

NATIONAL  
**JUVENILE JUSTICE**  
NETWORK

**FISCAL POLICY CENTER TOOLKIT**

**How to Retain Funds for Youth Programming  
From the Sale or Lease of Juvenile Facilities**

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## What Is This Toolkit For?

In recent years, many state governments recognized that locking away youth in trouble with the law in state prisons—facilities that are proven to harm youth and increase recidivism—and far away from their families and other community supports, is a needless expense. Many states closed large facilities or are in the process of making systemic changes that are intended to enable the closure of facilities. Unfortunately, however, facility closures—especially those that arise primarily from an interest in balancing state budgets—do not necessarily lead to better investments in programs and services for youth in the juvenile justice system.

The National Juvenile Justice Network (NJJN) helps youth justice advocates on the state level make the best argument for and have appropriate tools to guarantee that the money saved from a facility closure “follows the youth” back to their home communities.

The goal of this toolkit is to help advocates ensure that at least a portion of funds garnered through facility closures remains in the juvenile justice system. When a facility is closed, the state (1) avoids the costs of operating that facility, and (2) may sell or lease the facility or grounds upon which the facility is sited. This toolkit specifically addresses what happens when a facility is closed and the state sells or leases the property. (NJJN may release a toolkit in the future on how to address avoided operating costs.)

The best way to guarantee that the proceeds of a sale or lease are not simply absorbed into the state’s general fund is through statute. This toolkit will guide you through the process of drafting a bill—on your own or with the assistance of your legislature’s bill drafters—that will require your state to capture some or all of the proceeds from the sale of a closed facility and invest them in youth programming.

## How to Write Your Own Statute

Before you begin, you should understand the current procedures in your state for the disposal of state property. You are interested in the “disposal” of “real property,” or a “capital asset.” Your state has a procedure, established by law, that lays out the requirements for the disposal of any and all state property, from staplers to office buildings and land. This is commonly referred to as “state finance and procurement law.” You must find this statute (there may be more than one), read it, and become familiar with its procedures. If you need additional guidance on where to look, contact NJJN’s Fiscal Policy Center. The bill you draft will be an *exception* to the regular procedure, so you must have some knowledge of how the current procedure works.

The goal of the bill you will draft is to require that at least a portion of the proceeds from the sale of a closed juvenile facility—or the income stream, if the property is leased—be placed in a trust

fund that can only be spent on projects for youth in the juvenile justice system. What follows are suggestions and a general framework to accomplish this goal. You will, of course, have to adapt the following—with the help of your legislature’s bill drafting entity—to suit your state and your specific goals. (NJN’s Fiscal Policy Center staff may also be available to help.)

## **WHAT IS THE CURRENT PROCEDURE?**

Your state likely follows a procedure similar to the following:

- An executive department determines that real property<sup>1</sup> under its custody is in “excess” of the needs of the department—that is, it is empty or grossly under-utilized.
- The department notifies another executive agency—the state planning department, finance department, or the like—in writing that the real property is “excess.”
- A review of the property is undertaken, with the goal of making a recommendation regarding the use and disposal of the property. The review may require an appraisal of the property, public hearings, public notification, offering the facility to local governments with a right of first refusal, notification of legislative budget committees, and a time frame for completion of the review.

## **DRAFTING YOUR OWN STATUTE**

### **Step One: Some Issues to Consider**

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Once you have reviewed the existing law, you will want to amend the law so that juvenile facilities are treated differently from other state assets. To do this, you may need to:

- Define “juvenile facilities.” Because you want juvenile facilities treated differently, you will need to craft a definition of what qualifies as a juvenile facility. You may want to include examples of juvenile facilities in your definition. While this definition should be clear, it should also be as general as you can get away with. For example, “A juvenile facility is any institution or facility that houses a juvenile committed to the jurisdiction of the Department of Juvenile Services or an institution or facility under the jurisdiction of the Department of Juvenile Services. Juvenile facilities include, but are not limited to, detention homes, group homes, shelter homes, etc.”
- Require a public hearing on the disposal of all juvenile facilities. A public hearing will ensure that all interested parties can weigh in on what will happen to all juvenile facilities that are put through the disposal process.

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<sup>1</sup> “Real property” generally refers to real estate and buildings.

