



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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JEFFREY A. MEYERS
 COMMISSIONER

September 12, 2017

Via Email (.pdf) and First Class Mail

Representative Neal M. Kurk, Chairman
 Joint Legislative Fiscal Committee
 Legislative Office Building
 33 North State Street, Room 210
 Concord, N.H. 03301

Re: DHHS Plan to Develop Alternative Placement Capacity for DCYF Involved Youth

Dear Representative Kurk:

Thank you for your recent email outlining your concerns with the Department's August 31, 2017 report on the development of alternative placement capacity for DCYF involved youth. As you know, I responded to that email on Sunday, September 10th to address preliminarily the issues you raised. This letter is in further response to your concerns.

1. *"Your language suggests that the appropriation is to be used solely for the facilities required in section 159, while the bill directs that the funds be used for the requirements of section 165, which include broad improvements to the service system, not merely the section 159 facilities, and references both "residential and other treatment settings." and,*

Your language states that the additional bed capacity is to come from the section 159 facilities, while section 165's required capacity increase does not refer to those facilities. Moreover, additional capacity is to be in place by January 1, 2018, while the second facility does not need to be certified fully until July of 2018, which should make it clear that the two requirements are separate and distinct. The legislation anticipated that, with appropriate rate and programmatic improvements as required by section 165, the additional capacity would be attained at least in part from existing facilities."

Response:

The appropriation language in Section 175 (see enclosed) clearly states that the \$8.7 million dollar appropriation is to be used to fund rate increases and additional capacity for out of home placements pursuant to the duties of the commissioner *"in section 165 of the act"*. It further provides that these funds *"may not be used for any other purpose . . ."*

Section 165 (see enclosed), in turn, requires that the department develop alternative placement capacity for *"non-serious violent offenders"* who prior to the act *would have been placed at the Sununu Youth Services Center*. A broad read of *"placement"* in this section would limit the use of these funds to the development of alternative placement capacity for youth who prior to the act would have been committed to or detained at the SYSC.

Section 175 is entitled: Funding Alternative Placement Capacity for Youth. This section states that the department is required to spend no less than \$8.7 million on housing and other services for "additional alternative capacity for out of home placements pursuant to the duties of the Commissioner in Section 165 of this act."

While beyond the language on Section 175, neither Section 165 nor Section 159 contain specific guidance concerning the issue of whether the "alternative placement capacity" may or may not come from existing facilities, it is reasonable to conclude based on the language of Section 175 that the intent is to *increase the state's capacity* for placement in Medicaid-eligible settings by no less than 35 beds¹. While I would agree that, as a matter of law, there is nothing in the statute that explicitly prohibits an existing provider from converting existing capacity to meet the needs of this population, doing so could result in the loss of existing (lower rate) beds and in a net *decrease* in the state's placement capacity contrary to the intent of the legislation.

2. *Your language also refers to the appropriation as "up to \$8.7 million," while section 175 directs that "no less than" that amount be used for the purposes outlined in section 165.*

Response:

You are correct. Section 175 provides that "no less than" \$8.7 million of the funds appropriated shall be used for the purposes outlined Section 165. The "up to" language was inadvertently substituted and we will amend the plan to say "no less than".

3. *I am also concerned that your letter may not meet the requirements of section 165:*

"[T]he commissioner shall evaluate the adequacy of the service system and ensure that sufficient alternative placement capacity is in place . . . On or before September 1, 2017, a plan for development of such capacity shall be provided to the fiscal committee . . ."

Your letter indicates that the evaluation has not been conducted and that the time frame for such evaluation "will be determined."

Response:

In the approximately 65 days since this legislation was enacted, the Department (despite the absence of an appropriation of funds for this particular purpose²) has worked diligently to identify qualified individuals and entities who would be willing and able to conduct a high quality, comprehensive assessment of the adequacy of the existing service array. Due to the blended system, this assessment will include not only juvenile justice services but also child protection services. These youth are often in the same in-home services or community placements based on their treatment needs and not on the petition type. We have identified multiple national organizations familiar with these types of endeavors, developed a set of questions to use to assess their qualifications, and begun to conduct teamed interviews. As stated in the department's plan, the department anticipates that it will secure an individual or group to conduct this assessment on or before September 30, 2017.

¹ Section 165 provides in relevant part, "The plan shall provide for an *increase* in the state's capacity for placement in Medicaid-eligible settings of no fewer than 35 minors." Emphasis added.

