

# **RESPONSE TO THE IOWA GIRLS JUSTICE INITIATIVE RECOMMENDATIONS**

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## **Introduction**

This is a response to the Iowa Girls Justice Initiative Recommendations: *“Serious, Violent, and Chronic Juvenile Female Offenders: Service and System Recommendations for Iowa”* dated February 2017. (See <https://humanrights.iowa.gov/cijp/females-and-juvenile-justice-0/iowa-girls-justice-initiative>). In addition, the authors of this report were members of the Iowa Girls Justice Initiative (IGJI) planning group from November 2015 to December 2016. Therefore, this response should be read in conjunction with the IGJI recommendations in order for the reader to fully understand the context.

The IGJI recommendations note the planning group determined at the outset of the process to operate on a consensus basis and that during this process there were:

“Instances of strong agreement or disagreement on issues. Specifically, Jim Chesnik, Nathan Kirstein, and Brent Pattison did not agree on two points, which are footnoted (p. 7 and p. 21)...”

The intention of this response is to provide clarity in regards to those areas of disagreement and we are publishing this report separately since a majority of the IGJI planning group members decided not to include this information in the recommendations. This response will outline the reasons for our disagreement with the IGJI recommendations noted below and will provide alternative recommendations. To be clear, the authors of this report agree with IGJI “System Recommendations” in their entirety. These “System Recommendations” begin on p. 22 of the IGJI Recommendations.

## **Areas of Disagreement with the IGJI Recommendations**

The IGJI recommendations begin by noting that serious, violent, and chronic juvenile female offenders are at the center of a system and service crisis in juvenile justice in Iowa. The authors of this report offer a different way to look at this “crisis”. We do not believe this “crisis” is caused by the lack of a locked or staff-secure facility for “Serious, Chronic, and Violent” girls in Iowa, as the IGJI recommendations would have you believe. Rather, we believe the “crisis” is caused by a lack of female-responsive, culturally competent, trauma-informed, treatment-oriented, developmentally appropriate services for girls across the continuum of services for ALL girls involved with the juvenile justice system. Furthermore, as noted at the end of this response, we recommend that one way out of this “crisis” is to provide a level of community-based services here in Iowa that is not currently a part of Iowa’s juvenile justice continuum.

Therefore, the authors of this response disagree with the following IGJI Service Recommendations:

The recommendation for a facility that would use a combination of “secure” and “staff secure” as a means for security for a placement of last resort for 12 girls. Please note that “secure” essentially means locked facility since the definition includes “mechanical and/or other types of structural security (e.g. the ability to lock youth within the facility, security fences around the property).” (See IGJI Recommendations p. 15, 17-18, 21, and 29)

The recommendations infer that the existing Iowa Code § 232.52(2)(e) defines girls who are “Serious, Violent, and Chronic”. (See IGJI Recommendations p.7 and 18)

### **Reasons for Disagreement with the IGJI Recommendations**

We disagree with the above noted IGJI recommendations for the following reasons:

