



Juveniles in the Adult Criminal Justice System in Texas

by Michele Deitch

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Juveniles in the Adult Criminal Justice System in Texas

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EXECUTIVE SUMMARY

Purpose of report

Texas law permits juveniles 14 and older who have committed felony offenses to be transferred by a juvenile judge to adult criminal court for trial and punishment. The process is known as “certification.” While awaiting trial these youth are confined in adult jails, often for periods of a year or more in isolation conditions. If convicted, they will serve their time in adult prisons.

The law also permits serious and violent juvenile offenders to be retained in juvenile court and to be given a determinate sentence with a placement in the Texas Youth Commission. Depending on the offense, juvenile judges can impose sentences of up to 40 years. The sentence begins in the Texas Youth Commission where the juvenile can participate in highly effective rehabilitative programming, and at age 19 the juvenile judge re-evaluates the youth to determine if a transfer to the adult prison system to complete the sentence is warranted.

The common assumption is that certified juveniles are the “worst of the worst,” repeat, violent offenders who are beyond the rehabilitation offered by the juvenile justice system. But is this assumption in fact true? This report examines all available Texas data with respect to certified juveniles and compares them to the population of juveniles who receive determinate sentences and are placed in TYC. It also compares the significant differences in programming and services for the two populations of juvenile offenders.

The need for this information about serious juvenile offenders is especially important during the restructuring of the Texas juvenile justice system currently underway in the Texas Legislature.

Major Findings

(1) Minimal differences exist between certified juveniles in the adult criminal justice system and determinate sentence juveniles in TYC, except for county of conviction.

The data reveals little to distinguish the two groups of offenders. Youth who are transferred to adult court and those retained in the juvenile system look substantially similar with respect to most demographic factors, criminal offense, prior criminal history, and sentence length. Most significantly, the juveniles present similar levels of criminality in terms of both their current offense and their criminal history. The majority in each group has committed violent offenses, with the crimes of aggravated robbery and sexual assault accounting for well over half the current offenses in each population. As for their criminal backgrounds, the majority in each population has either one or no prior referral to juvenile court. Even in cases where the juvenile has three or four prior referrals, very few of those prior referrals involved violent offenses.

Sentences lengths are also remarkably similar, with youth in both populations most often receiving sentences between 4 and 10 years. Only a handful of juveniles certified as adults in recent years received sentences longer than the 40 years available for determinate sentence youth.

The one significant difference between the two populations is the county of conviction. More than twice as many certification cases have arisen in Harris County over a four-year period than in any other county, and Harris County in fact certified more juveniles than the next six counties combined. Also, six counties, including Harris, Jefferson, Hidalgo, Nueces, Lubbock, and Potter, appear to disproportionately use the option of certifying youth rather than giving determinate sentences. In contrast, two of the largest counties in the state, Travis and El Paso, have extremely low certification rates. This data suggests that county of conviction plays a very large role in determining whether a juvenile offender will receive a determinate sentence in juvenile court or whether that youth will be tried as an adult.

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(2) Certified juveniles do not represent the “worst of the worst.”

The data dispels prevailing assumptions that juveniles transferred to adult court are more violent and more persistent in their criminal behavior than those retained in juvenile court. Indeed, the two groups look remarkably similar, as discussed above. Moreover, the data revealed the following:

- While the large majority of certified juveniles have committed violent offenses, **only 17% have committed homicide.**
- **About 15% of juveniles transferred to adult court are charged with non-violent felonies, including state jail offenses.**
- **72% of certified juveniles do not have a prior violent criminal history,**
- **29% of certified juveniles are first-time offenders.**
- **89% of certified juveniles have never been committed to TYC,** suggesting that few of them have a serious history of delinquency of any kind.
- **Significantly more juveniles are transferred to adult criminal court than receive determinate sentences with placement in TYC.** In 2010, for example, there were 229 certifications to adult criminal court and only 108 determinate sentences with TYC placement.

Oddly, under Texas law the certification option is not limited to worst-case scenarios, since many non-violent felonies qualify a juvenile for transfer to adult criminal court. In contrast, the determinate sentencing option is limited to the 30 most serious offenses.

(3) Most certified youth have never had the opportunity to benefit from effective rehabilitative programs in the juvenile justice system.

Nine out of ten youth transferred to adult criminal court have had no prior commitments to TYC, completely bypassing the most serious option the juvenile system has to offer. And 44% have had either no prior involvement with the local juvenile justice system or only one prior referral. In certifying them as adults, the justice system prematurely concluded that “nothing works” with these juveniles, when the reality in a great many cases is that “nothing has been tried,” either through programs available at the local juvenile probation level or through rehabilitative programs available at TYC.

The Capital and Serious Violent Offenders Program at the Giddings facility in TYC is nationally renowned for working with juveniles who have committed homicide and other violent crimes. Its success rate is a remarkable 95% when it comes to re-arrests for violent offenses within 3 years. But certified youth cannot participate in this program because it is only available to juveniles who stay in the juvenile system.

(4) Adult prisons and jails are a poor fit for juveniles under age 17, regardless of their offense or the court in which they are prosecuted, and cannot meet their specialized needs.

Housing juveniles in adult prisons and jails compromises both public safety and the personal safety of the youth. A Task Force of the Centers for Disease Control, reviewing all available scientific research, concluded that the transfer of youth to the adult system not only has no deterrent value but typically increases rather than decreases their rates of violence and recidivism. One nationally-reported study found that transferred juveniles who served at least a year in prison had a 100% greater risk of violent recidivism.

Moreover, juveniles housed in adult prisons and jails face vastly higher risks of suicide, sexual assault, physical assault, and mental illness.

Executive Summary

To a large degree, these poorer outcomes occur because juveniles in adult prisons and jails usually do not have access to effective therapeutic interventions, education programs, staff with specialized training, and services designed to meet their unique and age-appropriate needs. Even more disturbing, many are co-mingled with adults, placing them at physical risk, or are placed in isolation for long periods of time. Research has shown that even after very short periods of segregation, juveniles can experience symptoms of paranoia, anxiety, and depression.

Though many states have addressed this concern by allowing transferred juveniles to be housed in juvenile facilities both pre-trial and post-conviction, Texas is not among them. In Texas, juveniles transferred to adult criminal court await trial in adult county jails, and those convicted are sent to adult prison, as young as age 14. Most county jails have no option for these juveniles but to house them in isolation for their own safety.

As for convicted juveniles, though TDCJ has established a Youthful Offender Program for offenders age 17 and under to keep these juveniles separate from adults and provide them with some limited programming, the YOP holds only 68% of the age-eligible population. The remainder of the 17-and-under population in TDCJ is held in state jails, transfer facilities, administrative segregation, or medical or mental health facilities. In all those other prison settings, the youth lack specialized programming and may be mixed in with the adult offender population. Juveniles in state jails can remain in that setting for up to two years with no specialized housing or services; those in warehouse-like transfer facilities can remain in that setting for a month or more; and those in administrative segregation can remain in that status indefinitely.

While youth in the prison system's Youthful Offender Program have access to some therapeutic programming, the curriculum has been severely compressed over the last few years. Vocational training and recreational opportunities are inadequate, according to TDCJ's internal reports. Only 38% of juveniles in TDCJ are enrolled in educational classes, compared to 96% of juveniles in TYC. And there are so few females in the YOP that opportunities for this population are especially lacking.

TDCJ has clearly made an effort to offer special protections for this juvenile population, but any services provided are at best an overlay to the agency's primary security mission. Juvenile facilities, in contrast, offer specialized and intensive therapeutic programming with impressive results, an education-focused curriculum, and a staff trained to work exclusively with this population of juvenile offenders.

Recognizing that juveniles have distinct physical, emotional, social, and safety needs from adult prisoners, all of the leading professional associations in the field, including the American Bar Association, the American Correctional Association, and the National Commission on Correctional Health Care, have adopted guidelines calling for juveniles transferred to adult courts to be housed in different settings than adult prisoners.

More than 16 states of the 35 for which information was available hold certified youth in juvenile facilities rather than in adult prisons until at least age 18. Six states hold them until age 21 or longer. And a significant number of states have policies either mandating or allowing certified youth to be held in local juvenile detention facilities rather than adult jails while they are awaiting trial. Virginia and Pennsylvania passed such laws in 2010, and Virginia's Legislature passed this bill unanimously.

Policy Recommendations

This report clearly indicates that the certification process in Texas is not working in conjunction with the determinate sentencing process as was intended to limit transfer to adult criminal court to the most heinous crimes and circumstances in which the juvenile has exhausted available options in the juvenile system. The report also highlights the important benefits that come from keeping these youth in the juvenile justice system and in juvenile facilities where they can get access to age-appropriate services and rehabilitative programs. The determinate sentencing system provides juvenile judges with tremendous flexibility in ensuring that offenders are held accountable for their crimes, that public safety is protected, and that youth have the opportunity to become rehabilitated and turn their lives around.

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As legislators continue to evaluate major structural changes for the Texas juvenile justice system, the following recommendations should be taken into account in order to better serve the needs of serious juvenile offenders in Texas and to protect public safety through improved outcomes.

- (1) Limit eligibility for certification of a juvenile as an adult to the most serious, violent offenses, in order to restore certification to its place as a strategy for dealing with the worst juvenile offenders.
- (2) No juvenile should be eligible for transfer to adult court unless that juvenile has previously been committed to TYC (or its successor agency).
- (3) Require all certified juveniles age 14 – 17 convicted in adult court to be confined in TYC (or its successor agency) until age 19, alongside determinate sentence juveniles, when they could be transferred to TDCJ to complete their sentence.
- (4) Juveniles age 14 – 17 who are certified as adults and awaiting trial in adult court should be confined in local juvenile detention facilities rather than in adult jails.
- (5) TDCJ should adopt policies mandating streamlined transfer of certified youth to the Youthful Offender Program upon conviction, thereby bypassing warehouse-like transfer facilities where they are housed with adult offenders.
- (6) Juvenile court judges should be allowed to order a 19-year old determinate sentence youth to complete rehabilitative programming in TYC (or its successor agency), in order to better protect public safety and to avoid unnecessary transfers to TDCJ.
- (7) Improve data collection for juveniles who are certified as adults.

I. INTRODUCTION

A. Purpose of Report

Most people would naturally assume that juveniles who commit criminal offenses—even very serious offenses—are handled through the state’s juvenile justice system. But Texas, like most states, has a process by which juveniles can be transferred from juvenile court to adult criminal court. The process and the circumstances under which such transfer can occur varies from state to state, as does the frequency of such transfer. In Texas, that process is known as “certification,” and juvenile court judges have the option of sending children as young as age 14 to the adult criminal justice system. A substantial number of juveniles each year fall into this uncharted space where the juvenile and adult criminal justice systems intersect.

There are also common assumptions held about juveniles who are transferred to the adult criminal justice system in Texas. They are often described as the “worst of the worst”: youth who have committed heinous crimes, who have a violent past, and who are beyond the rehabilitation offered by the juvenile justice system. But is this in fact true?

Moreover, little is known about what happens to those juveniles who are tried and convicted as adults in Texas. Few are aware that they are housed in adult county jails while awaiting trial, and that they are sent to adult prison if they are convicted and given a prison sentence.

Recognizing the need to fill these gaps in information and the importance of this public policy issue in Texas, our graduate seminar in “Applied Research in Juvenile and Criminal Justice” at the University of Texas Lyndon B. Johnson School of Public Affairs took on this subject as an intensive research project in the Fall of 2010. The project was managed by Professor Michele Deitch, an expert in both juvenile and criminal justice policy who has written extensively on the topic of juveniles tried as adults. An earlier project she led resulted in the report *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System* (LBJ School of Public Affairs, 2009), which examined these topics from a national perspective.

The current report is intended to paint a fuller picture of juveniles in the adult criminal justice system in Texas. For the first time in well over a decade, we have gathered all available data with respect to this population in order to better understand the process of certification of juveniles as adults, to examine who these youth are and how they compare to juveniles who remain in the juvenile justice system, and to determine what happens to them upon conviction. By discussing the applicable laws and administrative policies and providing this data, we hope to bridge the gap between assumptions that are made about this population and the reality of actual practice. This will allow practitioners, policy-makers, and advocates alike to develop data-informed policies that better protect public safety and that more effectively serve the youth involved.

