GOVERNMENT OF THE DISTRICT OF COLUMBIA Department of Youth Rehabilitation Services



Office of the Director

WISCONSIN LEGISLATIVE COUNCIL SPECIAL COMMITTEE ON HIGH-RISK JUVENILE OFFENDERS TESTIMONY BY VINCENT N. SCHIRALDI, DIRECTOR DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES 21 OCTOBER 2008

Thank you for this opportunity to address two critical issues affecting juvenile justice systems throughout the country – the transfer of young people to the adult criminal justice system, and the reform of secure care for youth retained in the juvenile justice system.

I'll start first with a discussion of the issue of waiving youth into the adult system. During the 1990's nearly every state changed its laws to make it easier to prosecute young people as adults. Traditionally, since a separate court for children was created in Chicago in 1899, youth who broke the law were brought before the juvenile court. In rare cases, judges decided which youth were so violent or such chronic offenders that they were not "amenable to treatment" in the juvenile court. In such cases the jurisdiction of the juvenile court was "waived" and the youth was transferred to adult criminal court. Some states had legislation that automatically excluded youth charged with the most serious offenses, notably murder, from juvenile court jurisdiction. During the 90's, however, states throughout the country passed a variety of measures to send more youth to criminal court. These measures include any or a combination of the following:

- lowering the age at which youth can be prosecuted as adults
- greatly expanding the categories of crimes for which youth are automatically prosecuted in criminal court
- giving prosecutors the exclusive authority to decide which youth are charged as adults, and

• limiting the discretion of judges to overturn decisions by prosecutors and law enforcement officials.

With so many states having changed their laws in this area, in many respects over the past decade or so we have witnessed a massive social experiment occurring in our country, with the question being whether transferring large numbers of young people to the adult criminal justice system is sound public policy. That is to say, are we getting the public safety results that were promised by those who pushed supposedly "get tough" and "you do the adult crime, you do the adult time" policies and laws.

Some researchers estimate that as many as 200,000 youth are prosecuted as adults every year. Despite overwhelming research demonstrating that these policies have failed, statutes that prosecute youth in the adult criminal justice system remain on the books. According to research conducted by the Campaign for Youth Justice:

- 23 states have no minimum age for transferring a youth to adult court; in all other states, the minimum age is 10 to 15
- Children are more likely to re-offend after serving in adult jails and prisons
- Youth convicted in the adult system receive little or no rehabilitative programming, which is mandated in the juvenile system.
- On any given day, more than 7,000 children are in adult jails
- The number of youth placed in adult jails has increased by 208% since 1990,
 and
- Children in adult prisons are at increased risk of abuse, sexual assault, suicide, and death

These national statistics reflect the reality of trying, sentencing, and incarcerating children in the adult criminal justice system. In 13 states, youth are automatically tried and sentenced as adults no matter how minor their offense; this kind of policy sends thousands of youth to adult court for non-violent offenses. According to a 2007 nationwide Zogby poll, 92% of Americans believe that instead of a blanket policy about trying youth in adult court, these decisions should be made on a case-by-case basis and 89% of Americans believe that rehabilitative services and treatment for incarcerated youth can help prevent future crimes.

With extensive research having been conducted on these policies, we are obligated to ask three basic questions:

- 1. Does is work?
- 2. Is it safe?
- 3. Is it fair?

Does is work?

The most extensive and comprehensive research on this issue has been conducted in Florida, a state that has led the way in transferring young people to the adult criminal justice system for the past 10 years. The top researchers in the field, funded by the US Justice Department, conducted a series of studies on Florida's practice of trying youth in adult court. The research conclusively found that young people fare worse when they are tried as adults. Even when controlling for prior record and current offenses, youth tried as adults in Florida were a third more likely to reoffend than those retained in juvenile court. The transferred youth also re-offended twice as quickly, and were twice as likely to be arrested for serious offenses. These results were almost identical to similar research conducted in New York and New Jersey by researchers from Columbia University. Research such as this has led the United States Surgeon General, the Justice Department and the Centers for Disease Control to all issue reports over the last several years which indicate that waiving juveniles to the adult system actually results in worse public safety outcomes for young people and jeopardizes the safety of youth while they are incarcerated in adult facilities.

