

Rehabilitation via Arbitrariness: Why Commitment as a Dispositional Option in Washington, D.C.'s Juvenile Justice System Should Be Abolished

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Table of Contents

Introduction.....	137
I. How Juvenile Dispositions Work in D.C.....	138
A. <i>Pre-Trial</i>	139
1. Consent Decree	139
2. Diversion.....	139
B. <i>Post-Trial</i>	139
1. Probation.....	139
2. Institutionalization	141
II. Who Gets Committed	141
III. Why Youth Get Committed	142
IV. The Basic Structure of Commitment	144
V. DYRS' Complete and Unchecked Control over Committed Youth Has Produced a Non-Transparent and Arbitrary System....	146
A. <i>DeAndre: TDMs</i>	147
B. <i>Kevin: Housing</i>	150
C. <i>Mike: Education and Housing</i>	156
D. <i>Terrence: Family and Housing</i>	158
VI. How Arbitrariness Can Be Ameliorated and Youth Outcomes Improved.....	161
A. <i>Increase Public Disclosures</i>	162
1. Make All DYRS Documents Related to Procedures, Policies, and Programming Publicly Available	162
2. Regularly Publish Outcomes Data	164
B. <i>Actively Involve the Courts and Defense Attorneys in Post-Disposition</i>	167
1. The Role of the Court	168
2. The Role of the Defense Attorney	172
VII. Eliminating Commitment.....	175
VIII. What Is the Alternative?.....	177

Introduction

*We realize that youth belong to families, not to the government.*¹

Across the country, the juvenile justice system holds out as its purpose the rehabilitation of the youth in its care. But delivery on that promise has been underwhelming at best. This paper suggests one local solution: ending commitment, one of the dispositions (sentences) youth can receive in the D.C. juvenile justice system. Commitment is rife with arbitrariness and it funnels poor youth of color into the deep end of the juvenile justice system just to access services that youth often need long before entering the system. When a youth is committed, he becomes a ward of the District. Parental custody is effectively terminated for the duration of the commitment and the D.C. Department of Youth Rehabilitation Services (DYRS) takes over, assuming authority over all decisions regarding the youth, including where he will live, where he will go to school, what programming he will participate in, whether he will be on electronic monitoring, how often he can see his family, what his curfew is, whether he will undergo drug testing, and much more. This complete delegation of authority to DYRS is further solidified by the general absence of legal representation and court involvement during commitment.

The good news is that commitment is improving significantly under the progressive leadership of Clinton Lacey, the head of DYRS since 2015.² But Director Lacey will not be with DYRS forever, and DYRS alone cannot fix the problems of D.C.'s juvenile justice system. More must be done and that "more" is detailed in this paper, with the key reform being the elimination of commitment, along with greater court and defense attorney involvement in the post-disposition phase of the juvenile justice system.

Commitment does not fulfill the purpose of the juvenile justice system to be a youth-centered, rehabilitative enterprise in which youth are placed in the least-restrictive setting consistent with public safety. This outcome is due, in part, to the fact that an agency – rather than the courts *and* the agency – is in charge. Youth are vulnerable to procedural arbitrariness at the hands of DYRS because the only outside check on DYRS (short of lawsuits) is annual performance reviews before the D.C.

¹ D.C. DEP'T OF YOUTH REHAB. SERV. (@DYRSDC), TWITTER (Mar. 3, 2016, 2:35 PM), <https://twitter.com/DYRSDC/status/705522122697936900> (quoting Clinton Lacey) [hereinafter DYRS Mar. 3 Tweet].

² *Director's Biography: Clinton Lacey*, D.C. DEP'T OF YOUTH REHAB. SERV. (Jan. 10, 2017), <https://dyrs.dc.gov/biography/clinton-lacey>.

Council.³ The juvenile justice system was the first problem-solving court,⁴ and commitment removes the court's vital role in D.C. juvenile justice.

Furthermore, elimination of commitment is a critical step in acknowledging and addressing the fact that the current structure of D.C.'s juvenile justice system helps perpetuate racial and socioeconomic disparities in the District. Eliminating commitment could go a long way toward pushing the District to more broadly offer resources currently accessible only through commitment and to begin proactively addressing the needs of vulnerable youth.

Part I of this paper describes the various dispositions that youth can receive in D.C. Part II describes the demographic makeup of committed youth. Part III explores why youth get committed. Part IV lays out the basic structure of commitment. Part V shares several stories to illustrate the connection between the arbitrariness of commitment and poor outcomes for youth. Parts VI and VII propose various solutions, namely greater – and mandatory – transparency and oversight via involvement of the courts and defense attorneys, as well as the elimination of commitment. Part VIII concludes with thoughts on what a commitment-free system would look like and what roadblocks exist.

I. How Juvenile Dispositions Work in D.C.

If a youth is charged with a crime or status offense,⁵ a juvenile judge

³ Performance plan, D.C. CODE §1-614.12 (2017); Performance report, D.C. CODE §1-614-13 (2017).

⁴ See, e.g., Hon. John F. Varin, *The Unique Problems of Juvenile Problem-Solving Courts*, ADVOC. Sept. 2008, at 30, 30 (discussing the unique challenges that juvenile courts face in their role as “problem-solvers” that must consider a juvenile’s relationships, development, motivation and environment); Jane M. Spinak, Special Issue, *Unified Family Court: Romancing the Court*, 46 FAM. CT. REV. 258, 258-59 (2008) (discussing the challenges and evolution of the various types of family court, including the juvenile court); Timothy Casey, *When Good Intentions Are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy*, 57 SMU L. REV. 1459, 1464 (2004) (describing the challenges of modern day problem-solving courts via comparison to the juvenile courts); James L. Nolan, Jr., Commentary, *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 40 AM. CRIM. L. REV. 1541, 1555 (2003) (noting that juvenile courts were the first problem-solving courts). As these papers suggest, giving the courts total control is also not preferable; See also, *In re Gault*, 387 U.S. 1 (1967) (highlighting some issues that arise by giving total control to the courts). As this paper will attempt to demonstrate, greater power sharing between DYRS, the courts, and D.C. Council – with an active role for defense attorneys – is better for youth outcomes.

⁵ Status offenses are crimes that are only crimes for minors, such as truancy and running away from home. For more, see, e.g., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATUS OFFENDERS (2015), available at

has the following options (other than commitment) for how to proceed:

A. *Pre-Trial*

1. Consent Decree

In a consent decree,⁶ the court imposes certain conditions for generally six months before making a determination of innocence or guilt.⁷ If the youth complies with those conditions, the case is dismissed. If the youth does not, the case proceeds. The conditions are usually similar to those for youth on probation, such as following a court-determined curfew, attending school, not committing any new offenses, and drug testing. Consent decrees may also include other conditions such as counseling and mental health evaluations.

2. Diversion

With diversion, youth are able to avoid a juvenile record by participating in alternative programs. This may involve a referral to the Juvenile Behavioral Diversion Program.⁸

B. *Post-Trial*

If the judge determines that a youth was involved (guilty) in the charged offense, a disposition hearing is held.⁹

1. Probation

Probation is by far the most common disposition and is administered

https://www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf.

⁶ D.C. SUPER. CT. R. JUV. PRO. 104, available at <https://www.dccourts.gov/superior-court/rules>.

⁷ Consent Decree, D.C. CODE §16-2314 (2017).

⁸ FAMILY COURT SOCIAL SERV. DIV., *Juvenile Behavioral Diversion Program*, D.C. SUPER. CT., <https://www.dccourts.gov/superior-court/family-social-services/juvenile-behavioral-diversion-program> (last visited July 30, 2018) [hereinafter *JBDP*]. This court actually provides options for youth both pre- and post-disposition, depending on their history of involvement with the juvenile court. The Department of Human Service's ACE program is another available diversion program; eligibility and participation is determined by the Office of the Attorney General, not the court. *Id.*; See *How Juvenile Diversion Benefits the District*, OFFICE OF THE ATTORNEY GEN., <https://oag.dc.gov/public-safety/juvenile-diversion-program> (last visited Mar. 11, 2018) [hereinafter *ACE Diversion Program*]. The six-month program is available only to youth charged with "minor, low-level" offenses.

⁹ D.C. SUPER. CT. R. JUV. PRO. 32, available at <https://www.dccourts.gov/superior-court/rules>.

by a department of the D.C. Superior Court called Court Social Services (CSS).¹⁰ There are about 1,100 youth on probation,¹¹ as compared to 271 committed youth.¹² Probation works much like it does in the adult system, although there are some rehabilitative services available.¹³ The judge will order the youth to comply with certain conditions,¹⁴ and the youth will be assigned a probation officer whose role is to make sure the youth is “in compliance” with those conditions.

If the youth is not in compliance, the probation officer can impose a variety of sanctions, including filing a request for a “show cause” hearing. At such a hearing, the youth will be required to “show cause” as to why his probation should not be revoked, given his failure to comply with probation conditions.¹⁵ If the court grants the request for such a hearing, the court can then decide whether to revoke the youth’s probation. If the court revokes probation, the case will go back to a “pre-dispositional posture,” meaning that the judge can issue a new probation order, commit the youth to DYRS, or impose any other of the available dispositions.¹⁶ Although the probation officer has great discretion, D.C. Superior Court retains ultimate legal control over the youth’s rehabilitation. The Court is responsible for overseeing CSS because CSS is a part of the Court’s budget, which is funded by Congress. In contrast, D.C. Council has no oversight authority over CSS, but does control the services under commitment, as DYRS’

¹⁰ D.C. SUPER. CT. R. JUV. PRO. 32(f)(1), available at <https://www.dccourts.gov/superior-court/rules>.

¹¹ Dr. Michael Barnes & Dr. Malcolm Woodland, Presentation on Court Social Services at George Washington University Law School (Mar. 23, 2016).

¹² *Fiscal Year 2017-2018 Performance Oversight: Department of Youth Rehabilitation Services: Hearing Before the D.C. City Council Committee on Human Services* (Feb. 21, 2018), available at http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4365 (see time mark 6:43:25) [hereinafter *Hearing 2018*].

¹³ See, e.g., D.C. SUPER. CT. FAM. CT., FAMILY GUIDE TO THE DISTRICT OF COLUMBIA JUVENILE JUSTICE SYSTEM at A2-1 (2017), <https://www.dccourts.gov/sites/default/files/matters-docs/Family-Guide-to-DC-Juvenile-System.pdf>. (describing services available to youth on probation at the Court’s Balanced and Restorative Justice Drop-In Centers (BARJs)).

¹⁴ There is a stock list of conditions, which include obeying one’s parents, going to school, avoiding drugs and alcohol (and maybe drug testing), not committing any new crimes, not breaking curfew, staying away from certain areas, and any other services or referrals deemed appropriate by CSS. The judge can add other conditions. See *id.* at 3.

¹⁵ D.C. SUPER. CT. R. JUV. PRO. 32(i), available at <https://www.dccourts.gov/superior-court/rules>.

¹⁶ D.C. SUPER. CT. R. JUV. PRO. 32(i)(3), available at <https://www.dccourts.gov/superior-court/rules>.

budget is a part of the District's budget.¹⁷

Although housing is generally not available through probation, the judge does have the option to send a youth on probation to an out-of-state residential treatment center (RTC).¹⁸ Unfortunately, RTCs take kids far away from their families and friends and are notorious for their abusive practices and disastrous outcomes.¹⁹ RTC placement is an option for committed youth as well, depending on their risk level.²⁰

2. Institutionalization

If a youth demonstrates severe mental health needs, the judge can institutionalize the youth in both the pre- and post-disposition phases.²¹ Institutionalization may involve placement at a psychiatric residential treatment facility. Institutionalization may also be used to help determine whether a youth is competent to stand trial.²²

II. Who Gets Committed

Committed youth are poor youth of color. In FY17, 97% of youth

¹⁷ *Family Social Services*, D.C. SUPER. CT., <https://www.dccourts.gov/superior-court/family-social-services> (last visited April 5, 2018) (Court Social Services is “the District’s juvenile probation agency.”); *Government of the District of Columbia Organizational Chart*, EXEC. OFFICE OF THE MAYOR (April 7, 2015), <https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/DC-Govt-Org-Chart-03-25-17.pdf>.

¹⁸ D.C. CODE § 16-2320(a)(4) (2017), (c)(1) (2017).

¹⁹ *See, e.g.*, UNIV. LEGAL SERV., OUT OF STATE, OUT OF MIND: THE HIDDEN LIVES OF D.C. YOUTH IN RESIDENTIAL TREATMENT CENTERS 3-10 (2009), <http://www.uls-dc.org/out-2520of-2520state-2520out-2520of-2520mind-2520revision-2520final.pdf>. Perhaps in recognition of how horrific and counter-productive the vast majority of RTCs are, DYRS met with several RTCs in 2016 to “enhance relationships, increase agency transparency and share information. The DYRS Case Management division gained valuable knowledge to aid in placing our youth, and RTCs learned about the community-based approach that the agency believes in . . . staff Nancy Fisher and Dr. Markeeta Barnes introduced an objective, outcome-based evaluation tool for assessing RTCs intended to improve performance by enhancing DYRS oversight, promoting vendor accountability and measuring program performance across key indicators.”; *Out of State, On Our Minds*, COMMITTED TO EXCELLENCE NEWSL. (Dep’t of Youth Rehab. Serv., Washington, D.C.), Feb. 25, 2016. Indeed, the title of the article, “Out of State, On Our Minds,” suggests that DYRS, under the leadership of Clinton Lacey, is waking up to the reality of RTCs.

