



TEXAS JUDICIAL COUNCIL  
COMMITTEE REPORT  
and  
RECOMMENDATIONS  
June 2018



# JUVENILE JUSTICE

In June 2017, the Texas Judicial Council charged the Juvenile Justice Committee with the following:

- Consider best practices and necessary reforms to the juvenile justice system to improve the adjudication of delinquent conduct cases; and
- Oversee the study required by HB 1204 regarding the use of the terms child, minor, and juvenile in statute for fine-only offenses and the adjudication of those offenses; recommend any necessary reforms to improve the adjudication of those offenses.

The members of the Committee are:

Justice Court Judge Valencia Nash, Chair  
(Dallas County)  
Senator Brandon Creighton  
Probate Court Judge (Ret.) Polly Spencer  
(Bexar County)

Municipal Court Judge Edward Spillane  
(College Station)  
County Court at Law Judge Vivian Torres  
(Medina County)  
Ms. Ashley Johnson  
Mr. Kenneth Saks

An Advisory Group was also established to assist the Committee in its work. Members of the Advisory Group are:

District Court Judge Darlene Byrne (Travis County)  
Deborah Fowler, Executive Director, Texas Appleseed  
Dr. Stephanie McVea, LPC, Zenith Child and Family Wellness Center  
Dr. Terry Smith, Chief Juvenile Probation Officer, Dallas Co.  
Elizabeth Henneke, Executive Director, Lone Star Justice Alliance  
Jill Mata, General Counsel, Texas Juvenile Justice Department  
Laura Angelini, General Administrative Counsel, Bexar County Juvenile District Courts  
District Court Judge Laura Parker (Bexar County)  
Jamie Bernstein, Assistant Director, Supreme Court of Texas Children's Commission

Larry Burgess, CPS Fostering Connections Program Specialist  
Tiffany Roper, Deputy Associate Commissioner for CPS  
Ryan Turner, General Counsel and Director of Education, Texas Municipal Courts Education Center  
Sarah Guidry, Executive Director, Earl Carl Institute for Legal and Social Policy, Thurgood Marshal School of Law  
Lauren Rose, Director of Youth Justice Policy, Texans Care for Children  
Michele Deitch, Adjunct Professor, LBJ School and UT Law School  
District Court Judge Michael Schneider (Harris County)

Michael Turner, Director of State Programs  
and Services, Texas Juvenile Justice  
Department  
Patricia Cummings, Attorney, Cummings Law

District Court Judge Rhonda Hurley (Travis  
County)  
Riley Shaw, Assistant District Attorney,  
Tarrant County

The Juvenile Justice Committee held meetings on August 31, 2017, on May 16, 2018, and on June 12, 2018. The Committee's Advisory Group held meetings on December 18, 2017 and March 28, 2018.

This report contains recommendations relating to first of the Committee's two charges only. These recommendations are organized around three broad themes, as follows:

- Addressing the needs of youth in Class C matters;
- Addressing the needs of dually-involved youth; and
- Supporting reforms impacting youth in state custody.

The report required by HB 1204 to be submitted by OCA to the governor, lieutenant governor, and Legislature is due no later than December 1, 2018. Work on this study is ongoing.

## Recommendations in Brief

### **Addressing the Needs of Youth in Class C Matters**

Recommendation 1: The Legislature should amend current law to allow for the handling of youth charged with Class C/fine-only offenses as a civil matter in the state's justice and municipal courts.

Recommendation 2: The Legislature should amend the Code of Criminal Procedure to clarify and expand the role and use of juvenile case managers, to include the use of regional juvenile case managers, as needed.

Recommendation 3: The Office of Court Administration should develop best practice materials and related resources regarding juvenile diversion and other alternative disposition programs and make them available on its website.

### **Addressing the Needs of Dually-Involved Youth**

Recommendation 1: The Legislature should modify the data-sharing provisions of HB 932 (2017) and HB 1521 (2017) and require the automatic exchange of information between the Texas Juvenile Justice Department and the Department of Family and Protective Services.

Recommendation 2: The Supreme Court Children's Commission should convene a task force to study and report on issues relating to youth with involvement in the juvenile justice and child welfare systems. The task force should establish a common, statewide definition(s) for the population, identify resources needed to meet the needs of youth who are dually-involved, and make other recommendations as may be necessary to improve outcomes for dually-involved youth. The report should address training needs for judges and other necessary parties on handling cases involving youth involved in both systems.

