



## **WRITTEN TESTIMONY**

**REGARDING HOUSE BUDGET RECOMMENDATIONS  
FOR ARTICLE V – PUBLIC SAFETY & CRIMINAL JUSTICE**

***SPECIFICALLY RELATING TO THE TEXAS JUVENILE JUSTICE DEPARTMENT***

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**TO**

**THE HOUSE APPROPRIATIONS COMMITTEE  
SUBCOMMITTEE ON ARTICLES I, IV & V**

**FEBRUARY 19, 2015**

Dear Members of the Committee,

Thank you for allowing the Texas Criminal Justice Coalition (TCJC) to provide public testimony on the House Budget Recommendations for the Texas Juvenile Justice Department (TJJD, the Department).

TCJC has been closely monitoring the juvenile justice system in Texas for years, and we support community-based best practices that safely reduce the number of youth in confinement while addressing the underlying needs that lead to delinquent behavior. Doing so not only places youth on a path to success, but it increases public safety and saves taxpayer dollars.

### **PUSHING THE RESET BUTTON: HOUSE BUDGET RECOMMENDATIONS' CURRENT BUDGET STRUCTURE**

The zero-based budget structure for TJJD in the House Budget Recommendations provides this subcommittee with an opportunity to restructure the Department's financial plan to support the original goals set out for TJJD by its enabling legislation, Senate Bill 653 (2011). These goals include:<sup>1</sup>

- **Supporting the development of a consistent county-based continuum of effective interventions, supports, and services for youth and families that reduce the need for out-of-home placement;**
- **Increasing reliance on alternatives to placement and commitment to secure state facilities, consistent with adequately addressing a youth's treatment needs and the protection of the public;**
- **Locating facilities as geographically close as possible to necessary workforce and other services while supporting youths' connection to their families;**
- **Encouraging regional cooperation that enhances county collaboration;**
- **Enhancing the continuity of care throughout the juvenile justice system; and**
- **Using secure facilities of a size that supports effective youth rehabilitation and public safety.**

Although previous legislative efforts have helped move the Department towards these goals (e.g., the creation of a commitment diversion fund in 2009, which provides funds to local probation departments for rehabilitative programs as an alternative to committing youth to state secure facilities), **the agency has faced substantial obstacles demonstrating movement away from its reliance on larger state-secure facilities, or demonstrating the efficiency of its community-based spending.** Such obstacles include: (1) instability within central administration, (2) difficulties in retaining juvenile correctional staff, (3) maintaining large state campuses resembling prisons, (4) the inability to overcome stigmas associated with the former Texas Youth Commission, (5) local control and autonomy, and (6) at times, faltering legislative support. Each of these has contributed to the Department's inability to effectively partner with counties to "produce positive outcomes for youth, families, and communities."

By acknowledging these challenges and accepting the structure proposed below, the subcommittee can continue to push TJJD towards its intended goals through a financial plan that emphasizes youths' needs and safety, better system performance, and improved community outcomes.

## TJJD'S PROPOSED BUDGET STRUCTURE

The suggested structure submitted by the Department unfortunately does not embrace the opportunity to have its budget reflect its true method of operations. Instead, it keeps the format, as well as the division of funds, at status quo. The goals and strategies are also identical to those of previous bienniums. This budget structure has proven ineffective in allowing the Legislature to monitor the Department's movement away from reliance on larger state-secure facilities and evaluate its investments in effective community based programming and practices.

While we appreciate and understand the Department's desire to reach a point of stability prior to making substantial system changes (e.g., transitioning from larger state-secure facilities to smaller ones), we believe that now is the time to act. The House Budget Recommendations present the Department the immediate opportunity to work with policy-makers to address the obstacles that are prohibiting them from transitioning into an effective front-end entity.

## MOVING FORWARD: MATTERS FOR CONSIDERATION IN CONSTRUCTING A NEW BUDGET

To turn the legislative vision for Texas' juvenile justice system into a reality, it is imperative that the agency's financial plan be aligned with its goals. In constructing this plan, policy-makers should consider three key facts: **(1) keeping youth close to home ensures better outcomes for youth and the community, (2) performance measures are key to ensuring outcomes are met, and (3) maintaining the safety and security of youth is of utmost importance.**

