



# Policy *Perspective*

## Measuring Performance in the Juvenile Justice System

by **Marc A. Levin, Esq.**  
Director, Center for Effective Justice

### RECOMMENDATIONS

- Performance measures should emphasize outcomes such as recidivism and educational progress, not the volume of juveniles in the system.
- The Texas Youth Commission (TYC) could benefit from additional performance measures such as the number of high school degrees and G.E.D.s earned, verified allegations of abuse, and recidivism by unit.
- The institutional cost-per-day performance measure for TYC should be revised to fully capture the actual cost, which when administrative expenses are included, is \$93,864 per youth per year rather than the reported cost of \$49,665.
- The Texas Juvenile Probation Commission, which distributes funds to local departments primarily based on the volume of probationers, should tie some of these funds to outcomes such as recidivism, educational progress, and technical revocations to TYC.

### INTRODUCTION

Is Texas' juvenile justice system meeting its goals and is success being measured correctly? As the Sunset Advisory Commission (SAC) considers these questions during its ongoing reviews of the Texas Youth Commission (TYC) and Texas Juvenile Probation Commission (TJPC), it is an opportune time to evaluate these agencies' performance measures and their progress on each of them. While many of these measures provide valuable information on offender outcomes and cost to taxpayers, some measures, like those of numerous other state agencies, focus simply on volume. For example, these "output" performance measures assess how many youths are incarcerated or on probation.

However, because the goal of the juvenile justice system ought not be to maximize the number of youths under supervision, these benchmarks should not be measures of success, but simply data points that are reported for planning and budgeting purposes. Conversely, there are important goals of the juvenile justice system, such as restoring crime victims and involving parents of youths, which are not reflected in existing performance measures. Through adjustments to current performance measures, policymakers can more accurately determine whether the juvenile justice system is fulfilling its mission and identify policy changes that can drive performance improvements.

### WHAT ARE PERFORMANCE MEASURES?

Performance measures are benchmarks that each agency reports to the Legislative Bud-

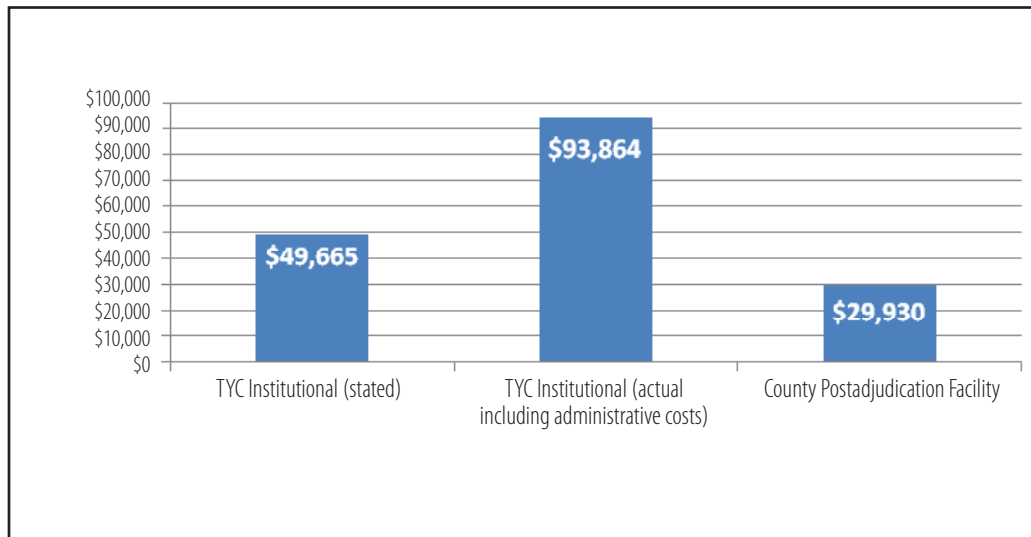
get Board (LBB) and Governor's Office of Budget, Planning, and Policy (GOBPP). Each agency proposes what measures it will use every biennium, with the LBB and GOBPP approval required for revisions. According to the LBB, performance measures serve the following purposes:

- They are part of each agency's strategic plan, indicating how progress toward agency goals and objectives is measured.
- They are used by decision-makers when allocating resources and determining appropriation levels.
- They are intended to help focus agency efforts on achieving priority goals and objectives.
- They are monitoring tools to help guide government and make it accountable to the taxpayer.

The LBB has stated that the performance management system should be "results-oriented." There are four types of performance measures:

- **Outcome Measure:** A quantifiable indicator of the public and customer benefits from an agency's actions.
- **Output Measure:** A quantifiable indicator of the number of goods or services an agency produces.
- **Efficiency Measure:** A quantifiable indicator of productivity expressed in unit costs, units of time, or other ratio-based units.

900 Congress Avenue  
Suite 400  
Austin, TX 78701  
(512) 472-2700 Phone  
(512) 472-2728 Fax  
[www.TexasPolicy.com](http://www.TexasPolicy.com)

**Figure 1: Annual Cost Per Youth**

Source: Texas Youth Commission July 2008 Legislative Budget Board Submission; 2008-09 Budget; Texas Juvenile Probation Commission 2008 Operating Budget

- **Explanatory/Input Measure:** An indicator of factors, agency resources, or requests received that affect a state entity's performance.

Agencies report data on a quarterly basis for key output and efficiency measures and on an annual basis for key outcome and explanatory measures. Non-key measures are reported annually in agencies' operating budgets (in odd-numbered years) and in Legislative Appropriations Requests (in even-numbered years).

