

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



July 14, 2010

**SUMMARY OAG EXAMINATION OF DYRS OPERATIONS**

**Introduction**

The Mayor asked me to review all aspects of the operations of DYRS and to recommend appropriate changes. Comprehensive submissions have been made to the Mayor and City Administrator—this is a summary that may be released to the public.

**DYRS REFORM ACCOMPLISHMENTS**

Five years ago, the old Youth Services Administration (YSA) was on the brink of court receivership, and was the subject of harsh criticism by the Inspector General's Office, advocates, and the news media. Since then, the Department of Youth Rehabilitation Services (DYRS) has made several significant improvements and is often regarded as a promising national model of how juvenile justice agencies should function. Notable examples of DYRS improvements include:

- Vastly improved the District's facilities for youth rehabilitation:
  - Opened the Youth Services Center to house youth awaiting court appearances. Previously those youth were sent to the Oak Hill detention center.
  - Opened New Beginnings Youth Development Center, a state-of-the-art youth rehabilitation facility based on the highly acclaimed model used in Missouri.
  - Closed the outdated Oak Hill detention center.
- Expanded the continuum of rehabilitative care:
  - Grew from 0 licensed alternative care provider facilities in 2005 to 22 licensed facilities in 2009, adding 360+ slots to provide many alternatives to rehabilitate youth (e.g., Evening Reporting Center, Electronic Monitoring, Therapeutic Family/Group Homes).
  - Established a staff-secure program for female DYRS youth that provides a college experience by offering classes on-site.
- Improved safety and security:

- Abscondence rate reduced from 26% in 2003 to 8% in 2010
- No escapes from NBYDC in over a year.
- There have been no escapes from New Beginnings in over a year, and there has never been an escape from the Youth Services Center.
- Formed close working relationship with MPD, including sharing intelligence on gangs/crews, implementing the Top 60 program to provide more intensive supervision and services to the agency's most at-risk youth, and implementing the Top 10 High Priority Abscondence Program, a joint effort to apprehend the highest priority absconding youth.
- Expanded workforce development opportunities for youth:
  - Secured a competitive \$3 million grant from the US Department of Labor to expand workforce development and alternative education opportunities for committed youth.

For its improvements, DYRS has earned praise from independent experts. For example:

- Alan Pemberton, the plaintiffs' attorney in Jerry M., said in rescinding their longstanding motion to place DYRS in receivership, "We have seen more progress toward compliance in the last two years than we did in the previous 20 years."
- The Ash Institute for Democratic Governance and Innovation at Harvard's Kennedy School of Government named DYRS as among the Top 50 Programs of the 2008 Innovations in American Government Awards competition. They were selected from a pool of nearly 1,000 applicants. DYRS has also made it to the semifinals as one of eight programs for the 2008 Harvard Kennedy School and Annie E. Casey Foundation Innovations Award in Children and Family System Reform.
- The education program at New Beginnings was called one of the "best programs" in a correctional facility ever seen by the court monitor's education expert; its transformation, from one of the nation's worst programs to one of its finest, was characterized as "remarkable."
- In May, 2010, USA Today praised DYRS' reform efforts in an article entitled "For D.C., hope in treating young offenders."

## **DYRS MANAGEMENT ISSUES**

While there has been significant progress, in the first five months of 2010 at least 9 youth committed to DYRS were arrested for murder and 2 others were the victims of homicides in the District of Columbia.<sup>1</sup> The Office of the Attorney General conducted a thorough review of each of these cases as well as DYRS youth rearrested in DC for murder, assault with intent to murder, or assault with intent to kill in 2009-2010.

OAG staff identified a total of 20 individuals who fit this criteria, for this time period, and reviewed their DYRS records, court records, MPD records and OAG case files.

### **Recurring Issues**

For each youth accused in the Brian Betts murder, my staff reviewed OAG's files, the MPD reports, DYRS hard file copies, and the information contained in the DYRS YES<sup>2</sup> system. For the rest of the youth arrested in 2009 and 2010, OAG staff consulted the same sources, although we did not have access to any DYRS hard files for those youth. Our review revealed several recurring issues that raised serious concerns about management of the Agency.

