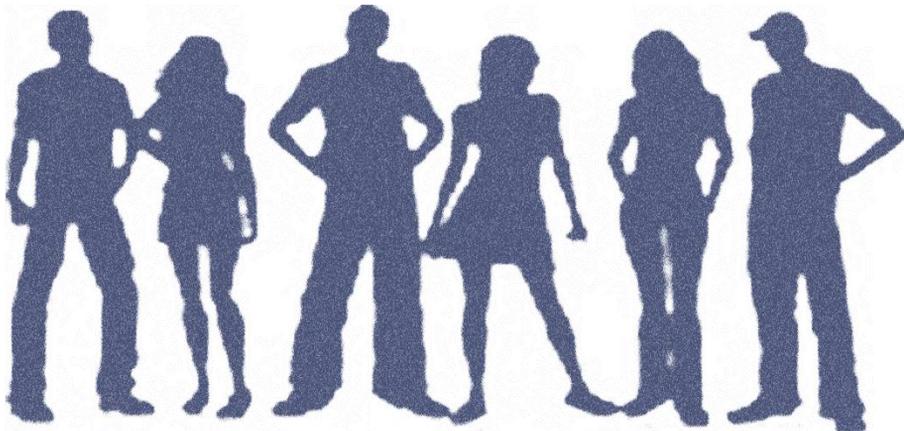




# Juvenile Justice Commission

2016 Annual Report



# Our Report Includes....

- Mission Statement
- Juvenile Justice Commissioners
- Our History
- Our Members Change
- Expanding Our Knowledge
- Our Collaborative Endeavors
- The Commission Facilitates Public Forum
- Our Monitoring Continues
- Our Current Issues
- Facility Monitoring Report Form
- Indiscriminate Shackling Form
- Findings of Fact from the Public Form
- Closing: Our Journey Continues

# Our Mission Statement



The West Virginia Supreme Court of Appeals is committed to a juvenile justice system that promotes effective interventions that will enhance the likelihood of rehabilitation and behavior reform for those children involved in delinquent behavior. It is the Court's desire that West Virginia serve these youths and their families within a sound framework of public safety while providing guidance, structure and appropriate, evidence-based services. Circuit judges need to be confident that those youths whom they sentence to the Industrial Home for Youth at Salem are given, through rehabilitative programs, every opportunity for success after their confinement.

Therefore, the facilities and the programs they include must, from time to time, be examined by the Court not only to ensure that the sentencing judges are very familiar with the environment into which they are sentencing adjudicated juveniles, but also in order to ensure that these programs are appropriate and as effective as they can possibly be. In that manner, the adjudication system itself can be improved by providing more effective intervention at an early stage of juvenile delinquency. Through collaboration and communication between the Court, the Legislature, and the Executive agencies, West Virginia's investment of energy and resources into children who are in trouble will result in the best possible future for the State.

Established, Fall of 2011

# Juvenile Justice Commissioners

The Honorable Phillip Stowers  
Circuit Judge, Putnam County

Justice Margaret Workman, Ex-Officio

The Honorable Gary Johnson  
Circuit Judge, Nicholas County

The Honorable J. Lewis Marks, Jr.  
Circuit Judge, Harrison County

The Honorable Eric O'Briant  
Circuit Judge, Logan County

The Honorable Joanna Tabit  
Circuit Judge, Kanawha County

Megan Annitto  
Assistant Professor  
Charlotte School of Law, Charlotte, NC

The Honorable Gail Boober  
Magistrate, Jefferson County

Cammie Chapman  
Director  
Division of Children's Services,  
West Virginia Supreme Court of Appeals

W. Jesse Forbes  
Forbes Law Offices, PLLC

Bobbi Hatfield  
Former State Delegate

Chuck Heinlein  
Community Representative  
Retired West Virginia Department of  
Education Deputy Superintendent

Sam Hickman  
Executive Director  
National Association of Social Workers  
West Virginia Chapter

Cindy Largent-Hill  
Director, Juvenile Justice Commission  
West Virginia Supreme Court of Appeals

Michael J. Martirano, Ed.D.,  
State Superintendent of Schools

Represented by:

Cindy Daniel  
Deputy Superintendent  
and  
Jacob Green, Special Assistant to the  
Associate State Superintendent of Schools,  
Office of Institutional Ed Programs,

Jane Moran, Attorney  
Jane Moran Law Office, Williamson, WV

The Reverend Rue Thompson  
Diocese of Wheeling-Charleston

The Reverend Matthew Watts  
MJ Watts Ministries, Charleston, WV

Administrative Office Staff:

Alicia Mascioli, Deputy Director of the  
Juvenile Justice Commission

Tina Payne, Director of Legislative Analysis

Lorri Stotler, Administrative Assistant  
Juvenile Justice Commission and  
West Virginia Business Court Division

# Our History



The Supreme Court of Appeals of West Virginia demonstrated its concern for youth involved in the justice system by establishing the Adjudicated Juvenile Rehabilitation Review Commission. On July 11, 2011, then-Chief Justice Margaret Workman issued an Administrative Order outlining the reasons for taking such a monumental step. It was Justice Workman's desire that the Commission thoroughly review the facilities, procedures, and programs that are charged with rehabilitating youth in the judicial system. The Court expressed a concern and interest in determining if youth were receiving an education and rehabilitation in a safe environment.

Oftentimes, these youth are removed from their families, homes, and communities because it is the only option for them to receive services, and the court system, justifiably so, maintains a concern for these youth. Placement options include psychiatric residential treatment facilities, treatment group homes, emergency shelters, detention centers, and correctional facilities. Because a court order is necessary for removal to occur, these youth are considered wards of the court.

The Commission's initial review and study involved the facilities operated by the West Virginia Division of Juvenile Services. As its work continued, however, it became necessary to expand the scope of review. To best accomplish the original intent of Justice Workman's vision and the Administrative Order, the Commission's review needed to include the West Virginia Department of Health and Human Services (DHHR) and the Department of Education—Office of Diversion and Transition Programs (formerly known as the Office of Institutional Education Programs). With this expansion, the Commission was renamed the Juvenile Justice Commission (JJC).

The original Administrative Order of the Supreme Court of Appeals of West Virginia was amended on July 14, 2015, to include language specific to its expanded scope and to align the Commission's work with reform measures mandated in Senate Bill 393 (passed during the 2015 Legislative Session).

# Our Members Change

On July 31, 2016, Tom Scott retired from his position as the Court Compliance Officer with the Supreme Court of Appeals of West Virginia. The Commission was established because of grave concerns within the West Virginia Industrial Home for Youth. Then-Chief Justice Margaret Workman was made aware of an unexplained death which prompted further investigation. Tom Scott conducted that initial investigation and worked diligently to ascertain the chain of events and circumstances surrounding the youth's death. He conducted interviews, reviewed lengthy video footage and studied facility and other documentation – hoping to provide answers to the Commission and, more importantly, to the young man's family. The boy's grandmother complimented the diligence of the Commission and said Tom was the only person "in the system" that listened to her and attempted to answer her questions. Throughout his tenure as a staff member of the Commission, he provided assistance with facility monitoring and shared his expertise related to correctional security procedures. He was a valuable resource.



Pictured left to right: Cindy Largent-Hill, Tom Scott and Lorri Stotler

During its June meeting, the JJC welcomed Jesse Forbes as its newest Commissioner. Mr. Forbes is a Managing Member of Forbes Law Offices, PLLC, a Charleston-based law firm focusing on general litigation, where he handles a wide range of cases. He routinely serves as guardian *ad litem* for children in abuse and neglect proceedings, and he serves as counsel to juveniles in court proceedings throughout the state. In addition, Mr. Forbes has served as a Mental Hygiene Commissioner in Kanawha County and has been on the Mental Health Association Board.



W. Jesse Forbes

Harrison County Circuit Judge Lewis Marks did not seek re-election and thus retired from service in December 2016. Judge Marks took office in the Fifteenth Judicial Circuit on February 1, 1996. In 2000, he received the Outstanding Judicial Service Award from the West Virginia Trial Lawyers Association. Throughout his judicial career, he had the honor of serving as a special justice for the Supreme Court of Appeals of West Virginia several times when a case required the recusal of a sitting Justice.

