A JUVENILE COURT RESOURCE

Creating Flexibility from the Bench:

Meeting the Needs of Juveniles with Mental Impairments

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Photo by Josh Thomas

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1609 Shoal Creek, Suite 201 • Austin, TX 78701 • 512-473-2800 • www.texasappleseed.net

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About This Resource

Texas Appleseed's research into mental health and juvenile justice issues, and how they intersect with school discipline policy, alerted us to the need for a resource that would provide information about community-based alternatives to detention. This report contains information for judges and other stakeholders on the impact of current laws and polices on Texas' young offenders, the uneven delivery of needed services to juveniles with mental impairments, and an overview of alternative "front end" approaches proven to keep youth from repeatedly cycling through the juvenile justice system. Diversion into community-based treatment is a win-win solution, since it not only provides youth with effective treatment, but is less costly and reduces the drain on local resources caused by recidivism.

Report Team

Deborah Fitzgerald Fowler, *Legal Director*
Katie Payne, *Legal Intern*
Rebecca Lightsey, *Executive Director*
Janis Monger, *Communications Director*

Texas Appleseed Mission

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to conduct research, analysis and advocacy to achieve practical solutions to social and economic justice problems.

For More Information

Texas Appleseed
1609 Shoal Creek
Suite 201
Austin, TX 78701
512-473-2800
www.texasappleseed.net

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Marc Levin
Director
Center for Effective Justice
Texas Public Policy Foundation
AUSTIN, TX

Susan Stone, J.D., M.D.
Executive Coordinator
Austin Mayor's Mental Health Task Force Monitoring Committee
AUSTIN, TX

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Core Principles: Serving Court-Involved Youth with Mental Health Needs

The National Center for Mental Health and Juvenile Justice released the following Core Principles as part of a model to identify and treat youth with mental health needs in the juvenile justice system. These principles were developed to guide all efforts to better coordinate and deliver mental health screening, assessment and treatment to juvenile defendants—and can serve as an underpinning for community and court decisions in this area.[1]

1. Youth should not have to enter the juvenile justice system solely in order to access mental health services or because of their mental illness.
2. Whenever possible and when matters of public safety allow, youth with mental health needs should be diverted into evidence-based treatment in a community setting.
3. If diversion out of the juvenile justice system is not possible, youth should be placed in the least restrictive setting possible, with access to evidence-based treatment.
4. Information collected as part of a pre-adjudicatory mental health screen should not be used in any way that might jeopardize the legal interests of youth as defendants.
5. All mental health services provided to youth in contact with the juvenile justice system should respond to issues of gender, ethnicity, race, age, sexual orientation, socio-economic status, and faith.
6. Mental health services should meet the developmental realities of youth. Children and adolescents are not simply little adults.
7. Whenever possible, families and/or caregivers should be partners in the development of treatment decisions and plans made for their children.
8. Multiple systems bear responsibility for these youth. While at different times, a single agency may have primary responsibility, these youth are the community's responsibility and all responses developed for these youth should be collaborative in nature, reflecting the input and involvement of mental health, juvenile justice, and other systems.
9. Services and strategies aimed at improving the identification and treatment of youth with mental health needs in the juvenile justice system should be routinely evaluated to determine their effectiveness in meeting desired goals and outcomes.

1 The National Center for Mental Health and Juvenile Justice & Policy Research Associates, Inc., BluePrint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System (2007).

Creating Flexibility from the Bench
Introduction

Experts agree that children with mental impairments come into contact with the juvenile justice system at disproportionately high levels. The reasons for this are complex, but the lack of community-based resources to prevent delinquency is often cited as a primary problem.

In Texas, gaps in community-based services may mean that children with serious mental health needs do not receive treatment until they have come into contact with the juvenile justice system. Texas ranks 48th in the nation on spending for mental health care.[1] In 2008, only 18 percent of Texas children eligible to receive public mental health services actually received them.[2] A report on school-based mental health care cited lack of training, funding and human resources as contributing to inadequate mental health support to Texas' school children.[3]

Failure to provide community-based mental health services to Texas children and families has dire consequences—affecting not only educational attainment and undermining a healthy family life, but dramatically increasing the likelihood of future involvement in the juvenile justice system. Consider these facts:

- Special education students are vastly overrepresented in school discipline referrals, at a rate almost twice that of their representation in the overall student body.[4] Often, children are referred to the juvenile system due to behavior at school.[5]
- Many children in the juvenile system are "dually involved" in state custodial systems, having been foster children when they entered the juvenile justice system. Up to 80 percent of foster children have been diagnosed with one or more mental or behavioral disorders;[6] however, there is a lack of available mental health services for foster children and some advocates complain of inadequate oversight of those receiving treatment.[7]

1 Kaiser Family Foundation, *State Health Facts*, *available at* www.statehealthfacts.org/comparemaptable.

2 Texans Care for Children, *Increase Funding for Children's Mental Health Services*, *available at* http://www.texanscareforchildren.org/files/MHFunding.pdf

3 Tex. Dep't of Mental Health & Mental Retardation, Tex. Educ. Agency, Tex. Fed'n of Families for Children's Mental Health & Mental Health Association in Texas, Back to School Advancing School-Based Mental Health Care in Texas 7 (2003).

4 Texas Appleseed, Texas' School-to-Prison Pipeline Dropout to Incarceration (2007).

5 *Id.*

6 Lynda E. Frost & Kelly J. Gober, *Unintended Implications of Child Welfare Reform for Texas Foster Children's Mental Health*, Presentation at the University of Oregon School of Law, Oregon Child Advocacy Project Conference, March 24-25, 2006.

7 *Id.*; *see also* Emily Ramshaw, *Some Texas foster kids' doctors have ties to drug firms*, Dallas Morning News, August 17, 2008 (discussing concerns that some foster care children may be overmedicated).

- Up to 55 percent of young offenders supervised by the Texas Juvenile Probation Commission and the Texas Youth Commission have mental health needs;[8] however, there is a substantial gap between identified mental health needs and services provided.[9]

Juvenile judges are on the frontlines of mental health treatment for the state's children—and are in a unique position to seek greater flexibility to make decisions from the bench that will ensure these children receive appropriate treatment. Appropriate treatment holds the greatest potential for reducing recidivism.

Deborah Fowler
Legal Director
Texas Appleseed

8 Sunset Advisory Comm'n, Staff Report, Texas Youth Commission, Texas Juvenile Probation Commission, Office of Independent Ombudsman 11 (2008).

9 Tex. Juv. Probation Comm'n, Strategic Plan, Fiscal Years 2009-2013 22 (2008); Tex. Youth Comm'n, Review of Agency Treatment Effectiveness, Fiscal Year 2008 14 (2008).

Texas Juvenile Justice Code:
Youth with Mental Impairments

Mental illness or mental retardation can become a critical issue at a number of different stages in a juvenile proceeding. Mental impairments may affect competence to proceed to trial and factual questions surrounding the youth's mental state at the time that the crime was committed, as well as competence to waive Miranda rights or to confess.[1]

The court should consider a young person's mental impairments when determining such issues as whether a juvenile should stay in detention,[2] or whether a youth should be transferred to adult criminal court.[3]

Ensuring that young people with mental impairments do not "slip through the cracks" of the juvenile justice system often rests in the ability of the attorneys and judges to identify these clients. Unfortunately, for too many, their impairment is not recognized until after they have been adjudicated delinquent—a point in the process when there is less flexibility to address mental health needs moving forward. Early assessment and knowing what the law allows are both crucial components of identifying appropriate responses to a youth's mental health needs.

Early Assessment

Assessment of a young person's mental health is deemed so critical that the court is allowed to order an evaluation at ***any stage*** of the proceedings.[4] The assessment must be carried out by a disinterested expert—physician, psychologist, or psychiatrist—who is experienced in forensic evaluation.[5] If testing uncovers "any reason to believe" that the child has a mental illness or mental retardation, the probation department is required to refer the child to the local MHMR authority for further evaluation and services.[6]

In addition, probation departments are required to do an initial screening when youth are admitted to detention or enter the probation system.[7] If the child's scores on the screening instrument indicate a need for further assessment and evaluation, the child must be referred to the local mental health authority unless the child or probation department has access to an internal, contract or private mental health professional.[8]

1 *See* Tex. Fam. Code §51.09(a)(1)(D)(magistrate must certify that she has examined child independent of any law enforcement or prosecutor and determined that child understands nature and contents of statement and has knowingly, intelligently, and voluntarily waived his or her rights).

