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Testimony before the Senate Criminal Justice Committee Hearing *Regarding Senate Interim Charges*

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A. Interim Charge #5 – Detention of Juveniles in Adult Facilities

Some of the most serious youth offenders age 14 and above at the time of their offense are certified to stand trial as adults, which means that they are incarcerated in county jails awaiting trial and in adult prisons upon conviction. Currently, 156 inmates under 17 are in adult prisons, a figure lower than the number of youths certified to stand trial as adults, because some reach age 17 by their trial date.¹ These youths are primarily violent and sex offenders, though 35 were certified to stand trial as adults for property, drug, or unspecified offenses in 2008.²

In fiscal year 2009, 254 youths who committed their offense while under the age of 17 were certified to stand trial as adults, an increase of 44 since 2007.³ This may be attributable to a provision in Senate Bill 103 enacted in 2007 that requires youths sentenced for a determinate period to TYC to be transferred to adult prison or released to adult parole upon turning 19, whereas the previous age limit was 21. Thus, for a youth who commits a very serious crime and may have previous adjudications, prosecutors and judges may feel it is necessary to certify the youth as an adult to obtain a longer length of stay.

The three-year violent offense re-arrest rate for youths in TYC's nationally acclaimed Capital and Serious Violent Offender Treatment Program in Giddings is 5 percent.⁴ The three year re-incarceration rate for youths completing this program is 11.7 percent, compared with 30.4 percent for those released from TDCJ who had been convicted of a violent offense at age 16 or younger.⁵ It is also significant that youths sentenced as adults to TDCJ serve less than five years on average, meaning that they will be back in the community at a young age with many years left in their 20's and early 30's, which is the age range during which the risk of criminal behavior is greatest.⁶

Given the number of empty beds at TYC and the success of TYC's serious violent and capital offender program, policymakers should also review the existing statute allowing certification of youths 15 or above to stand trial as an adult and be sent to adult prison for *any* felony to determine whether the current statute is too broad. Additionally, policymakers should consider whether written findings should be required when a court decides to certify a youth to stand trial as an adult.

Also, further research is needed to compare the effectiveness of the Texas Department of Criminal Justice's Youthful Offender Program (YOP) through which some youths in adult prison receive sheltered housing with TYC's program for similarly serious offenders.¹ As of May 2008, only 38 percent of youths in the YOP at the Clemens Unit were enrolled in school while incarcerated, while all youths at TYC attend school for a full day.⁷ Moreover, a third of the youths at TDCJ are not even in the sheltered housing YOP program, but rather comingled with adults.⁸ National studies have also found youths in adult facilities are more likely to be abused and taken advantage of, including sexually victimized.⁹

In short, the weight of the available research compiled by the Department of Justice suggests that confining youths in adult lockups is generally ill-advised and that any short-term cost savings may well be offset by higher long-term costs to crime victims and taxpayers associated with increased recidivism.¹⁰

Finally, policymakers should also study whether all individuals convicted for an offense committed at age 17 should be automatically treated as adults. Texas is the largest state with this policy, as most other states set 18 as the threshold. There is some arbitrariness in drawing any line because every teenager differs in maturity. Psychologists consider a 17 year-old to be in the final stage of adolescence and research has found 17 year-olds' brains are still developing, which has implications for judgment and impulse control.¹¹

Thousands of offenders who were 17 years-old at the time of their offense enter Texas county jails and state prisons. County jails typically have even less programming than prisons. Is this the right destination for all these offenders, particularly those that are first-time offenders who have not yet been through the juvenile justice system? A 2008 Wisconsin study found 17 year-olds sent to adult prison have about twice the re-incarceration rate of either juveniles or those sent to adult prison at an older age.¹² In addressing this issue, many factors need to be taken into account in determining what policy options are feasible and likely to result in positive outcomes for public safety without increasing costs to taxpayers.

B. Interim Charge #8 – Juvenile Justice Pilot Programs

In 2009, the Legislature cut funding for TYC from \$314 million in 2008 to \$210 million in 2010 and \$205 million in 2011, primarily due to a decline in population.¹³ The 2010-11 budget calls for the closure of two TYC facilities, including a remotely located institution in West Texas where many abuses occurred. At the same time, \$45.7 million in new funding was provided for local juvenile probation programs designed to divert youths from TYC.

This funding realignment, which will save taxpayers more than \$160 million over the current biennium, is supported by research indicating that all but the highest-risk youth are less likely to return to crime if kept in the community rather than incarcerated.¹⁴

¹ If TYC was permitted to hold some of these youths beyond their 19th birthday when necessary for rehabilitation, judges and prosecutors might be more inclined to send them to TYC instead of adult prisons.