- There has been no increase in the number of girls waived to adult court or girls placed out of state since the closing of the Iowa Girls State Training School in January 2014.
  - The average number of girls waived to adult court has not changed and continues to average around 60 per year (excluding direct filings) both during the existence of the Iowa Girls State Training School and after the closure.<sup>i</sup>
  - The average number of girls in out-of-state placements has not changed and continues to average around 9 per year both during the existence of the Iowa Girls State Training School and after the closure.<sup>ii</sup>
- Availability of a locked facility does not prevent Iowa youth from being waived to adult court nor does it prevent youth from being placed out of state.
  - Although there is a locked facility for boys in Iowa (Boys State Training School), 2,106 boys have been waived to adult court from 1/1/09 to 9/30/14.<sup>iii</sup>
  - Although there is a locked facility for boys in Iowa (Boys State Training School), 110 boys who were eligible for the state training school have been sent out-of-state in the 5 years before November 2015.<sup>iv</sup>
- The former Girls State Training School in Toledo was not a locked facility and therefore the lack of a locked facility option for placement for girls has been the status quo in Iowa for over 30 years.<sup>v</sup>
- Building or maintaining a new facility for girls is not likely to change the number of girls waived to adult court or the number of girls in the adult system both because of the facts stated above and because the laws regarding waiver and juvenile court jurisdiction remain the same. These laws are the main source of youth (boys and girls) finding themselves in the adult system, not the existence or non-existence of a locked facility.
  - Iowa law allows for juvenile court to waive jurisdiction of the youth to criminal court if all of the following apply: (1) the youth is 14 or older; (2) there is probable cause to believe the youth has committed delinquent act(s); (3) there are not reasonable prospects for rehabilitating the child in the juvenile system; and (4) it is in the best interest of the child and the community.<sup>vi</sup>
  - Iowa law allows for the direct filing of charges in criminal court, without any waiver hearing, if the youth is age 16 or older and is charged with ONE of the following: (1) Controlled substances violation with a firearm or offensive weapon; or (2) criminal gang affiliated weapons offenses; or (3) felony weapons offenses; or (4) any forcible felony.<sup>vii</sup>
- All out-of-home congregate placements used for girls' adjudicated delinquent placed in the State of Iowa are staff-secure at this time. For the purposes of this report staff-secure means the facility staff may place the youth in locked control/seclusion rooms within the facility or may physically restrain youth (similar to IGJI Recommendations definition on p.29). Therefore, staff-security is not an element missing from the continuum of care that a new locked ("secure") and/or staff-secure facility will provide.
  - State and federal law allow for the use of locked control/seclusion rooms in detention facilities, comprehensive residential facilities (a level of group foster care licensure), and psychiatric medical institutions for children.<sup>viii</sup>

- State and federal law allows for the use of physical restraint in detention facilities, group foster care facilities (including comprehensive residential facilities), and psychiatric medical institutions for children.<sup>ix</sup>
- The statute regarding eligibility criteria for the State Training School is far too broad and encompasses too many girls that do not fit the description of “Serious, Violent, and Chronic”.
  - The statute is broad enough to include eligibility of girls that do not fit this description (i.e. girls that are 15 years of age or older who have had ANY previous delinquency adjudication and have been previously placed outside the home for that adjudication).<sup>x</sup>
  - The numbers of females eligible for placement at the State Training School during the years 2011, 2012, and 2013 were above 200 girls for each of those years.<sup>xi</sup>
  - The number of girls eligible for the State Training School who were charged with a forcible felony in 2014 is 3 girls.<sup>xii</sup>
  - Multiple States have narrowed their statutes to lessen the amount of youth eligible for locked facilities since research shows that locked facilities are harmful to youth and are costly to the State when balanced with the fact they do not reduce recidivism.<sup>xiii</sup>
- The type of forcible felony charges filed against girls lead to multiple questions regarding whether the girls themselves are victims in need of treatment and what circumstances caused these charges to occur, rather than supporting a public safety justification for the need for a locked facility.<sup>xiv</sup>
- The issues in Iowa’s juvenile justice system caused by private providers “rejecting” the placement of a youth at their facility or “ejecting” a youth from the facility and thus creating a need for a “placement of last resort” that cannot “reject” or “eject” a youth will be greatly (if not entirely) alleviated in July 2017 by the Iowa Department of Human Services new contracts with providers that will have “no reject, no eject” requirements.<sup>xv</sup>
- There has been no evidence provided to the IGJI group that locked facilities provide for the needs of girls in the deep end of the juvenile justice system better than community-based alternatives used with small-group, regionally based settings.
  - Experts in juvenile justice reform brought in by the IGJI group (listed on page 5 of the IGJI Recommendations) recommended that Iowa not build or reinstate or add a locked facility (“secure”) for girls to the juvenile justice continuum in Iowa.<sup>xvi</sup>
  - The webinars that the IGJI group encouraged members to attend specifically stated that building or maintaining locked facilities for girls in the deep end is not the recommended direction.<sup>xvii</sup>
  - The youth involved in the IGJI group and the women visited by the IGJI group at the Iowa Correctional Institution for Women never recommended a locked facility.
  - Alternatives such as Youth Advocate Programs (or organizations like them) and the Missouri Model (minus the problem-riddled Missouri adjudication process) were offered as examples but the IGJI group has not sought out any information regarding these alternatives. Multiple juvenile justice experts have recognized these alternatives as effective.
- The current national trend in juvenile justice reform is to close State Training Schools and other locked facilities and use community-based alternatives. For those youth who absolutely need an out-of-home placement, which should be very few, small group home settings or therapeutic foster care closer to the youth’s home should be utilized.<sup>xviii</sup>

