

# Rightsizing the Justice System: Testimony to the Senate Finance Committee on Article V

## February 9, 2023

**Background on Texas Appleseed:** Texas Appleseed is a public interest justice center working to change unjust laws and policies that prevent Texans from realizing their full potential. We anchor a dynamic network of pro bono partners and collaborators to develop and advocate for innovative and practical solutions to complex issues. Texas Appleseed also conducts data-driven research that uncovers inequity in laws and policies and identifies solutions for lasting, concrete change. The many issues on which we work are united by the goal of greater justice.

### Invest in TJJD's Success

The Texas Juvenile Justice Department (TJJD) has various functions that it has historically done well and efficiently.<sup>1</sup> For example, TJJD provides technical assistance to county probation departments and provides support such as trainings, tools, and case management systems. TJJD also ensures probation departments adhere to standards created and monitored by the agency and conducts abuse and neglect investigations when needed. Additionally, the agency collects data from counties and produces statewide reports and updates about the conditions within our juvenile system, information that is critical to policymakers and the public. TJJD does all this while also disbursing grants and funding to counties across the state, including grants that provide services intended to prevent children from entering the juvenile system.

This sort of communication and support between the counties and the agency is critical to serving this vulnerable population. We applaud the Legislature for going above and beyond in funding TJJD's exceptional item for salary stipends for juvenile probation departments at a rate higher than the agency requested.<sup>2</sup> This investment will serve Texas children and communities by ensuring that children stay shallower in the system, because it will allow juvenile probation departments to ensure they have the capacity they need to provide critical supports and services.

However, there are a few exceptional items that TJJD requested that were not funded in the filed budget that are critical to ensuring taxpayer dollars are wisely focused on the supports and services that have proven not only effective – but critical to safety for Texas communities and the children who are juvenile-justice involved. For instance:

- Funding TJJD's exception item requesting \$540,000 in increased funding for prevention and intervention services (Priority 15) would be a pivotal investment in our youth and would protect communities by intervening before children exhibit more significant behavioral problems.
- Funding TJJD's exceptional item requesting \$8.9 million to maintain existing diversion targets (Priority 7) would ensure that the agency is able to keep pace with the costs associated with diverting youth from state secure facilities and protect against an increase in commitments to struggling state secure facilities.

<sup>1</sup> Tex. Hum. Res. Code Sec. 201.002

<sup>2</sup> State Senator Joan Huffman, *Senate Bill 1*, The 88<sup>th</sup> Texas Legislative Session

- Funding TJJJ’s exceptional item requesting an additional \$7 million in funding for community-based programming (Priority 14) would allow more children to receive rehabilitation in their communities, an evidence-based practice proven to be more effective than secure facilities.
- Funding TJJJ’s exceptional items, totaling \$932,000, focused on probation system support (Priority 13) would allow the agency to increase its capacity to provide critical regional support to probation departments, and would fund a mental health program coordinator to assist counties in identifying supports for children with high mental health needs.
- Funding TJJJ’s exceptional item for \$3 million in funding to allow it to continue providing validated risk and needs assessments (Priority 8) to county probation departments ensures that counties have what they need to ensure rehabilitation is based on an evidence-based practice.

Finally, ensuring that children are safe during their juvenile justice system involvement is not only required by state and federal law – it also ensures that children do not leave the system more traumatized (and therefore more likely to experience behavioral challenges) than they were when they entered the system. Funding TJJJ’s exceptional item related to the Office of the Independent Ombudsman (OIO) (Priority 21) is critical to effective systems of rehabilitation.

### **Divest from TJJJ’s Weakness**

Similarly, we are cautious about Texas investing more tax dollars into a piece of the system that TJJJ has historically struggled to manage. Specifically, we are concerned about investing more money into building new state-run secure facilities given the agency’s poor track record of safely operating its existing facilities.

TJJJ’s secure lockups have a history of staffing shortages and high turnover rates. Though staffing levels have stabilized somewhat since TJJJ raised wages in July of 2022, the agency still had less than half of its budgeted officer positions filled in September 2022.<sup>3</sup> Building new state secure facilities will not address the staffing crisis TJJJ is facing, and it is unlikely to address the short-term problem that the agency is facing regarding waitlists to get into state secure facilities. What’s more, the agency’s staffing shortages have fueled chaos inside TJJJ’s state secure facilities and have led to a host of issues that threaten the safety and well-being of youth in them. Some of these issues include:

- Youth being locked in their rooms for up to 23 hours a day.<sup>4</sup>
- Kids having to use water bottles and lunch trays to relieve themselves after not receiving adequate bathroom breaks.<sup>5</sup>

<sup>3</sup> McCullough, Jolie, *Pay raises alone won’t solve staffing shortages in “nightmare” Texas youth prisons, ex-workers say*, Texas Tribune, (November 17, 2022) available at <https://www.texastribune.org/2022/11/17/texas-juvenile-prisons-employee-raises/>

<sup>4</sup> McCullough, Jolie, *Understaffed, and under federal investigation, Texas juvenile detention system halts intake*, Texas Tribune, (July 7, 2022), available at <https://www.texastribune.org/2022/07/07/texas-juvenile-justice-staffing/>.

