

IMPROVING JUVENILE JUSTICE IN WEST VIRGINIA

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**American Friends
Service Committee**

Introduction to West Virginia's Juvenile Justice System

West Virginia communities and families will benefit if the only young people who are confined or detained in out-of-home facilities are those who constitute a threat to the public or themselves.

While there has been progress toward this goal in recent years, much remains to be done. Adjusting policies could have a major positive impact on juveniles, their families and communities—and the state's taxpayers.

West Virginia's juvenile justice system can be a confusing maze even to those who know it well. Data is often difficult or impossible to obtain.

This report provides an overview of West Virginia's juvenile justice system, including historical

IN 2013 ONLY 1 OF EVERY 8
committed youth in West Virginia was
locked up based on a Violent Crime
Index offense (homicide, aggravated
assault, robbery or sexual assault)



62% are committed for
non-violent offenses

background, recent reforms, and recommendations for improvements. It also suggests that looking at the system through a mental health lens could lead to more constructive solutions and positive outcomes for the state's youth offenders.

Entering the System

Every year in West Virginia, around 4,000 juveniles will appear before a judge.

They may wind up in court because of delinquency, a behavior considered a crime by a person of any age. Or they may be there because of a status offense, behavior only forbidden to minors, including skipping school, running away from home, violating curfews or

possessing tobacco products and/or alcohol.

It is often unclear what issues may underlie the problem behavior, such as family conflicts, substance abuse and/or undiagnosed and untreated mental health issues.

Pending the judge's decision, several possible outcomes can follow for the juvenile in question. He or she may be:

- given an improvement period in which to address problem behaviors so that the case can be dismissed;

- given probation, a form of community supervision, which may include reporting to a juvenile probation officer, participating in community-based programs, drug testing and/or paying restitution;
- referred to a special court, such as a teen or juvenile drug court; or
- committed to some form of out-of-home placement, ranging from treatment facilities, secure and non-secure facilities under the supervision of the West Virginia Department of Health and Human Resources to the custody of the Division of Juvenile Services.

The outcome of this contact with the juvenile justice system - an often confusing mix of public agencies, private organizations, and diverse individuals - can have a lasting impact on the lives of the young people affected, their families, and communities.

Impacts of the System

A simple way to understand the impact of the juvenile justice system, and especially out-of-home placement, is to consider how it can affect the ordinary life course of individuals.

In today's world, becoming an adult often means moving from school to work, then often to marriage or a long-term relationship, making a home, and possibility becoming a parent or guardian.

As sociologist Bruce Western notes, "Today, arriving at adult status involves moving from school to work, then to marriage, to establishing a home and becoming apparent. Completing this sequence without delay promotes stable employment, marriage, and other positive life outcomes. The process of becoming an adult thus influences success in fulfilling adult roles and responsibilities." (1)

Incarceration or other forms of detainment early in life are a major disruption in the ordinary life course which can have ripple effects far into the future. Studies of adult offenders, many of whose problems began as juveniles, found that former prisoners earn less than their peers who have not been confined. They are more likely to be unemployed or sporadically employed in jobs that lack a path for advancement. The stigma associated with incarceration may block access to careers or public benefits.

Incarceration has a strong impact on family life. Western concludes, "Imprisonment has also inhibited the formation of stable two-parent families in the low-income urban neighborhoods from which most of the penal population is drawn. Stable families provided the poor with a valuable means of improving welfare. Families pool resources, socialize and supervise children, and provide networks of mutual aid." (2)

Once a young person is detained, he or she is at risk of being drawn more deeply into the juvenile and criminal justice system.

The Costs and Paths of the System

The Justice Policy Institute is a Washington-based think tank that, "changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities." (3) In a report titled *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Secure Facilities*, the Institute lays out key findings. These include:

**DJS Correctional Facilities
Cost 4 Times as Much as
Community-Based Services:**



- **More likelihood of recidivism.** Incarceration may have the unintended consequence of increasing future criminal behavior. One study found that “prior incarceration was a greater predictor of recidivism than carrying a weapon, gang membership, or poor parental relationship.” (4)

Confinement by nature forces a close living relationship with others who have had delinquency issues. For this reason, prisons have often been referred to as “finishing schools for crime.”

