

# Policy Perspective

## The ABC's Before TYC: Enhancing Front-End Alternatives in the Juvenile Justice System

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### RECOMMENDATIONS

- Link state funding of juvenile probation and crime prevention programs to TYC utilization.
- Implement performance-based juvenile probation funding.
- Increase use of police diversion.
- Expand juvenile drug courts.
- Increase utilization of juvenile victim-offender mediation.
- Reduce out-of-school suspensions and school referrals to juvenile justice system through school-based probation officers, teen and school-based courts, peer mediation, and student behavior and attendance accounts.
- Foster private sector initiatives to provide vocational opportunities.

### INTRODUCTION

Given the abuses at the Texas Youth Commission (TYC) that have justifiably received much attention, it's easy to overlook the fact that only 3 percent of the 107,684 juveniles referred to the criminal justice system or under supervision in Texas are incarcerated at TYC facilities, and only another 8 percent are in local residential facilities.<sup>1</sup> The Texas Juvenile Probation Commission (TJPC) oversees local residential facilities and distributes state funds to the 169 local juvenile probation departments. Although they have increased slightly in recent years, violent felonies represent only 7 percent of referrals to juvenile probation, meaning that most referrals stem from property and drug offenses, along with "status" offenses such as runaway and alcohol possession which are crimes only for minors.

### Most Common Juvenile Arrests in Texas<sup>2</sup>

*\*frequency per 100,000 population*

Assaults	964
Burglary	230
Curfew & Loitering	558
Disorderly Conduct	849
Drug Abuse	609
Drunkenness	152
Larceny-Theft	1,012
Liquor Laws	226
Runaways	580
Vandalism	208

In the juvenile system, Texas already emphasizes alternatives to incarceration for most offenders. Moreover, the alternatives are working. Some 83 percent of juveniles on probation

in Texas successfully complete their terms and 81 percent of those on deferred prosecution succeed.<sup>3</sup> State policy changes can further enhance these alternatives.

There is a strong connection between the effectiveness of juvenile probation and the costs to the state of TYC commitments. Each referral to juvenile probation costs the state an average of \$899.60 compared with TYC's annual cost of \$62,000 per year per ward.<sup>4</sup> Looked at another way, TYC's total budget for 2008-09 is \$503 million while TJPC's budget is \$328 million—even though TJPC serves 20 times as many youth.

In 2007, the Legislature reduced TYC's projected population in 2009 from 5,062 to 4,027 through SB103's provisions that preclude TYC placement for misdemeanors and cap the TYC age at 18.<sup>5</sup> To avoid creating an unfunded mandate for counties that must deal with these misdemeanants formerly placed at TYC, the Legislature appropriated \$22.5 million in additional funding for enhanced community-based services and programs. The Legislature also committed \$35.4 million for the placement of youth that would have previously been eligible for commitment to TYC. Further reductions in TYC's population may result from these budgetary provisions.

In January 2007, the Legislative Budget Board had projected that TYC would have needed another 600 beds to hold 5,062 youths in 2009—the \$66 million cost to have constructed these beds and the \$33.4 million annual cost to operate them have now been averted.<sup>6</sup> The reduction in TYC's projected population also enabled the Legislature to

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decrease TYC's operating budget, excluding capital improvements, from \$454.6 million in 2006-07 to \$445.3 million in 2008-09, even while enacting expensive reforms to end abuses such as establishing an office of inspector general and ombudsman to investigate and report misconduct, reducing the staff-youth ratio from 18-1 to 12-1, and increasing the juvenile correction officer training requirement from 80 to 300 hours, the benchmark for Texas adult prison guards.<sup>7</sup>

Some 75 percent of the commitments to TYC are juveniles on probation, including 1,342 probation revocations.<sup>8</sup> For several reasons, there is a limit to how many of these youth can be diverted from TYC. Since juvenile probation departments are focused on rehabilitation and have long used progressive sanctions such as intensive probation monitoring, curfews, and local residential placement, the majority of youth referred to TYC have committed very serious and/or repeated crimes. In fact, 91 percent of youths sent to TYC have at least one prior felony.<sup>9</sup> They also likely went through all of the programs offered by the local juvenile probation department, including placement in a Level 5 post-adjudication residential facility if the youth is from a well-populated county.

Consequently, in addition to strengthening juvenile probation, another way to further reduce, or at least stabilize, TYC commitments is to take measures that control the total number of youths who ever become involved in the criminal justice system. Such measures can include reducing unnecessary out-of-school suspensions and school referrals for conduct that in years past would have been punished within the school setting. The younger a person is when they have their first contact with the criminal justice system, the more likely they will go onto a life of crime—because of this correlation the Texas Board of Pardons and Paroles uses age of first contact as one factor in assessing the risk of prospective adult parolees. Nationally,

57 percent of youths whose first contact with the justice system was at age 12 ended up in the adult criminal justice system versus 43 percent of those whose first referral was at age 17.<sup>10</sup>

The state bears 100 percent of the cost of TYC placements, but has historically only funded 30 percent of juvenile probation costs, with 60 percent of the burden borne by county taxpayers and the remaining 10 percent covered by federal funds.<sup>11</sup> One consequence of the decentralized probation system is that counties differ widely in the type of juvenile probation and delinquency programs that they offer. By allowing counties that control their utilization of TYC for nonviolent offenders to keep some or all of the savings to the state, Texas can promote local innovations in juvenile justice.