Indeed, the young people themselves recognize the superiority of the juvenile justice system over the adult system. The Florida researchers interviewed 50 youth in Florida prisons and 50 youth in a maximum-security juvenile facility. Only two percent of the youth in the juvenile justice system reported that they were "learning new ways to commit crimes" while incarcerated, while 40 percent of the youth in the adult system said that they were learning new ways to commit crimes. One of the youth confined in the juvenile facility stated "They helped me know how to act. I never knew any of this stuff. That really helped me, 'cause I ain't had too good a life." By comparison, a youth in the adult prison said, "When I was in juvenile programs, they were telling me that I am somebody and that I can change my ways, and get back on the right tracks. In here, they tell me I am nobody and I never will be anybody." Indeed, since 1993, the year before Florida's legislature made it much easier for prosecutors to try juveniles as adults, Florida's

serious juvenile arrest rate fell by 13 percent, while the serious juvenile arrest rate for the U.S. declined by a much more impressive 53 percent - four times the decline experienced in Florida. In 1993, Florida's serious juvenile arrest rate was twice the national average. Now, Florida's serious juvenile arrest rate is nearly four times the national average. Both common sense and research tell us why this is so. After all, if you lock up a teenager with murderers, rapists and robbers, guess what he'll want to be when he grows up?

The second question: Is it safe?

Clearly the answer here is no. Sending young people to adult prisons is tantamount to giving up on them. In a November 2007 report released by the Campaign for Youth Justice entitled, *Jailing Juveniles*, shows how difficult it is to keep children safe in adult jails. In fact, youth have the highest suicide rates of all inmates in jails. Youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility, and 19 times more likely to commit suicide in an adult jail than youth in the general population. Youth in adult jails are also at great risk of physical and sexual assault. Findings in the report document that 21% and 13% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 2006 respectively, were youth under the age of 18 (surprisingly high since only 1% of jail inmates are juveniles).

And finally, and maybe most importantly considering the answers to the first two questions, is it fair?

This shift in policy has occurred at a time of growing awareness and concern about disproportionate representation of youth of color in both the adult and juvenile justice systems. Numerous reports have shown that youth of color are over-represented in the population held in detention facilities and in the transfer of youth from juvenile to adult court. In a report by the Justice Policy Institute, which I was Executive Director of when this analysis was conducted, entitled *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*, the research demonstrates that minority youth experience a "cumulative disadvantage" as they move from arrest to referral on charges, to adjudication, to disposition or sentencing, and finally to incarceration.

Another study commissioned by *Building Blocks for Youth* and prepared by the Pretrial Services Resource Center in Washington, *Youth Crime/Adult Time* is also instructive on this issue. This report is the most comprehensive and in-depth national study of the prosecution of minority

youth in criminal court. It is distinctive in several ways. First, it includes the full range of "transfer" mechanisms, e.g., judicial decisions, prosecutorial decisions, and legislative exclusions. Second, the study is broad-based, examining all the major decision points in criminal case processing, from arrest to final disposition. Third, there are a sufficient number of Latino youth to consider them separately in the analysis. Fourth, this is a multi-jurisdictional study of juvenile cases prosecuted in adult courts in 18 large urban counties across the country, including Milwaukee. Finally, the findings are based on data gathered specifically for this study and not from secondary sources. This study showed findings similar to earlier reports regarding over-representation and disparate treatment of youth of color, with over 80 percent of juvenile cases filed in adult court in the 18 largest jurisdictions in the country involving youth of color (in Milwaukee, it was 83%). The report also revealed disturbing aspects of the transfer process. In effect, in most cases, there is no longer an actual "transfer" process. In a marked departure from tradition, most determinations (85 percent) to prosecute juveniles as adults are not made by judges, but instead by prosecutors or legislatures. Moreover, although prosecution in criminal court is thought to be reserved for youth charged with the most serious offenses, this study indicates that many youth who are sent to the adult system have cases that are dismissed, resolved without conviction or transferred back to the juvenile justice system, scarcely justifying their prosecution in adult court, detention in adult jails, and subsequent confinement in adult jails and prisons. Thus, this research raises serious questions about the fairness and appropriateness of prosecuting youth in the adult criminal justice system.

As we can see, the answers to these three basic questions show that the policy of transferring youth to the adult criminal justice system fails to meet generally accepted standards of sound public policy. It does not work to reduce crime, thereby jeopardizing public safety. It puts youth at great risk of harm, and it is applied in a discriminatory and unfair manner.

