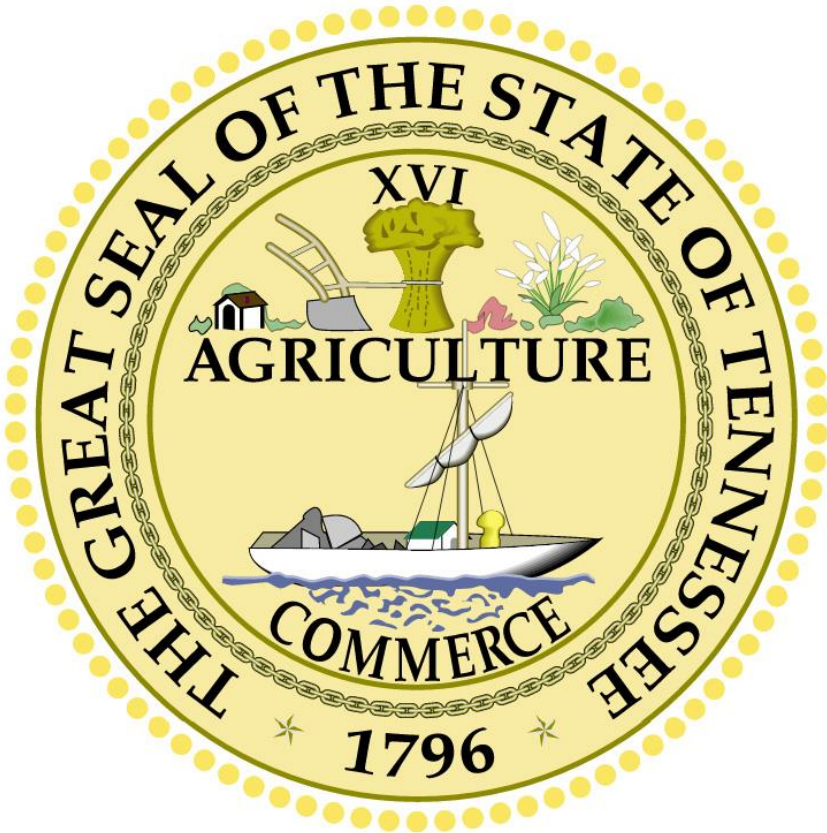


**JOINT AD-HOC TENNESSEE BLUE RIBBON
TASK FORCE ON JUVENILE JUSTICE**



FINAL REPORT

December 2017



Members of the Joint Ad-hoc Tennessee Blue Ribbon Task Force on Juvenile Justice

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ABOUT THE TASK FORCE

Summary

In May 2017, Governor Bill Haslam, Chief Justice Jeff Bivins of the Tennessee Supreme Court, legislative leaders, the Administrative Office of the Courts (AOC), and the Department of Children's Services (DCS) jointly requested the formation of the Joint Ad-hoc Tennessee Blue Ribbon Task Force on Juvenile Justice (Task Force).

Co-chaired by Speaker Beth Harwell and Majority Leader Mark Norris, Task Force membership consisted of a diverse array of stakeholders including representatives from the legislature, governor's office, judges and court administrators, law enforcement, prosecutors, defense attorneys, probation, leadership from state agencies, and key justice system stakeholders.

The work of a predecessor task force, the 2016 Tennessee Juvenile Realignment Task Force, culminated in the creation of this task force. Its report urged the state to undertake a data-driven, research-based effort to develop policies to improve outcomes in the juvenile justice system. With the formation of this Task Force, the state did just that.

Leaders charged this Task Force with completing a comprehensive, data-driven review of the state's juvenile justice system and developing evidence-based policy recommendations for legislative, administrative, and budgetary action that:

- Protect public safety;
- Effectively hold juvenile offenders accountable;
- Contain taxpayer costs; and
- Improve outcomes for youth, families, and communities in Tennessee.

The Task Force convened from June to November 2017 to complete its assessment of the Tennessee juvenile justice system. All of its meetings were open to the public and live-streamed. With technical assistance from The Pew Charitable Trusts (Pew) and the Crime and Justice Institute (CJI) at Community Resources for Justice, the Task Force began with a quantitative review of DCS's juvenile justice services system and Tennessee's juvenile court system. The Task Force also gathered statewide stakeholder feedback from three questionnaires (provided to judges, DCS family service workers, and county probation staff) and 10 stakeholder roundtables. After studying Tennessee data, the Task Force reviewed the latest research on what works best to reduce reoffending along with effective policies and practices used in other states.

Major findings from this review of Tennessee’s juvenile justice system include the following:

- **Youth adjudicated on misdemeanor offenses, unruly offenses,¹ and technical violations make up nearly half of youth in costly out-of-home placements.** Forty-four percent of youth in out-of-home placement were charged with misdemeanors, technical violations of the conditions of community supervision, and unruly offenses.
- **Youth prosecuted in the juvenile system are staying longer and enduring more out-of-home placements during their time in custody.** While the number of youth in out-of-home placement has decreased over the past five years, youth are staying 10 percent longer in those placements. Youth are sent to an average of 4.4 placements during their stays in DCS custody, with some experiencing up to 15 placements during one custody disposition. The average time youth spend on state supervision is up by 48% over the same time period.
- **Community-based interventions that effectively hold youth accountable, reduce recidivism, and keep families intact are not available across the state—especially in rural jurisdictions.** Courts across Tennessee lack sufficient evidence-based alternatives to system processing, detention, and other out-of-home placements. DCS currently spends \$230,000 per bed per year on its most expensive placements, more than 27 times the cost of state probation, while some jurisdictions lack less costly alternatives that could serve youth effectively at home.
- **A lack of statewide guidance leads to inconsistent outcomes.** Local courts largely determine when, if at all, youth have access to pre-court diversion and whether youth should be removed from home pending adjudication. They decide whether a case gets petitioned and supervised in juvenile court or gets transferred to the adult system. Without state guidance, they decide who is supervised and how. As a result, some counties utilize effective pre-court interventions for the majority of cases, while others send the majority of their cases to court. Moreover, some send similar youth to detention and DCS placement at rates that are higher than counties with access to more resources.
- **Data collection and information sharing is insufficient and inconsistent across the state.** A lack of comprehensive data collection across counties limits the information available to probation officers, treatment providers, and courts about individual youth and impedes accountability of the juvenile justice system. Without a means to track recidivism, the state lacks the ability to measure the effectiveness of system processes and certain interventions or treatment services.

Through this consensus-based process, the Task Force developed the below data-driven, research-based, fiscally sound policy recommendations that:

- Prevent deeper juvenile justice system involvement of lower-level youth through early response;
- Protect public safety and contain costs by focusing system resources on the highest-risk youth; and
- Sustain effective practices through continued oversight and reinvestment in a stronger continuum of evidence-based services statewide.

¹ Acts that are considered unruly include running away, habitual truancy, habitual disobedience, and other offenses that are applicable only to children.

