



# West Virginia's 2015 Juvenile Justice Reform

## Overview

In 2015, West Virginia enacted S.B. 393, a bill to improve juvenile justice policies based on recommendations from a bipartisan state task force. The law will reduce the placement of low-level youth offenders in state-funded facilities and steer resources toward community-based sanctions and services that cost less and are more effective at reducing recidivism. The changes are projected to cut the number of committed youth by at least 16 percent over five years, saving an estimated \$20 million, which will be invested in evidence-based community interventions for juvenile offenders.

## Highlights

### Problem

Nationally, the number of juveniles committed to residential placement facilities declined 35 percent from 2006 to 2011, mirroring a nationwide decrease in youth arrest rates.<sup>1</sup> West Virginia's committed juvenile population, however, increased 5 percent during this period, even as crime declined statewide.<sup>2</sup> State taxpayers spent as much as \$100,000 per year per youth in a residential placement facility, even though research shows that such placements generally fail to reduce reoffending.<sup>3</sup>

### Findings

The West Virginia Intergovernmental Task Force on Juvenile Justice conducted an extensive review of the state's system. It found that nearly 60 percent of youth committed to the Division of Juvenile Services (DJS) in 2012 were misdemeanants or probation violators and that three-quarters of those placed out of home through the Department of Health and Human Resources (DHHR) were status offenders or misdemeanants.<sup>4</sup>

### Reforms

The task force recommended prioritizing costly, state-funded residential facilities for the most serious offenders; expanding effective community services and strengthening supervision; and enhancing oversight and accountability. Most of the recommendations were incorporated into S.B. 393, which the House and Senate passed unanimously and Governor Earl Ray Tomblin (D) signed into law on April 2, 2015.

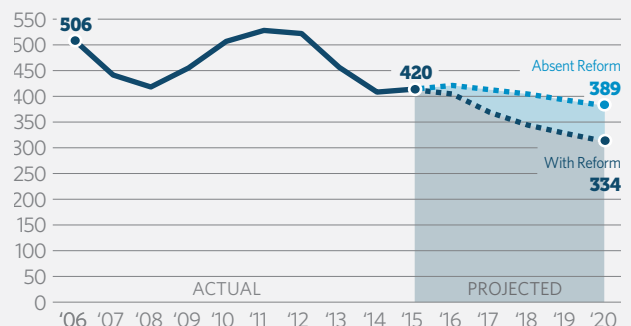
### Impact

In addition to reducing the number of youth in residential placement facilities by at least 16 percent, S.B. 393 will allow West Virginia to invest its savings in effective, community-based alternatives to commitment. In the 2015 budget cycle, legislators made an initial appropriation of \$4.5 million for such programs.

Figure 1

## S.B. 393 Expected to Reduce Juvenile Commitments by 16% by 2020

West Virginia projected to save more than \$20 million through reforms



Note: Projection does not include the effect of a provision, added later, that limits commitment to the Division of Juvenile Services' diagnostic facility to youth deemed high risk.

Sources: Pew analysis of data from West Virginia Division of Juvenile Services and West Virginia Department of Health and Human Resources

## Glossary

**Adjudication:** A judgment or decision of a court or jury regarding whether a youth was legally responsible for an offense. The juvenile equivalent of a finding of guilt or innocence.

**Case:** Any proceeding, action, cause, suit, lawsuit, or controversy initiated through the court system by filing a complaint, petition, or indictment.

**Delinquency:** Conduct by a juvenile that is subject to prosecution and would be criminal if committed by an adult, as opposed to a status offense (see below).

**Disposition:** A decision made by a judge regarding a guilty adjudication—the juvenile equivalent of sentencing. Possible determinations could include an improvement period (see below), probation, specialty courts, or commitment to Department of Health and Human Resources or Division of Juvenile Services custody.

