

VIA ELECTRONIC MAIL

Tuesday, October 18, 2016

The Hon. Margaret White AO
Mr. Mick Gooda
The Royal Commission into the Protection and Detention of Children in the Northern Territory
PO Box 4215
Kingston, ACT 2604

To the Honourable Margaret White AO and Mr. Mick Gooda:

My name is Jason Szanyi. I am an attorney and Deputy Director at the Center for Children's Law and Policy in the United States. The Center for Children's Law and Policy (CCLP) is a national public interest law and policy organization based in Washington, DC focused on the reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in those systems. Our staff work to help jurisdictions throughout the United States make their juvenile justice systems more equitable and effective.

Over the last 10 years, we have worked on juvenile justice reform in 32 U.S. states and the District of Columbia. We have played a leading role in the largest juvenile justice reform initiatives in the U.S., including the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative and the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative. We have also worked to help juvenile justice systems and agencies in the wake of litigation, investigations, and media coverage of policies and practices.

Our staff have followed the news reports of abuses of children in youth detention facilities in the Northern Territory. We have been very disturbed by much of the information that we have seen reported about the treatment of young people, as it mirrors many past abusive practices of the juvenile justice systems in several states within the U.S. Although I have visited Australia for pleasure and have tremendous admiration for your country and its people, I have not had any first-hand experience with the youth justice system in your country. That said, I am writing to offer our observations and insights on two issues that I believe are of interest to the Commission: (1) What are the best ways of helping youth involved in the juvenile justice system avoid future offending?; and (2) What can we learn from states that have faced concerns related to conditions in their juvenile facilities? Although we are based in the United States, we remain ready to offer any assistance that would be helpful as the Commission undertakes its work.

What Works for Youth in the Juvenile Justice System?

Anyone who has ever parented, taught, or spent much time around adolescents knows that they are impulsive, influenced by their peers and have trouble foreseeing the long-term consequences of their actions. American laws have long acknowledged these differences by restricting voting and service on juries to those over the age of 18 and requiring parents to make medical and other important decisions for teenagers. In a series of landmark decisions, the U.S. Supreme Court has also recognized the difference between adolescents and adults, grounding those decisions in research from neuroscience and social science that shows how youth lack maturity, make poor and very risky decisions, are susceptible to negative influences such as peer pressure, and do not have fully formed characters and thus have far more potential for rehabilitation.

Since its creation, the juvenile justice system has been based on the fundamental principles that young people can be rehabilitated and that youth are different than adults. This means not simply applying an adult corrections model to youth. Research shows that the majority of youth entering the juvenile justice system suffer from mental illness and have experienced trauma.¹ We have seen that adult corrections-based approaches do not help these young people achieve long-lasting positive outcomes. For example, transfer of youth to adult criminal court has been studied extensively. It does not work to reduce recidivism. In fact, it is counterproductive. Youth who are transferred to adult criminal court are more likely to recidivate than similarly situated youth who remain in juvenile court.² Worse, transferred youth also recidivate sooner than youth who remain in juvenile court, and recidivate with more serious crimes.³

Research and experience in other jurisdictions show that we cannot simply punish our way out of delinquent behavior. Studies done through the Center for the Study and Prevention of Violence at the University of Colorado confirm that effective community-based interventions are strength-based, use therapeutic models, and focus on family engagement.⁴ We also know much more about how to work effectively with young people who are committed to the custody of the juvenile justice system. For example, Missouri has evolved a system system of small, youth-centered residential facilities generally within 75 miles of a youth's home,⁵ in stark contrast to many state systems' facilities containing hundreds of youth. The climate of the Missouri facilities contrasts markedly with other systems. Youth wear their own clothes, facilities look more like schools than prisons, and dormitories are decorated with students' art work and home-like furniture. Programming focuses on individualized attention, and staff and young people are encouraged to interact. A significant percentage of staff in Missouri have college degrees in counseling or psychology, a major departure from other systems that require only a high school

¹ Jennie L. Shufelt & Joseph J. Coccozza, *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study* (Nat'l Ctr. for Mental Health & Juvenile Justice, Delmar, N.Y.), June 2006, at 2.

² Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services, 56 *Morbidity & Mortality Weekly Reports* 1 (Nov. 27, 2007).

³ *Id.*

⁴ Center for the Study and Prevention of Violence, Model Programs, *available at* <http://www.colorado.edu/cspv/blueprints/modelprograms.html>.

