

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



MEMORANDUM

To: The Honorable Adrian M. Fenty, Mayor
Neil Albert, City Administrator

From: Peter J. Nickles, Attorney General

Date: May 20, 2010

Re: Review of DYRS records regarding committed youth arrested in DC for murder or assault with intent to murder in 2009-2010.

Summary

My lawyers (Rob Hildum, Deputy Attorney General, Alicia Washington, Assistant Deputy Attorney General, and Dave Rosenthal, Senior Counsel, all of the Public Safety Division) reviewed the files of youth who have been arrested for murder and assault with the intent to murder in 2009 and 2010. Among other observations we found the following:

- DYRS procedures and practices favor release to the community without regard to the youth's needs, prior criminal acts or potential for re-offending. While there are numerous advocates for returning the youth to the community, there does not seem to be a Public Safety advocate role in the process.
- Neither police reports nor meaningful summaries of the crimes that the youth committed can be found in DYRS's files. While DYRS utilizes a risk assessment tool that produces a risk level, the exact circumstances or facts of the specific cases are not considered. It is difficult to understand how a treatment plan for a youth can be developed without any reference to the facts of the underlying offense.
- Neither DYRS' files nor notations in the DYRS YES computer system show that there is adequate and regular supervisory oversight of the youth by DYRS supervisors.
- There is a lack of uniform response to a youth's abscondence -- either from a group home or from other supervision.
- There does not appear to be a process in place to respond to arrests in other jurisdictions or arrests of kids as adults.

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- In some cases, either workers, or third party monitors, are not regularly meeting with youth or they are not documenting their meetings in the YES system. Youth progress and failures are frequently not documented in the YES system.

General Observations:¹

- Neither the police reports nor meaningful summaries of the crimes that the youth committed are located anywhere in DYRS's files. While DYRS utilizes a risk assessment tool that produces a risk level, the exact circumstances or facts of the cases are not considered.
- As part of the risk assessment DYRS only considers the charge for which the youth was committed, not the crime with which the youth was originally charged. The risk assessment has two parts: the committing offense and the risk level. Each part is assigned as low/medium or medium/high. Thus a youth will be classified as low/medium or medium/high, etc. If a youth committed an armed robbery, but pleads to robbery or theft, only the lesser charge is considered by DYRS for its assessment of severity. DYRS does not go beyond the committing charge or consider the facts of the case.
- Prior adjudications are considered when assessing risk, but again DYRS only considers the charge the youth was adjudicated for and not the facts of the case as charged or as documented in police reports. As can be seen in the annotated summaries, the facts underlying the youth's prior adjudications are significant regardless of what he pled to.
- When a youth absconds, there does not appear to be a uniform response from the workers, which seems to indicate DYRS does not have a policy in place or it is not being followed. The youth disappear for several days at a time without DYRS requesting a custody order.
- There are several occasions where the youth did not follow the rules or the terms of their release agreements, but are still rewarded with either a move to a less restrictive

¹ For each youth accused in the Brian Betts murder we reviewed OAG's files, the MPD reports, DYRS hard file copies, and the information contained in the DYRS YES system.

We also reviewed the "Confidential Case Summaries" provided by DYRS in early May and added annotations such as the facts of each of the youth's cases; where appropriate we added additional cases, and with the use of YES, added additional information to the timelines that were provided in each of the summaries. We provided our annotations in red so that they would be easier to identify. (These documents were provided to you on May 14, 2010 and are attached hereto for your convenience.)

This review process, although worthwhile, was very labor intensive and time consuming. For the rest of the youth arrested in 2009 and 2010, we reviewed the youth's record, the facts of the youth's prior offenses, and his DYRS history in the YES system.

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placement or promises of a less restrictive setting. The DYRS files do not show the youth being sanctioned for their failures to comply with agency requirements.

- There appears to be a lack of coordination between DYRS and CSS and CFSA when there are dual jacketed youth.
- When the youth is locked up on an adult charge, or for a juvenile offense in another jurisdiction, DYRS fails to put a hold on the youth so that DYRS is not notified or given the opportunity to detain the youth when he is released in the other matter. In addition, there does not appear to be a DYRS therapeutic response for the new offense.

