

**Utah Juvenile Justice Working Group**

# **Final Report**



**November 2016**

# Members of the Utah Juvenile Justice Working Group

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## SUMMARY

In 2014, Utah undertook a research-based initiative to improve public safety and control costs in the adult corrections system, resulting in the passage of House Bill 348. During that process, stakeholders concluded that a similar data-driven effort could help Utah develop policies that improve outcomes in the juvenile justice system. A similar cross-agency effort, headed by the leaders of the Executive, Legislative and Judicial branches will be critical in a state where juvenile reoffending remained high despite the investment of more than \$50 million to incarcerate youth in Fiscal Year 2014.

Building on the success of the adult corrections initiative, Governor Gary Herbert, Chief Justice Matthew Durrant, Senate President Wayne Niederhauser, and House Speaker Gregory Hughes established the inter-branch Utah Juvenile Justice Working Group and asked members to develop policy recommendations that meet three goals:

- Promote public safety and hold juvenile offenders accountable;
- Control costs; and
- Improve recidivism and other outcomes for youth, families, and communities.

From June through November 2016, the Working Group, with technical assistance from The Pew Charitable Trusts and The Crime and Justice Institute at CRJ, completed a data-driven assessment of the Utah juvenile justice system. The assessment began with an exhaustive review of quantitative information from Utah's courts and juvenile corrections system. It also included stakeholder feedback from three surveys and more than 30 roundtable discussions with prosecutors, families, judges, victims, youth, probation officers, defense attorneys, and others connected to the juvenile justice system. After combing through the Utah data, the Working Group then examined research on what works to reduce reoffending along with effective policies and practices used in other states.

The major findings from this review of Utah's juvenile justice system include:

- **A lack of statewide standards leads to inconsistent responses and disparate outcomes throughout the juvenile justice system.** Disparities based upon race and geography persist for youth with similar offenses at every stage of the system and are most pronounced for youth removed from the home.
- **Most youth who enter the system are low-level offenders.** The majority of referrals into the juvenile justice system are for misdemeanor offenses, and more than 80 percent of youth entering the court system for the first time are at a low risk to reoffend. Youth who receive pre-court diversion reoffend at lower rates, but most youth who end up on probation or in custody are denied a diversion opportunity when they first entered the system, despite being statutorily eligible.
- **Youth who have never committed a felony make up a large portion of out-of-home placements, potentially increasing their risk to reoffend.** A high proportion of youth removed from the home for the first time have limited prior histories of only misdemeanor or status offenses, charges such as habitual truancy, which would not be a crime if committed by an adult. Research shows that out-of-home placement does not reduce recidivism for most youth and may increase it for youth who enter at a low risk to reoffend.
- **Youth remain stalled in the system for long periods due to court-ordered conditions such as financial obligations.** Youth placed on probation or in custody spend approximately three years on average monitored by the court before aging out. The average length of an out-of-home

disposition to state custody ranges from 10 months for the Department of Human Services' Division of Juvenile Justice Services (JJS) to 19 months for a Division of Child and Family Services (DCFS) disposition for youth placed for a delinquency or status offense without any finding of abuse, neglect, or dependency.

- **Affordable, accessible services that effectively hold youth accountable and keep families intact are largely unavailable to the courts across the state.** Judges, probation officers, and other stakeholders reported that high-quality services for youth living at home that reduce reoffending and strengthen families are not available across much of the state. Where they do exist, long waitlists and high costs hinder families' access.
- **Out-of-home placement costs up to 17 times more than community supervision, but results in similar rates of re-offending.** Community supervision costs up to \$7,500 per youth per year compared to as much as \$127,750 per year for some JJS non-secure out-of-home placements. But roughly half of youth released from both state custody and probation are convicted of another crime within two years.
- **Most youth do not receive legal representation throughout the duration of the court process, even when their liberty is at stake.** While statute requires appointment of counsel for felony offenses, it does not require counsel for misdemeanor or status offenses (which account for the vast majority of cases coming into the juvenile court system). Judges reported that few youth have legal representation through every stage of the court process. Statute allows the courts to impose any disposition, including out-of-home state custody, on youth charged with any delinquency offense at any stage of the court process without the benefit of counsel.

## THE UTAH JUVENILE JUSTICE WORKING GROUP

Beginning in June 2016, the Working Group met monthly to conduct a comprehensive, data-driven assessment of the Utah juvenile justice system.<sup>1</sup> Over the course of six meetings, Working Group members reviewed Utah data drawn from the Court and Agencies Record Exchange (CARE) system, which houses data collected by the Administrative Office of the Courts (AOC) and the Department of Human Services' (DHS) Division of Juvenile Justice Services (JJS). The Working Group also reviewed state statutes, administrative policies, and court rules while collecting additional system assessment information from stakeholder interviews and statewide surveys of juvenile court judges, probation officers, and JJS case managers. In addition, the Working Group members received stakeholder input by hosting 32 stakeholder roundtables across the state with groups on the front lines of the Utah juvenile justice system. Participants included:

- Law enforcement,
- Judges,
- Victims,
- Families,
- Probation officers, supervisors, and chiefs,
- JJS Youth Services, secure detention, work camp, and secure care staff,
- DHS' Division for Child and Families Services (DCFS) staff,
- Youth on probation and in secure care, secure detention, work camps, JJS proctor care, and DCFS custody,
- Juvenile prosecutors,

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<sup>1</sup> Unless otherwise cited, all analyses in this report were conducted by The Pew Charitable Trusts and the Crime and Justice Institute at CRJ using data provided by the Administrative Office of the Courts, the Division of Juvenile Justice Services, the Division of Children and Family Services, and the Youth Parole Authority.

- Juvenile defense attorneys,
- Service providers,
- Educators,
- Tribal representatives, and
- Community partners.

In September, the Working Group heard from Dr. Edward Mulvey, a nationally recognized juvenile justice researcher at the University of Pittsburgh School of Medicine. Dr. Mulvey presented research on effective policies and practices for reducing recidivism for youth living at home as well as those in secure- and non-secure out-of-home placements.

After reviewing Utah’s system and data, as well as research on best practices in reducing juvenile recidivism, the Working Group split into three subgroups to consider additional information and develop consensus-based policy recommendations:

- The *Pre-Adjudication Subgroup* focused on aligning pre-adjudication decision-making and court processes with research about improving outcomes,
- The *Dispositions Subgroup* focused on disposition options and supervision length to focus state resources on offenders at highest risk to public safety and more effectively hold youth accountable, and
- The *Investment and Oversight Subgroup* focused on investment in evidence-based practices and programming, as well as data collection, training, and system accountability.

Using the data and research discussed throughout the Working Group process as well as the more in-depth analysis of their specific policy areas, members of each subgroup prepared a set of policy proposals and presented them to the full panel for consideration. The Working Group discussed the proposals and submitted this report of process, findings and consensus recommendations to the Commission on Criminal and Juvenile Justice (CCJJ) for consideration during the 2017 legislative session.

