Assessment of the Utah Juvenile Justice Working Group's Final Report

Sorry for the delay in getting back to you. Here are my thoughts upon reading the Final Report, issued in November of 2016, provided after giving my tummy time to settle down. The short version is that I am astonished by this. The report says the juvenile justice system hurts Utah's delinquent youth, and because the report claims that intervention by the system causes recidivism, its solution is to gut the system of its ability to intervene. It calls for handling more cases nonjudicially instead of judicially. It calls for limiting the ability to place youth in detention. It calls for reducing the number of youth placed on probation. It calls for continuing the push to eliminate such things as observation and assessment facilities in favor of providing assessments in a youth's home. It calls for dramatically limiting the length of time youth in JJS custody stay in JJS custody. It calls for limiting the ability of judges to punish youth for contempt, when youth do not obey court orders. In short, it wants youth handled in home rather than in any facility, which clearly has a lot to do with saving money (although the report claims that the reason is that virtually nothing the juvenile justice system does actually works). What is truly astonishing is that it combines a desire to minimize consequences with an adamant demand that when youth refuse to do what little a juvenile judge does order of them, the juvenile court should be unable to make them comply. In short, it combines the wildest fantasies of liberal activists with the tax cutting desires of the conservative ideologues and the tear down the establishment bent of the libertarians, into a radical plan for gutting the system in favor of supposedly evidence-based solutions that are anything but. I suppose it's not the end of civilization, but it's a step in that direction.

Cover Page
This isn't the correct Great Seal of the State of Utah.

Member List
It's very unlikely that the listed members of the working group did much more than rubber stamp the predilections of the head of Salt Lake's public defenders and the rest of Salt Lake's politically correct legal elite. Unfortunately, I haven't seen on the legislature's web site, or through SWAPLAC, the legislation they want to push in response to this report, or heard who actually drafted the pending legislation (the public defenders in Salt Lake drafted the awful, sloppy juvenile public defender legislation we got recently).

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We see the phrases "research-based" and "data-driven" in the very first paragraph. These are sure signs that we will soon also see the phrase "evidence-based," and thereby be subjected to the holy trinity of jargon designed to dress up ideology and junk science in the emperor's new clothes. No matter how many such phrases get stamped onto this report, though, it's still lipstick on a chicken. If there is any doubt of that, the first paragraph removes it by making it clear that this report is JRI brought to juvenile court. JRI is literally killing Utahns, and this plan will kill more. Letting JRI metastasize is not a desirable thing. The problem, as it was with JRI, is that its promoters do not care about the truth. They may not even be able to recognize the truth, as enamored as they are by the solemn religion of their varied ideologies.

We see a hint of that right there at the end of the first paragraph: juvenile offending supposedly remained high despite a lot of money spent on it. Well, no, juvenile offending continued because juvenile offending will always continue. Whether that's "high" is, as The Dude said, an opinion. If the legislature hadn't spent that $50 million, it would be even higher. Spending that money is what kept it as low as it is. Not spending money will result in bad things. We get a statement that JRI was a "success," which tells us that the authors of the report are of doubtful sanity, and we get a list of goals for bringing JRI to juvenile court, only one of which is a genuine motivator for this effort: "Control costs." Trouble is brewing. The unholy alliance of conservatives who hate taxes, libertarians who hate the police, and liberal defense attorneys who hate prosecutors, which before JRI had not worked together, is managing to push this snowball to the brink of the hill. On page one we see four of seven bolded bullet points of the report's major findings. First, the report bemoans disparate outcomes across the state. That, however, is good. There should be such diversity, because juvenile courts are about individualized justice, not one size fits all McJustice. By the second bullet point the inanity is in full swing. This is emblematic of what is wrong with the entire report. The authors say that youth who receive pretrial diversion reoffend at lower rates, but youth who climb higher up the ladder of graduated sanctions are denied this opportunity for a resolution that will keep them from reoffending. However, correlation is not causation. It is not the getting of a nonjudicial resolution that causes youth getting nonjudicial resolutions to not reoffend, and it is not being put on probation that causes youth being put on probation to reoffend. Some youth are more likely to reoffend than other youth, and the youth more likely to reoffend are screened at the beginning of the process and moved higher up the ladder of graduated sanctions. The youth less likely to reoffend get nonjudicaled. But it is not being nonjudicialed or put on probation that causes the result. Quite the opposite. Yet having indulged themselves with that assertion, the authors follow it up with jawdropper: out of home placements supposedly do not generally reduce recidivism, they increase it (at least in some cases). I don't know where to start with that one, except to note that I will address it again shortly when the report restates that nonsense while showing a chart that does not actually say what they say it says. Sadly, the report now goes into a flat out lie. It claims that youth put on probation are there for an average of three years. It is hard to fathom how they could say that, as it's facially ludicrous. Very, very few youth spend three years on probation. It certainly isn't an average. Perhaps they got confused and looked at how long a youth spent going in and out of court on various charges, and found that youth put on probation for a few months at some point cumulatively spend an average of three years in and out of court. That might be. But only because some youth are reoffending and the system isn't punishing them aggressively enough to get them to stop. More likely, since the paragraph also mentions fines, they think that the entire amount of time a youth takes to pay off fines equates to probation. It doesn't.

