#165

IN THE SUPREME COURT OF FLORIDA

Case No. SC19-240

THIRD INTERIM REPORT OF THE TWENTIETH STATEWIDE GRAND JURY

In December of 2019, this Twentieth Statewide Grand Jury released its Second Interim Report, highlighting a number of public safety and security issues in need of urgent redress by state and local officials and supporting many of the recommendations of the Marjory Stoneman Douglas Public Safety Commission (hereinafter the MSDPSC) in its own November 1, 2019 Report. We were pleased to see that many of the legislative proposals of both the MSDPSC and this Grand Jury were incorporated into a draft of Senate Bill 7040 (2020) (hereinafter SB 7040), which was presented earlier this year in the previous legislative session. Unfortunately, SB 7040 never made it to the Governor's desk to be signed into law, but we see this as an opportunity for further improvement. Over the past eleven months, this Grand Jury has continued to gather evidence and testimony regarding the issues outlined in our mandate, and we have further recommendations ahead of the next legislative session for how to better secure our public schools and protect our children.

Many of the issues and recommendations in our Second Interim Report stand on their own and do not require more information than we have already provided. In fact, every member of this Twentieth Grand Jury fully stands behind every word of what we recommended in the Second Interim Report, and we encourage the legislature and the public to read this Third Interim Report in tandem with that document.

The first part of this report further elaborates on issues and recommendations we made in our Second Interim Report. In some cases, we simply wish to elaborate on our prior

recommendations because additional information has come to our attention. In other cases, we wish to reiterate our prior recommendations because we have not yet seen any plan to adequately address a given issue or because we believe the previously-proposed legislative measures will be insufficient to solve the problem.

We intend to use the second part of this Third Interim Report as an opportunity to highlight urgent problems within the patchwork of interlocking, often-conflicting sources of care that comprise Florida's mental health framework. This Grand Jury has received a great deal of evidence and testimony regarding financial deficiencies, conflicts between various agencies over information sharing and privacy, inadequate or inefficient provision of services and a number of other serious problems. To put it bluntly, our mental health care "system"—if one can even call it that—is a mess, and we have formulated a spate of recommendations for straightforward improvement and further study in this critical area.

Finally, we are well-aware that the advent of Coronavirus is likely to dramatically affect the state's 2020-21 budget and loom like a shadow over the next legislative session. We acknowledge that there are costs associated with many of our recommendations. This is as inevitable as it is essential: We can imagine no better investment than protecting the health and safety of our children. If there is one irony to the impact of this pandemic, it is that having a large number of students attending school virtually has dramatically—if only temporarily—lowered the chances of another school shooting incident. While the Coronavirus pandemic may have taken this issue off the front page for now, as our society returns to a state of normalcy and students begin to once again physically attend classes in larger numbers, more school shootings will undoubtedly occur. Now is the time for our local and state institutions to take bold action.

RECOMMENDATIONS FROM THE SECOND INTERIM REPORT

SCHOOL DISTRICT-RUN BUILDING INSPECTION AGENCIES

In our Second Interim Report, as part of a discussion about systemic deficiencies and conflicts between various state and local agencies regarding emergency communication systems, we made the following recommendation:

> 2. School Districts should be stripped of their authority to inspect their own construction, issue their own [Temporary Certificates of Occupancy], and issue final Certificates of Occupancy. Other local agencies are more than capable of performing independent inspections.

Since our Second Interim Report we have received even more testimony and evidence—both from government officials and from private business owners and contractors—regarding just how negative and significant the impact of school district-run building departments can be on the timeliness and expense of large-scale construction projects. Having a building inspection department which is controlled by and answerable to a local school district makes it incredibly easy for school officials to hide deficiencies, spoof timelines and control the flow of information to the public regarding the functionality and safety of our children's taxpayer-funded schools. This kind of conduct leaves these construction projects ripe for fraud and other criminal misconduct.

County and municipal building departments throughout the State of Florida are staffed by professionals whose primary duty is to ensure that construction or renovation occurring within a community complies with state and local safety regulations. These agencies are more than capable of timely and properly inspecting schools, and in much of Florida, this is exactly what happens. A school is built or renovated, and an independent county or municipal inspector is called in order to examine and vet the quality of the workmanship, materials used, design and any number of other

factors. If the building passes, the agency will issue a Certificate of Occupancy. If the building fails, the school district must address the deficiencies identified by the independent inspector and request a new inspection.

