

Unfulfilled Promises

The reality of FINS in Arkansas

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Executive Summary

Families In Need of Services (FINS) is a legal avenue that promises to help juveniles and parents acquire vital services – such as counseling, health services, or parenting courses – to improve the quality of their lives at home and school. Ideally, a FINS proceeding aims to assist those who need a helping hand, but the current statute offers insufficient guidelines for its implementation. As it's written, practically every family in Arkansas falls under the jurisdiction of FINS, creating a hazy picture of its desired aims or scope. Equally problematic is the punitive nature FINS cultivates by detaining children or their parents for rejecting services offered by the court. Arkansas has to grapple with the reality that FINS is flawed, and righting its course would behoove the state a great deal.

There's a racial component to the adjudication of FINS cases that can't be ignored. Data from the Arkansas Administrative Office of the Courts, while incomplete, paint a picture of a disproportionate share of FINS

cases being prosecuted in the Delta region of eastern Arkansas. This region contains roughly a third of the state's population but over sixty percent of FINS cases.

FINS can better serve Arkansas families, but it will require an overhaul, both in the language of the applicable statutes and their implementation. Additional changes to other Arkansas laws, such as creating a uniform school absence policy, would also help improve FINS outcomes. This report aims to identify areas in the applicable statutes, the FINS petition, and the actual delivery of services that could be changed to create positive reforms. This report will identify areas that could benefit from revision and recommend policy changes.

While this report is primarily focused on FINS itself, sections and recommendations will also be devoted to assessing other factors that play a role in helping juveniles and their families, such as the operation of the Division of Youth Services (DYS), data collection by the state of Arkansas, and the role schools play in FINS. A close look at these systems, and how they

interact with the FINS process, could lead to reforms that enhance the well-being of families across the state.

Revising FINS will require cooperation from a diverse community of stakeholders. Participants in the courts must work directly with schools, administrators of services, and policymakers to ensure meaningful changes are brought about. However, it will be important that no one particular group feels singled out as the culprit of current inadequacies. This report draws upon advice from all stakeholders and offers an unbiased assessment about what each group could do differently to help families in need succeed.

What Does FINS Say?

Arkansas law addresses FINS in statutes found in the Arkansas Code statutory chapter setting out requirement for Juvenile Courts and Proceedings (the “Juvenile Code”).¹ References to and requirements for FINS are scattered throughout the code, which covers other significant areas like delinquency and dependency-neglect laws, each having its own procedures and legal implications.² This creates a lack of clarity for the implementation of FINS in Arkansas.

The Arkansas statutes addressing FINS are vague and do not offer much guidance. Under the current law, any adult may file a FINS petition on any child in the state.³ FINS is defined as meaning “any family whose juvenile evidences behavior that includes, but is not limited to the following:

1. being habitually and without justification absent from school while subject to compulsory school attendance;
2. being habitually disobedient to the reasonable and lawful commands of his or her parent or custodian; or
3. having absented himself or herself from the juveniles’ home without sufficient cause, permission, or justification.”⁴

FINS aims to primarily address three issues: runaways, truancy, and disobedience, but debate about these three

areas varies greatly. Regardless of the reason a petition was filed, judges still possess the same options in terms of what they can and cannot order a family to comply with.

A judge can use FINS to provide the following services:

- child care;
- homemaker services;
- counseling;
- cash assistance;
- transportation;
- family therapy;
- physical, psychiatric, or psychological evaluation;
- treatment.⁵

With a diverse range of options, FINS allows judges to be creative with the orders they issue. The aim of the Juvenile Code is to provide a combination of services that will prevent a juvenile from being taken out of the home, and promote reuniting juveniles with a parent or guardian from whom they were removed.⁶

In addition to the ability to order services, the court possesses ways to ensure that families comply with the orders. Judges are allowed to monitor progress with review hearings, require the juvenile to wear a monitoring device, or to require certification of completion of programs by service providers.⁷ These strategies are employed to give judges evidence of whether or not families are improving.

There are no real statutory limits on a FINS order. Most constraints are concerned with the maximum amount of fines a family can incur for services, or broad rules, such as how many days’ notice a court must provide to the Department of Human Services to ensure services are adequately paid for.⁸ Despite these procedural limitations, there are no actual provisions in the law that limit the usage or scope of a FINS order.

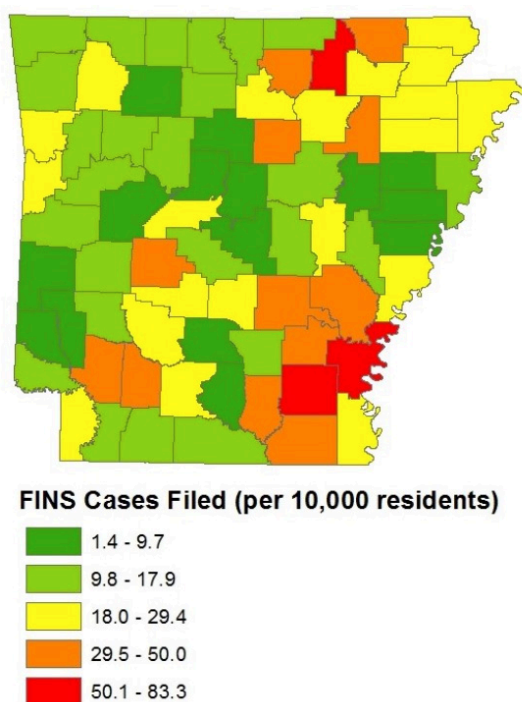
Vague language in the law creates points of contention. The statute states that a court may adjudicate a FINS case when it “includes, *but is not limited to*,” [emphasis ours] the three main areas of truancy, habitual

disobedience, and running away from home.⁹ This places an extraordinarily large number of families under the jurisdiction of FINS, but also raises the question of what exactly FINS aims to accomplish. While many legal codes leave a little breathing room for interpretation, the incredibly broad language of FINS creates a nebulous number of cases that do not belong in FINS at all.