² NOTE ON APPROPRIATION FOR DCYF SYSTEM EVALUATION: While the requirement to undertake the evaluation of the DCYF system is contained in Section 165 of the law, Section 175 restricts the use of the appropriation to "rates and additional capacity." That same section specifically prohibits the expenditure of any portion of the appropriated funds for any other purpose. The department is unaware of any other appropriation for the adequacy assessment.

The concern expressed regarding the vagueness of the time frame for the evaluation as, "... will be determined" is completely misplaced. We are moving to get a contract to Governor & Council in October so that the evaluation may go forward this Fall.

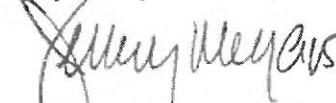
4. *Finally, your letter may have misinterpreted the scope of the additional capacity required by section 165 by limiting it to only committed youth. The section refers to capacity for children "placed" at the Sununu Center, which includes both committed and detained youth*

Response:

I agree that the scope of Section 165 is ambiguous. It does not clearly indicate whether the alternative placement capacity is to be developed for committed youth only or for committed and detained youth. Existing law, RSA 169-B:19, VI, however, addresses minors who are *committed* to SYSC and speaks to notifying the court of any such "placement". The term "placement", however, is not defined in RSA 169-B:2. Reading this section in conjunction with Section 159 which requires that the department certify a Medicaid eligible facility for the transfer of *committed* youth by January 1, 2018 and that it certify a second such facility for *committed* youth by July 1, 2018 supports an interpretation that this alternative placement capacity is to be developed for the *committed* population. Regardless, the department does not believe that 35 alternative placement beds will be sufficient to accommodate both committed and detained youth who would formerly have been placed at the SYSC. If, in fact, the law requires that the alternative placement capacity include both committed and detained youth, then the funds available and the number of alternative beds would have to increase.

In closing, I believe that our plan is entirely consistent with the law as written. I look forward to the meeting tomorrow. I would also strongly urge the Committee to invite DCYF residential providers to appear at a future meeting. These providers are an integral part of the system and the legislature should be aware of their views and perspectives as the law is implemented.

Respectfully submitted,



Jeffrey A. Meyers
Commissioner

Enclosure

cc: Governor Christopher T. Sununu
Senate President Charles Morse
Speaker Shawn Jasper
Rep. Frank Kotowski
Senator Jeb Bradley
Councilor Christopher Pappas
Senator Kevin Cavanaugh
Mayor Theodore Gatsas
Chief Nick Willard
Members, Fiscal Committee of the General Court
Christine Tappan, Senior Division Director, DHHS
Brady Serafin, Director, SYSC

HB517 relative to state fees, funds, revenues, and expenditures
Chapter Law 156, (2017)

156:175 Funding of Alternative Placement Capacity for Youth.

Notwithstanding any other provision of law, no less than \$8,714,632 of the funds appropriated in account 05-95-42-421010- 2958, class 535, shall be expended during the biennium ending June 30, 2019, to fund rate increases and additional capacity for out-of-home placements pursuant to the duties of the commissioner of health and human services in section 165 of this act. These funds may not be transferred or utilized for any other purpose, including to satisfy a lapse requirement or appropriation reduction.

156:165 Alternative Placement Capacity for Youth; Reporting Requirement.

I. In furtherance of the duty of the department of health and human services under RSA 170-G:4 to provide services for all children and youth referred to it by the district courts pursuant to RSA 169-B, the commissioner shall evaluate the adequacy of the service system and ensure that sufficient alternative placement capacity is in place for those children who are not serious violent offenders who prior to this act would have been placed at the Sununu youth services center. On or before September 1, 2017, a plan for development of such capacity for minors who are not serious violent offenders shall be provided to the fiscal committee of the general court, and the plan shall be updated on a monthly basis until it is fully implemented. The plan shall provide for an increase in the state's capacity for placement in Medicaid-eligible settings of no fewer than 35 minors. The increase in capacity for minors who are not serious violent offenders shall be implemented no later than January 1, 2018, and include a rate structure which supports the staffing ratios and other resources necessary for the safe and effective treatment of such children in residential and other treatment settings. The rate structure shall be submitted to the fiscal committee of the general court for approval prior to December 1, 2017. If necessary, the plan shall provide for a process for re-establishing cost-based rate-setting rules and procedures which may have expired.