## THE FRONT END OF THE JUVENILE JUSTICE SYSTEM: CURRENT STAKEHOLDERS AND STRATEGIES

### Juvenile Probation

TJPC classifies the programs offered by juvenile probation departments into various categories, such as:

Anger Management	Life Skills
Cognitive Behavioral	Mental Health
Day Treatment	Mentoring
Early Intervention	Sex Offender
Educational	Substance Abuse Treatment
Family Preservation	Truancy
Female Offender	Victim Mediation
Gang Prevention	Vocational

According to a study by the state-funded Washington State Institute for Public Policy, most of these approaches reduce crime and the total cost of the juvenile justice system.<sup>12</sup> Studies have found that programs such as day treatment that keep most juvenile offenders in the community are more effective

### QuickFact:

Seventy-five percent of TYC commitments are juveniles on probation.

Washington State Institute for Public Policy Estimates as of October, 2006	Effect on Crime Outcomes Percent change in crime outcomes, & the number of evidence-based studies on which the estimate is based (in parentheses) (1)	Benefits and Costs (Per Participant, Net Present Value, 2006 Dollars)			
		Benefits to Crime Victims (of the reduction in crime) (2)	Benefits to Taxpayers (of the reduction in crime) (3)	Costs (marginal program cost, compared to the cost of alternative) (4)	Benefits (total) Minus Costs (per participant) (5)
<b>Notes:</b> "n/e" means not estimated at this time. Prevention program costs are partial program costs, pro-rated to match crime outcomes.					
<b>Programs for Youth in the Juvenile Offender System</b>					
Multidimensional Treatment Foster Care (v. regular group care)	-22.0% (3)	\$51,828	\$32,915	\$6,945	\$77,798
Adolescent Diversion Project (for lower risk offenders)	-19.9% (6)	\$24,328	\$18,208	\$1,913	\$40,623
Family Integrated Transitions	-13.0% (1)	\$30,708	\$19,502	\$9,665	\$40,545
Functional Family Therapy on probation	-15.9% (7)	\$19,529	\$14,617	\$2,325	\$31,821
Multisystemic Therapy	-10.5% (10)	\$12,855	\$9,622	\$4,264	\$18,213
Aggression Replacement Training	-7.3% (4)	\$8,897	\$6,659	\$897	\$14,660
Teen courts	-11.1% (5)	\$5,907	\$4,238	\$936	\$9,208
Juvenile boot camp to offset institution time	0% (14)	\$0	\$0	-\$8,077	\$8,077
Juvenile sex offender treatment	-10.2% (5)	\$32,515	\$8,377	\$33,064	\$7,829
Restorative justice for low-risk offenders	-8.7% (21)	\$4,628	\$3,320	\$880	\$7,067
Interagency coordination programs	-2.5% (15)	\$3,084	\$2,308	\$205	\$5,186
Juvenile drug courts	-3.5% (15)	\$4,232	\$3,167	\$2,777	\$4,622
Regular surveillance-oriented parole (v. no parole supervision)	0% (2)	\$0	\$0	\$1,201	-\$1,201
Juvenile intensive probation supervision programs	0% (3)	\$0	\$0	\$1,598	-\$1,598
Juvenile wilderness challenge	0% (9)	\$0	\$0	\$3,085	-\$3,085
Juvenile intensive parole supervision	0% (10)	\$0	\$0	\$6,460	-\$6,460
Scared Straight	+6.8% (10)	-\$8,355	-\$6,253	\$58	-\$14,667
Counseling/psychotherapy for juvenile offenders	-18.9% (6)	\$23,126	\$17,309	n/e	n/e
Juvenile education programs	-17.5% (3)	\$41,181	\$26,153	n/e	n/e
Other family-based therapy programs	-12.2% (12)	\$15,006	\$11,231	n/e	n/e
Team Child	-10.9% (2)	\$5,759	\$4,131	n/e	n/e
Juvenile behavior modification	-8.2% (4)	\$19,271	\$12,238	n/e	n/e
Life skills education programs for juvenile offenders	-2.7% (3)	\$6,441	\$4,091	n/e	n/e
Diversion progs. with services (v. regular juvenile court)	-2.7% (20)	\$1,441	\$1,034	n/e	n/e
Juvenile cognitive-behavioral treatment	-2.5% (8)	\$3,123	\$2,337	n/e	n/e
Court supervision vs. simple release without services	0% (8)	\$0	\$0	n/e	n/e
Diversion programs with services (v. simple release)	0% (7)	\$0	\$0	n/e	n/e
Juvenile intensive probation (as alternative to incarceration)	0% (5)	\$0	\$0	n/e	n/e
Guided Group Interaction	0% (4)	\$0	\$0	n/e	n/e

Source: Aos, S., Miller, M and Drake, E., "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates," Washington State Institute for Public Policy (October 2006) <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>.

than incarceration in state lockups in reducing recidivism because they help the offender avoid associating with more delinquent youth and maintain positive ties between the juvenile and his or her family and community, including non-profit organizations and religious congregations.<sup>13</sup>

The availability of these programs varies widely across the 169 Texas juvenile probation departments. For example, as part of its current study of existing victim-offender mediation as required by House Bill 2291 passed in the 80th Legislature, TJPC has determined that 11 local probation departments currently offer victim-offender mediation.

