

Mental Healthcare in the Texas Juvenile Justice System



Texas Advisory Committee
to the U.S. Commission on Civil Rights

February 2024

Advisory Committees to the U.S. Commission on Civil Rights

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Texas Advisory Committee to the U.S. Commission on Civil Rights

September 2021 – September 2025

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In Memoriam, Charles Z. Burchett (1949 – 2023)

The Committee would like to honor and remember the service of Charles Z. Burchett, who passed away on March 13, 2023, in the middle of this project. Charles has served as a dedicated member of the Texas Advisory Committee to the U.S. Commission on Civil Rights since 2002. In addition to the decades of service he gave to the Commission, he also served his community of Kirbyville as a pastor for 43 years. Specifically, the Committee would like to remember his years of advocacy in disaster management and the expertise he provided the Committee during their study of the Civil Rights Implications of Hurricane Harvey.

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Introduction

In May 2022, the Texas Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to study the civil rights implications of mental health care in the Texas Juvenile Justice System. While other important topics may have surfaced throughout the Committee’s inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion.

As part of this inquiry the Committee heard testimony in person and via videoconferences held from August 2022 to April 2023.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during the related timeframe.² It begins with a brief background of the issues the Committee considered and then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report and the recommendations included within it were adopted unanimously by the Committee on December 6, 2023.

¹ See Appendix A.

² TJJD submitted its written testimony after the record’s scheduled closure. The Committee voted unanimously to accept the testimony in September 2023.

Executive Summary

Allegations of civil rights violations and reports of abuse and mistreatment have long plagued the Texas Juvenile Justice Department (TJJD), which manages five state-operated secure facilities to serve those youth who have committed the most serious offenses and require specialized treatment services. However, it was clear from the testimony that the facilities create a challenging and often harmful environment for the youth.

Most youth in the Texas Juvenile Justice System have clear mental health needs. Not only are these needs not being adequately addressed, but being in state-run facilities may further traumatize the youth and exacerbate mental health needs.

Facility understaffing and under-resourcing has long been a challenge, and was exacerbated by the pandemic. And while understaffing is improving, in part due to pay increases, it is still too low. We commend the Texas Legislature for taking steps to improve staffing and funding in the system, but it remains far short of what is needed to meet the needs.

We heard testimony that community-based services that prioritize a rehabilitative approach are proven to be the best way to address the needs of youth in the juvenile justice system. But TJJD continues to operate and invest in their five state-run facilities in rural areas that keep the youth far from their home communities. The Committee recommends that TJJD

Finally, the Committee is concerned about the lack of clarity and communication about the rights of the youth in their care. Youth and their guardians need more clarity on what rights they have and the options they have for filing a grievance when they think those rights might have been violated.

This report provides the Commission with several recommendations for the Texas Legislature, the governor, and the Texas Juvenile Justice Department that the Committee believes would address many of these problems and vastly improve the outcomes for the youth assigned to the system.

Merrill Matthews

Chair of the Texas Advisory Committee to the U.S. Commission on Civil Rights

Background

The Texas juvenile justice system has been afflicted with issues and challenges for decades. Many of the issues facing the system today are the same issues Texas has historically attempted to address. For example, in 1948, in response to reports of abuse, Richard Clendenen, Consultant on Training Schools for the U.S. Children's Bureau, advised the state to "close down most 'penal-type' facilities for juveniles located in isolated rural sites. Instead, he recommended smaller facilities located near urban centers, which would allow greater involvement in the rehabilitation process of juveniles' families and experts in relevant fields such as mental health, education, and psychiatry."³

In recent years, allegations of civil rights violations, state and federal investigations, and reports of abuse and mistreatment have plagued the Texas Juvenile Justice Department (TJJD). In October of 2021, the U.S. Department of Justice announced a statewide investigation into the conditions in the five secure juvenile correctional facilities run by TJJD. The investigation is examining whether Texas provides children confined in the facilities reasonable protection from physical, sexual, and emotional abuse by staff and other residents, excessive use of chemical restraints, and excessive use of isolation. The investigation is also examining whether Texas provides the youth with adequate mental health care.⁴ At least 11 staff members of Texas facilities have been arrested for sexually abusing children in their care.⁵ Some of the reported allegations include sharing pornographic material, having sexual relations with minors in custody, and sexual assault. Other examples of misconduct include reports of staff members allegedly paying children with drugs or cash to assault other children.⁶

The Sunset Advisory Commission of Texas provides regular assessment of all state agencies⁷ and recently submitted a report on TJJD for the 2022-2023 legislative session.⁸ The report found that staffing shortages are causing major instability and safety concerns within the Texas Juvenile

³ Dr. William Bush, Written Testimony submitted via email to the Texas Advisory Committee to the U.S. Commission on Civil Rights, p. 1 (hereafter cited as *Bush Written Testimony*).

⁴ Department of Justice Office of Public Affairs. "Justice Department Announces Investigation into Conditions at Five Juvenile Facilities in Texas." Wednesday, October 13, 2021 <https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-five-juvenile-facilities-texas>.

⁵ Sarah N. Lynch and Eric Beech. "U.S. Justice Department Opens Probe of Texas Juvenile Detention Facilities." Reuters. Thomson Reuters, October 13, 2021. <https://www.reuters.com/world/us/us-justice-department-opens-probe-texas-juvenile-detention-facilities-2021-10-13/>.

⁶ Sarah N. Lynch and Eric Beech. "U.S. Justice Department Opens Probe of Texas Juvenile Detention Facilities." Reuters. Thomson Reuters, October 13, 2021. <https://www.reuters.com/world/us/us-justice-department-opens-probe-texas-juvenile-detention-facilities-2021-10-13/>; Brandi Grissom and Sue Ambrose. "Fights, sex, drugs: Texas juvenile lockup on the verge of crisis, reports show." Dallas Morning News, Nov. 16, 2017. <https://www.dallasnews.com/news/investigations/2017/11/17/fights-sex-drugs-texas-juvenile-lockup-on-the-verge-of-crisis-reports-show/>.

⁷ TJJD website, Sunset Review (last accessed November 2023) <https://www.tjtd.texas.gov/index.php/sunset-review#2-key-functions-performance>.

⁸ Sunset Advisory Commission Staff Report with Final Results, p. A1. [Found here](#).

Justice System, that key elements of TJJD’s statute, rules, and procedures do not conform to common regulatory standards; and that the Office of the Independent Ombudsman needs clearer authority and formalized policies to better protect the rights of youth in the juvenile justice system.⁹

Federal & State Law

The Due Process clause of the Fourteenth Amendment to the U.S. Constitution governs the standards for conditions of confinement of juvenile offenders.¹⁰ Subjecting confined juveniles to undue restraint or excessive force violates the Due Process clause.¹¹ The Due Process clause also requires TJJD to keep juveniles reasonably safe from harm inflicted by third parties, including by other juveniles in the facility. They also must provide such minimally adequate training as reasonably may be required by these interests.¹²

The Department of Justice’s investigation is conducted under the authority of the Civil Rights of Institutionalized Persons Act (CRIPA)¹³ and the Violent Crime Control and Law Enforcement Act.¹⁴ Both statutes give the Department of Justice the authority to investigate systemic violations of the rights of young people in juvenile correctional facilities. These laws can also be used to enforce other rights that youth have in the juvenile justice system, such as rights under the Americans with Disabilities Act and the Individuals with Disabilities Education Act.¹⁵

In the Texas juvenile justice system, a “juvenile” is legally defined as a person who was at least 10 years old but not yet 17 at the time he or she committed an act defined as “delinquent conduct” or “conduct in need of supervision.”¹⁶

“Delinquent conduct” is generally conduct that, if committed by an adult, could result in imprisonment or confinement in jail. “Conduct in need of supervision” (CINS) is generally conduct that, if committed by an adult, could result in only a fine or would not even be considered a violation of the law. Examples include truancy or running away from home.¹⁷

⁹ Sunset Advisory Commission Staff Report with Final Results, pp. A11-A14. [Found here.](#)

¹⁰ See Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987).

¹¹ See Youngberg v. Romeo, 457 U.S. 307, 73 L.Ed 2d 28, 102 S. Ct. 2452 (1982).

¹² *Id.*; see also J.H. ex rel. Higgin v. Johnson, 346 F.3d 788, 791 (7th Cir. 2003).

¹³ 42 U.S.C. § 1997 et seq.

