



Juvenile Justice Reform In Arkansas

Building a Better Future for Youth,
their Families, and the Community

A REPORT IN COLLABORATION WITH
THE ARKANSAS DIVISION OF YOUTH SERVICES

by Pat Arthur and Tim Roche

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Director's Message

Juvenile Justice Reform in Arkansas: Building a Better Future for Youth, Their Families and the Community.

Like many states, Arkansas has long struggled with the development of a juvenile justice reform plan that will best meet the needs of the youth of the State of Arkansas. There are many philosophical differences on how to best approach this very perplexing but important matter and, as you can see from reading this report, we fully intend to embrace all “best practices” that exist as well as developing some of our own unique practices.

The purpose of this report is to establish the framework by which we intend to embark on building a long range Strategic Plan for reform that will best serve the needs of the youth, their families and the communities in which they reside. As we proceed with building this plan, I fully intend to make this a collaborative effort which will include input from all stakeholders.

I would like to personally thank the authors, Ms. Pat Arthur and Mr. Tim Roche, for their hard work in preparing this report. Also, I would like to offer a special thanks to the JEHT Foundation for their support in the development of this very important reform effort.

Ronald R. Angel
Director, Division of Youth Services
Department of Human Services

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Executive Summary

Arkansas, like many other states, is at a critical juncture in the history of its juvenile justice system. It stands on the brink of reform, looking for more effective and less costly ways to help youth in trouble.

The Division of Youth Services (DYS), juvenile court judges, providers, advocates, policymakers, and other system stakeholders stand poised to begin a major reform effort.

Investment in a juvenile justice reform initiative is imperative. It will save taxpayer money, better protect communities, and save children at-risk of being lost to a life of crime.

A fuller spectrum of community based interventions must be developed to reduce the use of secure confinement for youth who don't present a serious risk to public safety.

Hundreds of adolescents caught in Arkansas' juvenile justice system for minor, non-violent offenses are being locked up in potentially damaging correctional facilities and other secure residential placements at a very high societal and human cost.

Youth are being confined solely because juvenile court judges don't have an adequate array of community based programs to offer them and their families. Existing services are stretched to the limit. Youth who so badly need positive supports in the community are being put on waitlists for help.

The types of programs available in Arkansas to help youth in the community are limited, leaving judges with few alternatives to incarceration. For example, intensive family intervention programs proven to cut re-arrest rates in half are generally unavailable. Adolescent substance abuse treatment, a necessary staple of any juvenile justice system, is virtually non-existent throughout the state.

There is solid evidence showing that community based interventions work to reduce juvenile crime, and are less costly than confinement. Studies also reveal that locking up children can be harmful, and actually increase the risk of future delinquency.

A large proportion of the youth committed to DHS could be safely managed in the community with the right set of supports and services. Almost all youth committed to DHS are non-violent offenders. During the first 3 quarters of FY 2008, more than 90% of all commitments were for non-violent offenses. In FY 2007, 42% of commitments to DHS were for misdemeanors.

Reform over the long-term will save taxpayer money that can be re-invested in developing a comprehensive array of community interventions proven to help youth stay out of trouble. The cost savings from reduced reliance on incarceration will be significant. It costs the state an average of \$150 per day for each youth confined in one of Arkansas' juvenile correctional facilities. For youth committed to DHS who are placed in a "specialty" facility, such as the Arkansas State Hospital, the cost of confinement is as high as \$480 a day, per youth. In FY 2007, 403 youth were confined in these facilities, for an average length of stay of 208 days, costing an average of \$60,000 for each placement. In FY 2007, it cost the state \$11 million to operate the Arkansas Assessment and Treatment Center, a 143-bed secure juvenile correctional facility near Alexander, Arkansas.

The primary purpose of this report is to underscore the urgent need to reform Arkansas' costly juvenile justice system. It explains how the system works, and profiles the demographics of committed youth.

It is also intended to serve as a conceptual framework to assist DHS and stakeholders in Arkansas in building a reform plan.

The report identifies factors that contribute to the over-reliance on secure confinement, and makes specific recommendations to address each. These factors include: system fragmentation; the lack of meaningful assessments of the risk and needs of youth; the need for more resources to identify and access community based services; the absence of appropriate interventions to address misbehavior in schools; the lack of alternative interventions for foster youth and youth with mental disorders; the absence of fiscal incentives to encourage the use of community based programs; and, most importantly, gaps in community based interventions and programs.

In addition to calling for broad reform, the report identifies specific steps that can be immediately taken to better serve youth and streamline the system while more sustainable reforms are pursued. It recommends exploration of expanded use of Medicaid and Title IV-E funding to enhance the state's community based system of care and to help sustain reform over time.

The report also calls for funding to seed the reform effort. More specifically, funding is needed in the short-term to:

- Fund the work of a strategic planning stakeholders group.
- Expand community based programs and interventions that have shown positive outcomes for youth and their families.
- Develop 3 model pilot sites in a rural, urban, and mid-size community to offer fiscal incentives to local communities to reduce commitments to DYS.

Finally, this report identifies reform goals and basic reform principles to help guide juvenile justice reform efforts.

The commitment of DYS leadership, juvenile court judges, advocates, providers, and other stakeholders to reform the system is heartfelt and strong. It is hoped that this report will invigorate others to join the call to help Arkansas' wayward youth who so desperately need their guiding hand.

Introduction

Each year, thousands of children are cycled through state juvenile justice systems around the country. In many states, including Arkansas, the vast majority of those adjudicated delinquent and committed to state custody are incarcerated for non-violent offenses. Meanwhile, studies have shown that locking up children can be harmful and actually increase the risk of future delinquency and adult crime.

States across the country, including Alabama, Florida, Texas, and New York, are attempting to reduce reliance on incarceration by developing a broader array of community based program alternatives proven to help youth and their families.

Arkansas too is moving down this important path toward reform.

Investment in this reform initiative is imperative. It will save taxpayer money, protect communities, and save children at-risk of being lost to a future life of crime.

This report underscores the depth of the need to reform Arkansas' juvenile justice system and shows the urgency of acting now. Its primary goal is to provide a conceptual foundation to support juvenile justice reform, and to assist stakeholders in Arkansas as they move forward in the development of a reform plan.

The first part of the report summarizes the problem of Arkansas' costly reliance on secure confinement, discusses how this problem can be addressed through an expansion of community based interventions, and shows why the time for reforming the state's juvenile justice system is now.

The second part of the report provides an overview of the juvenile justice system and demographics of the population of youth committed to state custody. This section is intended to ground discussions

about reform in a common understanding of how the system works and what we know, and don't know, about the youth it serves.

The third section of the report identifies the factors that contribute to Arkansas' over reliance on confinement and offers recommendations to address each. These factors include: system fragmentation; the lack of meaningful risk and needs assessments; the need for more resources to identify and access individualized community based services for youth; the absence of alternative interventions to address school misbehavior; the lack of alternative inter-

Investment in this reform initiative is imperative. It will save taxpayer money, protect communities, and save children at-risk of being lost to a future life of crime.

ventions for foster youth and youth with mental disorders; the absence of fiscal incentives to encourage the development and use of community based programs; and, most importantly, gaps in community based interventions and programming.

Finally, part four of the report calls for the development of a 5-year strategic plan as the next step in the path toward reform.

We hope this report helps frame discussions about how to prioritize, sequence, and assess the costs of action steps to rebalance the juvenile justice system in Arkansas, and will unite DYS and its stakeholders around a common set of reform principles and goals.

PART ONE

The Problem, the Solution, and the Opportunity

The Problem

Hundreds of children and adolescents who get into trouble in Arkansas for minor, non-violent offenses are being locked up in potentially damaging correctional facilities and other secure residential placements at a very high cost to the State.

Many of these children come from broken homes, have mental health issues, substance abuse problems, learning disabilities, and are from some of the poorest communities in Arkansas. They are disproportionately African American.

Once committed to DYS, many youth are shuffled between placements, disrupting rehabilitative efforts and increasing the cost of their confinement.¹ Their incarceration is often harmful, and makes many of them potentially *more* dangerous to society.² Incarceration is particularly counterproductive for low-risk children who may be exposed to more sophisticated criminal conduct in custody and become “tougher” to survive in a prison-like environment.³

While many of these children have high needs, and engage in troubling behaviors, many could be more effectively steered from future crime ~ without compromising public safety ~ if they were given the right interventions, positive supports, and sanctions in the community.

But juvenile judges in Arkansas do not have an adequate array of community based alternatives to avoid commitment. As a result, youth who might



otherwise be safely kept in the community are being incarcerated at a high human and societal cost.

In FY 2007, there were 621 commitments to DYS.⁴ Forty-two percent of these were for such misdemeanor level offenses as stealing an iPod, possession of marijuana, or disorderly conduct at school.⁵ Virtually all committed youth were confined in a juvenile correctional facility or secure residential placement after their commitment.⁶

The commitment of so many low-risk/high needs youth to DYS is extremely costly. During FY 2007, there were 443 admissions to secure juvenile correctional facilities.⁷ The average period of confinement for each placement was approximately 117 days.⁸ In FY 2007, these facilities cost the state an average of \$128 dollars a day for each youth confined there. The average daily rate will rise to about \$150 in FY 2008.

In addition, the state spends as much as \$350 to \$480 dollars a day to confine juvenile offenders in “specialty” facilities, including the Arkansas State Hospital, Millcreek of Arkansas, and Rivendell Behavioral Health Services. There were a total of 403 placements in these types of facilities in FY 2007, with the average length of stay being 208 days.⁹ Thus, the cost of confining a juvenile on a misdemeanor level or non-violent offense at one of these facilities averages about \$60,000. In total, the state spent more than \$23 million in FY 2007 on specialty residential placements.

The Arkansas Juvenile Assessment and Treatment Center (referred to as “Alexander”), a 143-bed secure juvenile correctional facility managed by a for-profit corporation, cost the state more than \$11 million dollars to operate in FY 2007.

As state spending on expensive correctional facilities goes up, gaps in the availability of non-residential community based alternatives widen. Youth are being wait-listed for the help they so badly need. Intensive family interventions and adolescent drug and alcohol programs proven to reduce crime and

save money are virtually non-existent throughout the State.

Juvenile judges in Arkansas do not have an adequate array of community based alternatives to avoid commitment. As a result, youth who might otherwise be safely kept in the community are being incarcerated at a high human and societal cost.

Over time, Arkansas’ juvenile justice system has grown imbalanced, relying increasingly on secure confinement for low risk/ high needs youth and less on community based programs and interventions. This has occurred even though Arkansas law strongly favors the use of “[l]ess restrictive community-based programs for youths not deemed at risk of performing violent offenses.”¹⁰

For those offenders who do present a risk of committing a serious, violent offense, intensive programming in smaller, therapeutic facilities is the most effective way to interrupt the cycle of crime and protect public safety. However, this type intensive residential programming does not presently exist in Arkansas.

The use of the most restrictive level of custody for non-violent, low-risk youth does not prevent re-offending, as evidenced by the recommitment rate which has increased in Arkansas over the last decade, without a corresponding surge in juvenile crime.¹¹

The Solution

Other states across the nation are trying to solve the same vexing issues that are so challenging in Arkansas.¹² These other jurisdictions, like Arkansas, are looking to adopt some variation of the “Missouri Model,” a juvenile justice system that relies on out-of-home placement truly as a last resort. When custodial placement is necessary, youth are housed in small, home-like, therapeutic facilities located as close as possible to a youth’s own community. After 20 years of moving deliberately in the direction of reserving secure custody for only the most serious juvenile offenders, Missouri has managed to safely reduce its committed population by managing youth in a range of alternative community based programs. Missouri is now recognized as the best juvenile justice system in the country.

As in Missouri, reform of the juvenile justice system in Arkansas will require strong political will, persistent hard work over the long haul, and an initial commitment of additional resources. At the outset, new funding is needed to: 1) support the strategic planning process; 2) further assess facility and program capacity and design needs; 3) begin filling gaps in the community based system of care, and 4) test reform strategies at pilot sites.

There are also changes in DYS and juvenile court practices that can be immediately implemented, without any new funding, to help reduce the use of costly incarceration and increase opportunities for youths’ positive development in the community.¹³ For example, changes in intake, assessment, and release practices, and the development and systematic use of a meaningful risk assessment instrument by juvenile court judges, will reduce confinement time and save money on incarceration costs that can then be reinvested in community based care.

In order to sustain reforms over time, opportunities to maximize Social Security Act entitlement funding (Title XIX Medicaid and Title IV-E) should be explored to support a richer array of community

based services, enhance DYS programming, and increase probation staff, as has been done in Tennessee, North Dakota, Minnesota, Kentucky, Ohio, Georgia, California, and Connecticut.¹⁴ These federal funding sources could generate significant new resources not presently available to the state given its reliance on secure residential options.¹⁵

As in Missouri, reform of the juvenile justice system in Arkansas will require strong political will, persistent hard work over the long haul, and an initial commitment of additional resources.

The realignment of fiscal incentives will also be necessary to sustain reform so that community based, non-residential treatment alternatives become favored over DYS commitments.

Finally, the significant cost savings from reduced use of secure confinement must be reinvested in effective community based programs. Expansion of these programs will save state resources in the long-run, enhance public safety, and better serve Arkansas’ youth, families, and communities.

The Opportunity

No single agency can by itself change the way scarce resources are deployed to help youth in trouble and their families in Arkansas. DYS, schools, the Department of Education, the Division of Behavioral Health Services, law enforcement, the Division of Children and Family Services, providers, judges, prosecutors, legislators, public defenders, and other advocates must come together to embrace a common vision for reform, and to work to develop a plan to achieve better results for Arkansas’ youth.

