

SUPREME COURT OF NEBRASKA



ADMINISTRATIVE OFFICE OF THE COURTS & PROBATION

Corey R. Steel
State Court Administrator

Ellen Fabian Brokofsky
State Probation Administrator

MEMORANDUM

Date: October 27, 2015
To: Ellen Fabian Brokofsky, State Probation Administrator
From: Jeanne K. Brandner, Deputy Administrator
Kari Rumbaugh, Assistant Deputy Administrator
Subject: Response to the "Office of Inspector General of Nebraska Child Welfare, Annual Report 2014-2015"

This memorandum is in response to the 2014-2015 Annual Report of the Office of Inspector General (OIG) of Nebraska Child Welfare.

The Administrative Office of the Courts and Probation (AOC/AOP) is committed to reforming juvenile justice in Nebraska. The Courts and Probation have already begun positively impacting the lives of Nebraska's youth and families by implementing programming and processes that are consistent with nationally recognized evidence-based practices. The judges, probation officers, supervisors and administrative staff work diligently to deliver effective services and support.

The OIG's report states that reform takes time. It is, indeed, important to allow sufficient time to permit adequate evaluation. Additionally, the OIG discusses talking with the Department of Health and Human Services (DHHS) to clarify questions and ensure the accuracy of the data and statements reported. Probation Administration was given no such opportunity, rather, the OIG simply reported frustration regarding the court's process for providing confidential information from court records and a perceived lack of transparency and accountability.

During development of LB347 which sought to expand the OIG's authority regarding juvenile justice, Probation informed the OIG that a court order would be required to release confidential case record information. This process is in keeping with the statutory requirement for handling all confidential court information. While this procedure is clearly different from the process that currently exists for obtaining child welfare information, it is by no means an attempt to interfere with the OIG's authority or independence.

From the beginning, Probation has taken steps to work with OIG to ensure that probation's information could be efficiently obtained. Probation offered to facilitate requests for release of information from individual courts, thus minimizing the burden on OIG. The offer was refused.

Many overarching statements made in the OIG report did not include supporting data. This response includes relevant data from the Administrative Office of the Courts and Probation.

Formal Response:

OIG Report: Page 9/Reform Efforts not yet Achieving Desired Results:

“It is also reasonable to expect that more than two years into a coordinated reform effort that there be some movement in the right direction with more tangible improvements on the horizon.”

“Many of the areas where the OIG has identified significant shortcomings are directly related to the responsibilities and operations of the Juvenile Services Division of the Administrative Office of Probation.”

AOP RESPONSE

LB 561 states that between July 1, 2013 and June 30, 2014, the responsibilities of the Office of Juvenile Services (OJS) will be limited to the management of the Youth Rehabilitation and Treatment Centers (YRTC) and supervising the youth sent to them. The bill also states that the Juvenile Services Delivery Project will expand statewide by June 30, 2014. This means that the juvenile justice and status youth populations were not completely transferred from DHHS to the AOP until June 30, 2014. Therefore, since July 1, 2014, (15 months) youth transferred from DHHS and new youth have been under the purview of the AOP.

The AOP has made progress towards system improvement. Support has been requested and received from national experts including, Georgetown University’s Center for Juvenile Justice Reform, Annie E. Casey Foundation, Robert F. Kennedy National Resource Center for Juvenile Justice and the Council of State Governments (CSG) Justice Center, just to name a few. These professionals have supported and recommended specific areas of improvement that have been implemented, again showing progress. This includes the Juvenile Detention Alternatives Initiative (JDAI) in Douglas and Sarpy Counties which has resulted in a noteworthy reduction in unnecessary detention utilization. Another initiative is The Crossover Youth Practice Model, which is a collaborative and data sharing effort with DHHS.

