

Report Of The 2013 Task Force On The Unified Juvenile Code

(2013 Senate Concurrent Resolution 35)



Research Memorandum No. 514

Legislative Research Commission

Frankfort, Kentucky

December 2013

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Foreword

The Task Force on the Unified Juvenile Code was created in the 2012 Regular Session by House Concurrent Resolution 129 to review and research the juvenile justice system and to make recommendations for changes to the Unified Juvenile Code. In 2013, the General Assembly adopted Senate Concurrent Resolution 35, which directed the task force to continue its review of the Unified Juvenile Code and provide recommendations for juvenile justice reforms.

The task force co-chairs would like to thank the task force members, all those who attended the meetings, and those who provided research, testimony, and input into the development of the task force recommendations. The co-chairs would also like to acknowledge The Pew Charitable Trusts and its partner, the Crime and Justice Institute, for providing technical assistance to the task force.

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Legislative Research Commission
Frankfort, Kentucky
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Report Of The 2013 Task Force On The Unified Juvenile Code

Summary

In 2013, Senate Concurrent Resolution 35 extended the Task Force on the Unified Juvenile Code, which had been created the year before. The task force was directed to continue its review of the juvenile justice system to develop recommendations for reform.

The task force was a bipartisan, inter-branch group with diverse representation from juvenile justice stakeholders. It conducted a detailed analysis of Kentucky's juvenile justice system and, based on this work, developed recommendations to protect public safety, hold offenders accountable, improve outcomes for children and families, and control costs in the juvenile justice system.

Seeking to improve public safety and achieve better outcomes for youth and their families, the task force studied Kentucky data, reviewed research on proven juvenile practices, and looked to other states to identify solutions.^a

Task Force Findings

The task force analysis led to findings in four areas of Kentucky's juvenile justice system:

- Kentucky is spending significant resources on out-of-home residential placement for low-level status and public offenders.^b The Department of Juvenile Justice (DJJ) spends more than half of its \$102 million annual budget on secure and nonsecure residential facilities that cost an average of \$87,000 per bed per year. In addition, the Department for Community Based Services (DCBS) spent an estimated \$6 million in fiscal year 2012 for out-of-home placement of status offenders.
- Lower-level offenses make up a significant share of the juvenile justice system. Misdemeanants and violators make up the majority (ranging from 55 percent to 87 percent) of youth in of each type of out-of-home placement.
- The length of time probation/court order violators and misdemeanor offenders spend in out-of-home facilities has increased 31 percent and 21 percent, respectively, over the past decade. The amount of time these offenders spend out of home differed by less than 1 month from those adjudicated on felony offenses. Hundreds of status offenders are spending time out of home through commitments to DCBS or in detention.

^a Unless otherwise cited, all analyses in this report were conducted by The Pew Charitable Trusts, based on data provided by the Kentucky Department of Juvenile Justice, the Kentucky Administrative Office of the Courts, and the Kentucky Cabinet for Health and Family Services.

^b A status offender is a child who has been found to have committed acts that, if committed by an adult, would not be a crime but that are prohibited as to children. A public offender is a child who has been found to have committed an offense under KRS Chapter 527 or a public offense that, if committed by an adult, would be a crime other than a motor vehicle offense (KRS 600.020).

- A lack of funding for and access to services and alternatives in the community has contributed to more expensive commitments to DJJ and DCBS and more youth being placed out of home.

Recommendations And Impact

The task force recommendations are grouped into four categories:

- Reinvest savings to provide for sustained funding, expand community services, and improve supervision.
- Focus resources, particularly expensive out-of-home facilities, on higher-level offenders, and reinvest savings into strengthening early intervention and prevention programs.
- Increase effectiveness of juvenile justice programs and services.
- Improve government performance by providing oversight of reform implementation, tracking performance measures, and maximizing federal resources.

The task force recommendations would improve public safety, hold offenders accountable, improve outcomes for children and families, and control costs in the juvenile justice system. Over the next 5 years, the proposed reforms are expected to save Kentucky millions, and the task force recommends that the savings be reinvested in supervision and services in local communities. The shift of lower-risk youth and resources from out-of-home placement to evidence-based community programs will lead to safer communities and better outcomes for Kentucky youth and their families.

