

# REHABILITATIVE RELEASE OF YOUTH FROM ILLINOIS PRISONS

*Removing bureaucratic barriers to  
youth reentry success*

*Children and Family Justice Center  
March 2016*

**Northwestern**  
PRITZKER SCHOOL OF LAW  
Bluhm Legal Clinic



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*About the Children and Family Justice Center (CFJC)*

Founded in 1992, the Children and Family Justice Center (CFJC) is a comprehensive children's law office and part of the Bluhm Legal Clinic at Northwestern University Pritzker School of Law. At the CFJC, attorneys and law students work together to promote justice for children, adolescents, and their families through direct legal representation, policy advocacy and law reform. Website: <http://www.law.northwestern.edu/legalclinic/cfjc/>

# REHABILITATIVE RELEASE OF YOUTH FROM ILLINOIS PRISONS

## *Removing bureaucratic barriers to youth reentry success*

Illinois currently operates an outmoded and inefficient system for releasing delinquent youth from state juvenile incarceration to community supervision. Unlike Illinois juvenile courts and even juvenile prisons, the state's system for discharging youth from incarceration is part of a state agency that deals primarily with adult offenders.

Illinois is out of step with the rest of the nation and with what juvenile justice experts and research have determined are best practices for successfully transitioning youth from prison back to home communities.

To advance public safety by correcting this failing and improving opportunities for youth to have successful lives, Illinois should remove responsibility for youth prison release decisions from the Illinois Prisoner Review Board. Instead, the Illinois Department of Juvenile Justice should be empowered to make the decisions using timely, responsible release procedures supported by due process protections.

## BACKGROUND

The State of Illinois is responsible for release, community supervision ("aftercare"), and discharge of youth who have been adjudicated delinquent and committed by a court to the custody of the Illinois Department of Juvenile Justice (IDJJ). Although youth entering and exiting state incarceration represent only a small proportion of youth in the juvenile justice system, their successful reintegration is crucial to public safety and success in life.

Upon the creation of the Illinois Department of Juvenile Justice in 2006, adult parole agents from the Illinois Department of Corrections (IDOC) continued to supervise all youth in community settings and the Illinois Prisoner Review Board (IPRB) continued to oversee release and revocation decisions. The youth reentry system remained virtually indistinguishable from adult parole. At the same time, splitting management of particular aspects of youth reentry across three state agencies - IDJJ, IDOC and IPRB - allowed for diffusion of responsibility.

The Youth Reentry and Improvement Law of 2009 directed the Illinois Juvenile Justice Commission to conduct a comprehensive audit of youth parole reentry

and revocation. The study was conducted to give policymakers a better understanding of system flaws leading to high recidivism rates.<sup>1</sup>

Published in 2011, the Commission's *Youth Reentry Improvement Report* explained the research and conclusions made after observation of 237 IPRB hearings and after review of 386 youth IDJJ files. The report stated: "An essential measurement of any juvenile 'reentry' system is whether youth returning from incarceration remain safely and successfully within their communities. By this fundamental measure, Illinois is failing."<sup>2</sup>

The report traced the way in which the system was "functionally identical to the adult system and modeled on adult culpability and capability," recommending significant changes to achieve more developmentally-appropriate methods of release and supervision.<sup>3</sup>

A great deal has changed since the Commission's 2011 report: youth are no longer supervised by adult parole agents; youth are no longer unaided in locating treatment services in the community; and youth are no longer unrepresented by legal counsel at revocation hearings.

However, one decision point discussed at length - the process of transitioning youth back home - is a procedural relic of adult parole. In 2011, Commissioners identified the release process as "an ineffective mechanism" for making decisions in the best interest of youth and the community, involving the use of an "idiosyncratic set of criteria" to determine whether a youth ought to be released, resulting in "arbitrary decisions" that protect neither youth nor public safety.<sup>4</sup>

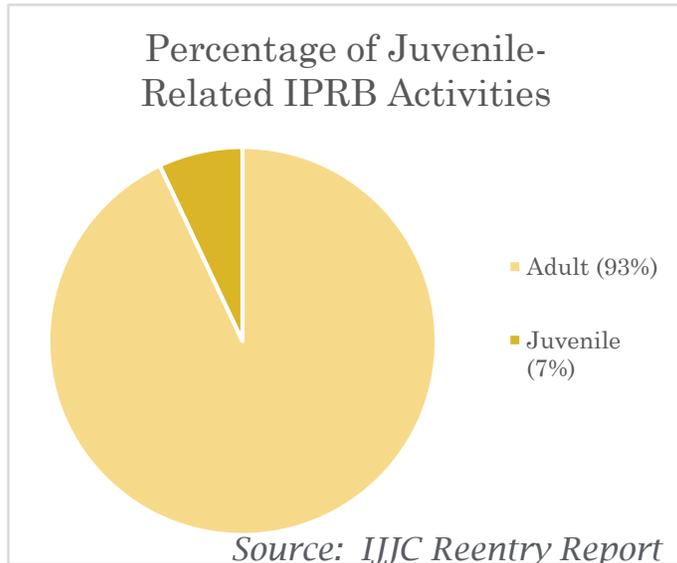
Consolidating release authority within IDJJ, as is the national practice, will enable continued improvements in system accountability, public safety, efficiency, and due process.

Similar issues continue today. Although the nature and quality of IDJJ assessment, clinical recommendations, and aftercare planning have improved, the IPRB overrules IDJJ release decisions even more frequently than during the Commission's original observations.

Consolidating release authority within IDJJ, as is the national practice, will enable continued improvements in system accountability, public safety, efficiency, and due process.