Some of the initiatives included: implementation of a statewide validated assessment tool, targeting services to high risk youth, and responding with age appropriate programming (example: juvenile specific cognitive groups). In addition to utilizing the assistance of national experts, the AOP is engaged in collaborative efforts with Director Courtney Phillips and the DHHS executive team.

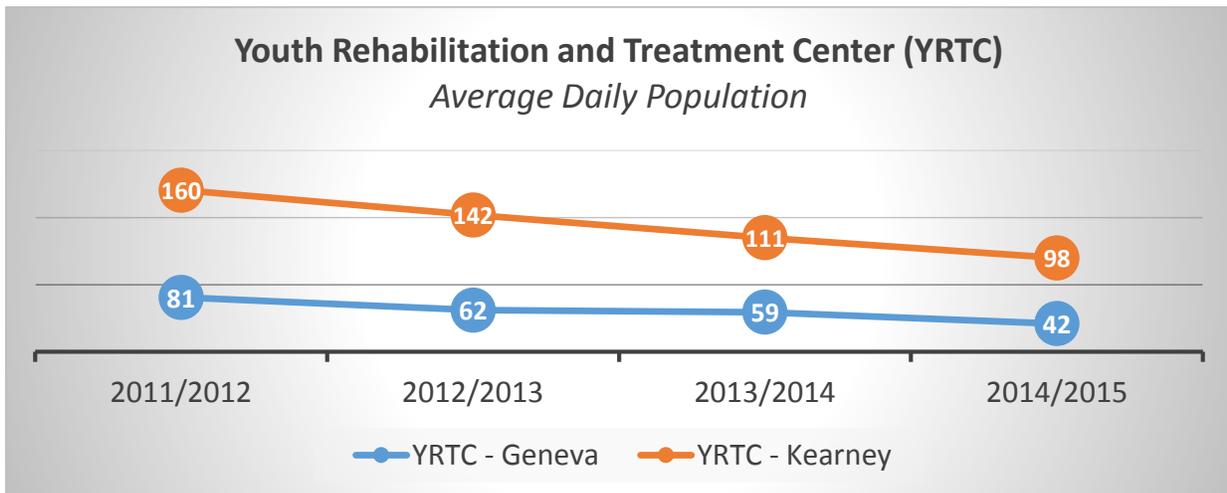
“Since LB 561 went into effect, juvenile justice costs to the State of Nebraska have increased at a much greater rate than anticipated, despite a continued decline in youth crime.”

AOP RESPONSE

National research continues to show that juvenile justice reform does impact state dollars and supports that state dollars may need to be allocated to further reform efforts (CSG: Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System, 2014). This is also true with the reform efforts in Nebraska. The nationally expected immediate impact on a fiscal level seen by reform is the reduction of youth being placed in state-run secure facilities. This result has held true for Nebraska as well with reductions in population at YRTCs in Kearney and Geneva (detailed in the graph below).

The AOP worked diligently with DHHS prior to passage of LB561 to clarify the current budget for youth under their supervision. Unfortunately, these efforts were largely unsuccessful and a clear budget was never received. Therefore, to state there was not a cost savings when an uncertain budget was received is flawed, especially since the calculation of costs by the AOP was different then what was allocated upon passage. Additionally, due to severe violations and changes of federal laws surrounding Medicaid/Magellan/IV-E, previously funded services are now being denied and/or fall to probation for payment. Although these barriers exist, the AOP is driven to reduce unnecessary use of out-of-home placements and detention as well as build a continuum of in-home services which will ultimately impact the budget in the future. However, expecting system reform this significant to happen in 15 months is not realistic.

Nebraska’s culture that out-of-home placements help youth as well as the failed attempt to privatize case management has greatly impacted our youth and families. Although there are barriers, strides have been made which include: training staff, engaging and empowering system involved families who are used to youth being removed and never returned, building service access for judges greatly in need of options for youth, and implementing focused system improvements.