- Absent the requirement of a public hearing, the determination of the use of the property will happen behind closed doors. A public hearing ensures some transparency and may be your best—or only—opportunity to present your plan for the property. The danger, of course, is that opponents to your plan, if they exist, may have an opportunity to present a different plan.

## Step Two: Establish a Fund

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You are now ready to draft language that requires proceeds of the sale of juvenile facilities—or some percentage of the proceeds—be deposited in a trust fund.

Your aim is to establish a fund into which some or all of the proceeds from the disposition of the property are placed, with the requirement that the funds can only be used for specific, limited purposes. The fund you create needs a name, such as the “Youth Development Fund” or “Safe Kids Fund.” The legislation establishing the fund must also be crafted so that the fund balance “shall not revert” to the general revenue fund for the state, “shall never be raided” to cover budget shortfalls, “shall only be used” for the type of programming and activities specified in the legislation, and cannot simply “supplant” other current funding sources.<sup>2</sup>

To accomplish this, your bill drafter will have to employ the proper language. But this is your bill, and it is important that you are familiar with the terms and—at the very least—can tell whether the proper language was included or omitted. To ensure that you are using the proper terminology, look at the language from other enabling legislation for current funds in your state. It is likely that your state has similar funds for other purposes. Common examples are a transportation trust fund, an enterprise or business development fund, a land preservation fund, a conservation fund, or a rural legacy program.

## Step Three: General Considerations in Drafting Your Bill

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Be aware that you will likely have to amend the current property disposal/procurement statute. As discussed above, you will be exempting juvenile facilities from the current procedure, so you must add a section to the current law that makes it clear that the current procedure does not apply to juvenile facilities.

Accordingly, the current statute must be amended to include:

1. A definition of a juvenile facility;
2. An express exception to the current procedure as a whole for juvenile facilities;
3. A statement that whenever a juvenile facility is declared “excess” or “surplus,” a public hearing must be held; and
4. What to do with any revenue from the sale or disposal of a juvenile facility.

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<sup>2</sup> Quote marks in this sentence indicate important phrasing that you should use when drafting your own language. For example, it is important that your draft bill use the term “supplant,” as it is a legal term of art.

# Model Statutory Language

## CHANGES/ADDITIONS TO CURRENT LANGUAGE Existing Procurement/Disposal/Surplus Property Statutes

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The current disposal/procurement statute will have a definition section. Add the following to that section, with any changes necessary for your specific state:

**Definition of “juvenile facility”:**

An institution or facility under the jurisdiction of the Department of Juvenile Services. Or, “A juvenile facility is any institution or facility that houses a juvenile committed to the jurisdiction of the Department of Juvenile Services or an institution or facility under the jurisdiction of the Department of Juvenile Services. Juvenile facilities include, but are not limited to, detention homes, group homes, shelter homes, etc.”

The current disposal/procurement statute will have a section that details the procedure the state must go through in order to dispose of property. You must first make clear that juvenile facilities are exempt from this process. This addition must refer to the new code section you create that will deal with the disposal of juvenile facilities. Insert the following language to the beginning of the section:

**Disposition (sale, lease, transfer) language:**

Except as otherwise provided in [insert reference to the new code section that you use to create your new fund]...

You should also consider putting the hearing requirement in the existing disposal/procurement statute. Insert the following language to the current statute:

**Require a public hearing:**

After the Department receives notice under [insert the current subsection of the code that refers to notice from the executive department that a property is excess] of this section, the Department shall...[language from existing statute]

If the property is a juvenile facility, the Department must hold a public hearing in the county or legislative district in which the property is located within 30 days after receiving the notification.

The current disposal/procurement statute will state that revenue from the disposal of state-owned property be deposited with the state Treasurer or Comptroller and then be deposited in the state's general fund. To make clear that these funds will be used differently, you should insert language such as:

**Revenue language:**

Any revenue derived from the sale, transfer, exchange, lease, or grant of property that is a juvenile facility shall be deposited in the Safe Kids Fund under [new code section].

Naturally, you would substitute the name of your local fund for "Safe Kids Fund" in the example above.

