



Janice K. Brewer
Governor

Michael Branham
Director

September 17, 2009

Debra K. Davenport, Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport:

This is the Arizona Department of Juvenile Corrections' (ADJC or "the Department") response to your preliminary draft performance audit of the Arizona Department of Juvenile Corrections – Suicide Prevention and Violence and Abuse Reduction Efforts ("the Report"). The Department is gratified by your team's conclusion that ADJC's secure facilities have become far safer places for the juveniles committed to ADJC. We believe that the achievements you noted also result in increased safety for our staff. Just as importantly, the Department knows that only by providing a safe environment can it successfully accomplish its mission of enhancing public safety by changing the delinquent thinking and behaviors of the youth committed to it. Your findings reflect the hard work and determination of well over 1000 Department employees for the past five years. As the audit report also recognizes, this agency's commitment to further improvement is ongoing. In fact, it is as strong as ever.

Although the Report briefly and fairly discusses the Department's history, the auditors naturally focused on the period during which they conducted their review. The Department believes that placing their findings in historical context will provide the reader further appreciation of their significance, particularly as ADJC prepares for its statutorily mandated sunset review.

ADJC was created in 1989 when the State Legislature separated it from the Arizona Department of Corrections. Establishing a stand-alone juvenile corrections agency demonstrated this State's recognition that the needs of juveniles in the corrections system are substantially different from those of adult inmates both because of the developmental differences between the two populations and as a matter of constitutional law. The juvenile justice system rests upon the foundational notion that juveniles who commit crimes are capable of change. The Legislature codified that principle at ARS §§ 41-2801, *et. seq.*, the Departments enabling statutes, when it created the Department.

ADJC's establishment was in large part a response to *Johnson, et. al. v. Upchurch, et. al.* (D. Ariz, No. CIV-86-195-TUC-RMB), a class action conditions of confinement lawsuit filed

against the Department of Corrections in 1986. The juvenile plaintiffs in that case, who were incarcerated in Catalina Mountain School (then called Catalina Mountain Juvenile Institution) in Tucson, contended that Arizona was violating their constitutional rights by failing to provide adequate treatment, rehabilitation, and education, by isolating them without due process of law, and by subjecting them to physical and emotional mistreatment. The case was resolved by a consent decree signed by the parties in 1993, which provided for federal court monitoring to ensure the implementation of the agreement by the newly created Department. When the case ended in 1998, ADJC was found to have successfully addressed its legal deficiencies.

Unfortunately, despite millions of dollars spent and more than five years of work during *Johnson v. Upchurch*, sustaining change proved more difficult than creating it. As the auditors' Report discusses, just five years after *Johnson v. Upchurch* was dismissed, ADJC was once again subject to federal monitoring. The gains made over the course of a decade unraveled to the point where three juveniles housed at Adobe Mountain School in Phoenix committed suicide within one year (2002-2003), prompting investigation by the United States Department of Justice (USDOJ) pursuant to the federal Civil Rights of Institutionalized Persons Act (CRIPA). The USDOJ conducted an inspection and review of ADJC facilities in 2002-2003, resulting in the filing of *United States v. The State of Arizona, et. al.* (D. Ariz., No. CV-04-01926-PHX-EHC) in federal district court on September 15, 2004.

As your Report notes, the USDOJ's January 2004 investigative report detailed numerous serious deficiencies at ADJC. The wide range of issues included the physical conditions of the Department's secure care facilities, suicide prevention, and protection of juveniles from harm, as well as treatment issues including special education programming, treatment programming and medical and mental health services.

On September 15, 2004, the State and the USDOJ entered into a Memorandum of Agreement that required ADJC to correct its deficiencies by enacting over 120 specific provisions. The deadline for compliance was September 15, 2007. The USDOJ appointed a four member "Committee of Consultants," all nationally recognized experts on juvenile corrections practices, to monitor the Department's progress. On September 15, 2007, the USDOJ dismissed its lawsuit against the Department as scheduled. In the Committee of Consultants' final monitoring report, they found ADJC to have achieved substantial compliance with every provision of the CRIPA agreement in just three years. Department staff and administrators are rightfully proud of that accomplishment.

In its approach to implementing the CRIPA agreement, the administration of this Department sought from the outset to design and carry out a plan of action *not* focused on complying with the CRIPA agreement; the necessity of compliance was a given. Instead, ADJC conceived a strategy for transforming the agency in a manner that would sustain the gains made in order to achieve compliance *after* the Department of Justice and their concluded their work in Arizona.

From the perspective of ADJC's administration, every Department action between 2003 and 2007 was formulated and taken in order to avoid a repeat of the Department's post-*Johnson v. Upchurch* regression. Thus the Department welcomed this audit of CRIPA issues related to the safety of juveniles in ADJC facilities. We believed that ADJC had not only avoided backsliding, but had continued to improve conditions for juveniles since the CRIPA lawsuit's dismissal. The Department is pleased that the audit team examined ADJC using the standards of the federal monitors in CRIPA and confirmed that those standards are still being followed, and ADJC facilities are safer for juveniles today than they were even at the conclusion of the CRIPA case in 2007.

To be sure, ADJC remains a work in progress. With the aftermath of *Johnson v. Upchurch* always in mind, we are not satisfied with the improvements we have made. Nor is ADJC complacent regarding the continuous planning and effort necessary to avoid reverting to unsafe conditions. Our challenge is only heightened by the State's unprecedented economic challenges – the substantial budget reduction the Department has already borne and the likely prospect of further cuts. That said, I would be remiss if I did not express my pride in ADJC staff and all we have accomplished together.