Like Missouri 20 years ago, Arkansas is now at a crossroads in the evolution of its juvenile justice system. The time is ripe for reform. The Governor has voiced a commitment to reform the system by reducing reliance on secure confinement. The Legislature has passed a Resolution acknowledging the state's over-reliance on costly secure facilities, and the need for a wider array of community based alternatives.¹⁶ The Director of DYS has pledged his commitment to reforming Arkansas' juvenile justice system to ensure public safety, good results for youth and families, and the wise use of state dollars.

Stakeholders are uniformly dedicated to enhancing community based interventions and sanctions, and reducing reliance on secure out-of-home placements. Providers and DYS are committed to the development of new accountability systems to ensure that interventions and services are effective for youth and their families as demonstrated by proven, positive outcomes.

Additionally, there is the possibility of further philanthropic assistance with reform efforts from the JEHT Foundation, and the Annie E. Casey Strategic Consulting Initiative is another potential source of foundation support.¹⁷

Finally, and importantly, Congress recently passed and the President signed into law the Second Chance Act (H.R. 1593). When funded, the Act will provide \$362 million to help prisoners achieve success after being released from a period of incarceration, including \$55 million in grants to state and local governments specifically for programs to help juveniles leaving custody. The Act authorizes spending on addiction and mental health treatment, job training, education, housing, and other services for juvenile

The Director of DYS has pledged his commitment to reforming Arkansas' juvenile justice system to ensure public safety, good results for youth and families, and the wise use of state dollars.

offenders sent home. The Act also provides for a number of other programs, including treatment programs as an alternative to incarceration.¹⁸ Funding appropriated under the Second Chance Act will present new opportunities to help youth and their families, and can aid economic development in Arkansas' communities.¹⁹

The confluence of all these factors makes it especially important to seize the momentum for reform *now*. While it won't happen overnight, reform is within reach. The time is right for DYS, in collaboration with its stakeholders and other partners, to work together to develop a strategic plan to guide juvenile justice reform.



PART TWO

How Arkansas' Juvenile Justice System Works and the Youth It Serves

How the Juvenile Justice System in Arkansas Operates

As a foundation for reforming the system, there must first be a common understanding of how the system works. The following section describes relevant parts of the system for youth adjudicated delinquent in Arkansas.²⁰

The Commitment Process

Children between the ages of 10 and 18 who violate the law in Arkansas can be adjudicated delinquent and committed by a juvenile court judge to the custody of DYS. Commitments to DYS are for an indeterminate period not to exceed 2 years (unless extended by the court) or the youth's 21st birthday.²¹

Juvenile judges may place youth found delinquent on probation instead of committing them to DYS. Juvenile judges may also order restitution, community service, place the juvenile in a county detention facility for an indefinite period not to exceed 90 days for probation violations, or place the youth on electronic monitoring in the community.

When committing a youth to DYS, juvenile judges are required to complete a risk assessment to assess a youth's risk to public safety; however, actual practice varies from county to county, and judges generally agree that the risk assessment instrument used needs revision.

In the commitment order, a juvenile judge may recommend that a youth be placed in a community based program instead of in a juvenile facility, or in a particular placement. But DYS has the sole legal responsibility to determine what services a committed youth will receive, where the youth will

be placed, and how long the youth will be held in custody (up to age 21).

Some juvenile judges require as part of their commitment order that notice be provided to the court prior to a juvenile's release from DYS which, as a practical matter, may affect a juvenile's length of commitment.

Commitment practices vary from one jurisdiction to another for a variety of reasons. For example, some communities have a richer array of commitment alternatives than others. Also, some counties have more probation and intake staff available to identify and structure community services.²²

The System for Providing DYS Services and Related Costs

DYS does not directly provide programming to youth committed to its custody. It is the only state juvenile justice agency in the nation that contracts out to private providers all facility operations, treatment programs, and aftercare services. DYS' annual budget for 2008 is \$61.9 million, \$10.5 million of which is designated for DYS administrative operations.

There are 13 non-profit organizations under contract with DYS to provide services to youth who have been adjudicated delinquent, as well as to status offenders and youth at-risk of becoming involved in the juvenile justice system. Services provided by these 13 provider organizations include: emergency shelter, counseling, day services, case management, community supervision, intensive case management, diagnosis and evaluations, drug screening, electronic monitoring, therapy, and residential treatment.²³

Each provider contracts with DYS for a negotiated contract amount to provide services specified in the contract. They bill DYS a contractually established amount for each type of service provided over the course of the contract. They are obligated, however, to provide services specified in the contract for the entire contract period, even if it exceeds the total of their capped contract amount.

Under strict terms specified in their contracts, providers may reject individual youth referred to their programs, except for referrals for aftercare services.

Some providers meet state requirements for community mental health provider status allowing them to augment DYS contracts with Medicaid reimbursements, billing non-Medicaid reimbursable services against their capped DYS contracts first. This practice maximizes the use of federal funding to supplement state dollars, and more providers are considering moving in this direction.²⁴

DYS has 8 secure correctional facilities located throughout the state. Alexander is DYS' largest secure facility with 143 residential beds. Alexander is where youth are confined during the intake process. Youth may also be assigned a program at Alexander after assessment. DYS contracts with a for-profit corporation (G4S) to operate Alexander, located in Saline County.

In FY 2007, the state spent approximately \$11 million to operate Alexander.

Two of the state's 13 non-profit providers manage the state's other juvenile offender facilities which are: Dermott Juvenile Correctional Facility (32 beds) and Dermott Juvenile Treatment Center (30 beds) (both in Chicot County); Harrisburg Juvenile Treatment Center (36 beds in Poinsett County); Colt Juvenile Treatment Center (28 beds in St. Francis County); Lewisville Juvenile Treatment Center (30 beds in Lafayette County), and Mansfield Juvenile Treatment Center (27 beds) and Mansfield Treatment Center for Girls (21 beds) (both in Scott County).



There are a total of 357 beds in Arkansas' 8 secure facilities.

A total of 443 youth were admitted to the "serious offender" programs provided at DYS' 8 secure facilities during FY 2007.²⁵ The average length of stay was 117 days in these programs and the average daily cost was \$128 per day.²⁶

DYS also contracts with several of its community based providers, and a few for-profit corporations, to provide placements for committed youth in "specialty" facilities. These facilities are: Arkansas State Hospital (sex offender and psychiatric treatment); the Centers for Youth and Families (psychiatric treatment); Consolidated Youth Services (sex offender treatment); Millcreek (psychiatric and therapeutic services); Living Hope (psychiatric treatment); Piney Ridge Center (sex offender treatment); Rivendell Behavioral Health (psychiatric treatment); South Arkansas Youth Services (therapeutic group home); Vera Lloyd (therapeutic group home); Youth Bridge (therapeutic group home and substance abuse treatment), and Youth Home (psychiatric treatment).

There were a total of 403 placements in these specialty facilities in FY 2007.²⁷ The average length of stay that year was 208 days.²⁸ The provider rates for these placements, ranging from \$480 to \$120 per day, and number of youth placed in each, are depicted in the chart below.

DYS also purchases beds in several of the state's 14 county operated juvenile detention facilities to hold youth who are awaiting assessment, transfer, or pro-

gram placement when beds at Alexander are full. DYS held an average of 55 youth daily in county detention facilities for this purpose in FY 2007, at an average rate of \$83 per youth, per day. The total expenditure during FY 2007 was more than \$1.5 million for these beds. While DYS has worked hard and in good faith to reduce these costs, \$2.5 million is budgeted for the use of county juvenile detention centers for this purpose in 2008.

Residential Daily Rates and Number of DYS Placements During SFY 2007

SPECIALTY FACILITY*	DAILY RATE	# OF PLACEMENTS
Arkansas State Hospital	\$392	11
Youth Home	\$350	4
Centers for Youth and Families	\$350	7
Consolidated Youth Services	\$350	14
Living Hope	\$474	68
Millcreek Habilitation Services	\$350	17
Rivendell	\$480	92
So. Arkansas Youth Services	\$123	77
Vera Lloyd	\$120	39
Youth Bridge (SA)	\$128	27
Youth Bridge (Therapeutic GH)	\$130	40

*The Average Length of Stay in Specialty Placements in FY 2007 was 208 Days. (This does not include the time spent in detention and Alexander waiting to be placed in a Specialty Facility.)

CORRECTIONAL FACILITY*	DAILY RATE	# OF PLACEMENTS
Alexander	\$227**	24
Colt	\$126	46
Harrisburg	\$126	68
Mansfield (Boys)	\$126	62
Mansfield (Girls)	\$129	62
Dermott (18-21)	\$129	49
Dermott	\$129	67
Lewisville	\$126	65

* The Average Length of Stay in Correctional Facilities in FY 2007 was 117 Days. (This does not include the time spent in detention and Alexander waiting to be placed in a Correctional Facility.)

** In FY 2007, Alexander was not reimbursed based on a daily bed rate. This represents the daily bed rate for SFY 2008.

Girls are being held in these detention beds awaiting placement almost twice as long as boys. In FY 2007, the average length of stay for girls awaiting placement was about 65 days compared to 35 days for boys.²⁹ DYS leadership is concerned about the lack of appropriate services and placements for girls, the most likely cause of this disparity.

Additionally, in FY 2007 the state spent a total of \$550,000 for health care provided to youth in custody. This amount was in excess of the amount paid for program and facility operations allowed under the provider's contract. A significant percentage of the overage for medical expenses in FY 2007 was for the cost of pharmaceuticals.

DYS monitors the contract compliance of private providers, but there is currently no system in place for DYS to measure the effectiveness of programming and services in terms of outcomes for youth.

Intake and Placement

DYS is responsible for the system's intake function, including determining the appropriate program or placement and a youth's anticipated length of commitment. To do this, DYS case managers have begun to administer a risk and needs assessment instrument, called the Youth Level of Service/Case Management Inventory (YLS/CMI), to help determine the youth's level of risk, treatment needs, and appropriate placement.

DYS case managers also calculate the youth's anticipated length of stay, using a matrix that factors the severity of the youth's committing offense and the number of prior offenses into the length of stay equation. DYS contracts with the University of Arkansas for Medical Sciences to conduct physical, psychological, education, and speech pathology testing on youth during intake.

After this assessment process, DYS determines the appropriate placement and makes a referral to that contract provider. The provider may reject the referral.

In FY 2007, providers rejected placement referrals a total of 442 times throughout the course of the year (some youth were rejected multiple times). Common reasons for denying referrals included: the juvenile was too old for the placement, had too low of an IQ, needed psychiatric care, was a past treatment failure, or is a sex offender.³⁰

DYS case managers also complete an initial treatment plan during intake that is forwarded to the treatment provider once a placement is established. But the treatment program, and in some cases the duration of the program, are determined by the contractor responsible for actually providing services. There are no standardized treatment assessment or planning instruments used by all program providers.

During FY 2007, the *average* length of time between commitment and residential placement, or "dead time," was 65 days. DYS recognizes this as a problem and is attempting to address it.

The time it takes for intake, assessment, and placement generally does not count as part of a youth's programming or anticipated length of stay. This period of incarceration is referred to by youth, and many others, as "dead time."

During FY 2007, the *average* length of time between commitment and residential placement, or "dead time," was 65 days.³¹ DYS recognizes this as a problem and is attempting to address it.

Under state law, a juvenile's treatment plan, anticipated length of stay, and post-commitment place-

ment recommendation is to be completed within 30 days of a juvenile's date of commitment.³²

If the period of "dead time" from the date of commitment to placement were reduced to the statutorily required 30 days, the annual cost savings to the state would be roughly \$3.4 million.³³

Release and Aftercare

Under state law, DYS makes the final determination when to release a child from confinement.³⁴ Upon release to the community, youth are placed on an aftercare program, the length of which is determined by DYS. Currently, DYS places most



youth on aftercare for a period of 90 days. Moving away from a "one size fits all" approach, however, DYS is appropriately reviewing its practice of imposing the same length of aftercare on all youth.

The DYS case planner develops an aftercare plan in consultation with the contract provider responsible for providing aftercare services to the youth upon release. (This is most often a different provider than the one providing programming to the youth while in custody.)

The committing court may retain jurisdiction over a youth after release, if the original committing order included a period of probation upon release,

or may require the juvenile to follow the terms of a DYS aftercare plan.

A Profile of Arkansas' Committed Youth

Too little is known about the characteristics of Arkansas' committed youth. As in so many other states, the collection and sharing of important data by DYS and other child-serving agencies is woefully inadequate. While policy changes and fiscal allocations must be driven by reliable data, not anecdote, isolated tragedy, or subjective bias, the lack of data should not debilitate efforts for reform. The basic characteristics of the offender population in Arkansas, no doubt, follow national trends. Nevertheless, obtaining better data about population demographics should be a priority. The profile of committed youth that emerges from analysis of at least some of the data kept by DYS underscores the need for systems reform.

