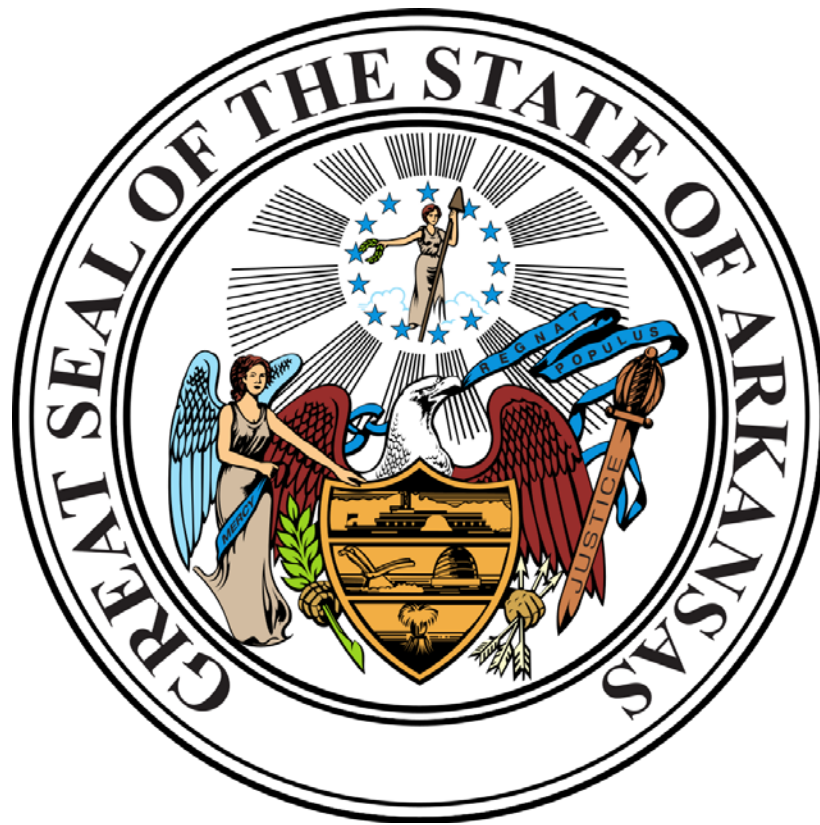


**FINDINGS AND RECOMMENDATIONS
OF THE ARKANSAS DYS
LENGTH OF STAY WORKING GROUP**



FINAL REPORT

February 2019



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Executive Summary

In August 2018, The Honorable Asa Hutchinson, Governor; Cindy Gillespie, Director of the Department of Human Services (DHS); and Betty Guhman, then-Director of the Division of Youth Services (DYS), convened the Arkansas DYS Length of Stay Working Group (Working Group), comprised of representatives from each of their respective offices. These leaders charged the Working Group with completing a review of juvenile justice system policies, practices, and procedures related to youth length of stay in Division of Youth Services custody, and developing evidence-based policy recommendations for administrative action that:

- Protect public safety;
- Effectively hold youth accountable; and
- Reduce the length of stay of juveniles in the Division's custody.

Over a period of five months and with technical assistance from The Pew Charitable Trusts' Public Safety Performance Project (Pew) and The Crime and Justice Institute at Community Resources for Justice (CJI), the Working Group engaged in a review of DYS data, policies, and procedures related to length of stay. The Working Group considered analyses of DYS Custody Case data (RiteTrack) from 2008 through 2017, DYS Annual Statistical Reports, and data from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for national comparison.¹ As part of its policy review, the group conducted meetings and interviews with other DHS and DYS staff, and reviewed state statutes, administrative policies, and regulations. Working Group members also led focus groups with staff and youth at several DYS facilities across the state. Finally, the Working Group reviewed national research on what works best to reduce reoffending and studied effective policies and practices used by other states to meet its charge.²

Areas identified from this review of Arkansas's juvenile justice system as needing attention include:

- Youth in DYS custody stay out of home longer than what research demonstrates works to reduce recidivism;
- Treatment is delayed as youth wait in juvenile detention centers for placement, extending youth stays in custody;
- Case plans are not individualized, not based on assessments, and not meaningfully tied to length of stay; and
- Responses to noncompliance often interrupt treatment and arbitrarily increase length of stay.

Based on its findings, the Working Group developed data-driven, research-based policy recommendations for DYS that will:

- Bring Arkansas' length of stay in line with what research shows works to reduce recidivism;
- Create a consistent and evidence-based case planning process;

¹ Unless otherwise cited, all analyses in this report were conducted by The Pew Charitable Trusts and The Crime and Justice Institute at Community Resources for Justice using data provided by the Arkansas Division of Youth Services.

² In October 2018, the Working Group heard from Dr. Edward Mulvey, a nationally-recognized juvenile justice researcher from the University of Pittsburgh School of Medicine. Dr. Mulvey presented research on best practices in juvenile justice, including information about adolescent brain development and research findings on what works to reduce recidivism.

- Create a structured system of graduated responses for youth in custody to reduce unnecessary treatment interruptions and arbitrary extensions of length of stay;
- Enhance communication, oversight, and accountability; and
- Allow DHS and DYS to increase the availability of evidence-based services for youth in their custody and in the community as an alternative to custody.

If enacted together, these policies are projected to reduce the population in DYS custody while simultaneously promoting public safety.

These policy changes demonstrate an important shift in Arkansas's administration of juvenile justice, and they fit into a broader context of transformation in juvenile justice reform currently being undertaken in Arkansas. They are also grounded in precedent from other systems near and far. States like Mississippi, Utah, Georgia, and Kentucky have made similar shifts and seen corresponding reductions in both length of stay and the overall size of their out-of-home populations. Implementation of those changes has allowed those states to improve their responses to youth in facilities and shift resources to the community to supervise youth who can safely remain in their own homes, all amidst a backdrop of continued declines in juvenile arrests.

The Working Group recommends that this full slate of policies become effective on July 1, 2019.