156:159 Dispositional Hearing. Amend RSA 169-B:19, VI to read as follows:

VI. A minor committed to the youth development center for the remainder of minority may be placed at any facility certified by the commissioner of the department of health and human services for the commitment of minors. The commissioner of the department of health and human services shall be responsible for notifying the court, within 5 business days, of any such placement and of any subsequent changes in placement made within 60 days of the original placement. *The commissioner shall maintain certification of at least one Medicaid-eligible residential treatment facility for the transfer pursuant to this paragraph of offenders other than serious violent offenders beginning January 1, 2018, and no fewer than 2 such facilities no later than July 1, 2018. For purposes of this section, a "serious violent offender" is a minor subject to a commitment order for a serious violent offense as defined in RSA 169-B:31-c The process for identification and certification of residential treatment facilities under this subparagraph may include consultation with the operators of existing facilities in the state about their physical and programmatic capacity and the identification of any necessary enhancements in programming or rate structure to develop the resources required by this subparagraph.*

DCYF Review of Existing Services

Purpose of Review

This review of services is intended to assess the status of services currently available for youth via residential treatment within the Division of Children Youth and Services (DCYF) certified providers. This assessment provides an overview of the available services; however, it does not come to conclusions regarding the capacity or quality of the system to meet the needs of the youth who are placed by the court in residential treatment settings within New Hampshire. A broader and more thorough assessment would need to be conducted to provide clarity to the capacity and the quality of the system and the system's ability to adequately meet the needs of the youth and the safety of the community.

Currently Certified

Below are the in-state residential treatment programs currently certified by DCYF with their corresponding certification bed number and Department approved licensed capacity.

*There are three different factors that contribute to the number of children who can be placed at a program; 1. Licensed, 2. Certified, and 3. Operational Capacity.

- Licensed beds are approved by the Child Care Licensing Unit of DHHS in accordance with He-C 4001 or Health Facilities of DHHS in accordance with RSA 151 .
- Certified numbers are a portion of those licensed beds which the Division for Children Youth and Families certify as beds we could access based on RSA 170-G:4 XVIII He-C 6350 and He-C 6420.
- "Operational capacity" while a facility may be licensed or certified for a certain number of beds, their actual "operational capacity" may be significantly lower. A facility's "operational capacity" may depend on a number of factors including the facility's ability to acquire and keep necessary staffing, its ability to recruit and retain qualified individuals to provide clinical and special education services, program costs and the adequacy of its reimbursement rate to cover those costs. As a result of these and other factors the actual "operational capacity" of a number of our facilities is/may be substantially lower than their licensed or certified capacity. This number is fluid and may change, therefore it is not included below.

DCYF Certified In-State Residential Treatment Programs	Number of Licensed Beds *	Certified Beds
Assessment Treatment Program		
CAST- MPA	44	16
Intermediate Treatment Programs		
Chase Home	25	18
Dover Children's Home	19	12
Orion House	18	17
Webster House	20	19
Intensive Residential Treatment Programs		
Becket Academy- Rumney	16	16
Crotched Mountain	113	10
Easter Seals-(Boys)	16	10
Easter Seals-(Kroll)	5	5

Easter Seals-Zachary Rd.	106	39
Easter Seals-Lancaster	24	6
ES Crisis (uses existing licensed beds)		8
Nashua Children's Home	55	46
NFI-Davenport School	22	20
Pine Haven	23	20
Spaulding (3 programs)	61	26
VPI- Campton	26	16
VPI East Haverhill Academy (EHA)	16	2
VPI Sub Acute at Depot St	5	4
Wediko	44	28
Shelter Care Programs		
Traverse (can use 4 additional MPA licensed beds)	8	8
Nursing Programs		
Cedar Crest (we don't certify a number)	26	
Total	692	346

Program closures

Over the last 11 years there have been a number of New Hampshire program closures. It should be noted that a number of these programs were hospitals and group homes which we do not have a certification category for any longer (eff. 2015). These program closures are captured below.

Closed Since 2006		
Antrim	New Hampshire	Closed
Blue heron	New Hampshire	Closed
Boylston	New Hampshire	closed
Child and Family Services	New Hampshire	Closed
Cheshire	New Hampshire	Closed
Eckerd	New Hampshire	Closed
Hannah House	New Hampshire	Closed
Malley Farm	New Hampshire	Closed
Mount Prospect Intensive	New Hampshire	Closed
New England Salem	New Hampshire	Closed
NFI Midway Shelter	New Hampshire	Closed
NFI North Country Shelter	New Hampshire	Closed
NFI Northern NH Human Services	New Hampshire	Closed
Odyssey	New Hampshire	Closed
Our House for Girls	New Hampshire	Closed
PACE	New Hampshire	Closed
Phoenix	New Hampshire	Closed
Rolfe and Rumford	New Hampshire	Closed
Saint Charles	New Hampshire	Closed

In addition we have a number of programs which began after 2006, but closed since then. Those programs include

2006-2017		
Dover Pregnant and Young Parent	New Hampshire	Closed
Easter Seals Girls	New Hampshire	Closed
Easter Seals Co Occurring	New Hampshire	Closed

In addition we have had a number of new programs which have been developed based on need per RSA 170-G:4 XVIII, some based on response from closures listed above. The newly created programs have been developed based on our existing population of youth eligible for community based programs.