Where Are the Families? (And Who Are They?)

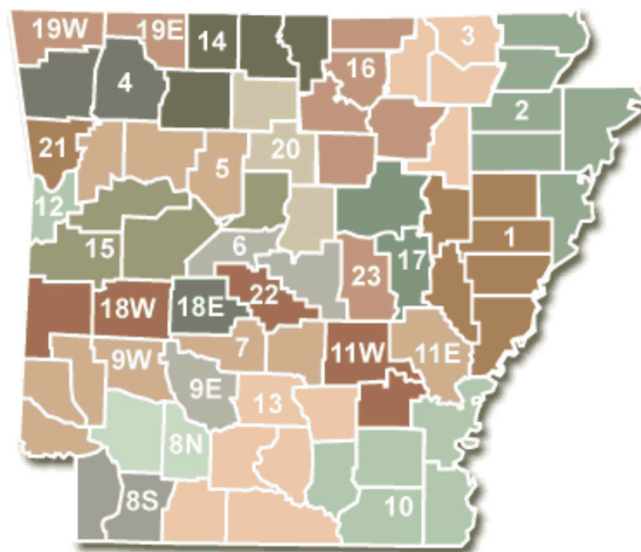
Data from the Arkansas Administrative Office of the Courts (AOC) suggests that families and youth in northeast and southeast Arkansas are particularly at risk for prosecution in a FINS case. Additional jurisdictions outside of these regions, particularly in the western portion of the state, have a troubling number of FINS cases as well. In a five year period from 2011-15, a majority of FINS cases came from 12 of the 28 circuit court divisions.¹⁰

Figure 1: FINS Cases by County



Source: Arkansas Office of the Courts

Figure 2: Arkansas Circuit Court Jurisdiction



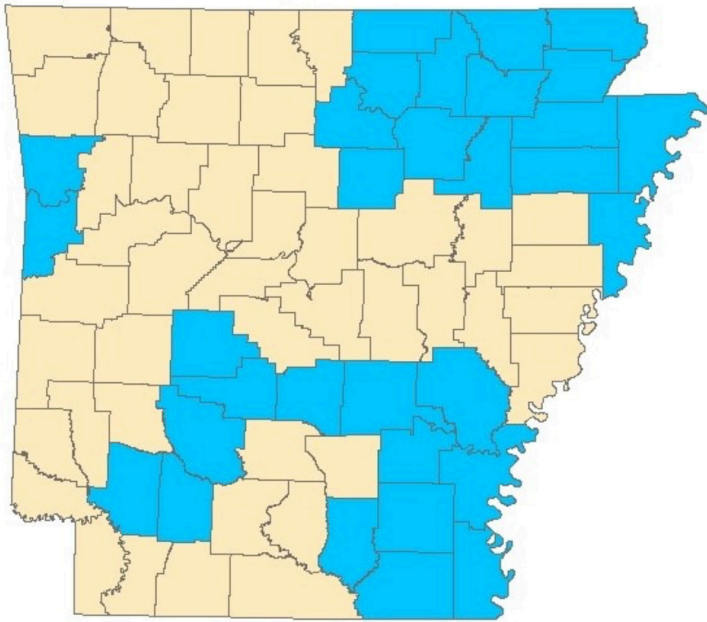
Source: Arkansas Legislative Services, <http://www.arlegalservices.org/system/files/pictures/map.gif>

Figure 1 is a representation of where FINS cases are being filed, while Figure 2 is a map that outlines the jurisdictions of the circuit court divisions. Figure 3 represents the “at risk” jurisdictions. The combined total population of the “at risk” jurisdictions comprise about a third of the entire Arkansas population.¹¹

Figure 1 tracks the prevalence of FINS cases across each county in Arkansas. Since circuit court jurisdictions are not divided equally by population, data in Figure 1 is derived by calculating a standard rate of FINS cases per 10,000 Arkansans in every county to account for population differences across counties. Northeast and southeast Arkansas rely heavily on FINS, with central Arkansas utilizing FINS the least.¹²

Figure 3 highlights the 12 circuit court divisions that comprise just over 60 percent of all FINS cases filed during a five-year period. When income is taken into account, the problem becomes more troubling. According to the U.S. Census Bureau, the median income in Arkansas is approximately \$41,264 a year.¹³ The median income of these 12 divisions is significantly lower, at \$34,424 a year.¹⁴ Out of these

Figure 3: Counties with High Levels of FINS Cases



31 counties, only three (Craighead, Grant and Hot Spring counties) are above the state median income. This suggests poorer families are more at risk of being involved in a FINS proceeding.

These 31 counties make up roughly a third of Arkansas's entire population.¹⁵ Rural Arkansas relies on FINS more than the more populated parts of the state, creating several questions about how FINS is utilized within these areas. Barriers to accessing services are greater in rural Arkansas. For example, there are fewer mental health professionals in these regions.¹⁶ Transportation becomes an issue due to the distance families have to traverse and the time they have to spend to access counseling, and the cost of transportation can be prohibitive.

The Administrative Office of the Courts data also provides a distinct picture of when juveniles are likely to have FINS petitions filed against them. Teenagers are most likely to be involved in FINS cases. There is little usage of FINS when children are young, between birth to age 4. After this there is a significant increase in FINS usage when children turn 5 and 6, which is the age that most children enter kindergarten and elementary school. FINS usage spikes again when children enter middle school, and on through high school (Figure 4 on opposite page). After age ten, the

number of FINS cases grows rapidly until falling off at age 17 and 18, which is when FINS may only be utilized in unique circumstances.

Because most cases involve teenagers, critics believe FINS operates under a paternalistic system that punishes adolescents for growing up. Supporters, nonetheless, insist that FINS is a pre-emptive strategy which can protect at-risk teens from becoming a part of the prison system when they are adults.