We seek to answer the following questions:

1. How often are juveniles certified to be tried as adults in Texas?
2. What is the profile of these juveniles certified to be tried as adults, in terms of demographics, criminal offense, and criminal history?
3. What characteristics distinguish certified juveniles from determinate sentenced juveniles who remain in the juvenile system and who are confined in Texas Youth Commission facilities?
4. How do these two populations of juveniles compare with respect to their sentencing outcomes and institutional placements?
5. How do these two populations of juveniles compare with respect to the programs and services they receive after sentencing?

Juveniles in the Adult Criminal Justice System in Texas

The need for this information about serious juvenile offenders is especially important at a time when the juvenile justice system in Texas is undergoing significant restructuring and is subject to intensive legislative oversight.

B. Methodology

To gather our qualitative data and as background for this report, we reviewed relevant literature on juvenile justice, with a particular focus on laws and policies relevant to juveniles tried as adults in Texas. We observed certification hearings in juvenile court, and interviewed juvenile judges, prosecutors, and defense attorneys about their practices with regard to certification cases. We also spoke with officials at the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice. Finally, we toured TYC's Giddings State School, which houses the Capital & Serious Violent Offenders Program, as well as TDCJ's female Youthful Offender Program at the Hilltop Unit.

Through Open Records requests to TJPC, TYC, and TDCJ, we obtained aggregate data about juveniles certified as adults in Texas, about juveniles who receive determinate sentences, and about juveniles incarcerated in TDCJ. We also obtained and reviewed information about the programs and services available to these populations.

C. Structure of the Report

Part II of this report ("Overview") provides some historical background on the issue of juveniles in adult court. This section further summarizes the current laws and policies governing the transfer of juveniles to adult criminal court in Texas, and the relevant sentencing structure. Part II also reviews current national research with regard to this issue, and highlights the major concerns about trying juveniles in adult criminal court and confining them in adult prisons and jails.

The most substantial portion of the report is Part III, the "Findings" section, which presents all of the data we found to answer our research questions.

Part IV is a "Discussion" section that synthesizes our findings and discusses the policy implications of this information.

Finally, Part V presents our Recommendations.

II. OVERVIEW

A. Historical Background

The practice of treating juveniles as adults for criminal justice purposes represents a sharp break with the long-established principles of the juvenile justice system in the United States, and a return to a much-criticized policy that existed in the 1800s. Beginning in 1899, juvenile courts were established to handle cases of juveniles who commit criminal offenses. Prior to this time, all juveniles were prosecuted in adult court. By 1925, 46 states including Texas had created separate juvenile systems that allowed for individualized responses to delinquent behavior, emphasized treatment and rehabilitation above punishment, and barred the confinement of juveniles with adults.¹

After almost a century of preserving the distinction between juvenile and adult offenders, the tide began to shift backwards in the 1980s and 90s, when rising youth crime rates and a media focus on the imagined notion of “juvenile super-predators” took hold.² Most states passed new laws permitting more children to be transferred to adult criminal court, and created more sentencing options for juvenile judges to respond to serious and violent youth crime.³ Though the threat of a wave of serious juvenile crime never materialized,⁴ the policies put in place during this time of fear have lasted to the current day.

As part of this national trend to hold youth accountable for criminal behavior, the laws in Texas pertaining to certification of juveniles as adults changed during this time frame. The original certification law was enacted in 1973 and permitted juveniles between the ages of 15 and 17 who are charged with felonies to be transferred to adult criminal court.⁵ But in 1996, legislators lowered the minimum age for certification from 15 to 14 years of age for certain crimes.⁶

Also, Texas passed a strong determinate sentencing law in 1987.⁷ Under this blended sentencing option, a juvenile as young as age 10 adjudicated for certain serious offenses can be committed to the Texas Youth Commission until he becomes an adult and can then be transferred to the adult prison system—the Texas Department of Criminal Justice—to complete the sentence. Depending on the offense, a juvenile judge can impose a sentence of up to 40 years. This law greatly expanded the court’s authority to deal with serious juvenile offenders, since the state’s indeterminate sentencing law for juveniles in general would not allow them to be confined beyond their 21st birthdays. In 1995, the Legislature expanded the determinate sentencing statute to cover a far greater range of offenses—from the 5 original serious offenses to about 30, including some 2nd and 3rd degree felonies, some felony drug offenses, and habitual felony conduct.⁸ Determinate sentencing provided juvenile judges with a very tough sentencing option that nevertheless recognized the potential of juveniles to benefit from rehabilitative programs.

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1. Michele Deitch, et.al., *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System*, Special Project Report.(Austin: The University of Texas at Austin, Lyndon B. Johnson School of Public Affairs, 2009) p. 6.
 2. Deitch, p. 7.
 3. Ibid.
 4. Shay Bilchik, “Challenging the Myths,” 1999 National Report Series, Juvenile Justice Bulletin, United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, February 2000, p. 2.
 5. Acts 1973, 63rd Tex. Leg., Ch. 544, Sec. 1.
 6. Acts 1995, 74th Tex. Leg., Ch. 262, Sec. 34.
 7. “The Texas Juvenile Justice System,” Texas Juvenile Probation Commission, accessed March 7, 2011, www.tjpc.state.tx.us/aboutus/juv_justice_overview.htm.
 8. Robert Dawson, *Texas Juvenile Law*, 7th Edition (Austin: Texas Juvenile Probation Commission, August 2008), p. 509.

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Because these changes to the law were enacted during a time of fear when the entire foundation of the juvenile justice system was being challenged, lawmakers never considered the ways in which the certification statute and the determinate sentencing law overlay each other. But with the passage of time, we can see the ways in which these statutes have played out and the degree to which there is some irrationality and inconsistency in the structure and application of these laws. The current re-evaluation of the structure of the Texas juvenile justice system provides an ideal time to ask whether there is a better way to handle our state's serious and violent juvenile offenders than our current approach.

B. Sentencing and Transfer Options for Serious Juvenile Offenders Under Texas Law

Texas law pertaining to determinate sentencing and certification is complex, and warrants a fuller explanation. Juvenile judges have three options for handling juveniles who commit serious crimes.

First, most juvenile offenders in Texas are handled under the state's delinquency laws, which provide for indeterminate sentences that can last up until the juvenile turns age 19.⁹ Juveniles adjudicated as delinquents may be placed on probation or they may be sent to the Texas Youth Commission (TYC). Any offense, including serious and violent felonies, may be handled as a delinquency case.¹⁰

Second, Texas law provides a determinate sentencing statute that allows for significantly longer sentences than are allowed under the delinquency laws.¹¹ Determinate sentencing allows a youth to stay in the juvenile justice system for purposes of trial and initial confinement, but also provides the juvenile judge with a vehicle for imposing a long sentence on a serious juvenile offender that might require his or her eventual transfer to the adult prison system. Determinate sentencing, under some circumstances, also provides juvenile judges with the opportunity to take a "second look" at the youth when he or she reaches adult age, so that the judge can re-evaluate the youth's risk to public safety at that point.¹²

There are two types of determinate sentences: determinate sentences with a placement in the Texas Youth Commission (TYC), and determinate sentence probation. Youth who are in the determinate sentence probation population are ordered by the juvenile judge to be on probation for a term of up to 10 years, which may extend beyond the time that they reach adulthood.¹³ They are initially retained at the county level for supervision by the local juvenile probation department, including the possibility of placement in a county's post-adjudication facility. When the youth turns 18 and ages out of the juvenile court's jurisdiction, the probation automatically expires, unless the local prosecutor requests a transfer hearing. In such an event, the youth goes back before the juvenile judge who decides whether to transfer the youth to the custody of an adult criminal court. If transferred, the county's adult probation department (the CSCD) would supervise the youth for the remainder of the term of probation.

Determinate sentences with a placement in TYC are of more direct relevance for this report since they provide a comparison population for those youth who are transferred to the adult criminal justice system. Juveniles who receive this kind of determinate sentence are committed to TYC with a possible transfer to the Texas Department of Criminal Justice (TDCJ).¹⁴ The juvenile judge imposes a sentence of a set number of years, which may extend past the age of adulthood. The maximum length of a determinate sentence is

9. Texas Family Code, Title 3: Juvenile Justice Code, §54.04(d)(2).

10. Ibid.

11. Texas Family Code §54.04(d)(3).

12. Texas Family Code §54.11.

13. Texas Family Code §54.04(q).

14. Texas Family Code §54.04(d)(3).

Overview

40 years for a capital felony, 1st degree felony, or an aggravated controlled substance felony; 20 years for a 2nd degree felony; and 10 years for a 3rd degree felony.¹⁵ The sentence begins in TYC, where the juvenile participates in the entire range of programming available, including rehabilitative programs and education. No later than just before the youth turns 19, if the youth has completed his or her minimum required length of stay in TYC, the agency can decide to parole the youth. But if the youth has either not completed the minimum length of stay or done poorly in the program, TYC seeks a ruling from the juvenile court judge.¹⁶ The juvenile judge must hold a hearing to evaluate whether the youth should be transferred to adult prison to complete the sentence or whether the youth can be safely released on parole without putting public safety at risk.¹⁷

A determinate sentence youth in TYC who consistently refuses to participate in programming or whose misbehavior present a safety risk to staff or other juveniles in the facility can be referred to the court for a decision about early transfer to TDCJ.¹⁸ Thus, TYC has leverage over these youth to encourage them to take full advantage of TYC's programs and services. Indeed, TYC can offer these determinate sentence juveniles both a "carrot" and a "stick," since meaningful participation in programs can result in either parole or a recommendation for release without transfer to adult prison whereas refusal to work the program can result in an early transfer to TDCJ.

Because determinate sentencing involves potentially long sentences with ultimate incarceration in prison, it is a sanction available only for the most serious offenses. Lawmakers have identified roughly 30 offenses in the Penal Code that qualify for determinate sentencing, including all of the most violent crimes.¹⁹ The category of offenses eligible for determinate sentencing is much more restrictive than the list qualifying for certification of a juvenile as an adult. A prosecutor must petition the court to try a case as a determinate sentencing matter. The juvenile judge can impose this determinate sentencing sanction on any youth within the court's jurisdiction who is charged with one of those designated offenses, from age 10 up until age 17 (the maximum age can be extended to 18 under certain circumstances).²⁰

Finally, there is the last option a juvenile judge has for handling these cases: a juvenile judge may waive jurisdiction and transfer a youth to adult criminal court through a process known as certification.²¹ A child who was at least 14 years old at the time an offense was alleged to have been committed may be certified for a capital felony, 1st degree felony, or an aggravated controlled substance felony.²² A 15-, 16-, or 17-year old may be certified for a second degree felony, third degree felony, or a state jail felony.²³

The same statute also allows the court to transfer the case of an individual charged with specified felony offenses committed between the ages of 10 and 17 if that person is now 18 or older and there were valid reasons why the case could not have been tried prior to age 18.²⁴

The decision to transfer a juvenile to adult criminal court must come after a full investigation and hearing that gives the court probable cause to believe (1) that the youth committed the alleged offense, and (2) that

15. Texas Family Code §54.04(d)(3)(A-C).

16. Texas Human Resources Code, Chapter 61: Texas Youth Council, §61.079.

17. Texas Family Code §54.11.

18. Human Resources Code, §61.079.

19. Texas Family Code §53.045(a).

20. Texas Family Code §51.02(2).

21. Texas Family Code §54.02

22. Texas Family Code §54.02 (a)(2)(A).

23. Texas Family Code §54.02(a)(2)(B).

24. Texas Family Code §54.02(j).

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the transfer is necessary to protect the welfare of the community due to either the seriousness of the offense or the juvenile's background.²⁵ Courts vary tremendously in the extent to which this is a meaningful hearing. Some judges hold lengthy hearings complete with a wide range of witnesses in a trial-like environment, while others appear to rubber stamp the certification request from the prosecutor with quick hearings and only rare refusals to certify.²⁶

There is an exception to the discretionary judicial transfer decision: the law provides that any juvenile who has previously been certified as an adult *must* subsequently be tried as an adult for any felony offense, unless the previous case was dismissed or no-billed, or the child was found not guilty.²⁷ This statutory provision is colloquially known as "once an adult, always an adult."

