

Dear Members of the Committee,

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 testimony regarding sentencing of youth under 18 who are accused of committing serious crimes. **TCJC urges this Committee to raise the age of juvenile jurisdiction from 17 to 18 years old to better reflect the societal consensus for maturity and to enable adult facilities, which currently house the majority of system-involved 17-year-olds, to better comply with the Prison Rape Elimination Act. TCJC further urges this Committee to provide juries with a range of sentencing options for youth so that juries may take into account and give effect to mitigating factors that indicate a lesser degree of culpability for youth who commit serious crimes.**

RAISING THE AGE OF JUVENILE JURISDICTION WILL PROTECT YOUTH, ALLEVIATE SUBSTANTIAL COSTS TO COUNTIES, AND PROTECT SHERIFFS

Texas Teens Can Be Treated as Adults When They Break the Law: In Texas, the age of adulthood is typically 18 years of age; at that age, juveniles are able to vote, join the military, and buy a lottery ticket. Yet despite this seeming consensus that adulthood begins at 18, juveniles may be charged as an adult for a criminal offense the day they turn 17. Not only is this practice inconsistent with our societal consensus for “maturity,” it is also inconsistent with common sense—“what every parent knows”—and what neurological research has confirmed: **youth are inherently less likely to consider the potential outcomes of their actions, are prone to risky behavior, and are more vulnerable or susceptible to negative influences and outside pressures.** Because of these distinctive attributes of youth, which they thankfully outgrow with time, there is less justifications for treating them as adults and subjecting them to adult punishment.

Adult Correctional Facilities are No Place for Kids: The majority of system-involved youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record or adult prison. **(See graphic at right for the number of arrests among 17-year-olds in 2013.¹)** The adult prison system exposes youth to isolation and detention within a jail setting, or incarceration within a prison setting – settings that pose a severe danger to the mental and physical health of youth. Various studies have confirmed that adult correctional facilities are a breeding ground for violence and abuse.²

Texas has a Financial Incentive to Keep Kids Out of Adult Facilities: In specific response to fears about the prevalence of rape in correctional settings, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA).³ PREA is a federal statute aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Among other things, it requires all offenders under 18 to be housed separately from adults in correctional facilities.⁴



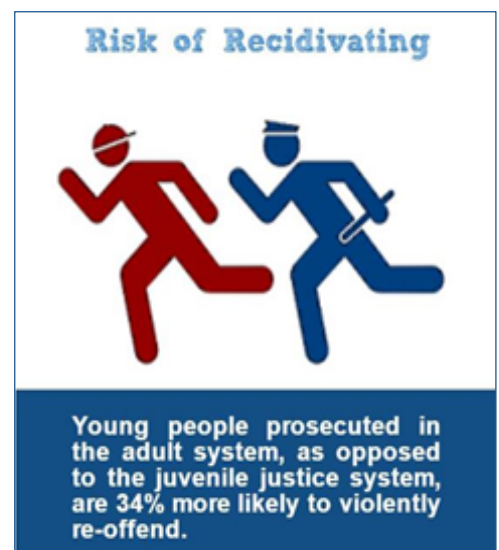
This *Youthful Inmate Standard* (examined more fully below) has greatly impacted adult county jails, forcing them to expend extra costs to comply, and leaving many counties unable to comply due to architectural constraints.

For example, **Dallas County spends approximately \$79,850 per week to separate 17-year-olds from adults.**⁵ Harris County has had to evacuate entire floors to move one or two 17-year-olds to the shower.⁶ Smaller counties are logistically unable to provide “sight and sound” separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.⁷ Simply put, **Texas county jails cannot continue housing 17-year-olds with adult inmates or in isolation cells without financial cost and/or liability risk.**

Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to keep these youth safe, and it would obviate the costs of doing sight and sound separation. The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, **many Sheriffs have chosen to support “raising the age” of juvenile jurisdiction.**⁸

KEY FINDINGS

- **Studies have shown that raising the age of juvenile jurisdiction to 18 will ultimately save Texas \$88.9 million for every cohort of 17-year-olds moved into the juvenile system.**⁹
- **There is no justifiable basis for distinguishing between 17-year-olds and 16-year-olds.** These two groups of teens commit largely the same types of offenses. The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws and public drunkenness, possession of marijuana and larceny theft.¹⁰
- **The majority of 17 year-olds are arrested for nonviolent and misdemeanor offenses.** 96% of 17 year-olds who were arrested in 2013 were arrested for nonviolent and misdemeanor offenses.¹¹
- **Setting the age of adult criminal justice jurisdiction at 17 negates neurological research findings** that identify this age as a crucial point in developing cognitive reasoning.¹²
- **Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system** (see graphic at right). According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal justice system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crimes.¹³
- **Research has shown that adult correctional facilities are a breeding ground for violence and abuse.** Youth are over eight times as likely to have a substantiated incident of sexual violence while in state prisons than adults in these same facilities (see graphic below).¹⁴



DANGERS OF HOUSING YOUTH IN ADULT FACILITIES

Risk of Suicide

Physical & Sexual Violence



Youth held in adult facilities face higher risks of physical & sexual assault than they would in juvenile facilities. In fact, two-thirds of 16 & 17 year olds held in adult facilities across the U.S. were sexually victimized on more than one occasion by other inmates.



