

Between a Rock and a Hard Place

An Investigation of Custody Relinquishment as a Method
for Accessing Essential Mental Health Services for Children in Utah

A Report to the Community from the Disability Law Center

July, 2007



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The Disability Law Center (DLC) is a private non-profit agency that supports and protects the civil rights of persons with disabilities in Utah. We are motivated by the vision of a just society where all people are treated with equity, dignity and respect. The DLC accomplishes its mission through enforcing and strengthening laws that protect the opportunities, choices and legal rights of people with disabilities in Utah.

The DLC serves a wide range of individuals with disabilities – including those with cognitive, mental, sensory and physical disabilities – by guarding against abuse, advocating for basic rights, ensuring accountability in health care, education, employment, housing, transportation and within the juvenile and criminal justice systems. All DLC services are free of charge and available statewide. Office hours are 8:30A.M. – 5:00P.M. Monday through Friday. Our office is located at 205 North 400 West, Salt Lake City, Utah 84103.

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Executive Summary

It is estimated that 7.5 million children in the United States have a mental disorder.¹ Of those children, the Surgeon General estimates that as many as 80% are not getting appropriate mental health services.² Part of the problem is the lack of comprehensive services in the community, and further complicating the problem is the cost of necessary mental health services. The average American family income is too high to qualify for Medicaid, yet is not enough to cover the wide array of necessary mental health services.³ Additionally, those families that are able to afford private insurance may have insurance policies that do not provide enough coverage for in-patient hospitalizations or respite/day treatment programs.

This leaves families to struggle with two agonizing choices:

- 1. Give up custody of the child to the state. This allows the child to qualify for Medicaid coverage to pay for needed mental health services; or**
- 2. Continue to struggle caring for a child with an untreated or under-treated mental illness.**

Additionally, many states actually require that a child be in state custody before a residential treatment program can provide services.⁴

In Utah, the scope of the problem is not so clear. For years, the Disability Law Center (DLC) has received anecdotal reports of this problem from child advocacy groups and consumers. The State of Utah was made aware of this issue through the efforts of local advocacy groups, including the Utah chapter of the National Alliance for the Mentally Ill (NAMI) and Allies with Families. In fact, Utah's Medicaid agency researched the possibility of initiating a Medicaid waiver⁵ program to provide mental health services to children, at least three separate times in the last ten years.

The DLC conducted extensive interviews with six parents who described being told that their *only* option to obtain essential mental health services for their child was to give up

¹Goodman, Gwen. "Accessing Mental Health Care for Children: Relinquishing Custody to Save the Child" a comment in the Albany Law Review, 2003.

² Id.

³ Id.

⁴ Id.

⁵ Federal Medicaid law limits eligibility by income and assets. The income and resources of parents are typically counted when determining a child's eligibility. However, Medicaid waivers give a state the option to "waive" some of the standard income and eligibility requirements, including deeming the parents' incomes and assets irrelevant for the purpose of determining eligibility. If Utah developed a children's waiver, they could pay for community-based mental health services for any child, regardless of the family's income or assets, in cases where a child might otherwise require a mental health hospital level of care and the cost of the services does not exceed the cost of hospitalization, either individually or in the aggregate.

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custody to the state. We also interviewed staff from several state agencies that address children's mental health issues.

Findings

The DLC's investigation of this issue demonstrates that:

- Utah families face this terrible decision on a regular basis.
- Current state agency databases are not tracking the numbers that will show the extent of this problem.
- There is no overall state commitment to find a solution to meet the needs of these children and families in a proactive and comprehensive way that promotes intact family structures.

Recommendations

The following recommendations will allow the state to define the scope of the problem as well as help families in crisis stay together:

- Collect and track data by all agencies involved in the treatment, care and custody of children with severe mental illness in order to establish the need for a children's mental health waiver.
- Develop a children's mental health waiver.
- Increase the availability of comprehensive children's mental health services in the community.

Summary

Although we are not able to quantify the full extent to which custody relinquishment exists in Utah, we should be concerned that there are families whose very preservation is at stake because they cannot afford mental health treatment and cannot access less restrictive services in the community. Utah must take a holistic approach to this issue, seeking efforts to both quantify the issue and provide more comprehensive services in the community for those families currently in need. In this way, we can ensure that no family will ever be forced to make the painful decision to relinquish custody of a child who is loved but is also in desperate need of help.