For example, [REDACTED] was in federal prison on a firearm charge and the worker knew his release date but did not request a hold. As a consequence he was released from prison and DYRS could not locate him. Several months later he was arrested and charged with assault with the intent to kill. DYRS still has him listed as being in abscondence.

In addition, Sanquan Carter was locked up on several adult charges and DYRS even held a youth family team meeting at DOC in December 2009. DYRS did not request a hold for his juvenile case. In March, 2010 he was released and DYRS received notice from CSOSA after his release. Several days later he killed Jordan Howe.

- There does not seem to be an incremental "step down" process for committed youth who are placed in secure confinement. They spend several months at New Beginnings or another treatment facility and then are sent directly home. While some appear to be doing well in a structured setting they are sent directly back to their frequently unstructured homes without any transition in a group home. Many youth do not retain the benefits ascribed to the residential or secure confinement once they are suddenly given freedom.
- Despite violations of terms of release, there appears to be a reluctance to send a youth back to a residential treatment facility or to a group home if they have already been through a similar placement.
- There appears to be an arbitrary limit as to how long a youth should be in a group home or in residential treatment. No consideration is given to the violent nature of a crime, criminal history, family resources (or lack thereof) or likelihood of rehabilitation. DYRS' Case Management Protocols state:

The following represents maximum length of stays for out of home placements:

- Residential Treatment Center: 6 months up to 1 year
- Therapeutic Group Home: 150 days
- Traditional Group Home: 120 days
- Independent Living Program: 1 year

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- In several instances it appears that youth are moved through group homes without regard to how well they are doing, and placed back into the community.
- DYRS procedures and practices seem to favor release to the community without regard to the youth's needs, prior criminal acts or potential for re-offending. While there are numerous advocates for returning the youth to the community, there does not seem to be a Public Safety advocate role in the process.
- We question whether there is adequate supervisory oversight in general on these cases. For example, in at least one case a youth was in abscondence for a number of weeks before a custody order was sought. In another case a third-party monitor was given a number of days to try and locate a youth who was in abscondence. Even with the failure of the worker to maintain contact or seek a custody order, regular supervisory review would have disclosed the need to immediately make contact or seek a custody order.

Recommendations:

- The risk assessment tool needs to be re-considered and DYRS needs to begin reviewing the facts of not only the committing offenses, but all other offenses perpetrated by the youth. The facts of the prior offenses must be considered when developing a rehabilitation plan for the youth. Similarly, if the youth is rearrested, the fact that he was not securely detained in the new case should not mean that the youth's treatment level should not be adjusted to reflect the facts of the new charge.
- The youth's attorneys are often present at youth family team meetings along with the youth, his family, and DYRS case workers. The attorneys represent and advocate on behalf of the youth at these meetings and frequently use the meetings as a way to relitigate the trial. If the youth tells his attorney that he wants to go home and not to New Beginnings or some other placement, his lawyer is ethically bound to advocate for his clients wishes without consideration of the client's best interests. Attorneys should not be present at youth family team meetings. This is not an adversarial or litigious setting and lawyers should not have a role. There is no one at the family team meetings who advocates for public safety or for the victim. The family team meetings should be restructured to review the youth's needs and treatment choices, but always after considering public safety.
- There needs to be more oversight of the case workers and the youth's case in general to ensure consistency and accountability. There also has to be more oversight of a third party monitor's work with youth and documentation of the work that they are doing. Both workers and third party monitors must document youths' progress and failures. Anyone looking at a youth's YES file should have all the information necessary to determine what the workers are doing with the youth and the progress that the youth is making towards rehabilitation.
- The agency must establish and implement standards and responses for group home and aftercare agreement violations, as well as for abscondences. Uniform immediate

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response to non-contact or abscondences must be established. Youth must be made aware that if they abscond there is a sure, but measured, consequence.