#### **1. Risk Assessment**

DYRS uses a Structured Decision Making Risk Assessment Tool ("SDM") to assist in determining placement and the youth's "risk level." The SDM has two parts: (1) the severity of the offense for which the youth was committed, and (2) the risk level based on prior adjudications (convictions). Each part has three levels: low, medium and high. For example, a youth could be categorized as "low/medium" or "medium/high" or any other combination.

The most obvious flaw with the SDM is that it merely considers adjudications (convictions) and does not require a thorough review of the facts involved in each instance in which the youth was arrested. 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. Moreover, very few of the DYRS records reviewed have any police reports or meaningful summaries of the crimes that the youth committed. While DYRS uses a risk assessment tool that produces a risk level, the full record of circumstances or facts of the youth's crime are not considered. Advocates argue that the juvenile system "is not a mini adult system," but the refusal to look into the facts of each case and only consider the offense pled to is inappropriate and, in fact, treats the youth like a mini-adult. The same holds true for the refusal to consider the facts of a youth's prior criminal history. In sum, DYRS procedures and practices favor release to the community without regard to the youth's needs, prior criminal acts or potential for re-offending.

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<sup>1</sup> The youth accused of the Brian Betts murder were included in this list even though they were charged in Montgomery County. There may be other DYRS youth charged in Montgomery County and Prince William County but we have not been able to obtain a list of youth charged with murder in those counties to cross reference against a list of youth committed to DYRS, as we have done for youth arrested in the District.

<sup>2</sup> The Youth Empowerment System ("YES!") is DYRS' electronic case management system which includes the youth worker's notes and documents associated with the cases.

## **2. Limits on the Youth's Stay in Group Homes or Residential Treatment Facilities**

In addition, there appears to be an arbitrary limit as to how long DYRS will keep a youth in a group home or in residential treatment. Little 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

There are several instances of youth not following rules or the terms of their release agreements and yet still being rewarded with a move to a less restrictive placement. Indeed, DYRS files do not demonstrate that youth are sanctioned for their failures to comply with agency requirements. 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. In several instances, youth are moved through group homes and placed back into the community without regard to how well they are doing or whether they have been rehabilitated.

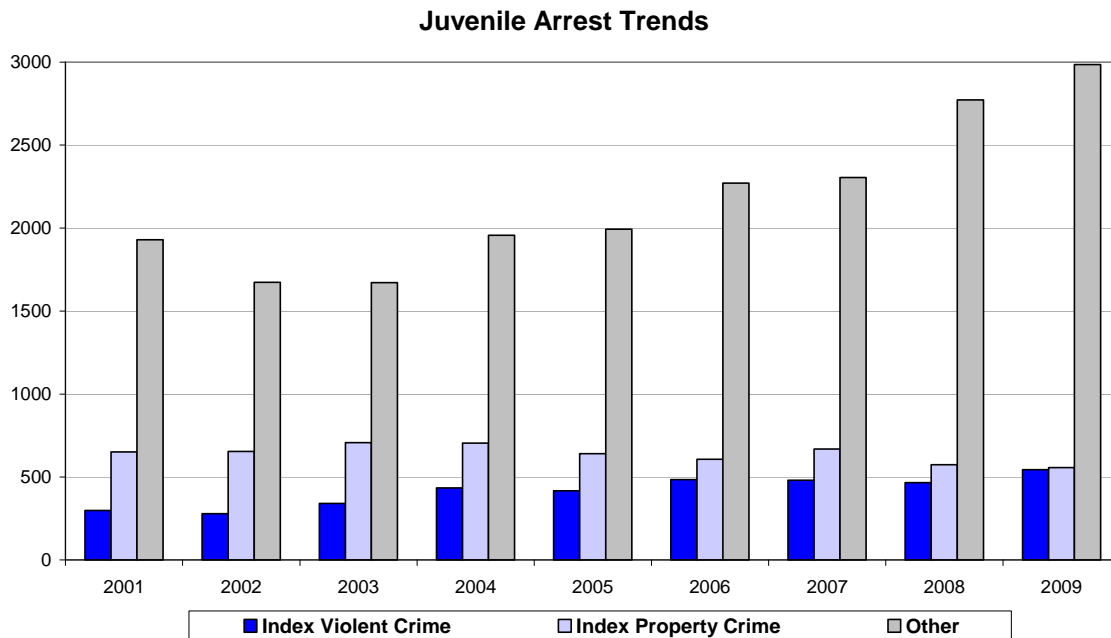
## **3. Abscondences and Supervisory Oversight**

When a youth absconds from a placement, 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. There were several instances where youth disappeared for several days at a time without DYRS requesting a custody order or if there was a request, workers failed to follow up with the court to ensure that the custody order was issued.

