Abuse and Neglect in Arkansas’s Juvenile Treatment Centers
Defining disability is inherently tricky

Extends beyond traditional notions of a physical impairment

Includes developmental disabilities, intellectual disabilities, mental health impairments, traumatic brain injuries, and learning disabilities, among others
Protection and Advocacy Systems

- Organizations which advocate for and enforce the rights of people with disabilities
- Created by Congress; Designed by Governors
- One in every state and territory
- Operate with grant funding from several federal agencies
- Endowed with authority under federal law
Disability Rights Arkansas (DRA)

- The Protection and Advocacy System for Arkansans with disabilities
- Not part of the federal or state governments
- Governed by a Board of Directors
- Relatively small office
- Tasked with providing legal and advocacy services for all Arkansans with disabilities (more than 500,000 people)
Disability Rights Arkansas (DRA)

- Pro Bono Representation and Advocacy
- Operates eight federally-funded programs
- Seeks to provide change at both the individual and systemic levels
- Part of the National Disability Rights Network
DRA and Juvenile Justice

- More than a decade of DRA involvement in the juvenile justice field
- Juvenile Treatment Centers
- Special Education
- FINS Report with Hendrix College
Why Juvenile Treatment Centers?

- To advocate for and enforce the rights of individuals with disabilities
The population in juvenile treatment centers is of special interest to us because of a long history of abuse and neglect in Arkansas toward juvenile delinquents.

http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=5500
Juvenile Justice in Arkansas

- Three Common Legal Avenues for Youth in Arkansas Courts
  1. Families in Need of Services
  2. Dependency–Neglect
  3. Delinquency
Delinquency Options

- Not Delinquent Finding
- Juvenile Detention Center placement
- Commitment to the Division of Youth Services
- Other Remedies
Division of Youth Services
Commitment Options

- Secure residential facilities
  - Six Juvenile Treatment Centers
  - One Juvenile Correctional Facility
  - One Juvenile Assessment Center
  - Typically around 300 youth in SRFs are at any given time
  - Average annual cost is $63,000 per bed

- Community-based treatment
Juvenile Treatment Centers

- DYS detention facilities
- Adult–Juvenile Parallels
  - State Prisons = Juvenile Treatment Centers
  - County Jails = Juvenile Detention Centers
Juvenile Treatment Centers

- Provide therapy and counseling designed to enable a resident to complete treatment goals
- Required by Arkansas Code to offer educational services
- Provide room and board, onsite nurses, and vocational training
Juvenile Treatment Centers

- Six sites are administered directly by DYS
- One juvenile treatment center is operated via contract by a for-profit corporation
Seven centers cross the state, often in far-flung and remote locations

- Arkansas (Alexander) Juvenile Assessment and Treatment Center
  - Colt Juvenile Treatment Center
  - Dermott Juvenile Correctional Facility (18–21)
    - Dermott Juvenile Treatment Center
    - Harrisburg Juvenile Treatment Center
    - Lewisville Juvenile Treatment Center
    - Mansfield Juvenile Treatment Center
Juvenile Treatment Centers

- Contracted Beds
  - Alexander – 100
    - Colt – 28
  - Harrisburg – 36
  - Dermott JTC – 30
  - Dermott JCF – 32
  - Mansfield – 49
  - Lewisville – 30
DRA and Juvenile Treatment Centers

- History of involvement for more than a decade

- After somewhat of a hiatus, DRA has maintained a constant monitoring presence since reports of physical abuse and a sharp rise in assaults at the largest DYS facility in 2014
Access Authority

- All Protection and Advocacy Systems are granted a broad access authority by federal statutes and regulations.

- DRA has the authority to enter any facility in Arkansas that provides care or treatment to persons with disabilities in order to carry out our protection and advocacy activities.
Access Authority

- DRA has the authority to have reasonable, unaccompanied access to provide information, training, and referrals to individuals with disabilities and to monitor compliance with individual rights.

- DRA has authority to access facilities, individuals, and records in order to investigate complaints of abuse and neglect.