Recommendation 3: The Legislature should revise the Texas Family Code and the Texas Government Code to expand the jurisdiction of Children's Courts to oversee cases involving dually-involved youth.

Recommendation 4: The Legislature should revise the Texas Family Code to allow for the transfer of venue of a juvenile case from a court exercising juvenile jurisdiction to the court with venue over a youth's child welfare case.

### **Supporting Reforms Impacting Youth in State Custody**

Recommendation 1: The Legislature should ensure that the Texas Juvenile Justice Department has sufficient flexibility to determine the appropriate placement of and treatment for youth committed to its custody.

Recommendation 2: The Legislature should clarify that the validated risk and needs assessment juvenile probation departments are required to use must be used before every disposition, including non-judicial dispositions, such as deferred prosecution.

Recommendation 3: The Legislature should provide additional funds to local governments for diversionary and other intervention programs designed to ensure youth do not penetrate the juvenile justice system more deeply than risk and need dictate, and for rehabilitation programs for those youth on probation, in post-adjudication placement, and committed to the Texas Juvenile Justice Department.

Recommendation 4: Juvenile court judges should be offered additional training related to child and adolescent development and best practices in juvenile case adjudication and disposition.

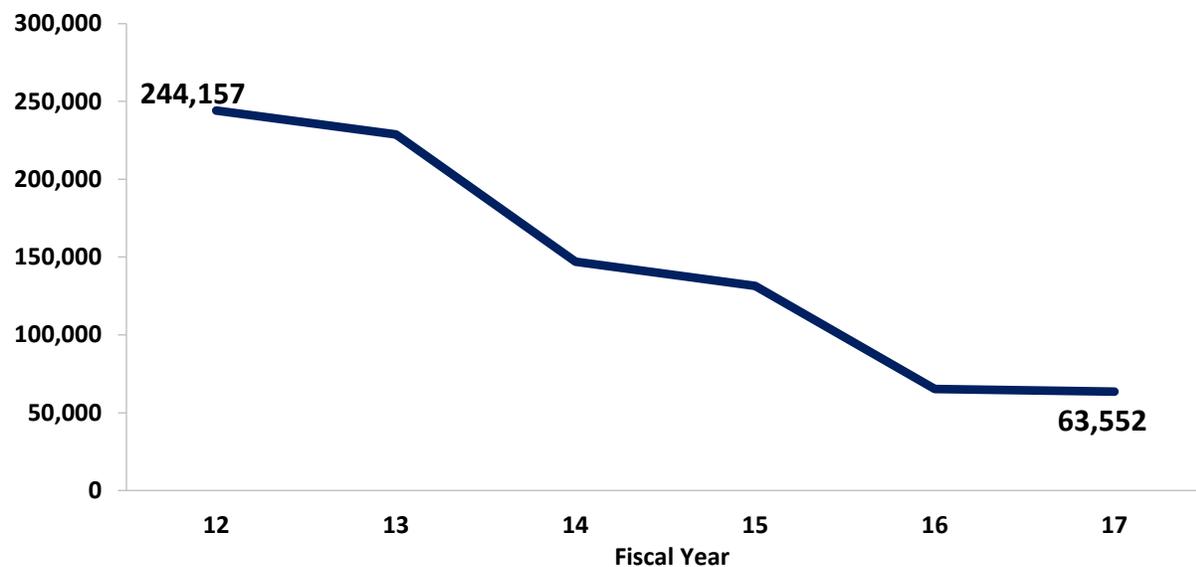
## Recommendations in Detail

### **Addressing the Needs of Youth in Class C Matters**

#### Background

Over several legislative cycles, Texas lawmakers have debated how to curb youth penetration into the adult criminal justice system and the ways to limit the negative effects of that penetration when it happens. Recent reform efforts largely targeted Class C misdemeanor law, showcased by changes to school-ticketing law in the 83rd Legislative Session and truancy law in the 84th Legislative Session. As evidenced in Chart 1 below, these reforms helped to significantly reduce non-traffic Class C cases filed against juveniles in justice and municipal courts.

