FINISH THE 5

Our journey to zero youth prisons in Texas

Texas Center for Justice & Equity

SOLUTIONS FOR SAFE, HEALTHY, JUST COMMUNITIES

Policy Brief | October 2022

Finish the 5

Our Journey to Zero Youth Prisons in Texas

Alycia Castillo
Director of Policy and Advocacy

Cover image: Richard Ross
Richard Ross is an artist/activist/photographer, and a distinguished research professor of art based in Santa Barbara, California. As the creator of Juvenile-in-Justice, his work turns a lens on the placement and treatment of American juveniles housed by law in facilities that treat, confine, punish, assist and, occasionally, harm them. Learn more at www.juvenile-in-justice.com.

Design by Madison Kaigh

The Texas Center for Justice and Equity advances solutions and builds coalitions to end mass incarceration and foster safer communities.

©2022 Texas Center for Justice and Equity. All rights reserved. Any reproduction of the material herein must credit the Texas Center for Justice and Equity. “Finish the 5: Our Journey to Zero Youth Prisons in Texas” is available from the Texas Center for Justice and Equity at www.TexasCJE.org.

FINISH THE 5

Our Journey to Zero Youth Prisons in Texas

"Perhaps we've needed to figure out that kids are people too."
-Representative Valerie Swanson on problems in Texas' youth prisons,
Committee on Juvenile Justice and Family Issues Interim Hearing, August 9, 2022

SUMMARY

Amid the convergence of multiple crises in the Texas Juvenile Justice Department (TJJD), which have led to dangerous and inhumane conditions for approximately 600 children in its care, Texas lawmakers have the responsibility to do something radically different.

Many other states and counties – and even Texas in the not-so-distant past – have successfully closed state secure facilities. Texas can and must take the transformational step to close TJJD's five state secure facilities and *do it right*: commit to **no new builds or transfers to the adult system**. With smart investments, counties can provide children the resources they need to thrive outside of prison walls.

We're urging the Texas Legislature to make three key changes to resolve this crisis and ensure the safety of the hundreds of young people in the five remaining state secure institutions today:

(1) Facility Closures

The Texas Legislature should resolve to shut down TJJD's five state secure institutions by 2027 through a thoughtful, staggered closure plan.

(2) Justice/Community Reinvestment Incentives

The Texas Legislature should invest in building communities' infrastructure to appropriately address the needs of children who would have been incarcerated, and allow recapture from closed facilities to reimburse the costs for community-based resources including the following:

- A new Office of Youth and Community Restoration at the Texas Health and Human Services Commission (HHSC) to advance the wellbeing of children through a public health lens.
- Significant investments in existing school-based tools like restorative justice to combat the school-to-prison-pipeline.
- Short-term funding to counties to facilitate the transition of children by judges and juvenile probation departments to non-institutional, non-punitive services; this will include the development and expansion of community-based service providers in partnership with the community, schools, and HHSC.

(3) Policy Solutions to Decriminalize Youth

The Texas Legislature enacted bold and effective policy reforms from 2007-2011 that resulted in a nearly 50% reduction in youth incarceration, without a negative public safety impact.[1] The Legislature should build on these solutions by enacting a host of policy changes that begin to divert youth from the punishment system altogether.

A BRIEF HISTORY OF YOUTH INCARCERATION IN TEXAS AND BEYOND

The ethical dilemma of youth incarceration in Texas should be housed in the context of its inception and historical usage. In the late 1800s, emerging racist theories based in eugenics were used to deem Black, Mexican, and Filipino children "feebleminded" and justify their sterilization and confinement to institutional settings, often called "training schools."[2] In 1889, Texas created the Gatesville State School for Boys; while this facility now serves as a Texas Department of Criminal Justice institution for adults, it initially housed boys who had previously been held in an adult prison – some who had never committed a crime. Gatesville, like many other youth prisons around the country, served as a labor camp and quickly garnered a reputation of ruthlessness. At the same time, scholars across the country were using pseudoscience theories to dehumanize Native and Indigenous children and justify their removal from their homes, as well as establish Indian boarding schools to eliminate their culture, heritage, and language and foster assimilation to White culture.[3]