Youth confined in adult facilities are 36 times more likely to commit suicide.

Solitary Confinement



In adult facilities, 17 year olds can spend up to 23 hours a day in solitary confinement. Adolescents are still in the midst of development, and placement in solitary confinement can lead to physical and psychological harm.

- **17-year-olds housed in adult correctional facilities are forced into isolation.** Youth who are held in adult correctional facilities are subject to isolation, which poses a severe danger to their mental and physical health.¹⁵ Because PREA defines a “youthful inmate” as anyone under the age 18, 17-year-olds MUST be kept “sight and sound” separated from the rest of the adult population. Unfortunately, county jails (where the majority of youth are held) are not equipped to segregate 17-year-olds without isolating them.¹⁶
- **Keeping 17-year-olds in the adult criminal justice system comes at significant expense to counties.** The *Youthful Inmate Standard* is extremely difficult for county jails to comply with. Some counties, such as Dallas, spend nearly \$80,000 per week keeping youth separated by sight and sound from the general population.¹⁷ The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, the Sheriffs’ Association of Texas has chosen to support “raising the age” of juvenile jurisdiction.¹⁸ Yet another county concern is lawsuits: PREA exposes counties to increased civil liability,¹⁹ with the potential for substantial litigation costs.
- **Texas facilities have high reported incidents of sexual assaults.** During its initial investigation into allegations of prison rape, the Bureau of Justice Statistics found that five Texas prison facilities were among those nationally with the highest prevalence of sexual assault.²⁰ An astounding 15.7% of inmates surveyed indicated that they were sexually assaulted by another inmate or staff.²¹

See the table on the following page for more information.

Table 4. Prison facilities with the highest prevalence of sexual assault, by another inmate or staff and by level of force and injury, National Inmate Survey, 2007

Facility name	Total prevalence ^a	Inmate-on-inmate sexual assault			Staff-on-inmate sexual assault			
		Physically forced	Pressured	Injured ^b	Physically forced	Pressured	Reported as willing	Injured ^b
U.S. total	4.5%	1.3%	1.7%	0.5%	0.9%	1.5%	1.7%	0.3%
Estelle Unit, TX	15.7	5.1	7.9	2.0	0.9	4.4	5.2	0.4
Clements Unit, TX	13.9	1.7	3.3	1.0	4.1	6.8	5.6	3.1
Tecumseh State Corr. Inst., NE	13.4	0.0	1.2	0.0	7.5	11.8	5.9	3.9
Charlotte Corr. Inst., FL	12.1	0.6	1.1	0.0	2.6	6.1	5.7	0.0
Great Meadow Corr. Fac., NY	11.3	1.0	2.8	0.0	6.0	6.3	2.8	2.0
Rockville Corr. Fac., IN ^c	10.8	6.5	7.5	3.7	0.5	1.1	0.9	0.6
Valley State Prison for Women, CA ^c	10.3	4.7	5.9	1.5	1.5	3.3	3.3	0.9
Allred Unit, TX	9.9	3.6	3.2	3.3	2.8	3.2	2.3	0.9
Mountain View Unit, TX ^c	9.5	7.5	6.8	2.7	0.7	3.0	1.4	2.1
Coffield Unit, TX	9.3	2.1	3.9	0.0	0.4	1.4	4.3	0.0

Note: Detail may add to more than totals because victims may report more than one type of victimization, injury, and type of force.

^aPercent of inmates reporting one or more incidents of sexual victimization involving another inmate or facility staff in the past 12 months or since admission to the facility, if shorter. (See *Methodology* for definitions.) Weights were applied so that inmates who responded accurately reflected the entire population of each facility on selected characteristics, including age, gender, race, time served, and sentence length. (See *Methodology* for nonresponse and post-stratification weighting procedures.)

^bInjuries included knife or stab wounds, broken bones, anal or rectal tearing, teeth chipped or knocked out, internal injuries, knocked unconscious, bruises, black eyes, sprains, cuts, scratches, swelling, or welts.

^cFemale facility.