Juveniles who are certified as adults in Texas are eligible to receive almost the entire range of sanctions available to adult offenders under the Penal Code. There are two exceptions: they cannot receive the death penalty (per the United States Supreme Court decision in *Roper v. Simmons*, 543 U.S. 551 (2005)), and they are no longer eligible for a life without parole sentence for a capital offense.²⁸ Juveniles who receive a life sentence are eligible for parole consideration after they have served 40 years of their sentence; they need not be released, but they can have their case reviewed by the Parole Board in that time frame.²⁹ Thus, juveniles tried as adults can receive sentences ranging from probation to up to 99 years or life, depending upon the felony level.

Under Texas law, juveniles eligible for a determinate sentence, as well as those charged with delinquent conduct, who need to be confined during the pre-adjudication period will be held in a juvenile detention facility.³⁰ After adjudication and sentencing, if they are committed rather than placed on probation, they are confined in TYC up until age 19, unless their institutional behavior requires an early transfer to adult prison.³¹ In contrast, those youth who are certified as adults, if not released on bond, are held pre-trial in adult county jails.³² Once convicted and sentenced, they are confined in adult prisons.³³ There is no provision under current Texas law that would allow a juvenile certified as an adult to serve time in a juvenile facility either pre-trial or post-conviction.

C. Problems with confining juveniles in adult prisons and jails

Housing juveniles in adult jails and prisons compromises both public safety and the personal safety of the youth. In 2007, a Task Force appointed by the Centers for Disease Control reviewed all the available scientific research and reached a stark conclusion: "[T]ransfer of juveniles to the adult criminal justice systems generally results in increased rather than decreased subsequent violence, compared with violence among juveniles retained in the juvenile justice system. . . . [Transferring juveniles to the adult system] is counter-

25. Texas Family Code §54.02(a)(3).

26. Chris Vogel, "For Their Own Good," *Houston Press*, May 28, 2009, <http://www.houstonpress.com/content/printVersion/1274177>.

27. Texas Family Code §54.02 (m)(1).

28. Texas Penal Code, Chapter 12: Punishments, §12.31(a)(1).

29. Texas Government Code, Chapter 508: Parole and Mandatory Supervision, § 508.145(b).

30. Texas Family Code §51.12(a).

31. Texas Family Code §54.04(d)(3), and Texas Human Resources Code §61.079.

32. Texas Family Code §51.12(h)(1).

33. Texas Family Code §54.02(h).

Overview

productive for the purpose of reducing juvenile violence and enhancing public safety.”³⁴ The CDC conclusion was consistent with findings of prior researchers, who determined that “juveniles prosecuted as adults reoffend more quickly and at rates equal to or higher than comparable youths retained in the juvenile system.”³⁵ The evidence supporting this finding was so clear that the CDC Task Force took the highly unusual step of recommending that legislators repeal laws and policies that facilitate the transfer of youth from the juvenile to the adult system.³⁶ The CDC group specifically highlighted safety concerns about the placement of juveniles under the age of 18 in adult prisons and jails.³⁷

To a very large degree, the increase in recidivism seen among juveniles who were transferred to the adult criminal justice system stems from the lack of services and programming available to them in adult facilities, as opposed to what they could have received in juvenile institutions.³⁸ Youth in adult facilities have limited access to either educational programs or specialized therapy and treatment.³⁹ Moreover, staff in adult jails and prisons do not have specialized training to work with this age population or to meet their unique needs as very young prisoners.

Juveniles housed in adult prison and jail facilities are also at increased physical risk, often due to their small size. The National Prison Rape Elimination Commission found that “[m]ore than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”⁴⁰ They are also 50 percent more likely to be subjected to physical assault with a weapon by other inmates.⁴¹ Although there are federal laws that generally require the separation of youth from adults in correctional settings, those laws do not apply to juveniles who have been transferred to the adult system.⁴² Thus, some jails and prisons will mix the certified youth population in with the adult offender population. As one adult correctional officer interviewed for an article in *The New Republic* observed, young inmates in adult facilities have little hope of avoiding rape: “He’ll get raped within the first twenty-five to forty-eight hours. That’s almost standard.”⁴³

Youth confined in adult jails and prisons are also at high risk for mental health problems. They are 36 times more likely to commit suicide than their counterparts in juvenile facilities.⁴⁴ Many suffer post-traumatic

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34. Angela McGowan, et. al., Centers for Disease Control Task Force on Community Preventive Services, “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” 32 (4S) *American Journal of Preventive Medicine* (2007), p. S20, [hereinafter, CDC, “Effects on Violence”], <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.
 35. Donna M. Bishop, “Juvenile Offenders in the Adult Criminal Justice System,” *Crime and Justice*, vol. 27 (2000), p.86.
 36. Centers for Disease Control Task Force on Community Preventive Services, “Recommendation Against Policies Facilitating the Transfer of Juveniles from Juvenile to Adult Justice Systems for the Purpose of Reducing Violence,” 32 (4S) *American Journal of Preventive Medicine* (2007), p. S5, <http://www.thecommunityguide.org/violence/taskforcearticle3.pdf>.
 37. CDC, “Effects on Violence,” pp. S17 – S18.
 38. Deitch, *From Time Out to Hard Time*, pp. 59-60.
 39. *Ibid*, p. 59.
 40. National Prison Rape Elimination Commission, *Report* (June 2009) p. 18, [hereinafter “NPREC Report”] <http://www.ncjrs.gov/pdffiles1/226680.pdf>.
 41. Jeffrey Fagan, Martin Forst and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of Treatment-Custody Dichotomy,” *Juvenile and Family Court*, no.2 (1989), p.10.
 42. Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Washington, D.C., November 2007, p. 22.
 43. Cited in Vincent Schiraldi and Jason Zeidenberg, “The Risks Juveniles Face When They Are Incarcerated With Adults,” Center on Juvenile and Criminal Justice (July 1997), p. 3.
 44. *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, p. 10.

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stress and depression following incidents of sexual violence.⁴⁵ Furthermore, many youth are held in isolation while they are awaiting trial, in large measure to keep them apart from adults. Such isolation can last up to 23 hours a day over a period of a year or more, in what amounts to long-term solitary confinement. While it is a worthy goal to keep the juveniles separate from the adult offenders, such intense isolation over long periods of time can cause significant deterioration of the youths' mental state. Research has shown that even after very short periods of segregation, juveniles can experience symptoms of paranoia, anxiety, and depression.⁴⁶ An investigation by the Houston Press in 2009 found that certified juveniles aged 14 to 16 in the Harris County Jail—an average of 89 youth per year—are held in 23-hour a day lock-up for months on end, isolated not only from adult inmates but from each other.⁴⁷ Many of the juveniles profiled in the Houston Press article expressed concerns about the mental agony and depression this isolation caused them.⁴⁸

The evidence thus shows that transfer of juveniles to the adult criminal justice system and the confinement of youth in adult facilities put public safety at risk. These practices have a harmful impact both on the juveniles who end up in the adult system and on the communities to which they will return after their release.

It is critical, therefore, that we develop a clear profile of the youth who get transferred to the adult criminal justice system in Texas, and that we re-evaluate the wisdom of our current practices and strategies for dealing with the serious juvenile offender population in light of this body of research.

45. NPREC Report, p. 153.

46. *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, p. 10.

47. Vogel, "For Their Own Good," *Houston Press*.

48. *Ibid.*

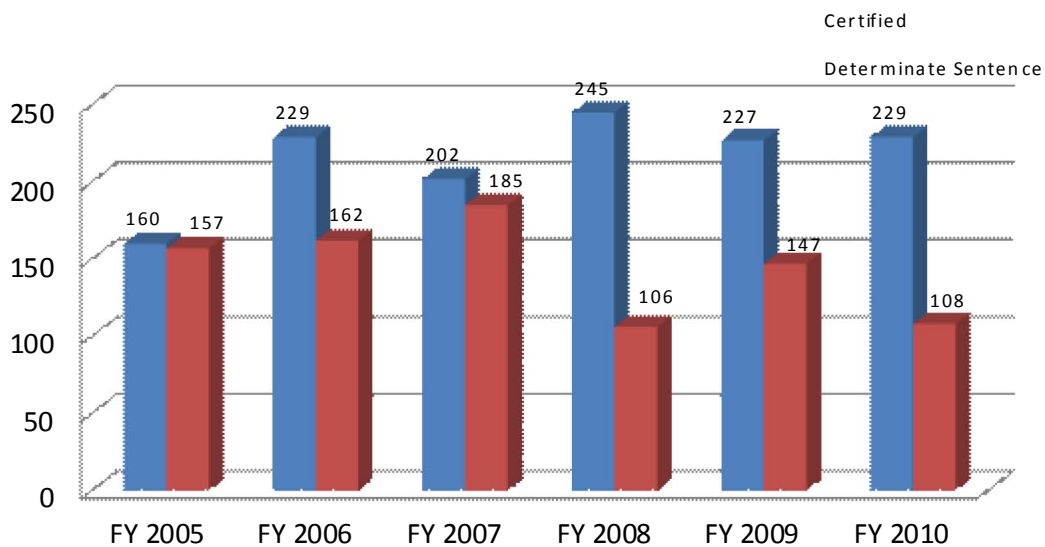
III. FINDINGS

A. Numbers of adult certification cases vs. juvenile determinate sentencing

The number of juveniles in Texas who are certified as adults is 49% greater than the number kept in the juvenile justice system and given determinate sentences resulting in a TYC placement. From FY 2005 to the end of FY 2010, there were 1,292 certifications.⁴⁹ In this same time period, there were a total of 865 juveniles given a determinate sentence and a TYC placement.⁵⁰ Figure 1 below provides a breakdown of these numbers by fiscal year.

Figure 1 shows that in the most recent year, FY 2010, 229 juveniles were certified, while 108 juveniles were given a determinate sentence with placement in TYC, a difference of more than 100%. FY 2008 saw the greatest number of adult certifications, 245, and the greatest discrepancy between the number of certifications and determinate sentences (139 more certified juveniles than determinate sentence juveniles who

Figure 1
Number of Adult Certifications vs. Determinate Sentences with TYC Placement, FY 2005 – 10



Source: data provided by the Texas Juvenile Probation Commission, 2010

49. Vicki Spriggs, "Texas Juvenile Probation Commission, Report to the Texas House of Representatives Committee on Corrections," September 29, 2010.
50. It is important to note that determinate sentence probation is also available as an option for a youth adjudicated for one of the designated felony offenses. However, for purposes of our analysis, we believe the appropriate comparison group for certified youth is the universe of determinate sentenced juveniles who receive a TYC placement, since this would be the most severe sanction that could be imposed on these juveniles and would presumably be the alternative to certification in most cases. Throughout this report, when we refer to the determinate sentence population, we are referring to those juveniles who are confined in TYC under a determinate sentence.

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receive TYC placements). Whereas prior to FY 2008, the numbers of certifications and determinate sentences were relatively close, in the years since, there has been a marked increase in certifications relative to determinate sentences involving TYC placements.⁵¹

B. Characteristics of certified and determinate sentence populations

To determine how the population of juveniles who received juvenile determinate sentences with placement in TYC compares to the population of juveniles who were certified as adults, we examined a variety of characteristics about each population, including: demographic data including age, gender, ethnicity, and county of conviction; offense; and criminal history.

(1) Demographic Characteristics

Age

As noted earlier, to be certified as an adult or to be given a determinate sentence in Texas, an offender must have been below the age of 17 at the time of the offense. Juveniles become eligible for certification at age 14 for capital felonies, aggravated controlled substance felonies, and first-degree felonies. Starting at the age of 15, a juvenile may be certified for *any* felony under the Penal Code, including second- and third-degree felonies as well as state jail felonies. Determinate sentences are available for juveniles beginning at age 10, and may not be given, due to lack of juvenile court jurisdiction, if the petition for the determinate sentence is not filed before the youth turns 18 years old.