In 2003, 85 percent of departments offered at least one of the TJPC-classified programs to juveniles under their supervision and 51 percent of juveniles under supervision in 2003 participated in at least one program.<sup>14</sup> The successful completion rate for all programs is 68 percent and only 3 percent of juveniles successfully completing a program are referred to TYC within two years, compared to 19 percent of those not completing a program.

Part of the increase in TJPC funding provided by the 80th Legislature was targeted to divert more youths from TYC. In the budget for TJPC, lawmakers set aside \$35.4 million during the biennium for community corrections programs, targeting youth that would have previously been eligible for TYC commitment and \$8.8 million for placing youth guilty of a felony or multiple misdemeanors in the 32 locally-operated post-adjudication residential facilities, which cost \$90.62 per day compared to \$153.24 per day for TYC. The budget specifies that none of this money can be used by juvenile probation departments for staff salary increases. TJPC audits departments to ensure these funds are properly disbursed and also monitors conditions at post-adjudication facilities to ensure that abuses similar to TYC do not occur or, if they do, are promptly detected and corrected.

### Juvenile Prosecutors and Courts

Texas juvenile probation departments generally dispose of Class B misdemeanors and some Class A misdemeanors. Class C misdemeanors, which are fine-only of-

### QuickFact:

Local residential facilities are 41 percent cheaper than TYC.

fenses, are disposed of in municipal or justice of the peace courts, unless the youth is charged with conduct in need of supervision, in which case the matter is routed to the juvenile court. Felonies are resolved by settlements with prosecutors or sentences imposed by the juvenile courts.

All told, in 2005, juvenile probation departments disposed of 40,783 cases while another 15,844 cases were settled by prosecutors, with the remaining 47,535 cases resolved by juvenile courts. Of these, the court ordered supervisory caution in 908 cases; ordered deferred prosecution in 4,767 cases; adjudicated new or modified probation in 26,859 cases; certified and transferred to adult court in 178 cases; adjudicated and committed to TYC in 2,665 cases (2,495 with indeterminate sentences and 170 with determinate sentences);\* and consolidated, transferred, dismissed, or found not guilty in 12,158 cases.<sup>15</sup>

A relatively recent innovation in the judiciary is drug courts. Although most of the approximately 50 drug courts in Texas are for adults, some Texas counties, including Bexar, Dallas, and McLennan, have established juvenile drug courts. In these courts, a judge generally defers disposition of the case contingent upon the youth's successful completion of treatment, which is measured through frequent testing and reporting. The juvenile probation department often provides ongoing supervision, drug testing, ancillary support, and monitoring of the youth's progress. At regular intervals, the youth receives official recognition for achieving treatment milestones. At the successful conclusion of treatment, pending charges are dismissed by the court. In the Tarrant County Juvenile Drug Court, 83 percent of youths success-

fully complete the program, and of those youth, 98 percent have no further referrals resulting in adjudication or commitment to TYC.<sup>16</sup>

The 80th Legislature passed HB 530, which created additional funding for drug courts through a \$50 offender fee applicable to certain drug and intoxication offenses. The bill lowered the county population threshold for requiring the establishment of drug court programs from 550,000 to 200,000, although the requirement is contingent upon the availability of sufficient state or federal funding. HB 530 also empowered courts to enter an order of nondisclosure under Government Code 411.081 for the offense for which the defendant entered the drug court program if the defendant: 1) has not been previously convicted of a felony; 2) does not get convicted for another felony offense in the two years after the completion of the drug court program. By obtaining such an order, a rehabilitated offender will be in a much better position to obtain employment, housing, and student loans.

### **Law Enforcement**

Of the 141,113 juvenile arrests in 2005, 63,926 were warned and released, handled in justice and municipal courts, or diverted by law enforcement, with the remaining 77,187 referred to juvenile probation departments. The early intervention and police diversion provisions in Chapter 52 of the Family Code are one mechanism that some law enforcement agencies use to resolve minor juvenile cases. Section 52.03 of the Family Code states that each county's juvenile board "shall, in cooperation with each law enforcement agency in the county, adopt guidelines" for such informal dispositions.