⁵ Ayelish McGarvey, A Culture of Caring, *Am. Prospect*, Sept. 2005, at A12-14.

diploma or two years of college for their youth care workers.⁶ In contrast with the 50 to 70 percent recidivism rates seen elsewhere, of youth released from Missouri’s Division of Youth Services programs in 2005, only 8 percent of young offenders were incarcerated three years later and only 18 percent were sentenced to adult probation.⁷

The District of Columbia’s Department of Youth Rehabilitation Services (DYRS) is another example of an agency that evolved from a deeply troubled system to a national model. DYRS spent decades under a court consent decree because of dangerous conditions in its juvenile facilities and inadequate community-based services.⁸ In 2004, the agency was on the brink of court receivership because of its inability to resolve concerns related to its juvenile facilities, including the overuse of restraints and isolation. However, under the leadership of a new director, Vincent Schiraldi, DYRS was able to implement a comprehensive reform effort grounded in the tenets of Positive Youth Development. Most juvenile justice practice simply seeks (often unsuccessfully) only to extinguish negative behaviors. By contrast, Positive Youth Development adopts the perspective that the best way of preventing and reducing delinquent behavior is through a combination of identifying and building upon youth’s strengths as well as meeting their needs.⁹

Although much of the agency’s work involved developing more robust services and supports for youth in the community, DYRS also altered its approach to direct care in its facilities, creating a positive peer culture and therapeutic milieu modeled after the work that had been done in Missouri.¹⁰ These reforms substantially reduced the number of youth in secure care and improved conditions for those who remained confined. Importantly, the changes corresponded with a reduction in recidivism and a decline in serious juvenile crime.¹¹ DYRS has received national recognition for its reform work. In 2008, the Harvard Kennedy School of Government cited DYRS in its “Innovations in Government Awards Program” as one of the “Top 50” government programs in the country.¹²

The use of research to identify effective programs is an enormous achievement for the juvenile justice system and for juvenile justice reform. We know a great deal about what works, with whom, for how long, and how much money can be saved. This research has been invaluable in helping jurisdictions achieve the rehabilitative mandate of the juvenile justice system while holding youth accountable and keeping communities safe.

Conditions of Confinement in Juvenile Justice Facilities

Our organization is widely recognized both in the United States and internationally for our expertise on issues related to conditions of confinement in juvenile facilities. Our staff have spent decades working with jurisdictions across the country to improve conditions of

⁶ *Id.*

⁷ Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, Georgetown Journal on Poverty Law and Policy (Vol. XVI, 2009), pg 525, available at <http://cclp.org/Lessons.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

confinement in facilities that house youth. Our staff co-authored the extensive Juvenile Detention Facility Assessment Standards used by the Annie E. Casey Foundation in its Juvenile Detention Alternatives Initiative, known as JDAI.¹³ The JDAI Standards are the most comprehensive and demanding set of standards for juvenile facilities in the country. They are the standards that are used to assess and improve conditions in over 300 JDAI sites in 39 states and the District and Columbia. The JDAI standards have been cited in investigations by the U.S. Department of Justice's Civil Rights Division. They have also served as the basis for federal and state legislation, as well as many agencies' policies. Our staff worked with legislative task forces in Louisiana and Mississippi in recent years to help those states develop comprehensive standards for their juvenile facilities following numerous lawsuits and concerns about conditions in those states. We regularly host visitors from other countries through the U.S. Department of State who want to learn more about the strengths and weaknesses of our country's juvenile justice system and its efforts to improve conditions for young people in custody.

In times of crisis, officials often default to the use of the most restrictive and extreme interventions, such as physical force, mechanical and chemical restraints, and solitary confinement. Yet research and experience show that simply responding to youth with a greater show of force creates a cycle that exacerbates violence, acting out behavior of youth, staff injury, and poor staff morale.¹⁴ This is not an effective strategy for working with young people, and it is not a strategy that will equip youth with the skills that they need to succeed once they return to the community.

For example, solitary confinement can have long-lasting and devastating effects on youth, including trauma, depression, anxiety, and increased risk of suicide and self-harm. It can cause permanent harm and exacerbate existing mental health conditions and trauma. Research shows that more than half of all suicides in juvenile facilities occurred while young people were held in isolation.¹⁵ Solitary confinement does nothing to address the underlying causes of a youth's acting out behavior. Experts agree that youth leave solitary feeling angry, disoriented, and frustrated – the very feelings that often trigger problematic and disruptive behavior. Solitary confinement removes youth from staff interactions and programming that they need to develop awareness and skills to control problematic behavior in the future.

In a recent article in *Corrections Today*, Ohio Department of Youth Services Director Harvey J. Reed discussed how Ohio's juvenile justice agency changed from being a troubled juvenile justice system that was the subject of multiple lawsuits over conditions to a national model. In this article, Director Reed described how the use of restrictive and punitive practices such as solitary confinement were actually correlated with higher rates of assaults on staff and youth.

