



Detained: Nebraska's Problem with Juvenile Incarceration

An effective juvenile justice system holds young people accountable for their actions in age-appropriate ways that best promote community safety. Our children and citizens alike are entitled to a system that will offer the best return on investment, by providing the right package of accountability and supports to change anti-social behaviors. A pragmatic approach to juvenile justice invests in evidence-based programs and services, and eschews costly practices that are unsupported by research.

One such practice is an overreliance on incarceration: the costliest option on the justice spectrum, in both economic and rehabilitative terms.¹ While a small percentage of youth may exhibit such dangerous behavior that they require immediate confinement, decades of research tells us that juvenile incarceration is costly and ineffective in most cases. Longitudinal studies have shown that jailing youth does not change behavior, and in fact can backfire to make communities less safe by increasing recidivism rates among previously low-risk youth offenders.² Other studies have shown that children who have spent time incarcerated are less likely to graduate from high school, more likely to be arrested and incarcerated as adults, and more likely to contemplate suicide.³ Incarceration may keep a child momentarily contained, but it bears its own substantial risks that should always be weighed in the balance.

What do we mean by juvenile incarceration, and how does it happen in a rehabilitative juvenile court system? There are two ways: short-term stays in local juvenile detention facilities, or long-term commitments to Nebraska's two state-run youth prison campuses. This issue brief focuses on the former.⁴ Juvenile detention facilities are the juvenile equivalent of jail: a short-term, secure facility to hold children until some sort of resolution or next step can be reached on the juvenile case, and necessary rehabilitative services are arranged for the child to return safely to the community. Facilities are run by counties, tasked with providing "safe, secure housing," and licensed under state and federal jail standards.

Accredited education is provided at all of Nebraska's detention centers, and staff at each facility make efforts to provide programmatic opportunities, counseling, and health care. However, because they are designed primarily for security, to walk into a juvenile detention center can present a jarring disconnect from the goal of the juvenile court system: to rehabilitate the child and serve his or her best interests.

¹Amanda Petteruti, Marc Schindler & Jason Ziedenberg. *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*. Justice Policy Institute, 2014: available online at http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf

²Re-Examining Juvenile Incarceration. Pew Charitable Trusts, 2015: available online at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>

³Barry Holman & Jason Ziedenberg. *The Dangers of Detention: the Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Justice Policy Institute: available online at http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf

⁴We have previously researched Nebraska's deep-end juvenile prison facilities, the *Youth Rehabilitation and Treatment Centers*. That report can be accessed at <http://voicesforchildren.com/2015/07/data-snapshot-nebraskas-youth-rehabilitation-and-treatment-centers/>

What is the law in Nebraska?

Current law in Nebraska permits the use of juvenile detention in only three cases:

- 1) When there is “immediate and urgent” necessity for the protection of the child;
- 2) When there is “immediate and urgent” necessity for the protection of others or their property, and/or;
- 3) When it appears the child is likely to flee the jurisdiction.⁵

Because the juvenile process is meant to be rehabilitative, detention is never permitted as a punitive measure. A child in juvenile court cannot be sentenced to a “term” in juvenile detention.⁶ However, children can and often are processed into detention facilities not for new, dangerous charges, but for noncompliance with the terms of their probation, runaway behavior from home or a court-ordered placement, or for failure to appear to a scheduled court hearing. Many youth sit in county detention facilities awaiting evaluations or placements at private treatment facilities, and long lengths of stay can turn an “immediate and urgent necessity” into an indeterminate period of incarceration.

The juvenile code requires that every child brought to the door of a detention facility on a new charge be screened using a neutral, uniform assessment to determine risks and whether temporary incarceration is necessary.⁷ Nebraska Juvenile Probation Administration uses the same Risk Assessment Instrument (RAI) across the state. Crafted to reserve detention for truly dangerous cases or behavior, the RAI calculates a score based on certain risk factors such as the nature of the charge, whether the child has previous charges pending, and any history of runaway behavior. Supportive factors like a guardian willing to take the child home provide offsetting points. The RAI was evaluated by the University of Nebraska’s Juvenile Justice Institute, but ultimately could not be validated because probation intake officers were overriding the tool too frequently (detaining youth who scored for release).⁸

Secure versus staff-secure facilities

Federal and state law explicitly prohibit the incarceration of individuals who have committed no crime. Many youth, however, are brought before the juvenile court on non-criminal charges like truancy, breaking curfew, or running away from home. Though secure confinement is prohibited, Nebraska permits these “status offenders” to be held in staff-secure facilities, which are statutorily defined as:

Staff-secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Neb. Rev. Stat. §43-245(24).

