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**TEXAS CRIMINAL  
JUSTICE COALITION**

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**WRITTEN TESTIMONY**

**SUBMITTED BY ALCIA CASTILLO  
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**ON**

**THE TEXAS JUVENILE JUSTICE DEPARTMENT  
LEGISLATIVE APPROPRIATIONS REQUEST  
FOR FISCAL YEARS 2022-2023**

**TO**

**THE LEGISLATIVE BUDGET BOARD**

**NOVEMBER 25, 2020**

Dear Members of the Legislative Budget Board:

My name is Alycia Castillo; I am a Policy Analyst for the Texas Criminal Justice Coalition. Thank you for this opportunity to provide written comment with respect to the Legislative Appropriations Request for the Texas Juvenile Justice Department (TJJD), as well as a review of how the Department plans to allocate funding over the next biennium.

The Texas Criminal Justice Coalition has been closely monitoring the juvenile justice system in Texas for years and, as an organization, we support a community-based system of care that safely reduces the number of kids in secure confinement while addressing the root causes of crime, increasing public safety, and saving taxpayers money.

### **Supporting TJJD's Exceptional Item Requests: A Necessary Investment in the Future of Texas**

With the leadership and support of TJJD's Board and Executive Director, Camille Cain, the agency has made tremendous strides toward becoming a more rehabilitative space for children who have made mistakes. In calendar year 2019, TJJD's average daily population (secure detention) totaled 949 children between the ages of 10 and 16, down 180 from 1,129 children in 2016, prior to Director Cain's leadership. Referrals have also declined by over 1,000 since 2016, with 54,137 referrals processed in 2019.<sup>1</sup>

TJJD has recognized the complex and highly-individualized factors that can interfere with children's success, both in school and out of school, and we encourage continued acknowledgment of the driving factors that lead to incarceration but may be out of a child's control: from trauma, to intellectual and developmental disabilities, to lack of community support, to racial discrimination, to victimization.<sup>2</sup>

The Department's request highlights its concern about the high needs of all children in its care and, despite a challenging budget cycle, seeks to prioritize evidence-based care through exceptional items that would restore base funding for various essential services centering rehabilitation. Though tragic, the COVID-19 pandemic has created an opportunity to make lasting changes to the juvenile justice system.

**With populations in both TJJD and county detention centers down, we can, for the first time, make significant changes without significant negative financial impact.**

#### **What Drives Kids into TJJD?**

##### **Trauma:**

88% of kids in TJJD have one or more Adverse Childhood Experiences, while 49% of girls have four or more Adverse Childhood Experiences.

##### **Mental Health Needs:**

60% of children in TJJD have been diagnosed with a severe mental health issue, with approximately 5% having very significant mental health needs (including depression, autism, and psychosis).

##### **Disability:**

Approximately 23% of kids in TJJD have reported intellectual and developmental disabilities, and the average child is 5 grades behind at intake.

##### **Commercial Sexual Exploitation:**

91% of girls in TJJD have concern for sex trafficking based on the Commercial Sexual Exploitation Identification Tool.

**Texas' most vulnerable children need age-appropriate care and support, not prison cells.**

Below are our recommendations on each of the exceptional items. *Note that the Texas Criminal Justice Coalition supports TJJD's commitment to preventative measures in its exceptional items.*

### ***Exceptional Item 1: Maintaining Core Functions***

Exceptional Item 1 would seek restoration of a portion of the base-level funding for the agency's essential functions, including but not limited to pass-through funding for local probation departments, full funding for diversion programs, and allowances to grant pass-through funding to local juvenile probation departments to continue prevention and intervention programming (\$6 million) and fully fund commitment diversion initiatives (\$1.4 million). **This should be a priority for the Legislative Budget Board, as TJJD's essential functions are necessary to ensuring the safety of children in state custody.**

**Additionally, some costs for contract care could be prevented through better diversion options at the local level, especially for children with first-time offenses,** which the above-mentioned \$1.4 million could support. These measures are critical to ensuring the population of incarcerated children continues its recent downward trend. Diversion options will also prevent the projected population uptick following the loosening of COVID-19 restrictions. Overall, **these investments will yield future cost savings, which are necessary as projections for an even more challenging budget cycle in the 2024-2025 biennium loom.**