¹³ Juvenile Detention Facility Assessment Standards Instrument, 2014 Update: Juvenile Detention Alternatives Initiative, a project of the Annie E. Casey Foundation, available at:

<http://www.cclp.org/documents/Conditions/JDAI%20Detention%20Facility%20Assessment%20Standards.pdf>.

¹⁴ Harvey J. Reed, Ohio Implements Path to Safer Facilities, *Corrections Today*, Vol. 77 No. 55, 26 (September/October 2015), available at

<http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=bGdc%2BzAgBfs%3D&tabid=78&mid=542> [hereinafter Path to Safer Facilities].

¹⁵ Council of Juvenile Correctional Administrators, Toolkit: Reducing the Use of Isolation (March 2015), available at <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/04/CJCA-Toolkit-Reducing-the-use-of-Isolation.pdf>.

Since the agency undertook work to reduce solitary confinement and shackling, alongside other reforms to improve conditions and create a more rehabilitative environment, officials have seen a significant decrease in violent incidents involving youth and staff.¹⁶ This is a pattern that we have seen in many other agencies throughout the country.

We have conducted independent assessments of conditions of confinement at the request of numerous agencies following litigation, major incidents, and leadership transitions, and we have advised various federal agencies and many state and local governments on strategies to improve conditions of confinement in facilities that house youth. In our experience, problems in juvenile facilities generally stem from a small number of discrete issues:

- **Inadequate staff training.** Working in a juvenile facility is one of the most challenging and underappreciated jobs in this country. In almost every jurisdiction, staff members receive some type of training on techniques for physically managing disruptive or confrontational behavior. However, those training curricula vary widely and are often weighted heavily toward the use physical restraints and holds, not verbal de-escalation and crisis management. Without adequate training, staff lack the skills to respond to difficult situations. Staff deserve to receive training on effective de-escalation and crisis management techniques, as well as training on adolescent development, adolescent mental health, and trauma histories of youth.
- **Inadequate classification protocols.** Officials in some jurisdictions claim that gang conflict is the primary cause of violence and incidents in their juvenile facilities. Gang affiliation certainly warrants attention. However, many jurisdictions with well-run juvenile justice facilities have found ways of managing gang-involved youth without having to resort to extremely restrictive and punitive interventions. A robust classification process is one important part of this process.
- **Insufficient numbers of direct care staff to adequately supervise youth.** In facilities that are overcrowded, or that suffer from staffing shortages, staff are under enormous pressure to keep the peace at all costs. In such situations, staff members feel compelled to react immediately with force to minor misbehavior, out of fear that a small disturbance will become more widespread. Staff who are pulled in too many directions lack the opportunity to interact in meaningful ways with youth, to address their problems, and to detect conflict or unrest before it escalates into a serious incident. Moreover, staff in under-resourced facilities often feel that they must isolate youth with the highest needs, such as youth at risk of victimization by other youth and children with mental health disorders, because staff cannot provide them with adequate supervision.
- **Too few qualified mental health professionals to meet youths' needs.** Although youth with mental health needs are overrepresented in secure facilities, many officials and agency administrators do not or cannot employ sufficient numbers of qualified mental health professionals. Without regular access to mental health professionals, children with emotional disorders often deteriorate markedly. This prompts staff in

¹⁶ Path to Safer Facilities.

many facilities to rely on solitary confinement as a response to acting out behavior, which can further exacerbate youths' mental health conditions.

- **A failure to incorporate mental health staff in interventions for youth who present challenging behavior.** Secure juvenile justice facilities should not house children with serious mental health disorders. Those children should be served in mental health facilities that can meet their needs. However, mental health professionals can help craft behavior management programs for youth with less serious mental health needs that help staff work effectively with those youth. In our experience, facility managers often fail to set up opportunities for staff and mental health professionals to collaborate in this way.
- **Poorly designed behavioral management programs.** Research shows that acknowledging and rewarding compliance is a more powerful tool to change behavior than the use of sanctions alone. Nevertheless, many facility administrators employ behavior management systems focused solely on punishments. Others rely on systems that do not apply sanctions and rewards in a consistent manner, which undercuts the goal of ensuring compliance with facility rules. Still others rely on incentives and sanctions that are not meaningful or effective for youth. We know that there are ways to hold youth accountable that do not involve the use of restraints or solitary confinement. These include the loss of meaningful privileges, dropping a youth's "level" or program status, and creating sanctions based on restorative justice models.
- **Few activities to keep youth busy.** Fights in secure facilities often emerge when youth are not engaged in activities, and many facilities lack programming beyond school, television, and gym time. Without a range of engaging activities, youth resort to horseplay and other negative behaviors that lead to arguments, confrontations, altercations, and the use of force, restraints, and solitary confinement.