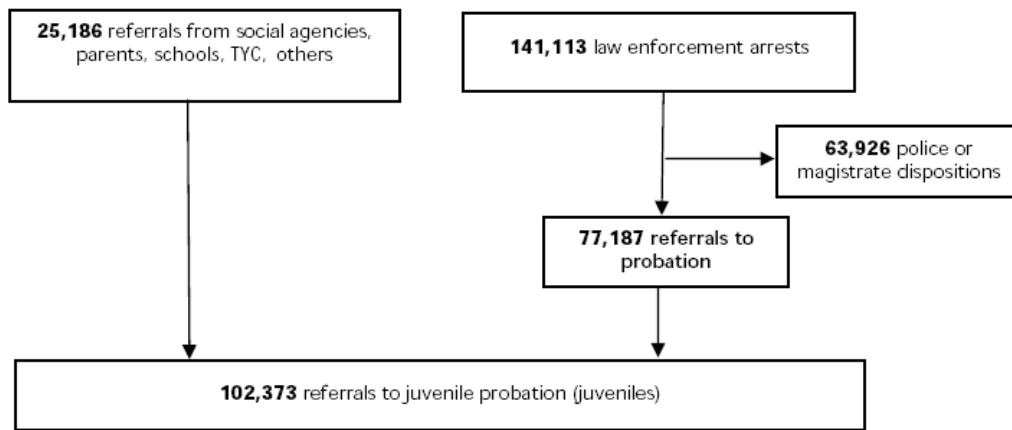
### **QuickFact:**

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\*Determinate sentences are for a fixed period, usually resulting in transfer of that youth to adult prison, unlike indeterminate sentences which empower TYC to set the youth's release date based on when it determines rehabilitation is completed, or under the new law, when the youth turns 18, although TYC can transfer some of these offenders to adult parole and ask the sentencing court to transfer others to adult prison. Youths being certified to stand trial as adults or receiving long determinate sentences represent a very small slice of the total juvenile caseload.



**Texas Juvenile Intake Process**



Source: "The State of Juvenile Probation Activity in Texas," Texas Juvenile Probation Commission (September 2007) <http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2005.pdf>.

Pursuant to these dispositions arranged by peace officers, which Section 52.03 limits to first-time, non-violent offenders, the youth offender and parent enters into an agreement, which often is based on input from the victim, to make restitution and comply with conditions such as counseling.

In Dallas County, non-officer staff in the Dallas Police Department follow up to make sure the agreement is honored while law enforcement in some other counties utilize juvenile probation personnel, even though these youths are not, by virtue of this disposition, placed on probation. In Tarrant County, of the 380 youth processed through the First Offender Program under Section 52.03, 90 percent completed the program successfully, while 100 percent were not re-referred within 90 days following successful program completion.<sup>17</sup>

**Schools**

Schools refer approximately 7,000 Class B misdemeanor and higher cases to the juvenile justice system every year.<sup>18</sup> That does not include over 20,000 Class C misdemeanor cases for truancy and violations of the Education Code filed by school districts in municipal and justice of the peace courts.<sup>19</sup> HB

278 passed in the 80th Legislature repealed an Education Code provision that allowed school districts to criminalize any provision of their student handbook, which had led to Class C citations for such routine misbehavior as chewing gum and tardiness. However, districts can still cite students for other violations of the Education Code like "unreasonable noise."

Also, Texas public schools may contribute to delinquency by making 286,000 referrals to out-of-school suspension every year, resulting in more than 1 million school days missed. States with higher rates of out-of-school suspensions also have higher overall rates of juvenile incarceration.<sup>20</sup> An analysis of TJPC referral data—combined with TEA data on suspensions—indicates that students who are in out-of-school suspension are 32 times more likely to commit a Class B misdemeanor offense or greater, or violate a judicial order, during those days than students in school.<sup>21</sup> While the type of students suspended for misbehavior are also the type of students more prone to commit crimes, the lack of supervision during the day may enhance the opportunity for these suspended youth to engage in illegal activity.

**QuickFact:**

In Tarrant County, of the 380 youth processed through the First Offender Program under Section 52.03, 90 percent completed the program successfully, while 100 percent were not re-referred within 90 days following successful program completion.

## RECOMMENDATIONS

### *Link State Funding of Juvenile Probation and Crime Prevention Programs to TYC Utilization*

Misdemeanant TYC placements were eliminated as part of SB 103, the landmark TYC reform legislation enacted by the 80th Legislature. This makes the juvenile system consistent with the adult system where misdemeanants can be sentenced to county jail, but not to state facilities. An advantage of this approach is that local officials who must bear the cost of county lockups have an incentive to manage capacity to balance public safety and costs to taxpayers.

Conversely, when prosecutorial and sentencing decisions are made locally and the incarceration cost is borne by the state, there is an incentive to overutilize incarceration. This is particularly true in the juvenile system, because the state pays for a lower percentage of juvenile probation than adult probation. Indeed, a 2003 report by the Comptroller noted, “In some cases, for instance, county juvenile probation departments will send youths to TYC simply because available TJPC funding has run out—even if the youths’ offenses do not merit TYC placement, and despite the fact that TYC placement is far more expensive than probation options.”<sup>22</sup>

Even with misdemeanants no longer being sent to TYC, other nonviolent offenders remain eligible for commitment. For example, it is a state jail felony to possess unauthorized prescription drugs and even the smallest amount of any illegal drug except marijuana. In 2006, over 300 youth were incarcerated at TYC for drug offenses, which cost \$28.1 million based on TYC’s \$152.39 per day cost and average commitment of 20.5 months.<sup>23</sup> Many property offenses like theft and graffiti can also be felonies if the damage or value involved exceeds a certain threshold.

Ohio pioneered a solution to this problem that better aligns the incentives in

the juvenile justice system for processing nonviolent offenders. Through its innovative RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) funding system adopted more than a decade ago, Ohio took some funds previously allocated to the Department of Youth Services—their version of TYC—and pooled and distributed them to county probation departments instead, based on population and delinquency levels.