**Chart 1: Non-Traffic Class C Cases Filed Against Juveniles in Justice and Municipal Courts by Fiscal Year (includes truancy and Education Code Violations)<sup>1</sup>**



Under Family Code sections 51.03 and 51.04, misdemeanor charges filed against children generally qualify as “conduct indicating need for supervision” (CINS) and are heard originally and exclusively in juvenile court. This is not the case with most juvenile Class C misdemeanor (fine-only) charges. Due in part to judicial efficiency and resource concerns,<sup>2</sup> and because of the

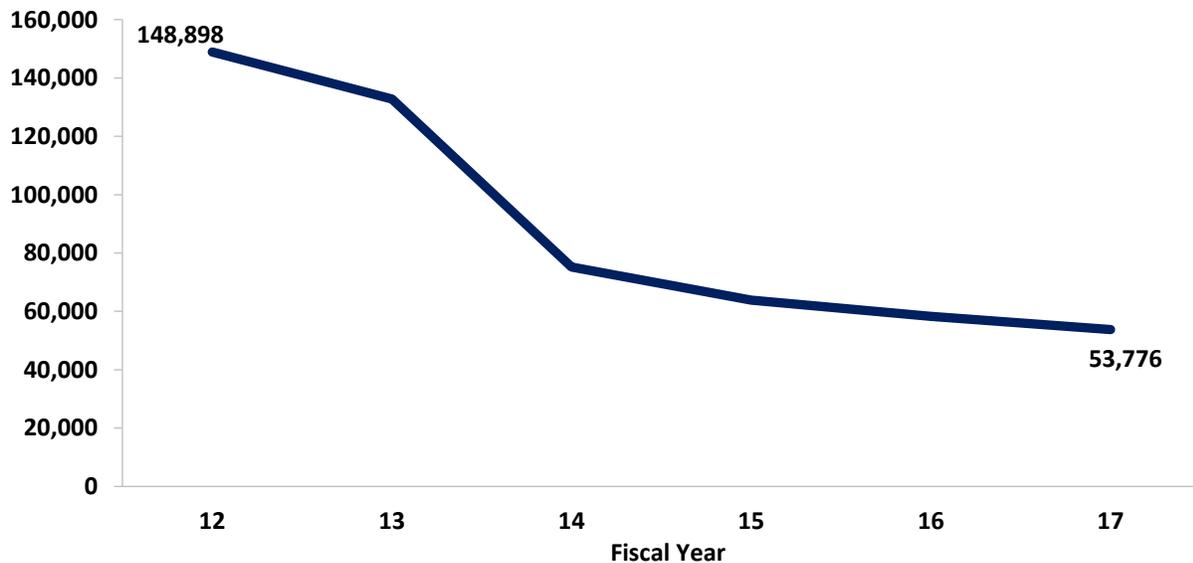
<sup>1</sup> Source: Office of Court Administration. Does not include data from Hidalgo County justice courts nor the El Paso Municipal Courts.

<sup>2</sup> See ROBERT DAWSON, TEXAS JUVENILE LAW 589 (7th ed. 2008). Professor Dawson’s guide suggests that Class C juvenile case jurisdiction initially sits in adult criminal court because Class C charges lack “sufficient seriousness to warrant using the specialized resources of the juvenile justice system” and because criminal courts can more quickly dispose of the cases.

interplay between Family Code provisions dealing with what constitutes an offense committed by a juvenile and the conditions under which cases can be transferred among courts,<sup>3</sup> Class C charges brought against juveniles exist in a fluid jurisdictional context: they begin in criminal court as criminal charges and do not become a CINS matter for juvenile courts unless transferred. As a result, most fine-only Class C cases brought against juveniles are adjudicated under the criminal jurisdiction of justice and municipal courts.

Despite the decline in filings resulting from Legislature’s reforms in 2013 and 2015, the volume of Class C charges filed against juveniles in the adult criminal court system remains high. Even after adjusting case filings numbers to remove truancy and Education Code violations from consideration, Office of Court Administration data still show that over 53,000 non-traffic Class C cases were filed against juveniles in justice and municipal courts in FY17, and although these types of cases are down substantially from where they were five years ago, the filing rate decline has slowed and appears to be leveling out. See Chart 2, below.

**Chart 2: Non-Traffic Class C Cases Filed Against Juveniles in Justice and Municipal Courts by Fiscal Year (excludes truancy and Education Code Violations)<sup>4</sup>**



<sup>3</sup> See TEX. FAM. CODE §§51.03, 51.08.

<sup>4</sup> Source: Office of Court Administration. Does not include data from the justice courts in Hidalgo County or the municipal courts in El Paso.