Population Demographics

National studies of incarcerated youth indicate, and experience in Arkansas shows, that a disproportionately high number of youth adjudicated delinquent suffer from learning disabilities, mental health issues, and substance abuse problems, as compared to adolescents of the same age range in the general population.³⁵

Many are from impoverished and all too often broken families. A significantly high proportion of youth committed to DYS have likely experienced some form of abuse or neglect: The vast majority of youth in DYS custody on a single day in 2008 had had prior contact with DCFS, the state's child welfare agency.³⁶

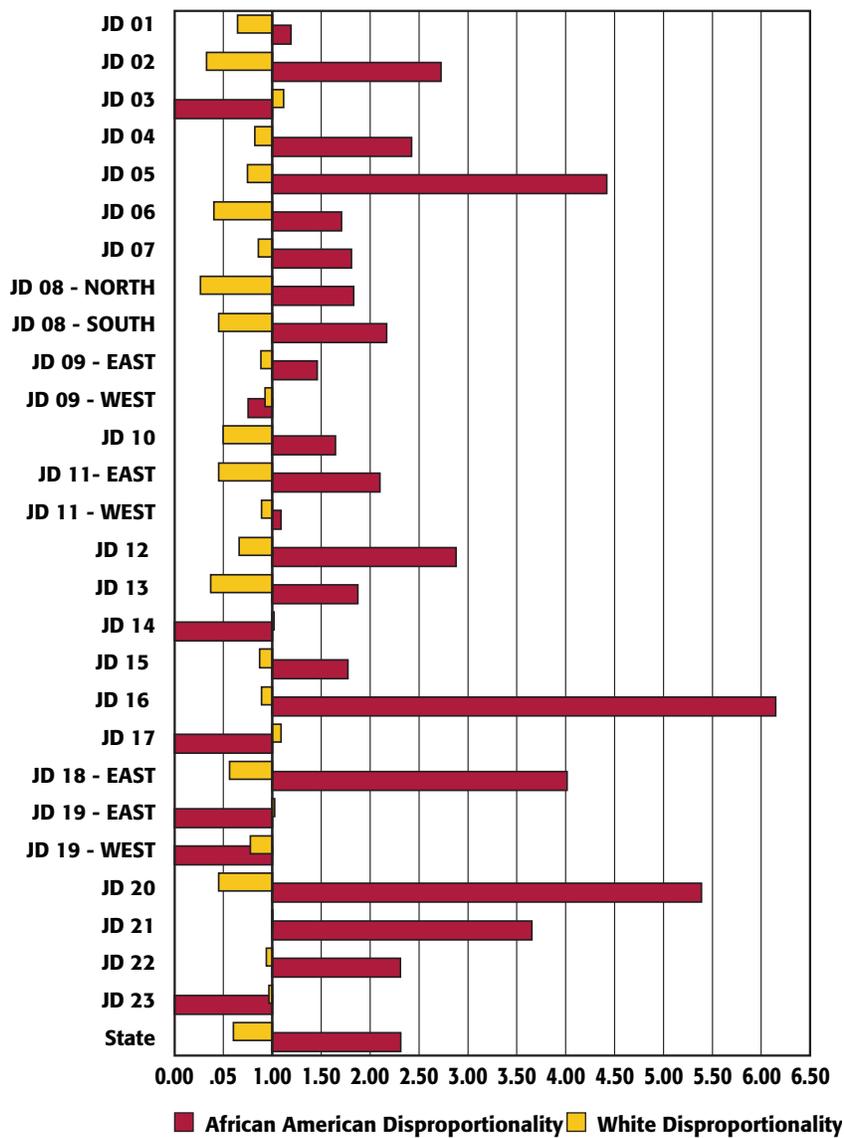
The average age of adolescents committed to DYS in FY 2007 was 15.6 years old.³⁷ Eighty-one percent of the commitments were male and 19% female.³⁸

Statewide, 49% of all commitments to DYS in FY 2007 were African American, and 46% were Caucasian.³⁹

African American youth were disproportionately committed to DYS at varying degrees of disproportionality depending upon judicial district.

A significantly high proportion of youth committed to DYS have likely experienced some form of abuse or neglect.

Racial Disproportionality in Commitments by Judicial District⁴⁰



Offense Severity and Commitment Rates

Over the past decade, the proportion of commitments for serious offenses (arson, first degree battery, kidnapping, murder, rape, or robbery) has decreased, while the proportion of commitments for misdemeanor offenses has substantially increased. In FY 1997, 223 out of 808 commitments (26%) were for a serious felony offense, while in FY 2007 just 92 out of 621 commitments (15%) involved these more serious felony offenses. And in FY 1997, 247 of the total 808 commitments (30%) were for misdemeanor offenses, while in FY 2007, 260 of the 622 commitments (42%) were for misdemeanor offenses.⁴¹

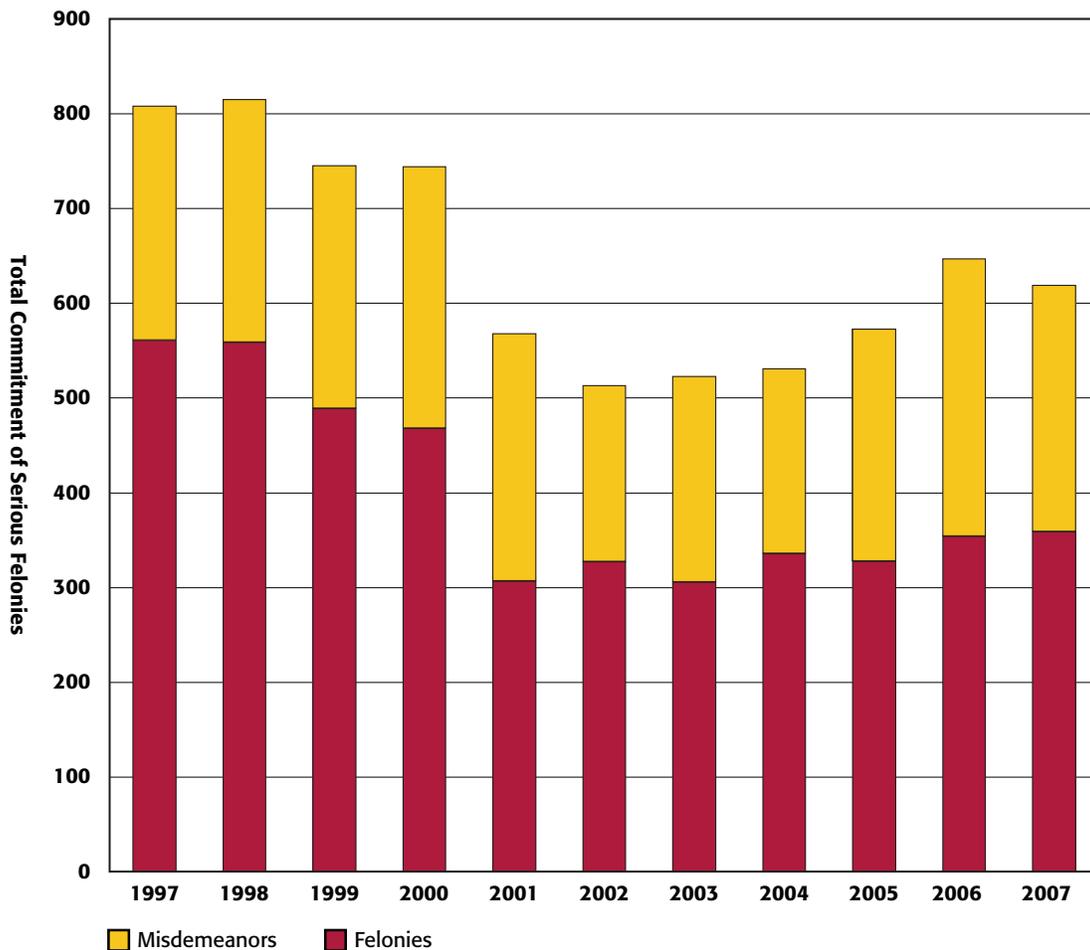
More than 90% of all commitments to DYS during the first 3 quarters of FY 2008 were for non-violent offenses.⁴²

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Rates of commitment, the type of behavior resulting in a commitment, and the demographics of committed youth, vary considerably depending upon the county or judicial district of commitment.

Thirteen counties did not commit *any* youth to DYS in FY 2007: Marion, Baxter, Fulton, Sharp, Searcy, Newton, Van Buren, Yell, Montgomery, Polk, Calhoun, Prairie, and Perry.⁴³

10-Year Commitment Trend



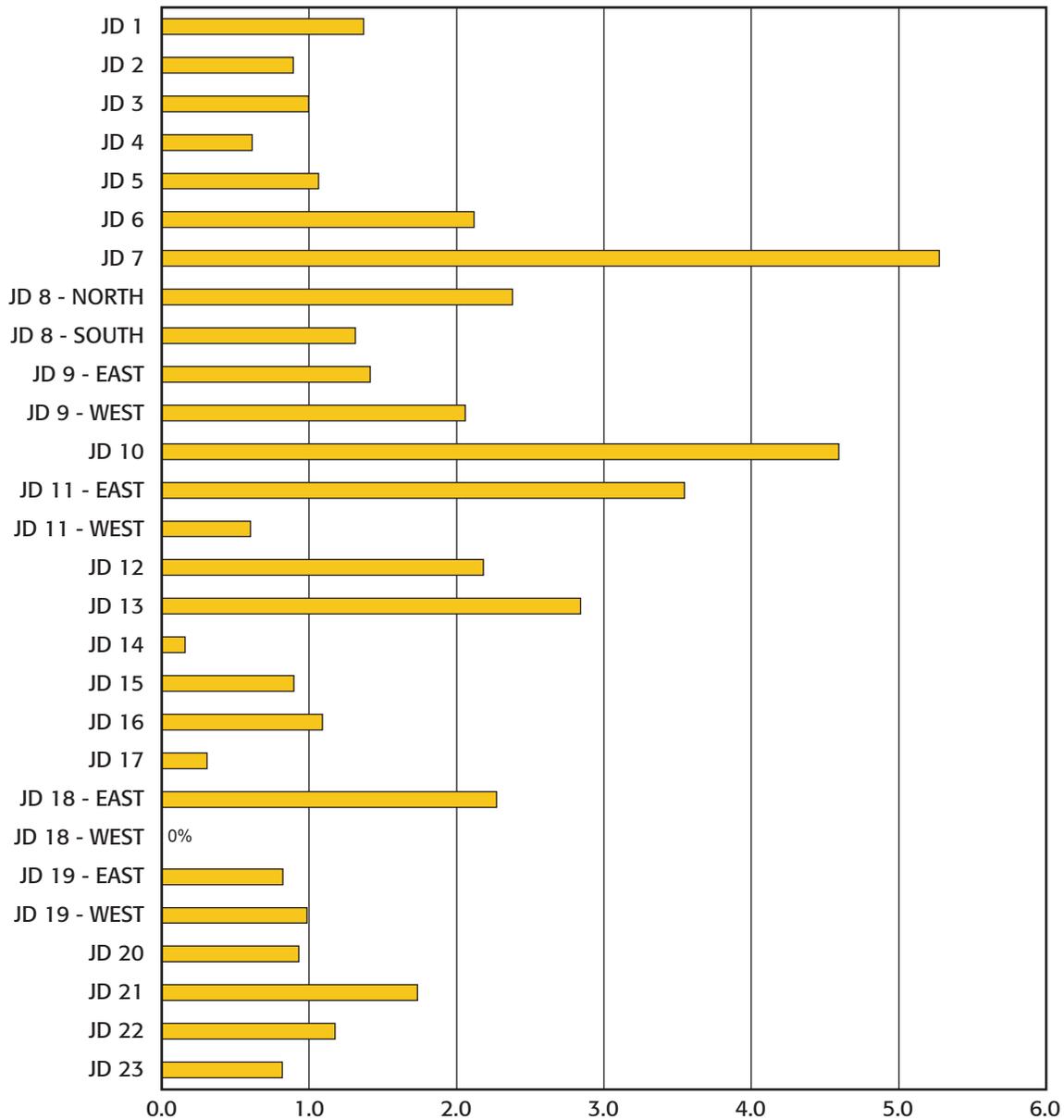
There were a total of 621 commitments in FY 2007 from the 62 remaining counties.⁴⁴

The commitment rate per 1,000 juveniles varied widely across the state.

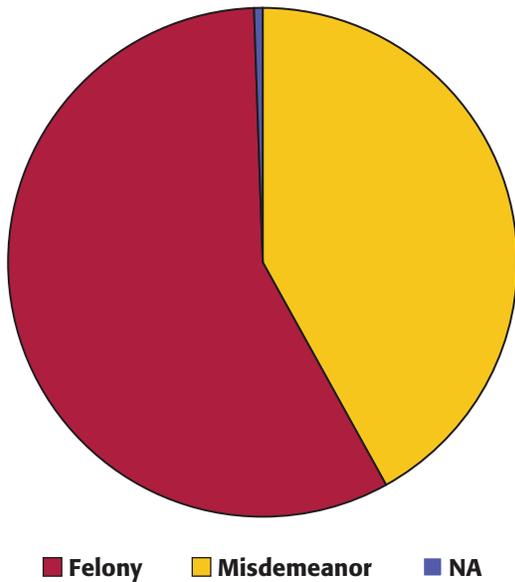
During FY 2007, 42% of all commitments to DYS were for misdemeanor level offenses.

During FY 2007, 42% of all commitments to DYS were for misdemeanor level offenses.

Commitment Rate per 1,000 by Judicial District ⁴⁵



Proportion of Commitments by Offense Degree ⁴⁸



The proportion of misdemeanor commitments varied significantly in FY 2007 by judicial district. Judicial district 14 was the only district that committed only felony level offenses to DYS in FY 2007.⁴⁷

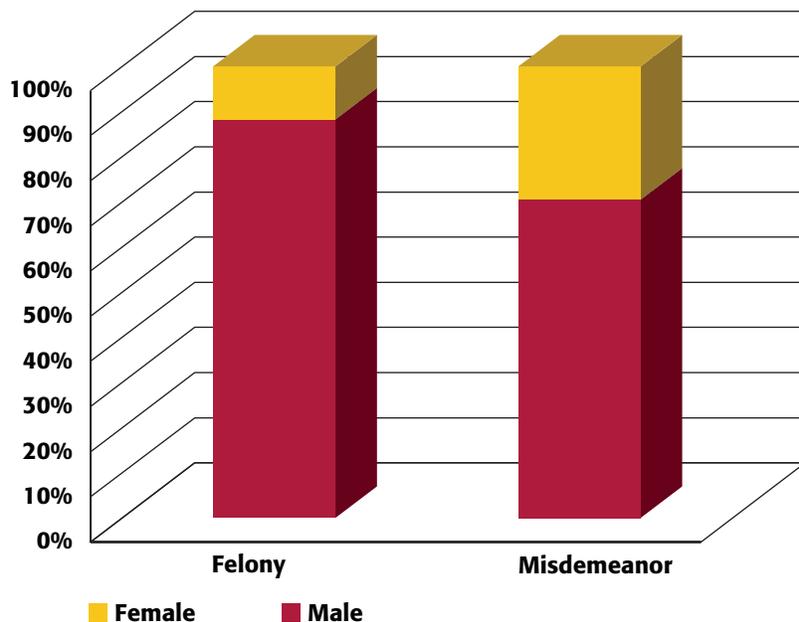
The percentage of misdemeanor compared to felony commitments in FY 2007 was proportionately higher for girls than boys.