As of the date of writing, the Nebraska Crime Commission has yet to publish standards for the regulation of staff-secure facilities. In this report, we will distinguish which facilities identify themselves as staff-secure versus secure. We will also provide descriptions of the facilities from the child’s-eye-view in an effort to establish whether there is a meaningful difference for youth to be held in secure versus staff-secure confinement.

⁵Neb. Rev. Stat. 43-251.01(5)

⁶This subheading describes the permissible uses of detention for juvenile court proceedings. It should be noted, however, that juvenile detention facilities in Nebraska also house children under the age of 18 who are charged with crimes in the adult criminal court. In these cases, youth may be serving definite sentences within the facility.

⁷Neb. Rev. Stat. §43-260.01

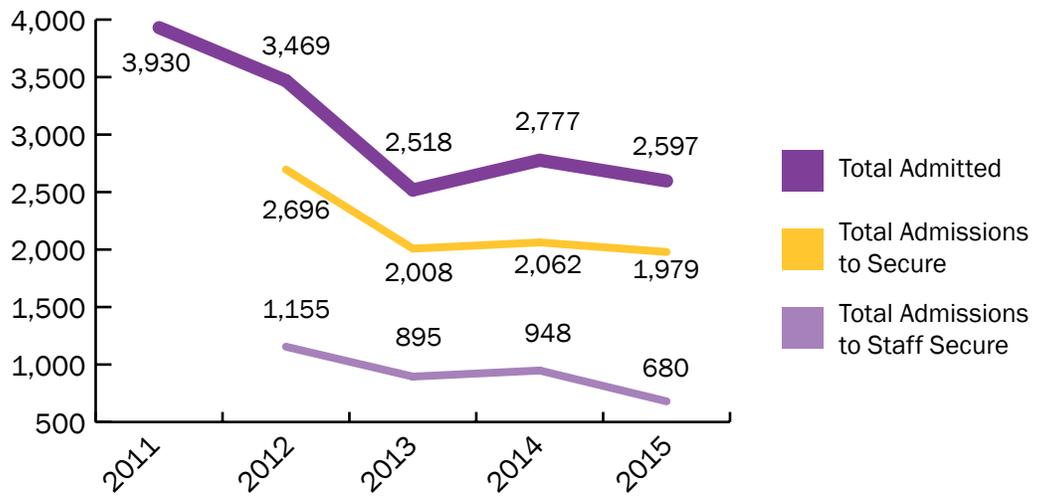
⁸Sara Moore, M.A. & Anne Hobbs, J.D., Ph.D. Analysis of the Nebraska Juvenile Risk Assessment Instrument – 2015. University of Nebraska Juvenile Justice Institute: available online at http://www.unomaha.edu/college-of-public-affairs-and-community-service/juvenile-justice-institute/_files/documents/analysis-of-nebraska-intake-risk-assessment-instrument.pdf

What does detention look like in Nebraska?

Statewide Data

Federal and state initiatives have substantially reduced the numbers of youth admitted to detention facilities in recent years.