**Felony:** The more serious of two categories of criminal offenses (see **misdemeanor**, below).

**Improvement period:** A pre- or post-adjudication term of up to one year with conditions calculated to serve a juvenile offender's rehabilitative needs. If the conditions are fulfilled, the proceedings are dismissed.

**Misdemeanor:** The less serious of two categories of criminal offenses (see **felony**, above).

**Out-of-home placement:** A court-ordered disposition to a placement other than in the home of a parent, relative, or guardian, including to a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, or detention facility.

**Probation:** A disposition to community supervision, which may include periodic reporting to a supervisory officer, participation in behavior change programming, payment of victim restitution, and regular drug tests.

**Referral:** A charge of a status or delinquent offense that is sent to the court but not yet filed. Referrals can be addressed informally or can go through formal processing steps and become a case.

**Status offense:** Conduct that would not be a crime if committed by an adult but for which juveniles may be adjudicated, including truancy, curfew violations, incorrigibility, running away, and underage possession and/or consumption of alcohol or tobacco.

Definitions include information from West Virginia Code, West Virginia Trial Court Rules, West Virginia Rules of Criminal Procedure, and the federal Office of Juvenile Justice and Delinquency Prevention.



This important piece of legislation puts our kids first, and I'm confident it will improve outcomes for West Virginia youth and their families, increase accountability for juveniles and the justice system, and protect both public safety and the state's finances."

—Governor Earl Ray Tomblin (D)

## Background

In June 2014, Gov. Tomblin and leaders from the judicial and legislative branches established the Intergovernmental Task Force on Juvenile Justice. The bipartisan 30-member group included the governor's designee as chair, legislators from both chambers and both parties, law enforcement officials, judges, agency leaders, a representative of the faith community, a prosecutor, a public defender, and others.

The task force was charged with conducting a comprehensive review of the state's juvenile justice system and developing consensus-based policy recommendations to protect public safety by improving case outcomes, enhancing accountability for juvenile offenders and the system, and containing taxpayer costs by targeting resources toward the most serious offenders. The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice, provided technical assistance as the task force collected and analyzed information about West Virginia's juvenile justice system and formulated new policies and practices.

Task force members met six times between August and November 2014, with four subgroups gathering more frequently to review and discuss four specific policy areas: early intervention and diversion; evidence-based and effective practices; community services and interagency service delivery; and disposition and placement. Members examined state data trends and analyzed statutes, policies, and practices from each stage of the juvenile justice process, including referrals to court, actual cases, adjudications, dispositions, supervision, placement, and release. The task force gathered additional input through interviews, surveys, and roundtable discussions with a variety of stakeholders, including judges, victim advocates, law enforcement leaders, service providers, and agency staff. It also reviewed reform efforts in other states, as well as research on juvenile justice best practices.

In December 2014, the panel delivered its policy recommendations in a final report to the governor, the president of the state Senate, the speaker of the House of Delegates, and the justices of the Supreme Court of Appeals.

## Key findings

The task force examined how West Virginia's juvenile justice system was performing and whether it was aligned with the research about what works. It made several key findings:

