### E X E C U T I V E S U M M A R Y

# DESIGNED TOFAIL

#### A REPORT ON

Wilder Youth Development Center, a Department of Children's Services Facility



COUNSELING

CENTER







This report is a joint effort of Disability Rights Tennessee (DRT) and the Youth Law Center (YLC) made possible by the many youth willing to share their experiences.

DRT is part of the national Protection & Advocacy (P&A) System — a network of 57 federally mandated legal advocacy agencies serving people with disabilities and making up the National Disability Rights Network. As the P&A agency for Tennessee, DRT has broad authority to advocate for the rights of individuals with disabilities in this state, to monitor certain facilities, including juvenile justice facilities, and to investigate allegations of abuse and neglect. This report is based on records and information that DRT is authorized by law to collect in order to advocate for and protect the rights of people with disabilities. DRT is supported at taxpayer expense by the U.S. Department of Health & Human Services, The Administration for Community Living; Substance Abuse & Mental Health Services Administration; U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. This report does not represent the views, positions or policies of, or the endorsements by, any of these federal agencies.

YLC is a non-profit law firm that advocates to transform foster care and juvenile justice systems across the nation so that every child and youth can thrive. For over forty years, YLC has pursued policy and advocacy to protect the rights of youth in the child welfare and juvenile justice systems and to promote positive youth connections to community and family.

For more information, please visit DRT at www.disabilityrightstn.org and YLC at www.ylc.org. For questions or other inquiries, please contact YLC at info@ylc.org and DRT at inquiries@disabilityrightstn.org.



## **Executive Summary**

*Designed to Fail* is a report about abuses found at the Wilder Youth Development Center run by the Tennessee Department of Children's Services (DCS) that has implications well beyond a single facility. The authors believe many of the practices can be found in other facilities and conclude with recommendations necessary for the state juvenile justice system as a whole. This report documents the destructive practices of warehousing a disproportionate number of youth with disabilities and of Black youth, who represent the majority of children locked up in Tennessee's juvenile detention centers, and steps that should be taken immediately to stop harming these children.

Under Tennessee law, DCS is required "to provide timely, appropriate and cost-effective services for children in state custody and at risk of entering state custody so that these children can reach their full potential as productive, competent and healthy adults." Tennessee Code Annotated (T.C.A.) § 37-5-102. With regard to youth in the juvenile justice system, DCS is failing to meet this duty under state law.

Disability Rights Tennessee (DRT) is the state's federally mandated Protection & Advocacy agency for people with disabilities. DRT has been monitoring the conditions of confinement, education and treatment at Wilder since September of 2020. During this time, DRT has uncovered disturbing patterns of abuse, exploitation and a startling abdication of responsibility for the well-being of youth in DCS custody at Wilder. Based on these investigations, it is apparent that DCS is in violation of state and federal laws, and its own policies. The recent monitoring has also uncovered troubling incidents suggesting that DCS has directly inflicted harm upon the very youth it is charged with treating, rehabilitating and protecting. DRT worked with the Youth Law Center, a national organization with expertise in child welfare and juvenile justice reforms, to gather input and assist in the development of recommendations in this report.

As detailed throughout the following pages, breakdowns of evaluation and assessment protocols, failures to offer appropriate evidence-based services, and neglecting to maintain safe environments have resulted in a juvenile justice process in Tennessee that is dysfunctional and in disrepair, harming youth, especially those with disabilities.

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Hardware secure facilities like Wilder should be the very last resort for youth. Instead, DCS should be utilizing community-based alternatives that are available for both prevention (before youth are involved in the juvenile justice system) and rehabilitation (after youth are involved). As long as the juvenile justice system in Tennessee relies on restrictive facility placements such as Wilder, it is designed to fail children in its care and consequent-ly, fails to protect the communities and neighborhoods across the state.

Additionally, DCS is wasting taxpayer money. By law, state funds are required to provide evidence-based services and, when possible, those services should be community-based. In its monitoring, DRT saw little evidence that the \$407 per day per youth costs for Wilder were spent on appropriately delivered, evidence-based interventions or earlier, more cost efficient and effective community-based services.

The Wilder Youth Development Center is not what the name implies and does not provide youth development; rather, it is run like a dangerous jail with few, if any, necessary services to help youth. It lacks appropriate education programs, mental health support, and basic life skills. Further, Wilder undermines the critical connection youth have with their parents and families. While outside the scope of this report, youth at Wilder described similar experiences at other DCS-contracted juvenile justice facilities, thus suggesting there are structural deficits in Tennessee's juvenile justice system including a systemic lack of necessary services, especially those provided in the community.