2011/2012 and 2012/2013 Geneva: Youth Rehabilitation & Treatment Center –Geneva “SFY 2012/13 Annual Report”
2013/2014 and 2014/2015 Geneva: Youth Rehabilitation & Treatment Center –Geneva “SFY 2014/15 Annual Report”
2011/2012 and 2012/2013 Kearney: Youth Rehabilitation & Treatment Center –Kearney Annual Report “SFY 2014/15 Annual Report”
2013/2014 and 2014/2015 Kearney: Youth Rehabilitation & Treatment Center –Kearney Annual Report “SFY 2014/15 Annual Report”

OIG Report: Page 11/Frequent Use of Out-of-Home Placement:

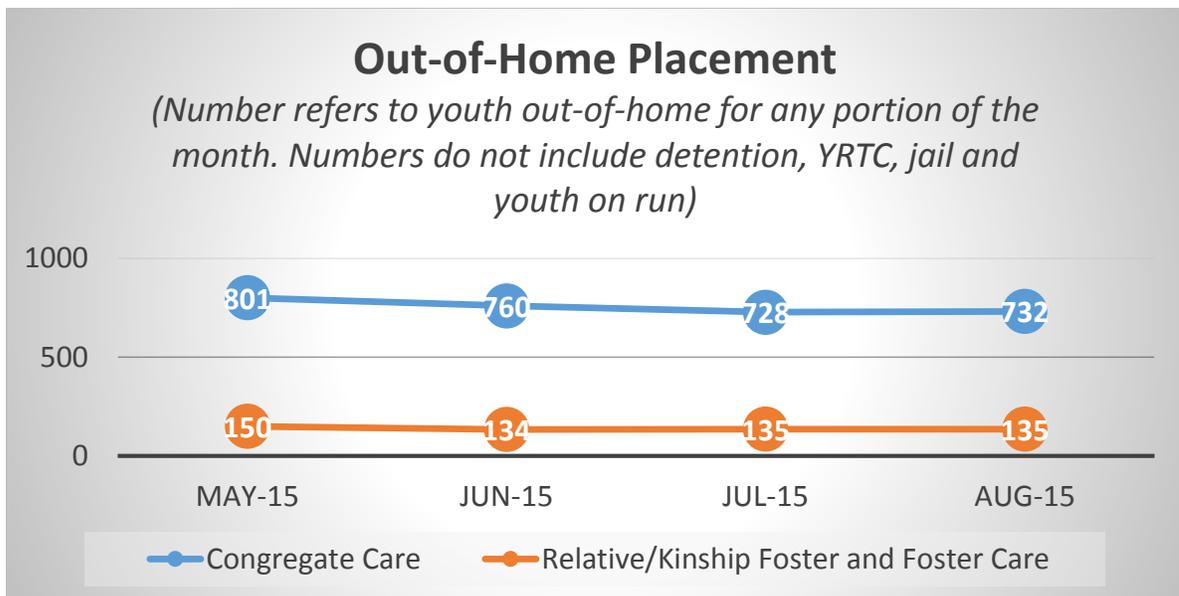
“Now that data on youth is available, it appears that little or no progress has been made in reducing out-of-home placements since Probation assumed primary responsibility for coordinating services and supervision of youth in the juvenile justice system.”

AOP RESPONSE

A data response was discussed comparing a one day snapshot of probation youth placed out-of-home with a six month period from DHHS. Using a snapshot does not take into consideration the total population included. Additionally, it is not clear if OJS and Probation consider the same placements as “out-of-home.” For example, does OJS include foster care as Probation had in the data referenced by the OIG?

The AOP realizes a need to implement intensive in-home evidenced-based services as a key to reducing the placement numbers and while encountering many set-backs (collaboration, funding sustainability, and legislation) for moving forward with this priority strategy, has not lost sight of the need and continues to pursue this avenue. The AOP has, and will, continue to recommend reduction in the use of unnecessary out-of-home placements.