It is important to note the impact that age limits for juvenile court jurisdiction, and limits on the maximum age at which a juvenile may be housed at the Texas Youth Commission, can have on the certification of juveniles. The juvenile court's jurisdiction ends once a defendant turns 17,⁵² and a juvenile can only be housed at the Texas Youth Commission until the age of 19; therefore, a juvenile given a determinate sentence may be housed at the Texas Youth Commission only until age 19. Sometimes, offenders who were under 17 at the time they committed an offense age out of the juvenile justice system and eligibility for placement in TYC before their cases can be adjudicated. As a result, these offenders must be certified as adults in order to hold them accountable for the offense, since they can no longer be placed in TYC. Since these individuals are now of "adult" age, they are not part of the population that is the focus of this report, even though they have been formally "certified" as adults as a matter of procedure. The focus here remains on those juveniles age 17 and under who are still within the juvenile court's jurisdiction and who are still eligible to receive determinate sentences and placement in TYC.

Figures 2 and 3 indicate the age at which juveniles were either certified or given a determinate sentence with TYC placement. Note that their ages at the time of their offenses are not readily available.

51. At least some of the reduction in use of determinate sentences with TYC placement relative to certifications may have to do with reluctance on the part of some judges to send youth to TYC in the wake of the highly publicized problems with the agency in 2007.

52. Note, however, that under the Texas Family Code, §51.0412, the juvenile court retains jurisdiction over juveniles even after their 18th birthday if the proceeding, begun earlier, is incomplete. This explains how it is possible for some juveniles to receive determinate sentences after age 18.

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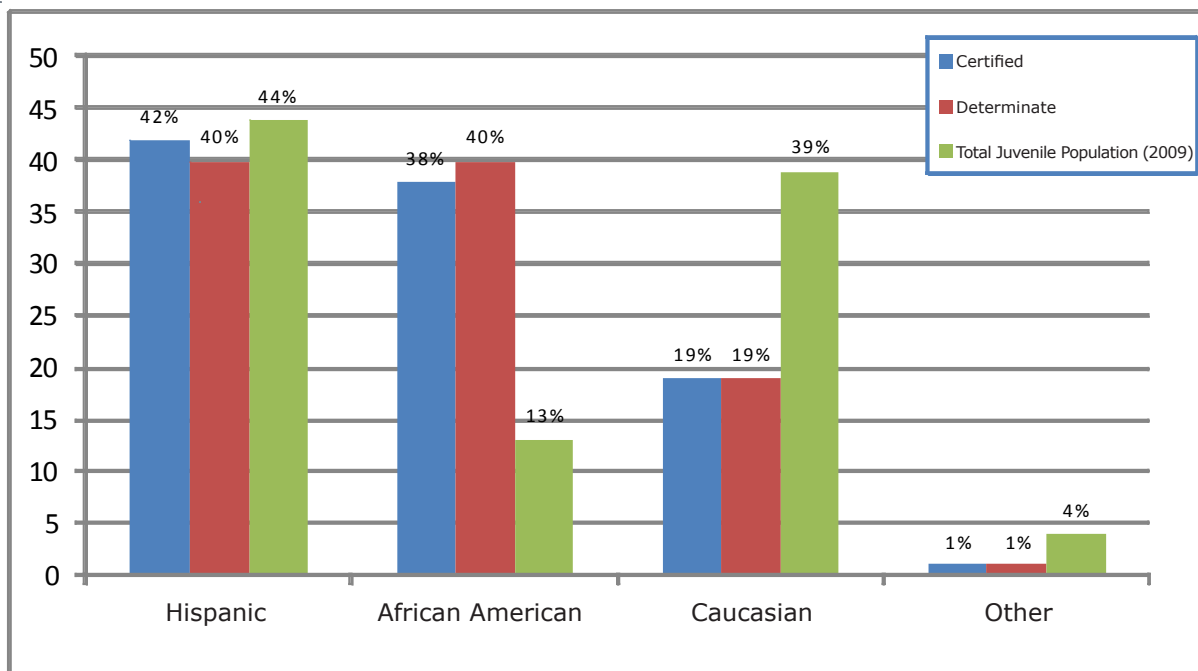
Ethnicity

Figure 4 presents the ethnic breakdown of both the certified and determinate sentence population as compared to the total population of juveniles in Texas.

The vast majority of both certified and determinate sentence juveniles are minorities, and their representation in these categories is highly disproportionate to their representation in the general population of the state. Figure 4 reflects that minorities make up roughly 57% of the juvenile population in Texas, yet they comprise 80% of all certifications and determinate sentences. Virtually all of that disproportionality is accounted for by African Americans, who make up only 13% of the state's overall juvenile population, yet they are roughly 40% of the certified and determinate sentence populations.

Comparing the certified and determinate sentence populations, we see that the ethnic breakdowns of the two groups are virtually identical.

Figure 4
Percent of Certified and Determinate Sentence Juveniles by Ethnicity,
FY 2005 – 09, as a percentage of the total juvenile population in Texas, 2009



Source: data provided by the Texas Juvenile Probation Commission and the Texas State Data Center, 2010

County of Conviction

Figure 5 compares the number of certifications and determinate sentences with placement in TYC in the 10 counties responsible for the largest number of certifications. It reveals that more than twice as many certification cases have arisen in Harris County over a four-year period than in any other county. Indeed, Harris County has more certification cases than the next six counties combined. Figure 5 also indicates an extremely large discrepancy between use of certifications and use of determinate sentences in six of these counties (Harris, Jefferson, Hidalgo, Nueces, Lubbock, and Potter), suggesting possible disproportionate efforts in these counties to try juveniles as adults. Also of interest is the fact that Travis County, the 5th largest county in the state, and El Paso, the 7th largest, do not appear in this Figure, suggesting that judges in those counties are not granting certifications (or that prosecutors are not seeking them) in many cases.

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The data also shows that a very high percentage of the determinate sentence population—at least 93%—has committed a serious violent felony. Thus, it is clear that a substantial number of serious and violent juvenile offenders do remain in the juvenile justice system, and that certification is not an automatic response to these offenses on the part of most juvenile judges.

Tables 2 and 3 also highlight certain offenses for which certification but not determinate sentencing is available. Thus, we see some certifications for both burglary and robbery, neither of which offense is eligible for determinate sentencing, presumably because neither was considered serious enough to warrant determinate sentencing. Burglary represents almost 6% of certifications.

There are also a striking number of juveniles charged with non-violent offenses who are certified as adults. While the data is not precise enough to allow for an exact breakdown, the number of non-violent certifications appears to be between 10% and 15% of the total.

Together, Tables 2 and 3 indicate that the two populations of determinate sentence juveniles and certified juveniles are relatively comparable when it comes to their criminal offense. Contrary to popular assumptions, certified youth who are tried as adults as a whole are not demonstrably more violent than the population of serious juvenile offenders who are retained by the juvenile court and given determinate sentences with placement in TYC.

Table 2
Certifications by Most Frequent Offense, FY 2005–09

<i>Offense</i>	<i>FY 2005</i>	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>Total</i>	<i>% of Total Certifications</i>
Aggravated Robbery	58	74	76	90	76	374	35.2%
Sexual Assault	28	39	38	48	49	202	19.0%
Homicide*	23	47	31	39	41	181	17.0%
Aggravated Assault	20	17	24	18	30	109	10.3%
Burglary	6	18	8	14	13	59	5.6%
All Other Felonies	13	11	8	13	8	53	5.0%
Felony Drug Offense	7	10	2	9	2	30	2.8%
Robbery	4	7	4	6	5	26	2.4%
Att. Homicide*	0	2	8	2	0	12	1.1%
Felony Weapons	0	0	2	4	2	8	0.8%
Motor Vehicle Theft	1	4	0	0	0	5	0.5%
Felony Theft	0	0	1	2	1	4	0.4%
Total	160	229	202	245	227	1063	100.0%

Source: data provided by the Texas Juvenile Probation Commission, 2010

* "Homicide" includes Capital Murder, Murder, Felony Murder, Manslaughter, Involuntary Manslaughter, and Criminally Negligent Homicide.

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Table 3
Determinate Sentences with Placement in TYC
by Most Frequent Offense, FY 2005 – 09

<i>Offense</i>	<i>FY 2005</i>	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>Total</i>	<i>% of Total Determinate Sentences</i>
Aggravated Robbery	63	51	84	42	68	308	40.7%
Sexual Assault	26	36	24	15	24	125	16.5%
Aggravated Assault	30	23	39	16	17	125	16.5%
Violation of Probation for Sexual Assault	9	13	8	9	9	48	6.3%
Homicide*	8	9	8	4	7	36	4.8%
Violation of Probation for Aggravated Robbery	4	7	9	6	4	30	4.0%
Violation of Probation for Aggravated Assault	6	6	4	3	6	25	3.3%
All Other Felonies	5	9	4	5	3	26	3.4%
Felony Drug Offense	2	3	4	0	3	12	1.6%
Felony Weapons	1	0	0	2	4	7	0.9%
Unknown	3	1	0	1	0	5	0.7%
Violation of Probation for Homicide	0	1	0	1	1	3	0.4%
Violation of Probation for Felony Drug Offense	0	1	0	1	1	3	0.4%
Violation of Probation for Felony Weapons	0	1	0	1	0	2	0.3%
Att. Homicide*	0	0	1	0	0	1	0.1%
Violation of Probation for Unknown Offense	0	1	0	0	0	1	0.1%
Total	157	162	185	106	147	757	100.0%

Source: data provided by the Texas Juvenile Probation Commission, 2010

* "Homicide" includes Capital Murder, Murder, Felony Murder, Manslaughter, Involuntary Manslaughter, and Criminally Negligent Homicide.

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Table 4
Comparing Certified Juvenile and Determinate Sentence
Populations by Top 5 Offenses, FY 2005–09

CERTIFICATIONS		DETERMINATE SENTENCES WITH TYC PLACEMENT	
<i>Offense</i>	<i>% of Total Certifications</i>	<i>Offense</i>	<i>% of Total Determinate Sentences</i>
Aggravated Robbery	35.2%	Aggravated Robbery	40.7%
Sexual Assault	19.0%	Sexual Assault	16.5%
Homicide*	17.0%	Aggravated Assault	16.5%
Aggravated Assault	10.3%	Violation of Probation for Sexual Assault	6.3%
Burglary	5.6%	Homicide*	4.8%
Other	13.0%	Other	15.2%
TOTAL	100.0%	TOTAL	100.0%

Source: data provided by the Texas Juvenile Probation Commission, 2010

* "Homicide" includes Capital Murder, Murder, Felony Murder, Manslaughter, Involuntary Manslaughter, and Criminally Negligent Homicide.