Currently, there are more than 1,100 youth in DCS custody for unruly or delinquent offenses. If enacted together, these policies are projected to reduce the delinquent and unruly population in DCS custody by 36 percent by FY 2024, compared to projections for the population absent policy changes, and yield an estimated \$36 million in averted state costs over five years. The Task Force recommends that this full amount be reinvested in a continuum of in-home and community-based services that research indicates will improve recidivism rates and other outcomes, as compared to placements that may lead to higher rates of recidivism and may cost the state more than \$230,000 per youth per year. The Task Force further recommends that the state make up to a \$4.5 million upfront investment in FY 2018-2019 to support and stimulate the implementation of the recommendations contained herein.

Task Force Policy Development Process

Beginning in June 2017, the Task Force met six times over six months to conduct a comprehensive, data-driven assessment of the Tennessee juvenile justice system.² The Task Force reviewed and discussed data that examined how cases are processed through and terminated from the juvenile justice system at key decision points. Nationally recognized juvenile-justice researcher Dr. Edward Mulvey presented the science of adolescent development and effective policies and practices for reducing recidivism among youth in the juvenile justice system. The Task Force also reviewed state statutes, administrative policies, and court rules, conducted stakeholder questionnaires, and facilitated 10 roundtables across the state with stakeholders involved at various stages of the Tennessee juvenile justice system. Roundtable participants included:

- Prosecutors
- Victims and Advocates
- Defense attorneys
- Family service workers (FSWs)
- DCS Youth Development Center staff
- DCS Youth Development Center youth residents
- Community partners
- County probation staff
- Educators
- Law enforcement

After reviewing Tennessee’s juvenile justice data and national research and gathering stakeholder input, the Task Force split into the following three subgroups to consider additional information and develop policy recommendations:

- Pre-Adjudication Decision-making: Examine policies to better align pre-adjudication decision-making and court processes with research about improving outcomes;
- Dispositions, Supervision, and Placements: Examine disposition and placement options and supervision length to focus resources on youth who pose the greatest risk to public safety; and
- Oversight and Accountability: Examine investment in evidence-based practices and programming, as well as data collection, training, and system accountability.

Each subgroup held at least three meetings. Subgroups developed recommendations based on Tennessee data, national research, and state examples of best practices. They also relied on examples from individual jurisdictions within Tennessee. In addition, many members of the Task Force served on other state task forces convened in 2017, including the Ad Hoc Task Force on Opioid Abuse and the Indigent Representation Task Force, and referenced the work and recommendations of those task forces throughout the policy development process.

In October, subgroup members presented the policy recommendations developed as part of the subgroup process to the full Task Force for consideration, and members further discussed and refined the recommendations. These recommendations represent compromise, consensus-based recommendations from the collective task force. While that may not always reflect the individual preferences of each Task Force member, they are policy solutions developed by Tennesseans for Tennessee. By consensus, the Task Force submitted this report and the recommendations contained herein.

² Unless otherwise cited, all analyses in this report were conducted by Pew and CJI using data provided by DCS, AOC, and the largest four counties (Davidson, Hamilton, Knox, Shelby).



KEY FINDINGS

The Task Force analyzed Tennessee’s available juvenile justice data, stakeholder feedback, and leading juvenile justice research to make the following set of key findings:

Youth adjudicated on misdemeanor offenses, unruly offenses,³ and technical violations make up the nearly half of youth in costly out-of-home placements

While juvenile crime in Tennessee has declined by nearly 1/4 since 2012, the offenses driving youth into state custody have not become more serious and are still primarily misdemeanors, probation violations, and unruly offenses. Forty-four percent of DCS delinquency custody dispositions in 2016 were for youth with misdemeanors and probation violations, who did *not* have more serious offenses noted in their prior DCS history. Additionally, more than 130 youth were in DCS custody in July 2016 on unruly charges, offenses that would not be considered crimes for an adult. Thus, even though the number of custody dispositions has declined, the offense profile of DCS custody dispositions has not changed since 2012.

Research demonstrates that out-of-home placements fail to reduce recidivism for most youth and can increase the likelihood of reoffending in some youth.⁴ However, Tennessee has few statutory limits on sending youth out of home for these lower-severity behaviors. In the court’s discretion, youth adjudicated delinquent may be committed to the custody of DCS or placed in an “institution, camp or other facility for delinquent children operated under the direction of the court or other local public authority.”⁵ Similarly, youth adjudicated unruly may be removed from the home and placed with a “person, agency or facility that presents the least drastic or restrictive alternative,” including DCS after referral to DCS’s juvenile-family crisis intervention program and certification that there is no other less drastic measure than court intervention.⁶ When a probation violation is filed with the court and found, the court may place the youth out of home, regardless of the severity of the underlying offense or the youth’s violation.

For those youth facing out-of-home placement for probation violations and other lower-level offenses, the Task Force found inconsistent defense representation statewide. Stakeholders reported that the timing of the appointment may occur after critical decisions in the case have occurred. While Tennessee law affords youth the right to counsel at all stages of delinquency proceedings and those that place unruly children in

³ Acts that are considered unruly include running away, habitual truancy, habitual disobedience, and other offenses that are applicable only to children.

⁴ Edward P. Mulvey, et al., “Longitudinal offending trajectories among serious adolescent offenders,” *Development & Psychopathology* 22 (2010): 453–475; Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, “Imprisonment and reoffending,” in *Crime and justice: A review of research*, ed. Michael Tonry. (Chicago: University of Chicago Press, 2009), 115–200; Patrice Villettaz, Martin Killias, and Isabel Zoder, “The effects of custodial vs. noncustodial sentences on re-offending: A systematic review of the state of knowledge,” (Oslo, Norway: The Campbell Collaboration, 2006); Christopher T. Lowenkamp and Edward J. Latessa, “Evaluation of Ohio’s RECLAIM funded programs, community corrections facilities, and DYS facilities,” (Cincinnati, OH: University of Cincinnati, 2005); Paula Smith, Claire Goggin, and Paul Gendreau, “The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences,” (Ottawa, Ontario, Canada: Solicitor General of Canada, 2002).

⁵ Tenn. Code Ann. § 37-1-131

⁶ Tenn. Code Ann. § 37-1-132

jeopardy of home removal, the phrase “in jeopardy of home removal” is not clearly defined and appointment is not required in all stages of all cases.⁷ For example, appointment is not generally required for a child who is represented by a parent, guardian, guardian ad litem (GAL), or custodian, unless their interests conflict.

Youth prosecuted in the juvenile system are staying longer and enduring more out-of-home placements during their time in custody

Current law permits the court to order any enumerated disposition or combination of dispositions for a youth, including community service, fines, mentoring, counseling, restitution, probation, or commitment to DCS or another placement, for generally any length of time up to the jurisdictional cap of 19 years of age, regardless of their age at disposition.

The Task Force reviewed research showing that there is no clear evidence linking longer lengths of stay in out-of-home placements to reduced recidivism; more specifically, a recent study of serious juvenile offenders found no change in re-arrest rates for youth staying more than three to six months out of home.⁸ This indicates there are not likely to be public safety gains from keeping youth on supervision for longer than six months.

DCS Custody

Generally, the only statutory restriction on the length of DCS custody is the jurisdictional age limit of 19 years old. Even though longer lengths of stay are not likely to produce public safety gains, and may be counterproductive, youth who are placed in custody at a younger age stay in custody longer. Overall, the average length of DCS custody is 11 months, up 10 percent since 2012.