Judge Marks had been on the JJC since its inception. During the September meeting, the Commission took the opportunity to acknowledge his contributions to the Commission and to the juvenile justice system. Chairman Judge Phil Stowers and fellow Judges Joanna Tabit, Eric O'Briant, and (visiting) Judge Thomas Bedell complimented his career – especially related to children and families.

During an interview with WBOY, Judge Marks said he strived to embody certain character traits, such as being kind, considerate, and fair to litigants and attorneys. He believed in showing respect to everyone before the court, whether it was a lawyer, a litigant, or a defendant in a criminal case. He also strived to make wise decisions. Judge Marks accomplished that goal, as he was known for being a humble and honorable servant. His leadership, knowledge, and commitment to children's issues was valuable and will be missed. As stated by Chairman Judge Stowers, "He is leaving a huge hole on the Commission that will be difficult to fill."



Pictured left to right: Judge Stowers, Judge Marks, Judge Bedell, and Cindy Largent-Hill

# Expanding Our Knowledge

Working with children and adolescents is challenging without the complexities of chaotic family situations; mental, emotional or behavioral health symptoms; substance abuse; cognitive functioning deficits; and academic struggles. These are the youth involved in our state's juvenile justice system. To better comprehend these challenges, and the challenges facing those stakeholders who work directly with youths, the Commission established a practice of inviting guests from other branches of government, public or private organizations, and professionals with expertise on current issues and trends to share their knowledge during each quarterly meeting.

## Topics Shared During 2016 Include:

*Division of Juvenile Services – John Marchio, Director of Robert Shell Juvenile Center*  
Senate Bill 393, enacted in 2015, mandated that effective January 1, 2016, West Virginia Division of Juvenile Services' (DJS) facilities would no longer be available for status offenders. Because these youth were being housed at the Robert Shell Juvenile Center in Cabell County, a change in population and mission occurred. Mr. Marchio reported that a transition plan – which included weekly transition meetings that involved West Virginia DHHR, DJS and JJC staff – began during the last quarter of 2015 and concluded just prior to the end of that calendar year.



Robert Shell Juvenile Center

Robert Shell Juvenile Center, a 23-bed facility, is now providing diagnostic services as ordered by the Circuit Court (previously being handled at the Donald R. Kuhn Center in Boone County) and intake processing (previously being handled at Tiger Morton Juvenile Center in Kanawha County). Both of these services are provided to committed youths in the custody of the DJS. Both diagnostic and intake services involve a 30 day assessment and the length of stay averages 45 to 50 days.

*Emergency Shelter Provider Network – Matt Rudder, Director of Genesis Youth Crisis Center, and Steve Tuck, Chief Executive Officer with Children’s Home Society of West Virginia*

On January 1, 2016, DJS was no longer available for the emergency/crisis placement of status offenders. As of that date, youth likely would be ordered to shelter placement. The Emergency Shelter Provider Network offered to provide a centralized referral process to assist circuit court judges in finding immediate placements if local shelter beds are not available. The JJC requested an update from the Network to discuss the impact this had on shelter providers (i.e. population, census). Both Mr. Rudder and Mr. Tuck felt that the transition was going well with minimal issues. The Commission will continue to monitor the impact, if any, to the shelters.

*Putnam County Juvenile Programs and Youth Reporting Center – Judge Phillip Stowers, 29th Judicial Circuit, and Stephanie Bond, Director of Division of Juvenile Services*

The Commission has expressed an interest in visiting facilities and programs around the state. In June, its meeting was held at the Putnam County Board of Education. Judge Stowers spoke about the juvenile programs provided in Putnam County. He complimented the “team” philosophy that local agencies have embraced which has resulted in numerous initiatives that have benefited at-risk youth. For example, truancy has reduced by 70 percent. In the past 5 years, the graduation rate has increased from 83 percent to 92 percent and the drop-out rate has decreased by 50 percent.

After the business meeting, the DJS welcomed the Commission to its newly renovated Putnam County Youth Reporting Center (YRC). DJS Reporting Centers are an alternative to detention and/or residential placement and serve pre-petition (diversion), post-petition, and adjudicated youth. Life skills, anger management, substance abuse, smoking cessation, and a variety of other treatment services are provided.

In addition, the O.C. Spaulding Center (housed within the Putnam County YRC and named after the late Judge Spaulding) serves as an alternative learning center for the youth of Putnam County who are on probation and expelled from public school. The Spaulding Center offers a small school environment with an online virtual learning center and helps to transition youth back into the public school setting.

*Genesis Youth Crisis Center – Matt Rudder, Director Genesis Youth Crisis Center*

Genesis Youth Crisis Center hosted the September 2016 meeting. At the conclusion of the meeting, the Commissioners enjoyed a tour of the facility.

*Eli Baumwell, ACLU-WV Policy Director*

It is the belief of the American Civil Liberties Union (ACLU) that West Virginia over-relies on the court system when dealing with at-risk youth. It is viewed that the courts are the gateway to accessing services. Once youth enter the system, they are likely to stay in the system. Because West Virginia struggles with providing community-based interventions, the ACLU is looking at early intervention by way of a school-based diversion model. It is its intent to draft legislation mandating that the West Virginia Department of Education house mental and behavioral health providers in schools, starting initially with pilot areas.

*West Virginia Department of Education - Debra Kimbler, Assistant Director, GED*

Ms. Kimbler updated the Commission on alternative programs available to students in West Virginia. For years, the General Educational Development (GED) was the high school equivalency certificate offered in West Virginia. By way of bidding process, the Test Assessing Secondary Completion (TASC) replaced the GED in West Virginia as our assessment of high school level academic skills.

Ms. Kimbler works closely with the Office of Diversion and Transition Programs (formerly the Office of Institutional Educational Programs - OIEP) researching options that would encourage students in the juvenile justice and/or residential placement systems to stay in school and obtain a high school diploma. One established program is Option Pathway, which is now offered in every OIEP school. This two-year program is designed for at-risk students and promotes remaining in school to earn a diploma. Academic classes are in a classroom setting for half of the school day, and the remainder of the day is spent participating in a career technology program.

*Partnership between Child Advocacy Centers and DJS – Grace Stewart, Director of Program Services with the West Virginia Child Advocacy Network and Tim Harper, Director for Investigations and Prison Rape Elimination Act (PREA) Coordinator with DJS*

DJS continues to develop a strong Prison Rape Elimination Act program. The initial process involved developing advocacy relationships for juveniles in the custody of DJS. By way of a memorandum of understanding, Child Advocacy Centers will provide a safe and confidential environment for youths to disclose physical and sexual abuse they may have experienced. Child Advocacy Centers provide safe, child-friendly facilities promoting collaboration between child protection, criminal justice, and child treatment professionals to investigate abuse, hold offenders responsible, and help children heal. Services available include forensic interviews and support services to victims and their families/caregivers. DJS youth can go to a local Child Advocacy Center without the use of mechanical restraints and correctional clothing and speak to trained professionals and/or law enforcement about abuse.

*West Virginia Department of Education – JoDonna Burdoff, Behavioral Specialist, Office of Diversion and Transition Programs*

Juvenile Justice Commissioners have discussed for several months the increased presence of autism within the juvenile justice system. To better understand disorders on the autism spectrum, an expert was invited to share basic information.

West Virginia has been a leader in establishing and providing autism services for many years. Ruth Sullivan of Huntington, one of the first advocates speaking on behalf of those with autism, created the Autism Society of America. As a result, West Virginia was home to an Autism Training Center before any other state. We are still the only state that offers professional certification to work with student/individuals through an autism mentor program.