²⁰ *See infra* Section IV.

²¹ D.C. CODE § 16-2315 (2017); D.C. SUPER. CT. R. JUV. PRO. 110-110A, *available at* <https://www.dccourts.gov/superior-court/rules>.

²² D.C. CODE §16-2315(b), (c) (2017); D.C. SUPER. CT. R. JUV. PRO. 110, *available at* <https://www.dccourts.gov/superior-court/rules>.

committed to DYRS were African-American.²³ Since FY04, that percentage has never dropped below 93% - and the remaining percentages are entirely filled by Latino youth.²⁴ Of youth in the D.C. juvenile justice system as a whole (not just committed youth), 95% live below the federal poverty line.²⁵ However, African-American youth are less than 60% of the D.C. youth population,²⁶ and only 27% of D.C. youth overall live below the federal poverty level.

Over 64% of committed youth come exclusively from wards 5, 7, and 8, with nearly half of those youth (30%) coming from ward 8 alone.²⁷ Furthermore, over 80% of committed youth have special education needs and over 90% have a mental health diagnosis.²⁸

III. Why Youth Get Committed

While the severity of commitment would suggest that it is reserved for only the most serious offenders, the reality is that the majority of youth are committed for mere misdemeanors.²⁹ From FY04 to FY17, misdemeanants went from 35% to 64% of newly committed youth.³⁰ In other words, because of a misdemeanor, many youths have become wards

²³ *Youth Population Snapshot*, D.C. DEP'T OF YOUTH REHAB. SERV., <http://dyrs.dc.gov/page/youth-snapshot> (last visited July 26, 2018).

²⁴ *Id.*

²⁵ Tamar Birchead, *Infographic on the Criminalization of Poor D.C. Youth*, JUV. JUST. BLOG (Oct. 19, 2012), <http://juvenilejusticeblog.web.unc.edu/2012/10/19/infographic-on-the-criminalization-of-poor-d-c-youth/> (last visited July 30, 2018). Although information regarding the family income of committed youth is not publicly available, it is reasonable to assume that the percentages are similar, if not worse, particularly given how many committed youths come from the District's poorest wards. *See also infra* note 26.

²⁶ *Child Population by Race: District of Columbia*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/103-child-population-by-race?loc=1&loct=1#detailed/2/10/false/869,36,868,867,133/68,69,67,12,70,66,71,72/423,424> (last visited July 25, 2018).

²⁷ D.C. DEP'T OF YOUTH REHAB. SERV., COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON THE JUDICIARY PERFORMANCE OVERSIGHT HEARING PRE-HEARING QUESTIONS AND ANSWERS: TRACKING YOUTH SUCCESS, Question 2c (2016), http://dccouncil.us/files/user_uploads/budget_responses/TrackingYouthSuccess_1234578.pdf [hereinafter TRACKING YOUTH SUCCESS].

²⁸ *Id.* at Question 2d (individualized education plans (IEPs) are for special needs students).

²⁹ Youth who have committed felonies can be and are put on probation, suggesting that there is not a direct relationship between the severity of the offense and the corresponding disposition. Rather, the court is likely to also consider many other factors, such as prior criminal history, what resources have previously been made available to the youth, and their (non)success with those resources, etc.

³⁰ *Youth Population Snapshot*, *supra* note 23.

of the District and their parents no longer have the ultimate say on the most basic and intimate details of their children's lives and schedules.

A key reason why youth are committed for minor offenses provides insight into one of the paradoxes of commitment – and reason for its elimination. As detailed in Section I, juvenile judges do not have many options when it comes to sentencing. This is particularly true for youth who do not pose serious risks to public safety, but need housing. For example, if a youth is on probation and home is no longer an option for the youth (which could be for a variety of reasons, including protracted conflict between the parents and the youth), the judge has essentially no choice but to end the youth's probation and commit the youth to DYRS so that the youth can have access to long-term alternative housing options such as group homes, therapeutic foster homes, New Beginnings (the juvenile prison),³¹ or an RTC.³² Commitment can become an attractive option if home life grows unbearable, particularly for low-income parents who cannot afford alternative housing arrangements for their children, family counseling services, addiction services, or other needed support to stabilize their home life. Commitment might also be a more attractive disposition when a judge believes a youth needs more intense supervision and/or services than probation can offer.³³

Thus, basic needs such as housing, supervision, and services, often

³¹ This paper will refrain from using the euphemistic terms used by DYRS to describe its facilities. DYRS describes New Beginnings as a “secure residential treatment facility[.]” *New Beginnings Youth Development Center*, D.C. DEP'T OF YOUTH REHAB. SERV., <http://dyrs.dc.gov/service/new-beginnings-youth-development-center> (last visited March 1, 2018). To be perfectly clear: it is a prison, complete with barbed wire, pat downs, and locked cells. Fortunately, DYRS does not require youth at either the Youth Services Center (YSC, the juvenile jail) or New Beginnings to wear jumpsuits with “juvenile” emblazoned on the back. The uniform is a short-sleeved collared shirt and khaki pants – a humanizing detail worthy of applaud. New Beginnings is leaps and bounds better than many juvenile prisons, *see infra* note 159, but it is still a prison.

³² Theoretically, in such a case the judge should open an abuse and neglect case, which would send the youth into the dependency system under the supervision of the Child and Family Services Agency (CFSA), but CFSA has suffered such dysfunction that no judge would consider CFSA a better option than commitment. Furthermore, in the past when a judge would turn to CFSA in such a situation, CFSA would refuse to open a dependency case for a youth that had an open juvenile justice case.

³³ *See, e.g.*, D.C. CODE ANN. § 16-2322(a)(3), (c) (West 2012) (specifying when the court may terminate or extend a dispositional order). Probation generally lasts up to one year, although Court Social Services can request an extension. If a youth's probation is revoked, the case reverts back to its original sentencing posture, at which point the court can order another year of probation. *See id.*

stemming from poverty and trauma,³⁴ rather than serious criminal behavior, can drive a youth into the “deep end”³⁵ of the juvenile justice system. Commitment holds the key to services that are inaccessible in the community otherwise, but were likely needed long before the youth arrived in court. Tying judges’ hands in such a way results in an over-reliance on commitment that is counter-productive. System-involvement at any level, but incarceration in particular, can result in worse outcomes for youth than if they had just remained at home or had had access to community-based resources such as mentoring or job training.³⁶ DYRS has also repeatedly and publicly acknowledged that reliance on commitment drives youth into the deep end of the juvenile justice system unnecessarily, and it laudably has been making efforts to make more of its services available outside of the commitment structure.³⁷

IV. The Basic Structure of Commitment

Until very recently, little was made publicly available about what happens to a youth once they are committed. In December 2017, DYRS

³⁴ See Kristine Buffington, Carly B. Dierkhising, and Shawn C. Marsh, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (2010), https://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf.

³⁵ CLINTON LACEY, D.C. DEP’T OF YOUTH REHAB. SERV., 2015 COMMUNITY REPORT: RESETTling PERSPECTIVE 5 (2015), http://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/CommunityReportWEB.pdf [hereinafter *Community Report*].

³⁶ See *infra* Section V.b.

³⁷ DYRS is working on providing more of its services to youth once their commitment is over, so that services are not exclusively tied to active committed status, such as job training. It has two “Achievement Centers” in D.C. that offer regular programming that it is working on making more broadly available to the public. *Agency Locations*, D.C. DEP’T OF YOUTH REHAB. SERV., <https://dyrs.dc.gov/page/agency-locations> (last visited April 5, 2018) (describing Achievement Centers). DYRS has also engaged in community outreach efforts, such as a winter clothing distribution at Charles Hart Middle School. See CHARLES HART MIDDLE SCH. (@CharlesHartMS), TWITTER (Dec. 15, 2017, 3:32 PM), <https://twitter.com/CharlesHartMS/status/941813226659966976>. DYRS will also be one of the agencies staffing the recently opened Safer Stronger DC Office of Neighborhood Safety and Engagement (“the ONE Center”), which is dedicated to taking a public health approach to public safety and is open to the general public. See *Mayor Bowser Opens Safer Stronger DC Office of Neighborhood Safety and Engagement*, EXEC. OFFICE OF THE MAYOR (Oct. 25, 2017), <https://mayor.dc.gov/release/mayor-bowser-opens-safer-stronger-dc-office-neighborhood-safety-and-engagement>. One of the services DYRS will be offering at the ONE Center is its Credible Messenger mentoring initiative, which is currently available only to committed youth. *Hearing 2018*, *supra* note 12 at 5:56:15. For more on Credible Messengers, see *infra* note 92.

published a long-overdue family guide that includes such information.³⁸ The basic structure of commitment is as follows. When a youth is committed, the juvenile judge transfers legal custody to DYRS.³⁹ The judge can set a specific length of commitment (e.g. 24 months or until a specific birthday), or, more commonly, make the length of commitment indefinite, not to exceed a certain date or birthday. The maximum length of commitment is until the youth's 21st birthday.⁴⁰ In FY17, the average length of commitment was 772.3 days – over two years.⁴¹

Once in DYRS custody, the youth is assigned a case manager (now known as a “Care Coordinator”) who is the linchpin to every aspect of commitment.⁴² The youth's time in commitment is structured around meetings and programming. The Care Coordinator will organize an initial “Team Decision Making Meeting” (TDM) with the youth, the youth's parent(s) or guardian, and other DYRS staff to develop a “success plan” that entails a “combination of services and supports that will build on [the youth's] strengths and meet each need.”⁴³ The youth will then have a TDM every ninety days to check on his progress.⁴⁴ The TDMs function somewhat like status hearings for youth on probation, but without the formality or protections that court provides, including a recognized right to appointed counsel. If the youth wants to add or change services he is receiving, a separate Service Care Meeting can be scheduled.⁴⁵ While the Care Coordinator and DYRS staff “give[] great weight to the Court's recommended plan for treatment and supervision,” DYRS has the final say, being “responsible for all decisions regarding the youth's placement [i.e. where the youth will live] and rehabilitation plans.”⁴⁶

³⁸ CLINTON LACEY, D.C. DEP'T OF YOUTH REHAB. SERV., WHAT LOVE LOOKS LIKE: A VOICE FOR YOUR FAMILY (Dec. 2017), https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/What%20Love%20Looks%20Like%20-%20A%20Voice%20for%20Your%20Family_0.pdf [hereinafter *Family Guide*].

³⁹ D.C. CODE § 2320(c)(2) (2007); D.C. CODE § 2-1515.04 (2012); D.C. MUN. REGS. TIT. 29, § 1200.4 (2009).

⁴⁰ D.C. CODE §16-2322 (2005).

⁴¹ *Strategic Objectives*, D.C. DEP'T OF YOUTH REHAB. SERV., <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DYRS17.pdf> [hereinafter *Strategic Objectives*].

⁴² D.C. DEP'T OF YOUTH REHAB. SERV., *Care Planning and Coordination Handbook*, at C-2 (2017) [hereinafter *Care Planning Handbook*].

⁴³ *Id.* at F-11 to F-12.

⁴⁴ *Id.* at F-11, F-15.

⁴⁵ *Id.* at F-14.

⁴⁶ *Case Planning Process*, D.C. DEP'T OF YOUTH REHAB. SERV.,

Initial placement decisions are based in part on assessment of the youth's risk level via the "Structured Decision Making" (SDM) tool.⁴⁷ While the parameters make sense (the higher the risk, the more restrictive the placement), they are merely parameters. DYRS case management has the ultimate say on where the youth is placed.⁴⁸ If a youth is deemed "high risk," DYRS can send him to an RTC or New Beginnings. An example of a medium level placement is a group home (which can include *out of state* group homes) and an example of a low-level placement is home.⁴⁹

A youth's placement may change over the course of the commitment in response to positive and negative behaviors. If a youth "absconds" (runs away from a placement), is arrested for a new serious offense, or is considerably non-compliant with his community release agreement, a Care Coordinator must "initiate a review of community placement[.]"⁵⁰ This review could lead to a community status review hearing conducted by DYRS or a waiver of such hearing if the youth so chooses.⁵¹ What follows is a decision about whether the youth needs to be in a more restrictive placement.

At the end of the commitment, the Care Coordinator "will complete a Closing Summary to recap the youth's commitment term for record keeping purposes and will conduct a final contact, preferably face-to-face," with the youth.⁵² A youth may choose to engage in post-commitment services,⁵³ but otherwise, the youth's case is closed.

V. DYRS' Complete and Unchecked Control over Committed Youth Has Produced a Non-Transparent and Arbitrary System

To illustrate the arbitrariness of commitment and the negative impact it can have on youth outcomes, this section shares and explores stories of committed youth.⁵⁴ Each story will highlight a problem, provide

<http://dyrs.dc.gov/service/case-planning-process> (last visited Mar. 9, 2018).