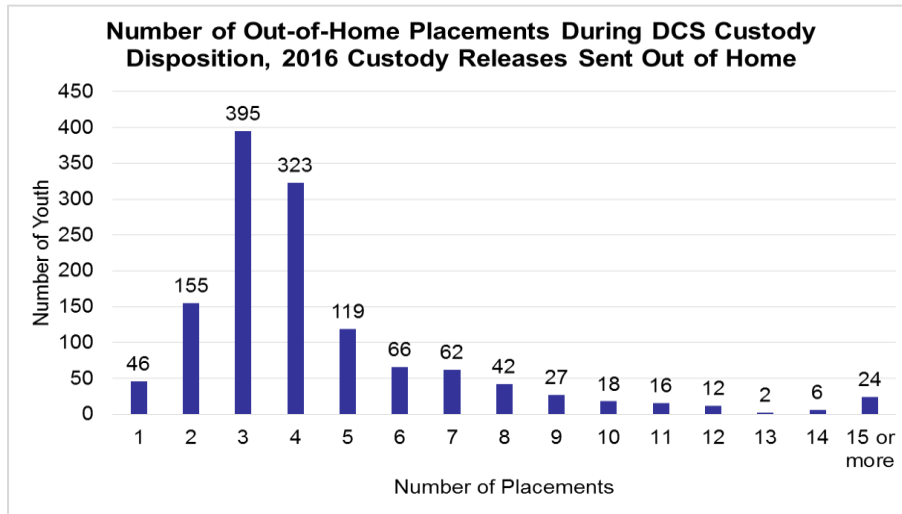
Once the court commits a youth to DCS custody, DCS generally has the authority to hold a youth out-of-home for an unrestricted amount of time in detention or in other out-of-home settings pending placement.⁹ Neither statute nor rule dictates the maximum allowable length of time for a youth to be held in detention pending placement or the number of placements to which a youth can be sent during one custody period. During their time in DCS custody, youth spend an average of 35 days in detention, a 53 percent increase since 2012. Additionally, while youth average more than four out-of-home placements during their time in DCS custody, some youth have more than 15 placements during their custody dispositions (see Chart One).

⁷ Tenn. Code Ann. § 37-1-126

⁸ Dr. Edward Mulvey, Presentation to the Tennessee Juvenile Justice Task Force, September 12, 2017

⁹ Time limits guide DCS when courts order determinate sentences. *See* Tenn. Code Ann. § 37-1-137.

Chart One:



DCS and Local Probation

Judges also have discretion to place youth on probation indefinitely until the youth ages out of the juvenile system, or for a finite period, with any conditions they deem appropriate. Local probation length varies widely across counties—ranging from five to 11 months on average. Delinquent youth are staying an average of 14 months on DCS probation, 18 percent longer than in 2012. Even though the number of DCS probation dispositions has declined over the past five years, the average length of DCS probation has increased for all offense types. In addition, the younger youth are at the start of DCS probation, the longer they spend on supervision, regardless of offense type. Youth who start on DCS probation when they are younger than 14 years old spend nearly two years on probation on average. Age is the factor that most clearly distinguishes how long youth remain under supervision, and age is also the only explicit limit in statute that ends the jurisdiction of the juvenile court or DCS.

The overall length of time youth remain under supervision, including the length of time that youth remain on aftercare once they are released from custody, is generally unknown.

Community-based interventions for juvenile justice youth that effectively hold youth accountable, reduce recidivism, and keep families intact are not consistently available across the state—especially in rural jurisdictions

The Task Force reviewed research showing that high-quality, evidence-based programming provided in the home and in the community reduces reoffending and controls state costs.¹⁰ Costs to the state for out-of-home placement, for example, are 27 times more than community supervision and diversion, exceeding \$230,000 per bed per year in the most expensive state-run secure facilities. Despite this evidence, stakeholders at every stage of Tennessee’s juvenile justice system reported that community-based interventions are not available across the state.

In a roundtable, local probation staff stated that the scarcity of services in certain communities often leads to placing lower-level youth out of home in order to receive those services.

¹⁰ Christopher T. Lowenkamp and Edward J. Latessa, “Evaluation of Ohio’s RECLAIM funded programs, community corrections facilities, and DYS facilities,” (Cincinnati, OH: University of Cincinnati, 2005).

Local stakeholders reported that youth across counties and across different stages of the system have similar service needs. Despite these common needs, access to high-quality services varies dramatically from county to county, depending largely on whether the county has the funds to provide services. In response to questionnaires, nearly all frontline probation staff respondents strongly agreed or agreed that the major barriers for youth accessing services are the geographic location of the youth and the lack of the service needed. Court officers also expressed in roundtables their frustration at the challenges they face helping youth to access services due to limited availability in certain regions. Stakeholders reported that insurance limitations are a barrier to accessing services for youth on probation as well; families that are not eligible for TennCare (the state's Medicaid program) struggle to pay for needed services.

However, most evidence-based programs for youth in the juvenile justice system who are residing at home are much less expensive and require just three to six months; for example, the existing Multi-Systemic Therapy contract DCS has in Tennessee lasts six months, costs approximately \$12,000 per participant, and has been shown to reduce reoffending by nearly 50 percent.¹¹ In addition, Functional Family Therapy (FFT) (an evidence-based program for youth at risk of out-of-home placement in the juvenile justice system)¹² and Aggression Replacement Training (an evidence-based program for moderate and high risk youth in the juvenile justice system) are only 30 hours long, typically delivered over approximately three months, and have been shown to reduce reoffending by one-third.¹³ These less expensive programs are not available across Tennessee, despite their proven effectiveness.

Lack of statewide guidance leads to inconsistent outcomes

Across key decision points throughout the Tennessee juvenile justice system, the Task Force reviewed data that demonstrated wide variation in how youth flow into and through the juvenile justice system.

Research indicates that over-involvement with the juvenile justice system can increase recidivism for youth with limited prior history,¹⁴ yet statutes and court rules provide limited guidance for Tennessee judges, court staff, and DCS to guide their decisions about how and under what circumstances youth are diverted from court, detained, and disposed.

Referral

Tennessee law permits any individual to refer any offense to juvenile court for prosecution.¹⁵ Referral to the court or law enforcement is required only under limited circumstances and, even when required, is subject to local interpretation.¹⁶

In the context of school-based behaviors, for example, certain behaviors must be reported by law, including habitual and unlawful absence from school. However, for those mandatory referrals, local policy dictates when and how that occurs. For example, the number and type of absences that make a student “habitually and unlawfully absent” can mean one thing in one school district and something different in another. In addition to local interpretation of statutory provisions, availability of alternative interventions, and whether and how localities employ school resource officers (SROs) or school security

¹¹ Multisystemic Therapy (MST) – Blueprints Program Rating: Model.

<http://www.blueprintsprograms.com/evaluation-abstract/multisystemic-therapy-mst>

¹² Functional Family Therapy (FFT) - Blueprints Program Rating: Model.