WHAT IS PREA, AND HOW IS IT RELATED TO THE AGE OF JUVENILE JURISDICTION?

In passing PREA, Congress “established a National Prison Rape Elimination Commission (NPREC) to ‘carry out a comprehensive legal and factual study of the penological [sic], physical, mental, medical, social, and economic impacts of prison rape in the United States’ and to recommend to the Attorney General ‘national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.’”²² “The statute defines ‘prison’ as ‘any confinement facility,’ including jails, police lockups, and juvenile facilities, and defines ‘rape’ to include a broad range of unwanted sexual activity.”²³

PREA has four primary goals:

- **Data Collection:** Section four of PREA requires the Bureau of Justice Statistics to collect statistics on the incidence of prison sexual violence in state, local, and federal custodial facilities.²⁴
- **Training and Technical Assistance:** Under Section five of PREA, the National Institute of Corrections received funding to administer a national clearinghouse on sexual violence in custody and to provide training and technical assistance to the field.²⁵
- **Grants to the States:** PREA authorizes a grant program to help states meet the PREA requirements.²⁶ To date, the total federal amount given in grants to states and local departments of corrections from 2004-2013 is \$54,376,459.²⁷ **The most heavily funded state from these grants was Texas, which has received \$3,576,598.**²⁸
- **Development of National Standards:** On June 20, 2012, the Department of Justice adopted a series of national standards aimed to prevent, detect, and respond to prison rape. “A State whose Governor does not certify full compliance with the standards is subject to the loss of five percent of any Department of

Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years.”²⁹ “The final rule specifies that the Governor’s certification applies to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.”³⁰ There is no penalty to the state for facilities outside the state’s operational control; however, as discussed more fully below, counties may still be vulnerable to private litigation for noncompliance.

The PREA “standards are generally not outcome-based, but rather focus on policies and procedures.”³¹ Many of these procedures are straightforward and non-controversial. One of those standards relates to the confinement of youth, defined as individuals under the age of 18. The Youthful Inmate Standard (§115.14) requires that:

- No youth under 18 years of age can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain “sight and sound separation”—i.e., preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Of the 112 counties who responded to an information request filed by the Texas Criminal Justice Coalition, nearly 65% of Texas counties with adult correctional facilities already comply or are attempting to comply with PREA requirements.³² But complying becomes expensive for jails that house 17-year-olds. As the Sheriffs’ Association of Texas states, “To ensure the safety of 17-year-olds in our care, best practice tells us 17-year-olds should be separated from older offenders in correctional facilities. This means increased staff and building units on to or jails to house these youth. Many counties will soon need to retrofit their jails to comply with safety standards for 17-year-olds – costing tax payers millions of dollars.”³³

POTENTIAL LIABILITY FOR FAILING TO COMPLY WITH PREA

“PREA does not require State and local facilities to comply with the Department [of Justice]’s standards, nor does it enact a mechanism for the Department to enforce such compliance; instead the statute provides certain incentives for such confinement facilities to implement the standards.”³⁴ These incentives include grants to help local facilities come into compliance. **Several Texas counties have already received PREA-related grants: Dallas County Juvenile Department (\$88,942), Travis County Juvenile Probation Department (\$100,000), Atascosa County Juvenile Probation Department (\$300,000), Harris County, Texas (\$237,693), and Webb County, Texas (\$250,000).**³⁵

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”³⁶ **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United State Supreme Court set forth the standard for determining if prison conditions violated the Eighth Amendment.³⁷ The two-part test adopted by the Supreme Court required the plaintiff to prove (1) that the conditions were cruel and (2) that the government was deliberately indifferent to the conditions facing the inmate. Prior to PREA, this second prong—deliberate indifference—narrowed the class of claims that litigants were able to bring, because it is extremely difficult to prove that a government entity was deliberately indifferent to the conditions facing inmates.

PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates. Thus, failure to follow these PREA standards could be seen as *prima facie* evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.³⁸

COST ESTIMATES PER SIDE OF LITIGATION FOR TYPICAL AUTOMOBILE TORT CASE

Litigation Stage	Amount expended on attorney’s fees alone for <u>lowest 25%</u>	Amount expended on attorney’s fees alone for <u>highest 75%</u>
Case Initiation	\$1000	\$7,350
Between Discovery through Formal Negotiations or ADR	\$5,000	\$36,000
Trial	\$18,000	\$109,000

This cost model suggests that litigation costs alone may substantially increase for facilities that fail to comply with PREA. It is too early to predict what the costs might be if a plaintiff is successful. One ex-inmate of Travis County has sued, alleging that county and sheriffs’ officials displayed deliberate indifference to his safety by failing to comply with PREA; he is seeking \$2 million in damages as compensation for the rape he sustained while in the Travis County jail.³⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION

Raise the age of maximum juvenile jurisdiction from 17 to 18 years. The Texas Criminal Justice Coalition recommends that Texas raise the age of juvenile jurisdiction for both misdemeanors and felonies from 17 to 18. This expansion of juvenile jurisdiction is consistent with federal constitutional law and promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.