As recently as last month, a DC-based polling firm, Greenberg, Quinlan, Rosner Research conducted a poll of DC residents to find out what they thought about putting kids in the DC jail, an adult facility, and prosecuting youth as adults. DC residents gave voice to what similar public opinion research has shown nationally: they do not want youth who are arrested and awaiting trial put into an adult facility. Further, they want:

- Youth not be prosecuted as adults because it does not prevent them from committing future crime and could result in them being re-arrested for violent or other crime
- Youth to be rehabilitated, not simply incarcerated, and
- Rehabilitation that includes opportunities for young people to better themselves like vocational training and mental health assistance

There is no question that violent and dangerous youth need to be securely confined for our safety and theirs. There is equally no question that some young people must be tried as adults. But incarcerating youth with more sophisticated adult prisoners renders them vulnerable to attack and more damaged when they return to society. This is tantamount to giving up on them - something we should never do.

Our challenge as responsible adults is to create a fairer and more effective youth justice system, where there is a balance between prevention, treatment, and punishment that gives kids a chance to make better choices. That is to say, where there is a balance between keeping our youth safe and ensuring public safety.

That is exactly what we are striving to achieve in Washington, DC. The mission of the Department of Youth Rehabilitation Services is to improve public safety by building on the strengths of the young people in our care in the least restrictive environment consistent with public safety. Our vision has consistently been to achieve this goal by creating decent and rehabilitative secure care *and* to develop a continuum of community based care for the youth under our supervision that is second to none in the nation. The essence of positive youth development can be found in the motto DYRS has adopted:

- Treat the young people like they're your own, but never forget they're someone else's. Hugh Price, the former President of the National Urban League, once described Positive Youth Development as what a good parent does with their own children on a good day. So when I think about my own 17-year-old daughter, I know that I don't greet her each day she comes back from high school by saying "Oh, I'm so proud of you, you didn't take drugs, get pregnant, or get arrested in school today!" Yet those are standards of achievement we set for youth in our nation's delinquency system all the time. For us, our motto, vision and mission drive us towards two essential goals that are consistent with the tenets of Positive Youth Development. One is,

don't settle for a deficit-based approach, one that treats the floor of crimelessness and drug-free existence as if it is the ceiling, just like you wouldn't accept those lowered horizons for your own loved ones.

But the second part of the motto - "...never forget they're someone else's" - requires that we empower the youth and their families to be a part of developing their own plans of which they will, ultimately, be the primary executors. We recognize that, for our own sons and daughters, nieces and nephews, grandchildren, cousins and God-children, the path to a problem-reduced life is through the achievement of certain competencies and skill sets. Our job as parents, aunts, uncles, grandparents and God-parents is to help young people achieve those skills and competencies so they can flourish. An important byproduct of achieving adult competencies is the absence of antisocial behavior, but that is the floor, not the ceiling.

So how does positive youth development really differ from a deficit based model? A Positive Youth Development (PYD) approach views the youth as an active participant in the change process, instead of as a client or target of change. The key strategy for a traditional Juvenile Justice (JJ) approach is control; for PYD, it is connecting the youth with community resources. So, for example, a traditional JJ approach would send a youth to job counseling and order community service as a punishment; PYD would look to engage the youth in career exploration and career-path work experience and use community service as service learning and job preparation. Most importantly, in the traditional JJ work, the aim is to diminish a youth's problems or deficits; in PYD, it is to build on a youth's strengths and assets.

The principles of PYD are the bedrock upon which the DC adaption of the Missouri model is founded, which is the second subject I will address today. Missouri's system proves that reducing recidivism is an achievable goal; that bad outcomes for youth in the juvenile justice system are not inevitable; and that treating youth humanely while holding them accountable is not only good for young people, it is good for community safety and good politically. Missouri also proves that a system with good outcomes can be provided at a reasonable cost. What elements are critical to the Missouri approach and how might another system adapt to the Missouri model? While there are many strands – and one of the beauties of the Missouri system is the degree to which all of those strands are woven together – all of those strands can be grouped into four elements:

- Keep it small
- Keep it safe
- Keep it local
- Keep it focused on youth

Keep it small: Missouri replaced large "training schools" with smaller, more hospitable (but still secure) facilities. No facility houses more than 40 youth and most house 36 or less. Then these facilities are divided into even smaller settings. Youth and staff are assigned to groups of no more than 12, usually 10 youth, and each group acts as a self-sufficient community. The youth in that group sleep together, eat together, go to school together, engage in therapy together, and play together.