The AOP believes the best way to track progress is to continue to look at the current data over a period of time (See Out-of-Home Placement Data). This will identify progress and allow further probing about barriers, outlining logical next steps. It is important to recognize that some of the youth currently in out-of-home placement were transitioned to the AOP from DHHS.



NPACS: OHP, Office of Probation Administration, September 2015

OIG Report:

“While the population at the YRTC’s decreased, youth continue to be sent to detention, and most often private, residential facilities (group homes), many of which do not offer treatment. This is concerning as these facilities not only cost more for Nebraska, but also generally do not have positive outcomes for youth or reduce their likelihood of committing crimes in the future.”

AOP RESPONSE

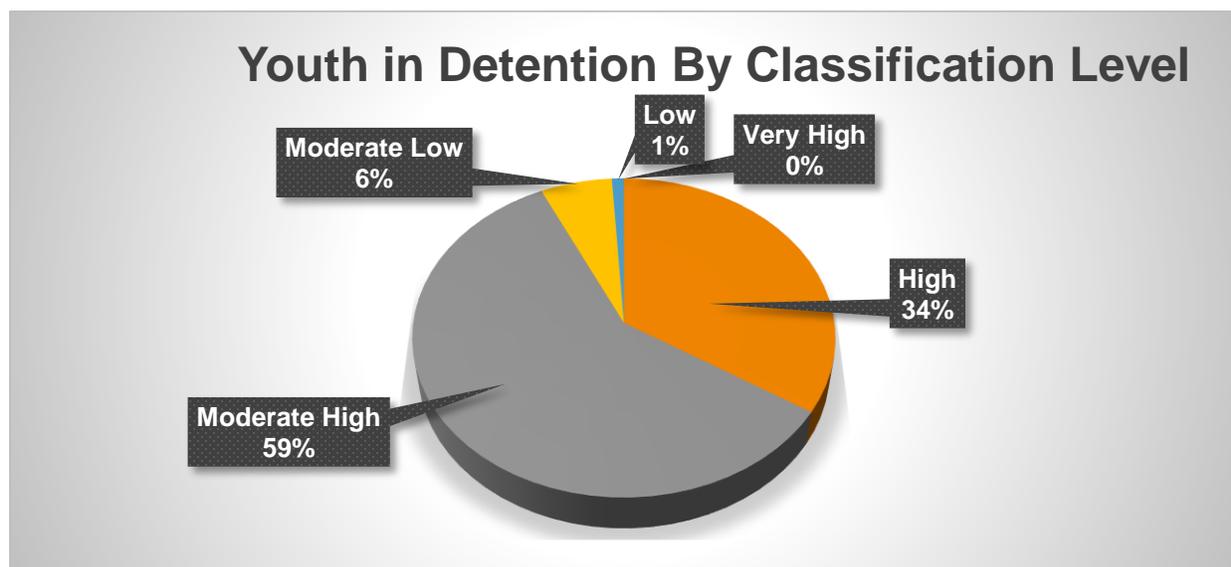
The AOP believes it is essential to clarify the information is not correct regarding YRTC and “other facility” cost. The YRTC’s reported for 2013-2014 the cost per day for Geneva was \$347.55 and Kearney was \$271.90, this is much higher than a group home placement which averages \$100 per day.

OIG Report: Page 12/Inappropriate Use of Detention:

“However, information available to the OIG indicates that Nebraska is not yet using juvenile detention in accordance with these new provisions and many low-risk youth continue to be detained.”

AOP RESPONSE

This statement appears to be an assumption. The youth in detention data supports the reality. Additionally, detention screening tools are not the same as instruments used to assess a long-term risk of recidivism. The intake screening tool serves only to identify two short term items; will the youth re-offend pending court and will the youth appear in court as required? The general statement about low-risk youth should not be linked to the finding from the analysis conducted by the University of Nebraska at Omaha. A snapshot as follows represents the **risk level** of detained youth as measured by the Youth Level of Service/Case Management Inventory (YLS/CMI). As represented below, 1% of youth were low risk and 6% were moderate low, showing predominately moderate-high and high risk youth in detention on 10/19/2015.