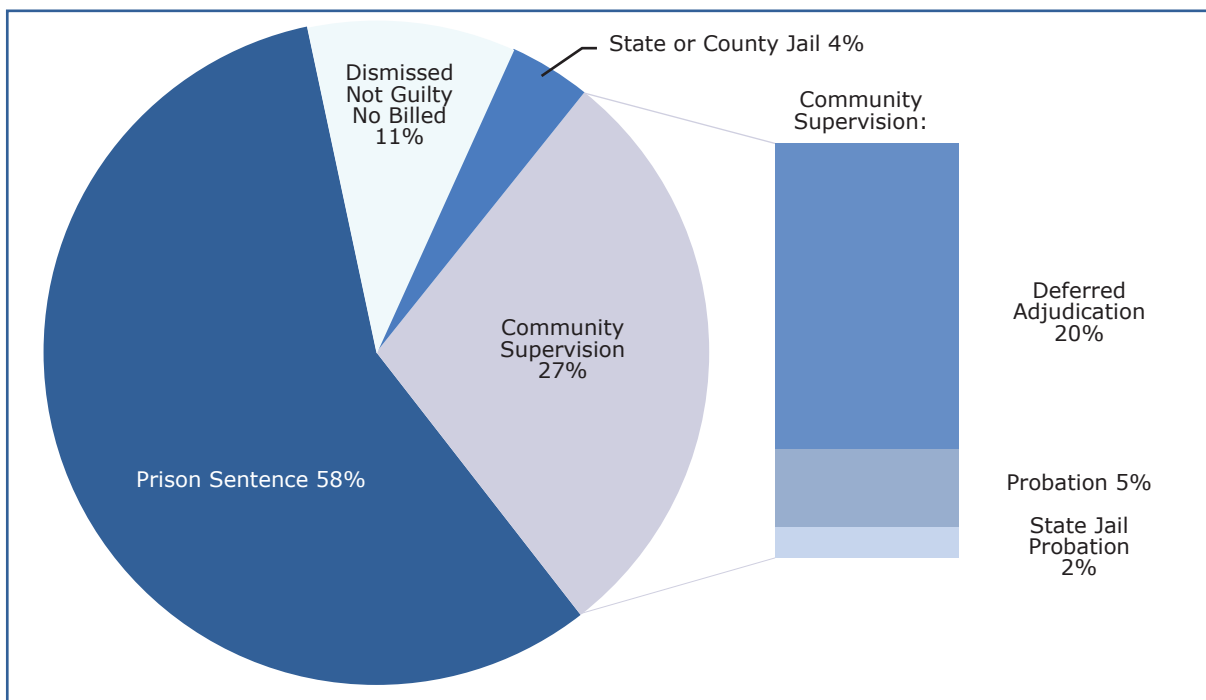
(3) Criminal history

To evaluate the prior criminal history of juveniles who were certified or who received determinate sentences with placement in TYC, we gathered data about the number of prior referrals they had to juvenile court. These referrals may have involved either misdemeanor or felony offenses. Moreover, they may or may not have resulted in probation with local supervision and possibly an out-of-home placement in a post-adjudication facility, and may or may not have resulted in a prior commitment to TYC. Thus, the mere fact of prior referral does not alone tell us how serious the prior criminal history actually was. Consequently, this data was further analyzed to assess whether the juvenile had a prior referral for any violent offense and whether the juvenile had any prior TYC commitment. The data presented below excludes the offense for which the juvenile was certified or for which he or she received a determinate sentence.

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While it is unclear the extent to which disposition trends have changed in the past decade and a half, there are some indications that a sizeable portion of the certified youth population still does not end up serving time in prison. For example, only about 59 of the 103 juveniles in TDCJ's Youthful Offender Program (YOP) on October 31, 2010 were certified as adults (the vast remainder of those in the program were 17-year olds who are automatically tried in adult court).⁵⁴ Yet in FY 2010, Texas had a total of 225 certified youth. While it is possible that some of those certified may be older than age 18 at the time of their arrival in TDCJ and thus ineligible for placement in the YOP, and some might be housed in TDCJ facilities other than the YOP, there is nevertheless a noticeable discrepancy between these figures, suggesting that a large portion of certified youth have disposition outcomes resulting in community supervision, jail time, dismissal of charges, or a not guilty finding. Clearly, there is a need for improved reporting and data collection on the sentencing outcomes for youth who are certified as adults.

Figure 11
Sentencing Outcomes for Certified Youth, FY 1996
(N=315 certification cases)



Source: Criminal Justice Policy Council, 1999

(2) Outcomes for determinate sentence youth who are placed in TYC

For youth who receive a determinate sentence, there are several different outcome possibilities after their placement in TYC. They may eventually be discharged from TYC's jurisdiction for a variety of reasons, including:

- transfer to TDCJ to serve the remainder of their sentence in prison
- release from TYC and placement on adult parole through TDCJ
- placement on TYC parole

54. Data provided by TDCJ Executive Services, December 29, 2010.

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- completion of their entire sentence and release from TYC with no parole
- discharge under a statutory provision that allows for release of certain mentally ill juveniles

We reviewed data on offenders serving determinate sentences at TYC who were received during FY 2006–10 in order to identify how frequently each of these different outcomes occur. However, it is important to take into account the fact that during that time, TYC underwent many substantial changes that affected the distribution of these outcomes. Most notably, the 80th Texas Legislature in 2007 passed Senate Bill 103, which, among other changes, reduced the maximum age of TYC’s jurisdiction from 21 to 19. Thus, juveniles who entered TYC in FY 2006 and FY 2007 were able to remain in TYC for up to two years longer than the youth who entered TYC in the following years. For this reason, it is important to consider separately the outcomes of those youth who received determinate sentences in the years pre-Senate Bill 103. Also, it is important to recognize that the data for the most recent years is less probative because the vast majority of youth have not yet served their minimum length of stay. We simply do not yet know the ultimate outcome for many of the youth in this more recent time frame. Consequently, the data from these two time frames cannot be directly compared to determine changes in outcomes over time.

Table 5 sets forth the current status for those youth who were received at TYC with determinate sentences during the period from FY 2006–07, while Table 6 gives the current status for youth who were received at TYC with determinate sentences from FY 2007–10.

With the caveats noted above about interpreting and comparing the data in these figures, Tables 5 and 6 tell us that a relatively small proportion of determinate sentenced juveniles overall get transferred to TDCJ. Most serve their time in TYC and then get released on parole.

Table 5		
Current status of determinate sentence youth in TYC, received FY 2006–07		
STATUS	# of Juveniles	% of Juveniles
Placed on Adult Parole	128	35.1%
TYC Residential Custody	67	18.4%
Transferred to TDCJ	63	17.3%
Sentence Expired	57	15.6%
Placed on TYC Parole	47	12.9%
Other	3	<1%
Total	365	100.0%
Source: data provided by the Texas Youth Commission, 2010		

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STATUS	# of Juveniles	% of Juveniles
TYC Residential Custody	271	71.3%
Placed on Adult Parole	46	12.1%
Transferred to TDCJ	33	8.7%
Sentence Expired	18	4.7%
Placed on TYC Parole	9	2.4%
Other	3	<1%
TOTAL	380	100.0%

Source: data provided by the Texas Youth Commission, 2010

(3) Length of sentences given to certified youth

Identifying the length of sentences received by juveniles who were certified as adults and who received a prison sentence was again a difficult task given the lack of comprehensive statewide data about this population. As a proxy for this information, we examined sentencing data for the population of all juveniles in TDCJ's custody aged 19 and under who were received by the agency prior to age 17.⁵⁵ Thus, the sample includes all those who were certified as adults and placed in the Youthful Offender Program, as well as those certified youth who are recent graduates of that program, plus those youth who are or were recently confined in other parts of TDCJ such as state jails, administrative segregation, substance abuse facilities, and medical or mental health units.⁵⁶ Examining these teenagers who were received at TDCJ prior to age 17 provides a current snapshot of this population and the length of sentences they are serving, though there is clearly a need for more thorough and precise collection of statewide data on this population.

For those offenders in TDCJ who were received prior to age 17 and who are now age 19 or under (a total of 94 offenders), the length of their sentences was found to range from 6 months to life. As seen in Table 7 below, a majority of offenders (58.5%) are serving sentences of 10 years or less, including 6.4% who are serving terms of 3 years or less.

55. TDCJ was only able to provide data based on the date the youth was received by TDCJ, and not their age at the time of the offense.

56. A very small number in the sample may represent teenagers who received determinate sentences and were transferred early from TYC. But the number appears to be small enough to discount for purposes of this analysis. For example, on October 31, 2010, only 2 of the youth currently in the YOP were received from TYC, and there is no reason to think that number was significantly larger in previous recent years.

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Table 7
Length of sentences for current youth age 19 and under at TDCJ, who were received prior to age 17, FY 2010

<i>Sentence length</i>	<i># Youthful Offenders</i>	<i>% Youthful Offenders</i>
Less than 4 years	6	6.4%
4-10 yrs	49	52.1%
11-30 yrs	25	26.6%
31-40 yrs	5	5.3%
41-59 yrs	3	3.2%
60+ /LIFE	6	6.4%
TOTAL	94	100.0%

Source: data provided by the Texas Department of Criminal Justice, 2010

(4) Length of sentences given to determinate sentence youth

To identify the length of sentences received by juveniles who were retained in the juvenile justice system and given determinate sentences with commitments to TYC, we analyzed data from the current population of youth in TYC facilities. As seen in Table 8 below, a large majority of determinate sentence offenders (77.2%) are serving sentences of 10 years or less, including 15.4% who are serving terms of 3 years or less.

A comparison of the sentencing outcomes between certified youth and youth who receive determinate sentences finds that the two populations receive fairly similar sentences. For both certified and determinate sentence youth, the majority of offenders receive sentences lasting between four and ten years. Fewer than 10% of certified juveniles—a total of only 9 youth—received sentences longer than those sentences imposed on determinate sentence youth. This suggests that sentences for most certified youth easily fall within the allowable determinate sentence ranges.

Table 8: Length of sentences for determinate sentence youth in TYC, FY 2010

<i>Sentence length</i>	<i># Juveniles</i>	<i>% Juveniles</i>
Less than 4 years	115	15.4%
4-10 yrs	461	61.8%
11-30 yrs	156	20.9%
31-40 yrs	14	1.9%
TOTAL	746	100.0%

Source: data provided by the Texas Youth Commission, 2010

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D. Placements and programming for certified youth and determinate sentence juveniles

As noted previously, there is a lack of data regarding the seemingly large percentage of youth who are certified but not sent to prison. This section of the report examines what happens to those certified youth who *are* sent to prison. Where are they housed within the prison system and what services do they receive? This population is then compared with those determinate sentence youth in TYC on matters of housing and programming.

(1) Housing of certified youth in TDCJ

Those certified juveniles who are found guilty and committed to the custody of TDCJ are typically housed in the agency's Youthful Offender Program (YOP). This program provides separate housing and some limited programming for this sub-population. There is a YOP for boys aged 14-17 at the Clemens Unit in Brazoria, and a YOP for girls aged 14-17 at the Hilltop Unit in Gatesville. Placement in these programs is limited to certified juveniles and those determinate sentenced juveniles who are transferred from TYC due to misbehavior, as well as other TDCJ offenders who are below age 18.

However, some exceptions exist to this practice, and consequently not all juveniles younger than 18 are placed in the YOPs. Most notably, any juvenile who is certified for a state jail felony must be housed in a state jail. Typically, all youth under age 18 in state jails are housed in the front of a dormitory housing adult prisoners for their safety, but there is no access to a Youthful Offender Program.⁵⁷ Also, some small number of juveniles is held in medical or mental health units alongside adult prisoners in TDCJ. Some juveniles are also held in administrative segregation in TDCJ, under isolated conditions where they are locked in a cell for up to 23 hours per day for an indefinite period. Also, during the time frame between transfer from the county jail and placement in the YOP, certified juveniles are sent to transfer facilities in the same manner as any adult prison inmate. They can remain in this transfer facility without any special programming or separate housing for a period of up to several weeks. On average, that transfer period is 17 days, but a significant portion of the youths remains in transfer status for over a month.⁵⁸ They are also transported on buses with adult prisoners without regard to their youthful offender status.

Table 9 below provides a breakdown of where juveniles aged 17 and under are currently housed within TDCJ. These figures include certified youth as well as determinate sentence youth transferred early from TYC and 17-year olds automatically tried in adult courts. The table indicates that only 68% of the age-eligible population is in a Youthful Offender Program.

While we cannot provide a precise breakdown of the numbers in the chart below to get at the exact number of certified juveniles in TDCJ on that date, we were also provided with data from October 31, 2010, indicating that 59 of the 103 juveniles in the YOP had been juveniles transferred to adult court, and that 5 state jail offenders were certified youth.⁵⁹

57. Geralyn Engman, Clinical Manager, TDCJ Rehabilitation Divisions Program, e-mail message to Emily Ling, December 12, 2010.

58. TDCJ Internal Audit Division, *A Report on Rehabilitation Programs Division's COURAGE Program for Youthful Offenders*, Audit 0921, October 26, 2009, pp. 6-7.