Under RECLAIM, juvenile judges may use the funds allocated to treat juvenile offenders in the local community or pay to commit the youth to the Ohio Department of Youth Services. A separate fund was established to allow juvenile judges to sentence youth convicted of violent offenses, including murder, attempted murder, kidnapping, voluntary manslaughter, involuntary manslaughter, rape, arson, and violent gun offenses, without using the RECLAIM funds.

The results of RECLAIM have been promising. Some 91 percent of RECLAIM participants were not admitted to a state institution within three months of being released according to a University of Cincinnati study.<sup>24</sup> The study also showed that the RECLAIM funding change resulted in 36.2 percent fewer commitments to DYS than projected. More recent research on RECLAIM found that, over a much longer 2.5 to 3.5 year period, the “failure rates of youth of low and moderate risk placed in a custodial setting are anywhere from two to six times that of the low and moderate risk youth placed in RECLAIM.”<sup>25</sup> In this 2005 study by Professors Christopher Lowenkamp and Edward Latessa, failure is defined as another adjudication or commitment. For example, the RECLAIM recidivism rate for a moderate risk offender was 22 percent, compared with a 54 percent rate such offenders in DYS, which is comparable to TYC’s 52 percent rate. For high-risk offenders, the study concluded there is no dif-

### TalkingPoint:

RECLAIM reduced both recidivism and state commitments.

ference in recidivism between DYS confinement and RECLAIM placement.

Texas could adopt a similar funding system under which no county would have a cap on how many nonviolent offenders it could send to TYC, but those counties that utilized TYC less than would be expected based on factors such as their juvenile population and number of juvenile felonies committed would benefit from a greater share of state funding for local juvenile justice programs. Such a funding formula would be most appropriate for heavily populated counties, as many of the smaller Texas counties have so few TYC commitments that the fiscal impact would be inconsequential and large fluctuations could be caused by a single case. However, even moving to a system like RECLAIM for just the largest Texas counties could be impactful, as five counties account for 54 percent of TYC commitments. The goal would not necessarily be to further reduce TYC commitments in absolute numbers, but to hedge against significant increases in commitments and provide a positive fiscal incentive for counties to develop and expand innovative and cost effective local juvenile justice programs.

Without revamping juvenile justice funding, there is the potential for TYC commitments to rise again once the current TYC imbroglia passes and local officials face budget consequences like Travis County, which stopped committing youth to TYC due to the 2007 crisis and instead spent an additional \$4 million of its own funds on local residential programs. The 2005 statistics demonstrate the room for growth, as there were 2,675 commitments but 18,435 youth that were eligible, most of which were not the three-time misdemeanor offenders that are now excluded.

Finally, it is important to ensure that the additional funds received by counties that come in at or below targets for TYC commitment of nonviolent offenders would not

just be for juvenile probation, but could also be distributed by juvenile boards, or a panel representing the county's juvenile probation department, law enforcement entities, and school districts for prevention and diversion efforts by other entities, including law enforcement, youth mental health crisis centers, and school districts. Such panels already exist as "community justice councils" required under Section 76.003 of the Government Code.

Funds that are saved could also be allocated for that county's benefit through the Services to At-Risk Youth (STAR) program overseen by the Department of Family and Protective Services (CPS), which received \$43 million for the 2008-09 biennium (mostly from federal funds and a state court divorce fee with only \$3 million from general revenues) to partner with local agencies, including juvenile probation departments, to provide crime prevention and intervention services to youth under the age of 18 who are runaway and/or truant, living in family conflict, have allegedly been involved in, or committed delinquent offenses, or have allegedly committed misdemeanor or state felony offenses but have not been adjudicated delinquent by a court. STAR, which was originally under the auspices of TYC and was designed to fill the gap of youth who need supervision but are not on probation, contracts with community agencies to offer family crisis intervention, short-term emergency residential care, individual and family counseling, and other youth programming. In 2006, STAR reached 31,670 youths in all 254 counties.<sup>26</sup>

Saved funds could also be routed to that county through the Department of State Health Services Access To Recovery (ATR) programs, which utilize federal funds from the Substance Abuse and Mental Health Services Administration to provide vouchers to juvenile probationers for drug treatment and related services, such as job train-



### Talking Point:

A portion of juvenile probation funding should be based on outcomes.

ing and placement, that can be redeemed at any licensed provider, including faith-based programs. Juvenile drug courts obtain funding through ATR for the treatment component of their program. Currently, ATR funding only serves certain counties and cannot meet demand. In 2007, DSHS covered substance abuse treatment of 625 youth per year, although it supported intervention, i.e. brief substance abuse outpatient counseling after use has begun but before full addiction, for 2,386 youth and prevention, i.e. drug education, for 81,147 youth.<sup>27</sup> According to DSHS, youth substance abuse treatment costs \$2,764, approximately 22 times less than one year of TYC commitment, and TJPC reports that only 5 percent of youth who complete substance abuse treatment are referred to TYC within two years, less than a third of the baseline commitment rate.<sup>28</sup> In short, whether an addicted juvenile probationer obtains substance abuse treatment depends largely on county-level juvenile probation department funding decisions, and according to TJPC, most departments do not offer it. A RECLAIM-type funding system would devolve funding choices to the local level, allowing counties the choice of allocating fewer state dollars for TYC placement of juvenile drug addicts and potentially placing 22 times as many such offenders in substance abuse treatment.