### ***(1) Keeping Youth Close to Home Ensures Better Outcomes for Youth and the Community***

In January 2015, the Council on State Governments (CSG) released a groundbreaking report entitled, *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms.*<sup>2</sup> Although substantial support for locally based treatment of youth existed prior to the release of this publication,<sup>3</sup> this study is definitely the "first of its kind" in bolstering that recommendation. After reviewing and analyzing an unprecedented dataset of 1.3 million individual case records spanning eight years, researchers found that **youth who are incarcerated in state-run facilities are 21 percent more likely to be rearrested than youth served under community supervision.**<sup>4</sup> They further found that **when these youth do re-offend, they are three times more likely to commit a felony than their counterparts served through the local juvenile probation system.**<sup>5</sup>

These findings carry significant implications for how the Department should allocate its resources. The CSG report confirms that state-run facilities are not only ineffective, but also counterproductive. Currently, Texas has five state secure facilities that house youth committed to the State's care, all of which are large in size, are institutional in nature, and were constructed to house hundreds of youth far away from their homes. By contrast, local juvenile probation departments are more effective at meeting youths' needs while continuing to allow family interaction, thus reducing the likelihood of future system involvement.

**In light of the CSG report findings, TJJD's budget should reflect a move away from state-secure facilities and towards community resources.**

**Key Consideration:** Should this subcommittee decide to move forward in shuttering facilities this legislative session, **TCJC urges that the process of transitioning youth out of those facilities be thoroughly examined and that lessons learned from previous closures be taken into consideration.** Primary among our concerns is what would be done with youth who are currently on-hand in these facilities; they cannot merely be squeezed into remaining facilities. Instead, policy-makers should consider right-sizing the current facilities by transitioning low-risk youth back into their communities, which would ultimately allow for youth-to-staff ratios to align with best practices. Once this is accomplished, the Department can begin to take more significant steps away from large campuses and towards smaller regional facilities, as necessary.

**(2) Performance Measures Are Key to Ensuring Outcomes are Met**

A significant barrier to TJJD achieving success is the State’s inability to assess the agency’s performance using evidence-based performance measures. Ultimately, statistics that are tied to the budget that should demonstrate whether funding is being utilized effectively across the system. The Department’s current budget structure emphasizes recidivism as the primary—and sometimes only—performance measure. This is misguided: For years, researchers have cautioned policy-makers against measuring system performance chiefly on recidivism because it “miss[es] important measures of the system’s day-to-day performance, obscuring the role that citizens can and should play in promoting secure communities.”<sup>6</sup>

Although recidivism is an important and historical measure in juvenile justice, it alone cannot be the sole measure of agency efficiency. However, in instances where recidivism is not the sole measure, the State has unfortunately determined the Department’s success by outputs – measures that only demonstrate the volume of youth being served in certain programs – not outcomes, which determine whether services are in fact working.

Examples of an Output vs. an Outcome Measure in Juvenile Justice		
Goal	Output Measure	Outcome Measure
<p>Address the underlying treatment needs of youth entering the system.</p> <p><u>Example of Need:</u> Substance Abuse Treatment</p>	<p>Number of youth who were referred to and completed substance abuse treatment programming.</p>	<p>Percentage of youth who were successful in avoiding relapses within 6, 9, and 18 months of program completion.</p>

The subcommittee will note in the chart above that the output measure primarily focuses on the number of youth who have cycled through the revolving programmatic door, whereas the outcome measure evaluates whether the programming itself is effective. By combining these two measures, decision-makers will be better equipped to determine whether a program is worth the funds allocated to it.

**TCJC strongly recommends that the Legislature restructure the current performance measures being used to determine juvenile system effectiveness.** In creating these measures, we ask that the following elements be kept in mind:<sup>7</sup>

- Outcome measures must be mission based;
- The juvenile court experience can be measured;
- Intermediate outcomes are valuable;
- Outcomes should be measured at the time of case closing; and
- Outcome data should be utilized early, often, and in multiple ways.

**Without restructuring current performance measures, the Legislature will continue to allocate funds to a Department that will be unable to demonstrate whether it is achieving its mandated goals.**

**Key Consideration:** The restructuring of performance measures should be done in conjunction with the overall budget structure (e.g., goals and strategies). Doing so will allow policy-makers to not only see the “why” of their appropriations, but also the “who, what, when, and where.”