Access Authority

- Neither HIPAA nor FERPA prevent DRA from accessing records or individuals


- Utilizing this authority, DRA monitors for and investigates abuse and neglect in juvenile treatment centers
Any act or failure to act which is performed, or fails to be performed, knowingly, recklessly, or intentionally, and which causes, or may cause, injury or death to an individual with disabilities.
Monitoring and Investigations: Abuse

- Rape
- Striking
- Excessive force when placing an individual in restraint
- Regulations or any practice likely to cause immediate or long-term physical or psychological harm
- Verbal, mental, or emotional harassment
Monitoring and Investigations: Neglect

- A negligent act or omission by an individual responsible for providing treatment or services which causes, may cause, or risks injury or death to an individual with disabilities
Monitoring and Investigations: Neglect Examples

- Failure to carry out an appropriate individual treatment plan
- Failure to provide adequate nutrition, clothing, or health care
- Failure to provide a safe environment
- Failure to maintain adequate numbers of trained staff
Monitoring

- DRA attorneys and advocates are deployed as monitors

- Since 2014, DRA has maintained a fairly robust schedule of monitoring of juvenile treatment centers

- On a weekly, monthly, semiannual, or annual basis, depending on the severity of issues at a particular facility and DRA resources
Monitoring

- All seven centers have been monitored repeatedly

- Four centers have warranted more frequent monitoring
  - AJATC
  - Dermott JTC
  - Dermott JCF
  - Lewisville JTC
Monitoring: The How

- Youth Interviews
- Staff Interviews
- Requesting facility records, such as logs, evaluations, and medical reports
- Reviewing Records
- Observation of physical conditions and individuals
- Photography
- Building rapport with youth and staff
Investigations

- Investigations are opened based on monitoring, tips from individuals, news reports, and other means.

- When DRA has probable cause to believe that an individual with disabilities has been or is currently subject to abuse or neglect, DRA can open an investigation.
A reasonable ground for belief that an individual with disabilities has been, or may be, subject to abuse or neglect.

The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions, or problems that are usually associated with abuse or neglect.
Different standard than criminal law

Low threshold
- E.g. anonymous phone call

Courts have agreed with the low threshold standard, since P&A enforcement authority is essentially non-existent. Even if a P&A made an incorrect probable cause determination, the result is only that the P&A accessed records, spoke with individuals, observed conditions, and perhaps took photographs.

P&A has authority to determine if probable cause exists - case law makes clear that there is no third-party review - P&A is the “final arbiter”
Investigations

- Youth interviews
- Staff interviews
- Request individual records, including confidential records and video
- Depending on the type of abuse or neglect being alleged, DRA must make a good faith effort to obtain guardian consent
- The facility must release guardian contact information to DRA immediately
- Review records
- Observation
- Photography
When DRA determines that abuse or neglect has occurred in DYS, several options are available.

DRA attempts to resolve issues at the lowest possible level of intervention.
Investigations: Options

- Meeting with facility staff or director
- Letter to DYS
- Meeting with DYS
- Public Report
- Media Outreach
- Report to Child Abuse Hotline
- Complaint to a federal agency, such as the Department of Justice or Department of Education, Office of Civil Rights
- Lawsuit
Representation and Advocacy

- In addition to monitoring and investigation activities, DRA provides direct representation for youth in the juvenile justice system.

- Representation can come in the form of advocacy and/or legal representation.

- An advocate can be assigned to an individual with disabilities, and the advocate will support the individual in achieving their stated goals.

- An attorney might be assigned to provide direct legal representation.

- Cases of advocacy and legal representation include:
  - Identification for special education eligibility
  - Discharge and transition planning
Abuse and Neglect in Juvenile Treatment Centers

- Commitment Concerns

- Youth commitment is up in Arkansas, counter to the national trend
  - FY2015: 526
  - FY2014: 486
  - FY2013: 468
  - FY2002: 514

- Incarceration trends in Arkansas vs. other states
  - Nationally, incarceration of youth has dropped by 53% from 2001 to 2013
  - In Arkansas, commitment only dropped by 11% in the same time period
  - And we have seen a recent rise bringing us back to the 2001 rate.
Commitment Concerns

- By crime:
  - 43% felony
  - 30% misdemeanor
  - 2% aftercare violation
  - 16% probation violation with misdemeanor original offense
  - 9% probation violation with felony original offense
Commitment Concerns

- Violent v. Non-violent Offenders

- Vast, vast majority of youth committed to DYS have been adjudicated responsible for non-violent crimes
Commitment Concerns

- Far more than half of youth committed have a disability, as indicated by:
  - Mental health diagnoses
  - Psychototropic medication prescriptions
Length of Stay

- Youth are committed to DYS for treatment
  - Commitment ends when DYS says it ends
  - DYS usually provides youth with both a time-sensitive period of treatment (e.g. 4–6 months) and a requirement to complete treatment

- Reflects the legal paradigm at play
  - Juveniles are committed for treatment and rehabilitation
  - Adults are sentenced to confinement and punishment with a somewhat reduced emphasis on rehabilitation
Length of Stay

- This “dual sentencing” of time served and treatment completed is not necessarily typical. In other states, youth are committed either for a defined period or until their treatment is complete.

