

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of the Brookhaven Juvenile Rehabilitation Facility

PEER reviewed the management and operation of the Brookhaven Juvenile Rehabilitation Facility's start-up and operational costs and whether the facility's programs are meeting the needs of the intended client population: mentally retarded juvenile offenders ordered by Youth Court to enter the facility.

The Brookhaven Juvenile Rehabilitation Facility (BJRF), which began accepting clients in July 1999, was designed, constructed, and equipped appropriately to provide a "secure and therapeutic environment" for its special needs clients. However, the Department of Mental Health exceeded its statutory construction authorization of \$5.5 million when building BJRF. A warehouse and director's residence not in the original plan added \$1 million to construction costs, for a total of \$9.2 million.

Admission practices at BJRF are not in keeping with statutory requirements, since thirty percent of the clients are transferred to this specialized facility from other Department of Mental Health facilities without a Youth Court order. This reduces the number of beds available for the special needs juveniles for whom the facility was created. Moreover, BJRF has not yet admitted any females, thereby denying this resource to a significant portion of eligible juvenile offenders.

The Department of Mental Health has, in effect, discouraged treatment of violent offenders at BJRF. Although the staff was not completely prepared to deal with aggressive behavior of clients during the first two years of operation, current staff and staff training are adequate for the current clients. Security is adequate, but needs re-thinking for the intended clientele. Program implementation problems center on a failure to carry out the positive reinforcement behavior modification treatments in a uniform manner and disagreements over the proper role and form of discipline in client behavior change.

September 11, 2001

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PEER Committee
Post Office Box 1204
Jackson, MS 39215-1204

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) <http://www.peer.state.ms.us>

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
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ALYCE G. CLARKE
TOMMY HORNE

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

Post Office Box 1204
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph. D.
Executive Director

OFFICES:
Woolfolk Building, Suite 301-A
501 North West Street
Jackson, Mississippi 39201

September 11, 2001

Honorable Ronnie Musgrove, Governor
Honorable Amy Tuck, Lieutenant Governor
Honorable Tim Ford, Speaker of the House
Members of the Mississippi State Legislature

On September 11, 2001, the PEER Committee authorized release of the report entitled **A Review of the Brookhaven Juvenile Rehabilitation Facility.**

A handwritten signature in cursive script, reading "Herb Frierson", written over a horizontal line.

Representative Herb Frierson, Chairman

This report does not recommend increased funding or additional staff.

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A Review of the Brookhaven Juvenile Rehabilitation Facility

Executive Summary

The PEER Committee reviewed the management and operation of the Brookhaven Juvenile Rehabilitation Facility (BJRF) in response to concerns about start-up and operation costs and whether BJRF and its programs are meeting the needs of its clients.

Establishment of Special Needs Facilities for Juvenile Offenders

To meet needs identified by a 1994 Senate Juvenile Justice Study Committee, in 1995 the Legislature authorized and funded the construction and equipping of two fifty-bed special needs facilities, one for mentally retarded adolescent offenders (the Brookhaven facility, which began accepting clients in July 1999) and one for mentally ill adolescent offenders (the Harrison County facility, scheduled to begin accepting clients in November 2001). These facilities were intended to be separate from existing mental health and juvenile justice facilities.

The enabling statute, MISS. CODE ANN. Section 41-21-109, defines the purpose of these special needs facilities:

[These two facilities] would be specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates. . . . These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling.

Facility Design and Construction Costs

The BJRF is designed and equipped appropriate to its charge of providing a "secure and therapeutic environment" for treating mentally retarded adolescents committed by youth or chancery court.

Concerning construction costs, the Department of Mental Health (DMH) expended a total of \$9.2 million to construct and equip the Brookhaven Juvenile Rehabilitation Facility. The department used approximately \$8 million of the \$11 million in bonds authorized (the amount intended for constructing and equipping both the Brookhaven and Harrison County facilities), as well as \$1.2 million in operating funds. Construction of a warehouse and director's residence not contemplated in the initial authority or planning for the facility added over \$1 million to the cost of the facility.

Departure of the Facility from Its Statutory Mission

Current admission practices at the Brookhaven Juvenile Rehabilitation Facility are not in keeping with statutory requirements and have resulted in a move away from addressing the special need for which the facility was created. In addition to commitment by court order, which is the only admission method contemplated in state law, BJRF admits juveniles through transfers from other mental health facilities.

The Department of Mental Health and BJRF staff developed the transfer methods of admission to BJRF from existing departmental policy and a statute addressing transfers between mental health facilities not specific to this special needs facility. PEER takes the position that the specific requirement found in MISS. CODE ANN. Section 41-21-109 (that the purpose of the facility is to accept mentally ill or retarded persons committed by a court) should control admissions to BJRF.

Because its admission practices limit treatment services to a segment of the intended population and extend services to unqualified juveniles, the Department of Mental Health has only partially fulfilled its legal mandate for BJRF. The department has not admitted any females to the Brookhaven facility, thus denying this important resource to a significant population of eligible juvenile offenders. Since its opening in 1998, nearly thirty percent of BJRF's clients have been transferred from other mental health institutions, rather than having been committed by court order. These transfers take bed space that could be used by members of the targeted population. In effect, the Department of Mental Health has discouraged treatment of violent offenders at BJRF.

Staffing, Training, and Security

During the first two years of BJRF's existence, some of the staff was not completely prepared for the aggressive behavior of clients. There was also significant staff turnover during this time. BJRF now has adequate numbers of direct care and education staff, and provides sufficient staff orientation training, but because the Department of Mental Health has changed BJRF's clientele from what is legally mandated, PEER cannot assess the facility's readiness to provide services to its intended target population.

Although BJRF's method of providing security appears adequate to protect the clients and staff within the population currently being served, changing the population to the intended target group could compromise the adequacy of the facility's security.

Program Quality

It is too early in the life of the Brookhaven Juvenile Rehabilitation Facility program to make definitive statements about program quality and success. However, PEER noted problems with the staff not uniformly implementing the positive reinforcement behavior modification plan and internal disagreements on the proper role and form of discipline for the facility. Also, BJRF has not developed measures of program success. Particularly, there are no indicators of the potential long-term impact the Brookhaven Juvenile Rehabilitation Facility program may have on the lives and adaptive successes of its clients upon discharge to the community and how such successes might be measured and tracked.

Recommendations

Facility Construction

1. For future construction projects, DMH should utilize the planning process to identify and accurately quantify all project costs, set budgets, and monitor progress to minimize expenditures beyond those funds authorized. DMH should follow the intent expressed in legislative grants of authority for project funding, by disallowing expenditure of funds for expansion of facilities

(e.g., the addition of staff housing or a warehouse), thereby causing project cost overruns.

Admissions

2. DMH should conform its admissions decisions to comply with statutory criteria as set forth in MISS. CODE ANN. Section 41-21-109, which limits admissions to mentally ill or mentally retarded juvenile offenders who have been committed for treatment by a court of competent jurisdiction.
3. DMH should promptly inform all youth and chancery court judges in the state that it will fully comply with the admission intent expressed in MISS. CODE ANN. Section 41-21-109.
4. DMH should clearly define the relationship between the Brookhaven facility and the Harrison County facility regarding the placement of "dual diagnosis" juvenile offenders and disseminate this information to the state's youth and chancery court judges for their use in making commitment decisions.

Staffing

5. After achieving compliance with statutory admission requirements, DMH should assess its direct care staffing needs to establish the appropriate levels of direct care staff needed for treatment of the intended population of mentally ill or mentally retarded juvenile offenders.
6. Management and education staff should continue efforts to qualify for and obtain State Department of Education accreditation by adhering to standards for classroom staffing--i.e., maintaining the required level of teaching personnel.

Policies and Procedures

7. Recognizing the statutory required purpose of BJRF, and that ICF/MR (intermediate care facilities for the mentally retarded) standards are limited in their application to treating this special needs population, BJRF management and DMH staff should continue to develop policies and procedures specific to the BJRF program.
8. In keeping with the statutory mandate, BJRF management and appropriate staff should develop and offer training consistent with the role of

providing treatment to the state's mentally ill and mentally retarded juvenile population.

Performance Measurement

9. DMH and facility management should develop and define an accurate set of outcome measures, install a system to capture relevant data, and annually assess and report performance for the BJRF program.

For More Information or Clarification, Contact:

PEER Committee
P.O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
<http://www.peer.state.ms.us>

Representative Herb Frierson, Chairman
Poplarville, MS 601-795-6285

Senator Bill Canon, Vice Chairman
Columbus, MS 662-328-3018

Senator Bob Dearing, Secretary
Natchez, MS 601-442-0486

A Review of the Brookhaven Juvenile Rehabilitation Facility

Introduction

Authority

In response to citizen concerns, the Committee authorized a management and expenditure review of the Brookhaven Juvenile Rehabilitation Facility (BJRF).

PEER conducted this review pursuant to the authority granted by MISS. CODE ANN. § 5-3-57 et seq. (1972).

Scope and Purpose

The PEER Committee reviewed the management and operation of BJRF in response to concerns about start-up and operation costs, and whether BJRF and its programs are meeting the needs of its clients. PEER sought to determine:

- whether the agency's use of resources in constructing and equipping the facility was relevant, justified, and timely;
- whether the physical facility, when opened, was designed and equipped to meet the needs of the client population;
- whether facility admission practices have complied with statutorily defined criteria;
- whether facility staffing, training practices, and program efforts comply with mental health facility and other applicable standards for providing security and client treatment; and,
- whether security procedures and practices are sufficient to protect facility staff and clients.

Method

In conducting this study, PEER reviewed financial, program, and other documentation of the Department of Mental Health. PEER further reviewed laws and policies, procedures, and applicable standards from other state and federal agencies (e.g., Bureau of Building, state Department of Education and Department of Health, and U.S. Health Care Finance Administration). PEER interviewed Department of Mental Health (DMH), State Department of Health, Mississippi Department of Education (MDE), Department of Human Services (DHS), Brookhaven Juvenile Rehabilitation Facility, and Mississippi Association of Youth Court Judges officials.

Establishment of Special Needs Facilities for Juvenile Offenders

To meet needs identified by a 1994 Senate Juvenile Justice Study Committee, the Legislature, in 1995, authorized and funded the construction and equipping of two fifty-bed special needs facilities, one for mentally retarded and one for mentally ill juvenile offenders.

Documentation of Need for Special Facilities for Juvenile Offenders

In 1994, after hearing testimony from youth court judges and other juvenile and social service professionals, a Senate Ad Hoc Committee on Juvenile Justice and School Violence reached agreement on the need for specialized treatment facilities for potentially violent mentally retarded/mentally ill juvenile offenders separate from existing mental health facilities.

Studies of incarcerated youth show that up to 70 percent suffer from learning disability or educationally disabling conditions.

In Mississippi, there was no systematic needs assessment to establish benchmarks and to quantify the magnitude of the problem prior to the facilities' authorization. The need for such facilities as the Brookhaven Juvenile Rehabilitation Facility (a facility for mentally retarded adolescent offenders) and the Harrison County Facility (for mentally ill adolescent offenders) has been generally established both nationally and in Mississippi.¹ Recent research in juvenile justice has found, through surveys of youth confined in juvenile justice institutions, that far greater proportions of these individuals suffer from mental health problems than youth in the general population. Youth with learning disabilities or an emotional disturbance are arrested at a higher rate than their non-disabled peers, and studies of incarcerated youth show that as many as 70 percent suffer from learning disability or educationally disabling conditions.

