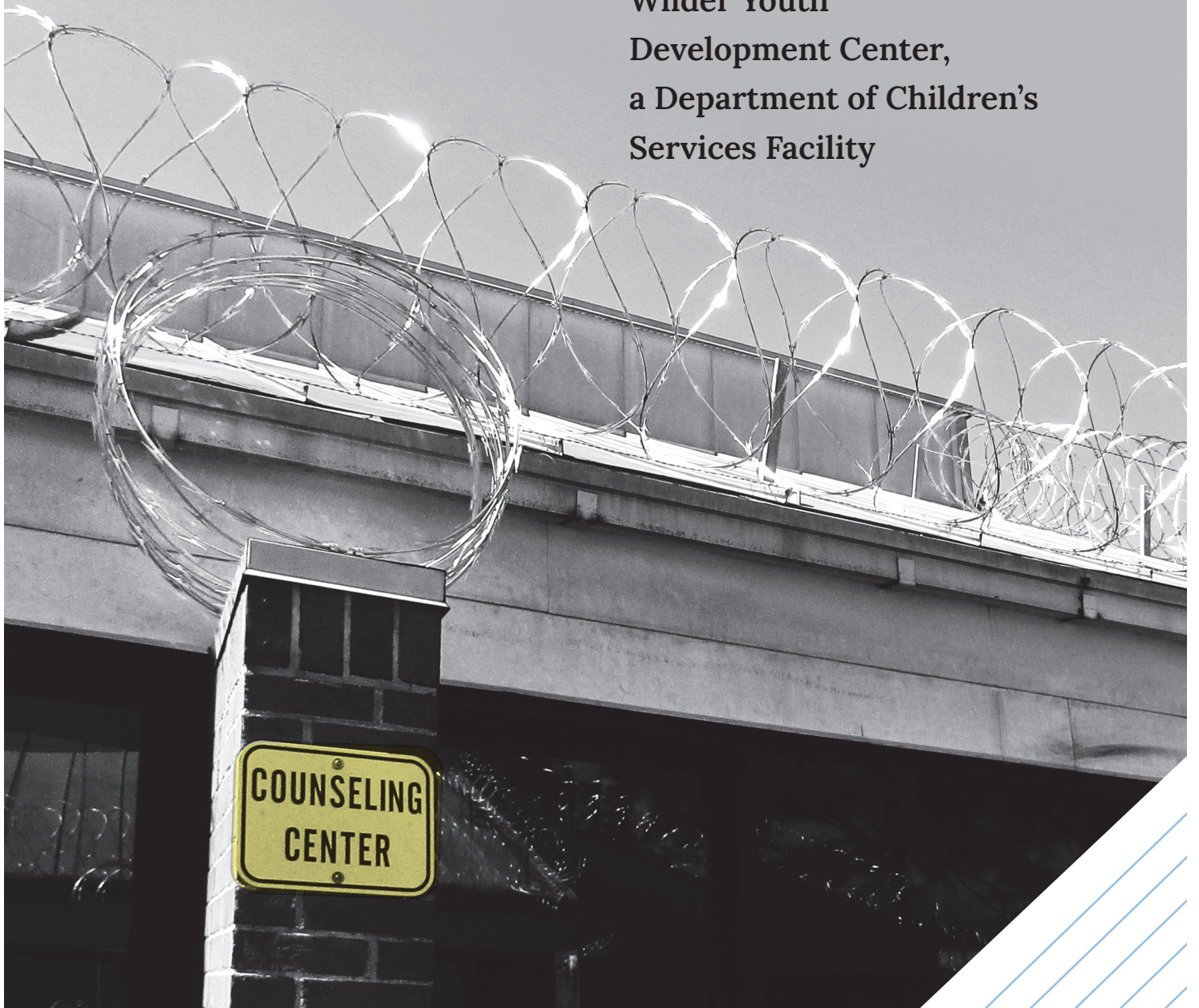


DESIGNED TO FAIL

A REPORT ON

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





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.

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Glossary of Terms and Abbreviations

ACEs Adverse Childhood Experiences: the potentially traumatic experiences that occur before a child reaches 18 and can include emotional, physical, and sexual abuse, or exposure to substance abuse, domestic violence, or mental health conditions; having ACEs is linked to negative health and behavioral outcomes later in life, including elevated risks for chronic disease, suicidality, and substance abuse

Continuum of Care a range of treatment settings and options that can be adjusted for individualized and specialized youth needs, including those with disabilities, and that prioritize family and community connection

DCS Department of Children's Services: oversees Tennessee's foster care and juvenile justice systems

DRT Disability Rights Tennessee: the federally mandated Protection & Advocacy (P&A) agency in Tennessee with broad authority to advocate for and protect the rights and well-being of Tennesseans with disabilities, which involves monitoring certain facilities and investigating abuse and neglect

Evidence-Based Program (or Services) a program or practice that has been scientifically shown to improve outcomes relevant to the purpose of the program and that is governed by a program manual or protocol that explains how to administer the program

"Handle with Care" Protocol a behavior management system that utilizes verbal de-escalation and a patented physical restraint technique

Hardware Secure Facility a highly restrictive juvenile detention facility in which the movement of youth is managed by both staff supervision and the construction and hardware of the facility such as locks, bars and fences

HiSET the sole exam opportunity in Tennessee offering a state-issued high school equivalency credential for adults without a high school diploma; while intended for adults, 17-year-olds may take the HiSET with an age waiver signed by their local director of schools

P&A System The Protection & Advocacy System: a network of 57 federally mandated legal advocacy agencies serving people with disabilities and making up the National Disability Rights Network

PREA Prison Rape Elimination Act (2003): federal legislation intended to help eradicate all sexual misconduct by residents and staff in all types of institutions in the United States including juvenile facilities

Psychotropic Medication prescription drugs that affect the chemical makeup of the brain and nervous system

Seclusion the involuntary segregation of a child from the rest of the resident population regardless of the reason for the segregation, including solitary confinement, to a locked unit or ward where other children may be seen or heard but are separated from the child

Therapeutic Foster Care out-of-home care by foster parents with specialized training to care for a wide variety of children and adolescents, usually those with significant emotional, behavioral, or social issues or medical needs

TRU Dorm the "Therapeutic Response Unit" at Wilder where youth are sent for seclusion and other forms of segregation, including protective custody

Trauma-Informed Care practices that recognize and respond to the signs, symptoms, and risks of trauma to better support the health needs of individuals who have experienced it

YDC Youth Development Center: a hardware secure juvenile justice facility in Tennessee that confines youth 13-18 years old who have been committed to state custody for treatment by the Juvenile Courts

YLC The Youth Law Center: a non-profit advocacy organization working to transform foster care and juvenile justice systems across the nation so every child and youth can thrive



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.

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 consequently, 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 pent-up 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.

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 themselves, 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.



Introduction

The Tennessee Department of Children’s Services’ failure to design a continuum of services that can meet the individualized and specialized needs of youth in the juvenile justice system has led to a practice of unnecessarily warehousing youth with disabilities and trauma related needs in institutional settings, where they receive substandard care, few appropriate services, and are highly at risk of abuse. These practices disproportionately target African American youth, who represent the majority of children locked up in Tennessee’s secure detention centers.¹

The practice of placing youth in locked facilities without access to appropriate services is both unconscionable and a violation of state and federal law. Further, while children are placed in these facilities, there have been disturbing incidences of abuse and harassment. There are community-based alternatives for both prevention (before youth are involved in the juvenile justice system) and rehabilitation (after youth are involved) that Tennessee should be using instead. To put it simply, the juvenile justice system in Tennessee is designed to fail children placed in its care and, by consequence, fails to protect the communities and neighborhoods of Tennessee.

This report specifically addresses the Wilder Youth Development Center and is based on recent monitoring visits by Disability Rights Tennessee and publicly available data.

¹ Per DCF data, African American children represent 59% of the youth in secure detention centers and only 21% of the state’s overall population. See <https://www.tn.gov/tccy/programs0/jj-dmc.html>.

The Tennessee Department of Children’s Services (DCS) is responsible for protecting, supporting, and, above all, keeping safe some of the most vulnerable children in our state who are entrusted to its care.

This responsibility is not only an ethical duty but also required by law. Tennessee Code Annotated (TCA) § 37-5-102 states that DCS’s purpose is “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.”

T.C.A. § 37-5-102 also states that the Department shall further strive to:

1. Protect children from abuse, mistreatment or neglect;
2. Provide prevention, early intervention, rehabilitative and educational services;
3. Pursue appropriate and effective behavioral and mental health treatment;
4. Ensure that health care needs, both preventive and practical, are met; and
5. Keep children safe.

With respect to youth in Tennessee’s juvenile justice system, DCS is failing on all counts, and nowhere is this more evident than the John S. Wilder Youth Development Center (Wilder).

The Wilder Youth Development Center is not what the name seems to describe; instead, it is a detention facility that is run more like a dangerous jail than a place where youth can get needed services, like training programs, mental health support, and basic life skills. Further, Wilder undermines the connection youth have with their parents and families, harming their ability to make a successful transition to adulthood and contribute positively in their communities.

Disability Rights Tennessee (DRT) has been monitoring conditions of confinement, education, and treatment at Wilder since September 2020, with virtual monitoring initially, and multi-staff, in-person site visits taking place on April 5-8, 2021, May 4-6, 2021, June 29-30, 2021, August 18, 2021, October 5, 2021, and most recently on March 2, 2022.

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. While outside the scope of this report, youth at Wilder report similar experiences at other DCS-contracted juvenile justice facilities. Indeed, there are structural deficits in the way that services are delivered to youth in the juvenile justice system in Tennessee that point toward DCS’s mismanagement and a failure to support or protect children contrary to state and federal law. DRT’s monitoring at Wilder shows that there are a disproportionately higher number of Black youth and youth with disabilities who are confined there, and we believe this is true in facilities across Tennessee.

These patterns represent a failure of facility management and a failure by DCS to design and maintain a continuum of care that delivers “timely, appropriate, and cost-effective services” in order to meet the

needs of children and families “in a setting that is the least restrictive and, yet, the most beneficial to the child.”²

Not only is DCS harming the youth in its care, it is also wrongfully spending taxpayer money that is meant to ensure that youth receive research-backed therapeutic and rehabilitative services. Under T.C.A. § 37-5-121, DCS is prohibited from “expend[ing] state funds on any juvenile justice program ... including any service model or delivery system in any form or by any name, unless the program is evidence-based.” In the course of monitoring Wilder, DRT has yet to see any of the \$407 per day it costs to place a youth at Wilder be spent on proven, appropriately delivered, evidence-based services.³

Instead, DRT has seen a deterioration in conditions of confinement such that Wilder is neither therapeutic nor safe for students or staff. Recently, an employee at Wilder described the facility as “spiraling out of control.”

Despite their inability to run the facility they currently have, DCS has requested to build and run a new, large juvenile justice facility in West Tennessee. Even

aside from DRT’s concerns regarding facility management, the rationale for such a facility is unclear, given that, as DCS stated in its own annual reporting, Tennessee is in the middle of a long downward trend in the number of youth committed to state custody for delinquency⁴; the number of youth at Wilder has not been higher than 89, and has been as low as 42, since DRT started monitoring.⁵ During DRT’s March 2022 monitoring visit, DCS confirmed its plans to reduce the population at Wilder to 32 young people.

As DCS itself has noted, “the population or the number of youth in residence has very little impact on YDC operating costs. Indeed, staff and facility maintenance costs are much the same when the facility is at full capacity as when it runs at less than full capacity.”⁶ Why then, should taxpayers pay for a new, half-empty facility with potential for continued abuse and neglect of youth in DCS’s care, instead of investing in the evidence-based therapeutic and rehabilitative resources that DCS is obligated by law to provide? These services, when provided in the community with fidelity to evidence-based models, strengthen youth, families, and their communities by providing young people opportunities to heal, rehabilitate, and grow.

² T.C.A. § 37-5-102(a)

³ Under T.C.A. § 37-5-121, an evidence-based program is a program or practice that has been scientifically shown to improve outcomes relevant to the purpose of the program—such as reducing substance use or improving mental health—and that is governed by a program manual or protocol that explains how to administer the program. This statute also allows DCS to develop pilot programs based on research or theory in order to identify new evidence-based practices.

⁴ “Overall, the number of diversion and probation cases has declined since 2012.... These declines follow state and national trends of fewer youth entering custody for delinquent offenses.” See https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/annual-reports/2020_Annual_Report.pdf, p. 17.

⁵ The most recent data reports show that at the start of FY20, there were 885 delinquent youth in custody in Tennessee and only 683 youth in custody at the end of the fiscal year. That’s a decrease of 203 youth—or 23 percent. At the November 1, 2021 DCS Budget Hearing, DCS Commissioner Nichols reported that that number had further decreased to 547 youth—an additional decrease of 20 percent over the span of just four months. Budget hearing available here: <https://sts.streamingvideo.tn.gov/Mediasite/Channel/mediasiteadmin-tn-budget-hearingsfy2022-2023/watch/176133f25fd040e08e2d734231fcc8be1d>.