This change will reduce confusion and jurisdictional questions that arise when 17-year-olds are arrested. Moreover, raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to comply with PREA standards, and it would obviate the costs of doing sight and sound separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.

Citations

- ¹ Texas Department of Public Safety, Crime Records (2013).
- ² Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-55, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf>; see also Michele Deitch, Anna Lipton Galbraith, and Jordon Pollock, "Conditions for Certified Juveniles in Texas County Jails," (May 2012): 25.
- ³ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).
- ⁴ Ibid.
- ⁵ Sheriffs Adrian Garcia, Christopher Kirk, and Lupe Valdez, "Sending 17-Year-Olds to Adult Jails Costly to Teens and Taxpayers," *Dallas Morning News*, May 19, 2014, <http://www.dallasnews.com/opinion/latest-columns/20140519-sending-17-year-olds-to-adult-jails-costly-to-teens-and-taxpayers.ece>.
- ⁶ Deitch, et al., "Conditions for Certified Juveniles," 25.
- ⁷ Ibid.
- ⁸ Adrian Garcia, Christopher Kirk, and Guadalupe Valdez, "Raise Age of Juvenile Jurisdiction," *Houston Chronicle*, May 30, 2014, <http://www.chron.com/opinion/outlook/article/Raise-age-of-juvenile-jurisdiction-5517953.php>.
- ⁹ Michele Deitch, Rebecca Breeden, and Ross Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law*, 40 (2012): 1-67, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.
- ¹⁰ Texas Department of Public Safety, Crime Records (2013).
- ¹¹ Ibid.
- ¹² J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *Annals of the New York Academy of Sciences*, Vol. 1021 (2004).
- ¹³ Centers for Disease Control and Prevention, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services," *MMWR* 56, No. RR-9 (2007), <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.
- ¹⁴ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37128 (Jun.20, 2012) (amending 28 C.F.R. pt II5). Other studies have found that youth in adult facilities are five times more likely to report sexual assaults than youth in juvenile facilities. Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-54, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf> (Youth in adult prisons are "five times more likely to report being sexually assaulted by other inmates than in a juvenile commitment facility.").
- ¹⁵ Deitch, et al., "Conditions for Certified Juveniles," 25-26.
- ¹⁶ Ibid.
- ¹⁷ Adrian Garcia et. al, "Raise Age of Juvenile Jurisdiction."
- ¹⁸ Ibid.
- ¹⁹ Deitch, et al., "Conditions for Certified Juveniles," 25-26.
- ²⁰ Allen J. Beck and Paige M. Harrison, "Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007," Bureau of Justice Statistics, Dec. 2007, <http://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.
- ²¹ Ibid.
- ²² U.S. Department of Justice, "National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary," May 16, 2012, 1 (citing 42 U.S.C. 15606(d)(1), (e)(1)).
- ²³ Ibid. (citing 42 U.S.C. 15609(7) & (9)).
- ²⁴ PREA § 15603.
- ²⁵ PREA § 15604(a).
- ²⁶ See PREA § 15605(a) (stating that the purpose of the grants is to ensure that "budgetary circumstances . . . do not compromise efforts to protect inmates" and "to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape").
- ²⁷ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- ²⁸ Ibid.
- ²⁹ U.S. Department of Justice, "National Standards to Respond to Prison Rape," 2 (citing 42 U.S.C. 15607(c)).
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Texas Criminal Justice Coalition's analysis of data obtained from 112 counties with adult correctional facilities.

³³ “Sheriffs Say Yes to Raising the Age of Juvenile Jurisdiction,” Sheriffs’ Association of Texas.

³⁴ U.S. Department of Justice, “National Standards to Respond to Prison Rape,” 10 (emphasis added); see also Webinar: “PREA Readiness – Arlington County Detention Facility,” @ 56:00, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/827/webinar-prea-readiness-arlington-county-detention-fac>.

³⁵ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.

³⁶ Ibid, 2.

³⁷ 511 U.S. 825 (1994).

³⁸ Paula Hannaford-Agor and Nicole L. Waters, “Estimating the Cost of Civil Litigation,” January 2013, 5, http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx.

³⁹ Farzad Mashhood, “Ex-Inmate Sues Over Travis County Jail Rape Claim,” *Austin American-Statesman*, March 14, 2014.