### WHY DO PERFORMANCE MEASURES MATTER?

The performance management system provides several incentives for agencies to meet or exceed their performance measures. First, when agencies fall below their targets for each measure, they must explain the variance in their next report to the LBB and in testimony before the House Appropriations Committee and the Senate Finance Committee. Each appropriations act also provides budget execution authority that empowers the LBB and the Governor to adjust funding based on whether performance measures are being met. Negative consequences also include the transfer of functional responsibility to another entity, conservatorship, or a management audit. On the positive side, agencies with excellent performance,

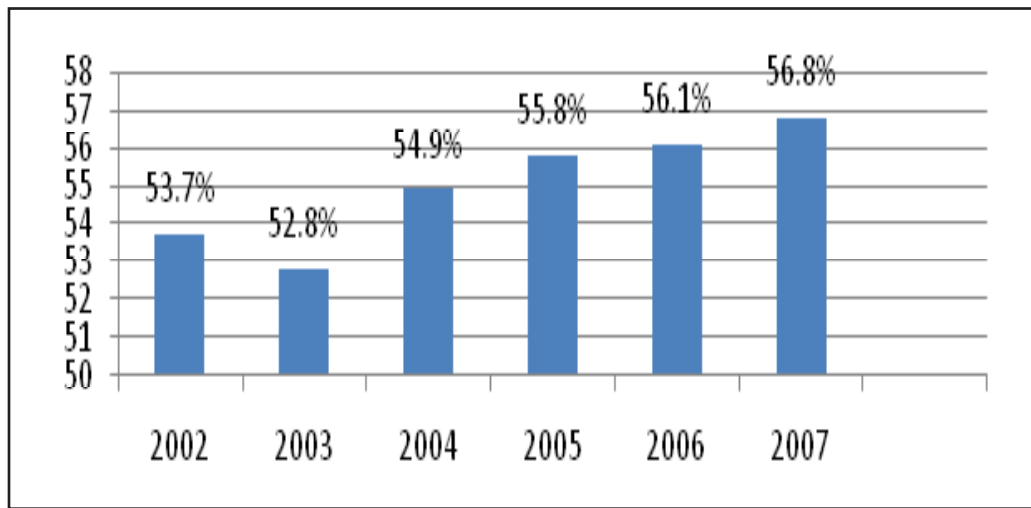
defined as meeting or exceeding 80 percent of its key measures with at least 70 percent of its measures certified by the State Auditor's Office, may use appropriations to provide bonuses to employees that contributed to their success by as much as 6.8 percent of those employees' salaries.

### TYC PERFORMANCE MEASURES

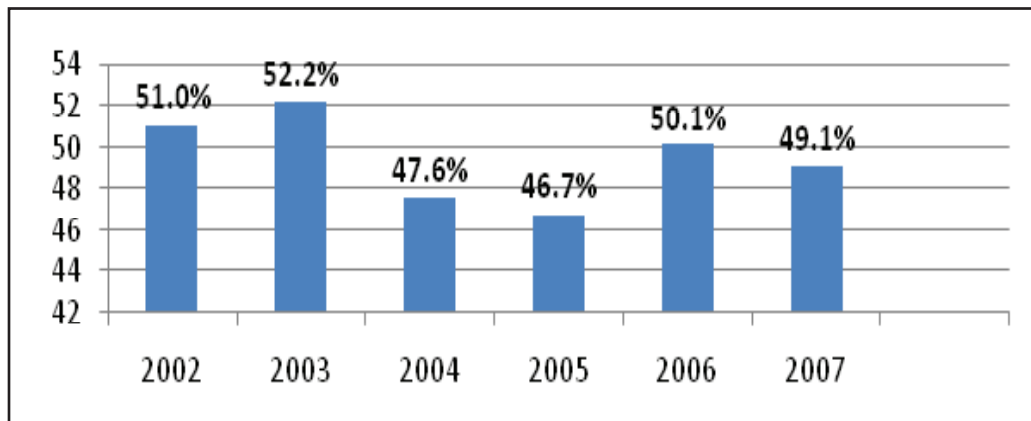
These following measures are among the best that TYC uses because they focus on maximizing public safety through the reform of offenders at the lowest cost to taxpayers.

#### The Best Current Measures

- **Institutional Cost per Youth per Day.** TYC's stated cost per day in the third quarter of 2008 was \$136.04, which equates to an annual cost of \$49,665. This is below the projected cost of \$149.11 per day, partly due to 500 vacant juvenile corrections officer positions. However, this figure does not include administrative costs. If the 2,200 youths in TYC's institutions are divided by its total budget minus direct parole and contracted capacity costs (\$247 million - \$40.5 million = \$206.5 million), the resulting cost is \$257 per youth per day, equating to an annual cost

**Figure 2: TYC One Year Re-arrest Rate**

Source: Texas Youth Commission

**Figure 3: TYC Three Year Re-incarceration Rate**

Source: Texas Youth Commission

of \$93,864 per youth. This figure fully allocates administrative costs to the institutional division. While some of TYC's administration is devoted to parole or contract facilities, most is appropriately attributable to institutions, particularly given that parole in some areas is subcontracted to juvenile probation departments and contract beds are down to 228 following the 2007 closure of the Coke County facility.

The daily cost per youth is an important barometer for taxpayers, though it is important to note that TYC's budget can decline while the per youth cost increases. That was the projected impact of Senate

Bill 103 (SB 103) enacted in 2007, because it reduced the population at TYC by excluding misdemeanants. This change brought the juvenile system into alignment with the adult system where misdemeanants can be incarcerated in county jails, but not state prisons. It also trimmed TYC's population by requiring that, upon turning 19, youths be released from TYC or transferred to prison, and created a review process to ensure youths were not kept at TYC after they had completed their rehabilitation program and no longer posed a danger. At the same time, SB 103 addressed the abuse scandal through measures such as increased training for staff, the installation of cameras, and the

creation of an inspector general and ombudsman, all of which came with a price tag. Furthermore, while TYC closed one contract unit, Conservator Richard Nedelkoff has indicated cost per youth can be reduced by consolidating additional lockups.

- **One Year Re-arrest Rate for Violent Offenses.** Performance in recent years has been disappointing on this key metric, with a slight increase in the one-year re-arrest rate from 55.8 percent in 2005 to 56.8 percent in 2007.<sup>1</sup> TYC also provides a longer-term outlook through another performance measure—the three-year re-incarceration rate. It is important to note that all of this data reflects youths who were released no later than 2006, prior to the implementation of the 2007 reforms.
- **Math Level Gain.** This indicator measures the progress youths at TYC make in math while incarcerated and a similar measure assesses reading gain. Educational advancement is strongly associated with reduced criminality. So far in 2008, TYC reports a math advancement rate of 54.39 percent, which is less than the goal of 71 percent.<sup>2</sup>
- **Constructive Activity Rate.** This is the percentage of youth who have been on parole for at least 30 days who are employed, attending school, college, or GED preparation; participating in vocational or technical training; or providing community service, which equals 40 hours or more per week. Youths who are neither enrolled in school nor employed are more likely to recidivate and it is within the responsibility of parole officers to both require and assist youths they supervise in enrolling in school or obtaining employment. In 2006, 89.5 percent of youth on parole were engaged in constructive activity, exceeding the agency's goal of 75 percent.