- Creates confusion and misguided expectations for youth; leads to frustration and possibly is counterproductive.
Length of Stay

- Average length of stay is up
  - FY11: 132 days
  - FY14: 228 days

- Youth routinely stay beyond their length of commitment, and sometimes beyond their completion of treatment

- Some have even completed their treatment plans yet have not been discharged; a claim corroborated by staff at juvenile treatment centers and our monitors
Some youth languish in DYS facilities for months or even years beyond their commitment expectation.

Youth with intellectual and developmental disabilities are particularly underserved in our juvenile justice system. Especially if their families do not desire to take them back.

Options for transition that are underutilized:
- DDS Waiver
- ARS
Isolation

- No DYS policy on isolation
- Left to individual facilities
- National standards
- Arkansas standards
- Practice
Isolation: National Standards

- **American Correctional Association ("ACA")**
  - Eight hour maximum without review and administrative authorization.
  - Room confinement is limited to five days maximum.
  - “Only when the juvenile is dangerous to himself/herself or others.”
  - “Any sanctions that may adversely affect a juvenile’s health or physical or psychological well-being are expressly prohibited.”
  - Allows for special management for high-risk youth but suggest that the youth should receive an individualized and constructive behavior management plan.

- **US DOJ Standards**
  - 24 hours maximum room confinement.
  - Daily visits from a physician
  - Twice daily visits from a child-care worker or treatment staff
  - Provide with educational materials and other services
Isolation: Arkansas Standards

- The Juvenile Detention Facility Standards
- Developed by the Arkansas Criminal Detention Facilities Review Committees
- Prohibits the use of isolation as punitive measure
- Limits isolation only to instances where necessary to provide for the safety of the juvenile or other juveniles or the security of the facility
- Maximum of 24 hours
- Review by an administrator or designee not involved in the incident every 24 hours beyond this initial window.
- Youth in isolation are to be afforded living conditions and privileges approximating those available in the general juvenile population
Isolation: Practice

- We have regularly observed isolation used as a punitive measure and during periods of staff shortages (especially on weekends)

- In one especially troubling episode, a youth remained in room confinement with only occasional and brief (hour) respites for more than three months
  - This case also featured probable forging of documents by the provider at that facility – before the State takeover
Restraint and Shackling

- We continue to receive reports of shackling and restraint at some facilities.

- Youth are restrained with handcuffs and foot shackles and placed outside, regardless of weather conditions. Youth report having been mechanically restrained in the cold and rain for extended periods of time.

- At some facilities, youth are restrained and placed in shackles and handcuffs when a physical fight occurs.
Several youth at both facilities reported the use of mechanical restraints as a response to altercations.

Given a history of broken bones and possible exacerbation of injuries with mechanical restraints, this practice is especially troubling.

National and state standards prescribe mechanical restraint use only during an escape attempt or when health or safety is actively in jeopardy.

Physical Conditions

- Institutional nature

- Common spaces and individual rooms have characteristics of an institutional setting, including cement walls and desks, fluorescent lighting, and fixed furniture.
Physical Conditions

- Inadequate bedding
- Torn mattresses, thin plastic mats, lack of pillows and blankets
Many individual rooms have an odor of urine and uncleanliness.

Walls are barren except for smudge marks and gang-related graffiti.
Physical Conditions: Cleanliness

- Leaks in bathrooms

- At the time of one monitoring visit, there was standing water in the living quarters bathroom area which was due to a plumbing leak. Staff reported that the facility had not had a plumber come out to fix the leak.
Physical Conditions: Cleanliness

- Bathrooms lack basic necessities like hand soap and toilet paper.

- Some toilets display evidence of not having been cleaned in some time.

- Toilets in some individual youth rooms reportedly are not operable and exhibit frequent plumbing issues.
Trash litters the grounds, along with a large pile of discarded furniture and appliances, at one facility.

Multiple sightings of rats and rodent excrement, often in the cafeteria, were reported, in two facilities.
Physical Conditions: Cleanliness

- Staff report that adequate cleaning supplies are not being sent by the Division, with requests being answered by deliveries of cheap bleach.