- Uniform guidance must be given to the workers as to when a Custody Order should be requested. We recommend that the 1998 agreement with the Court be reestablished; after a youth is in abscondence for one hour a missing persons report should be made to the police, after three hours a request for a custody order should be faxed to the court. DYRS must monitor if the Court issues the custody order. DYRS should refer to OAG for follow up all failures of the Court to issue a custody order within 24 hours of its request.
- When a youth is in custody on another case, workers must request holds to ensure that the youth is released to DYRS and not returned directly to the community.
- DYRS should create a higher level of community supervision for some youth who need additional monitoring, such as requiring GPS or Electronic Monitoring even if the youth is in a group home or independent living program.
- DYRS should consider creating a strict home confinement sanction for non-compliance. This confinement could take place at the group home or in the youth's home.
- DYRS adopted a graduated sanctions index for violations. There are some youth who are being stepped up by the revocation panels for up to 30 days. This, however, is clogging New Beginnings and causing problems for their programming as the facility was not designed for 30 day stays. There needs to be a 20-30 bed secure facility for aftercare violators and another 15-20 bed secure facility for those awaiting placement.
- There should also be a short term facility for detained/committed youth. There is no reason why committed youth should not be receiving needed treatment while detained on a rearrest. YSC, as a short term holding facility, is not designed to provide the care and rehabilitation that must be afforded to youth who are already committed to DYRS' custody. A targeted program can be developed just for these youth. A separate program would have the side advantage, considering recent detention rates, of bringing the numbers down at YSC to below the 88 person limit.
- Although not directly related to the cases reviewed, it must be pointed out that there is still no facility for committed girls. Securely committed girls are held at YSC with non-adjudicated youth.
- Records should be requested from Montgomery County and Prince George's County similar to the records obtained from USAO and PSA which list all arrests for murder and attempted murder for 2009 and 2010 where the suspect was under 21 so that we can determine if a significant number of DYRS youth have been arrested in Maryland.
- Re-write the community release agreements, and possibly the DYRS regulations, to include waivers so DYRS can move swiftly to detain a youth for short periods of time without having to go through the aftercare revocation process.

- Re-write the Juvenile Confidentiality statutes to put light on the juvenile justice system. Currently the District's confidentiality statutes are rigid, overly burdensome, and – often - ineffective. While the current laws purport to protect youth, in practice they only serve to prevent the public from learning the truth about what a juvenile has been responsible for and, even after information is lawfully reported, it prevents the public from learning the inaccuracies contained in the news reports. In addition, the confidentiality statutes hamstring the stakeholders and make it difficult to not only share vital information but to identify that which can be lawfully shared. On numerous occasions DYRS, OAG, EOM and other District agencies have had to seek court orders to gather or access information necessary to resolving or studying important issues related to juvenile justice. The statutes should be amended to permit the Mayor and the City Council (and their designees) access to all juvenile information. In addition, government agencies, schools, and family and child serving agencies should be able to freely exchange information without the need for court orders.

There are many approaches that can be made to amending the Juvenile Confidentiality statutes. These statutes could be amended to permit free access to information regarding a person who falls within one or more of the following categories:

- Is deceased,
- Is charged with a crime as an adult (this could be limited to felonies),
- Is charged with a felony (or a violent or dangerous crime) as a juvenile (this could be limited to youth above a certain age).
- Is convicted of a certain number of juvenile cases (which can include only DC convictions or convictions from other jurisdictions).

The confidentiality statutes can also be rewritten so that they only limit the identification of the juvenile and his or her family and not the entire record. This would permit public statements that describe incidents – even if the information was derived from a prohibited source – so long as the speaker did not give sufficient detail to identify the youth involved.

CONCLUSION

The problems outlined above appear to be systemic. Most of the issues seem to be related to a lack of supervision, guidance, documentation, and overall management of the DYRS program. There is a serious disconnect between theory and practice.

The goals of positive youth development are admirable and must be pursued, but there are numerous examples in the cases reviewed where the youth chronically failed, refused to participate or simply walked away from placements and there appear to be no consequences. DYRS must address these issues and can do so without sacrificing their programming emphasis on rehabilitation.

Attachment