

# FINAL REPORT

## Committee to Study Alternatives to the Continued Use of the Sununu Youth Services Center Facility.

HB 1743, Chapter 355:7, Laws of 2018

November 1, 2018

### Executive Summary:

The committee studied the status of the Sununu Youth Service Center (SYSC) and reviewed its current utilization. The committee found that over the past several years, the population of the SYSC has continued to drop and most recently, with the changes to sentencing as well as the implementation of sentence review enacted by the legislature as part of HB 517, Chapter 156:157-175, Laws of 2017 the population of incarcerated and detained youth is approximately 30 requiring the use of one and one-half of the four available “pods”. With one “pod” being converted to a youth alcohol and drug rehabilitation facility there is currently one “pod” unused except for limited use of the contained conference and meeting rooms, etc.

The committee has made the following recommendations. A more detailed discussion of these recommendations can be found later in this document:

- Retain the SYSC facility but utilize the current vacant pod “G” to provide a privately run, outpatient SUD juvenile treatment and housing for youth up to 21 years of age as they transition back into the community. Alternatively, the space could be used for pregnant teen or teen parents programs provided it would satisfy the DOJ grant requirements;
- The Legislature should appropriate money for renovation and restoration of the Spaulding and Pinecrest buildings on the DHHS/SYSC site and utilize these buildings to provide community services such as outpatient drug treatment/residence for youth, outpatient mental health or consider utilization as state office space for local state needs;
- The Oversight Commission on Children’s Services formed under RSA 170-G:19 through the Office of the Child Advocate should convene a working group to examine the current needs and availability of services and treatment in the juvenile justice system. Legislation should be enacted forming a commission that will consider, formulate and monitor implementation of a restructuring of the state’s child care programs.

### Summary:

As required in HB 1743, Chapter 355:7, Laws of 2018, a committee was formed by appointments of the Speaker of the House and Senate President. Members of the committee were:

- Representative Frank Byron, Chair
- Senator Lou D’Allesandro
- Senator Gary Daniels
- Senator James Gray
- Representative Erin Hennessey
- Representative Lynne Ober
- Representative Karen Umberger

*Draft 10/22/18*

- Representative Mary Jane Wallner

The legislation stipulated that the committee's duties were to consider the following aspects of the Sununu Youth Service Center (SYSC):

- The disposal of the existing facility;
- The transition to a smaller facility with a correctional capacity;
- The transition to small residential treatment facilities with the capacity for secure placement;
- The ability to use excess capacity at the Sununu youth services center for an outpatient drug treatment facility for persons under the age of 18;
- Whether the department has updated all policies, procedures, and practice consistent with the legislative intent of HB 517, Chapter 156:157-175, Laws of 2017;

To accomplish these goals, the committee regularly met to solicit information from the Department of Health and Human Services (DHHS) (See meeting minutes Appendix A). The committee received information from the department on the current census and long term population trends of the facility including details on the required segregation of SYSC residents. Also reviewed were the Department of Justice (DOJ) Violent Offender Incarceration and Truth-In-Sentencing (VOI/TIS) Incentive Grant Funds that were utilized to defray a portion of the facility construction costs. Other information as requested by the committee was provided by DHHS or other relevant individuals or agencies.

### **Discussion:**

The SYSC, located at 1056 North River Road, Manchester, NH 03104 was built by the State of New Hampshire for the detention and incarceration of youth in 2006. The facility is situated on a 156 acre parcel that includes a total of 17 buildings, many of which are mothballed and not in use. The SYSC was designed to house a residential capacity of 144 youth in four, separate "pods" each containing 36 residents. Since facility startup, demand for residential population has steadily declined. In September of 2018, the population of both incarcerated and detained youth at SYSC is approximately 30 with minor fluctuations although the trend downward does not appear to show a leveling off. Attorney Michael Skibbie of the Disability Rights Center - NH presented information (See Appendix B) to the committee showing the decline in several key indicators such as a decline in New Hampshire's youth population is expected to trend downward into the future, the national juvenile crime rate has and continues to show a decline, New Hampshire's is experiencing a decrease in juvenile delinquency cases and lastly, the number of lawyers appointed for juveniles in New Hampshire has decreased; this being an indicator of a decline serious juvenile crime.