⁶ https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/PC1005_Report_FY17.pdf, p. 9

We call upon policymakers, juvenile justice system stakeholders, community members, and all those who care about the well-being of Tennessee’s youth and families to:

1. Stop the abuse and exploitation of youth in DCS custody.
2. Oppose the expenditure of taxpayer dollars on a large new DCS juvenile justice facility in Tennessee.
3. Require DCS to follow Tennessee law and the recommendations of Tennessee policymakers by investing in evidence-based solutions that will: (a) provide meaningful opportunities for justice, healing, and reconciliation; (b) deliver on DCS’s mission to ensure that all children reach their full potential as productive, competent, and healthy adults; and (c) keep communities and families safe.⁷
4. Hold DCS accountable to stop the practice of warehousing primarily Black youth with disabilities and to instead invest in the creation of an array of community-based therapeutic services as required by state and federal law.

⁷ Tennessee’s 2017 Blue Ribbon Task Force on Juvenile Justice recommended that state funds be “reinvested in a continuum of in-home and community-based services that research indicates will improve recidivism rates and other outcomes, as compared to placements that may lead to higher rates of recidivism and may cost the state more than \$230,000 per youth per year.” See <https://www.tn.gov/content/dam/tn/tccy/documents/ij/JJ-BlueRibbon-Report-2018.pdf>, p. 6.

In the pages that follow, we will provide an overview of DCS, Wilder, and their respective roles in Tennessee’s juvenile justice system, followed by an accounting of DRT’s findings with regard to each of the five above-described legal responsibilities DCS has to Tennessee’s children and youth. We will close with a discussion of next steps and possible avenues to create sustainable systems-reform that truly delivers on DCS’s mission to ensure that all children reach their full potential as productive, competent, and healthy adults.

Who We Are



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.⁸ This report is based on records and information that DRT is authorized by law to collect to protect the rights of people with disabilities.⁹



The Youth Law Center (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.

⁸ See The Protection & Advocacy for Individuals with Developmental Disabilities Act (PADD) 42 U.S.C. § 15043; 45 C.F.R. § 1326.25(a)(2); The Protection & Advocacy for Individuals with Mental Illness Act (PAIMI) 42 U.S.C. § 10805; 42 C.F.R. § 51.41(b)(2); and The Protection of Advocacy of Individual Rights Act (PAIR) 29 U.S.C. § 794e.

⁹ Pursuant to its federally mandated access authority and as part of its records review process, DRT has reviewed surveillance video related to many of the incidents described in this report.

A few important terms are referenced throughout this report.

Under Tennessee law, DCS is supposed to provide **evidence-based services**, which means services that actually work and have been scientifically shown to improve outcomes. Evidence-based services can be found in multiple clearinghouses provided by federal, state, and private entities.¹⁰ Importantly, evidence-based services must be provided with fidelity to their model, meaning in the prescribed manner and by individuals who are trained in the model.

These services should be provided as part of a **continuum of care**, or a range of treatment settings and options that can be adjusted for individualized youth needs, including those with disabilities, and that prioritize family and community connection.

DRT's monitoring and investigation at Wilder raises concerns that DCS is not using evidence-based services to build a continuum of care, and is relying instead on locking youth up in highly restrictive **hardware secure facilities** where prescriptions for **psychotropic medications**, or drugs that affect the chemical makeup of the brain and nervous system, are rampant.

In addition to being ineffective, this practice of **warehousing** youth is expensive. And, unfortunately there is reason to believe that DCS hardware secure facilities such as Wilder are not only expensive and ineffective, but sites of abuse.

¹⁰ For more information on evidence-based practices in Tennessee and the Clearinghouses used, see: <https://www.tn.gov/content/dam/tn/finance/office-of-evidence-&-impact/ebb/documents/FAQs-Evidence-Based%20Budgeting%20for%20FY23.pdf>.

Overview of DCS, Wilder, and the Juvenile Justice System in Tennessee

In Tennessee, as in the rest of the United States, the juvenile justice system is a patchwork of state and local laws, policies, and practices meant to respond to the needs of children and youth who come into contact with law enforcement and are accused of violating a law.

Juvenile courts have a special focus on treatment and rehabilitation, rather than punishment, based on the fact that children are different from adults. Under Tennessee law, the purpose of the juvenile court is to “provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions....[to] remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefore a program of treatment, training and rehabilitation, [and to] achieve the foregoing purposes in a family environment whenever possible.”¹¹

This focus on treatment and rehabilitation is particularly important given that youth in the juvenile justice system are disproportionately likely to have had prior exposure to trauma and have significant overlap with youth with disabilities and/or mental health needs. A study of youth in the juvenile justice system in Florida found that 97% reported at least one Adverse Childhood Experience,¹² and 50% reported experiencing four or more.¹³ About half of youth in the juvenile justice system have had prior contact with the child welfare system.¹⁴ The low national estimate of youth in the juvenile justice system who have disabilities is 30%,¹⁵ and almost 70% of youth in the juvenile justice system have at least one diagnosable mental health condition.¹⁶

In Tennessee, juvenile courts have the ability to order a range of evidence-based treatment and rehabilitation services for youth.¹⁷ In most cases, courts find that youth can be effectively served in their home communities through diversion programs, community-based services, or probation.¹⁸ In cases in which

¹¹ T.C.A. § 37-1-101

¹² Adverse Childhood Experiences or ACEs are traumatic experiences that occur during childhood or adolescence, such as physical and sexual abuse, or exposure to substance abuse. These experiences can cause chronic and severe stress that can interfere with the developing brain. Studies show that ACEs negatively impact health and well-being later in life, but also that there are opportunities to help children and youth heal. Tennessee currently funds the Building Strong Brains Initiative in order to research and address ACEs for Tennesseans; see <https://www.sycamoreinstitutenetn.org/adverse-childhood-experiences/>. 72.8% of Tennesseans agree that the government and public agencies share a responsibility with parents and the community to reduce trauma for children; see <https://www.tn.gov/content/dam/tn/dcs/documents/health/aces/Public-Opinion-Report-ACES.pdf>.

¹³ https://www.prisonpolicy.org/scans/Prevalence_of_ACE.pdf, p. 8

¹⁴ <https://www.ojp.gov/pdffiles1/ojdp/grants/252717.pdf>, p. 55

¹⁵ <https://journals.sagepub.com/doi/10.1177/001440290507100308>

¹⁶ <http://www.modelsforchange.net/publications/767>; <https://pubmed.ncbi.nlm.nih.gov/18216730/>

¹⁷ T.C.A. § 37-5-121 applies to “[t]he department of children’s services, and any other state agency that administers funds related to the prevention, treatment or care of delinquent juveniles.”

¹⁸ A statewide count of how many Tennessee delinquency cases resulted in dispositions to DCS is not available. However, in 2019, Tennessee reported 20,524 total delinquency cases. That same year, DCS’s point in time count for youth in custody was 946. Hockenberry, S., Smith, J., and Kang, W. (2021). “Easy Access to State and County Juvenile Court Case Counts, 2019”. Online. Available here: <https://www.ojdp.gov/ojstatbb/ezaco/>; see also https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/PC1005_Report_FY19.pdf.

a judge finds that a youth's needs cannot be met with the services available in the community, or in which the youth is adjudicated for certain more serious offenses, the court may order a youth committed to DCS. In rare cases in which the alleged crime is unusually severe, a court could find that a youth cannot be treated in the juvenile justice system and decide to transfer a youth's case into the adult criminal justice system.²⁰

Once a youth is committed to DCS, DCS is required to engage in an individualized evaluation process, incorporating a validated risk and needs assessment, and taking into account feedback from the youth, and the youth's family members and supportive adults.²¹ This information must then be used to develop a case plan that specifies treatment goals, action steps, services to be provided to the youth and family, and a plan for reintegrating the youth into the community after the case plan treatment goals are completed.²² Using the results of the assessment and case plan, DCS then recommends a placement. The placement could be with a foster parent in a family home, in therapeutic foster care, in a congregate care setting (commonly referred to as a "group home"), or in a secure facility, the most restrictive of which is the Wilder Youth Development Center. According to 2020 data, about half of youth in DCS juvenile justice custody are in a foster family, group home, or other community-based placement.²³

Ideally, the type of placement for an individual youth is decided based on the youth's unique treatment needs and opportunities for growth, the environment in which evidence-based ser-

ELIJAH'S¹⁹ STORY

"I ask for your blessing and miracles. Just to see in your heart to do right"

Elijah was very young when he was first placed in DCS custody as a foster child. Throughout his childhood, he was subjected to extreme abuse and neglect, but was eventually able to connect with family who loved and cared about him. Still, Elijah struggled sometimes, and as a young teen he fell in with the wrong crowd. When a juvenile court judge decided to send Elijah to Wilder, he said that it was because what Elijah really needed was therapeutic services and trauma-informed care. Elijah and his father were both hopeful that going to Wilder would finally provide him with the services he needed to heal.

Instead, when Elijah got to Wilder, he was asked to join a gang. When he refused, he was assaulted multiple times in the presence of staff. Elijah was then placed in solitary confinement for 23 hours a day, where he lived in a cell that smelled like urine, and was infested with roaches, spiders, lizards, and mold. Elijah and his father told DCS over and over again that they feared for his life, but they did nothing for months. In a statement in which Elijah pleaded for his release, he wrote "I'm really trynna change and I'm not just sayin words or talkin, I'm acting on it too...Change is real. I ask for your blessing and miracles. Just to see in your heart to do right."

¹⁹ Several stories of the experiences of youth at Wilder are included in this report. Pseudonyms have been used to protect the identity of the young people referenced. P&A reporting authority is available at 45 C.F.R. § 1326.28(c) and 42 C.F.R. § 51.45(b).

²⁰ It is worth noting that nationally, the practice of juvenile transfer to adult court has declined significantly over the past 30 years, in part due to research showing the negative impacts of such transfer on outcomes such as recidivism, suicide rates, and risk of experiencing physical and sexual abuse; see <http://www.jjgps.org/news/article/73/transfer-reported-data-trends-updated>. U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services, 56 Morbidity and Mortality Weekly RR-9 (Nov. 30, 2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

²¹ T.C.A. § 37-1-173(c)(1)

²² T.C.A. § 37-1-173(c)(3)

²³ https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/JJ_Annual_Report_2020.pdf, p. 8

The Juvenile Justice System: A General Overview

In the popular imagination, the juvenile justice system is a place where youth go to be detained or incarcerated. In reality, the juvenile justice system is a *process*. Depending on what stage of the process a youth is in, they might move to different physical places. Only a very small proportion of youth are incarcerated for long periods of time in a single facility; the majority of youth who come into contact with the juvenile justice system receive supportive services at home, in their community.²⁴ The minority of youth who are removed from home often cycle through many different places over short periods of time. According to Tennessee’s 2017 Blue Ribbon Task Force on Juvenile Justice, youth in Tennessee are sent to an average of 4.4 placements during their stays in DCS custody, with some experiencing up to 15 placements during one custody disposition.²⁵

Initial Contact (<i>Arrest</i>)	Adjudication (<i>Trial</i>)	Disposition (<i>Sentencing</i>)	If A Youth is Committed to DCS...
<p>Most youth are released home after being arrested. They could be given a date to come to court or be referred to a diversion program and not have to go to court at all.</p> <p>A smaller number of youth might be detained in a juvenile detention facility until a judge can review whether or not they should be released home. Some youth will be released home, and others may be detained until they can be adjudicated (the next step in the process).</p>	<p>At adjudication, a judge decides whether the youth has violated the law.</p> <p>If a youth who was detained pending adjudication is found innocent, they are released home. If a youth is adjudicated delinquent, they proceed to disposition (the next step in the process).</p>	<p>At disposition, a judge decides where to refer the youth for treatment and rehabilitation. These options include but are not limited to:²⁶</p> <ul style="list-style-type: none"> • Referring a youth and family to community-based services (the youth returns home) • Placing a youth on probation (the youth remains at home) • Placing a youth in an institution, camp, or other facility operated under a court or other local public authority²⁷ • Committing a youth to the Department of Children’s Services for placement. 	<p>Youth who are committed to the Department of Children’s Services are evaluated and placed by DCS. These placements could range from a foster home, therapeutic foster care, group homes, hardware secure facilities, or the Wilder Youth Development Center.</p>
<p>Detention facilities and/or services offered in these stages of the process are typically operated at the local level. Detention facilities are licensed by the state Department of Children’s Services, but are not directly operated by DCS.</p> <p>In most counties, probation services are provided by the state, but some counties have their own probation departments.</p>			<p>DCS oversees all aspects of placement for youth committed to DCS custody.</p>

²⁴ https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/annual-reports/2020_Annual_Report.pdf, p. 17

²⁵ <https://www.tn.gov/content/dam/tn/tccy/documents/jj/JJ-BlueRibbon-Report-2018.pdf>, p. 5

²⁶ The full list of disposition options is stated at T.C.A. § 37-1-131.