¹⁴ H.R.3355 – 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994, H.R.3355, 103rd Cong. (1994), <https://www.congress.gov/bill/103rd-congress/house-bill/3355>.

¹⁵ Department of Justice Office of Civil Rights. Children’s Rights in the Juvenile Justice System. <https://www.justice.gov/crt/rights-juveniles>.

¹⁶ The Juvenile Justice System in Texas, Overview, Important Definitions. TJJD. <http://www.tjjd.texas.gov/index.php/juvenile-system#important-definitions> (accessed March 18, 2022).

¹⁷ *Ibid.*

A juvenile who engages in delinquent conduct or commits a CINS violation can be referred to juvenile court. The juvenile can be dealt with informally and returned home, but if the county decides to charge the juvenile with delinquent conduct, the juvenile is afforded the same legal rights as an adult charged with a crime. In certain circumstances, the county can request to have a youth certified as an adult. If such is granted, the person is considered an adult for criminal purposes and will no longer be in the juvenile justice system.

If the juvenile is adjudicated for delinquent conduct, there are several possible disposition options. The juvenile may be placed on probation; the juvenile may be sent to the Texas Juvenile Justice Department with an indeterminate sentence (only felony offenses); or the juvenile may be sent to TJJD with a determinate sentence (only certain offenses).¹⁸

In Texas, individual counties provide services to all youth referred to the juvenile courts and prosecute juvenile cases, either through their district or county attorney's office. County juvenile probation departments handle most of the sanctions and therapeutic interventions the courts may impose.

TJJD works in partnership with local juvenile boards and juvenile probation departments to support and enhance juvenile probation services throughout the state by providing funding, technical assistance, and training; establishing and enforcing standards; collecting, analyzing, and disseminating information; and facilitating communications between state and local entities. It also provides oversight of county-operated detention facilities.¹⁹

TJJD manages state-operated secure facilities and halfway houses to provide treatment services to those youth who have chronic delinquency problems and who have exhausted their options in the county. Additionally, youth who have committed the most serious offenses requiring specialized treatment services that counties are not equipped to provide are also likely to be committed to state-run facilities.²⁰

There are also international standards for youth detention. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty dictates the minimum standards for incarcerated youth.²¹ The United States is the only country that has *not* ratified this treaty and are therefore

¹⁸ The Juvenile Justice System in Texas, Overview, Referral to Juvenile Court and Possible Dispositions. <http://www.tjjd.texas.gov/index.php/juvenile-system#referral-to-juvenile-court-possible-dispositions> (accessed March 18, 2022).

¹⁹ The Juvenile Justice System in Texas, Overview, State Agencies Involved in the Juvenile Justice System. <http://www.tjjd.texas.gov/index.php/juvenile-system#state-agencies-involved-in-the-juvenile-justice-system>.

²⁰ Ibid.

²¹ Adopted by the General Assembly resolution 45/113 on December 14th, 1990 <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty>.

not subject to its standards.²² The protections include a prohibition of solitary confinement and corporal punishment, a requirement that youth be kept separate from adults, the right to physical and mental health care, and a prohibition on the use of medicine as a form of restraint.²³

The Juvenile Justice System in Texas

The Texas Juvenile Justice Department (TJJD) was created in 2012 when the Texas Youth Commission and the Texas Juvenile Probation Commission were merged. TJJD's responsibilities include operating five secured state facilities and supporting county probation departments by disbursing grants, providing technical support, and ensuring that all facilities are adhering to its guidance. TJJD is tasked with providing rehabilitative services including mental health treatment and quality educational instruction.

Since 2018, the number of youths in state-secured facilities has shrunk by more than a third.²⁴ There are currently five TJJD-secured facilities for youth: Evins Regional Juvenile Center, Gainesville State School, Giddings State School, McLennan County State Juvenile Correctional Facility, and the Ron Jackson State Juvenile Correctional Complex. During fiscal year 2023 the number of youth in state-secured facilities is around 590 total population.²⁵

TJJD compiles detailed annual statistical reports regarding juvenile crime throughout the state. In a given year, more than 50,000 juveniles are arrested in Texas or referred to the juvenile probation system.²⁶ Local county juvenile justice systems provide services for these youth, many of whom are diverted from further involvement with the juvenile justice system. The most serious offenders are committed to TJJD facilities. Reform measures enacted in 2007²⁷ greatly reduced commitments to state-run facilities by limiting them to youth with felony-level offenses only.²⁸

²²National Juvenile Defender Center. International Human Rights: Law & Resources for Juvenile Defenders & Advocates. Fall 2012 https://njdc.info/wp-content/uploads/2013/11/International-Human-Rights_Law-and-Resources-for-Juvenile-Defenders-and-Advocates.pdf. United Nations, Treaty Series, vol. 1577, p. 3; depositary notifications C.N.147.1993.TREATIES-5 of 15 May 1993 [amendments to article 43 (2)]1; and C.N.322.1995.TREATIES-7 of 7 November 1995 [amendment to article 43 (2)].

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4

²³ National Juvenile Defender Center. International Human Rights: Law & Resources for Juvenile Defenders & Advocates. Fall 2012 https://njdc.info/wp-content/uploads/2013/11/International-Human-Rights_Law-and-Resources-for-Juvenile-Defenders-and-Advocates.pdf

²⁴ Jolie McCullough. "Almost 600 Texas youths are trapped in a juvenile prison system on the brink of collapse." *The Texas Tribune*. August 2, 2022. [Found here](#). TJJD, Written Testimony submitted via email to the Texas Advisory Committee to the U.S. Commission on Civil Rights, p. 2 (hereafter cited as TJJD Written Testimony).

²⁵ TJJD Written Testimony, p. 2; Martin Martinez, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, pp. 21-22 (hereafter *Transcript I*).

²⁶ The Juvenile Justice System in Texas, Overview, The Numbers. <http://www.tjjd.texas.gov/index.php/juvenile-system#the-numbers> (accessed March 18, 2022).

²⁷ SB 103. Texas Legislature. 80th Session. <https://capitol.texas.gov/tlodocs/80R/billtext/html/sb00103f.Htm>.

²⁸ The Juvenile Justice System in Texas, Overview, The Numbers. <http://www.tjjd.texas.gov/index.php/juvenile-system#the-numbers> (accessed March 18, 2022).

Oversight & Accountability

Two independent groups are tasked with investigating alleged misconduct within TJJD: the Office of the Inspector General (OIG) and the Office of the Independent Ombudsman (OIO).

OIO for TJJD is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to TJJD.²⁹ OIO reports to the Governor and the Texas Legislature; it is not a part of TJJD and does not report to the Department's Executive Management or the TJJD Board.³⁰ To fulfill the duties of the office, staff regularly visit all TJJD secure facilities, halfway houses, parole offices, county post-adjudication facilities, and county contract care programs. In 2021, OIO was conducting regular site visits at 107 facilities and probation/parole offices that met the criteria expanded by Senate Bill 1630, 84th Legislative Session.³¹ OIO periodically mails informational brochures regarding its services to the parents of youth newly committed to TJJD detention centers. To facilitate communications from youth in the facilities, as well as the public, OIO maintains a hotline that is answered 24 hours a day. The Deputy Ombudsman also distributes posters containing OIO's hotline number to the facilities that are routinely visited and educates youth on complaint procedures.³²

OIO monitors and enforces 14 basic rights for post-adjudicated youth. Information on these rights is supposed to be provided to youth and their guardians upon entry to TJJD facilities and posted throughout the facilities. These are:

1. Right to equal treatment
2. Right to free speech and expression
3. Right to religious freedom
4. Right to personal possessions
5. Right to receive visitors
6. Right to access to mail and telephone
7. Right to earnings and monetary gifts
8. Right to protection from physical and psychological harm
9. Right to medical and dental care
10. Right to access attorneys
11. Right to be informed
12. Right to accuracy and fairness
13. Right to confidentiality of records

²⁹ <https://statutes.capitol.texas.gov/Docs/HR/htm/HR.261.htm>.

³⁰ Independent Ombudsman, Overview, What is the Independent Ombudsman? <https://www.tjjd.texas.gov/index.php/independent-ombudsman#what-is-the-independent-ombudsman> (accessed March 18, 2022).

³¹ Independent Ombudsman for the TJJD. Fourth Quarter Report FY 21. <https://www.tjjd.texas.gov/index.php/doc-library/send/645-fiscal-year-2021/3070-fy21q4>.

