



Written Testimony of Derek M. Cohen
Deputy Director, Right on Crime
Deputy Director, Center for Effective Justice
Texas Public Policy Foundation

As a conservative public policy think tank, the Texas Public Policy Foundation has a keen interest in juvenile justice policy. Juvenile justice is a costly endeavor. In many states, the relative scarcity of juvenile offenders and service-intensive focus lead to greater per-offender costs than its adult counterpart. Further, juvenile offenders offer great potential for rehabilitation and diversion from a persistent criminal lifestyle. We thank Chairman Kline and the committee for examining this critical issue.

Juvenile Justice in the States

Although having an altruistic, child-saving orientation and history, the current state of the juvenile justice system seems almost assembled by committee. Rooted in the doctrine of *parens patriae*, the juvenile court was originally set out to act as a “parent” for wayward youths and those whose families have failed them. However, amongst the court-driven due process advances of the 1960s, the role of the court as protector was found wanting. Cases that carried to the US Supreme Court found that state-level juvenile courts obfuscated much of the constitutionally guaranteed due process provisions. In the years following, the juvenile court has wholly begun to more closely resemble its adult counterpart.

The primary difference in between the juvenile and adult court system is one of aims. Whereby the adult systems seeks to mete out adequate punishment for the crime committed, the juvenile justice system still focuses on the effective implementation of rehabilitative treatment and delivering its wards to this treatment.

Unfortunately, many youths are sent to the adult criminal court for disposition, either by statutory boundaries or waiver processes. Once in the adult court, appropriate rehabilitative modalities at the disposal of the bench are far more limited than in a juvenile court. Further, inconsistencies amongst and in states regarding processing and sentencing of juveniles has led to the concept of “justice by geography,” where a delinquent act may be punished radically different in one jurisdiction as opposed to another due to the structure of the local laws and court system.

In 2013, it is estimated that 54,148 juveniles were held in residential placement nationwide, roughly half of the number held in 1999.ⁱ This prevailing drop both preempts and outpaces the recent reductions seen in the adult corrections system. Of these, a reported 2,524 youth were detained with the most-serious crime being a status offense.ⁱⁱ However, an analysis conducted by the Texas Public Policy Foundation estimated that this number may underestimate the true number of confined status offenders of the course of the year by a factor as high 3.6.ⁱⁱⁱ

Age of Juvenile Court Jurisdiction

With its key emphasis on rehabilitation and reintegration, the juvenile justice system categorically produces better outcomes for public safety and young offenders than does the adult system. Still, many juvenile offenders find themselves in the adult criminal justice system under statutory definitions of the age of criminal responsibility or through judicial or prosecutorial action.

For most individuals, the human brain has not reached full development until about 25 years of age. This latent development is not problematic *per se*, though the disparate rate different regions of the brain develop is. The two *nucleuses accumbens* (one in each hemisphere) are more substantially developed in early adolescents. The *nucleus accumbens* facilitates reward response (i.e., provides a dopaminergic release) when certain behaviors are undertaken.

However, this outpaces the development of the prefrontal cortex, the brain area associated with impulse control, delayed gratification, and other executive-level “adult” functions. Simply put, the average adolescent brain has an unfortunate structure that demands reward, though lacks the ability to regulate reward-seeking behaviors. As such, it is not uncommon to see minor deviance amongst youth, though that deviance often stops in the individual’s early twenties.^{iv}

Further, studies have shown that traumatic experiences (those reasonably expected to be experienced in secure incarceration with an adult facility) have an extremely detrimental effect on the developing brain. Future deviance, aggression, and low self-control are correlated with having experienced trauma earlier in life.

Similarly, the adolescent brain as a “work in progress” bodes well for rehabilitative approaches. The brain’s malleability at this stage makes the individual prime for appropriate intervention. However, this nuance underscores the need for appropriate risk classification and program assignment. Assigning low-risk youth to interventions intended for and attended by high-risk offenders can be just as damaging as the incarceration experience.

The bulk of the scientific literature on the matter has shown that when compared to similarly-situated offenders, youth who are transferred into the jurisdiction of the adult court routinely have worse outcomes than do those who are not. These studies look at youth via post hoc comparison or quasi-experimental design and identify the aggregate differences in outcome between the two groups. Youth handled by the adult criminal court and in adult correctional facilities routinely have higher rates of victimization while incarcerated, higher recidivism rates upon release, and even an elevated risk of suicide.

In addition to the divergent outcomes from the two jurisdictions, 17 year-olds in many states are still subject to compulsory attendance laws. Juvenile probation, with its close relationship to the schools, is better arrayed to keep the offender in school and on a path to success. Further, the juvenile system is more adept at interfacing with parents. A 17 year-old

processed in the adult system precludes parental involvement, whereas the juvenile courts, juvenile probation, and even juvenile secure facilities encourage and solicit parental involvement, a key element in reforming the child.