In FY 2007, 137 youth, or 23% of the total number of youth committed that year, were being recommitted to DYS.⁵⁰ Of these recommittments, 42% were for misdemeanor offenses.⁵¹ Out of the total of 256 youth committed for misdemeanor offenses in FY 2007, only 60 (23%) had ever experienced a prior commitment.⁵²

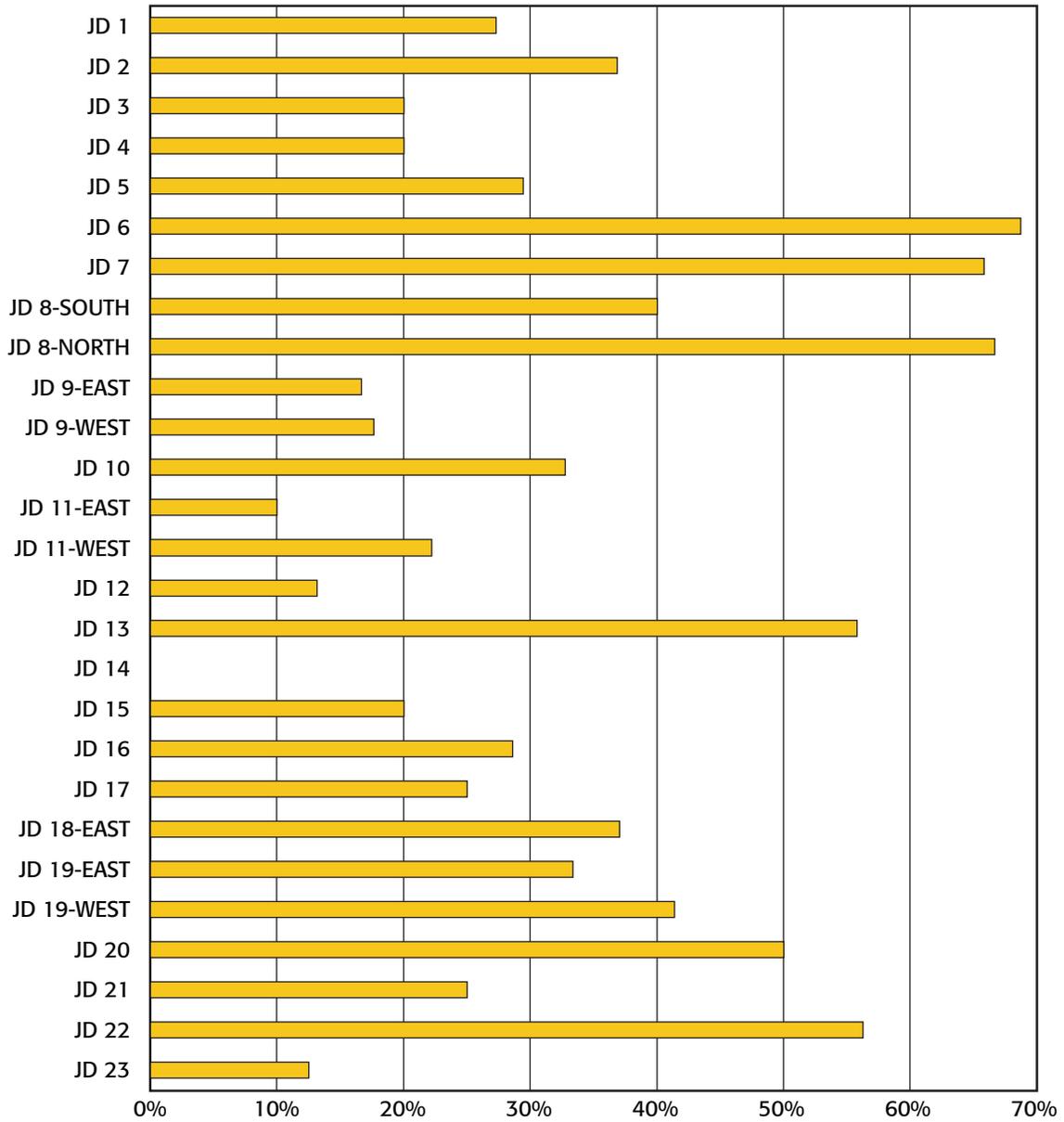
Since FY 2003, the recommitment rate has significantly increased.⁵³

The trend over the past decade in Arkansas has thus been to commit teens with increasingly less serious behavior to DYS, confining them in increasingly expensive facilities that are potentially harmful. Meanwhile, rates of recommitment have substantially increased over the same period of time, without a corresponding increase in juvenile crime.⁵⁴

Felony and Misdemeanor Commitment by Gender ⁴⁹



Proportion of Misdemeanor Commitments by Judicial District ⁴⁸



PART THREE

Factors that Contribute to an Over-Reliance on Confinement and Recommendations to Address Each

A variety of factors contribute to the excessive commitment of low-risk/high needs youth who, with the right set of services, could be held accountable and treated more effectively in the community. These factors include: system fragmentation; the need for more structured decision-making through use and proper application of risk and needs assessments; the lack of alternative interventions to address school misbehavior; a high number of DCFS involved youth spilling over into the delinquency system; a high incidence of commitments involving youth with mental disorders; the lack of fiscal incentives that favor keeping youth in the community and out of state custody, and gaps in community based interventions available to judges as an alternative to commitment.

CONTRIBUTING FACTOR #1:

System Fragmentation

The fragmented architecture of Arkansas' juvenile justice system is, in part, responsible for youth being kept in custody for excessive intake periods awaiting placement, and being held in residential placements longer than necessary to protect public safety or achieve treatment goals. The fact that intake, placement, and release functions are performed by DYS, and programming, treatment, and aftercare services by private providers, creates significant communication and coordination challenges for every participant in the system. These challenges make it difficult to ensure that youth do not fall through the cracks, and contribute to the costly over-incarceration of youth in Arkansas.

The chances of a youth being held longer than necessary are increased further by the lack of writ-

ten DYS policies governing the intake, placement, and release processes. The lack of written policy has indeed led to disjointed practices affecting a youth's length of stay. For example, DYS does not have a policy governing whether youth will receive program credit for rehabilitative efforts awaiting placement. As a result, the practice among providers varies as to whether credit will be given. Similarly, whether the standard length of a residential program will be adjusted to fit each youth's individual needs, or to be consistent with the projected length of stay determined by DYS, is a practice that differs among providers. And, in what program a youth is placed is too often driven by bed availability, not by individual treatment needs.

DYS is addressing this important problem by moving forward with the adoption of policies. But more change is needed to streamline and standardize the intake, placement, and release processes to create a more seamless and uniform case flow.

Recommendations To Improve Coordination

- Adopt written DYS policies governing intake, placement, and release.
 - Ensure that DYS intake assessments are performed in a timely and consistent manner.
 - Retain independent consultants familiar with the essential elements of an effective regionalized juvenile justice system to conduct a comprehensive review of Arkansas' service delivery structure, DYS case management system, and quality of DYS programs.
-

CONTRIBUTING FACTOR #2:**Inadequate Risk and Needs Assessments**

Juveniles who are not likely to re-offend are netted in the juvenile justice system in Arkansas because both DYS and juvenile courts are not properly and consistently using standardized risk and needs assessment instruments. Commendably, DYS and juvenile judges are committed to improve practices with respect to the use of risk and needs assessment tools.

Research shows that even without programming, most youth who are arrested will have no further involvement in the system.⁵⁵ Committing youth to DYS who are unlikely to commit another crime takes prevention and intervention resources from those who do present a risk to public safety. The key is to identify who is at risk of re-offending and match them with the right kind of interventions and programming.

The use of reliable standardized risk and strength-based needs assessments by trained staff will help achieve this goal. These tools, when used in combination with school, psychological, health and other evaluations, will better match a juvenile to community services and help assess the likelihood of re-offense. If used properly, they will inform disposition decisions, custody and program placement decisions, and ultimately improve public safety.

DYS has administered a reliable risk and needs assessment instrument (the YLS/CMI) on youth during the intake process since 2007.⁵⁶ But only 82 assessments were completed out of the 621 commitments that year. Additionally, DYS staff need more training in the proper application of the tool.

Juvenile court judges are in the process of developing a risk assessment tool for use by all juvenile courts, recognizing that the instrument currently used is not adequate, if used at all. This is an important first step toward reducing commitments of low-risk youth.

Changes in DYS and court practices to ensure the proper and consistent use of risk and needs assessments will reduce confinement of youth who do not present a serious risk of re-offense.



Recommendations To Structure Decision-Making

- Develop a reliable, standardized risk and strength-based needs assessment instrument for use by juvenile courts to inform disposition decisions.
 - Provide additional training to DYS staff administering the YLS/CMI risk and needs assessment instrument to ensure it is used in a manner consistent with the tool's design.
-

CONTRIBUTING FACTOR #3:

Too Few Resources to Match Youth with Community Based Programs that Meet Their Individual Needs

During interviews for this report, stakeholders expressed a need for more juvenile probation and intake staff, as well as child advocates, who can help identify and access the appropriate blend of community based services to fit a youth's particular needs. The lack of enough probation staff and advocates to help find the right set of community based services contributes to the over use of secure confinement.

A cost-benefits study of effective interventions that reduce child crime reveals that advocacy to help youth find the support they need in the community also saves money. Providing youth facing delinquency charges with advocates to help them gain health care, safe and stable living situations, counseling



and family intervention services, and appropriate educational programs, saves crime victims and taxpayers close to \$4,000 per year for every child receiving such assistance.⁵⁷ Increasing the number of advocates and probation staff charged with identifying and securing appropriate community based interventions for youth facing a delinquency commitment will improve public safety and save money.

Recommendations To Help Youth Find Appropriate Community Based Supports And Services

- Train and deploy existing DYS staff to assist county juvenile intake and probation officers to identify and secure individualized services for youth in the community.
 - Solicit volunteers, and support from the business sector, to create child advocacy pilot sites to help youth facing delinquency charges find the community based supports and services they need to address the underlying causes of their behavior.
 - Provide training and additional supports to public defenders representing juvenile offenders.
 - Identify new revenue sources, including possibly Title IV-E funding, to support additional probation and intake staff for juvenile courts.⁵⁸
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CONTRIBUTING FACTOR #4:**Lack of Alternative Interventions to Address School Misbehavior**

Interviews of youth and systems stakeholders reveal an apparent rise in the referrals of youth engaged in misbehavior at school to law enforcement, and a corresponding increase in the number of commitments to DYS for school-based misdemeanor level offenses. Interviews and file reviews show that offenses such as disorderly conduct, obstructing governmental operations, terroristic threatening, and criminal mischief often occur at school. In FY 2007, 15% of all commitments were for these categories of misdemeanor offenses.⁵⁹

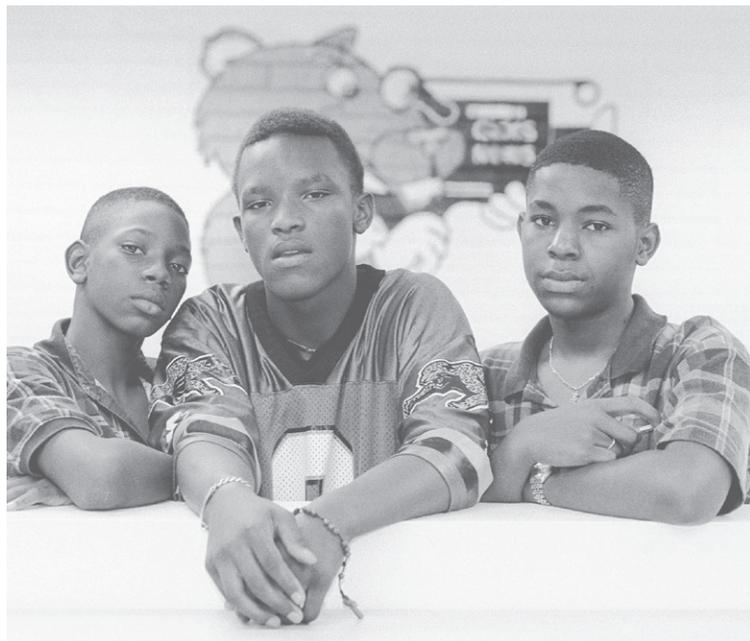
The lack of alternative interventions to help youth who are in trouble at school undoubtedly contributes to the use of delinquency courts as the default means of managing school misbehavior. While more rigorous analysis is required to determine the link between school disciplinary practices and the use of secure confinement for low-risk/high needs offenders, anecdotally the link seems strong. Arkansas, like so many other states, appears to be part of an alarming trend to push youth out of classrooms and into the courtroom for non-dangerous misconduct.