³² Ibid.

14. Right to file grievances and appeal decisions

OIG was created by the Texas Legislature and is charged with investigating TJJD regarding (1) crimes committed by department employees, including parole officers employed by or under contract with the department, and (2) crimes and delinquent conduct committed at a facility operated by the department, a residential facility operated by another entity under a contract with the department, or any facility in which a child committed to the custody of the department is housed or receives medical or mental health treatment.³³ The chief inspector is a commissioned peace officer and is authorized to appoint additional peace officers to fulfill the statutory duties of the office. The chief inspector is appointed by and reports directly to TJJD's Board. The inspectors general have all the power and duties afforded to peace officers under the Texas Code of Criminal Procedure.³⁴

Concerns about safety and civil rights

Use of Force

In 2019, TJJD staff used force against incarcerated children almost 7,000 times.³⁵ TJJD defines “use of force” as “physical measures used to direct, compel, or restrain bodily movement of a noncompliant youth.”³⁶ In the state facilities, the following methods are considered permissible under the use of force policy: mechanical restraints, manual restraints, chemical spray, physical escort, and planned team restraint.³⁷ Across all facilities, nearly half (47%) of all youth were subjected to the use of force.³⁸

Juvenile facility staff may inappropriately use Oleoresin Capsicum (OC) (pepper) spray to respond to non-threatening conduct and behaviors that in fact are manifestations of mental illness

³³ Agency Accountability, Overview. <https://www.tjjd.texas.gov/index.php/accountability> (accessed March 18, 2022).

³⁴ Inspector General, Overview. <https://www.tjjd.texas.gov/index.php/inspector-general#overview> (accessed March 18, 2022).

³⁵ Edgar Sandoval & Tim Arango. “Complaints Against Texas’ Juvenile Prisons Include Violence and Sex Abuse” *The New York Times*. October 15, 2021. <https://www.nytimes.com/2021/10/15/us/texas-juvenile-centers-investigation.html#:~:text=In%202019%2C%20prison%20staff%20used,who%20was%20confined%20that%20year>

³⁶ TJJD. General Administrative Policy Manual. 380.9723. Effective February 15, 2016.

<http://www.tjjd.texas.gov/index.php/component/jdownloads/send/498-ch380f-security-control/1744-380-%209723-use-of-force>; 37 TAC Sec. §380.9723.

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=T&app=9&p_dir=F&p_rloc=166664&p_tloc=14619&p_ploc=1&pg=3&p_tac=&ti=37&pt=11&ch=380&rl=9727](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=F&p_rloc=166664&p_tloc=14619&p_ploc=1&pg=3&p_tac=&ti=37&pt=11&ch=380&rl=9727).

³⁷ 37 TAC §380.9723.

³⁸ Brett M. Merfish and Beth Mitchell to Steven H. Rosenbaum, Chief, Special Litigation, Section of Civil Rights Division, U.S. Department of Justice. October 21, 2020. <https://www.texasappleseed.org/sites/default/files/DOJ-FINAL-COMPLAINT-fin.pdf>.

or developmental disabilities, even when staff are trained to use OC spray as a last resort.³⁹ In fact, the Special Litigation Section of the U.S. Department of Justice’s Civil Rights Division has found the inappropriate and excessive use of chemical agents on youth with disabilities, among other groups.⁴⁰

Understaffing

The 2022-23 Sunset Commission review found that understaffing underscores “all other problems at TJJJ, endangering youth and staff safety.”⁴¹ More specifically, “chronic staffing shortages in state secure facilities affect nearly every aspect of committed youths’ lives and perpetuate TJJJ’s problems with maintaining safety, providing treatment and services, and ensuring youths’ due process rights.”⁴²

During the summer of 2022, at the height of the staffing crisis, TJJJ secure facilities functioned at roughly 200% of their capacity; in September 2023, this dropped to 132% due to improved staffing among juvenile correction officers, not a decrease in youth admissions.⁴³

Additionally, understaffing may lead to the overuse of lockdowns in secured facilities.⁴⁴ Due to low staffing levels, in order to meet requirements under the Prison Rape Elimination Act (PREA), lockdowns are sometimes utilized to meet the required ratio of 1 staff member for every eight youths.⁴⁵ The Sunset Advisory Commission found that bathroom breaks for youth in lockdown can take up to three or more hours due to these lockdowns.⁴⁶ The last full-day (22-23 hours) lockdown occurred in October 2022.⁴⁷

Mental Health Care

The percentage of youth with moderate to severe mental health needs has grown significantly. Specifically, in 2014, at the point of intake, the TJJJ identified 21% of youth as having moderate to severe mental health needs; in 2019, that percentage grew to 53%⁴⁸ and by 2022, it had risen to 84%.⁴⁹ In 2019, 138 youth were referred to security due to danger to self or suicide (which includes attempted suicide, injury to self, suicidal behavior, and suicidal ideation) a total of 271

³⁹ Center for Children Law and Policy Factsheet, Chemical Agents in Juvenile Facilities. July 2019. <https://cclp.org/wp-content/uploads/2019/07/Fact-Sheet-Chemical-Agents-Final-2019.pdf>.

⁴⁰ Ibid.

⁴¹ Sunset Advisory Commission Staff Report with Final Results, p. 20. [Found here.](#)

⁴² Sunset Advisory Commission Staff Report with Final Results, p. 21-22. [Found here.](#)

⁴³ TJJJ Written Testimony, p. 3.

⁴⁴ Sunset Advisory Commission Staff Report with Final Results, p. 23. [Found here.](#)

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ TJJJ Written Testimony, p. 3.

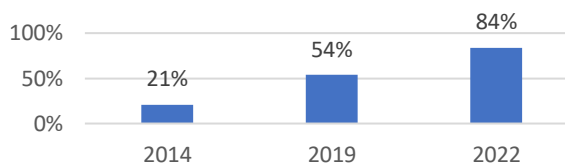
⁴⁸ Brett M. Merfish and Beth Mitchell to Steven H. Rosenbaum, Chief, Special Litigation, Section of Civil Rights Division, U.S. Department of Justice. October 21, 2020. <https://media.disabilityrightstx.org/wp-content/uploads/2020/10/21154645/DOJ-FINAL-COMPLAINT.pdf>.

⁴⁹ TJJJ Written Testimony, p. 2.

times, a rate of almost two referrals per each youth. The rate of referrals was similar in 2018, with 186 youth referred a total of 417 times, a rate of two referrals per each youth.⁵⁰

More recently, the Sunset Advisory Commission found that in fiscal year 2021, TJJD reported more than 6,500 suicide alerts in secured facilities, which represents an increase of about 40% since 2019.⁵¹ Due to the extremely high level of risk in TJJD facilities, counselors spend roughly 30 hours a week solely on suicide risk assessments, resulting in far fewer hours to provide rehabilitative care.⁵²

The percentage of youth with moderate to severe mental health needs



The increasing use of lockdowns due to lower staffing has had a negative mental health impact on youth in TJJD care in recent years.⁵³ TJJD itself cited full and partial lockdown as a cause of increases in suicide assessments in the fall of 2021.⁵⁴ The Sunset Commission heard accounts that youth regularly harm themselves while in lockdown in order to have adult intervention.⁵⁵

Racial and Ethnic Disparities

All of these factors are made even more concerning by the racial and ethnic disparities found within Texas’s juvenile justice system. In 2019, Black youth in Texas were 4.7 times more likely, and Latino youth were 1.6 times more likely, to be incarcerated than White youth.⁵⁶ Between 2015 and 2019, the disparity between Black and White youth actually increased by 5%.⁵⁷ As of 2021, total new admissions to the TJJD system were 35% Black, 44% Hispanic, 20% White, and 1% other.⁵⁸

⁵⁰ Brett M. Merfish and Beth Mitchell to Steven H. Rosenbaum, Chief, Special Litigation, Section of Civil Rights Division, U.S. Department of Justice. October 21, 2020. <https://media.disabilityrightstx.org/wp-content/uploads/2020/10/21154645/DOJ-FINAL-COMPLAINT.pdf>.

