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PROPOSED RESPONSES TO IMPROVE JUVENILE JUSTICE

Following the 2019 legislative session and the concerns expressed about the direction of juvenile justice in South Dakota, the Juvenile Justice Public Safety Act Oversight Council has been working to solicit system stakeholder and community feedback to make recommendations in advance of the 2020 legislative session.¹ Based on a review of the data and extensive feedback received to date through those engagement efforts, the following proposals are recommended by the Oversight Council to enhance the juvenile justice reform efforts in South Dakota.

A. Changes to the Commitment Criteria that Focuses Department of Corrections Resources on Appropriate Youth.

It is important that any expansion of the current commitment criteria to the Department of Corrections (DOC) be based on the need to meet the demands of the youth and to protect public safety. The Oversight Council would propose the following changes to SDCL 26-8C-7:

26-8C-7. Decree of disposition--Contents--Findings. If a child has been adjudicated as a delinquent child, the court shall enter a decree of disposition according to the least restrictive alternative available in keeping with the best interests of the child. The decree shall contain one or more of the following:

- (1) The court may require the child to pay restitution, as defined in subdivision 23A-28-2(4) and under conditions set by the court, if payment can be enforced without serious hardship or injustice to the child;
- (2) The court may impose a fine not to exceed one thousand dollars;
- (3) The court may place the child on probation under the supervision of a court services officer or another designated individual pursuant to § 26-8C-14;
- (4) The court may require a child as a condition of probation to participate in a supervised community service program, if the child is not deprived of the schooling that is appropriate for the child's age, needs, and specific rehabilitative goals. The supervised community service program shall be of a constructive nature designed to promote rehabilitation, appropriate to the age level and physical ability of the child and shall be combined with counseling by the court services officer or other guidance personnel. The supervised community service program assignment shall be made for a period consistent with the child's best interests, but for not more than ninety days;

¹ The Oversight Council held meetings in Aberdeen (May 17, 2019); Rapid City (August 21, 2019); Sioux Falls (October 8, 2019) and will meet in Pierre (November 12, 2019).

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- (5) The court may place the child at the Human Services Center for examination and treatment;
- (6) The court may place the child in a detention facility for not more than ninety days, which may be in addition to any period of temporary custody;
- (7) The court may place the child in an alternative educational program;
- (8) The court may order the suspension or revocation of the child's right to apply for a driving privilege, suspend or revoke an existing driving privilege, or restrict the privilege in such manner as it sees fit, including requiring that financial responsibility be proved and maintained;
- (9) The court may assess, or charge costs and fees permitted by §§ 16-2-41, 23-3-52, 23A-27-26, 23A-28B-42, and 23A-27-27 against the child, parent, guardian, custodian, or other party responsible for the child; or
- (10) The court may only commit a child to the Department of Corrections if the judge finds that:
 - (a) No viable alternative exists;
 - (b) The Department of Corrections is the least restrictive alternative; and
 - (c) The child is currently adjudicated delinquent for an offense eligible for transfer proceedings pursuant to § 26-11-3.1; the child is currently adjudicated delinquent for a crime of violence pursuant to subdivision 22-1-2(9), sex offense pursuant to § 22-24B-1, felony sexual registry offense pursuant to chapter 22-24B, or burglary in the second degree pursuant to § 22-32-3; or the court finds from evidence presented at the dispositional hearing or from the pre-dispositional report that the youth presents a significant risk of physical harm to another person; or
 - (d) The court finds from evidence presented at the dispositional hearing or from the pre-dispositional report that the child is high risk for re-offense based on a validated risk and needs assessment and the child has had a previous unsuccessful discharge from probation for a felony level offense or is on supervised probation for a felony level offense, and
 - (1) the child has been adjudicated for intentional damage to property where the property damage exceeds \$5,000; or
 - (2) the child has been adjudicated for felony level drug distribution offense.

Any finding made pursuant to this section shall be made in the written decree.

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B. Identify and Provide Services to At-Risk Youth Prior to Criminal Justice System Involvement.

The best possible course of action is to identify youth that are at-risk for justice involvement as early as possible. This can be accomplished through an early identification process for childhood trauma in elementary schools and a connection to services for both the youth and the family. The goal is to provide support and services outside of the criminal justice system and facilitate local connections to services that can prevent justice system involvement and connect families to resources that may be difficult for them to find on their own.

C. Determine Appropriate Resources Required for Psychiatric Residential Treatment Facilities (PRTF) in South Dakota to Serve Existing Populations of Justice Involved Youth as well as Non-Justice Involved Youth.

