



# **Texas Center for Justice & Equity**

**SOLUTIONS FOR SAFE, HEALTHY,  
JUST COMMUNITIES**

**WRITTEN TESTIMONY**

**SUBMITTED BY**

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**ON**

**INTERIM CHARGE 2-D**

**TO**

**THE HOUSE CRIMINAL JUSTICE REFORM, INTERIM SELECT COMMITTEE**

**AUGUST 24, 2022**

Dear Chair Leach and Members of the Committee,

I appreciate this opportunity to provide written testimony on the interim charge to: “Examine the appropriate age range for the juvenile justice system and parole eligibility, in addition to procedures for juveniles certified as adults.”

For 15 years, the Texas Center for Justice and Equity has been closely monitoring the state’s juvenile justice system. As an organization, we promote strategies that reduce system involvement while addressing root causes of crime, increasing public safety, and saving taxpayers money. We believe in the power of rehabilitation over punishment, and we urge you to take all necessary steps to limit the number of children coming into contact with the Texas Juvenile Justice Department (TJJD) and Texas Department of Criminal Justice (TDCJ).

## **RAISE THE AGE**

***We urge the state to treat kids like kids and raise the age of adult criminal jurisdiction from 17 to 18.***

In Texas, 17-year-olds who are arrested are automatically sent to the adult justice system. Texas is one of only three states left to treat these teens as adults for criminal justice purposes – removing their parents from the court process and exposing kids to confinement in adult jails. Kids who are arrested and tried in the criminal legal system are adversely impacted in multiple ways, both with short- and long-term collateral consequences:<sup>1</sup>

- **Education challenges:** Kids incarcerated in adult corrections facilities lack access to educational services that they would receive in the juvenile system. Simply put: The Texas Department of Criminal Justice is not equipped to address kids’ special educational needs.
- **Criminal records:** Prosecution and conviction in the adult system results in an adult criminal record, which poses obstacles to higher education, employment, housing, and practicing civic duties, including joining the military or voting.<sup>2</sup>
- **Higher recidivism:** Incarcerated kids who reside in adult prisons not only have an increased likelihood of reoffending, but their likelihood of committing a violent offense also increases.<sup>3</sup>
- **Assault and physical health problems:** In the adult system, 17-year-olds face a higher risk of sexual assault.<sup>4</sup> Incarceration during adolescence also affects cognitive and social development, with long-term effects including disproportionate morbidity and mortality, worse physical health outcomes, and limited overall functioning as adults.<sup>5</sup>
- **Mental health problems:** Incarceration has been found to increase depression and suicidal ideation. Research studies show that kids in adult prisons are 36 times more likely to commit suicide than kids in juvenile justice settings.<sup>6</sup> While separation from adults in prison is routine to keep kids safe, prolonged isolation occurs, which profoundly affects mental health<sup>7</sup> – and many treatment options in the Texas Department of Criminal Justice do not allow children under 18 to participate.
- **Limits on family bonding:** Incarceration has a devastating impact on social relationships with family and friends.<sup>8</sup>

In light of these factors, it is critical that Texas join 47 other states in treating kids like kids – and keep 17-year-olds under age-appropriate juvenile jurisdiction.

Yet, given the immense challenges facing the Texas Juvenile Justice Department (TJJD) – likely for the long term – it is also imperative to find alternate settings for kids currently housed in state secure facilities, for any kids awaiting transfer to TJJD in county detention facilities, and for any potential 17-year-olds who would otherwise be sent to TJJD if a “raise the age” measure was to pass.

This leads to a critical question: *Where would 17-year-olds be placed if not in TJJD?*

**Our answer: This is an opportunity for Texas to look beyond carceral settings and invest in community-based supports – for ALL kids in the juvenile system.**

Both the state and local counties must consider the advantages of a **Community Reinvestment Fund**. This capacity-building strategy seeks to manage and save costs associated with the corrections system by shrinking its impact, then redeploying savings to agencies and community-based programs that serve to prevent and address the root causes of crime. Under this model, a backbone nonprofit organization acts as an intermediary to make grants from the Fund to local organizations and direct service providers, then actively partners with such entities to strengthen their capacity, improve their services, and monitor whether their services are producing long-term, positive outcomes for the populations they serve.

We have seen success with such a strategy in Harris County. Earlier in the COVID-19 pandemic, Harris County’s Juvenile Probation Department partnered with local service providers who leveraged their own federal COVID-19 relief funds to expand their service areas to serve more kids being released from local detention. (*While the outcomes are still undergoing robust study and tracking, the most recent data shows remarkably low re-arrest rates.*) However, the Probation Department and partner organizations acknowledged that their expanded capacity would not be sustainable once they lost CARES Act funding. The Harris County Commissioners’ Court stepped in: To facilitate the ongoing successes of this model, they voted in February 2021 to establish the state’s first-ever Youth Justice Community Reinvestment Fund to increase local efforts to keep kids on a safe, healthy, stable path. Comprised of \$2 million originally earmarked for juvenile probation, as well as \$2 million from the county’s general fund, the Fund allows investments for detention alternatives to flow directly into communities most impacted by juvenile detention,<sup>9</sup> equipping under-resourced local providers to meet the unique needs of youth and families in their neighborhoods.