Background

In 2012, the General Assembly created the Task Force on the Unified Juvenile Code through House Concurrent Resolution 129 to review the Kentucky juvenile justice system and to make recommendations for reform. The task force—a bipartisan, inter-branch group with diverse representation of juvenile justice stakeholders—held six meetings in 2012 and received testimony and written materials from numerous stakeholders throughout the juvenile justice system. In 2013, through Senate Concurrent Resolution 35, the General Assembly extended the task force to conduct additional review and to provide recommendations for reform of the juvenile justice system.

The task force met 10 times in 2013, engaging in a detailed analysis of Kentucky's juvenile justice data and system information. The task force reviewed the data relating to complaints, petitions, admissions, dispositions, and placements for both status and public offenders. Additionally, the task force heard information about both the status and public offense systems relating to policies and practices that impact the youth entering the system; dispositions they receive; where they are placed and for how long; and alternatives, including community-based options. The task force also solicited information from a wide range of stakeholders through numerous outreach meetings throughout the summer and fall. The task force reviewed information related to status and public offense referrals, complaints, dispositions, placements in the community and out of home, lengths of stay, and supervision. The task force used this

information to develop comprehensive recommendations that will improve public safety, hold offenders accountable, improve outcomes for children and families, and control costs.

The task force received technical assistance from The Pew Charitable Trusts and the Crime and Justice Institute in this effort.

Key State And National Juvenile Justice Trends

The task force began its review of the juvenile justice system by looking at state and national trends, as well as research on effective interventions for youth and their families.

Review of state data revealed that, from 2002-2013, the postdispositional DJJ out-of-home population (excluding detention) declined by 45 percent, and the community supervision population declined by 36 percent. There was, however, a 16 percent increase in the out-of-home population from 2012-2013 that ran counter to this trend. The overall downward trend in the DJJ postdispositional out-of-home population is consistent with national data. Since juvenile violent crime arrest rates peaked in the late 1990s, 46 states have reduced commitment rates. Nationally, between 1997 and 2011, the juvenile violent crime arrest rate fell 49 percent, and the juvenile commitment rate fell 48 percent.¹

Though juvenile crime has declined nationally, Kentucky and several other states have continued to hold large numbers of juveniles in residential secure and nonsecure facilities at high costs. Many of these states are turning to research to identify interventions for juvenile offenders that achieve better outcomes at lower costs.

The task force reviewed juvenile justice research and found evidence demonstrating that placement in out-of-home facilities does not lower the likelihood of juvenile reoffending and may increase the likelihood of committing a new crime for some offenders.² A 2009 study suggests that longer lengths of stay in secure facilities do not reduce recidivism for certain juvenile offenders.³ Other evidence suggests that targeting high-risk juvenile offenders for correctional interventions maximizes the reduction of recidivism.⁴

Task Force Findings

To establish a foundation for its policy discussions, the task force reviewed Kentucky's juvenile justice data and system information. The task force identified four key challenges in the effort to improve outcomes for youth and public safety for communities.

The Juvenile Justice System Has High Costs

DJJ spends more than half of its \$102 million annual budget on secure and nonsecure residential facilities. The state's secure facilities—youth development centers and detention centers—both cost more than \$87,000 per bed annually. Though DJJ spends more than half its budget on these out-of-home facilities, the majority of youth committed to DJJ are placed in the community.

The state spends a significant amount on out-of-home placements for status offenders. Thirteen percent of juveniles held in the secure detention centers are status offenders. Additionally, DCBS spends an estimated \$6 million annually on residential placements for adjudicated status offenders.

Lower-Level Offenders Are A Significant Part Of The Juvenile Justice System And A Majority Of The Out-Of-Home Population

Lower-Level Offenders Make Up A Large Share Of Youth Entering The System

A system assessment revealed that in 2012, a large number and share of youth entered the juvenile justice system for status, misdemeanor, or Class D felony offenses. There were more than 20,000 referrals to the juvenile justice system for status offenses. These referrals were screened through a precomplaint process that reduced the number of cases that were ultimately filed into court as petitions to 4,161. Additionally, there were more than 19,000 public offense complaints in 2012. The majority of public offense charges associated with these complaints were for lower-level offenses such as theft and assault; in 2012, 13 percent of these public offense charges were Class D felonies and 73 percent were misdemeanors. It is recognized by the task force that there is a wide array of Class D felonies and that some of the Class D offenses are very serious in nature.

An examination of Administrative Office of the Courts data found that 59 percent of the status complaints and one quarter of public offense complaints were school related. The task force heard testimony regarding local practices that reduced referrals for both public and status offense cases but found that these practices were not uniform across Kentucky. The task force wanted to conduct a more detailed analysis regarding school-related offenses but lacked sufficient data to review offense, school, and referral source information.

