



## **Committee on Criminal Jurisprudence**

March 25, 2014

### **INTERIM CHARGE: Study the classification of 17-year-olds as adults in the criminal justice system of Texas.**

Thank you for this opportunity to provide testimony. I am Lauren Rose, Juvenile Justice Policy Associate with Texans Care for Children, a nonprofit organization that works solely to improve outcomes for Texas children through policy change. We come by our recommendations and policy positions through active dialogue with our network of members throughout the state who together represent thousands of Texas Children. We also co-convene various stakeholder groups which bring together a wide range of organizations, families and advocates around our areas of focus: early opportunity; infant, child and maternal health; children's mental wellbeing; child protection; and juvenile justice including the Texas Juvenile Justice Roundtable which I facilitate.

**Texans Care for Children strongly urges the committee to maximize opportunities for youth rehabilitation and success by focusing our juvenile system on serving teens – keeping younger children out of the justice system and preventing older teens from entering the adult system.**

#### **1) Change the classification of ALL 17-year-olds to the juvenile justice system.**

Most Texas youth turn 17 years old during their junior year of high school. There is no automatic trigger in their brain that makes them mature overnight when they turn 17 and all research indicates that indeed their brains are still developing. When they wake up on their 17<sup>th</sup> birthday, they are not adults. They can't legally buy cigarettes or alcohol; drop out of school; vote or serve on a jury. They still need a parent's permission to get married or to join the military. But if they make the same mistakes they were prone to make the day before, they can land in the adult criminal justice system; while their classmates who have not yet celebrated their 17<sup>th</sup> birthday would have the opportunity to turn their lives around in the juvenile justice system.

By their 17<sup>th</sup> birthday, most high school juniors have not yet begun the process of applying to college, but one mistake, one run in with the law, no matter how small or minor, can ruin their chance of getting into a college, obtaining financial aid or finding housing. Finding a decent-paying job can also become much more difficult.

The juvenile justice system offers educational opportunities and rehabilitative programming to help youth turn their lives around; such programming and opportunities are hard, and often impossible, for youth to have access to in the adult system. Because their brains are still developing, they have a greater chance of rehabilitation, and should be afforded such opportunity.

In most cases, youth in the juvenile justice system can have their record sealed after completion of their sentence so that the mistakes they make do not follow and haunt them into adulthood, keeping them from gaining admission into college or obtaining employment. Adult records, no matter how minor the offense, will follow a 17-year-old for the rest of their lives decreasing the likelihood that they will be able to be financially independent, contributing community members.

Most 17-year-olds who enter the criminal justice system will not spend any time in prison. However, because of their age, those who do are more likely to suffer physical and sexual abuse than in the juvenile justice system. They are also more likely to commit suicide.<sup>i</sup>

Over the last 7 years, Texas has been nationally recognized as a leader in juvenile justice reform due to reforms implemented by the Legislature, including greatly reducing the population of youth in state-secure facilities; keeping justice-involved youth closer to their homes, and reducing the number of youth certified as adults held in county jails. With changes on the national landscape and with heightened scientific understanding of adolescence, Texas should again show leadership in reforming the juvenile justice system and include 17-year-olds in the system.

**The U.S. Supreme Court, Prison Rape Elimination Act standards and medical science all consider 17-year-olds as juveniles – Texas should too.**

#### ***U.S. Supreme Court Defines 17-year olds as Juveniles***

As this committee is well aware, when the U.S. Supreme Court makes decisions regarding juveniles in the justice system, their rulings impact 17-year-olds, even if the state considers those youth to be adults. As the juvenile justice reform movement continues through the courts, the Supreme Court will continue to make decisions that will force the state to create one-off “fixes” for 17-year-olds. With each of those fixes, the state will more than likely then need to retroactively make a change, such as resentencing everything youth, or former youth, impacted by the Supreme Court decision; all costly and time consuming.

#### ***Prison Rape Elimination Act (PREA) Standards Compliance will be costly with 17-year-olds in Adult Facilities***

To be in compliance with PREA standards, youth (including all 17-year-olds) in adult facilities must be sight and sound separated from all adult inmates in housing units, including common areas. When passing through areas outside of housing units, if there is a possibility the youth can come in contact with an adult, the youth must be under direct supervision of staff. To get county jails and prisons up to these youth-specific standards will be a costly endeavor. To ensure sight and sound separation, entire wings, pods, or housing units will have to be dedicated to youth, even if only one or two youth are in the facility. Direct supervision could mean a need for increased staff. If the entire state cannot be certified as in compliance, the state will lose federal criminal justice funding. If county jails and prisons are not in compliance, it also means that youth may be more vulnerable to abuse.