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Oddly, on the very next page the report says that youth who are past probation and in an out of home Juvenile Justice Services placement spend about ten months in state custody. That undercuts the three years on probation assertion. The report begins to get it right when it says that good families are essential, but then it lapses into lamenting inadequate programs for families, as if good families are created by government programs. In the middle bolded bullet point they just out and out say that JJS placement "results" in reoffending. Results in, as in actively causes. Consequently, because placement costs so much more than doing little, we are

told we should just save the money and do whatever we can for kids in their homes. Here's the problem with that argument: JJS has a different population than youth kept in their homes. They're worse people. So yes, they do reoffend when they get out. But they'd reoffend more if they'd been coddled more and taught that they can get away with anything. If the working group was so into science, they'd have minimized their variables by studying equivalent populations in each setting. But that wouldn't have occurred to them. Finally, the last bolded bullet point says all youth with a felony level offense automatically get a public defender for free. No one knows exactly how to read the new legislation about juvenile defenders, since it was exceptionally poorly drafted, but it doesn't say that, it says they get at attorney through waiver of rights (but says nothing about funding that). However, lately a lot of judges have been straining at a gnat to get to a broader interpretation. What really needs to be noticed at this point is the statement that youth supposedly need representation at every point in the juvenile court process. No, they don't. Setting aside the fact that juvenile court defense attorneys are as likely to do harm as good, at least in Salt Lake County where they so frequently and furiously drag out the inevitable, one thing is certain: youth being handled nonjudicially do not need defense attorneys. Nonjudicial resolution is only available for youth who are not denying the allegations in the referral. Defense attorneys deny and dicker. Once that happens, efforts to achieve a nonjudicial resolution cease, and the case moves to a judicial track, which is often not as good for the youth.

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We learn that an outside expert came to Utah. Happy day. For the two decades I have been a juvenile prosecutor, various people in Salt Lake have brought in outside experts to try to impose various templates upon us. It's never a good idea. We have our own strengths and weaknesses. Any line level employee who has been working very long knows exactly what they are. But we never work on those things. Instead, we look to self professed experts, whose ideology always seems to match up to the defense bar's and that of the judges and AOC officials in Salt Lake. JDAI was here a few short years ago, talking about how they'd gutted the California Youth Authority and needed to do the same thing here. I agree that hell holes like the CYA need reform. But that doesn't mean we do, and when their people interviewed me it was clear they had no substantive understanding of how our system works. Worse, when they were pointed to statutory provisions showing their understanding was incorrect, they because upset and redoubled their efforts to shove their agenda down our throats. From what I hear, the Pew Charitable Trusts used them quite a bit in putting together the carefully skewed statistical presentation used as the basis of the working group's conclusions, and that's one reason why I don't like those conclusions. They don't help our youth, they help some outsider's agenda. This report says that there will be millions in savings, that will be reinvested in improving the system. We already know that's hogwash, from watching JRI's failure to do that in the adult system. But unfortunately it is a scheme that is already being implemented, since JJS is already moving youth from residential observation and assessment units to so-called in home observation and assessment. That saves money, but it doesn't yield as reliable a report and it doesn't get kids out of the breeding ground of their underlying problems.