### Questionable Measures

- **Average Daily Population of Institutional Programs.** This performance measure is problematic for two reasons. First, more youths sent to TYC may indicate higher crime or overutilization of TYC for nonviolent offenders. A higher average population

can also reflect youth being confined longer than necessary. TYC is well situated to handle youths who have committed violent offenses, particularly those who are either in counties without suitable residential programs or who have exhausted those programs. The Giddings Capital Offender program at TYC has won national acclaim for reducing recidivism. However, for less serious offenders, local options cost less and may produce less recidivism. Even within TYC, a non-institutional setting such as a group home model may lead to less recidivism for some youths than a large institution. Indeed, TYC has proposed in its recent legislative appropriations request to move away from institutions, with one proposed scenario involving TYC operating 10 regional facilities that would be more similar to the group homes in Missouri that have an 8 percent recidivism rate.<sup>3</sup>

In 2000, TYC peaked at 5,646 youths in residential programs but is now down to 2,799 youths (2,366 of whom are in state lockups with 337 in privately operated facilities that contract with the state and 207 in halfway houses), largely due to the reforms in SB 103.<sup>4</sup> While the population in 2006 and 2007 was just under 5,000, it was still considerably more than the 3,467 count in 1996. The corresponding decline in the number of staff per youth over this period is often cited as one reason for crisis of abuse, as staff without sufficient back-up would sometimes use excessive force, leading to injuries and even riots. Even at 2,366 youths currently institutionalized, TYC is slightly over its 2,292 projection for this year. This is attributed to the closure of the contract facility in Coke County, which led to the 200 youths being transferred to state-run institutions, and processing delays in clearing out remaining misdemeanants.

- **Average Daily Population of Halfway Houses.** Given that there are no performance measures for comparing outcomes of youths released to halfway houses versus those simply placed on parole, there is not sufficient information to determine whether the existing halfway houses are effective in reducing recidivism and, if so, for which types of offenders. TYC is slightly under the projection for 2008 with 204 youths in the third quarter compared with the

projection of 218 units. One reason cited for the variance is that fewer youths qualify for halfway houses because those youths remaining at TYC are younger and not appropriate for halfway houses. Therefore, not meeting this goal is not necessarily an indication of negative performance.

### Proposed Additional Measures

- **Parole Recidivism Rate.** TYC's reports several performance measures for recidivism, but these rates include offenders released without parole. Therefore, these measures do not specifically indicate the effectiveness of parole. Parole recidivism can be measured by both the re-arrest and re-incarceration rates. Although it is not a performance measure, TYC did report this data for 2006 to the SAC.<sup>5</sup> The results were mixed, as the one-year re-arrest rate was 63.6 percent, but only 10 percent for a violent offense. The three-year incarceration rate of paroled youth was 49.2 percent.
- **High School Degrees, G.E.D.s, and Vocational Certificates Earned While at TYC and on Parole.** The average TYC youth is four to five grade levels behind academically upon admission and has an I.Q. of 88. Therefore, particularly given shorter stays, most youths will be unable to obtain a high school degree at TYC regardless of the quality of the educational program. However, G.E.D.s and vocational certificates are within reach for many youths at TYC and on parole. TYC has a more narrow performance measure for industrial certifications earned by youths enrolled in technical programs.
- **Verified Allegations of Abuse.** Following the creation of the inspector general's office at TYC to uncover and correct abuses involving staff and youths, TYC added performance measures for the number of allegations of criminal activity, serious incidents, and emergency operations reported to the inspector general and the number of such allegations per 100 youth. However, this does not indicate how many of these allegations were determined to be valid. An initial increase in verified allegations may simply indicate that the culture is changing such that youths and
- staff feel confident enough to report abuses without retaliation, but over time TYC should be held accountable for demonstrating that the significant investments that taxpayers have made in increased training requirements, an improved staff-to-inmate ratio, the installation of hundreds of cameras, and better screening of prospective staff are reducing the number of verified abuses.
- **Parental Satisfaction and Contacts.** The majority of parents of TYC youths are, like taxpayers, customers of TYC, and their involvement is often crucial to successful reentry. Therefore, TYC should report as a performance measure parental satisfaction assessed through a survey and the number of parental contacts, both through visitation and conversations with TYC staff. To be sure, some TYC parents are partly responsible for their child being at TYC, including some who committed abuse or neglect, though in the most severe cases they would no longer count as parents since their parental rights would have been terminated. One provision in SB 103 directed TYC to post and distribute a Parental Bill of Rights to inform parents about their visitation rights and how to report abuse. The move towards regionalization of TYC facilities is also partly intended to promote parental involvement by channeling youths to facilities near their families.
- **Volunteer Hours Worked.** TYC has prided itself on the number of volunteers who work inside units, including many retirees and parishioners of religious congregations. In 2004-05, volunteers contributed over 125,000 hours.<sup>6</sup> Volunteers contribute significantly to the rehabilitation of youths at no additional cost to taxpayers. Following the 2007 crisis, TYC began conducting background checks of volunteers.
- **Recidivism by Unit.** As TYC considers whether to close any additional facilities, recidivism by unit would be a particularly valuable performance measure, although it must be viewed in light of the differences between the types of offenders at different units. To the extent wardens have authority over programming and staffing, this can also be one factor in evaluating their performance. Recidivism should



also be reported for contract facilities to determine whether private sector operators are achieving better or worse results than the state. Recidivism measures for halfway houses are also needed. Currently, the only TYC performance measures relating to contract lockups and halfway houses are daily population and cost per youth.