Collectively, the Working Group’s policy recommendations will yield an estimated \$25 million in averted costs from JJS over five years for reinvestment in a continuum of evidence-based options for the courts to hold youth accountable in the community, with additional averted costs stemming from changes to how existing JJS facilities are utilized. Further, the policy changes will create an additional \$33 million in averted costs for DCFS over five years for reinvestment in evidence-based in-home services to improve outcomes and strengthen families. The Working Group recommends that the legislature provide an upfront investment to fund services before these policies changes go into effect to support the achievement of this reinvestment.

## KEY FINDINGS

### **A lack of statewide standards leads to inconsistent responses and disparate outcomes.**

The Working Group found that Utah state law includes few criteria or requirements for decision-making at each stage of the juvenile justice process. In addition, Utah data reveal disparate practices and outcomes for similarly situated youth by judicial district and by race.

The Working Group found inconsistent practices at key decision points throughout the system, including:

### *Non-Judicial Adjustment Prior to Formal Court Processing*

- The practice of offering youth non-judicial adjustment—a pre-court diversion in which a youth may avoid a charge in court by signing an agreement and completing its requirements—varies by judicial district. No statutory requirements or prohibitions exist, leading to disparate outcomes across the state. For example,
  - In the 7<sup>th</sup> judicial district, of the youth charged with class B misdemeanors or below coming into the system for the first time, just over one-third received a non-judicial adjustment instead of a petition in 2015. But in the 1<sup>st</sup> judicial district, more than two-thirds of those youth received a non-judicial adjustment that year.

### *Technical Violations of Court Orders*

- There are no statutory criteria for how and when to respond to technical violations (violations of court orders that are not new offenses). In the Working Group’s roundtables and surveys, probation officers, supervisors, and chiefs reported inconsistency in how different courts allow them to respond to technical violations, including which types of offenses, if any, they are permitted to act on in the community. Probation staff report that differences in these practices lead to disparities in which behaviors trigger contempt charges.

### *Out-of-Home Placement*

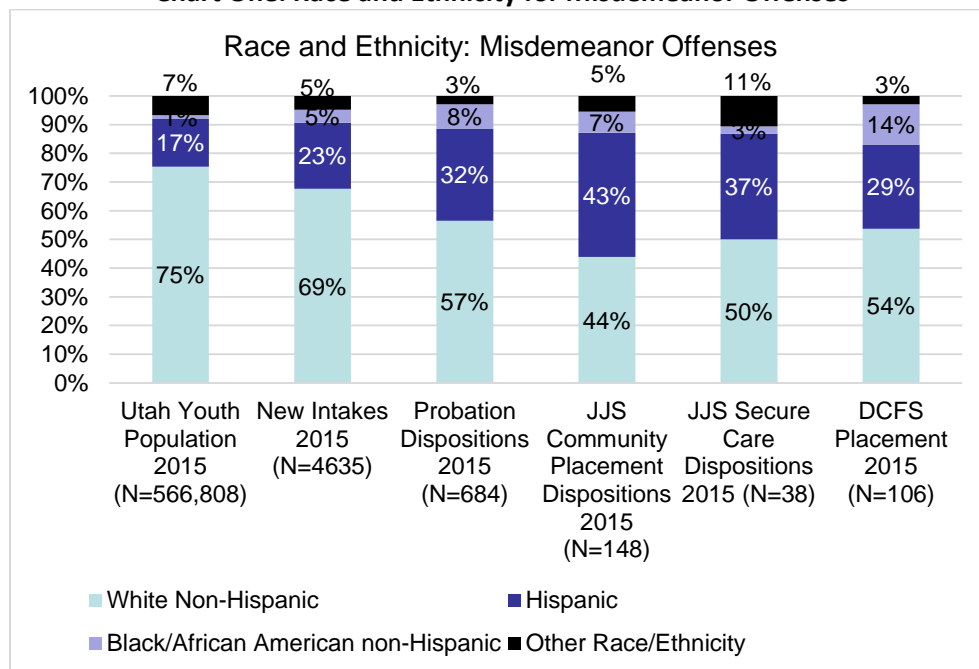
- There is wide district-level variation in the use of out-of-home placements, relative to the districts’ proportion of youth coming into the system (new court intakes). The districts that have the largest share of cases coming into the system do not have as large a share of out-of-home placements. For example:
  - While the 2<sup>nd</sup> Judicial District accounted for 18 percent of new court intakes across the state in 2015, the district accounts for 32 percent of JJS detention dispositions and bookings.
  - In contrast, the 4<sup>th</sup> Judicial District accounted for 20 percent of new intakes in 2015 but just 11 percent of JJS detention dispositions and bookings.
- Sentencing guidelines are not statutorily binding for judges. In surveys, 77 percent of Utah’s juvenile court judges reported sometimes or always departing from sentencing guidelines, either departing “up” (giving a more serious disposition than the guidelines recommend) or departing “down” (giving a less serious disposition than the guidelines recommend).
- The likelihood that a youth will be placed in child welfare custody for delinquent behavior without a finding of abuse, neglect, or dependency varies by district. Most DCFS delinquent youth are placed in non-secure out-of-home placements that also house youth found to have been abused, neglected, or dependent on the state. DCFS staff report that they do not receive training on effective responses to the criminogenic needs of youth. Additionally, some judicial districts use DCFS custody frequently for delinquent youth, while others use it rarely, if ever. For example:
  - The 2<sup>nd</sup> district accounted for just nine percent of DCFS custody dispositions in 2015 despite representing 18 percent of new intakes statewide.
  - In the same year, however, the 3<sup>rd</sup> district represented 36 percent of new intakes but more than half of DCFS custody dispositions (see Table One)

Table One		
	New Intakes 2015	DCFS Custody Dispositions 2015
First District	7%	1%
Second District	18%	9%
Third District	36%	56%
Fourth District	20%	16%
Fifth District	8%	0%
Sixth District	3%	3%
Seventh District	3%	11%
Eighth District	4%	2%

Racial disparities persist for all types of probation and custody dispositions, and the disparities grow larger as youth progress deeper into the system, especially once they are removed from the home. These racial disparities remain when taking into account the different demographics in each judicial district, and differences in offense type. For example:

- Hispanic youth charged with misdemeanors make up 43 percent of JJS non-secure out-of-home placement, but only 23 percent of new cases coming into the system (see Chart One)
- African-American youth make up 5 percent of new misdemeanor cases coming into the system, but nearly three times that proportion (14 percent) of misdemeanor youth placed in DCFS custody solely for delinquency.

