



**Texas Juvenile Justice Issues:
Youth in the Adult System,
Community Corrections,
and the School-to-Prison Pipeline**

Texas Senate Committee on Criminal Justice

Interim Charges, #5, #8, #9

April 29, 2010

Chairman Whitmire and members of the Committee, I am Jodie Smith of Texans Care for Children. Thank you for this opportunity to provide testimony today. Texans Care for Children is a statewide nonpartisan, nonprofit advocacy organization dedicated exclusively to the children of Texas. We look to our broad base of community-based experts—our partners and 220 members throughout the state who together represent thousands of Texas children—to inform our work and help us in developing our legislative agenda. We also co-convene the Texas Juvenile Justice Roundtable with the Juvenile Law Section of the State Bar of Texas. In addition to juvenile justice, our areas of focus are: family economic security; infant, child and maternal health; children’s mental health; and child welfare.

I. Charge #5: Youth in the Adult System

Trends in Adult Certification of Juveniles

Adult certifications of juveniles in Texas increased approximately 40 % in 2005 and have fluctuated each year since then. Number of adult certifications of juveniles in Texas (2009 data is still being finalized):

- 2005 → 160
- 2006 → 229
- 2007 → 203
- 2008 → 245
- 2009 → 225

The available data does not allow one to determine whether decreases in certifications are explained by decreases in the overall violent crime rate or by a decrease in the number of certifications as a percentage of convictions. Of youth who are certified as adults, 10% of youth were in the jail system, 50% in state prison, and 40% on adult probation. Youth are certified for even relatively minor crimes, including property and drug-related crimes, and some youth are in state jails for committing a state jail offense.

Harris, Dallas, and Bexar Counties are the largest contributors to certifications at 34%, 14%, and 6% respectively. Jefferson County, a relatively small and rural county, certifies a disproportionate number of youth relative to its population. Most certified youth are 17 years old (31%) while 16-year-olds make up 41%, collectively 72% of all youth certified. The racial demographics of youth certified reflect

disproportionate minority contact (DMC), which is important given the federal Juvenile Justice Delinquency Prevention Act (JJDP) requirements concerning DMC reduction. DMC reduction provisions stand a good chance of being enhanced in the ongoing JJDP reauthorization process.

Hispanic → 42%

African American → 38%

White → 19%

Youth in TDCJ

The Texas Department of Criminal Justice (TDCJ) currently has just over 100 youth in prison—90-100 males and 3-4 females. The Clemens unit in Brazoria houses males while the Hilltop unit in Gatesville houses females. The relatively small number of young offenders, especially girls, in TDCJ raises concerns about their isolation and their access to services, including education.

The Youthful Offender Program at TDCJ, called COURAGE, is available to some youth up to age 18. About 2/3 of all youth age 14 to 17 are in the Youthful Offender Program, averaging about 6 months in the program. The remaining youth are in the general population, state jails, administrative segregation, or in special medical care. Although youth are mostly kept separately from adults, youth and adults attend classes together. Youth are also under the same disciplinary code as adults. If they violate any part of the code, the disciplinary protocol is the same for youth and adults. Not all youth in TDCJ attend school—there is currently a wait list. Given the lack of access to education, the lack of separation from adult offenders, housing conditions built for adults, lack of developmentally-appropriate conditions and treatments, and the lack of outcomes-based effectiveness measures for Youthful Offender Programming, placement at TDCJ and the Youthful Offender Program is not in the best interest of Texas youth or in protecting Texas communities from repeat offenders.

Considerations for Reform

Children have unique differences and needs from adults and as a result, should be kept physically separate from them. Juveniles transferred to adult court can be housed with adult inmates, which greatly increases their chance of suicide and assaults. Because their brains are still forming, children are less culpable than adults, and are more likely to be successfully rehabilitated.

Texans Care hosted a convening of the Juvenile Justice Roundtable in December 2009 to increase understanding of these issues and to identify recommendations. As follow up, we are convening a small group next week to further refine recommendations to this committee and the 82nd Texas Legislature. Participating in that discussion will be juvenile judges, an academic researcher, a juvenile prosecutor and juvenile defender from the Juvenile Law section of the State Bar of Texas, correctional professionals, and advocates. Approaches under consideration:

1. House youth at juvenile detention and juvenile secure facilities. Currently, once a youth is certified as an adult, the youth is legally considered an adult, therefore making it illegal to place that youth/certified adult in a juvenile facility. Alternatively, once youth are convicted as adults, they could be housed in a TYC facility in conjunction with a judicial review at 18-19 years of age regarding transfer to TDCJ. This would require a change in state statute. The age to which a youth is allowed to stay at a TYC facility could be raised to 21 or 23, as other states do. Several other states are taking this approach—West Virginia and Kentucky now hold youth in juvenile detention facilities rather than adult detention facilities, and just this month, Virginia's governor signed a new law to keep children and youth out of adult jails unless a judge determines that they are a safety risk in a juvenile detention facility.

