

Opportunities for Achieving Improvements By the Kentucky Juvenile Justice Task Force

Status Offenses

Proposed Action by Task Force	Rationale for Addressing	Considerations in Prioritizing	Describe Improvement
Remove "status offenses" in statute and replace with "Children in Need of Services" (CHINS).	This change addresses the core issue with status offenses - the common existence of underlying problem(s) that must be addressed with services designed to meet treatment needs of child and family.	Shifting to CHINS represents a true solution that addresses core problems, hence working towards resolution of family, school and community concerns. Given the upcoming change in KY law mandating school attendance for 16 and 17 year olds, we can expect more status offense and low level public offense charges unless state creates alternative ways to address misbehavior which can be pursued through a CHINS model.	The overall long-term cost to the commonwealth is much more significant under current practices; the statutory amendments could allow for a transition phase, as CT and other states have done, to find savings to reinvest in DCBS (from DJJ facility closures, savings from fewer competency evaluations, and savings from reduction in court cases).

Addressing Children Ten and Younger

Proposed Action by Task Force	Rationale for Addressing	Considerations in Prioritizing	Describe Improvement
Create new statutory framework for addressing misbehavior of children ten and younger rather than court prosecution. Revisions can include mandatory diversion for children ten and younger through CDW office with gradation of referrals including referring children and families to CDW supervised Diversion Programs, other community-based programs, school based FYRSC services, RIAC and LIAC (Impact and Impact Plus), or DCBS CHINS-style supervision. Level of referral should be based on level of need and use of validated risk/needs	Research shows that recidivism risk increases when children are prosecuted and pushed more deeply into the juvenile justice system for minor misbehavior rather than held accountable through a family and community-based treatment program. Prosecuting a child ten or under in juvenile court presents difficulties when the child is not competent to understand court proceedings or lacks the capacity to have the requisite mental state required by the elements of the offense contained in the penal code. Addressing the misbehavior in a supportive environment with appropriate experts that engages	Data establishes significant racial disparity in our current prosecution of these children. Most of these youth are not competent to be prosecuted. Money is spent now on competency evaluations because state and federal constitutions requires that a child be competent to be prosecuted. Length of time taken to prosecute these youth delays provision of services, treatment and intervention. Federal Medicaid dollars through EPSDT can be accessed to provide these youth services through a professional case management system administered by DBHDID (Impact Plus) or through the SIACs,	Children will be held more accountable with a system that is designed to intentionally address the underlying causes of the behavior and have an established delivery system for ongoing services. If services at a lower level are not successful, more government and, if necessary, court intervention, can be pursued. There is no evidence that children who are exposed to the juvenile justice system at a very young age are benefitted by it, or that the social service system is incapable of protecting the community from such children.

assessments.	parent and community resources is more effective.	coordinated by CDW or DCBS. Addressing the behavior and needs of these children and their families through a CHIN or modified CHIN model will more effectively meet their needs, avoid unnecessary stigmatization, harmful labeling of youth, and damaging consequences of being placed in facilities with older teenagers charged with public offenses. The earlier in life a child is engaged with the courts, the worse outcomes they face.	
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Strengthening Diversion System

Proposed Action by Task Force	Rationale for Addressing	Considerations in Prioritizing	Describe Improvement
Amend statute to permit diversion for all qualifying charges and remove language that currently requires prosecutors and judges to evaluate if otherwise qualifying cases should bypass diversion and directly go to court.	Diversion Program was developed with intent to allow all young people equal access to diversion. Data reflects that large numbers of young people who qualify for diversion are denied the opportunity. Racial disparity exists in the denials of opportunity for diversion, most notably with prosecutor overrides. Removing barriers to opportunity for diversion for all youth will allow for a quicker means of addressing misbehavior, holding youth accountable and bringing equity and fairness to the process.	Diversion is a program intended to be available to all youth for qualifying offenses. Diversion is designed to include necessary referrals to community-based resources and allows child to be held accountable for their actions more quickly.	Court procedures are time consuming and expensive, and the court is not the ideal environment to make the best decisions for children. Many prosecutors and judges do not exercise their review power, and it is inequitable to permit youth in one county the opportunity for diversion while youth in another do not receive it. Removing overrides will allow the system to work for all youth in a constitutionally acceptable manner. It will be one less task for busy judges and prosecutors. If children who qualify fail in diversion, they can then be sent to court.