<http://www.blueprintsprograms.com/factsheet/functional-family-therapy-fft>

¹³ Program Profile: Aggression Replacement Training (ART)

<https://www.crimesolutions.gov/ProgramDetails.aspx?ID=254>

¹⁴ Dr. Edward Mulvey, Presentation to the Tennessee Juvenile Justice Task Force, September 12, 2017

¹⁵ Tenn. Code Ann. § 37-1-119

¹⁶ See e.g. Tenn. Code Ann. § 49-6-3007, § 49-6-4209, 49-6-4301

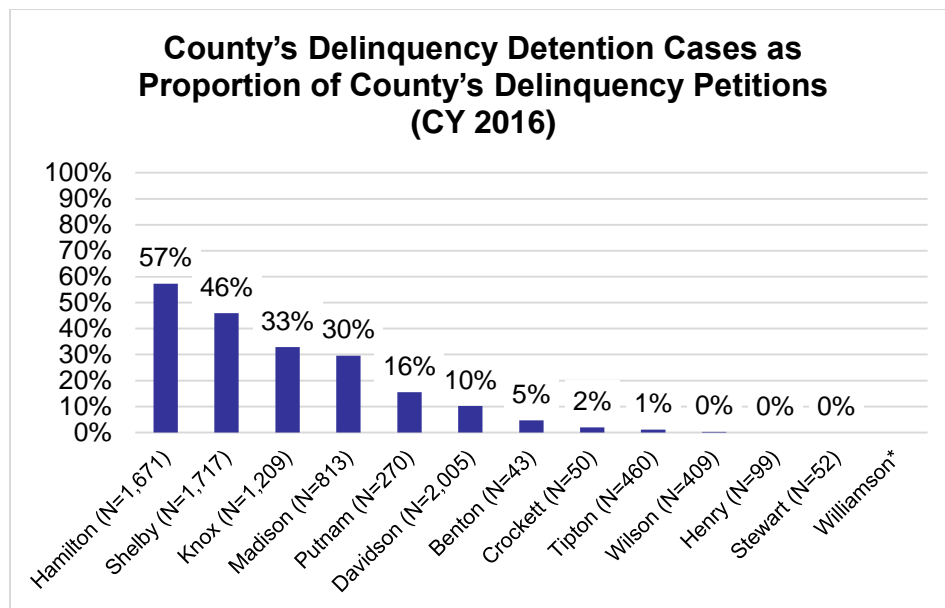
officers affect whether schools manage misbehavior or send youth to court for intervention. The use of SROs, law enforcement officers assigned to schools in accordance with an agreement between law enforcement and the local education agency, varies across the state. Components of those agreements and training are not standardized statewide.

A variety of stakeholders, including law enforcement and defense attorneys, reported that early interventions and other services outside of formal court processing were not widely available across some counties, contributing to the variation in whether and when individual jurisdictions decided to refer cases to court.

Detention

The law permits the use of secure pre-adjudication detention under a variety of circumstances for supervision violations, unruly cases, and delinquency allegations, including in response to behavior that may not necessarily pose a risk to public safety (for example, running away from home). Additionally, there is no standardized process to determine risk of flight or risk of harm to others, which may lead to wide interpretation regarding what circumstances are appropriate for secure detention. While the law requires judges to consider detention alternatives before placing youth in detention, many jurisdictions do not have any detention alternatives available to consider because the county does not fund them. The lack of clarity in statewide guidance and the limited availability of detention alternatives contribute to wide regional variation in the proportion of petitions that are detained in each county (see Chart Two).

Chart Two:



*Williamson excluded because of detention data issues

Petition

Because current law allows discretion on the part of individual jurisdictions to determine which cases are diverted from court and which are formally processed in the juvenile system, there is broad variation in the types of cases that are petitioned across the state. In the Task Force review of court data from 13 counties, seven of the top 10 offenses for delinquent petitions in 2016 were misdemeanors, and 61 percent of unruly petitions were for truancy cases. Yet some of the largest counties rarely petition unruly cases, while in smaller counties about half of petitions are for unruly offenses.

Statute authorizes the use of several processes—informal adjustment and pre-trial and judicial diversion—to divert cases in lieu of formal adjudication.¹⁷ However, these programs are not statutorily mandated in any case, and there is variation as to whether and how often counties use them, if at all, with eligibility largely determined by individual courts. Tennessee’s diversion options allow youth to be held accountable outside of court, yet the Task Force reviewed data showing some counties informally adjusting or diverting many of their cases and other counties not using diversion at all. For example, Shelby County informally adjusts 73 percent of its referrals, while Knox County informally adjusts only 23 percent of its referrals despite similar offense profiles.

Individual jurisdictions also have discretion to transfer certain youth to the adult criminal court for prosecution, in lieu of responding to that behavior through a juvenile petition or process. For youth 16 years or older at the time of the alleged conduct, any type of delinquent offense is eligible for transfer to adult court. Youth younger than 16 are also eligible for transfer if they are alleged to have committed one of an enumerated list of felony offenses. Once a child is transferred and found guilty, juvenile court jurisdiction ends. Any subsequent delinquent offense goes directly to adult court. Transfer rates have declined over the largest four counties from CY 2012 to 2016; however, the rate of decline varies across counties. In some counties, transfers have not kept pace with declines in delinquency petitions.

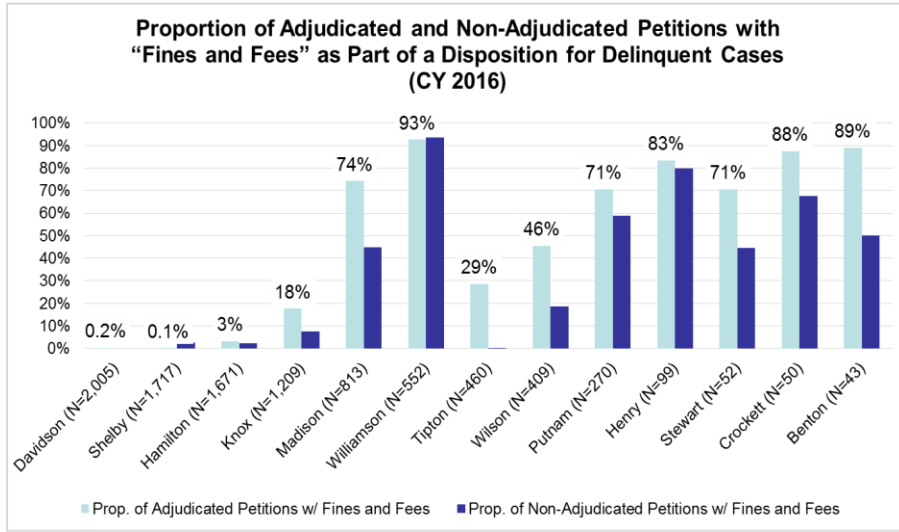
Due to the lack of standards, the same youth charged with theft might have three completely different paths in three different jurisdictions. In one jurisdiction, the youth might be diverted from court processing, in another that same youth might be adjudicated, and in another the youth might be transferred to the adult system.

Court-ordered financial obligations

A review of the Tennessee data showed fines and fees as the most common form of financial obligation ordered by courts. Research shows imposition of fines and fees can significantly increase the likelihood of youth reoffending; however, no uniform criteria guide judges in deciding which youth should or should not be ordered to pay a fine, resulting in wide regional variation in the imposition of fines on youth (see Chart Three). In some smaller counties, these fines and fees are ordered for the majority of delinquent and unruly cases, even if youth are diverted or cases are dismissed (for example, a youth could be charged a fine as a condition of a case being dismissed).