The availability of such reclaimed funding to local law enforcement for juvenile crime prevention could also encourage greater use of police diversion and restitution agreements for resolving the most minor juvenile infractions.

### ***Implement Performance-Based Juvenile Probation Funding***

Controlling TYC commitments is, of course, not the only goal of juvenile probation. Beyond the cost of TYC commitments, simply increasing the number of juvenile probationers who graduate high school would have significant fiscal benefits, as 2007 drop-outs

alone will cost Texas \$377 million a year, mostly in social service and criminal justice burdens.<sup>29</sup> Future increases in state juvenile probation funding should be linked to performance benchmarks for individual departments. These could include:

- percent of probationers who successfully complete a program;
- percent of probationers who commit additional crimes, particularly violent crimes as juveniles or young adults;
- school attendance and behavioral and academic progress; and
- percent and amount of restitution collected.

Such an approach would in some way mirror the state's school accountability system. It may be impractical or too costly to collect some of this data, particularly since subsequent crimes and graduation will in many instances occur after the youth is no longer on probation. For this reason, such performance-based funding would likely have to be accompanied by enhanced data sharing between juvenile probation, law enforcement, and school districts, which could yield other benefits. In the past, such entities have not always seamlessly shared data. For example, TJPC has for years been attempting to obtain data from CPS.

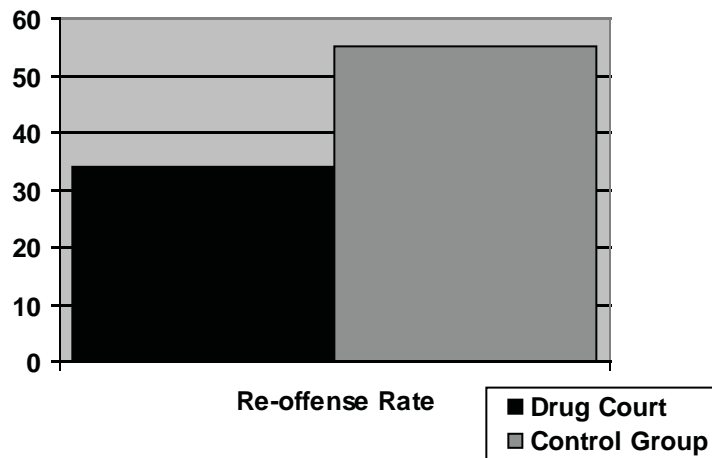
As the study from the Washington State Institute for Public Policy demonstrates, there are numerous community-based approaches to juvenile justice that are effective and, rather than have the state mandate the best mix of programming in urban, suburban, and rural areas that may have very different caseloads, allocating a portion of state funding based on TYC utilization and performance measures allows for innovation and customization while ensuring that state taxpayers receive a meaningful return on their investment.

### **TalkingPoint:**

Some Texas counties have failed to issue state-required guidelines for police diversion of youths.



**Juvenile Drug Court Recidivism Comparison in New Mexico's 11th Judicial District<sup>29</sup>**



Source: Pitts, W. J., "Measuring Recidivism in a Juvenile Drug Court: Systematic Outcome Study of a Juvenile Drug Court Using Historical Information," *The Southwest Journal of Criminal Justice*, 3(1) 17-34 (2006) <http://swjci.cjcenter.org/archives/3.1/Pitts.pdf.orts/RPTSTAT2005.pdf>.

**Increase Use of Police Diversion**

Even though Section 52.03 of the Family Code requires juvenile boards to establish guidelines for police diversion, some county juvenile boards, including Harris County, have not done so. Appropriate circumstances in which to employ police diversion include minor graffiti and theft incidents, such as where one student steals an item out of another student's locker.

An Urban Institute study of a youth police diversion program in Howard County, Maryland found that the six month recidivism rate was only 4 percent.<sup>30</sup> The program targeted first-time minor property offenders, requiring them to make restitution, perform community service, write essays, and send an apology letter to the victim. Like in Dallas, a peace officer determines that the case falls within the guidelines for diversion and exercises discretion to handle the case in this manner while a police social worker follows up to ensure compliance.

Youth police diversion offers clear efficiency advantages. It is widely used in Canada and a government survey of police there found that they support it, noting: "Particularly in metropolitan jurisdictions, police officers

tended to contrast unfavorably the perceived remoteness of the Crown and Youth Court, and the cumbersome and slow nature of their proceedings, with their own proximity to the reality of street crime, their own ability to deliver swift sanctions, and their familiarity with the circumstances and needs of individual young offenders."<sup>31</sup> Also, police diversion allows courts, prosecutors, and juvenile probation departments to focus their resources on repeat and more serious offenders.

Ensuring that all Texas counties follow state law by putting police diversion guidelines in place would be particularly useful for school peace officers (most students are enrolled in Texas school districts that have their own police departments), as they are ideally situated to work with parents, school administrators, the offender, and victim to reach a successful resolution of a minor incident within the confines of the school.