- **Other alternatives are more effective.** Several studies have suggested that community-based programs are more successful at reducing recidivism. In San Francisco, for example, participants in a Detention Diversion Advocacy Program had about half the recidivism rate of those who were detained. (5)

By contrast, the Juvenile Justice Information Exchange reports that incarcerated youth face a higher risk of physical, emotional, and sexual victimization, suicide, disruptions to their mental and physical development, disruptions to their education, and negative impacts on employment and future economic success. (6)

- **Many young people “age out” of delinquency on their own, a process known as desistance.** According to the U.S. Office of Juvenile Justice and Delinquency Prevention, “most youth who commit felonies greatly reduce their offending over time, regardless of the intervention.” Further, their research found that confinement did not reduce recidivism while community-based programs were more effective. (7) Confinement can disrupt this aging out process and reinforce negative behaviors.
- **The missing piece: mental health.** According to the Justice Policy Institute, “of all the various health needs that detention administrators identify among the youth they see, unmet mental and behavioral health needs rise to the top.”(8) According to Thomas Grisso, author of *Double Jeopardy: Adolescent Offenders With Mental Disorders*, “an estimated two-thirds of youths in juvenile justice custody meet the criteria for one or more mental disorders—two to three times the rate found in the community at large.”(9)

Mental health issues—such as depression, bullying, substance abuse, family problems, etc.—can lead to behaviors that put a young person into the system, which in turn can actually worsen mental health.

- **Downstream effects.** Researchers Anna Aizer and Joseph J. Doyle, Jr. found that, “those incarcerated as a juvenile are 39 percentage points less likely to graduate from high school and are 41 percentage points more likely to have entered adult prison by age 25 compared with other public school students from the same neighborhood.” (10)

Detention also affects future economic success. Given the link between educational attainment and earnings this should be no surprise. A study published in 1991 found that incarceration in youth reduced hours worked by 25-30 percent years after release from the system. (11)

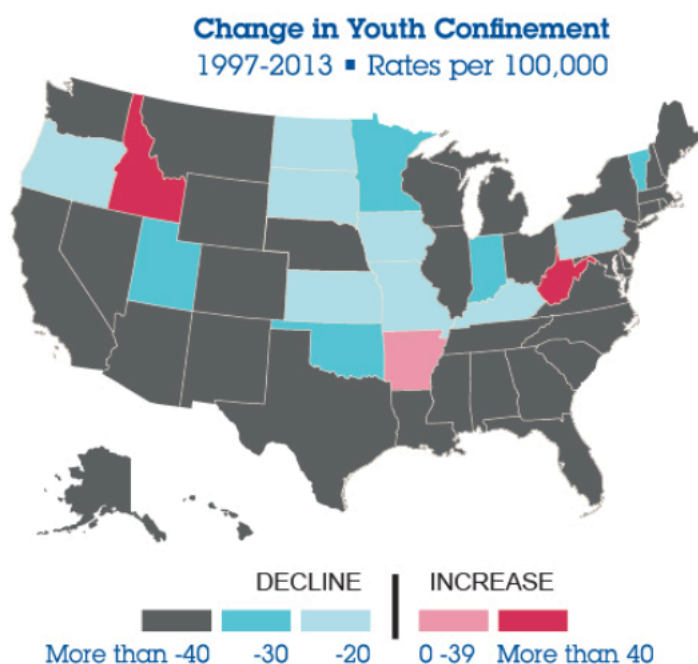
All these negative trends disproportionately impact low-income communities and people of color, who continue to be overrepresented in the criminal and juvenile justice system.

Given these facts it is promising that West Virginia embarked on the path to juvenile justice reform in 2014.

Trends of the System

West Virginia tends to buck national trends and winds up at the top or bottom of lists of states, often not in a good way. Until recently, that was the state trend in juvenile justice.

In 2013, West Virginia confined juveniles at a rate of 510 per 100,000. By contrast, Massachusetts, with



nearly four times the population of West Virginia, had just 393 youth in confinement. While the state made some improvements in reducing racial disparities, African American youth were still nearly three times as likely to be confined as their white counterparts. The state's youth confinement rate for African Americans was 1.5 times higher than the national average. (12)

West Virginia was second only to Wyoming in the rate per 100,000 of confining young females, with a rate of 175, compared with a national rate of 47. (13)

In 2013, the Annie E. Casey Foundation reported that nationally the rate of juvenile confinement dropped by 41 percent. (14) The Pew Charitable Trusts reported that "the number of juveniles committed to residential placement facilities declined 35 percent from 2006 to 2011, mirroring a nationwide decrease in youth arrest rates." (15)

West Virginia, however, was one of only five states where the rate of detention increased, despite a drop in both crime and population.