In 2004, Florida launched a similar funding realignment initiative called Redirection. Remarkably, youths released from a non-residential diversion program were 46 percent less likely to be arrested for a violent felony or convicted of any felony than comparable youths placed in a residential program over the 3.9 year follow-up period.¹⁵ The May 2009 state review found the initiative has saved \$36.4 million and avoided another \$5.2 million in recommitment and prison costs.¹⁶ As early as 1995, former Governor Jeb Bush, who presided over the implementation of Redirection, called for shifting resources towards the front-end of the juvenile justice system to prevent crime.¹⁷

In Texas, the state funds 34 percent of juvenile probation, with 65 percent paid for by county taxpayers and 1 percent in federal funds. As part of Rider 21 to the General Appropriations Act, the Legislature required that the Texas Juvenile Probation Commission (TJPC) pay TYC \$51,100 for each youth committed to TYC in excess of 1,783 youths per year.¹⁸

Accordingly, TJPC has initiated the Commitment Reduction Program (CRP) that allocates the new funds to community-based, family, residential, transition, and aftercare programs. Departments submit funding plans to TJPC that are linked to the number of youths they pledge to divert from TYC. For example, if a department's three-year average of commitments to TYC is 25, they can obtain their full share of new funding by pledging to divert five youths from TYC, a figure that is based on the statewide goal of 1,783 or fewer commitments. The department can also obtain partial funding by pledging to divert less than five youths.ⁱⁱ

Plans for new or expanded programs must include supporting evidence or documentation that the new program or service has had positive outcomes in other jurisdictions. Similarly, plans for enhanced supervision or specialized caseloads must include evidence of success. Evidence of positive outcomes must also be provided for proposed residential services as well as a description of how the family of a supervised youth will be incorporated into the rehabilitative efforts.

Departments will be evaluated according to the following performance measures:¹⁹

- Number of juveniles served;
- Percent of juveniles completing the program(s);
- Percent of juveniles with improved outcomes (e.g., reduction in substance use or increase in school attendance);
- Number of juveniles committed to TYC;
- Number of juveniles certified to stand trial as adults;
- Re-offending (recidivism) as measured by one-, two-, and three- year re-referral/re-arrest and incarceration rates for all juveniles participating in the program;ⁱⁱⁱ and

ⁱⁱ The Commitment Reduction Program does not place a legal cap on the number of youths committed to TYC. Judges may still commit youths for any felony offense or violations of probation. The county Juvenile Board, which includes the judges in the county who hear juvenile cases, decides whether to participate in the Program.

ⁱⁱⁱ There are many ways to measure recidivism. Typically, the re-incarceration rate for a program will be the lowest rate, followed, respectively, by the re-adjudication rate and the re-arrest rate, as not all arrests lead to adjudications and not all adjudications lead to incarceration.

- Cost per youth diverted.

The guidelines specify that maximum diversion funding shall not exceed the rate of \$140 per juvenile diverted per day or \$51,100 annually. The majority of the funds will support non-residential programs that cost much less than this maximum amount, though this figure still compares favorably to the \$99,000 annual cost of TYC commitment in 2009.²⁰ Under the guidelines, departments that exceed the targets for TYC commitments for 2010 to which they agreed will have their share of this new funding reduced or eliminated in 2011.

This funding shift better enables probation departments to implement programs that effectively reform youths. This paper highlights examples of innovative programs, focusing on those programs for which there is some evidence of success in Texas, and which, with the new funding, might be replicated in other parts of the state. Additionally, many of these programs share common elements that can be incorporated into newly developed programs. While many of these programs involve a significant government role in supervising and treating youths, at substantial taxpayer expense (though even while far less than TYC once spent), the criminal activities they address often impose a substantial fiscal and human cost.

An example of a promising program created through this new funding stream is the Grayson County T.E.A.M. (Transition, Education, Alter and Mentor) Court, which was launched in September 2009. The court combines the proven elements of drug courts, mental health courts, and other problem-solving courts. The new court's target population is high-risk felony offenders and youths with multiple violations of court orders, a family history of criminal activity, and a history of substance abuse. The court was created using the new diversion funding from TJPC and is designed to help the county meet its target of five TYC commitments in 2010 as compared with its three-year average of nine commitments.

Coordination provided by the court enhances the enforcement, treatment, family preservation, and educational strategies each youth and family receives. Members of the court's review committee represent law enforcement, educators, the district attorney's office, the defense attorney, the Department of Juvenile Services, chemical dependency counselors, licensed professional counselors, and the community. Guidelines for progressive sanctions and treatment modalities are being developed. The phases of the program, each which lasts 8 to 12 weeks, are listed below.