**Expand Juvenile Drug Courts**

HB 530 passed by the 80th Legislature expanded drug courts while imposing no additional burden on taxpayers through the use of a \$50 adult drug offender fee. Because many offenders either cannot or do not pay their offender fees and such fees can inter-

**TalkingPoint:**  
 Travis County's "Pot of Gold" facilitates service restitution for youth who can't pay.

fare with restitution and child support, offender fees may not alone be a sustainable source of funding for further expanding drug courts. A RECLAIM-type funding system would complement the offender fee funding stream by enabling counties that choose to send fewer drug offenders to TYC to use some of the money saved for local solutions like drug courts.

### ***Increase Utilization of Juvenile Victim-Offender Mediation***

There is strong evidence that victim-offender mediation should be more widely used. A meta-analysis that examined 27 victim-offender mediation programs in North America found that 72 percent of them lowered recidivism.<sup>32</sup> A national study of juvenile pretrial victim-offender mediation found a 32 percent recidivism reduction.<sup>33</sup> This is likely attributable to youths coming to understand the actual impact of their crime on another person, as opposed to merely viewing it as a violation of a government statute. HB 2437 introduced in the 80th Legislature would have set up a funding stream for victim-offender mediation programs by instituting a \$15 fee on property offenses and allowing programs to charge offenders a participation fee.

Travis County has pioneered a practice in its juvenile victim-offender mediations that other jurisdictions should consider. As some indigent youth are unable to pay the restitution they owe, Travis County Juvenile Probation has instituted a "Pot of Gold." This refers to a modest sum of money that is set aside for compensating the victim and is released to the victim only as the youth performs service restitution commensurate with an hourly rate for this work.

### ***Reduce Out-of-School Suspensions and School Referrals to Juvenile Justice System Through School-Based Probation Officers, Teen and School-Based Courts, Peer Mediation, and***

### ***Student Behavior & Attendance Accounts***

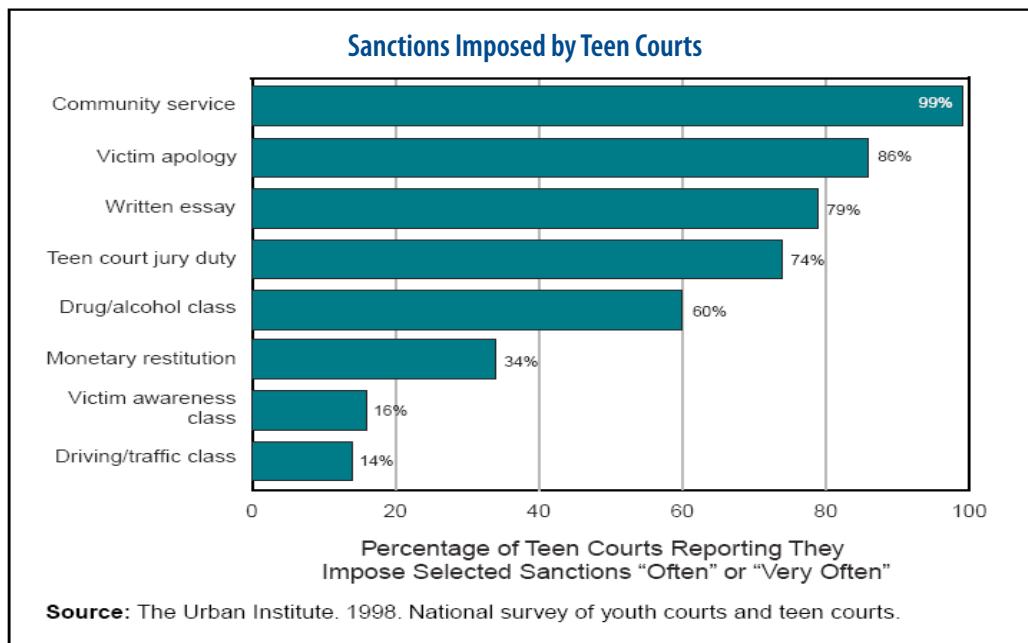
School-based juvenile probation officers, which are used extensively in Pennsylvania where they monitor 4,500 offenders per year, have been shown to reduce suspensions and drop-outs, and may increase academic progress.<sup>34</sup> They provide an on-site alternative to removing supervised youth from school while also addressing the fact that many parents have difficulty transporting their child to juvenile probation offices. School-based probation officers can also enhance communication between school administrators, teachers, and the juvenile justice system.<sup>35</sup>

Moving some juvenile probationer officers into the schools would not impose an additional personnel cost on the schools, as these officers would continue being paid by the juvenile probation department. It could even save money expended by juvenile probation departments on office space. Some schools may have extra space, particularly in urban districts like Houston and San Antonio ISD that are losing enrollment partly due to drop-outs, some of whom were on juvenile probation. Local juvenile probation departments and school districts, not the state, should determine whether school-based probation officers make sense in light of the unique circumstances in their area, such as whether there is a particular school with a high number of juvenile probationers who are or should be enrolled.