Key Findings

Across the country juvenile crime has decreased over the past two decades.³ Since 1997, the national violent crime arrest rate has dropped by 62 percent.⁴ Similarly, the juvenile commitment rate has decreased by 61 percent.⁵ Youth facility use has also declined across the country, with states taking the opportunity amidst declining arrests and commitments to rethink whether and how to use facilities.⁶ Kansas, for example, has shifted its facility use dramatically, closing one of its two juvenile correctional facilities and shuttering more than 90 percent of its group home beds since 2016; South Dakota has closed its only secure juvenile facility.⁷

Arkansas, too, has recently made the decision to close two juvenile facilities while continuing to assess its juvenile justice policies and practices.⁸ Like the rest of the country, Arkansas's juvenile crime rate and committed youth population have declined: From 1997 to 2015, juvenile arrests have declined about 60 percent, and have continued to decline in 2016 and 2017.⁹ However, the state's commitment rate remains higher than the nationwide average and higher than most neighboring states.¹⁰ The Arkansas Division of Youth Services does not control the number, risk-level, or needs of youth who enter its custody—the courts have broad latitude to commit nearly any adjudicated youth. Examining commitment data, the Working Group found that in 2017, one third of youth committed to DYS custody by the courts had a misdemeanor as the most serious offense on their commitment order, and most of the top-ten most-serious offenses for committed youth were property offenses. Seventy-five percent of those youth were sent to DYS for the first time; 25 percent had a prior commitment.

³ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrests Statistics Juvenile Arrests, 2016*, by Charles Puzzanchera, National Report Series Bulletin (Washington, DC, 2018), <https://www.ojjdp.gov/pubs/251861.pdf>. A U.S. Department of Justice OJJDP report found that juvenile arrest rates for larceny-theft, burglary, and arson were at their lowest levels since 1980 and the arrest rate for drug law violations in 2016 was at its lowest since the early 1990s. Moreover, arrest rates have declined for both males and females of all racial groups over the past 10 years, though declines have been greater for males and white youth than females or black youth.

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Statistical Briefing Book: Juvenile Arrest Rate Trends," Law Enforcement & Juvenile Crime, Oct. 22, 2018, http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05200. Pew's analysis of the violent crime arrest rates includes murder and nonnegligent homicide, robbery, and aggravated assault.

⁵ Office of Juvenile Justice and Delinquency Prevention, "Census of Juveniles in Residential Placement: 1997-2015," Easy Access to the Census of Juveniles in Residential Placement (EZACJRP), June 1, 2017, <https://www.ojjdp.gov/ojstatbb/ezacjrp>. Pew's analysis includes only youths committed to a facility as part of a court-ordered disposition. The census reference dates for the data analyzed by Pew were Feb. 22, 2006, and Oct. 28, 2015; Oct. 24, 2007, was used only for Nebraska.

⁶ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Juvenile Residential Facility Census Databook" Juvenile Residential Facility Census Databook (JRFCDB), Mar. 27, 2018, <https://www.ojjdp.gov/ojstatbb/jrfcdb>, cited in The Pew Charitable Trusts, "Steep Drop Since 2000 in Number of Facilities Confining Juveniles," Sept. 13, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/09/13/steep-drop-since-2000-in-number-of-facilities-confining-juveniles>.

⁷ The Pew Charitable Trusts, "Steep Drop Since 2000 in Number of Facilities Confining Juveniles," September 13, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/09/13/steep-drop-since-2000-in-number-of-facilities-confining-juveniles>; Council of Juvenile Correctional Administrators, "Toolkit: Facility Closure and Strategic Downsizing of Juvenile Justice Systems" <http://cjca.net/wp-content/uploads/2018/09/Strategic-Downsizing-Toolkit-FINAL.pdf>.

⁸ Arkansas Department of Human Services, "Governor Hutchinson Announces DHS Making Changes to Juvenile Justice System to Focus on Youth's Treatment, Return Home," Nov. 16, 2018, <https://humanservices.arkansas.gov/newsroom/details/governor-hutchinson-announces-dhs-making-changes-to-juvenile-justice-system-to-focus-on-youths-treatment-return-home>.

⁹ ACIC Statistical Analysis Center, "Crime Statistics," Arkansas Crime Information Center, accessed Jan. 3, 2019, <https://www.acic.org/crime-statistics>. Juvenile arrests declined from 21,693 in 1997 to 8,754 in 2015, and continued to decline in 2016 and 2017 with 8,619 and 8,208 arrests, respectively.

¹⁰ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Juvenile residential placement rates by State, 2015," Juveniles in Corrections, June 1, 2017, <https://www.ojjdp.gov/ojstatbb/corrections/qa08601.asp?qaDate=2015&text=no&maplink=link3>.

Two variables impact the overall size of the youth population in juvenile facilities: how many youth come in the front door and how long each of those youth stay. DYS cannot control whether the court commits a youth to its custody, but it does have discretion to control most factors related to length of stay, including whether and when to place committed youth in out-of-home settings or at home with services, and when to discharge youth.¹¹

To better understand trends associated with DYS' committed population, the Working Group analyzed length of stay data and examined how DYS decision-making may impact length of stay and the overall size of the committed population, both in facilities operated by DYS and in those operated by contracted providers. Moreover, the Working Group reviewed national, peer-reviewed research showing that out-of-home placement, including placement in both secure¹² and non-secure residential settings,¹³ generally fails to reduce recidivism, while placement at home with services and supervision leads to better recidivism outcomes, particularly for low- and moderate-risk youth.¹⁴ This undertaking led to the following set of key findings:

Youth stay out of home longer than what research shows works to reduce recidivism

Almost all youth stay longer than six months; nearly half stay longer than a year

The Working Group reviewed research showing that even for those youth who commit the most serious felonies, there is no consistent evidence linking longer lengths of stay (more than three to six months) in out-of-home placements to reduced recidivism.¹⁵ In some cases, longer placement lengths are associated with a small *increase* in recidivism.¹⁶

DYS controls length of stay for nearly all committed youth; however, DYS has not aligned length of stay for youth in its custody with the prevailing research.¹⁷ Analysis of the Division of Youth Services' length of stay data showed that, in practice, while the average length of stay has declined over the past decade, committed youth are currently placed out of home for ten months on average, beyond the length of time research says works to reduce recidivism for even the most-serious felony cases.