This simple and obvious workflow is completely turned on its head when local school districts take it upon themselves to staff and run their own building inspection departments, achieving direct control of institutions that are ostensibly tasked to independently vet new constructions and renovations. Inspectors and managers in these departments become directly answerable to the local school districts themselves. In this fashion, these districts become "masters of their own reality", with the potential to control the outcome of the inspection process to suit their own needs, allowing them to sweep all manner of incompetence and malfeasance in building and permitting processes under the rug, safely out of the view of the communities these local school districts are supposed to serve.

In our Second Interim Report, for example, we pointed out how Temporary Certificates of Occupancy (TCOs) were being issued by district-run inspection offices in spite of the fact that the buildings were not compliant with necessary safety standards. But rushing the process is not the only way districts can interfere to suit their own ends. On the other side of the coin, this Grand Jury has seen examples of district-run inspection regimes delaying projects for literal *years* by imposing additional standards and criteria outside statutory requirements in an apparent effort to secure certain large-scale projects for preferred vendors. No matter how the process is hijacked, the average voter is unlikely to ever hear about it because the flow of information that would be coming from a county or municipal building department instead flows directly up to the district. Thus, any potentially damaging information will flow no further.

In both of these examples, substantial additional costs ultimately fall to the taxpayers of the State of Florida in the form of higher taxes, cancelled improvements that never materialize for want of funds, and any number of other budgetary deficiencies that ultimately undermine the quality of education provided to students. It is apparent to this Grand Jury that district-run building, permitting and inspection regimes are unnecessary, inefficient, do not benefit taxpayers, and create substantial conflicts of interest within school districts.

Recommendation

We recommend that the Florida Legislature pass a law banning district-run building, permitting and inspection departments in the State of Florida and mandating that county and municipal agencies be the *only* issuers of both TCOs and permanent Certificates of Occupancy for schools within their geographical jurisdictions.

INVESTIGATIVE AND SANCTION OVERSIGHT OF SCHOOL DISTRICTS

In our Second Interim Report, we addressed the issue of persistent and ongoing instances of school district noncompliance with state laws in a variety of areas and recommended the following:

> 1. The Florida legislature should formally task the Florida Department of Education (hereinafter FDOE) with the mission to ensure school district compliance with state-level laws regarding the following: Compliance with Senate Bills 7026 & 7030, [School Environmental Safety Incident] Reporting (hereinafter SESIR), Florida Safe Schools Assessment Tool (FSSAT), and the proper reporting of Behavioral Threat Assessments (BTAs). The FDOE should not just be a repository for this information, but should be responsible for ensuring its quality, accuracy and veracity.
>
> 2. The FDOE should be given sufficient staff and investigative resources to provide meaningful oversight, feedback, information and guidance to the school districts as to their compliance with these state laws.

3. The FDOE should have at its disposal sanctioning authority sufficient to coerce school districts to comply with these state laws where necessary, which may include withholding state funds, fines, censure, referral for criminal charges, and/or the removal of recalcitrant school officials.

We wish to again bring these recommendations to the attention of the Governor and the Florida Legislature. We have seen overwhelming evidence over the past eleven months that the rosy reports forwarded quarterly to the FDOE by local school districts are wildly inaccurate. Indeed, these incident summaries often look positively rashomonic when compared to testimony and evidence we have received from students, teachers, parents, law enforcement agencies and even local news reports of violent incidents.

None of this should surprise anyone. It is patently unreasonable to expect officials to voluntarily release damaging information that would allow potential political opponents to paint schools in their districts as violent and disorderly. Of course, without access to real, accurate, unbiased data, voters are unable to judge whether they are reelecting innovative disciplinarians or clever liars. Similarly, the FDOE is hamstrung in its efforts to understand where these behaviors are occurring and assign resources appropriately.

In summary, we once again remind the legislature and the public that much of the data provided by local school districts to the FDOE are completely unreliable, and the data *never will be reliable* without someone, somewhere, having the ability to investigate what is being reported and sanction noncompliant districts.[1] Simply put, you can't have a game without a referee. We

[1] This Grand Jury is well-aware that SB 7040 proposed language specifically tasking the Chairman of the FDOE to "oversee compliance with education-related health, . . . safety, welfare, and security requirements of law [and to] facilitate public and nonpublic school compliance to the maximum extent provided under law, identify incidents of material noncompliance, and impose or recommend to the State Board of Education, the Governor, or the Legislature enforcement and sanctioning actions . . . ." While we fully support the inclusion of this language in future proposed legislation, our overriding concern is that the FDOE currently lacks the necessary staff and funding to carry out this legal mandate, and the requirement that potential enforcement and sanctioning actions be ratified by other

continue to believe that the ability to: (a) investigate the veracity of these reports, and (b) sanction district malfeasance and/or noncompliance would be a natural extension of the FDOE's current mandate and would constitute an important and critical step towards securing the safety and security of our children. These recommendations are further supported in a number of findings in the Office of Safe Schools Audit conducted by the State of Florida Auditor General in September of 2020.