Referred to as the “school-to-prison pipeline,” schools across the nation are increasingly turning to law enforcement and juvenile courts to address school yard transgressions that a decade ago would not have resulted in arrest.⁶⁰ Youth of color, and youth with disabilities, are disproportionately represented among youth on the school-to-prison track.⁶¹

Nationally, we know that the majority of suspensions, expulsions, and school arrests are for nonviolent offenses.⁶² Studies also show that youth who

drop out of school are at a dramatically higher risk of becoming involved in the juvenile or criminal justice systems.⁶³ In 2005, there were 12,000 teens in Arkansas ages 16 to 19 who had dropped out of high school.⁶⁴

School-related intervention programs can help youth return to their education and save costs by reducing criminal activity.⁶⁵ Truancy interventions can be very effective in re-engaging youth at school,



thus helping to divert youth from the school-to-prison path. Promising truancy interventions in Arkansas, like the truancy courts conducted in a few judicial districts, should be more closely examined and replicated to the extent they have proven results.

Additional technical assistance to help schools implement the Positive Behavioral Interventions and Supports program (PBIS), which emphasizes reinforcement of positive behavior and a student’s strengths, rather than simply focusing on punishing bad behavior (endorsed by the federal Office of Special Education Programs) might also help reduce

school referrals to law enforcement.⁶⁶ Advocacy groups are beginning to advance PBIS as an effective model to stem the flow of youth in the school-to-prison pipeline.⁶⁷

In Arkansas, Project Achieve, a statewide initiative funded through the Arkansas Department of Education (Special Education Unit) has been implementing a positive behavioral support system model that is related to PBIS in schools throughout the state since 2003.⁶⁸ Looking more closely at the outcomes achieved by this initiative, and possible expansion of the model, may help to stop the school-to-prison pipeline in Arkansas.

Arkansas should study the degree to which increased school referrals to law enforcement, and the lack of interventions to keep youth in school, are contributing to an increase in the commitment of non-violent offenders to DYS.

Recommendations to Stop the School-to-Prison Pipeline

- Study the school-to-prison pipeline in Arkansas, as has been done in other states.⁶⁹
 - Identify communities in Arkansas with promising programs that successfully divert school misconduct from the juvenile justice system and replicate programs with proven positive outcomes.
 - Offer training and technical assistance to schools to help teachers and administrators find positive, safe ways to manage school misbehavior.
-

CONTRIBUTING FACTOR #5:

High Number of Delinquency Commitments of Abused and Neglected Youth

Use of the delinquency system to address the problems of misbehaving youth who have suffered abuse and neglect contributes to the reason so many low-risk/high needs youth are filling costly DYS secure residential beds.

Of the 815 youth in DYS custody on March 25, 2008, the vast majority (almost 83%) had some kind of prior contact with DCFS, ranging from a brief contact to actual foster care placement.⁷⁰ Out of a total of 796 youth in DYS custody on February 21, 2008, 35 were also under the legal custody of the state's foster care agency.⁷¹

Persons who have been abused and neglected as children are 59% more likely to be arrested as juveniles.⁷² It is not surprising that youth with histories of maltreatment are at higher risk of getting in trouble with the law. By adolescence, these youth have likely fallen behind in their education, often struggle with mental health issues, and face homelessness upon leaving the child welfare system when they reach 18.

Youth who stream through the delinquency and child welfare systems, often referred to as “crossover” or “dual jurisdiction” youth, are likely to be especially damaged by the negative effects of multiple institutional placement in both systems and, therefore, extremely challenging to help.

Arkansas is not alone in facing the unique challenges of serving crossover youth.⁷³ Other states have documented what has been called a child welfare “detention bias,” which favors dealing with misbehaving foster youth in the juvenile justice system, rather than addressing placement or other issues in the child welfare system, which may be at the root of the child's problems.⁷⁴ Because so few options exist to help neglected and abused children, judges

addressing delinquency charges, and seeking to protect the child, are left with no alternative but a delinquency commitment. And child-serving agencies rarely share a common vision for multi-systems approaches to addressing the needs of these youth.

In New York, the Vera Institute's Project Confirm has done great work to chart the path of crossover youth, finding a significant lack of mutual understanding and cooperation between the child welfare and juvenile justice agencies, a duplication of services, and poor results for this deeply troubled population of youth.⁷⁵

In Arkansas, there is not currently enough data or information to draw firm conclusions about how child welfare practices impact the juvenile justice system in general and DYS commitments in particular. Whether these youth are committed for less serious offenses due to lack of resources and placements in the community; whether their dependency cases are being closed, cutting off the availability of federal Title IV-E funding; whether they spend more time in custody due to a scarcity of appropriate placements and services to address their unique needs upon release, are all important questions that should be examined more closely.

DCFS and DYS laid an important foundation for addressing issues related to crossover youth by entering a "Cooperation Agreement" on January 8, 2008. The Agreement calls for improved information sharing, collaborative case staffings and aftercare planning, and procedures for coordinating services for pregnant youth. Oversight of the implementation of this Agreement, and further study of the interplay between these two systems, is critically important.

Recommendations Related to "Crossover" Youth

- Retain consultants to review the interaction of the state's foster care system with the juvenile delinquency system to make specific recommendations for improving outcomes for crossover youth.
 - Designate a DCFS and DYS team to conduct quarterly compliance reviews of the agencies' Cooperation Agreement, and to measure the outcomes of enhanced agency cooperation for dual jurisdiction youth.
-

CONTRIBUTING FACTOR #6:

High Proportion of Youth Committed for Non-Dangerous Behavior Related to Mental Disorder or Substance Abuse

A great number of youth committed to DYS suffer from mental disorders and substance abuse. A manual review by DYS staff of the intake assessments done of 345 youth in FY 2006 suggests that an overwhelming majority of the youth had one or more identified mental health or substance abuse issues.⁷⁶ Almost 10% of the youth surveyed were reported to have an IQ of less than 70.

While nationally the number of incarcerated youth with mental health problems is high,⁷⁷ the number of youth with unmet mental health needs committed to DYS in Arkansas appears especially great.

In a model juvenile justice system youth who get into trouble as a result of mental health problems would not be referred for commitment unless their offenses were serious.⁷⁸ The extent to which commitments for non-serious offenses are related to behaviors connected to mental disorder in Arkansas is not yet clear.

Reliable data regarding the incidence and severity of mental disorders among DYS committed youth

should be gathered and analyzed. Given the high number of youth being committed for non-serious offenses and confined in very expensive “specialty” residential placements for mental health issues, this is an area rich with potential for safely reducing the number of commitments in Arkansas. This is especially true because the troubling behaviors of these youth are more often a cry for help than dangerous.

Closer examination of the pathways of youth with mental disorders to DYS will reveal the extent to which the juvenile justice system in Arkansas has become a surrogate system for children’s behavioral health care, as is occurring in so many other states.

Recommendations Related to Youth with Mental Health Needs

- **Ask the Behavioral Health Care Commission appointed by the Governor to review options to reduce commitments for non-serious misconduct related to mental disabilities and to fund further review of the problem.**
 - **Develop and implement a system to gather reliable data about the incidence and nature of mental health disorders among youth committed to DYS.**
 - **Conduct a review of the juvenile court and probation files of a statistically significant number of committed youth with mental health needs to determine if they are being committed for minor offenses related to mental health issues more effectively addressed through community based mental health services.**
-

CONTRIBUTING FACTOR #7:

Lack of Fiscal Incentives Favoring the Use of Community Based Alternatives

As in many states, there are no fiscal incentives in Arkansas to encourage the treatment of juvenile offenders through local programming. This contributes significantly to the commitment of challenging low-risk youth to high-cost DYS residential placements.

Fiscal incentives, when applied correctly, have been shown to drive significant change in the design and delivery of public services. One area in which fiscal incentives have played an increasingly important role in altering ineffective practices is in state and local juvenile justice systems.

Rising costs, diminishing resources, and rising juvenile recidivism rates have caused some policy-makers to rethink how they structure and fund their juvenile justice systems. Several states have applied the leverage of fiscal incentives to reduce the number of youth committed to state juvenile justice institutions and to increase funding for local programming. These states increased the costs that localities pay to send youth to state care and created new funding streams for development of community based supervision and service options.

Investing in local programming has since become the rallying cry of systems stakeholders, especially law enforcement, not only because it produces better outcomes for youth, but it also saves money and reduces crime.⁷⁹ Cost-benefit studies have shown that reassigning low and moderate risk offenders to community sanctions with the right interventions produces significant savings in reduced crime costs.⁸⁰

States, including Pennsylvania, Wisconsin, California, Ohio, and Illinois, have in a variety of different ways transformed their juvenile justice systems through a realignment of fiscal incentives.

Five States That Rationalized Their Fiscal Architecture⁸¹

Pennsylvania—“Act 148”

- State pays 80 percent of the county cost of community-based juvenile justice services. The county pays state 40 percent of the cost of state juvenile confinement.
- Three years after Act 148 was enacted in the late 1970s, there was a 75 percent increase in state subsidies for county programs; by the early 1980s, secure placements for juveniles dropped 24 percent.

California—“Realignment”

- County pays a fee, ranging from \$150 to \$2,600 a month, for use of state facilities, depending upon the level of offense.
- A separate, dedicated funding source (Juvenile Justice Crime Prevention Act of 2002) provides \$100 million in funding each year for local juvenile justice programs. Between 1996 and 2003, the California Youth Authority’s population of incarcerated youth fell 52 percent, during a period when the juvenile crime rate fell 31 percent.

Wisconsin—“Youth Aids”

- Allocation for each county is based on the total county youth population and the number of juvenile arrests and county secure placements.
- A year after Youth Aids” was enacted in 1980, 25 counties shared \$26 million in funding plus state capacity-building money for community alternative programs. Between 1995 and 2006, Milwaukee—the city within the biggest county—experienced a 74 percent decline in commitments to secure state facilities.

Ohio—“RECLAIM Ohio”

- State provides counties with fixed financial support for community-based juvenile justice services *minus* a fraction of the total for each youth sent to the state for handling.
- Counties are allocated the savings based on their use (or lack) of commitments to state facilities the previous year.
- Between RECLAIM Ohio’s enactment in 1992 and 2004, the number of youths committed to secure state care in Ohio fell 31 percent.

Illinois—“Redeploy Illinois”

- County identifies target type of delinquent behavior or overall delinquent population and commits to 25 percent reduction in corrections commitments from average number during the previous three years.
- State provides funding for the county to deliver services related to the targeted populations, particularly juveniles committed for court evaluations, and nonviolent offenders.
- Since starting in mid-2004, Redeploy pilot sites include the 2nd Judicial District (containing 12 rural counties) and in St. Clair, Peoria, and Macon. Preliminary projections suggest the four pilot sites will have a 33 percent reduction in commitments to the state by the end of year one, resulting in \$2 million less being spent on youth incarceration costs.

Recommendations to Alter Fiscal Incentives to Reduce Incarceration

- Develop and fund pilot sites that provide fiscal incentives for the use of community-based alternatives for youth who would otherwise be committed to DYS with the goal of replication statewide.
 - Develop a contract rate structure that allows flexible use of contract funding, but rewards clearly articulated performance outcomes, to encourage shortening the length of stay and increased investment in community based services.
-

CONTRIBUTING FACTOR #8:

Gaps in Community Based Services

The single most obvious reason for the continuous flow of low-risk non-serious offenders into DYS custody is the gaps in community based treatment alternatives throughout the state. Several important types of community based interventions for juvenile offenders proven effective at reducing crime are not available in Arkansas. For example,

the intensive family therapy intervention called Functional Family Therapy, *shown to cut re-arrests in half*, is not offered as a community based option.⁸² Substance abuse treatment is also virtually non-existent. And there are waitlists for many of the community based options offered in the state, including therapy and counseling, day services, emergency shelter, and sanctions services like electronic monitoring. The limited range and quantity of community based programs, especially in rural and poor communities, results in a costly over reliance on secure confinement.

In addition, the lack of a centralized accountability system used by DYS to evaluate program outcomes serves to widen the gaps in Arkansas' community based system of care. With only finite resources, funds spent on programs that have not shown positive results for youth reduces funding for interventions that have been proven to work. Arkansas' community based providers have a long history and quality reputation for providing services to youth in the juvenile justice system. They should be given the opportunity, as they have requested, to demonstrate through objective outcome measures the effectiveness of their work.



Below are brief descriptions of several community based interventions and program models that have proven effective in other states. All or some of these could be developed to enhance existing community based disposition alternatives in Arkansas.

Multisystemic Therapy (MST) — MST is a form of intensive family therapy that emphasizes teaching youth and their parents ways to control problem behavior. Understanding youth in the context of their family and addressing patterns of behavior through consistent responses has proven effective with high-risk youth who in the past would have been committed to secure custody. Some jurisdictions have seen reductions in re-arrests and commitments of high-risk youth by as much as 60%.

Functional Family Therapy (FFT) — Like MST, FFT relies on bringing effective parenting and problem solving into the homes of delinquent youth. Professionals teach a range of intervention strategies to youth and parents over the course of weeks and months. FFT has helped to change problem behavior within the home and consequently reduce re-offense and re-commitment rates significantly.

Multidimensional Treatment Foster Case — Like MST and FFT, Multidimensional Treatment Foster Care involves professionals teaching behavior management techniques to foster parents and delinquent youth in foster homes as an alternative to placement in institutional settings. This approach has been successfully used with youth who were engaged in serious delinquency. MTFC trains foster parents in constructive methods of controlling challenging behaviors, works with youth to better manage their behavior, and works with the biological family to provide the skill and knowledge they will need when their youth return home. MTFC has resulted in re-arrest rates half that of similar youth who did not have the benefit of this approach.

Paraprofessional and Advocacy Programs — Intensive “wrap-around” models of care have grown in popularity and sophistication in recent years.