²⁷ This dispositional option is new as of 2021; as a result, there is not yet data available regarding how it is used.

vices that meet those needs and offer those opportunities for growth are most likely to be successful, and public safety considerations. At this time, as detailed throughout this report, a complete breakdown of evaluation and assessment protocols, as well as a failure to offer appropriate evidence-based services and to maintain safe environments in which youth can be treated has resulted in a juvenile justice process in Tennessee that is far from ideal. **DCS is in violation of state law, federal law, and its own policies; but worse than that, DCS has inflicted abuse upon the very children and youth it is charged with treating, rehabilitating, and protecting.**

The focus of this report is on the post-disposition stage of the juvenile justice system, and specifically on youth committed to DCS. However, it is worth noting that what happens at earlier stages of juvenile justice proceedings has an impact on what happens in the post-disposition stage. For instance, efforts to divert youth from the juvenile justice system can provide opportunities for early positive intervention so that youth and families can be connected to needed supports without having to go through the juvenile justice process. Or, increasing the availability of high-quality local services could reduce the court's need to commit a youth to DCS.

On a less positive note, abuses of the power of the juvenile court, such as those uncovered in recent reporting on Rutherford County,²⁸ could result in youth being denied preventive services, or being unnecessarily removed from home.²⁹ The hybrid state/local nature of the juvenile justice process in Tennessee

presents some challenges in implementing statewide strategies to address youth needs, but increased state oversight, data gathering, and coordination across counties would be a first step towards ensuring that all youth and families, in counties big and small, rural and urban, have equal access to high quality evidence-based services and interventions that help families heal and stay together.³⁰

“I’ve been in [Wilder for three years] since I was 15, and I don’t feel like I have changed or had a chance to grow.”

²⁸ <https://www.propublica.org/article/black-children-were-jailed-for-a-crime-that-doesnt-exist>

²⁹ Tennessee’s 2017 Blue Ribbon Taskforce on Juvenile Justice found that “[a] lack of statewide guidance leads to inconsistent outcomes...As a result, some counties utilize effective pre-court interventions for the majority of cases, while others send the majority of their cases to court. Moreover, some send similar youth to detention and DCS placement at rates that are higher than counties with access to more resources.” See <https://www.tn.gov/content/dam/tn/tccy/documents/jj/JJ-BlueRibbon-Report-2018.pdf>.

³⁰ The Taskforce also found that “[d]ata collection and information sharing is insufficient and inconsistent across the state.” Id.

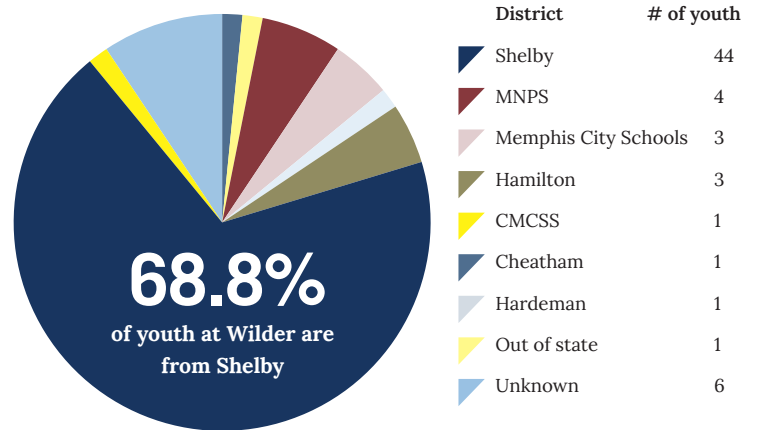
What is the John S. Wilder Youth Development Center?

Wilder was founded in 1971 in Somerville, Tennessee. At the time, it was one of multiple facilities for youth operated by the Department of Correction. Over the years, Wilder shifted from being a co-educational facility primarily intended for youth under the age of 14 and then to a boys-only facility. In 1996, oversight of Wilder and the other youth development centers in the state was moved to DCS, which now oversees both the child welfare and juvenile justice systems. Wilder is the last of the state-run youth development centers; the others have been closed, converted to a different type of facility, or privatized.³¹

Currently, Wilder serves boys aged 14 to 18. The facility has a rated capacity of 144 beds and is budgeted for 120; as of March 2, 2022, the count of youth incarcerated at Wilder was 42, with plans to further reduce the population to 32.³² Placement at Wilder is supposed to be reserved for youth who cannot receive treatment and services in a less restrictive environment.³³ DCS policy states: “Placement into a secure facility *may* [emphasis in original] be appropriate” for youth adjudicated for violent offenses who have not yet received treatment, youth who are within 90 days of their 18th birthday, youth who have been adjudicated for two or more felony offenses, one of which must be a violent crime or crime against a person, or youth with histories of adjudications who are currently determinately committed.³⁴

Demographics at Wilder³⁵

97% of youth at Wilder are African American



According to DCS’s website, Wilder offers “mental health treatment, family therapy, individual therapy, Anger Replacement training, sexually aggressive youth programming, alcohol and drug treatment services, medical services and general educational [sic], special education and HiSET,”^{36,37} with the goal of “improv[ing] youth’s behavior and increas[ing] their social and independent living skills while promoting stable, permanent connections to family and caring adults that will allow them to be successful upon their return to their community.”³⁸

Based on DRT’s monitoring observations, nothing could be further from the truth.

³¹ <https://www.tn.gov/dcs/program-areas/juvenile-justice/juvenile-justice-history.html>

³² There were 87 youth at Wilder at the time of DRT’s site visit in May of 2021. In recent months, DRT has noticed a significant number of youth being transferred by DCS from Wilder to other facilities (including out of state) or to the Department of Corrections.

³³ <https://files.dcs.tn.gov/policies/chap18/18.34.pdf>

³⁴ <https://files.dcs.tn.gov/policies/chap18/18.34.pdf>

³⁵ The demographic information contained in this chart was self-reported by youth at Wilder during interviews with DRT, and DRT confirmed the information reported through records review where possible.

³⁶ <https://www.tn.gov/dcs/program-areas/juvenile-justice/ydc.html>

³⁷ The Tennessee State Board of Education has ruled that passing the HiSET exam is currently the only method for earning a recognized Tennessee high school equivalency diploma. One must be at least 18 years of age without a high school diploma or equivalency to take the HiSET exam, or 17 years old with an age waiver signed by the local director of schools. See <https://www.tn.gov/workforce/jobs-and-education/ae/aer/hiset.html>.

³⁸ <https://www.tn.gov/content/tn/dcs/program-areas/juvenile-justice/ydc/wilder.html>

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. DCS is taking state dollars allocated to treat youth and address the effects of their trauma and using those dollars for the opposite of the intended purpose by exposing these youth to physical and mental abuse. Families are entrusting the care of their children to DCS in the hope that the state can provide necessary treatment and services that the families themselves cannot.

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. Wilder youth also report abusive practices by staff at other DCS-contracted juvenile justice facilities.

Physical Abuse

Throughout DRT’s monitoring of Wilder, numerous youth reported that they had been physically assaulted by staff at the facility.

DCS is legally prohibited from using physical restraint “as a means of punishment, discipline, coercion, convenience or retaliation or to compensate for lack of

staff presence or competency.”³⁹ In instances in which staff come into physical contact with youth, they are required to use the minimum level of physical intervention in order to minimize the risk of causing bodily pain or injury.⁴⁰ DCS indicates that staff at DCS facilities use a protocol called “Handle with Care” to ensure that any incidents of physical contact between staff and youth comply with these prohibitions. While the use of restraint is permitted in situations that pose an imminent threat of harm to the youth or others,⁴¹ there is also a requirement that prior to the use of physical intervention, staff must first utilize “all other potential de-escalation techniques.”⁴² These protocols stand in stark contrast to certain incidents reviewed by DRT, in which staff forcefully initiate restraints on youth in the absence of imminent harm and without first utilizing de-escalation techniques or on youth who are already de-escalated.

³⁹ DCS Rule 0250-04-08-.11

⁴⁰ <https://files.dcs.tn.gov/policies/chap27/27.34DOE.pdf>

⁴¹ <https://files.dcs.tn.gov/policies/chap19/19.11.pdf>

⁴² <https://files.dcs.tn.gov/policies/chap27/DOEDirective27.34.pdf>

JOSEPH'S STORY

“I felt like George Floyd”

Following de-escalation from a minor conflict with his teacher, Joseph was sitting calmly on a table in the common area of his dorm, when multiple staff members approached him and threw him to the floor for not going to his room. The staff members hit, kicked, and stood on him while he lay on the ground. Joseph reported that he felt as though he could not breathe, which is consistent with one staff member's arm being positioned on his neck. As they beat him, he cried out for someone to call his mother. When Joseph spoke to DRT about what happened, he said, “I felt like George Floyd.”

DCS classified this incident as a proper physical restraint; it was anything but. DCS policy requires that physical restraint and seclusion be used as emergency safety interventions and be implemented in a manner designed to protect the youth's safety, dignity, and emotional well-being.⁴³ There was nothing dignified about this brutal assault, which undoubtedly resulted in lasting trauma.

DRT filed a child abuse report for Joseph after hearing this story. Throughout its monitoring, DRT has filed child abuse reports related to more than ten youth, including one incident in which a youth reported being beaten and choked until he was unconscious after he had been restrained and confined to his cell. In many instances of abuse

reported to DRT, the staff involved in these serious allegations continued to work with youth at Wilder and elsewhere. DCS's child abuse investigators have not substantiated any incidents of abuse related to these DRT reports, despite the fact that there is substantial documentary evidence available to DCS.⁴⁴ One staff member was named as an aggressor in three investigations by DRT and at that point had been the subject of **27** investigations completed by the DCS Special Investigations Unit.⁴⁵ DCS's documented failure to take action when it comes to staff who are the subject of a high number of reports and investigations is discussed in more detail below.

Sexual Abuse

In addition to multiple reports of physical abuse that have been corroborated by DRT, youth also report sexual misconduct on the part of staff at Wilder.

Multiple youth report that a male staff member regularly watched youth while they showered, commented on the size of their genitals, and promised gifts to entice youth to expose themselves to him. DRT made a child abuse report against this staff member based on interviews with seven youth alleging knowledge of the aforementioned behavior. DRT is aware of two incidents in which youth perceived they were being punished for defending themselves against this staff member. Multiple complaints and grievances have been made against this staff member, but the behavior was still unaddressed by DCS at the time of the youth interviews.⁴⁶

Failure to address this staff member's behavior violates DCS's own Zero Tolerance Standards and Guidelines for Sexual Abuse, Sexual Harassment, Assault or

⁴³ <https://files.dcs.tn.gov/policies/chap19/19.11.pdf>

⁴⁴ Despite multiple requests by DRT, DCS failed to produce several Special Investigation Unit reports related to certain incidents reported by DRT, so the outcome of those investigations is still unknown.

⁴⁵ The DCS Special Investigations Unit (SIU) conducts investigations on allegations of child abuse and neglect which occur while a child is in DCS custody or when the case involves non-custodial children where the alleged perpetrator is acting in an official employment, volunteer, or foster care capacity. The SIU conducts investigations where the allegations would affect the employment or volunteer status of those working with children. See <https://files.dcs.tn.gov/policies/chap14/14.25.pdf>.

⁴⁶ Personnel records indicate that, a few months later, this staff member submitted a resignation letter and transferred to Western Mental Health Institute, a psychiatric hospital run by the Tennessee Department of Mental Health and Substance Abuse Services.

Rape Incidents and the federal Prison Rape Elimination Act (PREA) policy.⁴⁷ Hardware secure residential facilities, such as Wilder, must comply with the PREA, which outlines the standards to prevent, detect, and respond to rape at juvenile facilities. In 2018, a PREA audit revealed concerns about inadequate staffing ratios at Wilder, and the 2021 Wilder Interim PREA Report Draft⁴⁸ reveals that the facility preliminarily failed its most recent audit with regard to seven measurable standards, a departure from compliance with all standards in 2018. This failure is deeply troubling and representative of the state's abdication of its duty to protect the children in its care.

Staff-Directed Attacks on Youth

In multiple Wilder incidents investigated by DRT, staff appear to be directing, or at the very least encouraging, violence against the youth in their care. Over the course of DRT's monitoring process, approximately 25% of the youth DRT spoke with reported being the victim of, witness to, or assisting staff in an abusive practice in which Wilder staff provide snacks and other incentives to youth residents for attacking other youth who staff dislike. This practice is referred to within the facility as "putting noodles on heads." In effect, this means that staff are placing bounties to encourage youth to attack other youth. For example, youth are told by staff that another youth "has ten noodles on his head," which means a youth who assaults the identified youth will receive a reward of ten packages of ramen noodles from the staff member who ordered the assault. The existence of this practice was acknowledged by Wilder leadership during interviews with DRT.

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."**⁴⁹ 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.⁵⁰

ISAIAH'S STORY

Not Safe Anywhere

Shortly after being released from protective custody, Isaiah was moving into his new dorm when he was attacked by several other youth. Multiple staff were already present when the attack began, having been called to the dorm because they heard some youth talking about jumping Isaiah. Several youth later reported that one of the staff members present had put noodles on Isaiah's head, prompting youth to plan to assault him. As the attack now unfolded, staff stood by, doing nothing to intervene.

⁴⁷ <https://files.dcs.tn.gov/policies/chap18/18.8.pdf>

⁴⁸ DCS released a 2022 PREA Audit Report on March 22nd indicating corrective measures were taken to address the seven areas of non-compliance identified in the 2021 Wilder Interim PREA Report Draft. However, DRT remains concerned about PREA related issues at Wilder, as the 2022 PREA Audit Report does not include interviews of any youth reporting sexual abuse at the facility, despite 32 allegations of sexual abuse against staff identified in the 12 months leading up to the audit.