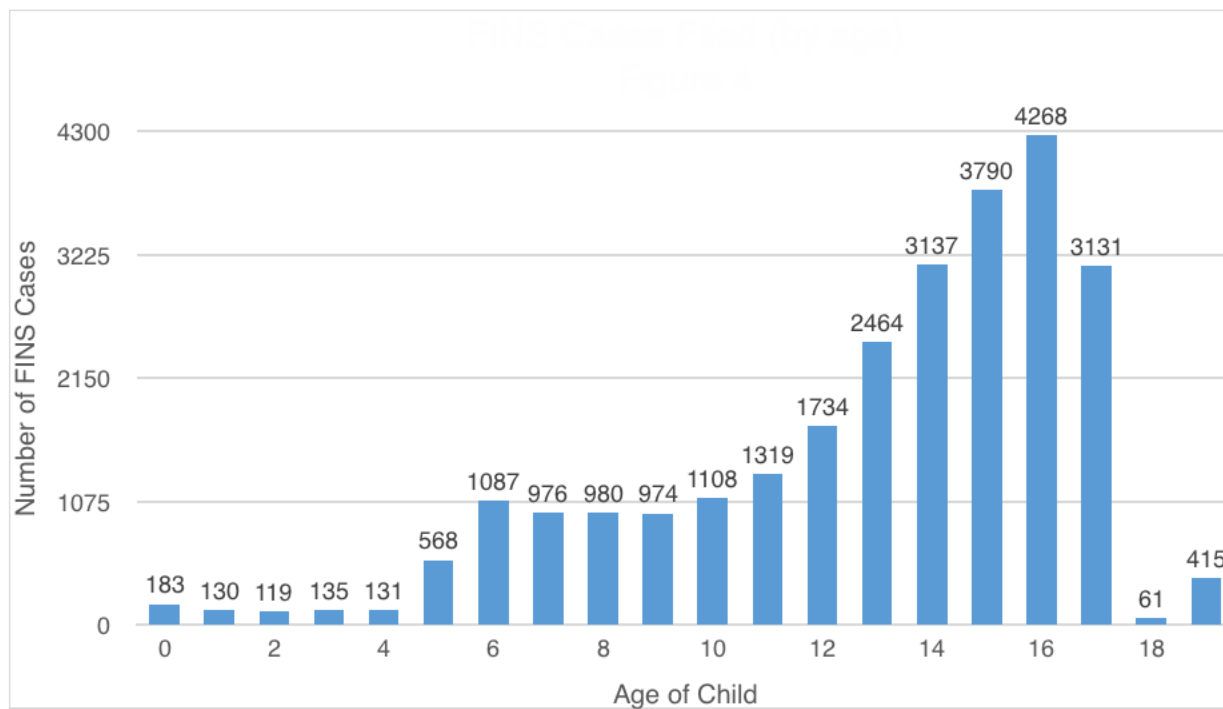
While AOC offers an excellent picture in terms of where FINS cases are filed and the age breakdown of FINS petitions, there are several areas where AOC data falls short. These shortcomings make it difficult to get an accurate picture of the average family that is requiring services and uses FINS as a means to improve their well-being.

Racial data from AOC is incomplete at best. Out of more than 26,000 cases filed between 2011 and 2015, AOC lacks racial data for over 5,000 of them - roughly 20 percent of petitions.¹⁷ The available data identifies roughly 52 percent of juveniles subject to FINS as white, and 20 percent as African-American. Arkansas as a whole is 77.5 percent White and 15.8 percent African-American.¹⁸ Statistics like these would suggest only a slight racial bias towards African-Americans. However, with such a significant number (20 percent) with unknown racial data, it is difficult to make any assumptions.

Another area where AOC lacks data is disability status. Advocates for children, families, and people with disabilities often worry FINS is a way for school districts to remove children with disabilities from the classroom instead of handling their issues within the school. AOC does not collect data on disability diagnosis, if children are currently under an Individualized Education Plan (IEP) through the school, or if they have been evaluated for special education status.

In lieu of disability data, advocates still believe a pattern could be recognized by analyzing data that identifies who is filing FINS petitions. Some allege

Figure 4: FINS Cases Filed (by age)



that school districts are the main filers across the state. AOC does not mandate records be kept on those who file FINS petitions. However, some Circuit Court jurisdictions keep track of that information, often internally. Judges interviewed in Faulkner and Jefferson Counties noted that their staff keep detailed records of where petitions are coming from. Other judges asked for this information, however, were not sure if their staffs collected data, and several jurisdictions reported not keeping track at all.

Without complete disability and racial data, it is difficult to paint an accurate picture of the kinds of families who are in need of services.¹⁹ Judges who keep track of this information report a significant amount of petitions filed by school districts. But that data is incomplete, not public, and does not answer questions regarding special education status. Additionally, any conclusions drawn from the racial breakdown would not only be anecdotal but would be close to useless because most of the counties where FINS is prevalent are heavily white or heavily African-American when compared to the Arkansas state average as a whole.²⁰

What Do Stakeholders Think of FINS?

Debate over FINS has developed over time and is hitting a fever pitch in Arkansas. Anyone involved in the process, whether in the court room, the classroom, or those on the service provider side, has an opinion. Calls for a complete revamp, or perhaps even abolishing FINS, have left many within the legal community concerned and divided. This section identifies the different actors and stakeholders involved in the debate and characterizes the main points of view within each community. Additionally, we look at the obstacles to achieving consensus between these groups.

Judges

By and large, judges believe FINS serves as a tool to help families in need. Opinions may differ on what needs to happen going forward regarding procedure, but judges questioned uniformly stand by preserving it. Some judges believe FINS is too broad, and requires an overhaul in language to narrow its focus to better serve families. As Judge Thomas Smith of the 19th West



Judicial Circuit (Benton County) said, “Currently, FINS covers every family in Arkansas.”²¹ Other judges are less comfortable with changing the FINS code, with some arguing that nothing in the code should be tampered with at all.