One potential factor contributing to the number of lower-level offenses being charged was a perception among prosecutors that state statutes do not give them discretion to decline to file charges if reasonable cause exists. It is noted that 43 percent of public offense and 29 percent of status offense cases filed as petitions in court had been eligible for diversion but were in court due to an override of the diversion decision.

Lower-Level Offenders Comprise Most Of The Out-Of-Home Population

Analysis of data regarding juveniles committed to DJJ showed a pattern similar to what the data revealed about referrals and complaints entering the system: the majority of youth committed to DJJ—whether they remain in the community or are placed out of home—are lower-level offenders. Looking just at youth placed out of home, the most common offenses prior to out-of-home placement were misdemeanors and violations of the conditions of supervision. These offenders constitute a majority and growing share of youth in secure youth development center facilities: from 2002 to 2012, they increased as a share of the secure population from 39 percent to 55 percent. Further, many of these youth had a limited criminal history, or none at all, prior to their most restrictive out-of-home placement with DJJ.

Between 2002 and 2012, the average length of stay in out-of-home placement increased 31 percent for probation and court order violators, 21 percent for misdemeanants, and 11 percent for felons. The length of stay did not vary substantially based on the severity of the offense: there was less than a 1-month difference in the average length of stay out of home for felons (approximately 7 months) and misdemeanants, probation and court order violators (approximately 6 months).

Looking more closely at probation and court order violators, it appeared that the length of supervision terms was likely a factor contributing to the numbers of youth spending time out of home. Under current law, juveniles remain on supervision until age 18 unless they are affirmatively discharged from supervision by the agency supervising the youth (DCBS or DJJ) or by the court. Many juveniles are placed out of home by DJJ for violations of the conditions of supervision, and these juveniles are held out of home for approximately the same amount of time as felons and misdemeanants. For the majority of these juveniles, out-of-home placement is ordered even if the juvenile has one or fewer court appearances for violations of his or her conditions of supervision.

The task force also looked at placements for status offenders and found a substantial number being placed out of home for offenses that would not be crimes if committed by an adult. As of October 2013, there were more than 250 youth who were placed out of home after being committed to DCBS. Status offenders placed by DCBS in out-of-home care stay an average of 8.5 months and may be housed with public offenders. These status offenders may also be placed far from their homes, creating obstacles for involving families in services. Analysis of DJJ data showed that 13 percent of the juveniles held in Kentucky's secure detention facilities are status offenders detained for violating court orders.

Lack Of Community Options Contributes To Out-Of-Home Placement

Through presentations and stakeholder input, the task force found that there is a lack of services in the community for status and public offenders. Where services do exist, there is insufficient information to determine the consistency or effectiveness of the interventions. For example, in FY 2013, only 261 adolescent youth received substance abuse treatment through the community mental health centers, which are the primary source for mental health and substance abuse services for youth in Kentucky.⁵

The lack of services available in the community, including aftercare, impedes the ability of DJJ to provide comprehensive supervision. Stakeholders testified that one factor contributing to commitments to DJJ and DCBS was the effort to access youth and family services that were not available in the community.

Lack of funding is a significant contributing factor to insufficient services in the community for juveniles. The task force believes efforts to address the needs of youth in lieu of residential placement are likely to fail without increased community-based services.

Inconsistent Use Of Risk And Needs Assessments Impacts Disposition And Placement Decisions

The task force also looked at factors driving disposition and placement decisions, particularly whether the agencies in charge of disposition, placement, and supervision decisions are using objective decision-making tools. Various agencies use different assessment tools for different purposes with little consistency across agencies and some inconsistencies within agencies. For example, the Youth Level of Service/Case Management Inventory (YLS) is used by DJJ in preparing its Pre-Disposition Investigation report that is prepared for the court as well as to guide DJJ's decisions related to placement and supervision. The YLS is not completed for every case prior to disposition and has not been validated on Kentucky's juvenile population.^c The task force also found that there is not a structured decision-making tool to objectively guide decisions about sanctions for probation violations or guidelines for when juveniles should be discharged from supervision.

Recommendations

Based on its review of juvenile justice data and system information, the task force developed the following recommendations to improve the effectiveness and efficiency of the juvenile justice system. If adopted, these reforms will focus out-of-home resources on higher-level offenders and reinvest a portion of the savings into proven public safety strategies that will improve outcomes for youth and their families.