The Working Group found that 91 percent of committed youth are placed out of home for longer than six months and nearly half of committed youth spend longer than a year in out-of-home placement (Figure 1).¹⁸

¹¹ Arkansas Code Ann. § 9-28-209 (1995); Arkansas Code Ann. § 9-28-204 (1995).

¹² Thomas A. Loughran, Edward P. Mulvey, Carol A. Schubert, Jeffrey Fagan, Alex R. Piquero, and Sandra H. Losoya, "Estimating a Dose-Response Relationship between Length of Stay and Future Recidivism in Serious Juvenile Offenders," *Criminology* 47, no. 3 (2009): 669-740, <https://doi.org/10.1111/j.1745-9125.2009.00165.x>.

¹³ Joseph P. Ryan, Laura S. Abrams, Hui Huang, "First-Time Violent Juvenile Offenders: Probation, Placement and Recidivism," *Social Work Research* 38, no. 1 (Mar. 2014): 7-18, <http://psycnet.apa.org/doi/10.1093/swr/svu004>.

¹⁴ Edward J. Latessa, Brian Lovins, and Jennifer Lux, "Evaluation of Ohio's RECLAIM Programs, University of Cincinnati Center for Criminal Justice Research (April 2014): 1-66, [https://www.uc.edu/content/dam/uc/ccjr/docs/reports/FINAL%20Evaluation%20of%20OHs%20RECLAIM%20Programs%20\(4-30-2014\)%20.pdf](https://www.uc.edu/content/dam/uc/ccjr/docs/reports/FINAL%20Evaluation%20of%20OHs%20RECLAIM%20Programs%20(4-30-2014)%20.pdf).

¹⁵ Loughran, "Estimating a Dose-Response," 669-740.

¹⁶ Paula Smith, Claire Gogin, and Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," Public Works and Government Services Canada, (2002), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/fcts-prsn-sntnacs/index-en.aspx>.

¹⁷ Arkansas Code Ann. § 9-27-509 (1999). DYS controls length of stay for all youth except Extended Jurisdiction Juvenile youth. DYS controls length of stay for all youth except Extended Jurisdiction Juvenile youth.

¹⁸ The length of out-of-home placement used in these figures is calculated from the date of the commitment order, and may include time spent in a JDC prior to or during intake, as well as time spent in both secure and non-secure residential placements.

Length of Out-of-Home Placement, Grouped, 2016

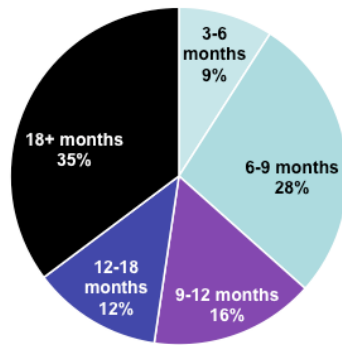


Figure 1. DYS Data Analysis, Length of Out-of-Home Placement

The Working Group additionally examined whether certain types of more serious cases might be driving the longer lengths of stay. DYS does not control release of extended jurisdiction juvenile (EJJ) youth—only the court can authorize release for those youth. The data showed, however, that EJJ youth represented only five percent of youth staying out of home for longer than one year. Notably, more than one third of youth staying longer than a year had a misdemeanor as the most serious offense on the commitment order.

Indeed, data showed that youth had similar average lengths of stay regardless of whether they were committed for misdemeanor or felony charges. And, over the past decade, the average length of stay for youth committed on felonies decreased more than the average length of stay for youth with misdemeanors (Figure 2).

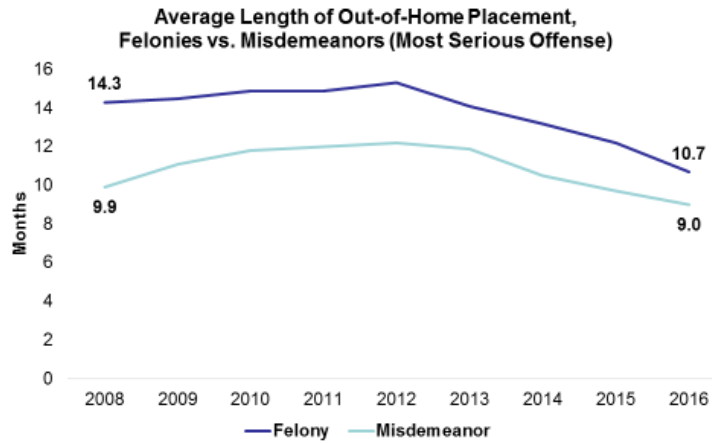


Figure 2. DYS Data Analysis, Average Length of Out-of-Home Placement by Most Serious Offense

When looking closely at existing length of stay policies, the Working Group found that factors guiding length of stay determinations lack clear definition and may not be interpreted consistently. Initial length of stay ranges are set using a matrix, which uses several factors to determine the low and high end of a youth’s assigned length of stay range. DYS policies, however, do not provide staff with clarity about how to apply the individual components of this matrix to ensure consistent application across youth. For instance, policy dictates that staff may mitigate a youth’s initial length of stay if they determine that the

act leading to commitment was less serious than most similarly classified offenses. There is, however, no clear standard guiding that comparison nor how much an affirmative finding reduces that initial length of stay calculation. While research shows that procedural fairness, perceived or real, promotes positive outcomes for youth, the Working Group found no apparent basis in policy for the length of stay patterns demonstrated by the data.¹⁹

Treatment is delayed as youth wait in juvenile detention centers for placement, extending youth stays in custody

The average length of time committed youth spend in secure detention before entering their first non-detention placement has tripled since 2008

DYS is required to conduct an observation and assessment process for youth committed to its custody. The Division has the discretion to determine the appropriate location and duration of those processes,²⁰ as well as how the assessments are used.