59. Data provided by TDCJ Executive Services, December 29, 2010.

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Table 9
Current juvenile population (under age 18) at TDCJ by units, on August 31, 2010

UNIT	TYPE	# OF JUVENILES
Clemens	Male Youthful Offender Program	105
Clemens	Administrative Segregation	9
Hilltop	Female Youthful Offender Program	5
Bartlett, Bradshaw, Dominguez, Formby, Hutchings, Lindsey, Lychner⁶⁰	State Jails	18
Byrd and Holliday	Male transfer facilities	20
Woodman	Female transfer facility	0
Other	Substance abuse, medical health, or mental health units	3
TOTAL		160

Source: data provided by the Texas Department of Criminal Justice, 2010

(2) Programming for certified youth in TDCJ

As previously stated, there is no specialized programming available for those certified youth who are placed in state jails.⁶¹ Any programming in which they participate, such as educational or vocational courses, would be programming that is similarly provided to the general population of offenders in that facility. Consequently, certified youth could serve up to two years in a state jail with access only to programming designed for adult, not juvenile, offenders. That same lack of specialized programming is true for juveniles housed in transfer facilities, substance abuse treatment facilities, medical or mental health units, or administrative segregation.⁶²

Those offenders who are placed in a Youthful Offender Program at either the Clemens or Hilltop units partake in the “COURAGE”⁶³ program until they reach the age of 18. COURAGE consists of targeted, therapeutic programming for the juvenile population that is intended to “provide education, employment skills, and social development in a highly structured environment.”⁶⁴ While it was beyond the scope of this project to evaluate the quality or extent of the programming and services offered to juveniles in the YOP, we reviewed a number of reports about the program prepared over the last three years. We also toured the female YOP at the Hilltop Unit. Information derived from those reports and our observations is provided below.

Education: Juveniles in YOPs do not have access to specialized educational programs for youth. They have access to the same educational programming that is available to the adult general population of TDCJ, and juveniles who do go to school attend classes with adults. A 2008 review of the YOP at Clemens found that only 38% of youthful offenders were currently attending classes.⁶⁵ Of the 62% of juveniles not currently in school, 4.3% had already earned a high school diploma or GED. Additionally, 26.5% were enrolled in school but not allowed to attend class due to disciplinary sanctions.⁶⁶ No explanation was available for why the remaining 31.2% of YOP juveniles were

60. All state jails housing youth on August 31, 2010, were male units. When females receive state jail sentences, they are placed at either the Woodman or Plano female state jail units. Geralyn Engman, TDCJ, December 12, 2010.

61. Ibid.

62. See TDCJ Internal Audit Division report, pp. 1-2.

63. “COURAGE” stands for Challenge Opportunity Understanding Respect Acceptance Growth Education.

64. TDCJ Internal Audit Division report, p. 18.

65. Terry Schuster, “Managing the Special Needs of TDCJ’s Youthful Offenders,” May 27, 2008 (unpublished paper on file with the author), p. 28 (citing data provided by TDCJ Executive Services, April 7, 2008).

66. Schuster, pp. 16-17 (citing data provided by TDCJ Executive Services, 2008).

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not in school. That 2008 study also found a striking contrast between YOP juveniles and TYC youth on this educational front, with 96% of TYC youth in school during that same time frame.⁶⁷

Vocational training and recreation: A 2007 evaluation of the YOP by TDCJ's Research, Evaluation, and Development Unit (RED Unit) found that "youthful offenders were not provided with adequate vocational and recreational opportunities."⁶⁸ The evaluation concluded that, because the younger population was "required to be separated by sight and sound from adult offenders, vocational and recreational programming was nearly impossible to schedule."⁶⁹

Therapeutic programming: Included in the COURAGE program is a short component of therapeutic interventions designed to meet the developmental needs of juvenile offenders. Between 2000 and 2007, this program was designed as a therapeutic community model and the youth (or some subset of them) participated for one to two years. But in 2007, TDCJ condensed the program into a 6-month abridged version due to the fact that most youthful offenders reach the age of 18 less than a year after their arrival in the program.⁷⁰ This limitation of time resulted in what the then-director of the YOP described as "a much less effective intervention than [for] those previously placed in the Therapeutic Community."⁷¹ Although the program is designed to last 6 months, the curriculum is flexible and can be expanded to provide additional material for those youth whose stay in the YOP is longer than 6 months, and can be compressed for those who are only there for a few weeks.⁷²

Female youthful offenders: Until mid-2008, girls in the Hilltop YOP received extremely limited programming. Although there was one staff member specifically assigned to work with these girls since 2000, the number of female youthful offenders was too small to justify separate programming, and so they were simply physically separated from the adult prisoner population for purposes of housing. In the last couple of years, the female YOP has held as few as one girl at a time, and as many as 12. The 16-year old girl who was the sole participant in the program lived in what amounted to isolation for a period of many months until she was joined by another female juvenile. Recognizing concerns about the limited services provided to this population, in 2008, TDCJ implemented the COURAGE 6-month curriculum for the girls. The exact structure of the program changes, though, when there are too few participants to offer them community activities.⁷³ In 2010, the agency introduced some additional counseling services and therapeutic interventions. The population of females remains low, however, and there were a total of 5 juveniles in the program at the time the authors toured the facility. One of those 5 girls was being held in administrative segregation, apart from the other four and with no opportunity for group contact.⁷⁴

Upon turning 18, youthful offenders in the YOPs are placed in the regular adult prison population.

67. Schuster, p. 29.

68. RED Group, *Youthful Offender Program*, Austin: Texas Department of Criminal Justice, 2007 (as described by Schuster, p. 19).

69. Ibid.

70. Prior to 2007, youthful offenders were defined by TDCJ as offenders between the ages of 14 and 19. The numbers of juveniles who fit that criteria was too great for the program to handle, however, and in 2007, the definition was altered to include only those offenders younger than age 18. Schuster, p. 13.

71. Schuster, p. 16. (citing interview Schuster conducted with Herum Edwards, Director of the Youthful Offender Program, Clemens Unit, Texas Department of Criminal Justice, on April 1, 2008).

72. Geralyn Engman, Clinical Manager, TDCJ Rehabilitation Divisions Program, e-mail message to Michele Deitch, March 7, 2011.

73. Ibid.

74. Visit to the Hilltop Unit Youthful Offender Program, Texas Department of Criminal Justice, October 11, 2011.

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(3) Housing of determinate sentence youth in TYC

For offenders who receive a determinate sentence and are placed in TYC, they will first be housed at one of two assessment centers. The McLennan Unit (Mart 1) is the orientation center for male offenders, while the Ron Jackson Unit serves as the orientation center for females. After undergoing thorough assessments, offenders are then transferred to housing at one of several TYC institutional facilities. Unless there is a need for intensive psychological treatment at the Corsicana Unit or pre-natal services, the majority of girls will remain at the Ron Jackson Unit for treatment specialized for female offenders. The majority of male offenders are transferred to Giddings State School, but many other units also house determinate sentence youth. Table 10 below provides the current housing breakdown for juveniles with determinate sentences at TYC.

Table 10 indicates that TYC distributes the population of determinate sentence offenders among various units, though there is a heavy concentration of these youth at the Giddings facility. The placement for each youth is influenced by a range of factors such as age, educational and treatment needs, and proximity to home.

Table 10		
Determinate sentence population at TYC by units, on December 6, 2010		
UNIT	TYPE	# OF JUVENILES
McLennan O & A (Mart I), Ron Jackson O & A	Orientation and Assessment Centers	10
Al Price SJCF	TYC Institution	25
Corsicana	TYC Institution (Residential Treatment Center)	20
Crockett	TYC Institution	14
Evins Regional	TYC Institution	25
Gainesville	TYC Institution	45
Giddings	TYC Institution	168
McLennan II (Mart II)	TYC Institution	25
Ron Jackson SJCC, Units 1 & 2	TYC Institution	15
Ayres House, Beto House, Cottrell House	Halfway Houses	3
National Mentor Healthcare, Terrell State Hospital	Medical	2
TOTAL		352

Source: data provided by the Texas Youth Commission, 2010

(4) Programming for determinate sentence youth in TYC

It was also beyond the scope of this report to evaluate the quality of the programming available to youth in TYC. Nevertheless, there is a great deal of information publicly available about the programs and services offered in TYC, which provides a clear sense of the daily regimen for determinate sentence youth confined in these facilities.

All juveniles in TYC receive educational programming and have access to vocational programming as well.⁷⁵ Teachers in TYC are equipped to deal with special education students, and those youth who complete their

75. "TYC Educational Program," Texas Youth Commission, http://www.tyc.state.tx.us/programs/educ_intro.html, and "TYC Workforce Development," Texas Youth Commission, <http://www.tyc.state.tx.us/programs/workforce/index.html>, (last visited January 29, 2011).

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GEDs have the opportunity to take college classes for credit.⁷⁶ Education is at the center of TYC's daily curriculum, and it takes precedence over other activities. As noted earlier, 96% of juveniles in TYC participated in educational programs during 2008, in contrast with 38% of those in the Youthful Offender Program at TDCJ.⁷⁷

All youth committed to TYC receive basic treatment services consisting of programming designed to foster both positive behavioral change in juveniles and educational achievement. Currently, TYC uses a program entitled CoNEXTions© as its curriculum for basic treatment, which incorporates nationally recognized best and promising practices.⁷⁸ All youth are also assessed to identify their need for additional specialized treatment programs. The available specialized programming options for TYC youth are: 1) Capital and Serious Violent Offender Treatment Program, 2) Sexual Behavior Treatment Program, 3) Chemical Dependency Treatment Program, and 4) Mental Health Treatment Program.⁷⁹

Given the seriousness of the offenses they have committed, many determinate sentence youth are likely to be enrolled in the Capital and Serious Violent Offender Treatment Program (C&SVOP). Offered at TYC's Giddings State School (males) and the Ron Jackson facility (females), the C&SVOP is a 24-week intensely structured program that has earned worldwide acclaim for its effective treatment of some of the most violent young offenders. It is "designed to help youth understand the emotional and cognitive contributors to criminal behavior, to hold youth accountable for their criminal behavior and to promote individual responsibility, to foster victim empathy, and to teach youth to interrupt negative behavior cycles to reduce future offending."⁸⁰ The C&SVOP has been lauded in a highly-regarded book,⁸¹ and has been profiled in numerous research reports and national journal articles. The program has been found to significantly reduce recidivism rates among serious offenders, as shown in Tables 11 and 12.

Table 11 indicates one-year recidivism results from 2009, while Table 12, which includes three-year data the agency gathered in 2007, provides a longer-term look at the program's success.

	<i>Not Enrolled in C&SVOP</i>	<i>Enrolled in C&SVOP</i>
Arrest for Any Offense, 1 year after release date	27.9%	20.4%
Arrest for Violent Offense, 1 year after release date	7.7%	2.0%
Incarceration for Any Offense, 1 year after release date	4.6%	3.1%
Source: TYC 2009 Annual Review of Agency Treatment Effectiveness		

76. See generally, "TYC Education Plan," May 2009, Texas Youth Commission, http://www.tyc.state.tx.us/programs/educ_action_plan.pdf (last visited January 29, 2011).

77. Schuster, p. 28.

78. "CoNEXTions© Program Brochure," Texas Youth Commission, http://www.tyc.state.tx.us/programs/conexions_bro/index.html (last visited January 29, 2011).

79. "Specialized Correctional Treatment," Texas Youth Commission, http://www.tyc.state.tx.us/programs/special_treat.html (last visited January 29, 2011).

80. "Giddings State School Specialized Treatment Programs," Texas Youth Commission, <http://www.tyc.state.tx.us/programs/giddings/treatment.html> (last visited January 29, 2011).

81. John Hubner, *Last Chance in Texas: The Redemption of Criminal Youth*, New York: Random House, 2005.

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Table 12 Capital & Serious Violent Offenders Program 3-Year Effectiveness Results, 2007		
	<i>Not Enrolled in C&SVOP</i>	<i>Enrolled in C&SVOP</i>
Arrest for Any Offense, 3 years after release date	77.8%	40%
Arrest for Violent Offense, 3 years after release date	23.7%	5.0%
Incarceration for Any Offense, 3 years after release date	40.6%	15.0%
Source: TYC 2007 Annual Review of Agency Treatment Effectiveness (as cited in Schuster, p. 31)		

Notable among these results is the low recidivism rate of violent offenses by youth who have completed the C&SVOP. Three years after being released from TYC, only 5% of youth who had received the C&SVOP had been re-arrested for a violent crime, compared to almost 24% of youth who had not been enrolled in the program. The agency's 2010 data are similarly impressive, reflecting that juveniles who complete the C&SVOP are 73.6% less likely to be re-arrested after release than youth who did not participate in the program.⁸²

Many determinate sentence youth are also likely to be in the Sexual Behavior Treatment Program (SBTP). The SBTP is a 12-18-month structured program designed especially for youth identified as high risk for committing a new sexual offense. The programming incorporates intensive psychotherapeutic groups and techniques to facilitate changed behavior. The SBTP has been found to reduce recidivism rates among serious offenders, as shown in Tables 13 and 14 below.