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Now we are back to inconsistent practices between judicial districts, which upsets people in the Third District when they learn that few others consider them a model, but is a boon to every

district that does things differently. One thing that repeatedly draws the working group's attention is that youth are punished for contempt of court. Indeed, limiting contempt sanctions appears to have risen to a preeminent concern of the report, largely because contempt sanctions often involve detention placements. I will address this more below when the report delves deeper into that issue. Next the report says that detention, a great evil according to the minds of the working group, is imposed differently between different districts, and sometimes even over time within judicial districts; the report notes that in the Fourth District detention placements have dropped noticeably. Yes, that is because one judge here has been at war with the concept of detention. He viscerally hates anything that smacks of punishment. He is the probably the softest judge in the state. He usually does not shout at people, but when he does it is often at those who question why he refuses to impose anything that most people would recognize as punishment. As the juvenile judge in charge of juvenile drug court, he has lost control of his drug court because so many youth know there is likely to be no sanction if they continue to abuse substances. There will be similar consequences to what the working group is seeking, they just don't want to pull their heads up from the sand long enough to see them. As to the report's observation that Third District is putting too many delinquent youth in DCFS as a disposition, that's probably true and it's probably nuts and it's not in the least surprising. DCFS placement should only occasionally be used as a delinquency disposition. In practice, placement in DCFS tends to function as a get out of jail free card, though, as it usually means the youth will receive no real intervention for future offenses, just perhaps community service hours that DCFS may well credit for being in the placement.

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This is essentially the disproportionate minority confinement page, disproportionate having to do with something beside the rate at which individual youth selected themselves for prosecution by committing offenses. The question arises, where is the disproportionate gender confinement page? Males in the juvenile justice system are wildly overrepresented compared to females. Why isn't the working group trying to eliminate that disparity?

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If, as Emerson said, a foolish consistency is the hobgoblin of small minds, it must perpetually be Halloween up at the working group meetings. Once again they get it backward, and say that it is intervention in youth's lives that turns them bad, not the level of badness that results in particular interventions. Observing that youth handled nonjudicially reoffend less than those who are charged judicially by filing a petition (the charging document in juvenile court), the working group again confuses cause and effect. They blame the petition. No, it isn't the petition. It's that youth who are petitioned are worse people than youth who are handled nonjudicially, which is why they were petitioned instead of handled nonjudicially, so of course they reoffend more! The report then says that the difference in rates of reoffending is primarily driven by contempt charges. There is absolutely no proof to support this statement. It stems from the belief that youth get stuck in the system because when a judge orders something and the youth supposedly cannot comply, they get deeper and deeper into a hole that they cannot get out of. That may be true in some cases, but the idea that signing a contempt order actually causes them to later rack up more delinquency charges is ludicrous. Youth who commit crimes do so because they choose to commit crimes, not because someone filed a petition sometime in the past, or because a judge expects someone to obey a court order.

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Right in the first sentence, we find what is perhaps most odd about this report. Once again, the working group says that out of home placements generally do not help youth, and may hurt them. My response is, if that's the case then why do juvenile judges keep doing it? Juvenile judges don't have to put kids in detention, or O&A, or JJS, or anything else. It doesn't take a report or new legislation for a juvenile judge to do something different. If virtually everything juvenile judges do for kids is destructive, why have they been doing it? And why don't they just stop? And how do they justify working in a system with so many evil people who are supposedly so assiduously destroying young lives? In reality, the answer is right there in the rest of the first paragraph. The authors say Utah youth in placements are not often serious, chronic offenders. Well, that's why we don't have as many serious, chronic offenders as some states—because we nip our problems in the bud! We should be proud of that! I've sat around a cafeteria at the National Advocacy Center during a week with juvenile prosecutors, listening to prosecutors from jurisdictions that are awash with crime, who were astonished that we are able to spend time on individuals who are not completely depraved. I maintain that being in this position is a wonderful thing: if we intervene early instead of late, everyone is better off! As for the working group's statement that judges lack statutory standards to guide them in making placements, that is simply absurd. Several years ago the state created the juvenile sentencing matrix, basing it on the placements available through a spurt of funding the legislature made in conjunction with the creation of the matrix, and that matrix provides exactly the sort of direction the working group claims does not exist. Not to let a page go by without banging the correlation must be causation gong, the last text on the page asserts again that kids should be able to defy judges because contempts just lead to detention, and detention somehow magically causes reoffending. I will say that there are people out there who endlessly claim that all the science shows that detention is bad. Sadly, they never actually produce legitimate science to back that up, and show no sign that they can comprehend the difference between real science and bogus studies from some sociologist with an axe to grind.