There are approximately 100 teen courts in Texas.<sup>36</sup> In teen courts, youths volunteer to serve as prosecutors, defense lawyers, and jurors in minor juvenile misdemeanor cases. The teen jurors hand down the sentence that, if complied with, results in the defendant being diverted from the traditional justice system. Teen courts cannot impose incarceration or probation, but they can and do impose sanctions such as community service and restitution, and instill positive peer reinforcement in the process.

#### ***QuickFact:***

A national study of juvenile pretrial victim-offender mediation found a 32 percent recidivism reduction.



According to Jo Ann Wilder with the Texas Teen Court Association, they are generally funded by cities through the municipal court budget or raise money from private donors as non-profit organizations. Several teen courts in the state have folded due to a lack of funds. For example, Wilder notes that Hedwig Village, a Houston bedroom community, recently pulled funding for their teen court while constructing a new city hall and that Texarkana may defund its teen court next year. Yet, teen courts cost an average of only \$32,822 a year to operate, about half the annual cost of incarcerating one juvenile in TYC.<sup>37</sup> A 1991 study of the Arlington teen court found that, among similar offenders, it reduced recidivism from 36 to 24 percent.<sup>38</sup> School-based teen courts could achieve similar results for minor offenses committed in school without the need to refer the matter to law enforcement and the juvenile justice system.

Approximately 350 Texas school districts use the Peer Assistance and Leadership (PAL) program, which includes peer mediation, in at least one school.<sup>39</sup> The State

Bar of Texas also provides a free conflict resolution curriculum developed and pairs lawyers with student mediators for dispute resolution training. Peer mediation has been demonstrated to significantly reduce levels of school violence and the number of out-of-school suspensions.<sup>40</sup>

Remitting state funds which are conserved by counties that limit the placement of non-violent offenders in TYC will provide some local governments with the resources to fund peer mediation, teen courts, and school-based courts. Texas cities and counties should also consider establishing a mechanism to fund teen courts, school-based courts, and peer mediation by tapping into part of the money that is saved when such programs divert offenders from municipal and juvenile court. Juvenile courts are particularly costly, because indigent defendants are entitled to indigent legal counsel paid by county taxpayers.

Some school districts have also found success in giving students a financial incentive to attend and behave. At KIPP charter schools which have a strong record of improving

### QuickFact:

Only 20 to 40 percent of youth on probation graduate high school or obtain a GED.

academic achievement and student behavior while serving a primarily low income population, students receive “paychecks,” which travel with them through the day.<sup>41</sup> Every day, students can “earn” \$1 for being present, \$1 for being on time and \$1 for being prepared and completing homework for each of their six classes, but money is deducted for misbehavior and truancy. The funds roll over like a 401K from year to year. Students may use the “money” from their paychecks to “buy” items at the school store, or to “earn” a class field trip.

### TalkingPoint:

Project CRAFT enables youth to build homes rather than criminal records.

### *Foster Private Sector Initiatives to Provide Vocational Opportunities*

The average youth committed to TYC is 16 years old but only functions at a 5th grade math level and a 6th grade reading level. The average IQ of youths committed to TYC is 88. While comparable statistics for juvenile probationers are not available, and are likely slightly better, the fact remains that many of these youths are far behind educationally and are unlikely to graduate high school, let alone college. Nationally, only 20 to 40 percent of probation youth earn a GED or high school diploma.<sup>42</sup> Consequently, expanding vocational opportunities for these juveniles is vital to encourage these offenders to earn a living through legal means, rather than being a constant drain on the public treasury. Policymakers should explore free-market approaches for leveraging the private sector to accomplish this goal.

A highly successful example of such a program that taps into the ingenuity of the private sector is Project CRAFT (Community, Restitution, Apprenticeship-Focused Training), a joint effort by the Home Builders Institute, the U.S. Department of Labor, and juvenile justice agencies in Florida, Tennessee, and Mississippi through which adjudicated youth are trained to enter construction work. The 12-week program includes class-

room instruction and covers topics such as estimating on the job site, reading blueprints, and making math calculations. Some 89 percent of graduates obtain employment.<sup>43</sup> Just as impressively, in an outside evaluation of the Nashville program, only 11.6 percent of the 161 participants were re-arrested while 105 earned a GED through the program’s education component which focused on math and reading skills as they are applied in the construction field.<sup>44</sup>

One way for Texas to stimulate such private sector initiatives would be to offer a credit against the state business tax for employers and trade groups who provide such job training and apprenticeship programs for adjudicated youth.

### CONCLUSION

While the TYC crisis has cast a negative light on juvenile justice in Texas, it has also renewed legislative and public interest in strengthening the front-end of the system that diverts youth offenders from incarceration and puts them on a path to be productive citizens. The good news is that, for most Texas youths, informal diversion or juvenile probation is working and they do not become career criminals. However, the bulk of state resources remain focused on the back end of the system, providing little incentive for innovations that can successfully resolve an even greater share of juvenile cases at the earliest and least expensive point in the process, and keep students in school instead of looking for trouble on the streets.

As TYC and TJPC enter the sunset process and several legislative committees begin interim studies on juvenile justice, this is an ideal time for policymakers to go beyond simply ending abuses at state lockups and chart a new course for juvenile justice in Texas that controls both crime and costs. ✨



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