⁴⁹ <https://comptroller.tn.gov/content/dam/cot/sa/advanced-search/2020/pa20070.pdf>, p. 81

⁵⁰ <https://comptroller.tn.gov/content/dam/cot/sa/advanced-search/2020/pa20070.pdf>, pp. 78-80. The Comptroller found "[DCS's] PREA compliance managers did not complete the Wilder Youth Development Center's PREA staffing pattern assessment;" "[m]anagement did not have a sufficient monitoring process to document and analyze that provider agencies had performed all required background checks for provider employees before they were hired;" and the "Office of Continuous Quality Improvement staff did not have evidence that they followed up on provider employees or conducted in-depth reviews on provider employees or department employees who were investigated for violating department standards, contract provisions, or state regulations."

Beyond the examples described above, DRT has seen the detrimental effects of DCS's failure to address Wilder staff who have been the subject of multiple investigations for problematic conduct. Allegations from multiple youth implicated one staff member, who had ten prior investigations, in a number of inappropriate behaviors, including allowing the multi-person assault of a youth, leading to serious injury, as well as facilitating an escape by youth in May of 2021.

Abuse allegations at DCS-licensed Tennessee treatment facilities for youth in the delinquency and dependency systems have been a long-standing issue. In 2010, the U.S. Department of Justice found that Woodland Hills Youth Development Center in Nashville was among the top 13 facilities in the nation for sexual abuse.⁵¹ In 2017, reports of alleged sexual and physical abuse at Middle Tennessee Juvenile Detention Center, then operated by Wayne Halfway House, made the news after several detained youth and at least one DCS employee called 911 to report abuse.⁵² In 2019, a former staff member filed a lawsuit against Youth Opportunity Investments, alleging sexual and physical abuse at Roane Academy, a treatment center for foster youth, following a 2018 lawsuit alleging sexual and physical abuse at Nashville's local juvenile detention center, which was also run by Youth Op-

portunity Investments at the time.⁵³ Despite multiple opportunities to address this issue, DCS has offered no satisfactory response; it maintains and has even expanded contracts with Wayne Halfway House and Youth Opportunity Investments.

DCS Sanctions Abuse Through Its Seclusion Practices

In addition to DCS's tolerance of physical and sexual abuse of children by its employees and contractors, DCS has a history of implementing seclusion practices that violate its own policies and harm youth. At Wilder, the "Therapeutic Response Unit" (or TRU Dorm), which is not at all as it sounds, is where youth are subjected to these detrimental seclusion practices.

The harmful effects of solitary confinement on youth are well-documented⁵⁴ and have been recognized by the Tennessee State Legislature, which passed a bill in 2021 prohibiting the seclusion of youth for "discipline, punishment, administrative convenience, retaliation, staffing shortages, or any reason other than a temporary response to behavior that threatens immediate harm to a youth or others."⁵⁵

This is hardly a radical position—even before this legal change, seclusion was highly regulated by DCS policy, and could only be used for disciplinary purposes after a multi-stage hearing process. Disciplinary confinement could only last for a maximum of five days for the most serious of offenses, such as arson. Temporary seclusion for control needed to be reviewed every three hours, with a review by a psychologist if the youth was confined for more

"I lost my mind in the TRU."

⁵¹ https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/panel_report_101014.pdf

⁵² <https://www.columbiadailyherald.com/story/news/2017/06/24/columbia-naacp-investigating-juvenile-detention/20439299007/>

⁵³ <https://www.tennessean.com/story/news/crime/2020/07/27/lawsuit-claims-unsafe-conditions-east-tennessee-juvenile-center/5495549002/>

⁵⁴ See, for example, the American Academy of Child and Adolescent Psychiatry. "Solitary Confinement of Juvenile Offenders." (2017) Available here: https://www.aacap.org//AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx/.

⁵⁵ SB0383/HB1126 amending T.C.A. § 37-5-214

than six hours. Emergency confinement, limited to periods in which there is an “extraordinary security problem,” required youth to be reviewed by a psychologist or physician after 72 hours and again every 48 hours thereafter. The prolonged use of solitary confinement reported by youth and reflected in youth records does not align with these policies, which clearly intend seclusion to be a rare and highly monitored occurrence. It is not clear that DCS would have been able to follow these policies if it wanted to; DCS does not employ a psychologist on staff at Wilder, instead contracting out as needed for evaluation purposes.⁵⁶

The TRU dorm at Wilder is supposed to provide specialized treatment and stabilization for youth. In reality, the “service” it provided for many youth assigned there during DRT’s initial monitoring was solitary confinement for 23 hours a day.

DRT investigators have visited the TRU dorm at Wilder five times since April of 2021. Early monitoring by DRT revealed the TRU dorm was primarily used to isolate and segregate youth for various reasons, ranging from engagement in behaviors such as fighting or property destruction to low-level disciplinary infractions like repeated refusal to follow instructions. The unit was most often used for temporary seclusion of youth following a restraint, but if a youth was officially placed or assigned to TRU, placement there required an eight-week stay.⁵⁷ At times, placement in the TRU dorm was seemingly arbitrary and completely disconnected from the actual needs of youth. Youth were also sent to TRU for purposes such as administrative convenience, for protective custody, for suicide watch, and, seemingly, for punishment.

AMIR’S STORY

Sent to Isolation for Showering

Over the course of a year, Amir was put in isolation over 40 times. One time, he was put in isolation for not getting out of the shower immediately when he was told and another for being loud at bedtime and keeping his dorm awake. This last incident resulted in Amir being “administratively placed” in TRU, which means he was held there for an extended period without official placement by his treatment team. At one point, Amir told the nurse who managed his prescriptions that he had no use for his ADHD medication anymore, because all he did was sit in solitary confinement for 23 hours a day.

When Amir was placed in isolation, DCS regulations only permitted use of such confinement in very specific situations, such as a temporary confinement of no more than three hours, an emergency, for protective custody, or as a limited disciplinary measure (no more than five days of confinement) that could be imposed only for certain serious offenses, such as arson, and only after a hearing and review by the hearing officer and/or disciplinary committee.⁵⁸

In 2021, the Tennessee State Legislature banned solitary confinement in juvenile facilities in response to allegations of abusive practices at another DCS-contracted juvenile justice facility⁵⁹ and in recognition of the harmful effects it has on young people. Lt. Gov. McNally noted in an interview that, initially, DCS was opposed to the bill.⁶⁰

⁵⁶ <https://files.dcs.tn.gov/policies/chap25/25.5DOE.pdf>

⁵⁷ In May of 2021, signs in the TRU dorm indicated an eight-week mandatory stay for all youth placed there. However, this practice of keeping youth in TRU for eight weeks seems to have shifted in the summer of 2021. DCS’s September 2021 TRU Handbook, discussed in more detail below, envisions a five-day mandatory stay in TRU and states that the purpose of TRU “is to assist youth in regaining the focus and skills to engage safely and effectively in the general population. This is accomplished by providing additional supports in a secure environment with a smaller dorm.” The 2021 TRU Handbook contemplates the following program supports: group therapy each day for one hour; individual therapy twice per week; and behavioral management through crisis plans. See the TRU Handbook at <https://files.dcs.tn.gov/policies/chap18/TRUHandbook.pdf>.

⁵⁸ <https://files.dcs.tn.gov/policies/chap25/25.3DOE.pdf>

⁵⁹ <https://www.newschannel5.com/news/newschannel-5-investigates/lt-governor-led-charge-to-end-juvenile-solitary-confinement-following-our-reports>

⁶⁰ Id.

The TRU dorm is infested with mold, roaches, spiders, mosquitoes, and lizards. It has holes in the walls and smells of sewage in the shower. Youth report seeing blood left on the walls of the dorm from other youth self-injuring. Unsurprisingly, prolonged confinement in these environs has led to youth reporting increases in suicidal ideation.

Records reflect that two youth notified staff that isolation in TRU made them want to kill themselves, and yet, DCS continued to keep those youth in TRU.

One of these youth remained in TRU for the better part of a year and a half, even after filing grievances and calling for meetings with his parents and treatment team. The other was placed in TRU following being on suicide watch, even after staff noted that placement in TRU was the *cause* of his suicidal ideation.

As noted above, and since DRT's Wilder monitoring began, the Tennessee State Legislature passed much-needed reforms that further restrict the use of seclusion in juvenile facilities, but it remains to be seen how these reforms will be overseen and implemented within facilities. While the legislative intent of the seclusion bill was to eliminate the practice of long-term seclusion,⁶¹ an amendment to the bill allows DCS to prescribe "alternative options" for certain youth following the statutory maximum time in

seclusion; this creates a potential loophole that could result in extended seclusion for certain youth.⁶²

It is unclear whether this amendment will be used by DCS to continue its abusive and arbitrary practices around seclusion. Since the passage of the 2021 bill, DCS adopted new guidelines that require staff to submit special forms in order for youth to be placed in TRU. So far, it does not seem that all of these new guidelines are being implemented; to date, records received by DRT on behalf of one youth placed in TRU since September of 2021 have not included the required forms.⁶³

DCS's failure to address well-documented abuse allegations, as well as repeated violations of its own policies related to seclusion, call into question the ability of the Department to meet basic standards of care or its statutory duty to provide evidence-based therapeutic care to Tennessee's youth.

DCS recently blamed ongoing problems at Wilder on its inability to use physical restraint under the Council on Accreditation's standards. In a Fayette County meeting in September 2021, Deputy Commissioner Darren Goods stated that it would make "good common sense" to "allow our youth services officers to do more hands on to do more being able to secure these young men."⁶⁴ With so many allegations by youth alleging assault by staff, we must ask how much more hands-on staff could possibly be. It is not more violence that is needed but less and, instead, more staff training, more appropriate services and screening (described below), and more evidence-based practices as required by law.

⁶¹ At a Civil Justice Committee hearing on the bill on April 14, 2021, it was stated that the bill "will fix a loophole that allowed juveniles to be placed in a segregated, confined setting for extended periods of time." See https://tnga.granicus.com/MediaPlayer.php?view_id=643&clip_id=24646&meta_id=592642.

⁶² The following language was added as an amendment to HB1126: "Following a period of seclusion, the facility administrator may review the seclusion and authorize an additional two-hour period of seclusion if appropriate. The facility administrator shall not authorize more than two (2) subsequent, consecutive periods of seclusion or more than six (6) total hours of seclusion within a twenty-four-hour period. The department may, by rule or policy, provide alternative options for a child who cannot safely rejoin the rest of the resident population following the maximum period of seclusion authorized by this subsection (c)." See <https://www.capitol.tn.gov/Bills/112/Amend/HA0306.pdf>; contra <https://www.capitol.tn.gov/Bills/112/Bill/HB1126.pdf>.

⁶³ The 2021 TRU Handbook guidelines require the following forms: the TRU Behavior Support Plan (Form CS-4213) required for all youth placed in TRU, the TRU Administrative Referral (Form CS-4212), or the Therapeutic Response Unit (TRU) Referral (Form CS-4211).

⁶⁴ <https://www.localmemphis.com/article/news/local/dcs-blames-wilder-youth-development-center-problems-on-accreditation-limitations/522-831c6ab8-fbea-4596-a131-d866eef69929>

DCS is Failing to Appropriately Assess, Educate, or Rehabilitate Youth at Wilder and Instead is Warehousing Youth, Many with Disabilities, Contrary to Law

DCS is failing to provide basic educational and rehabilitative services to youth in the juvenile justice system—many of whom have disabilities and/or trauma-related special needs. Additionally, 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 for youth.

As discussed in section I, youth in the juvenile justice system are disproportionately likely to have had prior exposure to trauma and to have a disability and/or a diagnosable mental health condition. This is certainly the case at Wilder. This means, first, that youth in the juvenile justice system have needs that have not been identified or addressed by other systems at earlier intervention points, such as child welfare (which, in Tennessee, is also run by DCS), mental and behavioral healthcare, and school systems. Second, youth in the juvenile justice system are likely to have complex overlapping needs that require individualized support and planning for the youth as well as for their families.

It makes good sense that a system caring for youth with complex needs would have to provide individualized support, planning, and services to be effective. The system cannot meet the needs of a young person in its care unless it knows what they need based on appropriate assessment and then provides services designed to help that individual young person based

on the assessment. Not only is this good sense—such individualized support is required by DCS’s written policy and codified in Tennessee law.⁶⁵

Despite these requirements in policy and law, DCS is failing both to appropriately evaluate and assess youth for services and to provide those services. DCS has failed to follow its own policies to do what it would need to understand the needs of this population. It is also not providing the services that would most benefit this population, increase youth well-being, and reduce crime. Without evaluation and assessment data, DCS has none of the information it would need to develop additional placements and programs to meet these youths’ current needs, much less be able to reliably invest in prevention and early intervention services to prevent crime and additional trauma.

Further, DCS is failing to provide even the services that are obviously necessary for youth well-being and rehabilitation, such as fundamental basic education

⁶⁵ “For any child committed to the department for a delinquent offense, the department shall ensure, in conjunction with any service provider, that it develops and implements an individualized case plan based upon the recommendations of the child, the child’s parents, guardian, or custodian, and other appropriate parties and the results of the validated risk and needs assessment.” T.C.A. § 37-1-173(c)(1)

services, nor are they using the limited information they do have about the needs of the population to make an earnest attempt at providing rehabilitative programming, such as anti-gang curriculum, anger management programming, family therapy, or religious services.