There is a panoply of community-based rehabilitative modalities that target young offenders and at-risk youth. Functional Family Therapy and Multi-systemic Therapy are promising avenues for dealing with at-risk youth. In dealing with youth post-adjudication, cognitive-behavioral therapies (CBT) (those which target “criminal thinking errors” and other criminogenic risk factors) have shown broad success. It is important to note that CBT programs, just like other forms of rehabilitation, are most effective with high-risk offenders. Care should be taken not to over-sentence (and by extension over-treat) low-risk youth as doing so often leads to negligible or counterproductive outcomes.

A case handled in the juvenile justice system is almost universally more expensive in terms of upfront costs than one handled in the adult system. This is largely due to the relatively robust economy-of-scale that exists in adult corrections. Nationally, juvenile justice systems have lower guard-to-inmate ratios, more rehabilitative programming, fewer inmates per facility, and oftentimes individual rooms. Adult criminal justice institutions are optimized for cost efficiency. As more juveniles who fall under the jurisdiction of the adult court are adjudicated in the juvenile court, there will likely be a minor increase in raw costs, though the per-juvenile cost trend will likely bend downward rapidly.

These upfront costs mask the long-term fallacy of prioritizing immediate, superficial saving over long-term benefits. One of the most effective methods for controlling criminal justice system costs is to ensure that offenders avoid recidivating, or re-offending, upon release. The immediate cost-savings enjoyed by processing a case through the adult court versus the juvenile court is quickly diminished if that individual is brought back before the court multiple times. Taken in tandem with the routinely lower recidivism rate exhibited by juvenile offenders handed in the juvenile justice system, it makes better long-term financial sense to adjudicate youthful offenders in the juvenile court. With dwindling juvenile probation caseloads, these low-risk youth will not likely strain existing capacity in many states.

In Texas alone, a recent cost-benefit analysis assessing potential fiscal impacts of this type of reform estimates that raising the age of the juvenile court jurisdiction will produce a net savings of \$88.9 million per each cohort of 17 year-olds moved into the juvenile system.^v

***Mens Rea* and the Overcriminalization of Youthful Indiscretions**

Overcriminalization – the over-application or misuse of criminal law or processes to address non-criminal behavior – is a burgeoning problem in both state and federal criminal statutes. With a federal criminal code alone that boasts over 4,500 violations that may lead to criminal sanctions, in addition to hundreds of thousands of regulatory offenses, it is of no surprise that the accused often have little knowledge of the illegality of their behavior. Examples of nonsensical applications of criminal law abound; from the use of securities law to punish

environmental offenses¹ to the case of a famous racecar driver seeking life-saving refuge during a blizzard.²

Juvenile justice, too, has experienced a rampant uptick in the application of law and formalized proceedings to address behavior of dubious criminal blameworthiness. This is experienced two-fold by juveniles as they are subject not only to prevailing criminal law, but a body of status offenses – actions not criminal if committed by an adult like truancy, incorrigibility, or running away – as well.

In many of these cases, the fact pattern is missing one critical element: *mens rea*, the culpable mental state required to commit an offense under common law. Oftentimes juveniles are not fully advised if a specific activity is punishable given the vagueness of the rule.

A strong *mens rea* component included in the codification of each of the law or rule is necessary to ensure true violators are punished while others are not swept into the net of overcriminalization.

Too often state and federal courts are seen as a convenient venue in which to address what are fundamentally behavioral or social issues; actions which are not egregious violations of public order or sentiment. This misuse of the criminal justice system has real, measurable consequences.

The Role of the Federal Government in Juvenile Justice

Much like policies dealing with adult offenders, juvenile justice is primarily under the purview of state authority. This is reflected in the paucity of federal prisoners under the age of 18; 33 as of August 29th of this year.^{vi} However, the federal government may incentivize certain state-level policies through grant programs and technical assistance.

The Juvenile Justice and Delinquency Prevention Act

Perhaps the most prominent example of federal juvenile justice policy, the Juvenile Justice and Delinquency Prevention Act (JJDP) was first signed into law in 1974. Subsequently reauthorized, the JJDP sets standards for state juvenile justice policy regarding sentencing and conditions of confinement.

While the JJDP has managed to advance certain best practices in juvenile justice, it unfortunately allows for the jailing of status offenders under valid court order (VCO) exception.