Judges who are less interested in code changes can be grouped into three camps. First, there are those who believe it is within their judicial authority to implement FINS in the way it is currently written. These judges tend to believe FINS is working well in its current form, and cite their judicial leadership as the reason for the success of FINS. Other judges express a more philosophical concern, suggesting that the legislature lacks the information to reform FINS in a meaningful way. Finally, there are judges who believe the issues with FINS originate with school districts.

All judges questioned said school districts played a significant role in the dysfunction of FINS. School districts heap on endless amounts of truancy cases. In the 20th Judicial Circuit (Faulkner, Searcy, and Van

Buren Counties), Judge Troy Braswell instituted a policy that truancy cases must first undergo a separate process, called diversion, before being prosecuted as a FINS case. Diversion is a process that is similar to FINS but does not require a court appearance.²² Through diversion, the family can still receive services normally offered through FINS. Diversions allow families to receive the assistance they need, without having the state threatening them with detainment.

Other judges note that school districts should act on more than just truancy cases. Judge Earnest Brown of the 11th West Judicial Circuit (Jefferson and Lincoln Counties) refuses to allow any FINS case in his court that is based on disobedience.²³ Limiting the reasons schools may or may not file FINS petitions is aimed at reducing the overall case load, allowing families who truly need to acquire services to do so.

While tension exists between school districts and judges, it is worth noting many judges have solid rapports with their local school superintendents. Each

judge handles these cases differently and some have made more concerted efforts to reach out to schools and providers than others. Ideally, judges create meaningful connections in their communities and bring service providers into the mix to form blueprints for families to succeed. But that doesn't happen everywhere. Judges could benefit from more time to compare and contrast their own practices with other judges. Collaboration, or any effort to establish best practices, is seemingly nonexistent.

Public Defenders

A crucial component of FINS is the provision granting any juvenile a public defender.²⁴ A public defender is an attorney provided by the state for an individual unable to afford their own. However, due to a general strain of resources, public defenders sometimes are not present in FINS cases.²⁵ Even when a public defender is present, they sometimes have little to no contact with their juvenile client prior to appearing in court.²⁶ This lack of real legal representation is the central cause of concern for public defenders.

That parents also do not receive representation in FINS cases creates another area of concern.²⁷ The FINS statute, in its current form, does not guarantee a public defender to parents; it only states parents can bring their own lawyer.²⁸ Judges have detained parents under FINS petitions and removed children from a parent's home in a FINS proceedings, all without a parent having representation.

To public defenders, this is a questionable practice that violates the due process rights of parents.²⁹ They are uneasy with the laxity in the code. Additionally, public defenders worry if they are even properly serving their clients due to limited contact before the trial. Inadequate funding leaves public defenders with massive caseloads. Public defenders are not convinced FINS is working and are concerned that families will lack proper protection of their rights in an already vague system.

Department of Human Services

DHS is intertwined with FINS because many of the services provided to families through FINS are subsidized or performed by DHS.³⁰ Many of the services offered by DHS tend to come in the form of evaluations, access to counseling, crisis care, or even basic medical needs.³¹ Additionally, DHS handles the removal of children and places them into foster care, which occurs in some instances under FINS.

However, it is difficult to pinpoint how many children enter the foster system from FINS. Until last year, the Department of Children and Family Services (DCFS) was not tracking the number of FINS children in foster care.³² Out of 5,033 youth in foster care, it is estimated that over 200 of those children came from FINS.³³ DCFS is entitled to a 72 hour hold in delinquency or dependency/neglect juvenile cases in order to assess the situation at home. FINS does not have any sort of analogous provision. In other words, removal from the home can be instantaneous and without due process, a clear violation of civil liberties of both the parent and child.

DHS wonders what FINS is actually doing. The services offered through FINS are primarily administered by DHS, with or without a court order.³⁴ Many FINS cases also could be Dependency/Neglect cases, but it is difficult to say with certainty since FINS allows immediate seizure of the child, without formal evaluations considered in a Dependency/Neglect case. More information and easier access by DHS, rather than court orders, could help families get services.

Other Service Providers

Beyond DHS, several other service providers play a role in implementing FINS to help families. The quality of services offered by the circuit courts, local communities, and private health care providers varies greatly across the state, and often runs in line with geography and income. The 20th Judicial Circuit offers a variety of services, from tutoring to parenting classes. Faulkner County offers outreach to community groups to create mentoring programs.³⁵

For the rest of the Circuit (Searcy and Van Buren Counties), resources are less available. Indeed, court-provided resources tend only to be located within highly populated counties; the rest of the jurisdiction is often left untouched. It should be no surprise then that many of the circuit courts recognized as “problematic” earlier in this report tend to possess multiple counties, especially in northeast and southeast Arkansas, where jurisdictions cover five or six counties (Figures 1, 2, and 3).

The same is true of community organizations. Populated areas, such as central or northwest Arkansas, have found it easier to start up community-based programs to help those in need. This should come as no surprise, since bigger populations generally mean higher incomes for the counties. Most counties where FINS petitions are frequently filed tend to be low-income and are sparsely populated (with some exceptions).³⁶

Private health care providers face a similar reality: the resources just aren’t there for rural areas. Service providers across the spectrum have the ability to do tremendous good in their communities, but many communities across the state lack any type of services ordered through FINS.³⁷ Without a concerted effort to fund initiatives in rural Arkansas, it is likely these areas will continue to be underserved, not because service providers do not have the desire to, but because the resources simply are not there to justify setting up shop in these communities.