According to DCS's own 2020 reporting, it costs **\$48,840 per day** to keep Wilder open—that's almost enough to cover four years of tuition at the University of Tennessee, Knoxville. What else could youth, families, and taxpayers be getting for that amount of money?⁶⁶

In effect, DCS is wasting taxpayer dollars by warehousing youth in expensive, restrictive, and punitive facilities without providing assessments or appropriate services that are required under policy and law. This is especially troubling considering that these youth disproportionately have disabilities and/or have experienced trauma. Further, the overwhelming majority of these youth are Black. The failure to offer even the most basic of services to these youth is indicative of a profoundly broken system. Based on the current conditions at Wilder, which are not in any way creating a space for rehabilitating youth for reunification with their families and reintegration into their community, it would seem that DCS has simply given up.

Failure to Appropriately Assess

Through DRT's engagement with individual youth at Wilder and their case files, it is clear that DCS is failing to conduct its own assessments in accordance with DCS policy and Tennessee law and, further, is ignoring data available from existing assessments.

Tennessee law specifically requires appropriate assessment and further requires that assessment lead to appropriate services. It states that "a validated risk and needs assessment shall be used in all delinquent cases post disposition in making decisions and recommendations regarding programming and treatment."⁶⁷ DCS is also required to use the assessment to develop and implement an individualized case plan, which "at a minimum ... shall specify treatment goals and the actions to be taken by the child in order to demonstrate satisfactory attainment of each goal, specify the services to be offered and provided by the department and any service provider, [and] ensure appropriate reintegration of the child to the child's parents, guardian, or legal custodian, other appropriate parties, the child's school, and the community following the satisfactory completion of the case plan treatment goals."⁶⁸

Further, DCS is required to use these assessments and a Child and Family Team Meeting process before placing a child in a hardware secure facility⁶⁹ such as Wilder. A youth's DCS caseworker must submit a "Hardware Secure Facility Justification Letter or Waiver Request," along with a number of other records, for review by the Central Office Population

⁶⁶ Wilder maintains a capacity of 120 beds, and DCS reports that the facility costs \$407 per day per bed; see https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/JJ_Annual_Report_2020.pdf, p. 9. Prioryear reporting from DCS specifically noted that DCS does not see significant operations cost savings from running Wilder at less than full capacity, meaning that the state commits to paying the same amount to keep Wilder open, regardless of whether or not youth are actually placed there; see https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/PC1005_Report_FY17.pdf, p. 9.

⁶⁷ T.C.A. § 37-1-164(a)

⁶⁸ T.C.A. § 37-1-173(c)(3)

⁶⁹ There are different levels as they relate to hardware secure facilities. This manual speaks to level 2 and level 3: https://files.dcs.tn.gov/policies/contract-ProviderManual/Section_6-Continuums.pdf. This manual discusses "residential treatment": https://files.dcs.tn.gov/policies/contractProviderManual/Section_4-Residential_Treatment.pdf.

Management Committee.⁶⁹ The information that DCS is supposed to consider in order to decide whether a youth should be placed in a hardware secure facility includes, but is not limited to:

- The youth’s adjudication, placement, and treatment history;
- The recommendations of the Child and Family Team Meeting (CFTM) process;⁷¹
- The results of the Child and Adolescent Needs and Strengths (CANS)⁷² assessment (*note that DCS is required by state law to use this assessment to make treatment recommendations*);⁷³
- Whether the youth qualifies for special education services;
- Whether the youth has current mental health conditions or an intellectual disability;
- A current IQ score; and
- Whether the youth could be served in a community-based placement.⁷⁴

DCS policy states that youth determined to have a moderate, severe, or profound intellectual disability cannot be placed at a Youth Development Center, and youth who have a mild intellectual disability cannot be placed at such a facility without a special waiver by the Commissioner of Children’s Services.⁷⁵

Despite these requirements, in a sample of eleven youth for whom DRT requested records, **none** of the youth had an IQ score included in their Hardware Secure Facility Justification Letter. Evaluations of two of these youth (one performed prior to placement at Wilder and one performed after) reflect IQs below 70, which is one indicator of an intellectual disability.

The youth with the pre-existing evaluation could not legally have been placed at Wilder absent a special waiver by the Commissioner. No such waiver was present in his file. Furthermore, it is unclear from many of the CANS assessments what information therein could be used to meaningfully inform treatment recommendations, as the assessments are arguably incomplete, with the bulk of the content focusing on youth charges and little to no emphasis on youth strengths or other individualized data.

DCS’s failure to assess and evaluate youth violates Tennessee and federal law. Without adequate assessment and evaluation procedures, it is unclear how DCS could possibly provide appropriate, individualized services to rehabilitate youth or to discern what level of care a youth needs or what setting is allowable under law.

Failure to Educate

DCS is failing to meet its obligation to educate youth in its custody, in addition to failing to comply with federal special education requirements for youth with disabilities under the Individuals with Disabilities Education Act.

The school at Wilder is run by DCS and is required to operate in accordance with the rules and regulations promulgated by the Tennessee State Board of Education for the Tennessee Department of Education (DOE) and public schools. Under state law and regulations, public schools must offer a minimum of 180 days of instruction per year and six and a half hours of instructional time per day.⁷⁶ Students must earn a minimum of 22 credits across the areas of Math,

⁷⁰ <https://files.dcs.tn.gov/policies/chap19/19.6.pdf>

⁷¹ <https://files.dcs.tn.gov/policies/chap31/31.7.pdf>

⁷² <https://files.dcs.tn.gov/policies/chap31/CANSProtocol.pdf>

⁷³ Under Tennessee state law, DCS must use a validated risks and needs assessment to make programming and treatment recommendations. T.C.A. § 37-1-164(a). DCS uses the CANS assessment to meet this requirement.

⁷⁴ CS-0585 “Tennessee Department of Children’s Services Hardware Secure Facility Justification Letter or Waiver Request” rev. 8/20.

⁷⁵ <https://files.dcs.tn.gov/policies/chap18/18.25DOE.pdf>; <https://files.dcs.tn.gov/policies/chap19/19.6.pdf>

⁷⁶ T.C.A. § 37-5-119; T.C.A. § 49-6-3004; <https://publications.tnsosfiles.com/rules/0520/0520-01/0520-01-03.20211103.pdf>

KYRIE'S STORY

DCS says a youth with an IQ well below 70 “doesn’t have an intellectual disability”

As a young man with a diagnosed intellectual disability and a number of mental health, behavioral, and special education needs, Kyrie never should have been placed at Wilder. A less restrictive setting with appropriate services and staff equipped to address his complex, disability-related needs would have been a more appropriate and effective placement.

Like many youth who end up in the juvenile justice system, elementary school wasn't easy for Kyrie. His family had difficulty getting the special education support to which he was legally entitled. His middle school years were equally, if not more, challenging.

When DCS placed Kyrie at Wilder, he had a prior evaluation diagnosing him with an intellectual disability, as well as multiple diagnoses that also affect his education, but DCS ignored all of this information. His Hardware Secure Facility Justification Letter omitted his IQ score and explicitly stated that he did **not** have an intellectual disability or an IEP despite records to the contrary. Based on his intellectual disability diagnosis, Kyrie would need a special waiver from the Commissioner to be placed at Wilder, and no such waiver was in his file.

Unfortunately, there is evidence to suggest that Wilder is being used to warehouse youth with disabilities like Kyrie, further overwhelming staff who are not trained to work with children with such specialized and complex needs. By placing these youth in such inappropriate settings, DCS places them at risk of harm.

Kyrie was kept in isolation for a prolonged period and reports that he was assaulted by staff. He has also received few educational services and no special education assessments. DRT was informed by Wilder staff that Kyrie was never evaluated because there was no psychoeducational evaluator on staff. DCS simply lacks the appropriate staffing, training, or services to serve these youth with complex needs.

English, Social Studies, Science, Physical Education, Personal Finance, Foreign Language, Fine Arts, and Electives to graduate from high school under the Tennessee state graduation requirements. To earn a regular academic diploma, students must also take the ACT or SAT in their eleventh-grade year.⁷⁷

DRT's observations of DCS's educational practices and policies raise significant concerns as to whether DCS is fulfilling its basic educational obligations to youth at Wilder. Education services appear to be inconsistent and erratic. For instance, in March of 2021, DCS implemented a facility-wide education schedule at Wilder, which stated that youth would only go to the school building for instruction two days per week and would receive instruction in the front lobby of their dorm two days per week. The “instruction” in the dorm would consist of students being pulled out to complete assignments in their education folder. It is unclear to DRT whether this instructional schedule and method would reasonably allow a youth to meet high school graduation requirements.

It is clear, however, that youth residing in the TRU dorm have not been receiving adequate educational services. As of May 2021, youth in the TRU dorm received approximately two to three hours of instruction *per week*. One youth placed in protective custody reports that because he has so few credits, he feels his only option is to take the HiSET Exam, the state-issued high school equivalency credential in Tennessee.

⁷⁷<https://www.tn.gov/content/dam/tn/stateboardofeducation/documents/rulespolicies/2.103%20High%20School%20Policy%204-20-18.pdf>

In addition to these general educational failures, DCS is also failing to provide federally mandated special education services.

The federal Individuals with Disabilities Education Act (IDEA) includes the Child Find Mandate, which makes schools responsible for identifying students with disabilities.⁷⁸ Students with enumerated disabilities are entitled to a Free and Appropriate Public Education (FAPE)⁷⁹ in the Least Restrictive Environment (LRE).⁸⁰ To meet the requirements of FAPE, schools are required by law to provide services “that address all of a child’s identified special education and related service needs, based on the child’s unique needs and not on the child’s disability.”⁸¹ Special education and related service needs are determined through a student’s Individualized Education Plan (IEP).⁸²

Due in part to the issues with assessment described in the previous section, students at Wilder are not receiving necessary and legally required special education services. DRT was told by a staff member that at one point approximately forty students at Wilder were receiving special education support, meaning that they should have had IEPs and been receiving related services. However, another school staff member told DRT at the same time that only twenty-three youth had IEPs. Without a qualified psychoeducational evaluator on staff, it appears Wilder is failing to identify youth who should be receiving special education and related services and to develop and implement IEPs for those youth.

Education is foundational to a youth’s development, success, and opportunities later in life. DCS appears to not be offering instruction adequate to allow youth to graduate from high school, let

DESPERATE TO LEARN

Youth in TRU Dorm

“It’s impossible to earn credits with only this much school. I’m in 10th grade and I only have six credits.”

“I can’t go to school for enough days to learn what I need.”

“On days when I can’t go to school, I get a packet to complete alone in my room, but I don’t have a desk.”

DRT interviews with youth in the TRU Dorm indicate that youth want to learn, earn credits, and graduate from high school, but feel that it is impossible to make meaningful educational progress in the environment they’re in. This is particularly concerning for youth with disabilities, who are supposed to be receiving specialized academic support in order to help them succeed in school.

alone providing workforce development or college preparatory work. Further, DCS is failing its legal duty to provide special education services for youth with disabilities. This is yet another example of how youth are harmed and further disadvantaged while at Wilder, instead of being rehabilitated through the receipt of services necessary to successfully transition into the community.

⁷⁸ 20 U.S.C. § 1412(a)(3)

⁷⁹ 20 U.S.C. § 1412(a)(1)

⁸⁰ 20 U.S.C. § 1412(a)(5)

⁸¹ <https://publications.tnsosfiles.com/rules/0520/0520-01/0520-01-09.20210812.pdf>, p. 12. See 20 U.S.C. § 1412(a)(3)(B), (a)(4).

⁸² 20 U.S.C. §§ 1412(a)(4), 1414(d), & 1436(d).

Failure to Rehabilitate

In addition to the lack of adequate education services for youth, Wilder has a startling lack of rehabilitative programming to help youth process their experiences and encourage positive future development.

The main and seemingly only available rehabilitative program at Wilder is Aggression Replacement Training (ART), which is a program meant to teach youth how to replace aggressive responses with non-violent behavioral options. As designed, ART is a ten-week course in which youth convene in a small group, with two trained facilitators, for one hour three times a week, and facilitators must receive 40 hours of training before providing any programming to youth.⁸³ ART is somewhat evidence-based,⁸⁴ though it is usually ranked in the lowest tier of evidence-based interventions.⁸⁵ As such, ART might be helpful to some youth in the juvenile justice system when it is implemented with fidelity to the model and by appropriately trained staff.

At Wilder, however, faithful implementation has not been occurring, as security guards and other untrained staff are being called in to facilitate ART due to staff shortages.

Even if ART were being replicated with fidelity at Wilder, it is unclear which youth would actually benefit from it. All Wilder youth are required to partici-

pate, and there is no process for determining whether ART is an appropriate intervention for any particular young person. It is also not apparent what, if anything, is available to youth who have completed ART. A number of other programs exist that are better supported by research and that target additional types of needs, but based on DRT's monitoring these do not appear to be offered at Wilder. For instance, DRT did not observe any specialized programming targeting sexual offenses or substance use disorders,⁸⁶ and Wilder appears to have discontinued its gang awareness programming.