Between 2002 and 2012, "the number of court referrals for delinquent offenses actually declined by 55 percent; during the same period of time, referrals for status offenses increased by 124 percent," according to the West Virginia Intergovernmental Task Force on Juvenile Justice. Recall status offenses would not be considered offenses were they committed by an adult.

The report also found that the number of status offenders placed out-of-home by DHHR increased 255 percent in the same period. Nearly half had no previous contact with a court, which means, “these youth had never been arrested for a crime or referred to court, informally or formally, for any type of behavior or offense, status or delinquent. In addition, more than half of those committed to the Division of Juvenile Services (DJS) for delinquency had only committed misdemeanors. If that wasn’t bad enough, the length of stay for youth in DHHR facilities increased by 11 percent to 15 months.” (16)

Seventy-four percent of juveniles placed out-of-home by DHHR were confined for truancy, while nonviolent offenses (67 percent) and misdemeanors (76 percent) made up the majority of DJS placements. (17)

In other words, despite a falling crime rate and a declining population, West Virginia was locking up more children for longer periods of time for minor offenses at great costs to families, communities and taxpayers. According to the task force, “The average cost of placing a youth in a DHHR out-of-home facility—based on average facility per diems for emergency shelters and all instate and out-of-state group residential programs—is \$289.32 per day, or \$105,600 per year. The average cost of placing a youth in a DJS facility is \$277.91 per day, or \$101,439 per year.” (18) Those costs have only increased.

In 2013, only about one out of every eight committed youth in West Virginia was locked up based on a Violent Crime Index offense, such as homicide, aggravated assault, robbery, or sexual assault. (19)

The state could pay more than a million dollars per year to lock up 10 children for missing a few days of school. There had to be better policy solutions for kids, families, communities, and taxpayers. Fortunately, state leaders have taken decisive action to reverse these trends.

Beginnings of Juvenile Justice Reform in West Virginia

In 2014, Governor Earl Ray Tomblin convened the West Virginia Intergovernmental Task Force on Juvenile Justice, which brought together legislative and judicial leaders as well others with expertise in the system. The group was also aided by the Pew Charitable Trusts, which has worked for juvenile justice reform in other states. The West Virginia Supreme Court established its own Juvenile Justice Commission in 2011.

The mission of the task force was to conduct a comprehensive analysis of the state’s juvenile justice system and to produce a set of policy recommendations aimed at protecting public safety by improving outcomes for youth, families, and communities; enhancing accountability for juvenile offenders and the system; and containing taxpayer costs by focusing resources on the most serious offenders. (20)

The task force eventually recommended “prioritizing costly, state-funded facilities for the most serious offenders; expanding effective community services and strengthening supervision; and enhancing oversight and accountability.” (21) These recommendations were the inspiration behind Senate Bill 393, which unanimously passed the state House and Senate in 2015. The bill is intended to reduce the number of youth in residential facilities by at least 16 percent by 2016 and to invest the savings in community services.

A companion piece of legislation, House Bill 2550, was also passed in 2015 and may have an even greater impact on reducing out-of-home placement. The bill reformed well-intentioned state truancy policies passed in 2010 which had unfortunate unintended consequences.

The 2010 legislation lowered the number of unexcused absences required for a student to be regarded as truant from ten to five. Many more students with absenteeism issues were then adjudicated—and then confined outside their homes and communities at great public expense. This was one of the harshest truancy policies in the nation.

According to the American Civil Liberties Union of West Virginia, H.B. 2550 calls for schools to send a letter home to parents after three unexcused absences; meet with the family after five and possibly adjust down the number of unexcused days; and engage the court after ten. In addition, the law provides much needed clarification on what types of absences are counted as unexcused. (22) Efforts to weaken the provisions of H.B. 2550 in the 2016 legislative session were fortunately unsuccessful.

These steps demonstrate that despite partisan and other divides lawmakers, judges, and community members can cross lines to promote rational policies in the public interest. However, there is more to be done to build on this success. And compared to past efforts, the next steps could be easy to take.