Small allows staff to get to know youth and youth to know staff and the other youth. Small makes the challenges of running a secure facility more manageable. It fosters community and allows close supervision. It encourages accountability because it is harder for a staff member or a youth to hide. Staff and youth are both less tempted to engage in negative behavior if they know they are likely to be caught and if there is immediate accountability, both of which are more likely to occur in a smaller setting. Small discourages the staff rotation or cross-coverage that is often routine in larger settings but which breaks down both community and accountability. Missouri's insistence on utilizing only small settings is supported by research in other contexts – e.g. the "small schools" movement. Youth do better and the adults responsible for youth do better in smaller settings.

Keep it safe: Missouri has an unparalled record of safety – they keep staff, youth, and the community safe. In Missouri, staff does not have to live in constant fear of being assaulted by a youth. In Missouri, youth do not have to spend most of their energy and time thinking about how to defend themselves, including proving that they are tougher than other youth so that they will get left alone. And they don't have to think about how to escape or flee in order to be safe. In Missouri, staff do such a good job at assessing potential community safety risk and at socializing the youth in their care that the community has learned to trust their judgment and does not have to worry about the presence of a facility in its midst, worry about furloughs, or worry about releases. This strong safety track record allows Missouri to incorporate community experiences into their treatment model.

Safety is a prerequisite to treatment. Successful treatment is a prerequisite to better outcomes and lower recidivism. Staff cannot be expected to provide treatment and youth to engage in treatment until they feel safe. Fear makes staff and youth reactive, thus undermining the treatment environment. Individual incidents – assaults and injuries – hurt individual youth and staff but also have negative ripple effects that go well beyond the immediate damage. Injuries breed fear and fear breeds injuries. Both increase staff turnover, lower morale, increase use of sick time (putting a strain on the remaining staff and on the budget), interrupt the productive routine (school or programming), and result in disproportionate resources devoted to medical care to repair the injuries and to investigations in order to find out the perpetrators. Incidents drive up length of stay because youth will be held longer either to punish them for participating in an incident or out of concern about a lack of evidence of rehabilitation. Increased length of stay is expensive and runs contrary to the research that suggests that shorter-term interventions have more positive impacts on youth than longer term ones.

The Missouri model makes safety the responsibility of everyone – youth and staff alike – not the responsibility of the adults alone -or, as is common in some systems, the responsibility of a subset of staff, often called security officers. The orientation process and group process utilized in Missouri emphasize, encourage, and support safety. When new youth come in and either start to act out or threaten to act out, the other youth tells that youth that such behavior is not cool there. On a day to day basis, youth often have the best sense of when an incident might be brewing. The Missouri approach has the youth respond as a group to cool things off and address the potential issue before the incident happens. Youth also know themselves when they are at risk. They are encouraged to tell the youth in their group and their staff when they are having a bad day, and to ask for space and help. In addition, staff having a problem with a youth is encouraged to seek support from other staff. Everyone is made conscious of the triggers that cause anger and to address the underlying issues rather than letting them escalate into incidents. Missouri does not need lockdowns, isolation cells, or physical or chemical restraints. In fact, it decided those interventions were counter-productive and eliminated them. It utilizes its group process and its close supervision to anticipate and prevent, rather than react, to safety issues. Safety is the responsibility of everyone not just security officers therefore separate treatment and security staff are not needed. You combine them, which frees up and concentrates resources on youth.

This emphasis on "safety first" not only supports treatment inside the facilities, it makes it possible to incorporate community experiences into treatment and so transition a youth successfully back into the community. Missouri facilities are remarkably open to the community. Many do not have fences – i.e. they are "staff secure" – and none have razor wire. They have homey elements such as pictures, plants, furniture, and pets. Some are directly integrated into a community setting. For example, two girls' facility is located on a college campus. Youth in the highest levels of secure care have the opportunity to earn trips into the community. Trips have become routine, not exceptional, in the Missouri system. Those controlled experiences allow youth to learn how to behave in real life settings outside the institution and the institutions themselves are more reflective of real life in the community.

The assignment of a single case manager from the point of commitment through all levels of institutionalization to the end of the term of commitment also supports safety. The case managers get to know the youth on their caseloads so well that there is less of a chance that a youth will end up in an inappropriate setting or will not receive the treatment that he or she needs. The case managers keep close tabs on youth after release and again can often anticipate a potential problem before it rises to the level of a community safety issue. In most systems, youth transfer from adult to adult to adult, which requires that each new adult get to know that youth anew. The safest thing for an adult to do who doesn't know a youth is to place or keep the youth in the most confined setting available. The Missouri case management system reduces the stress of managing unknown safety risks by largely taking away the unknown.