2 Youth who have a mental illness may "decompensate" (experience further deterioration of their mental health) while they are in detentions settings; courts may consider this is in determining whether this is an appropriate setting for a juvenile who has a serious mental illness.

3 A juvenile court is required to order and obtain a complete diagnostic study and social evaluation of the child prior to the hearing—if a child has a serious mental illness or mental retardation, this could be a factor for the court to consider in determining whether the circumstances warrant waiver of jurisdiction and transfer to criminal court. Tex. Fam. Code §54.02(d).

4 Tex. Fam. Code §51.20.

5 *Id.*

6 *Id.*

7 Tex. Fam. Code §51.21; the Texas Juvenile Probation Commission requires assessments to be completed using the MAYSI-2, a mental health screening instrument developed specifically for use with children.

8 *Id.*

Diversion from the Justice System

In some cases, diversion away from the justice system and into community-based treatment or services may be an option. Law enforcement, prosecutors and judges each play a key role in determining when this is appropriate. For juveniles who commit low-level offenses, diversion may be available at several points during the process.

What is Mental Illness?

Mental illness is defined under the Texas Health and Safety Code art. 571.003(14) as "an illness, disease or condition—other than epilepsy, senility, alcoholism or mental deficiency—that:

- Substantially impairs a person's thought, perception of reality, emotional process, or judgment; or
- Grossly impairs behavior as demonstrated by recent disturbed behavior."

Mental illness is quite common. One in five Americans has some type of mental illness in any given year. There is a very high incidence of substance abuse in youth who have mental illnesses. This may be due to their attempt to "self medicate" or control the symptoms they are experiencing.

In referring to a youth with a mental illness, it is important to use language which recognizes that no one is defined solely by a diagnosis of mental illness. Thus, rather than referring to a "mentally ill" juvenile, it is preferable to refer to him or her as a young person who has a mental illness.

Diversion by Law Enforcement

Section 52.03 of the Family Code allows a law enforcement officer to divert a child away from juvenile court if:[9]

- Guidelines for this type of disposition have been adopted by the county's juvenile board and the disposition is authorized under those guidelines; and
- The officer reports the disposition in writing to the law enforcement agency.

Disposition under this section of the Code lends itself to situations involving children who have a mental illness or mental retardation, since it allows law enforcement to refer the child to treatment and services provided by other agencies.[10] These youth can be referred to such services as crisis family intervention, emergency short-term residential care, family counseling, and coping skills.[11]

First Offender Program

For youth who may not be appropriate for diversion under Section 52.03, the First Offender Program offers a similar but more structured diversion away from the justice system, with the caveat that failure to complete the program will result in referral to the juvenile court.[12] Defendants younger than 18 are eligible for the First Offender Program if they have not previously been adjudicated delinquent and were not taken into custody

9 Tex. Fam. Code §52.03.

10 Tex. Fam. Code §52.03(c)(1-3).

11 *Id.; see also* Tex. Fam. Code §264.301 (services for at-risk youth).

12 Tex. Fam. Code §52.031.

for a felony or a misdemeanor involving violence or possession of a certain weapon.[13] Disposition under a First Offender Program may include counseling or other rehabilitation services, and can be tailored to reflect the needs of a child who has a mental illness or mental retardation.[14]

What is Mental Retardation?

Mental retardation is a developmental disability that occurs before a person's 18th birthday. It is manifested by delayed intellectual growth, inappropriate or immature reactions to one's environment, and/or below average performance in academic, psychological, physical, linguistic and social domains.

Mental retardation is usually determined based on both an IQ test (with a score of around 70 or below) and a measurement of a person's adaptive behavior.

Mental retardation is not a mental illness. Individuals with mental illness encounter disturbances in their thought processes and emotions, while persons with mental retardation simply have a limited ability to learn and process information.

Mental illness is often temporary, while mental retardation is usually life-long. There is no "cure" for mental retardation.

Advocates are moving away from using the term "mental retardation" and replacing it with "intellectual disability." The new term reflects a respect for those with the disability. When working directly with youth who have an intellectual disability, it is preferable to use this term when possible. "Mental retardation" is used in this resource because it is the legal term used throughout Texas statutes.

Other Diversion Opportunities

Though they are not formally recognized as diversion programs or opportunities, these are avenues to refer young people to community-based mental health treatment or services:

- **Prosecutorial review**—Prosecutorial discretion includes determining the "desirability of prosecution." If a young defendant's behavior may have resulted from a mental impairment, a prosecutor can decide that the interests of the community and the young defendant are best served by dismissing the case, with the understanding that the juvenile will seek services or treatment.[15]
- **Deferred prosecution**—If community-based services or treatment will meet the youth's mental health needs and the child is eligible for deferred prosecution, then deferred prosecution may represent another opportunity to avoid further involvement in the juvenile court system.[16]
- **Probation**—Offenders qualifying for the Texas Council on Offenders with Medical and Mental Impairment "Special Needs Diversionary Program" in participating counties may be offered probation.

13 Tex. Fam. Code §52.031(a).

14 Tex. Fam. Code §52.031(h)(3).

15 Tex. Fam. Code §53.012.

16 Tex. Fam. Code §53.03.

Chapter 55 of the Juvenile Justice Code—Incompetence & Lack of Capacity

In some cases, a youth will not be eligible for diversion from the justice system—either due to the nature of the crime committed, or because the youth is not a first-time offender. When this is the case, it is critical to protect the juvenile's due process rights by inquiring into his or her competency and capacity. Chapter 55 of the Texas Family Code specifically governs these proceedings. Although the procedures for children with mental illness and mental retardation are similar, they are outlined in different portions of Chapter 55. For purposes of this chapter, "mental illness" is defined by §571.003 of the Health and Safety Code.[17] Except as supplied by Chapter 55, once mental health services or residential care for mental retardation are ordered, the standards of care are governed by Subtitles C and D of Title 7 of the Health and Safety Code.[18]

Raising the Issue—Court Jurisdiction to Order Evaluation & Treatment

Upon motion by a party, the juvenile court has jurisdiction to initiate proceedings to order mental health or mental retardation services for a child.[19] Although it is not required by statute, the court may *sua sponte* hold a mental competency hearing when the issue is clearly raised in the record.[20] As discussed above, the court may order on its own motion a mental or physical examination at any stage during the proceedings.[21]

Texas Court of Appeals cases have suggested that a court's failure to order a mental examination *sua sponte* may violate the juvenile defendant's due process rights, if the issue is sufficiently raised by the evidence.[22] Because juvenile proceedings are quasi-criminal in nature, children in the juvenile justice system are afforded the same basic constitutional protections as adults in the criminal justice system.[23]

Child's Present Mental Health State

Once a Chapter 55 issue has been raised, there are three options for proceeding. Subchapter B focuses on the juvenile's present mental state, and the court determines if there is probable cause to believe that the child has a mental illness based upon evidence from the motion, supporting documents, counsel statements, witness testimony, and its own observation of the juvenile.[24]

If probable cause is found, the court orders an examination for the child under §51.20, and the juvenile court proceedings are temporarily stayed. Under Subchapter B, the child's competency to proceed or his or her capacity to have committed the crime is not necessarily at issue. Instead, Subchapter B requires an expert opinion declaring that the child has a mental illness and meets the commitment criteria under Subtitle C, Title 7 of the Health and Safety Code.[25]

If the juvenile court finds that the child has a mental illness and meets the commitment criteria, the court initiates proceedings for temporary or extended mental health services or refers the child to the appropriate

17 Tex. Fam. Code § 55.01 (2007).

18 Tex. Fam. Code § 55.03 (2007)

19 Tex. Fam. Code § 55.02 (2007)

20 *In re E.M.R.*, 55 S.W.3d 712, 719 (Tex. App. –Corpus Christi 2001, no pet.).

21 *In re J.K.N.*, 115 S.W.3d 166, 169 (Tex. App. –Fort Worth 2003, no pet.).

22 *Id.* (examining the record to determine whether the trial court should have reasonably concluded from the evidence that due to mental illness, the juvenile defendant "lacked the capacity to understand the proceedings, to consult with counsel, or to assist in his own defense," such that the court's failure to order a mental examination violated due process.)