¹⁷ Tenn. Code Ann. § 37-1-110, § 37-1-129

Chart Three:



During stakeholder roundtables, prosecutors and defense attorneys reported that the burdens of meeting financial obligations for juvenile justice youth could lead to supervision of youth in the juvenile justice system for longer than needed to complete programming and services in some jurisdictions. Of those judges responding to the Task Force’s questionnaire, 33 percent reported that a case could not be closed if financial obligations remained unpaid.

Supervision

When the judge decides to place a youth under supervision, the court has discretion to place that child under the supervision of a probation officer of the court, DCS, or any other person it deems appropriate, and practice varies across the state.

Tools used to inform key decisions about supervision level are not available statewide. Nor are tools that appropriately match youth to effective interventions. Many states use a validated risk and needs assessment—a tool for identifying factors that correlate with the likelihood of recidivism—to identify high-risk youth and refer them to interventions that can hold them accountable and improve public safety.¹⁸ The type and availability of these assessments in Tennessee vary across localities, particularly for youth who are not supervised by DCS (since it is up to the county to identify and validate its own tool). In addition, where assessments are used, many assessments have not been validated on the Tennessee population on which they are used.

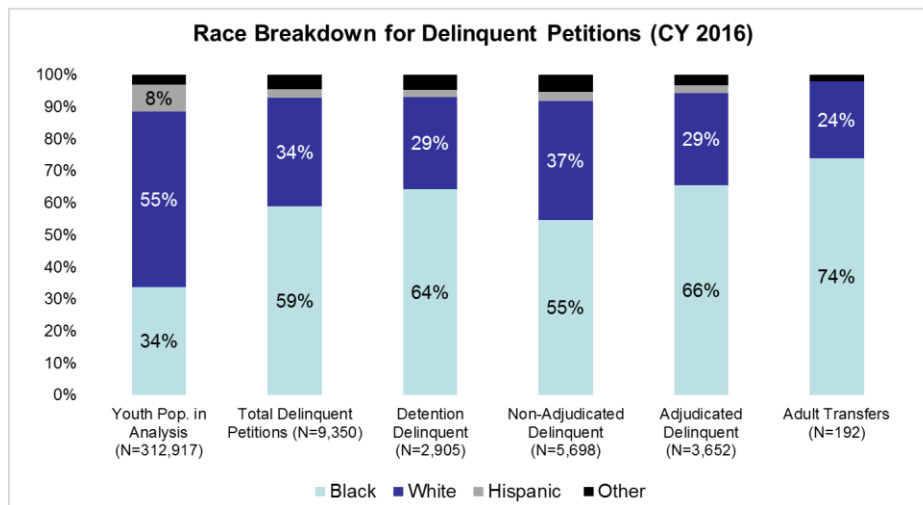
Racial Disparity

Across all stages of the juvenile justice system, the Task Force found, on top of regional inconsistency, that racial disparities persist in counties across the state for all types of delinquent petitions. Black youth have greater representation at each stage of the juvenile justice system when compared to the general youth population. In particular, Black youth make up 34 percent of the youth population included in the

¹⁸ Christopher T. Lowenkamp and Edward J. Latessa, “Evaluation of Ohio’s RECLAIM funded programs, community corrections facilities, and DYS facilities,” (Cincinnati, OH: University of Cincinnati, 2005); D.A. Andrews, James Bonta, and J. Stephen Wormith, “The Recent Past and Near Future of Risk and/or Need Assessment,” *Crime & Delinquency* 52, no. 1 (2006): 7-27.

analysis, but account for 59 percent of all delinquent petitions, 66 percent of adjudications, and 74 percent of adult transfer cases (see Chart Four).

Chart Four:



Data collection and information sharing is insufficient and inconsistent across the state

While the Task Force reviewed extensive quantitative information from across the system, many counties could not be included in county-level data analyses because their data were not available. Tennessee does not have a statewide court data system that allows for all counties to report electronic data to the AOC uniformly, nor does it interact with the DCS data system. Stakeholders expressed frustration that data about the juvenile justice system are not routinely and readily available for use by courts, probation officers, policymakers, or administrators.

Data are collected inconsistently across counties. Definitions of common terms vary, making it difficult to compare information among counties. For example, there is not a consistent definition of a “case” used across counties and agencies; some counties count new cases based on every time the youth appears before them in court, while others count them based on the date a new petition is filed. Some counties group multiple charges together based on the incident date, while others count each charge as a separate petition being filed. Additionally, county court data is not shared with AOC until the case reaches final disposition, which may be years after the case was initiated, making real-time information about the juvenile justice system difficult to obtain. Thus, limited information is shared among schools, law enforcement, local courts, and DCS.

System stakeholders, including probation officers, prosecutors, and defense attorneys reported that they were not able to access information about a youth’s prior record without having to contact colleagues in other parts of the state. For example, if a youth commits an offense in one jurisdiction and then moves to another jurisdiction and commits another offense, there is no way for the second county to know about the offense or obtain the records electronically without calling the first county’s court system to request that personnel look up the records. In addition to the challenges this poses for effective case processing, stakeholders reported that services and supervision are often duplicated because of limited information sharing. Agencies do not necessarily know what prior services have been provided to the youth, and cannot use that information to inform their decision-making about which services to refer or order the youth to attend.

In Tennessee, recidivism data is not collected and reported, preventing key stakeholders from being able to compare rates of reoffending for youth across counties and at different stages of the juvenile justice system. Under these conditions, measuring the success of interventions or treatment services becomes difficult, and following a youth throughout the system becomes nearly impossible. The Task Force reviewed other states' data collection and oversight procedures implemented to ensure that evidence-based programs are implemented with fidelity and that data are collected to inform decisions. The Task Force recognized that coordinated data collection and information sharing allows juvenile justice agencies, departments, and programs to collaborate and better understand the functioning of their juvenile justice systems. Furthermore, using data to inform decisions allows jurisdictions to measure the extent of implementation and track improvements over time.

Additionally, while there are existing state and local entities providing oversight and coordination for different parts of the juvenile justice system, there is no established inter-branch entity charged with regular oversight or coordination of the entire juvenile justice system. Assuming data is collected regularly and reported consistently from the various counties and systems, there is no body set up to regularly collect and analyze that data and use it to inform policy change.

POLICY RECOMMENDATIONS

The Task Force acknowledged in its discussions that all three branches of government – the executive, judicial, and legislative – have a role to play in the juvenile justice system, particularly in determining the state’s policy approach to protecting public safety and creating the best possible outcomes for youth in the system. The Task Force recognized that successful implementation is dependent on carefully considered timelines and phased effective dates for certain recommendations that make substantial changes to criteria for DCS custody. Successful implementation is also intrinsically linked to effective expansion of community-based services to counties statewide.