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Introduction

“This whole situation has been horrible – the lack of support. It destroyed my marriage and was financially devastating. My other three children feel like my daughter gets all the attention. This has destroyed my personal relationships and has been emotionally and financially devastating.”

-- Mother of a 21 year old diagnosed with Bipolar Disorder and a history of substance abuse

Custody Relinquishment – A National Perspective

It is estimated that 7.5 million children in the United States have a mental disorder. For one-half of those children, their mental disorder causes serious disabilities.⁶ Of those 7.5 million children, the Surgeon General estimates that as many as 80% are not getting appropriate mental health services.⁷ Part of the problem is a lack of comprehensive community-based mental health services, combined with the cost of those services that do exist. Medicaid covers mental health services for many of the nation’s children who are low-income and have disabilities. Unfortunately, the average American family’s income is too high to qualify for Medicaid,⁸ yet is not enough to cover the wide array of necessary mental health services.⁹ Additionally, those families that are able to afford private insurance may have insurance policies that do not provide enough coverage for in-patient hospitalizations or respite/day treatment programs. Were these services more easily accessible, they could help de-escalate problematic behaviors before they became crises requiring more expensive in-patient treatment and decrease the stress experienced by families.

Consequently, many families are faced with a devastating choice between caring for a child with an untreated or under-treated mental illness or giving up custody of a child to the state so that the child qualifies for money available through the Division of Child and Family Services (DCFS) or Medicaid to pay for the needed mental health services. Additionally, many states actually require that a child be in state custody before a residential treatment program can provide services.¹⁰

In 1999, the National Alliance for the Mentally Ill (“NAMI”) issued a report: *Families on the Brink: The Impact of Ignoring Children with Serious Mental Illness*. In this nationwide study, NAMI found that 23% of all respondents¹¹ were told that they must

⁶Goodman, Gwen. “Accessing Mental Health Care for Children: Relinquishing Custody to Save the Child” a comment in the Albany Law Review, 2003.

⁷ Id.

⁸ Federal Medicaid law limits eligibility by income and assets. The income and resources of parents are typically counted when determining a child’s eligibility

⁹ Id.

¹⁰ Id.

¹¹ NAMI received responses from families who have children with a serious mental illness “in all 50 states for a total of 903 responses” to their survey.

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give up custody of their child in order to get that child necessary mental health services. The study also found that 20% of all respondents actually gave up custody of their children for the purpose of getting treatment for a serious and persistent mental illness.

Custody Relinquishment in Utah

On a local level, the picture is not so clear. Over the years, the DLC has received anecdotal reports of this problem from child advocacy groups and from consumers. The State of Utah was made aware of this issue through the efforts of local advocacy groups, including the Utah chapters of NAMI and Allies with Families. In fact, Utah's Medicaid agency has researched the possibility of initiating a Medicaid waiver program to provide mental health services to children at least three times in the last ten years. This program will be discussed more fully below.

In response to these concerns, the DLC began to investigate the issue of custody relinquishment as a method for accessing essential mental health services for children. We asked to speak to representatives from a number of state and community agencies, consumer advocacy groups, mental health service providers, and families. Of the professional interviews that we requested¹², the DLC interviewed representatives from the following agencies and organizations:

- Utah Division of Health Care Financing (Utah's Medicaid agency)
- Allies with Families
- Third District Juvenile Mental Health Court Probation and Parole
- Utah Division of Child and Family Services (DCFS)
- Utah Division of Juvenile Justice Services (JJS)
- ABLE Clinic¹³ (serving children in low-income families who have special medical needs)
- An Assistant Attorney General who works with DCFS
- A State District Juvenile Court judge.

We conducted interviews with six parents who were told that their only option to obtain essential mental health services for their child was to give up custody of their child to the state. Parts of their stories appear throughout this report.

¹² The DLC was unable to secure interviews with the following agencies: Division of Substance Abuse and Mental Health; the Utah State Hospital; NAMI Utah; Valley Mental Health; Utah Neuropsychiatric Institute; and Primary Children's Medical Center.