In addition to this lack of formal programming, Wilder functionally isolates young people from all other productive supports, such as family, religion, and community-based services. Youth do not have regular access to developmentally appropriate activities such as recreational sports, arts, or music.

Youth confined at Wilder are isolated with little if any contact with family and friends outside of the facility. Youth reported during DRT's September 2020 virtual monitoring that they went from getting to make three phone calls per week, when visitations were cancelled due to COVID-19,⁸⁷ to one ten-minute phone call per week, and that they often don't even get that. One youth reported not getting a phone call for three weeks. Other youth reported to DRT staff similar lengths of time between calls, and one stated, "We all miss our family and are worried about them because of COVID, and we can't even talk to them."⁸⁸ Lack of contact with family members is counter to widely accepted juvenile justice rehabilitative practic-

⁸³ For additional information on ART, including training requirements for staff implementing the model, see the description here: <https://www.cebc4cw.org/program/aggression-replacement-training/>.

⁸⁴ <https://www.cebc4cw.org/program/aggression-replacement-training/>

⁸⁵ See, for example, the California Evidence-Based Clearinghouse (CEBC), where ART is ranked as a third-tier Promising intervention for addressing disruptive behavior. Tennessee uses CEBC as one of the sources to rate evidence-based practices. See "DCS Program Inventory Deep Dive III: Evidence and Evaluation Aug. 27, 2021, available at https://results4america.org/wp-content/uploads/2019/12/6-DCS-Program-Inventory-Deep-Dive-III-Evidence-_-Evaluation.pdf. See also Frequently Asked Questions: Evidence Based Budgeting for FY 23, available at <https://www.tn.gov/content/dam/tn/finance/office-of-evidence-&-impact/ebb/documents/FAQs-Evidence-Based%20Budgeting%20for%20FY23.pdf>.

⁸⁶ In theory, Wilder has rehabilitative programming for sex offenders as well as for youth with drug and alcohol dependence, but DRT did not observe any such programming over the course of its six site visits.

⁸⁷ Family visitation has been reinstated at Wilder since DRT first began its monitoring process.

⁸⁸ This is a violation of DCS Policy 26.3-DOE: Telephone Privileges which states, "In no case shall a youth be permitted less than two telephone calls per month"; see <https://files.dcs.tn.gov/policies/chap26/26.3DOE.pdf>.

es and the rehabilitative purpose of Wilder. Further, by isolating these youth, DCS is setting them up to fail later, making it more difficult for them to successfully reintegrate in community and family after they are released from custody. It is worth noting that all of the “Well-Supported” and “Supported” practices for addressing adolescent disruptive behavior in commonly used clearinghouses of evidence-based practices include a significant family-based component.⁸⁹

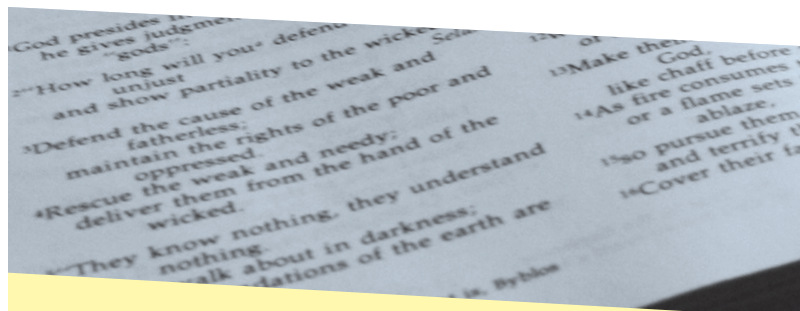
Youth at Wilder also do not have any access to religious services or counseling. There is no chaplain at the facility, and outside religious groups are not permitted to hold services on campus. Youth also do not have virtual access to religious leaders or services. This is a violation of DCS’ own policy, as well as youths’ First Amendment rights.⁹⁰

Since DRT began monitoring, there is no indication that any community-based groups have been able to offer programming at Wilder, either in person or virtually. DCS’s website indicates that the Teen Outreach Program, a positive youth development curriculum, was at one point offered by an outside provider, but this program has not been operational since DRT began its investigation, and it is unclear if there are plans for it to return. There are no community-based opportunities to engage in the visual or performing arts, and there are no organized sports. Wilder has a large gym equipped with exercise machines, as well as an on-site pool, but DRT has never observed these being used during site visits.

Isolation and the Lack of Rehabilitative Services Has a Cost for Youth at Wilder

With such limited programming available, what do youth do all day? According to one youth, they are “all getting fat just sitting here all day, eating, not going outside.” One youth’s records reflect he gained

44 pounds in one year while at Wilder. This youth was also taking multiple psychotropic medications during this time, both of which can cause weight gain without proper monitoring.⁹¹ Due to lack of staffing, DCS frequently relies on dorm and facility-wide lockdowns to manage behavioral concerns, which only exacerbates youths’ frustrations and inability to utilize positive outlets to release their energy. In May of 2021, DRT interviewed students in two dorms who had been on lockdown for a week, during which they



THE BIBLE

A Weapon Too Dangerous for Youth to Possess

Elijah, the youth who wrote asking for “blessings and miracles,” participated in a restorative justice mediation program, an opportunity presented to him by DRT. Although the victim ultimately chose not to participate, Elijah seized the opportunity for connection and growth, forming a close relationship with the mediator, with whom he spoke at length about his faith and desire for change and purpose. At the close of their work together, the mediator gifted Elijah a Bible.

Following his visit with the mediator, Wilder staff seized Elijah’s Bible, saying that it was too heavy, and thus a potential weapon.

⁸⁹ See, for example, <https://www.cebc4cw.org/topic/disruptive-behavior-treatment-child-adolescent/>.

⁹⁰ <https://files.dcs.tn.gov/policies/chap18/18.31.pdf>

⁹¹ Mirtazapine is one of the medications this youth was prescribed and taking; it is associated with significant weight gain. See Laimer M, Kramer-Reinstadler K, Rauchenzauner M, Lechner-Schoner T, Strauss R, Engl J, Deisenhammer EA, Hinterhuber H, Patsch JR, Ebenbichler CF. Effect of mirtazapine treatment on body composition and metabolism. *J Clin Psychiatry*. 2006 Mar;67(3):421-4. doi: 10.4088/jcp.v67n0313. PMID: 16649829

Youth report that they have nothing to lose, and even welcome being transferred out of Wilder into the adult criminal justice system.

had not gone to school, had any recreation time, nor gone to the cafeteria for meals. Youth stated they were “going crazy” and were bored. They noted that they desperately wanted to get fresh air and exercise, but instead had been watching TV for days.

The punitive focus and overall dysfunction of the facility has stripped away what limited opportunities youth did have to demonstrate progress. The majority of youth placed at Wilder have been committed to DCS for what is called a “determinate sentence,” which in many cases means that youth will be in DCS custody for a period of several years, or until their 19th birthday. Youth are supposed to have the opportunity to earn sentence reduction credits each month that would allow them to be released early if they meet certain goals and milestones,⁹² but the lack of opportunities to demonstrate treatment progress, coupled with a dysfunctional discipline system, means that in practice youth rarely earn these credits.

For example, multiple youth report that staff have deemed them ineligible to earn available monthly credits for failing to respond immediately to an instruction, and that in some cases, staff have punished, restricted, and/or disqualified entire dorms from being able to earn these credits based on the conduct of one or two youth.

Wilder staff appear to be confused about the policies and procedures surrounding sentence reduction

credits, and were unable to provide a unified explanation of how the system works to DRT investigators. DRT reviews of sentence reduction credit transcripts indicated that in at least one case, Wilder staff removed *more* credits than a youth had earned, leaving him with negative four credits, a direct violation of DCS policy.⁹³

The inability to earn sentence credits is likely a major contributing factor toward recent reports of escape attempts at Wilder. One youth involved in an escape attempt and who had been regularly earning sentence reduction credits at his prior placement said, “They were doing me wrong taking my credits, so I ran.” Youth report that they have nothing to lose, and even welcome being transferred out of Wilder into the adult criminal justice system.

DCS’s failure to provide rehabilitative programming and indiscriminately punitive attempts to control youth have created a powder keg of pent-up frustrations and hopelessness in which youth actively express a desire to be incarcerated in adult facilities rather than remain in DCS custody. Rather than presenting youth with supported pathways toward self-improvement and personal, familial, and community reconciliation, DCS has designed a system in which youth are deprived of any opportunities to learn, grow, and develop positive relationships. Wilder is designed to set up youth to fail.

⁹² T.C.A. § 37-1-137(h)(1)-(4) and <https://files.dcs.tn.gov/policies/chap18/18.37.pdf>

⁹³ DCS Policy 18.37: Determinate Commitments states, “The loss of previously earned YCRCs may not exceed the total previously earned credits.”

DCS is Failing to Pursue Appropriate and Effective Behavioral and Mental Health Treatment

DCS is warehousing youth with disabilities at Wilder but is failing to provide appropriate behavioral and mental health treatment. This creates an unsafe environment for youth and staff and seems to violate federal and state law requiring that children receive appropriate therapeutic services in the least restrictive environment.

78% of youth interviewed by DRT at Wilder report receiving psychotropic medications for conditions such as mood disorders, depression, PTSD, ADHD, bipolar disorder, schizophrenia, anxiety, and others. A Wilder staff member told DRT that he suspected that some students had undiagnosed intellectual disabilities, and another staff member opined during an interview that all youth at Wilder suffer from PTSD. Based on the deteriorating conditions and abuses discovered by DRT at Wilder, it seems youth are being exposed to traumatic events on a regular basis, further compounding their prior exposure to trauma.

And yet, there is no psychologist or psychiatrist on staff.

Wilder does have a contract for counseling services through Omni Health, but it does not seem that this contract is meeting the needs of the youth at Wilder. A shortage of therapists was cited in at least one youth's records, which indicated that his case manager recommended and requested additional therapy

sessions for the youth following two reports of suicidal ideation in less than one month, but was unable to secure them due to the "shortage" of therapists.

It appears Wilder relies heavily on psychotropic medications to address mental health and behavioral concerns with minimal oversight or appropriate assessment. This is contrary to clearly established best practices and is practically dangerous. Many psychotropics prescribed to children are unlicensed or "off-label" for the intended purpose.⁹⁴ The American Academy of Child and Adolescent Psychiatrists (AACAP) has issued basic principles related to the pharmacologic treatment of children in state custody. They include careful monitoring of how youth respond to treatment, screening for adverse effects, and ensuring access to comprehensive evaluations and non-pharmacological behavioral health supports.⁹⁵ Careful monitoring of youth is necessary to assess side effects, especially increases in suicidal ideation, and other changes over time.⁹⁶

⁹⁴ Lakham, Shaheen and Gareth E. Hagger-Johnson. "The Impact of Prescribed Psychotropics on Youth." *Clin Pract Epidemiol Ment Health* 2007; 3:21.

⁹⁵ AACAP Position Statement on Oversight of Psychotropic Medication Use for Children in State Custody, available here: https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/FosterCare_BestPrinciples_FINAL.pdf.

⁹⁶ See also *Limiting Psychotropic Medication and Improving Mental Health Treatment for Children in Custody* available here: https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/april-2016/limiting-psychotropic-medication-and-improving-mental-health-tre/.

What's the Worry with Psychotropic Medications?



Psychotropic medications are drugs which exercise a direct effect on the central nervous system and are capable of influencing and modifying behavior and mental activity.⁹⁷ Common classes of psychotropic medication include antidepressants, stimulants, and antipsychotics. They are most commonly used to treat conditions such as ADHD, anxiety, depression, bipolar disorder, and obsessive compulsive disorder.

While psychotropic medications can be an effective component of a youth's mental health treatment plan, they can also be harmful to youth if they are used inappropriately. Some of these medications may have serious side effects and can actually cause suicidality.⁹⁸ In recent years, advocates and policymakers have become increasingly concerned that these medications are overprescribed to youth in the foster care and juvenile justice systems.⁹⁸ In fact, Tennessee participated in a 2019 project meant to address disproportionately high rates of psychotropic medication use by youth in DCS custody.¹⁰⁰

In a training given to Tennessee stakeholders, the National Center for Youth Law listed a number of “Red Flags” that might indicate improper use of psychotropic medications including:

- Two or more medication prescriptions of any class
- Two medications in the same class of drugs
- High/adult doses for children
- Abruptly stopping medications
- Long-term use without attempts to taper off
- No monitoring, documentation, or noticeable impact.¹⁰¹

While DRT is not in a position to evaluate which medications individual youth should or should not be prescribed, DRT can confirm that these red flags are present in the treatment histories of youth at Wilder. Of 64 youth interviewed, 78% reported having a prescription for psychotropic medication, and 30% were prescribed more than one. Records reflect multiple instances in which youth were taking psychotropic medications prior to placement at Wilder and were then switched to multiple different psychotropic medications while at Wilder.

