



Elizabeth A. Henneke, Policy Attorney

Jennifer Carreon, Policy Researcher

Phone: (512) 441-8123

Email: ehenneke@TexasCJC.org; jcarreon@TexasCJC.org

www.TexasCJC.org

INTERIM TESTIMONY 2014

TJJD L.A.R 2016-2017

The Governor's Office of Budget, Planning and Policy And the Legislative Budget Board

Dear Members,

My name is Elizabeth A. Henneke. I am a Policy Attorney for the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present public comments on the Legislative Appropriations Request of the Texas Juvenile Justice Department (TJJD, the Department).

TCJC has been closely monitoring the juvenile justice system in Texas for years, and as an organization we support community-based best practices that safely reduce the number of youth in secure detention while addressing the root causes of crime, increasing public safety, and saving taxpayers money.

SUPPORTING TJJD'S BASE REQUEST: AN INVESTMENT IN THE FUTURE OF TEXAS' YOUTH

TCJC supports the Department's efforts to increase resources to support community programming. Overall, the Department is asking for approximately 1% less than what it received in the 2014-2015 biennium; yet it has significantly shifted funds between strategies. Specifically, TJJD has increased funding to community programming by 131% from its 2014-2015 appropriations and decreased its commitment to pre- and post-adjudication facilities by 56.5% from its 2014-2015 appropriations. TCJC ardently supports this shift in priorities: Proven community-based programs leverage local resources and are more conducive than secure facilities to youth rehabilitation. These community programs – such as Functional Family Therapy, Multi-Systemic Therapy, and mentoring programs – reduce recidivism, keep youth and staff safer, and cost less than secure facilities.¹

TCJC notes with some trepidation, however, the Department's 86% increase to its contract capacity in *Goal B: State Services and Facilities*. While TCJC supports the Department's desire to "transition some of its residential population from state facilities (B.1.2) into contract care (B.1.9)" in order "to access a broad array of placement options, keep youth closer to home, ensure youth are located where their needs can be best met, and bring the average population in state facilities below 200 per facility,"² TCJC notes that the Department has maintained the level of funding to support state-operated secure facilities. Combined then, the Department appears to have merely increased funding for facilities by 86%. At a time when commitments are at an all-time low,³ it does not seem appropriate to increase funding overall for state facilities.

Despite this concern, it appears that TJJD is continuing its transformation into a true front-end agency.

RECOMMENDED RIDER REVISIONS

RIDER 1 - PERFORMANCE MEASURE TARGETS

A significant barrier to TJJD achieving success is the State's inability to set adequate performance measures that can be used to evaluate the system as a whole. Although recidivism is an important and historical measure in juvenile justice, it alone cannot be used as the sole measure of the system's success. 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."⁴

For this reason, **TCJC strongly recommends that the legislature restructure the current performance measures being used to determine system effectiveness.** In creating these measures, we ask that the following elements be kept in mind:⁵

- Outcome measures must be mission based.
- The juvenile court experience can be measured.
- Intermediate outcomes are valuable.
- Measure outcomes at time of case closing.
- Use outcome data early, often, and in multiple ways.

Without the reconstruction of these measures, the legislature will continue to allocate funds to an agency that may or may not be achieving the goals it has been asked to accomplish.

TCJC RECOMMENDED RIDER: INCREASED RESOURCES FOR THE OFFICE OF THE INDEPENDENT OMBUDSMAN

The Office of the Independent Ombudsman (OIO) was established as part of the 2007 juvenile justice reforms following the revelations of widespread abuse at Texas state secure facilities. Today, safety continues to be a significant concern at 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.⁶ The OIO made 171 facility site visits in the first three quarters of Fiscal Year 2014, interviewing over 1,100 youth.⁷ 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 the third quarter of Fiscal Year 2014, the OIO tracked 85 reports of physical abuse, 11 reports of sexual abuse, 9 reports of neglect, 5 reports of verbal abuse, and 2 report of exploitation.⁸ It also responded to over 287 inquiries.⁹ 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 state custody.** The OIO has a high need for more, not less, state funding as explained in the Legislation Appropriations Request. Texas should increase funding for the OIO to ensure it is funded at an adequate level and that 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 TJJD.** 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 has received its funding as a line item in TJJD's Legislative Appropriations Request. This imposes significant limitations on the OIO's effective oversight of TJJD. Studies have found that one of the most important aspects to independence of monitoring agencies is their ability to 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.**"¹⁰ To the extent that the OIO receives its budget, even if simply via a pass through, from TJJD, the OIO's independence is compromised. This independence, however, is critical to assuring that the Legislature can rely fully upon the reports and evaluations by the OIO.

COMMENTS ON CERTAIN EXCEPTIONAL ITEMS REQUESTED BY TJJJ

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 an 88 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,¹¹ 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, TJJJ has been a nationwide leader on PREA compliance. In 2013, TJJJ coordinated three conferences to educate practitioners about PREA, which provided training to over 450 juvenile justice professionals statewide.¹² TJJJ 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, TJJJ 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, "TJJJ 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."¹³ **TJJJ continues to pursue outside funding to support the expansion of this program at no cost to the State, reflecting responsible stewardship of the Department.**

The funding requested in the Department's exceptional item, therefore, will permit it to come into compliance with best practices regarding supervision ratios and increase on-the-job training for staff. These changes will assure that the Department's facilities are safe places for Texas youth.