## A Summary of the Key Findings

## DCS is Failing to Protect Children from Abuse, Mistreatment or Neglect.

The core function of DCS is to protect Tennessee's children from abuse, mistreatment, and neglect. By warehousing youth in unsafe facilities such as Wilder, and at times employing staff members who have physically harmed youth either directly or through reckless neglect, DCS has placed these youth at risk.

**Abuse by Staff**: DRT's monitoring and investigation has revealed a pattern and practice of abuse perpetrated by staff at Wilder, including physical abuse, sexual abuse, and staff orchestrating attacks on youth.

**DCS Has Failed to Respond to Allegations of Staff Abuse:** In its December 2020 Performance Audit of DCS and Wilder, the Tennessee State Comptroller found DCS had failed to ensure that Wilder "corrected potentially harmful practices that risk the safety of the children who are in their custody." Although the DCS Special Investigations Unit was aware of three Wilder employees who were the subject of ten or more investigations into their conduct, the state's Provider Quality Team Division did not follow up on or perform in-depth reviews for any of the three employees.

DCS Sanctions Abuse Through Its Seclusion Practices: At Wilder, the "Therapeutic Response Unit" (or TRU Dorm), which is not at all as it sounds, is where youth are subjected to detrimental seclusion practices. Records reflect stays in TRU resulted in increased suicidality, yet DCS recklessly continues this practice—even with the same youth who have reported that it makes them want to kill themselves.

#### DCS is Failing to Appropriately Assess, Educate, or Rehabilitate Youth at Wilder – Many of Whom Have Disabilities and/ or Trauma Related Needs:

DCS fails to conduct assessments in accordance with Tennessee law and often seems to ignore existing assessments. DCS fails to educate youth in its care, including not meeting education requirements for youth with disabilities under the Individuals with Disabilities Education Act. Lastly, Wilder has a startling lack of rehabilitative programming. Wilder functionally isolates young people from all other productive supports, such as family, religion, and community-based services. DCS's failure to provide rehabilitative programming and to instead arbitrarily punish and isolate youth has created a powder keg of pentup frustrations and hopelessness.

By failing to build out a continuum of community-based alternatives for juvenile justice-involved youth, DCS is defaulting to the most expensive, least effective, and most restrictive options. According to DCS's own numbers, it costs \$48,840 per day to operate Wilder—almost enough to cover four years of tuition at the University of Tennessee.

#### DCS is Failing to Provide Effective Behavioral and Mental Health Treatment.

DCS is warehousing youth with disabilities at Wilder and failing to provide appropriate treatment, creating a dangerous environment that seems to violate law requiring children receive appropriate services in the least restrictive environment.

Wilder relies heavily on psychotropic medications to address behavioral needs: 78% of youth interviewed by DRT report receiving psychotropic medications for conditions such as mood disorders, depression, schizophrenia, anxiety, and others. Despite this seemingly huge need, DRT monitoring found a startling lack of therapeutic services or qualified medical staff and instead found therapist shortages and an alarming prevalence of mental health deterioration and suicidality among youth.

#### DCS is Failing to Ensure that Health Care Needs of Youth Are Met.

Youth interviews and records obtained by DRT indicate a pattern of delays and denials of medical care.

#### Without Proper Grievance Procedures and Increased Transparency and Oversight, DCS Cannot Keep Children Safe.

DRT monitoring has shown that youth at Wilder have been isolated from their families and communities and have little to no recourse if they are harmed or are not getting basic services. These youth are functionally hidden away from sight with little due process or functional complaint processes. Consequently, they have no effective means to protect themselves or to seek help when they are at risk. Worse, when families attempt to hold DCS accountable, it has actively sought to transfer youth to other facilities and/or to the adult system.

**Grievance Procedures**: Records show that from 2019-2020, only three grievance hearings were held for almost 300 youth grievances. Only one of the three hearings took place within five days of the filing (a violation of DCS policy), and only one of those hearings was appealed.

#### **Executive Summary**

## **A Summary of the Recommendations**

The people of Tennessee support system-change to help youth and their families, not a system designed to fail. Residents across the state strongly support changes in the juvenile justice system such as those put forward in the following recommendations. They want a system that focuses on prevention and rehabilitation over punishment and incarceration, findings that are documented in a statewide public opinion survey of Tennessee resident's and commissioned by the Youth First Initiative.

Support among Tennesseans for these policies is based on a belief that most youth in the juvenile justice system are capable of positive change, that the system should provide them with more opportunities to better them-selves, and that the best thing for society is to rehabilitate young people so they can become productive citizens.