I question whether there is adequate supervisory oversight. 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, the workers gave a third-party monitor a number of days to locate a youth who was in abscondence. During this time period no one sought a custody order from the court. Regular supervisory review would disclose the need immediately to make contact or seek a custody order.

### **Juvenile Crime Steadily Increasing**

Juvenile arrest trends for serious violent crimes are a cause for concern. Not only are the arrests rising in absolute numbers, reaching a high of almost 550 arrests for serious violent crime (homicide, rape, robbery, and aggravated assault) in 2009, but this is happening as violent crime for adults is substantially decreasing.

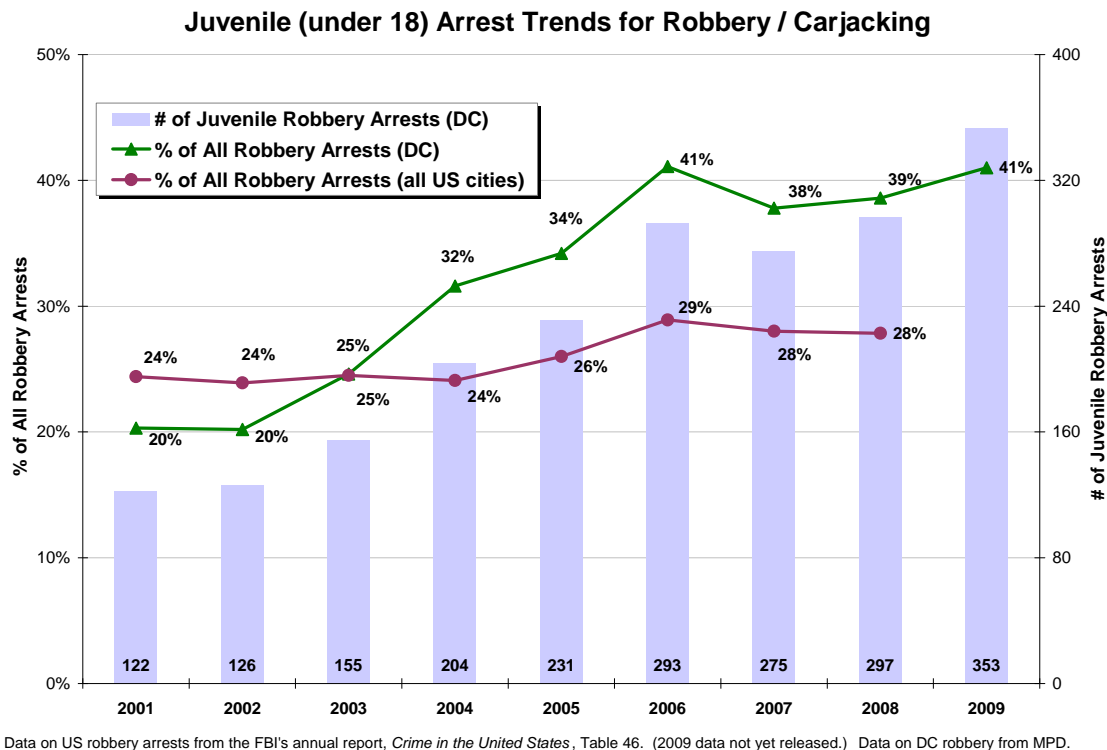


Under DC Criminal Code, juveniles are defined as 17 years of age or younger. **Index violent crime** includes homicide, rape/sexual abuse, robbery, and aggravated assault. **Index property crime** includes burglary, larceny/theft, theft from auto, and unauthorized use of a vehicle. **Other** includes disorderly conduct, simple assault, narcotics, prostitution, weapons possession, and other charges.

This means juveniles are committing a higher proportion of violent crimes. The table below shows the proportion of all arrests in DC that were juveniles from 2001-2008 (annual average), compared to the percentage of the arrests that were juveniles in 2009.