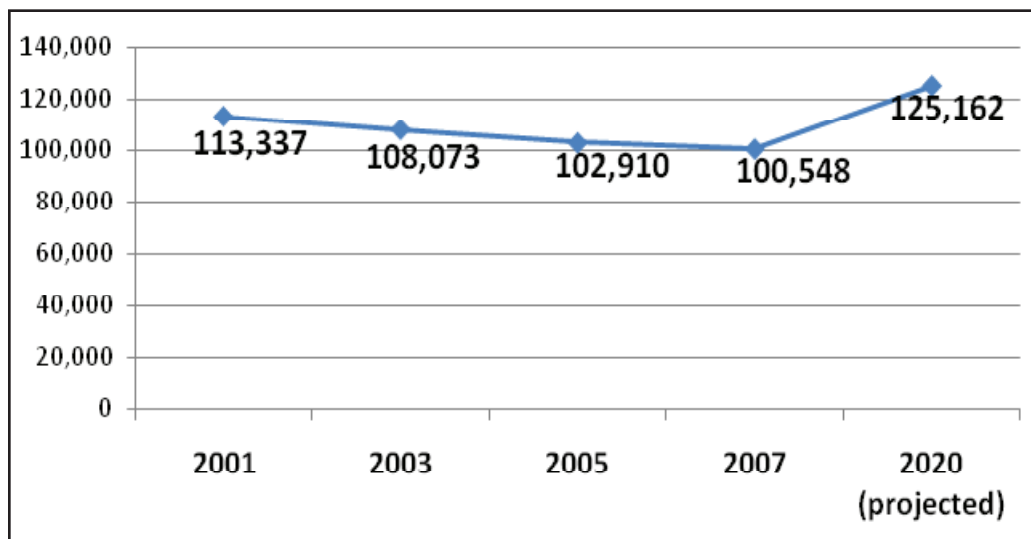
- **Administrative/Central Office Staff and Expenses Per Youth.** This measure would help policymakers determine whether TYC management is operating efficiently. Today, TYC employs 368 administrators, compared with 321 in early 2007 when the Commission housed 4,000 youths in its institutions.<sup>7</sup> At a time when TYC continues to have a shortage of juvenile corrections officers to implement programming and provide security at the units, the state incurs a cost of \$18.7 million a year to employ central office staff. Senate Criminal Justice Chairman John Whitmire and House Corrections Chairman Jerry Madden have asked the State Auditor's Office to examine the recent growth in administrative staff and their salaries.

## TJPC PERFORMANCE MEASURES

### The Best Current Measures

These measures fulfill the stated purpose of juvenile probation because they focus on results, namely achieving the maximum reduction in the human and financial costs of crime to both victims and citizens at the lowest cost to taxpayers:

- **One Year Re-Referral Rate.** This is an important measurement of recidivism, although neither this nor any other recidivism measure is considered a key measure. The 2007 one-year juvenile probation re-referral rate was 31 percent. Although it is not a performance measure, TJPC also reports a two-year rate, which was 53 percent in 2007, compared with 50 percent in 2003. This may be partly attributable to a hardening of the caseload. Over this period, the number of property offenders has declined while violent offenders have increased. Also, many of the re-referrals are for misdemeanors. As of 2007, only 5 percent of youths leaving probation were incarcerated at TYC within two years.
- **Average State Cost Per Juvenile Referred.** This provides a useful estimate of the average annual cost of each juvenile on probation and illustrates that juvenile probation is much less costly than TYC. Although the actual cost of \$895 per youth referred in 2007 exceeded the projection of \$788, the annual per youth cost of TYC is more than 55 times that, even without including TYC's administrative costs described above. After adjusting for the fact that the state only pays about a third of juvenile probation costs, total government cost of probation would be about 18 times less than TYC's conservative per youth cost. TJPC projects the cost per juvenile referred to increase to \$1,170 and \$1,185 in 2008 and 2009 respectively. In addition to inflation, this is attributable to the probation system absorbing more youths who might have otherwise gone to TYC who need specialized programming such as treatment for mental illness and substance abuse. During the last legislative session, TJPC's budget was increased from \$268 million to \$323 million, in large part to support the diversion of misdemeanants and other offenders from TYC. However, TJPC has not requested a substantial increase in funding for 2010-11.
- **Percent Commitments to TYC.** This is considered a key measure. Since 80 percent of youths committed to TYC are on probation, this measurement goes a long way towards determining the number of youths at TYC and the resulting cost to taxpayers. In 2007, some 2,327 probation youths were committed to TYC, exceeding TJPC's target of 1,300 youths. However, TJPC expects only 890 probation youths to be committed in 2008, likely reflecting the fact that TYC is no longer taking misdemeanants—a policy that was only in place during the second half of 2007. TJPC projects 1,100 commitments in 2009 and 2010. In 2007, the Legislature appropriated an additional \$13.8 million to counties for handling misdemeanants that could no longer be sent to TYC.
- **Rate of Successful Completion of Probation.** Successful completion means an offender did not re-offend while on probation, was not revoked, and did not abscond, all of which are positive outcomes that directly relate to the proper goals of juvenile probation. In 2007, 80 percent of youths successfully

**Figure 4: Juvenile Probation Referrals**

Source: Texas Juvenile Probation Commission

completed probation, short of the target of 87 percent and the 83 percent figure in 2006.

### Questionable Measures

- **Total Number of Referrals.** This is considered a key measure. It is important for policymakers to be aware of such trends in the juvenile justice system, as the number of referrals is directly tied to the state's cost, both in terms of the state's share of juvenile probation funding and the impact on TYC, since more youths on probation means more opportunities for revocations. Conversely, if a referral to juvenile probation is made in lieu of directly sentencing a youth to TYC, the state saves money. Therefore, more referrals to juvenile probation can neither be assumed to be a positive or a negative reflection on TJPC and probation departments. Increases in referrals could result from higher rates of juvenile crime, fewer uses of alternatives to probation for minor offenses such as the first-time offender program,\* or diversions of youths who would otherwise go to TYC. This measure is also questionable because TJPC has no control over the number of referrals. Accordingly, there is little justification for requiring the agency to explain to the Legislature why there were fewer referrals than targeted or using this metric to determine the eligibility of TJPC employees for a bonus. Another possible consequence of failing to meet a performance measure is the triggering of budget execution authority, but if fewer referrals in a biennium result in unused funds, TJPC would automatically return the unspent funds to the general revenues.
- **Average Daily Population of Residential Placements.** Residential placements are appropriate for some youth on probation, particularly those who committed a violent offense and are in an unstable or