New Attitude/Phase 1	New Attitude/Phase 2	New Attitude/Phase 3	Your Aptitude/Phase 4
Orientation/Overview	Emphasis on Family	Emphasis on Education	Community Support Network
Treatment Plan	Review & Update Treatment Plan	Treatment & Transition Planning	Victim Support Service
Education	Continue Introspective Reporting	Treatment Plan Update	Educational Support

Pro-social Activity	Community Service	School Reporting	Goal Setting
Healthy Lifestyles	Bi-Monthly Drug Testing	Victim Empathy	Monthly Court Review
Family Intervention	Bi-Monthly Court Review	Monthly Court Review	Parent Support Group
Individual Counseling	Parent Support Group	Parent Support Group	
Family Therapy			
Weekly Drug Testing			
Introspective Reporting ^{iv}			
Mandatory Curfew			
Bi-monthly Court Review			
Parent Support Group			
Victim Empathy			

Source: Grayson County Department of Juvenile Services²¹

Three treatment modalities being incorporated into the T.E.A.M. Court are the Strengthening Families Program (SFP), Aggression Replacement Therapy (ART), and Functional Family Therapy (FFT), each of which is an evidence-based practice.

The Strengthening Families Program (SFP) is a 14-session program featuring evidence-based parenting skills, children’s life skills, and family skills training. Parents and children participate both separately and together. Youths are trained in communication skills to improve parental, peer, and teacher relationships, problem solving, anger management, resistance to negative peer influences, and coping skills. Parenting sessions emphasize skills such as effective and consistent discipline. This includes imposing consequences and time-outs, rewarding positive behaviors with praise, and holding family meetings to establish order and organization. Peer-reviewed research has found the SFP to be effective in other jurisdictions in reducing substance use and mitigating emotional, academic, and social problems.²² It has been recognized and approved as an evidence-based practice by seven federal agencies, including the Office of Juvenile Justice and Delinquency Prevention.

Anger management instruction is a central component of the ART program. According to a Washington State Institute for Public Policy (WSIPP) analysis of four studies, ART reduces the recidivism of juvenile offenders by 7.3 percent.²³ ART also trains youths in skills such as making a complaint, understanding others’ feelings, dealing with someone else’s anger, keeping out of fights, dealing with group pressure, helping others, and responding to failure. Training in moral reasoning aims to instill a sense of justice and fairness in consideration of the needs of others. ART is a 10-week, 30-hour program administered to groups of 8 to 12 juveniles three times a week.

^{iv} This consists of youths describing their own thought processes, particularly what leads them to make decisions on how they will behave.

FFT consists of 8 to 12 one-hour sessions, up to 30 sessions, and may be conducted either in an office or at home. It involves three phases. The first phase is motivation and engagement. The goals of the initial phase are to develop mutual trust, reduce negativity, minimize hopelessness, engender a strong commitment by the youth to ensure attendance at future sessions, and increase motivation for change. The second phase is behavior change in which the goals are to develop and implement individualized change plans, alter delinquent behavior, and build relational skills. Clinicians work with parents to enhance their skills in supervising the youth and develop their understanding of the behaviors associated with delinquency. The final phase is entitled generalization, in which the goals are to broaden behavior changes from the home to the youth's conduct in the school and community, prevent relapse, and identify community resources that can assist the family after the program has concluded. Studies have found that FFT reduces recidivism by 25 to 60 percent.²⁴ FFT is one of eight interventions named by the U.S. Surgeon General as a model program for seriously delinquent youths.

Some of these proven treatment modalities are also incorporated in other community-based programs funded through the CRP.

It is too early to assess the recidivism outcomes of specific community-based programs funded through the CRP, since these programs just began and it takes time to determine the percent of youths who successfully complete them and how many recidivate. We do know that TYC commitments are continuing to decline in late 2009 and early 2010. Moreover, juvenile crime is declining. In fiscal year 2006, there were 24,965 Texas youths adjudicated for delinquent conduct, which dropped to 20,943 in fiscal year 2009, a 16.1 percent decrease.²⁵ At the same time, the state's juvenile population has been increasing 0.9 percent annually.²⁶ Also, new delinquency filings in the Dallas County juvenile courts have declined from 2,884 in fiscal year 2006 to 1,768 in fiscal year 2009.²⁷ In Bexar County, juvenile referrals declined 5.8 percent from 2007 to 2008 and then another 10.0 percent in 2009.²⁸

It appears that the CRP is being implemented as policymakers intended, with TJPC appropriately requiring that funded programs be based on research and creating a strong system of performance measures. The measures will hold these programs accountable for results during 2010 and TJPC will use them in making funding decisions for 2011. We recommend that, in regard to property and violent offenders, victim restitution and satisfaction be added as a performance measure. Also, intake and outcome psychological and behavioral assessment instruments should be used where appropriate to evaluate program effectiveness, as they can be administered at a much lower cost than a controlled recidivism study and can supplement information on recidivism by indicating the extent to which a youth's behavior and attitude have changed while in the program.