¹³ The ABLE Clinic is a part of the Bureau of Children With Special Health Care Needs, Division of Community and Family Health Services.

In This Report

The report describes what happens to families who cannot afford necessary mental health services for their children and discusses the various professional agencies' perceptions of the issue. The report reaches the following conclusions:

- These cases are not rare or isolated.
- Current state agency databases are not tracking the numbers that will show the extent of this problem.
- There has not been a commitment by all state agencies involved to find a proactive and comprehensive solution which meets the needs of these children and families in a way that supports existing family structures.

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A Costly Decision – The Story of Sam

Sam* was nine when he was first expelled from school due to behaviors related to Attention Deficit Hyperactivity and Bipolar Disorders. Despite private counseling with a psychiatrist at the University of Utah, psychiatric medications prescribed by his pediatrician, two hospitalizations at the Utah Neuropsychiatric Institute (UNI) at ages 13 and 15, and family and group counseling, Sam's behaviors never seemed to get better. Over the years, his behaviors intensified resulting in social isolation, threats toward his neighbors and siblings, and property destruction. Sam's parents both work and have private insurance available to them. Even so, they could not cover the expense of both the in-state and out-of-state residential mental health programs necessary to adequately treat Sam.

Sam's under-treated psychiatric disorders had severe consequences for his family. Sam's parents divorced, in part, because of the stress of caring for him on a daily basis. Additionally, Sam's mother has multiple sclerosis. Her disease progressed quickly and she had many complications due to the physical and emotional demands of caring for Sam.

Sam's mother, desperate to find appropriate services for her son, called the youth correctional facility where she had done some volunteer work. She spoke with a therapist she had worked with hoping he would know about residential treatment programs that might be able to help Sam. The therapist suggested that she make her son a ward of the state so that it could provide the services she could not afford. This was an option that would be presented to her many times. Sam's mother admits, "I almost gave him up several times. It was agonizing."

Sam's mother refused to relinquish custody, relying instead on the juvenile criminal justice system, including a 90-day stay at a detention center when Sam was in the 4th grade. That system was not capable of meeting his mental health needs. The services provided during this detention resulted in Sam's mother owing money to the Office of Recovery Services. Her inability to pay these expenses affected her credit report, creating an "unbelievable" impact on the family's finances: "When I look at my credit report... I would say to myself do I feed my children or pay my bills?"

Sam was ultimately able to stay out of state custody, but only thanks to the personal resources of his extended family. Sam's paternal grandmother is a psychiatric nurse and took him in for a short time to give his mother some relief.

** Sam is a fictitious name used to protect the identity of the young man described in this story.*

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Professional Perspectives

Health Care Providers

Health care providers stated that, in their opinion, custody relinquishment is a real issue. They have dealt with families who have either given up custody of their child with mental illness so the child can receive essential mental health care, or were on the brink of doing so. They feel that there are limited options for parents and children in this position.

"I am aware of other families who have been faced with this decision, but I feel they are reluctant to come forward for fear of retaliation or losing the few services they do have."

-- Father of a 15 year-old diagnosed with Obsessive Compulsive Disorder

Community Medical Providers

Susan Dickinson, an ABLE¹⁴ Clinic nurse, pointed out that many families are unable to navigate the extensive mental health system on their own. Instead, they become involved with DCFS or the juvenile criminal justice system because they have not been able to identify or access critical mental health services in a timely manner.

Ms. Dickinson said that every year the clinic serves two to three families who must relinquish custody in order to get mental health services for their children. The children are usually diagnosed with Autism, Bipolar Disorder, and/or Post Traumatic Stress Disorder (PTSD). These families experience one crisis after another, often requiring hospitalization for the child in need of services. These crises often take the form of psychotic episodes, threats of suicide and occasionally violent behavior. These families incur significant costs for their child's care, further hampering their ability to pay for private mental health services until custody relinquishment becomes the only viable option to qualify the child for Medicaid and all of the services that come with it.

These families may benefit from case management services designed to help them connect to essential services. Many of the families do not know about day camps and other respite services that can prevent crises by keeping the children in a structured environment and reducing stress for the families. Unfortunately, Medicaid does not cover these preventive services.