#### ***Medical Science: juvenile brain is still developing until 25***

The part of a youth's brain that helps to control decision making and recognize consequences develops into his mid 30s. Dr. Laurence Steinberg, one of the foremost experts in adolescent brain research, puts it best: "The adolescent brain is like a car with a good accelerator but weak brakes."<sup>ii</sup> The youth's impulse is the accelerator; the inability to control impulses and think through consequences, the weak brake. Psychiatrists and researchers agree: because teenagers, including 17-year-olds, are still maturing and their brain still developing, they should not be held as culpable for their crimes. Additionally, because their brains are still developing, they are more susceptible to rehabilitative programming when made available. At the same time, it has also been determined that some youth will just grow out of delinquent behavior.

For these reasons, we applaud your efforts to include 17-year-olds in the justice system. **Texans Care also urges you to build on this effort to redefine how the state identifies and treats juveniles in the justice system, including increasing the minimum age at which a youth can enter the juvenile justice system, and ensuring that no juvenile is put on trial as an adult or held in an adult jail or an adult prison.**

## **2) ALL youth should be kept out of the adult system. – Certifying 17-year-olds as adults should not be an option.**

The risks and costs are too great to continue sending 17-year-olds into the adult criminal justice system. At the same time, because of the current culture of considering 17-year-olds as adults, and the lack of restrictions on what offenses can lead to certification, we run the risk of high numbers of certifications once 17-year-olds are considered juveniles. And because all felonies can lead to certification as an adult, it is also quite possible that some lower-level felonies that would have previously been treated as misdemeanors could instead continue to be treated as felonies in order to certify a youth, an unintended consequence nobody would want.

The juvenile justice system is the most appropriate place for youth, even the ones who have committed the most serious offenses. This is not to say that all youth who have committed the most serious offenses should be released when they age out of the juvenile justice system. Just as many do today, those who would otherwise be certified as adults should receive determinate sentences that start in the juvenile justice system and then transfer to the adult system upon the youth having aged out. Starting a sentence in the juvenile justice system, allows youth the opportunity to continue their education and access age-appropriate services and rehabilitative programming while they are most likely to be successfully complete rehabilitation programming. At the same time, it will keep youth safe, keep adult facilities from having to make structural modifications and staffing changes to meet PREA standards and prevent the legislature from needing to continuously change statute to conform with new Supreme Court decisions.

## **3) Keep pre-Teens out of the justice system**

The juvenile justice system should be focused on serving populations it is best equipped to serve – adolescents who have an emerging awareness of their wrong-doing and a high likelihood of reforming their behaviors. Children who are 10, 11 and 12 years old account for 8.2% of the delinquency referrals to the juvenile justice system.<sup>iii</sup> These pre-teens have very different needs than their teenage counterparts and often end up in the juvenile justice system due to complex

needs. Often they have experienced serious trauma, including physical, sexual and emotional abuse or neglect and acting out is an indication of a severe treatment need. These kids need youth- and family-focused supports outside of the juvenile justice system so they can get back on track. The Department of Family and Protective services can refer these younger youth, just like they do now for 9-year-olds, to age-appropriate intervention programs and therapy.

**Thank you for this opportunity. Texans Care for Children appreciates the committee's consideration of these issues and asks that you focus our juvenile system on serving those populations it is best equipped to serve.**

Respectfully,

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<sup>i</sup> Prison Rape Elimination Act of 2003. Congressional Findings. [<http://www.gpo.gov/fdsys/pkg/PLAW-108publ79/pdf/PLAW-108publ79.pdf>]

<sup>ii</sup> Ritter, Malcolm. Experts link teen brains' immaturity, juvenile crime. ABCNews.com. Associated Press. Dec. 2, 2007. Web [<http://abcnews.go.com/Technology/story?id=3943187>]

<sup>iii</sup> TJJJ 2011. For purposes of this analysis, probation violations of 17 year olds finishing juvenile probation were not included in the delinquency referrals.