NPACS: OHP, Office of Probation Administration, October 19, 2015

OIG Report:

“A recent study by the Juvenile Justice Institute (JJI) showed that Probation is not using the tool enough to know whether the tool is valid or can be verified in any way.”

AOP RESPONSE

This is not an accurate statement. The detention screening instrument is used every time a youth is brought before a probation officer by law enforcement for an intake, as required by statute. What was outlined in the study as an area for improvement is the override rate. This can be attributed to the development of alternatives having not been fully realized in just 15 months.

OIG Report:

“The study found that between September 1, 2013 and August 31, 2014, 578 youth who did not score for detention, were placed in detention by Probation.”

AOP RESPONSE

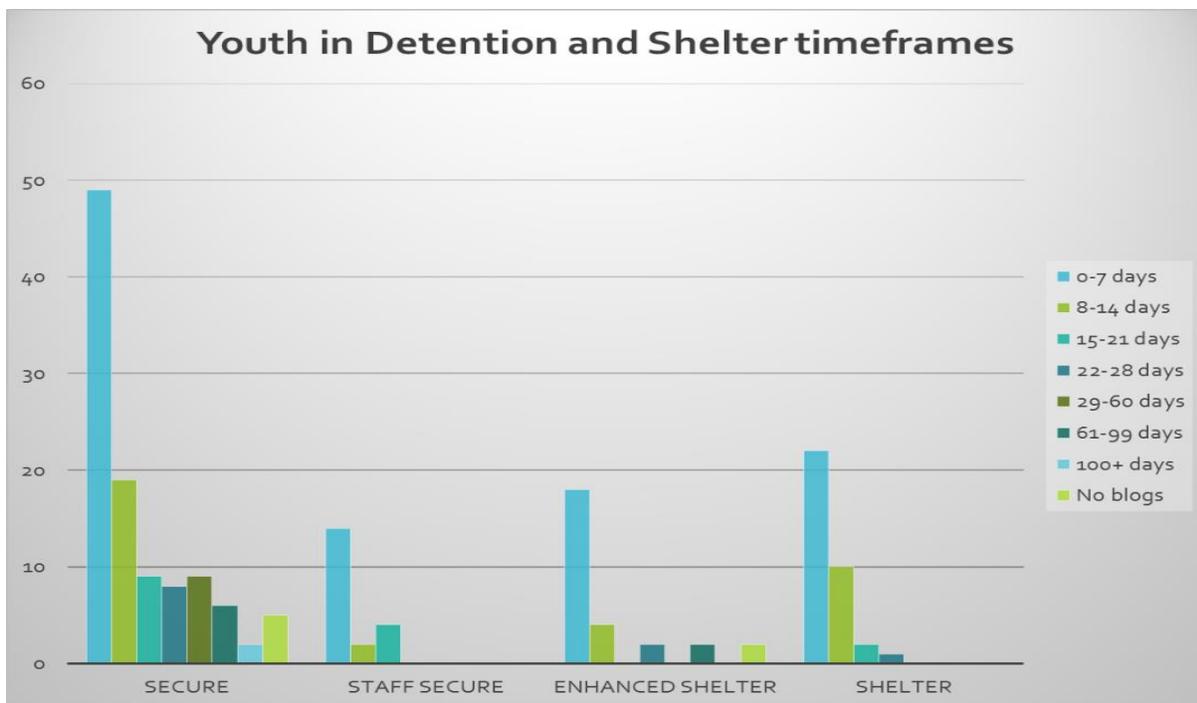
Consistent with Evidenced-based Practice, the AOP requested and funded the 2015 Analysis of the Nebraska Intake Risk Assessment Instrument. The data gathered is essential to providing baseline information, determining barriers and identifying areas of focus with the tool - a critical self-analysis. The evaluation did exactly that and now work is underway to address areas needing improvement. The AOP finds it very concerning that the OIG would turn Probation’s use of Evidenced-based Practice into something negative. Probation is the key stakeholder coordinating JDAI efforts, which has shown great results in Douglas and Sarpy Counties - dropping detention to half the daily population of a few years ago. Evaluating and making steps to improve tools, as well as identify needs is essential to system improvement.