## Recommendations

### **Recommendation 1: The Legislature should amend current law to allow for the handling of youth charged with Class C/fine-only offenses as a civil matter in the state's justice and municipal courts.**

In recent legislative cycles, Texas lawmakers enacted legislation aimed at limiting youth exposure to the criminal justice system, particularly in connection with school-related offenses. During the 83rd Legislative Session (2013), SB 393 and SB 1114: 1) decriminalized certain school offenses (disruption of class and disruption of transportation), 2) imposed new procedural requirements on the school-based charging process, and 3) built additional diversion pathways to keep students from entering the criminal justice system.

Then, the 84th (2015) Legislature created Title 3A of the Family Code and overhauled Texas truancy law in HB 2398. The reform bill decriminalized failure to attend school, strengthened truancy prevention and intervention measures, and created civil truancy courts to address the reasons for excessive school absences. The reforms produced a staggering annual decline in the number of Class C juvenile cases filed: from 244,000 in FY12 to 63,500 in FY17, a reduction of nearly 74%. Nevertheless, the numbers of youth still interacting with the adult criminal justice system are difficult to ignore, especially in light of the long-term consequences of a Class C charge and given what research suggests about how best to address the needs of court-referred and court-involved youth. Office of Court Administration data show that over 53,000 non-traffic, non-truancy, non-Education Code Class C cases were filed against juveniles in justice and municipal courts in FY17.

As noted above, Class C charges against youth (such as disorderly conduct, non-driving alcohol violations, or possession of tobacco) generally originate in justice and municipal courts, which do not operate under the more youth-protective confines of juvenile or (civil) truancy court systems. Entry into this system carries with it a variety of consequences and potential hazards, such as lack of appointed counsel rights, potential fines and fees that might be difficult to satisfy, and the prospect of a criminal record — which can in turn impact a youth's future school, job, and housing prospects into adulthood.

In light of these risks, and in line with the Legislature's concerns about sending Texas children into the criminal justice system, the Committee recommends the Legislature amend current law to allow for the handling of youth charged with Class C/fine-only

offenses as a civil matter in the state’s justice and municipal courts.<sup>5</sup> Shifting toward a civil system for juvenile Class C charges would advance a stated purpose of the Juvenile Justice Code — “to remove, where appropriate, the taint of criminality from children committing certain unlawful acts,”<sup>6</sup> while simultaneously holding youth accountable for their actions. And for the more than 50,000 youth who currently come into contact with the adult criminal justice system every year because of a Class C fine-only charge, the long-term risks posed by a criminal justice response to low-level juvenile misconduct would be lessened.

**Recommendation 2: The Legislature should amend the Code of Criminal Procedure to clarify and expand the role and use of juvenile case managers, to include the use of regional juvenile case managers, as needed.**

Under Code of Criminal Procedure Article 45.056, local government entities can employ a juvenile case manager (JCM) to assist in administering cases involving juvenile offenders. Although the role of JCMs varies by jurisdiction and has fluctuated over the years,<sup>7</sup> JCMs generally operate as several positions rolled into one — an innovative problem-solver that is part court clerk, part probation officer, and part social worker.<sup>8</sup> Ultimately, JCMs are to work to deter youth from additional and possibly more serious offending, including entry into the criminal justice system.

As far back as 2011, lawmakers expressed concern that the problem-solving potential of JCMs remained unrealized.<sup>9</sup> Consider the following:

- While the exact number of JCMs across the state is unknown, recent data provided to the Office of Court Administration by the Texas Municipal Court Education Center suggests that there are just under 170 JCM entities (such as a municipality or county) active in Texas.
- Most JCMs operate in or near urban and suburban areas, leaving rural areas underserved.

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<sup>5</sup> The Committee defers to the Legislature in resolving the specifics of this system but encourages the maximum retention of judicial discretion in the system (e.g., discretionary transfer of a case to a juvenile court).

<sup>6</sup> TEX. FAM. CODE §51.01(2)(B).

<sup>7</sup> See Ryan Kellus Turner, *Juvenile Case Managers in Texas: The First Decade*, THE RECORDER 8-11, vol. 21, no. 2, Mar. 2012, <http://www.tmcec.com/public/files/File/The%20Recorder/2012/Recorder%20Vol.%2021%20No%202.pdf>.

<sup>8</sup> SENATE RESEARCH CENTER, S.B. 61 Bill Analysis, 82nd Leg., R.S., at 1, <https://capitol.texas.gov/tlodocs/82R/analysis/pdf/SB00061F.pdf#navpanes=0>.