Ms. Burdoff's presentation provided an overview of the presenting symptoms and behaviors involved in autism spectrum disorder. Individuals with autism are at risk of presenting with socially inappropriate, often offending behaviors and are entering local and federal courts in growing numbers. Because of their "higher functioning" presentation, some people in this population are often not recognized by police or the courts as having cognitive deficits. Some individuals may have an extensive vocabulary, excellent language skills and present with above-average intelligence. However, significant social impairment can cause extreme difficulty for justice professionals.



# Our Collaborative Endeavors

It is important to the JJC to work collaboratively with all branches of government and with the public and private sector. To best accomplish this, certain Commissioners and Commission staff members are actively involved in interagency and intergovernmental committees and meetings, including

- ❖ DHHR - Commission to Study Residential Placement of Children;
- ❖ Department of Education – Education of Children in Out-of-Home Care Advisory Committee;
- ❖ Court Improvement Program Board;
- ❖ Court Improvement Program Sub-committees:
  - Youth Services,
  - Runaway,
  - Services and Treatment for Children and Families, and
  - Data, Statutes and Rules;
- ❖ West Virginia Juvenile Justice Reform Oversight Committee;
- ❖ Smart on Juvenile Justice (OJJDP with the Crime and Justice Institute);
- ❖ Principles of Effective Intervention for Juvenile Justice; and
- ❖ ACLU Presentations on Civil Citations

Commissioners and staff members were invited to participate in panel discussions regarding juvenile justice. Those include:

- ❖ West Virginia Center on Budget and Policy
- ❖ Summer Policy Institute
- ❖ Court Improvement Program Cross Training
- ❖ Hearts, Minds and Futures Forum – hosted by Mental Health Matters



# Our Commission Facilitates a Public Forum

West Virginia DHHR establishes contracts with agencies to operate emergency shelters and residential group homes. In February, those agencies received new contracts that had significant changes proposed without public comment. Of most importance, the contracts

- ❑ Dismantled the then-current “Level System” and proposed that providers would either be designated “Enhanced” or “Standard;”
- ❑ Did not clearly define those “Enhanced” and “Standard” designations;
- ❑ Indicated that the focus on care is calendar-based versus a treatment model;
- ❑ Reimbursed room, board and supervision for a certain number of days, and after a designated number there would be no reimbursement; and
- ❑ Required Medicaid to pay all services outside of room, board and supervision

The information included in the contracts came as a surprise to the JJC and to the judiciary. While the JJC realizes that the judiciary does not operate the DHHR, the JJC was established to study, oversee, and investigate (if necessary) how West Virginia youth involved in the court system are cared for by certain state agencies. The proposed changes would impact the juvenile system.

The lack of collaboration and communication was disappointing because the Executive and Judicial Branches worked collaboratively to write Senate Bill 393 (Juvenile Justice Reform). To make this type of fundamental change, without any communication, public comment or stakeholder meeting seemed a bit unreasonable and not in the spirit of the partnership.



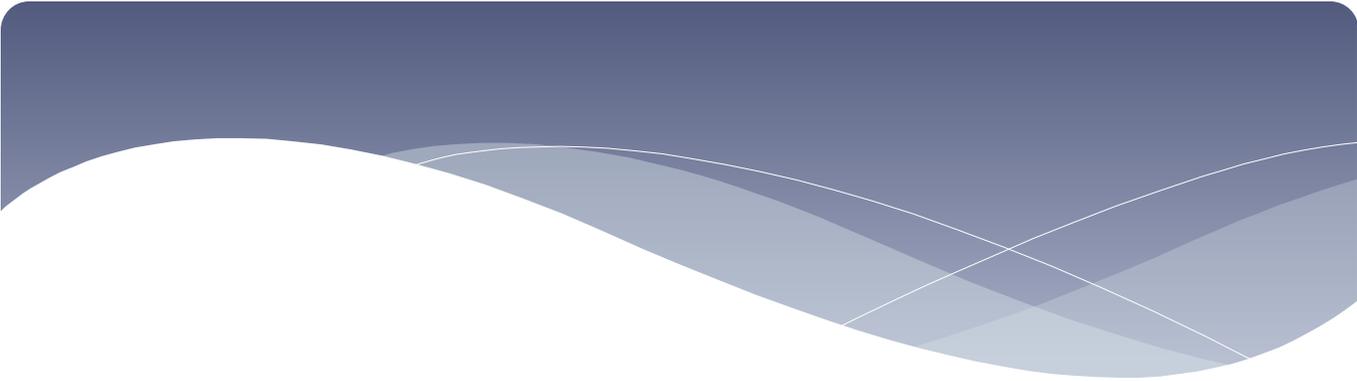
Throughout the following months, conversations were held between the DHHR and shelter and residential providers, with no clear resolution. While some items of concern were adjusted, there were still critical issues that were unclear and unsettling. Two of those were the residential designations (specific to admission/eligibility criteria for residential programs) and reimbursement/billing (a bundled rate versus a *per diem* rate for room, board and supervision along with what services would be eligible for Medicaid reimbursement). In addition, providers were given a short time to review the contracts and submit with final signatures.

Because of continuing concerns, lack of information and growing confusion, the JJC unanimously voted to conduct a public forum. It was hopeful that this would serve as a mechanism for all stakeholders to provide information on the future of out-of-home options for youths in the justice system. Ideally, the Commission would have liked to have conversed with the DHHR about intentions to define, allocate, fund and reimburse services.

On July 27, the JJC hosted the public forum. Commissioners made clear that it was neither their intent nor their role to override a decision of the Executive Branch and that the forum was solely an opportunity for public comment. More than 75 people attended. Those speaking included agency executives, agency board members, attorneys, and legislators. The information gleaned from the forum was organized into a report entitled *The Juvenile Justice Commission's Findings of Fact and Recommendations Relating to DHHR's Proposed Contract Changes for the Placement of West Virginia Youth*. (Page 24)



Commissioners pictured left to right: Sam Hickman, Reverend Rue Thompson, Judge Joanna Tabit, Judge Lewis Marks, Judge Phillip Stowers, Cindy Largent-Hill, and Jesse Forbes.



During this time, several residential providers joined forces and filed a petition in Kanawha County Circuit Court seeking injunctive relief. It was subsequently denied. The Petitioners chose not to appeal that ruling and filed a writ of *mandamus* with the West Virginia Supreme Court of Appeals:

*STATE OF WEST VIRGINIA ex rel. PRESSLEY RIDGE; ELKINS MOUNTAIN SCHOOL; ACADEMY MANAGEMENT, LLC; STEPPING STONES, INC.; STEPPING STONE, INC.; FAMILY CONNECTIONS, INC.; and BOARD OF CHILD CARE OF THE UNITED METHODIST CHURCH, INC., Petitioners*

Vs.

*WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES; KAREN L. BOWLING, Cabinet Secretary of the West Virginia Department of Health and Human Resources; WEST VIRGINIA BUREAU FOR MEDICAL SERVICES; CYNTHIA BEANE, Acting Commissioner for the West Virginia Bureau for Medical Services; WEST VIRGINIA BUREAU FOR CHILDREN AND FAMILIES; and NANCY EXLINE, Commissioner for the West Virginia Bureau for Children and Families, Respondents*

In a 3-2 decision, the writ was granted. While the Supreme Court noted that the petition would have ordinarily been denied due to “anticipation of some theoretical omission of duty” and the concern that providers could get another “bite at the apple,” Justice Workman wrote for the Court that the decision was based upon “the fundamental importance of the vital rights of the children of this State and the deleterious effects that the [juvenile facilities] alleged these policy changes may have.” The resulting order mandates that attorneys for both sides file separate briefs with Kanawha County Circuit Judge Tod Kaufman detailing altered policies, conflicts with established statutes and regulations, the effect upon the discretion of circuit court judges, and whether such policy shall require legislative changes prior to implementation.

# Our Monitoring Continues

*STATE OF WEST VIRGINIA, ex rel. D.L. and K.P., (Petitioners) Vs. STEPHANIE BOND, Acting Director, Division of Juvenile Services, and DAVID JONES, Superintendent of the West Virginia Industrial Home for Youth, (Respondents)*

The matter in this lawsuit was resolved by final order entered by the Honorable Omar Aboulhoshn on January 21, 2014. The order included a specific directive to the JJC related to “continued monitoring”. The Commission staff was ordered to monitor facilities under the authority of the DJS and report any related findings on a regular basis to the JJC (as *written below*) Commissioners have since received a quarterly monitoring summary.

