

Legislating Devolution: Issues in Developing State Statutory Frameworks To Support Community-Based Service Systems

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I. The Rationale for Reform

Many of the changes in service delivery being proposed at the federal and state levels emphasize the need to construct more community-based systems of services and supports to children and families. Ultimately, this requires new formal relationships between states and their communities. Ultimately, many of these will require changes in state statute, as well as changes in state funding.

For this reason alone, state legislatures play an important role in defining this “devolution.” Moreover, state legislatures have an important oversight function in examining the impacts of these changes and whether they produce better services and improved outcomes for children and families while ensuring equitable treatment of residents across the state. By nature of their constituency base, state legislators are more connected with the community-level effects of implementation of state policies.

The first task in devolving authority from the state (and federal) to the community level is being explicit about the rationale behind this devolution. There are a number of valid reasons for seeking to move greater discretion and decision-making over service design and delivery to the community- and neighborhood-level:

- o to develop more individually-tailored responses to the needs of children and families, which requires flexibility in decision-making and discretion at the frontline level;
- o to construct a more seamless system of services and supports, which are dependent upon effective collaborations and referring arrangements across different service systems at the local level;
- o to build upon natural, neighborhood-based networks of support, including community institutions, the religious community, and voluntary networks of support, which must be developed within neighborhoods and at points closest to people’s lives;
- o to pool and redeploy resources to develop more effective and efficient responses to families, moving from a funding stream-driven to a family-driven, system, which is best achieved through supporting innovation at the community level; and
- O to create a community will and ownership over meeting the needs of children and families, which requires community investment in the process of service design and delivery.

At the same time, however, the current system of services did not develop without reason. The uniformity of administration supported by state-level decision-making assures some level of equity in service provision across a state. The categorical nature of services provides certain entitlements to individuals or families, based upon statewide determinations of need or rights to service. Protections against discriminatory practice are easier to enforce when they are based upon uniform standards and rules.

In short, the state has certain responsibilities to all its residents, regardless of where they live. In developing strategies to support “devolution,” the state must develop an accountability structure that can assure the state meets these fundamental responsibilities, particularly for vulnerable populations. This requires a new relationship between the state and its local jurisdictions, and not simply the state “getting out of the way.” The reason for devolving authority to the community should not be based upon an assumption that the community is more enlightened than the state as a whole.

Devolution that can achieve the promise of improved services and supports while protective fundamental rights to support involves new roles and responsibilities at both the state and community level. State officials must learn new roles and adopt a new political culture within the state bureaucracy in supporting communities. States and communities together must establish new forums for communication and negotiation, leading to new partnership relationships. Communities must acquire new skills and expertise in handling new decision-making responsibilities.

This is likely to be an evolutionary process. There exist no magic structures to transform systems and assure these conditions are met.

One of the first steps in developing these new roles is to make clear the principles under which “devolution” should occur. The following is one iteration of these principles, as it applies to state responsibilities:

- o the state does not abrogate its responsibility to providing a certain level of services to children and families, including assuring that vulnerable populations are adequately supported;
- o the state provides information and technical assistance to communities regarding current funding streams and core service responsibilities, as requested and needed by communities;
- o the state provides incentives to communities and shares risk with communities in fostering innovation and change;
- o the state enables communities to innovate at their own pace, not overwhelming them with new responsibilities but encouraging them to be bold;
- o the state establishes a state structure with which local jurisdictions can negotiate in carrying out innovations, with the negotiation process regarded as fair by both state and

local jurisdictions; and

o the basis for innovation and reform is upon achieving improved results for children, recognizing that innovations are designed to learn how to succeed rather than necessarily achieve success from the outset.

II. Issues in Designing Legislation

A number of state legislatures have enacted statutes that move toward more community-based systems of services and supports. Several (including Washington's Community Public Health and Safety Networks and Oregon's HB2004) have established, on a statewide basis, new local authorities for this purpose. Several (including Iowa's decategorization project, Minnesota's consolidated funding districts, and California's AB1741) have created demonstration sites with the authority to pool resources across state categorical funding systems in order to develop more community-based systems of support. These statutes differ widely in scope, specificity, and structure. Importantly, however, all are based upon the need to move away from a categorically-driven and toward a family-need driven financing system and away from a process-based and toward and outcome-based accountability system.