¹ In the case of *Yates v. United States* (574 U.S. ____), commercial fisherman John Yates was alleged to have possessed 72 red groupers thought to be undersized during an onboard inspection conducted by federal agents. Upon his return to shore, inspectors only uncovered 69 undersized red groupers, the implication being that he disposed of three en route. Mr. Yates was later charged with “destroy[ing]...or mak[ing] a false entry in any record, document, or tangible object,” a provision in the federal code attributable to the Sarbanes-Oxley Act of 2002 (Pub.L. 107–204) and carrying a potential penalty of 20 years in prison.

² In the case of *Unser v. United States*, Bobby Unser and a friend were snowmobiling in the Rocky Mountains when they were caught in an unexpected blizzard. After becoming lost, the pair sought refuge in a barn. Unbeknownst to them, they had allegedly illegally snowmobiled through a national forest wilderness area.

Similar to a contempt of court ruling, juveniles who commit a non-jailable offense after having been admonished for the same activity are subject to incarceration.^{vii} Subsequent reauthorizations should ensure the exception for VCO incarceration is removed.

Juvenile Justice in Texas³

While Texas has experienced success in terms of cost efficiency and public safety in the wake of the seminal 2007 reforms of its criminal justice system,⁴ much of the juvenile justice system remain entrenched in inefficient and costly practices. That year, the revelation of several abuse scandals prompted the legislature to apply similarly reorganize the juvenile justice system.

The General Appropriations Act of 2009 provided additional funding to the juvenile probation system, allowing the Community Corrections Diversion Program to begin, which set a maximum target for incarcerated juveniles. Modeled after successful initiatives in other states, this program provided funding for counties that lowered the number of committed juveniles below that target by utilizing diversionary programs. Counties participating in the program were provided with additional funding to support diversionary options such as community-based residential placements or community supervision. Counties that went beyond the target, and incarcerated additional juveniles were required to return some of that funding.

The program cut the number of juveniles being sent to state-run facilities and allowed the Legislature to decrease funding for state facilities in 2009 by \$100 million and more in the long-term.^{viii} Today's Texas Juvenile Justice Department (TJJD) costs taxpayers less than the combined total of yesteryear's Texas Youth Commission (TYC) and Texas Juvenile Probation Commission (TJPC).

In mid-2010, the TYC advanced a strategic plan for 2011–15 to concentrate more on rehabilitation measures. In 2011, the Texas Legislature took these suggestions but went a step further by restructuring the entire system. Before 2011, juveniles in state custody were either under the TYC or the TJPC. SB 653 joined these two agencies as the TJJD in order to streamline communication between local systems and state-run facilities and thereby increase community involvement in corrections. The bill also required that the state use results-oriented performance metrics that focus on recidivism, educational and vocational progress, and victim restitution.^{ix}

SB 1209 provided an option for counties to place juveniles in juvenile-detention centers while they awaited hearings.^x This avoids the juveniles having to spend lengthy periods in adult lockups, as juveniles in adult facilities have been shown to have higher rates of assault, suicide, and recidivism after release.^{xi}

Perhaps the most noteworthy juvenile justice reform of the past decade came during this past legislative session in the form of SB 1630.^{xii} This bill stands to save the state tens of millions of dollars by lowering its reliance on state-run facilities and relocating lower-level

³ For more information on the timeline of Texas's juvenile justice reforms, please see *The Texas Model: Juvenile Justice* by Dianna Muldrow and Derek Cohen of the Texas Public Policy Foundation.

⁴ For more information on Texas's reforms of 2007, please see *Texas Adult Corrections: A Model for the Rest of the Nation* by Greg Glod of the Texas Public Policy Foundation.

juvenile offenders to community-based programs.^{xiii} It requires that judges evaluating non-determinate juvenile sentences assess whether the juvenile has a special need that cannot be met in the available community programs. If there is no such need, then the juvenile is to be placed in the community setting. This mandate was accompanied by a regionalization plan that further increases community involvement.

Trends in Crime, Costs, and Commitments

Since the passage of recent juvenile justice reforms, Texas has enjoyed a sustained drop in state-level commitments and general expenditures towards juvenile justice. In FY 2006, 2,738 juveniles were committed to secure facilities in Texas. By FY 2013, the number of commitments have plummeted to 818, a reduction of over 70 percent.^{xiv} This drop has allowed the state to close or consolidate seven facilities.^{xv} These reforms were attended by a commensurate drop in nominal spending. As illustrated in Figure 1, spending on juvenile justice is the lowest it has been since before FY 2001.