**ILLINOIS IS THE ONLY STATE WHERE JUVENILE RELEASE DECISIONS ARE MADE BY A STATE BOARD DEDICATED PRIMARILY TO DECISIONS ABOUT ADULT PRISONERS.**

In addition to performing juvenile hearings, the IPRB determines parole for adult prisoners serving indeterminate sentences (issued prior to 1978) and sets mandatory release conditions for adults serving the currently-used determinate sentences. Juvenile hearings represent less than seven percent of the caseload of the IPRB.<sup>5</sup>



Illinois is the only state in the country that gives an adult-focused parole board the power to release youth.<sup>6</sup> The other 49 states, representing 95 percent of national commitments to state secure confinement,<sup>7</sup> use other mechanisms:

Authority to Release Youth	Number of States <sup>8</sup>	Proportion of Youth Commitments <sup>9</sup>
Department of Juvenile Justice	32	67%
Juvenile Court	9	12%
Juvenile-Specific Parole Board	8	16%
Adult Prisoner Review Board	1 (IL)	5%

**Direct release by the department that supervises youth is by far the most common release mechanism, available to over two-thirds of youth incarcerated in state facilities nationwide.** Department release is also the mechanism used in all of the six states that commit youth in similar or greater numbers than Illinois. **Juvenile court and juvenile parole boards are exclusively found in states with smaller systems.**<sup>10</sup>

Authority to Release Youth	States Admitting 500+ youth/year	Number of Youth Commitments <sup>11</sup>
Department of Juvenile Justice	Georgia	729
	Missouri	654
	Oregon	672
	Texas	1,242
	Virginia	660
	Washington	510
Juvenile Court	None	--
Juvenile-Specific Parole Board	None	--
Adult Prisoner Review Board	Illinois	660 <sup>12</sup>

**ILLINOIS’ CURRENT RELEASE DECISION PROCESS UNDERMINES THE REHABILITATIVE PURPOSE OF THE JUVENILE JUSTICE SYSTEM BY OBSTRUCTING YOUTH AND SYSTEM ACCOUNTABILITY.**

The Illinois Juvenile Justice Commission report determined that the release decision-making process was inconsistent with the rehabilitative purpose of the juvenile justice system. According to the Commission, “successful youth outcomes depend upon three key aspects of release: release timing, release processes, and release conditions.”<sup>13</sup> The Commission noted deficiencies in each of these three aspects of release. Though many of the *Youth Reentry Improvement Report’s* recommendations have been advanced over the last five years (timely review and presentation for release by IDJJ, statewide expansion of the agency’s aftercare pilot, and increased due process at parole revocation hearings), the IPRB release process remains an adult model. In fact, the rate at which the IPRB upholds Illinois Department of Juvenile Justice release decisions has declined since the Commission’s 2011 report (from 96% in 2010-2011 to 85% in 2013-2014).<sup>14</sup>

The Commission explained that “[q]uality release decision procedures not only promote fundamental fairness, but are critical to youth success at reentry. Fair, legitimate decision-making processes increase youth compliance with institutional rules and release conditions, while poorly-explained and seemingly arbitrary processes undermine compliance. Decisions lacking transparency and consistency also thwart oversight of the agency preparing youth for reentry (e.g. IDJJ) and hinder internal quality control of the body of hearing officers (e.g. IPRB).”<sup>15</sup>

The lack of transparency and consistency in the IPRB release hearing process remains an obstacle to youth and IDJJ accountability. IDJJ's release processing has improved somewhat since the agency has taken over aftercare. The agency has abandoned certain IDOC administrative practices that caused delays in approving home addresses, such as uniformly applying adult residency restrictions to youth. But when there is no assurance that the IPRB will adopt IDJJ's recommendations, it is difficult to hold IDJJ responsible for developing and abiding by appropriate rehabilitation benchmarks and timelines, arranging timely access to community programming, or securing appropriate release placements for youth.

**The uncertainty of whether and when youth will join programming, housing, or treatment caseloads can damage relationships with service providers. It can also create a compounding chain of delay, as some programs will not hold space for a youth who is not guaranteed a release date, while some IPRB members hesitate to approve youth release without specific arranged services in place.**

Even small release delays can jeopardize carefully-constructed housing arrangements, community services, and treatment space, while eroding youth and family perceptions of system legitimacy.

Youth institutional behavior and active engagement in programming can be incentivized by the certainty of release upon meeting all obligations. Families and youth need to be able to count down toward reunification and prepare accordingly. In assessing the need for increased IDJJ authority to approve placements for youth about to be released, facility monitors at the John Howard Association of Illinois noted that **delays in release create “a real danger of youths becoming frustrated and regressing.”**<sup>16</sup>

Finally, even when the IPRB does not deny release, the mechanics of the hearings present significant administrative challenges to both IDJJ and IPRB, resulting in cumulative delays that cause expense and frustration for the state, youth, families, and service providers. The IPRB ordinarily conducts release hearings once or twice per month at each of the six IDJJ prisons, but there is no legal requirement that the IPRB conduct release hearings more frequently than once a year.<sup>17</sup> **It is not uncommon for youth who are ready for release to spend several weeks awaiting a hearing.** In 2014, the IPRB granted continuances rather than taking final action in 13 percent of its juvenile cases.<sup>18</sup>

Even small release delays can jeopardize carefully-constructed housing arrangements, community services, and treatment space, while eroding youth and family perceptions of system legitimacy. **These delays are expensive and can also be expected to increase noncompliance.**

## UNPRODUCTIVE TIME IN IDJJ FACILITIES WASTES SCARCE STATE RESOURCES.

To improve youth safety and youth outcomes, IDJJ needs to be able to maintain safe staffing ratios inside its facilities while simultaneously redirecting a portion of its current bricks, mortar, and monitoring budget toward the kind of in-facility and community-based treatment and programming that can help youth to thrive. This can only be accomplished by ensuring that rehabilitated youth are released without delay.