There is unlikely to be uniform state legislation developed in this area. In fact, there is likely to be a proliferation of approaches, sometimes several in the same state. States are likely to select different starting points for this devolution, around issues of most pressing concern or areas where there appear to be the most fertile opportunities.

Still, there are common elements that must be addressed within enabling legislation. The following seeks to describe these elements and suggest the issues that must be addressed within them.

1. Purpose. The rationale for the changes in authority and responsibility need to be clear and be understood at both the state and community level. For instance, if the purpose of devolving authority over child welfare funds to the community level is to reduce reliance upon remote, insitutional, and out-of-home care, that stipulation should be a part of the enabling legislation and structure. Otherwise, some communities may see the solution to their child welfare and juvenile justice problems as sending children away for their homes and out of the community. The establishment of a purpose for the devolution of authority should set the groundrules under which the devolution occurs.

Further, in setting these groundrules, any "non-negotiables" need to be spelled out. This certainly includes nondiscrimination, but may also include other safeguards to insure continued services to protected classes.

2. Scope of Resources Involved. Over time, states have established a variety of demonstration programs and projects that have different foci (adolescent pregnancy, delinquency, substance use and abuse, school-to-work for work with young adults or maternal and child health, school readiness, child development, parenting education, family support, and child abuse prevention for work with families with young children).

At the same time, these may share overlapping populations and espouse common themes—more comprehensive, preventive, community-based, family-centered services for children and families. Alternatively, states may have funded specific services (child care, work and training) through multiple funding channels within other categorical programs.

One approach to consolidation could be to offer communities the authority to pool such resources, on the grounds that consolidation can produce cost efficiencies. Yet the actual funding base and degree of overlap in service base may be quite small, particularly when none of the funding streams come close to meeting existing service demand in their areas. Unless other resources are available, this is likely to be seen largely as a zero-sum game.

A more substantial approach is to incorporate core funding streams into the potential pool of resources, including programs for which there is an entitlement to service. This provides a much greater opportunity for communities to redeploy resources and develop alternative services. It also offers an incentive to design more cost-effective approaches, if communities can retain any savings achieved for re-investment into other systems of support.

4. In Planning Requirements.

5. Extent of Community Authority.

6. Unilateral/state approval process

7. Degree of devolution—state to local jurisdiction/neighborhood

8. State Role, Responsibility, and Accountability (who is state and to whom is state responsible)

9. Community Role, Responsibility, and Accountability (and to whom is community responsible)

e.g. community assessment

citizen involvement

different constituencies

10. State-Community Negotiation Process

11. Resources Needed to Build Capacity

group dynamics/leadership development

technical assistance/specific expertise

information systems

12. Process for Establishing New Accountability Structures state-community final authority/shared

13. Roll-out process
voluntary or mandatory
phased-in or all at once

Current Examples of Legislation

State

Minnesota's consolidated funding districts

California's AB1741

Iowa's Decategorization

Iowa's Innovation Zones

Ohio's

Georgia's SB 256

Nebraska

North Carolina's

Washington state's Community Public Health and Safety Networks

Oregon's HB 2004

Indiana's _____

West Virginia's _____

Federal

Local Empowerment and and Flexibility Act of 1996

General Description and Scope of Legislation

Goal and purpose—child welfare, child and families, broader reform

Character of Devolution

Enabling—voluntary by demonstration

Mandatory—statewide

State funding streams included:

How described, any “entitlement,” core funding streams

New funding available:

Planning and “glue” funds

New program funds (size relative to other funding streams)

Redeployed funding/”keeping savings”

Local administrative unit membership and authority:

Specified members

Lead agency

geographic boundary/how selected

State administrative unit and powers:

Waiver authority over state regulations

Authority and accountability structure over local efforts

Technical assistance responsibility and capacity