South Dakota must have a formal mechanism to assess the required beds for our youth based on a medical necessity. This includes an examination of both capacity and location where services are needed to determine whether the current services can meet the population and geographic demands of our state. Any such effort should be undertaken by the Department of Social Services.

D. Recommend Statutory Changes to Promote the Expansion of Crisis Stabilization Beds and Invest Additional Dollars in Therapeutic Foster Homes in South Dakota.

The ability to provide crisis intervention beds for short stays while a more permanent response can be developed to deal with youth that are involved in the criminal justice system and are in a state of crisis is a necessary part of the continuum of services. These crisis beds would be intended for stays between 24-72 hours to respond to youth that may be spiraling out of control or in instances where a safe place to stay cannot be found. It is recommended that the current statutory structure be modified to promote the development of short-term crisis stabilization beds. There is a concern that the current regulatory environment does not account for the unique nature of these types of placement options; but instead focuses more on long-term placements that trigger additional regulation that is not necessary in the short-term. A stream-lined regulatory process could promote expansion into a much-needed service model.

In addition, the expansion of therapeutic foster homes allows for youth in a crisis to be placed closer to home. This is particularly important in smaller communities where a crisis stabilization bed may not be available. The goal of therapeutic foster homes would be to maintain a safe and secure environment while a youth's needs can be addressed on a more permanent basis. The ability to recruit

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families for these types of alternatives requires an investment by the state that recognizes the time and commitment required to agree to provide such services.

E. Expansion of Juvenile Justice Services Statewide.

The juvenile justice reforms were built on a shift to community based supervision and treatment as opposed to congregating youth in a facility under the supervision of the Department of Corrections. It is imperative to continue to review available services, develop new and additional services and maintain fidelity to the programming model. In addition, models like Systems of Care should be expanded statewide as soon as possible.

F. Invest Additional Dollars in the Diversion Incentive Fund.

The current diversion incentive fund has been integral in gaining county buy-in and support for the goals of Senate Bill 73. This investment has strongly supported the development of diversion programming statewide. The current funding structure has been viewed as an immense success by all indications and claims far exceed the dollars available. The Oversight Council recommends a significant investment of additional dollars in these funds from the funded amount of \$250,000 to \$400,000. This additional investment will promote and incentivize the development of additional diversion programs statewide.

G. Encourage Statewide Expansion of Community Response Teams.

Community Response Teams (CRT) are multi-disciplinary teams intended to bring together probation, community providers, corrections staff and social services along with school officials or other relevant persons to discuss alternatives related to an at-risk youth. The CRT teams where they currently exist are viewed as a successful tool to bring together the local community stakeholders to address the needs of justice-involved youth that are struggling or need a more intensive supervision plan. Given the geographical and community differences the expansion of CRT Teams must consider various factors required for successful utilization across a diverse geographic area. For example, CRT Teams may be regionalized or county based and should consider utilizing technology to bring together professionals and community members that can assist the court with recommendations related to justice-involved youth.

H. Support Strategies to Engage Families and Youth in Treatment Services to Increase Supervision and Treatment Success.

The Oversight Council has heard concerns about the challenges inherent in family engagement when working with juveniles involved in the criminal justice system. Engagement of youth and families into the appropriate treatment services

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is critical to supporting successful outcomes for both supervision and treatment. Strategies should be developed to ensure supervising officers as well as treatment providers are utilizing best practice techniques in engagement. Supervising officers and treatment providers should engage in local problem solving to identify barriers to the success of supervision and treatment services with youth in the community. Further efforts should be undertaken to address these challenges including the use of incentives as well as the Family Support Program² to support reducing barriers and increasing engagement. In addition, continued training and emphasis on evidence-based models such as Motivational Interviewing, Contingency Management³, Core Correctional Practices and other models shown to be effective should be integrated to the overall training requirements for both supervising officers and treatment providers.

I. Extension of the Juvenile Justice Oversight Council Beyond the Current Sunset.

The current Oversight Council is set to expire in September of 2020 based on the current statutory provision. SDCL 26-8D-9 provides “[t]he oversight council terminates five years after its first meeting, unless the Legislature, by joint resolution, continues the oversight council for a specified period of time.” It is recommended that the Oversight Council be extended for an additional three years. This would provide for continuation of the important task of monitoring the juvenile justice reforms, assessing gaps in services, and providing a venue for concerns to be expressed.

² Family Support Program is designed to assist in meeting the unique challenges of children, youth, and their families who are involved or at risk of involvement with the juvenile justice system. The program assists by financially supporting efforts to improve the child, youth, and family’s overall mental wellbeing, decrease the risk for involvement in the juvenile justice system, and aid in other related needs.

³ Contingency management is a behavioral approach that uses motivational incentives and tangible rewards to reinforce positive behaviors.