*Therefore, this Court hereby **ORDERS** that monitoring that has been undertaken by Ms. Largent-Hill and her staff for this litigation continue under the direction and control of the Supreme Court’s Adjudicated Juvenile Justice Rehabilitation Commission. While the Commission does not have the ability to litigate disputes as a Circuit Court would have, the cooperative atmosphere that the parties have operated under during this litigation will allow parties to have a mechanism to work through the Commission to hopefully resolve any issues that may arise in the future.*

Commission staff members visit DJS facilities at least once per quarter. An established monitoring form, approved by the Commission, is used. In 2016 the form was updated (Pages 19-21) to include more relevant and current issues seen in the facilities. Director Stephanie Bond told the Commission the DJS staff appreciates the information provided in the monitoring reports – especially information received from the residents. Because Commission staff members are outside of the agency, youths open up to someone from the “outside.” At the request of Director Stephanie Bond, sections related to “access to staff” and “treatment related services” were added. It is Director Bond’s belief that even if DJS offers the best programs, if staff members do not have good relationships and interactions with residents the likelihood of recidivism will increase. It is the agency’s goal to provide positive, prosocial communication combined with treatment.

The Commission discussed the area of education for monitoring and information gathering. Commissioners were interested in two areas.

1. How do residents perceive they are being treated in the classroom by school staff?
2. Are the academics offered of good quality and appropriate for each resident’s grade and ability level?

Another area of interest to the Commission was related to residents’ spiritual needs. Although most facilities organize religious services, do residents know they can request to meet with a faith representative and have religious materials? Both areas were added to the form.

The relationship between the Commission and the DJS continues to be one of transparency and collaboration. Under the leadership of Director Bond, DJS continues to move in a positive and progressive direction. Residents are treated with respect, have access to treatment services, enjoy recreational and creative youth-related activities and receive case management services encouraging a coordinated transition to the community or placement. As requested, Commission staff members receive documents, investigations, and access to DJS staff to complete facility reports. When concerns are noted, responses and supporting information are received within short time frames.

DJS has two mechanisms in place to ensure an individualized atmosphere and to encourage facility-wide communication. Each facility conducts a weekly “clinical” meeting which includes all disciplines within that facility. Residents’ behaviors, needs, phase level, and case plans are reviewed. To accomplish and encourage communication among the facilities, central office facilitates a weekly (division-wide) meeting with administrators and case managers discussing the most difficult and/or struggling residents.



Commission staff members have been invited and participated in both types of meetings and were duly impressed. In addition, DJS has structured a protocol for internal monitoring. The Division Director and Deputy Director visit every facility each quarter. Regional directors speak with facility administrators weekly and visit assigned facilities monthly. Other mechanisms include regular administrators’ meetings; policies regarding notifications, discipline, confinement, quality assurance, and staff; and an Investigative Unit.

### *Department of Health and Human Resources – Bureau of Children and Families*

As stated earlier, the Commission realized a full review of the juvenile justice system would be incomplete if the DHHR and its contracted facilities were not included. Commission staff began visiting residential facilities in West Virginia and out-of-state. To be economical and efficient, those nearest or on the way to a DJS facility were visited first. Staff visited Level I, II and III facilities around the state.

Commission staff members became concerned about youth safety at some facilities contracted by DHHR – Bureau of Children and Families. To receive certain information, JJC Director Largent-Hill requested the Internal Investigative Unit reports for the residential facilities as well as any corrective action plans currently in place. Deputy Director Mascioli assumed the task of reviewing and flagging significant issues and/or re-occurring situations.



### *Department of Education – Office of Diversion and Truancy Programs (formerly the Office of Institutional Programs)*

The JJC appreciates the importance of academic learning for all youth. It is especially important to have access to various facets of the educational system for youth in out-of-home placements. The Commission continues to be impressed with the academic services provided by the Department of Education within the DJS facilities and the DHHR contracted residential facilities.

Residents receive a quality education taught at their comprehension and grade level. Residents in these circumstances have significant behavioral and emotional issues. The organized weekly resident/census reviews conducted by DJS are one example of meeting the challenges of this population. Education, treatment and security staff members have a formal mechanism to share, brainstorm and collaborate to determine what the best approach is for each resident.

The special needs of a resident can often present a challenge to the education staff; however, they meet the challenge with a problem-solving attitude and positive demeanor. Whether it is teaching in a traditional classroom, preparing for the TASC, researching options for credit recovery, or providing vocational and technical services, the Department of Education staff evaluates the needs of each student/resident and develops a plan. Every resident is addressed individually!

# Our Current Issues

## *Indiscriminate Shackling of Juvenile Offenders*

In 2015 the JJC became aware of a national initiative evaluating indiscriminate shackling of juveniles. Commissioners asked staff members to research how the issue is handled in other states. Throughout 2016, Deputy Director Mascioli extensively researched and organized a summary of facts. The Commission was given a comprehensive summary of the legal landscape and related arguments (e.g. mental health), and a listing of states that have adopted some form of code, rule, or policy. The Commission voted unanimously to share this information with circuit court judges during the fall conference. Judge O'Briant, as Chairman of the 2016 Judicial Association, shared this information during the Judicial Association's Business Meeting. The Commission will provide further assistance as requested by the Association. (Shackling Summary located pages 22-23)



Pictured above: Deputy Director Alicia Mascioli presenting her shackling summary during the Commission meeting at the Robert Shell Juvenile Center on March 8, 2016.



*US Department of Justice*

During the summer of 2015, the U.S. Department of Justice investigated West Virginia's children's mental health system and subsequently issued findings to then-Governor Earl Ray Tomblin. Because it was imperative that the judicial perspective be shared with those investigators, JJC Director Largent-Hill organized a conversation between circuit court judges and Department of Justice representatives. As a result of that conversation, the Judicial Association appointed Judge Philip Stowers (Commissioner), Judge Gary Johnson (Commissioner) and Judge Alan Moats to work with the Department of Justice as appropriate or as requested. A meeting between the sub-committee and representatives was held in the spring, and Director Largent-Hill has maintained regular communication with the Department of Justice.

# Our Current Issues

## *Mental Health and Juvenile Justice*

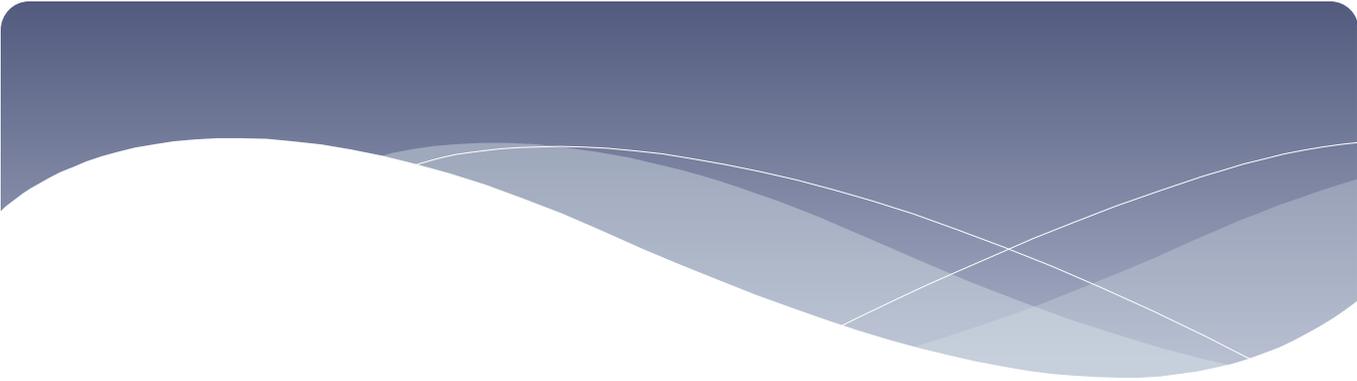
The Commission frequently discusses the increasing number of youth with mental health care needs who are placed in DJS custody. It was alarming to learn that some of those youth languish in detention awaiting approval and subsequent admission to psychiatric residential treatment facilities (PRTF). In an effort to better understand this, Administrative Assistant Lorri Stotler began tracking the MCM-1 forms completed for youth in DJS custody for PRTF (hospital) placements. Each MCM-1 form must be signed by a physician and states that a juvenile meets the medical necessity for inpatient mental health hospitalization. A quarterly summary of information is shared with Commissioners.