During the summer and fall of 1994, a Senate Ad Hoc Committee on Juvenile Justice and School Violence conducted hearings and received testimony from youth court judges, representatives from the Attorney General's Office, youth service agencies, the Department of Mental Health, and interested groups regarding the need to create additional facilities to accommodate emotionally disturbed, mentally retarded, violent juvenile offenders.

¹ Throughout this report, the use of the terms "juvenile," "youth," and "adolescent" refer to children between the ages of thirteen and twenty.

Needs Voiced by Youth Court Judges

During the hearings conducted in 1994, youth court judges cited a special need for appropriate placement institutions for "dual diagnosis" youth--those diagnosed as both mentally retarded and mentally ill.

Prior to BJRF's existence, the only alternative for sentencing mentally retarded juvenile offenders was custody of DMH, which then sent the youth to Ellisville State School or to private agencies.

During the course of the study committee hearings, youth court judges testified to the need for appropriate placement institutions for "dual diagnosis" youth, those with both mental retardation and mental illness. Several judges testified to the lack of such facilities, and with the only alternative for sentencing mentally retarded juvenile offenders prior to BJRF's existence being to the custody of DMH, which then sent the youth to Ellisville State School or to private agencies. Judges cited limited adolescent units and beds at the State Hospital at Whitfield (30 beds) and East Mississippi State Hospital in Meridian (100 beds), which provide adolescent acute psychiatric and drug/alcohol treatment.

A Harrison County youth court judge cited as an example of few hospitals having secure detention facilities for emotionally disturbed, violent juvenile offenders, a thirty-month waiting period for the South Mississippi Retardation Center for admitting a retarded, violent child. This judge's testimony also suggested "an existing annual need [to house offenders who may be behaviorally violent, suicidal, dual-diagnosed (mentally ill and retarded), or children in need of supervision] for approximately 150 beds in the coastal counties, 200 beds in Hinds County, and 10 beds for other rural counties." He also suggested "a need for 1,000 additional beds for such violent/retarded offenders."

This testimony was the most specific statement of need made to the Legislature. The 1995 Youth Court Annual Report (DHS, Division of Youth Services) showed additional indirect evidence of need. That annual report showed, in describing the "Grade Placement Reported in Youth Court Referrals During 1995," that, of 22,685 case dispositions in that year, 3.8%, or 862, were special education students with limited mental functioning abilities.

Study Committee Recommendations

In 1994, after reviewing the evidence and testimony provided, the Senate Ad Hoc Committee on Juvenile Justice and School Violence found "a lack of mental health facilities for emotionally disturbed/retarded/violent children."

The Ad Hoc Committee recommended construction of two residential facilities for mentally handicapped juvenile offenders. The committee report stated that:

. . .the Department of Mental Health has recommended construction and equipping of two separate facilities that could serve up to fifty children and adolescents, each of which will be located away from the existing programs of the Department of Mental Health that would be specifically designed to serve children and adolescents who have come into contact with judicial system after committing a crime and who are mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates. These facilities shall be self contained and offer a secure but therapeutic environment allowing persons to be rehabilitated apart from persons who are more vulnerable and who have disabilities that are more disabling.

The Legislature provided \$11 million for construction of two residential facilities for mentally handicapped juvenile offenders.

The Ad Hoc Committee estimated a total cost of \$8,100,000 to fund the construction and equipping of the two recommended facilities. Although the study committee estimated \$8.1 million, subsequent legislative action during the 1995 Regular Session increased the amount to \$11 million.

Legislative Authorization of Special Needs Facilities for Juvenile Offenders

During the 1995 Regular Session, the Legislature authorized construction of two fifty-bed facilities to be administered by the Department of Mental Health, one for mentally retarded, potentially violent juvenile offenders and one for mentally ill, potentially violent juvenile offenders, and approved bonding authority of \$11 million for the two facilities.

During the 1995 Regular Session, the Mississippi Legislature passed MISS. CODE ANN. Section 41-21-109 (1972) authorizing the Department of Mental Health to construct two special needs facilities, one for mentally retarded juvenile offenders (the Brookhaven Juvenile Rehabilitation Facility) and one for mentally ill juvenile

offenders (the Harrison County Specialized Treatment Facility).

Purpose of a Separate Program at Brookhaven Juvenile Rehabilitation Facility

The enabling statute, MISS. CODE ANN. Section 41-21-109, defines the purpose of these special needs facilities:

[These two facilities] would be specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates. . . . These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling.

DMH designated the Brookhaven facility to serve the special need population of mentally retarded juvenile criminal offenders committed by the juvenile justice system.

Of the two special need populations designated in Section 41-21-109, DMH designated the Brookhaven facility to serve the special need population of mentally retarded juvenile criminal offenders committed by the juvenile justice system. The Brookhaven Juvenile Rehabilitation Facility combines some corrections functions and education/training functions for mentally retarded youth committed to it by youth or chancery court.

Section 41-21-109 specifies a separate treatment program for the Brookhaven facility population in two respects. First, adolescent offenders committed to BJRF shall be "mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates." Second, the Brookhaven facility "shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling."

Thus the Brookhaven facility has two purposes: (1) provide a restrictive, secure, "corrections" environment for juvenile offenders committed to the facility by youth or chancery court judges, and (2) develop and carry out a habilitation and training program for educable/trainable mentally retarded juvenile offenders.

Taken together, these two parts define the target population as the educable or trainable mentally retarded juvenile offender. These are adolescents who need special education and a treatment regimen different from "non-handicapped inmates" (who might otherwise take advantage of mentally retarded youth), and they are

adolescents who can benefit from such a special education/training regimen, unlike persons who are more profoundly disabled.

Admission Requires Court Commitment of a Juvenile Offender

State law clearly provides that the method of commitment to BJRF shall be by court order.

The method of commitment to the Brookhaven facility is equally clear in the statute (Section 41-21-109). The purpose of this section is to provide modern and efficient rehabilitation facilities for mentally ill or mentally retarded juvenile offenders in Mississippi:

. . .who have been committed for treatment by a court of competent jurisdiction pursuant to Section 41-21-61 et seq., Mississippi Code of 1972.

Section 41-21-61 defines a mentally ill person and a mentally retarded person, among other things (see Appendix A, page 45). Subsequent sections through 41-21-107 deal with the process of commitment by a court of competent jurisdiction.

Roles of the Department of Mental Health's Youth Offender Facilities, Other DMH Facilities, and the Department of Youth Services' Correctional Facilities

Creation of the two DMH youth offender facilities provides an avenue for treatment of mentally retarded and mentally ill juvenile offenders apart from youth in other mental health facilities and training institutions operated by the Division of Youth Services (DYS) of the Department of Human Services.

Role of Brookhaven Juvenile Rehabilitation Facility

The Brookhaven Juvenile Rehabilitation Facility is different from other Department of Mental Health agencies both jurisdictionally and programmatically. BJRF does have direct and indirect program relationships with the regional community mental health centers (CMHCs) and the comprehensive regional facilities.

BJRF's jurisdiction is statewide. It currently receives clients committed to it from any of Mississippi's youth or chancery courts, or by transfer from any of the comprehensive regional facilities. In contrast, the fifteen

regional CMHCs and the five comprehensive regional facilities serve sub-state multi-county service areas. Programmatically, the Legislature created the Brookhaven Juvenile Rehabilitation Facility to serve mentally retarded youth that have involvement with the juvenile justice system in the state as an essential condition of their assignment. In contrast to other DMH facilities, BJRF is intended for clients who have come into contact with the juvenile justice system because they have committed a criminal offense.

BJRF's jurisdiction is statewide and it serves clients who have come into contact with the juvenile justice system because they have committed a criminal offense.

The Brookhaven Juvenile Rehabilitation Facility anticipates a close working relationship with the second facility authorized by Section 41-21-109, the new juvenile mental illness facility now being completed in Harrison County. This working relationship will be particularly important in determining the most appropriate placement of "dual diagnosis" youth. Having both facilities available will give youth and chancery court judges more flexibility of assignment. Also, the Department of Mental Health provides alternative living arrangements such as group homes, case management services, and transitional training. These services are potentially important to BJRF clients as part of their support networks after release and return to their home communities.

Relationship to Other DMH Facilities

Other DMH mental health facilities offer treatment for the mentally retarded or mentally ill juvenile non-offender population and fulfill a cooperative role by providing client assessments upon request of the local court. The juvenile population is served through facilities for the mentally ill and retarded and regional mental health centers.

Mental Illness Facilities

Mississippi State Hospital and East Mississippi State Hospital are psychiatric facilities that offer adolescent acute psychiatric care through an adolescent wing (serving about a tenth of their annual patient loads). East Mississippi also offers inpatient alcohol and drug treatment for adolescents. Both facilities provide transitional, community-based care for adolescents.

Regional Mental Health Centers and Facilities

The Department of Mental Health certifies and monitors fifteen regional mental health centers, which are part of

county government, and operates community service divisions of Mississippi State Hospital at Whitfield and East Mississippi State Hospital. The priority population addressed by these facilities is adults with serious mental illness, although they do provide some services for mentally retarded/developmentally disabled individuals. DMH also operates five comprehensive regional facilities (Boswell, Hudspeth, Ellisville, North MS, and South MS). These provide comprehensive services for the mentally retarded and persons with developmental disabilities.

Regional mental health facilities often serve as the primary diagnostic and evaluation providers for adolescent offenders processed through youth and chancery courts.

One indirect connection exists between these regional facilities and the Brookhaven facility. These facilities are often the primary diagnostic and evaluation providers for adolescent offenders processed through youth and chancery courts.

Relationship to DYS Correctional Training Institutions

Correctional training for juvenile offenders with IQs greater than 70 is provided through adolescent offender programs operated by the Division of Youth Services (DYS) at Columbia, Oakley, and Ironwood training schools. These DYS institutions offer intensive, military-type training; an accredited education program that includes K-12, GED, Gifted Program, Special Education and vocational training; and personal development (in both individual and social skills).

Juvenile offenders with IQs greater than 70 are served by Division of Youth Services training schools. State law prohibits commitment of adolescents seriously handicapped by mental illness or retardation to a DYS institution.

MISS. CODE ANN. Section 43-27-25 places restrictions on the commitment of mentally retarded and mentally ill juveniles to DYS correctional facilities. This statute requires that "No person shall be committed to an institution under the control of the [Department of Human Services' Division of Youth Services] who is seriously handicapped by mental illness or retardation." It provides for transfer of such youth from DYS institutions if they are determined to be so handicapped. Finally, it directs the Division of Youth Services to "establish standards with regard to the physical and mental health of persons which it can accept for commitment."

The Division of Youth Services has established a mental functioning criterion of an IQ of at least 70 to be admitted to state DYS training schools. The special education program is aimed at youth with IQs between 70 and 84. BJR defines the mental functioning dimension of mental retardation as an IQ score of 70 or less for its admission.