Paraprofessional and advocacy programs fall into the “wrap-around” category. Paraprofessional programs supplement treatment by professionals. The model involves highly individualized planning, intensive in-home support and supervision (ranging

These “wrap-around” program models have proven extremely effective in safely managing youth who would otherwise fill expensive custodial beds.

from 8 to 40 hours weekly), and flexibility to meet the needs and schedules of youth and families. Paraprofessional programs focus on the youth’s strengths instead of deficits. Trained advocates work flexible hours in a youth’s home and neighborhood to address issues that prevent a youth’s success. In addition to the advocates, neighbors, friends, and relatives are enlisted to support the youth’s rehabilitation plan. The goal is to create a local network of natural supports for the youth that will remain in place when the professionals retreat to other cases. Program durations do not typically extend beyond 6 to 9 months. These wrap-around program models have proven extremely effective in safely managing youth who would otherwise fill expensive custodial beds.

Evening Reporting Centers (ERC) — Youth crime tends to increase at times of the day when young people are idle and unsupervised. Many jurisdictions have developed evening reporting centers for youth involved with the court system to constructively occupy their time with educational, recreational and other structured activities between 4 p.m. and 9 p.m., Monday through Friday, and all day Saturday. Most often run by private, non-profit agencies, ERCs have become a popular and effec-

tive alternative to custodial or other forms of out-of-home placement. The location of ERCs in communities with high concentrations of youth involved in the juvenile justice system, and the employment of staff members from these same communities, have been important factors in the effectiveness of these programs. Free transportation to and from the youths' home and the ERC has also proven to be a valuable feature.

Substance Abuse Treatment

Programming — Stakeholders in Arkansas unanimously agree that the state needs more substance abuse treatment programming for youth. Given the wide range in ages, substances involved, and the duration and frequency of use, an equally wide range of program models is important to consider. Among the most common and effective include the following:

- ***AA/NA*** — Alcoholics Anonymous and Narcotics Anonymous are perhaps the most widely available substance abuse support services. These support programs have helped millions of people. AA/NA programs specifically designed for adolescents are common and should be a standard component of any jurisdiction's substance abuse treatment continuum. These programs are typically used as a supplement to other more intensive programming.
- ***Out-Patient Substance Abuse Treatment*** — Individual and group out-patient treatment is a staple of any good substance abuse treatment continuum. Youth are assigned based on their individual needs, which are determined through a formal assessment. Youth commonly attend one or more sessions (individual



and/or group) weekly. Sessions generally last one to two hours.

- ***Intensive Out-Patient*** — An effective form of programming increasingly used as an alternative to in-patient treatment is the intensive out-patient model. Non-residential treatment is provided from 1 to 3 hours per day, 3 to 5 days a week. These programs rely on both individual and group counseling, sober living, and teaching life skills.
- ***Short and Long-Term Residential*** — Breaking the cycle of substance abuse can sometimes require a period of residential treatment. The duration can vary for adults from two weeks to 2 years, but programs for youth usually do not exceed 6 months. Many different models and configurations exist. Both short and longer-term programming designed to fit the unique needs of each youth is vital.
- ***Juvenile Drug Courts*** — The last 20 years has seen a rapid expansion of the drug court concept in jurisdictions across the country. More recently this promising practice has taken root in juvenile courts. Based on a

system of rewards and graduated sanctions, and coupled with rigorous monitoring and frequent in-court reviews, juvenile drug courts have grown in popularity. Youth have regular and personal contact with judges, allowing the court to respond quickly to positive drug tests, and to mete out graduated sanctions. In Arkansas, drug courts are widely used for adult offenders, but they have not yet been funded for juveniles. Juvenile court judges who have experience with the use of these courts would like to expand this option to include youth.

- ***Cognitive Behavior Therapy (CBT)*** — CBT has demonstrated impressive results in curbing substance abuse behavior that drags so many youth into the throes of the juvenile justice system. By empowering and motivating youth to better understand their behavior and its implications, CBT has expanded the effective treatment options for youth and families plagued by the ravages of substance abuse.

The following recommendations are steps that can be taken to enrich Arkansas' existing continuum of community based care.

Recommendations to Enhance the Community Based System of Care

- Map existing community based resources, including those available through for-profit providers not part of the DYS community based provider system.⁸³
 - Implement a system to measure service and program outcomes.
 - Provide technical assistance and training to providers related to the development of evidence-based and best practice programs.
 - Analyze the feasibility of altering practices and facility use for Title IV-E funding to expand community based DYS programming, training, and probation services.⁸⁴
 - Ensure that aftercare services are available to youth immediately upon release by suspending rather than terminating Medicaid eligibility during confinement.⁸⁵
 - Encourage providers to meet the requirements for community mental health provider status in order to augment DYS contract funding with Medicaid reimbursements.⁸⁶
 - Increase funding for successful community based interventions.
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PART FOUR

Next Steps: A Strategic Plan to Rebalance the System

With stakeholder participation, DYS can move juvenile justice reform forward in Arkansas, as other states have done, by developing a 5-Year Strategic Plan to rebalance Arkansas' juvenile justice system.⁸⁷ It is our hope that the recommendations provided in this report will spark discussions during the strategic planning process about the priority, sequencing, and funding of action steps that will advance reform.

The Goals of Reform

The broad goals of reform for strategic planning are:

- Reduce reliance on incarceration for youth who can be better and safely served in the community.
- Expand effective community based supports and interventions throughout Arkansas.
- Reinvest dollars saved from unnecessary incarceration into community based services that have been proven effective.
- Address variability in commitments from different jurisdictions and the disproportionate treatment of minority youth.
- Ensure that DYS secure facilities used to confine youth are safe and humane and provide the greatest opportunity for rehabilitation.
- Develop a stronger quality assurance, monitoring, and oversight system to ensure that state resources are actually producing good outcomes for youth.
- Improve data collection and analysis capability.

A United Vision: The Guiding Principles of Reform

The following general principles may unite stakeholders in a common vision for reform:

- Adolescents are developing and with the right supports and services have tremendous capacity to change.
- Non-residential, individualized services and interventions for committed youth who are low-risk are more effective and less costly than secure confinement.
- Family and community supports to provide youth opportunities for positive development prevent delinquency and protect public safety.
- The least restrictive intervention consistent with public safety is the most effective.
- The coordination of services across mental health, juvenile justice, child welfare, and education systems is essential.
- A continuum of community based services should be available in urban, rural, and mid-size communities throughout Arkansas.
- Incarceration in secure custody may increase the likelihood of future delinquency and should be used only as a last resort.
- When secure confinement is necessary, small therapeutic facilities serve youth most effectively.

Recommendations for Initial Funding Priorities to Jumpstart Reform

- Fund the work of a strategic planning stakeholders group.
 - Increase funding for community based programs and interventions that have shown positive outcomes for youth and their families.
 - Provide funding for 3 pilot sites in a rural, urban, and mid-size community to offer fiscal incentives to reduce commitments to DYS.
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Conclusion

We hope this report provides a compass to guide stakeholders toward general principles and specific tasks that will lead to reforming the juvenile justice system in Arkansas. We also hope it invigorates the commitment of state officials to help Arkansas' wayward youth who so desperately need their guiding hand.



APPENDIX A

The Authors and Methodology

This report was prepared in collaboration with the Arkansas Division of Youth Services (DYS). The authors are Pat Arthur, Senior Attorney at the National Center for Youth Law, acting as an independent consultant to DHS, and Tim Roche, a juvenile justice expert specializing in the development of community based care systems for youth. The report is funded through a generous grant from the JEHT Foundation, acting in partnership with DHS.

This report is based on analysis of DHS documents and data, and interviews with DHS staff, judges, community based service providers, advocates, incarcerated youth and their families, probation officers, and other system stakeholders. In addition, the authors conducted site visits to the Mansfield Treatment Centers (both girls and boys unit), the Arkansas Assessment and Treatment Center, Dermott Juvenile Correctional facility, Consolidated Youth Services in Jonesboro, and conducted a focus group with a juvenile court judge, a prosecutor, community based service and mental health providers, and representatives from school, law enforcement, the Division of Children and Family Services, and probation.

Carl Valentine's Report entitled "Claiming Available Federal Medicaid and Title IV-E Funding," Appendix C in this report, is based on DHS documents related to Medicaid billings, DHS budget material, the current Medicaid State Plan (and relevant waivers), and interviews with community based service providers and DHS staff.

The authors are deeply grateful to the many individuals who gave valuable time and resources to provide assistance and information for the preparation of this report. A special thanks goes to Ron Angel, Director of the Division of Youth Services, for having the courage, vision, and leadership to form the partnerships that made this report possible.

APPENDIX B

Summary of Report Recommendations

Recommendations to Improve Coordination

- Adopt written DYS policies governing intake, placement, and release.
- Ensure that DYS intake assessments are performed in a timely and consistent manner.
- Retain independent consultants familiar with the essential elements of an effective regionalized juvenile justice system to conduct a comprehensive review of the service delivery structure, DYS case management system, and quality of DYS programs.

Recommendations to Structure Decision-Making

- Develop a reliable, standardized risk and strength-based needs assessment instrument for use by juvenile courts to inform disposition decisions.
- Provide additional training to DYS staff administering the YLS/CMI risk and needs assessment instrument to ensure it is administered in a manner that is consistent with the tool's design.

Recommendations to Help Youth Find Appropriate Supports and Services

- Train and deploy existing DYS staff to assist county juvenile intake and probation officers to identify and secure individualized services for youth in the community.
- Solicit volunteers, and support from the business sector, to develop child advocacy pilot sites to help youth facing delinquency charges find the community based supports and services they

need to address the underlying causes of their behavior.

- Provide training and additional supports to public defenders representing juvenile offenders.
- Identify new revenue sources, including possibly Title IV-E funding, to support additional probation and intake staff for juvenile courts.

Recommendations to Stop the School-to-Prison Pipeline

- Study the school-to-prison pipeline in Arkansas, as has been done in other states.
- Identify communities in Arkansas with promising programs that successfully divert school misconduct from the juvenile justice system and replicate ones with proven positive outcomes.
- Offer training and technical assistance to schools to help teachers and administrators find positive, safe ways to manage school misbehavior.

Recommendations Related to "Crossover" Youth

- Retain consultants to review the interaction of the state's foster care system with the juvenile delinquency system to make specific recommendations for improving outcomes for crossover youth.
- Designate a DCFS and DYS team to conduct quarterly compliance reviews of the agencies' Cooperation Agreement, and to measure the outcomes of enhanced agency cooperation for dual jurisdiction youth.

Recommendations Related to Youth with Mental Disabilities

- Ask the Behavioral Health Care Commission appointed by the Governor to review options to reduce commitments for non-serious misconduct related to mental disabilities and to fund further review of the problem.
- Develop and implement a system to gather reliable data about the incidence and nature of mental health disorders among youth committed to DYS.
- Conduct a review of the juvenile court and probation files of a statistically significant number of committed youth with mental health needs to determine if they are being committed for minor offenses related to mental health issues more effectively addressed through community based mental health services.

Recommendations to Alter Fiscal Incentives to Reduce Incarceration

- Develop and fund pilot sites that provide financial incentives for the use of community-based alternatives for youth who would otherwise be committed to DYS with the goal of replication statewide.
- Develop a contract rate structure that allows flexible use of contract funding, but rewards clearly articulated performance outcomes, to encourage shortening the length of stay and increased investment in community based services.

Recommendations to Enhance Community Based System of Care

- Map existing community-based resources, including those available through for-profit providers not part of the DYS community based provider system.

- Implement a system to measure service and program outcomes.
- Provide technical assistance and training to providers related to the development of evidence-based and best practice programs.
- Analyze the feasibility of altering practices and facility use for Title IV-E funding to expand community based DYS programming, training, and probation services.
- Ensure that aftercare services are available to youth immediately upon release by suspending rather than terminating Medicaid eligibility during confinement.
- Encourage providers to meet the requirements for community mental health provider status in order to augment DYS contract funding with Medicaid reimbursements.
- Increase funding for successful community based interventions.

Recommendations for Initial Funding to Jumpstart the Reform Initiative

- Fund the work of a strategic planning stakeholders group.
- Increase funding for community based programs and interventions that have shown positive outcomes for youth and their families.
- Provide funding for 3 model pilot sites in a rural, urban, and mid-size community to offer fiscal incentives to reduce commitments to DYS.

APPENDIX C

Claiming Available Federal Medicaid and Title IV-E Funding

Arkansas Division Of Youth Services — Spring 2008

By Carl Valentine, consultant retained by Pat Arthur, National Center for Youth Law

Arkansas is exploring strategies to reduce use of out-of-home placement for its juvenile population placed with or under the supervision of the Division of Youth Services. One of the primary strategies actively being considered is an expansion of community based services so that some youth can be diverted from initial out-of-home placement or shortening the length of stay through the use of community based alternatives. New resources will be needed to build an effective network of community based services while maintaining the existing out-of-home service structure until the effectiveness of community based service strategies can be demonstrated.

This paper explores strategies the Division can take to increase federal funding to both support the existing out-of-home services while building community based alternatives. The Division currently makes use of various federal grant funds such as Title I ESEA to support institutional educational programs and OJJDP funds for the support of community based alternatives to institutional care and will continue to explore other grant funding that would support the Division's programs. This paper explores steps the Division can take to maximize federal entitlement funding, i.e., funding through the Social Security Act entitlement programs (Title XIX Medicaid and Title IV-E). Both of these programs offer open ended federal matching funding for activities that meet the requirements of these programs. "Open ended" federal matching means the federal government is obligated to reimburse the state for all state expenditures that meet the program requirements. Thus, if \$100 of current

Division's direct or purchased expenditures supported with state general revenue can be supported under either Medicaid or Title IV-E, the direct cost to the state for these services will be partially shifted to the federal government reducing the cost of these services for the state by the amount of the federal reimbursement earned. Use of entitlement funding to support new investments in community based services can also reduce the cost of these new services for the state. This position paper will first review the current efforts of the Division to make use of Medicaid and then explore funding opportunities under Title IV-E.

