Children With Emotional Disorders In The Juvenile Justice System
Position Statement 51

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Mental Health America accords a high priority to the care of all children, especially those with emotional and behavioral problems**.**

Increasing numbers of children with emotional disorders are entering the juvenile justice system. This growing trend is the result of multiple systemic problems including inadequate local mental health services for children and more punitive state laws about juvenile crime. Because these children are disproportionately poor and children of color, they and their families are in special need of advocacy.

While very little data is presently available about children with emotional disorders in the justice system, it has been estimated that up to 60% of youth who are involved in the system suffer with such disorders. Many children with emotional disorders in the justice system have committed minor, non-violent offenses or status offenses. Mental Health America believes that these children do not need to be incarcerated. Whenever possible, these children should be diverted away from the juvenile justice system and towards community-based services including treatment as needed. Education, advocacy, and support should also be offered to the families of these children.

Mental health services can both prevent children from committing delinquent offenses and from re-offending. Intensive work with families at the early stages of their child's behavioral problems can strengthen their ability to care for their children at home.

Mental Health America believes the needs of children and families are best met through a system of collaborative community-based mental health services. These services include prevention, early identification and intervention, assessment, outpatient treatment, home-based services, wrap-around services, family support groups, day treatment, residential treatment, crisis services and inpatient hospitalization. Mental Health America further believes that these services are most effective when planned and integrated at the local level with other services provided by schools, child welfare agencies, and community organizations.

Because some children with emotional disorders commit serious and violent offenses, it is not always possible to divert them from incarceration. Nevertheless, these children need treatment for their disorders. The juvenile justice system and the mental health system should work together to develop programs and services within juvenile systems for these children. These services should be treatment-oriented, appropriate for the child's age, gender, and culture, individualized, and family-focused.

Incarceration Of Children

Placing children with emotional disorders in institutions, especially correctional facilities, poses special risks and obligations. Institutions have the duty to provide adequate medical services, including mental health services, protection from harm, and adequate education. These services are a right of the incarcerated child.

Children with emotional disorders are especially vulnerable to the difficult and sometimes deplorable conditions that prevail in correctional facilities. Overcrowding often contributes to inadequacy of mental health services and to ineffective classification and separation of classes of persons confined. It can both increase vulnerability and exacerbate emotional disorders. A correctional facility is a very bad place to put a child with an emotional disorder, and Mental Health America is on record in favor of maximum reasonable diversion.[1] But more and more, America is locking up children with emotional disorders.

Mental Health America believes that placing children with emotional disorders in institutions, especially correctional facilities, imposes special obligations on society. Correctional facilities have a duty to provide medical services, including mental health

services, and to provide protection from harm. These services are basic human rights of every person with emotional disorders confined in a correctional facility. Correctional facilities are properly expected to exercise special vigilance in dealing with children with emotional disorders because their ability to assert these human rights may be impaired. Mental Health America believes that these treatment obligations are greater than the treatment rights currently enforced by the courts as a matter of American constitutional law.

Delivery of mental health services in correctional facilities is the responsibility of all professionals at a facility, including psychiatrists, psychologists, social workers, nurses, correctional counselors, correctional officers, and facility administrators. Mental Health America believes that correctional facilities must be sufficiently staffed with mental health professionals, and that such professionals have special obligations to:

- advocate to correct conditions which interfere with or are inconsistent with basic human rights;
- advocate to improve mental health services and to oppose malpractice;
- train all personnel about the signs of mental and emotional problems and basic mental health principles; and
- oppose discriminatory treatment based on race, religion, gender, ethnic background, mental health condition, or sexual orientation.

Mental Health America commits itself to protecting the human rights of children with emotional disorders who are incarcerated in the criminal justice system. This includes their rights under the U.S. Constitution, as currently recognized by the courts, but goes beyond. Mental Health America will defend the human rights to adequate medical and mental health care, to protection from harm including staff abuse, and to a facility in which the vulnerable can be protected. If the most vulnerable cannot be protected, they should not be confined.

Mental Health America and its affiliates should work to inform members of law enforcement and correctional groups, judges and attorneys, mental health professionals and advocates, children with emotional or behavioral disorders and their families, the community and the media about the rights of prisoners with mental illness and the way in which local and state governments are responding to the need or failing in their duty.
Mental Health America also commits itself to identifying and addressing the forces that contribute to the disproportionately high involvement of persons from ethnic and racial minority communities in the criminal justice system. A system that incarcerates so many so differentially as ours is inherently unjust.

Treatment During Confinement

When children in need of mental health treatment must be confined in correctional facilities, certain principles should be observed:

1. All children should be screened upon admission by trained personnel for mental health and substance abuse problems. When the screening detects possible mental health problems, children should be referred for further evaluation, assessment and treatment by mental health professionals. Children who are already receiving treatment before they enter

should be assisted in continuing treatment. All children who are not released within one week should have behavioral, mental health and substance abuse evaluations completed by qualified mental health staff by such date.