Schools

FINS is considered a vital tool by school districts. Teachers do not want to get children in trouble, but FINS can open the door to countless services that can benefit the entire district.³⁸ Administrators and teachers feel constrained by mandatory reporting laws, and feel as though FINS is a way to comply with these laws. It also gives any services a chance to work before the children or their families face any punishment.³⁹

Additionally, since truancy is explicitly listed in the code as a reason to file a FINS petition, it seems

schools are within their rights to file petitions. However, administrators do concede that differing absenteeism policies across school districts can create frustration within the court system.⁴⁰ In areas where diversions have been a prerequisite before filing a regular FINS petitions, schools are adapting to the change and taking it well.⁴¹ But it is worth noting most districts do not offer any kind of diversion process for families at all.⁴²

Some districts appear to be cooperating with judges. In Pine Bluff, the school district is not permitted to file FINS petitions to deal with misbehavior at school, a practice that Judge Earnest Brown argues lowered the amount of petitions filed dramatically.⁴³ Teachers feel they are between a rock and a hard place, either under reporting or over reporting incidents. Expectations of teachers and schools when it comes to FINS are vague, much like the statute itself.

Advocates for Children and Families

Organizations that advocate on behalf of children and families find FINS to be problematic. Advocates get involved in FINS policy most often when school districts are involved.⁴⁴ In some districts, school administrators are advising parents to file FINS petitions as an avenue to acquire services for their child.⁴⁵ This has led to the concern among advocates that school districts are avoiding their obligations under The Individuals with Disabilities Education Act (IDEA) to provide special education services to a child with a disability.⁴⁶

To advocates, FINS is not an appropriate way for children to receive services in school. In fact, it appears to be a detrimental path. If a child truly requires assistance, school districts should be complying with Special Education law to evaluate if special education services can be provided through IDEA.⁴⁷ Beyond school, advocates believe many of the services offered through a FINS order could be provided without court supervision through DHS. The concept of the courts being involved does not seem like the best way to help families in need.

The Flaws of FINS

Communication needs to improve across the board, but especially between schools and the courts. There are four areas of primary concern with FINS: data gaps, the language of the statutes, access to services, and determining what would happen if FINS did not exist at all. In this section, each area will be briefly described. This will set the stage for a section of this report that presents recommendations to address the current challenges with FINS.

Data Gaps

To some, FINS is destroying the lives of families; others view FINS as a last resort to save kids' lives. These wildly different views come from a dearth of data on how FINS is actually impacting families. The lack of information contributes to the uncertainty of FINS outcomes. Special education status is not even recorded on FINS petitions and racial data is incomplete. This makes it difficult to achieve any coherent understanding of FINS. Recommendations to improve data collection methods are aimed at relieving this problem.

An Incomplete Statutory Scheme

The Juvenile Code itself offers vague notions of when a FINS case is appropriate. While the Code attempts to outline what are acceptable orders, judges have unprecedented access to the personal lives of juveniles and their families. Orders that require behavioral changes at home, rather than the issuance of services, are routinely issued. Monitoring a juvenile may be permissible under law, but the court is not supposed to serve in lieu as a parent. Civil liberties appear to take a backseat in order to accommodate judicial authority, something that should stun families and legislators alike. There are additional issues regarding who is allowed to file a FINS petition, and what their relationship to the juvenile would be. Clarifying the Juvenile Code sections on FINS, and reevaluating who should be permitted to file petitions would be excellent ways to ensure individuals are protected from archaic, paternalistic rulings.

Lack of Access to Services

Rural Arkansas faces a FINS crisis, yet services are hardly available. Especially in the Delta and northeast Arkansas, families are in dire need of assistance. Yet, services as a whole are harder to access. DHS and the courts both acknowledge that transportation particularly could become an issue, yet there is little agreement over who should be providing additional aid to subsidize transportation costs, among other things. While some point out the per person cost of expanding services in rural areas, it is impossible to deny that rural Arkansas is incapable of handling its current influx of FINS cases with the resources currently available. Finding ways to expand access to services is a must for any successful reform of FINS.

What if FINS did not Exist?

Murmurs of FINS being completely removed from the Arkansas justice system have been heard over the past few years.⁴⁸ Stakeholders from all factions have grappled with the question of whether or not FINS could have better outcomes, even if revisions to the current Juvenile Code were implemented. However, advocates for doing away with FINS must consider this: What happens to those kids?

Data suggests these youth do not stay out of court. After calculating AOC data, on average, there are 1.82 delinquency cases statewide for every FINS case.⁴⁹ Out of the 31 counties that were identified as heavily relying on FINS, 26 of them had a ratio lower than 1.82 to 1. Most notably, Pulaski County, which is pointed to as a place where FINS is virtually not used at all, has almost 23 times more delinquency cases than FINS cases.⁵⁰ Without FINS, it does not appear many children would avoid a court appearance; they would simply be moved to delinquency cases.

Improving FINS through Policy Changes

There are concrete ways FINS could be improved by either the legislature or by agency reform of current policies. Recommendations fall within one of three categories: data collection, statute reform, or improving access to services. Additionally, school districts retain the power to determine how many absences are allowable each academic year.⁵¹ Districts within the same circuit court jurisdictions currently enforce different absentee policies, creating confusion for the judges about how many days a child can miss before it warrants an intervention. Establishing a uniform, statewide policy could help clarify the definition of truancy, which could directly impact FINS outcomes.

Data Collection

1. AOC should collect special education status data, including whether or not the child has an IEP or 504 Plan. The FINS petition form should be revised to include questions asking about the special education status of a child, along with whether or not they are currently under an Individualized Education Plan (IEP) or 504 Plan. This simple reform would allow AOC to collect data to evaluate how many FINS cases involve children with disabilities. Courts would also have a better understanding of the individuals with whom they are dealing, including those children with disabilities who need and are entitled to special education from their school districts.

2. AOC should track who files FINS petitions. Certain circuit court jurisdictions already track who files FINS petitions, whether it be schools, parents, or other members of the community.⁵² Collecting this data in a more systematic manner across judicial circuits would help identify how FINS cases originate, along with equipping judges with information they can use to reach out to community members.