### More status offenders sent to juvenile court; most delinquency referrals involve misdemeanants

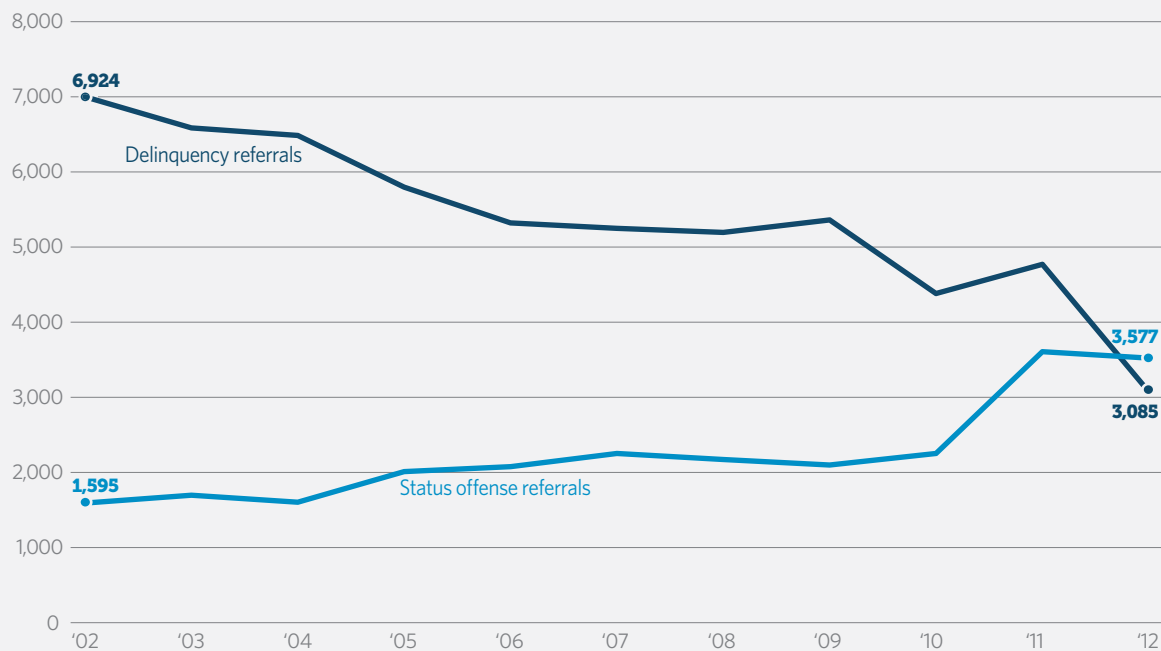
Referrals to court for status offenses—behaviors that would not be crimes if committed by adults—increased 124 percent between 2002 and 2012. During the same period, the number for delinquent offenses—which would be crimes if committed by adults—declined 53 percent. In 2012, truancy accounted for 74 percent and 40 percent of status offense and all juvenile court referrals, respectively, while nonviolent offenses (67 percent) and misdemeanors (76 percent) dominated those for delinquency. (See Figure 2.)

### Many first-time low-level offenders placed on probation

First-time status offenders and misdemeanants made up a significant share of those placed on probation, despite being eligible for diversion. Stakeholders indicated that these offenders were being placed on probation in part because the state lacked uniform, structured diversion criteria. In 2012, status offenders represented 1 in 4 probation dispositions; of this group, more than half (58 percent) had no previous court referrals. The number of status offenders placed on probation rose 77 percent from 2002 to 2012 even as the number of youth placed on probation for delinquency offenses declined 54 percent.

Figure 2

## More Lower-Level Juvenile Offenders Referred to Court Status offenses overtook more serious delinquency referrals in West Virginia



### Most delinquency referrals were for misdemeanors in 2012



Note: Violations include failures to comply with court orders and terms of supervision.

Source: Pew analysis of data from the West Virginia Supreme Court of Appeals

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## Many in state-funded facilities are low-level offenders

Research demonstrates that for many juvenile offenders, lengthy and expensive out-of-home placements in secure correctional or other residential facilities fail to produce better outcomes than alternative sanctions and that such placement can even increase recidivism. In West Virginia, youth who committed misdemeanors, probation violations, and status offenses made up an overwhelming share of those placed in the custody of DHHR or committed to DJS and sent to state-funded residential facilities.<sup>5</sup> More than half (51 percent) of the juveniles placed out of home by DHHR in 2012 were status offenders—an increase of 255 percent from 2002—