The DHHS staff has reviewed their most recent data concerning the placement of youth into the juvenile justice system (JJS) since 2008 (See Appendix C). Based upon their data, the total youth in placement has plateaued since approximately 2012, while delinquency cases have also demonstrated the same trends. While the DHHS data are cumulative, meaning that it includes youth in the JJS and delinquency cases that are both sent to SYSC and those to other facilities, etc., the committee's belief is that the declining trend of at SYSC is real as evidenced by the monthly "dashboard" report results provided by DHHS. It would appear that the judicial system is in fact sending youth to other treatment facilities than SYSC.

In 2015, Senate Finance Chairwoman Jeanie Forrester assembled a commission composed of both Senate and House members, Judicial representatives and local Manchester elected officials as well as topical experts to study the SYSC. This Commission was led by Senator David Boutin and issued its report on October 26, 2015. Recommended in the report (See Appendix D) were such suggestions to:

- Allocate costs of the site not associated with the SYSC to outside groups (State Police, etc.) who may be using the buildings, etc.;
- Direct the Department of Administrative Services to accurately determine the costs of converting the Spaulding and Pinecrest buildings into secure facilities;
- Expansion of the site's operations under the leadership of the NH Charitable Foundation to utilize the site's facilities for the provision of private, drug rehabilitation and mental health services;
- Directed the DHHS Commissioner to take no steps towards a Psychiatric Residential Treatment Center;
- Directed the DHHS Commissioner to within 90 days develop a plan to use attrition and reallocation of staff due to the declining SYSC residents, and;
- Directed the DHHS Commissioner to track the decline of the SYSC population and report to appropriate Legislative groups;

In HB 517, the budget trailer bill of 2017 (See Appendix E), the Legislature made changes to the incarceration and sentencing requirements in Chapter Law 156:157-175. These changes appear to have led to a decrease in the residential level of the SYSC although the final impact of these changes is too early to determine. Also included in these chapter law changes was 156:168 authorizing DHHS to lease out space to an independent contractor or agency to provide youth, alcohol and drug abuse treatment services while chapter law section 167 appropriated \$2M to allow for any facilities modifications necessary to accommodate these services. These services will provide 36 "beds" and utilize one "pod" of the SYSC footprint in the alcohol and drug rehabilitation program.

At the request of the committee, DHHS prepared a document showing the current utilization of the SYSC facility (See Appendix F). Currently, of the four "pods" available, the SYSC utilizes 1 ½ "pods" for housing the existing population of 30 detained or incarcerated youth sentenced by the court or awaiting sentencing. One of the remaining "pods" has just recently been converted at the direction of the Legislature to a Substance Use Disorder (SUD) program for youth under the age of 18. This program is to be run by the private, community group Granite Pathways who will commence operations in late 2018 or early 2019. That leaves one "pod" of 36 bed capacity unused that may be available for alternative purposes.

During the construction of the SYSC in 2006, the State applied for and was awarded a Department of Justice (DOJ) Violent Offender Incarceration and Truth-In-Sentencing (VOI/TIS) Incentive Grant in the amount of \$13.4 M out of a budgeted cost of approximately \$33 M (reference the 2003 State Capital Budget plan). In a letter dated 4 June 2015 from Ms. Denise E. O'Donnell, Director, Bureau of Justice Assistance to US Senator Kelly Ayotte (See Appendix G) it was stated that should the state wish to sell or repurpose the property *"The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses."* 28 CFR 66.31(c). Based upon this analysis, the amount due to the DOJ would approximately be approximately 40.6% of any sale price of the facility. It should be noted that the State of New Hampshire prior to the DOJ grant, owned the property on which the SYSC sits, the repayment of the grant would only be based upon the price of the SYSC facility and not the entire acreage or other buildings. In past studies by committees analyzing the future of the SYSC, this DOJ loan repayment has been a significant issue in any future planning for the facility.