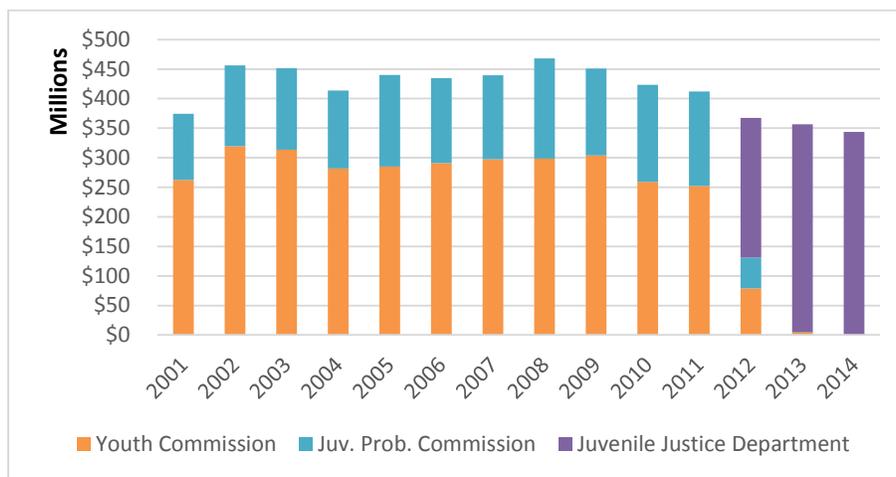


Figure 1: Texas State Expenditures on Juvenile Justice^{xvi}

Community supervision caseloads have dwindled, as well. In FY 2010, an average of 30,549 youths were monitored daily.^{xvii} In FY 2014, this number had dropped by nearly 25 percent to 23,064.^{xviii} These reductions in secure and community placements came in tandem with increases in public safety, with formal juvenile referrals dropping from 89,893 in FY 2010 to 63,708 in FY 2014 – a reduction of nearly 30 percent.^{xix}

Conclusion

To be clear, the task of administering the criminal justice system is solely the responsibility of the respective states. While criminal justice policy is fundamentally a state prerogative, with federal government can use future reauthorizations of the JJDPA to promote best practices and tie funding to performance metrics.

Juvenile justice reform is not “soft on crime.” It is a matter of using the best possible tools for the job. Proper juvenile justice policy has the potential to intercede in a nascent

criminal career, preventing future victimization at the hands of offenders and drains on law enforcement and correctional resources. With great fiscal and human costs at stake, it is critical that states implement proven methods for dealing with delinquent behavior. Congress can aid in this endeavor by ensuring future legislation reflects an understanding of this.

ⁱ Sickmund, Melissa, T.J. Sladky, W. Kang, and C. Puzzanchera, "Easy Access to the Census of Juveniles in Residential Placement" 2013.

ⁱⁱ *Ibid.*

ⁱⁱⁱ Levin, Marc and D. Cohen, "Kids Doing Time for What's Not a Crime: The Over-Incarceration of Status Offenders." Texas Public Policy Foundation, 2014.

^{iv} Steinberg, Laurence, "Cognitive and Affective Development in Adolescence." *Trends in Cognitive Science*, 9:2 2005.

^v Deitch, Michele, R. Breeden, and R. Weingarten. "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas." *Am. J. Crim. L.* 40, 2012.

^{vi} Federal Bureau of Prisons. "Inmate Statistics: Inmate Age." Available at:

https://www.bop.gov/about/statistics/statistics_inmate_age.jsp

^{vii} Levin and Cohen, 2014.

^{viii} Fabelo, Tony, N. Arrigona, M. Thompson, A. Clemens, and M. Marchbanks. "Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms." Council of State Governments, 2015.

^{ix} SB 653. 82nd Texas Legislature. 2011.

^x SB 1209. 82nd Texas Legislature. 2011.

^{xi} Deitch, Michele, A. Galbraith, and J. Pollock. "Conditions for Certified Juveniles in Texas County Jails." Lyndon B. Johnson School of Public Affairs, 2012.

^{xii} SB 1630. 84th Texas Legislature. 2015.

^{xiii} Legislative Budget Board, "SB 1630 Fiscal Note." 84th Texas Legislature. 2015.

^{xiv} Texas Juvenile Justice Department. "TJJD Commitment Profile." Available at:

<http://www.tjjd.texas.gov/research/profile.aspx>

^{xv} Pew Charitable Trusts. "Bending the Curve: Juvenile Corrections Reform in Texas." 2013. Available at:

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^{xvi} Texas Comptroller of Public Accounts. "Texas Transparency." Available at: <http://www.texasparency.org/>

^{xvii} Legislative Budget Board. "Adult and Juvenile Correctional Populations: Monthly Report (Sep 2015)."

Available at: http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/812_Monthly_Report_Sep_2015.pdf

^{xviii} *Ibid.*

^{xix} *Ibid.*