⁵¹ Sunset Advisory Commission Staff Report with Final Results, p. 23. [Found here.](#)

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ The Sentencing Project. “Black Disparities in Youth Incarceration: Racial Disparities Persist but Fall from All-Time High.” July 2021. <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf?eType=EmailBlastContent&eId=3678cc76-dab8-418b-b5cf-faa89e6baec9>; The Sentencing Project. “Latinx Disparities in Youth Incarceration: Latinx Youth 28% More Likely Than Whites to be Held.” July 2021. <https://www.sentencingproject.org/wp-content/uploads/2017/10/Latinx-Disparities-in-Youth-Incarceration.pdf?eType=EmailBlastContent&eId=3678cc76-dab8-418b-b5cf-faa89e6baec9>.

⁵⁷ The Sentencing Project. “Black Disparities in Youth Incarceration: Racial Disparities Persist but Fall from All-Time High.” July 2021. <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf?eType=EmailBlastContent&eId=3678cc76-dab8-418b-b5cf-faa89e6baec9>.

⁵⁸ Sunset Advisory Commission Staff Report with Final Results, p. 76. [Found here.](#)

Summary of Findings

Finding I: Most youth in the Texas Juvenile Justice System have clear mental health needs.

Finding II: Understaffing has been a major problem in the Texas Juvenile Justice System and has inhibited other efforts for reform. Staffing has been improving in the past year, but it is unclear if many of the longstanding issues with staffing will be resolved.

Finding III: There are not enough resources and staff to provide proper treatment for the mental health needs of the youth in the Texas Juvenile Justice Department's care.

Finding IV: Being in state-run facilities may further traumatize the youth and increase mental health needs.

Finding V: The state-run facilities provide an unsafe environment for both the youth and staff.

Finding VI: The Texas Juvenile Justice Department is transferring youth in their care to adult prisons rather than focusing on rehabilitative programming.

Finding VII: Youth benefit from individualized and asset-based mental health support, rather than the traditional punitive model currently in place in the Texas Juvenile Justice System.

Finding VIII: Youth facilities that are closer to home and incorporate community-based resources are more effective and better serve youth's mental health needs.

Finding IX: Texas communities do not have the resources required to support high-risk children who are ending up in Texas Juvenile Justice Department care. Texas needs to invest more in upstream and preventive services to divert children who are currently being referred to the juvenile justice system.

Finding X: While the Texas Juvenile Justice Department has clearly defined rights for youth in their care, there remains confusion about what these rights are and/or if they are being adequately enforced.

Finding XI: Facilities' current grievance process and other accountability measures are insufficient and function poorly.

Finding XII: The Texas Legislature made some improvements to the Texas Juvenile Justice Department and its funding in the 2023 session, but there is much more reform and investment still needed.

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence, and written comments from individuals directly impacted by the civil rights topic at hand; e.g., researchers and experts who have rigorously studied and reported on the topic, community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic, and government officials tasked with related policy decisions and the administration of those policies.

Studies require Committee members to utilize their expertise in selecting panelists who are the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method requires Committee members to draw from their own experiences, knowledge, opinions, and views to understand the issue and possible policy solutions. Committees are composed of volunteer professionals and advocates who are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of backgrounds, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in the oversight of nuances in the testimony.

The Committee sees the perspective of the Texas Juvenile Justice Department as essential in understanding this issue and achieving a balanced project record. Many outreach attempts were made, and numerous invitations were extended, but unfortunately, TJJD declined to participate in this project until well after the deadline to submit testimony. However, because of the critical need for the agency's contribution, the Committee decided to reopen testimony to allow for TJJD's response to the Committee's preliminary report.

For the purposes of this study, ***Findings*** are defined as what the testimony and other data suggested, revealed, or indicated based upon the information collected by the Committee. Findings refer to a synthesis of observations confirmed by a majority vote of members, rather than conclusions drawn by any one member. ***Recommendations*** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policymakers, or stakeholders.

Findings

Finding I: Most youth in the Texas Juvenile Justice System have clear mental health needs.

Many of the youth who enter TJJD facilities are identified as having mental health needs.⁵⁹ In 2022, 84% of youth were identified at intake as having moderate to severe mental health needs, compared to only 21% in 2014.⁶⁰ Nationally, some studies suggest that two-thirds of youth in the juvenile justice system have diagnosable mental health disorders.⁶¹ In December 2021 alone, TJJD reported they performed over 1,000 risk assessments for just 800 youth, with 500 of them at the Evins facility.⁶²

Self-harm and suicide are on the rise, and in 2021, there were over 2,000 incidents of self-harm and 6,500 suicide alerts in Texas's state-secured youth facilities.⁶³ Over half of the youth in these facilities have been put on suicide watch.⁶⁴ For certain demographics, it's even higher; 63% of girls are on suicide watch, as well as 56% of youth under age 14.⁶⁵

There is a correlation between mental health needs and experiences of trauma.⁶⁶ Up to 65% of youth in TJJD have had four or more adverse childhood experiences,⁶⁷ also called ACEs.⁶⁸ This figure is significantly higher than the general population.⁶⁹ Ninety youth in TJJD are identified as

⁵⁹ Representative Gene Wu, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, December 7, 2022. Transcript, p. 7 (hereafter *Transcript III*); Alycia Welch, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, pp. 15 (hereafter *Transcript I*); Brittany Norman, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, p. 157 (hereafter *Transcript II*).

⁶⁰ Martinez Testimony, *Transcript I*, p. 21; TJJD Written Testimony, p. 2.

⁶¹ Liz Ryan, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, February 15, 2023. Transcript, p. 6 (hereafter *Transcript IV*).

⁶² Elizabeth Henneke, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, February 15, 2023. Transcript, p. 6 (hereafter *Transcript IV*).

⁶³ Ryan Testimony, *Transcript IV*, p. 4; Welch Testimony, *Transcript I*, p. 11; Henneke Testimony, *Transcript IV*, p. 7; Martinez Testimony, *Transcript I*, p. 24.

⁶⁴ Henneke Testimony, *Transcript IV*, p. 8; Welch Testimony, *Transcript I*, p. 11; Martinez Testimony, *Transcript I*, p. 22.

⁶⁵ Henneke Testimony, *Transcript IV*, p. 8; Martinez Testimony, *Transcript I*, p. 24.

⁶⁶ Jernard Brown, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, April 11, 2023. Transcript, p. 2 (hereafter *Transcript V*).

Norman Testimony, *Transcript II*, p. 142; Welch Testimony, *Transcript I*, p. 9; Wu Testimony, *Transcript III*, p. 8; Henneke Testimony, *Transcript IV*, p. 8.

⁶⁷ Martinez Testimony, *Transcript I*, p. 21; Henneke Testimony, *Transcript IV*, p. 10; Ashley McFarland, Public Comment, *Transcript V*, pp.15-16.

⁶⁸ ACEs, or Adverse Childhood Experiences, are stressful or traumatic events that occur during a person's childhood and can have long-lasting negative effects on their physical and mental health. These experiences often include events such as abuse, neglect, household dysfunction, or other forms of adversity that can impact a child's well-being and development.

⁶⁹ Henneke Testimony, *Transcript IV*, p. 8; Martinez Testimony, *Transcript I*, p. 21.

victims of sex trafficking.⁷⁰ Additionally, many of the behaviors that lead the youth to be in TJJD custody, particularly violence,⁷¹ have mental health connections.⁷²

Finding II: Understaffing has been a major problem in the Texas Juvenile Justice system and has inhibited other efforts for reform. Staffing has been improving in the past year, but it is unclear if many of the longstanding issues with staffing will be resolved.

All five of TJJD’s facilities have experienced chronic staff shortages.⁷³ For example, the Evins Regional Juvenile Center in Edinburg has been 200% over a proper youth-to-staff ratio, and the Giddings State School, which houses the Crisis Stabilization Unit, TJJD’s mental health program, has been 150 percent% over a proper youth-to-staff ratio.⁷⁴ In June 2022, the agency had less than 50% of its full-time correction officer positions filled.⁷⁵

Staffing levels have increased significantly in 2023, in part to additional investments by the Texas Legislature, including pay raises for all staff.⁷⁶ Two of TJJD’s five secure facilities are now fully staffed, but three remain understaffed.⁷⁷

In addition to the large number of vacancies, there is a very low staff retention rate. The turnover rate for correction officers was more than 70% in 2022.⁷⁸ In December 2021, the Texas Rangers were called in to help address the staffing shortages.⁷⁹ This issue of understaffing is not unique to Texas and is an issue nationwide.⁸⁰

Low pay and the rural location of many of these facilities make it hard to recruit qualified individuals.⁸¹ A 15% salary stipend for direct-care staff, including juvenile correction officers

⁷⁰ Henneke Testimony, *Transcript IV*, p. 8.