3. AOC should track the services being ordered and the outcomes. Services vary by county, but rarely is information kept on what services are most often

ordered by judges, nor is there any real data at the state level about the outcomes of such services. By collecting data on the effectiveness of services, statewide analysis could be conducted to see what the average length of a FINS case is, along with what services yielded positive results versus those that end in detainment.

4. AOC should create distinctions between the reasons for which FINS petitions are filed. The FINS code explicitly notes truancy and running away as reasons to file FINS cases. The third category, disobedience, is less clear. Distinguishing why FINS petitions are filed against juveniles could be helpful to better tailor services to address the critical areas of need. Judge Braswell of the 20th Judicial Circuit utilized data collection to identify that truancy was a major issue in his jurisdiction, and thanks to his data, was able to shift his attention towards school districts to reduce truancy cases coming to court.⁵³

5. Provide Risk Assessment Tools for FINS. Risk assessment surveys are used to provide a better picture of the threat a juvenile could pose in a delinquency case. But FINS cases often are not evaluating crimes, but rather serving as interventions to at-risk juveniles, primarily adolescents. Some circuit court divisions are already implementing risk assessment tools in FINS cases.⁵⁴ This should be a practice statewide.

6. AOC should improve collection of racial data. Racial data currently provided by AOC is insufficient. Almost 20 percent of FINS cases do not have an identified race. Improving data collection could help paint a better picture of who the average FINS subject is.

7. Expand funding for personnel costs to allow circuit court and AOC staffs to collect this new data. Many of these proposals for collecting new information will require hours of labor to collect and publish data at both the county and state levels. Additionally, risk assessment tools require costs to maintain them. The legislature should work with AOC and circuit court staff to devise an appropriate budget increase to expand data collection.

FINS Statutory Reform

1. Clarify the statutes to only allow school districts to file FINS petitions for truancy. School districts are relying on FINS for a way to comply with mandatory reporting. Some judges worry that FINS is being utilized by school districts to remove misbehaving students instead of handling the issue within the disciplinary procedures of the school.⁵⁵ Advocates for children and families worry that school districts are taking advantage of FINS to circumvent special education procedures and laws that would otherwise provide these services without a court order.⁵⁶ In order to uphold protections established in special education law, limitations should be placed on what a school district can file a FINS petition for.

2. Remove the “includes, but not limited to,” clause from the FINS statutes. The problematic “includes, but not limited to,” clause is what enables FINS to have a jurisdiction over literally every family in Arkansas. But the process is called Families In Need of Services. If a case is not specifically under the categories noted within the boundaries of truancy, runaways, or disobedience, the case should be tried as a delinquency or a dependency/neglect case instead. Or, if it does not fit in any of those categories, perhaps the child does not belong in court at all.

3. Bolster protections for parents in FINS. Parents are currently not entitled to a public defender in FINS proceedings. This is not appropriate, since parents can be subjected to punishments by failing to comply with FINS orders. A revision to the FINS statutes would ensure civil liberties are protected.

4. Add protections for children with disabilities. Juveniles with disabilities are not recognized at all, despite the fact FINS aims to provide services to those in need. As noted in earlier recommendations, the FINS petition form should be revised to include questions regarding special education status. Advocates argue that several FINS cases involve a child with a disability, whether it has been diagnosed or not, especially when it comes to FINS petitions originating from the schools.⁵⁷ In many of these cases, children’s

legal rights are bypassed.⁵⁸ The Juvenile Code should be amended with considerations for those with disabilities aimed at protecting them from being punished for having a disability.

5. Require diversions before truancy cases come to court. Diversions allow juveniles and their families to acquire services offered through FINS without a court order. This ensures the child will not be detained, and also saves them from having a potentially traumatic court room experience.⁵⁹ Some circuit court divisions are already requiring diversions to be utilized before accepting FINS cases based on truancy. Most notably, starting in the 2016-2017 school year, Judge Braswell in the 20th Judicial Circuit will not hear a truancy FINS case until diversion has been tried and failed.⁶⁰ This change is occurring, because according to Judge Braswell, diversions can handle many truancy cases outright.⁶¹ A statewide standard of requiring diversions before FINS for truancy could help juveniles while protecting them from jail time.

6. Remove the ability for a court to remove a child from the home with a FINS case. FINS does not require the same evaluation process to remove a child from the home. In a dependency/neglect case, DHS must have a 72 hour hold before removing the child and must conduct a home study.⁶² FINS does not have any holding period, and could remove a child immediately. During the research for this report, the standards held in delinquency and dependency/neglect cases were not scrutinized in detail. There is no justifiable reason a FINS case should be used where dependency/neglect standards already exist.

7. Re-evaluate Valid Court Order Exceptions (At least with regard to FINS). Valid Court Order Exceptions permit judges to detain status offenders under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP).⁶³ Status offenders are individuals who defy a court order. In the context of FINS cases, this often means a juvenile did not attend a court ordered program, such as counseling, tutoring, or even dinner with mom (there is no rule against that being a court order under FINS).

Regardless of the national debate on the issue, the state legislature should consider if, under any circumstance, a juvenile or their parents should be detained and kept in prison for rejecting or failing to complete successfully a service ordered in a FINS case.

Improving Access to Services

1. Fund more service providers in rural areas. As noted in section 2 of the report, rural Arkansas faces the brunt of FINS cases. Resources for services are scarce, largely due to the funding bases available in these regions. While some may argue expansion of services in low-population areas will not impact a large number of citizens, the data suggests that most of the FINS families are in these areas.⁶⁴ Expansion of services through DHS, funded by the state, could help families access the services they need.

2. Subsidize transportation costs. The absence of reliable transportation to service providers repeatedly arose as an issue during research. The statute mentions that an order for transportation be provided, but it serves as an unfunded mandate.⁶⁵ Some families have access to transportation but struggle to afford the costs of traveling across rural Arkansas to the closest service provider. Reimbursing fuel costs would be an effective way to help families access services that may be traveling close to or more than 100 miles round trip to visit their counselor, community center, or other services. Expansion of services mentioned above would also help subsidize transportation costs, by reducing travel time and distance.