Brookhaven Juvenile Rehabilitation Facility Design and Construction

Although the Brookhaven Juvenile Rehabilitation Facility was constructed and appropriately equipped to manage the special needs clients it was created to serve, DMH exceeded the \$5.5 million initially authorized for this purpose, expending a total of \$9.2 million for construction and equipment.

The Brookhaven Juvenile Rehabilitation Facility is located on 43 acres of land, 17.8 of which were donated to DMH by the City of Brookhaven, and 25.6 of which were purchased from a private owner. Construction of the major part of the facility was completed in December 1998, seven months prior to client admissions (July 1999). The campus consists of three residential living units, an education building, a recreation building, an administration building, and an outdoor track and play area enclosed by a security fence.

The facility warehouse (which includes a repair shop) and director's residence (about 2,543 square feet) are located across a road bisecting the property from the main campus.

Facility Design and Equipment

The BJRF is designed and equipped appropriate to its charge of providing a "secure and therapeutic environment" for treating mentally retarded adolescents committed by youth or chancery court.

Facility Design

A security fence and a controlled entrance were incorporated into BJRF's design to serve the juvenile offender population.

The Brookhaven Juvenile Rehabilitation Facility incorporates elements of both security and therapy. As such, some aspects of physical design depart from traditional mental retardation facility structure. Specifically, the security fence around the main facility, and the "sally port" (i.e., controlled entrance) area for the arrival of youth assigned by court to the facility, were incorporated into the design to serve the juvenile offender population.

The Brookhaven Juvenile Rehabilitation Facility is designed for full-time living, including instruction, recreation, and functional living, and is appropriate for the target population specified by statute.

BJRF program staff members are equipped with hand-held radios to communicate with security and other staff members.

Design of office space for program staff was meant to encourage close involvement with and supervision of residents. Program staff offices are all located in the residential units, the education building, and the recreation facility. Although the program staff is physically separated from the administrative staff via the security entrances, the program staff members are all equipped with hand-held radios to communicate with security and other staff members. The classrooms and residential units (excluding residents' rooms) are monitored by security staff via security cameras, and equipped with emergency telephones. Observation rooms are connected to classrooms for staff to observe students unobtrusively in the classroom. The education building contains two "time-out" rooms for disciplining residents.

Facility Equipment

The physical plant was fully equipped when clients arrived in July 1999. Equipment, material, and supplies storage was a problem not completely solved until the completion of a separate building to house the storage/maintenance/shop functions in November 2000.

Damage repair costs at BJRF have not been excessive as a percentage of the facility's annual expenditures.

The equipment is appropriate for a full-time live-in facility. Damage repair costs have not been excessive (as a percentage of the facility's annual expenditures). In FY 2001, expenditures, including all items for building repairs in the two budget categories of contractual services and commodities (e. g., including cement plaster; lumber, parts and metal for cabinet and shelf repair; paint; contracted services), the total expended for repair was \$17,936, which was .5 percent of the annual expenditures.

The four classrooms in the education building are each equipped with students' desks, a teacher's desk, and a chalkboard. The library of the education building has a television and a computer. However, it is not stocked with teacher resource and reference materials or student supplements. The curriculum for the residents does not require the use of textbooks.

Construction Cost

DMH has expended a total of \$9.2 million to construct and equip the Brookhaven Juvenile Rehabilitation Facility. The department used approximately \$8 million of the \$11 million in bonds authorized (the amount intended for constructing and equipping both the Brookhaven and Harrison county facilities), as well as \$1.2 million in operating funds.

Section 41-21-109 authorized the "construction and equipping of two (2) separate facilities each of which could serve up to fifty (50) adolescents." The Legislature approved Senate Bill 2497 during the 1995 regular session, which authorized \$11 million in bonding authority for constructing and equipping these two structurally identical juvenile rehabilitation facilities.

Construction Costs for the Brookhaven Juvenile Rehabilitation Facility Educational and Residential Components

Currently, six years after authorization, the Department of Mental Health has opened one facility (Brookhaven Juvenile Rehabilitation Facility), expending a total of \$9.2 million for that one facility (see Exhibit 1, page 13). The \$9.2 million total includes the expenditure of operating funds to construct a warehouse, residential housing for the facility director, and to equip the facility.

Although initial plans for the two identical facilities estimated the construction cost of each to be \$5.5 million, DMH expended approximately \$8 million of the \$11 million in bonds to construct BJRF.

DMH expended approximately \$8 million of the \$11 million in bonds to construct the first of the two juvenile facilities, the one at Brookhaven. Initial plans for the construction of the identical facilities estimated the cost of construction to be \$5.5 million for each.

Exhibit 1: Summary of Construction and Equipment Expenditures for Brookhaven Juvenile Rehabilitation Facility

| | |
|---|---------------------------|
| Initial Funds Authorized (SB 2497) [2 Facilities] | \$11,000,000 |
| REVENUE AVAILABLE FOR ONE FACILITY | <u>\$5,500,000</u> |
| CONSTRUCTION & EQUIPMENT EXPENSES (Incl. Campus, Warehouse, & Residence) | |
| <u>Expenditures - Construction</u> | |
| SB 2497 | \$8,004,671 |
| SB 3214 | 664,047 |
| <u>Expenditures - Equipment</u> | |
| Operating Funds | <u>553,442</u> |
| Total Construction & Equipment Expenditures | <u>\$9,222,160</u> |
| CONSTRUCTION COSTS (OUTSIDE INITIAL PLAN) | |
| Professional & Other Fees | \$ 85,585 |
| Land Acquisition | 126,750 |
| Warehouse | 764,600 |
| Director's Residence | 219,678 |
| Total Expenditures (Outside Initial Plan) | <u>\$1,196,613</u> |

SOURCE: Bureau of Building, Grounds, and Real Property Management and FY 2000 and FY 2001 budget requests.

DMH expended a portion of BJRF's operating budget to complete the warehouse and director's house and to equip the facility.

Construction of the Brookhaven facility was completed in December 1998. The director's residence and the warehouse were completed in November 2000. DMH expended a portion of facility's operating budget to complete the house and warehouse (\$537,297) and to equip the facility (\$553,442). The Department of Mental Health used the remaining \$2.8 million from DMH's \$11 million capital improvement bond toward construction of the Harrison County JRF. This facility was funded with additional bond proceeds of \$7.5 million authorized by SB 3119 in 1999. The Harrison County facility, for mentally ill juvenile offenders, is nearing completion and is scheduled to open and accept its first clients in late 2001.

Appendix B, page 46, summarizes revenues and construction costs for the BJRF.

Unplanned Construction of a Warehouse and Director's Residence Added Over \$1 Million in Construction Costs

Construction of a warehouse and director's residence not contemplated in the initial authority or planning for the facility added over \$1 million to the facility's cost.

In September 1998, prior to completing construction of the Brookhaven facility's main campus, DMH entered into an architectural contract to design a 4,000-square-foot warehouse and a 2,543-square-foot director's residence. Neither was contemplated in SB 2497, which authorized funding for the facility, nor were they included during the project planning phase. Subsequently, DMH accepted a bid of \$984,600 for construction of these two structures. Warehouse construction costs amounted to \$764,600, while the director's residence cost \$219,678. DMH acquired 25.6 acres from a private landowner at a cost of \$126,750 for placement of the structures and to provide for future growth.

The Department of Mental Health's practice of providing housing for facility directors added construction costs of \$219,678 to the Brookhaven facility.

The director's residence was constructed pursuant to a Department of Mental Health policy that all directors live on campus. According to the assistant director of the Bureau of Building, this house design is typical of other bureau house projects, and the bid for the structure is comparable to like projects.

No state funds were used to furnish the BJRF director's house (other than built-in items such as major appliances). In addition to construction costs, DMH pays utilities and maintenance costs for the director's residence.

Departure of the Brookhaven Facility From Its Statutory Mission to Treat Juvenile Offenders

Current admission practices at the Brookhaven Juvenile Rehabilitation Facility are not in keeping with statutory requirements and have resulted in a move away from addressing the special need for which the facility was created.

Brookhaven Juvenile Rehabilitation Facility Client Admission and Discharge Practices

Two of the three current policies used by the Department of Mental Health to determine admission to the Brookhaven Juvenile Rehabilitation Facility are not in keeping with statutory requirements set forth for this special need facility.

Brookhaven Juvenile Rehabilitation Facility's Admission Criteria

In addition to commitment by court order, BJRF admits juveniles through transfers from other mental health facilities.

Currently, a juvenile may be admitted to BJRF in one of three ways, as represented in literature and brochures of the facility and discussed in its Policies and Procedures Manual:

- The client may be committed by the youth or chancery court, in which case the judge of the court would sign an order sending the youth to BJRF; or,
- The client may be transferred from one of the Department of Mental Health's comprehensive regional facilities by a transfer order signed by the director of the facility; or,
- A family can request BJRF to admit a mentally retarded adolescent. The youth must be evaluated by a DMH regional facility first and obtain a transfer assignment from a comprehensive regional facility.

The third method is really a variation on the second method, but the originating request comes from a family rather than a DMH facility director. Still, the admission is then technically a transfer.

Statutory Admission Method Specific to Brookhaven Juvenile Rehabilitation Facility

Commitment to BJRF by court order is the only method contemplated in state law.

Only one of these methods of admission to BJRF was contemplated in the statute establishing the Brookhaven Juvenile Rehabilitation Facility. MISS. CODE ANN. Section 41-21-109 says the two facilities (Brookhaven and Harrison County) "would be specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates and who meet commitment criteria as defined by Section 41-21-61, Mississippi Code of 1972" (see Appendix A, page 45).

The BJRF Policies and Procedures Manual, at Appendix I to the Admissions section ("Criteria for Admission to Department of Mental Health Adolescent Rehabilitation Facilities"), says:

Only a person who has attained the age of thirteen (13) years but less than twenty-one (21) years, who has come in contact with the judicial system after committing a crime, is mentally ill or mentally retarded, with behavior which renders him/her inappropriate to be housed with the population of other Department of Mental Health treatment facilities for adolescents, and who has been committed pursuant to Sections 41-21-61, et seq., shall be appropriate for admission. No person shall be admitted with unresolved criminal charges.

This statement of procedure is wholly in keeping with the plain meaning of Section 41-21-109.

Description of DMH's Admission Practices for BJRF

The Department of Mental Health and BJRF staff developed the transfer methods of admission to BJRF from existing departmental policy and a statute addressing transfers between mental health facilities not specific to this special needs facility.

Through adoption of departmental and BJRF policy governing transfers, the department has enumerated its criteria for admission to BJRF. In the Department of Mental Health's Policies and Procedures Manual under "Regulations Governing Admission to Mental Retardation Facilities Operated By the Department of Mental Health," Section VII, "Transfer," states:

Individuals may be transferred when such a transfer is necessary for the welfare of that or other patients.

In BJRF'S policy manual, Appendix I continues, including another method of admission labeled "Transfers:"

Adolescents from other Department of Mental Health facilities who meet the criteria for civil commitment may be transferred to an adolescent rehabilitation facility.