- Since the State takeover, youth and staff across the system report decreases in the quality and quantity of hygiene products, shampoo, hand soap, body soap, deodorant, toothpaste, and cleaning materials.

- The youth complained about the bad taste of the toothpaste, which may lead to youth not brushing their teeth.

- Youth have reported rashes and acne breakouts as a result of the new soap.
Physical Conditions: Disrepair

- Individual bedrooms combine draconian sparseness with unkemptness.
- Broken doorknobs and cracked windows.
- Doors hanging off their hinges
- One youth showed monitors his room, which has not had a working light for some time.
- Several buildings at one facility were damaged by a tornado/high-wind storm in the Spring of 2016. Repairs have only just now begun, a year later
Some facilities have individual bathrooms and showers with doors

Others lack any semblance of privacy
Privacy

- At some facilities privacy is non-existent, lacking even a curtain for the most personal activities.

- Toilet and shower stalls lack any kind of door or sheet. Windows do not have blinds, drapes, or covers.

- Youth lack individual rooms and are instead placed in a barracks-style environment, with ten to eleven in each of three rooms.
Historically, youth are dressed in camouflage and orange uniforms, reminiscent of prisons.

A trend toward more neutral uniforms.

Some youth are dressed in torn clothes and shoes.
Staffing Issues

- Difficult to retain staff
- Minimum wage or just above
- Chronic understaffing at some facilities
Education

- The facilities continue to lack fully functioning schools and educational programs for youth

- Lack of teachers

- Teachers have not been hired to replace those lost at both some facilities.
Education

- Outdated text books
  - The history and economics teacher reports that she uses books that are approximately ten years old.

- Movies instead of programming
  - At one facility, monitors observed students in both classrooms watching movies, including the math class viewing a documentary on lions.
  - Youth report frequently watching movies in class.

- One teacher reported that although he is supposed to be teaching algebra, most of the students do not know basic multiplication and division

- Teachers appear overwhelmed and largely unfamiliar with their students
At one facility, most youth are often observed in their unit common spaces, playing video games, watching movies, or otherwise not in school or educationally engaged.

At one facility, staff reported a lack of teachers. Despite a school schedule of 8 AM to 2 PM, staff and youth reported that there are not enough teachers to provide instruction throughout those hours.

Youth attend only three or four periods a day where they receive instruction and then have “electives,” which as described by staff and youth alike consists of playing hangman, sitting around, and sometimes going outside when the weather allows.
Courts and DYS sometimes require a youth to obtain a GED as a condition of release.

For some time after the State takeover, GED tests and pre-test material purchases were not being authorized by DYS.

Teachers had to pay out of pocket, or youth simply went without and had their releases delayed.

Brought to the attention of DYS, and problem appears to be resolved.
Vocational Training

- Additional vocational training programs desperately needed.

- Job skill training can provide youth with a sense of purpose while at the facility and lead to reduced recidivism after discharge.

- Funding allocation and the lack of available contractors in juvenile treatment centers areas are barriers to more robust vocational training program

- Some facilities offer a fiber optics course and some level of instruction in carpentry, watery, and motors
Special Education

- Child Find

- Students with disabilities continue to go unidentified and unevaluated.

- Failure to provide special education has a direct impact on the education of youth while in Division facilities and the likelihood of successful transition into the community and their home school districts
Special Education

- IEP Lack of Compliance
- Section 504 Lack of Compliance
Physical Abuse and Neglect

- Both by staff and other youth

- A sharp rise in at least one facility in 2014
  - A decline since media attention and DRA involvement
The grievance and medical request processes can be a powerful tool to encourage youth to address their concerns and learn to self-advocate in an appropriate manner.

Instead, a culture exists which deters the use of grievance and medical request forms. Forms are not readily available at some facilities. Youth must ask staff for forms, which creates an inherent deterrent, especially if the subject of a grievance is the staff member from which the youth is requesting a form.

Grievance and medical request forms need to be available in easily accessible locations and without having to ask a staff member. Boxes in which to place the forms must also be accessible and checked frequently by staff.
Recommendations

- Increase and require contact between public defenders and youth post-commitment
- Reduce number of youth confined to secure residential facilities
- Expand community-based programming
- Increase number of DYS monitors
- Develop system-wide isolation standards
Recommendations

- Resolve issues at the school-level
  - Special education identification
  - Behavior supports
  - End zero-tolerance policies

- Increase Funding

- Intensive Training for Juvenile Treatment Center staff

- Reduce length of stay