<sup>9</sup> *Id.*

- Even though Article 45.056 contemplates the use of regional case managers, there is little evidence to show that rural areas use case managers on a regional basis.

Juvenile law experts and JCM practitioners have suggested that the current rates of JCM usage in rural areas and across the state generally may be a product of education and awareness, funding restrictions and lack of funding, and possibly conflicting language in Article 45.056 and Code of Criminal Procedure Article 102.0174<sup>10</sup> that might create confusion over the role and function of a JCM. The Committee recommends that the Legislature amend the Code of Criminal Procedure's JCM provisions to promote clarity around the role of the position and help ensure the JCM position is used for its intended purpose and to its full extent.

**Recommendation 3: The Office of Court Administration should develop best practice materials and related resources regarding juvenile diversion and other alternative disposition programs and make them available on its website.**

The need for youth and family-serving programs and services to divert youth from prosecution, as appropriate, was a theme that surfaced early in Committee deliberation and persisted through the Committee's work. It was noted that local courts may need best practice materials and resources regarding juvenile diversion and alternative disposition programs.

Jurisdictionally, Class C cases can exist in both the juvenile court and adult criminal court systems. Local government entities may need better information on available diversion options and programs (such as juvenile case managers) to reduce Class C docket volume and to ensure that justice system responses are targeted to address a youth's risk and need. The Committee recommends the creation of juvenile diversion and alternative disposition best practice materials and educational resources for inclusion on the Office of Court Administration's webpage for centralized access.

**Addressing the Needs of Dually-Involved Youth**

**Background**

Children who interact with both the child welfare and juvenile justice systems in some fashion can fall under several different labels: "dually-involved youth," "dually-adjudicated youth," "dual status youth," or even "crossover youth." (For simplicity's sake, this report references

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<sup>10</sup> For example, Texas Code of Criminal Procedure Article 102.0174 requires the existence of a juvenile case manager position to collect a juvenile case manager fee, but bars use of that fee to pay the employee in that role if it is not the employee's "primary role" without defining "primary role."

such youth as “dually-involved.”<sup>11</sup>) Research on these children suggests that, depending on the technical definition used to identify the population, upwards of 50% of youth referred to juvenile courts for delinquency may be dually-involved.<sup>12</sup> Entry into the dually-involved pool inflicts a heavy burden on youth. In comparison to children outside of the population, dually-involved youth “experience earlier onset of delinquent behavior, higher rates of recidivism, frequent placement changes[,] poor permanency outcomes, and extensive behavioral health problems.”<sup>13</sup> And in adulthood, dually-involved youth are also more likely to interact with the criminal justice system, use multiple public service systems more frequently, and remain unemployed with fewer earnings over the long-term.<sup>14</sup>

The failure to identify and treat dually-involved youth also imposes a cost on local government. Dually-involved status can produce juvenile justice and welfare system conflict through contradictory court orders, conflicting treatment plans, duplication of services and hearings, higher placement costs, and a waste of limited resources.<sup>15</sup> Ultimately, the failure to identify dually-involved youth or the failure of systems to collaborate after such youth are identified exacerbates the strain placed on these youth and may delay the onset of critical services or a missed opportunity to intervene as may be needed.

## Recommendations

### **Recommendation 1: The Legislature should modify the data-sharing provisions of HB 932 (2017) and HB 1521 (2017) and require the automatic exchange of information between the Texas Juvenile Justice Department and the Department of Family and Protective Services.**

During the 85th Legislative Session lawmakers enacted HB 932 and HB 1521, both of which sought to increase the information shared between the Texas Juvenile Justice Department (TJJD) and the Department of Family and Protective Services (DFPS) to better identify dually-involved youth. HB 932 requires TJJD to conduct a foster care

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<sup>11</sup> The Committee does not advocate in this report for the official use of any specific term because it understands that local jurisdictions choose population terms of art for a variety of policy and practice reasons.