Youthful Offenders

Proposed Action by Task Force	Rationale for Addressing	Considerations in Prioritizing	Describe Improvements
Amend KRS 439.3401 to	Permitting parole consideration	As shown in <u>Roper</u> , <u>Miller</u> ,	Unlike adult offenders, many

<p>explicitly permit parole consideration for those under 18 convicted of categorical violent offenses.</p>	<p>comports with recent U.S. Supreme Court decisions mandating consideration of reduced culpability and impact of maturity level on decision-maker. Permitting consideration of parole reduces pressure on judge and prosecutor at trial as issue of probation is considered. Parole Board amendment brings that provision in alignment with probation provisions that permit consideration of probation.</p>	<p><u>Graham</u>, young people can benefit enormously by programs in a correctional setting and growth in maturity can aid in path to rehabilitation. It is appropriate for Parole Board to consider if youth has been rehabilitated after serving twenty percent of his sentence. KY Supreme Court recently addressed absence of authorizing language in statute in <u>Edwards v. Harrod</u>. Trial judges have communicated desire to permit regular parole consideration for this class of offenders.</p>	<p>youthful offenders have had the benefits of rehabilitative treatment in the juvenile justice system, and those offenders have a greater prospect for successful reentry. Allowing parole consideration will provide a cost savings from longer term incarceration of offenders, while perhaps reducing recidivism. If young offender has been rehabilitated at twenty percent service of sentence, then neither offender nor public benefits from longer term incarceration.</p>
<p>Restore judicial discretion by amending Juvenile Code for all transfer cases so that maturity/competency/capacity can be considered by trial courts on an individualized basis.</p>	<p>SCOTUS has determined that children are to be seen as categorically different in the eyes of the law. This categorical difference applies to all children regardless of alleged wrongdoing. Returning to original intent of Juvenile Code that restores judicial discretion in all transfer cases ensures that a decision-maker is evaluating appropriateness of waiver of juvenile court jurisdiction and circuit court prosecution in every situation. This exercise of judicial discretion will result in fewer cases being remanded from circuit court where circuit court convictions fail to establish elements that permitted automatic transfer.</p>	<p>It is critical that we make efficacious use of limited judicial resources given cuts in budget to AOC. In addition, engaging a child in rehabilitative programming as soon as possible will yield better return on our financial investment. Evidence-based studies indicate that youth have greater chance of sustained rehabilitation and reduced recidivism when engagement in juvenile and criminal justice system is measured to accurate assessment of risk/needs for individual youth. Judicial discretion at point of transfer can ensure we apply this accurate measure to determine if child will be held more accountable through juvenile or circuit court prosecution.</p>	<p>Studies show that transfer statutes do not deter bad behavior, and the result of the automatic transfer is that youth who are not appropriate for criminal prosecution are prosecuted criminally, at tremendous cost to the state, with a significant reduction in successful outcomes. Standards qualifying for transfer will not change except for greater reliance on judicial discretion to determine if waiver of juvenile court jurisdiction is most appropriate in given case. Sanctions and rehabilitative programming will be applied more quickly for those youth prosecuted in juvenile court.</p>
<p>Include statutory language to permit parole board to review for parole consideration all youthful offenders sentenced to LWOP.</p>	<p>SCOTUS cases require that decision-maker (judge, jury, parole board) should consider impact of maturity on culpability and punishment.</p>	<p>This amendment is timely given recent SCOTUS decisions. It would ensure KY is in compliance with SCOTUS precedent.</p>	<p>Consideration for parole does not mean that parole will be granted. Shift in SCOTUS findings on categorical difference of those under eighteen is a significant shift in the law that should be heeded</p>

			by Kentucky legislature to protect KY statutes and criminal prosecution from legal challenges. Requiring this review by KY Courts will protect KY judgments from federal court interference.
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Validated Risks and Needs Assessments

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<p>Amend statutes and regulations to require improved Risk and Needs Assessment Forms to be used by CDW workers and establish system of referring children and family to community-based services that ensures children are connected with necessary resources.</p> <p>Amend statutes and regulations to require JJDPA Mandated Detention Form to be completed by trained staff and to be considered by the court in examining alternatives to detention.</p> <p>Amend statutes and regulations to require improved risk assessment instrument for detention decision making.</p> <p>Amend statutes and regulations to require improved risk/need assessment instruments that can be used to guide decision making about placement decisions in least restrictive</p>	<p>National studies indicate that detention or longer term incarceration in DJJ facilities has negative consequence for most youth and in particular for non-violent youth. Youth placed in secure detention have greater risk of poor education, work, and health outcomes. It is important that decisions regarding punishment be based on validated instruments that yield an objective perspective of what interventions will contribute to rehabilitation and reduce chance of recidivism.</p>	<p>Federal dollars are available to Kentucky to help with mental health and behavioral issues with those under 18, connecting children effectively with those services will make our communities safer. Employing validated instruments at the detention and commitment levels will have broad based impact and can support DJJ restructuring of services for youth in accord with evidence-based studies of what programs are most effective to support long term success for the youth and their families.</p>	<p>National juvenile justice groups have tested and evaluated what Risk and Needs Assessments are most effective. In the long run, having programming that works will save money. Best practices exist in health care arena to guide legislative drafting for required steps to connect child and family with referrals to behavioral and mental health treatment.</p>