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The set of statistics has some errors, such as claiming that observation and assessment is a disposition, but it is flawed more for its suppositions: it supposedly shows that too many youth go into placements without a prior felony-level offense. So? More to the point, there is a ladder of graduated sanctions, and as people move up it they get increased sanctions. That is reflected in these statistics, which show fewer non felony-level cases going to secure than go to lesser placements. The system is doing what it's supposed to do. As for the part saying youth "often" spend "several years" in the system because of financial obligations, and that one just can't get free of the system, that's utterly ridiculous. One gets free by completing one's obligations. If one refuses to pay much restitution, that will follow one for some time, as it should. The idea that the system is quicksand for most, or even many youth is nonsense. If a youth spends years in the system, it is almost always because they are either reoffending, or are simply refusing to obey existing court orders to do reasonable things like going to school. And, once again, the populations handled nonjudicially are not the same as the populations handled judicially, and people do not stay on probation for an average of three years (although it is not unusual for youth to keep offending but not to work up the ladder of graduated sanctions to a placement they deserve).

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Here it is, one of the key goals of the people complicit in this report: they want to limit placements to three months. It is hard to explain how insane this idea is. A sex offender is going to get better after three months of treatment? No. Do we really want people like that out in the community? Really? There is one bit of truth on this page: youth put in detention as a temporary DCFS placement have, occasionally, spent a horrendously long time there.

Page 10
As hard as it is to believe, this report gets worse. Here, we learn that youth put on probation or in JJS custody usually enter at low risk and leave at high risk. Wow. Just, wow. Probation, which involves minimal checks to make sure someone is going to school and not taking drugs, turns someone into a high risk offender? Really? From here, the report descends into a morass of confusion. It says there are largely no services in the state that help kids while keeping their families intact. It is true that good families are the key, but whether the state can do much to create good families from bad ones is an open question. Sometimes all we have are blunt tools standing ready in the hope they clarify a youth's personal cost-benefit analysis when they are deciding whether to commit an offense. The report finally gets to what so called justice reform in Utah lately is all about: justice costs money. In the short run it is cheaper not to do something than to do it. In the short run, leaving kids in their home saves money over putting them in a placement. That's true. It's also short sighted. Although once again, this report gets confused on its facts, jumping back and forth between talking about JJS community placements, and the whole range of interventions. It's odd that they point to Chart 5 to illustrate an assertion that everyone everywhere in the system is about the same, so we don't need expensive placements, when the right side of Chart 5 shows that many youth may reoffend with misdemeanor-level offenses, but do not reoffend with felony-level offenses; such offenses become the province of a dwindling number of individuals who require decisive intervention. This part of the report also calls for eliminating or restricting work restitution programs. How then is restitution going to get paid? Those programs already let kids who couldn't otherwise pay restitution get some of it paid at taxpayer expense. Isn't that a good deal for young offenders, and for victims?

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Here the report says everyone should have an attorney at every stage in the process. This is unwise for two reasons. First, nonjudicial resolutions are part of the process, although the "Key Data Findings" that frequently get shared along with this report take pains to strip nonjudicials right out of its flowchart showing how juvenile court supposedly works. Defense attorneys would only foul such resolutions up, driving cases onto a judicial track as they play games by arguing about the allegations. Nonjudicial resolution is only available when someone is not controverting the allegations in a police report. Second, what would be nice in this world isn't relevant to anything. It would be nice if we all had free lawyers, and it would also be nice if we all had free Ferraris. But there are limited resources. So before we start spending taxpayer resources on something as stupid as giving a kid a taxpayer funded attorney for a disorderly conduct infraction, perhaps we should be thinking about whether those limited taxpayer dollars could do that youth more good being spent on health care or education. Free medical care beats free legal care, especially when the legal stakes are as low as they usually are in juvenile court.