#### What Now: Tennessee Can Make Immediate Changes to Its Juvenile Justice System to Stop Abuse, Improve Child Well-Being, and Increase Community Safety

## Respond immediately and appropriately to allegations of abuse.

- Implement policies to conduct open, transparent, and prompt disciplinary procedures for staff who have allegedly physically or sexually abused youth.
- Create a safe, protected environment for youth to file grievances that allows them to provide information about abuse in a way that will prevent any semblance of retaliation.
- Immediately terminate staff who have been found to have abused young people at Wilder and/or who have been found to retaliate against youth for reporting abuse.

#### Immediately assess all youth at Wilder to determine appropriate placement and service plans.

 Immediately initiate multi-disciplinary team meetings for all youth currently placed at Wilder. These meetings should assess the appropriateness of the placement at Wilder with special consideration of disability related needs—including intellectual and developmental disabilities and/or mental health needs.

- Create individually tailored treatment plans for all youth, including a transition plan with necessary supports for when youth return to their families and communities.
- Immediately conduct reliable evaluations of all youth suspected of an intellectual disability and end the practice of placing youth with intellectual disabilities in hardware secure placements.

#### Immediately contract with a third-party child psychiatrist to assess all children currently prescribed psychotropic medications.

- Immediately work with a third-party child psychiatrist to assess all prescribed psychotropic medications and to ensure that none are being used as "chemical restraints," but instead are part of a therapeutic approach supporting child wellbeing.
- Initiate periodic review by a child psychiatrist to monitor for any adverse side effects or changes related to medication, as well as a third-party review that is automatically triggered when polypharmacy (i.e., the prescription of two or more psychotropic medications) is recommended.

• Develop and implement a policy of informed consent, sharing information regarding all medications and their potential side effects with youth and their parents and/or legal guardians.

## Ensure staff are appropriately trained to work with youth with complex needs.

- Ensure that staff at Wilder and any other facility housing or serving youth in the juvenile justice system are appropriately trained and that staff ratios are in compliance with federal law and allow for safe access to educational and recreational opportunities, as well as therapeutic and rehabilitative services.
- Utilize the expertise of qualified behavior analysts to create system-wide and individualized behavior plans for youth with challenging behaviors and to train staff in the implementation of these plans.
- Hire properly credentialed education staff so that youth can access legally mandated special education services, as well as six-and-a-half hours of school a day for 180 days a year.
- Hire or contract for appropriate health and mental health services, including at minimum a psychologist, a child and adolescent psychiatrist, therapists, and nursing staff.

#### End current practices of isolation and instead provide youth with meaningful connections and opportunities.

• Allow youth to access religious services and to have appropriate and regular contact with family, including their extended family, siblings, and children.

- End the practice of seclusion at Wilder and all other DCS-contracted facilities.
- Under no circumstances should youth in protective custody be placed in long-term seclusion or kept in TRU Dorm, nor should they be denied equal access to programming and services.

#### Further steps must be taken for DCS to meet its ethical, legal, and fiduciary duty to children in its care and to the State of Tennessee.

- Invest in therapeutic and rehabilitative services to address youth and family needs across the full continuum of care to ensure that youth are truly receiving services in the least restrictive environment.
- Invest in and utilize post-adjudicatory community-based placements instead of sentencing youth to institutions.
- Invest in ongoing infrastructure to engage system-impacted youth and families, alongside community members and juvenile justice stakeholders, in designing and implementing evidence-based solutions and services across the state.
- Audit and implement a monitoring scheme for all DCS-contracted and licensed juvenile justice facilities.
- Review the licensing scheme for facilities serving youth in the juvenile justice system to ensure that the state is collecting the necessary data to certify that providers comport with evidence-based therapeutic practices and principles.
- End the practice of administrative transfers (i.e., incorrigibility determinations) to the adult corrections system.

In sum, Wilder exemplifies the myriad of ways youth in the juvenile justice system, many of whom have disabilities, are harmed by DCS's reliance on highly restrictive hardware secure facility placements. Without implementation of the recommendations contained herein, DCS will continue to fail the children it is designed to protect.





This report is a joint effort of Disability Rights Tennessee and the Youth Law Center. We are grateful to the many youth who were willing to share their experiences with DRT investigators and to a number of additional community-based organizations and juvenile justice advocates in Tennessee who were willing to share their knowledge as we developed this project.

For more information, questions or other inquiries, please contact the Youth Law Center at info@ylc.org and Disability Rights Tennessee at inquiries@disabilityrightstn.org.