settings for low and moderate risk offenders in lieu of DJJ facilities.			
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Strengthen Alternatives to Detention

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<p>Through budgetary language, mandate reinvestment of DJJ detention and YDC funds into community-based alternatives to detention/incarceration.</p> <p>To give guidance in budgetary allocation, require a report to the Task Force on progress of JDAI work in each designated area and review to determine if the designated communities and DJJ are committed to this effort.</p> <p>Task Force shall review progress of JDAI in the currently selected communities and consider value of seeking JDAI expansion in local communities as means to systemically reduce detention admissions and length of stay.</p> <p>Create utilization study for DJJ placements to examine best strategies for fiscal realignment into local community-based programming in lieu of institutional placement.</p>	<p>JDAI has a proven track record of success in creating community strategies to hold our children responsible for their misbehavior, right the wrongs they committed, address any underlying causes for the wrongdoing so that it is not repeated and set in place a sustainable system of accountability and support where community efforts are coordinated with state policy.</p>	<p>Kids who commit crimes should be held accountable for their actions. They should serve a reasonable punishment that fits, and they should atone and make things right with the victim. Even when incarceration is needed, almost every young offender will eventually be released from custody; if we want to reduce crime in our neighborhoods and protect people from repeat offenders, we need to break the cycle of crime. The best way to do that is by requiring kids who commit crimes to complete rigorous, mandatory rehabilitation programs such as education, counseling, job training and drug treatment so they become productive members of society , not repeat offenders.</p>	<p>To succeed, any statewide or legislative changes must be understood and endorsed at the local level to be implemented effectively. Coordinating any legislative or executive branch agency changes with local JDAI or other community-driven reform can strengthen Kentucky’s juvenile justice system.</p>

Increase Community Resources for Victims and Offenders

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<p>Create AOC or DJJ and/or DCBS authorization to establish systems for certification of community-based treatment programs, including restorative practice programs, truancy diversion programs, mentoring programs, and programs focused on athletics, performing arts, fine arts, science and engineering, and technical trades.</p> <p>Through statutory and regulatory amendment, establish a firmer referral system to Comp Cares, SIACs, LIACS, and RIACs.</p> <p>Through statutory and regulatory amendment, establish clearer duties for FYRSC as an evaluation and referral source.</p> <p>Recommend that CHFS lift the state-imposed moratorium on Impact Plus providers and advertise so that new providers may apply.</p> <p>Recommend that CHFS develop, recruit and expand the EPSDT children’s mental health provider network to ensure availability across the state.</p> <p>Through budgetary allocation and statutory and regulatory amendments increase funding for KECSAC Day Treatment programming.</p>	<p>Rehabilitation is most supported and recidivism rates most reduced where we have strong community-based supports. The Kentucky Legislature must place a value upon the creation, structure, supervision and funding of community-based programming to ensure that children and families across Kentucky have fair and equal opportunity to access and benefit from these services. Explicit steps must be taken to redirect monies from brick and mortar state facilities and instead invest in our local communities where children are raised and where youth can be held most accountable for their behavior and the family unit can be supported. Detention is too costly to be relied upon in those circumstances where public safety does not require it. Evidence based studies establish that relying upon incarceration rather than community-based sanctions for non-violent offenses negatively impacts public safety.</p>	<p>A focus on increasing community resources should occur concomitant with the effort to reduce the use of incarceration of children for non-criminal and non-violent offenses.</p>	<p>Justice demands that we create a structure and systems that are responsive to the needs of victims and community members. Government must be re-conceptualized so that it can achieve its original intent -- service of the people.</p>
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Treatment and Protection for Children with Special Needs