### ***Exceptional Item 2: Services Focused on Risks and Needs***

Exceptional Item 2 requests a 5 percent increase for probation departments, which is the shallowest end of the juvenile justice system. Preventing children from being pushed deeper into the system is not only an evidence-based best practice; it is an important measure for long-term savings in reducing recidivism and ensuring that kids stay connected to their families and communities – and thus have better opportunities for success.<sup>3</sup>

**Regarding the requested funding increase, the Texas Criminal Justice Coalition recommends these dollars be allocated to probation departments contingent upon each department's creation of a Community Reinvestment Fund,<sup>4</sup> to ensure adequate support for community-based service providers that are undertaking significant work to reduce kids' contact with the justice system.** Community Reinvestment Funds are being utilized all over the country<sup>5</sup> to facilitate the enhancement and expansion of services that extend beyond the involvement of law enforcement and ensure public safety. And there is strong support for such services: A Lake Research poll conducted in 2017 showed that 90 percent of respondents support treatment for mental health and drug addiction, job and skills training, and mentoring and counseling programs that address the root causes of crime.<sup>6</sup> Community Reinvestment Funds are typically granted by the state or county, entrusted to an intermediary organization with the capability of tracking and reporting outcomes, who will select and distribute funds to grassroots organizations doing direct care.

Similar allocation strategies have been implemented in many states through the Justice Reinvestment Initiative (JRI).<sup>7</sup> So far, the savings have been substantial. In Kansas, in the three years following JRI reforms, the state reported \$2.5 million in savings. Some states with similar reforms report even greater savings, like South Carolina, reporting \$490 million in total criminal justice savings from 2015-2017. Furthermore, 15 states that have some form of JRI strategy in place have seen their incarcerated populations decrease by more than projected levels, totaling \$1.1 billion in savings from 2015-2017 across all states.<sup>8</sup> Texas has the opportunity to both lead the country in reforms for youth justice and ensure long-term savings by investing in community-driven solutions to community-based problems.

**Exceptional Item 3: Strategies to Meet Emerging Issues**

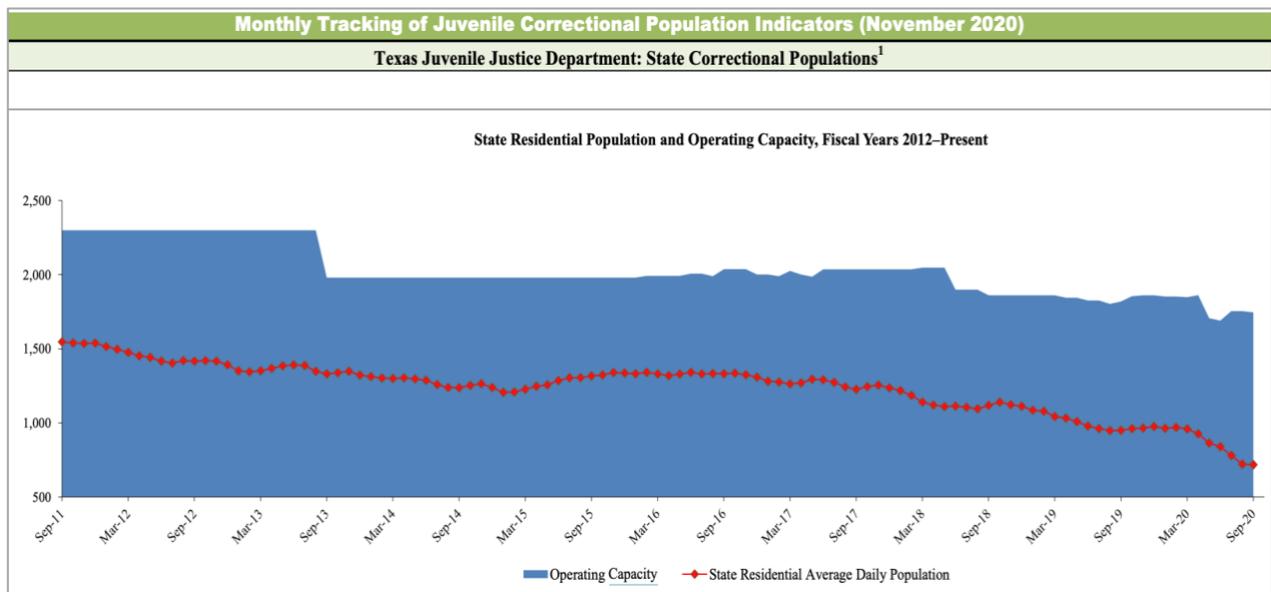
The Texas Criminal Justice Coalition recognizes the requests made in Exceptional Item 3 as challenging in the context of Texas’ budget deficit. We also recognize the urgency of funding the innovations requested (including support for specialized populations and children with intense needs). With this being the case, we have considered alternate means of funding this item, and recommend that this item be granted contingent upon other cost-savings proposals.