23 *In re J.E.H.*, 972 S.W.2d 928, 929 (Tex. App.—Beaumont 1998, pet. denied); *In re D.S.*, 921 S.W.2d 383, 386 (Tex. App.—Corpus Christi 1996, writ dism'd w.o.j.).

24 Tex. Fam. Code § 55.11 (2007).

25 Tex. Fam. Code § 55.11(b). The Court also may order an expert opinion on the child's competency to proceed; if this is ordered, the expert must be qualified under Chapter 46B of the Code of Criminal Procedure to examine a defendant in a criminal proceeding. Tex. Fam. Code § 51.20 (2007).

court to initiate proceedings for commitment.[26] In the hearing on an application for mental health services, the burden of proof is on the party filing the application, which may be the prosecuting or defense attorney.[27]

If the juvenile court orders mental health services or the court to which the child was referred notifies the juvenile court of its decision to order mental health services, the proceedings pending in juvenile court shall be stayed.[28] The stay is dissolved and the pending juvenile court proceedings continue if mental health services are not ordered.[29]

Competency to Proceed

Subchapter C covers the procedures for finding whether or not the child is incompetent to proceed with the trial due to mental illness or mental retardation. A juvenile who lacks the capacity to understand the proceedings or cannot assist in his or her own defense due to mental illness or mental retardation is not fit to proceed.[30] While incapacitated, the child cannot be subjected to transfer to criminal court, adjudication, disposition or modification of disposition.[31]

Chapter 55 incorporates the holding in *Drope v. Missouri* [32] that issues of competency may arise at any time during the proceedings, and the trial court should be alert to circumstances that would cause the accused to become incompetent to proceed.[33] The statute states that a finding of competency requires the court to proceed "as though a question of fitness to proceed had not been raised," however per *Drope*, fitness to proceed can be considered at any point in the proceeding—even after an earlier finding of competency—in order to protect the due process rights of the accused.[34]

Commitment proceedings differ for mental illness and mental retardation, with §55.37-55.39 governing proceedings for mental illness. The proceedings for unfitness to proceed due to mental retardation are similar to those of mental illness, but are governed by Subchapter D, Title 7 of the Health and Safety Code.[35]

As in Subchapter B, the issue of unfitness may be raised by any party and triggers a finding of probable cause evaluation by the court.[36] If probable cause is found, the proceedings are stayed and an examination ordered pursuant to §51.20 following requirements similar to those in Subchapter B.

A separate hearing is set if the juvenile court finds that evidence exists to support a finding that the child is unfit to proceed due to mental illness or mental retardation.[37] Lack of fitness to proceed must be proved by a preponderance of the evidence, and a jury trial may be requested by either of the parties.[38]

26 Tex. Fam. Code § 55.12 (2007).

27 Tex. Fam. Code § 55.13 (2007).

28 Tex. Fam. Code.§ 55.16 (2007).

29 Tex. Fam. Code § 55.17 (2007).

30 Tex. Fam. Code § 55.31 (2007).

31 *Id.*

32 420 U.S. 162 (1975).

33 *Id.* at 181.

34 Brian D. Shannon & Daniel H. Benson, Texas Criminal Procedure and the Offender with Mental Illness: An Analysis and Guide, 44-59 (4th ed. 2008).

35 Tex. Fam. Code § 55.40 (2007).

36 *Id.*

37 Tex. Fam. Code § 55.32 (2007).

38 *Id.*

Process after Finding of Incapacity

If the child is found unfit to proceed, the court shall stay the proceedings for as long as the incapacity lasts.[39] The court may order the child placed with the Texas Department of Mental Health and Mental Retardation, in a private inpatient facility, or in outpatient treatment if incapacity is caused by mental illness and the court determines an alternative setting may provide adequate treatment.[40] For all treatment options, the order for treatment is for at least 90 days.[41]

No later than 75 days after the child is committed, the facility in which the child is treated must submit a report to the court that describes the treatment provided to the child and the director's opinion as to whether the juvenile is still unfit to proceed with trial.[42] If the report states that the child is fit to proceed, the juvenile court shall find him or her fit to proceed with trial, unless the child's attorney objects in open court or in writing no later than the second day after receiving a copy of the report.[43] On objection by the child's attorney, the court shall hold a hearing to determine fitness to proceed. If the child is found fit to proceed, the stay is lifted and proceedings continue, but if the child is found unfit, a commitment hearing is held.[44]

The prosecuting attorney may file a motion for a restoration hearing if the child is found unfit to proceed and is not ordered by a court to receive inpatient mental health services, committed to a residential care facility, ordered to receive outpatient treatment, or discharged from a facility before his or her 18th birthday.[45] In the restoration hearing, the issue of fitness to proceed must be proved to the court by a preponderance of the evidence.[46]

Mental Health or Capacity at Time of the Offense—the "Insanity" Defense for Juveniles

Chapter 55 provides elements and procedures available to juveniles that are similar to the adult insanity defense but are described as a "lack of responsibility" for conduct as a result of mental illness or mental retardation.[47] A juvenile is not responsible for delinquent conduct or conduct in need of supervision if, at the time of the conduct, the child lacked the capacity to appreciate the wrongness of the conduct or to conform his or her conduct to the requirements of the law as a result of mental illness or mental retardation.[48] Unlike the standard for the adult insanity defense, the juvenile code retains the volitional element and specifies that mental illness or mental retardation are the bases for a finding of lack of responsibility. The juvenile code avoids using the language of the adult statute, which requires "severe mental disease or defect."[49]

If the court or jury finds that the juvenile was not responsible for his or her conduct because of mental illness or mental retardation, he or she may be placed with the Texas Department of Mental Health and Mental Retardation or in a private facility for not more than 90 days if the child meets the commitment criteria

39 *Id.*

40 Tex. Fam. Code § 55.33 (2007); The Texas Department of Mental Health and Mental Retardation ceased operations in 2004, but some statutes have not yet been amended by the Texas Legislature to refer to the new appropriate agencies. Mental health services are now provided by Texas Department of State Health Services (DSHS) and mental retardation services by the Texas Department of Aging and Disability Services (DADS). Texas Criminal Procedure and the Offender with Mental Illness, *supra* note 34, at 133.

41 *Id.*

42 Tex. Fam. Code § 55.35 (2007).

43 Tex. Fam. Code § 55.36 (2007).

44 *Id.*

45 Tex. Fam. Code § 55.43 (2007).

46 *Id.*

47 Tex. Fam. Code § 55.51 (2007).

48 *Id.*

49 Texas Criminal Procedure and the Offender with Mental Illness, *supra* note 34, at 220.

found in Subtitle C or D, Title 7, Health and Safety Code.[50] The court may order outpatient treatment if the lack of responsibility is a result of mental illness and if the court determines that the juvenile may be treated adequately in an alternative setting.[51]

Conclusion

The Family Code outlines several appropriate alternatives to juvenile court involvement focused on providing treatment to juveniles with mental health or mental retardation issues, while also protecting the public.[52] Judges play a critical role, both in encouraging other stakeholders within the system to consider alternatives to further involvement in the juvenile court system, and in utilizing provisions of the Family Code that offer judges the flexibility to ensure that juveniles, who have a mental illness or mental retardation, receive the treatment and services that are critical to reducing recidivism, rehabilitating the child, and protecting the public.

Katie Payne
Legal Intern

Deborah Fowler
Legal Director
Texas Appleseed

50 Tex. Fam. Code § 55.52 (2007).

51 *Id.*

52 Texas Criminal Procedure and the Offender with Mental Illness, *supra* note 34, at 225-26.

Mental Health Issues in the Juvenile Justice System

In most juvenile court systems in Texas, processing is swift. Detention and adjudication decisions are made in many cases before behavioral health screening and assessments are made—even though assessment can provide valuable information that can significantly improve placement and adjudication decisions for young people with behavioral health needs.

A recent multi-state research study, including data from Texas, estimates that about 70.4 percent of those involved in the juvenile justice system have some type of mental health diagnosis (66.8 percent of males; 81 percent of females). In contrast, the Texas Juvenile Probation Commission estimates that 26.3 percent of youth under juvenile justice supervision have a mental illness (FY 2006), based upon documented past mental health contacts with the Department of State Health Services. The Probation Commission's estimate excludes youth who have a mental illness but have never been diagnosed and those who have had no contact with the public mental health system.