2. Some youth who would otherwise be certified as adults could instead be sent to the TYC Capital Offenders program, which has received national recognition and has been proven to reduce recidivism. The program is largely based on cognitive, psycho-social techniques and is best suited to determinate sentence youth with average to above average intellectual functioning, and good verbal functioning. The program is considered intense and involves developing peer to peer and peer to staff relationships, which are critical since the program requires youth to utilize high levels of empathy and self-regulation. Role play and redirected behavior are components of the program. Most crimes committed by youth in the program involve murder.

3. Place more emphasis on determinate sentencing. With determinate sentencing or a blended sentence, youth have hope and an opportunity for review before entering into an adult system. Adolescents perceive time to be longer than adults, meaning that a 5-10 year sentence can seem like a lifetime to a youth. The hope inherent in a blended sentencing approach can be a critical factor in a youth's rehabilitation and ability to work toward a future where he or she is a self-sufficient and productive member of the community.

We will be working with the small group on this issue next week and will share our recommendations with this committee.

II. Charge #8: Community Corrections in the Texas Juvenile Justice System

In an effort to reduce the statewide number of commitments to the Texas Youth Commission (TYC), the 81st Legislature appropriated \$45.7 million to the Texas Juvenile Probation Commission (TJPC) for the 2010-2011 Biennium. TJPC was directed to disperse the money to juvenile probation departments to increase the resources available to keep adjudicated youth in local programs, supporting a decrease in the number of youth committed to TYC.

Funding Summary for 2010

- Total Amount of Available Grant C Funding = \$19,122,900
- Total Approved Allocations = \$17,085,500
- Largest amount approved = \$4,139,100 (Harris)
- Smallest = \$12,500 (60 Counties)
- Total Number of Local Juvenile Probation Departments in Texas = 165
- Departments that Accepted Grant C Funds = 144
- Departments that Declined Funding = 21

Each juvenile probation department was given a cap on the number of youth they could commit to TYC based on the department's current and historical TYC commitments, with grant funds based on the commitment cap.

- 60 departments were approved for \$12,500
- 42 departments were approved for \$25,000
- 17 departments were approved for \$51,100
- 46 departments were approved for \$102,200 or more

Texans Care's Monitoring and Independent Research

Texans Care saw great potential in the 81st Legislature's allocation of additional resources to counties for juveniles. We have monitored the Grant C process and outcomes to date in order to assure that Texas youth and communities are receiving maximum benefit from the Legislature's investment. We have been collecting data from both TJPC and local juvenile probation departments. We focused our interviews on counties that declined funding, those that received the most funding, and those who submitted proposals for mental health services. In our interviews with juvenile chiefs, we inquired about the following:

- Programs and services in each department's Grant C proposal.
- A description of the residential or supervision services proposed.
- Proposed services that are new, in a pilot phase, or based on research.
- The number of juveniles impacted by each department's proposal.
- If applicable, the amount of Grant C funds directed to mental health services, a description of funded mental health services, and feedback about connecting youth to TCOOMMI.
- How, if at all, this funding could be more useful in the future.
- The rationale for each juvenile board's decision to accept or decline funds.

Common Themes

Though our data collection continues, we have preliminary findings to share with you today.

#1 Some Juvenile Boards Have Concerns about How Grant C Impacts Judicial Decisions

Juvenile probation departments are governed by the local juvenile probation board, many of which have judges as members. The decision to accept or decline Grant C funds was up to those board members, and the opinions of board members and department chiefs were not always in line with one another. In at least some counties that accepted the funds and some that did not, there was judicial concern about the potential of Grant C funds affecting judicial decision making and inappropriately influencing adjudication proceedings.

#2 Mental Health Services are a Priority for Almost all Counties

Regardless of a department's decision to request mental health services, many commented that mental health services are the number one priority for them. Counties seem to be integrating a therapeutic approach into their supervision, so the need for counselors, psychologists, and various mental health services is increasing. Local juvenile probation departments are serving youth whose needs are more substantial than in the past, especially with Grant C funds that target youth who are TYC-eligible.

#3 Relationships with Local MHMR Centers Impact Grant C Outcomes

Counties that report a good existing working relationship with their local Mental Health and Mental Retardation Center (MHMR) had minimal negative feedback about the process of connecting youth with TCOOMMI, as the Grant C conditions require. Counties that did not have a robust relationship with the MHMR or that have a historically difficult relationship with the local MHMR reported frustration with the requirement to use TCOOMMI/MHMR as the vendor for youth services under Grant C. Some MHMRs do not provide the variety of specialized services that some probation departments need. We also learned that the paperwork required for contracting with TCOOMMI is at times delaying implementation of Grant C proposals. Some departments refrained from submitting mental health proposals because they did not want to secure services through MHMR/TCOOMMI.