### ***(3) Maintaining the Safety and Security of Youth is of Utmost Importance***

As the subcommittee moves forward in structuring the Department’s financial plan, it is of utmost importance that the safety and security of youth be maintained. At the most fundamental level, this means keeping systems in place that are already ensuring that youth are safe. The most obvious of these is the Office of the Independent Ombudsman (OIO), an independent state agency created to investigate, evaluate, and secure the rights of youth committed to state-secure facilities. **Safety continues to be a significant concern within both state and county juvenile facilities and must be addressed.**

In 2011, Texas expanded the responsibilities of the OIO to include the review of county data on abuse, neglect, and exploitation.<sup>8</sup> The OIO made 216 facility site visits in Fiscal Year 2014, interviewing over 1,354 youth.<sup>9</sup> In addition to conducting investigations, the OIO publishes quarterly oversight summaries and frequent facility-specific reports that provide invaluable information to Texas legislators and the public. For instance, in Fiscal Year 2014, the OIO tracked 1 report of attempted suicide, 255 reports of physical abuse, 38 reports of sexual abuse, 34 reports of neglect, 15 reports of exploitation, 15 reports of verbal abuse, and 6 reports of emotional abuse. It also responded to 810 inquiries.<sup>10</sup> These reports have alerted policy-makers to dangerous situations in juvenile facilities, allowing legislators to intervene early. **It is critically important that Texas provide the OIO sufficient funding to ensure robust monitoring to protect the safety of all youth in both state and local custody.** The OIO has a high need for more, not less, state funding. Texas should increase funding for the OIO to ensure it is funded at an adequate level and that the OIO’s employees have Schedule C parity with other investigative offices.

Furthermore, **Texas should assure the independence of the OIO by removing its funding from the province of TJJJ.** Texas Human Resources Code Section 261.003(b) provides that “[f]unding for the independent ombudsman is appropriated separately from funding for the department.” To date, however, the OIO funding has been a line item in TJJJ’s Budget. This imposes significant limitations on the effectiveness of OIO’s oversight of TJJJ. Studies have found that monitoring agencies should be “adequately resourced, with sufficient staffing, office space, and funding to carry out their monitoring responsibilities, and the budget must be controlled by the monitoring entity.”<sup>11</sup> To the extent the OIO receives its funding, even if simply via a pass through, from TJJJ, the OIO’s

independence is compromised. This independence is critical to assuring that the Legislature can rely fully upon the reports and evaluations conducted by the OIO.

### COMMENTS ON CERTAIN EXCEPTIONAL ITEMS REQUESTED BY TJJD

- **ITEM 3: ENHANCE SAFETY, SECURITY, AND TRAINING IN STATE FACILITIES**

TCJC supports the Department's request to enhance safety, security, and training at state-operated secure institutions by adding additional staff positions. These appropriations are necessary in part to comply with best practices, including the Prison Rape Elimination Act (PREA). In September 2003, the United States Congress unanimously passed this federal statute,<sup>12</sup> aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Over the course of 10 years, experts around the country developed what have become the PREA standards in an effort to substantially reduce the occurrences of prison rape in adult and juvenile facilities. PREA standards are mandatory, and state and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds. Additionally, **states and localities that are not in compliance with the standards may be vulnerable to litigation.** Private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting their constitutional obligations.

To date, TJJD has been a nationwide leader on PREA compliance. In 2013, TJJD coordinated three conferences to educate practitioners about PREA, which provided training to over 450 juvenile justice professionals statewide.<sup>13</sup> TJJD also hosted a webinar in 2013 specific to Juvenile PREA Administrators, in which over 235 individuals participated to discuss PREA-specific topics relevant to administration. Additionally, TJJD has provided PREA compliance training for its employees. In FY 2014, 2,374 employees (95.38%) were PREA trained, and in FY 2013, 2,530 employees (95.29%) were PREA trained.

TCJC also notes that the Department has obtained outside funding to support training in this area. In 2011, "TJJD successfully secured a demonstration grant award from the Department of Justice, Bureau of Justice Assistance to implement a Comprehensive Approach to Promoting Sexual Safety for Youth (CAPSSY) in [their] facilities."<sup>14</sup> **TJJD continues to pursue outside funding to support the expansion of this program at no cost to the State, reflecting responsible stewardship of the Department.**

However, given current staffing levels, TJJD is unable to adequately staff its facilities in the way that research shows is necessary to ensure the safety of kids. Additional staffing will better ensure compliance with best practices, including PREA compliance.

- **ITEM 4: EXPAND TRAINING AND SUPPORT ACROSS THE JUVENILE PROBATION SYSTEM**

TCJC supports efforts to reduce reliance on seclusions and restraints. As research has indicated, the seclusion (or solitary confinement) of youth can result in serious collateral consequences, such as increased aggression<sup>15</sup> and a deteriorated mental state.<sup>16</sup> Furthermore, when done frequently and incorrectly, physical restraints have shown to negatively impact relationships between youth and those who are responsible for supervising them, which only increases the likelihood of disobedience and violent outbursts.<sup>17</sup> In these instances, best practice calls for the establishment of rapport among youth and staff to enable active listening and de-escalation.<sup>18</sup>

**TCJC therefore supports the enhanced funding to support the juvenile probation system through the outlined initiatives.**

**TCJC also supports the Department's request for a grant to provide counties with technical assistance when coming into compliance with PREA.** This funding will help counties enhance safety in their facilities, achieving the primary goal of any institutional setting: the safety of youth.