Throughout the first half of the 20th century, various examples of inhumane and deadly conditions were reported from inside Texas training schools:

- 1910s: Punishments included "bustings," where boys were forced to hold their hands above their heads while guards used a bat to flog them.
- 1921: A Gatesville drill master murdered a 15-year-old child for refusing to participate in a military drill.
- 1949-1950: There was an increased use of "whippings" for "insubordination" at the Brady School for Black and Delinquent Girls.[4]

By the 1980s and 90s, America had committed to a "tough on crime" posture, out of which sprang an "adult time for adult crime" sentiment.[5] In addition to growing interest in the now-debunked "superpredator" theory, the United States began incarcerating more children for more crimes, even going so far as to impose adult jail and prison time on children.[6] In 1995, Professor John J. Dilulio coined the term "superpredator," stating, "America is now home to thickening ranks of youth 'superpredators' – radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders."[7] Just five years later, as the opposite of Dilulio's predictions materialized and the youth crime rate continued to drop, he apologized and renounced his statements. Unfortunately, his theorizing had led to an era of policymaking that ushered in harsh new state laws, which did not begin to be rolled back until 2005.

Some of the laws and outcomes of the "tough on crime" era included the setting of mandatory minimum terms of incarceration before eligibility for parole, and a 71% increase in youth tried as adults nationally.[8]

Alarmingly, the racist vestiges of the of the youth punishment system persist today. Black youth comprise 11% of Texas' youth population but represent 24% of TJJD commitments; White, Hispanic, and Other race youth comprise the remaining 89% of Texas' overall youth population but represent 31%, 51%, and 7% of TJJD commitments, respectively.[9]

SCANDAL AND ABUSE

It is important to note that **the first juvenile court in 1899 came about as a reform to punitive facilities**. Unfortunately, abuses and harm continued throughout the establishment of juvenile courts and ongoing youth incarceration.[10]

Broadly, agencies, advocacy groups, researchers, and government-funded organizations have come to the same conclusion: youth incarceration produces negative outcomes for children and communities, and it has a negative impact on public safety.[11] Though some of this is due to the inherently challenging conditions of a prison environment, much of it is due to abuse at the hands of prison leaders – including in Texas. *See examples at right.*

These abuses have triggered investigations from both Texas investigators like the Texas Rangers and investigators in the U.S. Department of Justice. **Regardless, in over a decade since the reforms of 2007 – and following the closure of eight youth correctional institutions by 2011 – additional facility closures and youth justice reforms have largely stalled.**[22]

TEXAS MUST CLOSE ITS REMAINING YOUTH PRISONS

A growing body of research proves what we know in our hearts to be true: age-appropriate, community-based interventions work for crime prevention, intervention, and restoration for youth. Programs and program pilots across the country demonstrate the effectiveness of various modes of treatment and care, but what all of them have in common is that they occur in a child's own community.[23] Furthermore, by and large, children in wealthy communities in Texas and beyond have benefited from a childhood free of incarceration, simply because of their access to resources. Every child in Texas should have this same opportunity.

In order to create capacity to serve children outside of dangerous prisons, Texas must free up investments in punishment. Closing TJJD's five youth prisons will be one meaningful step in ensuring this is possible.

IF NOT YOUTH PRISONS, THEN WHAT?

Upon the closure of Texas' remaining five youth prisons, millions of dollars will be freed up to reinvest in strategies that meet the needs of children in their own communities.

Savings should be redeployed to agencies and community-based programs that serve to prevent and address the root causes of criminalized behavior:

TIMELINE of SCANDALS

Below is a small sample of scandals that have plagued the Texas Youth Commission (TYC) and, after its establishment in 2011, the Texas Juvenile Justice Department (TJJD).

2006-07

Intense media and governmental scrutiny expose abuse and violence taking place in TYC. State leaders effect an immediate change in TYC leadership and launch a joint investigative committee. During the 2007 legislative session, lawmakers pass omnibus reform legislation that, among other things, prohibits transfers to state prisons for misdemeanors.