Missouri's remarkable safety record for staff, youth, and community is an impressive accomplishment, and it is this achievement that makes positive outcomes for youth.

Keep it local: Missouri staff does not try to rehabilitate youth by themselves. They know they need parents, and they need the support of the community. To make that possible, Missouri committed to a regional approach that places youth in facilities close to home. In order to do that, large centralized facilities were closed and new, smaller facilities were scattered throughout their state, in locations convenient to the families and communities from which the youth come. This commitment to going local fits nicely with the commitment to go small. Missouri built a continuum of placements by region so that if a youth needed a low, medium, or high level of

care, it could all be found within two hours of the youth's home. It also means that youth are more accessible to be interviewed for aftercare resources and to attend community-based programs in the community where they are likely to live after they leave care.

The Missouri commitment to the local also makes its facilities accessible to the decision-makers in the juvenile justice system, those who decide whether or not a youth will go to placement. Missouri's facilities are not located in remote regions far from the judges placing youth or the lawyers prosecuting or representing them or the case managers located in the community. Consequently, these decision-makers can see for themselves how the Missouri staff treats youth and it encourages them to trust Missouri staff to make the right decisions without micromanagement from outside. Consequently, Missouri staff has an unusually high level of control over the level of placement and on decisions about when to release the youth in their care. They also have a remarkable record of keeping youth in their system and out of the adult system.

Keep It Focused on Youth: Missouri focuses on youth. Missouri's beliefs and philosophies, policies, staffing patterns, training, and treatment have all been shaped by a consistent and renewed focus on thinking about how all those elements affect youth. And the most concrete manifestation of Missouri's laser focus on youth is their commitment to the group process, to youth themselves as the primary agents of their own rehabilitation and the rehabilitation of their peers, with the support of the adults.

Inadvertently, most systems drift into a focus on adults. Often, staff function in ways convenient to adults: shifts and rotations are established based on the times that work for the adults working in the system, not always the youth living in that system. Most reward staff by moving them farther and farther away from the youth and having them supervise adults. Most systems make adults the source of treatment. Even group processes in other settings have a tendency to be adult-focused.

Missouri makes youth the focus. The group process places primary responsibility for treatment and rehabilitation on the youth themselves. New youth are oriented and carefully taught how to engage in the group process with most of the orientation and teaching done by the other youth in the group. Youth are embedded in a single group. They are assigned to one group and they eat, sleep, learn, process treatment, and play in that group. Youth learn treatment tools, for example,

and they utilize those tools themselves and present their results to their fellow group members. Youth might go outside the group to receive special training or interventions such as sex offense or substance abuse, but the emphasis is on integrating most treatment into the group. Youth learn to rely on the group for feedback and for a community of support. Even after they leave, youth will call back to that group to ask for help or report their progress back in the community.

Utilizing youth as the primary source of their own therapy rests on the now large body of research pointing to the power of the peer group for adolescents. It harnesses that power and allows Missouri to leverage much more treatment into their system then if they depended on adults alone as the source of treatment. The adults are there to coach and teach and supervise, but the youth do most of the work. This peer group focus also keeps youth busy for every activity is utilized as a teaching tool. There is not much leisure or down time and there is almost no time away from the group.

This laser focus on youth also proves a useful screening tool in hiring staff. Missouri is explicit that it wants to hire staff who like youth. They hire college-educated staff, most of whom have a previous track record of working with youth. All staff, in every role, including kitchen help, administrative staff and maintenance staff are expected to work with youth. As a staff member in their system, there is really no place to hide if you do not like youth. The organizational chart is relatively flat with a premium placed on keeping staff in contact with youth.

Because youth do most of the work and most staff work directly with the youth Missouri can keep low staff youth ratios, allowing for close supervision and lower staff stress. In turn, both reduce incidents and turnover. Missouri staff are remarkably stable, especially for such relatively low paying jobs. The constant cry to focus on youth also encourages staff to brainstorm constantly about how to improve programming and create a real sense of ownership and team at the ground level. The action in Missouri is not in headquarters. It is on the frontlines and that keeps everyone from frontline staff up to the director focused on youth.

Now, some might think that DYRS has simply chosen to emulate the Missouri Model. But the Missouri approach only focuses on one important aspect of our reforms, the reform of secure care for committed youth. The truth however is that our programming and plans for reform are a combination of many best practices and promising approaches taken from jurisdictions

throughout the nation as well as ideas that have percolated up from our staff, community, parents, and youth. Included in those innovations we've borrowed from other jurisdictions is the use of a Lead Agency to provide and/or broker community based services, based on the nationally-recognized "Wraparound Milwaukee" approach.