Upon commitment, the Division nearly always elects to place youth into juvenile detention centers (JDCs) as they await placement, transporting them to a DYS facility to undergo the actual assessment process and sometimes returning them to JDCs after assessment but before permanent placement. No clear parameters limit the length of the assessment process, and data show that the average length of time a committed youth spends in detention pre-placement has tripled since 2008 (Figure 3). While confined at these detention centers, youth neither work on their case plans nor receive treatment.

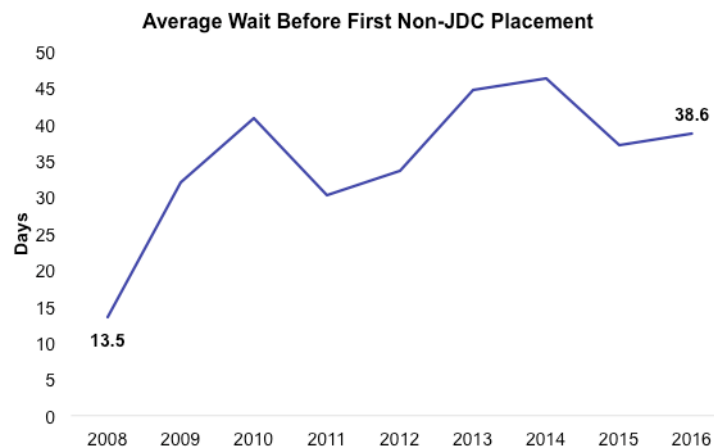


Figure 3. DYS Data Analysis, Average Wait in JDC Pre-Placement

The few youth who go directly to a DYS facility, bypassing the JDC, spend on average one month less out of home than youth who are placed into a JDC during the assessment process (Figure 4).

¹⁹ Carol A. Schubert and Edward P. Mulvey, "Perceptions and Outcomes in Adolescent Confinement," *MacArthur Foundation*, (2013): 1-5, <https://www.pathwaysstudy.pitt.edu/documents/RPD%20Residential%20Confinement%20Knowledge%20Brief.pdf>.

²⁰ Arkansas Code Ann. § 9-28-209 (1995).

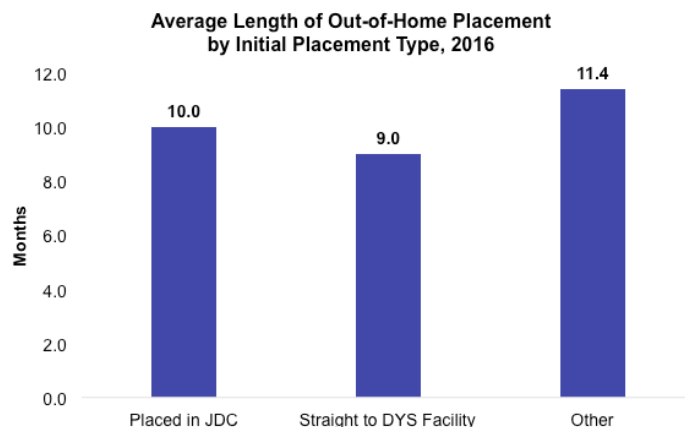


Figure 4. DYS Data Analysis, Average Length of Out-of-Home Placement by Initial Placement Type

Youth case plans are not individualized, not based on assessments, and not meaningfully tied to length of stay

The average length of stay generally exceeds even the high end of the initially-assigned length of stay range

When youth are committed to its custody, DYS conducts assessments as part of an observation and assessment process.²¹ While these assessments are supposed to guide case planning, placement, and length of stay decisions, stakeholders report that DYS often makes key case-planning decisions (such as setting treatment goals and determining the appropriate placement) before assessments are completed.

Research shows that appropriately matching supervision and treatment to a youth’s risk level and criminogenic needs (that is, needs related to the likelihood of reoffending) is associated with a lower likelihood of future delinquent or criminal behavior.²² Programs that match services to the needs most-closely correlated with reoffending are more effective at reducing recidivism.²³ The Working Group found, however, that there is no requirement in policy that youth case plans or goals correlate closely with criminogenic needs.

Moreover, the Division does not require its staff to connect the length of stay range in a youth’s case plan set by the length of stay matrix to the time DYS needs to help a youth work toward completion of case plan goals while in DYS custody. Similarly, DYS does not obligate its staff to enforce the assigned length of stay in its own facilities or among contracted providers. When reviewing data comparing the length of stay set by DYS in youth’s initial case plans to their actual lengths of stay, the Working Group found that youth generally exceed that planned length of stay range. Instead of leaving placement during the course of that range, youth stay in DYS custody 28 percent longer than the higher end of the length of stay range set out in their case plans (Figure 5).

²¹ Arkansas Code Ann. § 9-28-209 (1995).

²² Tracy A. Vieira, Tracey A. Skilling, and Michelle Peterson-Badali, “Matching Court-Ordered Services with Treatment Needs.” *Criminal Justice and Behavior* 36, no. 4 (Apr. 2009): 385–401, <https://doi.org/10.1177%2F0093854808331249>.

²³ Christopher Lowenkamp, Edward J. Latessa, and Alexander M. Holsinger, “The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Correctional Programs?” *Crime & Delinquency* 52, no. 1 (Jan. 2006): 77–93, <https://doi.org/10.1177%2F001128705281747>.