Reinvest Savings, Providing For Sustained Funding, To Expand Community Services And Improve Supervision

1. **Establish a fiscal incentive program.** The General Assembly should establish a fiscal incentive program that reinvests savings achieved from the juvenile justice reforms into evidence-based programs and services for juveniles and their families. Further, the state should reinvest savings into evidence-based community supervision and services. Funding for the program should be appropriated beginning in the 2014-2016 budget in anticipation of achieving savings to facilitate the development and expansion of supervision and services in the community. Any intervention funded by the fiscal incentive program should not include a mandate that the administration of the services or the cost of the intervention be borne by the counties or local governments; rather, the fiscal incentive program should be voluntary and funded by the state through savings achieved by the state from adoption of the task force recommendations.

^c Validating the YLS assessment tool on Kentucky's population will determine if the factors included in the assessment tool and the assessment scoring method are accurate predictors of recidivism outcomes, and if not, whether it is better to adjust the existing tool or adopt a new tool. In 2004-2006, DJJ worked with researchers at Eastern Kentucky University to study the YLS assessment tool and its potential use in Kentucky. However, this study did not meet the threshold of validation because it did not include any statistical analyses that determined whether the tool was predictive of Kentucky juveniles' recidivism outcomes.

Focus Resources, Particularly Expensive Out-Of-Home Facilities, On Higher-Level Offenders And Use Some Of The Savings To Strengthen Early Intervention And Prevention Programs

2. **Improve disposition alternatives for lower-level Class D felonies.** The General Assembly should establish criteria to allow some juvenile offenders who are adjudicated on less serious Class D offenses to receive a disposition that is less restrictive than offenders adjudicated of more serious Class D offenses. The disposition criteria should include offender risk level as well as offense severity.
3. **Establish criteria for commitment of misdemeanor offenders to the Department of Juvenile Justice.** The General Assembly should establish criteria for committing misdemeanor offenders to DJJ. The criteria might include prohibiting misdemeanor commitments to DJJ unless the offenders have certain criminal history or risk level. Further, the General Assembly should require DJJ to develop criteria, based on the seriousness of the offense and the offender's risk level, to guide DJJ out-of-home placement decisions for misdemeanor offenders who are committed to DJJ.
4. **The length of time juveniles spend in out-of-home placement should take into consideration the seriousness of their offenses and their risk levels.** The task force recommends the creation of a framework to limit the time that lower-level offenders are placed out of home that takes into consideration the offense severity and offender risk level. To ensure that offenders receive appropriate supervision and services within the established framework, the Department of Juvenile Justice should be required to develop additional treatment models that can be tailored to the needs of the youth, including considering the reason for the commitment. DJJ case plans should include a combination of treatment within the facilities and continuing treatment in the community. The framework may include a mechanism to override the time limits for out-of-home placement if appropriate based on the risks and needs of the juvenile.
5. **Establish a finite period of supervision correlated to seriousness of offense and the juvenile's risk level.** The General Assembly should replace the current system of indeterminate supervision terms with a system that tailors the length of supervision to the seriousness of the offense and the risk level of the offender. The General Assembly should also create a limit to the total term of supervision, subject to extremely limited exceptions.
6. **Require graduated sanctions for violations of conditions of supervision and allow a sanction of up to 30 days' detention only if the graduated sanctions are not successful.** The General Assembly should require the use of graduated sanctions for all supervised youth, including court-monitored, probated, and committed youth on supervision in the community. If the less restrictive graduated sanctions are not successful, the court or the Department of Juvenile Justice (for violations by committed youth) may then impose a period of detention not to exceed 30 days as a sanction for the violation.

7. **Increase use of early intervention options and disposition alternatives and increase training for juvenile justice professionals.** The task force recommends an increase in the number and capacity of locally driven early intervention and prevention services as well as programs such as diversion, mediation, and restorative justice. The ability of eligible youth to engage in these types of intervention and diversion programs, as determined by an evidence-based assessment tool, should be restricted only in limited circumstances. Further, the General Assembly should increase funding for alternatives available for disposition that can provide tailored and effective disposition options for appropriate juveniles, such as juvenile drug courts, mental health courts, and day-treatment programs. Additional training should be made available to judicial officers, educators, school resource officers, and other juvenile justice professionals to provide information about research relating to juvenile status behaviors, effective interventions for juveniles, impacts of out-of-home placement, and alternatives to incarceration.
8. **Establish an effective and multiagency alternative process for status offenders.** The General Assembly should develop an alternative process for status cases. The alternative process should require earlier intervention and access to services and resources other than court to assist schools and families with addressing behaviors that constitute status offenses. Court involvement would not necessarily be required by the new system, but if this system does include a court process, assessments and referrals to services as well as ongoing case management should be completed prior to any court involvement. Further, the system should require engagement of families if appropriate.