Ms. Dickinson also reports that families in rural areas of the state relinquish custody more often than parents in urban areas. Although she was unable to quantify the scope of the problem, this may point to the lack of comprehensive mental health services available in many rural communities.

¹⁴ The ABLE Clinic is a medical clinic operated by the Utah Department of Health that provides a wide array of medical services to children with special needs from low income families.

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Perspectives on the Role of DCFS and the Juvenile Criminal Justice System in the Lives of Children Without Access to Essential Mental Health Services

Children may become involved in two different systems because of a lack of appropriate mental health care. DCFS and the juvenile criminal justice system are often called upon to treat the symptoms of untreated mental health needs. Such symptoms can include aggression, truancy, drug and alcohol use and family conflict.

DCFS has historically been the agency involved in the vast majority of custody relinquishments. DCFS is often involved when there are concerns about the abuse or neglect of a child. DCFS can take over custody of a child, eliminating normal parental rights through a “no fault” relinquishment of custody in juvenile proceedings as well as for reasons of abuse and neglect. The suspension of parental rights opens the door for DCFS to get the child mental health treatment through Medicaid.

The juvenile criminal justice system provides a continuum of services to youth. The lack of mental health services often results in “delinquent”¹⁵ behavior. This delinquent behavior can require the child to be seen by a judge and to fulfill the obligations that result. In the juvenile criminal justice system, at delinquency proceedings, the juvenile court can order mental health treatment that the parent cannot otherwise access.

The Role of the Division of Child and Family Services (DCFS)

Relinquishment of parental rights through DCFS is an option for children who do not have access to mental health treatment while living with their families. Despite offering this option, DCFS does not know how many parents have relinquished custody in order to obtain mental health services for their children. An important first step to any resolution of this issue will be to gather this data.

According to Duane Betournay, Assistant Director of DCFS, the Division has a category called “service dependency” for those families who must relinquish custody because the child’s needs are not being met in the home. Families who fall into this category because of financial hardship, not negligence, are categorized as “no fault service dependency placements.” These parents still retain parental rights, including the right to be involved in treatment and education decisions for the child while in DCFS custody. They must also pay support to the Office of Recovery Services.

By Mr. Betournay’s count, in 2005, 470 children were placed in DCFS custody for service dependency. This represents 23% of all children in DCFS custody in 2005.

¹⁵ The terms delinquent/delinquency are used in the context of the juvenile criminal justice system to indicate criminal charges. The terms delinquent/delinquency also include status offenses- offenses that are only criminal if committed by a minor because of the status as a minor (e.g. truancy, runaway, etc.).

Two hundred and thirty-five (235) of these 470 children, or half of these children, were less than 10 years-old at the time of placement. Most of them were separated from family or other relatives and placed in foster care or residential treatment. Three of these children were sent to the Utah State Hospital (USH) after the dependency determination was made.

Despite knowing how many children were in DCFS custody because of service dependency needs, DCFS does *not* know how many are there due to a need for mental health services. Mr. Betournay believes that the number is significant. At this point, however, it is impossible to determine how many of these children have mental illness and are in custody due to a lack of access to necessary care and how many are there only because of a willful neglect by their parents.

While DCFS may be an option for some families, others refuse to give up custody – even if it means they will not receive essential mental health services for their child. Giving up custody can be traumatic for both the parents and child. Adopted children may be particularly vulnerable to the emotional trauma of separation from their adoptive parents because of attachment issues.

“I didn’t feel like I got any help from DCFS. Finally, a LCSW at Primary Children’s Hospital said the only way we would get help would be to give up custody of [our daughter]. This would ensure that she would get some sort of a long-term placement and at least basic support services.”

-- The parent of an 11 year-old diagnosed with Post Traumatic Stress Disorder and Depression

The Role of the Juvenile Criminal Justice System

Linda Barry-Potter, a probation officer with the Third District Juvenile Mental Health Court, described how the juvenile criminal justice system, of which the probation system is a part, often provides necessary residential mental health treatment that the family could not otherwise afford in a private placement.¹⁶ Of the twenty youth on her caseload at the time of our interview, five had been hospitalized at a state psychiatric hospital (four at USH, one at an out-of-state hospital) and four others were admitted for acute mental health hospitalizations. All nine were hospitalized for a minimum of one year. Additionally, three of the youth on her caseload were in juvenile criminal justice system detention facilities. Five other children were in DCFS foster homes with specially trained foster parents who work with youth in the juvenile criminal justice system.¹⁷

¹⁶ Since Ms. Potter is assigned to the Juvenile Mental Health Court, her case numbers will not be reflective of all probation officers in juvenile courts. The data, however, does reflect more involved mental health treatment interventions.