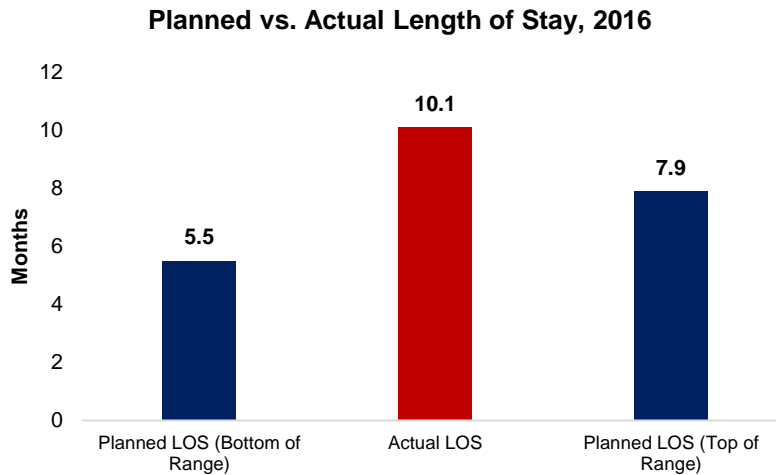


Figure 5. *DYS Data Analysis, Planned Length of Stay Range Calculations Compared to Actual Length of Stay*²⁴

Reviewing another factor related to length of stay, stakeholders reported a lack of clarity surrounding the relationship between release determinations and goal completion, a key criterion for release. DYS policy does not clearly define successful goal completion or detail how staff are expected to support youths’ successful goal completion. There is no clear timeline guiding release planning and, once goals are met, there is no clear timeline guiding a youth’s release. Indeed, several youth in DYS placements reported through focus groups that they did not understand the criteria or timeline for release.

In general, the Working Group found a lack of clear criteria guiding release decision-making, which posed a particular challenge for youth dually involved with the Division of Children and Family Services (DCFS). While about six percent of the youth entering DYS custody are currently or recently involved with DCFS, the data show that dually-involved youth stayed on average three months longer than DYS youth who are not DCFS-Involved (Figure 6).

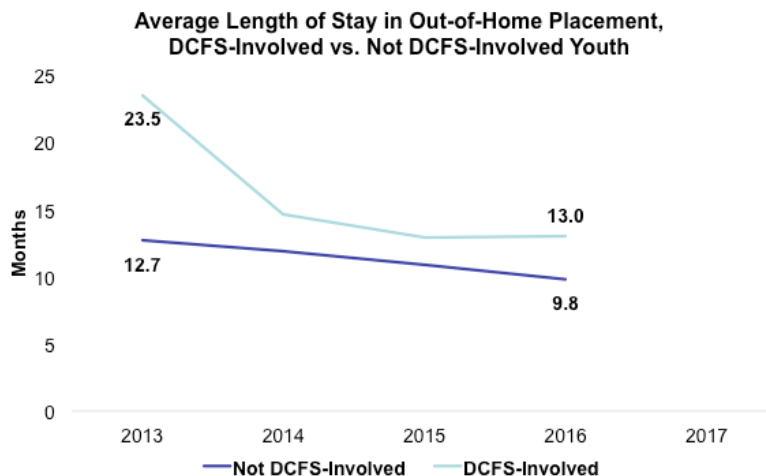


Figure 6. *DYS Data Analysis, Average Length of Stay in Out-of-Home Placement for DCFS-Involved Youth*

²⁴ The “initial LOS (Low)” refers to the lower bound of a youth’s initially-assigned length of stay range as set by the length of stay matrix. Similarly, the “initial LOS (High)” refers to the upper bound of a youth’s initially-assigned length of stay range as set by the matrix. The Actual LOS refers to the actual duration of time a youth spends in DYS custody.

Responses to noncompliance often interrupt treatment and arbitrarily extend length of stay

DYS has broad discretion to “disrupt,” place in “time out,” or extend a youth’s stay based on noncompliance

There is no strong evidence that out-of-home placement or longer stays in placement work as a deterrent to reduce reoffending.²⁵ Research consistently shows that a youth’s perception of the certainty, rather than the severity, of their punishment has the greatest effect on deterring future delinquency. In other words, the use of placement or an extended sentence does not deter youth as much as the certainty about what a sanction will be for their misbehavior.²⁶ Moreover, youth respond better to positive reinforcement and interventions than sanctions.²⁷

Accordingly, structure, and particularly a structured behavioral management system with a range of incentives and sanctions, can greatly increase the likelihood of youth compliance.²⁸

DYS does not currently have a structured behavioral management system with a clear array of incentives and sanctions. Instead, DYS staff and contracted programs have broad discretion to respond to youth noncompliance in the following ways:

- Placing youth in a “time out” (temporarily holding a youth in a JDC or other secure place of confinement away from the youth’s placement). Data show that one in five committed youth experiences at least one “time out”;
- “Disrupting” youth (removing them from their placement and holding them in detention until a new placement is found). Data show that one in fourteen committed youth experiences at least one “disruption”; and
- Extending a youth’s length of stay. While extensions for noncompliance are rarely formally documented, stakeholders report that extensions are routine.

Youth generally stay in DYS custody longer than their initially-assigned lengths of stay, and data show that some of that delay is due to these types of responses to noncompliance. The data show that when DYS elects to use a “time out” in response to youth behavior, treatment is disrupted for an average of two weeks. Youth who are sent to “time out” stay on average three months longer overall than youth without “time outs” (Figure 7).

²⁵ Loughran, “Estimating a Dose-Response,” 669-740.

²⁶ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Studying Deterrence Among High-Risk Adolescents*, by Thomas A. Loughran, Robert Brame, Jeffrey Fagan, Alex R. Piquero, Edward P. Mulvey, and Carol A. Schubert, OJJDP Research Bulletin: Pathways to Desistance Study (Washington, D.C., 2015), <http://www.ojjdp.gov/pubs/248617.pdf>.

²⁷ Elizabeth Cauffman and Laurence Steinberg, “Emerging Findings from Research on Adolescent Development and Juvenile Justice,” *Victims & Offenders* 7, no. 4 (2015): 428-449; Ivy N. Defoe, Judith Semon Dubas, Bernd Finger, and Marcel A. G. van Aken, “A Meta-Analysis on Age Differences in Risky Decision Making: Adolescents Versus Children and Adults,” *Psychological Bulletin* 141, no. 1 (Jan. 2015): 48-84, <https://doi.org/10.1037/a0038088>.

²⁸ Naomi E.S. Goldstein, Amanda NeMoyer, Elizabeth Gale-Bentz, Marsha Levick, and Jessica Feierman, “You’re on the Right Track: Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths’ Capacities to Successfully Complete Probation,” *Temple Law Review* 88, no. 4 (Summer 2016): 803-836, <http://www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf>.