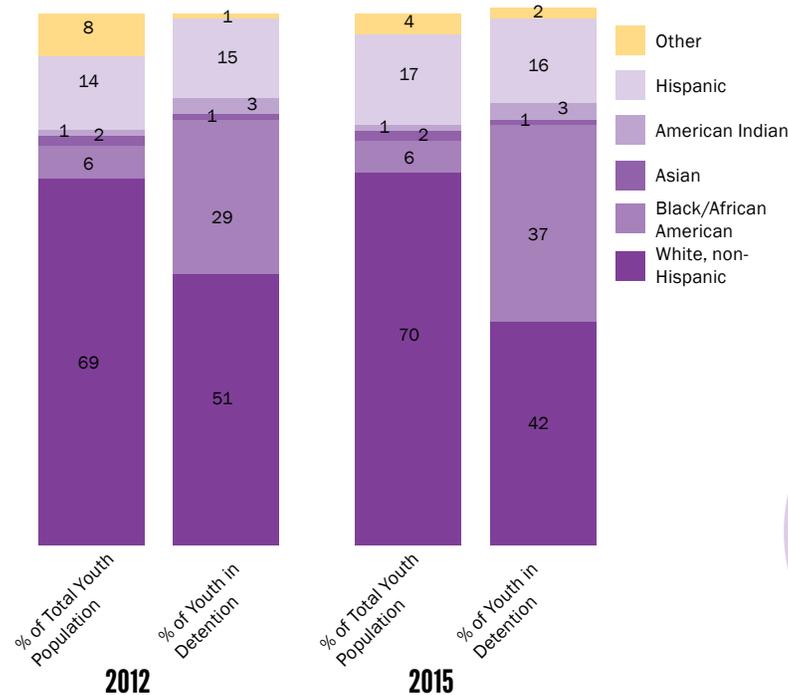
Nebraska's Admissions to Juvenile Detention Facilities (2011 - 2015)⁹



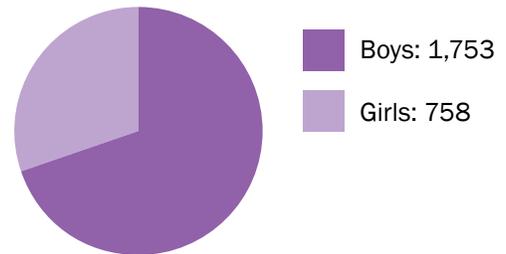
However, relative to our total youth population, our rate of juvenile incarceration remains high. In 2013, the national rate of juvenile incarceration was 57 per 100,000 youth. In Nebraska, it was 67.¹⁰ Unfortunately, 2013 had the lowest total detention admissions in recent years.

Moreover, initiatives to reduce overall admissions to detention have not been effective for all youth; in recent years, disproportionalities in the use of detention for white youth compared to black youth have grown. Though black children make up only 6% of our total youth population, they represent 37% of all youth detained.

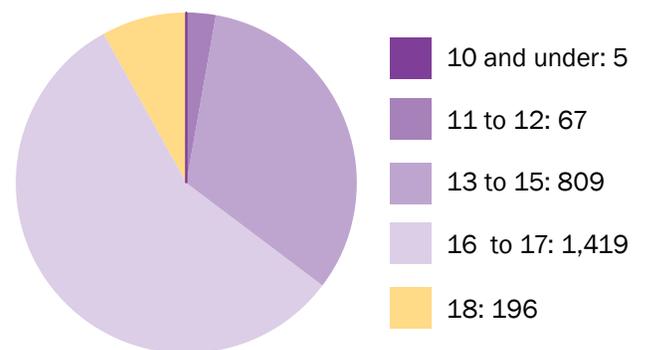
Race/Ethnicity: Total Youth Population vs. Youth in Detention (2012 vs 2015)¹¹



Detention Admissions by Gender (2015)



Detention Admissions by Age (2015)



⁹Data for this report was provided by Nebraska's five juvenile detention centers. Secure and staff-secure admission have been tracked separately for most centers since 2012. Youth can move back and forth between secure and staff-secure units, so the totals of admissions to each may add up to a number greater than the total admissions overall for the year.

¹⁰Sickmund, M., Sladky, T.J., Kang, W., and Puzanchera, C. Easy Access to the Census of Juveniles in Residential Placement. Office of Juvenile Justice and Delinquency Prevention, 2015: Available online at <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

¹¹Race/ethnicity data includes both secure and staff-secure admissions and is calculated as each facility reports a detainee's race or ethnicity.