CHARTER SCHOOLS

Another area we addressed in the Second Interim Report was the relationship between local school districts and the charter schools lying within their geographical jurisdiction. After hearing testimony from local school district officials who had taken the position that charter schools lay somehow outside their governance, we clarified that "*[c]harter schools are public schools*" and that "oversight of those schools' safety plans is the responsibility of the school districts." With these relationships in mind, we also made the following four recommendations:

> 1. The legislature should require the school districts to sign off on complete safety plans for all public schools that include full-year contracts with all SSO personnel necessary to comply with Senate Bills 7026 & 7030, including contingency plans for any necessary backup personnel during times where primary personnel are unavailable.
>
> 2. Safety plans should be submitted by charter schools as part of the initial charter school application process and updated as part of the charter schools' renewal process.
>
> 3. The legislature should spearhead a grant process that will provide supplemental security resources for public schools, charter or otherwise, that find themselves unable to comply with Senate Bills 7026 & 7030 due to their lower enrollment.
>
> 4. The legislature should clarify existing law to expand the jurisdiction of school district law enforcement agencies to include all public school property, including charter school campuses.

---

governmental institutions has the potential to unnecessarily turn otherwise-straightforward matters of compliance into political issues.

We were pleased to see that SB 7040 contained language further clarifying and cementing the responsibilities of local school districts and charter schools within those districts to one another, and we encourage the legislature to include the language used in SB 7040 in whatever bill it chooses to introduce in the next legislative session.

AARON FEIS GUARDIAN PROGRAM

SB 7040 also contained some necessary tweaks to the operations of the Aaron Feis Guardian Program; many of which were recommended by the MSDPSC, this Grand Jury or both bodies. We were pleased to see language in that bill consistent with the recommendation that prospective guardians be allowed to undergo training only after successfully completing psychological evaluations, and that those evaluations should be completed by third parties without fiduciary ties to the school districts or other interested parties.[2]

On the other hand, we have not seen any movement towards our other recommendations, particularly our second recommendation, which states that:

> 2. The legislature should task the FDOE's Office of Safe Schools with creating a SSO formula that accounts for the size of a school's campus, its location and the composition of its student body in arriving at a minimum SSO requirement. Campuses with larger student bodies, older students, more acreage and a greater number of SESIR incidents should be required to provide more security.

We mentioned before and reiterate here that we have heard substantial testimony that many school districts were purposefully choosing to adopt a policy of minimal compliance with the School

[2] The actual language of SB 7040 required potential guardians to "submit to and pass a psychological evaluation administered by a *licensed professional*". While this language does not specifically require there to be no fiduciary relationship between the examiners and their employers, we believe the statutory requirement of licensure serves a similar purpose in terms of ensuring rigor on the part of the professionals conducting the evaluations.

Safety Officer (hereinafter SSO) requirement by providing one SSO per school, regardless of the school's size, location or the age of its student body. This minimal compliance undermines the spirit of the program, which is meant to serve as a force multiplier in crisis scenarios. These events often happen quickly, perhaps too quickly for a single armed responder to be available on some of the larger campuses around the state.

Unfortunately, we did not see any language adjusting this requirement in SB 7040, nor has it appeared in any other pending legislation. Once again, while we understand that a standard of one SSO per school is perhaps politically expedient and financially convenient, the State of Florida has a diverse range of educational facilities, and *one* SSO—in a great many cases—is simply not enough.

Furthermore, the sources of funding for training and staffing for the Aaron Feis Guardian Program evaporated in the midst of a Coronavirus-induced budgetary crisis. We heard evidence that the non-recurring $49 million to train and equip guardians was reallocated. While we do not expect the governor or the legislature to allocate tens of millions of dollars to future needs during a pandemic, we do expect the Guardian Program to be funded. We implore the legislature to determine what monies are necessary to properly fund the guardian program (i.e. new guardian training, annual re-training, and equipment) and make recurring funds available for those purposes.

SESIR REPORTING

In our Second Interim Report, we addressed the significant and extensive problems with proper recording and reporting of SESIR data to the FDOE. This should surprise no one. The same toxic blend of potentially damaging information in the possession of school districts and no real oversight on the part of state-level entities to vet what the schools are sending is present here, just

as we identified in the section above regarding the investigative and sanction authority over school districts.