Why is there such a wide variation in these projections of mental illness among juvenile detainees? A similar disparity exists in estimates of the prevalence of mental disorders in the adult criminal justice system, with projections ranging from 9 percent to 64 percent.

The primary reason for this variation lies in the difficulty in distinguishing between "severe mental illness" and "any mental health complaint." More specifically, many in the juvenile justice system are diagnosed with behavior disorders, such as Conduct Disorder or Oppositional Defiant Disorder. It is not clear whether these are biologic mental disorders, since diagnosis is largely made based upon assessment of behaviors, and not specific mental health symptoms. Still, many juvenile offenders with these diagnoses also fit the criteria for severe mental illness.

The Harris County Juvenile Probation Department in Houston has developed a data system to more accurately reflect juvenile detainees' mental health needs. Between February 5 and July 8, 2007, more than 4,000 juveniles were screened for mental health disorders. Using a more sophisticated diagnostic analysis of the data, the department found that 20 percent of detained juveniles had serious emotional disturbance, and 36 percent were emotionally disturbed. When accounting for juveniles who had diagnoses in both categories, the overall estimate of prevalence of mental health diagnoses reached 50 percent, even when excluding behavior disorders and substance use disorders. Even more disturbing is that among these juveniles, more than 64 percent reported a history of significant traumatic experiences.

Do children exhibit the same symptoms of a mental illness as adults?

Children often do not exhibit the same symptoms that adults exhibit. For example, symptoms of depression for children and adolescents may differ from those commonly seen in adults. Youth with depression can often exhibit extreme irritability and anger. This can make the diagnosis difficult, since teenagers, who do not have a mental illness, can also appear angry and irritable. Compared to adults, youth with bipolar disorder also are less likely to exhibit mania. While they may appear irritable and impulsive, they may not exhibit euphoria and grandiosity. The difficulty of recognizing mental health issues in children makes screening and assessment by qualified professionals critically important.

In Their Own Words:

Youth Struggle with Mental Health Issues

Psychiatrists at the **Harris County Juvenile Detention Center** asked young people about their struggles with mental health issues. Seventy percent of those participating in this voluntary exchange reported a previous mental health history and were taking psychotropic medications. Among their responses:

- "Nobody listens to how bad I feel."
- "I can't seem to control my thoughts, but I don't know what to do about it."
- "I didn't want other kids to know what was going on with me."
- "I don't know where to go to get help; my family doesn't understand."
- "If I'd just stayed in sports, I wouldn't be here today—being tired helps the bad feelings go away."
- "When I got back to school (from detention), they just expected me to be bad."

What kinds of information should judges look for?

Mental Health Screening

Young offenders should undergo a mental health screening when they enter the juvenile justice system. Screening essentially looks for "red flags" signaling symptoms of mental illness and/or substance abuse issues that will likely require more in-depth assessment.

Mental Health Assessment

If a more in-depth assessment is indicated, referral mechanisms should be in place. A mental health assessment analyzes current mental health symptoms, past mental health treatment and symptoms, current and previous medications, any previous hospitalizations or other placements, family and social issues, and substance use history. The ultimate goal of the mental health assessment is to arrive at a diagnosis (or diagnoses) and the development of a treatment plan that addresses young offenders' needs.

Risk Assessment

Risk assessment takes into account the seriousness of the incident offense, criminal offense history, social supports (that would assist in preventing recidivism), diagnosis, substance use history, and a variety of other factors—all issues that should be brought to light to inform judicial decision-making. The Texas Juvenile Probation Commission is in the process of developing a risk assessment instrument for use statewide. The instrument will collect information on a juvenile's strengths and weaknesses to assist departments in targeting the most effective intervention for the young person. The risk assessment instrument also will be validated by gender to ensure appropriate gender-based risk classification. TJPC expects to roll out this assessment tool in January 2010.

What records may be useful in flagging a possible mental health issue?

Education Records

Youth with an emotional disturbance often experience difficulty in school and frequently have a history of disciplinary problems. If a child has been repeatedly disciplined at school, the possibility of an undiagnosed

mental health issue should be considered. Education records also will indicate whether or not a child has received special education services. Children are eligible for special education services for a range of reasons that include "emotional disturbance."

Under federal special education law, juvenile courts can refer a student for special education evaluation. Students who are found eligible for special education are entitled to an individualized educational program with supports and services designed to ensure the student makes meaningful progress on appropriate goals. Services that special education can provide include counseling; physical, occupational, and speech therapies; therapeutic recreation; mentoring; tutoring; vocational education; job coaching; positive behavior supports; and a variety of other supports. Special education students can continue to receive services until age 22. Juvenile Courts can appoint educational surrogates to make important educational decisions for these children whose parents are either unknown or inaccessible and for children who are wards of the state. If the court does not appoint a surrogate, the school district will appoint the surrogate.

Foster Care History

Juveniles who enter the justice system from the foster care system often have experienced significant trauma and have a higher incidence of mental health issues. Foster care records may show whether a child has been diagnosed with a mental illness and provide insight into treatment history.

Why is this information relevant to making judicial decisions?

While there is no one profile or formula to guide judicial decisions regarding juvenile defendants with behavioral health disorders, a judge's failure to consider this important information in placement and adjudication decisions can contribute to future recidivism on the part of young offenders. Many juveniles with mental illness do not exhibit symptoms in the courtroom, either out of fear, intimidation or the desire not to be "singled out" as different. Nevertheless, adjudication and placement decisions can make a significant difference.

Young people with mental illness, especially those with histories of trauma, who are placed in detention or incarceration settings have significantly worse outcomes and are highly likely to commit another offense. Early recognition and treatment of mental health disorders has been well established to improve overall prognosis. Engaging and establishing social supports can effectively decrease recidivism in the juvenile justice population.

What kind of treatment tends to be most effective for juvenile justice involved youth who have a mental illness?

Ideally, children and families with mental health needs will receive "wrap around" services based on the individual needs of a child and his or her family. This approach, often called "system of care," can be highly effective for juveniles involved in the justice system.

Residential care is a form of treatment and placement that should be reserved for only the most serious situations. Those in residential placement often get worse, as they learn problem behaviors from modeling peers. Many research studies have shown that being close to home and family is a critical component of success and recovery for young people with mental health issues.

Susan Stone, J.D., M.D.
Executive Coordinator
Austin Mayor's Mental Health
Task Force Monitoring Committee

Diverting Juveniles from the Justice System:
A Front-End Challenge

With all the recent attention surrounding challenges facing the Texas Youth Commission (TYC), it is easy to overlook the fact that only about 2 percent of the juveniles referred to or under court supervision in Texas are incarcerated at TYC facilities, and only another 8 percent are housed in local post-adjudication residential facilities.[1]

Texas' juvenile justice system already emphasizes alternatives to incarceration for most young offenders—and those alternatives are working. About 83 percent of juveniles successfully complete their terms of probation, and 81 percent of those on deferred adjudication avoid future prosecution.[2]

Still, judges and the courts need more tools and flexibility to address the needs and prevent recidivism of juvenile offenders—including the growing number with mental illness and drug addiction problems. Reviewing how young people first come in contact with the justice system can reveal opportunities to do more to prevent young people from advancing farther into Texas' justice system pipeline. As key policy makers in their communities, judges and juvenile justice system stakeholders can advocate for programs that give youth with mental health issues new opportunities to receive help in a community-based setting.

Juvenile Cases Referred by Schools

Schools directly refer approximately 7,000 cases to the juvenile justice system every year.[3] This number does not include youth arrested by school police officers. Of those 7,000 referrals, more than 2,500 young people are referred to juvenile probation for expulsion from a Disciplinary Alternative Education Program (DAEP) for "serious or persistent misconduct." It is likely that these referrals involve a disproportionately high percentage of special education students since almost one-third (412) of Texas' school districts overrepresented special education students in discretionary referrals to DAEPs at rates exceeding (sometimes double or triple) their representation in the student population for one or more years between 2001 and 2006. Seventy-nine districts did so annually during this five-year period.[4]

In addition, school districts annually file more than 20,000 Class C misdemeanor cases for truancy and violations of the Texas Education Code in municipal and justice of the peace courts.[5] The 80th Legislature (2007) repealed an Education Code provision allowing school districts to criminalize any provision of their student code of conduct (HB 278). Prior to that repeal, some Texas school districts were issuing Class C

1 Sunset Advisory Comm'n, Staff Report, Texas Youth Commission, Texas Juvenile Probation Commission, Office of Independent Ombudsman (2008); Texas Juvenile Probation Comm'n, Celebrating 25 Years of Service (2007), *available at* http://www.tjpc.state.tx.us/whats_hot/previous/25 YearsofService.pdf.