Just five years ago, ADJC garnered notoriety in Arizona and in the national juvenile corrections community. Some juvenile court judges publicly expressed reluctance to commit offenders to the Department, fearing for their safety. Today, this Department has regained the trust of the judiciary, and it serves as a resource, fielding inquiries from sister agencies around the country, often at the suggestion of DOJ attorneys or the nationally recognized experts who monitored us.

The Department responds to the Report's specific findings and recommendations as follows:

Findings and Recommendations

The Department's concurrence in the audit team's three findings does not constitute agreement with all of the specifics in the report. However, rather than addressing specific areas of disagreement with the audit report narrative, the Department believes it is more productive to look forward by responding to the audit team's findings and recommendations.

Finding 1: The Department has improved suicide prevention practices, which promote safety, but minor improvements are possible.

The Department agrees with the finding.

Recommendations:

- 1.1 The Department should continue its plan to monitor current procedures to develop and implement more specific guidelines for mental health staff related to the treatment expectations for juveniles who have been identified as having suicidal or self-injurious behaviors.

The Department will implement the recommendation. The recommendation itself reflects that the Department is already in the process of complying. Doing so is part of ADJC's ongoing strategy for institutionalizing and building upon the gains made during CRIPA.

- 1.2 The Department should continue to monitor juveniles' treatment plans to ensure that they address the suicidal or self-injurious behavior and that its modified procedures have been implemented by all staff.

The Department will implement the recommendation. The recommendation itself reflects that the Department is already in the process of complying. Doing so is part of ADJC's ongoing strategy for institutionalizing and building upon the gains made during CRIPA.

- 1.3 The Department should expand its regular assessments of its separation practices to include the review of unnecessary and/or inappropriate referrals for juveniles exhibiting suicidal and/or self-injurious behavior and take appropriate actions based on what it finds.

The Department will implement the recommendation. The recommendation itself reflects that the assessments to which it refers are in progress. ADJC has begun to assess practices in this area as part of its regular Quality Assurance process. ADJC notes, however, that it will always train staff to err on the side of safety where there is concern that a juvenile is contemplating self-harm. This is especially so when a corrections officer must make a decision as an incident unfolds and before a qualified mental health professional is available. In the best of circumstances, it is sometimes difficult for staff to spend the one-on-one time necessary to determine the seriousness of any threat to self. Doing so may prove increasingly difficult as ADJC absorbs further budget reductions.

- 1.4 The Department should ensure that juveniles are not placed in suicide-proof smocks unless a qualified mental health professional deems it necessary as stated in policy. If suicide-proof smocks are not used appropriately, the Department should take steps to re-align facility practices with its procedures and best practices.

The Department will implement the recommendation. As the Report states, the Department believes it has already corrected this issue.

- 1.5 Department should ensure that its staff prepare an incident report for all juveniles placed on its daily suicide prevention status list.

The Department will implement the recommendation. As the Report states, the Department believes it has already corrected this issue.

Finding 2: Department data shows decreased juvenile violence at its facilities; Department should continue its efforts to reduce violence.

The Department agrees with the finding.

Recommendations:

- 2.1 The Department should review its staff resources and assess whether it has sufficient staff to maintain staff-to-juvenile ratios agreed to with the U.S. Department of Justice or needs additional staff to do so. If additional staff resources are needed, the Department should review and consider various options for obtaining these resources, including shifting internal staff resources or working with the Legislature to obtain additional staff resources.

The Department will implement the recommendation.

- 2.2 The Department should continue to monitor the level of violence within its secure care facilities, assess whether its actions and practices are having a positive impact on reducing violence, and adjust when necessary if it finds that these actions and practices no longer help to sustain reduced levels of violence.

The Department will implement the recommendation. The recommendation itself reflects that the practice to which it refers is in progress and has been successful.

- 2.3 The Department should review documentation for incident debriefings to ensure that supervisors conduct debriefings within the time frame allotted and include direct care staff involved in the incident, as required by procedure.

The Department will implement the recommendation.

Finding 3: Department has taken some successful steps to address abuse, but can further strengthen staff awareness of appropriate staff-juvenile boundaries.

The Department agrees with the finding.

Recommendations:

3.1 The Department should launch an awareness campaign that continually reinforces appropriate staff-juveniles boundaries and the range of behaviors that may violate these boundaries by doing the following:

- a. Adapt its current trainings on boundaries to an annual refresher required of all staff.
- b. Provide staff with a daily visual reminder, similar to the ACAB posters, that reinforces the need for staff-juvenile boundaries and further prioritizes staff-juvenile boundaries as a safety issue.

The Department will implement the recommendation. As the auditors found, the Department has invested a great deal of effort in establishing and reinforcing appropriate professional boundaries between staff and youth. While not required by the CRIPA agreement or the federal monitors, this initiative was and remains part of ADJC's strategy for sustaining and improving upon CRIPA gains.

3.2 The Department should consistently provide all OJT written debriefing information to secure care facility superintendents:

The Department will implement the recommendation.

3.3 The Department should improve its process for systematically analyzing OJT written debriefing information to help:

- a. Identify staff-juvenile boundary issues at secure care facilities;

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- b. Determine the prevalence of such issues at secure care facilities;
- c. Develop and implement action plans to address any problems; and
- d. Follow up on the implementation of action plans to ensure that the actions addressed the problems.

The Department will implement the recommendation.

Conclusion

Despite unprecedented fiscal challenges, ADJC is committed to fulfilling its statutory and constitutional responsibilities to the citizens of Arizona and the juveniles and families we serve. We remain dedicated to consolidating the gains made under the CRIPA agreement and building on them.

ADJC appreciates the contributions to that effort made by the audit team as well as their professionalism and cooperation throughout the audit process.

Sincerely,

Michael Branham
Director