**Chart One: Race and Ethnicity for Misdemeanor Offenses**

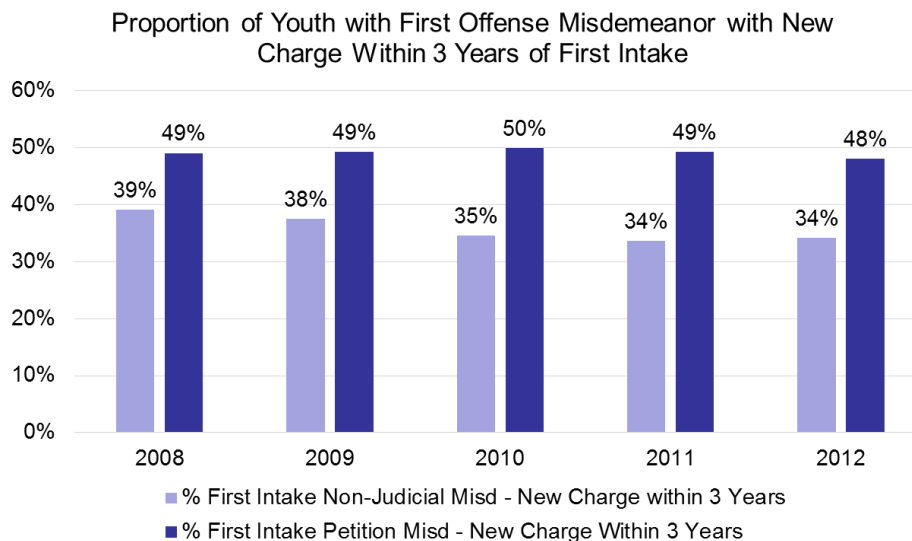


## Most youth who enter the system are low-level offenders.

The Working Group reviewed Utah data showing that most youth entering the juvenile justice system are charged with low-level offenses. While juvenile arrests in Utah fell approximately 33 percent between 2002-2012, Utah’s juvenile arrest rate remains higher than the national average, a gap driven primarily by lower-level crime. The majority of the youth entering the juvenile justice system were referred on a misdemeanor offense, and 80 percent of youth entering the system for the first time were assessed as low risk to reoffend.

Probation officers and other stakeholders reported the effectiveness of non-judicial adjustment at keeping low-level youth out of the system, and their perspective was supported by data: a higher proportion of misdemeanants and status offenders who receive a petition on their first case have subsequent charges, compared to those who receive a non-judicial adjustment (see Chart Two for an example for misdemeanor offenders). The difference in rates of reoffending is primarily driven by contempt charges, or technical violations of court orders that are not new delinquency charges. However, due to court rules and local standards that vary by district, many youth who are statutorily eligible for non-judicial adjustment do not receive it, a reality that is reflected in district-level variation—and an overall statewide decline—in the proportion of youth who receive a non-judicial adjustment on their first case. The most common charges for youth who have a petition filed on their first case rather than receiving a non-judicial adjustment are marijuana possession, drug paraphernalia, and truancy. Of the youth who progress through to the deep end of the system on probation or in state custody, most did not have a non-judicial adjustment on their first case.

**Chart Two: Non-Judicial Adjustment and Petition Outcomes for Misdemeanor Offenders**



Adding context to such data, the Working Group reviewed research showing that most youth involved with the juvenile justice system are not on a path to adult criminal behavior. A researcher who addressed the Working Group, Dr. Mulvey, presented research showing that lower risk youth should be held accountable through diversion outside of court because too much involvement with the juvenile justice system can increase recidivism for those youth.<sup>2</sup>

<sup>2</sup> Dr. Edward Mulvey, Presentation to the Utah Juvenile Justice Working Group, September 1<sup>st</sup>, 2016.

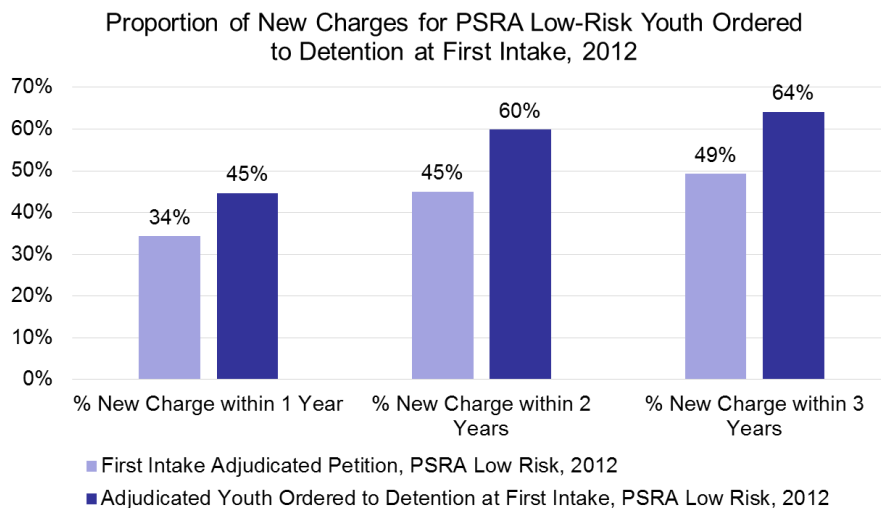


**Youth who have never committed a felony make up a large portion of out-of-home placements, potentially increasing their risk to reoffend.**

In its review of research, the Working Group found broad consensus that out-of-home placements do not improve outcomes for most youth and, in fact, can increase the likelihood of reoffending for certain youth. Research indicates that the most intensive dispositions should target youth who pose the greatest risk to public safety.<sup>3</sup> In Utah, however, data show large proportions of the youth housed in out-of-home placements are not serious, chronic offenders. Instead, a significant percentage of Utah youth placed in the custody of the state for the first time have only misdemeanors or status offenses in their history and few prior delinquency offenses. The Working Group found that Utah judges making out-of-home placement dispositions lack statutory standards to guide them, whether their decisions concern pre-adjudication secure detention or long-term state custody.

Although the state’s validated Pre-Screen Risk Assessment (PSRA) tool shows that placement in secure detention is a risk factor for reoffending, secure detention is the most frequently used out-of-home disposition. For example, the first out-of-home placement for many youth entering Utah’s system, including many lower-level youth, is secure detention.<sup>4</sup> In Utah, secure detention can be used in any case both as a disposition and to hold youth at any point prior to disposition. Utah does not utilize a risk assessment instrument to inform secure detention decision-making and, in 2015, more than 400 youth spent time in secure detention before adjudication on their first charge, staying an average of nine days. The most common charges for those detained youth included retail theft, misdemeanor assault, and marijuana offenses, and 44 percent of the youth were assessed at a low risk to reoffend by the PSRA (just 11 percent are high risk). For those youth who have prior contact with the system, contempt is the most serious charge in their court history for nearly half of detention bookings (43 percent). Adjudicated youth who are ordered to secure detention reoffend at higher rates than those who are not, a gap that holds among youth who are assessed as low risk.

**Chart Three: Outcomes for Low-Risk Youth Detained on their First Case**



<sup>3</sup> Presentation of Dr. Edward Mulvey to the Utah Juvenile Justice Working Group, September 1<sup>st</sup>, 2016.

<sup>4</sup> Secure detention is used both as a disposition and to hold youth prior to adjudication.

Looking at youth in the deep end of Utah’s juvenile justice system, the Working Group found that the vast majority are not serious, chronic offenders. Data show that large proportions of youth in out-of-home placement do not have serious delinquency offenses in their history and have limited or no history of court involvement. For example:

- The majority of out-of-home dispositions (81 percent) are for non-felony cases, including:
  - 81 percent of Observation and Assessment (O&A) dispositions,
  - 91 percent of DCFS delinquency dispositions,
  - 83 percent of secure detention dispositions,
  - 86 percent of JJS non-secure out-of-home placement dispositions, and
  - 50 percent of JJS secure care dispositions.
- 40% of youth sent to JJS non-secure, out-of-home placements and 17% of youth sent to JJS secure care did not have a prior felony in their history before their first placement.
- Contempt charges are a major driver within each type of state custody disposition, and the majority of youth placed in DCFS or JJS non-secure out-of-home placement on contempt had not committed a felony prior to their first placement.
  - For those who did have a prior felony, an average of more than six months had passed since the felony charge.
  - Contempt is the most serious offense for 19% of secure care dispositions.
- The majority of youth on probation and in DCFS custody —and nearly half of JJS non-secure out-of-home placement youth—have two or fewer prior delinquency incidents before their first placement.