- **ITEM 6: EXPAND PROBATION AND AFTERCARE PROGRAMS AND SERVICES**

As TJJJ continues its shift into a predominantly front-end agency, it is imperative that the Legislature financially support its efforts to treat youth in their communities, outside of facilities, and close to their homes. However, **TCJC strongly recommends that the performance measures associated with *Community Juvenile Justice* be restructured to include more comprehensive outcome measures that can be used to determine whether probation departments are truly meeting the goals that policy-makers have put before them.**

For instance, if the highest need among Texas' system-involved youth is substance abuse, then it would benefit the State greatly to know how effective substance abuse programming is (e.g., whether youth are relapsing 6, 9, or 18 months after treatment). Solely focusing on output measures – measures that only demonstrate the volume of youth being served in certain programs – will not move the Department forward. If an output measure is used to monitor success, it should be accompanied by a comprehensive outcome measure that can be easily defined by the Department's research division.

- **ITEM 9: OIG ADDITIONAL FTEs, VEHICLES, AND SCHEDULE C PARITY**

TCJC supports a robust Office of Inspector General (OIG), as well as funding to support increased staffing, Schedule C parity for staff, and increased numbers of vehicles. The OIG was established for the purpose of investigating: "(1) crimes committed by department employees, including parole officers employed by or under contract with the department; (2) crimes committed at a facility operated by the department or at a residential facility operated by another entity under contract with the department; and (3) crimes committed at any facility in which a child committed to the custody of TJJJ is housed or receives medical or mental health treatment."<sup>19</sup>

This Office is critical to ensuring the safety of Texas children, as it is the only TJJJ office responsible for investigations of a criminal nature that occur within facilities. According to the OIG's annual report, "During FY13, the OIG opened 1,840 Criminal investigations and closed 1,811, and OIG criminal investigations resulted in the following: 57 individuals were arrested, 114 cases were indicted, 25 cases were no billed, 88 cases had convictions, 67 cases were adjudicated, 290 cases were accepted by prosecution, 85 cases were declined by prosecution, and 187 offenses resulted in being unfounded or unsubstantiated. It should be noted that a closed criminal case can have multiple dispositions, such as arrest, indictment, and/or conviction. Additionally, OIG Apprehension Specialists were involved in the execution of 81 TJJJ Directives to Apprehend."<sup>20</sup>

**Additional funding will permit the Department to better respond to the increased volume of calls it has received.**

TCJC is not prepared to take a position, at this time, on whether the OIG needs additional safety equipment, such as body armor.

**TCJC’S POSITION ON ALL EXCEPTIONAL ITEMS REQUESTED BY TJJD**

Exceptional Item	TCJC’S Position
Building operations costs for agency headquarters	Neutral
Information technology modernization	Support
Enhance safety, security, and training in state facilities	Support
Expand training and support across juvenile probation system	Support
Enhance educational and instruction and services	Support
Expand probation and aftercare programs and services	Support
Agency fleet vehicle replacement	Neutral
OIG additional FTEs, vehicles, and Schedule C Parity	Support
Data center services	Support
Capital repairs and rehabilitation at state facilities	Neutral
New construction at state facilities to support education, training, & human resources	Neutral

**COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS**

- **Invest in Texas’ youth by creating a budget that is rooted in TJJD’s goals.** As TJJD moves forward in becoming a true front-end agency, it is imperative that a financial plan be put in place to support it. Such a plan will provide guidance to the Department in meeting specific outcomes, such as stronger communities, stronger families, and positive youth development. The subcommittee should note that this can only be accomplished by shifting the division of overall funds from state-facility operations to community-based services.

Currently, local juvenile probation departments carry the burden of covering anywhere from 72 to 93 percent of their overall operations.<sup>21</sup> Yet they serve the majority of youth who enter the system. Because TJJD’s aim is to become an effective front-end entity, it is important to equip counties with the technical assistance (e.g., assistance in program evaluation and training in best practices) required to produce effective outcomes.