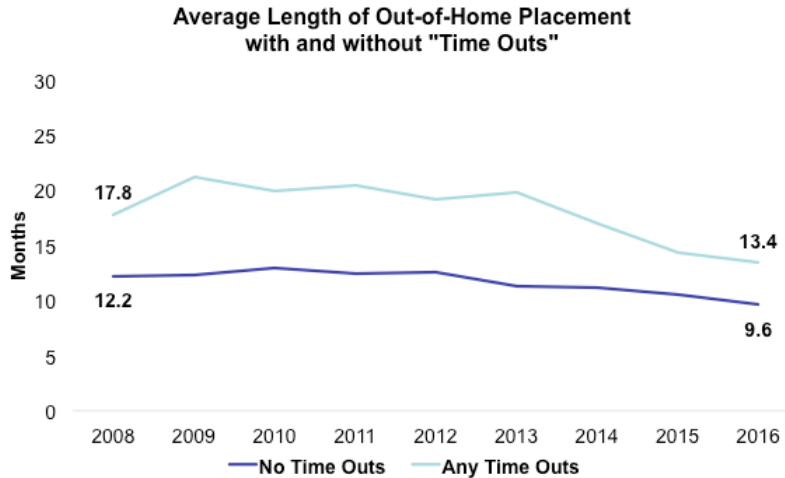


Figure 7. DYS Data Analysis, Average Length of Out-of-Home Placement for Youth with and without "Time Outs"

"Disruptions," when employed, generally leave youth in detention without treatment for about six weeks. The data reveal that youth with one or more disruptions stay five months longer overall on average than youth without disruptions. Among youth whose most serious offense is a felony, those with disruptions stay four months longer than those without; for youth whose most serious offense is a misdemeanor, those with disruptions stay six months longer (Figure 8).

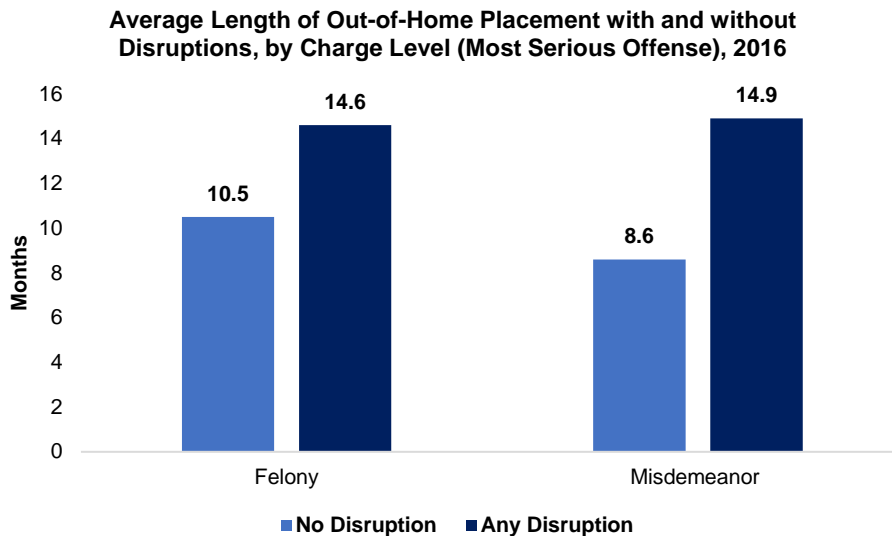


Figure 8. DYS Data Analysis, Average Length of Out-of-Home Placement for Youth with and without Disruptions

As youth shift among placements, stakeholders report that youths' length of stay often extends because youth must reinitiate treatment and progress toward goal completion as they adapt to a new facility. Youths' progress does not follow them from facility to facility: when they start over, their stays likely extend.

Overall, the data show that youth generally experience five different placements per commitment. The data show that youth committed for misdemeanors experience a similar number of placements as youth

committed for felonies. While not all movements among placements result from responses to noncompliance, the Working Group found that these responses do drive some of that movement. Additionally, for those youth that cycle through many placements, the data show that a greater number of placements is associated with longer lengths of stay overall (Figure 9).

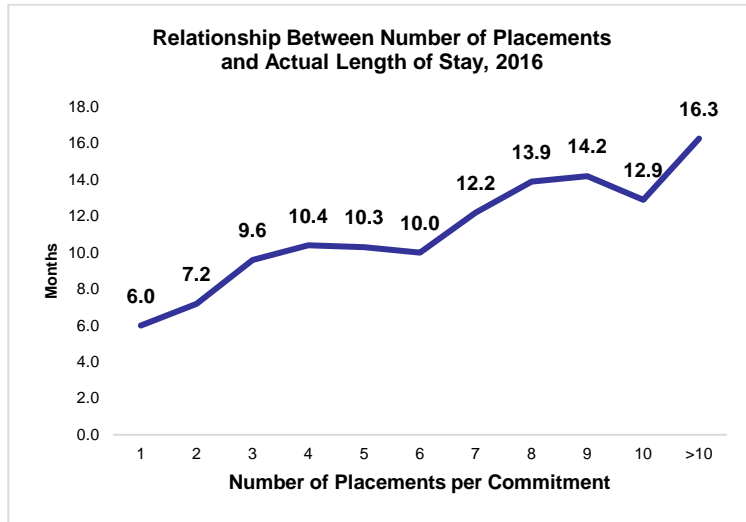


Figure 9. *DYS Data Analysis, Relationship Between Number of Placements and Actual Length of Stay for Youth*

DYS controls most factors related to length of stay, including number of placements and responses to noncompliance; however, effective length of stay administration depends on DHS’s ability to set clear policy and enforce that policy, both among its own staff and the providers who are contracted to run placements and provide services on DHS’s behalf. For this reason, and because DHS is currently in the process of transitioning operation of its facilities back to privately run providers, the Working Group made recommendations for updated DHS policies that will be applicable across DHS and its contracted providers.