**Youth remain stalled in the system for a long period due to court-ordered conditions such as financial obligations.**

The Working Group found that with the exception of Observation and Assessment and secure detention, all disposition lengths in Utah are indefinite, and youth remain in the system for long periods of time, often spending several years under court jurisdiction. No statutory language restricts overall supervision length, probation length, or custody disposition length, except for the jurisdictional age of 21.<sup>5</sup> Stakeholders, including families, probation officers, youth, and JJS and DCFS staff, reported that it is difficult for youth to work their way out of the system once they enter it, that major financial and community service obligations overwhelm youth, and that expectations and incentives for release are unclear at all stages of case processing. As one youth in secure detention stated, “The system feels like once you’re in it, it’s almost impossible to get out.”

*Length of Stay for Youth Who Are Formally Petitioned is Much Longer, Despite Similar Offenses to Diverted Youth*

For youth entering the system for the first time, the length of time they are monitored varies dramatically depending on whether the youth is diverted or sent to court (petitioned). Even though the offenses for youth who are petitioned and youth who are diverted through non-judicial adjustment are largely similar, the average length of a non-judicial adjustment for a youth’s first case is less than two months, while youth who are petitioned on their first case average one year under court jurisdiction.

*Length of Stay Under Court Jurisdiction Averages Three Years for Youth Put on Probation or in Custody*

The Working Group found that youth who are adjudicated and disposed to probation or state custody spend on average three years monitored by the juvenile justice system. All youth placed on probation

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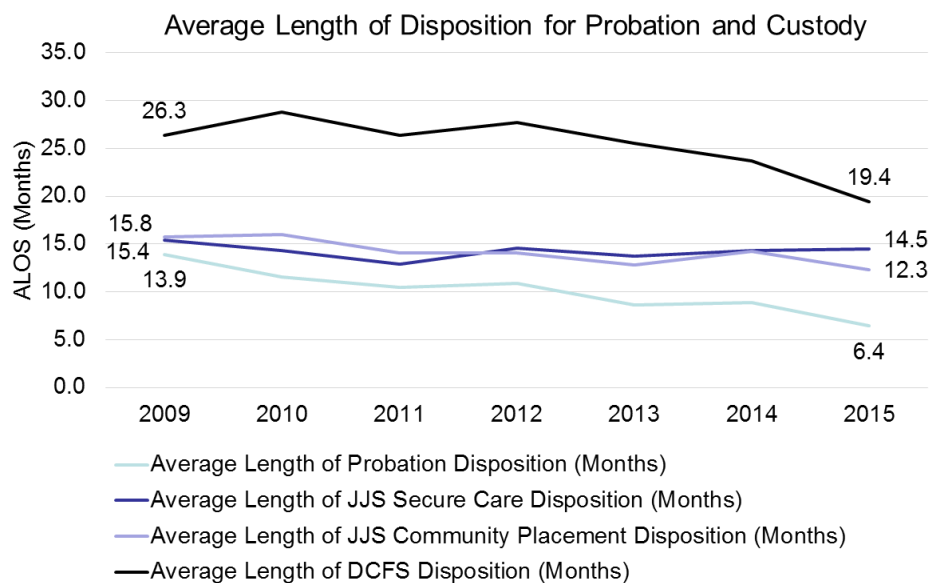
<sup>5</sup>The jurisdictional limit of 21 years of age can be surpassed if financial obligations remain.

must comply with 18 standard conditions, and many have additional special conditions, regardless of their risk level or offense type. Research reviewed by the dispositions subgroup shows that heavy financial obligations can extend length of stay, increase the likelihood of recidivism, and contribute to racial disparities.<sup>6</sup> Yet Utah data show that fines, fees, and community service hours are the most common dispositions. One probation chief summarized the challenges this way: “The standard probation orders are too much for a [probation officer] to hold any kid to, so they end up picking and choosing what to enforce. It’s too much for the [probation officer] to hold the youth accountable.”

*Lengths of Stay in Out-of-Home Placement Exceed Evidence-Based Timelines for Reducing Reoffending*  
 Research finds no consistent relationship between longer lengths of stay in out-of-home placements and recidivism; one recent study of serious offenders, for example, found no change in re-arrest rates for youth staying more than three months out of home compared to youth who stayed three months.<sup>7</sup> However, for Utah youth who are placed out of home, the average length of a JJS non-secure placement disposition is nearly 10 months, while the average length of a JJS secure care disposition is more than 14 months (see Chart Four).

Youth who receive a DCFS disposition for a delinquency or status offense stay out of home more than 19 months on average, significantly longer than the average JJS secure care disposition. The Working Group found that although youth in DCFS custody solely for a delinquency or status offense are placed in the same facilities as youth with abuse, neglect, or dependency petitions, they do not receive the same statutory rights and protections, such as permanency planning.

**Chart Four: Average Length of Probation and Custody Dispositions**



<sup>6</sup> Alex Piquero and Wesley Jennings, “Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders” DRAFT, *Juvenile Law Center*, <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>

<sup>7</sup> Loughran, T. A., Mulvey, E. P., Schubert, C. A., Fagan, J., Piquero, A. R., & Losoya, S. H. (2009). Estimating a dose-response relationship between length of stay and future recidivism in serious juvenile offenders. *Criminology*, 47, 669-740

Most youth who remain in the system for long lengths of time do not leave the system at a lower risk to reoffend than when they entered. Rather, Utah data show that while very few of the youth who are put on probation or in JJS custody enter the court system as high risk, most of them leave the system high risk. Much of this risk elevation occurs during the period of court monitoring that occurs before the youth is placed on probation or in custody.

**Affordable, accessible services shown to hold offenders accountable and keep families intact are largely unavailable to the courts across the state.**

The Working Group reviewed research showing that high quality, evidence-based programming for youth in the home and community improves outcomes while also reducing costs.<sup>8</sup> Utah prosecutors, law enforcement, and other stakeholders reported to the Working Group that evidence-based services for youth in the home keep families united and provide them with tools to improve accountability. As one law enforcement officer noted, “We need to invest in the families and see what is needed for the family to improve.”

Despite knowledge of the scientific evidence and the desire for quality programs, stakeholders at every stage of Utah’s juvenile justice system reported that such evidence-based services for youth living at home are largely unavailable. Data show that early intervention, substance abuse treatment, and family services are in place and working effectively only in a few districts in the state, and are particularly lacking in rural areas. In surveys, probation officers and JJS case managers reported that the options and availability of effective services for youth living at home vary regionally, and that youth often encounter barriers to service, such as limited transportation, long waitlists, and high costs to families.