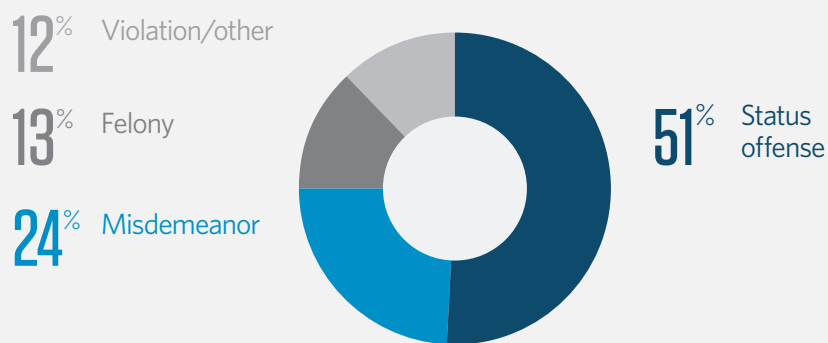
while misdemeanants accounted for another 24 percent. Of the youth committed to DJS custody in 2012, misdemeanants and probation violators made up 41 percent and 16 percent, respectively. (See Figure 3.)

Further, many youth placed in out-of-home settings were first-time offenders: About half of status offenders and delinquent youth placed in DHHR residential facilities in 2012 had never been arrested or referred to court. In addition, 82 percent of the youth placed in a residential diagnostic facility operated by DJS—and used as a location to evaluate youth before their dispositions are determined by the courts—had minimal prior history.<sup>6</sup> More than half of the youth ordered to the diagnostic facility were released home without being placed into DHHR or DJS custody, after spending months out of home to be assessed.

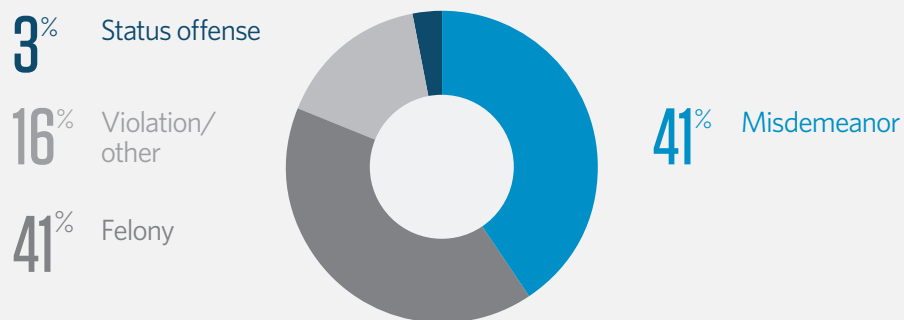
Figure 3

### In 2012, Most Out-of-Home Placements Were for Low-Level Offenses

Status offenders, misdemeanants made up three-quarters of DHHR placements



Misdemeanants, probation violators made up nearly 60% of DJS commitments in 2012



Source: Pew analysis of data from the West Virginia Supreme Court of Appeals

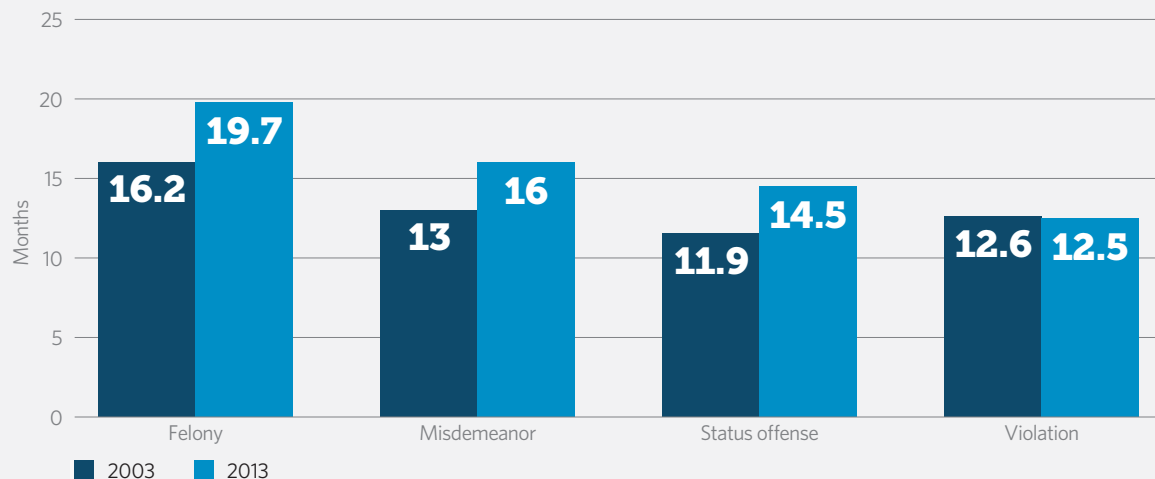
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## Long and growing stays away from home