As policymakers face a challenging budget environment, they should consider how to expand the CRP. There are four counties with more than 100,000 people, including Tarrant and Brazoria, that declined to participate. While diversion funds should not be reduced to those counties that are already participating and meeting their target for reducing TYC commitments through effective community-based programs, additional net savings from downsizing TYC may be realized by expanding the CRP to additional counties.

C. Interim Charge #9 – Impact of School Disciplinary Policies on Juvenile and Adult Corrections Systems

First, schools are a major source of referrals to juvenile probation. Dallas County Juvenile Probation Chief Mike Griffiths notes that many simple schoolyard scuffles that were once resolved in school through disciplinary action now result in referrals to probation. In 2007, we assisted lawmakers in developing House Bill 278, which eliminated a provision in the Education Code authorizing school districts to create criminal offenses not in state law for violations of school policies. However, there are overly broad offenses in the Education Code, such as “disruption of classes,” which includes “emitting noise of an intensity that prevents or hinders classroom instruction.” Disrupting class is one of the most common offenses for which students are cited. This offense and, perhaps others as well in the Education Code, should be narrowed to better distinguish between behavior that should simply be a disciplinary matter and that which is truly worthy of being criminalized.

Also, the thousands of students receiving tickets for Class C misdemeanors in school for offenses such as disrupting class are referred by municipal and justice of the peace courts to probation on contempt of a court order if they do not pay their fine and perform community service. David Reilly, the chief juvenile probation officer for Bexar County, says that, after investigating these cases, they often found that the youth fulfilled his obligations and had no subsequent trouble.²⁹ In the fall of 2008, this probation department notified the justice of the peace courts that they would “work” only those cases in which truancy was the underlying offense. The department said in remaining cases it would send a written notice to the family advising them of a referral and direct them to other agencies, but would take no further action unless the child was referred again.³⁰ This approach allows the Bexar County Juvenile Probation Department to focus its limited resources on youths on probation for offenses that have the greatest impact on public safety.

School disciplinary action is often a precursor to involvement in the juvenile justice system. Some 67 percent of youths referred to the juvenile justice system in Texas had at least one school disciplinary contact in the prior year.³¹ A Texas A&M University study found that, holding all other risk factors constant, Texas students involved in one or more disciplinary incidents were 23.4 percent more likely to be referred to the juvenile justice system than those with no school disciplinary contact.³² A student who has been suspended is three times more likely to drop out and 80 percent of adult prison inmates dropped out of school.³³

Research has indicated that out-of-school suspension actually accelerates delinquency, as these students often lack proper parental supervision, particularly when there is only one parent who is working, and frequently wind up getting into trouble on the street.³⁴ Also, studies have found that suspended students’ behavior and academic performance do not improve upon returning to school.³⁵ Suspension can be particularly ineffective in addressing behavior problems associated with a learning disability. While 11 percent of Texas students are classified as special education, these students account for 23 percent of those in out-of-school suspension.³⁶ Though school safety must always remain paramount, out-of-school suspensions are typically based on non-criminal misbehavior, and schools have a range of other options such as in-school suspension, after-school detention, and school service projects.

Additionally, schools should use existing resources to implement evidence-based disciplinary, prevention, and conflict resolution strategies that reduce delinquency and keep more kids in school. An example of prevention is character education, an approach that emphasizes the distinction between right and wrong and development of positive values. As it is often incorporated within existing curricula, the cost and instructional time involved may be relatively minimal. Although 83 percent of the districts and charters that responded to the annual Texas Education Agency (TEA) character education survey said they have a program, only 35 percent of districts and charters responded to the survey.³⁷ Though TEA does not have specific data, the agency suspects that the vast majority of the remaining districts and charters do not use character education.³⁸ Some 62.4 percent of responding districts with a program said that they believe it reduces disciplinary referrals, which are often precursors to out-of-school suspensions and juvenile justice referrals.³⁹ The Character Counts! program has been found to significantly reduce violent crime, property crimes, drug offenses, and truancy.⁴⁰