<sup>12</sup> WHEN SYSTEMS COLLABORATE: HOW THREE JURISDICTIONS IMPROVED THEIR HANDLING OF DUAL-STATUS CASES 3 (Douglas Thomas et. al. eds., Nat’l Ctr. for Juv. Justice 2015), <http://www.ncjj.org/pdf/Juvenile%20Justice%20Geography,%20Policy,%20Practice%20and%20Statistics%202015/WhenSystemsCollaborateJJGPSCaseStudyFinal042015.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> ADDRESSING THE NEEDS OF MULTI-SYSTEM YOUTH: STRENGTHENING THE CONNECTION BETWEEN CHILD WELFARE AND JUVENILE JUSTICE 18 (Denise Herz et. al. eds., 2012), [https://cjjr.georgetown.edu/wp-content/uploads/2015/03/MultiSystemYouth\\_March2012.pdf](https://cjjr.georgetown.edu/wp-content/uploads/2015/03/MultiSystemYouth_March2012.pdf).

<sup>15</sup> Gene Siegel & Rachael Lord, *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*, TECHNICAL ASSISTANCE TO THE JUVENILE COURT: SPECIAL PROJECT BULLETIN, June 2004, at 1, <http://www.ncjj.org/PDF/dualjurisdiction.pdf>.

screening during its admissions process to determine whether a child committed to its custody has at any time been in the foster care system.<sup>16</sup> HB 1521 addressed interagency sharing of information between TJJJ and DFPS, directing DFPS to share any information needed to identify dually-involved youth upon request.<sup>17</sup>

Increased sharing of information is key to identifying and serving the dually-involved youth population. Equally important, though, is the timeliness and consistency with which that information is shared. HB 932 directed TJJJ and DFPS (along with local juvenile probation departments) to collaborate to create a “method or methods by which probation departments statewide may access information from [DFPS] relating to a child’s placement in foster care.”<sup>18</sup> The current method of information sharing developed by TJJJ and DFPS requires local juvenile probation departments to email (or mail) requests for information to DFPS, with a turnaround time of 14 business days following request receipt. The Committee is aware that TJJJ and DFPS are exploring additional ways to streamline information sharing to allow for the more efficient exchange of information about dually-involved youth. Such a sharing arrangement may include a portal or other similar method. The Committee acknowledges that resources may be necessary to develop a portal or parallel method of sharing. The Committee feels strongly that streamlining information sharing is key in addressing the needs of dually-involved youth, and that the development of such a portal should be a top priority for the agencies and the Legislature.

The rapid identification of dually-involved youth is the reason behind the popularity and success of “crossover dockets,” several of which are in operation in Texas.<sup>19</sup> The expansion of this sort of systems-coordinated approach requires more regular and automatic sharing of information between TJJJ and DFPS. And in all cases, the automatic sharing of information can produce better identification of dually-involved youth and inform treatment options available to them. The Committee recommends the Legislature modify HB932 and HB1521’s provisions to enhance and improve interagency data-sharing.

**Recommendation 2: The Supreme Court Children’s Commission should convene a task force to study and report on issues relating to youth with involvement in the juvenile justice and child welfare systems. The task force should establish a common, statewide definition(s) for the population, identify resources needed to meet the needs of youth who are dually-**

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<sup>16</sup> TEX. HUM. RES. CODE §243.008.

<sup>17</sup> TEX. FAM. CODE §58.0052. This includes information about conservatorship status (if any) and reports to DFPS about alleged abuse or neglect (as either victim or perpetrator).

<sup>18</sup> TEX. HUM. RES. CODE §243.008(d).

<sup>19</sup> Such dockets exist in Travis and Bexar counties, and crossover operations are reported to exist in El Paso, Hidalgo, and McLennan counties, though at varying levels of maturity.

**involved, and make other recommendations as may be necessary to improve outcomes for dually-involved youth. The report should address training needs for judges and other necessary parties on handling cases involving youth involved in both systems.**

Estimating the size of the dually-involved youth population in Texas is a challenge. As noted above, the terms used to describe children with contact with both the juvenile justice and child welfare systems vary, and there is no statewide definition used to identify dually-involved youth in Texas. That said, there is much evidence to suggest that the identification of such youth is a critical part of a court's effort to secure the best possible treatment and placement outcomes for such youth. In addition, without a clear definition, data to inform a common understanding of the nature of the problem and the best ways to address it are lacking. If a broad definition is established, the number of youth falling within it could be significant, as would be the resources necessary to address their assessment, treatment, and placement needs. On the other hand, a narrow definition may exclude at-risk children for whom intervention and services would be beneficial.