**This community-based model should be replicated at the state and local levels, both to prevent kids from entering the system and, where necessary, to help them on reentry.** These Funds can be designed to more fully actualize the “Texas Model” of keeping kids closer to home, and they can help remedy the ongoing difficulties facing TJJD and local probation departments.

Members, while we promote accountability, our collective goal should be to meet kids where they are at, and to give them and their families the necessary resources they need – *in their own communities* – to address the root causes of their actions. Time and time again, incarceration has

not been shown to truly address public safety or be a space of rehabilitation and healing. And especially as TJJJ faces dangerous staffing and program shortages, now is the time to rethink the model of the remote youth prison and invest in Texas communities.

## **RAISE THE MINIMUM AGE**

***We urge the state to protect our very young kids and raise the minimum age of juvenile jurisdiction from 10 to 13, as well as release anyone younger than 13 from facilities to community programs and other non-carceral settings.***

In Texas, kids as young as 10 years old can and do become entangled in the juvenile system, despite crime rates being low for this age group. Yet, in most cases, children under 13 who break the law are placed on probation, which comes with conditions that even adults struggle to comply with, and which sets kids down the pipeline to prison.

It is critical to invest in more appropriate, community-based programming approaches for these very young children. Not only do kids on probation face challenges, but some are actually sent to TJJJ facilities. While they comprise less than 1 percent of the total youth currently in state secure facilities,<sup>10</sup> their presence in the system overall can lead to incarceration later down the line.<sup>11</sup>

One alternative to system involvement is FAYS (Family and Youth Services),<sup>12</sup> a prevention program available in all 254 Texas counties that provides counseling and parenting classes; anyone can refer a child to FAYS, including school officials, which can provide much-needed help to young people without criminalizing them.

Another alternative to incarcerating 10-, 11-, and 12-year-olds would involve educational institutions playing a larger role. Every school district in Texas has federal funding and mandates for childhood intervention; school-based referrals to behavioral or mental health services can significantly help young Texans. For instance, referrals to such services are required by the Individuals with Disabilities Education Act (IDEA). Yet in the 2017-2018 school year, the largest number of disciplinary removals per child or student with a disability were due to emotional disturbance, one of the disabilities specified in IDEA.<sup>13</sup> The earlier a person is exposed to trauma, the more serious the consequences are, and the more likely they are to engage in criminal behavior. Utilizing localized alternatives would better enable young children to proceed through developmental stages with tailored assistance and would reduce the severity of traumas experienced from school discipline and system involvement.

## **SECOND LOOK**

***We urge the state to provide an earlier parole review to people sent to adult facilities as kids.***

After a series of U.S. Supreme Court cases, states were required to eliminate mandatory life without parole sentences for youth under 18 years of age. Now, children as young as 14 in Texas who are convicted of certain serious crimes can be sentenced to a de facto life sentence – with no opportunity for parole until they have served, in many cases, at least 40 years behind bars.

Texas' extreme mandatory minimum sentence before parole eligibility is an outlier – and it represents the harshest parole eligibility of all states that have banned juvenile life without parole.<sup>14</sup>

**Texas should allow for parole eligibility at no more than 20 years for a person whose offense was committed when they were younger than 18, and the Parole Board should be required to consider a specialized set of factors when determining whether to grant parole to such persons (e.g., growth, maturity, rehabilitation, and youthfulness at the time of the offense).**

A parole hearing at that 20-year point can motivate young people to focus on rehabilitation and can provide a path to redemption for those who can prove they merit a second chance. Tremendous growth and maturity often occur in a person's late teens through mid-20's, with certain areas of the brain – particularly those affecting judgment, impulse control, and decision-making – beginning to fully develop in one's early 20's.<sup>15</sup> The fact that young adults are still developing means they are uniquely situated for personal growth and rehabilitation, and they should be given an earlier opportunity to demonstrate that they have successfully rehabilitated and matured.

*NOTE:* During the 87th Legislative Session, HB 686 – “Relating to the release on parole of certain youthful offenders; changing parole eligibility” – advanced to the Governor's desk but was vetoed. We will continue working with Rep. Moody and others to address the technical concerns raised in the veto proclamation.

## **CONCLUSION**

These recommendations are rooted in the belief that children should not be incarcerated, and their implementation will be a critical step in the right direction for decarceration. It is long overdue that Texas invests in thoughtful and healing community-based solutions and do away with harmful systems.

*For questions, contact Sarah Reyes at [SReyes@TexasCJE.org](mailto:SReyes@TexasCJE.org) or at (512) 441-8123.*

## Citations

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