Policy Recommendations to Improve the System

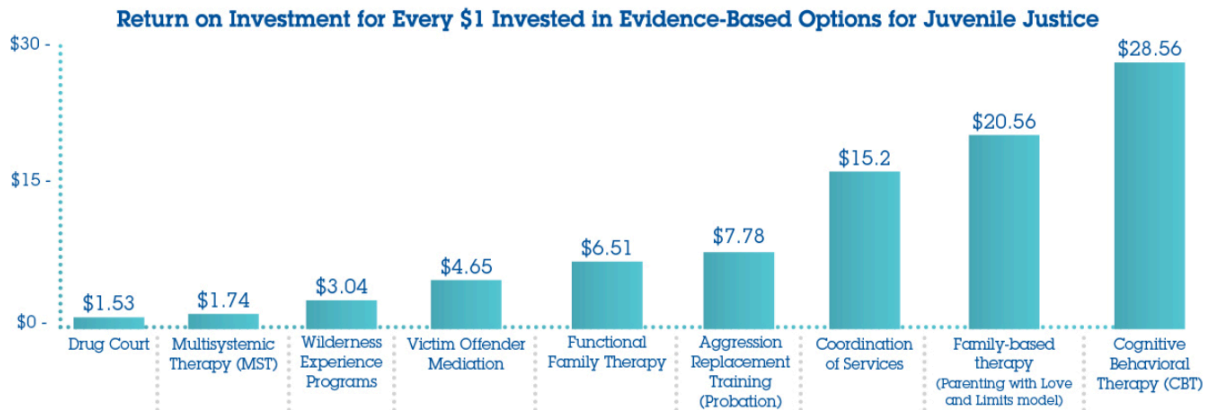
In 2015, the Civil Rights Division of the US Department of Justice issued a detailed letter to Gov. Tomblin warning that the state's current juvenile justice system was in danger of violating the 1990 Americans with Disabilities Act (ADA). Among other provisions, the ADA requires that "individuals with disabilities, including children with mental illness, receive support and services in the most integrated setting appropriate to their needs." (23)

The findings in this letter are worth considering. Among them are:

- Children placed in DHHR facilities are often placed out of home, but "Unnecessary placement in segregated residential treatment facilities, and removal from their families and communities, can harm children. Children frequently lose the ability to make everyday decisions about their lives because facilities regiment all daily activities." They may also be subject to seclusion, chemical treatment, and manual restraint by staff. All of this can contribute to disruption behaviors and lead to "further segregation and isolation from their communities." (24)
- Children who live in the community and need, but do not receive in-home and community-based services, are at risk of unnecessary placement in segregated treatment facilities."
- The state "has not developed comprehensive, community-based services for children with mental illness, including wraparound supports that are the standard of care for children with significant mental health issues. West Virginia has not developed statewide community-based crisis services, nor has it effectively diverted children from unnecessary placement in segregated residential treatment facilities."
- The state has "taken insufficient steps to reallocate existing resources for mental health service to, and has not taken full advantage of Medicaid support for, in-home and community-based services."
- Agencies that serve children in the state have "failed to collaborate to address the needs of children with mental health conditions involved in multiple systems."
- The state "fails to engage families effectively to develop strategies to support children in their homes and communities."

- The state “continues to fund expensive placement in segregated residential treatment facilities both within the state and out of state, but neglects to develop sufficient community-based services.” (25)

In sum, the Department of Justice argues that these policies violate the civil rights of children and waste state resources.



Bringing System Policy Recommendations to Fruition

West Virginia’s juvenile justice system has made real progress, however, it continues to face significant problems, particularly in the area of juvenile mental health. Some next steps are fairly easy to implement, while others may require an extended effort.

One immediate step would be to create a task force to address juvenile mental health issues. West Virginia has already created strategic plans to address chronic diseases such as asthma and diabetes. According to Mental Health Matters, West Virginia, “These plans help stakeholders tackle issues collectively by assessing needed services, setting goals and delegating responsibilities.” (26) A bill to create such a task force died in the 2016 legislative session. This issue should be revisited in the coming legislative session.

Another promising approach is to build the infrastructure to help public schools address mental health issues before a student is suspended or sent to court. Often, acting out is a symptom of deeper problems, which often go undiagnosed and untreated in the current system. A pilot program in one or two counties could be a good starting point.

A worthy long-term goal for our state would be to create the infrastructure which would ensure that students in danger of entering the juvenile justice system are assessed and referred to appropriate community-based programs whenever possible and appropriate.