The government as Santa Claus approach doesn't work well in the real world of limited dollars. This report goes on to bemoan the fact that probations officers file petitions in many instances. Yes, that's how the juvenile justice system works. Letting probation officers handle intake facilitates sending some cases to nonjudicial resolution, which especially if it occurs in close proximity to the offense is actually a good thing. It's ironic that these ideas to further legalize the system are coming from the Third District, where a hidebound and legalistic juvenile justice system hurts kids worse that what goes on in the rest of the judicial districts. The report complains that prosecutors aren't present at each at every hearing. So? Do we really want this system to look like the adult system? Because once it does, it'll start acting like the adult system, and that won't help kids. Complaining that prosecutors skip disposition hearings overlooks the fact that in a traditional juvenile justice system, dispositional recommendations come from the juvenile probation officer, the juvenile court's victim coordinator helps as necessary, and prosecutors have a lesser role in those hearings. It's hard to believe the authors of this report want them to have a greater role. What do they think the prosecutors will be advocating for? Less detention time? It is true that defense attorneys should be present at more hearings, such as review hearings where something may be done to a youth. I can't speak to the quality of legal representation across the state. In many areas, such as ours, it is adequate.

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This page begins with an assertion that the lack of statewide standards imposing uniformity across the system results in a lack of uniformity. First, there is a statewide sentencing matrix, and second, uniformity isn't as desirable as individualized justice. If youth are individual people who matter, this report shouldn't be pushing a one size fits all agenda. Anyone who doesn't understand this would be liable to say sillier things, and indeed we immediately get to "keep lower-level youth out of the juvenile justice system." We're talking here about delinquent youth who are breaking the law. And the plan is apparently to implement a new fad, MCOT, that few people have even heard of, as a substitute for the juvenile court. And something few people have even heard of is supposedly evidence-based best practice! According to the report, students "shall never be arrested, or issued a citation" for certain levels of offenses, and things like youth courts must be used before a youth can finally get be referred to juvenile court. It is becoming a good time to be a criminal.

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But wait, there is a whole alternative system here: for delinquent youth there should be a team meeting of various parties to try to provide support. That's not cheap. Finally, as a last resort, a case goes to a prosecutor instead of the juvenile court for a decision on whether to handle a case nonjudicially or judicially. Apparently we are going to trust everyone in the community to have a say in a youth's future except for juvenile court intake officers, who cost much less than prosecutors but apparently are unable to decide whether to nonjudicial a case because only a prosecutor can do that. This is all a fig leaf covering the proposed gutting of the juvenile court and the replacement of the system with one unlikely to work or to save money, particularly in the long run. Speaking of prosecutors, the report calls more specifically for prosecutors to be involved in referrals from the beginning. This is an unnecessary and confused recommendation. It speaks of prosecutors charging cases and then sending them out for nonjudicial resolution, but nonjudicial resolutions are for youth who have not been charged. The report wants youth to be offered an attorney for nonjudicial resolutions, which undercuts

nonjudicial resolutions since there is no discussion of the strength of the facts or the legality of arrest procedures at a nonjudicial resolution: if a youth denies an allegation or raises a legal issue, the effort to resolve nonjudicially ceases and the case is charged and put on a judicial track. Oddly, the report says that after a prosecutor screens a case and sends it to nonjudicial resolution, if nonjudicial resolution fails the prosecutor is supposed to rescreen the case and then consider sending it back for nonjudicial resolution. Did Kafka help with this report? Or just a committee that doesn't understand economics? It is daunting to consider how much additional work this not just screening but double screening would cause prosecutors, and it is astonishing that the working group would make prosecutors the gatekeeper of nonjudicial adjustments.

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The sliding scale idea for fines might be a good idea, although it doesn't take into account that most youth don't have much money of their own, and their parents aren't supposed to pay their fines, whether those parents are rich or poor. Where these ideas go off the rails is with the statement that if a youth gets a nonjudicial adjustment and refuses to comply, the system can then do absolutely nothing about it. No sending them to the judge, no nothing. Finally, this page goes straight to lets-click-our-heel-together territory by saying that all the amazing savings from not putting kids in detention will go to programs to help kids in their homes. We heard this with JRI, and it didn't happen. Are there people who actually believe it will happen with juvenile justice?