We begin with Section 1006.13, Florida Statutes (2020) which, in its current form, reads as follows:

> (2) Each district school board shall adopt a policy of zero tolerance that:
>
> > (a) Defines criteria for reporting to a law enforcement agency any act that poses a threat to school safety that occurs whenever or wherever students are within the jurisdiction of the district school board.
> >
> > (b) Defines acts that pose a threat to school safety.
> >
> > (c) Defines petty acts of misconduct which are not a threat to school safety and do not require consultation with law enforcement.
> >
> > (d) Minimizes the victimization of students, staff, or volunteers, including taking all steps necessary to protect the victim of any violent crime from any further victimization."

The Florida Legislature recognized that minor incidents could be more appropriately considered matters of school discipline, and attempted to create an exception in its statewide "[p]olicy of zero tolerance for crime and victimization" for "petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances", see 1006.13, Florida Statutes (2017), explaining that "[z]ero-tolerance policies may not be rigorously applied to petty acts of misconduct." Id.

Unfortunately, given the proverbial inch, at least some local school districts have taken the extra mile—they have abused the vagueness of this definition repeatedly and contumaciously to avoid reporting crimes, including some very serious crimes as SESIR incidents. Physical attacks on teachers become "disturbances." Large-scale brawls become "minor fights." The end-result of this misreporting is that voters do not have any idea how much crime and disruption is actually occurring in the schools, and law enforcement is often not informed any crime ever occurred

because school administrators without any legal training have determined very serious felonies to be "petty acts of misconduct". Administrators should *never* be in a position to make this determination on their own, and school districts should *never* be in a position to dictate—in the absence of facts—what kind of incidents do and do not qualify as petty acts of misconduct.

Unfortunately, the statute (while nobly intended) essentially places the power to define and report criminal activity into the hands of board members, administrators, and teachers who have zero experience in law enforcement and are poorly-versed in what does and does not constitute a crime in this State. This has led to tragic, though predictable, results. Just as school resource officers can hardly be expected to act as substitute Algebra teachers, administrators and educators should not be making decisions about what kind of activity warrants law enforcement involvement. Subsection (d) of the statute, in our view by far the most important portion, is often minimized or subordinated by attempts to expand the scope of subsection (c). Less than 1% of students in most systems commit any SESIR infractions whatsoever. The other 99% are victims, witnesses or innocent bystanders to those acts. And yet, time and again, the underreporting of incidents appears designed to "protect" that tiny fraction of miscreants, to the detriment of those using school for its intended purpose: To learn in a safe environment.

We have heard from teachers and administrators, sometimes tearfully, that they lack the life experience to differentiate criminal behavior from simple misbehavior. Many want no part of making such decisions, though some arrogantly appear to believe they are better-versed in "what the law should be" than actual sworn officers. Yet, rather than consulting with readily-available law enforcement officers, these educators refer to a Byzantine "policy" or "matrix" published by school officials who also lack this knowledge. The unfortunate and inevitable result is that incidents any law enforcement officer would plainly recognize as criminal acts warranting further

investigation never see the light of day. This can also result in belated contact with officers who are then saddled with a compromised investigation and missed opportunities to gather evidence, interview witnesses or protect victims. We have heard real-time, recent examples of incidents such as gang fights, sexual molestation and attacks on school personnel which are wholly omitted from the data districts forward to the FDOE, whether by negligence, incompetence—or, alarmingly, by design.

From a certain perspective, the motivation of administrators appears altruistic: They wish to minimize the number of students involved in the criminal justice system. Putting aside the factual and philosophical infirmity of this motivation for the moment, we focus instead on a recurrent basic error of logic: The administrators are conflating simply reporting incident *data without personal identifiers* with reporting the *narrative descriptions* of individual incidents that have been accurately cataloged. If the goal is truly to minimize a student's criminal history imprint, there are many opportunities for diversion, counseling, civil citation, or other disposition (laudably, many local school districts have Memoranda of Understanding with local law enforcement for just this purpose). Failing to accurately label or report the incident so that neither law enforcement nor the other school stakeholders are fully aware of it constitutes no more than putting lipstick on a pig.

It is also apparent, though, that some incentives to "decrease the statistics" are perverse. Administrators are rewarded with promotion or better jobs in larger districts; school police chiefs tout phony "reductions" in *arrests* or *reports* while the actual *activity* proceeds unabated or accelerates; districts appear "safer on paper" and thus more attractive to potential new (or even current) students and the funding they represent. We have received evidence regarding some examples of this outright fraud and will be further delineating this in future communications. We

will mention one representative (though unfortunately not isolated) example here, however: In Duval County, the school administration directed its police chief, who in turn directed his officers, via a PowerPoint training presentation, that Chapter 1006 did not "require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency." As the testimony we received confirmed, this meant *all* misdemeanor crimes. The Duval County School District's written directives (likewise developed by administrators and mandated by the police chief and school administration alike) considered such things as Extortion (a felony) and Stalking to not require reports (and these are by no means the only examples).