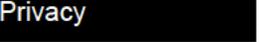
In addition to my prepared remarks, I have also submitted two documents that may be of particular interest. The first is the Corrections Today article that I mentioned above, where Ohio DYS Director Harvey Reed describes how the agency reformed its facilities from places that relied heavily on punitive policies, restraints, and solitary confinement to facilities where the use of solitary confinement and restraints has decreased facility. Notably, Director Reed cites data that at the same time the agency reduced its use of solitary confinement by nearly 90%, violent and assaultive incidents involving youth fell by almost 25% at the same time.

The second document is the report of two of the lead federal court monitors in the Ohio DYS litigation initiated by the Department of Justice and the Children's Law Center of Kentucky. The report provides much more detail about how far Ohio had to go at the beginning of the litigation, but more importantly, the very specific policies, practices, and programs that the agency found to be effective in creating a safe and supportive environment for staff and youth. Each state faces its own challenges and individual concerns, but there are many similarities between challenges facing the Northern Territory and the challenges that DYS faced in Ohio.

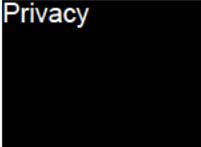
Finally, I would like to make a number of recommendations to the Commission as concrete steps you can take to help ensure that the Northern Territory moves past the incidents from earlier this year and toward a system that ensures the safety of youth and staff while also identifying and nurturing the potential of young people in the state's custody.

1. **Regularly request data from on key indicators that will help the Commission assess whether conditions and outcomes in the facility are improving or worsening.** For example, the number of physical altercations among youth, the number of physical altercations with staff, the number of uses of room confinement in excess of 1 hour and 4 hours, the number of staff injuries, the number of youth injuries, uses of restraints, uses of pepper spray, transfers to adult custody, youth's perception of their safety at the institution, and staff's perception of safety at the institution.
2. **Speak to young people who are in custody, to obtain their perspective on what would help improve the safety and programs in juvenile justice facilities.** When we work to assess and improve conditions in facilities, we always obtain the perspective of both staff and youth. I would encourage Commission members who have not been to juvenile facilities to make that trip and speak to the young people in custody about their experiences and what they feel that they need to be successful.
3. **Resist the temptation to dismiss or marginalize other states' experiences and successes reforming conditions of confinement.** Juvenile justice is one field where it is absolutely acceptable to buy, borrow, and steal good ideas and effective programs from other jurisdictions. Yet we often encounter officials who see their state's circumstances as so unique that they do not seriously consider other jurisdictions's work. For example, we often hear the line "We have reduced the population in our facilities so drastically that the youth who are there now are the worst of the worst, so we have to use pepper spray, riot gear, solitary confinement." However, every southern state in our country with the exception of Arkansas, and almost every state in the U.S., has reduced its incarcerated youth population dramatically in the past decade. Every state has confronted the situation of a smaller number of higher needs youth. However, many have recalibrated services and supervision in a way that has not resulted in a move toward shifting juvenile justice facilities toward an adult prison model. In fact, more and more states are using the reduced population as an opportunity to bring youth back from the adult system into the juvenile justice system, where they can receive appropriate services and supports.
4. **Finally, adopt the "my child" test when determining the appropriateness of practices for youth in custody.** There is a simple rule that I would encourage you to use in your oversight. That's the "my child" test. If you would not find a practice acceptable for your own children or children of those who you know and love, it is not an acceptable practice for anyone's children. We know that young people learn best from positive adults who find and build upon their potential through tough love when necessary, but also positive support, recognition, and encouragement. It may be tempting to write off kids who enter detention facilities as having exhausted every opportunity and not having family supports at home necessary for them to succeed. But these are Australia's youth, they are youth who can benefit from your help, and they are youth who you should hope

will be productive citizens of your country long into the future. Please take the time to invest in them in a positive way.

We have seen many examples of agencies that have successfully identified and addressed the systemic problems related to conditions in their juvenile facilities instead of adopting punitive and restrictive measures as a stop-gap measure. We hope that the Northern Territory can learn from these experiences. We appreciate your attention to the safety and well-being of youth and staff in the Northern Territory. We are happy to be of assistance and are happy to answer any questions from Commission members. Please do not hesitate to contact me at jszanyi@cclp.org or .

Sincerely,


Privacy

Jason Szanyi, Deputy Director
Center for Children's Law and Policy

Enclosures