2 Texas Juvenile Probation Comm'n, Self-Evaluation Report by Texas Juvenile Probation Commission for the Texas Sunset Commission (2007), *available at* http://www.sunset.state.tx.us/81streports/tjpc/ser.pdf.

3 Texas Juvenile Probation Comm'n, The State of Juvenile Probation Activity in Texas (2007), *available at* http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2005.pdf.

4 Texas Appleseed, Texas' School-to-Prison Pipeline: Dropout to Incarceration (2007), *available at* http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf.

5 Office of Court Admin., Activity Report for Municipal Courts, 2007 Annual Report, *available at* http://www.courts.state.tx.us/pubs/AR2007/mn/2-mn-courts-overall-activity-fy07.pdf.

citations for such misbehavior as chewing gum and tardiness; however, school districts can still issue citations for other minor violations of the Education Code, including disruption of class or "unreasonable noise."

According to the Texas Education Agency, 311,718 students were referred to out-of-school suspension in 2007-08, resulting in more than 1 million school days missed. Research has shown that states with higher rates of out-of-school suspensions also have higher overall rates of juvenile incarceration.[6]

Juvenile Arrest

Of the 136,188 juveniles arrested in Texas in 2007, 79,618 were referred to juvenile probation departments by law enforcement—and the remainder were either warned and released, had their cases handled in justice of the peace and municipal courts, or were subject to early diversion by law enforcement.[7]

The early intervention police diversion provisions found in Chapter 52 of the Texas Family Code are one mechanism that some law enforcement agencies use to resolve minor juvenile cases. According to Section 52.03 of the Family Code, each county's juvenile board "shall, in cooperation with each law enforcement agency in the county, adopt guidelines" for such informal dispositions.

Pursuant to a disposition arranged by peace officers and often based on input from the victim, the juvenile offender agrees to make restitution and comply with conditions such as a curfew. In Tarrant County, of the 380 youth processed through the First Offender Program under Section 52.03, 90 percent completed the program successfully and none committed another offense within 90 days of completing the program.[8] In Dallas County, staff in the Dallas Police Department follow up to make sure the agreement is honored, while juvenile probation personnel conduct the follow-ups in other Texas counties even though these offenders are not on probation.

Juvenile Probation

Successful completion of juvenile probation improves lives and saves the state the higher cost of incarcerating young people for repeat offenses and/or for more serious crimes. Each referral to juvenile probation costs the state an average of $1,200 compared to the $62,000 annual cost to incarcerate one young offender in the Texas Youth Commission (TYC).

In 2007, the Texas Legislature sought to reduce the number of young offenders incarcerated in TYC by outlawing the practice of sending youth to TYC for misdemeanors and capping the TYC age at 18. To avoid creating an unfunded mandate on counties to handle these young offenders no longer being sent to TYC, state lawmakers appropriated $22.5 million for enhanced community-based services and programs and another $35.4 million for placement of youth who would previously have been eligible for commitment to TYC.

Probation services have become increasingly important; yet, while the state bears 100 percent of the cost of TYC commitments, it has historically funded only 30 percent of juvenile probation costs, with 60 percent of the cost borne by county taxpayers and the remaining 10 percent covered by federal funds.

A very small percentage of referrals to juvenile probation are for violent felonies. Far more probationers are under supervision for property and drug offenses, along with "status" offenses (such as running away and alcohol possession) that only apply to minors.

6 R.J. Skiba et al., *Consistent Removal: Contributions of School Discipline to the School-Prison Pipeline,* Paper presented at the Harvard Civil Rights Project's School-to-Prison Pipeline Conference, Cambridge, Mass. (May 16-17, 2003)

7 Sunset Advisory Comm'n, Staff Report, Texas Youth Commission, Texas Juvenile Probation Commission, Office of Independent Ombudsman 7 (2008).

8 Tarrant County Juvenile Services, http://www.tarrantcounty.com/ejuvenile/cwp/view.asp?A=737&Q=427654&ejuvenileNavDLTEST=%7C7067%7C7944%7C.

The Children's Partnership—Travis County

The Children's Partnership leads the Travis County System of Care—a coalition of families, community organizations, and service agencies that delivers comprehensive mental health and other essential community-based services to youth. Their efforts reduce the need for restrictive and expensive out-of-home placements.

HOW IT WORKS:

Flexible Fund Pool

Members of The Children's Partnership, including juvenile justice, mental health, education, and health and human service providers, contribute to a flexible fund pool—allowing the dollar to follow the child to pay for traditional care and non-traditional services such as mentors, respite care, and school-based day treatment.

Depending on need, a parent liaison and/or a care coordinator is assigned to families enrolled in The Children's Partnership. Care coordinators facilitate the Child and Family Teams that plan and ensure provision of services. Parent liaisons are parents or caregivers of children with special needs. They provide family-to-family support and a link to community resources. Like care coordinators, parent liaisons support families in their home or community on the families' schedule.

In 2007, youth served by The Children's Partnership showed a 79 percent drop in out-of-school suspensions. Overall, there was a 58 percent decrease in arrests, probation and detention from intake in the Children's Partnership to follow-up.[1]

1 Statistical data obtained through The Children's Partnership clinical records managed by Austin Travis County Mental Health and Mental Retardation Center (ATCMHMR) for fiscal year 2007.

Programs offered by juvenile probation departments generally fall into the following categories:

Anger Management	Cognitive Behavioral	Day Treatment	Drug Court	Early Intervention	Educational	Family Preservation
Female Offender	Gang Prevention	Life Skills	Community Service Restitution	Mental Health	Mentoring	Sex Offender
Substance Abuse Treatment/Prevention	Truancy/Runaway	Victim Mediation	Counseling	Vocational	Electronic Monitoring	Intensive Supervision Probation

According to a study by the state-funded Washington State Institute for Public Policy, most of these approaches reduce crime and the total cost of the juvenile justice system.[9] Studies have found that programs such as day treatment, for example, are more effective than incarceration in reducing recidivism, because first offenders

9 S. Aos et al., *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, Washington State Institute for Public Policy, October 2006, *available at* http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf.

avoid associating with more delinquent youth in lockup and, instead, remain in the community where they can maintain positive ties with their families and other forms of support.[10]

State-Funded Services for Juveniles with Mental Health Needs

The Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI), an advisory board to the Texas Department of Criminal Justice, helps develop continuity of care programs for juvenile and adult offenders with medical or mental health needs.

During the 2005-07 biennium, TCOOMMI contracted with 21 local and state public mental health agencies to provide wrap-around case management to juveniles on probation. Under these contracts, probationers received medical and mental health assessments, service coordination and planning, medication and monitoring, individual and/or group therapy, Multi-Systemic Therapy or Functional Family Therapy, family-focused support services, benefit eligibility services, and transitional services.

In 2008, 425 youth on parole and 2,177 on probation received TCOOMMI services; however, the Sunset Commission reports these services are underutilized by local juvenile boards.

The availability of these programs varies widely across Texas' 169 juvenile probation departments. According to most recent available data, 85 percent of juvenile probation departments offer at least one of these programs to juveniles under their supervision;[11] however, the Texas Juvenile Probation Commission (TJPC) recently noted that less than half of juveniles with mental health issues are receiving the services they need.[12]

Juvenile Courts

Texas juvenile probation departments generally dispose of Class B misdemeanors and some Class A misdemeanors. Class C misdemeanors, which are fine-only offenses, are addressed in municipal or justice of the peace courts, unless the youth is charged with conduct in need of supervision, in which case the matter is routed to the juvenile court. Felonies are resolved by settlements with prosecutors or sentences imposed by the juvenile courts.