In short, in some jurisdictions the exceptions have not been content to merely swallow the rule, they have actually weaponized it to their advantage. By way of illustration: The FDOE trains that when reporting SESIR incidents, schools are required to indicate whether the incident is "gang-related" ("if gang affiliation or association caused the incident or was a contributing factor to action that happened during the incident"). Although Duval County School Board Police has an active Gang Liaison detective, and we have seen numerous photos, videos, social media boasts, and testimony regarding widespread gang activity on school premises, from 2016-2020 the District has reported—out of approximately 30,000 SESIR incidents—a grand total of *only six* it describes as gang-related. It appears to us that this number dramatically underrepresents the level of gang activity in Duval County schools.

No one is made safer by this chicanery. Indeed, this behavior is counterproductive. We have heard multiple accounts of students whose criminal behavior goes unreported who—either during their later school years or upon graduation—commit more significant crimes without understanding real-world consequences and reap longer prison terms. Students who otherwise might refrain from engaging in this type of activity become emboldened when they see others do

so with impunity. Victims and witnesses suffer in silence rather than report crimes which will be neither investigated nor punished. Even seasoned police officers become demoralized, disillusioned and frustrated. Exposure to this circle of absurdity breeds students, teachers, and even law enforcement officers who become disenfranchised and abandon the school system altogether in search of a more rational environment.

This situation is unacceptable.

"In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the *opportunity* of an education. Such an *opportunity*, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan., 347 U.S. 483, 493 (1954), supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955). Contrary to Brown's edict of equal opportunity, the behavior we describe here clearly demonstrates that some Districts are devoting an inordinate amount of energy (and taxpayer dollars) into concealing the behavior of a small percentage of students, resulting in decidedly *unequal* opportunity for the rest of the student body.

The problems appear uniformly more common and more dangerous in Districts which seem to share some things in common: large student populations, appointed superintendents, and, most conspicuously, their own District police departments with a chief who reports to the administration. Last year, the Legislature actually had to order the Districts to provide law enforcement personnel for each school, and commendably did so. It is telling that the districts did not do so of their own volition. It is also obvious that when the District controls the law enforcement agency on campuses, it also controls the data they generate and the optics of that data—and optics, unfortunately, are what we hear most often drive some of the "policies defining petty acts of misconduct" described in the statute.

Recommendations

To ensure transparency and accountability, we recommend that the chief of any school district law enforcement entity be legally required to either be elected or be subordinate to county sheriffs wherever practicable. Neither school district officials nor school administrators should ever be in any position of authority over law enforcement officers.

We also recommend that the Legislature remove the ability of individual Districts to define those things which require a report to law enforcement. Sections (a) and (c) have clearly become devices used to artificially create an unwarranted aura of safety and security. This false bravado is dangerous, and counterproductive. The districts have proven either unwilling or incapable of rationally implementing what was no doubt well-intended legislation. It is time to rein in the runaway stagecoach.

Frankly we can see no good reason for failing to even *notify* law enforcement about actions which could be criminal so that a proper investigation may be conducted. Teachers and administrators are ill-equipped to make such determinations, and many either resent it or fear making errors. And we see even less good reason, once that investigation has been completed, for failing to accurately document the incident for what it was via SESIR.

We would propose to amend the statute as follows:

> (1) District school boards shall promote a safe and supportive learning environment in schools by protecting students and staff from conduct that poses a threat to school safety. A threat assessment team may use alternatives to expulsion or referral to law enforcement agencies to address disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. Zero-tolerance policies must apply equally to all students regardless of their economic status, race, gender or disability.
>
> (2) Each district school board shall adopt a policy of zero tolerance that:

(a) Requires reporting to a law enforcement agency any act that poses a threat to school safety that occurs whenever or wherever students are within the jurisdiction of the district school board.

(b) Requires immediate notification of law enforcement when an act of misconduct occurs which may be criminal in nature, with any uncertainty being resolved in favor of notification.

(c) Minimizes the victimization of students, staff, or volunteers, including taking all steps necessary to protect the victim of any violent crime from any further victimization.