Status and juvenile offenders in DHHR-funded residential facilities also were spending more time away from home. From 2003 to 2013, the average length of stay rose 22 percent (to 14.5 months) for status offenders, 23 percent (to 16 months) for misdemeanants, and 22 percent (to 19.7 months) for those adjudicated guilty of felonies. (See Figure 4.) In 2013, youth spent an average of 12 months at in-state facilities—about the same as a decade earlier—while those sent to state-funded out-of-state facilities spent an average of 23 months, up 40 percent from a decade earlier.

Figure 4

### Average Length of Stay Rose for Youth Placed Out of Home Increases exceeded 20% for felony, misdemeanor, status offenders



Source: Pew analysis of data from West Virginia Department of Health and Human Resources

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## High costs for out-of-home placement

In fiscal 2015, the average cost of placing a youth in a DHHR out-of-home facility was \$289 per day, or about \$105,000 per year, and in a DJS facility was \$278 per day, or about \$101,000 per year.<sup>7</sup>

## Inadequate community services for youth and families

Many communities lacked services for youth in the juvenile justice system. In a survey of probation officers, 80 percent of respondents reported gaps in treatment or other services in their counties. According to the respondents, the greatest need for additional services was in education, substance abuse treatment, family conflict, mental health, and anger management. In addition, youth reporting centers—DJS-operated programs that provide community-based services and treatment to juveniles—operated in only 12 of West Virginia's 55 counties, with only seven of the centers offering education services. Also, privately run comprehensive

behavioral health centers, which are partially state-funded regional service providers, were located in only 13 counties, and respondents reported long wait times and limited access.

## Inconsistent use of risk and needs assessments

In jurisdictions that use evidence-based practices, risk and needs assessments allow authorities to match offenders with appropriate sanctions and services. Across West Virginia, jurisdictions were using risk and needs assessments inconsistently. DHHR, for example, did not use the same tool as DJS and juvenile drug courts, and no tool had been validated for West Virginia’s juvenile population. In addition, the state had not provided structured, statewide guidance about how assessment results should inform decision-making.