New since 2015 and currently certified			Daily Rate
Easter Seals- Crisis Program	New Hampshire	New	\$ 900.63 (no education)
VPI- Sub Acute	New Hampshire	New	\$ 736.31
VPI- East Haverhill Academy	New Hampshire	New	\$ 423.68
VPI- Campton Experiential Program	New Hampshire	New	\$ 445.18
Becket Academy At Rumney	New Hampshire	New	\$ 427.74
MPA- Comprehensive Assessment and Short Term Treatment	New Hampshire	New	\$ 413.93
Traverse Interim Shelter	New Hampshire	New	\$ 337.82 (no education)

New Hampshire programs which have closed over the last seven years have attributed this to these major factors, 1. Reduction in the number of referrals for a period of time (which is no longer a factor); and 2. Rates which have been the same since 2008. Although there was a brief increase of 2% in 2009 that 2% increase was retracted in 2011. The department had been operating under the constraints of HB2 276:148 (I, II) which had eliminated the ability to allow provider rate increases for in-state providers. The most recent budget session eliminated the departments constraints of HB2 276:14 and did yield a \$2,200,000 increase for provider rates, yet providers have expressed in the past that the increase will need to be anywhere from a 35% to 50 % rate increase, and in some cases higher, to meet the current treatment needs of children and required programming.