- **Ensure system efficacy by reconstructing TJJD’s overall performance measures.** Recidivism cannot be a system’s sole measure of success. Intermediate outcomes (e.g., parental involvement, school engagement, therapeutic progress) are absolutely necessary to determine whether the juvenile justice system is achieving what it was created to achieve: the rehabilitation of youth. By constructing these measures in conjunction with the Department’s goals and strategies, policy-makers can create a financial plan that guides the Department down a path to success.
- **Increase the safety and security of youth and staff.** Critical investments in training staff to apply best practices, assuring adequate supervision by staff at all times, and providing both the Office of the Independent Ombudsman (OIO) and the Office of Inspector General with sufficient funding will better protect the safety of all youth in state custody.

Specifically regarding the OIO, the Legislature relies upon that Office to provide robust monitoring of TJJD and the safety of the youth in its custody. Without adequate resources to complete that monitoring, and without financial independence from the Department, the Legislature cannot be confident that the OIO is fully equipped to perform its critical function: notifying the Legislature of any safety risks to Texas youth.

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Thank you for allowing the Texas Criminal Justice Coalition to provide testimony to this subcommittee on the House Budget Recommendations for the Texas Juvenile Justice Department. The decisions made by this subcommittee will have a significant impact on Texas youth and Texas communities, and we are grateful for the opportunity to provide input.

## CITATIONS

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<sup>1</sup> Texas Human Resource Code, Title 12, Subtitle A, Chapter 201 §201.003.

<sup>2</sup> The Council of State Governments (2015), "Closer to Home: An Analysis of State and Local Impact of the Texas Juvenile Justice Reforms."

<sup>3</sup> Annie E. Casey's *Juvenile Detention Alternatives Initiative* and the MacArthur Foundation's *Model for Change* are just two of the more notable pieces associated with keeping youth out of confinement and close to home.

<sup>4</sup> The Council of State Governments (2015), "Closer to Home: An Analysis of State and Local Impact of the Texas Juvenile Justice Reforms."

<sup>5</sup> Ibid.

<sup>6</sup> John Dilulio (1991), *No Escape: The Future of American Corrections*. New York, NY Basic Books, Inc.; J. Petersilia (1993) *Measuring the Performance of Community Corrections in Performance Measures for the Criminal Justice System*. Washington, DC: Bureau of Justice Statistics.

<sup>7</sup> Doug Thomas (May 2006), *How Does the Juvenile Justice System Measure Up? Applying Performance Measures in Five Jurisdictions*, National Center for Juvenile Justice.

<sup>8</sup> Texas Human Resources Code section 261.101.

<sup>9</sup> Office of the Independent Ombudsman, "*Fourth Quarter Report FY 14*" (August 31, 2014), p. 3.

<sup>10</sup> Ibid, pp. 8,9.

<sup>11</sup> M. Deitch, "Special Populations and the Importance of Prison Oversight," *AM. J. CRIM. L.*, Vol. 37:3, at 112.

<sup>12</sup> Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

<sup>13</sup> Email from Lisa Capers, "TJJD Training Efforts on PREA," (September 18, 2014).

<sup>14</sup> Texas Juvenile Justice Department, "*Overview of Agency Sponsored Prison Rape Elimination Act (PREA) Projects, Events, Activities and Accomplishments (2005-2014)*".

<sup>15</sup> A. Schore, "Affect Dysregulation and Disorders of the Self," New York: W. W. Norton & Co, 2003

<sup>16</sup> S. Grassian "Psychiatric Effects of Solitary Confinement" (2006)

<sup>17</sup> Smith, M. & Bowman, K.M..The Restraint Spiral: Emergent Themes in the Perceptions of the Physical Restraint of Juveniles, *Child Welfare* 88: 57

83 (2009); Wiley, S.A. & Esbensen, F., *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?* *Crime & Delinquency*, (July 2013).

<sup>18</sup> Smith & Bowman, *The Restraint Spiral* (2009); The Hogg Foundation for Mental Health, *Creating a Culture of Care: A Toolkit for Creating a Trauma-Informed Environment*, [http://www.hogg.utexas.edu/initiatives/seclusion\\_restraint.html](http://www.hogg.utexas.edu/initiatives/seclusion_restraint.html).

<sup>19</sup> Texas Juvenile Justice Department, Office of Inspector General, "Annual Report FY 13," (September 1, 2012 thru August 31, 2013).

<sup>20</sup> Ibid.

<sup>21</sup> Analysis of financial expenditures by county (2007-2012) provided to the Texas Criminal Justice Coalition via the Texas Juvenile Justice Department in May 2014.