Table 13 Sexual Behavior Treatment Program 1-Year Effectiveness Results, 2009		
	<i>Not Enrolled in Sexual Behavior Treatment</i>	<i>Enrolled in Sexual Behavior Treatment</i>
Arrest for Any Offense, 1 yr after release date	32.9%	24.3%
Arrest for Violent Offense, 1 year after release date	4.9%	2.9%
Incarceration for Any Offense, 1 year after release date	15.9%	11.9%
Source: TYC 2009 Annual Review of Agency Treatment Effectiveness		

82. Texas Youth Commission, *2010 Annual Review of Agency Treatment Effectiveness*, p. 34 (Austin: December 31, 2010), http://www.tyc.state.tx.us/about/Annual_Treatment_Effectiveness_Review2010.pdf (last visited January 29, 2011).

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	<i>Not Enrolled in Sexual Behavior Treatment</i>	<i>Enrolled in Sexual Behavior Treatment</i>
Arrest for Any Offense, 3 yr after release date	71.1%	51.2%
Arrest for Violent Offense, 3 year after release date	16.3%	6%
Incarceration for Any Offense, 3 year after release date	41.1%	29.8%

Source: *TYC 2007 Annual Review of Agency Treatment Effectiveness*
(as cited in Schuster, p. 32)

As with the C&SVOP, it is important to note the low recidivism rates of violent offenses by youth who have completed the SBTP. Three years after being released from TYC, only 6% of youth who had received the SBTP treatment had been re-arrested for a violent crime, compared to 16% of youth who had not completed the program.

The agency's 2010 data support these earlier findings. Youth identified as "high-need" who complete the sexual behavior treatment program were found to be almost 50% less likely to be arrested than similar youth who did not receive such services. Program completers identified as "medium-need" were almost 80% less likely to be rearrested than their counterparts who did not participate in the program.⁸³

83. *Ibid.*, p. 31.

IV. DISCUSSION

This section of the report synthesizes our findings above and discusses the implications of the data we presented regarding the profile of juveniles tried as adults in Texas.

A. There are minimal differences between juveniles who are certified as adults and those who receive a determinate sentence with placement in TYC.

There is a common assumption that juveniles tried as adults are substantially different from those juveniles who are retained in the juvenile justice system and given determinate sentences with placement in TYC. Our analysis, however, shows little to distinguish these two groups of juvenile offenders. On all critical measures, with the notable exception of the county of conviction, these two groups of juveniles look remarkably similar.

The data reveals that the two groups are essentially the same when it comes to demographic factors, such as age, gender, and ethnicity. Both groups are overwhelmingly male and minority, and disproportionately African-American. In terms of age, 16-year-olds are the most prevalent in each population, followed by 17-year olds.

On the two key factors that most would assume distinguish the two populations—criminal offense and criminal history—the juveniles present similar levels of criminality. Both populations are comprised primarily of juveniles who have committed instant offenses that are violent in nature, with the crimes of aggravated robbery and sexual assault being the most prevalent offense for each group. Their criminal backgrounds are also similar, with the majority of both certified juveniles and determinate sentenced juveniles having either one or no prior referrals to juvenile court. Even in cases where there were three or four prior referrals, very few of those prior referrals were for violent offenses.

In terms of their sentence length, these groups are also similar. Most juveniles who are certified as adults receive sentences of less than 10 years, which is also the case for juveniles who receive determinate sentences.

The one significant distinction between certified juveniles and determinate sentence juveniles is their county of conviction. Counties vary widely in terms of the extent to which they certify juveniles, and Harris County stands out demonstrably in this regard. Of course, Harris County has the largest number of juvenile offenders in the state, so we would expect it to have the largest certified population as well. But the enormous discrepancy in the size of the certified population between Harris County and all other counties is disproportionate to the difference in county size.⁸⁴ A number of other counties also certify a disproportionate number of youth compared to their use of the determinate sentencing option. In contrast, certain large counties—Travis and El Paso, in particular—certify almost no juveniles, while other counties appear to depend more heavily on determinate sentencing. This data suggests that the decision to certify a juvenile as an adult turns far more heavily on the county involved than on the youth's offense or background.

The fact that the two populations of certified juveniles and determinate sentence juveniles are so similar leads to the conclusion that they need similar treatment and responses to their criminal behavior. Both groups would benefit from the rehabilitative services provided to youth in the juvenile justice system, and there is little justification for confining the two groups under significantly different conditions.

84. Notably, the disproportionate use of certification in Harris County has been a long-term issue. Back in 1999, the Criminal Justice Policy Council reported its finding that Harris County accounted for more than 52% of certifications in the top 12 counties. Criminal Justice Policy Council, *An Overview of Juvenile Certification in Texas*, 1999, p. 16.

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B. Certified juveniles do not represent “the worst of the worst.”

A prevailing assumption exists among practitioners and policy-makers that those juveniles who are certified to stand trial as adults represent the “worst of the worst” among juvenile offenders. The data show that this assumption is false. This group is neither more violent nor more persistent in their criminal behavior than the determinate sentence juveniles, as discussed above.

Moreover, while the large majority of certified juveniles have indeed committed violent offenses, only 17% have committed homicide. And about 15% of juveniles transferred to adult court are charged with non-violent offenses, including state jail felonies.

The vast majority of certified juveniles do not have a prior violent criminal history, and many do not have any prior referrals to juvenile court at all. For more than one-quarter of the certified population, the instant offense was the first time they were ever in trouble with the justice system. Thus, it is a fallacy to assume that certified youth are repeat, chronic offenders. Strikingly, 89% of certified juveniles had never before even been in TYC, suggesting that few of them have a serious history of delinquency of any kind. This is especially significant considering that the time period covered by the data includes years when juveniles could be sent to TYC for misdemeanor conduct.

Another indicator that certified cases are not limited to the worst situations is that there are so many more certified juveniles than determinate sentence youth with placements in TYC. Despite the opportunity that the determinate sentencing statute presents to offer serious juvenile offenders an appropriate blend of accountability, toughness, and rehabilitation, that statute is under-utilized in certain counties when compared to the law permitting transfer of juveniles to adult court.

Also worth noting is that by the terms of the law, the certification option is not limited to “worst-case scenarios.” Any felony offense in the Penal Code, including a state jail offense, renders a juvenile eligible to be tried as an adult. There are many non-violent offenses that are considered felonies. In contrast, only about 30 felonies qualify a juvenile for determinate sentencing, and these include only the most serious and violent felonies. Thus, the determinate sentencing option—not the certification option—has come to look like it is designed for the most serious juvenile offenders.

C. TYC has not been given a prior opportunity to treat those juveniles who are certified as adults.

Juveniles who are certified to be tried as adults are often considered unredeemable and as beyond the help of the juvenile justice system. But that assumption is belied by the fact that 9 out of 10 certified youth have had no prior commitments to TYC. The vast majority of certified juveniles have never had the opportunity to benefit from the rehabilitative programs that the juvenile system has to offer before entering the adult system. The justice system prematurely concluded that “nothing works” with these juveniles, when the reality in many cases is that “nothing has been tried.” Certified youth miss out on the specialized programmatic opportunities in TYC, especially the highly successful Capital and Serious Violent Offenders Program discussed below.

D. The programming in TYC, especially the Capital and Serious Violent Offenders Program, is far more successful in meeting the specialized needs of juveniles than the Youthful Offender Program in TDCJ.

The programming available to juveniles at TYC is specially designed to offer therapy and interventions that are proven to reduce the likelihood of offenders committing additional violent crimes. The Capital and Serious Violent Offenders Program (C&SVOP) in particular is nationally renowned as a model program for rehabilitating juveniles who have committed some of the worst possible offenses. C&VSOP, based at the

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Giddings State School, has a three-year success rate of 95% in ensuring that its graduates are not re-arrested for violent offenses (in contrast, those juveniles without this specialized treatment have a success rate of only 76%). The Sexual Behavior Treatment Program has also demonstrated significant success in working with its target population, reducing the risk of re-arrest by up to 80%.

In addition to offering specialized rehabilitative programming, TYC offers all youth educational opportunities, including special education programs for youth with demonstrated needs.

Beyond the rehabilitative programming it provides, TYC is obviously designed to meet other unique needs of juveniles, including adolescent dietary needs, recreational programming to ensure appropriate muscle development, programming to promote social development, and family visitation. Moreover, the staffing ratios at TYC and the specialized training received by staff are age-appropriate for this population and contribute to youth safety.

In comparison to the program designed to work with juveniles at TYC, TDCJ is ill-equipped to meet the specialized needs of the population of juveniles certified as adults. While TDCJ has done an admirable job of seeking to develop a housing option to keep these juveniles as safe as possible, the fact remains that these are adult prisons focused much more on the agency's security mission than on rehabilitation. Any services provided to these youths are considered an add-on to the primary program objective of providing housing that separates youth from adults.

Also, staffing ratios in TDCJ are significantly higher than in juvenile facilities, and correctional staff assigned to work with this population receive only limited specialized training (36 hours to meet basic ACA requirements).⁸⁵

Juveniles who are housed in TDCJ's Youthful Offender Program receive minimal specialized programming, especially compared to those in TYC. Also, the majority of these youth are not in school. Due to a lack of resources and the minimal time frame in which most offenders are able to participate in programming, the YOPs are unable to provide the necessary rehabilitative programming that young offenders need to successfully foster positive reform in their lives prior to their release and return back into their communities.

Moreover, those juveniles who are in TDCJ but who are not in the YOPs, including those who are in state jails, administrative segregation, transfer facilities, or medical or mental health facilities, do not have access even to this minimal programming.

The data presented in this report show that the majority of certified juveniles are serving sentences of 10 years or less, meaning that most of them will be back in our communities while they are still young, but they will not have received the services they need to be successful and productive citizens. This lack of rehabilitative programming thus has a significant public safety risk.

National research shows that juveniles housed in adult prisons and jails rather than in juvenile facilities face significantly higher risks of suicide, sexual assault, and physical assault.⁸⁶ Moreover, they present a much higher risk of recidivism than their counterparts housed in juvenile facilities.⁸⁷ One nationally-reported study found that transferred juveniles who served at least a year in prison had a 100% greater risk of violent recidivism.⁸⁸

85. Geralyn Engman, March 7, 2011.

86. See Deitch, *From Time Out to Hard Time*, pp. 55-56. See also, Richard Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?," OJJDP Juvenile Justice Bulletin, Office of Justice Programs, US Department of Justice, June 2010, p. 7.

87. CDC, "Effects on Violence," pp. S7-S21.

88. CDC, "Effects on Violence," p. S13 (citing Jeffrey Fagan, "The comparative impacts of juvenile and criminal court sanctions on adolescent felony offenders," 18 *Law and Policy* 77- 119 (1996)).

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This report has shown how similar the populations are in Texas of juveniles tried as adults and housed in prison and those given determinate sentences and confined in juvenile facilities. Knowing this, it should give us pause to consider the vast differences in the services and programs they receive—and their chances of successful rehabilitation—once they are sent to their respective institutions.

V. RECOMMENDATIONS

Our findings have very clear policy implications, and this section details some of the most critical recommendations for policy-makers and practitioners seeking to address the issues highlighted in this report.

1. Limit eligibility for certification of a juvenile as an adult to the most serious, violent offenses.

In order to rightfully restore certification's place as a strategy for dealing with the most serious, violent juvenile offenders, the range of offenses eligible for transfer to the adult system should be narrowed significantly. Currently, any felony offense can render a juvenile eligible for transfer to the adult criminal justice system, including state jail felonies and other non-violent crimes. Such offenses are readily handled in the juvenile justice system, and should not subject a youth to the adult system. Moreover, the operational difficulties and special costs of dealing with these youth in adult prisons and jails are significant enough that more minor offenses should be kept out of the adult system.