⁷¹ Amnesty Freelen, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, p. 128 (hereafter *Transcript II*); Welch Testimony, *Transcript I*, p. 57; Henneke Testimony, *Transcript IV*, p. 10.

⁷² Phyllis Becker, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, December 7, 2022. Transcript, pp. 4 (hereafter *Transcript III*); Freelen Testimony, *Transcript II*, p. 124; Brown Testimony, *Transcript V*, pp. 2-3; Welch Testimony, *Transcript I*, p. 59.

⁷³ Martinez Testimony, *Transcript I*, p. 23; Welch Testimony, *Transcript I*, p. 12.

⁷⁴ Welch Testimony, *Transcript I*, p. 12.

⁷⁵ Welch Testimony, *Transcript I*, p. 12.

⁷⁶ TJJD Written Testimony, p. 2-3.

⁷⁷ *Ibid.*

⁷⁸ Martinez Testimony, *Transcript I*, p. 22; Welch Testimony, *Transcript I*, p. 12.

⁷⁹ Martinez Testimony, *Transcript I*, p. 65.

⁸⁰ Becker Testimony, *Transcript III*, p. 9.

⁸¹ Norman Testimony, *Transcript II*, p. 135; Wu Testimony, *Transcript III*, p. 25.; Henneke Testimony, *Transcript IV*, p. 15.

and case managers, was implemented in late 2022 to bring their pay to the same levels as adult correction officers.⁸²

The understaffing at these facilities creates very difficult working conditions for the staff they do have.⁸³ They have been regularly asked to work 12-hour shifts for six or seven days a week to maintain minimum staffing requirements.⁸⁴ Other staff, such as teachers and case workers, have had to fill correction officer roles instead of providing their skilled services.⁸⁵

These levels of understaffing mean that even when new policies are proposed and TJJJ administration tries to address issues, the facilities are unable to fully benefit from these attempted reforms.⁸⁶

Finding III: There are not enough resources and staff to provide proper treatment for the mental health needs of the youth in the Texas Juvenile Justice Department's care.

In addition to the overall understaffing of these facilities, there are even more unfilled positions for mental health care workers.⁸⁷ As of June 2022, TJJJ had only 55% of its mental health positions filled across all facilities, and many of these professionals are unlicensed.⁸⁸ At the same time, Texas had a statewide shortage of mental health professionals reaching as high as 64%. In September 2023, TJJJ has 52% of its mental health positions staffed.⁸⁹ TJJJ testified they expect staffing their mental health positions to be an ongoing challenge as Texas struggles with a statewide mental health professional shortage.⁹⁰

There is a months-long waitlist for mental health care across all facilities. At Giddings alone, there are 50 youth on the waitlist for the highest tier of mental health intervention.⁹¹ TJJJ has described this backlog of needs as a “pool they are emptying with a cup.”⁹² Not receiving treatment can result in youth staying in TJJJ facilities for longer periods and inhibits

⁸² TJJJ Written Testimony, p. 3.

⁸³ Layla Fry, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, p. 108 (hereafter *Transcript II*); Henneke Testimony, Transcript IV, p. 15.

⁸⁴ Henneke Testimony, *Transcript IV*, p. 15.

⁸⁵ Henneke Testimony, *Transcript IV*, p. 13; Welch Testimony, *Transcript I*, p. 13.

⁸⁶ Welch Testimony, *Transcript I*, pp. 12; 43; 97; Norman Testimony, *Transcript II*, p. 133; Henneke Testimony, *Transcript IV*, p. 13.

⁸⁷ Welch Testimony, *Transcript I*, p. 13.

⁸⁸ Welch Testimony, *Transcript I*, p. 14; Norman Testimony, *Transcript II*, p. 13; Martinez Testimony, *Transcript I*, p. 25.

⁸⁹ Additional legislative appropriations allowed the department to improve its mental health professional-to-youth ratio from 1:16 to 1:12 in September 2023 which resulted a lower staffing rate despite an increase in new hires. TJJJ Written Testimony p. 14.

⁹⁰ TJJJ Written Testimony, p. 3.

⁹¹ Welch Testimony, *Transcript I*, p. 14.

⁹² Norman Testimony, *Transcript II*, p. 134; Henneke Testimony, *Transcript IV*, p. 6.

rehabilitation efforts designed to minimize further justice system involvement.⁹³ Even when a youth is self-advocating for mental health care, they are frequently denied or left waiting for months.⁹⁴

When youth are receiving mental health services, it is not always the appropriate treatment.⁹⁵ For example, evidence received by the Committee indicated a youth who needs a particular type of care (e.g., substance abuse treatment) might be offered a different type of mental health care (e.g., anger management treatment) because it's the only treatment that the facility has to offer at that time due to a lack of staff and funding.⁹⁶ TJJJ testified that this piece of testimony might not be entirely true and that “many youth need multiple specialized treatments, and it is not uncommon for treatment programming to incorporate content learned in previous interventions.”⁹⁷

Lastly, there is inconsistent access to mental health prescriptions. Testimony received by the Committee suggested that there may be an overreliance by TJJJ on medications for youth to compensate for the lack of other more appropriate treatments.⁹⁸

Finding IV: Being in state-run facilities may further traumatize the youth and increase mental health needs.

TJJJ was increasingly relying on isolating the youth in their cells to compensate for understaffing. The youth will sometimes spend 23 hours a day alone in their cell.⁹⁹ There are reports that youth did not have timely access to bathrooms during these lockdowns and resorted to relieving themselves in their cells.¹⁰⁰ In response to the isolation, youth are self-harming and exhibiting other disruptive behaviors just to leave their cell and receive treatment.¹⁰¹

Self-harm and other disruptive behaviors are frequently met with restraints and the use of force, including the use of OC spray (i.e., pepper spray) to stop youth from self-harming.¹⁰² Youth who

⁹³ Henneke Testimony, *Transcript IV*, p. 8; Norman Testimony, *Transcript II*, p. 133; Fry Testimony, *Transcript II*, p. 108.

⁹⁴ Norman Testimony, *Transcript II*, p. 140; Henneke Testimony, *Transcript IV*, pp. 9-10.

⁹⁵ Ryan Testimony, *Transcript IV*, p. 3; Henneke Testimony, *Transcript IV*, pp. 7-8.

⁹⁶ Henneke Testimony, *Transcript IV*, pp. 7; 23.

⁹⁷ The Committee was unable to provide any more analysis on these differing perspectives. TJJJ Written Testimony, p. 14.

⁹⁸ Freelen Testimony, *Transcript II*, p. 126; Norman Testimony, *Transcript II*, p. 143.

⁹⁹ Martinez Testimony, *Transcript I*, p. 23; Welch Testimony, *Transcript I*, p. 10.

¹⁰⁰ Norman Testimony, *Transcript II*, p. 134; Welch Testimony, *Transcript I*, p. 11.

¹⁰¹ Welch Testimony, *Transcript I*, p. 11; Norman Testimony, *Transcript II*, p. 139.

¹⁰² Norman Testimony, *Transcript II*, p. 149. Martinez Testimony, *Transcript I*, p. 23.

are experiencing a mental health crisis may escalate the situation by resisting, resulting in further trauma.¹⁰³ Youth need to feel safe before mental health needs can be effectively addressed.¹⁰⁴

One population in TJJJ custody that is particularly concerning is victims of human trafficking. As of February 2023, there were 90 youth in custody who were identified as survivors of sex trafficking, which was almost 25% of the total population.¹⁰⁵ Currently, the Texas criminal legal system incarcerates children whose crimes were a direct result of, or incident to, human trafficking, intimate partner violence, and other abuse.¹⁰⁶ These kids are much more likely to have mental health needs and less likely to be rehabilitated in a punitive system. For example, the Committee heard the testimony of a girl in a facility who had a history of sex trafficking and had also been a victim of sexual abuse in TJJJ custody. She responded to an officer's use of force with panic and violence and consequently was charged with an additional crime and transferred to the adult justice system at the age of 16.¹⁰⁷

Finding V: The state-run facilities provide an unsafe environment for both the youth and staff.