Large-scale prisons are inordinately expensive, unwieldy, and operationally-complicated places to house delinquent youth. Based on FY2015 general revenue appropriations and average daily population,<sup>19</sup> the annual **cost to incarcerate a young person is \$131,335 in direct spending per capita (up to \$186,496 after including other associated costs).**<sup>20</sup> Nearly all of the funds expended on youth incarceration are consumed by the cost of prison guards and infrastructure – not service and treatment programs that help youth rehabilitation. IDJJ continues to struggle to provide the basics (a full day of education, out-of-cell programming time, meaningful treatment) required by a recent consent decree resulting from a lawsuit alleging unconstitutional conditions of confinement.<sup>21</sup>

Evidence-based programming delivered in a community setting is more effective than programming delivered in an institutional setting and comparatively inexpensive: **two of the most effective therapies for delinquent youth, Functional Family Therapy (FFT) and Multi-Systemic Therapy (MST), cost \$3,198–\$7,280 for a year of treatment.**<sup>22</sup>

Fortunately, relatively small adjustments to length of stay, including improving the efficiency of the release approval process, can have a significant impact on IDJJ population. **Completing transitions to aftercare as little as six weeks sooner could reduce IDJJ facility population by up to 20 percent.**

## RELEASE DELAYS MAY INCREASE YOUTH VICTIMIZATION AND RECIDIVISM.

***Longer IDJJ Stays Do Not Optimize Safety.*** An effective juvenile justice system must create a culture that encourages youth to mature out of delinquent behavior, because most youth who commit even very serious crimes will soon cease offending as they grow up.<sup>23</sup> Yet prison-like institutions, even when performing optimally and aimed at only the highest-risk youth, do not meet this requirement.<sup>24</sup>

The incarceration setting is at odds with basic functions of adolescent development<sup>25</sup>: static rules hinder teens' ability to practice increasing judgment and independence; constant monitoring reduces development of personal responsibility and self-regulation; prescriptive behavioral norms interfere with emerging personal values. A complete hold is put on key social interactions, such as caring for younger children or navigating appropriate and respectful contact with opposite-sex peers. Parental guidance and support is mostly unavailable. Typical adolescent sleeping and eating schedules are impossible and may be further compromised by trauma or depression. Sibling relationships are interrupted. Positive school, family, and community supports are eroded.

While delinquent youth must be held accountable, it is important to do so in a manner that increases, not decreases, safety.

Simultaneously, youth are placed in round-the-clock contact with high-risk youth, developing friendships they will be prohibited from continuing upon release. In the best-case scenario, it is difficult to imagine a more disconnected, isolating experience for a teenager. The typical scenario is much worse: crime, arrest, prosecution, and incarceration aggravate and compound existing youth trauma.<sup>26</sup> Daily institutional life presents tangible risk of physical<sup>27</sup> and sexual violence.<sup>28</sup> The issues that brought youth into custody may remain unaddressed or be exacerbated by the setting, leading to extensions of incarceration, while mental health deteriorates.

**While delinquent youth must be held accountable, it is important to do so in a manner that increases, not decreases, safety.<sup>29</sup> Even short stays in detention facilities have deleterious effects on youth outcomes.<sup>30</sup>** Recent review of existing research by the National Academy of Sciences found no evidence that placement in a juvenile facility produces any public safety benefit after six months; rather, there is some evidence that longer stays increase recidivism for some youth.<sup>31</sup> Therefore, responses to delinquency that include

incarceration in a state facility must be carefully monitored to ensure that youth do not languish in facilities, increasing their risk of both victimization inside the institution and re-offense upon release.

Lengthy institutional stays are not a prerequisite to delivering evidence-based and evidence-informed services. As practitioners explain, “many of the most effective practices must take place in the home or community to build on a young person’s systems of support.”<sup>32</sup> Although community-based programs are typically used as alternatives to incarceration,<sup>33</sup> they can also facilitate timely, successful reentry, reducing unproductive length of stay inside a facility.<sup>34</sup>

***Average Length of IDJJ Stay Exceeds Any Recognized Public Safety Purpose.***

Nationally, most youth held in state secure confinement have been there less than the recognized six-month cap on potentially positive institutional programming length, the “tipping” point at which risk of recidivism begins to increase for some youth.<sup>35</sup> In Illinois, youth with a new delinquency petition stay on average 32 percent longer than this limit and parole violators stay 45 percent longer.<sup>36</sup>

## RECOMMENDATIONS FOR A REHABILITATIVE RELEASE PROCESS

***Youth in IDJJ facilities should be able to access an attorney.*** Incarcerated Illinois youth are nearly always unrepresented, with no access to counsel.

Illinois’ very high ceiling on indeterminate youth commitments heightens the importance of best agency practices.

Professional standards of juvenile defense recommend that attorneys continue representation of juvenile cases through final disposition.<sup>37</sup> However, Illinois does not provide legal assistance to youth for any challenges to either the conditions or the length of their indeterminate commitment, an indeterminate period limited only by the maximum sentence length an adult could receive for the same crime or by reaching the age of 21.

***Revised release decision-making procedures should be transparent, consistent, and timely.*** The release decision making mechanism must be consistent with the Juvenile Court Act’s balanced and restorative justice language,<sup>38</sup> as well as the Act’s series of presumptions against incarceration in IDJJ prisons whenever less-restrictive means of supervision are available<sup>39</sup> and full release eligibility as of the first day of entry into IDJJ custody.<sup>40</sup> Most youth entering IDJJ at age 13-17 can be incarcerated until the age of 20 on a first commitment or 21 following a revocation of aftercare status.<sup>41</sup> Illinois’ very

high ceiling on indeterminate youth commitments heightens the importance of best agency practices.

A system placing the release decision-making authority with IDJJ should include the following:

- Decisions about the suitability of youth for release should be made at regular intervals and according to written public guidelines;
- Youth denied release should be given written notification, legal representation, and the opportunity to be heard and present evidence to IDJJ;
- Hearings should be open to the youth's family, attorney, or other advocates;
- IDJJ's reasons for an adverse decision should be presented to the youth, and evidence presented by both sides should be recorded; and
- Youth should have the right to appeal the decision to a neutral arbiter.

## CONCLUSION

The Illinois Juvenile Court Act should be aligned with national practice standards, enabling IDJJ to transition youth to community supervision using timely, responsible release procedures supported by due process protections. These reforms will optimize public safety, motivate youth, maintain family ties, hold IDJJ accountable for case planning, facilitate quality community programming, and reduce costly release delays that keep too many youth in prison for too much of their lives.

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<sup>1</sup> Illinois Juvenile Justice Commission, *Youth Reentry Improvement Report* (2011), <http://ijjc.illinois.gov/reentryimprovementreport> ("IJJC Reentry Report"). The Executive Summary of the report is incorporated as Appendix A.

<sup>2</sup> IJJC Reentry Report at 9.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 22.