There are also questions about how (at both the local and state level) reform planning should take place, how best to secure and use resources to improve youth and family outcomes, and what constitutes the most pressing education and training needs for judges concerning dually-involved youth. In Texas, counties hold a tremendous degree of potential to tailor creative, locally accountable and responsive services for the dually-involved population. Nonetheless, a host of logistical and procedural complexities confront local jurisdictions that choose to use systems-coordinated practices.<sup>20</sup> These include separate statutory timelines for hearings, information sharing and confidentiality issues, and service coordination and payment responsibility, among others.

Given the complexities surrounding the creation and maintenance of dually-involved youth reforms in a state characterized by local control and decentralized institutions, the Committee recommends the formation of a specialized task force by the Supreme Court's Children's Commission to study, report on, make policy recommendations about, and educate and train local leaders on, the dually-involved population. Other states have used this approach to address the challenges faced by dually-involved

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<sup>20</sup> According to Georgetown University's Center for Juvenile Justice Reform, seven Texas counties have implemented or are in the process of implementing the Crossover Youth Practice Model, a "nexus between research and best practices that outlines systemic changes youth serving systems can make to improve their ability to serve youth." See *Crossover Youth Practice Model*, <http://cjr.georgetown.edu/our-work/crossover-youth-practice-model/>. These jurisdictions are at different levels of maturity with regard to their programming and their ability to sustain or expand it.

youth.<sup>21</sup> Due to its expertise, the Children’s Commission is the ideal entity to take on this role.

**Recommendation 3: The Legislature should revise the Texas Family Code and the Texas Government Code to expand the jurisdiction of Children’s Courts to oversee cases involving dually-involved youth.**

Children’s Courts were created to assist general jurisdiction trial courts in managing their child abuse and neglect dockets. Because Children’s Court dockets are smaller and because Children’s Court judges have specialized training to address child well-being issues, these courts are in a good position to oversee cases involving dually-involved youth. Spurred by the “one family/one judge” approach to improve case outcomes for dually-involved youth, administrative efficiency, and thoughtful use of existing court resources and expertise, the Committee recommends the Legislature revise Title 3 and Title 5 of the Family Code and Chapter 74 of the Government Code to expand Children’s Court jurisdiction to oversee cases involving dually-involved youth.

**Recommendation 4: The Legislature should revise the Texas Family Code to allow for the transfer of venue of a juvenile case from a court exercising juvenile jurisdiction to the court with venue over a youth’s child welfare case.**

Under Family Code §51.06, venue in a juvenile justice case generally lies in the county where a youth allegedly committed an offense. In some instances, however, a youth in the child welfare system may be charged with an offense outside of the county with venue over that youth’s child welfare case. While Family Code §51.07 allows for transfer of an adjudicated case in one county to a *juvenile court* in another county for disposition, the Family Code does not contemplate the transfer of venue from a juvenile court to the court with venue over a youth’s child welfare case. Like the expanded jurisdiction recommendation found above, legislative creation of a venue transfer mechanism from a juvenile court to a child welfare court would tap into the “one family/one judge” approach and may result in more coordinated, and better outcomes. To improve case outcomes for dually-involved youth, the Committee recommends the Legislature revise the Family Code to allow for the transfer of venue of a juvenile case from a court exercising juvenile jurisdiction to the court with venue over a youth’s child welfare case.

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<sup>21</sup> IMPROVING OUTCOMES FOR YOUTH: A STATEWIDE JUVENILE JUSTICE INITIATIVE, NEVADA’S STATEWIDE APPROACH TO REDUCING RECIDIVISM AND IMPROVING OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (Sept. 2017), [https://csgjusticecenter.org/wp-content/uploads/2017/09/9.25.17\\_JJ\\_Nevadas-Statewide-Approach.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/09/9.25.17_JJ_Nevadas-Statewide-Approach.pdf).

## **Supporting Reforms Impacting Youth in State Custody**

### **Background**

The needs of youth in the custody or under the supervision of the Texas Juvenile Justice Department (TJJD) were broadly considered by the Committee, which was briefed on several occasions by agency leadership on a wide range of issues of interest to the judiciary. A helpful summary of these issues can be found in the June 2018 report from TJJD to the Governor outlining the agency's short- and long-term goals.<sup>22</sup>

### **Recommendations**

#### **Recommendation 1: The Legislature should ensure that the Texas Juvenile Justice Department has sufficient flexibility to determine the appropriate placement of and treatment for youth committed to its custody.**

The Legislature established the Texas Juvenile Justice Department to promote public safety and to produce positive outcomes for youth (and their communities) through supervision and rehabilitation.<sup>23</sup>