**For instance, TJJD is requesting \$3 million for the construction of new, localized facilities for children with high needs. One way this can be achieved is through the transfer of at least one TJJD state facility to the Texas Department of Criminal Justice (TDCJ); idling, closing, or transferring a facility would divest TJJD of facility improvement costs (approximating \$3.2 million) and better enable construction of facilities closer to home,** which will ensure capacity stays at an appropriate level. This would also allow TDCJ to more appropriately meet the needs of its geriatric population, all within the demands of a challenging budget cycle.

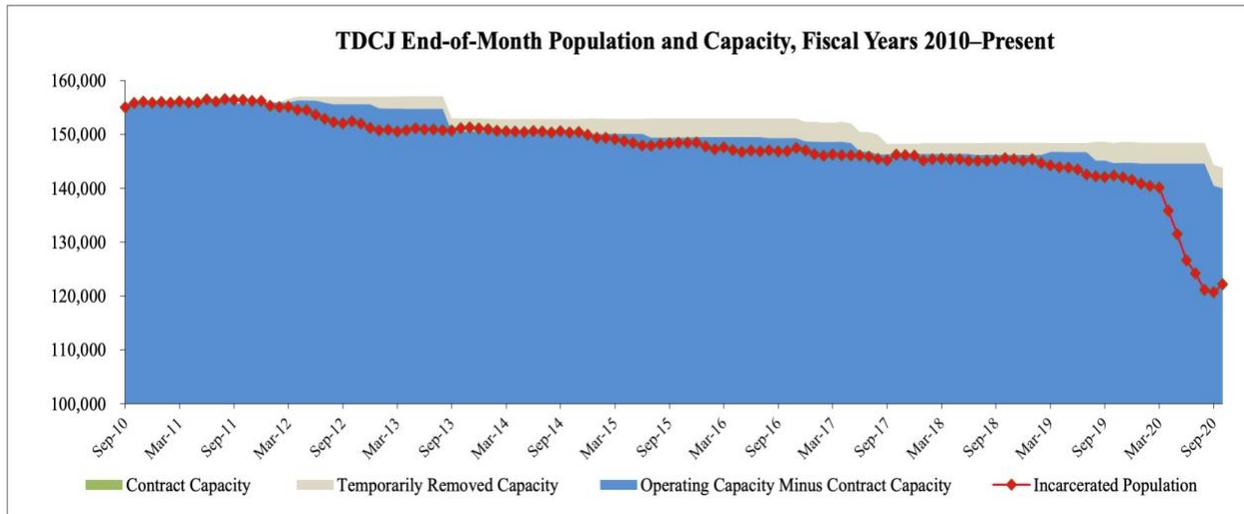
This is not a new proposal: From 2003-2007, the Texas Youth Commission transferred three facilities – Marlin, San Saba, and Hamilton – to TDCJ without incurring significant costs.<sup>9</sup>

While both TJJD and TDCJ have chronic understaffing issues, the number of shortages in TJJD facilities creates risk for unsafe conditions, and it highlights the urgency of transferring children to facilities in urban areas where the staffing pool will be greater and allow for the recommended staff-to-children ratios. Closing or transferring one TJJD facility would only require the transfer of approximately 120 children (depending on the facility), or 30 children per facility, providing opportunities for earlier release, especially important in light of the risks of housing children in confined spaces during an ongoing pandemic. TJJD does have the operating capacity to accommodate children who cannot safely be released.

*TJJD State Residential Population and Operating Capacity, FY 2012-2020:<sup>10</sup>*



TDCJ End-of-Month Population and Capacity, FY 2010-2020:



**Additional Considerations: Raising the Lower Age of Juvenile Jurisdiction and the Upper Age of Adult Jurisdiction**

In addition to funding TJJD’s exceptional items relating to increased local resources to build capacity, the Legislature should include in its long-term budget planning the cost and savings associated with raising the minimum age of delinquency to 12 and raising the age of automatic adult jurisdiction to 18.