<sup>5</sup> ILLINOIS PRISONER REVIEW BOARD, 37<sup>TH</sup> ANNUAL REPORT, JANUARY 1-DECEMBER 1, 2013 (July 31, 2014) <https://www.illinois.gov/prb/Documents/prb13anlrpt.pdf>.

<sup>6</sup> Six of the fifteen Prisoner Review Board members are required to have three years of experience in juvenile matters. 730 ILCS 5/331(b). However, time serving on the IPRB has been interpreted to satisfy this requirement and members without such juvenile experience have authority over juvenile matters. IJJC Reentry Report at 20.

<sup>7</sup> Analysis of 2013 admissions to state facilities, Sickmund, M., Sladky, T.J., Kang, W., and Puzanchera, C. *Easy Access to the Census of Juveniles in Residential Placement*, OFFICE OF

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JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2015) (“OJJDP Residential Placement Census”). Available at <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

<sup>8</sup> For a list of state release mechanisms, see Appendix B, Juvenile State Secure Care Release Mechanisms 50-State Survey.

<sup>9</sup> Analysis of OJJDP Residential Placement Census, *supra* note 7.

<sup>10</sup> For a list of state facility commitments organized by release mechanism, see Appendix C.

<sup>11</sup> Analysis of OJJDP Residential Placement Census, *supra* note 7.

<sup>12</sup> This number was standardized across states by the federal census of committed juveniles. It represents the number of youth committed to a state-run facility as a result of a court-ordered disposition (excluding other types of admissions and facilities). This number is an undercount of all IDJJ admissions in Illinois and is used here solely for comparison purposes.

<sup>13</sup> IJJC Reentry Report at 17.

<sup>14</sup> ILLINOIS PRISONER REVIEW BOARD, ANNUAL REPORTS 2010-2014 <http://www.illinois.gov/prb/Pages/prbanlrpt.aspx>.

<sup>15</sup> IJJC Reentry Report at 18 (internal citations omitted).

<sup>16</sup> JOHN HOWARD ASSOCIATION OF ILLINOIS, MOVING BEYOND TRANSITION: TEN FINDINGS AND RECOMMENDATIONS ON THE ILLINOIS DEPARTMENT OF JUVENILE JUSTICE, <http://www.thejha.org/transition> at 21. “The expansion of IDJJ’s power to identify and approve host sites for parole placement is important. Absent timely identification and approval of an appropriate host site, a youth’s release must be delayed and his incarceration prolonged, even if the Illinois Prisoner Review Board (PRB) otherwise finds the youth eligible for release. Delaying youths’ release, however, creates a real danger of youths becoming frustrated and regressing.” *Id.* (internal citation omitted).

<sup>17</sup> 730 ILCS 5-3-4(a).

<sup>18</sup> ILLINOIS PRISONER REVIEW BOARD, 2014 ANNUAL REPORT, *supra* note 14 at 12.

<sup>19</sup> Per capita budget figures calculated from ILLINOIS DEPARTMENT OF JUVENILE JUSTICE, 2015 ANNUAL REPORT, available at: <http://www.illinois.gov/idjj/Documents/IDJJ%20Annual%20Report%2001-04-16%20FINAL.pdf>. Per capita budget attributable to in-facility population obtained from IDJJ.

<sup>20</sup> Corrections-related budgets are often attributable to the budgets for other state agencies; Illinois’ indirect cost of incarceration tends to be 42% higher than the direct correction agency budget. Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*, VERA INSTITUTE OF JUSTICE (2012), available at: <http://www.vera.org/pubs/special/price-prisons-what-incarceration-coststaxpayers>.

<sup>21</sup> See, e.g., ILLINOIS DEPARTMENT OF JUVENILE JUSTICE, 2015 ANNUAL REPORT, *supra* note 19 at 15 (“IDJJ has not yet met educational requirements for full-time, full-day schooling as outlined in the RJ Consent Decree and Remedial Plan at IYC-Kewanee or IYC-St. Charles. Ensuring special education students have the supports they need has also been a chronic challenge.”).

<sup>22</sup> IJJC Reentry Report at 11.

<sup>23</sup> For a lengthy discussion of desistance from youth crime and the safety benefits of juvenile court, see ILLINOIS JUVENILE JUSTICE COMMISSION, RAISING THE AGE OF JUVENILE COURT JURISDICTION at 21-23 (2013), available at <http://ijjc.illinois.gov/rta>. See also Monahan, Steinberg, Cauffman et al, "Trajectories of Antisocial Behavior and Psychosocial Maturity from Adolescence to Young Adulthood," 45 Dev. Psychology 1654 (2009).

<sup>24</sup> NATIONAL ACADEMY OF SCIENCES, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 126 (Richard J. Bonnie, et al, eds.) (2013) "The practice of committing youth to large institutions that fail to provide for their developmental needs is both costly in financial terms and ineffective in furthering the goal of crime prevention." *Id.*

<sup>25</sup> "The process of changing an adolescent's trajectory rests on the ability of the systems around the adolescent to support and direct the ongoing change process. In late adolescence, most individuals follow a pattern of individuating from parents, orienting toward peers, and integrating components of attitudes and behavior into an autonomous self-identity. These processes are occurring simultaneously in an overlapping fashion, with the success of one process dependent on the course of another. Navigating this developmental period successfully, in which the adolescent sees himself or herself as a prosocial, law-abiding person, requires supportive adults, healthy relationships with peers, and opportunities to make autonomous decisions." *Id.* at 179 (internal citations omitted).

<sup>26</sup> An estimated 75% - 93% of youth entering the juvenile justice system have experienced some degree of trauma. JUSTICE POLICY INSTITUTE, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense* (Washington, DC: Justice Policy Institute, 2010).

<sup>27</sup> "Less than 17 percent of youth in placement for a year or less experienced some form of violence, compared with 24 percent of youth in placement between 18 and 24 months, and 33 percent of those in placement for more than 2 years." Melissa Sickmund and Charles Puzzanchera, NATIONAL CENTER ON JUVENILE JUSTICE, *Juvenile Offenders and Victims: 2014 National Report* (2014).