⁴⁷ *Care Planning Handbook*, *supra* note 42, at F-11 to F-12.

⁴⁸ *Id.* at E-6 ("The Care Coordinator is responsible for making an appropriate placement recommendation for committed youth consistent with the youth's level of restriction").

⁴⁹ For more on placement types, see *Family Guide*, *supra* note 38, at 30.

⁵⁰ *Care Planning Handbook*, *supra* note 42, at H-37.

⁵¹ *Id.* at H-37 to H-40; *see also* 29 D.C.M.R. §1200 et seq. (West 2018); *see infra* Steven's story, Section V.d, for more discussion on community status review hearings and waivers.

⁵² *Family Guide*, *supra* note 38, at 50.

⁵³ *Id.* at 51.

⁵⁴ Youth stories shared in this paper are based on my experience working in the D.C. juvenile justice system in the summer of 2015 as a law clerk for Open City Advocates, a non-profit legal organization that represents committed youth in D.C.; my current position

corroborating evidence of the widespread nature of that problem, and offer corrective measures. Note that some of these stories include attorney involvement in the post-disposition phase, but such involvement is rare, particularly in the scenarios highlighted.

A. *DeAndre: TDMs*

DeAndre is in exams week. He forgets he has a TDM today until his attorney shows up at school to take him to the meeting. He lets his attorney know that he is in the middle of taking an exam and would, obviously, prefer not to go to a meeting. His attorney calls his Care Coordinator, Mr. Harris, to explain the situation and Mr. Harris asks to speak to DeAndre. DeAndre explains what is going on, but Mr. Harris refuses to believe him, saying that DeAndre “isn’t doing anything.” He refuses to excuse DeAndre from the meeting until he speaks to the Vice Principal, who confirms that indeed, it is exam week and it would be preferable for DeAndre to be in school that day. Frustrated and rattled, DeAndre then proceeds back to class to finish his exam.

At his next TDM, DeAndre complains to Mr. Harris that he has scheduled DeAndre for two programs at the same time. Nothing is done to address DeAndre’s concern, and at the next TDM, DeAndre is scolded and threatened with being removed from his home for “being out of compliance”: his attendance records show that he has not been attending all of his programming. Stunned, DeAndre reiterates that it is because of Mr. Harris’ error in scheduling him for two programs at the same time. Only after repeated requests by DeAndre and his attorney does his Care Coordinator call yet another meeting – a Service Care Meeting – and work out the scheduling issue.

Lack of communication and continuity, poor planning, and a non-youth-centered approach plague TDMs. Meetings with DYRS staff are invariably held at DYRS offices and sometimes during the school day, prioritizing the staff’s convenience over that of the youth and his family. This is the case even though the DYRS Case Management Manual (known as the Care Planning and Coordination Handbook) encourages staff to meet

as a Skadden Legal Fellow at Open City Advocates; and conversations that I have had with various D.C. juvenile defense attorneys. All names have been changed and stories are a compilation of various youths’ experiences to protect the youths’ identities. These youth stories all feature male youth, reflecting the fact that the vast majority of committed youth are boys. *Youth Population Snapshot*, *supra* note 23. While the purpose of this article is to address concerns with commitment that apply to all youth, boys and girls do have unique experiences. A deeper look into those differences is beyond the scope of this paper.

youth in the youth's environment.⁵⁵ Furthermore, TDM agendas are boilerplate, untailed to the circumstances of each youth, nor reflective of what was discussed at the prior TDM. A to-do list is not sent out after a TDM, making it more likely that nothing will get done between one TDM and the next.

For DeAndre, very simple issues such as scheduling morphed into large problems because of the lack of planning and communication on the part his Care Coordinator. It could certainly be argued that DeAndre could have done more here; he could have notified his Care Coordinator that he had exams that week and he could have reminded his Care Coordinator more frequently that he was double-booked for programming. Yet recall that the whole point of commitment is to rehabilitate youth via a youth-centered approach.⁵⁶ This demands that Care Coordinators make every effort to be thorough and diligent, which will not only demonstrate to the youth that his needs are taken seriously, but will also model professional behavior. DeAndre's Care Coordinator could have easily obtained a copy of the academic calendar; he could have called the school to make sure that when he was going to pull DeAndre out of school would be at the least disruptive time possible; and he could have immediately followed up on DeAndre's concern about being double-booked for programming. Following the Positive Youth Development model, his Care Coordinator could have praised him for his focus on his studies, instead of accusing him of lying and threatening to remove him from his home. Because his Care Coordinator failed to take these proactive steps, DeAndre's education – critical to rehabilitation – was disrupted.

What is also revealing about DeAndre's story is that the compliance-focused mentality of adult probation still seeps into the juvenile system, even though the juvenile system is deliberately meant to be different. DYRS is tasked with "[e]stablishing a system that constantly reviews a youth's individual strengths, needs, and rehabilitative progress,"⁵⁷ yet DeAndre's Care Coordinator is more concerned about making sure DeAndre is

⁵⁵ *Care Planning Handbook*, *supra* note 42, at E-19 (Care Coordinators must "have weekly, in-person, face-to-face contact with each youth to whom they have been assigned and is residing at home, in a local group home, foster home, foster home [sic], SILP, or other community placement, or other community placement [sic]. At least two of those visits per month must be at the youth's local residence. . . . The other visits may be in the school, place of employment or neighborhood where the youth resides." A youth may prefer to meet at DYRS offices, but this requires the youth's input to be considered when determining the meeting location, input that is rarely solicited).

⁵⁶ *Care Planning Handbook*, *supra* note 42, at B-1 to B-3.

⁵⁷ D.C. CODE § 2-1515.04(6) (2017).

complying with his programming than whether it is actually addressing DeAndre's needs. The focus on compliance can leave the committed youth feeling that he has to go through the motions to satisfy the Care Coordinator, without anything actually getting done.

The focus on the youth's compliance is set in the first few minutes of a TDM. TDMs begin with a review of the Child and Adolescent Functional Assessment Scale (CAFAS).⁵⁸ The assessment is supposed to reveal where the youth is struggling and where, therefore, the adults in the room need to provide additional support to the youth.⁵⁹ In practice, DYRS uses the CAFAS to point out where the youth is out of compliance.⁶⁰ Thus TDMs often devolve into lecturing sessions where everyone tells the youth what he is doing wrong and what he needs to do better. DYRS is undergoing a culture shift to move away from focusing on the easier question of compliance to the harder question of what everyone else should be doing to engage the youth, a shift driven in part by the more deliberate inclusion of family in TDMs⁶¹ as well as the participation of the new Credible Messengers.⁶² However, "[r]esistance to the shift from a punitive to a strengths-based system" is an on-going struggle.⁶³ Leadership is tasked with "[c]ontinually explain[ing DYRS'] process and help[ing] staff and external partners understand the 'why' behind the change."⁶⁴ Because Care Coordinators are the gatekeepers to everything for committed youth, youth-

⁵⁸ See, e.g., D.C. DEP'T OF YOUTH REHAB. SERV., AGENCY PROGRESS REPORT 2014, 25 (2014),

https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/REL-088%20DYRS%20Annual%20Report_web%20%28sw%291.15.pdf.

⁵⁹ See, e.g., *Functional Assessment Systems Brochure*, MHS ASSESSMENTS 1, 3 (2017), http://issuu.com/mhs-assessments/docs/2017_fas_brochure_insequence?e=20431871/45038578 (quoting the Executive Director of the Maryland Association of Youth Service Bureaus, which uses the CAFAS: "The CAFAS allows us to dive deep into all aspects of the youths' lives, which creates a valuable conversation about how we can improve their lives").

⁶⁰ As the author has heard multiple TDM Facilitators say, "If [the youth] had 89 good days but one bad day, the CAFAS will rate the one bad day."

⁶¹ For more on families, see *infra* section V.d; see also D.C. DEP'T OF YOUTH REHAB. SERV., FY2016 PERFORMANCE ACCOUNTABILITY REPORT 8 (2016), https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DYRS_FY16PAR.pdf (listing "Increase parental involvement in the DYRS Team Decision Making process" as a FY16 initiative) [hereinafter FY2016 PERFORMANCE ACCOUNTABILITY REPORT].

⁶² For more on Credible Messengers, see *infra* section V.d.

⁶³ D.C. DEP'T OF YOUTH REHAB. SERV., DYRS BRIEFING 1, 21 (2014), http://dccouncil.us/files/user_uploads/budget_responses/GeneralQuestions19a_1.pdf.

⁶⁴ *Id.*

centered policies and procedures that are faithfully adhered to by all Care Coordinators are indispensable. Without that focus, youth outcomes are largely dependent on how good the particular Care Coordinator is at his or her job.

B. Kevin: Housing

Kevin is sixteen and has been at New Beginnings for several months. His Care Coordinator has repeatedly told him that he will be able to go straight home from New Beginnings. He cannot wait to get home; he really misses his family and friends. He has performed well at New Beginnings and hopes to get a job and start preparing for the ACT when he gets out. Shortly before he is to leave, however, his Care Coordinator tells him that he will have to go to a group home first for ninety days. As an explanation, the Care Coordinator simply says that he is not ready to go home. Frustrated and scared at this dramatic turn of events, he kicks a TV at New Beginnings. There is no property damage, but the incident gets reported to his Care Coordinator. His Care Coordinator responds by saying that this is proof that he is not ready to go home yet.

When he gets to the group home, the staff realizes right away that Kevin is a good kid. Around the same time, Kevin's Care Coordinator drops his case and he is assigned a new Care Coordinator, who authorizes Kevin to go home for the weekend (what is known as a "weekend pass"). Receiving a weekend pass so soon into a group home stay is unheard of. Yet the weekend goes by without incident and Kevin continues to go home every weekend until the long ninety days expire. Although Kevin is excelling at the group home and his weekends at home go well, his Care Coordinator never seeks to reduce the length of Kevin's stay at the group home, despite Kevin's requests that she do so.

DYRS has a legal obligation to "[e]stablish[] a system that constantly reviews a youth's individual strengths, needs, and rehabilitative progress and ensures placement within a continuum of *least restrictive settings* within secure facilities and the community[.]"⁶⁵ The legal force behind the principle of least restrictive settings is also embodied in the *Jerry M. Consent Decree*. In 1985, a class action lawsuit was brought against D.C. on behalf of youth confined at the former Oak Hill Youth Center (now New Beginnings). The lawsuit alleged that D.C. failed to provide youth in its secure facilities with adequate care and rehabilitative services.⁶⁶ In 1986, as

⁶⁵ D.C. CODE § 2-1515.04(6) (emphasis added).

⁶⁶ Indeed, it did. See, e.g., Jennifer Bellamy, *From Filthy Boys Prison to New Beginnings: Hill Staffers Walk a Mile in Youthful Offenders' Shoes*, ACLU (July 14, 2011, 10:47 AM),

a result of this suit, D.C. entered into a consent decree known as the *Jerry M. Consent Decree*.⁶⁷ The consent decree states, “The parties recognize and acknowledge the right of children to be housed and provided services in the *least restrictive setting* consistent with the protection of the public, the youth’s individual needs and with applicable court rules, statutory and constitutional provisions.”⁶⁸

The consent decree required that “all detained and committed children confined in YSA⁶⁹ custody . . . at a minimum . . . be reviewed by [DYRS] every 30 days (unless a different time frame is otherwise determined by the panel [in charge of implementing the consent decree]), to assess whether children are being confined in the most appropriate and least restrictive setting[.]” demonstrating a strong preference for more frequent evaluations than the 90-day intervals of TDMs.⁷⁰ The 2014 Revised Final Approved Amended Comprehensive Work Plan for implementing the consent decree reiterated this point: *mandatory* goal III states that “Committed and detained youth shall be housed and provided services in the least restrictive setting consistent with the protection of the public and each youth’s individual needs.”⁷¹ Officially, DYRS has

<https://www.aclu.org/blog/filthy-boys-prison-new-beginnings-hill-staffers-walk-mile-yearful-offenders-shoes>; Theola Labbé, *Behind Oak Hill’s Fences, Violence and Uncertainty*, WASH. POST (Aug. 2, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A32933-2004Aug1.html>; Liz Ryan, *Five Years Gone, the Notorious Oak Hill Center*, STORIFY (2014), <https://storify.com/LizRyanYJ/five-years-gone-the-notorious-oak-hill-youth-cente>.

⁶⁷ Consent Decree, *Jerry M. v. District of Columbia*, No. 1519-85 (IFP) (D.C. Super. Ct. July 24, 1986),

http://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/The%20Consent%20Decree.pdf [hereinafter *Jerry M. Consent Decree*]. For more information on *Jerry M.*, see LIZ RYAN AND MARC SHINDLER, NOTORIOUS TO NOTABLE: THE CRUCIAL ROLE OF THE PHILANTHROPIC COMMUNITY IN TRANSFORMING THE JUVENILE JUSTICE SYSTEM IN WASHINGTON, D.C. 1, 6-17 (2011), <https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/publication/attachments/Notorious%20to%20Notable.pdf>.

⁶⁸ *Id.* at 1.

⁶⁹ *Id.* at 4. YSA was the precursor agency to DYRS.