During the work of the committee at the request of the chair, a review of the existing federal regulations concerning the Department of Justice (DOJ) Violent Offender Incarceration and Truth-In-Sentencing (VOI/TIS) Incentive Grant program was conducted by House Attorney James Cianci. Attorney Cianci during his review observed "... that 28 CFR §66.31 (c) was removed from the federal regulations in 2014 and it is unclear whether it has been specifically replaced." Subsequent to Attorney Cianci's review it was found that 28 CFR §66.31(c), the key regulation controlling the VOI/TIS grant was replaced by 2

CFR 200.311 which is largely identical to the original regulations. The office of the Legislative Budget Assistant in discussions with DOJ's Jonathan Fahey, stated that the Department would follow the original regulation as were in place at the time of the facility's construction to consider any changes at SYSC.

The committee also reviewed the current status of the Department of Children, Youth and Families (DCYF) study that was performed by Public Consulting Group on the assessment and adequacy of the DCYF system and review of Juvenile Justice Services. This report (See Appendix H) provided information and a review of the roll of the SYSC in DCYS programs with suggestions for program improvement. It is significant that this report includes the suggestion that there should be convened an overview of the entire DCYF system including the role of the SYSC in that system. Further the report states that New Hampshire should consider alternative models for secure detention and commitment.

After studying the information, including past studies of the facility, the HB 1743 committee evaluated several options;

- 1. Continue utilizing the SYSC facility and entire site as it is currently configured;**
  - a. Continuing the current use of the SYSC with the utilization of one "pod" for the alcohol and drug rehabilitation program for youth and another pod unused will incur a burden in cost per resident for the state. Currently all costs associated with the entire 156 acre parcel including the 17 facilities are included in the cost of the SYSC. At the request of the committee, DHHS performed an analysis of the burdened cost of the site to the cost of running the SYSC (See Appendix I). It was found that the costs of the rest of the site, were not a significant total when compared to the SYSC costs. While future income from the youth alcohol and drug rehabilitation tenant will assist in deferring expenses, it is obvious that if the residential population continues to decrease the per resident costs will continue to balloon unless reductions are made or alternative uses are brought into the facility.
  
- 2. Sell the SYSC and all North River Road property and build or develop one or more alternative placement facilities to hold youth;**
  - a. The sale of the SYSC and all associated facilities would require the state to both pay off the DOJ loan while seeking alternative facilities to house incarcerated youth. Contained in the 2015 letter to Senator Ayotte mentioned earlier in this report, was a statement from DOJ that the loan repayment could be transferred for use in another facility development if the new facility was an authorized purpose. The letter in particular stated "*The state would then (note: refers to sale of facility) be required to repay DOJ the remaining amount or direct the proceeds of the sale of the VOI/TIS-funded facility to another VOI/TIS authorized purpose.*" This would infer that the DOJ grant would not necessarily need to be repaid but could instead be utilized to develop alternative secure space in a new facility for incarcerated youth. Utilizing this strategy, the state may be able to avoid the penalty of the DOJ loan repayment while establishing alternative retention facilities designed and staffed to be most efficient.
  
- 3. Retain all of the North River parcel but utilize the entire SYSC facility for alternative purposes;**
  - a. Should the state decide to continue its ownership of the entire parcel and the SYSC facility but change the utilization of the facility for an alternative purpose, the DOJ loan stipulates that the state must first clear the new use with the DOJ. Should the DOJ rule

that the new functions at the SYSC are not a “VOI/TIS authorized purpose” then the state would be obligated to repay the DOJ loan. It is unclear but inferred that DOJ would allow the state to transfer the current SYSC operations to new facility(s) and transfer the DOJ loan to cover the cost of establishing those facilities. DOJ may also allow for the transfer out of the loan repayment amount to build other facilities should the state chose a path similar to option #2 above.