OIG Report: Page 13/Probation Administration should be commended:

“The OIG has seen cases of youth being detained due to issues such as lack of available placements, a parent’s refusal to follow court orders, and even cursing at adults. Anecdotally, juvenile justice stakeholders indicate the majority of youth in detention are there for probation violations, not because they pose a danger to public safety.”

AOP RESPONSE

It is important to note that “anecdotal” information is not evidence or necessarily factual. The AOP is working, with support of the Annie E. Casey Foundation, to assess youth who are detained due to a Violation of Probation. Such considerations being reviewed are those detentions not ordered by the court, and utilization of the detention screening instrument for youth who repeatedly violate terms of probation and have not complied with numerous sanctions. Additionally, the AOP is gathering data regarding how long a youth is placed at detention, staff secure or shelter placement. This is essential because these are short-term placements used for youth awaiting a less restrictive alternative.



NPACS: Office of Probation Administration, October 2015

OIG Report: Page 13/Indefinite Probation Supervision replaces State Ward Status:

“Before LB561’s passage, youth in juvenile court were also given a specific and certain time period on probation.”

AOP RESPONSE

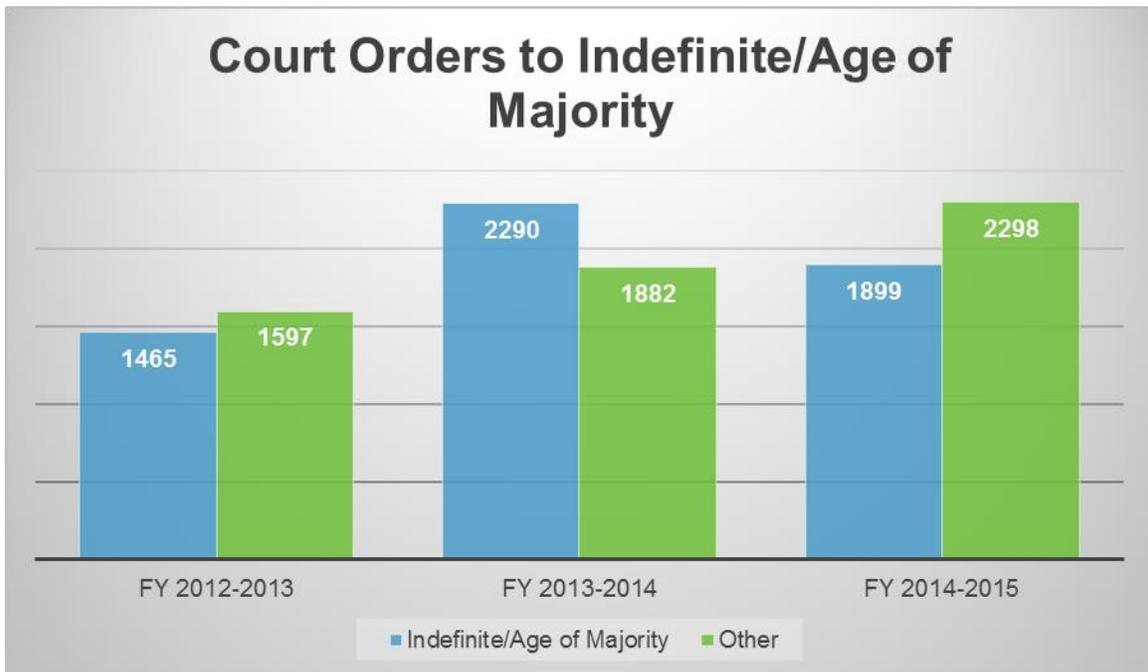
This is an inaccurate statement. Judges have always had discretion as to the term of a youth’s probation, up to and including until their age of majority. Probation supervision and state ward status are two different things, with supervision being an added support to youth and families, many of which still have parental rights intact.