Persons who have been committed directly to an adolescent rehabilitation facility may be transferred to other Department of Mental Health facilities as deemed appropriate for proper treatment. The department has offered the following sections as supporting its authority to transfer and admit to the Brookhaven facility without court order. Section 41-4-7(g) authorizes the department to establish policies for the admission of clients to departmental facilities. Specifically, it provides that one of the Department of Mental health's powers and duties is:

(g) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, mental retardation, alcoholism, drug misuse and developmental disabilities.

Additionally, the department cites Section 41-21-87 as authority to transfer clients between mental health facilities. This section provides:

The director may transfer any civilly committed patient from one facility operated directly by the department of mental health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

BJRF staff, taking this latter statute and departmental policy together, developed the second and third methods of admission to BJRF.

Department of Mental Health's Interpretation of Statutes in Setting Admission Policies

Because other provisions of law authorize the Department of Mental Health to transfer clients between facilities, the department believes Section 41-21-109 must be read so as to authorize the department to transfer into BJRF clients from other facilities, regardless of whether they have been committed by court order.

The Department of Mental Health believes MISS. CODE ANN. Section 41-21-109 must be read so as to authorize the department to transfer into BJRF clients from other facilities, regardless of whether they have been committed to the facility by court order.

The department argues in support of a broad construction of Section 41-21-109 allowing transfers and admissions without court order. According to the department, all statutes addressing the issue of commitment of clients to the care of the department must be read together, with subsequently enacted or re-enacted provisions controlling in cases where textual conflict exists between provisions. Because other provisions of general law authorize the department to transfer clients between facilities and these were reenacted subsequent to the enactment of Section 41-21-109, the department believes Section 41-21-109 must be read so as to authorize the department to transfer into the Brookhaven facility clients from other facilities regardless of whether they have been committed to the facility by order of the court. The department believes that to only require the department to house clients placed by the youth court would result in beds remaining empty.

PEER's Interpretation of Authorized Admission Method (Reading Together of Provisions Dealing with the Department of Mental Health and Its Authority)

PEER takes the position that the specific requirement found in Section 41-21-109 (that the purpose of the facility is to accept mentally ill or retarded persons committed by a court) should control admissions to BJRF.

In the face of conflict between provisions of law dealing with admission, the more specific provision of law, dealing specifically with the Brookhaven facility, should govern admissions to the facility.

The Department of Mental Health has argued that its general authority to establish admission criteria under Section 41-4-7 and its authority to transfer persons between facilities established in Section 41-21-87 authorize the department to admit or transfer into the facility persons other than those court committed. PEER has determined that in the face of conflict between provisions of law dealing with admission, the more specific provision of law, dealing specifically with the Brookhaven facility, should govern admissions to that facility.

The department's position as to its authority is in direct contravention to the plain meaning of Section 41-21-109, a

position that the PEER Committee rejects. In concluding that admissions are limited to those judicially mandated, PEER agrees that general sections of law which deal with the same subject matter should be read together (in pari materia) and to the extent possible each section of the CODE must be given effect as that the legislative intent can be determined. (See *Mississippi Public Service Commission v. Municipal Energy Agency of Mississippi*, 463 So 2d. 1056 [Miss, 1985].) In determining what the Legislature intended, the plain words of the statute are the best evidence of intent. (See *Mississippi Gaming Commission v. Imperial Palace of Mississippi, Inc.*, 751 So 2d. 1025 [Miss, 1999].) Further, such doctrines as repeal by implication or amendment by implication are only acceptable if it is clear from subsequently enacted legislation that the Legislature meant to repeal or amend a provision of law. (See *State v. Wood*, 187 So 2d. 820 [Miss, 1966].) Finally, if there is insolvable conflict between provisions of law, and one section is general while another is specific, the specific provisions prevail. (See *Imperial Palace, supra, Mauney v. State*, 707 So 2d. 1093 [Miss, 1998], *Benoit v. United Companies Mortgages of Mississippi, Inc.*, 504 So 2d. 196 [Miss, 1987].)

MISS. CODE ANN. Sections 41-4-7 (g) and 41-21-87, which convey general authority, clearly grant the department broad latitude to transfer clients between facilities and to set admissions criteria for facilities. Insofar as Section 41-21-109 restricts admissions to persons who have been committed by a court, it contravenes general provisions that give the department the authority to set placement and transfer rules for departmental facilities.

To read these provisions as the department would have them read, however, would result in a "reading out" of the provision that would allow admission only to those clients who have been committed to the facility by a court, a position supported by the plain meaning of clear and unambiguous terms of the section. This would constitute an amendment by implication, a position not generally well taken by the courts of the state.

To accept DMH's interpretation would support a position that the Legislature has rejected during the last two sessions when considering bills that would have removed the requirement that clients be committed by court order.

Further, to accept the department's interpretation would support a position that the Legislature has rejected during the last two sessions when considering bills that would have removed the requirement that clients be committed by court order. In 2000 (HB 847) and again in 2001 (HB 1333), DMH has attempted to obtain an amendment to Section 41-21-109 to provide that rehabilitation facilities for the mentally ill or mentally retarded juvenile offenders may accept persons who have been transferred from another Department of Mental Health facility. **In both years, the House bills failed to pass.**

In light of the fact that the sections are in conflict, and a harmonious reading does not appear possible, PEER reads the more specific provisions passed for the single purpose of regulating the operations of the Brookhaven facility as controlling in this matter. Such a reading preserves the clear legislative policy directive to operate a facility to address the needs of a special population. Consequently, PEER reads the provisions as establishing one method of admission, a court order. Thus the facility's second and third admission criteria options are not in keeping with state law. Further, absent specific authority from a court, administrative transfers would not be authorized for this facility, as the facility was intended for persons admitted by a court. To take a contrary position would allow administrative transfers to fill the facility rather than reserving this resource as law intended, for juvenile offenders committed by a court.

DMH believes that limiting BJRF's admissions to only those court-generated would result in empty beds at the facility. However, youth court judges currently estimate an annual caseload of between 500 and 1,000 mentally handicapped juvenile offenders, 30 to 50 of whom are "dually diagnosed."

The department has taken the position that limiting admissions to only those that are court-generated would mean that the Legislature had authorized beds that could not be filled. The Department of Human Services' Division of Youth Services reported in 1995 over 800 juveniles committed to its custody in need of special education; youth court annual reports from 1995 show over 800 cases annually involving special education students; and youth court judges currently estimate an annual case load of between 500 and 1,000 mentally handicapped juvenile offenders, 30 to 50 of whom are "dually diagnosed." Such indicators illustrate the continuing need for the institutional care for which the Brookhaven Juvenile Rehabilitation Facility was created.

Success of the Department of Mental Health in Fulfilling its Legal Mandate for BJRF

The Department of Mental Health has only partially fulfilled its legal mandate for BJRF because its admission practices limit treatment services to a segment of the intended population and extend services to unqualified juveniles.

As noted previously, MISS. CODE ANN. Section 41-21-109 states that the two facilities (Brookhaven and Harrison County) "would be specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates and who meet the commitment criteria as defined by Section 41-21-61, Mississippi Code of 1972."

BJRF's admission practices have meant treatment at the facility of a subset of the needy population, only partially addressing the needs initially identified by the judiciary and the intent expressed by the Legislature.

The Department of Mental Health has not admitted any females to the Brookhaven facility, thus denying this important resource to a significant population of eligible juvenile offenders.

Although it is clear from earliest meetings about BJRF construction that plans included the housing of females, thus far the facility has not admitted any female clients.

Thus far BJRF has not admitted any female clients. Failure to admit female offenders is not in accordance with MISS. CODE ANN. Section 41-21-109, which addresses juvenile offenders, generally, and BJRF's own admissions procedures (quoted on page 17). Also, it is clear from earliest meetings about BJRF construction that plans included the housing of females. At a 1996 meeting between architects and DMH and Bureau of Buildings representatives, the minutes reported: "One third of the clients are anticipated to be female, two thirds are anticipated to be male. This will lead to 3 cottages of 16 beds each."

The 1995 Youth Court Annual Report (the year the Legislature authorized the Brookhaven facility's construction) shows that of 22,685 juvenile cases disposed of in that year, 6,243 (27%) were committed by female offenders. Applying the 3.8% number of special education participants in the total cases disposed of to the number of female offenders, PEER estimates that there were about 237 female special education participants among the total cases reported in 1995. Youth court judges have few other commitment options for retarded female juvenile offenders. PEER interviews with youth court judges for this project confirmed a continuing need for placement for females.

BJRF staff contends that in order to designate a cottage for housing females, that they needed to get a "critical mass" of girls. Although BJRF has designated part of the facility for the treatment of four autistic youth (housing them together in one wing of one dorm), as of June 2001, no such arrangement had been made for females.

Since its opening in 1998, nearly thirty percent of BJRF's clients have been transferred from other mental health institutions, rather than having been committed by court order. These transfers take bed space that could be used by members of the targeted population.

DMH contends that allowing transfers of non-offender clients addresses waiting lists at other institutions and accelerates full occupancy at BJRF.

Since opening BJRF, the Department of Mental Health has accepted eighteen clients (of sixty-five total admissions) not committed by court order. DMH contends that allowing transfers of non-offender clients from other DMH institutions into BJRF is a way both to address some of the waiting list numbers at other institutions and to try to accelerate full occupancy at BJRF. According to BJRF staff, admitting non-offender clients gives the BJRF behavior modification program a better chance to work and presents less of a threat to staff and clients.

Although BJRF contends that admitting non-offender clients gives the BJRF behavior modification program a better chance to work and presents less of a threat to staff and clients, mentally retarded juvenile offenders are the adolescents that the facility was created to serve.

But, as one youth court judge said in an interview for this project, the statutory definition of mental retardation includes (at Section 41-21-61 (f)(ii)) persons "whose recent conduct is a result of mental retardation and poses a substantial likelihood of physical harm to himself or others in that there has been a recent attempt or threat to physically harm himself or others." These are the types of adolescents that the Brookhaven facility was created to serve.

DMH holds that the four juvenile offenders who were transferred out of BJRF for involvement in three violent incidents with staff members during the first year of operation were inappropriately assigned to BJRF. While any of those four may have had psychiatric issues, their records show three of the four had IQs in the 40s, 50s, and 60s. The fourth had an IQ of 75.

DMH argues that there is no difference between the seventy percent of BJRF clients assigned there by courts and the thirty percent of clients transferred from other DMH institutions regarding the manifestations of mental retardation—IQ, behavior, tendency toward violence, etc. In fact, some differences do exist. Four of the DMH-transferred clients are autistic; none of the court-ordered juveniles are autistic. BJRF's head psychologist reported in an interview with PEER that, through transfers from other DMH institutions, BJRF was gaining juvenile clients who are "less street-wise, less 'thuggy'" than the earlier court-ordered clientele.

The Department of Mental Health has, in effect, discouraged treatment of violent offenders at BJRF.

Although, according to state law, BJRF was to be "specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates," the facility's practice of accepting clients who have not been committed by court order reduces the number of beds available for youth court assignment. In effect, this reduces the opportunity for the facility to accept violent offenders. As noted above, BJRF staff members have stated that admitting non-offender clients gives the facility's behavior modification program a better chance to work and presents less of a threat to staff and clients.

BJRF is not reaching segments of its intended population and resources are being expended on nonqualified clients.