The Task Force recommends the following:

PREVENT DEEPER JUVENILE JUSTICE SYSTEM INVOLVEMENT

Empower schools to effectively respond to student behavior without implicating the courts, and to improve communication among administration, parents, and students

- Change the parameters of school zero tolerance policies by allowing schools to use discretion in suspension and expulsion for drug possession (not requiring the use of suspension or expulsion under zero tolerance). Authorize the creation of diversion treatment programs by school districts for drug possession in schools.
- Reduce exclusionary discipline by doing the following:
 - (1) expanding school-based tools and resources for schools, and
 - (2) continuing to encourage the adoption of comprehensive schoolwide discipline policies and practices. Those schoolwide discipline policies and practices should include tiered responses for encouraging positive behavior and responding effectively to misbehavior when it occurs.
- Require school intervention prior to the filing of a petition for most school-based behaviors. Absent serious threats to school safety, when a delinquency petition is filed by a school official, or a school resource officer, or when a petition is filed by a local police department as a result of a report made by a school official or school resource officer, based upon acts committed on school grounds during the school day, information shall be included in the petition which shows that the school district has sought to resolve the problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.
- Reference more prominently and cross-reference in Title 37 (juvenile code) and Title 49 (education code) the law requiring a manifestation review prior to filing a petition for youth with disabilities for school-based behaviors (Tenn. Code Ann. § 49-10-1304).
- Review school procedures and reporting requirements to law enforcement for drug offenses, assault and battery, and vandalism endangering life, health, or safety committed by a student on school property (Tenn. Code Ann. § 49-6-4209, 4301). Remove the requirement that a citation must be issued by a principal for smoking on school grounds (Tenn. Code Ann. § 39-17-1505).
- Reduce overuse of unnecessary arrest for incidents that may be effectively handled in school, such as disorderly conduct. Allow law enforcement, not schools, to determine when arrest is appropriate. Allow law enforcement to use discretion in deciding whether to make an arrest after a school referral and mandate civil immunity for reasonable use of that discretion.
- Require routine collection and reporting on arrests for offenses that occur on school grounds during the school day.

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- Delineate clearly in law the roles and responsibilities of SROs (and other security) by:
 - Requiring MOUs to include specific language defining the responsibilities of SROs (and security) and schools;
 - Limiting SROs (and security) from being involved in school discipline, enforcing school rules, and punitive actions when arrest is not necessary;
 - Requiring the creation of guidelines on how and when SROs (and security) may intervene;
 - Precluding security officers who are not POST-certified from holding themselves out as law enforcement;
 - Requiring mandatory statewide training for SROs (and security) on the effective role of SROs and best practices in juvenile justice;
 - Where SROs are assigned, requiring mandatory statewide training for school administrators on the proper roles and responsibilities of SROs; and
 - Requiring specialized training in working with elementary- and middle-school aged youth for those SROs working in elementary and middle schools.
 - School security officers who are not POST-certified may not conduct dog searches.
 - Require school personnel to document any circumstance in which the school requires youth to be dismissed from school - offer accountability standards for people that do this.
 - *Especially in rural areas*, increase funding for community services for families, like mental health services, to address root issues and prevent contact with the juvenile justice system and increase funding for counselors and behavior management programming. Work with the Department of Mental Health and Substance Abuse Services to target funding and resources so they are not duplicative.

Improve communication among school administrators, parents, and students, to appropriately address truancy concerns without court involvement where possible

- Focus court intervention for truancy by restructuring court responses to be more oriented towards social work and family services, moving away from the use of sanctions. Eliminate detention and placement in response to truancy and eliminate arrest for truancy, including for failure to appear. Clarify issues to be addressed by courts, such as barriers to education and root causes of truancy, and mandate demonstration of school level interventions prior to filing any truancy petition.
- Create fiscal incentives or matching funding for schools that reduce truancy filing rates.
- Require courts and school administrators to collaborate to minimize unnecessary referrals of truancy matters to the court.

Expand array of law enforcement responses to youth behavior

- Explicitly authorize the use of citation by law enforcement in lieu of arrest for misdemeanors (as is currently authorized for adults). In situations in which a citation might otherwise be used but there is risk to child (e.g. late at night), allow law enforcement to contact a parent or guardian in appropriate circumstances in lieu of arrest (but do not limit law enforcement's ability to arrest the youth where currently authorized).
- Remove the preference that youth be arrested in domestic violence incidents by providing officers discretion in applying Title 36, Chapter 3, Part 6 for youth under 18 years of age.
- An order of attachment (e.g. arrest order) based on a violation of probation or aftercare may not be issued unless the youth:
 - 1) Poses a significant risk of physical harm to another or damage to property; or
 - 2) Has absconded from supervision (*not* that the youth has not reported– but that efforts have been made to locate the youth and the youth cannot be found)

In cases in which the child has an attorney of record, the child's lawyer must be included in the attachment request.

Create a structured system that standardizes diversion of lower-level youth from the system, while simultaneously enhancing youth and family access to services and support

- Ensure that preliminary inquiry process is taking place statewide.
- Create a rebuttable legal presumption of incompetence for youth under the age of 12.
- Authorize law enforcement to divert citable offenses.
- Encourage every court to use informal adjustment where appropriate.
 - Each court must create and adopt a list of offenses for presumptive informal adjustment, considering, but not limited to, the following offenses:
 - Criminal trespassing, curfew, disorderly conduct, evading arrest (misdemeanor only), false information, gambling (misdemeanor only), loitering during school hours, no driver's license/revoked/suspended, obstructing a passageway, reckless driving, runaway, smoking paraphernalia and possession, tobacco, traffic tickets, criminal impersonation, domestic assault, simple possession of controlled substance, drug paraphernalia, fireworks violation, harassment, indecent exposure, joyriding, leaving the scene of an accident, possession/consumption of alcohol, resisting arrest/stop/frisk/halt, simple assault, theft (property, merchandise) \$500 or less, vandalism (under \$500), and complaints that would otherwise be classified as informal adjustment but involve a delinquent act against law enforcement.
 - This list does not preclude the use of informal adjustment by courts for other offenses on an individual basis where appropriate.
 - Each court must monitor the frequency with which youth are referred to court for the offenses listed above that are presumed to be informally adjusted and document the reason that they are not using informal adjustment.
- Authorize referral of diverted youth to a multidisciplinary team or other support team convened in each county court to provide oversight and assistance, review cases in which youth are struggling to complete diversion, make recommendations for those youth, and refer cases for additional services where appropriate.
- Authorize, but do not require, each county adopt Davidson County's confidentiality statute (Tenn. Code Ann. § 37-1-136) to enhance child and family engagement with assessments and service provision pre-court. The purpose of informal adjustment is assessment, counseling, and/or resource linkage, not making a youth go to a class or pick up trash upon threat of a petition being filed if they do not. There does not have to be a "stick" in order to be successful, particularly if confidentiality is promoted.
- Increase funding streams for pre-court, early interventions by:
 - Creating state-funded incentive program to encourage the use of informal adjustment at the county level; and
 - Allocating additional funds to schools for social work staff and early intervention measures.

Improve access to quality counsel for children interacting with the juvenile justice system

- Ensure that all juveniles have the right to counsel in all delinquent and unruly cases.
- Enhance the AOC standard notification and waiver of rights form for juveniles by incorporating language that is developmentally appropriate and require judges to use the new AOC form for all youth and impart the information in a developmentally appropriate manner.
- Review the attorney waiver statute to provide clarity about when and how the right to counsel can be waived and allow waiver of counsel only upon consultation with an attorney when available.
- All juveniles shall be presumed indigent for the purposes of appointment of counsel, and their family income shall only be considered for the purposes of reimbursement.