A high youth-to-staff ratio leads to unsafe conditions for both the youth and staff¹⁰⁸ and is a “recipe for disaster.”¹⁰⁹ Safety concerns include increased violence, unsanitary living conditions, and lack of basic health care and medical attention. With inadequate staff-to-youth ratios, the staff only have time to triage the youths' needs.¹¹⁰ It was reported that in July 2022, TJJJ halted the intake of youth into its facilities because it would not have been able to guarantee their safety.¹¹¹ TJJJ has made improvements in the last year, and it decreased the number of committed youth awaiting transfer to state custody from about 160 in July 2022 to about 70 in September 2023; during that timeframe, over 400 youth were moved off of the waitlist.¹¹²

The Sunset Advisory Commission found that understaffing led to increased safety risks for both youth in TJJJ care and staff, due to abuse of youth by staff and threats of physical violence.¹¹³

¹⁰³ Ryan Testimony, *Transcript IV*, p. 3; Norman Testimony, *Transcript II*, p. 149.

¹⁰⁴ Becker Testimony, *Transcript III*, p. 4; Welch Testimony, *Transcript I*, p. 12.

¹⁰⁵ Henneke Testimony, *Transcript IV*, p. 8

¹⁰⁶ Henneke Testimony, *Transcript IV*, p. 9.

¹⁰⁷ Henneke Testimony, *Transcript IV*, p. 9.

¹⁰⁸ Welch Testimony, *Transcript I*, p. 41; Martinez Testimony, *Transcript I*, p. 55; Becker Testimony, *Transcript III*, p. 10.

¹⁰⁹ Ashley McFarland, public comment, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, remote panel via ZoomGov, April 11, 2023. Transcript, pp. 15-16 (hereafter *Transcript V*).

¹¹⁰ Henneke Testimony, *Transcript IV*, p. 22; Welch Testimony, *Transcript I*, p. 9; Martinez Testimony, *Transcript I*, p. 41.

¹¹¹ TJJJ Director Shandra Carter quoted in: Jolie McCullough. “Almost 600 Texas youths are trapped in a juvenile prison system on the brink of collapse.” *The Texas Tribune*. August 2, 2022. [Found here.](#)

¹¹² TJJJ Written Testimony, p. 3.

¹¹³ Sunset Advisory Commission Staff Report with Final Results, p. 22. [Found here.](#)

Between 2019 and 2021, there were 10,000 violations identified as assaults on youth and staff in secure facilities; 20% of these assaults resulted in bodily harm.¹¹⁴ In the same period, assaults on staff increased by 23%.¹¹⁵

The instability in staffing levels decreases peer monitoring, which can increase opportunities for predatory staff to engage in abuse or exploitation.¹¹⁶ There has been an increase in dangerous incidents involving the use of force and sexual violence.¹¹⁷ From 2020 to 2022, there was an increase in sexual misconduct investigations by the Office of Inspector General at four of the five secure facilities.¹¹⁸ One study reported that between January and August 2020, the five facilities reported using restraints on youth a total of 2,947 times.¹¹⁹

The Committee heard accounts from youth and former youth in facilities that during their time with TJJD, they felt unsafe, were further traumatized, and were “destroyed.”¹²⁰

Finding VI: The Texas Juvenile Justice Department is transferring youth in their care to adult prisons rather than focusing on rehabilitative programming.

TJJD is referring some youth who turn 16 and older to adult prison systems, where the children do not have age-appropriate care or supervision.¹²¹ This goes against the evidence backed model of child-focused mental health care which prioritizes treating children as children and keeping them out of adult systems and prisons.¹²² Rather than having a culture of rehabilitation, TJJD is preparing youth for transfer to adult prison.¹²³ Without age appropriate supervision and care, TJJD youth in adult systems are extremely vulnerable to abuse and increased self-harm.

Finding VII: Youth benefit from individualized and asset-based mental health support, rather than the traditional punitive model currently in place in the Texas Juvenile Justice System.¹²⁴

¹¹⁴ Ibid.

¹¹⁵ Ibid, 25.

¹¹⁶ Ibid.

¹¹⁷ Welch Testimony, *Transcript I*, pp. 11,56; Henneke Testimony, *Transcript IV*, p. 9.

¹¹⁸ Henneke Testimony, *Transcript IV*, p. 9.

¹¹⁹ Russell Testimony, *Transcript I*, p. 37.

¹²⁰ Brown Testimony, *Transcript V*, p. 2; Henneke Testimony, *Transcript IV*, p. 9; Norman Testimony, *Transcript II*, p. 137; Welch Testimony, *Transcript I*, p. 11; Freelen Testimony, *Transcript II*, p. 125.

¹²¹ Freelen Testimony, *Transcript II*, p. 123; Henneke Testimony, *Transcript IV*, p. 11.

¹²² Ryan Testimony, *Transcript IV*, p. 4.

¹²³ Freelen Testimony, *Transcript II*, p. 127.

¹²⁴ Becker Testimony, *Transcript III*, p. 17.

Children with mental health challenges benefit from a model that is grounded in supporting the youth and families, focusing on strengths, assets, and needs.¹²⁵ Mental health services for children operate better when services can be individualized and youth are in smaller settings.¹²⁶ One beneficial model the Committee heard testimony about is Multisystemic Therapy (MST), a counseling model which involves the entire family and works to solve behavioral concerns within the family dynamic.¹²⁷ However, even if youth are receiving proper therapy, in an unsafe environment, treatment is often compromised.¹²⁸

The Committee heard testimony that TJJD may over-rely on the use of medications for treatment of youth in their care; 69% of youth in TJJD care have been prescribed some form of psychotropic medicine.¹²⁹ While use of psychotropic medicine can be part of a care plan for a child with mental health challenges, the use of medicine in TJJD is often inconsistent and may change frequently.¹³⁰

Finding VIII: Youth facilities that are closer to home and incorporate community-based resources are more effective and better serve youth’s mental health needs.

Studies show that community-based programs positively impact youth behavior and reduce re-offending. These programs generally emphasize therapeutic or educational approaches and build accountability.¹³¹ Communities can maintain smaller facilities, which can be more effective in addressing mental health needs.¹³² Additionally, research has shown that large incarceration facilities are not effective for youth and increase the likelihood of recidivism.¹³³ States that are transitioning to regional-based programs are seeing better outcomes for youth and lower costs in the long term.¹³⁴

Currently, most youth are in facilities that are far from their home, isolating them from their family and communities.¹³⁵ Children in crisis need stability, and maintaining a connection to

¹²⁵ Becker Testimony, *Transcript III*, p. 5.

¹²⁶ Norman Testimony, *Transcript II*, p. 189.

¹²⁷ Wu Testimony, *Transcript III*, p. 18.

¹²⁸ Becker Testimony, *Transcript III*, p. 4.

¹²⁹ Martin Martinez, T1, p. 21; Norman Testimony, *Transcript II*, p. 143.

¹³⁰ Freelen Testimony, *Transcript II*, p. 126.

¹³¹ Ryan Testimony, *Transcript IV*, p. 4.

¹³² Norman Testimony, *Transcript II*, p. 189; Martinez Testimony, *Transcript I*, p. 30.

¹³³ Ryan Testimony, *Transcript IV*, p. 4; Martinez Testimony, *Transcript I*, p. 22; Welch Testimony, *Transcript I*, p. 17.

¹³⁴ Welch Testimony, *Transcript I*, p. 17; Becker Testimony, *Transcript III*, p. 12; Ryan Testimony, *Transcript IV*, p. 3; Norman Testimony, *Transcript II*, p. 137.

¹³⁵ Martinez Testimony, *Transcript I*, p. 20.

homes and communities is important.¹³⁶ Being far from home also makes it hard to ensure youth will have community-based resources to help them after they are released from custody.¹³⁷

TJJD has already made great efforts to keep more youth close to home and has reduced the number of youth in state custody drastically over the last 10 years.¹³⁸ But the state continues to invest a significant portion of the TJJD budget in both the existing and new state facilities.¹³⁹ Given the decades of struggles these facilities have faced, it is unclear why TJJD continues to send the most at-risk youth to the facilities with the greatest safety and care concerns.