Also, in the first two years of BJRF's operation, after two episodes of injury to education staff members, BJRF transferred the youths that engaged in those violent behaviors to correctional or other mental health facilities. While there are times when removal from the facility may be a legitimate option, removal should not be a primary option for a special needs facility targeted to potentially aggressive youth. Solutions must come in the form of appropriate programs and staffing.

By reducing opportunities for commitment of violent offenders, by removing them from the facility by transfer, and by not admitting female clients, BJRF is not reaching segments of its intended population and resources are being expended on nonqualified clients.

Brookhaven Juvenile Rehabilitation Facility's Staffing, Training, and Security

During the first two years of BJRF's existence, some of the staff was not completely prepared for the aggressive behavior of clients. Significant staff turnover also occurred during this time. BJRF now has adequate numbers of direct care and education staff and provides sufficient staff orientation training, but because the Department of Mental Health has changed BJRF's clientele from what is legally mandated, PEER cannot assess the facility's readiness to provide services to its intended target population.

Although BJRF's method of providing security appears adequate to protect the clients and staff within the population currently being served, changing the population to the intended target group could compromise the adequacy of the facility's security.

DMH's Adoption of Standards for the Special Needs Facility

Because facilities for mentally retarded juvenile offenders have no nationally recognized set of operating standards, BJRF operates under a mixture of standards from the U. S. Department of Health and Human Services, State Department of Education, and internally developed security standards.

PEER sought to determine whether the Brookhaven Juvenile Rehabilitation Facility's staffing, training, and security complied with applicable standards for providing client treatment and security. BJRF also operates under other function-specific standards such as professional standards for medical/nursing practice, state/departmental standards for finance and personnel practices, and general mandates applicable to a class of clients such as the Civil Rights of Institutionalized Persons Act, but these were not within the scope of PEER's review.

BJRF is a new type of special needs facility, with no comparable programs in the state and few elsewhere.

The Brookhaven Juvenile Rehabilitation Facility is a new type of special needs facility, with no comparable programs in the state and few elsewhere. Such facilities for mentally retarded juvenile offenders have neither a nationally recognized set of operating standards, nor one national association of operating professionals. Rather, these new hybrid programs have to adopt and/or adapt operating standards from several disciplines and professions in developing programs for these special needs juveniles. The question becomes which standards are adopted, used, modified, or developed in the process of assembling a security and treatment program for this

special needs population, as well as how well the selected standards work in practice.

The Department of Mental Health chose to adopt the U. S. Department of Health and Human Services' standards for intermediate care facilities for the mentally retarded (ICF/MR) for BJRF's therapeutic environment. The department applied standards of the State Department of Education and Southern Association of Colleges and Schools for BJRF's educational program. Because the department believed no suitable model existed for security, BJRF developed its own standards and procedures for security.

Standards for the Therapeutic Environment

The Department of Mental Health chose to adopt the U. S. Department of Health and Human Services' standards for intermediate care facilities for the mentally retarded (ICF/MR) for BJRF's therapeutic environment.

In developing staffing and training requirements for the facility to achieve a therapeutic environment, the Department of Mental Health chose to adopt standards with which it was familiar. These standards, used at other mental retardation facilities, are the standards for intermediate care facilities for the mentally retarded (ICF/MR) promulgated by the federal Health Care Financing Administration (HCFA) of the U. S. Department of Health and Human Services (HHS). Although the U. S. Department of Health later determined that the Brookhaven facility is not eligible for ICF/MR funding due to its restrictive environment, the department's decision to use these standards has guided its development of programs and staffing.

DMH holds that it has no response from HCFA to its appeal of the Mississippi Department of Health's denial of ICF/MR certification. A conference call was held March 8, 2001, among staff of the Department of Health's Division of Health Facilities Licensure and Certification, HCFA Regional Offices in Atlanta and Chicago, and the HCFA Central Office in Baltimore. That call concerned the ICF/MR status of Brookhaven Juvenile Rehabilitation Facility, and discussion focused on the areas in which the facility did not meet ICF/MR certification standards—active treatment, the security fence, the security cameras. A memorandum summarizing the results of the conference call from the Department of Health to PEER said that all the federal government representatives were in agreement that BJRF does not meet certification requirements for an ICF/MR facility. The federal officials said that Medicaid payments could not be made for forensic units. A letter to this effect was requested from the HCFA Regional Office.

Standards for the Education Program

The Department of Mental Health applies standards of the State Department of Education and Southern Association of Colleges and Schools to BJRF's educational program.

Accreditation standards of the Mississippi Department of Education (MDE) and the Southern Association of Colleges and Schools (SACS) were adopted and included in the Brookhaven Juvenile Rehabilitation Facility's policies and procedures for the education program element. Many of the clients eligible for commitment to the Brookhaven facility function in the higher range of the mentally retarded population and would benefit from accredited education programs.

Standards for the Security Program

Because the Department of Mental Health believed no suitable model existed, BJRF developed its own standards and procedures for security.

In some areas, notably security, the Brookhaven facility developed its own standards and procedures. The security dimension had to be developed from the earliest planning for the facility. For example, several design elements of a corrections or forensic institution were included in construction to help control the potentially aggressive population, such as a twelve-foot-high fence around the perimeter of the facility, a "sally port" as the clients' entry point, surveillance cameras at various common movement points, and telephone and other communication means throughout the facility to connect non-security staff with security staff were provided for the facility. Security staff, most with law enforcement background or experience, were also among the personnel hired. These programmatic decisions for the Brookhaven facility were unique among mental health facilities.

Staffing of the Brookhaven Juvenile Rehabilitation Facility

Factors Affecting Staffing at BJRF

A facility for mentally retarded juvenile offenders must have appropriate staffing for a habilitation and training program, as well as security. During the first two years of BJRF's existence, some of the staff was not completely prepared for the aggressive behavior and special needs of mentally retarded clients. These conditions contributed to significant staff turnover during this period.

Special Staffing Considerations

Because the youth committed to BJRF are adjudicated delinquents, its program efforts must include two equally important, appropriately staffed dimensions: a habilitation and training program for educable/trainable mentally retarded juvenile offenders and a security dimension.

As stated earlier, MISS. CODE ANN. Section 41-21-109 clearly defines the appropriate clientele for the Brookhaven facility as adolescent mentally retarded criminal offenders committed by youth or chancery court to a secure, therapeutic environment. This is a clientele that, as the Director of the Department of Mental Health publicly stated in 1994 and again in 2001, that the department did not want to be responsible for treating due to its belief that the department lacked appropriate programs. Because the youth committed to the Brookhaven facility are adjudicated delinquents, the program efforts must include two equally important, appropriately staffed dimensions: a habilitation and training program for educable/trainable mentally retarded juveniles and a security dimension to reduce the danger of harm to self or others. (See MISS. CODE ANN. Section 41-21-61.) The security component of BJRF staffing is addressed on page 34.

Initial Staffing Problems

The initial education staff at BJRF had no special education experience with adolescents at the mental functioning level of BJRF clients, and the initial group of clients included some whose aggressive behavior toward adults was not anticipated by some staff members.

The first group of clients admitted to BJRF included some whose aggressive behavior toward adults was not anticipated by all staff. Also, none of the first education instructors hired had special education experience with

youth at the functioning level of the BJRF clientele. A positive reinforcement behavior modification plan had been installed as the primary disciplinary tool for the youth, which all program staff (including teachers) were supposed to administer.

In October 1999 and again in February and June 2000, four different BJRF clients were involved in three violent behavioral incidents with staff members.

These operating considerations combined in ways that led to problems in the new program. In October 1999 and again in February and June 2000, four different clients were involved in three violent behavioral incidents with staff members. These incidents led to teacher resignations.

For these and other reasons, BJRF experienced significant staff turnover in the first operating year that made program development, continuity, and adult intervention in client behaviors uncertain.

Staff Turnover

In the three years since it began operation, the Brookhaven Juvenile Rehabilitation Facility has experienced 53 percent turnover for program staff (with education and recreation staff being the highest) and 68 percent turnover for security staff.

BJRF has experienced significant staff turnover since its opening (see Exhibit 2, page 29). PEER's analysis of the entire facility's staff turnover as of June 30, 2001, shows that one hundred four staff members in sixty-five positions in seventeen job categories have been hired and left within the twenty-four months of operation with clients.

High turnover and difficulty in filling vacancies in the BJRF education staff have led to difficulty in education program planning, lack of development of the education program in the therapeutic regimen of the clients, and an inability to pursue educational accreditation in an active manner.

The four job categories with the highest percentage of turnover were school administrator, 100%; security officer, 68%; recreation therapist, 60%; and academic teacher, 55%. Overall, 73% of the employment terminations at the Brookhaven Juvenile Rehabilitation Facility are due to resignations, while 27% are the result of facility actions.

High turnover and difficulty in filling vacancies in the education staff have led to difficulty in education program planning, lack of development of the education program in the therapeutic regimen of the clients, and an inability to pursue active accreditation by the Mississippi Department of Education.

**Exhibit 2: Program and Security Staff Turnover by Type of Position
(For Fiscal Years 1999 through 2001)**

Program Staff Turnover FY1999-FY2001

| <u>Position</u> | <u>Overall</u> | <u>FY1999</u> | <u>FY2000</u> | <u>FY2001</u> |
|-----------------------------|-------------------------------|-----------------------------|------------------------------|------------------------------|
| School Administrator | 100% (2 OUT OF 2) | VACANT | 100% (1 OUT OF 1) | 100% (1 OUT OF 1) |
| Academic Teacher | 55% (6 OUT OF 11) | 0% (0 OUT OF 2) | 67% (4 OUT OF 6) | 29% (2 OUT OF 7) |
| Recreation Therapist | 60% (3 OUT OF 5) | VACANT | 67% (2 OUT OF 3) | 25% (1 OUT OF 4) |
| Active Treatment Technician | 53% (48 OUT OF 90) | 23% (5 OUT OF 22) | 42% (25 OUT OF 59) | 25% (14 OUT OF 57) |
| Nurse | 48% (10 OUT OF 21) | 0% (0 OUT OF 2) | 47% (8 OUT OF 17) | 15% (2 OUT OF 13) |
| Associate Psychologist | 33% (1 OUT OF 3) | VACANT | 33% (1 OUT OF 3) | 0% (0 OUT OF 2) |
| Social Worker | 50% (1 OUT OF 2) | 0% (0 OUT OF 2) | 0% (0 OUT OF 2) | 50% (1 OUT OF 2) |
| TOTAL PROGRAM STAFF | 53% (71 OUT OF 134) | 18% (5 OUT OF 28) | 45% (41 OUT OF 91) | 24% (21 OUT OF 86) |

Security Staff Turnover FY1999-FY2001

| <u>Position</u> | <u>Overall</u> | <u>FY1999</u> | <u>FY2000</u> | <u>FY2001</u> |
|------------------|-----------------------|---------------------|----------------------|----------------------|
| Security Officer | 68% (15 OUT OF 22) | 60% (3 OUT OF 5) | 40% (4 OUT OF 10) | 50% (7 OUT OF 14) |

SOURCE: BJRF records.

