



Interim Charge 3:

Study and make recommendations about issues related to the certification of juveniles as adults.

By Jeanette Moll, Policy Analyst for the Center for Effective Justice

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 greatly appreciate the opportunity to testify about the interim charge related to the certification of juveniles as adults.

The certification of juvenile as adults puts the certified offender wholly within the adult system, without any access to the resources and juvenile-specific rehabilitation within the juvenile system. The certification process in Texas was implemented to ensure the most serious offenders receive commensurate punishment, but it should be clarified in to also ensure that it is properly limited to the very worst cases.

A recent study found that youths certified as adults in Texas and youths given determinate sentences in the juvenile justice system are substantially similar in demographic factors, criminal offenses, prior criminal histories, and sentence lengths.¹ For example, of the youth certified and the youth given determinate sentences, most were 16 years old, most were male, the most likely crime was aggravated robbery, in almost the same proportion, and the prior criminal histories, as measured by the number of prior referrals, was almost identical.²

This is significant, given that youths given determinate sentences have access to two important avenues for rehabilitation that certified youth do not. First, determinately sentenced youth are placed, at least initially, in the juvenile justice system. Juvenile facilities provide far more resources and programs that aim to rehabilitate a youth and are tailored to a youth's needs. For instance, as of May 2008, only 38 percent of youths in the adult system were enrolled in school while incarcerated while all youths at TYC attend school for a full day.³ Second, under the determinate sentence system, a youth is reevaluated prior to transfer to the adult system at the age of 19, giving a judge the opportunity to determine whether a youth is ready for release or requires further incapacitation, factoring in rehabilitation and public safety issues.⁴ Determinate sentencing is a wise alternative to certification, given that it allows for significantly longer sentences, up to 40 years.⁵

Further, evidence reveals that certified youth might not be the "worst of the worst" for which the certification process was intended. Fifteen percent of certified youth were charged with non-violent felonies, 29 percent are first-time offenders, and 89 percent had never served time in a juvenile facility prior to certification.⁶

It is not only the type of youths certified that requires reevaluation of the certification process in Texas, but also that taxpayer dollars must be spent to the greatest degree of effectiveness in the corrections field. And for serious juvenile offenders, the greatest degree of effectiveness can be found in the juvenile justice system. TJJD has been proven to be remarkably adept at rehabilitating serious and violent offenders. TJJD's Capital and Serious Violent Offenders Program works with juveniles committed for the most serious of crimes—homicide and other violent offenses—and boasts some of the most successful recidivism outcomes in any TJJD program. After three years, only five percent of youths involved in the program were re-arrested for a violent offense, and only 15 percent were re-incarcerated for any offense.⁷ Compare that recidivism rate to the rate for youthful offenders, age 16 or younger, released from the criminal justice system after serving time for a violent offense: 30.4 percent.⁸

Even serious juveniles in the juvenile justice system are re-incarcerated less than half as often as those in the adult system. This finding is not limited to the specific nature of Texas' system—a 2008 Wisconsin study found 17 year-olds sent to adult prison have about twice the re-incarceration rate of either juveniles or those sent to adult prison at an older age.⁹

Finally, even among certified youth, the majority receive sentences between four and ten years.¹⁰ This means that these youth will be back in the community at a young age with many years left in their 20's and early 30's, which is the age range during which the risk of criminal behavior is greatest.¹¹ This places a high importance on rehabilitation of these offenders, which has been shown to be more likely within the juvenile justice system.

Given the success of TJJD’s serious violent and capital offender program, policymakers should also review the existing statute allowing certification of youths 15 or above to stand trial as an adult and sent to adult prison for *any* felony to determine whether the current statute is too broad. This may ensure that certification truly is reserved for the “worst of the worst,” and not youth more appropriately placed in the juvenile justice system. It is counterintuitive that, under current Texas law, the offenses for which a youth may be certified are broader – including various drug and property offenses – than the offenses for which a youth may be determinately sentenced.

Additionally, policymakers should consider whether written findings should be required when a court decides to certify a youth to stand trial as an adult. This would ensure a full understanding of the exact reasons why a youth requires placement in the criminal justice system, and implicitly ensure judicial consideration of determinate sentencing of youth.

¹ Michele Deitch, “[Juveniles in the Adult Criminal Justice System in Texas.](#)” Special Project Report, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin Report, (March 2011).

² Ibid.

³ Will Harrell and Terry Schuster, “[Meeting the special needs of TDCJ’s youthful offenders.](#)” Office of the Independent Ombudsman for the Texas Youth Commission, (May 2008).

⁴ [Tex. Family Code Ann. §54.11](#) (2008).

⁵ [Tex. Family Code Ann. §54.04\(d\)\(3\)\(A-C\)](#) (2008).

⁶ Michele Deitch, “[Juveniles in the Adult Criminal Justice System in Texas.](#)” Special Project Report, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin Report, (March 2011).

⁷ Texas Youth Commission, “[2007 Review of Agency Treatment Effectiveness.](#)”

⁸ Texas Youth Commission, “[2007 Review of Agency Treatment Effectiveness.](#)”

⁹ “[17-year-old Offenders in the Adult Criminal Justice System.](#)” Wisconsin Legislative Audit Bureau, (Feb. 2008).

¹⁰ Michele Deitch, “[Juveniles in the Adult Criminal Justice System in Texas.](#)” Special Project Report, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin Report, (March 2011).

¹¹ Jeff Baldwin, Texas Department of Criminal Justice, email, 4 Dec. 2009.