Policy Recommendations

Bring length of stay in line with what research shows works to reduce recidivism

1. DYS will limit youths' overall length of stay (LOS) out of home and hold staff and providers accountable for complying with those limits:
 - a. Overall LOS will be limited to three months (13 weeks) for youth assessed as low risk through a validated risk assessment.
 - b. Overall LOS will be limited to six months (26 weeks) for youth assessed as moderate risk or high risk through a validated risk assessment.
 - c. Regardless of a youth's assessed risk level, overall LOS will not be limited for EJJ youth and youth who are committed for serious violent felony offenses who DYS determines pose an imminent risk of harm to others.²⁹
 - d. DYS will not place youth in JDCs before or during intake.
2. As part of the case planning process, DYS will set a projected length of stay at intake for all youth as follows:
 - a. For youth who are recommitted to DYS on a violation of aftercare or probation that does not constitute a new crime, up to three weeks;
 - b. For other youth (except EJJ youth and those who are committed for serious violent felony offenses who are determined to pose an imminent risk of harm to others), the projected length of stay at intake will be:
 - i. Up to 30 days if a youth is assessed as low risk through a validated risk assessment; or if a youth is assessed as moderate risk through a validated risk assessment and the most serious committing offense is a misdemeanor;
 - ii. Up to 90 days if a youth is assessed as moderate risk through a validated risk assessment and the most serious committing offense is a felony; or if a youth is assessed as high risk through a validated risk assessment and the most serious committing offense is a misdemeanor;
 - iii. Up to 180 days if a youth is assessed as high risk through a validated risk assessment and the most serious committing offense is a felony;
 - iv. Extensions to the projected length of stay may not exceed the overall length of stay limit described in part 1.
 - c. DYS will assign EJJ youth and youth committed for serious violent felony offenses who DYS determines pose an imminent risk of harm to others a provisional length of stay consistent with the overall LOS applicable to other youth and use this as a guide for release planning or release recommendations to the court as applicable.
3. DYS will monitor for racial and ethnic disparities in LOS on a regular basis including tracking length of stay per commitment by race and ethnicity.
4. Where possible, DYS will shift away from congregate care and move toward serving a youth in his/her family home or in a family setting, and, if not possible due to individual youth's circumstances:

²⁹ See Appendix A for a list of offenses that the Working Group determined might be identified as "serious violent felony offenses."

- a. Enhance the use of kinship placements.
 - b. Work in conjunction with DCFS to find beds for hard-to-place youth.
- 5. Treat projected length of stay as the time period DYS and its providers have to deliver services to a youth.

Establish a uniform case planning process that leads to individualized and enforceable plans that maximize the benefit of youth's time in custody

- 6. Ensure that each youth undergoes a needs assessment at intake and then proceeds straight to treatment.
- 7. Use assessed risk to determine placement and use identified needs to determine treatment.
 - a. When provided by the courts, the DYS assessment of risk-level will be based on the validated risk assessment conducted by the judiciary.
- 8. Ensure that youth and staff (case managers and facility staff) are given the tools necessary to develop appropriate goals and move youth through a program.
- 9. Ensure that each youth has an individualized case plan that he/she understands and signs in person. The case plan will include:
 - a. Goals consistent with assessed criminogenic needs;
 - b. A program appropriately targeted to youth's assessed risk level, criminogenic needs, and responsivity factors;
- 10. For treatment during stays in custody, DYS will prioritize treatment of assessed needs that must be worked on in a residential setting over needs that can be effectively treated in a non-residential setting (as part of aftercare or otherwise).
- 11. Ensure that staff and providers follow case plans.
 - a. Providers will move away from standard programs and adapt treatment to individual youth.
 - b. Providers have the duty to treat youth and will be held accountable for service delivery.
- 12. Treatment will be monitored by DHS and DYS to ensure it is delivered with fidelity to appropriate youth.
- 13. The Division will cap length of aftercare at three months and make sure that aftercare focuses on the provision of services and connection to resources rather than surveillance.
 - a. A youth may continue to receive or be connected to services after the three-month cap on aftercare but will not be supervised by DYS.
 - b. The three-month cap on aftercare supervision does not apply to youth who are committed for serious violent offenses who pose an imminent risk of harm to others or to EJJ youth.

Establish a consistent and fair system of graduated sanctions and incentives to enhance compliance

- 14. The Division will establish a written system of graduated responses, including both incentives and sanctions, that includes:
 - a. An "array" of possible incentives and sanctions. DYS will:
 - i. Eliminate the use of extensions of LOS as a sanction; and
 - ii. Use earned discharge as one possible incentive.
 - b. The graduated response system will be clearly explained to youth and incorporated into their case plans.
 - c. All staff who interact with youth will be trained on the system of graduated responses, including the appropriate ratio of incentives to sanctions.
- 15. DYS will create a uniform policy on "time outs" to be used by all programs. The policy should limit the use of "time outs" to extraordinary circumstances and include the following:
 - a. Use of short "cooling off" periods instead of "time outs";

- b. Require that “time outs” take place in the facility, unless very specific criteria are met (e.g., serious assault resulting in injury requiring outside medical treatment);
 - c. Publish data on “time outs” by facility; and
16. The Division will limit length of stay extensions.
- a. LOS may not be extended beyond the LOS cap.
 - b. LOS calculated at intake may only be extended up to the LOS limit to complete treatment that *must* be completed in a facility and is based on an assessed criminogenic need.
 - i. A due process hearing will be required if DYS or one of its providers seeks to extend LOS.
 - c. There will be no extensions of calculated LOS for behavior manifestations of psychological issues.
17. DYS will not seek to extend two-year commitment orders.

Improve training and communication to support staff and optimize the impact of new policies

18. The DYS central office will enhance communication with facility staff and providers to transmit understanding of why and how policies should be implemented.
19. The Division will improve trainings for staff so that they are able to execute policies effectively and consistently.
20. DYS will improve communication with DCFS to enhance release of DCFS-involved youth from its custody.
- a. Update inter-divisional agreement between DCFS and DYS.
 - i. Make sure DCFS’ timeline for placement of discharged DYS youth is clear.
21. The Division will request specific information from courts related to the basis for the commitment of youth (e.g., violation, new offense, etc.).
22. DYS will clearly communicate rationale for policies with youth, courts, families, providers, and other stakeholders.
23. DYS will ensure all staff and contractors are trained on graduated responses.