In support of this general charge and informed by a consideration of the agency's proposed reform strategy, the Committee recommends that the Legislature consider amending the Family Code, the Government Code, and the Human Resources Code to build more flexibility into TJJD's placement and treatment options. Examples of the need for such flexibility include:

- Chapter 59 of the Family Code (the Progressive Sanctions Model), which centers placement and treatment options — primarily in minimum lengths of stay in a residential facility — around the crime committed rather than the rehabilitative risks and needs of the youth;
- Section 242.054 of the Human Resources Code, which bars TJJD from operating a halfway house program if a private halfway house program is contractually available for a lower price;
- Section 245.052 of the Human Resources Code, which prevents TJJD from paroling a youth with a substance abuse problem who has not completed a treatment program but for whom appropriate treatment may be available in

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<sup>22</sup> CAMILLE CAIN, TEX. JUVENILE JUSTICE DEP'T, SHORT-TERM SOLUTIONS AND LONG-TERM GOALS: A PLAN FOR TJJD (2018), <http://www.tjjd.texas.gov/Docs/TJJDPlan.pdf>

<sup>23</sup> See TEX. HUM. RES. CODE §201.002.

- the community; and
- Section 30.106 of the Education Code, which prevents TJJD from paroling youth unless they participate in a positive behavior intervention and support program (PBIS) and reading instruction (for youth with deficits in reading), to the extent required by agency rule. PBIS is not a program for children to participate in; it is a behavior intervention program for adults to implement.

**Recommendation 2: The Legislature should clarify that the validated risk and needs assessment juvenile probation departments are required to use must be used before every disposition, including non-judicial dispositions, such as deferred prosecution.**

Risk assessment tools are designed to identify juveniles who are at risk of becoming chronic offenders, and Human Resources Code §221.003(b) requires local juvenile probation departments to complete a validated risk and needs assessment for each child in its jurisdiction “before the disposition of a child’s case.” Nevertheless, the current language of Human Resources Code §221.003(b) does not indicate that the risk assessment needs to occur before every disposition (including non-judicial dispositions), only “before the disposition” of a case. The Committee recommends that the Legislature clarify this language to require the use of a validated risk and needs assessment before every disposition, including non-judicial dispositions, for the purpose of supporting dispositions that are targeted to a youth’s risk and need.

**Recommendation 3: The Legislature should provide additional funds to local governments for diversionary and other intervention programs designed to ensure youth do not penetrate the juvenile justice system more deeply than risk and need dictate, and for rehabilitation programs for those youth on probation, in post-adjudication placement, and committed to the Texas Juvenile Justice Department**

TJJD’s long-term goals include system redesign to pragmatically seek the best outcome for justice-involved youth, which involves a wide-range of support and services. Operating diversion, intervention, and rehabilitation programs will undoubtedly require additional expenditures by local government. The Committee recommends that the Legislature provide additional funds to local government in support of these programs.

**Recommendation 4: Juvenile court judges should be offered additional training related to child and adolescent development and best practices in juvenile case adjudication and disposition.**

The Committee was briefed on issues relating to the profile of youth in TJJD custody, specifically as it relates to youth who have experienced “adverse childhood experiences”

(ACEs). These childhood trauma indicators include parental separation or divorce, incarcerated household members, family violence, mental illness, and a wide range of abuse or neglect. Measuring ACEs can help in predicting negative outcomes, including early death, dangerous health conditions, odds of attempting suicide, and future violence victimization and perpetration.<sup>24</sup> Childhood trauma also plays a role in brain development and the ability of children to make rational choices and regulate behavior.

According to TJJJ estimates, youth in TJJJ facilities are 3.5 times more likely than the public to have 4 or more ACEs. This means juvenile court judges regularly interact with trauma-impacted youth whose development has likely been affected in a way that might interfere with their rehabilitation. The Juvenile Justice Code provides that it is “the intent of the legislature” for counties to select juvenile judges “who [have] a sympathetic understanding of the problems of child welfare.”<sup>25</sup> The Committee believes that juvenile judges would benefit from receiving training related to trauma informed practices, child and adolescent development, and related best practice in adjudication and disposition.

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<sup>24</sup> *Id.*, at 8 (citing *Adverse Childhood Experiences*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, <https://www.samhsa.gov/capt/practicing-effective-prevention/prevention-behavioral-health/adverse-childhood-experiences>).

<sup>25</sup> TEX. FAM. CODE §51.04(e).