¹⁷ Ms. Potter provided details about the typical scenarios she encounters. Please see Appendix A for that information.

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In Appendix A, Ms. Barry-Potter provides details about typical scenarios she encounters in working with juvenile probationers. Youth that are in pre-adjudication detention are frequently triaged for necessary mental health treatment.

The Attorney General's Perspective

An interview with an Assistant Attorney General representing DCFS helped to clarify the dual roles DCFS and juvenile criminal justice system play in this crisis.¹⁸ She said that she has not observed families voluntarily relinquishing custody for the purpose of getting a child mental health services. Of the families that she has seen who are dealing with a child with a severe mental illness that is untreated or under-treated, one of three things generally occur:

1. The child's acting out behavior has led to involvement with the juvenile criminal justice system.
2. Parents can be found neglectful in not providing their children with necessary services – the *same* services that the parents are unable to afford.
3. The lack of available treatment ultimately makes the child's behavior unmanageable necessitating DCFS to provide services in the home.

A Juvenile Court Perspective

A conversation with a juvenile court judge painted a slightly different picture about the two agencies and their involvement in addressing the issue. Again, it is the court's experience that the lack of adequate treatment for children with mental illness is a critical problem. The dependency route through DCFS and the delinquency route through the juvenile criminal justice system continue to be used so that children can access critical mental health services. At times, this judge has placed children in state custody for minor acts of delinquency so that they can access needed mental health care. Although there are data about the number of children who are placed annually in DCFS custody, there are no clear numbers about how many of these children end up in this system due to an untreated or under-treated mental illness.

"When my son was 16, a Weber Human Services worker told us she could provide him services that would help, but we would have to relinquish custody in order to make it happen. We made too much money to qualify for the services but not enough to pay for them."

-- Parent of a 28 year-old diagnosed with Cerebral Palsy and an unspecified mental illness

¹⁸ This Assistant Attorney General asked that we not use her name in the report.

Possible State Solutions

The DLC interviewed representatives from Utah's Medicaid agency ("Medicaid"), to explore possible solutions to the problem of custody relinquishment. These discussions focused on the possibility of enrolling previously ineligible children into Medicaid -- without the relinquishment of custody. The DLC learned that Medicaid had once explored the idea of a children's waiver.¹⁹ Under a waiver, Medicaid can waive some of its income and asset eligibility rules. Of note here is the ability to waive consideration of parents' incomes and assets in determining whether a child is eligible for Medicaid waiver services. A program of this kind could potentially create access to essential mental health care where it did not exist before.²⁰ Utah was unable to develop such a waiver because the Department of Health was not able to identify enough youth that could use the waiver. This is further evidence that the problems addressed in this report need to be properly quantified.

We are aware of two states that have developed Medicaid waivers for children with severe mental illness. Kansas has a waiver in which they serve an average of 1,900 children annually.²¹ The average length of time a child receives services under that waiver is 270 days.²² Vermont has a Medicaid waiver program for children with mental illness that serves an average of 250 children annually.²³ For a child to be eligible for services they must meet the eligibility criteria for inpatient psychiatric treatment. However, the comprehensive community-based services provided prevents many children from being hospitalized.

The experience of these two states suggests that a Medicaid waiver program for children with mental illness is a viable option to address the lack of mental health services. Custody relinquishment could be avoided with such a program.

¹⁹ These are Home and Community Based Services (HCBS) waivers. This is an optional Medicaid program through which a state can provide specific services to discreet groups, such as individuals with developmental disabilities, mental illness, or chronic, severe physical disabilities. To be eligible for such a waiver, you must otherwise be in need of institutional care. The State of Utah already has HCBS waivers for individuals with developmental disabilities, acquired brain injuries, physical disabilities, and technology dependent children, and elderly individuals. The programs can be cost efficient by limiting the number of individuals that can participate in the waiver.