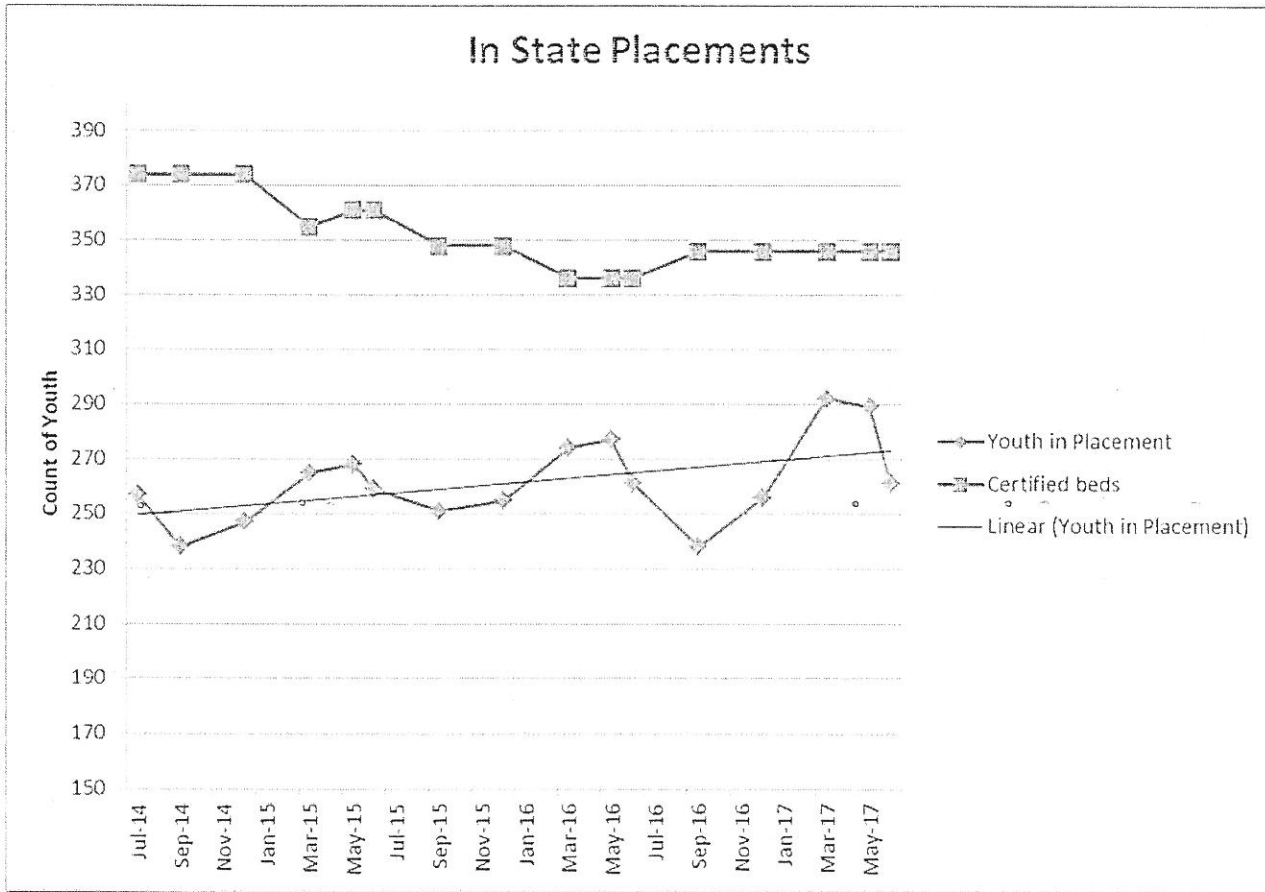
Placement Trends

Residential treatment placement trends demonstrate an increase in residential placement. There is always reduction over the summer of the residential placements; however, the system requires capacity to be able to meet the needs of all youth at the height of the youth in placement. In addition the system should afford for unexpected increases of a particular type of youth with a specific treatment need. The system must be flexible enough to be able to meet the evolving needs of the children youth and families in New Hampshire.

In addition, the below represents DCYF certified beds and DCYF placement *. It should be noted that there are many programs which are filling the beds that are certified by DCYF with youth from NH who are educationally placed, privately placed by families or placed from local New England States. The Certified number does not restrict the program from occupying those beds with other youth. These

programs historically have filled beds with youth from other referral sources in order to have a diverse referral pool in order to offset the DCYF established rate and to fill beds which DCYF was underutilizing. There were times when, dependent upon placement need, treatment needs or trends in challenging populations, DCYF under-utilized the certified beds. This may have been due to legislative changes (i.e. changes within the CHINS statute), efforts to reduce the length of stay and the efforts to reduce the amount of reliance on residential treatment program's (Frameworks for Collaboration Efforts) and the programs explored diverse referral sources.

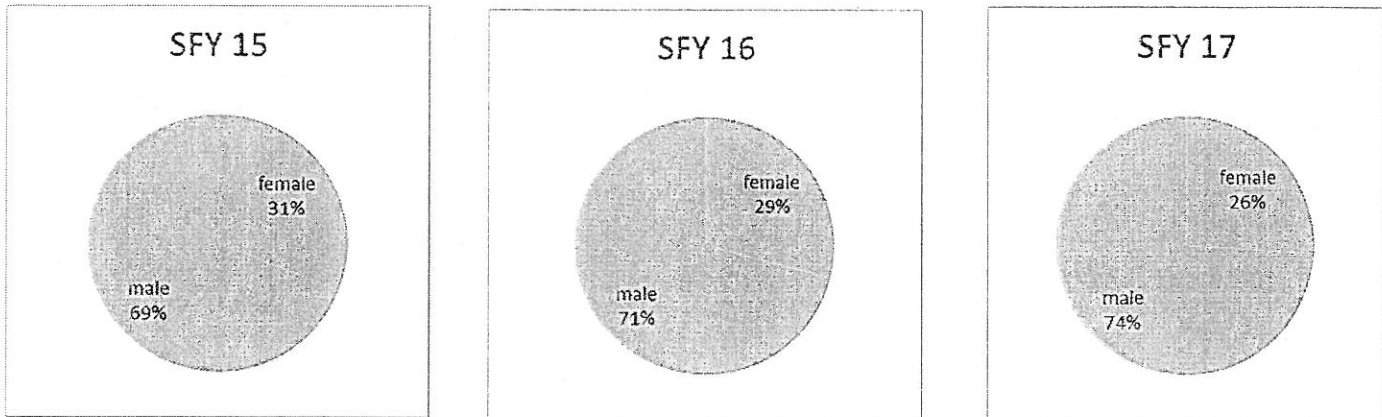
In State Placement Trends



The following is the number of beds available to males, females and co-eds (SFY 2018 is included):

beds available in the different programs	SFY 15	SFY 16	SFY 17	SFY 18
	374	348	346	336
Co-ed	207	241	240	231
male	152	92	86	85
female	15	15	20	20