As with other issues discussed earlier in this Report, we further recommend that the Legislature provide the FDOE with staff and resources sufficient to investigate the completeness and veracity of SESIR reports that are provided by the local school districts and empower the FDOE with sanctions sufficient to deter underreporting and misreporting of this important data—including criminal penalties.

FLORIDA'S MENTAL HEALTH SYSTEM

Throughout this Grand Jury's tenure, we have received and continue to receive substantial evidence and testimony regarding Florida's mental health care "system". As we have investigated the topics identified in our empanelment order, deficiencies in funding, leadership and services related to mental health care tend to turn up everywhere like bad pennies, underlying and aggravating many of the problems we identified above and often creating new problems where none would otherwise exist.

We cannot overstate the importance of addressing these deficiencies. It is clear to us that inadequately addressed mental health issues have the peculiar potential to spiral out over time into criminal acts and violent behavior resulting in serious injury and loss of life. This "spiraling" is substantially assisted by many of the critical deficiencies we address below. Beginning the process of enhancing, streamlining and correcting these deficiencies has the potential to do what few other

approaches can: Prevent violent incidents from happening altogether by making sure the kinds of escalating behaviors that lead to these tragedies are properly identified and comprehensively addressed by agencies with appropriate funding, leadership and experience.

We also recognize from the outset that these are hard problems. They are hard in the sense that the way forward is uncertain, but also—and we cannot stress this enough—they are hard because many of the government and private actors who have the power to implement the necessary legislative and administrative changes may lack the will to do so. Many of the actors involved in our mental health system work for different agencies with different goals and different philosophies. Therefore, it is our objective in this section to bring what we have seen so far into sharp relief for the people of the state of Florida. It will be up to our legislators, the Governor and the numerous municipal, county, quasi-governmental and private actors who comprise Florida's patchwork system of mental health service providers to fully investigate and resolve these critical deficiencies. We invite the voters to hold them accountable if they do not.

Finally, this section in no way comprises every element of the complex patchwork of interconnected agencies responsible for providing mental health-related services in the State of Florida. Frankly, we wish we had time to do more, but it would be well-beyond the scope of this Grand Jury to engage in the exhaustive examination of every actor and every agency responsible for these services. Therefore, we will deal with the problems as we see them in summary fashion, and in large part, our recommendations in this area will be centered around the idea that more comprehensive evidence and testimony and further expertise from many different sources will be necessary in order to produce effective legislation.

ISSUES

With these caveats in mind, it is the opinion of this Twentieth Grand Jury that—in a broad sense—the issues with Florida's mental health care system fall into three primary categories: (1) Financial issues; (2) service-related issues; and (3) leadership issues. There is obviously substantial overlap, but these categories do provide us with a useful lens through which the deficiencies can be seen clearly. We will further examine each category in turn, and then make our recommendations for improvements—and further study where necessary—in summary fashion.

Financial

We begin this section with a simple, indisputable fact: The State of Florida provides less funding *per capita* than any other state for mental health care and treatment. See National Association of State Mental Health Program Directors Research Institute, Chart, Florida Ranks at Bottom for Per-Capita Spending on State Mental Health Agencies (2016).[4] Even among states that do not collect income taxes, Florida is dead last. It is therefore important to highlight from the outset that correcting the deficiencies in our system of mental health care will require additional funding, but the legislature must make this financial commitment intelligently so as to ensure that whatever funds it does provide are not wasted.

By way of example, either due to special interest lobbying, or some other state or federal restrictions placed on the use of certain resources, funding for different kinds of mental health treatment is divided over several agencies. Local police departments may have federal or state funding to do some kinds of treatment, while schools or even social services offices may have

[4] Although this graph has been composed from financial information from the 2015 fiscal year, Florida is still the lowest-ranked state in terms of mental health care and treatment spending as of 2019-20, and we see no reason why that status quo would not continue into the foreseeable future absent intervention by the Legislature and the Governor.

federal or state funding to do other kinds of treatment. We have heard evidence from around the state that the *kind* of treatment a person receives—regardless of diagnosis—will largely be dependent on what agency that person interfaces with. These kinds of restrictions on how mental health funding can and cannot be spent by a given agency often lead to wasted resources and treating people for problems they do not have because that is the only thing a given agency may be able to do. Meanwhile, a person's true mental health issues may go untreated and could even be exacerbated by an incorrect treatment.

In summary, the State of Florida needs not only to provide more funding for the diagnosis and treatment of mental health issues, the legislature must wade through the swamp of special interests and earmarks to ensure that wherever possible, agencies encountering people in need of services have sufficient flexibility to diagnose and properly treat whatever mental health problems they encounter. More resources will allow for the hiring of more case managers, who would be able to provide comprehensive, targeted long-term mental health treatment plans to a smaller group of patients, instead of just triaging an overwhelming number of patients with whatever services are available based on how that particular patient came to the case manager.