²⁰ The nature of these waivers programs is such that the services would only be available to a child with a severe mental illness, and in particular, one who is at risk of admission to a hospital without receipt of the mental health services in the waiver.

²¹ The population of Kansas is roughly the same as Utah's.

²² The Kansas waiver is limited to children whose mental illness is severe enough that without the waiver services they would need acute inpatient hospitalization.²² The child must have a DSM-IV Axis I diagnosis. Some of the more prevalent Axis I diagnoses are Schizophrenia, Mood Disorders, Anxiety Disorders, Somatoform Disorders, Eating Disorders, Impulse-Control Disorders, and Substance Related Disorders.

²³ Vermont's population is a fourth of Utah's.

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Recommendations

"The only reason I have been able to get [my granddaughter] help when she has a crisis is because I am a good advocate and know the system. I don't know what other people do."

-- The mother of a 14 year-old diagnosed with Bipolar Disorder

It is clear that custody relinquishment for the purpose of accessing mental health services is a real problem in Utah, but the data to demonstrate the extent of the problem is not available. Further, we do not know the degree to which the various sources of the problem individually contribute to the overall problem. We don't know if parents are giving up custody because of willful neglect, lack of insurance coverage, or gaps in the community mental health system. Without this data, realistic solutions to the problem cannot be comprehensively developed.

The following are recommendations to help the state simultaneously get a handle on the scope of the problem as well as help families identify and utilize proactive and preventive interventions.

Tracking the Data

- DCFS should add a query to their database to track how many of the children in custody for service dependency are there because of their need for mental health treatment and where any instances of abuse or neglect are primarily a consequence of the child's untreated or under-treated mental illness.
- DCFS needs access to the database used by the juvenile criminal justice system. This database tracks the number of families who were determined to have "no fault" for their dependence on state custody for services.
- Both DCFS and the juvenile criminal justice system databases should be made available to Utah's Medicaid program for the purpose of determining the need for a children's waiver.

Children's Waiver- Local and National Efforts

- Utah should reconsider establishing a children's waiver once numbers become available from DCFS and the juvenile criminal justice system.
- Utah's Medicaid office should further explore the need to expand their definition of eligibility criteria for a children's mental health waiver to include those children who had inpatient hospitalizations at local hospitals *other than* USH.²⁴ These

²⁴ Recognizing the seriousness of this problem, MEDICAID conducted a feasibility study of a children's waiver in November of 2005. The intention of the study was to initiate a pilot program that would serve 12 to 25 children who would meet the eligibility criteria for admission at the Utah State Hospital and were at-risk of being placed in state

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hospitalizations, even if initiated as acute stays, may be longer than Medicaid had previously observed.²⁵ Expanding the eligibility criteria to include local hospitalizations may raise the number of children who could benefit from a waiver to provide less expensive services in the community. Kansas has used such a definition for its waiver program.

- Advocacy groups and constituents should write to Senators Orrin Hatch and Robert Bennett, urging them to reintroduce the Keep Families Together Act, which calls for increased collaboration between agencies to reduce the need for inpatient hospitalizations and would also increase the money available to states who wish to have a children's waiver.

Increase the Availability of Comprehensive Children's Mental Health Services

- Mental health providers in the community should implement a team case management model that includes representatives from the family, the school, a physician, and the child's therapist. Together, they can connect families to respite and other community services and divert them from the need for inpatient hospitalizations, DCFS or the juvenile criminal justice system intervention. These kinds of integrated services are sometimes referred to as "wrap around" services.
- Service providers should create more respite services like day camps or day care treatment settings.
- Increase the range of services available in the community that help children transition back to their homes from the juvenile criminal justice system out-of-home placements, residential treatment, and USH.
- Utah should consider New York's Family Based Treatment Program which emphasizes treatment in a family setting as an alternative to more costly inpatient care. This program is used to transition children from a residential treatment facility to their homes.²⁶

custody in order to receive mental health services. Because of the narrow focus of the search criteria and the lack of available data on why children are placed in state custody, MEDICAID could not find any families to participate.