Overview of Current Staffing

BJRF now has sufficient numbers of direct care and education staff, but because the Department of Mental Health has changed BJRF's clientele from what is legally mandated, PEER cannot assess the facility's readiness to provide services to its intended target population.

As of June 30, 2001, the Brookhaven Juvenile Rehabilitation Facility had 110 employees serving 41 residents. At maximum staffing and resident capacity, the Brookhaven facility is authorized 128 full-time positions and can house 48 full-time residents. The facility is operated twenty-four hours per day, seven days a week, for the entire fiscal year. The State Personnel Board checks all staff qualifications either prior to or just after hiring. The appropriate disciplines with appropriate professional certifications are currently present to carry out the

Brookhaven Juvenile Rehabilitation Facility's statutory purposes.

Because the Department of Mental Health has expanded the admission provisions of MISS. CODE ANN. Section 41-21-109, thus changing the actual population in residence from that legally mandated, PEER cannot assess BJRF's readiness to provide, with allocated resources, security and therapeutic services to its intended target population of mentally retarded juvenile offenders committed for treatment by a court of competent jurisdiction. However, PEER provides the following observations relative to facility staffing in comparison to applicable standards.

Direct Care Staffing

Using ICF/MR standards as a baseline, PEER found that BJRF exceeds direct care staffing requirements.

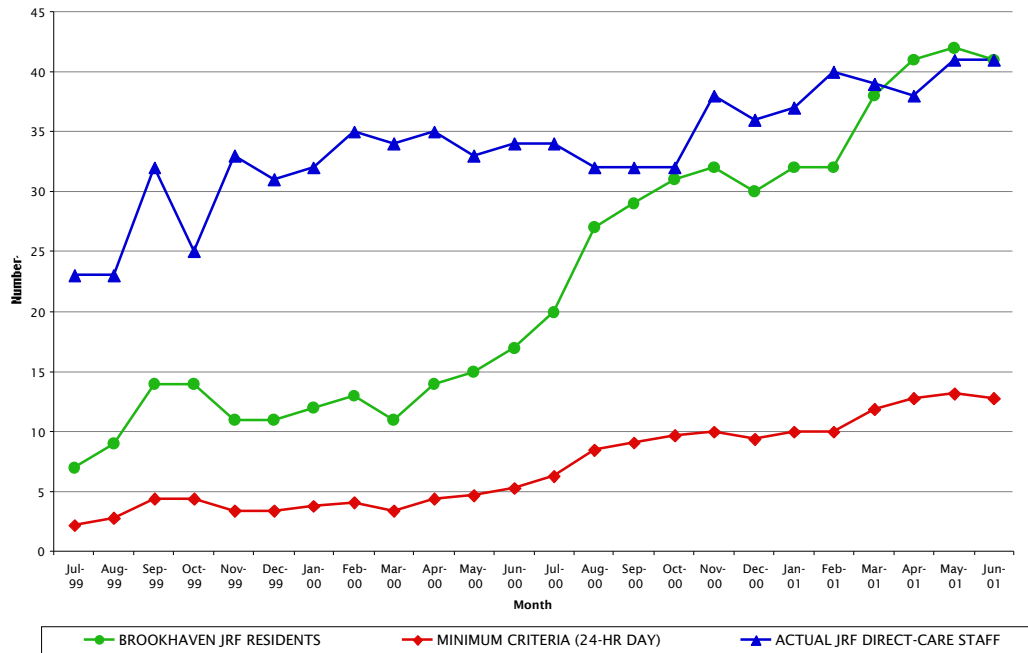
Direct care employees at BJRF include active treatment technicians who monitor the residents' behavior, implement the positive program reinforcement program, and serve as classroom aides while the residents attend school.

In developing staffing requirements for direct care workers, the Department of Mental Health used standards for intermediate care facilities for the mentally retarded (ICF/MR) promulgated by the federal Health Care Financing Administration (HCFA) of the U.S. Department of Health and Human Services (HHS). The Brookhaven Juvenile Rehabilitation Facility is a special needs mental retardation facility and should not be judged by ICF/MR standards alone. However, the ICF/MR standards do provide a baseline for an assessment of staffing.

As of June 2001, BJRF had forty-one direct-care staff for forty-one residents.

Currently, ICF/MR standards require a minimum of one direct care staff for every 3.2 residents when the population consists of residents with aggressive behavior. ICF/MR standards indicate that facilities should operate above the minimum when possible, since having additional staff allows for better implementation of clients' individual program plans. PEER's analysis of staffing patterns as of June 2001 showed that the facility had forty-one direct-care staff for forty-one residents at that time. Exhibit 3, page 31, shows that the Brookhaven Juvenile Rehabilitation Facility has exceeded the minimum direct-care staffing requirements since the facility began serving clients in July 1999.

Exhibit 3: Comparison of Actual Juvenile Rehabilitation Facility Direct-Care Staff vs. Minimum Staff Required for the Number of Brookhaven Juvenile Rehabilitation Facility Residents (For Period July 1999 through June 2001)



SOURCE: PEER analysis.

Education Program Staffing

Using State Department of Education standards as a baseline, PEER found that until recently BJRF did not meet recommended student/teacher ratios.

Although BJRF's education program is not required to be accredited by the State Department of Education, the facility adopted the department's standards and those of the Southern Association of Colleges and Schools for its education program. PEER used these standards as a baseline and found that BJRF has been understaffed based on the benchmark student/teacher ratios required for special education students in self-contained classrooms.

From the opening of the facility in July 1, 1999, until June 11, 2001, only two teachers served thirty-eight clients, with direct care personnel acting as classroom aides.

State special education regulations allow no more than twelve students for each classroom with only one aide, and no more than fourteen students for each classroom with two aides. For classes with multiply disabled students (e.g., mentally retarded with behavior problems or with autism), the regulations allow a maximum of ten students per class.

From the opening of the facility in July 1, 1999, until June 11, 2001, only two teachers served thirty-eight clients, with direct care personnel acting as classroom aides. Thus the facility did not meet the minimum education staffing standard set by the State Department of Education. Currently, the facility has five teachers, which should bring the facility up to education staffing standards.

Staff Training at the Brookhaven Juvenile Rehabilitation Facility

In accordance with ICF/MR and Department of Mental Health employee training standards for aggressive mentally retarded juveniles, the Brookhaven facility has provided complete and timely orientation training to about 90 percent of employees since it began operating.

In order for facility staff to implement a treatment program for residents, ICF/MR standards require orientation for all staff beginning upon the date of hire. Timely orientation training that prepares staff to intervene appropriately to control or influence client behavior promotes client and employee safety as well as program effectiveness. The department has adopted these standards and included them in the policies and procedures manual for the operation of the Brookhaven facility. The content of Brookhaven Juvenile Rehabilitation Facility's staff orientation program is consistent with that required by ICF/MR regulations.

The content of BJRF's staff orientation program is consistent with that required by ICF/MR regulations.

Facility policy requires that all new employees complete four sessions (about thirty hours) of orientation training on topics pertaining to client treatment and facility operating procedure. Staff orientation at the Brookhaven Juvenile Rehabilitation Facility includes topics on facility policies and procedures, behavior management, mental retardation, behavior observation and documentation, client rights, and the client level system. Also, employees who provide direct care (active treatment technicians, psychologists, nurses, and social workers) must be certified in techniques for managing aggressive behavior (TMAB) and cardiopulmonary resuscitation (CPR). These two areas require annual re-certification. Allowing staff to work with behaviorally disturbed residents prior to a proper orientation increases the potential for harm. Exhibit 4, page 33, shows the number of past and present employees receiving orientation.

PEER analysis of training records of employees hired since the facility began operating indicate that five completed no orientation, six completed only partial orientation, and thirty-one received full orientation, but some two weeks to two months after the date of hire. The number not in

compliance with policy amounts to about ten percent, while about ninety percent of the employees hired (147 of 189) completed the required orientation training.

Exhibit 4: Brookhaven Facility Employees Completing Orientation Training By Type (For Fiscal Years 1999 Through 2001)

| <u>Employee Type</u> | <u>Full Orientation Completed Timely</u> | <u>Full Orientation Not Completed Timely</u> | <u>Partial Orientation Completed</u> | <u>No Orientation Completed</u> |
|---|--|--|--------------------------------------|---------------------------------|
| Active Treatment Technicians, Psychologists, Nurses, & Social Workers | 101 | 3 | 2 | 3 |
| Education/ Recreation | 10 | 4 | 1 | 0 |
| Support | 24 | 21 | 1 | 1 |
| Security | 12 | 3 | 2 | 1 |
| Total | 147 | 31 | 6 | 5 |

SOURCE: Brookhaven Juvenile Rehabilitation Facility

Since October 2000, the Brookhaven Juvenile Rehabilitation Facility has been in compliance with departmental policy, which requires that all employees receive orientation upon the date of hire.

The department also conducts regular in-service training for BJRF staff, including application of the positive reinforcement behavior management program.

Security at the Brookhaven Juvenile Rehabilitation Facility

The security role at BJRF is the responsibility of both guards and program staff. In keeping with practices followed in other mental health facilities that follow ICF/MR standards, guards direct their primary attention to protecting the physical facility, while program staff are primarily responsible for clients' safety-related behaviors. Although this method of providing security appears adequate to protect the clients and staff within the population currently being served, changing the population to the intended target group could compromise the adequacy of the facility's security.

Potentially aggressive mentally retarded youth present behavioral problems that facility staff must be prepared to address. Behaviors that staff may encounter on a daily basis include hitting, spitting, biting, kicking, tantrums, self-injury, aggressive language, and inappropriate touching. These behaviors may be directed toward other youth or toward adults. Brookhaven Juvenile Rehabilitation Facility records show that, on average, eight of these incidents daily are serious enough to require a write-up or behavioral intervention.

Planning for the Brookhaven Juvenile Rehabilitation Facility shows that the facility was to be a therapeutic environment with a security overlay rather than a secure environment with a therapeutic overlay (the latter similar to a prison or juvenile corrections facility). Security personnel, in performing their duties, were to be as invisible to the internal operations of the facility as possible.

The security needs of the target population presented a staffing challenge to the Department of Mental Health, since it had never before been responsible for a program with the statutory mission proscribed for the Brookhaven facility.

Role of Program Staff in Facility Security

BJRF program staff (i.e., the education, recreation, nursing, psychology, social work, and residential staff) plan for and are involved in reactions to client behaviors that need management or correction.

Program staff at BJRF are expected to provide security for the internal functioning of the facility.

According to planning minutes and staff training logs, program staff of the Brookhaven Juvenile Rehabilitation Facility are expected to provide security for the internal functioning of the facility. This means program staff plan for and are involved in reactions to client behaviors that need management or correction. Consequently, staff receive training particularly related to behavior management and cardiopulmonary resuscitation. Staff members are expected to recognize signs of escalating client behaviors, and apply appropriate ways to manage it. The management of aggressive behavior may include such staff actions as talking calmly to an upset client, redirecting the client's behavior, using time out rooms, using self-defense techniques such as blocking a client's blow, and using physical restraints.

All program staff--the education, recreation, nursing, psychology, social work, and residential staff--are expected to have this knowledge and play this role. Currently, staff training certification is offered only for TMAB and CPR. All staff members are required to be certified annually in these areas, and in order to obtain certification in these two areas, staff members must demonstrate their ability to perform the requisite skills. The staff is also expected to demonstrate their effectiveness in these areas on the job.