In roundtables, a wide range of stakeholders, including probation staff, defense attorneys, and prosecutors, said the scarcity of services in the community often leads to decisions that send lower-level youth deeper into the justice system. In surveys, judges cited a lack of access to services in the community as a factor in their decisions to place youth in state custody. In addition, staff at JJS non-secure, out-of-home placement and secure care facilities reported that high proportions of lower-level youth are placed out of home solely as a means to ensure the youth can access services. One probation officer said that, “One of the things that really frustrates us is the lack of services and the lack of quality services for our kids because we do end up moving them along farther into the system to meet their needs [when they] could have their needs addressed in the community.”

**Out-of-home placement can cost up to 17 times more than community supervision, but results in similar rates of re-offending.**

The Working Group found that JJS non-secure out-of-home placement beds—where the largest share of youth are placed— cost as much as \$127,750 per year and average nearly \$44,000 per year. JJS work camps cost the state \$208 per youth per day even though a youth working an eight-hour day could only earn approximately \$50 in restitution. In contrast to out-of-home placement, community supervision costs the state up to \$7,500 per youth per year. Longer lengths of stay increase costs in all parts of the system. However, despite dramatic differences in cost, overall recidivism rates are similar for youth released from probation and state custody: approximately 50 percent are re-adjudicated in the juvenile justice system or re-convicted in the adult system within two years of release (see Chart Five). Most of

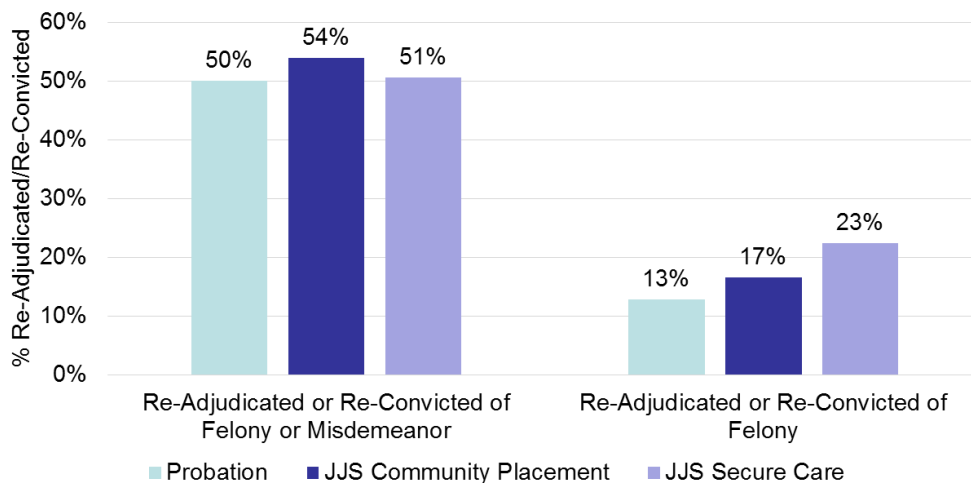
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<sup>8</sup> Christopher T. Lowenkamp and Edward J. Latessa, “Evaluation of Ohio’s RECLAIM funded programs, community corrections facilities, and DYS facilities,” (Cincinnati, OH: University of Cincinnati, 2005).

these youth recidivated on a misdemeanor offense rather than a felony, and the data indicate that, overall, the severity of offenses did not increase as they progressed deeper through the system.

**Chart Five: Recidivism Outcomes for Youth Released from Probation and JJS Custody**

Recidivism in Juvenile or Adult Court Within 2 Years of Release from Probation or Custody, 2012 Releases



**Most youth do not receive legal representation throughout the duration of the court process, even when their liberty is at stake.**

Utah statute allows the court to impose any disposition, including out-of-home placement, on youth charged with any offense type at any stage of the court process. The only exception comes in cases involving status offenders, who cannot be placed in JJS detention without a new contempt charge. In their comments to the Working Group at the judicial roundtable, judges expressed concern that few youth have legal representation at every stage of the court process, and in surveys, just 38 percent of judges reported that defense counsel is appointed for all types of offenses. Stakeholders also expressed concern that probation officers were responsible for filing charges in many districts, and prosecutors were never involved in reviewing the cases for probable cause. In cases where attorneys are appointed at the beginning of a case, only 35 percent of judges reported that defense lawyers are present at subsequent detention hearings; additionally, judges reported that prosecutors often weren't present at these hearings, and some judges reported that prosecutors weren't even present at adjudication or disposition hearings.

State law does not require that an attorney be present for misdemeanor and contempt charges, even if the initial charge is a felony. As a result, even youth who face the most serious consequence—removal from their home and placement in state custody—may not have legal representation and are not required by statute to receive it. In roundtable discussions, large proportions of youth—including those in secure care and secure detention facilities—reported having no lawyer during the court process. Of those youth who reported having legal representation, many said the quality of representation was poor due to inadequate communication by lawyers with their clients and families.

The Working Group reviewed research demonstrating that youth who perceive the juvenile justice system as fair (whether it is actually fair to them or not) are less likely to reoffend; conversely, punishing youth in an unfair process (again, whether perceived or real) reinforces social disaffection and antisocial

behavior.<sup>9</sup> However, the Working Group’s analysis demonstrates that a lack of statewide standards governing dispositions and legal representation, as well as inconsistent responses by the juvenile justice system to youth by geography and race, create disparate outcomes through the system.

## POLICY RECOMMENDATIONS

### Reinvest in effective early interventions to improve outcomes, strengthen families, and keep lower-level youth out of the juvenile justice system

#### *Reinvestment in Graduated Responses for Pre-Court Early Intervention*

- Reinvestment of averted costs and savings from reductions in out-of-home placement should prioritize evidence-based early interventions as part of a statewide tiered system of graduated responses prior to a court referral.
  - Funding must be made available for early intervention investments including, but not limited to, statewide expansion of receiving centers, Mobile Crisis Outreach Teams (MCOT), and youth courts, as well as for additional allocations for family strengthening programs and proven community-based truancy interventions.
  - MCOTs shall be expanded statewide and shall be authorized to accept referrals from family members, schools, or law enforcement officers for youth who are experiencing mental, emotional, or behavioral crises.

#### *Statewide Tiered System of Graduated Responses Prior to Court Referral*

- School-based offenses<sup>10</sup>
  - Class C misdemeanors and below
    - An enrolled student shall never be arrested, issued a citation, or have a complaint filed on them for behavior alleged to have taken place in a school environment if that behavior constitutes a class C misdemeanor, infraction, or status offense.
    - Instead, responses to these behaviors shall occur through multidisciplinary early interventions such as MCOTs, receiving centers, and other community-based alternatives to court.
    - Youth may also utilize the tiered responses developed to intervene with school-based class B misdemeanors and above (see below).
  - All non-person Class A misdemeanors and all class B misdemeanors with limited exceptions for certain class B persons offenses
    - For all non-person Class A misdemeanors and all class B misdemeanors (with limited exceptions for certain class B persons offenses) that would otherwise be referred to court, youth must fail to fully progress through a tiered set of graduated responses before being referred to court or to law enforcement for behavior alleged to have taken place in a school environment:
      - Tier 1:
        - The youth must be referred to a youth court program or comparable restorative justice program within the school setting rather than receive a referral to court.
      - Tier 2:

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<sup>9</sup> Dr. Edward Mulvey, Presentation to the Utah Juvenile Justice Working Group, September 1, 2016

<sup>10</sup> Law enforcement may be consulted to make charge determinations.