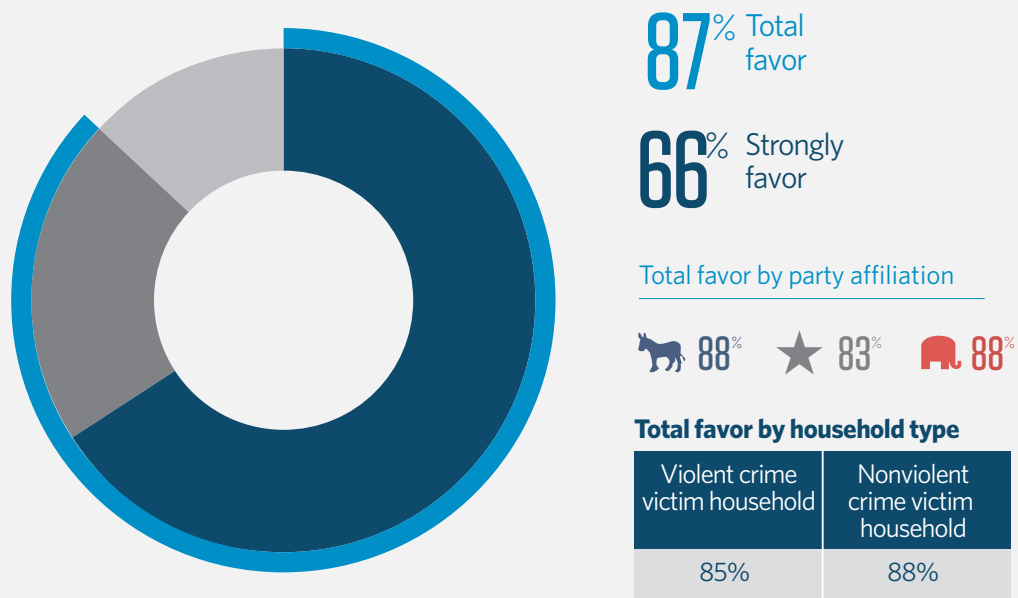
## Lack of reliable outcome data

West Virginia agencies gathered outcome data inconsistently, and as a result, the state did not have sufficient information about recidivism rates for youth exiting residential facilities or those on probation or parole. State agencies also often failed to share data.

Figure 5

### West Virginia Voters Want Residential Beds Prioritized for Serious Offenders

“Do you favor or oppose sending less serious juvenile offenders to community supervision?”



Source: Public Opinion Strategies and The Mellman Group, “West Virginia Voters Strongly Support Comprehensive Juvenile Justice Reform” (January 2015), <http://www.pewtrusts.org/-/media/post-launch-images/2015/02/public-attitudes-on-the-juvenile-justice-system-in-west-virginia.pdf>

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## Legislative reform package

The task force reached consensus on a comprehensive set of policy recommendations to be considered by the Legislature. Lawmakers incorporated most of the proposals into S.B. 393, which passed the state House and Senate unanimously. The law is projected to reduce the number of youth in residential placement within DHHR and committed to DJS custody by at least 16 percent by 2020, avoiding \$20.1 million in expected costs. The state also appropriated \$4.5 million in the 2015 state budget to fund truancy diversion programs, additional youth reporting centers, evidence-based pilot programs, and improved data collection and training.

Lawmakers did not adopt the task force's recommendations to eliminate out-of-home placement for first-time status offenders, lower-level misdemeanants, and technical probation violators and to provide alternatives such as community-based programs to improve outcomes. Had those measures been implemented, the entirety of the task force's recommendations would have cut juvenile residential placements by at least 40 percent by 2020, while avoiding \$59 million in expected costs.

### Broad Support for S.B. 393

- West Virginia Chamber of Commerce
- West Virginia Healthy Kids and Families Coalition
- The Education Alliance
- TEAM for West Virginia Children
- Logan County Family Resource Network
- West Virginia Nurses Association
- Our Children, Our Future Campaign
- American Civil Liberties Union of West Virginia
- Human Resource Development Foundation
- Charleston County Public Defender's Office

## Strengthen effective community supervision and services

- **Require a greater share of spending to be directed toward evidence-based practices.** The law requires that at least half of program expenditures by state agencies and contracted service providers fund evidence-based practices by 2017. The state may re-evaluate this percentage in 2017 to determine if it can be increased.
- **Allow for truancy intervention programs.** The law authorizes truancy diversion specialists, such as school-based probation officers and social workers, to work with schools, youth, and families to address problem behavior before a juvenile's actions result in a court appearance.
- **Permit the diversion of certain youth to restorative justice programs.** The law allows prosecutors and courts to divert status and nonviolent misdemeanants to a restorative justice program, such as victim-offender mediation, restitution, and community service, before adjudication.
- **Provide more community-based options for judges.** The law authorizes the opening of more youth reporting centers across the state, giving judges additional community-based options for less serious offenders. These programs are subject to the evidence-based standards referenced above.
- **Authorize the courts to adopt a system of community-based sanctions for probation violators.** The law allows the courts to create a new system to discipline juvenile probation violators, which would ensure that youth are swiftly held accountable and would encourage compliance with probation conditions.