Since the beginning of Director Cain’s leadership, commitments of 10- and 11-year-olds to TJJD have dramatically declined year to year with zero 10- and 11-year-olds incarcerated in a state secure facility as of 2019.<sup>11</sup> Unfortunately, not all counties have yet followed suit – meaning that, in Texas, **10 and 11-year-olds can and do become entangled in the criminal legal system**. Though crime rates are low for this age,<sup>12</sup> children under 12 who break the law are often placed on probation, which comes with conditions that even adults struggle to comply with. Removing 10 and 11-year-olds from juvenile jurisdiction will ensure that fewer children enter the pipeline to prison, and it will allow counties to reserve costly supervision services and detention beds for older children.

**Separately, while the impact of the COVID-19 pandemic has caused unanticipated expenses for TJJD, it has also revealed that cost savings can be realized by lowering the population of incarcerated children of all ages.** Over the past several months, population reductions have been achieved in two ways: (1) as counties have filed fewer petitions, and (2) as counties have moved to release youth who do not pose an imminent threat to public safety.<sup>13</sup> [Note that this second strategy has not been utilized to the extent necessary and has actually slowed since May 2020 in secure facilities.<sup>14</sup>] Where there have been aftercare resources available for children at the local level, like in Harris County, re-offense rates have remained low month to month.<sup>15</sup>

TJJD can employ similar strategies with regard to early releases. In 2019, TJJD housed 604 children with indeterminate sentences.<sup>16</sup> By providing those youth with opportunities for early release, as well as by providing them with individualized aftercare, Texas can continue – even following the pandemic – to allow children to receive the care they need in their own communities.

As discussed above, TJJJ's average daily population has already fallen significantly from 2016 levels, as have referrals to the system.<sup>17</sup> Those reductions, coupled with more recent population decreases (and, if possible, with new early releases), show there has never been a better time for the Department to absorb 17-year-olds who are confined to adult prisons.<sup>18</sup> That is what "Raise the Age" legislation seeks to accomplish.

In the past, a barrier to enacting "Raise the Age" legislation has been the fear that it would overwhelm the juvenile system. Reports from other states that have recently raised the age show this fear did not materialize.<sup>19</sup> This is partially due to the fact that **youth crime is declining**, and that **"Raise the Age" legislation is typically associated with other cost-savings reforms.**<sup>20</sup> Formerly prepared fiscal notes in Texas have not accounted for reduced rates of re-offending, nor the associated savings that result from young people being served in more age-appropriate settings that better facilitate growth away from delinquency.

**Texas is one of only three states that automatically charges 17-year-olds as adults.**

**This biennium, for the first time in years, TJJJ has the capacity to absorb 17-year-olds without significant barriers.**

Ultimately, passage of "Raise the Age" legislation would help align Texas with national norms – with 47 states already having successfully passed it – and best practices. Research consistently reports that treating kids like kids provides them greater opportunities for a future.

### Recommendations

- Grant TJJJ Exceptional Item 3 contingent upon the transfer of at least one (1) TJJJ facility to the Texas Department of Criminal Justice for housing geriatric individuals, which will in turn free up funding for TJJJ to invest in smaller, localized and specialized youth facilities.
- Grant TJJJ's request for probation funding in Exceptional Item 2, with distribution contingent upon each probation department's establishment of a Community Reinvestment Fund to be managed by local intermediaries.
- Grant TJJJ's requests in Exceptional Item 1 to avoid the proposed cuts to evidence-based, community-based prevention and intervention programs.
- Consider in long-term budget projections the costs and savings of raising the minimum age of delinquency to 12 and raising the age of automatic adult criminal responsibility to 18.

*Citations on following page.*

## Citations

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- <sup>9</sup> Correspondence via email received from Texas State Legislator staff on behalf of TJJJ official, 11/17/2020.
- <sup>10</sup> Legislative Budget Board, *Adult and Juvenile Corrections Populations Monthly Report: November 2020*, [https://www.lbb.state.tx.us/Documents/Publications/Info\\_Graphic/812\\_MonthlyReport\\_Nov.pdf](https://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/812_MonthlyReport_Nov.pdf).
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- <sup>13</sup> The Square One Project, *Can We Eliminate Youth Prison and What Should We Replace it With?* June 2020, <https://squareonejustice.org/wp-content/uploads/2020/06/CJLJ8234-Square-One-Youth-Prisons-Paper-200616-WEB.pdf>.
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