²⁵ According to Ms. Potter, of the 20 children on her current probation caseload, 9 have been hospitalized for inpatient psychiatric treatment (4 at USH, 1 at an out of state public hospital, and 4 at local hospitals for acute stays). All of these children were hospitalized for a minimum of one year.

²⁶ In this program, the child is placed in a foster home in which the parents are professionally trained and receive assistance from a masters-level family therapist. The temporary family and the family of origin receive a number of community services and counseling to help transition the child back to the family of origin's home. A program evaluation has shown that 67% of children in this program were able to return to their families and 22% demonstrated an increased ability to care for themselves.

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Conclusion

Although we are not able to fully quantify the extent to which custody relinquishment exists in Utah, we are able to put faces to the problem with the individual family stories retold in this report and through the experiences of service providers. In a state known for championing the value of family, we should be concerned that there are families whose very preservation is at risk because they cannot afford mental health treatment and cannot access less restrictive services in the community. Utah must take a holistic approach to this issue, seeking efforts to both quantify the issue and provide more comprehensive services in the community for those families who are currently in need. In this way, we can ensure that families will no longer be forced to make the painful decision to relinquish custody of a child who is loved but also in desperate need of help.

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Appendix A

Scenarios from Juvenile Mental Health Court

Linda Barry-Potter, a probation officer with the Third District Juvenile Mental Health Court, described some typical scenarios that she encounters working with juvenile probationers and/or their families.

- Parents either have no insurance or their private insurance does not adequately cover mental health treatment for the child, frequently resulting in behaviors that escalate to the point where law enforcement and the courts must intervene.
- The juvenile court will either send the child to Observation and Assessment (O & A) unit run by the Division of Juvenile Justice Services or will put the child on state supervision for a 45 day assessment.
- While at O & A, assessments are provided as well as individual, group and family therapy by licensed therapists. If medication is deemed appropriate, it is started while the youth is in O & A and monitored by medical staff for necessary adjustments.
- The child's behaviors may continue to deteriorate, especially in this new setting. This may result in an offense against detention staff, usually with a more serious charge of assaulting a corrections officer.
- The child can now be put in secured care or sent to a residential treatment program with the Division of Juvenile Justice Services having custody until the end of the sentence (usually 6 months to a year). When the child is in the custody of the Division of Juvenile Justice Services or in a residential program like Valley Mental Health's Adolescent Residential Treatment and Education Center ("ARTEC"), parents still pay support to the Office of Recovery Services. This support is calculated on a sliding scale.
- At the end of the sentence, the child may be released on probation but have little help in the way of transition.²⁷ Typically, there is little change in the parents' ability to provide support to the child for their psychiatric disabilities. If children do not get the treatment they need after being sent home, the child's probation officer can then petition the juvenile court on behalf of the parents to voluntarily readmit the child into the juvenile criminal justice system.
- In cases where a new offense occurs, Probation may petition the court on behalf of the parents to voluntarily return the child to state custody. In this circumstance, the parents are not charged with negligence. They retain their parental rights and are able to remain involved with decisions as to the child's

²⁷ Some in-home transition services are available, including individual therapy, medication management, tracker for school and work, possibly family therapy if the juvenile criminal justice system worker requests Family Preservation Services.

treatment and education plans. The juvenile criminal justice system develops a plan for reunification in 6 months to 1 year. The judge also has the ability to place the child in DCFS custody; however, DCFS can refuse the placement if they feel that they cannot guarantee the safety of the child or the community by providing services to the child outside of a secured setting. DCFS will frequently refuse placements for this reason in the case of children ages 12 or older. DCFS is even more likely to refuse placement for children over the age of 15 and for children who have a history of assaultive behavior.

- What services the child and family receive are up to the individual case worker (either DCFS, Probation, or JJS). If the caseworker does not refer the family or does not request the services, they are unlikely to occur. Occasionally, the judge will order family support services to assist the families.

Because of the problems she sees, Ms. Potter is working with three adult Mental Health Courts to request funding from the legislature for enhanced mental health services for the children that go through her system.

Between a Rock and a Hard Place

An Investigation of Custody Relinquishment as a Method for Accessing
Essential Mental Health Services for Children in Utah
A Report to the Community from the Disability Law Center – July, 2007