



Iowa

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February 3rd, 2022

Scott County Board of Supervisors
Administrative Center
600 W. 4th Street
Davenport, IA 52801-1003
Sent via U.S. mail and email at board@scottcountyiowa.gov

Re: Scott County Board of Supervisors' Planned Use of ARPA Funds
to Build a New, Expanded Juvenile Detention Center

Dear Scott County Board of Supervisors:

We, the undersigned civil rights, social justice, and community-based organizations, are writing to express our deep concern with the Scott County Board of Supervisors' proposed plan to use part of the federal government's allocation to Scott County of the American Rescue Plan Act (ARPA) funds to build a new, expanded juvenile detention center. We understand that you have not voted to give final approval for this proposal but that you have voted to preliminarily approve it.¹ Because the use of ARPA funds to build a new juvenile detention facility is

¹ Scott County Board of Supervisors, Scott County Coronavirus State and Local Fiscal Recovery Funds—American Rescue Plan Act (ARPA) (October 11, 2021), available at https://www.scottcountyiowa.net/board/pub/enclosures/2021/20211011_Special_Committee_of_the_Whole_9AM_ARPA_Discussion_IN_PERSON_AND_VIRTUAL/Scott%20County%20Coronavirus%20State%20and%20Local%20Fiscal%20Recovery%20-%20BOS%20update%2010-11-21.pdf (last visited January 20, 2022), (updated October 25, 2021), available at https://www.scottcountyiowa.net/board/pub/enclosures/2021/20211025_Special_Committee_of_the_Whole_ARPA_Discussion_9AM_IN_PERSON_AND_VIRTUAL/Scott%20County%20Coronavirus%20State%20and%20Local%20Fiscal%20Recovery%20-%20BOS%20update%2010-25-21.pdf (last visited January 20, 2022), (updated November 8, 2021), available at https://www.scottcountyiowa.net/board/pub/enclosures/2021/20211108_Special_Committee_of_the_Whole_ARPA_Discussion_9AM_IN_PERSON_AND_VIRTUAL/00_Agenda_with_Presentation.pdf (last visited January 20, 2022), and (updated November 22, 2021), available at https://www.scottcountyiowa.net/board/pub/enclosures/2021/20211122_Special_Committee_of_the_Whole_9AM

unlawful and will only exacerbate the racial disparities in Iowa’s juvenile delinquency system, we are asking you to vote not to approve this proposal and take prompt remedial action to redirect these funds as necessary. They may not be used to build a new facility to expand juvenile detention.

Using ARPA funds to build a new, expanded juvenile detention center that predates the pandemic would be unlawful. The planned use of funds violates the purpose and the express language of both the Department of Treasury’s interim and final rules. Misusing ARPA funding for the new, expanded juvenile detention center exposes the county to the serious risk of federal enforcement action requiring it to reimburse the Treasury Department.

In addition, building a new, expanded juvenile detention center is bad public policy. Nationwide, in Iowa, and in Scott County, a Black child is disproportionately more likely to face juvenile detention than a white child.² Expanding juvenile detention in Scott County will only exacerbate the existing crisis. It is also against the recommendation of state officials and national juvenile justice experts. Best practice is to focus new dollars and reforms on preventing children from entering the juvenile justice system in the first place, not to increase the incarceration of children.

**Permitted Uses of ARPA Funds Do Not Include Building a New,
Expanded Juvenile Detention Facility**

On March 11, 2021, the ARPA was signed into law. ARPA established the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund. These funds were “intended to provide support to State, local, and Tribal governments . . . in responding to the impact of COVID-19 and their efforts to contain COVID-19 on their communities, residents, and businesses.”³ The federal government has allocated ARPA funds to states, counties, and cities to ameliorate the effects of the COVID-19 pandemic. Scott County was allocated \$33.6 million in ARPA funds for this purpose. The Scott County Board of Supervisors has proposed to use a significant portion of the funds to build a new, expanded juvenile detention center. The proposal is to use anywhere between \$4.5 to \$7.5 million in ARPA funds for the juvenile detention center.

Before the COVID-19 pandemic, Scott County had identified and contemplated building a new, expanded juvenile detention center. In 2019, the Scott County Board of Supervisors hired Wold Architect & Engineers (“Wold”) to complete an assessment of the juvenile detention center. Wold’s assessment recommended expansion of the current juvenile detention center or building a new, expanded juvenile detention center to meet projected future needs. Wold estimated the need to increase beds from 16 to 64 beds by the year 2037. Directing ARPA funds

[ARPA Discussion IN PERSON AND VIRTUAL/ARPA%20Projects%20Priority%20Listing%2011-22-21%20Post%20meeting.pdf](#) (last visited January 20, 2022).