It is not the intent of the task force that this new system result in increased referrals of dependency, neglect, and abuse cases to the Department for Community Based Services. Rather, it is the intent of the task force that the new system facilitate earlier connections to services in the community for youth and families, and that only those cases that rise to the level of dependency, neglect, or abuse are referred to DCBS.

Increase Effectiveness Of Juvenile Justice Programs And Services

9. **Require more involvement from parents in juvenile interventions.** The General Assembly should authorize courts and precourt diversion programs to impose requirements for parents of status and public offenders, including but not limited to requiring involvement in counseling or case management for the youth, attending parent education courses, accessing family preservation services, and undergoing drug testing if appropriate.
10. **Clarify minimum requirements that schools must meet prior to filing court referrals and review the role of school resource officers.** Current statutorily established requirements that set out what steps schools are required to take prior to referring a case to court need to be clarified in order to increase uniformity of effective practices across Kentucky and reduce referrals to court, particularly for lower-level offenses. Further, the General Assembly should review the role and responsibilities of the school resource officer to determine whether further guidance and clarification should be given for the position.

11. **Require validation of the risk and needs assessment and increase its use in decision making.** The General Assembly should require that the risk and needs assessment used by DJJ be validated immediately and that the assessment be provided to the court to use in its disposition decision making.
12. **Require the use of evidence-based and promising programs and practices for status and public offenders.** The General Assembly should require increased use of evidence-based programs and practices for juvenile justice services to improve outcomes for juveniles and their families. Though the majority of resources should be focused on evidence-based programs and practices, promising practices should be permitted in order to allow for the development of new and innovative approaches. Additionally, performance measures should be implemented to track key outcomes related to the use of evidence-based and promising programs and practices for status and public offenders.
13. **Increase Department of Juvenile Justice supervision and aftercare requirements.** The General Assembly should establish minimum standards to guide DJJ community supervision and aftercare standards and practices that include increased supervision requirements and referrals or direct provision of services, including mental health, substance abuse, day treatment, family services, and educational or vocational training services.

Improve Government Performance By Providing Oversight Of Implementation Of Reforms, Tracking Performance Measures, And Maximizing Federal Resources

14. **Establish an oversight committee.** The General Assembly should establish a council or commission to provide ongoing oversight of the implementation of the policies adopted by the General Assembly based on the recommendations of the task force and to monitor performance measures. This oversight body also should be authorized to review additional juvenile justice issues as necessary, including the need for additional improvements to measure juvenile recidivism.
15. **Require tracking of juvenile recidivism rates and other key performance measures.** The General Assembly should require that measures to track juvenile recidivism be improved and established where they are lacking. Additionally, other performance measures should be developed and tracked where they are needed to review the outcomes for the juvenile justice system.
16. **Require schools and courts to report specific data on referrals and programs.** The General Assembly should require courts to track specific data on referrals, such as referrals that are formally filed by the school district, including the offense that is the basis for the referral and whether the referral was initiated by a school resource officer. Additionally, schools should report information on programs available to their at-risk youth.
17. **Clarify the county attorney's authority to elect not to file.** The General Assembly should revise statutes relating to the county attorney's review of a complaint to clearly give county attorneys discretion to not file a case if appropriate, even if reasonable cause exists.

18. **Recommend maximizing use of federal funding.** The task force recommends that the Department of Juvenile Justice and the Department for Community Based Services increase efforts to better use federal funding, particularly to increase evidence-based services in the community. Additionally, further review should be given to the potential to use federal funding for juvenile offenders who are aging out of the juvenile justice system to allow them to voluntarily agree to continue services through DJJ or DCBS and to access federal transition resources.

Endnotes

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⁵ "Substance Abuse Treatment in Kentucky." Mark Fisher, MS, State Opioid Treatment Administrator. Division of Behavioral Health. Cabinet for Health and Family Services. Presentation. Meeting of the Interim Joint Committee on Judiciary. London. Sept. 6, 2013.