OIG Report:

“However, courts now seem to be routinely placing youth on juvenile probation for an indefinite period of time, until their 19th birthday.

AOP RESPONSE

The AOP believes it is essential to clarify first that this statement was made without supporting data and appears to be assumption. Additionally, upon passage of LB561 all youth committed to the YRTC are now placed on an order of Intensive Probation. Since the time period a youth is committed to the YRTC is not controlled by courts, placing a youth on an indefinite period or until age of majority makes certain youth with complete commitment and have ample time to return to their communities with support before their term of probation lapses. The following information from the Supreme Court’s data system, JUSTICE, shows evidence of indefinite probation terms actually decreasing significantly in fiscal year 2014-2015.



JUSTICE, 2015

OIG Report: Page 14/Need for Transparency:

“While the OIG has been commissioned by the Legislature to act as a mechanism of legislative accountability for Juvenile Probation, they have indicated that they do not intend to comply with the law, including allowing the OIG direct access to electronic databases and expedited access to case files.”

AOP RESPONSE

The AOP has worked diligently, having multiple meetings with the OIG, specifically focused on what information is needed and how to streamline the OIG receiving that information. Although it is essential to note that there are three branches of government all separate and all equal. The OIG has only requested full access of probation records without taking into consideration the separation of powers and constitutional regulations. At this time, the probation information management system has information related to every adult and juvenile previously or currently under supervision. It is essential that confidentiality is key when working with adults, youth and their families. It is not appropriate for the OIG to have full access to confidential records that are not related to specific complaints or incidents. Therefore, with confidentiality being the essential focus, full access cannot be granted. The OIG reports receiving full access to confidential DHHS records and expects the same regarding probation. It is unclear to Probation under what provision DHHS granted this access. Nevertheless, it is important to note that a court order is required directing the AOP to release all confidential records to the Office of Inspector General. The AOP offered to work collaboratively with the OIG to assist in requesting any needed court records. The OIG did not accept this assistance stating that office would submit individual motions to the court. The OIG also reported being unwilling to notify probation staff when a motion was submitted.

OIG Report: Page 15:

“The lack of openness is concerning for those beyond the OIG as well. There is no avenue that families and youth who are involved with Probation have to understand or give input to the processes that impact their lives so significantly. Nor is there an opportunity for other agencies which must attempt to work cooperatively to achieve better outcomes for youth and families to share input and information about Probation’s functioning with their staff.”

AOP RESPONSE

Ensuring that families and youth are heard is the foundation for the court system. The court process includes attorneys who represent their client, judges that speak directly to the youth and family and the key focus is rehabilitation. Additionally, the AOP strives to engage youth and families and trains probation staff in skills such as Motivational Interviewing and Enhanced Family Engagement. Engaging youth/families and ensuring they are part of the team plan is a key tenet for probation officers and an essential job duty. The probation officer is locally driven, they facilitate and lead family team meeting, engage with law enforcement, participate on community teams and boards such as the Eyes of the Child teams, to name a few. But most importantly they reach out to youth and families on a daily basis.

OIG Report: Page 17/Data on Critical Incidents:

“DHHS has chosen to include the OIG on all internal critical incident reports, while Probation chose to send special reports to the OIG related to death and serious injury only during the last fiscal year.”