⁷⁰ *Id.* at 4. At New Beginnings, youth must move through a series of “levels” before they are allowed to leave. Meetings are held roughly every 30 days to determine whether a youth is ready to move up a level, which is based on evaluations of various staff members of the youth’s behavior. With each level comes more privileges and the youth gets closer to being released. Youth are allowed to have others there with them at the level meetings for support, but in practice, this rarely happens. D.C. DEP’T OF YOUTH REHAB. SERV., NEW BEGINNINGS YOUTH ORIENTATION HANDBOOK 29 (Apr. 2017).

⁷¹ *Jerry M. v. District of Columbia*, No. 1519-85 (2015) (Lopes, Arb.), http://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/The%20Wor

incorporated this goal into its mission, which is to “give court-involved youth the opportunity to become more productive citizens by building on the strengths of youths and their families in the least restrictive, most homelike environment consistent with public safety.”⁷²

Despite this official endorsement founded in a legal obligation, there is often a disconnect between youths’ risk levels and placement decisions, resulting in lower risk youth being placed in more restrictive settings than is necessary.⁷³ Kevin’s story illustrates this disconnect and the lack of transparency associated with how placement decisions are made. Kevin was clearly ready to go home, but inexplicably, was prohibited from doing so – and he is not the only youth to have suffered the same arbitrary and harmful fate.

Indeed, the opaqueness of how DYRS determines placements formed the basis of many recommendations made by D.C. Lawyers for Youth (DCLY), a D.C.-based advocacy group for youth in the juvenile justice system,⁷⁴ during a 2015 DYRS oversight hearing:

- Among the decisions that DYRS should create formal, written policies for [*sic*] placement decisions: “how strength, risk, and needs assessment are used to determine placement; the role of family and youth involvement; who makes the ultimate decisions; what is left to consensus at Team Decision making meetings; [and] the appeals process.”⁷⁵
- Low- and medium-risk youth should not be placed at RTCs or New Beginnings and instead should be placed at “non-secure community-based alternatives.”⁷⁶

k%20Plan.pdf [hereinafter Work Plan].

⁷² *Mission and Vision*, D.C. DEP’T OF YOUTH REHAB. SERV., <http://dyrs.dc.gov/page/mission-and-vision> (last visited on July 30, 2018).

⁷³ See, e.g., Eileen Rivers, *D.C. Youth Detention Emerges As Model of Improvement, But Struggles Persist*, USA TODAY (Dec. 30, 2017), <https://www.usatoday.com/story/opinion/policing/reentry/column/2017/12/30/d-c-youth-detention-emerges-model-improvement-but-struggles-persist/978857001/> (discussing the reality that some youth in D.C. are incarcerated for status offenses such as running away, truancy, and breaking curfew) [hereinafter *Struggles Persist*].

⁷⁴ DCLY closed its doors in 2017. Its work continues through Georgetown University Law Center’s Juvenile Justice Initiative.

⁷⁵ *Public Hearing before the Committee on the Judiciary On Performance of the Department of Youth Rehabilitation Services* (Feb. 19, 2015) (testimony of Daniel Okonkwo, Exec. Director of DCLY) [hereinafter *DCLY 2015 Testimony*].

⁷⁶ *Id.*

- Youth approaching the end of their commitments should have a formal transition plan in place, which would include a plan for where the youth will be living.⁷⁷

Research clearly shows that keeping youth closer to home and avoiding incarceration is absolutely essential to rehabilitating youth.⁷⁸ DYRS know this⁷⁹ and is fortunately making good progress under Director Lacey. An example of a recent positive step was the opening of a girls' unit at New Beginnings to allow some girls to be housed in the District instead of in RTCs in other states. As a result, as of FY17, "out-of-state secure-setting placements for [the committed] female population have decreased by over sixty six percent (66%)["⁸⁰ However, full implementation of the "closer to home" research is still to be seen because *over half of committed youth in FY16 and 17 were placed at New Beginnings or out of state.*⁸¹

⁷⁷ *Id.*

⁷⁸ See, e.g., Tony Fabelo et al., *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms*, THE COUNCIL OF STATE GOV'TS JUST. CTR. 1, 25 (2015), <http://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>; Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUST. POL'Y INST. 1, 4-7 (2006), http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf; Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, THE ANNIE E. CASEY FOUND. 1, 12 (2011), <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>; E.P. Mulvey & C.A. Schubert, *Smarter Use of Placement Can Improve Outcomes for Youth and Communities*, THE MACARTHUR FOUND. 1, 3 (2014), <http://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Smarter%20Use%20of%20Placement.pdf>.

⁷⁹ Care Planning Handbook, *supra* note 42, at B-5 ("The foundational idea stemming from [Positive Youth Justice] is that youth are most successful when they remain at home. Incarceration can be counter-productive and is inherently harmful to youth and will serve as a barrier to later success. Incarceration separates youth from natural sources of support to which they will eventually return, including their families and resources in their communities. Additionally, incarceration has been shown to lead to further justice involvement, less educational attainment, more unemployment, lower wages, and a host of other negative outcomes. . . . [N]on-compliance and even defiance are not reasons to incarcerate youth, even if that youth has committed minor crimes. Not attending programs or even testing positive for marijuana for youth who have never exhibited violent behavior, does not reach the threshold of risk to the public's safety that necessitates locked custody.").

⁸⁰ D.C. DEP'T OF YOUTH REHAB. SERV., FY2017 PERFORMANCE ACCOUNTABILITY REPORT 2 (2017), https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DYRS_FY17PAR.pdf.

⁸¹ NAT'L JUVENILE DEF. CTR., DISTRICT OF COLUMBIA: AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL 66 (2018), <http://njdc.info/wp->

Furthermore, some committed youth, particularly girls, are incarcerated not because they are a danger to the public, but for status offenses such as running away, truancy, and breaking curfew.⁸²

The devastating consequences of incarceration highlighted in the Care Planning Handbook are not limited to those youths who are actually locked up. *Any* involvement in the system has the potential to make youth worse off because adolescence is a critical development stage when youth are forming their identities; at that age, identities are fluid, malleable, and impressionable.⁸³ Peers exert enormous influence over how a youth views himself and his place in society. An adolescence (and even early adulthood, as commitment can last until age twenty-one) spent in the juvenile justice system threatens to entrench a criminal identity unless carefully handled not only because the youth is surrounded by other delinquent peers, but also because “any positive, community-based relationships (in particular, with the child’s family) are interrupted.”⁸⁴ Involvement in the juvenile justice system also creates instability in a youth’s education. While DYRS is obligated to provide committed youth with education, youth often have difficulty re-enrolling in school when they transition home from an out-of-home placement or when their commitment ends, as well as ensuring credits transfer between various school placements so that they do not fall behind in school.⁸⁵

The pro-social relationships that youth can develop with their family, school, and other arenas are critical to helping a youth function in the real world. What the juvenile justice system (particularly incarceration) provides instead is a highly artificial environment where youth behavior is minutely scrutinized and youth are given little room to make their own decisions and make the mistakes that are part of the natural maturation process.⁸⁶ That same environment can also be chaotic, lacking structure,

content/uploads/2018/06/DC-Assessment-Report-Final-lo-res.pdf [hereinafter *NJDC Assessment*].

⁸² Rivers, *supra* note 73. Incarceration is inappropriate and harmful for any youth, but locking up truants and runaways is particularly counter to all evidence and best practices.

⁸³ See, e.g., Holman & Ziedenberg, *supra* note 78, at 6-7.

⁸⁴ Robin W. Sterling, *Fundamental Unfairness: In Re Gault and the Road Not Taken*, 72 MD. L. REV. 607, 670 (2013).

⁸⁵ See *infra* Section V.c for more on education.

⁸⁶ See, e.g., Tessa Duvall, *Experts: Invest More in Children to Keep More of Them Out of Trouble*, FLA. TIMES-UNION (Feb. 26, 2017), <http://jacksonville.com/news/metro/2017-02-26/experts-invest-more-children-keep-more-them-out-trouble> (quoting Director Lacey as saying, “So much of [juvenile justice] treatment still goes on within the context of institutions, inside of institutions, delivered by the institutional staff... We must reach out and connect with community members. True youth development doesn’t take place in the

safety, and programming, as is often the case with group homes.⁸⁷ As a result, involvement in the juvenile justice system can make functioning in the real world more difficult, as youth focus on survival, rather than on being a teenager.

Committed youth are at further risk of criminal identity entrenchment because DYRS (and its service providers) *only serves committed youth*.⁸⁸ That is, even someone like Kevin who is living at a group home, going to school, participating in a basketball and boxing program, and going home on the weekends – a far cry from being incarcerated – is still constantly surrounded by other committed youth and has been removed from the consistent presence of whatever natural support system he had before commitment. He is surrounded – and controlled by – people who know his record and know that the only reason he is in the group home or in these programs is because he is committed. Despite any good intentions on the part of DYRS staff, fostering such insular environments at the critical time of adolescent development threatens to entrench youths' identities as delinquent and inhibit natural development.⁸⁹ Indeed, most youth grow out of delinquent behavior *without any intervention at all*.⁹⁰ Even among more troubled youth, research shows that simple interventions such as “establishing a relationship with a significant other (a partner or mentor) as well as employment” may be all that is necessary to help a youth

temporary artificial environment of our facility.”).

⁸⁷ See, e.g., *DCLY 2015 Testimony*, *supra* note 75; *Public Hearing before the Committee on Human Services on the Performance of the Department of Youth Rehabilitation Services* (Mar. 1, 2017) (testimony of Daniel Okonkwo, Exec. Dir. of DCLY) (describing the problems with group homes).

⁸⁸ CHARLES HART MIDDLE SCH., *supra* note 37. While it is true that DYRS services non-committed youth at YSC because it is the pre-trial detention facility, all youth at YSC are still system-involved. Additionally, while certain programs at the Achievement Centers – DYRS offices – are starting to become available to non-committed youth, it is an exception, rather than the norm. Fortunately, this is something DYRS is trying to change.

⁸⁹ Holman & Ziedenberg, *supra* note 78, at 5 (“Congregating delinquent youth together negatively affects their behavior and increases their chance of re-offending. . . unintended consequences of grouping children at-risk for externalizing disorders may include negative changes in attitudes toward antisocial behavior, affiliation with antisocial peers, and identification with deviancy.”) (internal quotations removed).

⁹⁰ *Id.* at 6 (“Detention can slow or interrupt the natural process of ‘aging out of delinquency’ . . . as many as a third of young people will engage in delinquent behavior before they grow up but will naturally ‘age out’ of the delinquent behavior of their younger years. While this rate of delinquency among young males may seem high, the rate at which they end their criminal behavior, (called the ‘desistance rate’) is equally high. Most youth will desist from delinquency on their own.”).

age out of delinquency.⁹¹ In recognition of this, DYRS has taken a positive step in developing a mentoring program connecting committed youth to mentors known as “Credible Messengers,” who are adult D.C. residents who themselves have been involved in the juvenile justice and/or criminal justice system and who thus can speak “credibly” about what the youth may be going through and what the youth may need.⁹²

There may be times when an alternative living arrangement other than the youth’s home would benefit the youth and promote public safety. Yet once again, DYRS is not clear on how those critical determinations are made and what role (if any) the youth, his family, and his advocates have in making those determinations. Furthermore, there is no accountability mechanism for ensuring that DYRS is sticking to its mission of finding the “least restrictive settings” compatible with both the youth’s rehabilitation and public safety.

C. Mike: Education and Housing

Mike is at New Beginnings. He is nineteen, but committed to DYRS until he is twenty-one. Mike never completed high school, but still wants to get his high school diploma, or at the very least, his GED. While he is at New Beginnings, his attorney advocates for an education transition plan, so that DYRS will have enrolled Mike in school by the time he leaves New Beginnings. There are schools in D.C. that take older students like Mike and his attorney has pushed for DYRS to enroll him in one of these schools. Despite repeated requests, DYRS fails to put an education plan in place and Mike is released without being enrolled in school. He and his attorney attempt to enroll him on their own, but as Mike is committed, DYRS has to cooperate – cooperation that is not forthcoming. Instead, DYRS eventually puts him in a group home (it is unclear why home is not an option), where he is provided with nothing – no clothing, no school, no activities, no home pass, etc. Restless after a week and eager to see his infant son, Mike runs away. Although he is still in DYRS’ custody, he can pick up adult charges because he is nineteen, and DYRS responds to him running away with an escape charge – an adult felony that is the equivalent of someone breaking out of prison. Mike serves four months in jail, now has a felony on his record, and is never enrolled in school.

Education is critical to rehabilitation,⁹³ yet as Kevin’s, DeAndre’s,

⁹¹ *Id.*

⁹² *Credible Messenger Initiative*, D.C. DEP’T OF YOUTH REHAB. SERV., <https://dyrs.dc.gov/page/credible-messenger-initiative> (last visited Jan. 14, 2018).

⁹³ See, e.g., Michelle Chen, *Prison Education Reduces Recidivism by Over 40 Percent*.

and Mike's stories illustrate, it is often ignored – and the youth is the one who pays the price. Among DCLY's 2015 recommendations was a written policy on education services and how "educational strengths and needs are considered in placement decisions."⁹⁴ This was clearly not done in determining Mike's placement and despite the fact that Mike ran away from the group home, it should be obvious that bringing criminal charges against him was counter-productive.