An example of the information that the tracking report provides is shown below.

MCM1 Tracking Report (2016)					
MALES and FEMALES					
Eval Date	County	Age	DOB	Admitting Facility	Type of Service Requested

## *Challenges in Magistrate Court*

It has come to the attention of Director Largent-Hill that younger children and developmentally-delayed youth are being brought to magistrate court because parents, schools and law enforcement are looking for assistance on how to best manage these youth when they present out-of-control behaviors. There has been some informal dialogue among the magistrates and Commission; however, a more formal conversation and additional information is needed. This will be a focus of meetings during 2017.



# Facility Monitoring Form with new Updates

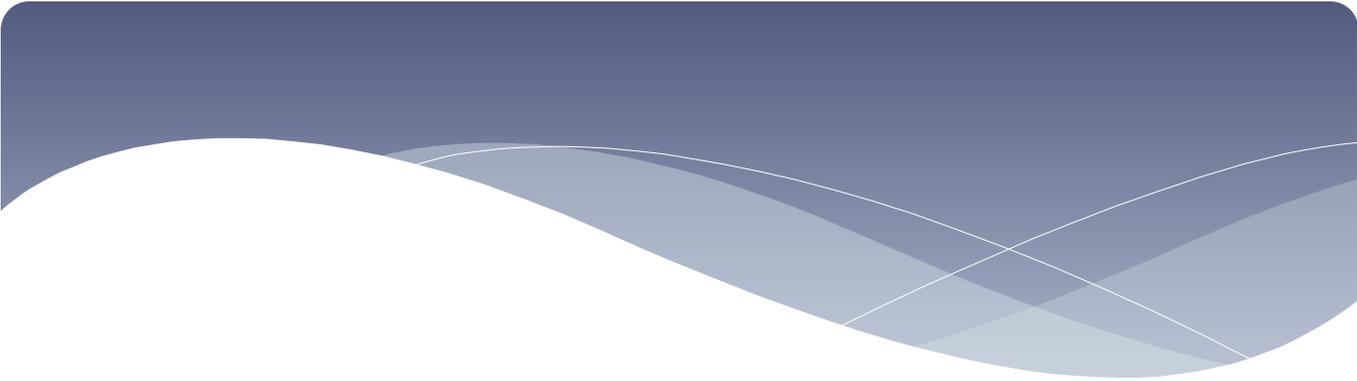
Facility: \_\_\_\_\_ Census: \_\_\_\_\_ Date: \_\_\_\_\_

General Issues	Current Status	Staff/Resident
Residents are out of rooms 6 am – 8 pm; 7 days/week (A. 1.)		
Programming/Activities are offered for most of day/evening (A.1.)		
Unit has an hourly detailed activity schedule & it is followed (A.2.)		
Outdoor recreation is offered 1 hour/weekdays and 2 hours/weekends (A. 4.)		
Resident Handbook (D. 19.)		
Bathroom Access: Toilet at night; provided toilet paper (H. 54.a. & b.)		
Telephone: free calls/week minimum of 15 min.; reasonable privacy (G. 43.)		
Permitted to receive calls from attorneys, other professionals & close family any time; unrestricted legal calls (G. 45. & 46.)		
Mail: scanned in front of resident; if censored resident notified (F. 35.) receive 10 stamps/month; delivered immediately; photos permitted; receive writing supplies (F. 39. & 40. 41. & 42.)		
Facility is clean (rooms, common areas)		
Medical Services (requests to speak with medical are answered/timely)		
Access to staff (treatment, security and admin): responsive, fair, respectful. Rules are fair and consistent		
<b>Room Confinement</b>		
<i>DJS Policy 332.00: Specialized housing is used for residents who are separated from others due to medical necessity, sanctions, behavioral concerns, a court order, or protective custody</i>		

Incidents are documented – with reason, staff initiating, duration (B. 7.)		
Access to daily shower, large muscle recreation, similar food, education (B. 8.)		
Medical and/or mental health talked with resident daily (face/face; not thru door) (B.9.)		
<b>Time Out</b> not to exceed 4 hours (out of control) (B.10.)		
Time Out exceeding 4 hours approved by Admin. (B.11.)		
Confinement due to major infraction not to exceed 3 days (B. 12.)		
Due process was used (B.13.)		
<b>Ad Seg</b> (sparingly) not to exceed 10 days; direct order & detailed reasons available in writing (B. 14.)		
Resident on Ad Seg can verbally explain why and process to be removed from Segregation (B. 15.)		
Ad Seg exceeding 10 days involves C'Office (B. 16.)		
Resident was involved in writing behavior plan, understand the plan, and have a copy		
<b>Modified Procedures for Safety</b>		
<b><i>DJS Policy 332.00: Residents may be segregated prior to hearing if they are being physically aggressive with other staff and/or residents and are not amenable to reasonable direction and control.</i></b>		
Immediate sanction of room confinement up to 3 days		
Due Process hearing held within 24 hours		
Specialized Housing procedures should be followed		
Mechanical restraints used for resident movement in facility		
Written notice is made		
Immediate notice to court, monitor & parties' counsel; within 24 hours		

<b>Suicidal Procedures</b>		
Protocol was followed as outlined.		
<b>Disciplinary Due Process</b>		
Resident received written notice of violation 24 hours before hearing (no punish prior to) (D. 21.)		
Resident was heard during hearing & has witnesses (D. 22.)		
Resident received written decision with reasons and sanctions; based upon evidence (D. 23. 24.)		
Right to appeal decision (D. 26.)		
<b>Grievance Process</b>		
Access to locked box; forms available w/out asking staff Handled by Supt/Director (E. 29 30.)		
Receive written copy of decision (E. 32.)		
<b>Treatment Related Services</b>		
Residents are involved in development of service plan		
Residents can verbally explain goals/ objectives on plan		
Residents have a copy of plan		
Individual &/or group counseling is provided (topics, frequency, etc.)		
<b>Education</b>		
Education staff responsive, fair, respectful		
Quality of academics; viability; progression		
<b>Spiritual</b>		
Reasonable access to spiritual materials, services, authority. Frequency.		
<b>MDT Meetings</b>		
Quarterly MDT's while in placement		
MDT was pre-scheduled; meeting conducted with stakeholders invited and/or present		
<b>Attorney Contact</b>		
Resident spoke w/ attorney prior to hearing		
Resident has had contact w/ attorney since placement		

**Additional Comments:**



Indiscriminate Shackling  
of Youth in Court:  
The Current Legal Landscape  
and Mental Health Arguments  
Against the Practice

## Supporting States:

- Alaska
- Arkansas
- California (2007)
- Connecticut (2015)
- Delaware (2016)
- District of Columbia (2015)
- Florida
- Idaho (2014)
- Illinois (limited, 1977)
- Indiana (2015)
- Maine (2015)
- Maryland (2015)
- Massachusetts (2010)
- Nebraska (2015)
- Nevada (2015)
- New Hampshire (2010)
- New Mexico
- New York (transport)
- North Carolina (2007)
- North Dakota (2007)
- Ohio (2016)
- Oregon (1995)
- Pennsylvania (2011)
- South Carolina (2014)
- Utah (2015)
- Vermont: transport (2013)
- Washington (2014)

## U.S. Territories:

- American Samoa
- Commonwealth of the Northern Mariana Islands
- Guam
- Virgin Islands

## States Under Fire:

- Arizona: pending rule
- Colorado
- Illinois: pending rule addressing issues with the 1977 court ruling
- Missouri

# Indiscriminate Shackling of Youth in Court: the Current Legal Landscape and Mental Health Considerations

July 2016

## Current Practices

There's a broad and growing national consensus on creating a presumption against shackling youth in courtrooms. Supporting states (left column) have created this presumption through legislation, court rules, court policies, and litigation. However, no state has prohibited shackling altogether. If the judge believes the youth to be a flight or safety risk after an individualized determination, the juvenile court judge retains the discretion to keep the youth in restraints.