\* The early intervention police diversion provisions in Chapter 52 of the Family Code are one mechanism that some law enforcement agencies use to resolve minor juvenile cases without referring the youth to probation. 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. Pursuant to these dispositions arranged by peace officers, the youth offender enters into an agreement, which often is based on input from the victim, to make restitution and comply with conditions such as a curfew. In 2006, 4,741 juveniles were discharged under this provision in 2006 with 70 percent successfully completing their agreement. Most of these cases occurred in Dallas and Bexar County, with 1,777 and 1,624 such police diversions respectively. 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 who were not already on probation are not, by virtue of this disposition, placed on probation.

abusive home environment. Postadjudication facilities administered by counties cost \$82 per day, compared to at least \$149.11 per day at TYC. Moreover, to the extent local residential placements represent diversions from TYC, significant savings accrue to the state. However, research has indicated that for nonviolent youth offenders, such as substance abuse offenders who are in a supportive home environment, day treatment results in low recidivism rates with a much lower cost to taxpayers.<sup>8</sup>

- **Number of Discretionary Students in Juvenile Justice Alternative Education Programs (JJAEPs).** Created by the Texas Legislature in 1995 and mandatory in counties with a population of 125,000 or more, JJAEPs are non-residential programs that provide seven hours of daily instruction. TJPC oversees JJAEPs, which are operated by counties, school districts, or non-profits that contract with counties. While several counties below this population threshold have chosen to establish JJAEPs, approximately 3,500 expelled students in the remaining counties are simply put on the street. JJAEPs are categorized by TJPC as classroom-style, therapeutic, and military-style (boot camp). Though some youths are ordered to attend a JJAEP by a court, most JJAEP students have been expelled to the JJAEP by a public school. Under Section 37.007 of the Education Code, expulsion is mandatory for serious offenses committed on-campus such as murder, aggravated kidnapping, and drug dealing. The Education Code also allows for discretionary expulsions to which this performance measure refers for less serious offenses such as alcohol possession on school grounds, sniffing glue or aerosol paint, and “serious and persistent misbehavior” at a Disciplinary Alternative Education Program (DAEP), which does not necessarily involve an offense at all. Discretionary placements currently account for 54 percent of the 7,446 entering students.<sup>9</sup> Some 72 percent of these discretionary placements are serious and persistent misbehavior referrals from DAEPs. Yet, Wichita Falls ISD has managed to eliminate such referrals and Fort Worth ISD has reduced them through tiered DAEPs. In sum, more

discretionary students placed at JJAEPs is not necessarily a positive development.

The average cost per day of JJAEP placement is \$125.90, of which \$79 is paid for by the state for each mandatory placement, while school districts and counties reach memorandums of understanding to divide the cost of discretionary placements.<sup>10</sup> School districts dictate how long a student must be held, with some districts requiring that it be entire semester regardless of the student’s progress while at the JJAEP. In recent years, state costs for JJAEPs have increased due to more mandatory referrals and longer stays.

### Proposed Additional Measures

- **Technical Revocations to TYC.** Technical revocations refer to an offender on probation being incarcerated not because of a new crime, but because of violations of the terms of probation. In both the adult and juvenile systems, technical revocations impose incarceration costs on the state, but departments must balance controlling revocations with the goal of reducing recidivism. To the extent a string of technical violations is predictive of a new offense, technical revocations can avert crime. Therefore, the technical revocation rate should be viewed alongside recidivism measures, with the ideal department achieving low technical revocation and recidivism rates. TJPC tracks the number of youth referred to TYC for violations of court orders, which accounts for 40 to 50 percent of TYC placements. However, these violations include both new offenses and technical violations. Utilizing this performance measure would require disaggregating these probation revocations. The adult parole system annually reports the share of technical revocations where a new offense was suspected. Additionally, TJPC should resume its prior practice of recording deviations from the progressive sanctions model—the agency’s recommended guidelines for departments to follow in sanctioning technical violations.\* This would enable the identification of those juvenile probation departments with the greatest number of technical revocations relative

\* Intermediate or progressive sanctions consist of measured responses to technical violations such as missing meetings. Examples of such sanctions include increased reporting requirements, an extension of the probation term, a curfew, and brief placement in a local residential facility.



to their total caseload where intermediate sanctions had not been exhausted prior to placement at TYC.

- **Three Year Re-Referral Rate.** Such a longer-term evaluation of recidivism would demonstrate the extent to which probation programs affect recidivism even after youths are no longer under supervision. The Texas Department of Criminal Justice reports three-year rates.
- **Re-Referral Rate by Type of Offense.** Violent crimes have a much greater impact on victims and communities than status offenses like underage drinking. Therefore, it would be helpful for policymakers in evaluating not just the frequency of recidivism, but also the severity. The measurement should look at both the original and new offense, which would indicate whether juvenile probation is more successfully reforming some types of offenders than others.
- **Restitution Collected.** Juvenile probation departments are responsible for ensuring that youths who have committed violent and property crimes, almost all of whom owe restitution, actually make those payments. Policymakers need to know whether the juvenile justice system is achieving one of its purposes—restoring individual victims who have been injured by juvenile offenders and in the process teaching youths about the impact of criminal activity.
- **Victim Satisfaction.** This would not be applicable to most drug cases, but would be an appropriate measurement for violent and property crime cases. Juvenile probation departments are expected to work in conjunction with victim liaisons in district attorney's offices to communicate with victims and ensure restitution is paid. A simple survey could ask victims where they are satisfied with the performance of prosecutors and the juvenile probation department.
- **Recidivism of Residential Placements.** Juvenile probation departments place youths in a variety of local facilities, including postadjudication facilities and inpatient drug treatment centers. This measurement would provide policymakers an indication of whether such facilities are effectively reforming offenders and

how their performance compares with TYC in this regard, keeping in mind that TYC's population consists of more serious offenders. While TJPC does not operate postadjudication facilities, they promulgate their standards and conduct inspections.