Meeting youths' educational needs is a weakness of the commitment model and has been the subject of recent litigation. In 2012, the D.C. Public Defender Service filed a state complaint against DYRS, the District of Columbia Public Schools (DCPS), and the Office of the State Superintendent of Education (OSSE) for their failure to adequately coordinate on special education youth transitioning back to the community from out-of-home placements such as New Beginnings, RTCs, psychiatric residential treatment facilities, or out-of-state group homes.⁹⁵ With no education plan in place, many youth leaving these placements were unable to re-enroll in school, inhibiting a smooth reintegration into the community.⁹⁶ DYRS, DCPS, and OSSE were also found to be violating the rights of special education students to certain forms of educational supports under federal law, namely under the Individuals with Disabilities Education Act (IDEA).⁹⁷

As a result of the complaint, DCPS, OSSE, and DYRS signed a Memorandum of Agreement (MOA), requiring the agencies to coordinate extensively, including having a DCPS representative at all TDMs to ensure

Why Aren't We Funding More of It?, THE NATION (Aug. 17, 2015), <http://www.thenation.com/article/prison-education-reduces-recidivism-by-over-40-percent-why-arent-we-funding-more-of-it/>; Brian Walsh, *Using Technology to Reduce Recidivism of Prisoners*, THE WHITE HOUSE BLOG (Nov. 26, 2013), <https://www.whitehouse.gov/blog/2013/11/26/using-technology-reduce-recidivism-prisoners>; *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook*, THE RAND CORP. (Aug. 22, 2013), <http://www.rand.org/news/press/2013/08/22.html>; John M. Nally et al., *The Post-Release Employment and Recidivism Among Different Types of Offenders With A Different Level of Education: A 5-Year Follow-Up Study in the United States*, 9 INT'L J. CRIM. JUST. SCI. 16, 18, 27-28 (2012), available at <http://www.sascv.org/ijcjs/pdfs/nallyetalijcjs2014vol9issue1.pdf>.

⁹⁴ DCLY 2015 Testimony, *supra* note 75.

⁹⁵ D.C. PUB. DEF. SERV., STATE COMPLAINT TO THE DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION RE: RIGHTS OF SPECIAL EDUCATION STUDENTS IN THE JUVENILE JUSTICE SYSTEM (June 4, 2012) (on file with author).

⁹⁶ *Id.*

⁹⁷ 20 U.S.C. § 1400 (2010).

that each youth is enrolled in an appropriate school, any credits earned at out-of-home placements are transferred, and adequate educational supports are implemented.⁹⁸ Compliance has been minimal, although the MOA is ongoing. Enforcement of the MOA for a particular youth often depends on who the youth's Care Coordinator and attorney are, as it varies how aware someone is of the existence of the MOA and what it means for committed youth.⁹⁹ In yet another aspect of commitment, the youth's journey is marred by inconsistency.¹⁰⁰

D. Terrence: Family and Housing

Mr. Green, Terrence's Care Coordinator, requires Terrence to call him every night when Terrence gets home to make sure he is complying with his curfew, even though Terrence has a GPS ankle monitor that reports his location at all times. One night, while Terrence was riding the metro home, he fell asleep and the train crossed into Maryland before he woke up. Terrence is not supposed to leave D.C. as a condition of his commitment. Realizing what has happened, Terrence tries to get home as soon as possible, but he gets home after curfew and forgets to call Mr. Green. Mr. Green has been frustrated with Terrence lately, as Terrence has failed

⁹⁸ MEMORANDUM OF AGREEMENT BETWEEN OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, THE DEPARTMENT OF YOUTH REHABILITATION SERVICES, AND THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS RELATED TO: EDUCATIONAL SERVICES FOR YOUTH COMMITTED TO THE DEPARTMENT OF YOUTH REHABILITATION SERVICES (2016), https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/MOA%20for%20Educational%20services%20for%20Youth%20Committed%20to%20DYRS.pdf. The MOA originally went into effect in 2012 and has been renewed each year since. For more on education, see *Hearing 2018*, *supra* note 12, at 5:31:33 (testimony by Sarah Comeau, Dir. of Programs and Co-Founder of the Sch. Just. Project).

⁹⁹ In recognition of the fact that education is a complex issue that falls under the jurisdiction of many different agencies, as highlighted above, D.C. Councilmember David Grosso has convened a working group to address education for vulnerable youth populations in D.C., including committed youth. One of the desired outcomes of the working group is greater fidelity to the MOA. Matthew Nocella, *Interagency Working Group Releases Recommendations to Improve Education of Students in the Care of the District of Columbia*, Office of Councilmember David Grosso (July 18, 2018), <http://www.davidgrosso.org/grosso-analysis/2018/7/18/interagency-working-group-releases-recommendations-to-improve-education-of-students-in-the-care-of-the-district-of-columbia>.

¹⁰⁰ See D.C. DEP'T OF YOUTH REHAB. SERV., COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON THE JUDICIARY PERFORMANCE OVERSIGHT HEARING PRE-HEARING QUESTIONS AND ANSWERS: SERVICES FOR COMMITTED YOUTH, Question 2 (2016), http://dccouncil.us/files/user_uploads/budget_responses/ServicesforCommittedYouth_123.pdf (discussing how critical a care coordinator's role is in ensuring that a committed youth with special education needs is provided with adequate support).

multiple drug tests, which have come back positive for marijuana, and Terrence has forgotten to charge his GPS a few times as well. This also isn't the first time Terrence has forgotten to call Mr. Green. Mr. Green has repeatedly berated Terrence for his non-compliance, but it has not led to any behavior change.

Mr. Green is not aware of what Terrence's home life is like besides the fact that he lives with his grandmother; Mr. Green has only occasionally invited Terrence's grandmother to TDMs. Terrence's grandmother does not really understand how commitment works, and is confused about Mr. Green's role. After the metro incident, Mr. Green, fed up with Terrence, decides to put him in a group home. No TDM is convened; Mr. Green gives Terrence's grandmother a quick call to let her know this is happening, and a few days later Terrence is expected to show up at the group home, where he remains until his commitment ends several months later.

Terrence's story raises two critical issues: the consequences of not actively engaging a youth's family and the nearly unchecked power that DYRS has over a youth's liberty. His Care Coordinator, perhaps knowing that ultimate authority rests with him to make all decisions regarding Terrence, decided to take Terrence away from his family because of a series of compliance issues that he failed to explore or try to understand why they were happening – and to distinguish real issues (drug dependency) from non-issues (falling asleep on the metro). Terrence's grandmother plays no active role in DYRS' decision-making process; DYRS occasionally informs her of what is going on, but her role as primary caregiver seems to mean little, even though Terrence will be going right back home when his commitment ends.

Reversing the persistent lack of engaging families of committed youth has been a top priority for Director Lacey.¹⁰¹ Under his leadership, DYRS has pushed forth several encouraging initiatives to better engage

¹⁰¹ See, e.g., Bruce Johnson, *D.C.'s Revolving Door of The Juvenile Justice System*, WUSA-TV (May 10, 2016), <http://www.wusa9.com/news/local/revolving-door-of-the-juvenile-justice-system/183222979> (quoting Director Lacey: "The flaw, the fatal flaw of course, was that there was no real bridge to the community and no investment in the family, or very little investment in the family, in the neighborhood where the young person is returning. . . . It's certainly a collaborative effort that's going to require all the resources that the city has to bring to bear. It's the educational system, it's behavioral and health. It's housing, it's employment. It's all of those factors."); *Hearing 2018, supra* note 12 at 5:54:14 (In describing changes to DYRS in the past 18 months, Director Lacey testified, "DYRS has also placed parent and family engagement at the heart of the case planning process. Our families are now intimately involved with the agency's programming and support services for our young people because we understand that a stable and supportive home is critical to the youth's long-term stability and success.").

families.¹⁰² In December 2017, DYRS also released a long-overdue family guide explaining commitment and what families' rights, responsibilities, and roles are.¹⁰³ But faithful and sustained implementation of needed changes will take time and quality assurance.

Director Lacey has stated that DYRS "realize[s] that youth belong to families, not to the government."¹⁰⁴ But the simplicity of this statement belies the fact that committed youth in fact *do* belong to the government and *are* treated as such. DYRS has legal custody of committed youth,¹⁰⁵ and Terrence's story highlights what can happen when DYRS abuses its legal power in making arbitrary decisions. Leaving youth in out-of-home placements until the end of their commitments sometimes happens, as it did to Terrence. These youth go back home without any transition plan or support to ensure that they and their families have what they need to keep the youth from being swept back into the juvenile justice (or adult) system. If DYRS believes that youth indeed belong to their families and recognizes that it is families – not DYRS staff – who will be there for youth once their commitment is over, then much needs to change.

Terrence's story also raises the issue of DYRS' total discretion over his liberty. The decision to put a youth on GPS, as Terrence was, is a decision DYRS can make on its own.¹⁰⁶ Having a GPS ankle monitor is a severe limitation on one's freedom, particularly for a young person. It not only alerts DYRS to the youth's location 24/7 (and can come with

¹⁰² *Anchored in Strength Family Support Groups*, D.C. DEP'T OF YOUTH REHAB. SERV., <https://dyrs.dc.gov/page/anchored-strength-family-support-group> (last visited Apr. 5, 2018); *Family Empowerment*, D.C. DEP'T OF YOUTH REHAB. SERV., <https://dyrs.dc.gov/service/family-empowerment> (last visited July 22, 2018) (Family Engagement Specialists serve as mentors for the youth's family members, assisting with everything from transportation to treatment); D.C. DEP'T OF YOUTH REHAB. SERV. (@DYRSDC), TWITTER (Oct. 20, 2017, 7:42 AM), <https://twitter.com/DYRSDC/status/921386195518619648> (advertising a weekend retreat at New Beginnings for the youth placed there and their families); see also *Hearing 2018*, *supra* note 12 at 5:08:25 (testimony from two representatives of the InnerCity Collaborative Community Development Corporation, one of the organizations contracted to provide Credible Messengers and Family Engagement Specialists to committed youth and their families: "[I]n order to help our youth, we have to help their families. Without affecting change around them, it is hard to motivate consistent change in them."); see also *Family Guide*, *supra* note 38, at 20.

¹⁰³ *Family Guide*, *supra* note 38.

¹⁰⁴ DYRS Mar. 3 Tweet, *supra* note 1.

¹⁰⁵ D.C. CODE §2320(c)(2) (2007); D.C. CODE §2-1515.04 (2012); 29 DCMR §1200.4 (2009).

¹⁰⁶ *Care Planning Handbook*, at H-41 to H-45 (2017) ("[T]he decision to place a youth on Electronic Monitoring is at the sole discretion of DYRS.").

restrictions on where a youth is allowed to be, as was the case for Terrence), but it is also bulky and easily visible, creating stigma and shame and undermining the confidential nature of juvenile justice system involvement.¹⁰⁷ It feeds into the development of a delinquent identity, rather than counter it.¹⁰⁸ Yet this weighty decision can be made unilaterally by the Care Coordinator, without opportunity for any type of formal challenge or appeal by the youth or an advocate.¹⁰⁹

Terrence was also removed from his home without ceremony. If DYRS wants to remove a youth from the home, it is supposed to conduct a Community Status Review Hearing first.¹¹⁰ Given the liberty interest at stake, the hearing is meant to serve as (minimal) due process for the youth. But DYRS does not require consultation with the youth's attorney and the youth can waive the hearing on his own, which is what happened in Terrence's case. A youth might waive his right to a hearing because he just wants "to get it over with," or is afraid something worse could happen if he doesn't agree to it. Understanding what is truly at stake when waiving your rights is something that is difficult for young people to understand because they are still growing and maturing.¹¹¹ The lack of procedural safeguards (such as, for example, having appointed counsel to advise the youth on both the waiver and the hearing) makes it more likely that youth who should *not* be removed from their homes *are* removed from their homes.

VI. How Arbitrariness Can Be Ameliorated and Youth Outcomes Improved

The previous section highlighted some of the entrenched arbitrariness of commitment and how youth outcomes suffer as a result. The examples touched on solutions, and this section is intended to expand on

¹⁰⁷ For more on the dangers of using electronic monitoring for minors, see Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297 (2015); *NJDC Assessment*, *supra* note 81, at 78. There is no empirical evidence that electronic monitoring is effective. It does not lower incarceration rates nor rehabilitate youth and it is not cost-effective. Electronic monitoring is also rarely subject to judicial oversight or scrutiny, as is the case with youth committed to DYRS.

¹⁰⁸ For more on the issue of adolescent development and identity formation, *see supra*, Section V.b.

¹⁰⁹ *See Electronic Monitoring*, *supra* note 106.

¹¹⁰ *See, e.g.*, D.C. MUN. REGS. TIT. 29, §1202.3 (2009).