- Youth who fail to comply with the school-based restorative justice program shall be referred to a multidisciplinary team of community stakeholders, including, but not limited to family members, a school administrator or his or her designee, and a mental health worker or clinician. The team must review the case and develop a plan for the youth with the goal of providing additional supports to address the youth's needs and prevent a court referral.
- The youth must comply with the plan set out by the multidisciplinary team.
- Tier 3:
  - If the youth is unsuccessful in complying with his or her plan, the youth may be referred to the prosecuting attorney, who may review the case and refer to intake probation for determination of eligibility for non-judicial adjustment.

### **Expand and create statewide standards for non-judicial adjustments to hold lower-level youth accountable, increase fairness, and reduce reoffending**

- When a youth is apprehended or cited by law enforcement, the initial report shall be referred to the prosecuting attorney for review.
- At that point, the prosecuting attorney shall review the case without unnecessary delay and make one of the following charging decisions according to the standard laid out below:
  - Dismiss
  - Charge and refer to intake for determination of eligibility for non-judicial adjustment
- In making the charging decision, the prosecutor shall use the following standard:
  - A prosecutor shall only charge a youth if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.
- Following the screening by the prosecuting attorney, the youth will meet with an intake probation officer. Any youth with two or fewer prior adjudications who is alleged to have committed a misdemeanor and who has not already failed to complete three prior non-judicial adjustments, including youth who have been placed in secure detention prior to the intake appointment, shall be offered a non-judicial adjustment.
  - Any other youth may be offered a non-judicial adjustment at the discretion of the intake officer.
- Acceptance of an offer of non-judicial adjustment shall not require an admission of guilt from a youth.
- A youth shall be offered the opportunity to seek the advice of counsel after receiving and prior to accepting the non-judicial offer.
- When a youth declines to accept a non-judicial adjustment, or when a probation officer determines that a youth who is ineligible for an automatic non-judicial adjustment offer has demonstrated conduct deemed inappropriate for such an adjustment, a petition must be filed with the court.
- At that point, the prosecuting attorney shall review the case again and make one of the following charging decisions according to the same standard laid out above:

- Dismiss
- Refer back for non-judicial adjustment
- Petition
- If a petition is filed, the judge shall be authorized at any subsequent stage of the court process to refer any case back for non-judicial adjustment.

#### *Non-Judicial Financial Obligations*

- Fines, fees, and restitution for non-judicial adjustment or any other court diversion program shall be assessed based upon the youth's family's ability to pay as determined by a statewide sliding scale established in accordance with federal poverty levels.
- A youth shall not be refused an offer for non-judicial adjustment due to an inability to pay a fine or fee associated with non-judicial adjustment, court diversion program, or any other related programming or sanction.
- A youth shall not have a petition filed due to an inability to pay a fine or fee associated with non-judicial adjustment or any other court diversion program, or due to an outstanding balance on a fine or fee upon completion of the non-judicial adjustment or other court diversion program.

### **Reinvest in a continuum of community-based alternatives to detention in every judicial district and focus pre-adjudication detention on youth who pose a public safety risk**

#### *Investment in Community-Based Alternatives to Detention*

- A continuum of community-based alternatives to detention for youth who are living at home shall be available in every judicial district. The options shall include home detention for serious, higher risk youth who might otherwise be held in custody as well as a range of less restrictive, community-based programs for lower-level youth.
- All savings and costs averted from reductions in the number of youth placed in pre-adjudication secure detention shall be reinvested in community-based alternatives to detention programs for youth living at home.
- If a youth is eligible for alternatives to detention according to the results of a detention risk assessment, an alternative may but need not include supervision by a probation or intake probation officer.

#### *Pre-Adjudication Detention Criteria*

- The state, through collaboration between JJS and AOC, shall develop or adopt and also validate a statewide detention risk assessment instrument and establish cutoff scores for determining eligibility for detention and alternatives to detention prior to adjudication.
- Every youth apprehended by law enforcement and under consideration for placement in secure detention at any point prior to adjudication shall undergo a detention risk assessment conducted by an individual trained to administer it.
  - The results of the detention risk assessment shall determine if the youth is eligible to be detained, referred to a community-based alternative, or released to a parent or guardian on the promise to reappear at future court hearings.



- The law enforcement officer, court, or probation officer administering the assessment shall have the discretion to release youth to a less restrictive program even if the youth is assessed as eligible for secure detention.
- Once a youth is assessed as eligible for secure detention, the youth shall only be detained if:
  - 1) Leaving the youth with a parent, a guardian, or custodian presents an unreasonable risk to public safety and the reason for this determination is entered into the written record by the law enforcement officer, probation officer, or court;
  - 2) The law enforcement officer, probation officer, or the court have considered and, where appropriate, employed the least restrictive community-based alternative to detention prior to the use of secure detention; and
  - 3) The youth is eligible for secure detention according to JJS rule [R547-13-4](#)
    - Youth shall not be placed in secure detention based upon the number of presenting offenses, only the severity of offense.
    - JJS shall remove from rule [R547-13-4](#) the criterion that a youth may be detained when “three or more non-status criminal offenses are currently alleged in a single criminal episode.”
- Youth charged only with a status offense shall not be placed in secure detention. This does not apply to out-of-state runaways.
- Youth shall not be detained due to a lack of more appropriate facilities or due to a parent or guardian avoiding his or her legal responsibilities.
- For youth who are detained, the law enforcement officer, probation officer, or judge must state for the record the reason that the youth was detained. If an override of the risk assessment occurred, the reason must be recorded in writing or on the record.

### **Ensure that all youth receive legal counsel at every stage of the court process and that the state collaborates with counties to certify that legal representation meets high standards across Utah**

- Legal counsel shall be appointed in all juvenile court cases.
  - A determination of indigence shall not be required to qualify for appointed counsel but may be considered for purposes of reimbursement.
- The appointment of legal counsel shall extend until the closure of the case and shall include all appellate proceedings.
- The Utah Indigent Defense Commission shall oversee or create a statewide entity to oversee matters relating to juvenile legal representation, including but not limited to contract standardization, training and certification, technical assistance, and the development of a cost-sharing partnership between the state and counties.

### **Establish timelines to improve fairness and increase the swiftness of responses from the system**

- Youth shall be adjudicated within 60 days of the filing of a petition with the court unless extended by the court for good cause, through stipulation of the parties, or through a motion by the defense.
- Dispositions shall not be held under advisement. Disposition hearings shall be delayed only as long as needed to complete the requisite assessments.