In 2007, dispositions were made in 103,792 cases.[13] Of these, 19,644 cases were settled by prosecutors, with the remaining cases resolved by juvenile courts. The court ordered supervisory caution in 22,809 cases; ordered deferred prosecution in 23,269 cases; adjudicated new or modified probation in 28,354 cases; certified and transferred to adult court in 216 cases; adjudicated and committed to TYC in 2,276 cases; and consolidated, transferred, dismissed or found not guilty in 19,644 cases.[14]

10 N.H. Azrin et al., *A controlled evaluation and description of Individual-Cognitive Problem Solving and Family-Behavior Therapies in dually-diagnosed conduct-disordered and substance-dependent youth*, Journal of Child & Adolescent Substance Abuse, 11(1), 1-43 (2001); J. Austin et al., *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, OJJDP Juvenile Justice Bulletin, September 2005.

11 Texas Juvenile Probation Comm'n, Celebrating 25 Years of Service (2007), *available at* http://www.tjpc.state.tx.us/whats_hot/previous/25YearsofService.pdf.

12 Texas Juvenile Probation Comm'n, Strategic Plan Fiscal Years 2009-2013 23 (2008).

13 Sunset Advisory Comm'n, Staff Report, Texas Youth Commission, Texas Juvenile Probation Commission, Office of Independent Ombudsman 7 (2008).

14 *Id.*

Operation Redirect—Harris County

Prior to Operation Redirect, approximately 90 percent of youth processed through the Harris County Juvenile Detention Center were sent to court without a comprehensive assessment of their mental health needs. Operation Redirect now assesses over 98 percent of youth prior to their court date, finding that nearly six out of 10 youth have a behavioral health issue that is likely contributing to their delinquency. The assessment collects more than 250 pieces of data and generates a clinical report and screening form which accompany the child to court. These comprehensive assessments make it easier for judges to issue decisions that recommend appropriate placement and services for young offenders with mental health needs.

HOW IT WORKS:

Assessment

- A "triage" evaluation at the front door of the juvenile detention center utilizes masters-level clinicians to identify youth with mental illness, mental retardation and substance abuse.

Court Resources

- A multi-level mental health information and advocacy system located within the court system—including a Court Resource Coordinator, Court Case Manager, and Family Facilitator.
- An attorney/judge training module that includes procedural flowcharts illustrating Competency and Lack of Responsibility proceedings.

Community Support Services

- Expanded community services are offered based upon data collection and identified behavioral needs of young offenders.

OPPORTUNITIES FOR CHANGE

Funding Incentives Favoring Probation & Crime Prevention over Incarceration in TYC

Even with misdemeanants no longer being sent to TYC as a result of the change in state law (2007), other nonviolent offenders still can be sent to TYC. For example, it is a state jail felony to possess unauthorized prescription drugs and even the smallest amount of any illegal drug, except marijuana. In 2006, more than 300 juveniles were incarcerated at TYC for drug offenses at a cost $28.1 million (based on TYC's $152.39 per day cost and average commitment of 20.5 months).[15] Many property offenses like theft and graffiti also can be felonies if the damage exceeds a certain dollar threshold.

Several states have created programs that allow state funding to be used to keep youth in community-based programs, rather than funding incarceration at a state facility. Under Ohio's Reasoned and Equitable Community

15 Texas Youth Comm'n, *Profile of Commitments*, *available at* http://www.tyc.state.tx.us/research/profile.html.

and Local Alternative to Incarceration of Minors (RECLAIM) funding system, juvenile judges can use the same pool of funds allocated to committing non-violent youth to state lockups for community-based options. The RECLAIM model does not cover youth convicted of the most serious violent offenses. In Ohio, this remittal of funding to counties reduced commitments to state lockups by 36 percent and cut recidivism from 54 to 22 percent.

Ohio's success with pooling funds is not unique. A similar pilot program in Illinois called REDEPLOY reduced the number of juveniles sent to state lockups by 44 percent and saved the state $11 million over two years. Putting these programs into place in Texas would not only save money, it would divert more youth away from TYC and into community-based alternatives with a track record of higher rehabilitation rates.

Similar solutions are being explored in Texas. The Sunset Commission report on TYC and TJPC proposed a pilot program that would allow county probation departments to keep some of the funds that now pay for TYC incarcerations. The Legislature responded by appropriating $24 million per year for TJPC's biennium budget to be used for "Community Corrections Diversion Programs." Though the Legislature did not specify how this money must be used, it is anticipated that the money will be allocated to programs aimed at keeping youth in their home communities rather than incarcerating them in a TYC facility.

Even without state funding, counties may find that initiating evidence-based programs that significantly reduce recidivism rates are a cost-effective alternative to sending youth to TYC. Programs that keep youth from repeatedly cycling through county juvenile justice systems, result in cost savings to law enforcement, juvenile probation, and courts.

Promote Agency Sharing of Information

In Franklin County, Ohio, a study found that 21 percent of youth on probation were also in the child protective services system.[16] A similar overlap is likely in Texas. A single Texas household might work with different caseworkers to address one or more of the following: adult probation, adult parole, juvenile probation, juvenile parole, Department of Family and Protective Services/CPS, and Department of State Health Services/ Mental Health & Mental Retardation (MHMR). School personnel, particularly psychologists, counselors and nurses, also play a critical role. Yet, juvenile probation officers often are unaware of CPS issues and unable to obtain a student's educational records to monitor behavior, attendance and academic performance. Greater coordination among the various agencies and caseworkers is needed to better address the family issues that often contribute to juvenile delinquency, and to maximize the use of supervision and treatment resources.

Increased Use of Police Diversion

Even though Section 52.03 of the Family Code requires juvenile boards to establish guidelines for police diversion agreements to resolve minor issues (such as graffiti cases and theft incidents from a locker at school), some county juvenile boards, including Harris County, have not done so. An Urban Institute study of a youth police diversion program in Howard County, Maryland, documented a six-month recidivism rate of only 4 percent.[17] The program targeted first-time minor property offenders, requiring them to make restitution, perform community service, write essays, and send an apology letter to the victim. A similar program in Dallas follows the Maryland model, assigning a peace officer to determine whether the case falls within the

16 G. Halemba et al., *Effectively intervening with dual jurisdiction youth in Ohio. Children, Family, and the Courts: Ohio Bulletin*, 2, 1-21, National Center for Juvenile Justice, Summer-Fall 2005, *available at* http://www.sconet.state.oh.us/Judicial_and_Court_Services/family_court/summer_fall_2005.pdf.

17 J. Butts et al., *The Impact of Teen Court on Young Offenders*, The Urban Institute, April 2002, *available at* http://www.urban.org/UploadedPDF/410457.pdf.

guidelines for diversion and, if so, to exercise his or her discretion to handle the case in this manner. A police social worker follows up to ensure compliance. Law enforcement and juvenile probation also frequently refer the diverted juvenile offender to counseling and treatment, either for mental health or substance abuse issues.

Youth police diversion offers clear efficiency advantages and allow courts, prosecutors and juvenile probation departments to focus their resources on repeat and more serious offenders.

Children's Crisis Intervention Training—San Antonio

Twenty-three school police officers from greater San Antonio are the first in Texas to complete a new, specialized training program in how to intervene and safely resolve a disturbance at school involving children with mental health issues.

The new program involves 40 hours of intensive training, including simulations in which officers role-play handling mental health and behavioral crisis situations on a school campus. **Children's Crisis Intervention Training (CCIT)** is the result of the joint pro bono efforts of participating community service providers, coordinated by the Center for Health Care Services through the Bexar County Judges' Children's Diversion Initiative. Trainers include both police officers and mental health professionals from more than a dozen partner agencies.

An estimated 70 percent of children brought or referred to juvenile detention are there as a result of behavioral incidents at school reported to authorities by school district police officers or school administrators. Admissions into juvenile detention Monday through Friday are double those on the weekend. Untreated mental health problems result in many of the behavioral problems that come to the attention of school police and school disciplinarians. Studies consistently have found that the rate of mental disorders in the juvenile justice system exceeds that of youth in the general population. The typical pattern for students who have a mental illness and are arrested at school is that they are sent to detention, released and then start the cycle again with a subsequent arrest. The focus of CCIT is to break the cycle, diverting juveniles who need it into mental health treatment instead of referring them to the justice system.

Officers trained through CCIT are taught to recognize behaviors that indicate mental illnesses and substance abuse. CCIT trains officers in active listening skills and other techniques to de-escalate volatile situations and to avoid risking injury to the child or the officer. Officers also learn about legal issues, as well as community resources where students and their families can find help in meeting mental health needs. Communities across the nation can use this model to reduce the number of children and youth entering the juvenile justice system.