Role of Security Staff in Facility Security

BJRF's security guards' primary duties are to protect the physical facility. If BJRF restricted its admissions to those required by statute, the department would need to reassess the role of BJRF security personnel in relation to clients.

Unlike correctional facilities where security guards are highly visible and are employed to provide protection among staff, the correctional population, and the physical plant, the job assignment of security guards at the Brookhaven Juvenile Rehabilitation Facility is much less visible and less involved in escorting or directing residents. The BJRF's security guards' role primarily concerns protection of the physical facility. Security guards are expected to keep unwanted visitors out of the facility, to prevent resident escape by ensuring security measures are followed in the restricted environment, to

protect the inventory of the facility, and be able to respond to client behavior emergencies.

At BJRF, security guards' roles for internal security are reactive; program staff are expected to take a proactive role.

Guards are primarily accessible to staff by hand-held radios, security telephones in common rooms, and surveillance cameras. Although guards walk and ride around the forty-three acres of the facility, their primary role is security in the abovementioned areas. The guards' roles for internal security are more reactive than the proactive role program staff are expected to carry out. Guards do, however, receive training in TMAB in case they have to intervene in aggressive conduct of clients.

The mental health security model appears adequate to the current needs of the facility. However, if BJRF restricted its admissions to those required by statute, the department would need to reassess the role of BJRF security personnel in relation to clients.

Assessment of Program Quality at the Brookhaven Juvenile Rehabilitation Facility

It is too early in the life of the Brookhaven Juvenile Rehabilitation Facility program to make definitive statements about program quality and success. However, PEER noted problems with the staff not uniformly implementing the positive reinforcement behavior modification plan and internal disagreements on the proper role and form of discipline for the facility. Also, BJRF has not developed measures of program success.

The General Program

All clients are provided with timely and appropriate assessment of functioning and individualized habilitation programs based on a positive reinforcement treatment program.

Each client has an Individual Program Plan that addresses his medical, dietary, social, psychological, behavioral, recreational, and educational needs.

The Brookhaven facility conducts a comprehensive functional assessment of all clients within fourteen days of admission. The facility staff develops an Individual Program Plan (IPP) for each youth based on the comprehensive functional assessment. The IPP addresses medical, dietary, social, psychological, behavioral, recreational, and educational needs of each client. All of this is fully documented in each client's records. (The recordkeeping is extensive, thorough, and kept up to date.) An interdisciplinary team monitors and modifies (as warranted by the client's progress) each client's IPP regularly.

The core training mechanism for the clients is a positive reinforcement behavior modification plan. The plan is thoroughly worked out with respect to rewards and withholding of rewards for the youth for their appropriate and inappropriate behaviors. All staff who come in contact with clients are expected to understand and administer this plan. It is the subject of formal training in the initial general orientation, and the subject of ongoing informal discussion and training among professional staff.

Problems with Program Implementation

Problems with program implementation have centered on a failure to carry out positive reinforcement programs uniformly and internal disagreements on the proper role and form of discipline in behavior change.

Uniformity in Carrying Out the Positive Reinforcement Program

Staff members' individual arrangements with clients cannot be applied to the entire client population and could undermine the effectiveness of behavior modification efforts.

Problems have existed with some of the BJRF staff fully implementing the behavior modification plan. The problems have taken two main forms. One form has been individual staff members making individual "bargains" with individual clients, in the form of "If you will behave in such-and-such a way, I'll bring you so-and-so for a reward." As the head psychologist points out, such "side" arrangements cannot be applied to the entire client population and can undermine the effectiveness of behavior modification efforts (by misusing its very principle). According to him, this problem has been addressed and eliminated.

Proper Role and Form of Discipline

The second, broader problem has centered in the education staff and has to do with the nature of "discipline" in the education program specifically. Most of the teaching staff (past and present) believes that disciplinary measures for the youth could be improved to be appropriate for the special population served. The assistant director for program services reported that early in the program, some of the teaching staff were reluctant to intervene in clients' behavioral incidents.

Disagreement exists among members of BJRF's professional staff about the effectiveness of the facility's behavior modification program.

In dealing with this problem (of a teachers' perceived lack of discipline), education staff members and psychologists have discussed at length the proper application of the behavior modification program in specific cases. Daily behavioral incident rates have fluctuated in the first twenty-four months of operation. The education staff believes that for some of the clients (usually the higher functioning ones), the positive reinforcement plan does not have much meaning and hence is ineffective as a behavior management tool.

The head psychologist reports that the behavior management model is ineffective for twenty to twenty-five percent of the clients, for whom the IPP then specifies

alternatives. With respect to specific disciplinary needs, there have been some significant differences between teachers and psychologists. Teachers employed during the early operation of the program have wanted the administration of medication to clients during behavioral incidents as the means of behavior management. The Brookhaven Juvenile Rehabilitation Facility's policy strongly discourages this practice, as does the Civil Rights of Institutionalized Persons Act.

While there are times when a client's removal from the facility may be a legitimate option, this should not be the primary option for a special needs facility targeted to potentially aggressive youth.

After two episodes of injury to education staff members, the youths that engaged in those behaviors were transferred from BJRF and recommitted to correctional or other mental health facilities. PEER would note that, while there are times when removal from the facility may be a legitimate option, removal should not be a primary option for a special needs facility targeted to potentially aggressive youth. Solutions must come in the form of appropriate programs and staffing.

Since the injurious incident, and subsequent substantial turnover in teaching staff, current teachers report fewer significant client-staff behavioral incidents. The behavioral incidents that the teachers now deal with are mostly client-to-client. There is continuing discussion, and still some disagreement, among professional staff about the behavior modification program. The head psychologist mentions "client non-compliance" and "staff inconsistency" as "barriers to successful programming." The "staff inconsistency" barrier takes good training and continual discussion about specific cases to improve the behavior modification program, and BJRF is making these efforts.

Management team members expect program treatment to be "long-term" for most clients. The Brookhaven Juvenile Rehabilitation Facility staff's "long-term" expectations are driven by the facility's programmatic behavioral objectives: the primary focus on developing adaptive behaviors that youth need for successful living after discharge. The behavior modification plan is an essential element of this "long-term" strategy. Whether it produces the desired adaptive behavior, including discipline in the classroom, is essential to the success of the facility's programmatic efforts.

Lack of Measures of Program Success

Current Department of Mental Health program performance measures for the Brookhaven facility do not include indicators of program success. Particularly, there are no indicators of the potential long-term impact the Brookhaven Juvenile Rehabilitation Facility's program may have on the lives and adaptive successes of its clients upon discharge to the community and how such successes might be measured and tracked.

BJRF's program performance measures include no indicator of long-term impact on clients.

Every element of the individual program plan has behavioral objectives. The professional in each discipline uses measures of performance on these objectives to gauge the progress of each client. These are useful internal measures for tracking individual progress within the facility and in each program element, but they do not address what happens to the youth after discharge from Brookhaven Juvenile Rehabilitation Facility back into the community.

BJRF's FY 2002 Budget Request reports the following program performance indicators and measures:

- Program Outputs: total number of resident/client days
- Program Efficiencies: Operating cost per resident/client day (projected as \$250/resident/day)
- Program Outcomes (targeted in FY 2002):
 - to provide habilitation, medical, and custodial care 24 hours a day, 365 days a year to licensed/certified care facility with at least 98% occupancy of total client days;
 - to obtain and maintain the facility's licensure and certification;
 - to achieve licensure and certification by the State Department of Health;
 - to meet the school accreditation requirements of the State Department of Education; and,
 - construction of two ICF/MR Group homes.

Except for the very beginning phase of the program (e.g., the first year), during which staff are taking program actions that result in the allocation of resources necessary to meet licensing/certification/accreditation standards, these are not ongoing measures of program outputs and outcomes. Rather, once they are achieved, they are input measures, illustrating the resources and activities the Brookhaven Juvenile Rehabilitation Facility and its programs will bring to bear on its clients. These program

performance measures include no indicator of what difference BJRF's programs make to the lives of its clients, and particularly no indicator of what long-term impact the program might make to the lives and adaptive successes its clients might have upon discharge back into the community.

Although the BJRF staff has considered recidivism (i.e., the number of youth who, once discharged, are returned to BJRF) as a measure, this measure is neither comprehensive nor dependable as a measure of programmatic success.

Recommendations

Facility Construction

1. For future construction projects, DMH should utilize the planning process to identify and accurately quantify all project costs, set budgets, and monitor progress to minimize expenditures beyond those funds authorized. DMH should follow the intent expressed in legislative grants of authority for project funding, by disallowing expenditure of funds for expansion of facilities (e.g., the addition of staff housing or a warehouse), thereby causing project cost overruns.

Admissions

2. DMH should conform its admissions decisions to comply with statutory criteria as set forth in MISS. CODE ANN. Section 41-21-109, which limits admissions to mentally ill or mentally retarded juvenile offenders who have been committed for treatment by a court of competent jurisdiction.
3. DMH should promptly inform all youth and chancery court judges in the state that it will fully comply with the admission intent expressed in MISS. CODE ANN. Section 41-21-109.
4. DMH should clearly define the relationship between the Brookhaven facility and the Harrison County facility regarding the placement of "dual diagnosis" juvenile offenders and disseminate this information to the state's youth and chancery court judges for their use in making commitment decisions.

Staffing

5. After achieving compliance with statutory admission requirements, DMH should assess its direct care staffing needs to establish the appropriate levels of direct care staff needed for treatment of the intended population of mentally ill or mentally retarded juvenile offenders.
6. Management and education staff should continue efforts to qualify for and obtain State Department of Education accreditation by adhering to standards for classroom staffing--i.e., maintaining the required level of teaching personnel.

Policies and Procedures

7. Recognizing the statutory required purpose of BJRF, and that ICF/MR standards are limited in their application to treating this special needs population, BJRF management and DMH staff should continue to develop policies and procedures specific to the BJRF program.
8. In keeping with the statutory mandate, BJRF management and appropriate staff should develop and offer training consistent with its role of providing treatment to the state's mentally ill and mentally retarded juvenile population.

Performance Measurement

9. DMH and facility management should develop and define an accurate set of outcome measures, install a system to capture relevant data, and annually assess and report performance for the BJRF program.

Appendix A: Definition of Mentally Ill and Mentally Retarded Contained in MISS. CODE ANN. §41-21-61

Mentally Ill Person

(e) "Mentally ill person" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Mentally ill person" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Mentally ill person" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) mental retardation, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia.

Mentally Retarded Person:

(f) "Mentally retarded person" means any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of mental retardation and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself.