***Medical, mental health, and legal experts agree that shackling harms juveniles and is counter to the purpose of the juvenile justice system.***

Many of the youth in court have been involved with the child welfare system as a result of abuse and neglect, and medical and mental health experts agree that shackling poses re-traumatization during a critical stage of identity

development. Shackling increases the risk of physical injury to youth. Furthermore, shackling promotes punishment and retribution over the rehabilitation and development of youth under the court's jurisdiction.

Legal experts agree that indiscriminate shackling is contrary to law and rehabilitation, and that the practice detracts from the fairness of the criminal justice system and dignity of the court as well as interferes with the youth's ability to assist in his or her own defense by hindering communication with counsel and the court.

Medical, mental health, and legal experts are advocating that juvenile courts align with best practices, national trends, research, and the rehabilitative purpose of juvenile court and adopt the presumption against shackling youth in court.

## Organizations Publicly Supporting Limited Courtroom Shackling

- American Bar Association
- National Council of Family and Juvenile Court Judges
- Association of Prosecuting Attorneys
- American Orthopsychiatric Association
- American Academy of Child & Adolescent Psychiatry
- National Center for Mental Health and Juvenile Justice
- National Association of Counsel for Children
- National Prevention Science Coalition to Improve Lives
- Child Welfare League of America

## A YOUTH'S VIEW:

~ "My momma won't see me in these, will she?"

~ "They left marks on my wrists and feet." I could see the marks, and they were visible over 24 hours after being shackled.

~ "They hurt."

~ "I feel like a bad person...like they think I'm dangerous or something."

~ "I couldn't write my lawyer notes and he ignoring me or telling me to be quiet when I was trying to tell him something."

~ "It's kinda hard to walk in em."

~ "I had to sign a paper at the end. You ever try to sign somethin in these?"



For more information, organization statements, expert affidavits, or research cites, please contact Alicia Mascioli, Deputy Director, Juvenile Justice Commission at [Alicia.mascioli@courtsww.gov](mailto:Alicia.mascioli@courtsww.gov) or 304-816-9625

## Example Policy, Legislation, & Court Rule (Pennsylvania)

### ALLEGHENY COUNTY PROBATION POLICY BULLETIN (*Effective May 31, 2011*)

**Policy:** It is the policy of the Court that restraints shall be removed from the juvenile prior to the commencement of a proceeding unless the Court determines on the record that they are necessary to prevent any of the following:

- (1) Physical harm to the juvenile or another person;
- (2) disruptive courtroom behavior, evidenced by a history of behavior that created harmful situations or substantial risk of physical harm;
- (3) the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom;
- (4) undue stress to a victim or witness present in the courtroom.

If the use of restraints is requested by Probation, any party or victim, or raised sua sponte by the Court, the Court will make a determination on the record, with the juvenile's attorney present, as to the need for restraints in the courtroom. This determination will be made before the juvenile is brought into the courtroom.

This policy pertains to the use of restraints in courtroom proceedings only. The use of restraints by sheriffs, probation officers, and others when taking juveniles into custody or transporting juveniles to and from Court, detention facilities, placement facilities, and other locations is governed by local policies of operation.

This policy is consistent with Rule 139 Pa.R.J.C.P.

**Procedure:** Before the hearing, the probation officer will review the juvenile's current offense, offense history, and other available relevant information to assess potential risk factors (violent behavior, history of absconding, resisting arrest, etc.).

If the probation officer, sheriff, victim, or other party believes that the juvenile should remain in restraints during the proceeding, the sheriff will be advised not to bring the juvenile into the courtroom until the Judge has ruled whether restraints are necessary.

The probation officer, sheriff, victim, or other party will approach the bench before the hearing, accompanied by the juvenile's attorney, to inform the Court of the factors relevant to the use of restraints.

After the judge hears any necessary testimony and makes a decision on the record, the Sheriff's Department will be advised of the Judge's decision.

If the Judge decides that restraints are necessary, the Sheriff's Department is authorized to use the restraints necessary to control the juvenile during the hearing.

### PENNSYLVANIA STATUTE

(a) Use of restraints.--Except as provided for in subsection (b), restraints such as handcuffs, chains, shackles, irons or straitjackets shall be removed prior to the commencement of a court proceeding.

(b) Exception.--Restraints may be used during a court proceeding if the court determines on the record, after providing the child with an opportunity to be heard, that they are necessary:

- (1) to prevent physical harm to the child or another person;
- (2) to prevent disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- (3) to prevent the child, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

*42 Pa.C.S.A. § 6336.2 (effective July 30, 2012).*

### PENNSYLVANIA COURT RULE

Restraints shall be removed prior to the commencement of a proceeding unless the court determines on the record, after providing the juvenile an opportunity to be heard, that they are necessary to prevent:

- 1) physical harm to the juvenile or another person;
- 2) disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- 3) the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

*237 Pa. Code § 139 (2013) (Use of restraints on the juvenile) (effective June 1, 2011).*

THE JUVENILE JUSTICE COMMISSION'S  
FINDINGS OF FACT AND RECOMMENDATIONS  
RELATING TO DHHR'S PROPOSED CONTRACT  
CHANGES FOR THE PLACEMENT OF  
WEST VIRGINIA YOUTH

JUVENILE JUSTICE COMMISSION,  
STATE OF WEST VIRGINIA

Issued August 22, 2016

**FINDINGS OF FACT AND CONCLUSIONS AND RECOMMENDATIONS**  
**OF THE JUVENILE JUSTICE COMMISSION**

**Whereas**, the Juvenile Justice Commission (previously known as the “Adjudicated Juvenile Rehabilitation Review Commission”) was established by the Supreme Court of Appeals of West Virginia to provide a complete and thorough review of West Virginia’s juvenile justice facilities, as well as the rules, regulations, and procedures being utilized in these facilities, in order to ensure that children in custody are being educated and rehabilitated in a safe and protected manner;<sup>1</sup> and

**Whereas**, the Juvenile Justice Commission subsequently expanded its review of West Virginia’s juvenile justice facilities to include all facilities inside and outside the State of West Virginia where a juvenile may be placed outside of the home as a result of cases involving abuse and neglect, delinquency, and status offender matters, which includes, but is not limited to all Division of Juvenile Services facilities, all Department of Health and Human Services facilities inside and outside the State of West Virginia, and all psychiatric hospitals in West Virginia that house juveniles;<sup>2</sup> and

**Whereas**, the Juvenile Justice Commission membership is diverse and includes circuit judges, as well as representatives of the West Virginia Department of Education, social workers, religious leaders, attorneys, legislators, and other community leaders;<sup>3</sup> and

**Whereas**, the Juvenile Justice Commission was recently informed of proposed contract changes between the Department of Health and Human Resources and the shelter network and residential treatment providers, and that these changes were substantial and related to the care of children in the judicial system of West Virginia; and

**Whereas**, the Juvenile Justice Commission was informed that the shelter network and residential providers had unanswered concerns that the Department had not addressed; and

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<sup>1</sup> Administrative Order creating the Adjudicated Juvenile Rehabilitation Review Commission, (2011), [http://www.courtswv.gov/court-administration/juvenile-justice-commission/pdf/Admin%20Order\\_4.pdf](http://www.courtswv.gov/court-administration/juvenile-justice-commission/pdf/Admin%20Order_4.pdf) (last visited Aug 17, 2016).