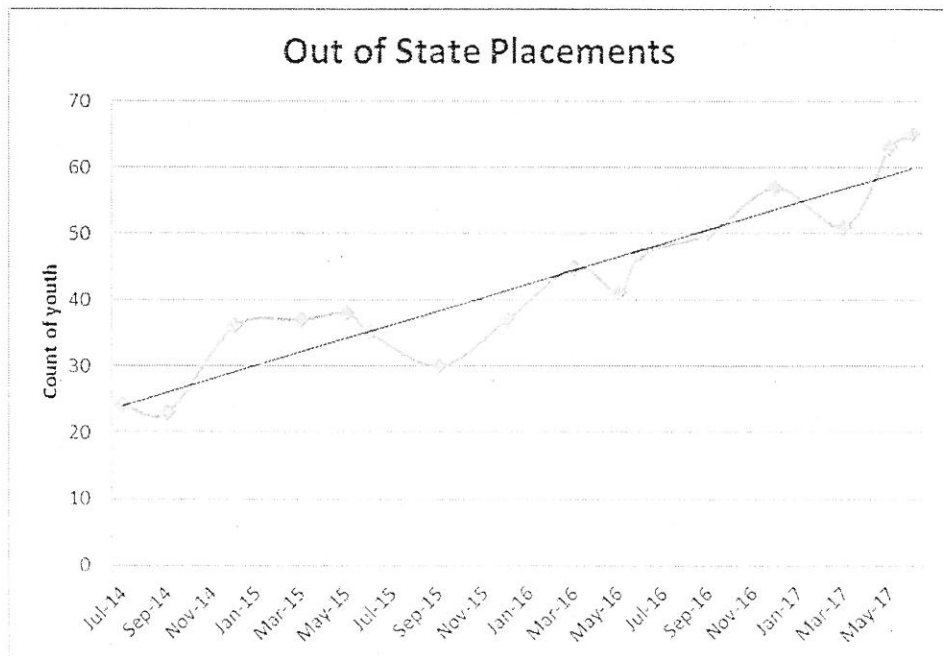
The following charts shows the breakdown between males and females in placement each FY (note the number of male specific beds has significantly decreased (above table) while the % of male youth in placement has increased).



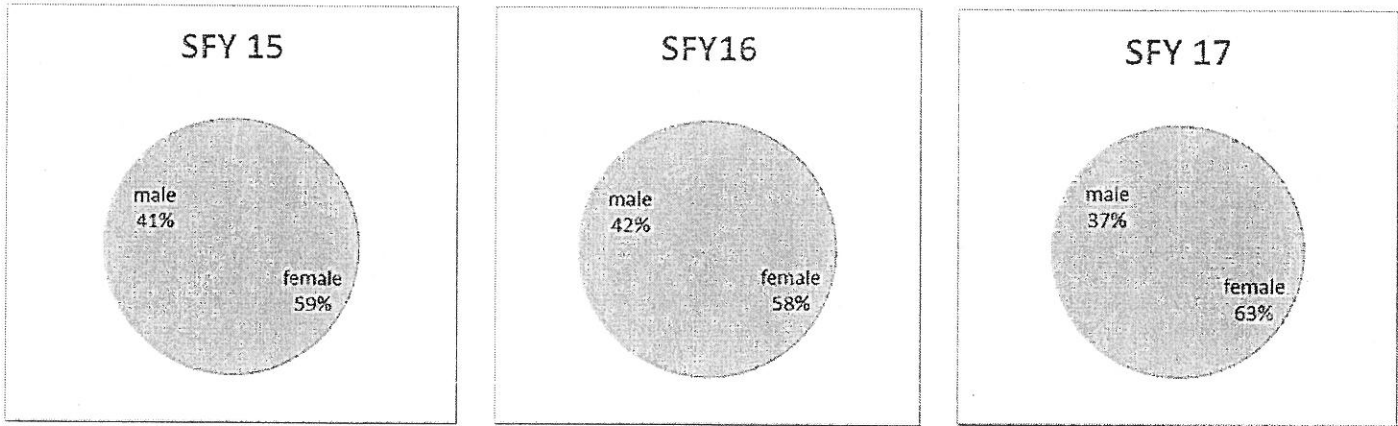
Out of State Placement Trends

In accordance with the statutes we prioritize placement in state for youth who need residential treatment. Per RSA 169-B:19-b; 169-D:17-b; 169-C:19-b *Presumption in Favor of In-State Placements.* – *There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.*

However, due to the needs of the youth, the denials of placement by in-state providers and in some cases the proximity of the out of state provider to the family home DCYF places youth out of state. Unfortunately, with the reduction in the residential placements in New Hampshire there are fewer programs regionally based and therefore youth may have to go further away in New Hampshire or out of state to receive appropriate services to meet their needs. The chart below shows the increase in out of state placements over the last 3 years.