Arrest category	% of Arrests that are Juveniles (Average annual, 2001-2008)	% of Arrests that are Juveniles (2009)
Homicide	6%	10%
Robbery / carjacking	31%	41%
Aggravated Assault	10%	12%
Burglary	11%	21%
Larceny / theft	8%	11%
Unauthorized Use of a Vehicle	38%	39%
Weapons Possession	11%	15%
All arrests	6%	8%

A more detailed chart for arrests for robbery (which includes carjackings) details the long-term trend and how this compares with national averages. The proportion of robberies committed by juveniles has doubled during the past decade: from 20% of robberies in 2001 and 2002, to more than 40 percent of the robberies in 2006 and 2009. And this disturbing trend is escalating. So far in 2010, over 48 percent of the robbery arrests have been juveniles. The number of juveniles arrested for robbery has increased from 143 at this point last year to 202 this year (January 1 - June 19), an increase of more than 40 percent.



### **DYRS Recidivism Rates**

As a part of my review of DYRS operations I examined DYRS' recidivist rate. In 2008 DYRS released a report that claimed youth committed to that agency recidivated at a rate of 25%, which compared favorably to several states including Virginia (38%) and Maryland (32%). DYRS defined recidivism as one who was "...convicted of a new juvenile or adult offense in Washington, DC for an offense which occurred within one year of being placed or returned to the community." In my view, this is a poor measure of recidivism. The fact of the matter is, in the adult system, it is unlikely that a criminal arrest would have reached its final conclusion in such a relatively short period of time. The DYRS report also excluded re-arrests and/or reconvictions in any jurisdiction other than the District. However, it is very common for re-arrests and/or reconvictions to occur in P.G. County.

In coming up with a more informative measure of recidivism, I looked to the U.S. Department of Justice and the Office of Juvenile Justice and Delinquency Prevention for guidance. They state:

**"Recidivism is the repetition of criminal behavior. A recidivism rate may reflect any number of possible measures of repeated offending—arrest, court referral, conviction, correctional commitment, and correctional status changes within a given period of time. Typically, the only available statistical indicators of criminal behavior are official records of these system events. For this reason, virtually all measures of recidivism underestimate re-offending since they only include offending that comes to the attention of the system. The most useful recidivism analyses include the widest possible range of system events that**

**correspond with actual re-offending and include sufficient detail to differentiate offenders by offense severity in addition to other characteristics. Including re-arrest, reconviction (or re-adjudication), and re-incarceration (or re-confinement) rates allows flexibility in making comparisons to other studies. Including information on severity of subsequent offenses, time to re-offend, and frequency of re-offending maximizes possibilities for making comparisons."**

***OJJDP, Juvenile Offenders and Victims, 2006 National Report at 234.***

The DYRS report in 2008 is limited and fails to consider the factors recommended by OJJDP.

To establish a more informative recidivist rate, my office recently looked at the 79 youth who were committed to DYRS for the first time in the first quarter of 2008. OAG staff researched each youth's criminal involvement after being committed to DYRS. The results of our analysis is disturbing: Since their commitment just over 2 years ago 71% of the youth have new convictions and 42% of those convictions are for offenses such as robbery, weapons, assault and drugs. In addition, 23% of those youth were convicted in the adult system. Moreover, these numbers do not include several youth who have not been convicted and are currently in the Department of Corrections awaiting trial on adult charges. As such the recidivist rate stated above may very well underestimate the true recidivist rate for this cohort.

## **RECOMMENDATIONS FOR DYRS**

### **1. Re-evaluate the Risk Assessment Process**

The risk assessment tool needs to include the facts not only of the committing offenses, but all other offenses perpetrated by the youth. If the youth is rearrested, even if not ordered securely detained, the new case should mean that the youth's treatment level should be adjusted to reflect the facts of the new charge. In addition, DYRS should introduce a "restorative justice" element to the rehabilitation process. Restorative justice would involve input from the victims of the crime committed by the youth and acknowledgment by the youth of his actions.

### **2. Oversight of DYRS Case Workers**

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 consistent oversight of third party monitors' 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.