<sup>2</sup> Administrative Order expanding the Juvenile Justice Commission’s review, (2015), [http://www.courtswv.gov/court-administration/juvenile-justice-commission/pdf/Admin%20Order\\_3.pdf](http://www.courtswv.gov/court-administration/juvenile-justice-commission/pdf/Admin%20Order_3.pdf) (last visited Aug 17, 2016).

<sup>3</sup> Juvenile Justice Commission membership, (2016), <http://www.courtswv.gov/court-administration/juvenile-justice-commission/Members.html> (last visited on Aug 17, 2016).

**Whereas**, the Juvenile Justice Commission, on March 8, 2016, voted unanimously to host a public forum and invite the Department of Health and Human Resources, providers, and the public to allow the stakeholders to express the effects of these proposals and to give the Department an opportunity to discuss its position on fundamental changes to the child welfare system;<sup>4</sup> and

**Whereas**, the Juvenile Justice Commission exercised its discretion in deferring the public forum until July to obtain information on these changes and to give the Department time to finalize the contract changes; and

**Whereas**, the Juvenile Justice Commission hosted an all-day public forum on July 27, 2016, in the Senate Judiciary Committee room of the West Virginia State Capitol.<sup>5</sup> More than seventy-five (75) people attended, and the following individuals appeared and provided testimony:

- Kari Sisson, Executive Director, Association of Children’s Residential Centers;
- Mark Drennan, Executive Director, West Virginia Behavioral Health Care Providers Association;
- Steve Fairley, Executive Director of Academy Programs;
- Pat Varah, Public Relations Director of Academy Programs;
- Father Brian Crenwelge, Chairman of the Board for St. John’s Home;
- Mike Price, Executive Director of Burlington United Methodist Family Services;
- Senior Status Circuit Judge Donald Cookman, Davis Stuart Board Member;
- Temporary Family Court Judge Susan Perry, Davis Stuart Board Member;
- Bob Coffield, Attorney with Flaherty Sensabaugh Bonasso PLLC;
- Nathan Schoetz, Advisory Board Vice Chairman of Academy Programs;
- Patrick McGeehan, House of Delegates, District 01;
- Bill Hartman, Elkins Mountain School Board of Directors;
- Laurah Currey, Chief Operating Officer, Pressley Ridge;
- Delegate Don Perdue, West Virginia House of Delegates, District 01;

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<sup>4</sup> Juvenile Justice Commission press release to host public forum, (2016), [http://www.courtswv.gov/public-resources/press/releases/2016-releases/july13c\\_16.pdf](http://www.courtswv.gov/public-resources/press/releases/2016-releases/july13c_16.pdf) (last visited on Aug 17, 2016).

<sup>5</sup> Phil Kabler, *Concerns raised over DHHR juvenile reimbursement changes*, CHARLESTON GAZETTE-MAIL, (July 27, 2016), <http://www.wvgazette.com/article/20160727/GZ0101/160729578>.

- Mark Spangler, Executive Director of Davis Stuart;
- Chuck Johnson, Attorney with Frost Brown Todd LLC;
- Steve Tuck, Children’s Home Society;
- Sarah Fox, former residential youth;
- Sara McDowell, Executive Director of Big Brothers Big Sisters; and
- Amy Whitehair, Highland Hospital, Clarksburg.

**Whereas**, the Department of Health and Human Resources was formally invited to the public forum but publicly opted, through the press, not to appear or send a representative on its behalf.<sup>6</sup>

### **FINDINGS OF FACT**

Based upon the testimony of witnesses at the public forum and other documents reviewed, and noting the absence of the Department of Health and Human Resources to provide any testimony or provide a written statement in lieu of testimony, the Commissioners made the following findings:<sup>7</sup>

1. **That the proposed changes are a unilateral attempt, under the guise of contract negotiations, to make systemic changes to the care and treatment of West Virginia children.** After preparing the proposed contract changes, the Department of Health and Human Resources additionally sought, through a “State Plan Amendment,” to amend the state’s Medicaid plan. Despite unprecedented collaboration between the executive, judicial, and legislative branches of government to reform the juvenile justice system in 2015, the Department independently proposed changes that will impact, and may violate, the product of that collaboration: Senate Bill 393.<sup>8</sup> The testimony and documents revealed that

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<sup>6</sup> Jeff Jenkins, *DHHR secretary on child welfare reform: “We’re going to prove to them it’s the right approach,”* METRONews, (July 26, 2016, 5:39 PM), <http://wvmetronews.com/2016/07/26/dhhr-secretary-on-child-welfare-reform-were-going-to-prove-to-them-its-the-right-approach/>, (Department of Health and Human Services Secretary Karen Bowling: “I just think change is hard right now. Having a public forum about our contracts—we won’t be there”).

<sup>7</sup> These findings of fact and recommendations were adopted unanimously by the Juvenile Justice Commission.

<sup>8</sup> S.B. 393, 2015 Leg., 81<sup>st</sup> Sess. (W. Va. 2015), [http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2015\\_SESSIONS/RS/Bills/SB393%20SUB1%20enr.htm](http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/Bills/SB393%20SUB1%20enr.htm).

- a. The proposed changes were not developed through the West Virginia Intergovernmental Task Force on Juvenile Justice; and
  - b. The proposed changes were not enacted through legislation; and
  - c. The Department neither consulted with nor advised the Governor’s Oversight Committee on Juvenile Justice Reform prior to or during the proposed changes. The Department had at least two opportunities during meetings on May 12, 2016, and again on August 12, 2016, to mention the proposed changes to this Committee and failed to do so; and
  - d. The Department neither consulted with nor advised the Commission to Study the Residential Placement of Children prior to or during the proposed changes. During this time frame, the Department cancelled one meeting of the Commission to Study the Residential Placement of Children and failed to include the topic for the June 16, 2016, meeting; and
  - e. The Department neither consulted with nor advised the Juvenile Justice Commission prior to or during the proposed changes; and
  - f. The Department of Education was neither advised nor consulted prior to the proposed changes. When approached by the Department of Education, the Department of Health and Human Resources advised the Department of Education that it did not need to be at the table at this time, although the proposed changes may violate state education regulations.
2. **That the proposed changes potentially violate West Virginia law.** The introduction of a computerized matrix and other contract provisions may interfere with the codified multidisciplinary process.<sup>9</sup> The testimony and documents revealed that
- a. The Department’s unknown computerized matrix largely, if not completely, controls the child placement determination and appears to impact the role of the Multidisciplinary Treatment team and the ability of the provider to accept and discharge children whose placement may be inappropriate for their treatment needs; and
  - b. Placing these restrictions on providers may risk the safety of the child and others, as well as impact rehabilitation and undermine the current placement process that

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<sup>9</sup> W. Va. Code §49-4-403(b)(1).

promotes collaboration between various disciplines in determining needs and monitoring treatment;<sup>10</sup> and

- c. The current placement process utilizes the statutorily required Multidisciplinary Treatment team, which is a group of professionals and paraprofessionals representing a variety of disciplines. These teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, parents, psychologists and psychiatrists;<sup>11</sup> and
  - d. The goal of the Multidisciplinary Treatment team is “to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children;”<sup>12</sup> and
  - e. This approach is an integral part of placement determination, flexing to meet the children’s unique needs based on the many challenges they face today: poverty, the drug epidemic, abusive and neglectful parents, mental health issues, and other problems that lead children into the juvenile justice system;<sup>13</sup> and
  - f. The Department has not demonstrated that the proposed changes will comply with existing West Virginia law, including the multidisciplinary process, and, specifically, Senate Bill 393 on juvenile justice reform.
3. **That the proposed changes could cause a youth treatment and placement crisis and lead to an increase in juvenile incarceration.** The effort by the Department of Health and Human Resources to drastically change the existing youth placement model is premature and lacking the crucial infrastructure to provide community-based services for these youth and their families. The testimony and documents revealed that
- a. The new proposal eliminates the three classifications of children based on the level of treatment needed and, instead, classifies them as either “standard” or “enhanced,” both terms of which are currently undefined; and
  - b. The proposed changes invite ambiguity in determining the services available for a child at each of the facilities and leave circuit courts to speculate when

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<sup>10</sup> W. Va. Code §49-4-404(a).