Diversion programs would be particularly useful for school police officers, as they are ideally situated to work with parents, school administrators, the offender and the victim to reach a successful resolution of minor incidents within the confines of the school and avoid getting the court involved. Judges can assist by encouraging the juvenile board in their county to follow state law by putting police diversion guidelines in place.

Expand Juvenile Mental Health & Drug Courts

During the last three legislative sessions, the Texas legislature has supported diversion courts for adults and juveniles who have a mental health or substance abuse issue. In 2003, the Texas Legislature voted to allow counties to set up mental health courts to divert mentally ill misdemeanants (HB 2609), and this

authority was extended in 2005 to cover felons (HB 2518). The 80th Legislature expanded drug courts to additional counties in 2007 (HB 530). Both types of diversion courts focus on treatment, counseling and judge-monitored supervision. Moreover, in most of these courts, an offender who successfully completes the rigorous required regimen does not receive a conviction. As a result, offenders do not face collateral consequences, such as denial of employment, occupational licenses, and housing.

Aggressive Assessment and Mental Health Court—Travis County

The Travis County Juvenile Probation Department (TCJPD) uses a formal assessment and screening process during intake to identify youth with mental health and/or substance abuse disorders. This makes it possible to incorporate treatment into the conditions of probation, increasing the likelihood that probation can be completed successfully.

TCJPD implements a continuum of treatment alternatives—employing two doctorate-level psychologists, therapists, licensed chemical dependency counselors, and a psychiatrist. To ensure access to individual and family therapy, TCJPD contracts with providers such as MHMR, Austin Child Guidance Center, and Providence.

Travis County also operates a pre-adjudication Juvenile Mental Health Court funded by a grant from the Bureau of Justice Assistance. The judge, prosecutor, defense attorney, probation officer, and others operate as a team to address the treatment needs of juveniles. Their goal is to divert young people from future involvement in the justice system by providing intensive treatment and supervision, often allowing them to remain in the community instead of going to a residential placement.

Nationwide, there are more that 175 mental health courts.[18] While data is still being gathered, early evidence indicates they are effective. In a study of the mental health court in San Francisco, for example, researchers found that at 18 months, mental health court participants were 26 percent less likely to be charged with any new crime and 54 percent less likely to be charged with a violent crime.[19]

Although most of the approximately 50 drug courts in Texas are for adults, some Texas counties, including Bexar, Dallas, McLennan, Travis and Tarrant have established juvenile drug courts. In the Tarrant County Juvenile Drug Court, 83 percent of young offenders successfully complete the program, and 98 percent of them have no future court referrals resulting in adjudication or commitment to TYC.[20] Travis County recently created a juvenile mental health court, and Bexar County is in the process of creating a juvenile mental health court for girls.

Juvenile Victim-Offender Mediation Programs

There is strong evidence that victim-offender mediation programs should be used more widely. An analysis of 27 victim-offender mediation programs in North America found that 72 percent of them lowered recidivism.[21]

18 M. Thompson et al., *Improving Responses to People With Mental Illnesses: The Essential Elements of a Mental Health Court*, Council of State Governments Justice Center, December 2007, *available at* http://consensusproject.org/mhcp/essential.elements.pdf.

19 Aaron Levin, *Mental Health Courts: A Strategy That Works*, 42 Psychiatry News 2007 6-22, *available at* http://pn.psychiatryonline.org/cgi/content/full/42/18/6.

20 Tarrant County Juvenile Services, http://www.tarrantcounty.com/ejuvenile/cwp/view.asp?A=737&Q=427682.

21 J. Latimer et al., *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 Prison Journal 127-44 (2005).

A national study of juvenile pretrial victim-offender mediation found a 32 percent reduction in recidivism.[22] This is attributable to mediation's success in helping juvenile offenders understand the actual impact of their crime on another person, as opposed to merely viewing it as a violation of a government statute.

Travis County has pioneered a promising practice in its juvenile victim-offender mediation program. Because some young offenders are unable to pay the restitution they owe, Travis County Juvenile Probation has instituted a "Pot of Gold" program. This refers to a modest sum of money that is set aside for compensating the victim and is released to the victim only as the youth performs service restitution commensurate with an hourly rate for this work.

While a youth who has a mental impairment likely will need ongoing services, the completion of a mediated agreement can make the victim whole, allowing juvenile probation to focus on the non-adversarial strategies needed for that young offender to complete probation, maximize mental stability, and achieve educational and employment goals.

Expand Teen and School-Based Courts

There are approximately 100 teen courts in Texas.[23] Young people volunteer to serve as prosecutors, defense lawyers, and jurors in minor juvenile misdemeanor cases. The teen jurors hand down a sentence that, if complied with, results in the defendant being diverted from the traditional justice system. Teen courts cannot impose incarceration, probation or fines, but they can and do impose sanctions such as community service and restitution. Positive peer reinforcement is a powerful tool to prevent recidivism.

According to Jo Ann Wilder with the Texas Teen Court Association, teen courts are usually funded by cities through the municipal court budget or are set up as a non-profit organization that can be funded with private donations. Several teen courts in the state have ceased to operate due to a lack of funds, yet teen courts only cost on average about $33,000 a year to operate, or about half the annual cost of incarcerating one juvenile in TYC.[24]

School-based teen courts could address minor offenses committed in school without the need to refer the matter to law enforcement and the juvenile justice system. This would particularly benefit special education students, who are overrepresented in discretionary disciplinary actions in many Texas school districts.

Conclusion

For most Texas young offenders, informal diversion or juvenile probation is already working, yet there is still a great need to redirect resources to front end programs. Unfortunately, the bulk of our resources target the back end of the justice system, providing little incentive for innovations that can successfully resolve an even greater share of juvenile cases at the earliest and least expensive point in the process and can reduce recidivism. Redirecting efforts to the front end of the juvenile justice system could do more to dismantle the "school-to-prison pipeline" in Texas.

Marc Levin
Director, Center for Effective Justice
Texas Public Policy Foundation

**Break-out boxes discussing Texas practices authored by Texas Appleseed.*

22 W. Nugent et al., *Participation in Victim-Offender Mediation Reduces Recidivism*, VOMA Connections 5(3), Summer 1999, *available at* http://www.voma.org/docs/connect3.pdf.

23 Teen Court Association of Texas, *Fact Sheet*, *available at* http://www.texasteencourt.com/facts.aspx.

24 http://www.ncjrs.gov/pdffiles1/ojjdp/183472.pdf

Mental Health Disorders Commonly Seen in the Juvenile Justice System

Attention Deficit/Hyperactivity Disorder (ADHD)—ADHD is characterized by:[1]

- Inattention (difficulty organizing tasks or activities; does not seem to listen when spoken to; fails to follow through on instructions; has difficulty sustaining attention in tasks, play or when spoken to; avoids or dislikes tasks that require sustained mental effort; often loses things necessary for tasks and activities; is easily distracted, forgetful);
- Hyperactivity (fidgety, runs or climbs excessively in inappropriate situations, talks excessively); and
- Impulsivity (blurts out answers before questions have been completed, has difficulty taking turns, interrupts or intrudes on others).

Bipolar Disorder—The increased use of this diagnosis for young children is very controversial.[2] While intense mood swings can be common during teenage years, the symptoms of bipolar disorder are serious, persistent and often disabling. These symptoms include:[3]

- Manic episodes lasting for a week or more (may be more talkative or speak more rapidly than usual (with abrupt changes in topic), increase in activity or physical agitation, grandiose thinking or inflated self esteem, racing thoughts, and a decreased need for sleep. However, children and youth with bipolar disorder are less likely than adults to present with mania. They do exhibit mood swings, irritability and impulsivity, but may not exhibit euphoria and grandiosity; and
- A depressive episode that follows a manic period, though for some young people, a significant amount of time may lapse between episodes of mania and depression.[4]

Conduct Disorder—One of the most commonly diagnosed mental health disorders among youth involved in the juvenile justice system.[5] Use of this label has long-term consequences for youth, since it is not easily removed and there are no specific treatments to address this condition. Mental health practitioners suggest that because this label is so stigmatizing, it should only be used when a youth's symptoms cannot be explained by other factors or mental illnesses.[6] While many teenagers experiment with destructive behaviors, a young

1 Dr. Lisa Boesky, *Mentally Ill Youths and the Juvenile Justice System*, National Council of Family and Juvenile Court Judges (2003), *available at* http://www.ncjfcj.org/content/view/617/347/; Dr. Susan A. Stone, *Effectively Representing the Special Education Student: Diagnostic and Pharmacologic Issues*, presented at Texas Bar CLE: 4th Annual Special Education Issues and the Juvenile Justice System in Texas, June 13, 2008.