Detention Facilities

Local Facility Tours

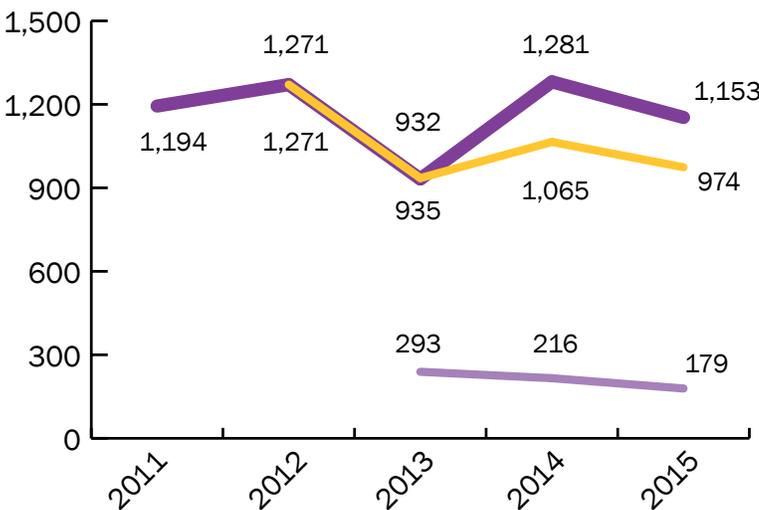
At the time of this writing, there are four operating juvenile detention facilities in Nebraska and one whose juvenile services have been temporarily suspended (Scottsbluff). Voices for Children visited each facility in an effort to understand what detention looks and feels like to the children sent there across the state.

Juvenile Justice Center Locations in Nebraska



Douglas County Youth Center: Omaha, NE

Douglas County Youth Center Admissions (2011 - 2015)



Average daily population in 2015: 75.8 (secure); 11.5 (staff-secure)

Average length of stay in days: 28.3 (secure); 20 (staff-secure)

Per diem cost in 2015: \$210.56

Estimated total cost per admission¹²: \$5,958.85 (secure); \$4,211.20 (staff-secure)

- Total Admitted
- Total Admissions to Secure
- Total Admissions to Staff Secure

Description of secure units: To enter secure units, youth go through metal sliding doors that operate by remote staff control. Secure common areas have tables and chairs, showers, and a small outdoor recreation area. Teachers bring materials to the unit for class, but youth leave the unit for recreation hours and different programming options such as gym and library time in separate areas of the facility. During rest hours and “count”/staff changeover, youth are locked in their single sleeping cells.

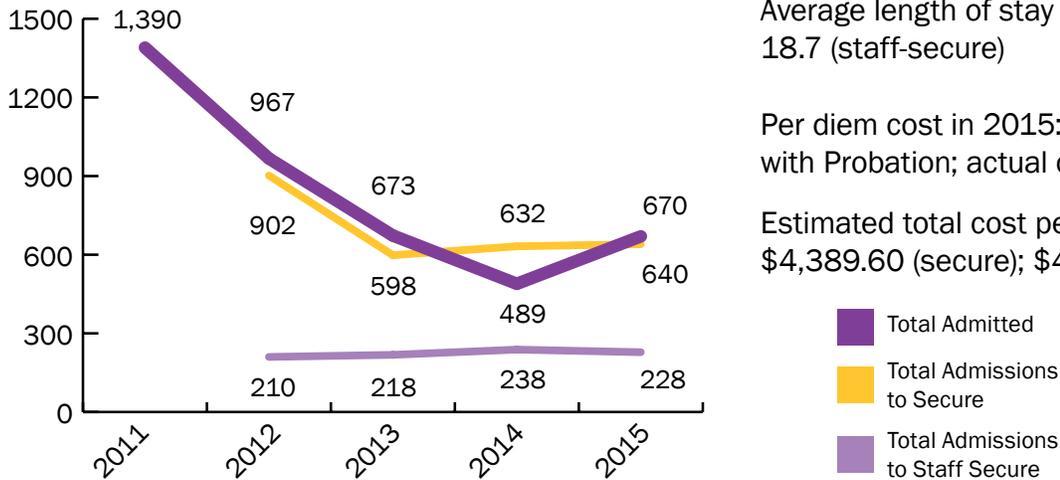
Description of staff-secure unit: Entry and exit from the staff-secure unit is through two buzzer-locked doors. The main area is two-story and entirely self-contained: education and extra-curricular activities, other programming and attorney visits all occur on the unit. Sleeping cells off the common area lock from the inside so that youth can freely exit their rooms, but not enter others.

Unique features/notes: Douglas County Youth Center has increased programming options beyond their detention beds. The Home on Electronic Monitoring program supervises children in their homes in lieu of detention. The EPIC program is an evening reporting center that can take referrals from the Home program or from Probation, offering pick-up from school, homework tutoring and mental health services, nightly family-style dinner and other activities for youth who need assistance and supervision in the after-school hours.

¹²Average cost is an estimate based on per diem rate and average length of stay.