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- Create a rebuttable presumption that information obtained from youth under 14 during an interrogation shall not be used against that youth in criminal or transfer proceedings unless the youth’s counsel is present during the course of the interrogation. That information may be used against other individuals in criminal or transfer proceedings, and may also be used for investigative purposes or during juvenile court proceedings as otherwise provided by law.
 - Collect data on appointment of counsel statewide and require regular reporting.
 - If parents can afford to obtain counsel for their child but refuse to hire counsel, the court may charge those parents for the cost of the youth’s appointed counsel, except where parent(s) are considered victims.
 - Require statewide training of attorneys appointed to represent youth in juvenile court and require attorneys to provide proof of training in order to be appointed to unruly or delinquent cases, including mandatory certification for transfer cases. Create specialized certification for attorneys handling transfer cases, using “capital case” attorneys as a model.
 - Require mandatory statewide law enforcement training in best practices for interviewing youth, with an aim of reducing the likelihood of false confessions, with only those trained permitted to interrogate youth. Analyze and study the issue of youth interrogation and develop best practices statewide.
 - Create and fund a juvenile defender resource center (or regional centers) that administers the state’s juvenile defense system. This recommendation contemplates a delayed effective date and an extended implementation timeline. Fund public defender to handle all cases in the juvenile system, with necessary training and oversight by the public defender’s office.¹⁹

Prioritize victim compensation and reduce financial obligations on youth by minimizing the use of other fines and fees

- Eliminate the imposition of fines and fees ordered against juvenile justice-involved youth.
- Ability to pay shall be considered in determining whether and how much a parent may be assessed financial obligations (including county fees) in a youth’s delinquency or unruly case.
- Financial obligations and community service hours shall be considered collectively to ensure that the order is reasonable and, where appropriate, prioritizes compensation to the victim. The court shall identify whether a non-financial alternative (such as a restorative justice program that will address loss resulting from the delinquent act) is available and can be utilized.
- Failure to pay financial obligations, complete community service hours, or satisfy other court conditions may not be used as a basis to remove a youth from the home or to securely detain a youth.
- Financial obligations may not be used as the sole basis for continued jurisdiction over a juvenile. Unfulfilled financial obligations shall not be referred to collections. The court shall retain the option to render a judgment against a juvenile if financial obligations remain unpaid at the end of the court’s jurisdiction.

PROTECT PUBLIC SAFETY BY FOCUSING SYSTEM RESOURCES

Focus the use of secure detention on youth who pose a risk to the community

- Clarify in statute that detention is a temporary holding facility that does not meet the definition of long-term care for youth, treatment, foster-care, or placement; and direct that use of secure detention should be minimized or avoided.

¹⁹ For additional information on this topic, see *Liberty & Justice for All: Providing Right to Counsel Services in Tennessee*, the report by the Tennessee Indigent Representation Task Force: <http://www.tncourts.gov/sites/default/files/docs/irtfreportfinal.pdf>

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- Modify the criteria for secure detention by:
 - Removing “failure to appear” as a factor for secure detention or limit its scope;
 - Removing “awaiting court action” on prior delinquency as a factor for secure detention;
 - Limiting secure detention for youth “on probation” or those who have committed a violation of probation or aftercare to instances where there is a likelihood of serious bodily injury or death;
 - Limiting the use of secure detention for unruly offenses to circumstances in which there is a written judicial finding of extraordinary circumstances, and cap the detention stay at 24 hours total;
 - Removing violation of valid court order as criteria for detention;
 - Narrowing “special circumstances” exception for delinquent offenses that are otherwise not detainable to include situations only in which the child presents a risk to himself or the community. DCS’s lack of resources or alternative placement options does not count as a “special circumstance” for youth in DCS custody as a dependent and neglected child. If the dependent and neglected child is subsequently charged with a delinquent offense, the youth must meet criteria for detention based on the delinquency offense; and
 - Eliminating the use of mandatory detention for certain situations or categories of offenses.
 - Creating a bottom age of eligibility for secure detention. Youth under 12 years old may not be detained except:
 - If there is a written judicial finding of extraordinary and special circumstances, a youth under 12 may be detained for no more than 24 hours total; or
 - If the youth is charged with homicide or attempted homicide, the youth may be detained.
 - Mandate that detention facilities cannot be used as dispositional option for delinquent or unruly cases or probation or aftercare violations. An attorney may not waive this prohibition, including in all agreements pre-adjudication.
 - Remove the loophole allowing delinquent youth to be placed in any institution, camp, or other facility for delinquent children operated under the direction of court or other local public authority (Tenn. Code Ann. § 37-1-131(a)(3)).
 - Limit the length of detention by:
 - Capping the cumulative use of detention pre- and post- adjudication;
 - Requiring that youth in detention must appear on a settlement docket within 30 days; and
 - Requiring that once committed to DCS, if a youth remains in a detention placement longer than 14 days, the Department shall provide information to the committing court outlining DCS efforts to place the child.
 - Prohibit the use of solitary confinement for youth in detention. Solitary confinement means the placement of a child in a locked room or cell alone with minimal or no contact with persons other than guards, juvenile facility staff, or attorneys, except for:
 - Confinement in a single-person room for limited periods necessary for required institutional operations or medical protection;
 - Emergency interventions authorized by supervisory staff, as brief as possible unless new authorization is obtained by supervisory staff with the youth being monitored continuously; and
 - Voluntary protective confinement initiated by the child.
 - Prohibit the use of bonds in juvenile court; bonds should only be available to youth transferred to adult court.

Establish research-based, presumptive lengths of supervision and state custody, and ensure appropriate levels of supervision based on the youth's risk and needs

- Require that supervision conditions be consistent with a demonstrated criminogenic need as assessed by a validated risk and needs assessment.
- Completion of GED, high school diploma or enrollment in a post-secondary educational program shall not be standard conditions ordered in each case and shall not be enumerated on standard probation orders. They must be considered individually and only ordered where appropriate.
- Create a presumptive maximum probation and diversion supervision length of 6 months. Extension of the presumptive maximum supervision period is permitted only for completion of an evidence-based program addressing a treatment need identified by a validated risk and needs assessment after a post-dispositional hearing and on court order.
- Create a 3-6 month presumptive length of custody for indeterminate commitments. At three months, allow for an extension of DCS custody only to complete an evidence-based program addressing a treatment need identified by a validated risk and needs assessment or if the youth has committed a new delinquent act in placement. If the youth runs away from placement, the time that the youth is absent from placement will not count against the presumptive length of custody.
- Require DCS to evaluate whether each youth with a determinate commitment should be placed on aftercare. For each youth DCS determines is appropriate for aftercare, require DCS to request that the court release the youth on aftercare up to three months prior to the expiration of the youth's sentence reflecting earned credit days.
- Limit each youth's stay in detention awaiting a placement to 30 days per custodial episode. However, if a youth absconds or receives new charges after being placed in a non-detention setting, the period of detention which occurs after these events shall not be counted while DCS looks for a subsequent non-detention placement for the youth or while the youth is awaiting a trial on the new charges.
- Require that all out-of-home placement providers design and operate programs to achieve successful completion of treatment goals and release within three months.
- Create private provider incentives through performance-based payments that provide a higher rate of payment for the first three months of treatment, incentivizing successful completion within the first three months.
- Restrict private provider authority to reject or eject a youth from placement for non-compliance without first demonstrating that alternative graduated responses have been exhausted.