2 *See* Benedict Carey, *More Children Being Treated for Bipolar Disorder*, N.Y. Times (September 3, 2008)(bipolar disorder diagnosis in children increased 40-fold between 1994 and 2003).

3 Dr. Lisa Boesky, *supra* note 1, at 3.

4 Dr. Susan A. Stone, *supra* note 1, at 2.

5 Dr. Lisa Boesky, *supra* note 1, at 2.

6 Dr. Susan A. Stone, *supra* note 1, at 3.

person with Conduct Disorder tends to engage in these behaviors on a repetitive basis—and their negative or problematic behavior is more intense, frequent and chronic. Some symptoms include[7]:

- Aggression directed at people and/or animals;
- Deliberate destruction of property;
- Engaging in theft or deceitfulness; and
- Violating important rules.

Major Depression—A life-threatening disease that impacts up to 2.5 percent of children and 8.3 percent of adolescents.[8] Young people who have major depression may have symptoms that differ from those generally associated with depression.[9] For this reason, it can be challenging to recognize and diagnose major depression in adolescents.[10] Symptoms in youth may include:

- Extreme irritability or oppositional behavior (youth may appear agitated, angry and aggressive);
- Poor appetite or overeating;
- Insomnia or hypersomnia;
- Low energy or fatigue;
- Low self-esteem;
- Poor concentration or difficulty making decisions; and
- Feelings of hopelessness.

Post-traumatic Stress Disorder (PTSD)—PTSD is an anxiety disorder that is very common among youth involved in the juvenile justice system, because many have been exposed to traumatic events during childhood.[11] This disorder is characterized by:[12]

- Exposure to a traumatic event involving actual or threat of death or serious injury, triggering ongoing feelings of fear, hopelessness or horror (in children, may be expressed by disorganized or agitated behavior, triggered by sexual or physical abuse, and/or misdiagnosed as suicidal behavior;
- Persistent re-experiencing of the event—repetitive play in which themes or aspects of the trauma are expressed, recurrent distressing dreams of the event, and/or trauma-specific reenactment);
- Avoidance of stimuli associated with the trauma and numbing of general responsiveness (markedly diminished interest or participation in significant activities, feelings of detachment or estrangement from others, inability to have certain feelings or emotions, sense of a foreshortened future);
- Persistent feelings of increased arousal (difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, hypervigilance, exaggerated startle response);

7 Dr. Lisa Boesky, *supra* note 1; Dr. Susan Stone, *supra* note 1; Texas Appleseed, Juvenile Practice is not Child's Play 14 (2005).

8 Dr. Susan A. Stone, *supra* note 1, at 2.

9 Dr. Lisa Boesky, *supra* note 1, at 3; Dr. Susan Stone, *supra* note 1, at 2.

10 Dr. Lisa Boesky, *supra* note 1, at 3; Dr. Susan Stone, *supra* note 1, at 2.

11 Dr. Lisa Boesky, *supra* note 1, at 3.

12 Texas Appleseed, *supra* note 7, at 14.

- Anxiety manifested in physical symptoms or behaviors (stomachaches, headaches and vague muscle or joint pain; self-injury or self-mutilation (cutting, carving, or burning one's own body); and
- Duration of symptoms is more than one month.

Psychotic Disorders—Psychosis is not, in and of itself, a psychiatric diagnosis; instead, it is a term used to describe a cluster of symptoms that can be associated with a number of different mental health disorders.[13] Youth who have schizophrenia typically experience psychosis, but psychosis also can be a symptom of major depression or bipolar disorder.[14] Symptoms can include:[15]

- Hallucinations (hearing or seeing things that are not real);
- Delusions (personal beliefs that the individual rigidly holds despite obvious proof that the belief is false or irrational); and
- Disorganized thinking and speech (may speak in sentences that do not make sense or are only loosely related, may use words that do not make sense, may parrot back what others have said, not answer questions at all, or take a very long time to answer).

13 Dr. Lisa Boesky, *supra* note 1, at 4; Dr. Susan Stone, *supra* note 1, at 2.

14 Dr. Lisa Boesky, *supra* note 1, at 4; Dr. Susan Stone, *supra* note 1, at 2.

15 Dr. Lisa Boesky, *supra* note 1, at 4; Dr. Susan Stone, *supra* note 1, at 2.

Resources

Federal Agencies

Center for Mental Health Services

http://mentalhealth.samhsa.gov/cmhs/

The Center for Mental Health Services (CMHS) pursues its mission by helping States improve and increase the quality and range of treatment, rehabilitation, and support services for people with mental health problems, their families, and communities. Their programs include projects focused on children and adolescents.

Office of Juvenile Justice and Delinquency Prevention

http://ojjdp.ncjrs.org/

The Office of Juvenile Justice and Delinquency (OJJDP) Prevention is a subsection of the Department of Justice. This office publishes resources focused on best practices for juvenile justice programs, including those for youth with mental impairments.

National Organizations

Bazelon Center for Mental Health Law

http://www.bazelon.org/

The mission of the Judge David L. Bazelon Center for Mental Health Law is to protect and advance the rights of adults and children who have mental disabilities. The Bazelon Center publishes resources on juvenile justice, mental health and the law.

Center for the Promotion of Mental Health in Juvenile Justice

http://www.promotementalhealth.org/

The Center for the Promotion of Mental Health in Juvenile Justice provides expert guidance to juvenile justice settings regarding best practices for mental health assessment and referral.

National Center for Mental Health and Juvenile Justice

http://www.ncmhjj.com/

The National Center for Mental Health and Juvenile Justice assists in developing improved policies and programs for youth with mental health disorders in contact with the juvenile justice system, based on the best available research and practice.

National Center on Education, Disability, and Juvenile Justice

http://www.edjj.org/

The National Center on Education, Disability, and Juvenile Justice provides professional development and technical assistance, conducts research and disseminates resources in three areas: prevention of school failure and delinquency, education and special education for detained and committed youth, and transition services for youth after incarceration.

Advocacy, Inc.

http://www.advocacyinc.org/index.cfm

Advocacy, Inc. advocates on behalf of Texans with disabilities. They provide education and outreach to the community, and in some cases can provide representation to persons who have a disability in civil court proceedings.

The Arc of Texas

http://www.thearcoftexas.org/

The Arc engages in advocacy, education and outreach around issues related to intellectual and developmental disabilities.

Hogg Foundation for Mental Health

http://www.hogg.utexas.edu/

The Hogg Foundation promotes effective mental health services, research, policies and education. The Foundation's program includes a focus on juvenile justice-involved youth.

Texas Criminal Justice Coalition

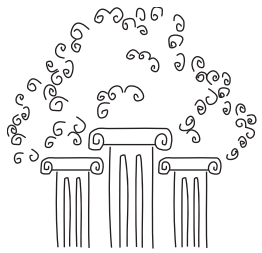
http://www.criminaljusticecoalition.org/

Through its Juvenile Justice Initiative, this Coalition advocates for juvenile justice policy solutions that maximize opportunities for troubled youth to become productive, law-abiding adults. Through educational outreach, it promotes reallocation of juvenile justice funding toward community-based alternatives to incarceration, treatment for substance abuse and mental health problems, juvenile drug courts, and restorative justice practices.

Texas Public Policy Foundation – Center for Effective Justice

http://www.texaspolicy.com/

Texas Public Policy Foundation's Center for Effective Justice promotes academically sound research and data on criminal and juvenile justice issues, and recommends their findings to opinion leaders, policymakers, the media and general public. Their focus includes research and recommendations around juvenile justice-involved youth with mental health issues.



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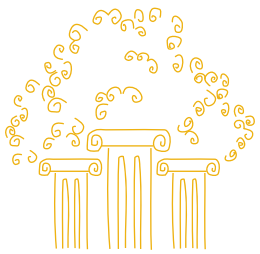

Texas
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WWW.TEXASAPPLESEED.NET

1609 Shoal Creek
Suite 201
Austin, TX 78701

512-473-2800