¹¹¹ *See, e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) ("A child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception that are self-evident to anyone who was once a child himself.") (internal quotations omitted); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28 (2009).

those solutions. DYRS needs clear and transparent policies, procedures, and data by which to measure its effectiveness and independent actors (including the courts and defense attorneys) to use those policies, procedures, and data to hold DYRS accountable. Investment in these solutions could make the difference between rehabilitation and non-rehabilitation, the development of trust and mistrust in the system, and the development of a positive citizen identity and the entrenchment of a delinquent identity.

A. *Increase Public Disclosures*

An initial and critical step to promoting transparency and reducing arbitrariness that results in poor youth outcomes is to make all of DYRS' documents and data available online.

1. *Make All DYRS Documents Related to Procedures, Policies, and Programming Publicly Available*

Under Director Lacey, more of DYRS' materials have become available online, although not the latest case management manual. However, there are also instances where DYRS simply *lacks any procedures and policies at all*. As DCLY testified in 2015:

Having written policies and making them available to youth, families, and their advocates facilitates quality-assurance and promotes fidelity to research-based service models. The Council of State Governments Justice Center similarly advises that in order to produce the best public safety and youth development outcomes, juvenile justice systems should have written policies that guide the use of assessments and structured decision-making tools, service delivery, and community supervision. In recent years, DYRS has not provided written policies regarding these critical activities, limiting the ability of youth and families navigating the system, and those who represent them, to effectively advocate for appropriate treatment. In a similar vein, the lack of written policies has limited the ability of DYRS leadership to ensure line staff is delivering effective services.¹¹²

Accountability is elusive without policies and procedures by which to measure it.

¹¹² DCLY 2015 Testimony, *supra* note 75 (emphasis added).

The above testimony also highlights the critical point that it is not just service providers, but also DYRS staff that need to be held accountable. In an oversight hearing in 2016, then Judiciary Committee Chairman and Councilmember Kenyan McDuffie voiced concerns about holding service providers accountable for youth outcomes.¹¹³ While important, it overlooks the vital role of line staff. Line staff must be held to task – and that will only happen if there are public, written policies and procedures by which to measure their compliance.¹¹⁴

Even among existing resources, there are critical gaps in information. For example, the recently-released Family Guide does not include information on Community Status Review Hearings and the process for removing a youth from his home or moving the youth from a less restrictive to a more restrictive placement, nor does it describe under what conditions a youth can be placed under electronic monitoring. Even the Achievement Center's programming calendar is not available online. The youth must rely on the Care Coordinator to know anything and everything. So much of how youth, parents, and advocates currently navigate the system is by happenstance and by acquiring knowledge over time. To measure youth outcomes requires greater standardization, which in turn will make it easier to tailor treatment to a youth's needs as all options will be clear to everyone involved.

As for TDMs, there are many recommendations for improvement, but this paper will only highlight some of them. At most TDMs, there is a facilitator. Facilitators have a neutral role, which puts them in an excellent position to hold all parties accountable. Facilitators should:

- *Send out a calendar invitation to each meeting and include all relevant parties*, including, but not limited to, the youth, the youth's family, the youth's attorney, the Care Coordinator, mentors, and service providers. The youth should be consulted on whom he would like to have in attendance.
- *Send out a request for meeting topics prior to the meeting*. TDMs are automatic and their agendas are boilerplate and static. Input from the youth and

¹¹³ *Fiscal Year 2015-2016 Performance Oversight: Department of Youth Rehabilitation Services: Hearing Before the D.C. City Council Committee on the Judiciary* at 32:00 (Mar. 3, 2016), available at http://208.58.1.36:8080/DCC/March2016/03_03_16_Judici_2.mp4 [hereinafter *Hearing 2016*].

¹¹⁴ A new care coordinator manual is now available, but it is not public and has major gaps. For more, see *Care Planning Handbook*, *supra* note 42.

stakeholders would help set the agenda and let everyone know what they should be prepared to talk about. In reaching out, the facilitator should also remind everyone of what they promised to do at the last meeting and to remind them that they will be called upon to report back on their progress.

- *Discuss whether to terminate commitment.* Discussion of whether it is time to end the commitment is not a regular agenda item, but given how controlling commitment is over a youth's life, perhaps it should be.¹¹⁵ Furthermore, the *Jerry M.* Consent Decree required that DYRS review on a monthly basis the "status of all detained or committed children" to see if "less secure confinement" was appropriate¹¹⁶ – a far more frequent check-in than TDMs' 90-day schedule.¹¹⁷
- *Send out notes from the meeting with a to-do list for each party.* Even though the facilitator or another DYRS staff member usually takes notes, those notes are not always shared with the participants and there is no follow-up email to remind everyone of their responsibilities. This lack of follow up risks the possibility that nothing gets done between one TDM and the next, the youth goes without needed services, the youth remains committed, and DYRS staff is not held accountable.

While basic and common sense, these recommended practices have not permeated day-to-day operations, as was highlighted in Section V, *supra*. TDMs serve a useful purpose in ensuring that not too much time passes before all stakeholders come together and check in on a youth's commitment. But TDMs invariably serve as opportunities to hold only the youth accountable and criticize the youth for his lack of compliance, rather than as opportunities to hold everyone in the room accountable.

2. Regularly Publish Outcome Data

In addition to making publicly available all documents related to commitment, DYRS should also regularly publish outcomes data. In the

¹¹⁵ See D.C. CODE § 16-2322(a)(4) (2017). DYRS only has the authority to unilaterally end a commitment if the youth's commitment is unrestrictive. If it is restrictive, the court would have to authorize early termination.

¹¹⁶ *Jerry M.* Consent Decree, *supra* note 67, at 6.

¹¹⁷ See *Care Planning Handbook*, *supra* note 42, at F-11, F-15.

past few years, DYRS has laudably diversified outcomes data to include academic progress, family engagement, and participation in positive youth development services.¹¹⁸ As to recidivism, however, DYRS only provides six-month¹¹⁹ and one-year snapshots of recidivism rates,¹²⁰ which is insufficient to evaluate DYRS' effectiveness. What is truly needed is a multi-year, nuanced evaluation that addresses desistance (which measures both the severity and frequency of reoffending)¹²¹ and the rate at which committed youth end up in the adult system.¹²² Indeed, if the juvenile system fulfills its rehabilitative purpose, no youth should end up in the adult system. And if a young person does, the public should know about it,¹²³ and DYRS (as well as other relevant partner agencies) should be held accountable if it did not properly serve that young person. In recognition of the importance of gathering better data, one of the 2017 Strategic Initiatives of DYRS was to collect "public safety outcome data for youth whose

¹¹⁸ See D.C. DEP'T OF YOUTH REHAB. SERV., FY2017 PLAN (Dec. 15, 2015), available at <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DYRS17.pdf> (demonstrating the introduction of several new performance measures in FY16, to be reported on beginning in FY17).

¹¹⁹ FY2016 PERFORMANCE ACCOUNTABILITY REPORT, *supra* note 61, at 5 (describing recidivism rate for youth leaving New Beginnings (i.e. the "Model Unit Program")).

¹²⁰ See *Public Safety Indicators*, D.C. DEP'T OF YOUTH REHAB. SERV., <http://dyrs.dc.gov/page/public-safety-indicators> (last visited March 2, 2018). DYRS defines recidivism as a new (juvenile or adult) conviction in Washington, D.C. within one year of the youth "being placed in or returned to the community." This is a confusing definition, as many committed youth are serving out their commitment in the community, thus it does not refer to the one year after a youth's commitment has ended, which would be a more useful data point in measuring DYRS' effectiveness – and not whether one year in, the youth has adjusted to commitment, particularly since many youth (if not most) are committed for multiple years; See also TRACKING YOUTH SUCCESS, *supra* note 27, at Question 5c.

¹²¹ See, e.g., Jeffrey A. Butts & Vincent Schiraldi, *The Recidivism Trap*, THE MARSHALL PROJECT (Mar. 14, 2018, 10:00 PM), https://www.themarshallproject.org/2018/03/14/the-recidivism-trap?utm_medium=email&utm_campaign=share-tools&utm_source=email&utm_content=post-top (discussing the insufficiency of recidivism as a metric of the success of any juvenile or criminal justice program and proposing desistance as a more effective measurement).

¹²² See, e.g., *Youth Population Snapshot*, *supra* note 23. Even while still committed, some youth end up in the adult system; Abby Taskier, *DC's Youth Face Solitary Confinement in District Jails and Federal Prisons*, SOLITARY WATCH (Dec. 19, 2013), <http://solitarywatch.com/2013/12/19/dcs-youth-face-solitary-confinement-district-jails-federal-prisons/>.

¹²³ In the aggregate. Maintaining confidentiality about juvenile court involvement is vital. Thus, this suggestion would imply having data on how many youth who were formerly committed end up in the adult system without revealing their names.

commitments have expired[,]”¹²⁴ although this goal is not mentioned in the 2018 Strategic Initiatives.¹²⁵

Published data on recidivism shows that recidivism rates are steadily falling.¹²⁶ What is particularly fascinating about the recidivism data, however, is what it reveals about where youth are placed. Recidivism data for youth placed at home is lacking for FY13 and FY14 because *so few youth were placed at home* initially,¹²⁷ even though DYRS’ mission is to always place youth in the least restrictive setting possible.¹²⁸ Hopefully as the data for FY15 onward is published, the statistics will have changed to reflect more initial home placements, given Director Lacey’s leadership in emphasizing community-based placements whenever consistent with public safety. As mentioned in Section V.b, placing youth in more restrictive settings than is necessary can actually increase their likelihood of recidivism, suggesting that there may be a link between the higher rates of recidivism among youth sent to secure placements (45%) versus community-based placements (21%),¹²⁹ although there may be other factors at work as well, such as youths’ initial risk levels.

The requirement to publish outcomes data would not only hold DYRS line staff, leadership, and service providers accountable, but would also draw more interest and attention from the community at large, which in turn would hopefully improve the quality of DYRS’ work. As DCLY points out:

DYRS asserts that it collects numerous outcomes and measures to evaluate the agency’s performance. However, this data is only infrequently and incompletely shared with the public. This makes it very difficult to for [sic] researchers, advocates, journalists, and the public at large to independently verify the agency’s success. Information like the size of DYRS sub-populations, re-arrest and re-conviction rates, and positive youth development indicators would be exceptionally useful to identify successful DYRS initiatives, gaps in programming, funding needs, and trends in the agency’s activities. Providing this information would

¹²⁴ *Strategic Objectives*, *supra* note 41.

¹²⁵ *Id.*

¹²⁶ *Public Safety Indicators*, *supra* note 120.

¹²⁷ *Id.*

¹²⁸ *See Mission and Vision*, *supra* note 72.

¹²⁹ *Public Safety Indicators*, *supra* note 120 (FY14 is the last year that data is available for both secure and non-secure placements).

be consistent with Mayor Bowser's stated intention to make the District's government 'one of the most open and transparent systems.'¹³⁰

The public dissemination of outcome metrics is vital to accountability.

B. Actively Involve the Courts and Defense Attorneys in Post-Disposition

At this point, the reader may feel that all DYRS needs to do is to continue to improve internally and build on the progress it is making; clear policies, measurable outcomes, and accountability mechanisms are integral components of any functioning agency or business. Indeed, in addition to its progressive new director, DYRS has a new strategic plan that involves lots of staff training, a recommitment to the Positive Youth Development model, and use of Restorative Justice.¹³¹ However, these changes will not be enough. Having a more balanced accountability system – where D.C. Council, the court, and defense attorneys all have a role in overseeing DYRS – will help ensure that the quality of DYRS' work is high even when there are (inevitably) changes in leadership and funding.

The explosion in problem-solving courts in the past few decades demonstrates the danger of relying on government agencies to fix themselves. As Professor Michael C. Dorf explains:

Is there any justification for choosing experimentalist courts rather than experimentalist agencies? The short answer, as with other broken institutions, is necessity. As a matter of first principle, there will often be no good reason to prefer problem-solving courts to problem-solving agencies; in fact, the latter may be the more appropriate tool. However, politics and legislative inertia will often prevent the creation of an appropriate agency – which leaves courts to fill the gap.¹³²

It may be that making the suggested changes will allow DYRS to continue to monitor itself, with periodic oversight hearings from D.C. Council. But if DYRS needs court oversight to hold it accountable to its mission and purpose, then so be it.

¹³⁰ *DCLY 2015 Testimony*, *supra* note 75.

¹³¹ *Community Report*, *supra* note 35, at 10.

¹³² Michael C. Dorf, *Legal Indeterminacy and Institutional Design*, 78 N.Y.U. L. REV. 875, 945 (2003).

1. The Role of the Court

In problem-solving courts, the judge “supervises the defendant’s compliance with [his treatment] plan by requiring reports from the treatment coordinators and by requiring routine appearances or reports from the defendant and/or his or her counsel.”¹³³ All parties are held accountable – the defendant, government agencies, and service providers – and all are committed to, and have a stake in, a singular goal: the defendant’s success, in whatever form that takes (e.g., ending a drug addiction).¹³⁴ Drug courts recognize that addicts relapse, and plan accordingly, providing incentives and when needed, applying sanctions in a graduated fashion.