<sup>28</sup> See, e.g., *Sexual Victimization of Youth in Illinois Facilities: Hearing Before the Illinois House Restorative Justice Committee* (July 30, 2013) (statement of Julie Biehl, Director, Children and Family Justice Center) (responding to U.S. Department of Justice report that Illinois was one of four states with juvenile prison sexual victimization rates more than 35% above the national average). <http://www.law.northwestern.edu/legalclinic/cfjc/documents/CFJC%20RJ%20Committee%20Final.pdf>.

<sup>29</sup> "In short, the experience of imprisonment is more aversive for adolescents than for adult prisoners, because adolescents are in a formative developmental stage in which their social context is likely to shape the trajectory of their future lives. While some may view this experience as one that is deserved due to the harm caused to any victim of crime, it does not accomplish the purpose that most victims desire for a juvenile offender, i.e., that the result of incarceration will be no future victims." *Id.* at 135.

<sup>30</sup> For example, Cook County youth who were sent to juvenile detention were twice as likely (as youth with the same backgrounds who were not detained due to more lenient judges) to be incarcerated in an adult prison by the age of 25. Anna Aizer, Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, NBER Working Paper No. 19102 (June 2013). See also

Richard A. Mendel, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION, ANNIE E. CASEY FOUNDATION (2011).

<sup>31</sup> NATIONAL ACADEMY OF SCIENCES, *supra* note 24 at 6, 157; *see also* Thomas A. Loughran et al., *Estimating a Dose-Response Relationship between Length of Stay and Future Recidivism in Serious Juvenile Offenders*, 47 CRIMINOLOGY 699, 726 (2009).

<sup>32</sup> Jessica Feierman, et al, TEN STRATEGIES TO REDUCE JUVENILE LENGTH OF STAY, JUVENILE LAW CENTER (2015) at 2.

<sup>33</sup> S. Aos, *The Juvenile Justice System in Washington State: Recommendations to Improve Cost-Effectiveness*, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY (2002), <http://www.wsipp.wa.gov/rptfiles/WhatWorksJuv.pdf>; S. Aos et al., *Evidence-based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, DOC. NO. 06-10-1201 (2006).

<sup>34</sup> This approach was taken in Lycoming County, Pennsylvania, using Multi-Systemic Therapy to assist in aftercare efforts. For more information, see [http://www.macfound.org/media/article\\_pdfs/MODELS\\_FOR\\_CHANGE\\_REPORT\\_DECEMBER2006.PDF](http://www.macfound.org/media/article_pdfs/MODELS_FOR_CHANGE_REPORT_DECEMBER2006.PDF).

<sup>35</sup> Dose-response relationship for length of stay per note 31, *supra*. National statistics on length of stay per author analysis of OJJDP Residential Placement Census, *supra* note 7.

<sup>36</sup> Average length of stay 7.9 and 8.7 months, respectively. Illinois Department of Juvenile Justice Quarterly Report, Table 10, “Youth Statistical Indicators,” July 1, 2015.

<sup>37</sup> *Standards Relating to Counsel for Private Parties*, §§ 10.1, 10.2, 10.5, and 10.6, in INSTITUTE OF JUDICIAL ADMINISTRATION – AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH (Robert E. Shepherd, Jr., ed.), at 91-94 (1996). *See also*: NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS §§7.1, 7.5, 7.7, 10.8 (2012).

<sup>38</sup> 705 ILCS 405/5-101.

<sup>39</sup> 705 ILCS 405/5-750.

<sup>40</sup> 705 ILCS 405/5-750 (3.5) “Every delinquent minor committed to the Department of Juvenile Justice under this Act shall be eligible for aftercare release without regard to the length of time the minor has been confined or whether the minor has served any minimum term imposed. Aftercare release shall be administered by the Department of Juvenile Justice, under the direction of the Director.” *Id.*

<sup>41</sup> Commitment length for juveniles is limited only by adult maximum sentence or a specific statutory age. 730 ILCS 5/3-3-8(a).

# APPENDIX

## *Rehabilitative Release of Youth from Illinois Prisons*

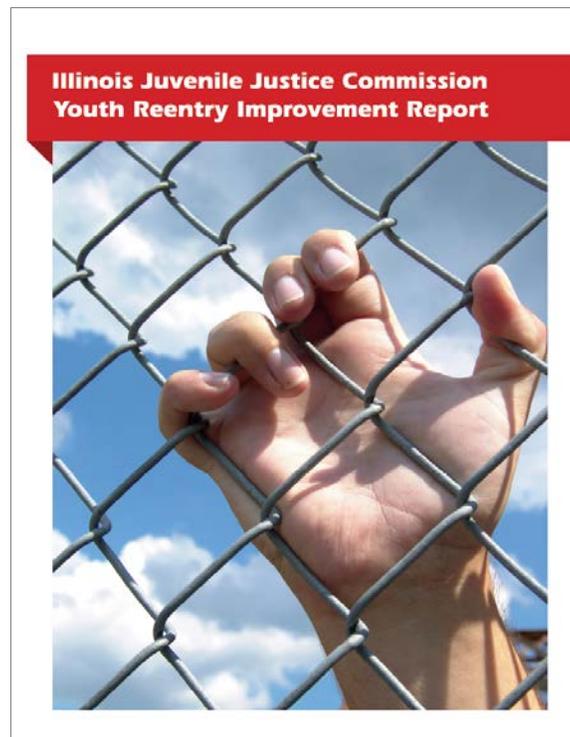
APPENDIX A: EXECUTIVE SUMMARY  
*YOUTH REENTRY IMPROVEMENT REPORT*  
ILLINOIS JUVENILE JUSTICE COMMISSION

APPENDIX B: JUVENILE STATE SECURE CARE RELEASE  
MECHANISMS, 50-STATE SURVEY

APPENDIX C: 50-STATE SECURE CARE COMMITMENTS  
BY VOLUME AND RELEASE MECHANISM

# APPENDIX A

EXECUTIVE SUMMARY  
*YOUTH REENTRY IMPROVEMENT REPORT*  
ILLINOIS JUVENILE JUSTICE COMMISSION  
NOVEMBER 2011



*“An essential measurement of any juvenile “reentry” system is whether youth returning from incarceration remain safely and successfully within their communities. By this fundamental measure, Illinois is failing.”*

## I. EXECUTIVE SUMMARY

### Introduction

An essential measurement of any juvenile “reentry” system is whether youth returning from incarceration remain safely and successfully within their communities. By this fundamental measure, Illinois is failing.