Harris County is an example of a county that has already made improvements in how it addresses the mental health needs of the youth in its juvenile justice system.¹⁴⁰ It has implemented a Multisystemic Therapy (MST) approach to reduce criminal activity, which includes coordinated services to address behavior, mental health needs, academics, and other needs of the whole family.¹⁴¹ Harris County judges are aware of mental health needs while hearing a youths' case.¹⁴² They have also utilized diversion programs to address mental health needs before the youth is officially involved in the justice system.¹⁴³ Harris County has decreased the number of youth sent to secure confinement by half in the past four years.¹⁴⁴

Finding IX: Texas communities do not have the resources required to support high-risk children who are ending up in Texas Juvenile Justice Department care. Texas needs to invest more in upstream and preventive services to divert children who are currently being referred to the juvenile justice system.¹⁴⁵

Community-based mental health services could serve children being referred to TJJD before they interact with law enforcement.¹⁴⁶ Outcomes for youth in community-based programs are far better than those who are incarcerated, especially in programs that incorporate the family in treatment and therapy.¹⁴⁷ Community-based services also recognize how important basic necessities such as food, clothing, shelter, stability, and safety are to a child's development and

¹³⁶ Ryan Testimony, *Transcript IV*, p. 3.

¹³⁷ Becker Testimony, *Transcript III*, p. 12.

¹³⁸ TJJD Written Testimony, p. 2.

¹³⁹ TJJD Written Testimony, p. 8.

¹⁴⁰ Leah Wolfthal, testimony, *Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, Houston, TX, August 8, 2022. Transcript, p. 152 (hereafter *Transcript II*); Wu Testimony, *Transcript III*, p. 7; Fry Testimony, *Transcript II*, p. 162; Ryan Testimony, *Transcript IV*, p. 4.

¹⁴¹ Fry Testimony, *Transcript II*, p. 111; Martinez Testimony, *Transcript I*, p. 27; Ryan Testimony, *Transcript IV*, p. 4.

¹⁴² Martinez Testimony, *Transcript I*, p. 27; Welch Testimony, *Transcript I*, p. 59.

¹⁴³ Wolfthal Testimony, *Transcript II*, p. 117; Martinez Testimony, *Transcript I*, p. 27.

¹⁴⁴ Ryan Testimony, *Transcript IV*, p. 4; Martinez Testimony, *Transcript I*, p. 40; Wu Testimony, *Transcript III*, p. 7.

¹⁴⁵ Norman Testimony, *Transcript II*, p. 182.

¹⁴⁶ Ryan Testimony, *Transcript IV*, p. 3.

¹⁴⁷ Ryan Testimony, *Transcript IV*, pp. 12, 18. Becker Testimony, *Transcript III*, p. 3.

wellbeing.¹⁴⁸ By working with these children at an earlier point of need, organizations can reduce the number of kids in the prison system by making sure behaviors leading to incarceration do not escalate.¹⁴⁹ Currently there is no one system connecting Texas schools, mental health services, juvenile justice, etc.¹⁵⁰

The current system across Texas is not equipped to prevent and respond to mental health crises occurring in communities.¹⁵¹ More youth in crisis are presenting at emergency rooms or are being arrested.¹⁵² In many cases, parents call police when their child is having a mental health crisis as there are no other community resources, but this can result in the youths' arrest and incarceration.¹⁵³

Finding X: While the Texas Juvenile Justice Department has clearly defined rights for youth in their care, there remains confusion about what these rights are and/or if they are being adequately enforced.

TJJD policy states that youth and their guardians receive information about their rights when admitted to TJJD facilities and have access to these rights in their student handbook and on posters hung around the facility.¹⁵⁴ But the Committee heard testimony from former youth, parents, and lawyers that this is not always fully implemented.¹⁵⁵ Additionally, it is hard to find the 14 basic rights youth have in TJJD online. The Committee only received this information directly from TJJD and were not able to find it independently on the agency website or in other TJJD materials.¹⁵⁶

Even when youth are given access to information on their rights, it may not be presented in a way that is understandable or empowering to youth.¹⁵⁷ For example, in TJJD's "Youth Complaint & Grievance Guide," there is no mention of the right to adequate mental health care or an explanation of what a violation of that right might look like. The rights in both the poster displayed in facilities and the brochure are not written in age-appropriate language, using words such as "confer," "correspond," "discrimination," and "extent."¹⁵⁸ Additionally the translated Spanish version of the flyer may cause confusion. For example, "youth rights specialist" in

¹⁴⁸ Becker Testimony, *Transcript III*, p. 4; Wolfthal Testimony, *Transcript II*, p. 120.

¹⁴⁹ Wu Testimony, *Transcript III*, p. 7.

¹⁵⁰ Becker Testimony, *Transcript III*, p. 19.

¹⁵¹ Fry Testimony, *Transcript II*, p. 111.

¹⁵² Fry Testimony, *Transcript II*, p. 123; Norman Testimony, *Transcript II*, p. 132.

¹⁵³ Freelen Testimony, *Transcript II*, p. 159.

¹⁵⁴ TJJD Written Testimony, p. 12.

¹⁵⁵ Norman Testimony, *Transcript II*, p. 179; Brown Testimony, *Transcript V*, p. 11.

¹⁵⁶ While this does not mean it does not exist online or on their website, it does suggest that it is not easily accessible.

¹⁵⁷ Norman Testimony, *Transcript II*, p. 139.

¹⁵⁸ TJJD Written Testimony, Appendices.

English is translated to “especialistas en derecho juvenil” and may be hard to understand for native Spanish speakers.

There are some noticeable rights that the youth have that are missing from the list of basic rights, for example a right to education or the right to protection from retaliation.¹⁵⁹ Additionally, the flyer distributed to youth should not discourage reporting in any way. The final section on the “Youth Complaint & Grievance Guide” may unduly cause youth to second-guess if they should make a complaint or not.¹⁶⁰

The Committee is particularly concerned about the “right to protection from physical and psychological harm.” There has been significant evidence that youth have been subject to both unsafe conditions and at risk of further psychological trauma under TJJD’s protection.¹⁶¹ For example, the Committee heard testimony about a child with pus streaming from their arm from having inserted items under the skin. This was present on over two visits spanning two weeks apart with no apparent medical treatment.¹⁶² Youth should be given clearer information about what violations of their physical and psychological rights look like in the juvenile detention context.

Lastly, while TJJD has been facing the difficult challenge of staffing shortages and a lack of resources that are largely out of their control, they should reevaluate their procedures for when staffing is low. TJJD’s testimony indicated that understaffing was the source of many of the Committee’s human and civil rights concerns. The practice of isolation; ceasing educational, spiritual, and recreational activities; and increasing the use of force should not be acceptable outcomes of understaffing.

Finding XI: Facilities’ current grievance process and other accountability measures are insufficient and function poorly.

TJJD has an Office of the Independent Ombudsman that conducts routine inspections of all five state-secured youth facilities. The office is also required to conduct routine inspections of county-level facilities.¹⁶³

There is currently little to no anonymity for youth in the grievance-filing process.¹⁶⁴ The youth can access the ombudsman via phone, but only in the facility’s common spaces with no

¹⁵⁹ TJJD Written Testimony, p.17.

¹⁶⁰ Ibid.

¹⁶¹ Welch Testimony, *Transcript I*, p. 10,12; Becker Testimony, *Transcript III*, p. 4.

¹⁶² Henneke Testimony, *Transcript IV*, p. 7.

¹⁶³ TJJD Written Testimony, p. 6.

¹⁶⁴ Norman Testimony, *Transcript II*, p. 136; Martinez Testimony, *Transcript I*, p. 45.

privacy.¹⁶⁵ Additionally, access to common spaces may be limited at times due to understaffing.¹⁶⁶

TJJD testified that it has clear procedures and safeguards to make sure all grievances are responded to in a fair and transparent manner.¹⁶⁷ But testimony received by the Committee questioned the neutrality of many of these grievance investigations.¹⁶⁸ They are concerned that complaints are investigated by staff who work in the same facility or by staff who have existing relationships with those they are investigating.¹⁶⁹ One parent testified that they feared retribution for their child if they filed a complaint about their child's treatment.¹⁷⁰

Few complaints address mental health care. TJJD's data from 2019 indicates that one percent of grievances were for specialized treatment programs and less than one percent of the grievances were for mental health.¹⁷¹ However, the youth may not understand that this is something they can complain about, and the onus is currently on the youth to make the complaint.¹⁷²

Even when complaints are made and investigated, there may not be enough resources or staff to address the concerns.¹⁷³ This is especially true for mental health care and when the grievance concerns missing or inadequate care.¹⁷⁴

Finding XII: The Texas Legislature made some improvements to the Texas Juvenile Justice Department and its funding in the 2023 session, but there is much more reform and investment still needed.