The juvenile court should return to this essence of being a problem-solving court. The juvenile court should recognize that youth are at a critical stage of development and are capable of abiding by the law, but they need to learn through trial and error and will make mistakes repeatedly. They are also part of ecosystems (i.e. their family, their neighborhood, their school) that youth have little control over,¹³⁵ so support must be given to those ecosystems to ensure that they, in turn, are supporting the youth. With check-ins and clearly defined procedures and goals, rehabilitation may no longer be such an elusive outcome. Such a structure is already the norm in the D.C. Superior Court Juvenile Behavioral Diversion Program, a problem-solving court for youth with severe mental health issues,¹³⁶ thus making it the norm in all juvenile cases should be feasible.

Furthermore, the only person who suffers if DYRS fails to do its job is the youth.¹³⁷ The youth racks up violations and charges; he is stigmatized and deemed a failure; he is released without having received what he needs, making it difficult for him to be a productive member of his community. But the agency remains unscathed; its funding is not tied to youth outcomes and no one loses his or her job if a youth ends his commitment worse off

¹³³ Megan F. Chaney, *Keeping the Promise of Gault: Requiring Post-Adjudicatory Juvenile Defenders*, 19 GEO. J. POVERTY L. & POL’Y 351, 376 (2012).

¹³⁴ Dorf, *supra* note 132, at 886 (“Experimentalist trial courts, sometimes called ‘problem-solving courts,’ are structured along the same lines as their administrative counterparts. For example, drug courts--to date the most widespread exemplars of problem-solving courts--serve primarily to monitor the performance of defendants and treatment providers.”).

¹³⁵ See, e.g., *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 470 (2012)). One of the differences the Supreme Court mentions that distinguishes youth from adults, and therefore justifies differentiated treatment for youth, is the fact that youth “have limited ‘control over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.”

¹³⁶ See *JBDP*, *supra* note 8.

¹³⁷ And, arguably, the public, if the youth continues to engage in criminal activity.

than when he started it. This lopsided accountability system is tied to the fact that the juvenile system is supposed to be focused on rehabilitation and not punishment:

Because of juvenile courts' structures, an adjudicated youth cannot bargain with his punishment by trading years of his sentence for treatment in the way that an adult criminal may in a drug court . . . Because the justice system assumes that the child is not punished, but instead is rehabilitated, if the court [or the agency] does not deliver the promised results, juvenile offenders cannot opt out of poorly functioning programs. Juvenile offenders have no ability to opt out of the rehabilitative care that the state offers them.¹³⁸

As Penelope Spain, CEO of Open City Advocates, testified before the D.C. Council Judiciary Committee in March 2016, participation in programming for committed youth is *not* voluntary but rather is done in "cookie-cutter fashion," with every youth being required to engage in essentially the same programs. Yet the youth is held to task if he fails to succeed in programming that he does not want and/or that does not actually address his needs.¹³⁹ Having more youth input into their treatment plans is thus essential to rebalance and redistribute accountability.

Unfortunately, youth will continue to be committed to DYRS regardless of the effectiveness of commitment. As Professor Megan F. Chaney explains:

If drug treatment programs mandated by drug courts did not produce sober people, there would be no point in submitting to state control for an indefinite amount of time, and, arguably, there would be no point to drug court at all. To survive, drug courts must be successful. In contrast, because a juvenile cannot voluntarily choose to participate in rehabilitation programs, there are fewer assurances that these programs are actually effective. Juvenile courts are guaranteed a steady stream of adjudicated youth regardless of rehabilitation programs' success rates.¹⁴⁰

There is no proof that the treatment model at New Beginnings works, nor that electronic monitoring works, nor that *any* of DYRS' programs work. Some of the more recent programs that seem very promising, such as the

¹³⁸ Chaney, *supra* note 133, at 374-75.

¹³⁹ *Hearing 2016*, *supra* note 113, at 58:00.

¹⁴⁰ Chaney, *supra* note 133, at 380 (emphasis added).

Credible Messenger program, will require time to evaluate their impact. Until the decision to commit a youth and fund DYRS is tied to better youth outcomes, change on the scale that is needed will remain elusive.

As mentioned earlier, D.C. Superior Court has been involved in overseeing the deep end of D.C.'s juvenile justice system before. The *Jerry M. Consent Decree* required an overhaul of everything DYRS does with youth at or leaving from New Beginnings and YSC.¹⁴¹ Yet *thirty years* have now passed since the consent decree went into effect, and DYRS still has not satisfied all of its conditions.¹⁴² DYRS' ongoing struggle to comply with the *Jerry M. Consent Decree* points to why additional judicial intervention on an individual youth level on a consistent basis – rather than solely a yearly, macro-level oversight hearing before the D.C. Council – may offer a more effective solution.

Current juvenile court rules do provide for some post-disposition follow up for committed youth,¹⁴³ which in practice are TDMs, but as detailed above, there are severe limitations to the effectiveness of TDMs in protecting a youth's liberty interests as well as ensuring a youth's rehabilitation. This would change if both the juvenile court and attorneys were more involved in the post-disposition phase for committed youth. Periodic check-ins with the court occur occasionally in probation cases, and youth have counsel present and the judge inquires as to whether probation services are working for the youth. The irony is that the oversight the court provides when a youth is on probation disappears if a youth receives the harsher sentence of commitment, which generally lasts far longer than probation and which creates the potential for far more serious liberty issues.

Granted, there is absolutely a place for informality in the juvenile justice system. Having to rely on the court to approve every decision regarding a youth's care can create counter-productive inefficiencies and

¹⁴¹ See *Jerry M. Consent Decree*, *supra* note 67.

¹⁴² See *Hearing 2018*, *supra* note 12, at 6:21:40 (discussion of how four of the original twelve goals from the *Jerry M. consent decree* remain outstanding, including having accurate data on critical incidents of assault in secure facilities and providing adequate behavioral and mental health services for youth).

¹⁴³ D.C. SUPER. CT. R. JUV. PROC. 32(g), available at <https://www.dccourts.gov/superior-court/rules> (requiring review of disposition within 30 days of dispositional order if youth was placed in an "institution, hospital, or agency upon specified conditions"); D.C. SUPER. CT. R. JUV. PROC. 32(h) (the director of DYRS "shall conduct a periodic evaluation of the child to determine if rehabilitative progress has been made and if the services provided to the child have been effective, and to determine, in conjunction with the child, the child's attorney and the OAG, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the child and the safety of the public. At least one evaluation shall be conducted during the course of the . . . commitment.").

formalities and turn small issues into much bigger deals than is necessary. Having to go to court is stressful and means disrupting work, school, and programming.¹⁴⁴ But the purpose of greater court involvement is to have more oversight to hold the adults in the room accountable. Committed youth and their attorneys should be able to rely on the court more to hold DYRS and its service providers accountable. To strike the proper balance between flexibility and accountability will always be challenging. But the scale is currently tipped too far in favor of flexibility, with committed youth suffering as a result.¹⁴⁵

As mentioned above, additional court involvement would have to be accompanied by greater transparency through the creation and dissemination of clear policies and procedures for all of DYRS' operations. If the latter happened, then the court would be in a much better position to serve as an oversight body because there would be standards and rules the court could point to in measuring DYRS' compliance and success. In other words, juvenile justice would become justiciable, instead of being guesswork.

Finally, greater court involvement is necessary if the number of youth committed is to decrease (short of eliminating commitment). It is the courts, after all, that decide whether to commit a youth.¹⁴⁶ Thus even if

¹⁴⁴ In my experience, one reason youth do not enjoy appearing in court is the disturbing practice of shackling youth in court – ankle chains and handcuffs connected to a belly chain. In 2015, D.C. Superior Court changed its policy to require judges to make a case-by-case determination if shackling is necessary, but in practice, routine shackling is still the norm. This inhumane and traumatic practice deserves many papers of its own. It is an example of how power sharing can help improve youth outcomes, as ending the practice of shackling may require legislation via D.C. Council.

¹⁴⁵ Greater court involvement also comes with the assumption that juvenile judges will be adequately trained on issues such as adolescent brain development and trauma-informed care so that they are understanding and up to date on how youth behave, what reasonable expectations are for the youth before them, and what strategies work. Otherwise, a youth may find himself worse off under court orders than under DYRS. For example, eliminating commitment will not eliminate the option (or the desire) to incarcerate youth. Before *In Re P.S.*, 821 A.2d 905 (D.C. App. 2003) gave DYRS full authority over placement decisions of committed youth, the court regularly ordered secure placements for committed youth. Furthermore, prior to the passage of the Comprehensive Youth Justice Amendment Act in 2017, which significantly restricts the circumstances under which the court can detain youth pretrial, the court regularly detained youth pretrial. See *Comprehensive Youth Justice Amendment Act of 2016*, 63 DCR 15312 (2017); *NJDC Assessment*, *supra* note 81, at 77. Better and consistent training – as well as faithful implementation of that training – for all stakeholders is always a good idea. One challenge to doing so in D.C. is the fact that judges in the juvenile court change roughly every two years.

¹⁴⁶ D.C. SUPER. CT. R. JUV. PRO. 32, available at <https://www.dccourts.gov/superior-court/rules>; D.C. CODE §2320(c) (2007); D.C. CODE §16-2322(a)(4) (2005).

DYRS operated perfectly, judges still have the authority to send a youth to the deep end of the juvenile justice system. Having judges more involved once a youth is committed could help judges see that fewer youth need to be committed and may translate into pressure and accountability for other system players to do their part in addressing youth needs outside of the deep end of the juvenile justice system – and hopefully, outside of the juvenile justice system altogether.

2. The Role of the Defense Attorney

Greater involvement of the court does not mean that it is simply the judges who are keeping an eye on DYRS. Problem-solving court judges recognize that they are not mental health or drug addiction or housing experts, so they must rely on other players such as attorneys to understand both the problems and solutions. Unfortunately, most defense attorneys disappear once a youth is committed.¹⁴⁷ Their absence is counter-productive, as the post-disposition phase is where the entire purpose of the juvenile court – rehabilitation – is supposed to take place.

The defense attorney plays a vital role in making sure that DYRS actually rehabilitates its youth.¹⁴⁸ Professor Chaney powerfully summarizes the role of the juvenile attorney in the post-disposition phase:

A lawyer provides voice and power in a system for which a child is at mercy. A juvenile client has no one in the dispositional phase that he or she can trust who is not a state agent. An attorney uniquely positioned to explain his or her situation to him or her, visit him or her at the treatment programs, evaluate and observe his or her success in the program firsthand would give a juvenile a legitimate position in his or her own treatment. . . . The notion that a defense attorney may pop into a program to check on its procedures at any time would create a sense of responsibility among the treatment facilitators, which, in turn, would promote excellence in the program. Knowing that someone is

¹⁴⁷ See *NJDC Assessment*, *supra* note 81, at 65-70, 89, 111.

¹⁴⁸ Post-disposition representation is recognized as a part of the aspirational National Juvenile Defense Standards. See NAT'L JUVENILE DEF. CTR. & MODELS FOR CHANGE, NATIONAL JUVENILE DEFENSE STANDARDS 23, 114, 120, 124 (2012), <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>. Relevant standards include 1.4 (Scope of Representation), 6.8 (Review Final Disposition Plan and Collateral Consequences of Disposition), 7.1 (Maintain Regular Contact with Client Following Disposition), and 7.5 (Represent the Client Post-Disposition).

watching is a legitimate reason for treatment providers to want to be successful in their pursuits.¹⁴⁹

The defense attorney is the *only* person whose role it is to represent and advocate for the youth's *expressed* interests, not his best interests as determined by the Care Coordinator and other DYRS staff. It is the attorney's ability to give the client a voice that can make commitment successful. The attorney can simultaneously hold DYRS to task and secure the client's buy-in that is necessary to 1) push for services and programming that are actually what the youth needs and thus 2) improve youth outcomes because the youth will feel vested in the process, rather than merely a pawn of the system who is better off keeping his head down until the ordeal is over.¹⁵⁰

Despite the critical role that attorneys can play in the post-disposition phase, DYRS has long been ambivalent – and sometimes blatantly opposed – to involving attorneys in a youth's treatment plan.¹⁵¹ Fortunately, the new case management manual (still not publicly available) robustly encourages attorney participation in TDMs, but enforcement of this new approach will take time. Regularly notifying attorneys of opportunities to engage in the post-disposition process – and requiring them to appear in court to report on what they observed – would likely result in many more

¹⁴⁹ Chaney, *supra* note 133, at 384.

¹⁵⁰ *See id.* at 387 (“Without an advocate specifically appointed to represent the child's continuing interest in due process, one cannot be entirely sure if 1) the child is being rehabilitated, 2) the time he is spending in juvenile custody is achieving rehabilitation, 3) that the specific programs designed to make him a law-abiding citizen are in fact working, and 4) that the time he is spending under state control and custody is meaningful and rationally related to his transformation to a law-abiding citizen.”).