3. Fund an awareness campaign. Many of these services are offered through DHS at little or no cost for the individual, and these services do not require a court order. DHS offices are scattered throughout the state. Yet, many families seem to go to the court, rather than the DHS office, to initiate the process of receiving services. DHS and the legislature should consider allocating funds to spearhead an awareness campaign to potentially draw families away from the courts and into other avenues to access services.

4. Mandate that DHS expand their transportation system. DHS currently provides transportation in urban and suburban areas to help citizens access services. While many families have access to a form of transportation, it is less certain a juvenile would have the same level of access their parents do. Helping juveniles in rural areas make it to appointments, community service, and other services could make a difference in the lives of many families. The legislature should mandate DHS expand their transportation services to more rural parts of Arkansas, and help fund this initiative.

What Do We Know?

There are thousands of families across Arkansas who could benefit from services provided through DHS and ordered through FINS. However, as it currently stands, FINS urgently needs to be re-evaluated and reformed. The statute is too vague, access to services is not possible for many, especially in rural Arkansas, and poor communication across stakeholders in the process has prevented meaningful improvements in legislation or outcomes.

Beyond the philosophical worries about the nature of FINS or the broad strokes its statute covers, there is a more dire issue of what we do not know about FINS. The state of Arkansas lacks any coherent narrative about what a “typical” FINS case looks like. Demographic data is scarce, and virtually no statewide data exists to describe the types of FINS cases being filed, their length, the services recommended, or even the outcomes of these cases.

To put it bluntly, we know almost nothing. No one can definitively state that FINS is effective or ineffective at providing services to families. Stories of saving lives and horror stories of destroying families have dominated the debate over the course of the last few years. All of these narratives are anecdotal; data is hard to come by, and everything comes from testimonies of individuals involved in the FINS process, despite the fact even the most involved individual only witnesses a small component of the overall system.

Advocates for FINS need to come to the realization that the only reason FINS continues to be left alone is because the legislature has no interest in completely abolishing FINS. If advocates truly believe FINS can make a difference, a concerted, coordinated effort should be made to demand that the legislature provide the resources necessary for AOC and the circuit courts to collect all necessary data to assess the real impact of FINS. Those opposed to FINS, on the other hand, must concede that FINS will not simply disappear. Shifting the focus to statute reform aimed at narrowing the scope of FINS would be a more tangible goal, along with pressuring proponents of the process to keep better track of the data. Without reframing the debate for both sides, FINS reform is unlikely, and the problems it aims to cure will continue to grow.

Out of all the recommendations in this report, impactful FINS reform will require immediate action on the data collection recommendations. We cannot conclusively assess the impact of FINS on Arkansas families until data collection changes are implemented and enough time has gone by to look at trends. The other reforms would have positive impacts as well; in fact, most recommendations in this report were inspired by the testimony of stakeholders from various parts of the FINS process. But the data recommendations could be a place where middle ground can be found between advocates and proponents of FINS. Without a significant overhaul in how the state collects data, we will never be able to definitively say whether or not FINS is doing what it says it will do in its name, which is helping families in need.

Notes

¹ See *Arkansas Code Annotated* § 9-27-101, *et seq.*

² See, e.g., *Arkansas Code Annotated* §§ 9-27-303(24), 9-27-306(a)(ii)(D), 9-27-320(a)(3), 9-27-312(a), 9-27-326(a)(1), 9-27-317(a), 9-27-328, 9-27-332, 9-27-333, 9-27-336(a)(2)(A).

³ *Arkansas Code Annotated* § 9-27-303(24).

⁴ *Arkansas Code Annotated* § 9-27-303(24).

⁵ *Arkansas Annotated Code* § 9-27-303 (25).

⁶ *Arkansas Annotated Code* § 9-27-303 (25).

⁷ *Arkansas Annotated Code* § 9-27-332 (3-6).

⁸ *Arkansas Code Annotated* § 9-27-333.

⁹ *Arkansas Code Annotated* § 9-27-303 (24).

¹⁰ *Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.*

¹¹ U.S. Census Bureau, “Annual Estimates of the Resident Population: Arkansas,” http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_PEPANNRES&prodType=table. (Accessed June 15, 2016).

¹² *Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.*

¹³ U.S. Census Bureau, “Income in the Past 12 Months (in 2014 inflation adjusted dollars).” American Community Survey (ACS), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1901&prodType=table (Accessed June 29, 2016).

¹⁴ U.S. Census Bureau, “Income in the Past 12 Months (in 2014 inflation adjusted dollars).”

¹⁵ U.S. Census Bureau, “Annual Estimates of the Resident Population: Arkansas.”

¹⁶ Owen, James, “A Problem Unpleasant to Mention, Easy to Postpone: Mental Health Access in Arkansas,” *Arkansas Policy Program*, February 15, 2016.

¹⁷ *Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.*

¹⁸ U.S. Census Bureau. “ACS Demographic and Housing Estimates 2010-2014.” American Community Survey (ACS). http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&prodType=table. (Accessed July 7, 2016).

¹⁹ Data on gender was also analyzed, but the disparities were not significant and the data was largely available with few unknown cases.

²⁰ U.S. Census Bureau. “ACS Demographic and Housing Estimates 2010-2014.” American Community Survey (ACS).

²¹ Hon. Judge Thomas Smith. Interview. August 5, 2016. Little Rock, AR.

²² Hon. Judge Troy Braswell, Jr. Interview. July 27, 2016. Conway, AR.