## **Expand investment into evidence-based programs in the community so that every judicial district in the state has access to high-quality options proven to strengthen families and reduce reoffending for youth living at home**

- All programs delivered to youth in the juvenile justice system should be evidence-based or within a specified time period rated by a standardized tool as effective for reducing recidivism. Tools used to evaluate programs should be agreed upon and selected by the Administrative Office of the Courts and Utah Department of Human Services. Once programs are evaluated, a timeline should be developed to support improvements of the program to achieve reduced recidivism.
- Reinvestment of averted costs and savings from reductions in out-of-home placements should prioritize evidence-based cognitive behavioral and family therapy programs designed to reduce recidivism. Other evidence-based programs shall then be considered as well. Implementation and infrastructure (including staffing, transportation, family wraparound services, and flexible funds) to support the sustainability and fidelity of evidence-based programs shall also be funded.
- Funding must be made available to establish a continuum of evidence-based cognitive behavioral and family therapy programs that target a youth's criminogenic needs in every judicial district statewide for youth living at home who are assessed as moderate or high risk.

## **Adopt performance-based contracting to ensure the results and accountability we expect from our system**

- A performance-based contracting system shall be developed for contracted services in the community as well as for contracted out-of-home placement providers. All contracts should incentivize the use of evidence-based programs or those programs identified as effective by standardized tools, and the use of three-month, evidence-based timelines for program completion.
  - Contracts for out-of-home placements shall offer premium rates for youth who receive appropriate dosage of treatment and are successfully discharged within the first three months.
  - When services are provided by a state agency, the agency should be guided by the same evidence-based timelines.
- In rural areas, incentives shall be developed to ensure that evidence-based services for youth living at home are available and accessible.

## **Increase the use of structured decision making to respond uniformly and ensure that the right youth receive the right level of supervision and services for the right amount of time**

### *Structured Decision Making*

- All adjudicated youth shall undergo a Pre-Screen Risk Assessment (PSRA) prior to disposition, excluding those with minor traffic, fish and game, tobacco, and curfew violations. Assessment information shall not be provided to the judge prior to the adjudicatory decision but shall be used to inform disposition decisions and case planning.
  - All adjudicated youth shall also undergo an appropriate risk assessment within seven days of case closure.

- Case plans for youth on community supervision and in out-of-home placement shall be created in collaboration with families and shall be individualized, informed by the results of a validated risk and needs assessment, and tailored to the youth’s offense and history.
- A statewide system of appropriate responses, including sanctions and incentives, shall be established and approved by the Sentencing Commission to help Probation and JJS respond to positive and negative behavior of youth on diversion, community supervision, and in out-of-home placements.
  - The responses shall be swift and certain; include a continuum of community-based options for youth living at home; target the youth’s criminogenic risk and needs and the severity of the violation; and provide earned discharge credits as incentive for compliance.
  - All responses to compliant and noncompliant behavior shall be documented in a youth’s case plan, including positive behaviors and incentives, violation(s) and corresponding sanction(s), and whether the youth had a subsequent violation after a sanction. Before referring the matter to court for judicial review, either through a contempt or failure to comply citation, supervising officers must document a pattern of technical violations and sanction attempts in the youth’s case plan. Notwithstanding the above, violations for no-contact orders with victims and new delinquency offenses may be filed directly with the court.

## **Expand training in order to increase consistency in the use of evidence-based practices and to reduce racial disparities**

### *Training*

- Training shall be expanded for stakeholders throughout the juvenile justice system, including educators, law enforcement officers, probation officials, judges, JJS staff, DCFS staff, and program providers. Training should be focused on evidence-based principles of juvenile justice, such as risk, needs, responsivity, and fidelity, and shall be supplemented by the following topics:
  - Adolescent development
  - Identifying and using local behavioral health resources
  - Implicit bias
  - Cultural competency
  - Graduated responses
  - Utah juvenile justice system data and outcomes
  - Gangs

## **Establish enhanced inter-branch oversight to inform decision-making and ensure the success and sustainability of reforms**

### *Oversight and Data Collection*

- The state shall create an oversight entity tasked with ensuring the effective implementation of the juvenile justice reforms recommended by the Working Group. An existing structure can be used for this purpose (the Commission on Criminal and Juvenile Justice or the Utah Board of Juvenile Justice, for example). Potential gaps in stakeholder representation on such boards should be addressed through additions to their membership or the creation of a subgroup with expanded membership to ensure representation of all three government branches and all parts of the juvenile justice system. Responsibilities of the oversight entity shall include:

- Ensuring implementation support for the expansion of evidence-based practices, including fidelity assistance, quality assurance, and ongoing evaluation;
- Examining the potential use of third party entities or an intermediary organization for assistance with implementation and supporting performance-based contracting;
- Overseeing the development of performance measures to track specific elements of the reforms recommended by the Working Group, while ensuring early and ongoing stakeholder engagement in identifying the relevant performance measures;
- Evaluating currently collected data elements and contract requirements to streamline reporting, reduce redundancies, and eliminate inefficiencies with the goal of ensuring a focus on recidivism reduction;
- Reviewing averted costs, ensuring reinvestment into prioritized community-based programs for youth living at home, and aligning resources into appropriate entities;
- Analyzing the alignment of resources and the roles and responsibilities of agencies, such as the operation of Early Intervention services, Receiving Centers, and diversion;
- Meeting on a regular basis; and
- Reporting back to the legislative, executive, and judicial branches on the progress of the reforms and any additional areas in need of review.
- The oversight entity shall ensure that data reporting is enhanced and expanded to include additional areas that are either difficult to analyze or are not reviewed on a regular basis to inform decision making. These areas shall include but are not limited to:
  - Key referral and disposition data from each judicial district;
  - Enhanced data on the length of time youth spend in the system, including the total time spent under court jurisdiction, on community supervision, and in individual out-of-home placements;
  - Relevant data pertaining to youth in DCFS custody, including the number of youth and time spent in out-of-home placement;
  - Recidivism data for all diversion and disposition types, including tracking youth from the juvenile system to the adult system;
  - Aggregate risk levels throughout the time youth are receiving services, under supervision, and in out-of-home placement as well as changes in risk level over time; and
  - Dosage of programming

### **Promote individualized dispositions, reduce unnecessary, control-oriented probation conditions, and tailor therapeutic conditions to address a youth's assessed risks and needs**

- Remove standard conditions that require youth to follow parental rules, house arrest, treatment, gang conditions and curfew and convert them to special conditions that may be ordered to address a specifically assessed risk or need; clarify the standard conditions of probation regarding weapon possession (to be specific to oneself, not one's family) and victim contact (to be specific to no-contact order).
- Eliminate state supervision as a separate disposition option and merge it into probation so that probation officers can supervise all youths according to their risk and needs.
- Fines, fees, restitution, and hours shall be considered collectively to ensure that the order is reasonable, and, where appropriate, prioritizes victim compensation.