While precise data is difficult to come by (itself an indication of our current reentry shortcomings), it is clear that well over 50 percent of youth leaving Department of Juvenile Justice (“DJJ”) facilities will be reincarcerated in juvenile facilities; many others will be incarcerated in the adult Department of Corrections (“DOC”) in the future. The costs of failure are catastrophic for the young people in the state’s care, for their families, and for our communities. The financial costs of this failing system are staggering as well: The Illinois Auditor General estimates that incarceration in a DJJ “Youth Center” cost \$86,861 per year, per youth in FY10.<sup>1</sup> Worse, the juvenile justice system is, in many ways, the “feeder system” to the adult criminal justice system and a cycle of crime, victimization and incarceration. Today, nearly 50,000 people are incarcerated in Illinois prisons at an immediate annual cost to the state of well over \$1 billion.<sup>2</sup> The economic ripple effect of incarceration inflates taxpayer costs even more.<sup>3</sup> In human terms, we must do better for

our young people and our communities. In fiscal terms, we simply cannot afford to continue business as usual.

There is good news: Young people are capable of tremendous positive change and growth and—with the right support, supervision and services—youth leaving DJJ facilities can become valued assets in our communities. In addition, there is burgeoning knowledge in Illinois and beyond about adolescent brain development, effective community-based supervision and services, and “what works” with young offenders. Perhaps most importantly, there is growing leadership and commitment in Illinois to do what is necessary to ensure that young people leaving the state’s custody return home safely and successfully. This report provides the findings and recommendations of the Illinois Juvenile Justice Commission, as required by the Youth Reentry and Improvement Law of 2009, 20 ILCS 505/17a-5(5.1), to realize this vision of safe communities, positive outcomes for our youth, and responsible use of public resources.

### The Illinois Juvenile Justice System

Illinois has long been a pioneer in juvenile justice, creating the first juvenile court in the United States in 1899.<sup>4</sup> Proponents of the original juvenile court understood that the moral culpability of youth is significantly different from that of adults, necessitating a distinct juvenile justice system.<sup>5</sup> Today, we also understand that youth are biologically different from

1. See STATE OF ILLINOIS AUDITOR GENERAL, DEPARTMENT OF JUVENILE JUSTICE COMPLIANCE EXAMINATION FOR THE TWO YEARS ENDED JUNE 30, 2010, available at <http://www.auditor.illinois.gov/audit-reports/compliance-agency-list/corrections/dojj/fy10-dojj-comp-full.pdf>.

2. See ILLINOIS DEPARTMENT OF CORRECTIONS, ANNUAL REPORT FY 2009, available at: [http://www.idoc.state.il.us/subsections/reports/annual\\_report/FY09%20DOC%20Annual%20Rpt.pdf](http://www.idoc.state.il.us/subsections/reports/annual_report/FY09%20DOC%20Annual%20Rpt.pdf); see also STATE OF ILLINOIS FISCAL YEAR 2012 AGENCY FACT SHEETS, available at [http://www.state.il.us/budget/FY2012/FY12\\_Agency\\_Fact\\_Sheets.pdf](http://www.state.il.us/budget/FY2012/FY12_Agency_Fact_Sheets.pdf).

3. Incarceration imposes significant collateral economic consequences upon not only the imprisoned and their families, but also upon communities and state taxpayers in general. For instance, most adult men (2/3) are employed prior to incarceration and half are the primary income source for their families. “Family income averaged over the years a father is incarcerated is 22 percent lower than family income was the year before a father is incarcerated. Even in the year after the father is released, family income remains 15 percent lower than it was the year before incarceration.” PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 5 (2010). Disruption of earnings during incarceration shrinks the tax base at the same time that the inmate’s family may require additional state assistance due to the loss of income; this is not a small demand on social services, as 1 in 28 children nationwide has a parent who is currently incarcerated. *Id.* at 4. After release, adult men earn 40

*“In human terms, we must do better for our young people and our communities. In fiscal terms, we simply cannot afford to continue business as usual.”*

percent less per year than they did prior to incarceration, continuing the large-scale economic ripple effect.

4. See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 86 (2000), available at <https://www.ncjrs.gov/html/ojjdp/nationalreport99/chapter4.pdf>.

5. See Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment and the Difference It Makes*, 68 B.U. L. REV. 821, 822 (1988).

*“Simply put, the drawbacks of relying upon a flawed surveillance-only punishment strategy for youth on parole are clear: unacceptably high reincarceration rates for youth with no corresponding fiscal or safety benefit to the public.”*

adults and thus their delinquent behavior requires a unique response from the state. As described in the recent United States Supreme Court decision *Graham v. Florida*:

As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressures; and their characters are not as well formed. . . . A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult. . . . [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. . . . Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.<sup>6</sup>

As a State, we recognize the potential for youth to “avoid delinquent futures and become productive, fulfilled citizens.”<sup>7</sup> The Illinois Juvenile Court Act states: “[i]t is the intent of the General Legislature to promote a juvenile justice system . . . [which] equip[s] juvenile offenders with competencies to live responsibly and productively . . . and enables a minor to mature into a productive member of society.”<sup>8</sup>

There are many differences between the juvenile and adult judicial systems. One key difference for the purpose of this report is the sentencing of juveniles. Most citizens are familiar with the adult system, where a judge sentences an offender to a finite prison sentence. When a judge decides to send a juvenile to serve a sentence in the Illinois Department of Juvenile Justice, however, that sentence is indeterminate, or open-ended.<sup>9</sup> Juveniles can only be released from DJJ

by reaching the age of 21 or by a decision of the Prisoner Review Board. (See Section III. A. for additional details.)