In the past few years, TJJD has had budgeted funds diverted from it several times.¹⁷⁵ Additional funding for the agency may continue to address the department's most pressing issue, understaffing.¹⁷⁶ Improved programming and treatment for youth cannot be successful without adequate investment.¹⁷⁷

¹⁶⁵ Martinez Testimony, *Transcript I*, p. 45; Norman Testimony, *Transcript II*, p. 135.

¹⁶⁶ Welch Testimony, *Transcript I*, p. 46.

¹⁶⁷ TJJD Written Testimony, pp. 5-6.

¹⁶⁸ Brown Testimony, *Transcript V*, p. 6; Norman Testimony, *Transcript II*, p. 179.

¹⁶⁹ Henneke Testimony, *Transcript IV*, p. 19.

¹⁷⁰ Freelen Testimony, *Transcript II*, p. 178.

¹⁷¹ Norman Testimony, *Transcript II*, p. 138; Martinez Testimony, *Transcript I*, p. 46.

¹⁷² Norman Testimony, *Transcript II*, p. 138.

¹⁷³ Welch Testimony, *Transcript I*, p. 45; Henneke Testimony, *Transcript IV*, p. 23; Norman Testimony, *Transcript II*, p. 139.

¹⁷⁴ Welch Testimony, *Transcript I*, p. 45.

¹⁷⁵ Welch Testimony, *Transcript I*, p. 41.

¹⁷⁶ Welch Testimony, *Transcript I*, p. 61; Sunset Advisory Commission. Written Testimony, submitted via email on April 14, 2023.

¹⁷⁷ Norman Testimony, *Transcript II*, p. 137; Welch Testimony, *Transcript I*, p. 42.

In the 2023 session, the legislature approved \$31.9 million in targeted salary increases for direct- and non-direct-care staff, nursing staff, and OIG positions, on top of the other salary increases given last year. Historically, although there have been pay increases to address employee retention issues in TJJJ, these proved to be short-term fixes rather than long-term improvements to staffing levels.¹⁷⁸ Increased pay may not address other concerns, such as the rural location of many of these facilities, the availability of qualified individuals, or unfavorable working conditions.¹⁷⁹

Increases in the TJJJ budget also included \$30.7 million in increased placement funding and probation grants to expand local diversion opportunities and community-based programming, as well as \$60 million in increased appropriations for county juvenile probation departments to better fund their work with youth shallow in the system to prevent commitment to state custody.¹⁸⁰ However it should be noted, that many of the increases to the budget in FY2022 were subsequently reduced in FY2023.¹⁸¹

¹⁷⁸ Martinez Testimony, *Transcript I*, p. 60; Norman Testimony, *Transcript II*, p. 136.

¹⁷⁹ Becker Testimony, *Transcript III*, p. 20; Ryan Testimony, *Transcript IV*, p. 12.

¹⁸⁰ TJJJ Written Testimony, pp. 8-9.

¹⁸¹ *Ibid.*

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁸² In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

The U.S. Commission on Civil Rights should issue the following recommendations to the U.S. Department of Justice:

1. Provide more transparency and report the progress on your ongoing investigation into the Texas Juvenile Justice Department.

The U.S. Commission on Civil Rights should issue the following recommendations to the Governor of Texas and the Texas Legislature:

1. Invest in the staff of all TJJD facilities, including:
 - a. Improve the salaries of staff to a competitive rate and in recognition of the essential and challenging roles these staff fill.
 - b. Require additional training for correction officers and ensure the training is developmentally appropriate for youth and considers their unique mental health needs.
 - c. Increase the number of specialty staff, including teachers, medical personnel, and mental health care workers. Ensure these specialists are being used for their expertise and are not required to fill in for corrections officers.
 - d. Require more mental health care workers to be properly licensed in order to ensure a high caliber of care.
2. Invest in the local and county-level juvenile systems and incentivize these community-based programs to treat youth closer to home, including:
 - a. Expanding multidisciplinary programs to address all the needs of youth, such as Multisystemic Therapy (MST).
 - b. Incorporate families in all mental health care programming.
 - c. Develop a regionalized system that can offer better support and funding to the many rural counties in Texas.

¹⁸² 45 C.F.R. § 703.2 (2018).

- d. Consider participation in the Department of Justice’s Community-Based Alternatives to Youth Incarceration Initiative,¹⁸³ which supports states and localities as they close large, under-capacity youth prisons.
3. Prioritize rehabilitation over punishment in all future investments and program changes to TJJD.
4. Mandate that TJJD provide multiple avenues for youth and their families to submit grievances and appoint investigators external to the facility to investigate all complaints.
5. Raise the age youth are considered a juvenile and increase the age that a youth can be transferred into the adult corrections system.

The U.S. Commission on Civil Rights should issue the following recommendations to the Texas Juvenile Justice Department:

1. Prioritize the human and civil rights of all the youth in its care.
2. Increase efforts to educate the youth in its custody and their parents and/or guardians on their rights and their avenues for grievance. The grievance process should be more available to youth, be private, and be adjudicated by neutral parties.
3. Invest in additional mental health care resources that can begin to address the needs of youth in its custody in the short term, including:
 - a. Consider additional remote resources such as 24/7 mental health hotlines that could support both the youth and staff in crisis and offer additional capacity for understaffed facilities.
 - b. Develop relationships with national resources such as the National Alliance on Mental Health and Substance Abuse and the Mental Health Services Administration.
 - c. Utilize telehealth in its full capacity to provide mental health care to youth. This includes one-on-one therapeutic services, not large group therapy sessions.
4. Reduce the use of isolation. When isolation is deemed necessary, ensure it is used sparingly and for the least amount of time possible. Increase mental health support during and after periods of isolation.
5. Require all staff to be trained in trauma-informed care and ensure that all policies recognize the potential trauma experienced by the youth and their mental health needs.
6. Provide additional crisis prevention training to staff to improve their de-escalation skills to prevent violent situations.
7. Accept all avenues of additional funding, including accepting all federal funds available and pursuing additional grants.

¹⁸³ OJJDP FY 2023 Community-Based Alternatives to Youth Incarceration. Office of Juvenile Justice and Delinquency Prevention. Department of Justice. [Found here.](#)

8. Consider the use of peer support services from individuals who have previous experience in the juvenile justice system but who have been rehabilitated and trained in crisis and behavioral management.
9. For youth who age out of or are released from state-secured facilities, conduct family assessments to ensure that the youth are returning to a safe environment and that family members are receiving support services as needed.
10. Raise the age youth are considered a juvenile and increase the age that a youth can be transferred into the adult corrections system. Reduce the practice of transferring youth to the adult system.
11. Review and revise the language of your rights brochures and other materials to include more age-appropriate language, proper translations, and a more comprehensive explanation of rights.

Appendix

- A. List of Panelists
- B. Panel Agendas, Minutes, Presentation Slides, & Transcripts
- C. Written Testimony

Appendix A – List of Panelists

Panel 1 – August 8, 2022, Houston, TX

Alycia Welch, The University of Texas at Austin
Martin Martinez, Texas Appleseed
Dr. Kristan Russell, Prairie View A&M University

Panel 2 – August 8, 2022, Houston, TX

Layla Fry, Meadows Mental Health Institute
Leah Wolfthal, Center for Urban Transformation
Amnistry Freelen, Parent Advocate
Brittany Norman, Disability Rights Texas

Panel 3 – December 7, 2022, Virtual

State Representative Gene Wu, Texas House of Representatives
Phyllis Becker, Missouri Division of Youth Services

Panel 4 – February 15, 2023, Virtual

Liz Ryan, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice
Elizabeth Henneke, Lone Star Justice Alliance

Panel 5 – April 11, 2023, Virtual

Jernard Brown, Collective Action 4 Youth

Appendix B - Panel Agendas, Minutes, Presentation Slides, & Transcripts

Documents found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0p1dmVuaWxlIEp1c3RpY2U%3D

Appendix C – Written Testimony

All written testimony can be found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0p1dmVuaWxlIEp1c3RpY2U%3D

Testimony submitted by:

Alycia Castillo

Amanda Burnitt

Rachel Gandy

Natalia Oakes

Sarah L. Martin

Dr. William Bush

Texas Juvenile Justice Department