**4. Convert the one, unused “pod” into an alternative use leaving two pods for incarcerated youth;**

- a. The committee determined that of the four (4) “pods” at the SYSC, one of the four “pods” is currently unused except for some conference and meeting rooms. The committee considered other potential uses of the unused “pod” such as:
  - i. Expansion of a SUD program for both youth and their families/caregivers;
  - ii. Relocation of the Secure Psychiatric Unit patients, currently at the New Hampshire Hospital;
  - iii. Creation of a pregnant and parenting teen program;

While any change to the use of the SYSC facility would require the approval of the DOJ due to the VOI/TIS grant, it needs to be noted that in the letter to Senator Ayotte from DOJ, DOJ appeared to be amenable to discussing alternative uses consistent with youth. The establishment of an SUD program for youth and parents/caregivers would be expected to meet with DOJ’s approval similar to the most recently approved SUD program. The committee discussed the relocation of the Secure Psychiatric Unit patients but was advised by DHHS that due to the medical staff being shared between New Hampshire Hospital and the Secure Psychiatric Unit, relocation of this function to the SYSC would present a significant, operational handicap. Therefore, the use of the facility for the Secure Psychiatric Unit was not viewed as feasible. The option to create a pregnant and parenting teen program was also discussed by the committee. Senator D’Allesandro as part of this committee’s work informally surveyed the need for these services and reported back that there appeared to be a lack of service providers. While the DOJ grant does not appear on the surface to be compatible with a pregnant teen and parenting teen program, it was the committee’s opinion that further discussions with DOJ would be warranted.

**Response to HB 1743 Committee Charge:**

The committee’s response to the goals contained in HB 1743 are as follows:

1. ***The disposal of the existing facility;***
  - a. It is the opinion of the committee that at present, sale or abandonment of the existing SYSC and the associated parcel is not warranted. The committee believes that additional functions should be added into the SYSC building as space is available and function is compatible with the DOJ VOI/TIS grant requirements.
2. ***The transition to a smaller facility with a correctional capacity;***
  - a. The committee recommends that both a working group be established under the leadership of the Child Advocate and longer term through legislation establishing a commission to determine and follow implementation of the future needs of a revamped system for New Hampshire’s youth.
3. ***The transition to small residential treatment facilities with the capacity for secure placement;***

- a. The committee recommends that this be the subject undertaken by the legislatively established commission who will determine the best needs and practices for providing care to the state's youth.
4. ***The ability to use excess capacity at the Sununu youth services center for an outpatient drug treatment facility for persons under the age of 18;***
  - a. The committee recommends that the unused pod be converted to an outpatient SUD halfway program for youth up to the age of 21 and their families.
5. ***Whether the department has updated all policies, procedures, and practice consistent with the legislative intent of HB 517, Chapter 156:157-175, Laws of 2017;***
  - a. The committee's finding is that DHHS has confirmed their implementation of these changes to their practices but have not as of yet implemented documentation changes to their policies and practices. The legislative groups should continue to follow this for completion.

### **Committee Recommendations:**

The committee recommends the following actions by the state be taken by both the executive branch and the legislature;

1. In concurrence with the PCG report evaluating the DHHS DCYF adequacy and enhancement assessment, the committee recommends that the Oversight Commission on Children's Services formed under RSA 170-G:19 III, (c) through the Office of the Child Advocate should convene a special working group to review the future direction and needs of the state in terms of youth services including housing of troubled youth as well as treatment. This working group should be composed of experts in the treatment and handling of troubled juveniles as well as including both elected and appointed officials and members of the public. This working group should develop a 10 year program model to modernize the state's youth incarceration program and facilities by studying the latest work of other states. Special emphasis on the provision of treatment of all levels of care should be considered in addition to ensuring adequate resources.
2. The Legislature should enact a Commission composed of both executive branch and legislative members as well as community members with expertise in the handling of juvenile offenders for guiding the conversion of the New Hampshire system of child care moving forward. The goals of this Commission should be to adopt and/or modify the working group's recommendations and to ensure that appropriate funding and long term implementation of the program stays on track;
3. The committee recommends that the Office of the Legislative Budget Assistant supported by the Department of Health and Human Service consult and seek official clarification from the Federal Department of Justice to determine the impact of changes to the VOI/TIS loan regulation found by House Attorney Cianci impact the SYSC. It is also unclear if a change in the Federal Executive Branch leadership could impact these programs.
4. The legislature should continue to follow the status of the DHHS implementation of the HB 517 changes to their procedures, policies and practices as required in HB 517, Chapter 156:157-175, Laws of 2017. The department has implemented all of the required changes into their system of operations and has stated that they were in the process of updating their written policies. DHHS