- **Mandate regular review of probation cases.** The law requires probation officers to update the court every 90 days on a youth's progress while on probation. If the juvenile is compliant and no longer in need of supervision, the officer may recommend discharge and the court can terminate the probation without a review hearing.
- **Empower courts to conduct and consider the results of a validated risk and needs assessment before disposition.** The law authorizes courts to adopt an assessment tool to help guide decision-making, establish appropriate supervision levels, and influence referrals to programs or services.



The results of these reforms cannot be overstated: stronger families, safer communities, and more youth on track toward becoming contributing members to West Virginia's future."

—Senator Chris Walters (R), task force member, Feb. 23, 2015

## Prioritize state resources for the most serious youth offenders

- **Expand and improve the use of early interventions by creating a two-step, pre-court diversion process for status offenders and nonviolent misdemeanants.** The law requires youth who are sent to court for a status offense—or, at the prosecutor's discretion, a nonviolent misdemeanor—to be referred by a caseworker to community services. The service provider must make contact with the youth or family within 72 hours of referral. If the youth or the family does not complete the diversion or is noncompliant, the case must be reviewed by a multidisciplinary team made up of a range of stakeholders and officials, including the family, a clinical expert, the youth's attorney, and the county superintendent or a representative. This two-step process will divert a significant proportion of low-level offenders from court involvement, helping them change their behavior while saving resources for more serious offenders. The traditional court process remains an option for youth who do not comply with the diversion program.
- **Restrict out-of-home placement of first-time lower-level offenders to certain instances.** The law prevents the placement of first-time status and nonviolent misdemeanor offenders in residential facilities, with exceptions for cases of abuse and neglect; when the court finds clear and convincing evidence of a significant and probable risk of harm to the juvenile, a family member, or the public; and when continued residence in the family home is contrary to the juvenile's best interests. The bill requires the state to collect data about how frequently these exceptions are invoked. In addition, status offenders may no longer be placed in secure DJS facilities, only high-risk youth or those with a violent offense may be confined in the juvenile diagnostic center, and stays in the center may not exceed 30 days.
- **Limit how long youth can remain in DHHR-funded facilities and mandate re-entry planning for all youth, starting at admission.** The law requires that youth who are placed out of home by DHHR begin the transition to community services within 30 days of commitment and conclude the process within 90 days. The time frame can be extended if the court finds clear and convincing evidence that it is in the rehabilitative interest of the youth offender. Before juveniles return to the community, they must have an aftercare plan outlining future services to ensure effective transition.

## Enhance government performance, oversight, and accountability

- **Require improved data collection to measure outcomes.** The law requires state agencies and contractors to collect a broad range of performance measures, including data about recidivism, diversion, community service, drug and teen courts, disproportionate minority contact, and the use and quality of evidence-based practices.
- **Create a state juvenile justice oversight committee.** The law establishes a bipartisan, interbranch oversight committee to monitor the progress of the reforms, explore additional areas for improvement, review performance measurement data, and assess opportunities for investing cost savings.

“ Concerned citizens from both sides of the political spectrum have led the effort for juvenile justice reform in West Virginia. They are to be commended for S.B. 393, which is an important step toward a better juvenile justice system.”

—*Charleston Daily Mail* editorial, March 5, 2015

## West Virginia Intergovernmental Task Force on Juvenile Justice

**Joseph D. Garcia**, governor's director of legislative affairs (chair and designee of Governor Earl Ray Tomblin)

**Michael B. Lacy**, director, Division of Probation Services (designee of Chief Justice Robin Jean Davis)

**Steven Canterbury**, administrative director, Administrative Office of the Courts

**Stephanie Bond**, director, Division of Juvenile Services

**Victoria Jones**, commissioner, Bureau for Behavioral Health and Health Facilities

**Nancy Exline**, commissioner, Bureau for Children and Families

**Chuck Heinlein**, former deputy superintendent, Department of Education (designee of Superintendent Michael Martirano)

**Dr. Carolyn Stuart**, executive director, Herbert Henderson Office of Minority Affairs

**Former Senator Donald Cookman** (D-District 15)

**Former Senator Clark Barnes** (R-District 11)

**Senator William Laird** (D-District 10)

**Senator Chris Walters** (R-District 8)

**Senator John Unger** (D-District 16)

**Delegate Tim Manchin** (D-District 50)

**Delegate Stephen Skinner** (D-District 67)

**Delegate Isaac Sponaugle** (D-District 55)

**Delegate Carol Miller** (R-District 16)

**Delegate Bill Hamilton** (R-District 45)

**Judge Gary Johnson**, 28th Judicial Circuit

**Judge Omar Aboulhosn**, 9th Judicial Circuit

**Judge Michael Lorensen**, 23rd Judicial Circuit

**Cindy Largent-Hill**, director, Juvenile Justice Commission

**Nikita Jackson**, school-based juvenile probation officer, Cabell County

**John Bord**, prosecuting attorney, Taylor County

**Vanessa Welch**, juvenile public defender, Harrison County

**Brent Webster**, chief, Charleston Police Department

**Elaine Harris**, vice president, AFL-CIO, and representative, Communications Workers of America

**The Rev. Matthew Watts**, president and CEO, HOPE Community Development Corp.

**Kathy Smith**, parent advocate, Barbour County

**Rick Jones**, principal, John Marshall High School, Glen Dale

## Endnotes

- 1 For the decline in commitments, see Office of Juvenile Justice and Delinquency Prevention, “Census of Juveniles in Residential Placement: 1997-2013,” last updated Oct. 1, 2015, <http://www.ojjdp.gov/ojstatbb/ezacjrp>. For the decline in arrest rates, see Office of Juvenile Justice and Delinquency Prevention, “Juvenile Arrests 2006,” *Juvenile Justice Bulletin* (November 2008), <https://www.ncjrs.gov/pdffiles1/ojjdp/221338.pdf>; and Office of Juvenile Justice and Delinquency Prevention, “Juvenile Arrests 2011,” *Juvenile Offenders and Victims National Report Series Bulletin* (December 2013), <http://www.ojjdp.gov/pubs/244476.pdf>. Commitment data from 2011 were the most recent available during the formulation of West Virginia’s policy reforms.
- 2 Ibid. West Virginia commitment figures include youth in the custody of the Division of Juvenile Services (DJS) and the Department of Health and Human Resources (DHHR).
- 3 The Pew Charitable Trusts, “Re-Examining Juvenile Incarceration” (April 2015), [http://www.pewtrusts.org/-/media/assets/2015/04/reexamining\\_juvenile\\_incarceration.pdf](http://www.pewtrusts.org/-/media/assets/2015/04/reexamining_juvenile_incarceration.pdf).
- 4 Unless otherwise noted, analyses in this report were conducted by The Pew Charitable Trusts, based on data from West Virginia’s Administrative Office of the Courts, DHHR, and DJS.
- 5 Delinquent youth and status offenders in West Virginia can be placed out of home in the custody of DHHR or DJS. DHHR facilities include emergency facilities, group home staff secure facilities, and psychiatric facilities, as well as in-state and out-of-state facilities. DJS facilities are located only in West Virginia and include detention, diagnostic, and hardware secure facilities, as well as one staff secure facility for status offenders (youth are in DHHR custody but placed in a facility operated by DJS).
- 6 The estimate of prior history is based on the proportion of youth who score low or moderate on the Youth Level of Service prior history domain.
- 7 Cost estimates for DHHR facilities are based on average per diems for emergency shelters and all in-state and out-of-state group residential programs.

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