At the very least, it makes sense to match the offenses qualifying for determinate sentencing, already assessed to be the 30 most serious criminal offenses in the Texas Penal Code. Even better would be to limit certification to those crimes that are considered "3g" offenses, the most serious offenses of all under Texas law, such as capital murder, aggravated sexual assault, aggravated robbery, aggravated kidnapping, and felonies involving a deadly weapon.⁸⁹

Similarly, the "once an adult, always an adult" provision in the law should be changed so that only felony offenses at the most serious and violent level should qualify a youth for transfer to adult court, regardless of whether he or she has been previously certified as an adult.

2. No juvenile should be eligible for transfer to adult court unless that juvenile has previously been committed to TYC.

When a juvenile is transferred to the adult criminal justice system, it suggests that there is nothing left for the juvenile justice system to try with that youth. The transfer is in large part a statement that the juvenile is beyond the possibility of rehabilitation. But as discussed earlier, 89% of those youths who are certified as adults have no prior commitment to TYC. These juveniles have not had the opportunity to take advantage of programs such as the Capital and Serious Violent Offenders Program and the Sexual Behavior Treatment Program, both of which have impressive outcomes for participants.

Determinate sentencing affords the court the opportunity to protect public safety while ensuring that these juveniles have the opportunity to participate in rehabilitative programming. Since determinate sentencing remains an option for the most serious juvenile offenders, those juveniles who have not previously been in TYC should not be candidates for transfer to the adult criminal justice system. Those youth who receive a determinate sentence and are unsuccessful in TYC's programming can still be transferred to adult prison at the age of 19 (or earlier, if necessary).

89. Texas Code of Criminal Procedure, Art. 42.12, §3g.

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3. Require all certified juveniles convicted in adult court to be confined in TYC until age 19, when they could be transferred to TDCJ.

Those juveniles who are transferred to adult court for prosecution and sentencing should not be confined in an adult prison that is ill-suited to meet their needs upon conviction. During the years while they are still teenagers, they should be confined in TYC facilities, which are far better equipped to deal with youth. TYC facilities can offer these youth intensive therapeutic programming, educational programs, a rehabilitative culture, staff with appropriate training, facilities designed for a younger population, an appropriate diet, and programs that involve family members. At the same time, confinement in a TYC facility provides public safety and accountability, even for the most serious offenders. What's more, those juveniles who participate in TYC programs such as the Capital and Serious Violent Offenders Program stand a much better chance of being rehabilitated than if they are sent to TDCJ. Since the majority of these juveniles are serving sentences of less than 10 years, every effort should be made to reduce the risk of recidivism for these youth. The best way to accomplish this is to confine certified juveniles in TYC rather than in TDCJ.

Both federal law and state law recognize the risks of housing juveniles with adult offenders in correctional facilities and prohibit such commingling. While there is a loophole in federal law that allows certified juveniles to be held in adult prisons, more recent guidance from the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention clarifies that such certified juveniles may also be held in juvenile facilities without violating federal law.⁹⁰ All the rationales for separating children and adults are equally applicable when dealing with those juveniles who have been transferred to adult court—they continue to have special needs regardless of whether they are prosecuted in the juvenile or adult system.⁹¹ Recognizing that juvenile offenders have distinct physical, emotional, social, and safety needs from adult prisoners—regardless of whether the justice system has deemed them to be adults for prosecution purposes—all of the leading professional associations in the field, including the American Bar Association, the American Correctional Association, and the National Commission on Correctional Health Care, have adopted guidelines recommending that youthful offenders be housed in different settings than adult prisoners.⁹²

There is plenty of national precedent for confining certified youth in juvenile facilities where they can receive specialized treatment, rather than in adult prisons. A review of state practices conducted in 2010 found that of the 35 states for which information was available, 16 states hold certified youth in juvenile facilities until at least age 18. Six of those states hold them until the age of 21 or older.⁹³

As this report has shown, there are few meaningful distinctions between the certified population and the determinate sentence population in Texas. Thus, these two groups of juveniles should be able to be housed safely on the same campuses and to participate effectively in the same programs while at TYC, as happens in

90. Robert J. Flores, *Memorandum from U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention: Compliance with Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 2002*, August 18, 2008.

91. Deitch, *From Time Out to Hard Time*, p. 85.

92. Task Force on Youth in the Criminal Justice System, *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners* (Washington, D.C.: American Bar Association Criminal Justice Section, 2001); American Correctional Association, "Position Statement: Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction," Delegate Assembly, Congress of Correction, New Orleans, Louisiana, January 14, 2004; National Commission on Correctional Health Care, "Health Services to Adolescents in Adult Correctional Facilities," Adopted by the NCCHC Board of Directors, May 17, 1998.

93. Lindsey Stuart, "Alternatives to Housing Youthful Offenders in Adult Prisons and Jails," p. 11, May 2010 (unpublished paper on file with the author). The 16 states and the ages until which certified youth can be held in juvenile facilities include: California (18), Connecticut (21), Florida (18), Illinois (18), Kansas (23), Kentucky (18), Maine (18), Missouri (21), Montana (18), Mississippi (22), Nebraska (22), North Dakota (18), Oregon (18), South Carolina (18), Washington (21), and West Virginia (18).

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other states.⁹⁴ There is no need to develop specialized services and programs for these certified youth. Just as is done with the determinate sentence population, if a certified youth consistently refuses to participate in programming or continues to engage in institutional misbehavior, provisions can be made for early transfer to TDCJ to complete the remainder of the sentence imposed by the criminal court.

As a way to ensure that TYC has the leverage to work with these youth effectively, it would be wise to provide these certified juveniles with some hope that they can be released if they demonstrate that they have been rehabilitated. The criminal judges who sentenced these youth should provide a “second look” at them once they reach age 19 to determine if it is still necessary for them to be transferred to the adult prison system to complete service of their sentence. This opportunity for a review of a juvenile’s progress at age 19 would save money by ensuring that rehabilitated juveniles are not unnecessarily transferred to adult prison for potentially long periods, would protect public safety by ensuring that the juveniles have incentive to turn their lives around, and would create a safer environment at TYC. The proposed review process can mirror the transfer hearing provided to determinate sentence juveniles at age 19, only it would be held in the adult criminal court.

4. Juveniles certified as adults and awaiting proceedings in adult criminal court should be confined in local juvenile detention facilities rather than in adult jails.

For all the reasons discussed above, and because the research shows the extreme safety risks and mental health challenges faced by youth in adult jails, juveniles certified to stand trial as adults should not be confined in adult jails. As the Houston Press article from 2009 so clearly demonstrated, such youth are often held in isolation, resulting in deteriorating mental health, depression, and suicidal tendencies.⁹⁵ The fact is that county jails are ill-equipped to hold youthful offenders. Moreover, most of these youth are unable to bond out of jail due to the fact that they rarely have means of financial support; thus, they spend long periods of time in these isolated conditions, where they have minimal access to educational opportunities or programs. It is also important to remember that these juveniles are still presumed innocent while living in these harsh conditions. Indeed, the data suggests that a substantial number will eventually be found not guilty or will have their cases dismissed. That makes their confinement under harsh conditions in adult jails even more disturbing.

The far more sensible strategy is to confine these youth in county-run juvenile detention facilities. These facilities are already equipped for dealing with a youthful population, and they are already familiar with handling juveniles charged with serious and violent offenses. Juveniles held in these facilities can continue to stay enrolled in school, and can participate in whatever programs are offered. Staff are trained to respond to their special needs, and staffing ratios are far more appropriate for this vulnerable a population.

A significant number of states have policies mandating, or at least allowing, the placement of certified youth in juvenile detention facilities while they await trial. For example, Kentucky requires that a youthful offender under age 18 must be detained in a juvenile facility unless able to make bail or meet the conditions for release.⁹⁶ And Virginia and California both have presumptions in place that a minor offender will be confined in a juvenile detention facility rather than a jail; only if the judge makes a finding of very specific and limited circumstances can the judge

94. A juvenile correctional administrator in Kentucky, which does not distinguish in any way between the population of certified youth and the general population of the juvenile facilities, stated that “if you visited a facility, you would not be able to tell the youthful offenders from the public offenders [general population of juvenile offenders].” She reported that the youthful offenders do not pose any additional burden to the juvenile facility staff, nor are they any more involved in disciplinary actions than other youth.” Stuart, p. 14 (citing Karen King Jones, Classification Branch Manager, Kentucky Department of Juvenile Justice, e-mail message to Lindsey Stuart, April 8, 2010).

95. Vogel, “For Their Own Good,” *Houston Press*.

96. Ky. Rev. Stat. §640.020.

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direct that the youth be held in an adult jail pre-trial.⁹⁷ Pennsylvania also passed a law in 2010 that allows juveniles charged with adult offenses to be housed in juvenile facilities rather than jails.⁹⁸

Since confining these juveniles in juvenile detention facilities for potentially lengthy periods of time will presumably have cost implications for the juvenile probation departments that operate these facilities, some provision should be made for the adult jail to compensate the juvenile probation departments for holding these youth. Cases involving certified youth should also be prioritized for speedy trials in adult criminal court to avoid any potentially lengthy and costly stays in detention.

5. TDCJ should adopt policies mandating streamlined transfer of certified youth to the Youthful Offender Program upon conviction.

Certified juveniles awaiting transfer to TDCJ upon conviction in criminal court should be transported directly from the jail or local juvenile facility where they are being housed to a TDCJ intake facility and then to TDCJ's Youthful Offender Program. Certified juveniles should never be sent to transfer facilities where they would be housed with adult offenders. Currently, it takes an average of 17 days to place these youth in the YOP unit with its separate housing areas.

There is a streamlined process in place to ensure that youth under age 18 coming directly from TYC are placed on the YOP unit within 4 working days of arrival in TDCJ's custody. A similar process should be developed for these certified youth. TDCJ's own Internal Audit Division similarly recommended a strict timeframe and improved processes for assigning certified juveniles received from county jails to the YOP.⁹⁸

6. Allow juvenile court judges to order 19-year-olds to complete programming in TYC.

Some juveniles who are sent to TYC on determinate sentences cannot complete a course of programming or treatment in the time before they turn 19, the maximum age of TYC jurisdiction. Thus, they are likely to be transferred to adult prison at age 19. Yet if the juvenile were to complete this programming, he may be a good candidate for release from TYC, rather than for transfer to TDCJ. At a transfer hearing, a juvenile court judge should be allowed to order that juvenile to remain in TYC to complete therapeutic programming. However, judges should only employ this option in the case of a youth whom the judge believes will be paroled rather than transferred to adult prison following completion of the programming. This would add to the judge's toolkit for dealing with determinate sentence youth, would promote public safety by ensuring that these juveniles complete rehabilitative programming, and would help avoid unnecessary transfers to TDCJ.

7. Improve data collection for juveniles who are certified as adults.

While the Texas Juvenile Probation Commission is an excellent source of data on juveniles who are certified to be tried as adults, there is no agency that collects data on these youth once they are in the adult system. Statistics on sentencing outcomes for these juveniles are not maintained in any way that distinguishes them from adult offenders. There is also little communication between the adult and juvenile court systems at the county level, so local juvenile system stakeholders do not know what happens in adult court once the juvenile court waives jurisdiction over a particular youth. Thus, it is extraordinarily difficult for researchers,

97. Va. Code Ann. §16.1-249(D) (2010); Cal. Welf. & Inst. Code §207.1(b) (2010). Virginia's Legislature passed this law unanimously in 2010.

98. Pa. Cons. Stat. § 6327(c.1) (2010).

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practitioners, and policy-makers to gather aggregate information about what happens to these youth after they are transferred. We do not have current information on the number who receive community supervision, who are acquitted, whose cases are dismissed, or who are sent to prison, for example. Nor is precise data available about sentence lengths in these cases.

Adult courts collect extensive data for submission to the Office of Court Administration (OCA). We recommend that the OCA require adult criminal courts to also report on disposition outcomes for cases involving certified juveniles. In this way, the OCA can become a repository for this data and can provide a fuller picture of what happens to juveniles who are transferred to adult criminal court. Such information would be helpful not only for policy-makers but for the juvenile judges and prosecutors who certify these youth.

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