stated that there were 23 policies needing to be updated of which there were 6 core policies impacted by HB 517. DHHS estimated that this documentation update would be completed by January 1, 2019;

5. The committee recommends that legislation be enacted (or alternatively confirm that the authority already exists under 2017, HB 517) authorizing that Pod "G" be utilized and converted over to a privately run, Substance Use Disorder outpatient treatment for juveniles or for pregnant teen and teen parent programs. The committee heard testimony that juveniles released from SUD programs typically lack temporary places to reside while continuing treatment and integrating back into the larger community. It would be appropriate to use pod "G" to provide these youth as well as their families, an outpatient opportunity for further treatment or a halfway house environment. This type of facility could be a natural extension of the current SUD treatment operations mentioned elsewhere in the report. The committee believes it is appropriate to seek DOJ approval for SUD outpatient treatment for youth up to 21 years of age. Current federal DOJ guidelines appear to consider up to 21 years as part of their definition as youth. As stated earlier, there appears to be an unmet need for services for pregnant teens or teen parents. While this program may have difficulty complying with the DOJ VOI/TIS grant criteria, it should be further considered.
6. The committee has received testimony that the unused buildings (Spaulding and Pinecrest) as mentioned in the 2015 Working group report are not being appropriately maintained or utilized due to lack of funding although they are considered historical buildings (See MOU in Appendix J). The committee recommends that the legislature appropriate in the state's capital budget, funding to renovate these two buildings either immediately or over a period. Testimony provided stated that the approximate costs associated with these renovations would be \$8M for Spaulding and \$10M - \$12M for Pinecrest. Use of these facilities for services to the community could meet the demands for current unmet needs such as mental health, pregnant teen, parenting teen, etc. While these two buildings were considered for listing as historical preservation sites, the committee was told that this was refused by the state in order to maintain flexibility of their use and an MOU was established to ensure their historical preservation.

In closing, the committee wishes to express its concern that the goals of HB 1743 have been part of an ongoing discussion for many years between the Executive and Legislative branches. This report, while covering several new areas, is only one of several examinations that have been performed on the system over the years. It is the desire of the committee members that action finally be taken to resolve these long standing concerns.

***APPENDICES LISTING***

***Appendix A***

Committee meeting minutes

***Appendix B***

Attorney Skibbie Letter to the committee on the decline of Incarcerated youth at SYSC.

***Appendix C***

DHHS Data Charts for Youth Placement into the  
Juvenile Justice System, Delinquency Cases and Juvenile Justice Case Loads

***Appendix D***

Sununu Youth Services Center: Work Group on Transformational Alternatives:  
Report of Senator David Boutin

***Appendix E***

HB 517, Chapter Law 156:158 -175, Laws of 2017

***Appendix F***

DHHS Document showing the current space utilization of the Sununu Youth Service Center

***Appendix G***

Letter and information dated 4 June 2015 from  
Ms. Denise E. O'Donnell, Director, Bureau of Justice Assistance to US Senator Kelly Ayotte

***Appendix H***

DCYF: Adequacy and Enhancement Assessment. Conducted by Public Consulting Group

***Appendix I***

DHHS Financial Analysis on Cost Burden at SYSC

***Appendix J***

Additional Information received by the committee;

1. Letter from Child Advocate on SYSC
2. Letter from Pastor Jose Luna of SYSC
3. MOU between DHHS & NH Division of Historical Resources