<sup>11</sup> W. Va. Code §49-1-207.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

determining whether a particular facility can appropriately provide for the children in their care; and

- c. The potential loss of youth shelter and residential placement networks will reduce beds and the circuit courts' options for treatment; and
  - d. The Department's new "Safe at Home" project for children ages twelve (12) through seventeen (17) with a particular diagnosis, involving wrap-around services in home communities, is in its early stages and neither the project nor the comprehensive and accessible infrastructure of treatment services is available in many parts of West Virginia; and
  - e. The lack of comprehensive and accessible infrastructure to support keeping children in their community, in addition to the proposed contract changes and resulting limitations, may produce community safety concerns and an increase in juvenile incarceration which is counterproductive to juvenile justice reform.
4. **That the proposed changes were cloaked in secrecy.** The Department of Health and Human Resources intended to unilaterally overhaul the child residential placement system without consulting key figures in the West Virginia juvenile justice system. The testimony revealed that
- a. The Department told the shelter network and residential providers, during contract discussions, to not worry about judges and not worry about money; and
  - b. The Department told the shelter network and residential providers not to discuss the contracts with others.
5. **That the proposed changes could be detrimental to the state's network of shelter and residential placements.** The proposed contracts, in terms of financial reimbursement, shift from a bundled services billing model to a fee-for-service billing model, which could cause the reduction of currently available services in, and closures of, youth residential facilities, including those with educational services on grounds. Furthermore, the Department of Health and Human Resources has offered no evidence, public or otherwise, that it has undertaken a cost-benefit analysis to show savings in taxpayer dollars by this shift in business model. The testimony and documents revealed that

- a. The new proposal, the “State Plan Amendment,” eliminates the bundling of services that currently compensates residential providers at a rate of \$250 per day and replaces it with a standard rate of \$178 per day for room, board, and supervision, while requiring residential care facilities to bill separately for other services provided to each child on a fee-for-service basis; and
  - b. The billing codes for some services are nonexistent or incomplete; and
  - c. The potential complexity of billing will shift manpower from treatment to securing reimbursement, stressing staff-to-student ratios; and
  - d. The still-present uncertainty in billing places providers in an impossible position to budget and estimate capital and human resources costs; and
  - e. The new proposal could cause cuts to educational programs and decimation of specialized and sexual offender treatment programs and diagnostics; and
  - f. The proposed contracts may make it difficult not only to adequately and appropriately serve children but even to remain in business.
6. **That the proposed changes increase safety concerns and may rapidly dismantle the state’s youth placement network.** The Department of Health and Human Resources has offered no credible explanation for the need to rapidly dismantle, without thorough examination and input, the youth residential treatment system in West Virginia. The testimony revealed that
- a. Legislators were told that the current billing model utilized by West Virginia, the bundled-service rate, is a fraudulent billing practice although West Virginia is permitted to bill at a bundled rate through a grandfather provision. Once the bundled rate is dismantled, it will no longer be available; and
  - b. The Department, in discussions with providers, stated its intention to “blow up” the residential treatment system; and
  - c. Providers, individually and collectively, reached out to the Department multiple times for clarification and collaboration on concerns with continually-changing contracts; and
  - d. The Department ignored letters requesting a meeting from residential providers and attempts at communication were met with silence; and

- e. Providers were issued final contracts with unresolved issues and told to sign by an expedited date or risk closure; and
  - f. Unresolved issues included concerns with billing, treatment, safety, expectations, discretion, and more, which impacts the youth and the juvenile justice system as a whole.
7. **That the proposed changes potentially usurp judicial authority.** The contracts employ a computerized matrix to determine placement and possibly impose arbitrary timelines on treatment. The testimony and documents revealed that
- a. The Department intends to use a computerized matrix in placing children that has not been revealed to the public, the providers, or the judiciary and may be contrary to West Virginia law; and
  - b. Utilizing a computer program for placement does not account for the individual needs of the child. This could result in children with very severe issues and safety concerns being placed among children with more moderate problems, and could result in a child under the supervision of the court being injured while in custody; and
  - c. The proposed changes impose time frames for treatment and force the removal of children from residential placement and/or non-payment to providers for children placed over a certain number of days, undermining rehabilitation and individualization based upon specific issues such as family systems and level of trauma; and
  - d. The arbitrary time frames for treatment could be interpreted as an attempt to usurp judicial discretion as it is the judiciary that determines how long a child remains in a particular placement, subject to the laws of the State of West Virginia.<sup>14</sup>

### **CONCLUSIONS AND RECOMMENDATIONS**

The Juvenile Justice Commission is deeply troubled with the testimony provided at the public forum. Furthermore, the Commission has taken note that the Department of Health and Human Resources has been provided many opportunities and invitations to explain the aforementioned changes and has refused to do so, seemingly taking the position that no

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<sup>14</sup> W. Va. §49-2-1002(d)(4).

explanation is warranted to the judiciary, providers, educators, and families among others. The Commission finds this position to be presumptuous and shortsighted, especially considering that judges, court officers, treatment providers, teachers, and families are a critical and necessary part of determining the best treatment options for the individual child.

The Juvenile Justice Commission is also deeply troubled with the rapid and sweeping changes that the Department of Health and Human Resources intends to implement through contract negotiations with shelter and residential placement networks without thorough examination as to the financial ramifications and without proper infrastructure in place to serve the needs of the children in their communities. To the extent of this Commission's knowledge based upon testimony provided and documents reviewed without explanation or clarification from the Department of Health and Human Resources despite many opportunities and invitations to do so, the Commission recommends the following.

- **The Department of Health and Human Resources should withdraw the “State Plan Amendment” submitted to the federal government until the financial ramifications are fully studied and understood.** This significant change could cause the closure of certain facilities and the elimination of other needed services and cause further constraint and limitations on treatment options available to the court system, thereby placing children at risk; and
- **The Department of Health and Human Resources should immediately suspend implementation of the new contracts.** While the Commission supports moving children into community-based services, such a sweeping change without the proper infrastructure could jeopardize the well-being of children and future rehabilitation efforts; and
- **The Department of Health and Human Resources should disclose the computer matrix process that possibly eliminates judicial discretion and impacts the multidisciplinary process in determining the needed placement and services for the child.** The new residential provider agreements force a provider to accept a child at a facility that has a vacancy even though that facility may not have the appropriate treatment services for that child; and
- **Any further changes to the process used to place at-risk children should be transparent and include input from providers, the judiciary, the West Virginia**

**Intergovernmental Task Force on Juvenile Justice, legislators, the Governor's Oversight Committee on Juvenile Justice Reform, the Commission to Study the Residential Placement of Children, the Juvenile Justice Commission, and the Department of Education, all of whom are critical stakeholders in the juvenile justice system.**

# Our Journey Continues

Every day our courts, emergency shelters and residential placement, detention, and correctional facilities struggle to find ways to provide safe and positive interventions to youths in their care, even when youths display significant emotional, mental, and behavioral needs. Unfortunately, reliance on the juvenile justice system to meet the special and unique needs of these juvenile offenders has increased and continues to do so. Daily, those facilities within the juvenile justice system, especially our detention or correctional facilities, face the challenge of providing individualized interventions while maintaining personal and public safety.

The Juvenile Justice Commission, from its inception, has focused on the betterment of youth within the system. The combination of children's mental health issues with our state's substance abuse epidemic touches every facet of the continuum in the juvenile system, and we want to do our part to assist stakeholders and providers in tackling these issues. Whether the Commission is a teammate or a watchdog, it shares in the concern and the responsibility for determining the pieces of the puzzle needed for a complete continuum within the juvenile justice system.

As the Juvenile Justice Commission continues its journey, we will encourage a comprehensive system that looks at each youth, individually. The time is now to stop failing our youth. Our children need the right intervention at the right time, the first time.