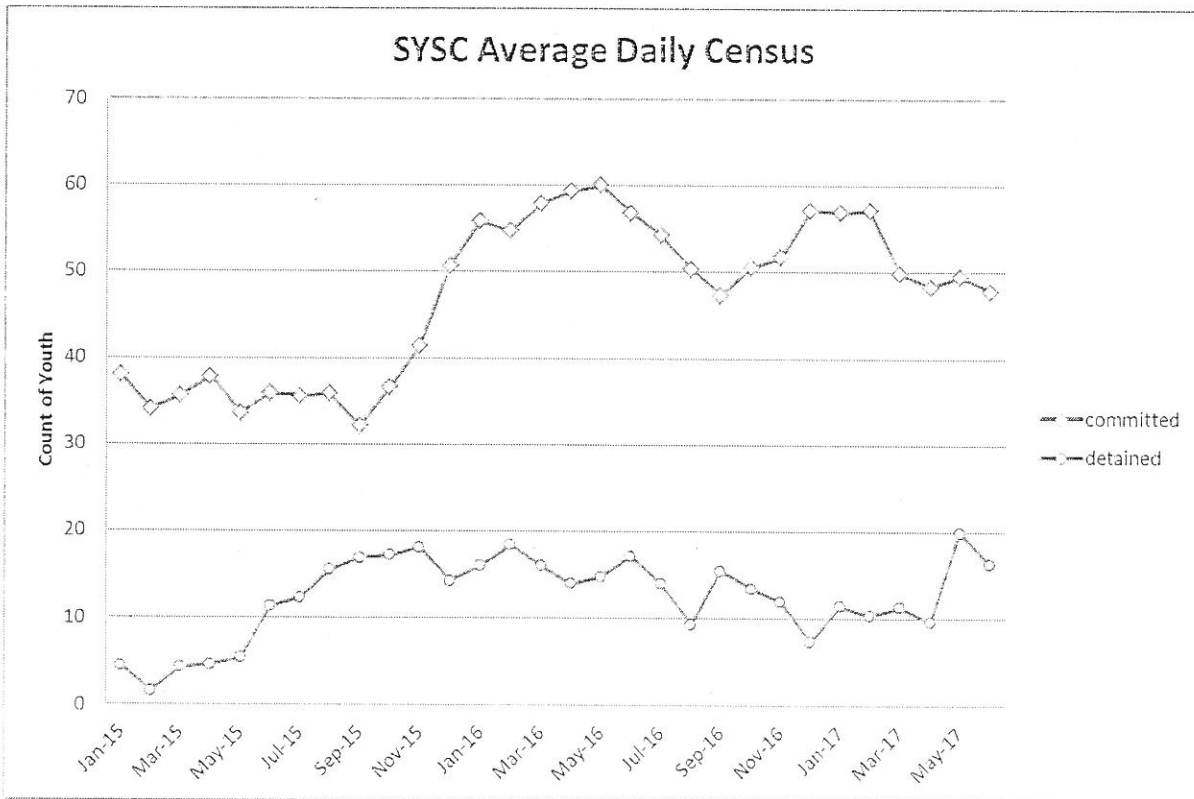


Below is the breakdown of males and females in out of state placement for each FY:



Sununu Youth Services Center (SYSC) Utilization

The utilization of the SYSC is dependent upon court orders to the setting. In addition the capacity at the program and the program itself does not allow for rejection of youth and must be prepared (as stated above in the “placement trends” narrative) to be able to accommodate any influx of youth and behavior at the setting. The Sununu Youth Services Center provides services to a small percentage of the juvenile justice population. If a significant community event occurs and several youth are either committed or detained, this can skew the actual percentages and provide the perception of over utilizing this facility.



Below are the lists of petition allegations otherwise known as charges, of the youth as of August 1, 2017 who were either detained or committed at the SYSC. The below references whether the petition allegation would have been a misdemeanor or felony, however for juveniles misdemeanors and felonies do not apply as they do not carry that distinction.

In total for 51 juveniles there were 465 individual petition allegations as many of the youth had multiple petition allegations each.

Petition Allegations	Count of allegations
318-B:2 (I) Possession of Controlled / Narcotic Drug	23
631:2 Second Degree Assault	8
631:2 A Simple Assault	78
631:2-b Domestic Violence	11
631:4 Criminal Threatening	32
632-A Sexual Assault and related offenses	10
634:1(IV) Arson	8
634:2 Criminal Mischief - Vandalism	21
634:2(II) Criminal Mischief -- Felony	5
634:2(III) Criminal Mischief -- Misdemeanor	20
635:1(II) Burglary -- Class B	17
635:2 Criminal Trespass	17
636:1 Robbery	6
637:3 Theft by Unauthorized Taking or Transfer	38
637:3-a Willfull Concealment	14
637:7 Receiving Stolen Property -- Felony	13
637:7 Receiving Stolen Property -- Misdemeanor	23
638:5 Fraudulent Use of Credit Cards	11
641:4 False Reports to Law Enforcement	6
642:2 Resisting Arrest/Detention	27
644:2 Disorderly Conduct	18

For any petition allegation which occurred less than five times was not included in the above table as it would allow for the youth to be potentially identified though the data.