2008

A former caseworker at Al Price Juvenile Detention Center, Jude Iwuchukwu, claims he was fired on trumped-up sexual harassment charges after he reported the alleged abuse of youth.[12]

2009

A 14-year-old adjudicated to Crockett State School hangs himself using his own underwear.[13]

2010

One in five youth in Texas lock-ups report being forced into sexual acts. Corsicana Residential Treatment Center specifically reports the second-largest sexual abuse rate nationally, with 32% of youth reporting having been forced into a sex act.[14] Later that year, the Department of Justice Report on Sexual Victimization in Juvenile Correctional Facilities confirms findings and also reports that this facility housed youth with either serious mental illness or cognitive delay.[15]

2018

Two teens escape Giddings State School in April,[16] and the following month, a 16-year-old dies overnight at Evins Regional Juvenile Center, with the cause of death unknown.[17]

2019

Six days of chaos ensue in June at Gainesville State School as staff lose control of more than two dozen youth.[18] In August, a corrections officer at Ron Jackson State School is fired and arrested for the rape of a youth.[19] In October, a staff member sexually assaults a child at McLennan County State Juvenile Correctional Facility in Mart, Texas – a facility known to house the youngest youth in the system.[20]

2022

By January, 131 youth at Giddings and 257 youth at McLennan have tested positive for COVID-19 since 2020.[21]

- Initially, and on a short-term basis, some funds should be diverted to counties to partner with, develop, and expand community-based service providers, to build the infrastructure needed for judges and probation departments to divert children toward non-institutional, non-punitive services.
- The Legislature should direct the creation of an Office of Youth and Community Restoration within HHSC. This office will serve to ensure that children and their families are provided the appropriate, public health-focused resources to aid in violence prevention and mitigation.
- Finally, the Legislature should make significant investments in existing school-based services that seek to improve mental health outcomes and violence prevention.

A Case Study on Community Reinvestment

One recent reform proving successful in Texas is the use of Community Reinvestment Funds. This is a budget strategy that supports decarceration by reallocating corrections system funding toward evidence-based, community-based interventions. During the onslaught of the COVID-19 pandemic in 2020, advocates in Texas worked with the Harris County Juvenile Probation Department to mitigate the harms, ensuring the rapid release and care of more than 80 children. Community-based direct service providers like reVision Houston took over case management for those children, making regular visits to their homes to deliver hot meals, provide homework and tutoring assistance, and offer counseling services, sometimes for the whole family. The result was striking. Fewer than 10 children were rearrested within the first six months of the program. The Columbia Justice Lab is currently studying the long-term impacts of this program for expansion to other jurisdictions.[24]

POLICY REFORM TO DECRIMINALIZE YOUTH

In the not-so-distant past, Texas was lauded for spearheading new, innovative, and promising youth justice reforms. In the wake of chronic scandals and breaking headlines about rampant abuse, the 2007 Texas Legislature enacted Senate Bill 103, a bill that, as mentioned above, ended adjudication to state secure facilities for youth with misdemeanors; it also created a new funding structure for counties to treat youth closer to home, with many counties providing in-home therapeutic care.[25] Following these changes, youth incarceration fell by half, from 4,800 to 2,425. Even still, additional reforms built on these positive results in 2009, when the Legislature further funded county supports through the state's correctional budget using savings from the dramatic decreases in youth incarceration. Finally, in 2011, Senate Bill 653 merged the existing agencies responsible for youth corrections into the new Texas Juvenile Justice Department.[26] By the end of 2011, the average daily population in TJJD dropped to 1,399. This resulted in enormous savings for the state, at around **$9.6 million saved per TYC facility closure**. And still, the youth population continues to decline, falling to 598 today.

Importantly, children have not simply been moved from state to county facilities: as the state's daily juvenile population has dropped, so has the county juvenile population. The number of children placed in a county detention facility following their adjudication in 2010 was 6,314; it dropped to 5,864 children in 2011, then to an astonishing 1,156 by 2020.[27]

These reforms show that change *is* possible in Texas. The Legislature must continue to divert children from the youth punishment system, including by investing in community- and school-based supports that address the root causes of criminalized behavior and build thriving families – items like restorative justice and mental health supports in schools, as well as drug and mental health treatment and violence intervention programs in the community.