Additionally, it is not always clear why youth are being prescribed psychotropic medications at all. In a detailed review of 12 case files, DRT identified three youth who were prescribed more than one psychotropic medication for the diagnosis of “Conduct Disorder,” one of whom was prescribed *five different medications during the same month he reported suicidal ideation.*

⁹⁷ T.C.A. § 49-2-124(a)(2)

⁹⁸ See for example, *Suicidality in Children and Adolescents Being Treated with Antidepressant Medications*, available here: <https://www.fda.gov/drugs/post-market-drug-safety-information-patients-and-providers/suicidality-children-and-adolescents-being-treated-antidepressant-medications#:~:text=Antidepressants%20increase%20the%20risk%20of,suicidality%20with%20the%20clinical%20need.>

⁹⁹ <https://www.childwelfare.gov/topics/systemwide/bhw/medications/guidelines/>

¹⁰⁰ <https://www.pcori.org/research-results/2019/ensuring-foster-youth-are-only-prescribed-psychotropic-medication-when-their-best-interest>

¹⁰¹ <https://www.pcori.org/sites/default/files/Tennessee-Stakeholder-PPT.pdf>

Wilder's use of psychotropic medication to treat children in its care is reckless—it lacks appropriate medical oversight and continuity and uses high dosages and rates of prescription that risk disastrous effects. Youth records reflect monthly fifteen-minute medication management appointments with an outside psychiatric nurse practitioner, but psychotherapy is not offered as part of those appointments. It is unclear how youth are being prescribed medication, given that youth report limited and/or delayed access to mental health practitioners who are qualified to prescribe and monitor those medications. For example, one youth was prescribed multiple psychotropic medications while at Wilder. His records from May 2020 indicate that his last psychiatric nurse practitioner visit was in February of 2020, and his next appointment was “pending new psych.” This was in spite of a therapist's note in March of 2020 that the youth needed to see the psychiatric nurse practitioner because, at the time he was placed on suicide precautions, he reported one of his medications made him mad. This apparent lack of regular access to psychiatric services is dangerous, given that medications being taken by youth at Wilder are serious, require monitoring to regulate dosages, and may have physical and psychological side effects.

Wilder's practices to address youth in psychiatric crisis are also inadequate and, at times, dangerous. Staff at Wilder regularly attempt to address psychiatric crises by placing youth in seclusion in the TRU dorm, as described in Section II, despite the wealth of evidence indicating that solitary confinement is associated with increased suicidality and incidence of self-harm.¹⁰² The American Academy of Child and Adolescent Psychiatry notes that youth are of “particular risk” of depression, anxiety, and psychosis due

to isolation practices and points out “the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.”¹⁰³ Multiple youth have reported that their experiences in TRU were *causing* suicidal thoughts.

By relying almost exclusively on psychotropic medications with little to no actual therapeutic services and on seclusion practices, Wilder is creating an environment that could increase suicide risk and where many young people's mental health disabilities will likely worsen over time.¹⁰⁴

As mentioned in Section III, DCS is failing to appropriately evaluate and assess youth who come into DCS's custody. The failure to appropriately assess youths' mental health disabilities raises the question of whether certain youth should be placed in hardware secure facilities at all, especially when they would be better served in a less restrictive or community-based therapeutic environment.

The majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.¹⁰³

¹⁰² See “Association of Restrictive Housing During Incarceration with Mortality After Release” (2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>; “Solitary Confinement and Risk of Self-Harm Among Jail Inmates” (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>.

¹⁰³ AACAP, “Solitary Confinement of Juvenile Offenders” (2017), available here: https://www.aacap.org//AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx/.

¹⁰⁴ In 2014, two suicides in the span of three weeks at Mountain View, then a Youth Development Center run by DCS, raised serious concerns about the adequacy of DCS mental health support. See <https://www.wbir.com/article/news/local/two-suicides-at-dcs-facility-spark-internal-investigation/51-312169067>.

Does Appropriate and Effective Behavioral and Mental Health Treatment Exist in the Community?

Yes, there are treatment models that research has shown can help young people! Research shows that the most effective treatment models that reduce delinquency among youth with mental health disorders are community-based models that involve youth *and* families. Examples include Multisystemic Therapy, Functional Family Therapy, and Treatment Foster Care.

Tennessee's 2017 Blue Ribbon Taskforce on Juvenile Justice recommended that the state invest in more community-based programs such as Multisystemic Therapy and Functional Family Therapy, noting that these programs were highly effective and significantly less expensive than putting youth in secure facilities. For example, the Taskforce found that state-run secure facilities cost taxpayers more than \$230,000 per bed a year, while funding a youth's participation in Multisystemic Therapy cost \$12,000.¹⁰⁵

In sum, it is clear that the mental health services at Wilder are inadequate to meet the needs of youth who have previous exposure to trauma, diagnosed disabilities, and/or needs for specialized mental health support. Additionally, the continued placement of youth with disabilities at Wilder and other hardware secure facilities raises concerns that evidence-based mental health treatment and behavior intervention are similarly unavailable to youth in less restrictive settings. By being placed in these facilities, youth with mental health conditions will likely get worse when instead they could be placed in the community with more appropriate and cost-efficient services and have the opportunity to heal.

¹⁰⁵ <https://www.tn.gov/content/dam/tn/tccy/documents/jj/JJ-BlueRibbon-Report-2018.pdf>

DCS is Failing to Ensure that Health Care Needs of Youth, Both Preventive and Practical, Are Met

DRT’s investigation has revealed that DCS has failed to provide basic medical care to youth in its custody. DCS is entrusted to provide treatment and services for youth in their care that would otherwise be inaccessible to youth and families. Instead, DCS is failing to provide adequate healthcare, resulting in harmful impacts on young people’s health.

In addition to the deficits in mental and behavioral healthcare staffing and oversight described above, similar problems are characteristic of healthcare in general at Wilder. There is no registered nurse on staff—the Director of Nursing is a licensed practical nurse, with less latitude to provide direct patient care than a registered nurse—and a physician is on site just once per week. Additionally, youth interviews and records obtained by DRT indicate a pattern of delays and denials of medical care, which can result in the need for more invasive treatments later. In some instances, DCS seemed culpable for medical neglect of the youth placed in their care. Delays and denials of care following assaults at the hands of staff or

other youth are of particular concern—withholding care means there are no medical records that could confirm youth reports of abuse.

In addition, DCS and Wilder failed to implement adequate procedures to mitigate COVID-19 risks for youth in their care and custody. There have been at least two COVID-19 outbreaks at Wilder since October of 2020, and one staff member described TRU as a “hotbed” for COVID-19. At the May 2021 site visit, Wilder staff told DRT that they did not know of a plan to provide vaccines for youth, and that the facility was not conducting regular COVID testing of youth or staff. The only people at Wilder being regularly tested for COVID-19 were new youth arrivals.

DCS’s inability to provide basic medical care to youth is further evidence of their failures when it comes to staff supervision and hiring and providing for the basic wellbeing of youth in their care.

CALEB'S STORY

Teen in Hospital after Delayed Transport and Treatment

Caleb had been feeling unwell for a few days and complained to Wilder staff that his limbs were swelling up. The swelling didn't go away, and he kept telling staff that he thought something was wrong. He was given ibuprofen and a prescription pill from someone identified in his hospital records as a "prison worker" at Wilder. Wilder staff ultimately determined that Caleb should be taken to the Emergency Room for evaluation and treatment, but his transport was delayed 24 hours due to the unavailability of security transport staff. Almost one week after his initial complaints to Wilder staff, he was finally admitted to the hospital and remained there for five nights.

Caleb was diagnosed with a serious kidney condition that can cause kidney failure and will require further medical treatment and care. He has no family history of kidney disease.

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

DCS is failing to provide for the well-being of youth in its juvenile justice facilities, contrary to its responsibilities under state and federal law, its duty to Tennessee’s taxpayers, and the basic principles of human dignity. Worse, because these youth are isolated in a locked facility, cut off from family and with little access to an effective grievance procedure or due process with appropriate oversight, they have no valid means to protect themselves or to seek help when they are at risk. When families have attempted to hold DCS accountable, it has actively sought to transfer youth to other facilities and/or to the adult system.

As detailed in Section II, Wilder, as well as other juvenile justice facilities housing youth in DCS custody, are sites of physical and sexual abuse at the hands of and at the direction of staff. As covered in section III, lack of rehabilitative and education programming and harsh, ineffective disciplinary methods contribute to a powder keg of frustration and hopelessness in which youth fight each other or seek to escape. Many of these youth have untreated mental health conditions, as described in Section IV, and DCS fails to provide even basic medical care to youth, as described in Section V. In no way, shape, or form could the youth at Wilder be described as “safe.”

So, what recourse do youth have?

Unfortunately, in light of the serious conditions at Wilder, the oversight and grievance mechanisms available to youth in these facilities are also inadequate.

Grievance Procedures

DCS has a five-page policy that describes in detail the procedural steps that DCS must take to respond to youth grievances.¹⁰⁶ Under this policy, youth have the right to be represented by an advocate of their choosing during the grievance procedure. Youth can file a formal grievance by filling out a grievance form and putting it in a locked grievance box. The grievance

¹⁰⁶ <https://files.dcs.tn.gov/policies/chap24/24.5DOE.pdf>

JAYDEN'S STORY

“Nothing gets fixed that’s against staff because they are the ones who go through grievances”

Jayden felt like he was losing his mind in solitary confinement in the TRU dorm. So, he did the only thing he could do—he filed a grievance. The grievance clerk (the staff person in charge of handling the grievance process) ignored it.

Several weeks later, he filed another grievance saying that he had been in TRU dorm for over seven months and that he wanted to kill himself because he was so tired of it. Again, there was no hearing, nor did Jayden informally resolve the complaint.

Eleven months later, Jayden filed two more grievances reporting that he had been in TRU for too long and that he had been retaliated against by staff. No hearing was held on either grievance.

Jayden told DRT that there was no point to filing grievances anymore, because “Nothing gets fixed that’s against staff because they are the ones who go through grievances.”

clerk is responsible for checking the boxes daily and recording them in the grievance log. All grievances are supposed to be forwarded to the Chairperson of the Grievance Committee within 24 hours, and a hearing should be scheduled within five days. Youth have the option to informally resolve the grievance, in which case a “Notice of Grievance Disposition” should be completed and processed. If youth choose *not* to informally resolve the grievance, they should have a hearing in front of the Committee. If youth disagree with the decision of the Committee, they can appeal to the Superintendent and then to the Assistant Commissioner of Residential Services.

During DRT’s monitoring visits, multiple youth reported that they are blocked from filing grievances, and certain staff will not allow them to make phone calls to the DCS hotline to report abuse or file PREA reports, telling the youth, “That’s weak.” This is further supported by DRT staff’s observation that grievance forms are not available in the dorms, even though they are supposed to be posted in each dorm on the bulletin boards.

During DRT’s May 2021 interview with the Wilder employee who holds the positions of both Facilities Safety Officer and Grievance Clerk, she stated that she did not know of a written policy for the grievance process, despite being employed at Wilder for 16 years. If the staff member who is responsible for grievances does not know of a written policy for the grievance process, one could infer that copies of grievance procedures are not “readily accessible to all youth” as required by DCS policy and that other staff may not be adequately trained in appropriate grievance procedures.¹⁰⁷

¹⁰⁷ This is a violation of DCS Policy 24.5-DOE: Youth Grievance Procedures, which requires that youth grievance forms shall be readily accessible to all youth. See <https://files.dcs.tn.gov/policies/chap24/24.5DOE.pdf>.

The Grievance Clerk stated there are collection boxes for grievance forms: one in the school, one in the cafeteria, and one in each dorm, but she did not know if youth are told where the grievance forms are or how to file a grievance. She admitted that most of the time, there aren't any grievances in the boxes. She opined during the interview that "the majority of the time, [the youth] are just trying to get someone in trouble" and that "they just want someone to listen to them." As one might expect, youth view the grievance process as an ineffective waste of time since their complaints are rarely, if ever, resolved and because Wilder staff themselves are charged with "investigating" grievances.

According to DCS Policy 24.5-DOE, the Grievance Clerk is supposed to forward any grievance received to the Chairperson of the Grievance Hearing Committee within 24 hours. But according to the Grievance Clerk, this only happens if the youth specifically requests a hearing after the supervisor of the person who is the subject of the grievance completes their investigation. This process gives the supervisor/investigator ample opportunity to persuade the youth not to request a hearing; the fact that hearings rarely occur suggests that this is exactly what happens.

Records show that from 2019-2020, only three grievance hearings were held for almost 300 grievances. Only one of the three hearings took place within five days of the filing, which is a violation of DCS Policy 24.5-DOE, and only one of those hearings was appealed.

In several instances, DRT interviewed youth who stated that they had filed grievance reports and/or PREA reports. With the exception of one youth, when DRT examined their case files, there was no record of these reports.

The failure of staff to adequately document grievance and incident reports, as well as DCS's seeming indifference to pervasive allegations of abuse, makes it

Records show that from 2019-2020, only three grievance hearings were held for **almost 300 grievances**. Only one of the three hearings took place within five days of the filing, which is a violation of DCS Policy 24.5-DOE, and only one of those hearings was appealed.

extremely difficult for juvenile court oversight mechanisms such as Foster Care Review Boards to function effectively. Juvenile courts are able to review the appropriateness of residential or treatment placements of youth in DCS custody,¹⁰⁸ but it does not appear that this is common practice.