#4 Grant C Funds are Supporting Residential Placement, often through Contract Care

Of the 144 juvenile departments receiving Grant C funds, 110 of them are using funds towards residential services. TJPC's written guidelines on residential services under Grant C leave room for multiple interpretations—the guidelines say that the focus of the funds is not residential placement *and* that the grant funds can be used for residential programs. Defining what constitutes residential services in different counties was difficult, because the requested funds for residential services are often going toward contractors, even in counties that also operate their own residential facilities. Some residential placement facilities offer specialized treatment and programming; others simply house youth. It is not yet possible to identify whether the counties or their contractors are using evidence-based practices, though residential supervision itself is not evidence-based.

#5 Delivery of Funding is Delayed and Inconsistent

Interviews with the counties indicated that the actual receipt of Grant C funds was delayed across the board. The grant went into effect September 1, 2009. Some counties received funds in December. At least one county had yet to receive approved funds, as of our last contact. Counties are unaware of the reason for the delay and some feel that they may not receive the full amount allocated to them before the fiscal year ends.

#6 Counties are Concerned about the Future of Grant C

Overall, counties appreciate the funds, but are strongly skeptical about the permanency of the funds. The funds will be more useful to their communities if they are sustainable. Counties are concerned that the Legislature will cut the funds, as counties have seen with prior community corrections funds. County budgets, in many cases, will not be able to support programs begun with Grant C funds if the funding is discontinued or reduced.

Current Budget Reductions

Texans Care is concerned about the impact of 2010-2011 budget cuts on many programs for children and youth, including the Grant C Commitment Reduction Funds. For FY 2010, the approved budget reduction will come both from TJPC's unallocated Commitment Reduction Funds and from cuts to local juvenile probation departments. In FY 2011, TJPC budget reductions will come from Commitment Reduction Funds—local juvenile probation departments will not have access to some or all of the funds the Legislature appropriated in the current budget.

We continue to gather information on the progress of community corrections in our juvenile probation system, and look forward to making recommendations to this committee as implementation progresses.

III. Charge #9: The School-to-Prison Pipeline

Texas Appleseed has done wonderful, detailed research in this area, on which we and many others depend. The Public Policy Research Institute at Texas A&M is also working with the Legislative Budget Board to analyze school discipline data at a district and statewide level. We look forward to continued research, greater transparency, and increasing understanding of the Texas school discipline data.

What is now known about the discipline environment in Texas schools is that district practices vary widely. For example, disrupting a classroom (which can include things such as swearing or chewing gum in class, depending on the district) could be handled by a classroom teacher in some districts and could result in expulsion or a criminal ticket in another district. Some districts expel students or criminalize them (through ticketing) many times more often than other districts. Further, neither districts

themselves nor parents have access to basic information about how districts compare in discipline responses.

School police officers have the responsibility of keeping schools safe from violence. For many, their time is used primarily to handle violations of school discipline policies rather than violent crime. Further, when a school police officer issues a criminal ticket to a child or youth, the city courts that handle the tickets do not use a normal court process involving a defense attorney, prosecuting attorney, judge, or jury. They can, but in practice, they do not. This means that Texas children and youth do not in practice have basic due process to resolve criminal charges they are subject to based on school discipline practices.

A very helpful development in this field is school-wide Positive Behavioral Support (PBS), an evidence-based framework effective at reducing disciplinary incidents, increasing a school's sense of safety, and improving academic outcomes. PBS is also the recommended intervention for dealing with challenging behavior in children with disabilities. The single greatest predictor of future incarceration is a history of disciplinary referrals at schools. Texas needs a school discipline environment that does not make criminals out of youth who are doing what they are developmentally driven to do—establishing independence and learning to speak for themselves. Our valuable criminal justice resources should be redirected into things that protect the public from violent crime, while our teachers and principals need sufficient resources and training—such as school-wide PBS—to manage students in need of behavioral interventions.

Additionally, it is critical to respond immediately when a child with unmet mental health needs or disabilities has a crisis at school. This is key to preventing unnecessary juvenile justice system involvement. Mobile Crisis Units, or Crisis Intervention Teams, in some communities provide immediate access to assessment and crisis-resolution services wherever the person in crisis is located. Crisis Intervention Teams can be effective in the school environment and are an important tool in the school discipline continuum.

Recommendations

Texans Care recommends that the 82nd Legislature:

- Require school districts to implement school-wide Positive Behavioral Supports.
- Require TEA to share data with school districts that allow them to compare their disciplinary referral data against other school districts.
- Require school districts that disproportionately refer students of color or special education students to develop a remediation plan.
- Eliminate “serious and persistent misbehavior” in a DAEP as grounds for discretionary expulsion and for referral to juvenile court as a Child in Need of Supervision (CINS) offense.
- Support keeping children in the community by making Mobile Crisis Teams available on school campuses.

Thank you for your time and for your commitment to the children and youth growing up in this state. If you have any questions, please contact me or the staff of Texans Care for Children at 512.473.2274.

Respectfully,
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