CONCLUSION

The solutions that have been posed to address the multiple crises at the Texas Juvenile Justice Department are woefully insufficient. Salary increases and staff recruitment strategies will not solve the problems with the inhumane practice of imprisoning the most vulnerable children in Texas – especially as horrors in TJJD remain ongoing.

We must do something different. That something begins with Texas committing to view and treat all children as human beings deserving of care, protection, and – at the very least – humane treatment.

By enacting a bill that allows for the staggered closure of Texas' five remaining youth prisons, lawmakers can create an infrastructure between now and the 2025 state legislative session that will provide children with the resources they need to thrive in their own homes, schools, and communities, without building any new youth prisons.

Citations

[1] Office of Juvenile Justice and Delinquency Programs, *Statistical Briefing Book: Age-Specific Arrest Rate Trends*, November 16, 2020, https://www.ojjdp.gov/ojstatbb/crime/qa05301.asp?qaDate=2019.
[2] James Bell, *Repairing the Breach: A Brief History of Youth of Color in the Justice System,* W. Haywood Burns Institute for Youth Justice Fairness and Equity, 2016, https://www.courts.ca.gov/documents/BTB24-4H-1.pdf.
[3] Ibid.
[4] William Bush, *Protecting Texas' Most Precious Resource: A History of Juvenile Justice Policy in Texas: Part I*, Texas Criminal Justice Coalition, 2008, https://texascje.org/system/files?file=publications/History%20of%20JJ%20Policy%20In%20TX%20Part%201%20%28Sep%202008%29.pdf.
[5] Michele Deitch, et.al., *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System*, The University of Texas at Austin, LBJ School of Public Affairs, 2009, https://law.utexas.edu/faculty/publications/2009-From-Time-Out-to-Hard-Time-Young-Children-in-the-Adult-Criminal-Justice-System/download.
[6] Lindsey Linder and Justin Martinez, "No Path to Redemption: Evaluating Texas's Practice of Sentencing Kids to De Facto Life Without Parole in Adult Prison," *The Scholar*, *22(3)*, 307-344, October 2020, https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1037&context=thescholar.
[7] The Campaign for the Fair Sentencing of Youth, *The Origins of the Superpredator: The Child Study Movement to Today*, May 2021, https://cfsy.org/wp-content/uploads/Superpredator-Origins-CFSY.pdf.
[8] Brenda Gordon, A Criminal's Justice or a Children's Injustice? Trends in the Waiver of Juvenile Court Jurisdiction and Flaws in the Arizona Response, 41 AZLR 193, 226 (1999).
See also: Tracey L. Meares, "What's Wrong with Gideon," *University of Chicago Law Review*: Vol. 70: Iss. 1, Article 15, 215, 217 (2003), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5166&context=uclrev.
[9] Texas Juvenile Justice Department, *The State of Juvenile Probation Activity in Texas: Statistical and Other Data on the Juvenile Justice System in Texas for Calendar Year 2020*, 2021, https://www.tjjd.texas.gov/index.php/doc-library/send/334-state-of-juvenile-probation-activity/2894-the-state-of-juvenile-probation-activity-in-texas-2020.
[10] James Bell, *Repairing the Breach*.
[11] Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2022, https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_jj.pdf.
[12] David Yates, "Former employee sues Al Price facility for wrongful termination," *Southeast Texas Record*, January 29, 2008, https://setexasrecord.com/stories/510608931-former-employee-sues-al-price-facility-for-wrongful-termination.
[13] Terri Langford, "TYC vows to get answers about teen's hanging," *Chron*, March 18, 2009, https://www.chron.com/news/houston-texas/article/TYC-vows-to-get-answers-about-teen-s-hanging-1532334.php.
[14] Emily Ramshaw, "Sexual Abuse in State Lock-Ups," *The Texas Tribune*, January 7, 2010, https://www.texastribune.org/2010/01/07/15-of-tx-youth-offenders-forced-into-sex-acts/.
[15] Review Panel on Prison Rape, U.S. Department of Justice, *Report on Sexual Victimization in Juvenile Correctional Facilities,* October 2010, https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/panel_report_101014.pdf.
[16] CBS Austin, "Authorities capture two teens who escaped Giddings Juvenile Detention Center," *WOAI*, April 22, 2018, https://news4sanantonio.com/news/local/authorities-search-for-two-teen-who-escaped-giddings-juvenile-detention-center.
[17] Keri Blakinger, "16-year-old inmate dies at Texas Youth Prison," *Chron*, May 19, 2018, https://www.chron.com/news/houston-texas/article/16-year-old-inmate-dies-at-Texas-youth-prison-12927897.php.
[18] Keri Blakinger, "Months of chaos lead to dozens of charges at troubled Texas Juvenile Prison in Gainesville," *Houston Chronicle*, June 6, 2019, https://www.houstonchronicle.com/news/houston-texas/houston/article/Months-of-chaos-lead-to-charges-in-Texas-13952828.php.