2. Children who suffer from acute mental disorders or who are actively suicidal should be placed in or transferred to appropriate medical or mental health units or facilities and returned to general population only with medical clearance. Correctional facilities that do not employ mental health staff should have written arrangements with local medical or mental health facilities for providing emergency medical and mental health care.

3. Mental health services should be available to children 24 hours per day, seven days per week. Treatment should be provided in an atmosphere of empathy and respect for the dignity of the person. It should be strengths-based and recovery-oriented. A reasonable array of mental health interventions should be available, including the full range of available medications. The type of intervention should be tailored to meet the child's needs, with family consultation, and should be delivered by qualified mental health staff who are trained to deal with crises as they arrive. When medications are used, they should be consistent with the treatment plan and monitored by a qualified mental health professional.

4. Special treatment should be available to children who have been sexually abused, who have substance abuse problems, health problems, educational problems, histories of family abuse or violence, and who are sex offenders. Programming in facilities should be appropriate to the child's age, gender and culture. Linguistically and culturally appropriate therapy should be provided. Under no circumstances should a child be penalized for seeking or receiving or declining mental health treatment.

5. Correctional facilities should train staff to use behavior management techniques that minimize the use of intrusive, restrictive, and punitive control measures. Facilities should have written guidelines for the use of seclusion, room confinement, and restraints. These guidelines should be made clear to children in custody. Distinctions should be made between the use of seclusion and restraints for custodial-administrative purposes and those made for therapeutic purposes. When restraint must be used to prevent injury to self or others, there should be stringent procedural safeguards, limitations on time, periodic reviews and documentation. Generally, these techniques should be used only in response to extreme threats to life or safety and after other less restrictive control techniques have been tried and failed.

6. Under no circumstances should children be the subjects for medical research without proper ethical review and informed consent.

7. Children should have a discharge plan prepared when they enter the correctional facility in order to integrate them back into the family and the community. This plan should be updated in consultation with the family (as appropriate) and community treatment facilities before the child leaves the facility. It should include the continuation of treatment, therapy and services begun in the facility. Correctional facilities should take an active role in promoting continuity of treatment for those released.

8. Facilities should take extra precautions to assure against suicide by children living through emotional or behavioral problems. Facilities should have a suicide prevention plan that includes appropriate admission screening, staff training and certification, assessment by qualified mental health professionals, adequate monitoring, referral to appropriate mental health providers or facilities, and procedures for notification of the prisoner's family.

9. Facilities need to identify and treat co-occurring disorders, and particularly substance abuse, and to provide support in the facility and in the transition to the community.

Specific Rights

Mental Health America affirms the specific rights of children with emotional disorders confined in correctional facilities listed here because they have the most potential to be abridged in correctional settings:

- The right to adequate medical and mental health care, to protection from harm including staff abuse, and to a facility in which the vulnerable can be protected: a safe, sanitary and humane environment
- The right to informed consent to treatment. Staff should discuss with the child and the child's family the nature, purpose, risks, and benefits of types of mental health treatment.
- The qualified right to refuse treatment, including psychotropic medications, on the same basis as any other person. [2]
- The right to the least restrictive environment and the least intrusive response to an apparent need for mental health services.
- The right to be confined in a place that can provide the treatment needed.
- The right to confidentiality in the delivery of mental health services and in mental health and related facility records.
- The right to have regular and timely access to medical and mental health staff who are culturally competent and qualified to provide adequate treatment and supervision.
- The right to be transferred to an appropriate medical or mental health facility or unit when conditions warrant.
- The right to receive educational services that are tailored to the child's educational level, needs, and abilities, including special education services and supports.
- The right to be free from corporal punishment, chemical restraints, and sexual abuse or coercion.
- The right to assert grievances, to have grievances considered in a fair, timely and impartial manner, and to exercise rights without reprisal.

The right to an individualized written treatment plan, to the treatment specified in the plan, to periodic review and revision of the plan based on the child's needs. The family should participate in the development, review, reassessment and revision of both the treatment plan and the discharge plan.

Effective Period

This policy was adopted in 1998 and revised by the Mental Health America Board of Directors on March 12, 2005. It will remain in effect for (5) years and is reviewed as required as required by the Mental Health America Prevention and Children's Mental Health Services Committee.

Expiration: March 11, 2010

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[1] Mental Health America Policy Number --, "In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System (adopted 2003)

[2] Washington v. Harper, 494 U.S. 210, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990). In the Washington case, a unanimous Supreme Court held that doctors in Washington's corrections system could administer anti-psychotic medicine to a non-consenting prisoner. The decision required the state to show, in a post-medication administrative hearing, that the prisoner was dangerous to himself or others as a result of serious mental illness and that the treatment was in the prisoner's best medical interest