Narrowly tailor provider’s authority to reject and eject youth from facilities and programming to increase accountability

24. The Division will adopt the Kansas model of “no eject, no reject” as a policy for all providers.
- a. Youth may not be ejected from a facility except in response to intentional battery requiring outside medical care.
 - i. “Intentional battery” will be specifically defined.
 - b. Incorporate “no reject” language into contracts.
 - i. Programs may not reject a placement unless: (1) the provider is at capacity, (2) a victim of the placed youth is currently at the facility (either staff or resident), or (3) the placed youth was previously ejected from the program under this policy and the victim is still placed/employed.

Expand evidence-based services in non-residential settings, where youth are most effectively served

25. DHS and DYS will prioritize non-residential treatment statewide.
- a. Create eligibility criteria based on research so that programs effectively target the appropriate youth.
 - b. Enforce eligibility for enrollment.
 - c. Continue to utilize appropriate non-residential services as a placement option after assessment.
26. The Division will ensure that youth with disabilities are appropriately connected to services/SSI.

Note: Context from around the country

While specific to the needs of Arkansas's committed population, these policy recommendations are grounded in lessons learned from other states. For example:

- Mississippi and Utah adjusted their policies to bring length of stay in line with what research says works to reduce recidivism:
 - Utah releases nearly all youth within 3 to 6 months of commitment;³⁰ and
 - Length of stay guidelines for youth in Mississippi range from two weeks for some youth to a maximum of 33 weeks.³¹
- By using structured and standardized behavior incentive systems³² including early release,³³ Texas and Mississippi have been able to limit length of stay extensions, facility removal, and isolation in response to noncompliance.³⁴

Through legislation, administrative policy changes, and revised contracts with private providers, these states, and others like Kentucky, Kansas, and Georgia, have shifted practice and seen a reduced flow of youth into facilities along with declines in length of stay. Those reductions have allowed states to reinvest funds previously spent on placement into more effective responses for youth in facilities and enhanced programming for those youth being supervised while living at home.

³⁰ Utah H.B. 239 (2017), <https://le.utah.gov/~2017/bills/static/HB0239.html>.

³¹ Mississippi Department of Human Services, Division of Youth Services, Oakley Youth Development Center, "DYS Policy XIII-15 Length of Stay," *Mississippi Department of Human Services* (Dec. 2014), http://www.mdhs.ms.gov/wp-content/uploads/2018/01/XIII_15_Length_of_Stay.pdf.

³² Texas Juvenile Justice Department, "Subchapter E. Behavior Management and Youth Discipline, Division 1: Behavior Management," in *General Administrative Policy Manual* (Houston: Texas Juvenile Justice Department, 2015), <http://www.tjjd.texas.gov/policies/gap/default.aspx#behavior>.

³³ Mississippi Department of Human Services, Division of Youth Services, Oakley Youth Development Center, "DYS Policy XIII-15 Length of Stay," *Mississippi Department of Human Services* (Dec. 2014), http://www.mdhs.ms.gov/wp-content/uploads/2018/01/XIII_15_Length_of_Stay.pdf; Mississippi Department of Human Services, Division of Youth Services, "DYS Policy XIII – Institutional Services," <http://www.mdhs.ms.gov/section-13-institutional-services/>.

³⁴ Mississippi Department of Human Services, Division of Youth Services, "Policy VIII-15 Length of Stay – Attachment D Extension of Stay," *Mississippi Department of Human Services* (Dec. 2014), http://www.mdhs.ms.gov/wp-content/uploads/2018/01/XIII_15D_Extension_of_Stay.pdf.



Conclusion

The Arkansas DYS Length of Stay Working Group fulfilled its charge from state leadership in conducting an exhaustive assessment of DYS' policies and procedures related to length of stay and developing research-based and data-driven administrative policies and regulations to protect public safety and reduce the residential population of the juvenile justice system. The process was driven by data, and informed by national research and input from a variety of stakeholders across Arkansas's juvenile justice system. The Working Group looks forward to continuing with the implementation of these recommendations.



Appendix A

List of “Serious Violent Charges” That Appear in Data Over Past Ten Years³⁵ and Are Excluded from Length of Stay Limits³⁶

- Aggravated Assault of an Employee in a Correctional Facility
- Aggravated Assault
- Aggravated Assault on Family or Household Member
- Aggravated Robbery
- Attempted Aggravated Robbery
- Attempted Capital Murder
- Battering, Domestic - 1st Degree
- Battering, Domestic - 2nd Degree
- Battery - 1st Degree
- Battery - 2nd Degree
- Carnal Abuse - 1st Degree
- Death Threat - School Employee or Student
- Endangering Welfare of Minor - 1st Degree
- Engaging in Violent Criminal Group Activity
- Failure to Stop After Accident with Injury/Death
- False Imprisonment - 1st Degree
- Felony with a Firearm
- Intimidating a Juror, Witness or Informant
- Kidnapping
- Manslaughter
- Murder - 1st Degree
- Murder - 2nd Degree
- Possession-Use of a Weapon by an Incarcerated Person
- Rape
- Robbery
- Sexual Assault - 1st Degree
- Sexual Assault - 2nd Degree
- Stalking - 2nd Degree
- Terroristic Act
- Terroristic Threatening - 1st Degree
- Unlawful Discharge Firearm Vehicle - 2nd Degree

³⁵ This list represents only those “serious violent charges” that appeared in the DYS commitment data over the past decade. Other offenses not listed would likely meet the “exclusion” criteria developed by the Working Group and youth charged with offenses not listed here could be exempted from the limits on length of stay were they to be committed to DYS custody. The Working Group used the following criteria to generate this list from existing data: “youth who are committed for serious violent felony offenses who pose an imminent risk of harm to others.”

³⁶ EJJ offenses are also excluded from policies that limit length of stay. For a full list of EJJ offenses, see Arkansas Code Ann. § 9-27-318 (2003).