It is regrettable but true that there may be some juveniles in West Virginia, as elsewhere, who constitute a major threat to the public and/or themselves. It only makes sense that out-of-home placement and extensive treatment should be reserved for such young people. The rest, the low-risk and low-threat population that so far makes up the majority of juveniles in confinement, should be treated, whenever possible, in their homes and communities.

End Notes

1. Western, Bruce, Punishment and Inequality in America, Russell Sage Foundation, 2006, p. 20.
2. Ibid, p. 163
3. Justice Policy Institute, <http://www.justicepolicy.org/About1.html>.
4. Justice Policy Center, "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities," p. 4, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.
5. ibid, p. 6.
6. Juvenile Justice Information Exchange, "Key Issues," <http://jjie.org/hub/community-based-alternatives/key-issues/>.
7. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, "Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders," p. 1, <https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf>.
8. Justice Policy Institute, p. 8.
9. Grisso, John, John D. and Catherine T. MacArthur Foundation, Research Network on Adolescent Development and Juvenile Justice, "Double Jeopardy: Adolescent Offenders with Mental Disorders," p. 1.
10. Aizer, Anna and Joseph J. Doyle, Jr. "Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges," p. 3, http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf.
11. Freeman, Richard B., NBER WORKING PAPERS SERIES, "Crime and the Employment of Disadvantaged Youth," p. 11, <https://core.ac.uk/download/pdf/6586657.pdf>.
12. West Virginia Center on Budget and Policy "Reforming Youth Incarceration in West Virginia: Safer Communities, Reduced Costs, and a Better Future for Troubled Youth," <http://www.wvpolicy.org/reforming-youth-incarceration-in-west-virginia/>
13. National Center for Juvenile Justice, "Sex of Residents by State, 2015," https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Sex.asp?state=&topic=State_Sex&year=2015&percent=rate
14. The Annie E. Casey Foundation, "Youth Incarceration in the United States," p. 1, <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf>.
15. The Pew Charitable Trusts, "West Virginia's 2015 Juvenile Justice Reform," p.1, <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/05/west-virginias-2015-juvenile-justice-reform>
16. West Virginia Intergovernmental Task Force on Juvenile Justice, "Report of the West Virginia Intergovernmental Task Force on Juvenile Justice," p. 6,

<http://www.governor.wv.gov/Documents/Final%20Report%20of%20the%20WV%20Intergovernmental%20Task%20Force%20on%20Juvenile%20Justice.pdf>

17. Pew, p. 3.

18. West Virginia Intergovernmental Task Force, p. 13.

19. West Virginia Center on Budget and Policy, op. cit.

20. West Virginia Intergovernmental Task Force., p. 5.

21. *ibid.* p. 5.

22. American Civil Liberties Union of West Virginia, “Truancy Reform Is Just The Beginning,” <http://acluwv.org/truancy-reform-isnt-the-end/>.

23. U. S. Department of Justice, Civil Rights Division, letter to Governor Tomblin, “Re: United State’s Investigation of the West Virginia Children’s Mental Health System Pursuant to the Americans with Disabilities Act,” p. 1, https://www.ada.gov/olmstead/documents/west_va_findings_ltr.pdf.

24. *ibid.*, p. 2

25. *ibid.*, p. 2, 3.

26. Mental Health Matters, West Virginia Facebook page, <https://www.facebook.com/pg/wvmh4kids/about/>.

Graphic Sources

West Virginia Division of Juvenile Services data from West Virginia Executive Budget Fiscal Year 2015. Volume 2 (Budget Operating Detail). P. 446

<http://www.budget.wv.gov/executivebudget/archives/Doucments/VIIOD2015.pdf>

“Better Returns for a Safer Florida: Aligning Taxpayer Investments in the Juvenile Justice System with Strategies Proven to Increase Public Safety,” The James Madison Institute, March 2014.

<https://www.jamesmadison.org/library/doclib/BetterReturns2014.pdf>

Sickmund, M., Sladky, T.J. Kang, W., and Puzzanchera, C. (2015) “Easy Access to the Census of Juveniles on Residential Placement.” <http://www.ojjdp.gov/ojstatbb/ezacjrp>

Washington State Institute for Public Policy, Benefit-Cost Results, Juvenile Justice (Updated June 2016) http://www.wsipp.wa.gov/BenefitCost/Pdf/I/WSIPP_BenefitCost_JuvenileJustice