Background

The Division's annual budget for FY 08 is \$61,939,618 (Administration \$9.6 million; Residential \$29.1 million; Community Programs 17.5 million and an additional \$5.7 million for detention centers and other community supports). On the revenue side the Division expects to receive \$47 million in state funding, \$.8.3 million through federal grants (JJDP, JABG and Title I) and \$3.5 million from Medicaid (targeted case management 38% and rehabilitative services 62%). No federal funding was received through Title IV-E. About 19 percent of the Division's budget is supported with federal funds.

Medicaid

The Division has done an excellent job of earning Medicaid reimbursement through use of two Medicaid programs: targeted case management and

rehabilitative services. There are some steps that can be taken to improve claiming but in the larger scale of issues this revenue is now in jeopardy. I will briefly discuss the larger national issues before providing several steps that could be taken to improve claiming.

In keeping with the federal efforts to curtail the rapidly increasing cost of the Medicaid program, federal CMS released an interim final regulation on December 4, 2007 that would end the use of targeted case management for child welfare and juvenile service programs effective March 3, 2008, saving a projected \$210 million in federal funding nationwide in 2008 and \$1.3 billion over a five year period. Since the release of the interim final regulations, there has been an outcry from the states, and the regulations have not been finalized. The House of Representatives recently approved a bill by a veto proof majority that would delay implementation for one year and the Senate is expected to pass similar legislation. Several states have initiated litigation charging the proposed regulations overreach the authorizing legislation for targeted case management. Although there is still hope targeted case management for child welfare and juvenile services can be saved, most states are making plans in case the program comes to an end.

With regard to Medicaid supported rehabilitative services CMS has issued draft regulations which, if implemented, will end the funding of treatment services provided directly by child welfare and juvenile service programs, limiting community based rehabilitative services to services provided by mental health providers. If the Division's contractors currently claiming Medicaid rehabilitative services are also licensed community mental health providers, this program can continue and expand as the state expands its investment in community based treatment services.

Many states currently support the treatment portion of out-of-home placements in therapeutic foster care settings, group homes, and residential

treatment facilities through the Medicaid rehabilitative services program. Although it is not known how the language in the draft regulations stating Medicaid's reluctance to reimburse claims "intrinsic to" other programs will be implemented, indications are they will end Medicaid involvement in the support of foster care and other non-medical out-of-home programs. As part of the CMS implementation process for the new regulations every state will have to submit revised state plan language for rehabilitative services removing programs considered to be non-medical in nature. Until the nature of the revised Medicaid rehabilitative program becomes clear, Medicaid officials around the country are reluctant to expand the program, and are avoiding any program modifications that would require CMS approval because this would allow federal officials to question the current use of the rehabilitative service program in the state.

The primary steps DYS can take to improve its Medicaid reimbursement in the current federal/state environment of cost control and cutbacks would be to improve Medicaid eligibility.

1. The first step would be to establish procedures that would suspend Medicaid eligibility rather than terminate Medicaid eligibility for youth placed with DYS. This procedure would allow youth to become Medicaid eligible immediately upon release rather than having to wait for eligibility to be re-established. Delayed Medicaid eligibility can stand in the way of released youth quickly receiving medical and community based behavioral health services, increasing the risk of recidivism.
2. A second step would be review why many youth placed with the Millcreek developmental disability special unit fail the "medical necessity" test. This expensive service with a daily rate of \$350 should not be serving DYS youth that are not meeting "medical necessity". The solution to this problem involves modification of DYS placement practices, DYS involvement with the

provider to assure timely removal to step-down placements and a review of the medical necessity criteria being applied to DYS youth.

3. A third step would add incentive and/or penalty payments for maximizing Medicaid claiming by contractors providing community based services. Aggressive pursuit of Medicaid reimbursement should be rewarded. All community providers under contract with DYS should meet community mental health provider status so they can augment DYS payments with Medicaid reimbursement.
4. A fourth step – community based providers should be encouraged to shorten length of stay, increase investment in community based services so that youth can live successfully at home or in a foster family or other step-down living arrangements through use of contract payments that allow flexible use of funds while holding providers accountable for improved outcomes as Tennessee, Florida and Alabama have done.

Title IV-E

Title IV-E funds are available for adjudicated delinquents receiving services from DYS when:

- The child’s placement and care are the responsibility of a public agency under agreement with the State agency administering IV-E;
- The child is IV-E eligible (see Section 472 (a) of the Social Security Act);
- The child is placed in licensed or approved foster family home or child care institution.

In 1980 Congress revised foster care provisions of the Social Security Act (PL 96-272). The revisions created title IV-E (42, US Code, Sections 670 - 675). Title IV-E became the basis for federal reimbursement of portions of both maintenance and administrative costs (management costs incurred by public agencies responsible for oversight of minors in foster care). Like Medicaid, Title IV-E provides

open ended federal reimbursement for eligible costs provided for eligible children. “Open ended” means the federal government reimburses states on an unlimited basis for specified activities at an established Federal Financial Participation rate.

MAINTENANCE: Title IV-E foster care maintenance payments for children means payment to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child and reasonable travel to the child’s home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described above. Costs related to social services such as counseling and therapy, education (as required under state law) and medical care are excluded. Settings where eligible maintenance is provided include licensed family foster homes, therapeutic foster homes as well as care in group homes and child caring institutions (excluding public facilities serving more than 25 children). Excluded would be hospitals or treatment facilities fully supported by Medicaid funding, detention facilities, forestry camps, training schools or any other locked facilities operated primarily for the detention of children who are delinquent. This last clause, “operated primarily for the detention of children who are delinquent” has been interpreted in federal policy guidelines as requiring two components:

- It must be a physically restricting facility, and
- It would not be operational without a population of children who have been adjudicated delinquent.

If either condition is not present, the criteria for establishing the detention of children has not been met. Thus, as long as the facility is not locked, is not a physically restricting facility, IV-E can be claimed.

Eligible maintenance costs are reimbursed by the federal government at the states' Medicaid Federal Financial Participation rate which in the case of Arkansas is about 73%. (The Arkansas FFP rate effective October 1, 2006 was 73.37 %.)

ADMINISTRATION (includes regular administrative costs incurred by the single child welfare state agency and other public agencies under agreement with the single state agency as well as the associated costs of training agency staff): Administrative activities include such activities as IV-E eligibility determination and redetermination, referral to services, preparation for and participation in judicial determinations, placement of the child, development of the case plan, case reviews, case management and supervision, recruitment and licensing of foster homes and institutions, rate setting, training staff and foster parents and a proportionate share of agency overhead.

Administrative costs include the costs associated with supervising children in foster care and DYS youth in placement as well as children at imminent risk of placement. Children at imminent risk of foster care include children receiving protective services, children formerly placed in foster care or a DYS facility, and youth at risk of placement living at home being supervised by child welfare, probation, mental health or another public agency. These activities which include community based preventive services for children at risk of foster care (out-of-home placement) are generally captured in accordance with a federally approved cost allocation plan using a time study/ cost report system and are reimbursed by the federal government at 50% FFP rate.

Probation supervision could be claimed as a IV-E administrative activity through use of a random moment time study, once the state Title IV-E Cost Allocation Plan is amended to include a broader concept of preventive services and the claiming methodology to be used by Probation. The IV-E Plan would also have to be amended to reference

the interagency agreement between the child welfare agency and the public agencies administering state/local probation programs. The training section of the IV-B Plan would also need to be amended to include training activities undertaken for juvenile probation officers and others administering the program.

TRAINING: Training, a special case of administration, is reimbursed at 75% FFP. Training deserves special mention for several reasons: first, the enhanced reimbursement rate significantly reduces the cost of training for the state, second, as a strategy for improving the stability and effectiveness of the workforce, and thirdly as a means of engaging the public university and its state appropriated funds in support of the child welfare and/or the juvenile services program.

Kentucky is a good example. In Kentucky, Eastern Kentucky University School of Corrections has taken the lead in development of a statewide training program for both child welfare and juvenile services involving a statewide network of public colleges through an agreement with the state single state agency for Title IV-E, the Human Services Cabinet, to provide pre-service, in-service training for staff, volunteers and foster parents and support for public employees seeking a baccalaureate or a masters degree in social work. With the contribution by the university of their federally approved indirect rate as well as other costs associated with the training program, and the federal reimbursement earned, the agency's cost of training is reduced to about 30 percent.

ELIGIBILITY: The third component of Title IV-E program is client eligibility. A full eligibility determination must be completed for children and youth in placement. No individual eligibility determination would be required for youth receiving probation services. The factors affecting eligibility relate to having a court order placing the child with the agency with language that continuation in the home was not in the best interest of the child and

reasonable efforts have been made to prevent placement (or were not possible in the case of arrest), and evidence of AFDC relatedness – citizenship, age, living with specified relative, parental deprivation and family income at or below the level set for AFDC in 1995. In a foster care population eligibility generally ranges from 60 to 70 percent and for the juvenile services population eligibility generally falls 10 to 15% lower than the child welfare foster care eligibility rate in that state.

The Involvement of the Courts

Two judicial determinations must be made before an otherwise eligible child may receive IV-E foster care benefits:

- “Continuation in the home is contrary to the welfare of the child” – While this language is not relevant to the court’s inquiry in a juvenile delinquency proceeding, it is nonetheless required for the purposes of making the juvenile IV-E eligible for foster care benefits. This language needs to be contained in the initial order that authorizes the juvenile’s removal from the home. It is acceptable to use a pre-printed court order. A number of states have worked this out with the courts.
- “Reasonable efforts were made prior to placement to prevent the need for removal of the child from his home” – Federal law does not specify at what stage in the court process that the judicial determination of “reasonable efforts” is to be made, but since a juvenile’s placement in a secured facility is not Title IV-E reimbursable, the “reasonable efforts” determination does not need to be made for the juvenile delinquent population until the juvenile is released from the secure facility and placed in a Title IV-E reimbursable placement.

One way to meet this requirement is to proceed with the development of a case plan, and then request the court to ratify the agreement set forth in

the written case plan to the effect that “reasonable efforts” have been made to reunify the family.

Administrative Considerations

The case planning/case management requirements found in Section 427 of the Social Security Act (45CFR 1356.21(d)) must be met or the State risks audit losses. Most of these requirements are probably being met by current DYS case plan and case management policy.

The case plan for each child must be a written document which is a discrete part of the case record, in a format determined by the State, (the format used by DYS can differ from the one used by child welfare). The case plan must be made available to the parent(s) or guardian of the foster child. The case plan must be developed within a reasonable period in no event later than 60 days from the time the State agency assumes responsibility for the child. The case plan must include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family. And, the case plan must include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family like) setting available and in close proximity to the home of the parent(s), consistent with the best interests and special needs of the child.

In addition case plans for children in placement must be reviewed every six months by the placing agency and a dispositional hearing must be completed by the courts no later than 18 months after the child’s original placement. The case plan requirements and reviews are consistent with sound care management. To determine the extent of policy changes required to conform to IV-E policy, an analysis of current DYS policy and practice should be undertaken, inconsistencies identified and conforming policy adjustments developed and implemented.

Projection of IV-E Revenue Opportunities

Arkansas DYS contracts with thirteen community based providers (28 contracts) to provide group and institutional care and follow-up case management costing over \$16.4 million annually. If 40% of the youth in these facilities were found to be Title IV-E eligible (a modest estimate) and 60% of the costs were found to be IV-E eligible using 73% FFP would generate \$2.9 million in federal revenue annually. Current Medicaid claiming could be continued because Medicaid reimburses treatment while IV-E reimburses room, board and supervision. The only area of overlap would be case management where the higher Medicaid eligibility rate makes the use of Medicaid the preferred option while that option remains available.

In addition each of the DYS residential programs should be reviewed for Title IV-E eligibility. If they are hardware secure Title IV-E is not available. If they are staff secure – no fence etc., Title IV-E can be used to generate Title IV-E revenue. DYS expends \$20 million on their residential programs. If these programs as well as emergency shelters supported with DYS funding were found to be Title IV-E eligible they would generate \$3.5 to \$4 million federal reimbursement annually. In a similar fashion the specialty providers DYS contracts with for about \$5 million annually should also be reviewed for possible IV-E eligibility.

On the administrative side, the \$10 million DYS spends on the management of their program should be analyzed for IV-E eligibility. A time study/cost report process would identify a significant portion of the administrative costs as IV-E related. If twenty percent of all DYS placements are IV-E eligible, DYS would realize an added \$1 million in revenue. In addition Title IV-E reimbursement will support IV-E related training at the enhanced 75% FFP rate.

Another area for IV-E analysis is the state and county expenditures for juvenile probation services. States using Title IV-E for probation services have found federal funds can be used to incentivize reduced caseloads and improved services designed to reduce youth requiring placement with DYS.

In summary a conservative estimate of new federal Title IV-E revenue for DYS would be \$3.9 to \$4.5 million annually but to earn these revenues and minimize the risk of audit take backs DYS will need to develop a IV-E management capacity estimated to cost from \$250,000 to \$500,000 annually.

End Notes

¹ Data obtained from DYS' RiteTrack system and analyzed for this report shows that on average, youth experienced 5 placement changes during their period of commitment. RiteTrack is the information system used by DYS to enter service, placement, and billing data. Information about DYS' RiteTrack data system, designed by Handel Technologies, Inc., is available at: <http://www.handelit.com/Industry/JuvenileJustice/ArkansasDYS/tabid/115/Default.aspx> The authors will provide upon request a written explanation of the data analysis conducted for this report.

² Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006). See also Richard A. Mendel, American Youth Policy Forum, *Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice*, at 8-9 (2001) (“[L]arge training schools have never proved effective in rehabilitating youthful offenders or steering them from crime. Recidivism from large training schools is uniformly high. . . . [V]irtually every study examining recidivism among youth sentenced to juvenile training schools in the past three decades has found that at least 50 to 70 percent of offenders are arrested within one or two years after release.”).

³ See, National Institutes of Health, *State-of-the-Science Conference Statement: Preventing Violence and Related Health-Risking Social Behaviors in Adolescents*, Oct. 13-15, 2004, at 13 (noting that the incarceration of juvenile offenders raises “the hazard of ‘contagion’” because “[w]hen young people with delinquent proclivities are brought together, the more sophisticated can instruct the more naïve in precisely the behaviors that the intervener wishes to prevent”).

⁴ The DYS Annual Report for FY 2007 suggests there were 622 commitments to DYS in FY 2007. See *Arkansas DYS Annual Report, FY 2007*, at 4, available at http://www.state.ar.us/dhs/dys/Annual%20Reports/dys_annual_reports.html However, raw data obtained from RiteTrack for this report revealed there were actually 621 commitments to DYS in FY 2007. The total number of delinquency cases handled by juvenile courts is far greater than the number of commitments to DYS.

⁵ Juveniles committed for a misdemeanor offense could have been before the court and handled without success on multiple prior occasions, for example on a status offender matter, in a diversion proceeding, or for probation revocation.

⁶ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.

⁷ See *Arkansas DYS Statistical Report, FY 2007*, at 9-18, available at: http://www.state.ar.us/dhs/dys/statistical%20report/dys_stat_report.html

⁸ *Id.*

⁹ *Id.*

¹⁰ Ark. Code Ann. § 9-28-203 (b)(5).

¹¹ A study of Arkansas' incarcerated youth found that the experience of incarceration is the most significant factor in increasing the odds of recidivism. Brent B. Benda & Connie L. Tollet, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, J. Crim. Just.. Vol. 27, No. 2, at 111-126 (1999).

¹² Blue Ribbon Commissions in Texas and Florida recently issued reports calling for juvenile justice system reform in those states. See *Getting Smart About Juvenile Justice in Florida: Report of the Blue Print Commission*, Florida Department of Juvenile Justice, (January 2008), available at <http://www.djj.state.fl.us/blueprint/index.html> *Transforming Juvenile Justice in Texas A Framework for Action, Blue Ribbon Task Force Report*, Springer, D.W., Chair. September 2007, available at http://www.utexas.edu/news/2007/09/13/social_work/.

¹³ The concept of positive youth development embraces the belief that all youth can avoid trouble if attached to resources that facilitate healthy development. See Jeffrey Butts, Susan Mayer & Gretchen Ruth Cusick, Chapin Hall Center for Children at the University of Chicago, *Focusing Juvenile Justice on Positive Youth Development*, Oct. 2005.

¹⁴ See Carl Valentine, *Claiming Available Federal Medicaid and Title IV-E Funding* (Spring, 2008), attached to this Report as Appendix C (analyzing the Medicaid and Title IV-E claiming practices of DYS in Arkansas and the potential for increasing these federal revenue sources for juvenile justice involved youth.).

¹⁵ *Id.* at 9-10; See also Patrick Griffin & Gregory Halemba, *Federal Placement Assistance Funding for Delinquency Services, Children, Families, and the Courts ~ Ohio Bulletin*, Vol. 1, No.1 (2003) (discussing savings realized in Ohio to expand the range of options available for juvenile courts to deal with delinquent youth through Title IV-E funding) available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=210006>

¹⁶ Senate Resolution 31 was passed by the 86th General Assembly of the Arkansas Legislature on March 28, 2007, and is available at <http://www.arkleg.state.ar.us/>.

¹⁷ The mission of the Casey Strategic Consulting Initiative (CSCI) is “to provide intensive strategic consulting that facilitates significant, measurable, and enduring human service system transformations.” CSCI teams work to strengthen agency management and operations in child welfare and juvenile justice agencies. See Annie E. Casey Foundation website at <http://www.aecf.org/MajorInitiatives/CaseyStrategicConsulting.aspx>

¹⁸ See H.R. 1593, 110th Cong., at § 3(a)(3)(2008).

¹⁹ With assistance from such organizations as the Public/Private Ventures, partnerships with the business sector to increase alternatives to confinement for youth could be spawned with funding from the Second Chance Act. Public/Private Ventures is a national nonprofit organization

whose mission works with philanthropies, the public and business sectors, and nonprofit organizations to improve the effectiveness of community initiatives, especially as they affect youth and young adults. <http://www.ppv.org/index.asp>

²⁰ Arrest and prosecution practices, use of diversion, pre-trial detention practices, the FINS (status offender) process, and the use of the adult criminal justice system for juveniles are important parts of the entire juvenile justice landscape that need to be reviewed, but all are beyond the scope of this report which focuses solely on youth who have been adjudicated delinquent and committed to DYS.

²¹ A juvenile as young as 14 may be prosecuted as an adult for certain crimes. Arkansas also has a juvenile blended sentencing alternative that allows prosecutors to request that juveniles meeting certain age and crime criteria be subjected to Extended Juvenile Jurisdiction (EJJ) which permits courts to modify juvenile disposition orders under certain conditions and impose adult criminal sentencing.

²² Probation services are administered at the county level. The juvenile division of all county courts must have at least one probation officer and one intake officer, the cost being shared equally between the county and the state. The number of probation and intake staff varies significantly by county throughout the state.

²³ There are for-profit providers offering pre-commitment assessments and then their treatment services for youth facing commitment, but the extent of these for-profit provider services is presently unknown.

²⁴ Carl Valentine recommends that providers should be encouraged to do this to enhance revenue flow for community-based services. See Valentine, *supra* note 14, attached as Appendix C.

²⁵ *Arkansas DYS Statistical Report, FY 2007*, at 9-18, available at http://www.state.ar.us/dhs/dys/statistical%20report/dys_stat_report.html

²⁶ The daily bed rates for these facilities will increase as of July 1, 2008, as follows: Lewisville, \$144; Mansfield, \$139 for the boys' program and \$142 for the girls'; Colt, \$145; Harrisburg, \$143; Alexander, \$227.79; and Dermott, \$129 (until Oct. 2008).

²⁷ *Arkansas DYS Statistical Report, FY 2007*, at 9-18, available at http://www.state.ar.us/dhs/dys/statistical%20report/dys_stat_report.html

²⁸ *Id.*

²⁹ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.

³⁰ *Id.*

³¹ *Id.*

³² Ark. Code Ann. § 9-27-331(f).

³³ This calculation assumes: 1) the same average lapse of time awaiting placement in FY 2008 as in FY 2007, and 2) an average daily bed rate of \$155 (averaging the FY 2008 daily bed rate of all intake placements, i.e., the county detention facilities and Alexander).

³⁴ Ark. Code Ann. § 9-28-210.

³⁵ Skowrya, Kathleen R., and Joseph Coccozza, PhD. "A Blueprint for Change," The National Center for Mental Health and Juvenile Justice. Delmar, NY: Policy Research Associates, Inc., 2007.

³⁶ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Arkansas DYS Annual Report, FY 2007*, at 7, available at http://www.state.ar.us/dhs/dys/Annual%20Reports/dys_annual_reports.html

⁴⁰ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.

⁴¹ See *Arkansas DYS Statistical Report, FY 2007*, at 9-7, available at http://www.state.ar.us/dhs/dys/statistical%20report/dys_stat_report.html

⁴² *DYS Quarterly Performance Reports, FY 2008*, available at: http://www.state.ar.us/dhs/dys/quarterly%20reports/dys_quarterly_reports.html

⁴³ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Arkansas DYS Statistical Report, FY 2007*, at 9-16, available at http://www.state.ar.us/dhs/dys/statistical%20report/dys_stat_report.html

⁵⁴ Data is not available to show how Arkansas' commitment rates currently compare to other states nationally. But experts consulted for purposes of this report agree that the rate of confinement of non-serious, non-violent offenders in Arkansas is high.

⁵⁵ Austin, D., Johnson, K.D., Weitzer, R., *Alternatives to Secure Detention and Confinement of Juvenile Offenders*, September, 2005, Washington, D.C: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, at 5.

⁵⁶ Robert Hoge, *Youth Level of Service/Case Management Inventory*, reprinted in *Mental Health Screening and Assessment in Juvenile Justice*, (Thomas Grisso, et al. eds., 2005).

- ⁵⁷ Steve Aos, Roxanne Lieb, Jim Mayfield, Marna Miller & Annie Pennucci, Washington State Institute for Public Policy, *Benefits and Costs of Prevention and Early Intervention Programs for Youth* (2004) (referencing TeamChild, a youth advocacy program in Washington State), available at <http://www.wsipp.wa.gov/rptfiles/04-07-3901.pdf>
- ⁵⁸ See Carl Valentine, *supra* note 14, attached as Appendix C.
- ⁵⁹ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.
- ⁶⁰ The Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, (Mar. 2005) available at <http://www.advancementproject.org/reports/FINALEOLrep.pdf>
- ⁶¹ *Id.*, at 18-19.
- ⁶² *America's Cradle to Prison Pipeline: A Report of the Children's Defense Fund*, at 62 (2007).
- ⁶³ Juvenile Offenders and Victims: 2006 National Report, at 14. Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice, available at <http://www.ojjdp.ncjrs.org/ojstbb/nr2006/downloads/NR2006.pdf>
- ⁶⁴ Child Welfare League of America, *State Fact Sheet, Arkansas's Children 2008*, available at <http://www.cwla.org/advocacy/statefactsheets/2008/arkansas.htm>
- ⁶⁵ Henry Levin, Clive Belfield, Peter Muennig & Cecilia Rouse, *The Costs and Benefits of An Excellent Education for All of America's Children*, Jan. 2007, at 13-14.
- ⁶⁶ See, OSEP's Technical Assistance Center at <http://www.pbis.org/schoolwide.htm>
- ⁶⁷ Mississippi Youth Justice Project, *Effective Discipline for Student Success: Reducing Student and Teacher Drop-Out Rates in Mississippi*, available at http://www.splcenter.org/images/dynamic/main/effective_discipline.pdf
- ⁶⁸ Information about Project Achieve is available at <http://www.projectachieve.info/outcomeshonors/statewideimplementationarkansas.html>
- ⁶⁹ See e.g., Deborah Fitzgerald Fowler, Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (2007), available at www.texasappleseed.net/pdf/Pipeline%20Report.pdf
- ⁷⁰ *Id.*
- ⁷¹ This is based on data obtained from DYS' RiteTrack system and analyzed for this report. The authors will provide upon request a written explanation of this data analysis.
- ⁷² Cathy S. Widom & Michael G. Maxfield, *An Update on the Cycle of Violence*, National Institute of Justice, U.S. Dept. of Just., at 1 (2001).
- ⁷³ Madelyn Freundlich & Leslee Morris, Youth Involvement in the Child Welfare and Juvenile Justice Systems: A Case of Double Jeopardy? (2004) (Available from the Child Welfare League of America at <http://www.cwla.org/pubs/pubdetails.asp?PUBID=0258>)
- ⁷⁴ Joseph P. Ryan, Denise Herz, Pedro M. Hernandez & Jane Marie Marshall, *Maltreatment and Delinquency: Investigating Child Welfare Bias in Juvenile Justice Processing*, 29(8) Children and Youth Services Review, at 1035 (2007).
- ⁷⁵ Dylan Conger & Timothy Ross, *Project Confirm: An Outcome Evaluation of a Program for Children in the Child Welfare and Juvenile Justice Systems*, Youth Violence and Juvenile Justice: An Interdisciplinary Journal, Vol. 4, No. 1, at 97-115 (2006).
- ⁷⁶ A copy of DYS' compilation of information is available from the authors.
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- ⁷⁸ See John D. and Katherine T. MacArthur, *Models for Change: Systems Reform in Juvenile Justice*, available at <http://www.modelsforchange.net/>
- ⁷⁹ See *On the Right Track to Safer Communities: Steering California's Juvenile Offenders Away from Lives of Crime*, A report from FIGHT CRIME: INVEST IN KIDS California, available at www.fightcrime.org/ca/cajjreport.pdf *Getting Juvenile Justice Right in New York: Proven Interventions Will Cut Crime and Save Money*, FIGHT CRIME: Invest in Kids New York, available at www.fightcrime.org/ny/rep/jjdist.pdf
- ⁸⁰ Christopher T. Lowenkamp & Edward J. Latessa, *Evaluation of Ohio's RECLAIM Funded Programs, Community Correctional Facilities and DYS Facilities: Cost-Benefit Analysis Supplemental Report* (2005) (reassigning moderate risk offenders to community sanctions with strict interventions saves an average of \$28,000 custody costs per youth and produced an average of \$19,000 in reduced crime savings even when proven intensive family therapies like MST, FFT, and MTFC were not used.) available at www.dys.state.oh.us/dysweb/Reclaim/DYSCostBenefit121205.pdf
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- ⁸² Alexander, J., Pugh, C., Parsons, B. & Sexton, T. (2000). "Functional Family Therapy." In D.S. Elliot (Series Ed.). *Blueprints for Violence Prevention: Book Three*. Boulder CO: Center for the Study and Prevention of Violence.
- ⁸³ Arkansas DYS service providers inventoried by service type the range of community based services they provide. While useful, a more rigorous analysis of services offered would help identify gaps in the availability of promising and evidence-based programming statewide.
- ⁸⁴ See Valentine, *supra* note 14, attached as Appendix C.
- ⁸⁵ *Id.*
- ⁸⁶ *Id.*
- ⁸⁷ See, e.g., State of Louisiana Office of Youth Development, *Youth Services Strategic Plan 2006-2011*, available at www.oyd.louisiana.gov/documents/OYDStrategic%20Plan_06-11%20complete.pdf