Limit the use of out-of-home placement for youth who violate supervision conditions and ensure that responses provide for accountability and address the youth's assessed risks and needs

- Youth may not be returned to court for a technical violation unless there have been documented attempts to address earlier noncompliant behavior and there is a determination made that court intervention is needed. Except, if new delinquent charges or habitual truancy charges are filed against the juvenile, youth can be sent directly to court for a violation hearing even if they have no prior noncompliant behavior.
- If a youth is sent to court for a supervision violation that is not a new delinquent offense and is found to be in violation, the court may modify conditions consistent with the results of a risk and needs assessment but may not place the youth out-of-home or in detention.

Tailor the use of DCS custody and reinvest into evidence-based services in the community

- There shall be a presumption that only the following youth are eligible for DCS custody: (1) a youth adjudicated for a felony offense against persons or (2) a youth adjudicated on any other felony if that youth has one prior adjudicated felony in their history.
- The court may depart from this presumption on a disposition for any felony adjudication if the court finds that the youth presents a significant risk of physical harm to another person.

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- The court shall not commit a youth to DCS custody on a disposition for an unruly offense, misdemeanor, or technical probation violation unless it is part of a disposition for a new felony offense. Community-based, in-home services must be in place and available statewide to meet the needs of youth who will not be eligible for DCS custody and should be implemented prior to the custody limitations going into effect.

Focus the use of transfer on the youth charged with the most serious violent offenses who cannot safely be served by the juvenile justice system

- Rather than transfer youth to the adult system because appropriate resources do not exist within the juvenile system, augment juvenile justice system resources to effectively and safely hold youth accountable.
- Revise eligibility criteria for transfer to include only:
 - Youth age 14+ may only be transferred for offenses currently enumerated in statute for youth under 16; and
 - Youth under 14 years old may only be transferred for criminal homicide or attempted criminal homicide.

Improve structured decision-making for youth on community supervision and in out-of-home placement

- A validated risk and needs assessment tool should be used in all cases post-disposition to inform supervision level, referrals to programs and services, and case planning. A validated risk and needs assessment tool should be used by court probation officers, youth service officers, DCS, and providers. It is not necessary for all counties to use the same tool; each county should ensure that the choice of risk and needs assessment is validated on the population for which it will be used. An assessment may be conducted prior to disposition where appropriate upon agreement from all parties.
- An individualized case plan should be developed for juvenile justice youth post-adjudication, for youth in community supervision and out-of-home placement, and it should be updated as necessary. The case plan should be informed by the results of a validated risk and needs assessment.
- The state should adopt the following set of guiding principles on behavior responses. Behavior responses to youth on all types of state or local supervision should be swift, certain, and proportionate and provide for a continuum of options to sanction violations as well as incentivize positive behaviors. The responses should be targeted to the youth's criminogenic risk and needs and to the severity of the violation.
 - Specifically, Court Probation Officers, Youth Service Officers, and DCS Family Service Workers should use the least-restrictive behavior responses. All violations and positive rewards should be documented in the youth's case plan, including the type of violation/positive behavior, the response, and the result of the response.

SUSTAIN EFFECTIVE PRACTICES THROUGH OVERSIGHT AND INVESTMENT

Reinvest in community programming

- DCS shall reinvest money that stems from Task Force recommendations that impact the number of youth in DCS custody.
- All programs that are funded through reinvestment dollars should go to services for youth in the juvenile justice system and should be evidence-based or rated by a standardized tool as effective for reducing recidivism.

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- Averted costs and savings can be reinvested through statewide contracts or through local grant programs, but all programs that are invested in should have fidelity monitoring components. Reinvestment dollars can also be used to support implementation and infrastructure to support the sustainability and fidelity of evidence-based programs (such as training, data collection, and evaluation).

Improve data collection, training, and oversight

- Comprehensive training on evidence-based practices in juvenile justice (such as adverse childhood experiences (ACES); risk, need, responsivity principles; adolescent development; trauma-informed practices; and what works to reduce racial and ethnic disparities) should be incorporated into existing training curricula that are provided to all probation and DCS staff working with adjudicated or diverted youth in the juvenile justice system.
- This training should also be available for stakeholders who work with delinquent youth at every stage of the juvenile justice system, including probation officers, DCS staff, education, law enforcement, judges, attorneys, guardians ad litem (GALs), and service providers.
- AOC, DCS, Tennessee Department of Mental Health and Substance Abuse Services, and other relevant agencies should collaborate to ensure training is uniform and provided to staff and stakeholders on a regular basis.
- A plan should be developed by the AOC, DCS, and the Tennessee Commission for Children and Youth (TCCY) for increased data collection and performance measures. These agencies should develop uniform definitions and criteria for data collection to ensure there is clear and consistent reporting across all agencies and all counties, specifically in the data elements that are already required in statute to be reported to the Administrative Office of the Court annually.
- An existing statewide entity such as TCCY shall provide administrative support to an oversight committee comprised of representation from:
 - AOC;
 - DCS;
 - Tennessee Department of Mental Health and Substance Abuse Services;
 - Tennessee Department of Education;
 - Legislature;
 - Juvenile court judges;
 - Prosecutors;
 - Defense attorneys;
 - Service providers; and
 - Other relevant stakeholder groups.
- This entity shall be co-chaired by the TCCY, AOC, and DCS. The oversight committee shall be responsible for oversight of performance measures and outcomes related to each policy area contained in the Task Force recommendations, ensuring system integration and accountability, monitoring fidelity of implementation and training efforts, reviewing averted costs and savings, making recommendations for reinvestment, and reporting to the Legislature annually.

Clarify the rehabilitative underpinnings of the juvenile justice system and revise other key provisions in the juvenile code

- Revise Tenn. Code Ann. § 37-1-101 (outlining purposes of the juvenile justice system) to include the latest research on adolescent development.
- Increase youth engagement through a youth council to allow youth who have been involved in the juvenile justice system to have a voice in how the juvenile justice system can improve.
- Modify the appeals process by:
 - In lieu of de novo review, permitting children to elect a direct appeal to the court of appeals and permit limited interlocutory appeals;

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- Eliminating the requirement that appeal be filed in juvenile court, and instead allow filing directly in the court of record for appeal, with notice to the juvenile court; and
 - Requiring that the record be provided by the juvenile court to the court of record for appeal within a limited period of time.
 - Authorize DCS to provide electronic monitoring resources to county probation for certain youth who would otherwise be committed to DCS, based on policies established by DCS.

CONCLUSION

The Joint Ad-hoc Tennessee Blue Ribbon Task Force on Juvenile Justice conducted an exhaustive, multi-agency, inter-branch review of the juvenile justice system. It was driven by data, informed by national research and input from a diverse array of juvenile justice experts and stakeholders across Tennessee. The Task Force recommends that state leadership introduce legislation based upon the inter-branch, consensus-based recommendations contained in this report in order to help Tennessee better protect public safety and hold youth accountable by expanding community-based options that are proven to reduce recidivism and improve outcomes for youth who come into contact with our state's juvenile justice system.