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<p>Strengthen statutory requirements to hold schools accountable for IEP, BIP, FBA before charging children in court.</p> <p>Strengthen statutory requirements so that schools conduct manifestation hearings and access Positive Behavior Interventions and Supports (PBIS) before resorting to court for disciplinary consequences and prosecution.</p> <p>By statute and regulatory amendment require that Dept. of Medicaid be held accountable for EPSDT referrals.</p> <p>By statute and regulatory amendment require that Dept of Medicaid and DBHDID be held accountable for performance of Impact Plus providers or another case management wrap around system for children and families.</p>	<p>The Juvenile Code requires that all means available be used to assist children and allow children to live in the least restrictive environment with their families. Federal law and our state constitution protect the educational rights of children to receive a free and appropriate public education (FAPE) even if the child has a disability. Federal dollars support the education of children with a variety of learning disabilities, including children with behavioral disabilities and mental health challenges. Thus, juvenile justice jurisprudence contemplates that a child’s educational needs are to be considered in the juvenile court context. Practically, it is important to ensure that schools are accessing the federal dollars available to assist children with serious emotional and behavioral disabilities rather than placing the entire burden on local juvenile courts that lack those same resources. Statutory language that incorporates the rights of children to FAPE, EPSDT and Medicaid and the therapeutic and educational services provided under an array of federal and state laws will ensure that indeed all available community resources are brought to bear to assist local communities in meeting the needs of these children.</p>	<p>Kentucky needs to ensure it is accessing the full array of federal monies designed to assist children with serious emotional and behavioral needs. The ways that these laws impact a child’s access to services is complex and statutory guidance can only be helpful to local courts, prosecutors and others in the system as they exercise their discretion in guiding the direction of cases and ensuring the delivery of services.</p>	<p>Establishing a statutory scheme that gives appropriate deference to the ways these state and federal laws intersect and the impact on a child and family in need of services will allow Kentucky to both hold children accountable and create a system that fully accesses available state and federal funding that can take fully advantage of federal dollars intended to be used to treat and protect children.</p>

Defining Role of School Resource Officers

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<p>By statute lay out the duties, limitations and prohibited activities of school resource officers (SROs). Kentucky statutes should clearly delineate the role SROs play in Kentucky schools, while ensuring that no law enforcement officer uses their access to children in the school setting to interrogate or otherwise investigate children for conduct occurring outside of the school setting.</p>	<p>Currently there is no clarity regarding the proper role an SRO plays in the life of the school. This has led to SROs getting involved in school discipline matters which ordinarily do not benefit from the attention of law enforcement. It has also led to law enforcement using schools as a setting to investigate youth regarding allegations which are not school related. Providing clear boundaries for SROs will help that resource be used more effectively and efficiently. It should also reduce the number of charges brought in juvenile court for matters which are truly issues of school discipline, including many of the charges presently brought against very young children (i.e. children under 11).</p>	<p>The U.S. Supreme Court and KY Supreme Court have recently ruled on issues related to interrogation of children at schools and have emphasized that the rights of children must be protected and that children are understood to be in a categorically different class than adults. The Kentucky Department of Education has recently passed regulations on the use of restraints and seclusion intended to keep children safe while also protecting the safety of staff and limiting legal liability of all concerned. Amending the law in accord with these nationally recognized legal principles will provide guidance to all that will support our goal of safe school environments and student success.</p>	<p>Making the law clearer regarding the rights, duties and limits of law enforcement officers will protect the interests of all. Law enforcement will be able to develop clear protocols that are in alignment with constitutional principles and with Kentucky law.</p>
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Questioning of Children

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<p>Amend existing statutes to prohibit police from interrogating children outside the presence of a parent or guardian. Require all juvenile statements to be recorded, and prohibit the admission of unrecorded confessions.</p>	<p>Juveniles are uniquely vulnerable to false confessions, and the changes proposed here will help to minimize that risk. These policies have been adopted in other jurisdictions without significantly impairing the ability to law enforcement to respond to crime.</p>	<p>Excellent work has been done in other states like Connecticut to address law enforcement engagement with youth along these same principles. The U.S. Supreme Court and the KY Supreme Court have both emphasized that children are in a categorically different position because of their youth and that the law must respect this difference. These recommended amendments will protect the constitutional rights of families to oversee the upbringing of their children and provides appropriate limits on government intrusion</p>	<p>A recognition in the law of the categorical difference of minors requiring the involvement of their parents before interrogation takes place will not compromise public safety. The exigent circumstances test will still be available to allow questioning when the matter is volatile and immediate police action needs to be taken to protect the public.</p>

		into the lives of families and children.	
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