Service

As we noted above, funding for the provision of mental health care services is spread out over state, federal and local agencies, each with different missions, priorities, metrics and definitions of success, making for treatment "plans" that are unfocused, inconstant and often ineffective at the individual level. Concerns about compliance with state and federal privacy statutes often prevent effective interagency cooperation. Because each agency cannot see the "big picture" of a person's complete mental health history, there is no real way to develop or carry out any kind of a comprehensive plan for treatment and follow-up services.

It would be an understatement to say that this approach is wasteful. Parallel case management over several agencies simply cannot be comprehensive. Attempts at classification often lead to several distinct kinds of mental disabilities getting lumped into the same categories and provided essentially the same services. A very common example of this would be lumping together students with behavioral disabilities and students with intellectual disabilities. Sure, both of these students qualify as having "special needs", but the needs themselves can often be very different. Likewise, greater cooperation and communication across agencies may lead to better and more comprehensive action. That which is relevant to a student's mental health will be as useful to his educators as it will be to his case workers, as would his school performance and disciplinary record. There is no logical reason to silo this information, and to the extent that fear of state and federal privacy lawsuits prevent this kind of sharing, those laws should be reexamined.

We saw some efforts at this kind of information coordination in SB 7040, which mandated the creation of a search tool known as the "Florida Schools Safety Portal", which would have:

> Provide[d] a unified search tool, known as the Florida Schools Safety Portal, [a] centralized integrated data repository and data analytics [tool] to improve access to timely, complete, and accurate information integrating data from, at a minimum, but not limited to, the following data sources by August 1, 2019:
>
> (a) Social media Internet posts;
>
> (b) Department of Children and Families;
>
> (c) Department of Law Enforcement;
>
> (d) Department of Juvenile Justice;
>
> (e) Mobile suspicious activity reporting tool known as FortifyFL;
>
> (f) School environmental safety incident reports collected under subsection (8); and
>
> (g) Local law enforcement.

We believe this was a good place to start in terms of gathering and collecting information, but it still leaves the problem of what is done with this information once it is shared. Coordinating services across multiple agencies, even if funding and communication issues are addressed, will be no small feat. It will require leaders.

Leadership

None of what we have described can be accomplished without knowledgeable and experienced leadership, and while Florida's Department of Children & Families is currently tasked with oversight of Florida's myriad mental health providers and programs, it is not currently equipped or empowered to exercise the degree of leadership and control necessary to balance the competing needs of public and private stakeholders, including local, federal and state-level government agencies, quasi-governmental managing entities and private mental health providers. The right combination of expertise and fresh ideas from both the public and private sector will be an essential component of a successful approach to comprehensive mental health treatment. Lobbyists, private sector interests and managing entities cannot dominate the discussion, but they must have a seat at the table, as must stakeholders from governmental entities like law enforcement, school officials and even consumers of mental health care services.

RECOMMENDATIONS

It should be apparent to any reader of this report that this Grand Jury has only scratched the surface of the myriad difficulties involved in comprehensively addressing the sad state of mental health care services in the State of Florida. While a comprehensive examination of this system would lie within our jurisdiction, it would take more time than we have at our disposal considering the other items the Governor has also placed in our mandate. For this reason, it is the

opinion of this Grand Jury that the Florida Legislature should appoint a commission to specifically examine the provision of mental health services in the State of Florida.

We are aware that a committee has already been constituted to examine coordinating the specific mental health care needs of children and adolescents between the various agencies and entities within Florida's mental health care system, and that many of the suggestions we make in this section echo language that now exists in several statutes, *inter alia* Section 394.493, Florida Statutes (2020), which was proposed in Florida House of Representatives Bill 945 (2020) (hereinafter HB 945) and signed into law by the Governor on March 12, 2020. We think this a good start, but our experience with the MSDPSC has shown a commission to be a superior vehicle to gather information and propose change, in that the Florida Legislature can empower a commission with subpoena authority, assign to it a series of investigative tasks, and require regular reports on its progress. HB 945 requires an unprecedented level of cooperation from a large number of state, county and municipal entities, and our experiences with SB 7026 and SB 7030 has been instructive on this point: Someone must oversee this new cooperative process and ensure these bureaucracies make the necessary adjustments to comply with the new mandates.