² Recently, the Chief Justice Christensen of the Iowa Supreme Court established a Juvenile Justice Task Force, and the committee is tasked with addressing the juvenile justice system’s racial disparities and ultimately issuing a report with its findings later this year.

³ Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (published May 17, 2021), available at <https://www.federalregister.gov/documents/2021/05/17/2021-10283/coronavirus-state-and-local-fiscal-recovery-funds> (last visited January 20, 2022).

to a plan to build a new, expanded juvenile detention center that predates the pandemic is an inappropriate use of ARPA funds, which were intended to provide support for local governments in responding to the impact of COVID-19 and their efforts to contain the virus.

The planned use of funds also violates the express language of the Department of Treasury's regulations governing the use of ARPA funds. On May 17, 2021, the Department of Treasury released the Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Recovery Fund established under the ARPA. Under the Interim Final Rule, the ARPA funds are limited to four categories of eligible uses:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; (c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and To make necessary investments in water, sewer, or broadband infrastructure.⁴

Eligible uses under (a) include “support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities),” “ventilation improvements in congregate settings,” and “[c]apital investments in public facilities to meet pandemic operational needs.”⁵

Building a new, expanded juvenile detention center does not fall under the any of the eligible uses of ARPA funds. The only eligible use that could arguably apply would be under (a) “capital investments in public facilities to meet pandemic operational needs”; however, the Final Rule forecloses the use of ARPA funds to build a new, expanded juvenile detention center.

On January 6, 2022, the Department of Treasury released the Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Recovery Fund established under the ARPA. Under the Final Rule, the Treasury Department clarifies that some capital expenditures may not be eligible because the use of ARPA funds “to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic.”⁶

The Interim Rule will remain in effect until April 1, 2022, when the Final Rule becomes effective.⁷

⁴ Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (published May 17, 2021), available at <https://www.federalregister.gov/documents/2021/05/17/2021-10283/coronavirus-state-and-local-fiscal-recovery-funds> (last visited January 20, 2022).

⁵ *Id.*

⁶ Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Final Rule (published January 6, 2022), available at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf> (last visited January 20, 2022).

⁷ *Id.*

Constructing a new, expanded juvenile detention center clearly is a prohibited capital expenditure use of ARPA funds under the Final Rule. The rules specifically provide:

[C]onstructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy. In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than \$1 million, would generally not be a proportional response to mitigate or prevent COVID-19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of the disease.”⁸

Alternatives include “personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.”⁹

Unlawful use of ARPA funds is subject to recoupment by the Department of Treasury.¹⁰ Therefore, Scott County’s expenditure of ARPA funding for the new, expanded juvenile detention center exposes the county to a substantial risk that the county would need to reimburse the Treasury Department the misused funds.

Building a New, Expanded Juvenile Detention Center Would Exacerbate Existing Racial Disparities at the Expense of Better Alternatives to Reduce Juvenile Delinquency Overall

Building a new juvenile detention facility in Scott County will only exacerbate an existing crisis when it comes to racial disparities in our juvenile delinquency system. Iowa’s racial disparity in juvenile detention is the eighth highest in the nation.¹¹ In Scott County, 1 out of every 22 Black children is detained, versus 1 out of every 457 white children.¹² Nationally Black children are more than four times as likely to be detained or committed in juvenile

⁸ *Id.*

⁹ *Id.*

¹⁰ See Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (published May 17, 2021), available at <https://www.federalregister.gov/documents/2021/05/17/2021-10283/coronavirus-state-and-local-fiscal-recovery-funds> (last visited January 20, 2022) and Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Final Rule (published January 6, 2022), available at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf> (last visited January 20, 2022).

¹¹ Josh Rovner, *Black Disparities in Youth Incarceration*, The Sentencing Project (July 15, 2021), available at <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> (last visited January 20, 2022).