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 aggression¹⁴ and a deteriorated mental state.¹⁵ 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.¹⁶ In these instances, best practice calls for the establishment of rapport among youth and staff in order to utilize more effective tools such as active listening and de-escalation.¹⁷ 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 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 Goal A be restructured to include more comprehensive outcome measures that can be used to determine whether or not probation departments are truly meeting the goals that policy-makers have put before them. Currently, the measures used to determine effectiveness largely include output measures, as previously stated.

ITEM 9: OIG ADDITIONAL FTES, VEHICLES, AND SCHEDULE C PARITY

TCJC supports a robust Office of Inspector General (OIG) and funding to support increased staffing, Schedule C parity for staff, and increased numbers of vehicles. The Office of Inspector General (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.”¹⁸ 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. “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.”¹⁹ The 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.

ITEM 13: INCREASE THE SALARY OF THE EXECUTIVE DIRECTOR OF TJJJ

TCJC supports TJJJ’s request to increase the salary of its executive director to \$210,000 from \$172,000. Of the Public Safety and Criminal Justice Agencies, TJJJ’s Executive Director is paid the least, with the Texas Department of Criminal Justice (TDCJ) Executive Director receiving \$260,000 and the Department of Public Safety (DPS) Director receiving \$183,498.²⁰ The State Auditor’s Office market analysis recommends raising the salaries of all of these Public Safety and Criminal Justice Agencies to the following: TJJJ (\$213,951); TDCJ (\$260,617); and DPS (\$238,524).²¹

TCJC’S POSITION ON ADDITIONAL EXCEPTIONAL ITEMS REQUESTED BY TJJD

Exceptional Item	TCJC’S Position
Building operations costs for agency headquarters	Neutral
Information technology modernization	Support
Enhance educational and instruction and services	Support
Agency fleet vehicle replacement	Neutral
CAPPS Human Resources system deployment	Neutral
Increased cost of Data Center services	Support
Capital repairs and rehabilitation at state facilities	Neutral
New construction at state facilities to support education, training, & human resources	Support
Increase salary cap for executive director	Neutral

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Invest in Texas’ youth by supporting TJJD’s base request for the 2016-2017 biennium.** As TJJD moves forward in becoming a true front-end agency, it is imperative to provide support to counties with the intent of achieving specific outcomes (e.g., stronger communities, cognitive development among youth).

Unfortunately and despite the redirection of funds from the state to the county level, juvenile probation departments still carry the burden of covering anywhere from 72% to 93% of their overall operations.²²

- **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 or not the juvenile justice system is achieving what it was created to achieve, the rehabilitation of youth.
- **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 and the Office of Inspector General with sufficient funding will better protect the safety of all youth in state custody.
- **Assure the Office of the Independent Ombudsman (OIO) has adequate resources and financial independence from TJJD.** The Legislature relies upon the OIO to provide robust monitoring of TJJD and the safety of the youth in its custody. Without adequate resources to complete that monitoring and financial independence from the Department, the Legislature cannot be confident that the OIO is fully equipped to notify it of any safety risks to Texas youth.

Citations

¹ Washington State Institute for Public Policy “Benefits and Costs of Prevention and Early Intervention Programs for Youth” (2004).

² Texas Juvenile Justice Department, Legislative Appropriations Request for Fiscal Years 2015-2016, at 1.

³ Texas Juvenile Justice Department, Commitment Profile, <http://www.tjjd.texas.gov/research/profile.aspx>. In the past 8 years, Texas’ state secure facilities have experienced a 65% decrease in its population.

⁴ 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.

⁵ Doug Thomas (May 2006), *How Does the Juvenile Justice System Measure Up? Applying Performance Measures in Five Jurisdictions*, National Center for Juvenile Justice.

⁶ Texas Human Resources Code section 261.101.

⁷ Office of the Independent Ombudsman “Third Quarter Report FY14” (March 1, 2014 to May 31, 2014).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ M. Deitch, “Special Populations and the Importance of Prison Oversight,” *AM. J. CRIM. L.*, Vol. 37:3, at 112.

¹¹ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

¹² Email from Lisa Capers, “TJJD Training Efforts on PREA,” (September 18, 2014).

¹³ Texas Juvenile Justice Department, *‘Overview of Agency Sponsored Prison Rape Elimination Act (PREA) Projects, Events, Activities and Accomplishments (2005-2014)’*.

¹⁴ A. Schore, *“Affect Dysregulation and Disorders of the Self,”* New York: W. W. Norton & Co, 2003

¹⁵ S. Grassian *“Psychiatric Effects of Solitary Confinement”* (2006)

¹⁶ 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).

¹⁷ 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.

¹⁸ Texas Juvenile Justice Department, Office of Inspector General, *“Annual Report FY 13,”* (September 1, 2012 thru August 31, 2013).

¹⁹ *Ibid.*

²⁰ State Auditor’s Office, Report No. 14-705 *“A Report on Executive Compensation at State Agencies,”* (August 2014).

²¹ *Ibid.*

²² Analysis of financial expenditures by county (2007-2012) provided to the Texas Criminal Justice Coalition via the Texas Juvenile Justice Department in May 2014.