- Mandatory court-ordered conditions, such as treatment, and other minimum requirements shall be removed from statute. Treatment shall only be ordered consistent with a demonstrated need as assessed by a validated assessment.
- Mandatory minimums shall be eliminated, and maximums on fines, fees, and hours shall be established. Where fines, fees, community service hours, or compensatory service hours<sup>11</sup> are ordered, limit amounts per criminal episode to a maximum of \$180 or 24 hours of compensatory service for youth under the age of 16, and a maximum of \$270 or 36 hours of compensatory service for youth 16 and older (at a conversion rate of \$7.50 per hour). Where community service is ordered, create a presumptive community service order of five to ten hours.
- The legislature shall develop a statutory restitution scheme that is juvenile-specific to govern guidelines for setting restitution amounts that is inclusive of these policy considerations, including whether restitution shall be ordered if there is any evidence of the youth's inability to pay or acquire the means to pay.
- Restitution shall be ordered only for "material loss," to be defined as uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses. Any amount paid in restitution should be credited against liability in a civil suit. Any civil penalty paid to a victim should be credited against the total amount of restitution owed.
- If the youth and the victim agree to participate, the court may refer the case to a restorative justice program such as Victim Offender Mediation that will address how loss resulting from the delinquency will be addressed.
- Victim Offender Mediation shall be expanded and offered statewide.
- If a youth has not paid their fine at the end of their presumptive time under court jurisdiction and the outstanding financial obligation is the sole basis for continued jurisdiction, the juvenile court may extend jurisdiction and authorize court monitoring for up to 3 months to allow the youth more time to pay. At the end of that extension, if the youth has not paid, the court may convert the unpaid fine into service hours at a conversion rate of \$7.50 per hour and allow court jurisdiction to be extended. Unfinished financial obligations shall not be referred to collections.
- The notification to the Utah Department of Motor Vehicles for license suspension shall be based on the age of actual eligibility for a driver's license. There shall be no mandatory suspension of a license and no presumption of suspension unless the youth is in actual control of the motor vehicle.

### **Tailor eligibility for removal from the home to focus state resources on youth who pose the highest risk to public safety**

- Commission of a status offense shall not serve as grounds for out-of-home placement or secure detention, either at initial disposition or on a subsequent filing of contempt or order to show cause. Neither a custody order nor a detention order may be stayed on a status offense.
- Secure care placement shall not be used for those who do not pose a public safety threat, and JJS community placement shall not be used for youth unless there is a need for residential treatment as assessed by a validated risk and needs assessment and non-residential options have been exhausted.

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<sup>11</sup> In these recommendations, both compensatory and community service hours are covered by the term "service hours."

- Neither JJS long-term custody option (community placement and secure care) may be ordered by the court unless a youth has a present felony; a present misdemeanor with more than five prior delinquency adjudications arising from separate incidents, or has a present misdemeanor offense that involves use of a firearm. Contempt charges shall not be used to override these limitations on JJS custody orders. For youth who qualify for commitment to JJS custody, the court may suspend a JJS custody order for three months following the initial disposition, but the court may only lift that order upon adjudication of a new delinquency offense that occurred within those first three months. Extensions of the suspended order will not be permitted.
- Detention and JJS custody shall not be used in response to contempt of court or technical violations of supervision. Youth shall not be removed from the home to repay financial obligations or work off service hours, and JJS work camps shall be eliminated.
- Youth shall not be removed from the home for observation and diagnostic assessment. Diagnostic assessment, including substance abuse, mental health, psychological or sexual behavior risk assessment, may be ordered by the court to be completed in the youth's home environment and shall be funded in every judicial district in the state with reinvestment from averted costs due to reductions in out-of-home placement. If a diagnostic assessment cannot be completed safely in home, Youth Services/Receiving Centers will be used as an alternative to detention to allow the assessment to be completed out of home. Where public safety is at risk, diagnostic assessments can be done in detention between adjudication and disposition.
- DCFS placement shall not be a custody option for youth with only delinquency or status offenses. If a delinquent or status youth has an abuse, dependency, or neglect case, DCFS custody may be ordered as part of the court's jurisdiction over that matter, in accordance with the abuse, neglect, and dependency statutes. Cases where there is dual involvement in the juvenile justice and child welfare systems shall continue to be referred to a Multi-Agency Staffing committee.
  - If the juvenile court has reasonable suspicion that abuse, neglect, or dependency is present, the court may order DCFS to conduct an assessment. Based on the results of the assessment, the court can order in-home DCFS family services for delinquent or status youth with abuse, neglect, or dependency concerns.
  - The juvenile court will still have the option under 78a-6-302 to place a youth in emergency protective custody with DCFS for up to 72 hours per the criteria for a shelter hearing under 78a-6-307.

### **Maximize the impact of supervision and deliver evidence-based interventions in the most effective period of time**

- There shall be a presumptive limit on the term of court supervision and out-of-home placement:
  - The presumptive maximum length of intake probation shall be three months and the presumptive maximum length of formal probation shall be four to six months.
  - The presumptive maximum length of JJS out-of-home placement shall be three to six months. If the court adjudicates a youth delinquent for one of the crimes enumerated in 78a-6-701 and 78a-6-702, then the presumptive length of stay does not apply, regardless of the youth's age.
  - The presumptive maximum length of aftercare supervision or parole, which could apply to any youth placed out of home with JJS, shall be three to four months. Youth shall be entitled to receive voluntary aftercare support services after their JJS custody is terminated.

- For the purposes of this policy, “out-of-home” placement shall not include “kinship” placements or placements with a permanent guardian. In other words, if a youth maximizes time in out-of-home placement but cannot immediately return to his/her family, the youth may spend the period of aftercare supervision or parole living with a relative or permanent guardian without exceeding the out-of-home placement cap.
- The judge, or Youth Parole Authority in the case of youth sent to secure care, shall terminate court jurisdiction at the end of these presumptive timeframes unless at least one the following circumstances is met:
  - Termination would interrupt the completion of a necessary treatment program. Completion shall be determined based on whether the youth has regularly and consistently attended the program.
  - The youth commits a new delinquency offense.
  - Service hours have not been completed (only for the extension of intake probation).
- If one of these circumstances exists, the judge shall have the discretion to extend jurisdiction for the time needed to address the specific circumstances. If a youth is Absent Without Leave (AWOL) for more than one day, that will “stop the clock” on the presumptive length of supervision and placement so that supervision can continue when the youth returns. Grounds for departure from the presumptive length of supervision or placement shall be recorded in the court record and tracked in the CARE data system.
- There shall be a cumulative cap on the amount of detention post-adjudication of 30-days. Any time spent in detention pre-adjudication must be credited toward that 30-day cap post-adjudication. In other words, if a youth spends more than 30 days in detention pre-adjudication, the court cannot use detention as a disposition post-adjudication. A youth can still spend up to 7 additional days awaiting placement in JJS custody. Those 7 days are authorized even if the detention cap has been met. Thirty-day detention dispositions shall not be used in conjunction with JJS custody or DCFS custody to lengthen the amount of time youth can be placed in detention awaiting placement.
- Youth on parole shall have an expedient rescission hearing if they are brought back in on a parole violation within 90 days of release; the same process is used for youth returned on parole violations more than 90 days after release.
- JJS shall use a structured decision-making tool to respond to technical violations of aftercare or parole in the community before bringing the youth in for a revocation or rescission hearing.
- Those youth who are currently subject to the jurisdiction of the district court under 78a-6-701(b) and (c) shall now be subject instead to the serious youth offender procedure under 78a-6-702.

## CONCLUSION

The Utah Juvenile Justice Working Group’s assessment of the juvenile justice system was comprehensive, data-driven, and based upon the input of Utahns across the state. The Working Group recommends that state leadership introduce legislation based upon the inter-branch, consensus-based recommendations contained in this report in order to place Utah on the path toward fulfilling the charge of improving public safety and holding youth accountable, controlling costs, and improving recidivism and other outcomes for youth, families, and communities across the state.