- The cost of building a new locked facility and/or maintaining a locked facility will be more expensive for the State of Iowa than substantially investing in community-based services. The resources that were saved by closing the Iowa Juvenile Home / Girls State Training School (IJH/GSTS) could have been and could still be used to create solid community-based services for STS eligible girls.
  - During the final decade of the existence of the Iowa Juvenile Home / Girls State Training School (IJH/GSTS), the Average Daily Bed Count (ADBC) went from 89 to 51, which is a reduction of 48%, however the total cost during the same period went up 37%.<sup>xix</sup>
  - The cost per bed for IJH/GSTS for FY12 was \$468 per day per bed based on an average daily bed census of 53. The estimated cost per bed for FY13 was over \$522 per day per bed based on an average daily bed census. These costs include education costs.<sup>xx</sup>
  - Based on the IGJI recommendations, the current cost of locked facilities in Iowa (detention and STS) averages above \$300 per day.
  - In 2014, the average cost in Florida for a community-based program that created true wraparound services for the youth and family was \$75 per day.<sup>xxi</sup>

### **Alternative Recommendations**

The authors of this report recommend that the girls who would otherwise have been served by a Girls State Training School during its existence be served by community-based services that specialize in working with such girls who find themselves in the deep end of juvenile justice systems. One such organization would be Youth Advocacy Programs (YAP). They serve similarly situated youth quite successfully in other states that have used this organization as an alternative to the use of locked facilities. If these girls cannot be served by these community-based services at home, then the authors recommend the use of these community-based services in a therapeutic foster home or regionally based group home for the youth. These services should be properly funded by the State of Iowa.

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<sup>i</sup> According to a February 13, 2015 e-mail from David Boyd, State Court Administrator, to Nathan Kirstein, Staff Attorney at Disability Rights Iowa, the number of girls adjudicated delinquent waived to adult court is as follows: Year 2010 – 60; Year 2011 – 66; Year 2012 – 84; Year 2013 – 61; and from the closure date in January 2014 to the date of the e-mail – 61. According to this e-mail, David Boyd received this data from the Division of Criminal and Juvenile Justice Planning.

<sup>ii</sup> According to a January 20, 2015 letter from Jennifer Harbison, Iowa Department of Human Services, to Nathan Kirstein, Staff Attorney at Disability Rights Iowa, the number of girls adjudicated delinquent sent out of state in the last five years prior to the closure of the Iowa Girls State Training School is 43. This averages around 9 girls per year. The number of girls sent out of state since the closure date in January 2014 to the date of the letter was 9 girls.

<sup>iii</sup> Statistics according to a January 8, 2015 e-mail from David Boyd, State Court Administrator, to Nathan Kirstein, Staff Attorney at Disability Rights Iowa. According to this e-mail, David Boyd received this data from the Division of Criminal and Juvenile Justice Planning.

<sup>iv</sup> Statistics according to the January 20, 2015 letter from DHS cited in Endnote (ii).

<sup>v</sup> The Iowa Girls State Training School was located on the campus of the Iowa Juvenile Home in Toledo, Iowa which housed both boys and girls adjudicated Children in Need of Assistance. The campus had no separating boundaries and the girls adjudicated delinquent were mixed with the child welfare youth. Therefore, under federal law, the facility could not be a locked facility since the population of delinquents were mixed with child welfare youth. See 42 U.S.C. § 5603(13); 42 U.S.C. § 5633(a)(11).