In 2006, Illinois, in further recognition of the unique needs of youth and the differences between the juvenile and adult systems, established the Department of Juvenile Justice, independent of the Department of Corrections. The dual mission of the Department of Juvenile Justice is to hold juvenile offenders accountable for illegal conduct and to rehabilitate youth to become productive members of the community.<sup>10</sup>

In spite of the separation of DJJ from DOC and numerous federal and Illinois laws recognizing the inherent differences between youth and adults, the reality for Illinois youth is that once they are committed to the Department of Juvenile Justice, they are subject to a system of release decision-making, parole, and revocation that is functionally identical to the adult system and modeled on adult culpability and capability. The application of these adult approaches to youth is problematic—not just for developmental and fundamental fairness reasons, but because it does not work. Simply put, the drawbacks of relying upon a flawed surveillance-only punishment strategy for youth on parole are clear: unacceptably high reincarceration rates for youth with no corresponding fiscal or safety benefit to the public.

Basic facts about the Illinois juvenile justice system support this conclusion. Recently released population data from the Illinois Department of Juvenile Justice reveals that in seven out of the past eight years, *technical parole violators* (e.g. youth who violated curfew, failed to attend school, are unemployed, failed to obey house rules, etc.) represented a greater percentage of the incarcerated juvenile population than any other type of admission, whereas youth who committed a new offense while on parole comprised only 2 *percent* of the average DJJ population.<sup>11</sup> In fact, on any given day, approximately 40 percent of incarcerated youth are technical parole violators.<sup>12</sup> The large number of incarcerated juvenile technical parole violators—whose noncompliant behav-

6. *Graham v. Florida*, 560 U.S. \_\_\_, 130 S. Ct. 2011 (2010).

7. 730 ILCS 5/3-2.5-5.

8. 705 ILCS 405/5101(1).

9. Sentences for first degree murder, however, are non-discretionary. See 705 ILCS 405/5-750(2). It is noteworthy that currently only three youth out of the total DJJ population of 1200 are sentenced for first degree murder. Interview with Chris Bernard, Juvenile Justice Project Director, John Howard Association of Illinois (October 18, 2011).

10. “Understanding that youth have different needs than adults, it is the mission of the Illinois Department of Juvenile Justice to preserve public safety by reducing recidivism. Youth committed to the Department's care will receive individualized services provided by qualified staff that give them the skills to become productive citizens.” MISSION STATEMENT, ILLINOIS DEPARTMENT OF JUVENILE JUSTICE, available at [http://www.idjj.state.il.us/mission\\_statement.shtml](http://www.idjj.state.il.us/mission_statement.shtml).

11. See Appendix B, Department of Juvenile Justice, Juvenile Institutions Monthly Population Summary, Fiscal Years 2003–2010.

12. *Id.*

ior likely poses no threat to public safety—overextends DJJ resources and significantly undermines DJJ’s ability to provide necessary programs for high risk and high need youth.

The Illinois Auditor General estimated that in FY 10 it cost the State of Illinois \$86,861 to incarcerate one youth for a year.<sup>13</sup> By contrast, more effective community-based strategies cost far less; examples include Functional Family Therapy, which costs \$3,198–\$3,309 per year, and Multisystemic Therapy, which costs \$7,206–\$7,280—a savings of at least \$79,581, per youth per year.<sup>14</sup> Improved reentry strategies that reduce reincarceration for technical violations are therefore critical to the fiscal health of Illinois.

Over the course of this study, the Commission has noted that there are many highly-qualified, caring professionals working at all stages of the juvenile justice system. However, this report highlights the ways in which the system is structurally flawed and that, rather than supporting the qualified professionals who strive for positive youth outcomes and public safety, the current juvenile justice system impedes and contradicts their efforts.

### ***Commission’s Youth Reentry Improvement Analysis and Policy Recommendations***

Under the Youth Reentry and Improvement Law of 2009, the Illinois Juvenile Justice Commission (“Commission”) was charged with developing recommendations to ensure the effective reintegration of youth offenders into the community.<sup>15</sup>

13. See STATE OF ILLINOIS AUDITOR GENERAL, DEPARTMENT OF JUVENILE JUSTICE COMPLIANCE EXAMINATION FOR THE TWO YEARS ENDED JUNE 30, 2010, available at <http://www.auditor.illinois.gov/audit-reports/compliance-agency-list/corrections/dojj/fy10-dojj-comp-full.pdf>.

14. Official cost estimates for contemporary evidence-based therapies are rare. To calculate expenses and cost savings of community-based therapies, the Commission requested cost information about two particular evidence-based therapeutic programs from One Hope United, a Chicago-based nonprofit federation of social service agencies serving 15,000 children in 4 states. See email correspondence with Patricia Griffith, Executive Director, One Hope United (Oct. 17, 2011) (on file with the Commission). Estimates received from One Hope United are in line with those cited in a recent agency publication from the State of Washington, also comprising the cost range cited in this report. See WASH. STATE INST. FOR PUB. POLICY, RETURN ON INVESTMENT: EVIDENCE-BASED OPTIONS TO IMPROVE STATEWIDE OUTCOMES 4 (July 2011), available at <http://www.wsipp.wa.gov/rptfiles/11-07-1201.pdf>.

15. In addition to policy recommendations, the law directed the Commission to provide the following information on youth whose parole was revoked:

- the number of youth confined in the Department of Juvenile Justice for revocation based on a technical parole violation,
- the length of time the youth spent on parole prior to the revocation,
- the nature of the committing offense that served as the basis for the original commitment,
- demographic information including age, race, sex, and zip code of the underlying offense, and
- the conduct leading to revocation.

The statutorily mandated data is attached as Appendix A.

*“The current release decision making process for youth undermines the rehabilitation and public safety goals of the Illinois juvenile justice system. . .”*

The Commission reentry study represents a significant undertaking, in which the Commission amassed an unprecedented amount of data and insight into the juvenile reentry and revocation system. Specifically, the Commission:

- reviewed nearly 400 files of youth whose parole was revoked;
- observed over 230 Prisoner Review Board (“PRB”) juvenile hearings;
- met with DJJ, DOC, Department of Children and Family Services (“DCFS”), and PRB staff multiple times over the course of the study and analysis;
- reviewed Illinois’ and other states’ statutes, case law, rules, policies, and procedures regarding juvenile sentencing, release, parole, and revocation; and
- researched best practices regarding juvenile release decision-making, reentry, and revocation.