Lack of Oversight, Due Process, and Protection from Possible Retaliation

While the variation in juvenile court practice across 95 counties and 98 juvenile courts in Tennessee is outside the scope of this particular report, DRT's interactions with youth at Wilder and their families seem to indicate that juvenile courts and juvenile defense attorneys are unaware of the abuses occurring within facilities and that there is no obvious mechanism through which they would become aware of or attempt to address those issues. Additionally, at least some juvenile defense attorneys either do not view it as their responsibility to assist clients with issues related to placement and services or are unaware of

¹⁰⁸ T.C.A. § 37-1-129(e)(2)

what mechanisms to protect their clients might be at their disposal. Functionally, this means that youth and families have no way to address their concerns, as DCS is the abuser, investigator, judge, and jailor.

A perfect example of this incredible concentration of power, and complete lack of judicial oversight, is a statutory provision through which DCS is empowered to transfer certain youth to the adult corrections system without judicial review. Under T.C.A. § 37-5-206(a), the superintendent of Wilder, upon approval by the DCS Commissioner and the Commissioner of Correction, can deem youth “incurable” when they turn 18 and transfer them to an adult facility for the remainder of their commitment. There is no hearing held to make this determination, and no appeal process exists.¹⁰⁹

During the course of DRT’s investigation, DCS has deemed at least two youth incurable. Both were youth who had made allegations of abuse and for whom DRT had expressed specific concerns to the Department.

Functionally, this means that youth and families have no way to address their concerns, as DCS is the abuser, investigator, judge, and jailor.

DCS’s actions indicate that it has neither the ability nor the intention to keep youth in the juvenile justice system safe.

The people of Tennessee support system-change to help youth and their families, not a system designed to fail.

Tennesseans strongly support changes to the juvenile justice system such as those outlined in this report. They want a system that focuses on prevention and rehabilitation over punishment and incarceration.

When asked “Compared to the way things are now in the youth justice system, if you had to choose, do you think there should be more focus on punishment and incarceration or more focus on prevention and rehabilitation?” 79% of respondents favored prevention and rehabilitation, with 71% of Republicans in favor, 84% percent of Democrats in favor and 85% of Independents in favor.

These and other findings are part of a 2021 statewide public opinion survey commissioned by the Youth First Initiative and conducted by GBAO, a research firm based in Atlanta, Georgia.¹¹⁰

In a time of deep partisan divides, Tennessee residents across the political spectrum support a range of policies, designed to reform the youth justice system, that focus on providing more support for rehabilitation, increasing funding for social workers, addressing racial inequities in the youth justice system, and including families in treatment planning and services.

A majority of Tennessee residents support closing youth prisons and redirecting funding to community-based rehabilitation programs. There is also strong bipartisan support for Congress providing funding to incentivize states to close youth prisons and repurpose youth prisons for broader community use.

¹⁰⁹ By contrast, if a District Attorney seeks to transfer a youth to the adult court system for trial and sentencing, a full hearing before a judge, at which the youth is represented by counsel, is required. This administrative process through which DCS can send youth, who had previously been determined by the court to be appropriate subjects for the juvenile justice system, to the adult system raises significant Constitutional concerns.

¹¹⁰ The Youth First Initiative, Tennessee Statewide Survey was conducted in February 2021 among 500 Tennessee adults with a Margin of Error of +/- 4.4 percentage points.

Additional select findings among Tennessee adults surveyed include:

- 85% favor designing spending and rehabilitation plans that include a youth's family in planning and services;
- 83% favor increasing spending on social workers and mental health counselors;
- 78% favor changing the system so that incarceration is not the automatic or default response for youth in the justice system;
- 74% favor prohibiting incarcerating youth for probation violations, such as missing appointments or skipping school, and support using less severe ways of holding them accountable;
- 74% favor requiring the state to address racial inequities in the juvenile justice system;
- 71% favor requiring rigorous community supervision instead of incarceration for youth who commit more serious offenses, unless they are an imminent risk to themselves or others;
- 69% favor ending the use of solitary confinement in youth prisons;
- And only 31% of Tennessee residents favor building more youth prisons.

Support among the people of Tennessee for these policies is based on the 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 themselves, and that the best thing for society is to rehabilitate young people so they can become productive members of their communities.

Clearly, people across the state of Tennessee want a juvenile justice system designed to help children, youth, and families—not the current situation in Wilder and other facilities that, as documented in this report, are part of a system designed to fail.

ANTHONY'S STORY

Transferred to Adult Prison for “Failing to Respond to Treatment”

When Anthony came to Wilder, it was clear that he had significant mental health needs. He had been hospitalized for suicide attempts, and he had multiple mental health diagnoses, including schizophrenia. He clearly needed additional supports, including special education.

It's not clear what sort of mental health treatment Anthony was able to access prior to being in DCS custody—he came to Wilder with prescriptions for multiple psychotropic medications. Wilder prescribed new ones.

Anthony struggled at Wilder; he was sent to seclusion numerous times, including for “repeated refusal to follow staff orders.” His records shows that almost 50 major incident reports were filed against him in a short period.

So, DCS decided to transfer Anthony, a teenager with a history of suicidal behavior and multiple diagnosed disabilities, to the adult corrections system, through deeming him “incorrigible,” without a hearing, without a judge, and without an attorney.

In DCS's memorandum in support of transferring Anthony to the adult system, they stated that he was incorrigible in part because he failed to respond positively to treatment “despite multiple interventions.” What those interventions were, we'll never know; DCS didn't mention a single one in its memo.



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

The youth at Wilder Youth Development Center are caught in a system that sets them up to fail. DCS, by creating this system and not taking steps to improve it, has thoroughly failed the youth who have been entrusted to its care. Our findings about the alarming conditions at Wilder also raise serious concerns about the other juvenile justice facilities contracted by the Department and about the overall functioning—or rather, dysfunction—of the juvenile justice system. DCS has an ethical, legal, and fiduciary responsibility to the state and to the youth and families it serves. In its dereliction of these duties, DCS is harming young people and their communities, wasting taxpayer money, and violating both state and federal law.

We recognize that any real fix to the juvenile justice system in Tennessee will be a long-term project that will require intentional engagement from system stakeholders, communities, and system-impacted youth and families. But it is also imperative that the abuses at Wilder stop immediately. The state cannot delay any further in addressing the dangerous conditions in which it has allowed youth to languish and suffer.

Accordingly, we offer two types of recommendations below: first, short-term recommendations meant to address the most egregious of the abuses at Wilder as soon as possible, and second, steps that the state should take to prevent those conditions from recurring at any facility in Tennessee and to bring DCS into compliance with federal and state law.

As a national youth justice organization that has worked on facility and conditions issues in juvenile justice and child welfare for almost 50 years, the Youth Law Center has seen repeatedly that if underlying systems and oversight issues are not addressed, abuses will recur. As long-time advocates for people with disabilities in Tennessee, DRT has also seen similar conditions issues crop up again and again across different types of institutional settings, whether they are jails, residential treatment facilities, or institutions for people with disabilities.

If DCS does not take steps to fix its broken system, youth in the juvenile justice system in Tennessee will continue to be harmed.

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. These policies and procedures should include, at minimum, thorough and effective investigations that occur no later than 72 hours after a report of abuse is filed; utilizing a neutral, third-party investigator to conduct these investigations; and taking steps to ensure that staff involved have no contact with youth while investigations are ongoing.
- 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. DCS should have zero tolerance for child abuse anywhere but especially in an institution where young people cannot leave and are fully entrusted to DCS for care and protection.

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. The meetings should include robust engagement with the youth, the youth's family, the youth's attorneys or advocates, mental health professionals, educators, and other external partners in order to evaluate and assess each youth for services and placement. Involvement of these outside experts can further support Wilder staff, who are overwhelmed and many of whom are not appropriately trained to work with youth with special needs.
- Through this process, create individually tailored treatment plans for all youth, including a transition plan with supports necessary for youth to return to their families and communities as appropriate.
- 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.
- Further, steps should be taken for 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. This latter review process should be similar to that completed by the Psychopharmacology Review Teams (PRTs) established by the Department of Intellectual and Developmental Disabilities (DIDD), in that the goal is to provide alternatives to potentially inappropriate psychotropic medications.
- Develop and implement a policy of informed consent, sharing information regarding all medications and their potential side effects with parents and/or legal guardians, and obtain consent from both family and youth as appropriate.

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. The staff at Wilder are currently set up to fail and do not seem to know of viable, effective alternatives to violence when working with youth with special needs or appropriate

procedures to respond to documented medical needs. This needs to be fixed immediately before more youth suffer physical and emotional harm as a result.

- 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, as required by state and federal law.
- Hire or contract for appropriate health and mental health services, including at minimum a psychologist, a child and adolescent psychiatrist, therapists, and nursing staff. Additionally, there should be sufficient therapists on staff at Wilder so that each carries a caseload appropriate for a residential setting with youth who require complex trauma-informed care. Wilder disproportionately serves youth with special needs who have experienced high levels of trauma—both before and since being placed at Wilder. Wilder needs to retain appropriate staff to be responsive to these needs.

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. This should include developing clear written protocols regarding what religious materials youth at Wilder may have in their possession so that, for example, a Bible cannot be classified as a weapon ad hoc.
- End the practice of seclusion at Wilder and all other DCS-contracted facilities. Seclusion prac-

tices deprive youth of basic human necessities, such as fresh air and sunlight, and prevent youth from accessing meaningful education, therapeutic, and rehabilitative programming. This practice is dangerous, especially considering the high level of pre-existing trauma and mental health needs of the youth at Wilder.

- Clarify policy regarding protective custody. 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. Not only is this a best practice that has led to reduced recidivism and increased safety in other communities, it is also required under federal and state law. Possible evidence-based solutions with demonstrated positive effects in other jurisdictions include Functional Family Therapy, Treatment Foster Care, and Multisystemic Therapy.¹¹¹ Some of these services currently exist in Tennessee but need to be expanded and specifically targeted and/or accessible to youth in the juvenile justice system.
- Invest in and utilize post-adjudicatory community-based placements. Instead of sentencing youth to institutions—which are expensive and more

likely to facilitate abuse and poor outcomes—wrap them with appropriate supports in the community. Such placements can often be funded with federal dollars¹¹² and take advantage of natural support systems in the community, such as churches and non-profits. Additionally, federal and state law mandates DCS provide services and supports in the least restrictive environment, especially for youth with disabilities, including those with mental health needs.

- 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. This will ensure that DCS is not trying to solve these complex problems on its own and that impacted communities can play a role in building services that work.
- Audit and implement a monitoring scheme for all DCS-contracted and licensed juvenile justice facilities, including public reporting of data regarding seclusion, restraint, and violations of youth rights and transparent, public reporting of the number of grievances filed and aggregate data on how they were resolved.
- 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 as it currently exists to eliminate the appearance of retaliation and reduce any actual retaliation.

¹¹¹ See for example on Functional Family Therapy and juvenile justice involved youth: <https://www.ojp.gov/pdffiles1/ojdp/184743.pdf>, and the efficacy of Multisystemic Therapy with the same population: <https://pubmed.ncbi.nlm.nih.gov/16597218/>.

¹¹² Through Title IV-E of the Social Security Act and Medicaid/EPSDT.

Opportunity for Change and Reform

Tennessee is at a crossroads. DRT's monitoring visits have shown that youth at Wilder are not safe. Further, DCS is using Wilder to warehouse youth with disability and trauma-related needs without appropriately assessing or caring for these youth. This is not a case of DCS needing to build better facilities; instead, it is a case of DCS placing youth under its care in an inappropriate setting with staff who are not appropriately trained or supported to care for them. The result is that DCS is not helping youth rehabilitate, but instead is harming them and making their needs more challenging. This hurts children, harms families, and weakens all of our communities.

This is not DCS's only option. Instead, DCS could appropriately invest in community-based therapeutic services for youth, both as prevention (before they become involved in the juvenile justice system) and as treatment and rehabilitation (after they become involved in the juvenile justice system). Community-based services have been found to be more effective than incarceration, even for serious offenses.¹¹³ Community-based services strengthen youth, families, and communities and make us all safer as they reduce recidivism and promote rehabilitation.

Community-based services are especially important for youth with disabilities, which we believe represent a majority of youth at Wilder. Youth with disabilities are especially vulnerable to loss of specialized education, lack of connections to peers and families, and other harm caused by being placed in overly restrictive environments. Youth with disabilities are also entitled, under state and federal law, to the opportunity to live in the least restrictive, most family-like environment.¹¹⁴

We are hopeful that Tennessee legislators, policymakers, and DCS leaders will take the findings in this report and work with the community to make the necessary changes as soon as possible. Youth need to be assessed for services and appropriate placement. They need to be assessed by medical professionals to eliminate the harmful practice of over-prescription of psychotropic medications. They need to be given access to appropriate education. And they need to immediately be safe from further abuse or harm. What we have seen at Wilder suggests that the juvenile justice system in Tennessee is broken. It is time to get back to taking care of the youth who are entrusted to the state, returning youth to their communities and families whenever possible, and following Tennessee and federal law.

¹¹³ For more information on community-based services, including links to various studies comparing their impact to incarceration models, see <https://jje.org/hub/community-based-alternatives/key-issues/#:-:text=Numerous%20evidence%2Dbased%20community%2Dbased,to%20confinement%20than%20for%20incarceration>

¹¹⁴ This is a well-established legal principle codified in the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, and elsewhere.



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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.