<sup>5</sup> McCullough, Jolie, *In Texas youth prisons, children trapped in their cells use water bottles and lunch trays for toilets*, Texas Tribune (September 12, 2022), available at <https://www.texastribune.org/2022/09/12/texas-juvenile-prisons-crisis/>



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- TJJD staff resorting to an overuse of restraints, including OC spray, and other means of force while supervising the youth.<sup>6</sup>
- Numerous accounts of sexual abuse and misconduct between TJJD staff and youth.<sup>7</sup>

Texas' state secure facilities are not working. Youth are not receiving quality rehabilitation services and are being hurt by staying in these large lockups. This is in line with other reports that have found large, prison-like lockups leave youth worse off. Specifically, a report by the Council of State Governments found that youth committed to Texas' state-run facilities were twenty-one percent more likely to re-offend with a violent offense when they are released than youth with similar treatment needs and offense histories who instead were kept in their community.<sup>8</sup> Texas should create a plan to move away from these state secure facilities and increase investments in regionalization efforts and diversion services that keep youth closer to their home communities and ensure they have shallow involvement in the justice system.

### Juvenile Population Projections have been Historically Overestimated

In 2022, the Legislative Budget Board (LBB) released its projections for Texas' correctional population and estimated that the number of youths within the state residential facilities would increase by over 21% in the next few years.<sup>9</sup> These population projections have been used as the basis for Texas' need to build new state secure facilities for youth. However, these population projections have consistently overestimated the number of youths committed to TJJD's state secure facilities.

As seen in *figure 1*, the projected average daily population has been significantly higher than the actual average daily population (ADP) within TJJD's state facilities for years. In fact, even before the COVID-19 pandemic, LBB projections were more than 25% higher than actual ADP.

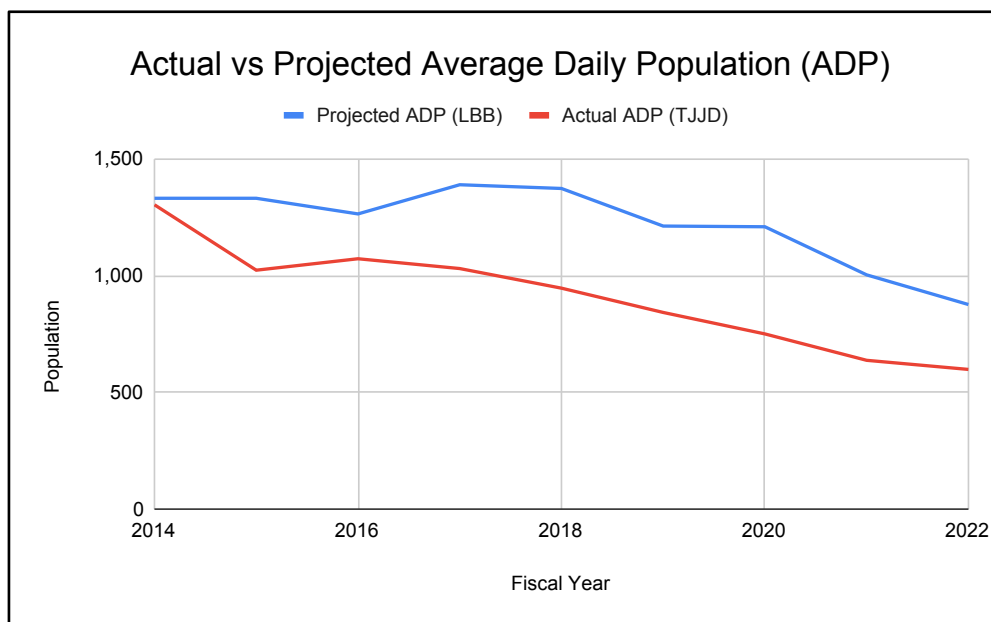


Figure 1. Actual vs. Projected Average Daily Population of youth in TJJD's secure facilities.

<sup>6</sup> Texas Appleseed and Disability Rights Texas, *Complaint to the Department of Justice* 10-11 (2020).

<sup>7</sup> *Ibid.*

<sup>8</sup> Council on State Governments and Public Policy Research Institute, *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms* (January 2015), available at <https://csgjusticecenter.org/publications/closer-to-home/>

<sup>9</sup> Legislative Budget Board of Texas, *Adult and Juvenile Correctional Population Projections Fiscal Years 2022 to 2027*, (July 2022) available at [https://www.lbb.texas.gov/Public\\_Safety\\_Criminal\\_Justice.aspx](https://www.lbb.texas.gov/Public_Safety_Criminal_Justice.aspx)



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This consistent overestimation of TJJD's youth population underscores our concern that taxpayer money will be invested in unnecessary bed space that will not be seen for years to come.

## **Conclusion**

As the 88<sup>th</sup> Texas Legislative Session progresses, it is critical that we ensure thoughtful investments are made in our child-serving systems. The Texas Juvenile Justice Department (TJJD) is at a pivotal moment with the agency under Sunset Review during a historic state budget surplus. Although significant reforms need to be made to the agency, we do not believe investing hundreds of millions of dollars in new state secure facilities is the best use of taxpayer money, nor will it stabilize TJJD during its current crisis. Rather, we believe the agency should focus on supporting county probation departments and other regionalization efforts that allow youth to rehabilitate in their home communities. Texas has always been a leader in juvenile justice reform, and Texas Appleseed believes we can make innovative investments to better equip TJJD as they continue serving youth. Continuing to invest in unsustainable facilities that will not provide relief for years to come would be misguided.



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