AOP RESPONSE

As stated previously, the AOP worked diligently to learn exactly what information the OIG required. Originally policy was written which would supply information regarding every incident. The OIG then reported to the AOP only incidents involving death and serious injury were necessary. Probation’s policy was then changed to accommodate the OIG to ensure more precise information was given. At this point, once a court order authorizes release, the OIG receives Probation’s file, including confidential records and information contained in the automated case management system.

OIG Report: Page 22/Professionalization of the Workforce-Caseload Challenges Remain:

“Additionally, the Legislature must assess whether Probation, which has no statutorily mandated caseload standards, has enough staff to function appropriately and whether caseloads should also be mandated for juvenile Probation.”

AOP RESPONSE

The AOP is dedicated to the implementation of Evidence-based Practices (EBP) and has calculated caseloads that are directly supported by research. This is another example of information that the AOP would share and educate stakeholders about, but without a request the AOP was not aware that the OIG did not understand caseload numbers and research regarding appropriate juvenile justice caseloads. The work is very different from child welfare and is managed according to risk.

OIG Report: Page 23/Mental Health and Trauma:

“Understanding the trauma effects of every change of placement is key to successful probation supervision.”

AOP RESPONSE

The AOP has been focusing efforts on trauma for some time, just recently training officers as Trauma 101 trainers for staff. This is a focus of probation not only for youth we serve, but also for staff. The AOP would have been happy to share information and progress if the OIG requested it and therefore would have helped ensure assumptions were not included in the report. The AOP is working towards adopting, training, and implementing a trauma focused screening tool for youth to include victimization in many forms (example trafficking).

OIG Report: Page 23 and 24/Concerns with Residential Facilities:

“Despite this research and federal mandates that children live in the lease restrictive (most family-like) setting, many children in the child welfare and juvenile justice system are placed in group residential facilities, often referred to as congregate care.”

AOP RESPONSE

The AOP is committed to help keep youth in their communities and in family-like settings. We are continuing to overcome many barriers with this, first being the lack of foster homes. Increasing the access to homes and building foster care availability is essential. Conversations with DHHS regarding foster care homes have been underway since LB561’s passage. Under the new DHHS leadership we are hopeful to work together to increase the type and number of foster homes available. Additionally, the AOP is implementing an Individualized Transition Plan for youth placed out-of-home. This plan begins immediately upon a youth being placed out of their home and will continue to be updated by the team, including the family and youth until discharge from the out-of-home placement.

OIG Report: Page 30/Dually Adjudicated Youth:

“Some have suggested that the “(3)(a) No-Fault” category which states that “the child is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian” is the category local jurisdictions make cases “fit” when they do not want Juvenile Probation to supervise the case.”

AOP RESPONSE

Appropriate filings are essential for both child welfare and juvenile justice entities as a foundation for training staff for the populations they receive. Child welfare is focused on abuse, neglect, and permanency while juvenile justice responds to delinquency and in Nebraska, status offense acts. The AOP and DHHS have been reviewing data regarding dually adjudicated youth. These youth currently represent less than 10% of both Probation and DHHS populations.

DHHS indicates the number has gone up no more than 20 to 30 youth, which is not unreasonable when clarifying the new roles of Probation and DHHS.

The AOP also has been leading the implementation of the Crossover Youth Practice Model. This model is essential in juvenile justice reform and helps probation and DHHS share information, as well as look a specific youth to ensure they are in the system that can best meet their needs.

Closing

As stated at the beginning of this document, the AOP is dedicated to juvenile justice system improvements. Our national partners, who are the leaders in supporting reform, stress we are taking, or have planned, essential action steps to increase juvenile justice reform success in Nebraska. The foundation is to ensure that youth and families in the juvenile justice system receive services and supervision that ensure they build self-sufficiency and reduce recidivism. However, it is also important that the right services be developed and matched to the right youth.

*Please note: this report does not address the OIG report’s allegation that costs increased at a greater rate than expected since reform began 15 months ago. This explanation would require a separate distinct response.

cc: Corey Steel, State Court Administrator