### **3. Consistent Approach to Youth Abscondences and After Care Violations**

The agency must establish and implement standards and responses for group home and aftercare agreement violations, as well as for abscondences. Uniform immediate response to the youth's failure to maintain contact with his case worker or abscondences must be established. Youth must be made aware that if they abscond, there is a sure and measured consequence. Uniform guidance must be given to workers as to when a custody order (abscondence warrant) should be requested. The 1998 agreement with the Court should be reestablished, which mandated that after a youth is in abscondence for one hour, a missing persons report should be made to the police; and after three hours a request for a custody order should be faxed to the court. DYRS must follow up to ensure the Court issues the custody order and notify OAG if the Court does not issue a custody order within 24 hours of DYRS' request.

### **4. Establish Higher Levels of Supervision and Create More Secure Facilities**

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. In addition, 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 in 2009. There are some youth who are being stepped back 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. In fact, there has recently been an overcrowding problem at New Beginnings.



To address this issue, DYRS needs a 20-30 bed secure facility for aftercare violators and another 15-20 bed secure facility for those awaiting placement.

## **5. A Comprehensive Recidivist Study**

A comprehensive recidivism study is essential to measuring DYRS' success. Every year hundreds of troubled youth are committed to DYRS' custody for rehabilitation and treatment. The commitment of a youth to DYRS represents an opportunity to change the course of that youth's life. The District needs a recidivist study that truly shows whether DYRS has succeeded in keeping that youth from further involvement in criminal activity. DYRS' 2008 recidivist report needs to be updated consistent with the recommendations from OJJDP to provide the fullest possible picture as to how well DYRS is doing at keeping committed youth from re-offending.

## **6. Targeted Programs For Youth Who Recidivate**

There should also be a short-term facility for detained/committed youth, so that committed youth receive 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 capacity limit.

## **7. Revise Juvenile Confidentiality Statutes**

Juvenile Confidentiality statutes should be amended to put light on the juvenile justice system. The District's confidentiality statutes are rigid, overly burdensome, and often ineffective. While current laws purport to protect youth, in practice they serve to prevent the public from learning the truth about a juvenile's crimes, 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 hamstringing the stakeholders and make it difficult not only to share vital information but to identify that which can be lawfully shared. DYRS, EOM, MPD and other District agencies must now seek court orders to 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 confidential juvenile information regardless of its source. Effective oversight can not take place without decision makers having access to case specific 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 alternative approaches that can be taken to amending the Juvenile Confidentiality statutes.

**Alternative One:** The three confidentiality statutes could be amended to limit their scope, expand the number of agencies and individuals able to see the records, and broaden the situations that trigger the release of information. The statutes could be redrafted to permit disclosure of

information so long as the information does not identify the youth, his or her family, victims and witnesses, or disclose sensitive law enforcement information. This would permit public statements that describe incidents – even if the information were derived from a prohibited source – so long as the speaker did not give sufficient detail to identify the youth involved. A new D.C. Code provision could also be drafted which establishes general exceptions that would be applicable to the three confidentiality statutes.

**Alternative Two:** The confidentiality statutes could be amended to permit free dissemination of information regarding a person’s juvenile court records, social file records, and law enforcement records when that person 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), and/or
- Is convicted of a certain number of juvenile cases (which can include only D.C. convictions or convictions from other jurisdictions).

**Alternative Three:** Instead of the foregoing, or in addition to it, the confidentiality statutes could be amended to increase access to the information or dissemination of the information contained in the records in a narrowly defined set of circumstances or to an increased number of persons. For example, a new Code provision could be drafted that provided that, notwithstanding D.C. Code §§ 16-2331, 16-2332, and 16-2333, the Mayor could release otherwise confidential information if he or she determines that the public’s need to know the information exceeds the benefit to the juvenile of having the information remain confidential. These Code provisions could also be amended to make it clear that the information contained in these records could be used in a redacted form as part of an agency employment matter or other agency action. Further, D.C. Code § 16-2332 could be amended to permit law enforcement access to records and information contained in records that may lead to the location and/or apprehension of a youth or as part of an investigation.

## **CONCLUSION**

The goals of positive youth development are admirable. I concede my own bias to a rehabilitative approach to juveniles, having been lead counsel in the Jerry M litigation in the past. At the same time, it is critical that we continue to maintain credibility and the support of the community to ensure the success of this approach.

Adopting the recommendations of this report will lead to better management at DYRS. Revising the confidentiality statutes will enable DYRS to succeed in its mission while enhancing the support of the community.