- **Educational Progress at JJAEPs.** Although the number of students at JJAEPs is an agency performance measure, the outcomes of JJAEPs are not. However, TJPC provides detailed information on outcomes in its reports. A May 2008 TJPC report highlights the performance of JJAEP students on the TAKS test, but even though it separates out performance among students at the JJAEP for 90 days or more, the more illuminating measure is the difference between intake and outtake performance on the Iowa Test of Basic Skills, which is administered to students enrolled for 90 days or more. In the 2006-07 school year, math scores increased by .39 of a grade level from entrance to exit while reading scores advanced by .51. However, the average gain obscures large differences, as performance rose by more than a grade level in both subjects at JJAEPs in Taylor, Hays, Cameron, Travis, and Williamson counties, but actually declined in both subjects in Dallas County and in math in Harris County. Advancement was two to three times greater at military and therapeutic-style JJAEPs than at traditional, classroom-style JJAEPs. JJAEPs operated by private contractors showed the greatest gains followed by those jointly operated by school districts and probation departments, while those administered solely by probation departments had a -.04 impact on math scores and only a .09 impact on reading.
- **Recidivism at JJAEPs.** Some 46 percent of youths leaving JJAEPs have contact with the juvenile justice system within one year, though only 15 percent of those contacts are for felonies, including 5 percent for violent felonies. Given that TJPC is requesting an additional \$1.3 million for JJAEPs in its 2010-11 legislative appropriations request, this creates an opportunity to give TJPC the authority to link a portion of existing or new JJAEP funding to educational and correctional outcomes. Current state funding is based solely on the number of mandatorily expelled students on-hand, which does not provide an incentive for performance.

- Department-Specific Outcomes.** Policymakers also need barometers of performance that will allow them to compare different juvenile probation departments. TJPC is primarily an oversight and funding pass-through agency. TJPC's 61 employees monitor probation departments and disperse state funding to them according to various formulas based primarily on the number of youths on probation, the number of probation youths convicted of the most serious offenses, the number of youths in local residential facilities, and the county's population. The state covers about a third of juvenile probation costs with counties picking up the rest. Performance measures should examine the recidivism rate and other offender outcomes, as well as the utilization rate of TYC, for each probation department.

Because of the many different juvenile probation funding streams and different caseload characteristics of each department, state funding per juvenile probationer varies across departments. To assess whether these funding streams are consistent with the performance management system, performance measures should evaluate each department's productivity per state dollar received, as measured by outcomes such as recidivism rate, technical revocations, victim satisfaction, and restitution collected. TJPC is developing a standardized risk-assessment that will provide a uniform measuring stick for each department's caseload, which will then allow for an apples-to-apples comparison of departments on outcomes such as recidivism. Currently, TJPC has only a limited influence on these outcomes, primarily through setting standards and providing training and technical assistance to departments.\* The state's accountability system for school districts provides a model for evaluating the performance of juvenile probation departments and linking a portion of state funding provided to each department to their performance. Should Dallas for example receive an increase in the \$90 per day in state funding per youth they receive for their JJAEP, even though it has a negative effect on academic performance?

The Foundation recommended streamlined, performance-based juvenile probation funding in its February 2008 policy perspective "The ABC's Before TYC: Enhancing Front-End Alternatives in the Juvenile Justice System"<sup>11</sup> and in a July 2008 letter to the SAC.<sup>12</sup> In their 2010–2011 legislative appropriations request submitted in August 2008, TJPC also expressed its support for simplified funding streams accompanied by department-specific performance measures:

"Since 1995, legislative appropriations to TJPC have been targeted to specific areas or services in juvenile probation departments. For example, current funding streams target residential placement, front-end programs and services, and special services such as Intensive Services Probation. TJPC administers up to 19 different contracts, based upon these targeted funding streams, with each of the 166 juvenile probation departments. Varied funding streams fragment, limit and restrict the counties' ability to respond to the specific needs of youth. For example, if funding for non-residential community-based programs and services has been exhausted, but funding remains for residential placements, it is likely a youth may be placed into a residential facility, regardless of whether placement is the best, or most appropriate disposition option. Specific, targeted funding streams should be consolidated and streamlined to allow flexibility for departments to tailor programs and services that are most appropriate to each offender's needs. Consolidated funding streams will help probation departments expend the limited state and local resources in a more efficient and effective manner. Outcome based performance measures will be implemented to ensure that consolidated funding streams are meeting desired goals."<sup>13</sup>

## WHAT ABOUT SCHOOL DISTRICTS' PERFORMANCE?

Many factors ranging from mental illness to poor parenting contribute to juveniles entering into the juvenile justice system, but nearly every child entering the system will

\* However, TJPC arguably has even less impact on the number of juveniles on probation, which is one of the current key performance measures.

have passed through a public school. While some youths may be so inclined towards delinquency that not even the best school could make a difference, schools are nonetheless uniquely situated to intervene positively in a juvenile's life. However, it is not reported which school districts produced the most youths who are on juvenile probation or incarcerated at TYC.

Similarly, it is not known how many students who were placed in out-of-school suspension were later placed in a JJAEP, referred to juvenile probation, or sent to TYC. School districts make 286,000 referrals to out-of-school suspension every year, resulting in more than 1 million school days missed. Our comparison of TJPC referral and school district suspension data indicates that students who are in out-of-school suspension are approximately 35 times more likely to be referred to juvenile probation during those days than students in school.<sup>14</sup> Some of this effect is certainly due to the fact that the type of student who has disciplinary problems in school is more likely to commit a criminal offense, making it challenging to determine the degree to which the use of out-of-school suspension, as opposed to other approaches, increases the likelihood of involvement in the juvenile justice system. However, the prospect of youths not being in school, and often lacking proper parental supervision, may create an opportunity for criminal activity. A National Center for Juvenile Justice report lends credence to this correlation between a youth not being in school and the incidence of delinquency, as it found that juvenile crime peaks in the afterschool hours of 3 p.m. to 6 p.m.<sup>15</sup>

A critical question is whether students with a similar number of disciplinary referrals placed in out-of-school suspension achieve better or worse outcomes, including contact with the juvenile justice system, than those kept in school. A summary of 31 national studies concluded that out-of-school suspension does not lead to improved behavior or educational performance.<sup>16</sup> While students who commit crimes that endanger other students should be removed and referred to the juvenile justice system, most out-of-school suspensions result from misbehavior that does not constitute criminal activity, and schools have many other options for disciplining students, including in-school suspension, detention hall, and mandatory school service

projects such as picking up trash after school. While no Texas data is available to indicate the primary reasons for out-of-school suspensions, a Connecticut study found the second most likely reason is, ironically, poor attendance.<sup>17</sup> When the punishment is the same as the misdeed, it is likely counterproductive. A high percentage of truant students were previously suspended. More tax dollars are then used to employ truancy officers in an attempt to locate these youths and reenroll them in school, but many up in juvenile justice settings that cost many times more per day than a regular school campus.

These issues might be more appropriately addressed through the school district accountability system rather than through performance measures, because TEA itself has little authority over school disciplinary practices. One factor that could be included in the accountability system is the number of discretionary out-of-school suspensions by district, adjusted for the percentage of at-risk students. Similarly, truancy rates adjusted for the share of at-risk students in a district could be evaluated.

Illustrating the need for school districts to take a more active role in working cooperatively with the juvenile justice system, TJPC's May 2008 report on JJAEPs noted: "Due to a low match rate with TEA, TJPC was unable to provide an analysis of attendance rates before and after JJAEP placement."<sup>18</sup> Also, juvenile probation and parole officers anecdotally report that school districts are reluctant to readmit supervised youths, though they are legally obligated to do so. When TJPC learns from a probation officer that a school district is refusing to enroll the youth, they ask TEA to intervene with the district.

Ultimately, policymakers need longitudinal data that follows juveniles for many years through the education, mental health, CPS, juvenile probation, juvenile incarceration, adult probation, and adult incarceration systems. This would allow policymakers to assess effectiveness of each system. For example, they could compare juveniles of similar backgrounds and school disciplinary history to see whether youths that were not suspended or expelled for similar disciplinary infractions followed different trajectories than those who were, and the resulting impact on costs to taxpayers for all of the affected systems.

## CONCLUSION

This examination of juvenile justice performance measures leads to several overarching findings. First, performance measures should not focus on the number of youths at TYC or even on probation. Such volume indicators certainly should not be among the key measures—those that are used for employee bonus eligibility. The LBB issues monthly reports documenting the number of youths in both systems, but higher volumes do not indicate whether agencies are achieving their goals, which should be to achieve the best outcomes for youth, victims, and public safety at the lowest cost to taxpayers.

Secondly, the differences between TYC and TJPC highlight the need to reexamine the role of performance measures for agencies that provide direct services, such as TYC, compared to those that primarily provide oversight and serve as vehicles to pass through funding, such as TJPC. Measures like recidivism and educational outcomes at JJAEPs are vitally important to indicate whether the juvenile probation system is succeeding, but given the current funding system, TJPC can affect them only to a very limited degree. Therefore, most of the important outcome-based measures should be more appropriately classified as assessments of the juvenile probation system as a whole, rather than indicators that help determine whether TJPC staff receive a salary increase.

If, however, TJPC is given greater authority to allocate funding based on departments' performance, they could be more justifiably held accountable for outcomes. Instead of dedicated funding streams based on the total number of offenders and the number of offenders in different categories and residential settings, the Legislature could give TJPC more authority to determine how it allocates funding to each department, with a particular instruction to take into account performance, and changes in performance among departments on key benchmarks such as recidivism and educational achievement. This would be accompanied by performance measures that assess change in productivity, based on outcomes such as recidivism, for every dollar spent. To the extent TJPC succeeds in adjusting the distribution of funds to stimulate better outcomes among departments, TJPC would fare better on its own performance measures.

This funding model contrasts with the current performance measure system where one sanction for an agency not meeting its performance measures is greater restrictions on their use of funds. When those measures depend primarily on the performance of local departments the agency oversees and funds, the agency may need more latitude in distributing its funds so that it can incentivize better results.

Additionally, it is clear that the institutional cost per youth per day as currently reported by TYC understates the actual cost, because it only includes direct costs. Since the vast majority of TYC administrative costs are incurred to oversee TYC's institutions, they should be proportionally attributed to the institutional cost per day. As policymakers consider policies that could reroute more youths to county facilities, a fully inclusive cost per youth figure is necessary to accurately evaluate how this approach would compare to TYC in terms of actual costs to taxpayers. Also, by adding a TYC performance measure for administrative costs per youth, policymakers can better track these costs that are not captured in the current per youth measurement and hold TYC accountable for them.

Finally, the results for performance measures relating to outcomes of juvenile offenders indicate that recidivism remains a daunting challenge for both TYC and juvenile probation departments, as it is for their counterparts around the country. One option Texas policymakers are considering is pooling juvenile incarceration and probation funds for nonviolent offenders and remitting the money to each county. Through this funding change, Ohio reduced recidivism two to six-fold and commitments to state youth lockups by 36 percent under its RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) program.<sup>19</sup>

If this funding shift occurs in Texas, it will be even more important to upgrade the performance measures or create a departmental accountability system that will allow policymakers to compare the performance of different counties to create an incentive for the adoption and proliferation of best practices and ensure state dollars are being used effectively. Given that many smaller counties in this scenario may increasingly use state money to



purchase slots in residential facilities in larger counties, transparency as to these facilities' performance could create a functioning market. Armed with information on these facilities' results, purchasing counties would seek

out facilities with documented effectiveness in reducing recidivism and boosting educational and vocational outcomes. ★

## ENDNOTES

- <sup>1</sup> Nancy Arrigona, et. al., Texas Juvenile Probation Commission and Texas Youth Commission, Coordinated Strategic Plan (Nov. 2007) accessed on 18 Sept. 2008, [http://www.tyc.state.tx.us/about/Coordinated\\_Strategic\\_Plan\\_2008-2009.pdf](http://www.tyc.state.tx.us/about/Coordinated_Strategic_Plan_2008-2009.pdf); TJPC Progressive Sanctions Model Key Rules and Principles, <http://www.tjpc.state.tx.us/publications/forms/2004/TJPCAGE0104.pdf>.
- <sup>2</sup> Texas Youth Commission, Self-Evaluation Report, Chair: Kenneth Brimer, Co-Chair: Vicki Truitt (24 Aug. 2007) accessed on 19 Sept. 2008, <http://www.sunset.state.tx.us/81streports/tyc/ser.pdf>.
- <sup>3</sup> Dick Mendel, "Small Is Beautiful: The Missouri Division of Youth Services," 5 ADVOCASEY 35-36, Annie Casey Foundation (Spring 2003) <http://www.aecf.org/upload/PublicationFiles/Juvenile%20Justice%20at%20crossroads.pdf>.
- <sup>4</sup> Texas Youth Commission, "TYC Population Trends" (27 Mar. 2007) accessed on 19 Sept. 2008, [http://www.tyc.state.tx.us/research/growth\\_charts.html](http://www.tyc.state.tx.us/research/growth_charts.html).
- <sup>5</sup> Texas Youth Commission, Self-Evaluation Report, Chair: Kenneth Brimer, Co-Chair: Vicki Truitt (24 Aug. 2007) accessed on 19 Sept. 2008, <http://www.sunset.state.tx.us/81streports/tyc/ser.pdf>.
- <sup>6</sup> Texas Youth Commission Archive (25 Oct. 2005) accessed on 19 Sept. 2008, [http://travis.tyc.state.tx.us/archive/Press/102505\\_volunteer\\_success.html](http://travis.tyc.state.tx.us/archive/Press/102505_volunteer_success.html).
- <sup>7</sup> Lisa Sandberg, "Bureaucratic Ranks Flourish at TYC," *Houston Chronicle Online Edition* (7 Sept. 2008) accessed on 19 Sept. 2008, <http://www.chron.com/dispatch/story.mpl/headline/metro/5989098.html>.
- <sup>8</sup> N. H. Azrin, B. Donohue, G. A. Teichner, T. Crum, J. Howell, and L. A. DeCato, "A controlled evaluation and description of Individual-Cognitive Problem Solving and Family-Behavior Therapies in dually-diagnosed conduct-disordered and substance-dependent youth," *Journal of Child & Adolescent Substance Abuse*, 11(1), 1-43; James Austin, Kelly Dedel Johnson, and Ronald Weitzer, "Alternatives to the Secure Detention and Confinement of Juvenile Offenders," *OJJDP Juvenile Justice Bulletin*, Sept. 2005.
- <sup>9</sup> Texas Juvenile Probation Commission, Performance Assessment Report (May 2008) accessed on 19 Sept. 2008, <http://www.tjpc.state.tx.us/publications/reports/TJPCMISC0108.pdf>.
- <sup>10</sup> Legislative Budget Board, Fiscal Note, 80th Legislative Regular Session (23 Mar. 2007) accessed on 19 Sept. 2008, <http://www.capitol.state.tx.us/tlodocs/80R/fiscalnotes/pdf/HB00185H.pdf>.
- <sup>11</sup> Marc A. Levin, "The ABC's Before TYC: Enhancing Front-End Alternatives in the Juvenile Justice System," Texas Public Policy Foundation (Feb. 2008) accessed on 19 Sept. 2008, <http://www.texaspolicy.com/pdf/2008-02-PP04-ABCOFTYC-ml.pdf>.
- <sup>12</sup> Marc A. Levin, Letter to the Sunset Advisory Commission (17 July 2008) accessed on 19 Sept. 2008, <http://www.texaspolicy.com/pdf/SunsetJuvenileLetter-Revised3.pdf>.
- <sup>13</sup> Texas Juvenile Probation Commission, Legislative Appropriations Request (6 Aug. 2008) accessed on 19 Sept. 2008, <http://www.tjpc.state.tx.us/publications/reports/TJPCMISC0208.pdf>.
- <sup>14</sup> Texas Juvenile Probation Commission, "The State of Juvenile Probation Activity in Texas" (Sept. 2007) accessed on 19 Sept. 2008, <http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2005.pdf>.
- <sup>15</sup> Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (2006) <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/chapter3.ppt>.
- <sup>16</sup> American Psychological Association Zero Tolerance Task Force, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations" (9 Aug. 2006).
- <sup>17</sup> Taby Ali and Alexandra Dufresne, "Missing Out: Suspending Students from Connecticut Schools," *Connecticut Voice for Children* (Aug. 2008) accessed on 19 Sept. 2008, <http://www.ctkidslink.org/publications/edu08missingout.pdf>.
- <sup>18</sup> Texas Juvenile Probation Commission, Performance Assessment Report (May 2008) accessed on 19 Sept. 2008, <http://www.tjpc.state.tx.us/publications/reports/TJPCMISC0108.pdf>.
- <sup>19</sup> E.J. Latessa, M.G. Turner, M.M. Moon, and B.K. Applegate, "A Statewide Evaluation of the RECLAIM Ohio Initiative," *Perspectives* 23 (2): 16, <http://www.uc.edu/criminaljustice/ProjectReports/Reclaim.pdf>; E.J. Latessa, C. Lowenkamp, and M. Lemke, "Evaluation of Ohio's RECLAIM Funded Programs, Community Corrections Facilities, and DYS Facilities: FY 2002," CCF Supplementary Report, [http://www.uc.edu/criminaljustice/ProjectReports/CCF\\_Evaluation\\_Final\\_2006.pdf](http://www.uc.edu/criminaljustice/ProjectReports/CCF_Evaluation_Final_2006.pdf).



## About the Author

**Marc A. Levin, Esq.**, is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an Austin attorney and an accomplished author on legal and public policy issues.

Levin has served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court.

In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law.

Levin's articles on law and public policy have been featured in publications such as *The Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News* and *Reason Magazine*.

## About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets, and limited government.

The Foundation's mission is to lead the nation in public policy issues by using Texas as a model for reform. We seek to improve Texas by generating academically sound research and data on state issues, and recommending the findings to policymakers, opinion leaders, the media, and general public.

The work of the Foundation is primarily conducted by staff analysts under the auspices of issue-based policy centers. Their work is supplemented by academics from across Texas and the nation.

Funded by hundreds of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