¹⁵¹ *See, e.g.,* D.C. DEP'T OF YOUTH REHAB. SERV., TEAM DECISION-MAKING BROCHURE (2014) (describing attorney attendance at TDMs: “What are the pros & cons of having attorneys attend? Legal and social work professionals may both gain in their knowledge of each other's field if attorneys participate in TDM. At times, lawyers may be able to clear up confusing issues, and case managers may be able to enlighten attorneys about matters of risk, safety and permanency. Also, if the attorney is present during the TDM process, there leaves little room for objection once the plan is presented in court. On the other hand, many participants may not be comfortable speaking freely in the presence of lawyers, and if the lawyer does not understand the TDM process and the purpose of the meeting, they can unintentionally sabotage the meeting. It is recommended that they be included in all TDM meetings.”). The belief that attorneys may “sabotage” TDMs can be corroborated anecdotally. For over a year, one case manager refused to notify the youth's attorney about TDMs and if the attorney somehow found out and came, the case manager would protest her presence. Another case manager said that most attorneys just “throw a monkey wrench into things.” Another shared that if giving youth a voice at TDMs was the issue, all that was needed was for youth to attend.

attorneys remaining vested in their clients' goals post-sentencing.¹⁵²

Consider the difference an attorney could have made for DeAndre and Terrence. Any check-in with the court would pit DYRS' word against the youths'. DeAndre's attorney could testify to the circumstances regarding the missed TDM and call the vice principal as a witness if necessary. DeAndre's attorney could explain the efforts DeAndre made to get his Care Coordinator to fix his scheduling error and convince the court that DeAndre's absences from his programming are not his fault and therefore do not form a basis for imposing more restrictions on him. Terrence's attorney could have challenged the use of GPS, chronicled Mr. Green's chronic lack of engaging Terrence's grandmother in any decision-making that contributed to Terrence's removal from the home, and at the very least, advised Terrence on whether to sign the hearing waiver.

Consider Mike as well. If attorneys were required to be engaged in their clients' commitment, perhaps a policy could be put in place that requires DYRS to contact the attorney immediately anytime a youth absconds. Since Mike is an adult, he will have an adult attorney in court, but his juvenile attorney could provide immense support in building his case and possibly getting the charge dismissed. At the very least, the juvenile attorney could provide support at sentencing, such as by informing the adult attorney about the option to advocate for the Youth Act, a provision of the D.C. Code that provides for a version of expungement for certain offenses committed by young people ages 18-21.¹⁵³ If court check-ins were mandated, the attorney could articulate Mike's story and explain DYRS' responsibility in failing to enroll Mike in school and the court in turn could require DYRS to either dismiss the charge and/or enroll Mike in school.

If DYRS had clear policies and procedures, the attorney could point to them in demonstrating DYRS' non-compliance and flesh out the narrative tying that non-compliance to the youth' perceived failures. Greater

¹⁵² The mechanisms for paying attorneys for post-disposition representation would also need to change. In D.C., attorneys can receive funds for post-disposition representation, but the process is opaque, and few attorneys take advantage of it as a result. *See NJDC Assessment, supra* note 81, at 33-36.

¹⁵³ D.C. CODE § 24-901(6) (2018). The Youth Act was just amended to expand eligibility to young people up to age 24 at the time of the offense. Erik Salmi, *Reforming the "YRA": The "Youth Rehabilitation Amendment Act of 2018"*, Office of Councilmember Charles Allen (May 4, 2018), http://www.charlesallenward6.com/the_latest_on_the_youth_rehabilitation_amendment_act; Erik Salmi, *DC Council Unanimously Passes Councilmember Allen's Youth Rehabilitation Amendment Act*, Office of Councilmember Charles Allen (July 10, 2018), <https://thedcline.org/2018/07/10/dc-council-unanimously-passes-councilmember-allens-youth-rehabilitation-amendment-act/>.

transparency would be an excellent step forward. However, the utility of transparency would only be fully realized if there are those who can use the transparency to hold DYRS accountable. One key actor of accountability is the attorney.

VII. Eliminating Commitment

The reforms analyzed in the prior section must occur regardless of whether commitment remains a disposition in D.C. However, even if all of the above reforms were implemented, commitment still needs to be eliminated to address the racial and socioeconomic disparities that plague the D.C. juvenile justice system. The overwhelming majority of youth in the D.C. juvenile justice system are poor African-Americans.¹⁵⁴ Although the juvenile justice system has improved dramatically since the days of *Gault* (and in D.C., since the days of Oak Hill), how much “justice” a juvenile receives still seems to depend on the color of his skin and his zip code. Indeed, for black youth in D.C., the juvenile justice system seems to have become the gatekeeper to the types of services that youth need and want, but are simply not available in their communities otherwise.

Why has that gate been constructed? Is there an implicit assumption that black youth, as a rite of passage, will go through the system and only then, in a state of crisis, are their needs considered serious enough that resources are invested? “Themes that dominate the history of system-involved black children . . . disparate expectations . . . inadequate services . . . [s]ocial control, lack of parental empowerment, reservation of resources for other children, and the presumption of criminality”¹⁵⁵ persist today in D.C. Regardless of what good DYRS has to offer the youth in its care, the structure of commitment still normalizes the racist idea that black youth must be highly surveilled and highly controlled. If this conclusion sounds dramatic, recall that 64% of committed youth in FY17 were committed for misdemeanors.¹⁵⁶ Low-risk youth are being channeled into the deep end of the juvenile justice system at high rates. Note, too, how often black (and other minority) youths’ entry into the juvenile justice system is not because of a crime, but because of a status offense such as running away or

¹⁵⁴ See *Birckhead*, *supra* note 25; see also JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 1, 4 tbl. 1 (2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>.

¹⁵⁵ Sterling, *supra* note 84, at 622, 678.

¹⁵⁶ *Youth Population Snapshot*, *supra* note 23.

truancy,¹⁵⁷ disciplinary issues at school, or family conflict.¹⁵⁸

This paper is *not* saying, “DYRS is a racist institution and we must therefore abolish it.” But commitment – the structure of how many black youth pass through D.C.’s juvenile justice system to (maybe) receive help – arguably is. What may be driving poor outcomes for youth is a subtle form of racism: institutional inertia and apathy built up over decades of handling generation after generation of the same population and believing it was good enough for those youth. The system has for so long assumed that it works well enough for youth to not really do anything about it, and those who know it is not working – the youth and their families – have not been empowered to challenge that assumption.¹⁵⁹

If commitment were abolished, there is a legitimate risk that it would expose the uncomfortable truth that commitment is simply not needed even close to the level it is depended upon now. So much of what it seeks to do can be done outside of its structure and without transferring custody from a youth’s parents to the government. In other words, ending commitment might make clear that at least some youth in DYRS’ custody do not need to be in the juvenile justice system, and certainly not in the deep end. All they need is access to services, programs, and support their wealthier peers take for granted and to be allowed to just be kids and grow up on their own without being highly surveilled and highly controlled. DYRS leadership has

¹⁵⁷ See, e.g., *Struggles Persist*, *supra* note 73 (discussing the reality that some youth in D.C. are incarcerated for status offenses such as running away, truancy, and breaking curfew); *Hearing 2018*, *supra* note 12, at 6:45:00 (Director Lacey discussing how he believes many youth, including PINS, are wrongfully committed and are better served in systems “upstream,” rather than in the deep end of the juvenile justice system); YASMIN VAFA ET AL., RIGHTS4GIRLS & GEORGETOWN JUVENILE JUSTICE INITIATIVE, BEYOND THE WALLS: A LOOK AT GIRLS IN D.C.’S JUVENILE JUSTICE SYSTEM 23-29 (2018), <http://rights4girls.org/wp-content/uploads/r4g/2018/03/BeyondTheWalls-Final.pdf> (analyzing the types of charges that form the basis for arrests and commitments of girls versus boys in D.C.) [hereinafter *Girls Report*].

¹⁵⁸ See, e.g., Sterling, *supra* note 84, at 676-79; ROVNER, *supra* note 154; Rebecca Klein, *Moving Student Photos Document School-To-Prison Pipeline*, HUFFINGTON POST (Nov. 3, 2014), http://www.huffingtonpost.com/2014/11/03/critical-exposure-school-to-prison-pipeline_n_6094376.html (showing student photos that demonstrate the school-to-prison pipeline in Washington, D.C.); TONY FABELO ET AL., COUNCIL OF STATE GOV’TS JUSTICE CTR., PUB. POLICY RESEARCH INST., BREAKING SCHOOLS RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT (2011), https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

¹⁵⁹ For more on racism in the juvenile justice system, particularly as it relates to youth prisons and their relationship to slavery, see Youth First Initiative, *Jim Crow Juvenile Justice*, YOUTUBE (Feb. 8, 2018), <https://youtu.be/7hgXWK7-1ZM>.

publicly and repeatedly stated this and is making efforts to not only expand its existing services, but to hold D.C. accountable to providing more options and services outside of DYRS – indeed, with the hope that youth do not have to be arrested nor arrive in court to have their needs addressed.¹⁶⁰ This enlightened position is encouraging, but again, leadership changes, and there must be structural mechanisms in place to ensure that commitment to DYRS does not become the default for youth with unmet needs.

VIII. What Is the Alternative?

Given the above criticisms of commitment, it may seem counter-intuitive to suggest that DYRS should oversee more youth, but that is exactly what should happen. Commitment should be abolished and probation and commitment services, staff, and administration should be consolidated into one, with services provided to youth and their families as needed – meaning that higher risk youth would receive more services and lower risk youth would receive less intervention. Perhaps it would all be called probation or perhaps something else. But youth would not become wards of the District; parents would not have to relinquish legal custody to gain access to vital services and programs. Currently, there is no transparent process to access the resources DYRS has to offer, and accessing those resources comes at an enormous price.¹⁶¹ Parents who are now only too willing to give up their legal rights so that their child can access resources the family cannot afford might not do so if those resources were available otherwise.¹⁶² The only youth who should be in DYRS custody are those at YSC and New Beginnings, and only for the period of time in which they

¹⁶⁰ See *ACE Diversion Program*, *supra* note 8; Tom Coulter, *Diversion Program Keeps Kids Out of Prison and Off The Streets*, STREET SENSE MEDIA (June 28, 2017), <https://www.streetsensemedia.org/article/diversion-program-youth-homelessness/#.WqXoKWbMzdQ>. One potentially promising avenue is expanded access for youth to the ACE diversion program through school referrals, rather than just police or court referrals.

¹⁶¹ The resources available to youth through DYRS are extensive. In addition to those already mentioned, DYRS can and has helped with rent, driver's education, furniture, clothing, and much more. DYRS provides youth with financial incentives to go to school and get good grades. They help youth obtain jobs and go to college. However, as analyzed above, accessing anything is marred by an opaque and arbitrary process and requires relinquishing total control to the agency.

¹⁶² These proposed changes to the juvenile justice system could also help youth who are transitioning out of court involvement. Currently, committed youth can apply for extended services beyond the end of their commitment, and many youth want the extension. If services were always available, youth would not have to worry that services would dry up at an artificial time, perhaps before their needs were fully addressed. If services were always available, then youth would not have to be court-involved to get the help they need.

are there. DYRS' model should also shift to serving all D.C. youth, not just court-involved youth. The intermingling of court-involved youth with the general population could help prevent the entrenchment of a delinquent identity and foster faster rehabilitation.

Of course, this is easier said than done. The juvenile justice system is one of the areas where the fact that D.C. is not a state creates a complicated and bureaucratic difference. Most kids in D.C.'s juvenile justice system are on probation, but D.C. Council has no control over the services they receive, as probation is a program of D.C. Superior Court and is funded by Congress, not D.C. Council. On the flip side, this setup means that the court has almost no control over committed youth, as commitment is funded through D.C. Council. This split oversight is wasteful and counterproductive, as many youth cycle through both dispositions. Greater uniformity and standardization would protect more youth from arbitrary treatment and foster greater accountability. Consolidating juvenile justice services into one department that is operated and funded by the District would require major restructuring, but this paper has hopefully convinced the reader that major restructuring is needed if rehabilitation is actually going to occur – and if we as a society are serious about racial and socioeconomic justice.

DYRS is an agency in flux; under new leadership, DYRS seems to finally be counteracting entrenched inertia. But internal restructuring will not be enough to hold the agency accountable and to improve the D.C. juvenile justice system as a whole. The District's challenge at this moment is how to capitalize on the positive changes happening at DYRS to institutionalize them and use them to ensure that *all* youth in the system are protected. Having the court and attorneys more involved is critical, but their involvement will not fix everything either. It took the Council, for example, to eliminate solitary confinement for youth.¹⁶³ Furthermore, while publicly available data on committed youth is limited, it is voluminous in comparison to data for youth on probation, which the court oversees.¹⁶⁴ Everyone must roll up his or her sleeves to ensure that the juvenile justice system is fulfilling its purpose. As a committed youth who testified during a 2016 DYRS oversight hearing said, whatever it takes to fix the system, “just do it.”¹⁶⁵

¹⁶³ Councilmember Kenyan McDuffie, *The Comprehensive Youth Justice Amendment Act of 2016* (2016), <http://www.kenyanmcduffie.com/wp-content/uploads/2016/10/Juvenile-Justice-One-Page.pdf>; *Hearing 2018*, *supra* note 12, at 6:30:50.

¹⁶⁴ *See, e.g., Girls Report*, *supra* note 157, at 14, 20 (commenting on the difficulty of accessing data on youth on probation).

¹⁶⁵ *Hearing 2016*, *supra* note 113, at 35:00.