Lancaster Youth Services Center: Lincoln, NE

Lancaster Youth Services Center Admissions (2011 - 2015)



Average daily population in 2015: 44.5 (includes secure and staff-secure)

Average length of stay in days: 18.6 (secure); 18.7 (staff-secure)

Per diem cost in 2015: \$236 (contract rate with Probation; actual cost likely higher)

Estimated total cost per admission: \$4,389.60 (secure); \$4,413.20 (staff-secure)

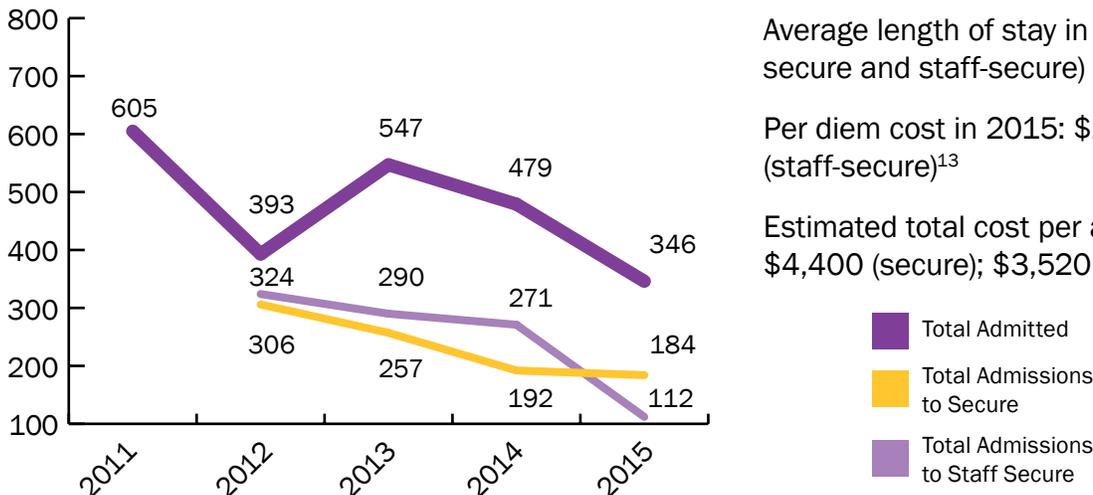
Description of secure units: Youth in secure pods sleep in single cells with a bed frame and toilet. Locked doors have a head-height window onto the small common area of the pod. Each pod has an individual shower for youth to use privately. Two pods share a larger common area with a TV that is overseen by a control desk; doors between cells, pods, common areas and the larger facility are locked and movements are monitored by staff.

Description of staff-secure units: Lancaster County is in the process of closing its staff-secure wing. At the time of our visit, youth on the staff-secure pod had freedom of movement within the unit and more materials freely available (books, computers, craft materials). The door between the staff-secure unit and the rest of the facility was locked. One door with a delayed lock in a hallway off the unit provided an exit to the outdoors. For youth on the staff-secure unit with delinquency charges, the court order was structured as a conditional release; violations of the program could result in administrative reassignment to a secure unit.

Unique features/notes: Lancaster Youth Services runs a family advocate program to support parents and families of detained youth. Staff assist families in understanding the court process, coordinating visits around parents' work and transportation schedules, and communicating about children's unique needs.

North East Juvenile Services Center: Madison, NE

North East Juvenile Services Center Admissions (2011 - 2015)



Average daily population in 2015: 26 (includes secure and staff-secure)

Average length of stay in days: 22 (includes secure and staff-secure)

Per diem cost in 2015: \$200 (secure); \$160 (staff-secure)¹³

Estimated total cost per admission: \$4,400 (secure); \$3,520 (staff-secure)

¹³Costs reflect an average of multiple different contracted rates.

Description of secure units: Two secure units are overseen by a control room, which looks out on their common areas. Some cinder blocks are decorated with art designed and painted by youth who have achieved the highest level status. Youth rotate through shared recreation and education spaces, and are locked into sleeping cells with a bed frame and toilet during rest hours and break times.

Description of staff-secure unit: Rooms on the staff-secure wing feature two beds low to the ground and a small window on the door looking out onto the common area of the unit. Youth have freedom of movement on the unit and rotate through shared parts of the facility for recreation and education. The unit has one door with a 30-second delay that opens to the outdoors.