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The nuts and bolts of closing detention facilities show up here, in the form of limiting which youth can be put in preadjudication detention following arrest. Detention for their own good, or because they're a flight risk, aren't on the radar. The last sentence, about limiting further disposition after the initial disposition hearing, probably came straight from the head of the Salt Lake's public defenders, who hates the fact that juvenile judges take further disposition under advisement and then impose additional disposition later depending on how a youth does. It's hard to think of anything more sensible that that, but public defenders up there have been waving the Constitution (usually the U.S. one) like a bloody shirt, claiming it prohibits that.

Page 16
More gobbledygook.

Page 17
It appears from the report's conclusions that everyone in the system and out of it should have training in how to eliminate racial disparities. But since defendants self select, it seems like they should be trained in obeying the law, if they don't want to end up in the system. What with recent national changes, we can breathe a sigh of relief that the U.S. Department of Justice won't soon be sending us off for reeducation through labor every time a minority youth is arrested. Still, my question remains: Where is the concern for disproportionate gender confinement?

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The third from the end bullet point suggests we encourage ignoring parents, staying out after curfew, belonging to gangs, and the like. That's what one is saying when one says it's too much to expect youth to obey such obvious conditions, and one wants to prevent judges from issuing such requirements in their orders. This is simply a cheesy attempt to avoid there being grounds to hold a youth in contempt. The tail wags the dog. Delinquent youth decide what the standards will be by refusing to obey court orders, and ostensible adults are supposed to agree that such orders should not be imposed. What was it that happens to the chickens when the fox guards the henhouse? The one good point here is prioritizing restitution over fines, although of course that already happens.

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The second bullet point keeps bouncing around between community service and compensatory service (which is actually the same thing). The legislature, several years ago, passed a law changing the phrase "community service" to "compensatory service" (this happened not too far distant from when they changed "Youth Corrections" to "Juvenile Justice Services"). The report says there shouldn't be more than 24-36 hours of compensatory service, depending on age, or 5-10 hours of community service. Apart from the obvious confusion, this is a statement that the wise and just guardians of our community who wrote this report think that the most restitution a victim should ever get equates to $270. It should go without saying that this is despicable and evil. The authors, of course, also want to cap fines. Then, the authors would limit restitution in the juvenile context to a list of losses narrower than how restitution is now described in the Utah Code or understood by normal people. And, they don't want unpaid fines to go to state debt collection. Basically, having done everything they can to keep youth out of placements, out of detention, and out of trouble with judges and POs for defying orders, they want to make sure that kids who only get fines or hours have only a token amount imposed, and that even then they can refuse to comply and no one will follow up. This is stupefying. The only good thing here is a plan to strip back the license suspension requirements that currently are much more severe for youth than adults, which for years has been an appalling feature of the system.

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It's ironic that the kings of the system don't even trust themselves. Much of this page is about limiting when a judge can put a youth in JJS custody, by creating specific charge-based limitations. In addition, judges are limited in using contempt to put a child in JJS. And, they cannot put youth in work camps to work off financial obligations. If judges already can't trust themselves to figure out the correct approach, what are they doing on the bench? Or is this just the liberal wing of the judiciary striking out at the law and order wing? At any rate, eliminating work programs like Genesis will further hinder restitution. And, we have the elimination of residential observation and assessment units, which means O&A reports for the court will be sloppier, and youth who need to be out of home and in a better place for awhile obviously won't be. The last part of the page is hard to believe, but it's more hard limits: three months for intake probation, whatever that is, and four to six months for real probation (which is about what it already is now in reality). Three to six months for JJS placements, except, thankfully, for youth who committed direct file or serious youth offender level offenses but are staying in the juvenile system. Three to four months for JJS aftercare. There is no point to this.

Especially for sex offenders. They might as well eliminate the entire system, since this leaves nothing but play pretend intervention. It is a fraud on the taxpayers, perpetrated by people who lack the integrity to simply admit they don't want to impose consequences on delinquents, so they are going to try to fool the taxpayers by maintaining the illusion of a juvenile justice system while doing things like circulating inane articles condemning the concept of accountability (which happened recently).

Page 21
The report would limit postadjudication detention to thirty days. That's already the case. It would also remove part of the direct file process and make it part of the serious youth offender process, sending fewer youth to the adult system.

—
/s/ Officer Krupke