[19] Keri Blakinger, "Juvenile prison guard fired, arrested for allegedly having sex with female inmate," *Houston Chronicle*, August 22, 2019, https://www.houstonchronicle.com/news/houston-texas/houston/article/Juvenile-prison-guard-fired-arrested-for-14372082.php.

[20] Keri Blakinger, "Texas juvenile prison officer charged with sexually assaulting teenage inmate in his cell," *Houston Chronicle*, October 30, 2019, https://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-juvenile-prison-officer-charged-with-14574549.php.

[21] Texas Juvenile Justice Department, *COVID-19 Response: TJJD response to COVID-19 – Essential Information,* https://www.tjjd.texas.gov/index.php/covid19#cases-youth.

[22] Jeff Bell, "Texas Rangers' investigation of TJJD finds criminal violations, but no wider pattern of abuse," KVUE, October 19, 2021, https://www.kvue.com/article/news/local/texas/texas-rangers-investigation-texas-juvenile-justice-department/269-d266cee7-72da-4f67-8caf-c6d45034945f.

See also: U.S. Department of Justice Office of Public Affairs, *Press Release: Justice Department Announces Investigation into Conditions at Five Juvenile Facilities in Texas*, October 13, 2021, https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-five-juvenile-facilities-texas.

[23] Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration,* The Annie E. Casey Foundation, 2011, https://folio.iupui.edu/bitstream/handle/10244/1035/JJ_NoPlaceForKids_Full.pdf.

See also: Stephanie Bontrager Ryon, Kristin Winokur Early, Anna E. Kosloski, "Community-based and family-focused alternatives to incarceration: A quasi-experimental evaluation of interventions for delinquent youth," *Journal of Criminal Justice*, Vol. 51, 59-66 (July 2017), https://doi.org/10.1016/j.jcrimjus.2017.06.002.

[24] Harris County Office of Justice and Safety, *Press Release: The Harris County Justice Administration Department (JAD) Launches Application in Search for Intermediary for the Youth Justice Community Reinvestment Fund*, May 12, 2021, https://jad.harriscountytx.gov/Press-and-Media/Press-Room/the-harris-county-justice-administration-department-jad-launches-application.

See also: reVision Houston and Harris County Juvenile Probation Department, *Harris County Data Update* [PowerPoint slides], JDAI Steering Committee, 2021, https://static1.squarespace.com/static/59dbb8b251a58476eaa8a714/t/60a553f3343ab059065c1a5e/1621447674536/Harris+County+Data+Snapshot+2020.pdf.

[25] Texas Senate Bill 103, 80th(R) Legislative Session, https://capitol.texas.gov/BillLookup/History.aspx?LegSess=80R&Bill=SB103.

[26] Deborah Fowler, *A True Texas Miracle: Achieving Juvenile Justice Reform in a Tough Economic Climate*, First Focus on Children, September 27, 2012, https://firstfocus.org/resources/report/a-true-texas-miracle.

[27] Texas Juvenile Justice Department (TJJD) (2021). Legislative Appropriation Request 2022-2023. https://www.tjjd.texas.gov/index.php/doc-library/send/571-legislative-appropriations-request/2498-legislative-appropriations-request-fy22-23.