Unique features/notes: Youth in the facility wear different colored shirts to identify their status: secure confinement, staff-secure confinement with criminal charges, staff-secure confinement without criminal charges, flight risk, etc. Additionally, NE Juvenile Services Center is the only facility not affiliated with one county; instead, it is a private nonprofit owned and managed by a conglomerate of 13 counties. Participating counties pay into a contract that goes toward paying off the facility bond, sit as members of the board of directors, and receive a lower per diem rate and one guaranteed open bed.

Sarpy County Patrick J. Thomas Juvenile Justice Center: Papillion, NE

Sarpy County Patrick J. Thomas Juvenile Justice Center Admissions (2011 - 2015)



Average daily population in 2015: 13.7

Average length of stay in days: 18.6

Per diem cost in 2015: \$256.10 (for most contracting counties)

Estimated total cost per admission: \$4,763.46

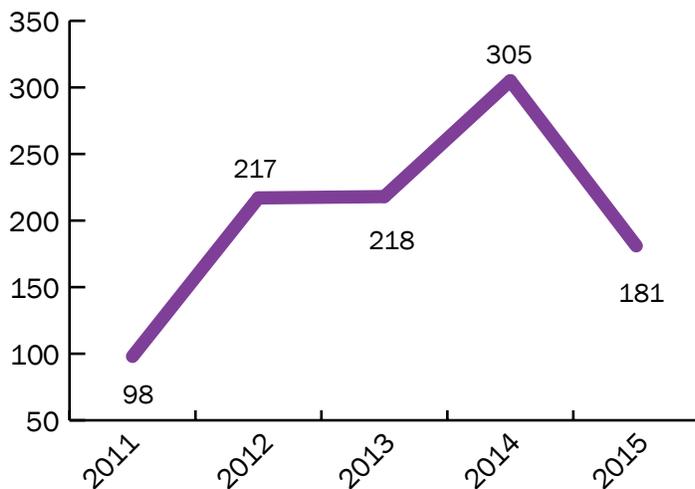
■ Total Admitted

Description of staff-secure: One of the smallest facilities, Sarpy has one main common area with three smaller sleeping units branching off. There is one door to the fenced recreation area, one door with a delayed egress lock, and one locked door to the main admissions area. Rooms have capacity for four beds, but with low population numbers, most youth sleep in singles.

Unique features/notes: Sarpy County has seen one of the sharpest reductions in detention numbers in recent years. The average daily population is very small, and much of the facility space is used instead for an alternative school, day reporting program, and administrative space for detention alternatives such as electronic monitoring and truancy diversion programs.

Scotts Bluff County Detention Center: Gering, NE (juvenile services temporarily suspended)

Scotts Bluff County Detention Center Admissions (2011 -2015)



Average daily population in 2015: 16

Average length of stay in days: 36

Per diem cost in 2015: \$235

Estimated total cost per admission: \$8,460

Total Admitted

Description of secure: Cell units can sleep up to five youth, and each unit has a shared bathroom with showers and a “time out” room to separate youth if necessary. A private “senior shower” can be earned as an incentive. Class is conducted in a main common area, and youth have monitored access off the common area to indoor and outdoor recreation spaces.

Unique features/notes: Scottsbluff runs an Equine Assisted Therapy program in which youth participants (both those detained and former detainees/other youth in the community) interact with horses to relieve stress and build confidence and communication skills. Scottsbluff also has a “day program” for students to sleep at the facility but go to school, work, and extracurricular activities during the day.

Conclusion:

Juvenile detention facilities are under a mandate to provide “safe, secure housing” and by its nature, that looks like jail. Twenty-foot barbed wire fences surround outdoor recreation spaces. Locked cells are sterile and generally windowless. Cameras monitor for safety and privacy is limited. Children wear facility-issued clothing, undergo fingerprinting and pat-down searches upon entry, and leave any personal belongings at the door.

The conclusion we draw from our visits should not reflect on the staff or management of these facilities, who care for the children sent to them and operate under burdens of unpredictably revolving populations, the need to balance security with opportunities for learning and growth, and lack of control over the process by which youth are admitted or released. During our visits, we repeatedly heard from staff urging more community-based solutions, faster case processes, and therapeutic placement options that would move kids out of detention and into rehabilitative services faster.