Additionally, conflict resolution programs such as peer mediation⁴¹ and school-based teen courts⁴² may offer viable alternatives to some of the more than 600,000 annual out-of-school suspensions⁴³ and thousands of school referrals to the juvenile justice system while still holding students accountable and promoting school safety. Research also supports the effectiveness of behavior contracts signed by the student, parent, and a school official.⁴⁴ Evidence-based bullying prevention programs are another school-based solution. They have been found to reduce bullying by up to 50 percent, which in turn reduces crime.⁴⁵ Nearly 60 percent of boys who researchers classified as bullies in grades six through nine were convicted of at least one crime by the age of 24, and 40 percent were convicted of three or more crimes by this age.⁴⁶ Also, bullied students are more likely to be absent from school and suffer from depression.⁴⁷

Reducing truancy can also reduce dropouts and future involvement in the juvenile and adult criminal justice systems. Fort Bend County has implemented a truancy abatement program called Saved by the Bell. A truancy officer is based at each of the three schools with the highest rates of truancy. The officers check to see the student is present. They go to the home if there is an unexcused absence. They also address special circumstances that are contributing to truancy. They have, for instance, purchased clothes for a student who did not come to school because he had none. The average age of students in the program is 16. Youths typically participate for six months. Saved by the Bell has reduced the number of disciplinary referrals by 89 percent compared to the prior year when participating youths were not in the program.⁴⁸ From a school budgeting perspective, cost-effective initiatives that result in more students staying in school can more than pay for themselves, since state school funding is primarily based on student attendance.

Additionally, lawmakers should examine the impact of the 1995 repeal of a statute that prohibited out-of-school suspension for truancy or tardiness, since kicking kids out of school does not solve the problem of them not being in school.

Finally, policymakers must continue to take steps to enhance accountability and performance at Disciplinary Alternative Education Programs (DAEPs), which serve about 100,000 Texas students at any given time. When DAEPs were created, most students referred were for disciplinary violations for which the Education Code mandates suspension, but today more than

three-quarters of referrals are discretionary. The vast majority of students suspended to a DAEP committed disciplinary violations, not a criminal offense, although a small percentage of DAEP students are referred for an offense—sometimes a serious one—committed more than 300 feet from the school campus. Serious offenses committed on campus result in expulsion. Expelled students are sent to Juvenile Justice Alternative Education Programs (JJAEPs) in populous counties and, in counties without JJAEPs, expelled to the street.

DAEPs have a drop-out rate that is more than five times higher than regular campuses.⁴⁹ In 2007, legislation required an intake and outtake exam to determine whether students placed at a DAEP for 90 days or more advanced academically, but the TEA is still developing rules to implement this provision nearly three years later.

Anecdotally, reports from around the state suggest that much of the per-student funding that districts receive does not make its way to DAEPs. Policymakers should study this issue to identify whether a greater share of funds that should be spent to remediate the academic and behavior challenges of students at DAEPs are instead going to district-level administration or other campuses. It is the allocation of existing funds that should be the focus, given that DAEP students are disproportionately disadvantaged which means that weighted student funding is actually greater, but the question is how much of this money actually goes towards instruction and programming at DAEPs.

Another issue that demands scrutiny is the expulsion of students from DAEPs, especially special education students, for serious and persistent misbehavior. The Legislature has not defined this nebulous concept and, as a result, such expulsions occur even though these students at DAEPs have not committed an offense and their behavior may be a manifestation of their learning disability. Moreover, further study is needed to determine how many DAEPs have effective programs for addressing misbehavior that are based on research, such as positive behavioral supports and individualized education plans for special education students as required by law. When students are expelled from a DAEP for serious and persistent misbehavior, they either go to a JJAEP which costs taxpayers more than \$100 a day or, in counties without a JJAEP, to the street where they are not educated and are likely to get into trouble.

Policymakers should also consider making suspension to a DAEP discretionary instead of mandatory for possession of alcohol and abuse of volatile chemicals, such as glue and correction fluid. A high school student with a beer can in the trunk of his car, parked in the school lot could be disciplined in ways other than being sent to a DAEP, which tends to disrupt academic progress. An excessively broad statutory definition of behavior that must result in a suspension precludes local disciplinary decisions based in such situations based on the unique facts of the case, including whether it was an isolated incident or part of a pattern of misbehavior.

In sum, schools must do more than simply pass the buck to parents, law enforcement, the juvenile justice system, and ultimately future victims and taxpayers.

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