## **MODEL LANGUAGE FOR NEW CODE**

### **Establishing a "Safe Kids Fund"**

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Now it is time to draft the section of your bill that establishes the new fund, which for the purpose of this toolkit is referred to as the "Safe Kids Fund." Bear in mind that funds:

- are established;
- have a stated purpose;
- have an administrator;
- have a special status (e.g., will not revert to the general fund);
- are authorized to make particular purchases of services and disposition of property;
- have a specific composition; and
- may have investment earnings.

You will want to include language that addresses each of these considerations.

Some suggested language or phrasing is below. Specific details will, of course, depend on what exactly you want to achieve.

#### **Establishment**

- a. There is a Safe Kids Fund in the Department of Juvenile Services.

#### **Purpose**

- b. The Department may use the Fund to:

1. fund youth programming<sup>3</sup> that includes, but is not limited to, evidence-based practices, after school activity centers, and/or prevention and intervention services [insert your wish list here—be over-inclusive];
  2. make a loan or grant, at a rate set by the Department, to a non-profit, private sector provider for the purpose of developing and providing intervention, prevention, or re-entry programming; and/or
  3. guarantee a loan, equity, investment, or other private financing to expand or improve the physical plant or programs offered at juvenile facilities.
  4. Etc.
- c. Except as provided above, the Department shall not use the Fund for:
1. any law enforcement or correctional purpose; or
  2. the funding of any court or court-sponsored program.
- d. Monies in the Safe Kids Fund shall not be used to supplant current state or local funds, but shall be used to increase the amounts of such funds that would, in the absence of the Safe Kids Fund, be made available for the purposes established in subsection (b) of this Section.

### **Administration**

- e. The Secretary shall manage and supervise the Fund.

### **Status**

- f. The Fund is a special, non-lapsing revolving fund that is not subject to reversion under § \_\_\_ [insert code section] of the State Finance and Procurement Article.
- g. The Treasurer shall hold the Fund and the Comptroller shall account for it.

### **Composition**

- h. The Fund consists of:
1. money appropriated by the State to the Fund;
  2. money made available through the sale, transfer, exchange, lease, or grant of property that is a juvenile facility pursuant to [insert code section];

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<sup>3</sup> Note that you may have to define “youth programming” or similar terms that you introduce in your list of how the funds may be spent.

3. money made available to the Fund through federal programs or private contributions;
4. repayment of principal of a loan made from the Fund;
5. payment of interest on a loan made from the Fund;
6. proceeds from the sale, disposition, lease, or rental by the Department of collateral related to financing that the Department provides under this subtitle;
7. repayment of a conditional grant extended by the Department; and
8. any other money made available to the Department for the Fund.

### **Investment earnings**

- i. The Treasurer shall invest money in the Fund in the same manner as other State money.
- j. Any investment earnings of the Fund shall be credited to the Fund.
- k. Funds provided under this section are intended to supplement, rather than supplant, current State general fund support for the Department of Juvenile Services.

## **Survey of Existing Law**

NJJN is unaware of a state or jurisdiction that has enacted legislation of the sort described here. However, NJJN is aware of two states with somewhat analogous statutes.

1. **Colorado.** The Colorado Division of Corrections may dispose of surplus state property and the proceeds of the sale or lease are deposited in a “correctional industries account.” The money in the correctional industries account must be used to fund the production of correctional industry goods and services, including personnel costs.

Unlike the draft legislation we propose above, the excess funds in the correctional industries account revert to the general fund and are used to supplant state funding. *See* C.R.S.A. § 17-24-113.

2. **Illinois.** Proceeds from the sale of certain Illinois state-owned real estate are deposited into one of the state’s Medicaid trust funds. Specifically, whenever a state mental health facility operated by the Department of Human Services is closed and the real estate on



which the facility is located is sold by the state, the net proceeds of the sale of the real estate shall be deposited into the Community Mental Health Medicaid Trust Fund.

Likewise, whenever a state developmental disabilities facility operated by the Department of Human Services is closed and the real estate on which the facility is located is sold by the state, the net proceeds of the sale of the real estate must be deposited into the Community Developmental Disability Services Medicaid Trust Fund. *See 30 ILCS § 605/7.*

Illinois law also provides that whenever real property originally purchased with monies from a special fund is sold, the special fund will be reimbursed for the amount of the expenditure with the proceeds of the sale. Any excess, however, reverts to the state general revenue fund. *See 30 ILCS § 605/7.1.*

## QUESTIONS?

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