In creating this mental health services commission, just as it did in HB 945, the legislature should make every effort to ensure that relevant stakeholders have an opportunity to participate and provide knowledge. Once again, the MSDPSC—which comprises a total of 19 members: five appointed by the Florida House, five by the Florida Senate, five by the governor and four ex officio members—provides a good framework from which to start. Politics, however, is not the only lens through which to view potential appointees. In order to be successful, *all* the relevant stakeholders in Florida's mental health system must have a place at the table, including representatives from law enforcement, criminal justice, mental health professionals, school district officials, educators,

managed entity members and even consumers. The commission's membership should include both experienced insiders who understand the internal mechanics of existing bureaucracies, and innovative outsiders with new ideas about how to improve—and where necessary, dismantle—said bureaucracies. This Grand Jury recommends that the commission be chaired by Ann M. Berner, President and Chief Executive Officer of the Southeast Florida Behavioral Health Network, a managing entity currently under contract with the Department of Children and Families to oversee the provision of mental health and substance abuse services in Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.[5]

As for this proposed commission's mandate, while this Grand Jury is by no means the final word on this subject, we do believe that at the very least, the commission's mandate should include two critical items that were not addressed by HB 945: First, it should consider how to best provide and facilitate services in "dual diagnosis" cases, which often lie at the nexus of mental health, substance abuse and law enforcement interests. Second, the commission should be charged with structuring and staffing a permanent, agency-level entity to manage mental health, behavioral health, substance abuse and addiction services throughout the State of Florida.

We recognize that this final "ask" will involve a considerable financial commitment by the political entities of the State of Florida, but as we explained above, it is very much the opinion of this Grand Jury that by resolving these issues in our mental health care system, the people of the State of Florida will ultimately be investing in a future with less violence and less suffering. Moreover, a permanent solution is necessary because we cannot continue to delegate temporary

[5] Ms. Berner was also a District Administrator for the Department of Children and Families, where she developed substantial experience working with law enforcement, mental health, substance abuse, foster care, adult services and other relevant stakeholders. She has a deep knowledge of the history of mental health services in the State of Florida and is familiar with the financial and budgetary matters involved on both the private and public sides at the local, State and Federal levels.

oversight over these important issues to time-limited grand juries, committees and commissions. Creating and funding a stable, cabinet-level agency to untangle and administer these disparate sources of funding and services is ultimately the only effective way we see to resolve these issues.

CONCLUSION

It would be an understatement to say that these are strange times. This Grand Jury was impaneled with a mandate to examine, *inter alia*, local school district compliance with safety and security laws and mandatory reporting requirements. These security laws and reporting requirements primarily involve equipment, personnel and incidents in and around school grounds. Nobody knew our tenure would be interrupted by a pandemic which would see in-person learning cut short for the 2019-20 school year and drastically curtailed for the 2020-21 school year. Nobody knows, even now, exactly what effect this pandemic will have on the State's upcoming budget. Nevertheless, we stress again what we stressed above: *Students are going to go back to school, and somewhere, a school shooting is going to happen again.* We must be ready. Many of the recommendations in both this Report and our Second Interim Report have the potential to literally save lives, but the Grand Jury can only identify deficiencies and publicize them. It will be up to the Florida Legislature, the Governor and the necessary municipal, local, quasi-governmental and private actors to act boldly on our suggestions.

Respectfully submitted to the Honorable Jack Tuter, Presiding Judge, this 10 day of December, 2020.

Forepersen, Juror # 7,
Twentieth Statewide Grand Jury of Florida.

THE FOREGOING Second Interim Report of the Twentieth Statewide Grand Jury was returned to me in open court this 10 day of December, 2020.

HON. JACK TUTER, Presiding Judge
Twentieth Statewide Grand Jury of Florida.

I, Julie Chaikin Hogan, Deputy Statewide Prosecutor and Assistant Legal Advisor, Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 10th day of December, 2020.

JULIE CHAIKIN HOGAN
Deputy Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida

I, Joseph Spataro, Chief Assistant Statewide Prosecutor and Assistant Legal Advisor, Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 10 day of December, 2020.

JOSEPH SPATARO
Chief Assistant Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida

I, Jeremy B. Scott, Chief Assistant Statewide Prosecutor and Assistant Legal Advisor, Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 10 day of December, 2020.

JEREMY SCOTT
Chief Assistant Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida

I, Nicholas B. Cox, Statewide Prosecutor and Legal Advisor, Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 10 day of December, 2020.

NICHOLAS B. COX
Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida

I, Richard Mantei, Assistant Statewide Prosecutor and Assistant Legal Advisor, Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this _____ day of December, 2020.

RICHARD MANTEI
Assistant Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida