



Interim Charge 2:

Study ways to reduce the number of youth referred to the juvenile justice system. Consider the availability of mental health services, diversion and early intervention programs, and other prevention methods.

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The Texas Public Policy Foundation is a 501(c)(3) nonprofit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets and limited government. I would like to thank you for the opportunity to discuss the interim charge related to reductions of juvenile referrals in Texas with the Committee. There are three significant areas in which referrals may be safely and effectively reduced: school based referrals, first time offenders, and mentally ill juveniles.

First, in 2010, over 5,000 referrals were made to juvenile probation departments across the state by schools.¹ While it is entirely appropriate for schools to exercise this power when necessary to keep students and teachers safe, it is essential that this avenue of discipline is not overused. Research has shown that school discipline is very highly correlated with a variety of poor outcomes for juveniles. The data reveals that out of all the youth referred to the juvenile justice system, 67 percent of youths referred to the juvenile justice system in Texas had at least one school disciplinary contact in the prior year,² and further that this school disciplinary contact alone—meaning all other risk factors held constant—meant a youth was 23.4 percent more likely to be referred to the juvenile justice system.³ Furthermore, a student who has been suspended is three times more likely to drop out and 80 percent of adult prison inmates dropped out of school.⁴

Counties have already become weary of dealing with minor misbehavior in the juvenile justice system. Bexar County, for example, decided that they would only administer school referrals in which truancy was the underlying offense. Any other cases would result only in a written notice to the family advising them of a referral, with information on services in other agencies. The juvenile probation department would then only take action if the youth was referred again.⁵ The chief juvenile probation officer in that county reported in 2010 that, after investigating these cases, they often found that the youth fulfilled his obligations and had no subsequent trouble.⁶ This approach allows county juvenile probation departments to focus their limited resources on youths with underlying offenses that pose a significant public safety risk.

Schools should also focus on incorporating the family into the response prior to adjudication and creating a community-based action plan or behavior contract for the youth and family to follow. KIPP charter schools have found much success in the use of behavior contracts signed by the parent and student and behavior accounts. This would reduce unnecessary formal processing of juveniles and prevent the costs and collateral consequences that arise from formal adjudication, such as a criminal record that sometimes precludes further education or employment.⁷ Other alternatives found in schools include the use of peer mediation and school-based teen courts as means of diverting students whose misconduct does not threaten public safety from the traditional juvenile justice system.⁸

The most promising policy option for this committee is to require school districts to adopt a tiered school discipline plan rather than a zero tolerance policy. Zero tolerance policies often result in immediate juvenile justice system action without regard to whether public safety is jeopardized and with little or no attention to ways of dealing with the misbehavior within the school. Tiered responses, in the alternative, provide an increasingly strict step-up in discipline, and usually resolve the behavior issue without formal system involvement. For example, a tiered response might first require a warning, followed by parental contact, followed by a referral to mediation or school conflict resolution problems. Only if those responses fail to correct the problem is a referral then made to the juvenile justice system.

Other districts adopting tiered discipline plans have experienced excellent results. For example, in Clayton County, Georgia, a recently created staggered response to misbehavior, rather than immediate involvement with the juvenile justice system, experienced an 87 percent decrease in reported fighting, a 36 percent decrease in other negative behaviors, 86 percent fewer justice system referrals, and a 64 percent drop in incidences of disruption.⁹ And at the end of the year, twenty percent more students were graduating from high school.

An issue related to tiered discipline plans is the definition of the offense of disrupting class found in Chapter 37 of the Education Code. Currently, this overly broad definition criminalizes such routine misbehavior as “making excessive noise.” While the hundreds of thousands of annual tickets issued for this offense are Class C misdemeanors that result in referral to municipal or justice of the peace court, rather than juvenile probation, they nonetheless provide an initial pathway for many youths to enter the justice system. By narrowing the definition of this offense or requiring a tiered disciplinary response,* policymakers can encourage more effective school-based responses while minimizing the burden on courts that are ill-equipped to do anything but fine the parent.

The second opportunity to reduce referrals to the juvenile justice system would be a far more comprehensive and widespread use of a first offender program. In 2010, 48 percent of youth referred to juvenile probation departments were first time offenders.¹⁰ Rather than formal system involvement, diversion for these youth can be far more effective and produce tremendous cost savings.

Under Texas Law, Section 52.031 of the Family Code, the state authorizes juvenile boards to establish a first offender program, for youths charged with C.I.N.S. conduct or a misdemeanor not involving either violence to a person or a prohibited weapon.¹¹ Under such a program, the youth may not have previous adjudications, but also may not be detained. The youth and his or her family must consent to participation, and disposition options include victim restitution, community service restitution, counseling or rehabilitation services, and periodic reporting.

These programs have been remarkably successful in some counties. For example, Tarrant County, Texas, created a first-time offender program in conjunction with the Lena Pope Home, which handles youth referred by law enforcement directly to the program, avoiding formal adjudication. After classes involving both the youth and his or her parents, as well as substance abuse and educational components, a youth can graduate from the program, if completed successfully, or be referred back to law enforcement. Out of the 1,474 youths served in the program since 2005, only 22 have been formally adjudicated following the program, less than 1.5 percent of participants.¹²

First offender programs are particularly acute in their ability to treat delinquent behavior early, prior to a pattern of bad behavior taking shape. If more counties adopted first offender programs and avoided formal adjudication, significant court costs and resources would be saved, and the cost savings to the state due to reduced long-term recidivism could be substantial.

TJJD could channel existing funding for juvenile probation departments into grants specifically purposed for first time offender programs. While some first time offenders would still require formal processing and adjudication, there are significant numbers of youth that could avoid referral to the system altogether.

Third, one other area which may significantly affect juvenile referrals is that of mentally ill youth and diversion from the system. The Texas Public Policy Foundation recently released a broad study of diversion alternatives for mentally ill youth. Within this study, there is data regarding the proportion of youth with a mental illness. In state facilities the proportion of youth with a mental illness stands at about 42 percent, while county facilities count 38.5 percent of its youth with a mental illness.

While not all of these youth can be diverted from the juvenile justice system due to public safety concerns and the nature of their offense, there is evidence that, for some youth, diversions incorporating mental health treatments may be far more effective. With great variance, these diversions cost a fraction of the cost of secure incarceration, and include far more mental health treatment than state systems. This treatment not only provides the opportunity for youth to create a far more stable home life but also to avoid further offenses. As the Foundation’s study noted, many of these diversions require more long term study before they can be definitively identified as the best option for mentally ill juvenile offenders, but counties and state agencies can begin looking at these diversionary alternatives through the grants provided for community juvenile justice services.

* For example, Texas Education Code Sec. 37.124 could be amended to read “(a) A person commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities, and if the person continues to intentionally disrupts class after all disciplinary options set forth in the student code of conduct that do not involve removing the student from school and which the school may exercise without parental consent have been exhausted.”

¹ Texas Juvenile Probation Commission, "[The State of Juvenile Probation Activity in Texas: Calendar Years 2009 & 2010](#)" (Nov. 2011).

² Tony Fabelo, "[Strengthening Juvenile Probation: Emerging Challenges and Issues to Consider, Report to Texas Juvenile Probation Chiefs Summit](#)," Council of State Governments Justice Center, (Jan. 2009).

³ Dottie Carmichael, Ph.D., Guy Whitten, Ph.D., and Michael Voloudakis, Ph.D., "[Study of Minority Over-Representation in the Texas Juvenile Justice System](#)," The Public Policy Research Institute at Texas A&M, (Oct. 2005).

⁴ Tony Fabelo, "[Strengthening Juvenile Probation: Emerging Challenges and Issues to Consider, Report to Texas Juvenile Probation Chiefs Summit](#)," Council of State Governments Justice Center, (Jan. 2009).

⁵ David Reilly, Bexar County Chief Juvenile Probation Officer, email, 28 Oct. 2009.

⁶ Ibid.

⁷ See Ashley Nellis, "[Addressing the Collateral Consequences of Convictions for Young Offenders](#)," The Sentencing Project (July 2011).

⁸ Jeffrey A. Butts and Janeen Buck, "[Teen Courts: A Focus on Research](#)," U.S. Department of Justice, (October 2000); Stephen K. Bell, et. al., "[The Effectiveness of Peer Mediation in a Low-SES Rural Elementary School](#)," Psychology in the Schools, Vol. 37(6), (2000).

⁹ Amanda Petteruti, "[Education Under Arrest: The Case Against Police in Schools](#)," Justice Policy Institute (Nov. 2011).

¹⁰ Texas Juvenile Probation Commission, "[The State of Juvenile Probation Activity in Texas: Calendar Years 2009 & 2010](#)" (Nov. 2011).

¹¹ [Tex. Family Code Ann. §52.031](#) (2008).

¹² Margaret Cohenour, LCSW, Director of Family Matters-Lena Pope Home, email, Feb. 7, 2012.

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