¹² Tim Barton, *How Should Scott County Address Juvenile Crime? Some Say Build a New Detention Center. Others Advocate for More Investment in Rehabilitative Services*, Muscatine Journal (Nov. 1, 2021, updated Dec. 8, 2021), available at https://muscatinejournal.com/news/local/govt-and-politics/how-should-scott-county-address-juvenile-crime-some-say-build-a-new-detention-center-others/article_42b6f24a-0438-5146-8109-daa9c9dc3943.html (last visited January 20, 2022).

detention facilities than their white peers using data collected in 2019.¹³ Forty-one percent of children in juvenile detention are Black even though Black youth comprise only 15% of youth nationally.¹⁴ In Iowa, the Black juvenile placement rate was 721 per 100,000 versus the white juvenile placement rate of 83 per 100,000.¹⁵ The rate at which Black children are placed in detention in Iowa was more than double the national average: Black children are about 8.7 times as likely as their white peers to be placed in juvenile detention.¹⁶

A report issued by the Iowa Department of Human Rights in November of 2020 found that Iowa's juvenile justice system increases racial disparities at multiple decision points in the juvenile justice system, including referring children to the juvenile justice system, detaining them, and waiving them to adult court.¹⁷ In 2019, Black children aged 10 to 17-years-old were 6.5 times more likely to enter the juvenile justice system for simple misdemeanor offenses compared with white children.¹⁸ Between 2015 and 2019, the number of Black children placed in juvenile detention for probation violations increased 31% while the number of white children decreased by 28.4%.¹⁹ Black children in Iowa were also 9.8 times more likely to have their case waived to adult court compared with white children.²⁰ Finally, Black children were 14.3 times more likely to have their case directly filed in adult court compared with white children.²¹

Rather than invest millions of dollars in expanding Scott County's ability to warehouse children who enter the juvenile delinquency system in Iowa, Scott County should focus on reducing the overall number of children in the system and reducing racial disparities. These strategies include adopting racial impact statements for new policies, better data collection and dissemination, and critical community investments in mental health counseling, violence prevention, and restorative justice.²²

¹³ Josh Rovner, *Black Disparities in Youth Incarceration*, The Sentencing Project (July 15, 2021), available at <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> (last visited January 20, 2022).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Iowa Department of Human Rights, *Racial Disparities—An Analysis of Three Decision Points in Iowa's Juvenile Justice System* (November 2020), available at <https://humanrights.iowa.gov/sites/default/files/media/Racial%20%20Disparities%20-%203%20Decision%20Points%20in%20JJ%2011%2023%2C%202020.pdf> (last visited January 20, 2022).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Josh Rovner, *Racial Disparities in Youth Incarceration Persist*, The Sentencing Project (Feb. 3, 2021), available at <https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/> (last visited January 20, 2022). Recently, Chief Justice Christensen of the Iowa Supreme Court established a Juvenile Justice Task Force, which she tasked with undertaking a holistic and comprehensive review of the Iowa juvenile justice system, including its racial disparities, and ultimately issuing a report with its findings in November of 2022. This report will hopefully offer additional strategies to reduce Iowa's juvenile delinquency disparities.

State officials and national juvenile justice experts do not recommend building new and expanded juvenile detention centers. The best practice is prevention of juveniles from entering the juvenile justice system, not incarcerating juveniles.

Scott County is already far out of step in adopting best practices to reduce juvenile delinquency. From 2006 until 2019, juvenile arrests nationally and in Iowa have decreased by about 50%.²³ In addition, juvenile incarceration nationally and in Iowa has also declined by about 50% from 2001 to 2015.²⁴ Scott County's youth population, defined as 10 to 17-years-old, is also in decline.²⁵ However, the youth incarceration rate in Iowa and in Scott County is higher than the national average: In Iowa, the rate is 133 children incarcerated for every 100,000 children while nationally it is 114 children for every 100,000 children.²⁶ Furthermore, Iowa ranks third in the nation on a per-capita basis in terms of the number of juveniles waived into adult court.²⁷ For the past four years, Scott County has waived more juveniles to adult court than Polk County, which has three times the juvenile population.²⁸ Of the juveniles waived into adult court, 28% received a sentence that was longer than five years.²⁹ This means that most of these juveniles could have been retained by the juvenile justice system and received rehabilitative services.³⁰ Building a new, oversized juvenile detention facility would only fuel the high number of Scott County youth waived into adult court.³¹

Andrew Allen, chairperson of Iowa's Juvenile Justice Advisory Council, which is tasked with overseeing Iowa's use of federal grants under the Juvenile Justice & Delinquency Prevention

²³ U.S. Department of Justice, *The Decline in Arrests of Juveniles Continued Through 2019* (November 2020), available at <https://www.ojp.gov/library/publications/decline-arrests-juveniles-continued-through-2019> (last visited January 20, 2022).

²⁴ Jose Olivares, *Fewer Youths Incarcerated, But Gap Between Blacks and Whites Worsens*, National Public Radio (Sept. 27, 2017), available at <https://www.npr.org/2017/09/27/551864016/fewer-youths-incarcerated-but-gap-between-blacks-and-whites-worsens> (last visited January 20, 2022).

²⁵ Tim Barton, *How Should Scott County Address Juvenile Crime? Some Say Build a New Detention Center. Others Advocate for More Investment in Rehabilitative Services*, Muscatine Journal (Nov. 1, 2021, updated Dec. 8, 2021), available at https://muscatinejournal.com/news/local/govt-and-politics/how-should-scott-county-address-juvenile-crime-some-say-build-a-new-detention-center-others/article_42b6f24a-0438-5146-8109-daa9c9dc3943.html (last visited January 20, 2022).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* See also Kate Payne, *Scott County Pushes Ahead with a Proposal to Use Pandemic Funds to Build a Juvenile Detention Center, Despite Community Opposition*, Iowa Public Radio (Nov. 11, 2021), available at <https://www.iowapublicradio.org/ipr-news/2021-11-11/scott-county-pushes-ahead-with-a-proposal-to-use-pandemic-funds-to-build-a-juvenile-detention-center-despite-community-opposition> (last visited January 20, 2022) (stating that between 2016 and 2019 Scott County waived more than 500 juveniles to adult court, which is dramatically higher than Polk County, which waived 69 juveniles to adult court during the same timeframe, despite having three times the youth population).

²⁹ Tim Barton, *How Should Scott County Address Juvenile Crime? Some Say Build a New Detention Center. Others Advocate for More Investment in Rehabilitative Services*, Muscatine Journal, (Nov. 1, 2021, updated Dec. 8, 2021), available at https://muscatinejournal.com/news/local/govt-and-politics/how-should-scott-county-address-juvenile-crime-some-say-build-a-new-detention-center-others/article_42b6f24a-0438-5146-8109-daa9c9dc3943.html (last visited January 20, 2022).

³⁰ *Id.*

³¹ *Id.*

Act of 1974, has stated that a new, expanded juvenile detention center is not necessary.³² According to Allen, a report from the Iowa Department of Human Rights' Criminal and Juvenile Justice Planning Division shows there is plenty of existing space to house juvenile offenders across the state.³³ Detention beds across the state of Iowa are at around 50% capacity.³⁴ Even with the recent change of housing juvenile offenders waived to adult court in juvenile detention facilities as opposed to adult jails, Iowa would still only be at about 60% of bed capacity.³⁵

Currently, Scott County has several juvenile detention diversion programs, which are all successful in lowering the incidence of juvenile delinquency in Scott County. These community-based diversion programs include the In-Home Detention Program, the Enhanced In-Home Detention Program with GPS, the Youth Transition Decision Making Program, and the Auto Theft Accountability Program. The new Youth Assessment Program, which is a collaboration with the county, the City of Davenport, the City of Bettendorf, and United Way of the Quad Cities, has receiving approval and funding from stakeholders and once fully operational will connect youth and their families to preventative behavioral and mental health services to lower juvenile delinquency.

These are the types of alternatives to incarceration which Scott County should be investing in rather than expanding its capacity to house children in detention.

Request for Action

Scott County's proposed use of ARPA funds to build a new, expanded juvenile detention center violates the express terms of Department of Treasury rules. Furthermore, building a new, expanded juvenile detention center is out of step with national and statewide juvenile justice trends and would exacerbate the existing racial inequities in the juvenile justice system.

We respectfully ask that you vote not to approve the use of ARPA funds for this purpose and take any prompt remedial action necessary to revoke approval of using ARPA funds for this purpose. If you have any questions about this request, please contact Pete McRoberts at pete.mcroberts@aclu-ia.org.

Should you vote to give final approval to the use of ARPA funds to build a new, expanded juvenile detention center, we will take action to notify the Secretary of the U.S. Department of Treasury and Office of Inspector General reporting the misuse of ARPA funds to build a new, expanded juvenile detention facility, in violation of the law.

³² Tim Barton, *Scott County Moves Ahead with \$16.8M Detention Center State Advisory Board Says Is Unneeded*, Quad-City Times (June 10, 2021, updated Aug. 13, 2021), available at https://qctimes.com/news/local/govt-and-politics/scott-county-moves-ahead-with-16-8m-detention-center-state-advisory-board-says-is-unneeded/article_36c62195-0166-58fd-be85-780d789ab16b.html (last visited January 20, 2022).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

Sincerely,

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