<sup>vi</sup> Iowa Code § 232.45

<sup>vii</sup> Iowa Code § 232.8(1)(c)

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viii For detention facilities see Iowa Administrative Code (IAC) 441-105.10; for comprehensive residential facilities see IAC 441-115.7; for psychiatric medical institutions for children see 42 C.F.R. §483.356-366

ix For detention facilities see IAC 441-105.16(3); group foster care facilities see IAC 441-114.20(3); for comprehensive residential facilities see IAC 441-115.6; for psychiatric medical institutions for children see 42 C.F.R. §483.356-366

x Iowa Code § 232.52(2)(e)

xi *"Quality and Level of Care for Young Women under Juvenile Court Jurisdiction with High Risk Delinquency and Social History Factors – Position Paper"*, December 2014, Juvenile Justice Advisory Council and Iowa Task Force for Young Women, Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning, p. 1.

xii *"Females in the Juvenile Delinquency System: A Comparison of Females in Placement Before and After Closure of the Iowa Juvenile Home and State Training School for Girls"*, Division of Criminal and Juvenile Justice Planning, November 2015, p.3.

xiii *"Using Bills and Budgets to Further Reduce Youth Incarceration"* – National Council on Crime & Delinquency, March 2014.

xiv According to the *"State of Iowa Juvenile Delinquency Annual Statistics Reports"* prepared by the Division of Criminal and Juvenile Justice Planning for 2011, 2012, and 2013, the top (3) forcible felony charges for girls are as follows:

- 2011: (1) Sexual Abuse 2<sup>nd</sup> Degree, (2) Assault w/ intent of injury – Peace officers / others, and (3) Arson 1<sup>st</sup> Degree
- 2012: (1) Robbery 2<sup>nd</sup> Degree, (2) Arson 1<sup>st</sup> Degree, and (3) Sexual Abuse 2<sup>nd</sup> Degree (tied with Assault w/ intent of injury – Peace officers / others)
- 2013: (1) Sexual Abuse 2<sup>nd</sup> Degree, (2) Assault w/ intent of injury – Peace officers / others, and (3) Assault w/ weapon – Peace officers / others

xv Crisis Intervention, Stabilization, and Reunification CISR Services, Request For Proposal No. ACFS-18-001 found at the following internet link:

[http://bidopportunities.iowa.gov/?pgname=viewrfp&rfp\\_id=12926](http://bidopportunities.iowa.gov/?pgname=viewrfp&rfp_id=12926)

xvi These experts are listed as follows: (1) Karen B. Francis, PhD; Co-Director National Girls Initiative; Principal Researcher, American Institutes for Research; (2) Francine Sherman, Clinical Professor; Director, Juvenile Rights Advocacy Program, Boston College Law School; (3) Jeannette Pai-Espinosa; Co-Director, Office of Juvenile Justice and Delinquency Prevention National Girls Initiative; President, The national Crittenton Foundation (the National Girls Initiative is the grantor for the Iowa Girls Justice Initiative)

xvii (1) *"Office of Juvenile Justice and Delinquency Prevention – Challenges of Female Programming in the Juvenile Justice System"*, Office of Juvenile Justice and Delinquency Prevention, December 9, 2015; (2) *"Gender Injustice"*, The Girls at the Margin Action Alliance – Speaker: Francine Sherman, December 10, 2015; (3) *"Girls and the Juvenile Justice System"*, Office of Juvenile Justice and Delinquency Prevention, May 3, 2016.

xviii See the following resources:

- *"Gender Injustice: System-Level Juvenile Justice Reforms for Girls"* – Francine Sherman, Boston College Law School, and Annie Black, National Juvenile Justice Network, September 24, 2015. (noted as Resource #12 under Additional Resources in IGJI Recommendations)
- *"Safely Home"* – Shaena M. Fazal, Esq., Youth Advocate Programs Policy and Advocacy Center, June 2014.
- *"Sticker Shock – Calculating the Full Price Tag for Youth Incarceration"* – Justice Policy Institute, December 2014.
- *"The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model"* – Annie E. Casey Foundation, Harvard Kennedy Law School, National Institute of Justice, October 21, 2016. (noted as Resource #31 under Additional Resources in IGJI Recommendations)

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- *"Beyond Bars – Keeping Young People Safe at Home and Out of Youth Prisons"* – National Collaboration for Youth, December 2016.

<sup>xix</sup> Based on information provided to Jerry Foxhoven during his membership on the Iowa Juvenile Home Protection Task Force in September 2013.

<sup>xx</sup> *Id.*

<sup>xxi</sup> *"Safely Home"* – Shaena M. Fazal, Esq., Youth Advocate Programs Policy and Advocacy Center, June 2014.