In this report, the Commission presents its findings on the current systemic failures of the Illinois juvenile justice reentry system, highlights of which are summarized below.

- The current release decision making process for youth undermines the rehabilitation and public safety goals of the Illinois juvenile justice system in that:
  - release is largely dictated by a youth’s committing offense and alleged disciplinary violations while incarcerated, instead of by an informed, objective determination that it is in the best interest of the youth and the public for the youth to be released;
  - no independent review mechanism assesses or documents the youth’s rehabilitative progress and the appropriateness of continued incarceration; and
  - conditions of parole restricting movement, prohibiting activities, and mandating programs or services are established without evidence or meaningful basis and without support to encourage their completion.

*“Youths’ constitutional due process protections are violated by the basic structure and process of Prisoner Review Board revocation proceedings. . .”*

- Youths’ constitutional due process protections are violated by the basic structure and process of Prisoner Review Board revocation proceedings in that:
  - youth are not informed of their right to request counsel at revocation hearings;
  - youth are denied the opportunity to present and review evidence;
  - youth are denied the ability to cross-examine adverse witnesses;
  - revocation determinations are idiosyncratic, subjective, premised on a cursory review of documents, void of guidelines, and not reviewable; and
  - PRB members fail to explain the purpose of the hearing to the youth or provide the youth with a substantive written explanation of the decision.
- The current parole system, which is operated by the Department of Corrections’ adult parole division, is costly and ineffective at sustaining pro-social youth behavior, enhancing public safety, and reducing recidivism, in that:
  - parole agents supervise mixed caseloads of both adults and juveniles<sup>16</sup> and are unable to use specialized youth reentry strategies;
  - parole agents do not effectively link youth to state-mandated or essential services; yet

- parole agents file technical parole arrest warrants on approximately half of youth on parole.

- The Department of Juvenile Justice youth tracking software is antiquated and fails to effectively manage youth assessments, programming progress, and public safety monitoring.

Based on the Commission’s extensive research and findings, this report presents recommendations for reform that will promote the effective reintegration of youth offenders into the community while ensuring youths’ constitutional due process protections.

- The Department of Juvenile Justice must prepare youth for timely release and qualified members of the Prisoner Review Board must increase the frequency and quality of release hearings.
- The current Department of Corrections adult parole surveillance model for juveniles should be replaced by a statewide extension of DJJ’s After-care Specialist pilot program.
- A court must make parole revocation determinations; Prisoner Review Board revocation hearings do not afford youth constitutional due process protections.
  - The Department of Juvenile Justice must develop and implement an integrated case management system to facilitate necessary information sharing, which will allow effective youth case planning and monitoring.

*“The current parole system, which is operated by the Department of Corrections’ adult parole division, is costly and ineffective at sustaining pro-social youth behavior, enhancing public safety, and reducing recidivism. . .”*

16. In Region 1, parole officers do have juvenile-only caseloads. However, these officers do not have adequate juvenile-specific training, specialized resources, or strategies at their disposal to supervise and support youth any more effectively than their counterparts who supervise blended adult/juvenile caseloads.

## APPENDIX B

### JUVENILE STATE SECURE CARE RELEASE MECHANISMS 50-STATE SURVEY

*The custodial department makes release decisions in 32 states:*

Alabama	Hawaii	Mississippi	North Dakota
Alaska	Idaho	Missouri	Oregon
Arizona	Indiana	Montana	Tennessee
Arkansas	Kansas	Nebraska	Texas
Connecticut	Kentucky	Nevada	Virginia
Delaware	Maine	New Mexico	Washington
Florida	Massachusetts	New York	West Virginia
Georgia	Minnesota	North Carolina	Wyoming

*Juvenile court makes release decisions in 9 states:*

Iowa	Michigan	Rhode Island
Louisiana	Ohio	South Dakota
Maryland	Pennsylvania	Vermont

*A juvenile-specific parole authority makes release decisions in 8 states:*

California	New Jersey	Utah
Colorado	Oklahoma	Wisconsin
New Hampshire	South Carolina	

*A non-juvenile-specific parole authority makes release decisions in 1 state:*

Illinois

## APPENDIX C

### 50-STATE SECURE CARE COMMITMENTS BY VOLUME AND RELEASE MECHANISM

DJJ Equivalent		Juvenile Court		Juvenile Parole Board		Adult Parole Board	
Alabama	249	Iowa	138	California	345	Illinois	660
Alaska	75	Louisiana	336	Colorado	354		
Arizona	369	Maryland	234	New Hampshire	48		
Arkansas	12	Michigan	81	New Jersey	444		
Connecticut	141	Ohio	468	Oklahoma	189		
Delaware	69	Pennsylvania	267	South Carolina	285		
Florida	60	Rhode Island	84	Utah	264		
Georgia	729	South Dakota	102	Wisconsin	261		
Hawaii	42	Vermont	6				
Idaho	231						
Indiana	378						
Kansas	381						
Kentucky	456						
Maine	123						
Massachusetts	72						
Minnesota	141						
Mississippi	72						
Missouri	654						
Montana	69						
Nebraska	189						
Nevada	177						
New Mexico	234						
New York	477						
North Carolina	240						
North Dakota	72						
Oregon	672						
Tennessee	375						
Texas	1,242						
Virginia	660						
Washington	510						
West Virginia	138						
Wyoming	96						
<b>TOTAL</b>	<b>9,405</b>		<b>1,716</b>		<b>2,190</b>		<b>660</b>
<b>PERCENT</b>	<b>67%</b>		<b>12%</b>		<b>16%</b>		<b>5%</b>

Children and Family Justice Center analysis of OJJDP's "Census of Juveniles in Residential Placement 2013" Sickmund, M., Sladky, T.J., Kang, W., and Puzanchera, C. (2015) "Easy Access to the Census of Juveniles in Residential Placement." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezacirp/>. Figures are federally-standardized across states and do not include all types of IDJJ admissions. Committed juveniles include those placed in the facility as part of a court ordered disposition.