As of August 1, 2017 there were 51 youth and detained committed to SYSC. 7 of those youth had no other placements. Below is the breakdown of the various types of placements the 51 youth have had:

Type of Placement	Count of Youth
General Foster Home	**
Individual Service Option	**
Intensive Group Home / Ed Fac (Level 3)	69
Intermediate Group Home (Level 2)	34
Out Of State	**
Shelter Care	40
Specialized Foster Home	**
Grand Total	150

Numbers less than 5 are masked due to potential for identity. These numbers are duplicative many of youth have had more than one placement prior to SYSC.

Other Petition Allegations
159:16 Possession of Weapons generally
163-B:3 Unlawful Activities - Litter Control Law
227-L:17 Woodland Fire Control
265:25 Conduct After Accident
318:42 Dealing in or Possessing Prescription Drugs
318-B:2 Acts Prohibited
318-B:26(I)(c) Sale of Marijuana (1 oz. - 5 lbs.)
318-B:26(II)(a) Possession of Cocaine
318-B:26(II)(d) Possession of Marijuana
597:7A Detention and Sanctions for Default or Breach of Conditions
626:8 & 636 Criminal Liability for Conduct of Another
626:8 Criminal Liability for Conduct of Another
629:1 Attempt
629:2 Criminal Solicitation
630:1-b Second Degree Murder
631:3 Reckless Conduct
634:3 Unauthorized Use of Propelled Vehicle or Animal (Joyriding)
635:1(V) Possession of Burglary Tools
637:3 Attempt Theft
637:4 Theft by Deception -- Misdemeanor
637:6 Theft of Lost or Mislaid Property -- Felony
638:17 Computer Crimes -- Misdemeanor
641:6 Falsifying Physical Evidence
642:10 OBSTRUCTING REPORT OF A CRIME
642:6(I) Escape -- Class B
644:1(I) Riot
644:17 Willful Concealment/Shoplifting
644:3-a False Fire Alarms
Contempt - Criminal Contempt of Court, Criminal

Conclusion

DCYF is able to provide an assessment of the current services however, in order to conduct a comprehensive assessment of our service array and system of care for youth and families it is essential to conduct a thorough adequacy assessment. Not only will a comprehensive adequacy assessment provide for the needed assessment DCYF would hopefully have the opportunity to look at the integration of services such as DCYF's services, but the preventive services such as integration of mental health and educational services for youth. This adequacy assessment could potentially provide for the implementation of best practices for children and youth across our state of New Hampshire.

Date	HB 517 requirements
Sep 1, 2017	Commissioner provides first report on plan for development of sufficient capacity for children who will no longer be at SYSC due to the provisions of the act.
Oct 1, 2017	Department begins quarterly reviews of children at SYSC for offenses other than serious violent offenses for placement elsewhere
Oct 1, 2017	Children committed to SYSC for misdemeanor-level offenses on or before this date become eligible for parole consideration after 3 months
Nov 1, 2017	Unless relieved of obligation by joint fiscal, report to that body required with regard to education of workers, SYSC programming changes, etc. Advisory group to be formed to receive statistical reports and provide guidance during transition
Dec 1, 2017	Rate structure for required increase in capacity for minors who are not serious violent offenders to be submitted to joint fiscal no later than this date
Jan 1, 2018	Obligation to redevelop unused SYSC space for drug treatment becomes effective
Jan 1, 2018	Plan for increase in alternative capacity to be implemented
Jan 1, 2018	Certification of at least one Medicaid-eligible facility for the transfer of SYSC children confined for offenses which are not serious violent offenses
Jan 1, 2018	Limits on extended detention following adjudication become effective
Mar 1, 2018	SYSC can no longer be ordered in cases involving certain non-violent offenses. This will apply to cases which have not yet reached the disposition (sentencing) stage as of this date.
May 1, 2018	Detention can no longer be ordered for cases which were eliminated from commitment eligibility on March 1, 2018.
Jul 1, 2018	The first cases subject to closure 2 years after adjudication (conviction) are closed. This applies to cases begun on or after July 1, 2016, and applies to cases other than those involving serious violent crimes.
Jul 1, 2018	Certification of one additional facility for the transfer of SYSC children