Rather, the high number of youth still being detained every year in Nebraska is the result of systems that put children in jail who do not need to be there, or allow them to linger in incarceration when the immediate risk of danger has long passed. There are some youth who require a high level of security because they present an immediate danger to the community or other youth, but secure detention centers are no place for children who have not presented a significant and immediate danger to the community, or whose behaviors are manifestations of childhood trauma or mental health diagnoses.

To that end, we recommend that Nebraska:

- **Eliminate statutory rationales for detention that permit the jailing of youth who pose no danger to the community or risk of flight:** Best practices reserve detention for preventing re-arrest or flight from the jurisdiction. Detention facilities are not designed to address mental health issues, and detaining a child who poses a risk of harm to himself – particularly, a child with suicidal ideation – places both child and facility at greater risk. Similarly, detention facilities should not be considered a placement option when a parent refuses to keep an otherwise non-dangerous child at home.
- **Continue to invest in our mental and behavioral health systems, alternative programming, and placement options:** Decades of research tells us that wrapping the right services and supports around a youth in his own home community will be the most cost-effective response in most cases to protect public safety.¹⁴ Moreover, public opinion supports reducing youth confinement in favor of investing in services and supports that reduce recidivism.¹⁵ In recent years, Nebraska has made a strong investment in evidence-based practices that can serve as alternatives to confinement. As described above, most detention facilities themselves offer or house such alternatives in the form of day and evening reporting centers, diversion programs, electronic monitoring and tracking services. State and local policymakers should continue to invest in and support this type of alternative programming, continuing to draw down our numbers of youth in confinement and feeding the savings back into tested, safe solutions that can give youth the guidance and support they need while they are waiting for their day in court.
- **Implement case processing standards statewide for youth in detention:** For those youth who do present an “immediate and urgent” danger requiring confinement, we should ensure that progress toward rehabilitation is not impeded by lengthy stays extending beyond when the immediacy and urgency have passed. The estimated total costs of detention grow by the day, and counties can drastically reduce the fiscal burden of detention by reducing lengths of stay even by just a few days. Probation, lawyers, service providers and the courts should respond nimbly to expedite proceedings for youth in detention, and statewide standards should be set requiring case progression within 30 days. Dedicated court time should be reserved for consideration of motions to expedite hearings or to reconsider the ongoing necessity of incarceration, and court time should be used effectively to move the case forward and the child out of detention. Defense attorneys should request detention review hearings pursuant to Neb. Rev. Stat. 43-271(d) upon any evidence the necessity for detention has abated.
- **Maximize staff-secure type placement for youth who require confinement, but halt its use for children who have committed no crime:** Without a doubt, there is a difference between secure units and staff-secure units. Youth in staff-secure units experience greater freedom of movement, privileges, and access to materials. Each staff-secure detention unit has some form of egress door that is not permanently locked.

However, despite the careful distinctions made in federal law and Nebraska statute between “secure confinement” and “staff-secure juvenile facility,” for a young person in staff-secure detention, these technicalities may feel like distinctions without a difference. A youth in a staff-secure unit still knows she is in a detention center. She has been showered and searched upon entry, her clothes replaced with facility-issued clothing. She needs to be buzzed through secure doors to get to school or the gym. When she is allowed outdoors, there is a razor wire fence keeping her in. Depending on the facility, she may still be transported to court in handcuffs by law enforcement. One youth we spoke to during a visit described placement on the staff-secure unit as, “It’s better, but I’m still locked down.”

The intent of federal and state law in prohibiting the secure confinement of non-criminal youth was to protect children from becoming criminalized by the system itself. For the child who has committed no crime, staff-secure detention is still detention.

¹⁴Elizabeth Seigel, Nastassia Walsh & Josh Weber. *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System*. Council of State Governments Justice Center, 2014: available online at <https://csgjusticecenter.org/wp-content/uploads/2014/07/Core-Principles-for-Reducing-Recidivism-and-Improving-Other-Outcomes-for-Youth-in-the-Juvenile-Justice-System.pdf>

¹⁵The Pew Charitable Trusts. *Public Opinion on Juvenile Justice in America*, 2014: available online at www.pewtrusts.org/~media/assets/2014/12/pspp_juvenile_poll_web.pdf?la=en