Appendix B: Brookhaven Juvenile Rehabilitation Facility Construction Revenue and Expenditure Summary

| Facility Description | Revenue / Expenditure Item | Revenue / (Expenditure) Amount | Sub-Totals | Balance |
|---|--|--------------------------------|--------------------|---------------------|
| REVENUES: | | | | |
| | Proceeds from Bond Sale Authorized by SB 2497 (1995, 1996, 1999) | \$11,000,000 | | |
| | Proceeds from SB 3214 | <u>\$664,047</u> | | |
| | TOTAL REVENUE | | | \$11,664,047 |
| EXPENDITURES: | | | | |
| Brookhaven JRF Main Campus: | | | | |
| (Administration building, education building, recreation building, three residential living buildings, and fencing) | | | | |
| | Professional & Other Fees | (\$457,159) | | |
| | RFP Advertisement | (53) | | |
| | Construction Costs | <u>(7,014,894)</u> | | |
| | Total Main Campus Cost | | (7,472,106) | |
| Warehouse and Directors Residence: | | | | |
| | Professional & Other Fees | (71,414) | | |
| | RFP Advertisement | (79) | | |
| | Land Acquisition | (126,750) | | |
| | Construction Costs (Warehouse) | (764,600) | | |
| | Construction Costs (Director's Residence) | (219,678) | | |
| | Network Communications | <u>(14,091)</u> | | |
| | Total Warehouse/Residence Cost | | (1,196,613) | |
| | TOTAL CONSTRUCTION EXPENDITURES | | | (8,668,718) |
| Campus Equipment: | | | | |
| | Equipment Purchased Directly by Facility | | (553,442) | |
| | TOTAL CONSTRUCTION AND EQUIPMENT EXPENDITURES | | | (9,222,160) |
| | BALANCE REMAINING (SB 2497 Proceeds) | | | \$2,995,329 |
| <hr/> CONSTRUCTION, LAND AND EQUIPMENT EXPENDITURES (From Operating Funds) | | | | |
| | Land Acquisition | (126,750) | | |
| | House/Warehouse Construction | (537,297) | | |
| | Campus Equipment | <u>(553,442)</u> | | |
| | Total Expenditures (From Operating Funds) | | (1,217,489) | |

SOURCE: Bureau of Building, Grounds, and Real Property Management and FY 2001 and FY 2002 legislative budget requests.

Agency Response

DEPARTMENT OF MENTAL HEALTH

State of Mississippi

1101 Robert E. Lee Building
239 North Lamar Street
Jackson, Mississippi 39201



(601) 359-1288
FAX (601) 359-6295
TDD (601) 359-6230

Albert R. Hendrix, Ph.D. - Executive Director

September 7, 2001

Dr. Max Arinder, Executive Director
Legislative PEER Committee
222 N. President Street
Jackson, MS 39201

Dear Mr. Arinder:

Department of Mental Health Staff were permitted to review the draft report in the offices of the PEER Committee, but were not permitted to take a copy of the draft report. They were permitted to review the draft for as long as they wished and to make notes, and this is appreciated, and were also permitted to take a copy of the Executive Summary of the report. Our response is based on the review of the draft report and the Executive Summary.

Departure of the Facility from its Statutory Mission

The Executive Summary asserts, on page "ii", that the Brookhaven Juvenile Rehabilitation Facility has departed from its statutory mission by admitting clients who have not been committed specifically to that facility by court order, thus taking up bed space that could have been used by members of the targeted population.

Response:

The Department of Mental Health disagrees with this assertion. The Department is utilizing the facility in the manner it has been advised by its legal staff and by the legal liaison assigned to it by the Attorney General. The facility was constructed and equipped to house clients who would be considered severe behavior problems and who have been accused of committing a crime as long as there are no pending charges, but it was also meant to be a place where clients who were a threat to other clients could be transferred. The 30% of clients mentioned in the report who have been transferred to this facility are, in fact, similar challenges for treatment like the 70% who have been committed directly by court order. They exhibit the similar behaviors and pose the similar problems, and that is why they were

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September 7, 2001

transferred there. Many of the clients transferred to BJRF require more complex treatment methodologies than those committed by court order.

Also, no person committed by court order has been denied admission. To have not transferred clients to this facility would have simply meant that this facility would have been underutilized, clients inappropriately residing in other facilities would have continued to do so, and beds at those other facilities would not have been freed up to serve other clients.

It is true no females have been admitted to the Brookhaven Juvenile Facility, but none have been ordered for admission either. There have been inquiries concerning females, but these have been admitted to other, more appropriate treatment facilities. Again, no person who was ordered for treatment under a court commitment has been denied admission.

The statute authorizing the juvenile rehabilitation facilities was passed in 1995. Statutory authority for the transfer of patients in the care of the Department of Mental Health was approved and passed as early as 1974 and as late as 1999. It has always been the responsibility of the Department of Mental Health to place an individual in the facility which meets his/her needs. Section 41-4-7 clearly states the Board of Mental Health has the authority to establish policy for the transfer of patients. This section of law was again passed in 1999. The Board has adopted this authority in regulation. Statutory authority for the transfer of civilly committed persons who are mentally ill or mentally retarded is clearly set forth in Section 41-21-87 which was reauthorized in 1997.

The Executive Summary further asserts, on page "iii", that "because the Department of Mental Health has changed BJRF's clientele from what is legally mandated, PEER cannot assess the facility's readiness to provide services to its intended target population".

The Department does not dispute that PEER staff might not be able to assess our ability to provide services to the intended population, but the fact is all of the clients at this facility are very similar in behavior and mental functioning. According to the report, 70% of the clients were committed by court order and thus are from the group that PEER staff believe are that targeted population. The other 30% are similar challenges for treatment as the 70%, they just weren't committed to BJRF by court order. Many of the clients transferred to BJRF require more complex treatment methodologies than those committed by court order. The treatment needs of and therapeutic services required for the entire population are individualized regardless of how they were admitted. Thus, the Department believes it is providing the appropriate services even if the entire population had been committed directly by court order.

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September 7, 2001

Concerning the recommendations, which begin on page "iii" of the Executive Summary, the Department has these responses (numbers correspond to the number beside each recommendation in the Executive Summary):

1. Facility construction - the report asserts that the Department added a warehouse and staff housing to the project after it was approved, thus causing significant cost overruns.

Response:

When these two facilities were in the early planning stages in the legislature, it was not known what they would cost. \$11,000,000 was bonded for both with the idea that once the first one was built, we would all have a better idea of what they would cost and additional funding could then also be bonded. It was the Department's intention all along to have a place to store materials and equipment and to also have a director's house, as we do at all other residential facilities. Both the warehouse and the director's house were planned and constructed in accordance with Bureau of Building regulations for such construction. The primary reason for the final cost exceeding the original estimate of \$5,500,000 is simply that no one had any idea what the final cost would be at the time the first bonds were authorized. These are a new type of facility never before built in this state.

The Department strongly agrees with the PEER staff's draft report which states, on page 11, that construction of the warehouse actually solved material storage problems. Also there was no disagreement that on-site housing of the director of a facility that has clients residing on the premises is essential to the effective management of the facility.

2. Admissions

Response:

The Department believes Mississippi law is clear in allowing DMH to transfer clients to whichever facility is best able to meet their needs as found in Section 41-4-7 (Powers and Duties of the Board of Mental Health) and Section 41-21-87 (Transfer of Civilly Committed Persons Who Are Mentally Ill or Mentally Retarded). The Department has been so advised by its legal staff and by the legal staff liaison assigned to it by the Attorney General. Therefore, we do not agree that Mississippi law limits admissions to this facility to only those persons who are juvenile offenders committed for treatment by a court of competent jurisdiction. We have not refused any such admissions, and, as already stated in this response, to limit this facility to only those admissions would have been to underutilize it and to continue housing inappropriately placed clients at other facilities.

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September 7, 2001

3. Admissions

Response:

All youth and chancery court judges were informed about BJRF and its purpose long before this PEER review was begun. Once a youth client is committed to us by any court, he or she is admitted. We have not had any commitments of females as yet. In March of 1999, all DHS Youth Services Staff, County Youth Court Counselors and Youth Court Judges were invited to tour BJRF and discuss plans for admissions. They were again invited for the Open House and Dedication in May, 1999. BJRF staff participated and presented at the Juvenile Justice Conference in August of 2000. Admission criteria and general information were disseminated at the Judicial Conference in September 2000. These same individuals along with county law enforcement officials were invited to "Law Day at BJRF" in April 2000. In March of 2001, all youth court judges and counselors were invited for a tour and Open House. The turnout was low so all handouts, brochures, etc., were mailed directly to each Youth Court Judge and Counselors. They were invited again in May 2001 for BJRF's second birthday. BJRF staff also participated in the 2001 Juvenile Justice Conference in August.

4. Admissions

Response:

As soon as the Harrison County facility is open, all judges will be notified and informed of its purpose, just as they were when the Brookhaven facility was opened.

5. Staffing

Response:

DMH believes that BJRF is staffed correctly for the clients who are there. All of those clients, whether court committed or transferred from another DMH facility, exhibit the same behavior problems and require the same or similar therapeutic treatments.

6. Staffing

Response:

Even though not required to obtain MDE accreditation, BJRF will continue to work toward accreditation in order that our clients are afforded the best education we can provide.

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September 7, 2001

Management had no intention of not continuing efforts to qualify for and obtain MDE accreditation. The Department appreciates the PEER staff's recognition of this effort.

7. Policies and Procedures

Response:

BJRF was designed to be a treatment program for a population not previously specifically targeted; therefore, the development of policies and procedures are evolving. Just as with our other MR and psychiatric facilities, policies are reviewed and modified as needed. BJRF will continue to review and modify policies and procedures based upon the needs of our clients.

8. Policies and Procedures

Response:

Again, in keeping with the statutory mandate, the Department has looked and will continue to look for ways to better train our staff to provide appropriate treatment. Even in these times of funding constraints, adequate training remains a priority. Records reflect that BJRF is doing an outstanding job in our efforts to keep abreast of the latest methods of serving our clients. It has received national recognition for its training program as evident by its receiving the Richard B. Dillard Award from Southeastern Association of the American Association on Mental Retardation at their 2000 Annual Conference.

9. Performance Measurement

Response:

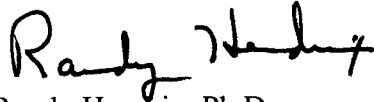
Prior to PEER's review, DMH and BJRF were working together to develop a tracking system for clients admitted to and discharged from BJRF. This will allow us to collect important client data, establish outcome measures and facility performance criteria. All this information collectively will be included in the DMH annual report to Legislature and Board of Mental Health.

Thank you for the opportunity to review the draft report and to respond as well as possible to it, not having been allowed to retain a copy of the draft. Once the final report is received, we may have additional responses.

Dr. Max Arinder
September 7, 2001

Also, we appreciate the courtesy and professional demeanor of the staff assigned to this review by the PEER Committee. We know the Legislature is ultimately responsible to the taxpayers for the efficient utilization of the scarce state resources, and we welcome Legislative review of our programs.

Sincerely yours,

A handwritten signature in black ink that reads "Randy Hendrix". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Randy Hendrix, Ph.D.
Executive Director
Department of Mental Health

ARH:ECL:kb

PEER Committee Staff

Max Arinder, Executive Director
James Barber, Deputy Director
Ted Booth, General Counsel

Evaluation

Sam Dawkins, Division Manager
Linda Triplett, Division Manager
Oona McKenzie
Pamela O. Carter
Kim Cummins
Barbara Hamilton
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Editing and Records

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Tracy Bobo
Sandra Haller

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Corrections Audit

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