²³ Hon. Judge Earnest Brown, Jr. Interview. July 11,

2016. Pine Bluff, AR.

²⁴ Hon. Rhonda Wood, “FINS – Families In Need of Services Overview & Proceedings.” Arkansas Administrative Office of the Courts. <https://courts.arkansas.gov/sites/default/files/FINS.pdf>

²⁵ Scott Tanner. Arkansas Public Defender’s Commission. Interview. July 28, 2016. Little Rock, AR.

²⁶ *Surles v. Randolph County Circuit Court and Tim Bumpess D/B/A/ New Life Children’s Home Respondents*. 2015. Ark 221. Supreme Court of Arkansas. No. CV-15-349.

²⁷ Tanner. Interview.

²⁸ Hon. Rhonda Wood, “FINS – Families In Need of Services Overview & Proceedings.”

²⁹ Tanner. Interview.

³⁰ Hon. Rhonda Wood, “FINS – Families In Need of Services Overview & Proceedings.”

³¹ Mischa Martin. Director of Foster Care Services. Interview. August 17, 2016. Little Rock, AR.

³² Martin. Interview.

³³ Martin. Interview.

³⁴ Martin. Interview.

³⁵ Braswell. Interview.

³⁶ U.S. Census Bureau, “Income in the Past 12 Months (in 2014 inflation adjusted dollars).”

³⁷ Braswell. Interview.

³⁸ Dr. Richard Abernathy. Executive Director of Arkansas Association of Educational Administrators. Interview. July 26, 2016. Little Rock, AR.

³⁹ Abernathy. Interview.

⁴⁰ Abernathy. Interview.

⁴¹ Braswell. Interview.

⁴² Abernathy. Interview.

⁴³ Brown. Interview.

⁴⁴ Cassie Howell, Attorney at Disability Rights Arkansas Inc. Interview. October 21, 2016. Little Rock, AR.

⁴⁵ Howell. Interview.

⁴⁶ Howell. Interview.

⁴⁷ Howell. Interview.

⁴⁸ Tanner. Interview.

⁴⁹ Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.

⁵⁰ Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.

⁵¹ “Parents Confused Over New State School Attendance Law,” KHBS, KHOG-TV. September 27, 2011. [http://](http://www.4029tv.com/Parents-Confused-Over-New-State-School-Attendance-Law/5248378)

www.4029tv.com/Parents-Confused-Over-New-State-School-Attendance-Law/5248378

⁵² Braswell. Interview.

⁵³ Braswell. Interview.

⁵⁴ Braswell and Smith. Interviews.

⁵⁵ Brown. Interview.

⁵⁶ Howell. Interview.

⁵⁷ Howell. Interview.

⁵⁸ Howell. Interview.

⁵⁹ Tanner. Interview.

⁶⁰ Braswell. Interview.

⁶¹ Braswell. Interview.

⁶² Martin. Interview.

⁶³ Coalition for Juvenile Justice. “Use of the Valid Court Order Fact Sheet.” www.juvjustice.org/sites/default/files/...files/State%20VCO%20usage%202.18.15.pdf

⁶⁴ Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics.

⁶⁵ Hon. Rhonda Wood, “FINS – Families In Need of Services Overview & Proceedings.”

Bibliography

4029 TV. “Parents Confused Over New State School Attendance Law,” KHBS, KHOG-TV. September 27, 2011. <http://www.4029tv.com/Parents-Confused-Over-New-State-School-Attendance-Law/5248378>

The Associated Press, “Tom Cotton holds up juvenile justice overhaul in Senate,” Arkansas Online. February 12, 2016. <http://www.arkansasonline.com/news/2016/feb/12/tom-cotton-holds-juvenile-justice-overhaul-senate/>

Arkansas Administrative Office of the Courts, Office of Research and Justice Statistics. Annual Reports 2011-2015. <https://courts.arkansas.gov/forms-and-publications/annual-reports>

Arkansas District Court Clerks Association. “Arkansas Code (Annotated).” <http://www.adcca.org/arkansas-code-annotated/>

Coalition for Juvenile Justice. “Use of the Valid Court Order Fact Sheet.” www.juvjustice.org/sites/default/files/...files/State%20VCO%20usage%202.18.15.pdf

Hughes, D’lorah. “Things to Know Before You

- Go to Juvenile Court in Arkansas.” Arkansas Law Notes. University of Arkansas Law. October 9, 2010. <http://media.law.uark.edu/arklawnotes/2010/10/09/things-to-know-before-you-go-to-juvenile-court-in-arkansas/>
- Owen, James, “A Problem Unpleasant to Mention, Easy to Postpone: Mental Health Access in Arkansas,” Arkansas Policy Program, February 15, 2016.
- U.S. Census Bureau. “ACS Demographic and Housing Estimates 2010-2014.” American Community Survey (ACS). http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&prodType=table. (Accessed July 7, 2016).
- U.S. Census Bureau, “Annual Estimates of the Resident Population: Arkansas,” http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=PEP_2015_PEPANNRES&prodType=table. (Accessed June 15, 2016).
- U.S. Census Bureau, “Income in the Past 12 Months (in 2014 inflation adjusted dollars).” American Community Survey (ACS), http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1901&prodType=table (Accessed June 29, 2016).
- Washington County, AR. “FINS FAQ.” <https://www.co.washington.ar.us/index.aspx?page=65>. (Accessed March 31, 2016).
- Wood, The Hon. Rhonda, “FINS – Families In Need of Services Overview & Proceedings.” Arkansas Administrative Office of the Courts. <https://courts.arkansas.gov/sites/default/files/FINS.pdf>.



DISABILITY RIGHTS ARKANSAS (DRA) is a private, nonprofit agency with offices in Little Rock, Arkansas. Since 1977, the Governor of Arkansas has designated DRA the independent Protection and Advocacy system for persons with disabilities in Arkansas. DRA operates under authority outlined in federal law, is funded primarily through federal grants and is governed by a Board of Directors. DRA collaborates with other disability rights and civil rights organizations and agencies, the private bar and legal services to accomplish its goals and objectives.

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