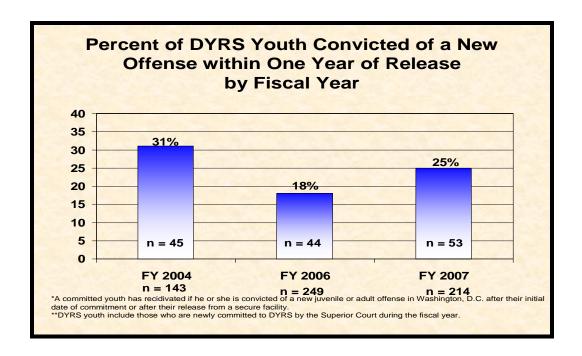
Then there are some who maintain that D.C. youth are different from Missouri youth. Well, yes and no. YES, each adolescent is a unique individual and that is why Individualized Developments Plans (IDPs) are developed and refined in Family Youth Team Meetings. And, NO, every adolescent has strengths, needs and aspirations to belong to a family and community, to be recognized as a worthy human being, and to simply be loved and supported by at least one significant person in his or her life.

While DYRS has a long way to go before we're satisfied with our reform efforts, both in terms of replicating the Missouri Model and creating a network of community based programs we're satisfied with, we believe we are on the right track.

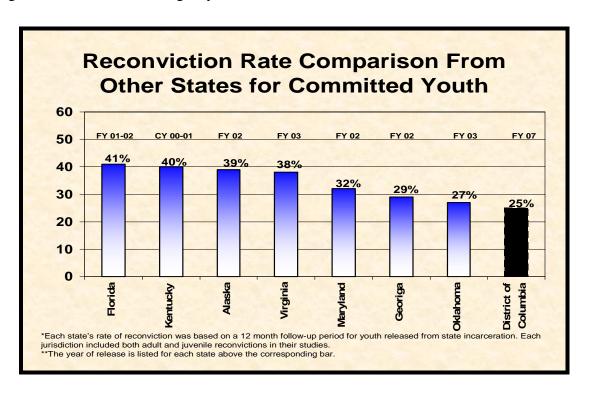
Just last month, DYRS issued a newly completed recidivism study. The analysis provides three primary indicators of safety – recidivism, as measured by re-adjudication or re-conviction within one year; city-wide juvenile arrests for serious offenses from 2004 to present; and homicides of DYRS youth from 2005 to present.

With regard to youth recidivism, we looked specifically at youth newly committed to DYRS in fiscal years 2004, 2006, and 2007. FY 2004 predates the establishment of DYRS as a cabinet level agency so it best represents the "before" picture of DYRS.

Recidivism within 12 months of returning to the community for youth newly committed to DYRS declined by 19% from 2004 to 2007.



Although great caution needs to be exercised in cross-jurisdictional comparisons of recidivism, DYRS' overall rate of recidivism is lower when compared to the most recently published data from nearby states such as Virginia and Maryland. This despite the fact that the number of new commitments to DYRS has increased two and one-half fold between FY2004 and FY2008, putting a tremendous strain on agency resources.



I want to stress that our findings are preliminary. We need to delve more deeply to explain, understand, and research further our recidivism data.

Finally, during the time period we have been initiating our reforms, juvenile arrest rates have been declining steadily in the District of Columbia. Since 2004, the juvenile arrests for serious crime have declined by 24%, more than three times the decline in the rate of adult arrests for serious crime.

As we continue to strive to improve our juvenile justice system in DC, we by no means hold ourselves up as a beacon for others to emulate. We have come from running a system that was a disaster, poised on the brink of Court-ordered receivership, enmeshed in litigation for literally decades. It was one where neither staff nor youth were safe; it was a miserable place both to be confined or to work. Right now, I'd say we've gone from being a very, very bad system to being slightly above average – as evidenced by our initial recidivism outcomes, our being awarded a "Top 50" award by Harvard University's Kennedy School of Government, and by the Plaintiffs in our lawsuit withdrawing their motion to place the department into receivership, which was still pending when I took over this job. We're not at the end of the long tunnel of reform, but we can see the light at the end of the tunnel, and as we struggle to use best practices like the Missouri Model, a "Wraparound Milwaukee" approach, and other innovations like Positive Youth Development, we're always happy to share our experiences with other jurisdictions and learn from their experiences. I thank you for inviting me to attend this most interesting hearing and look forward to answering whatever questions you might have.