

# Raise the Lower Age

In Texas, children aged 10 and up can be adjudicated and confined in secure juvenile correctional facilities. **These prison-like settings are no place for kids.**

## MICHAEL'S STORY

Michael,\* a young Black student, considers Judy like a grandmother. Michael is like so many kids we know — he loves football, basketball, and music. He had always been a very social and outgoing child, but Michael's life significantly changed in 6th grade, when he was just 11 years old. After a fight on the school bus, Michael and several other children of color were arrested. Michael spent five nights in a juvenile detention facility, where he was alone in a cell and wore detention-issued clothes that hung off his small frame.

### From Bus Scuffle to Lockup

It began when two children were being bullied in the back of the bus. The bus driver asked the children who were being bullied to move forward and sit behind him, but the bullying did not stop. The bus driver allowed the situation to escalate for nearly 10 minutes without stopping the bus as additional children got involved — including Michael who eventually left his seat, pushed and attempted to hit one of the children. Finally, concerned about injuries, the bus driver stopped the bus and called for assistance. Police arrived shortly thereafter, but none of the children were detained. The next day, the students went to school as normal. There, they learned that five children were being suspended, including Michael. Michael's mother and Judy later learned there was a warrant issued for his arrest. **Michael had just turned 11.**

### Cruelty of Confinement

Michael's family dropped him off at the juvenile detention intake yard, where he was handcuffed and led to intake by detention officers. Michael ended up in detention for five nights. The first night Judy and his mom got only a 30-minute visitation. Judy recalled, "He was behind glass in a small room with only a metal mouthpiece to communicate through. His eyes were vacant when we walked in. He's a kid that plays sports, loves going to church youth group, and is super funny. We got there, and he just stared at us. It was a helpless feeling. We couldn't touch him, hug him, or comfort him. He put his hands on the glass, and we put our hands up to meet them on the other side of the glass. He was desperate to hug his mother."

### Rushed in Court & Admonished

By the time Michael's turn to go before the judge came, the family was informed the court was short on time and needed to proceed quickly or wait until another time. Not wanting Michael detained any longer, the family decided to proceed, hoping for grace for young Michael. Instead, the judge explained that Michael's behavior was "inexcusable" and that "you should be ashamed of yourself." Describing that experience in the courtroom, Judy said, "He had no idea what was going on. When the judge ordered him detained and returned to the cell pod, he couldn't even hug his mother goodbye because he remained in handcuffs through the whole proceeding."

### Life-Changing Harms

While he was in juvenile detention, Michael's family began to worry about the long-term effects of the traumatic experience. "He was barely sleeping, barely eating," Judy later learned. After being released, he was placed in a Disciplinary Alternative Education Program (DAEP) during the day — essentially an alternative school that is not akin to a traditional classroom. He had a long list of strict conditions of release including that he could not carry cash or have a cell phone which Judy said jeopardized his ability to call home creating safety concerns and challenged his day-to-day involvement in school-related activities. This has dampened some of Michael's spirit; he is still dealing with the trauma from this experience. Michael's family asked for assistance with counseling, but were told that he was referred by his probation officer and he was declined.

\* Names have been changed to protect the family's privacy, and images do not depict the actual children.

## RECOMMENDED SOLUTION

Young children do not belong in the juvenile setting. Texas should instead embrace a developmentally appropriate approach to address these youth by raising the lower age of juvenile jurisdiction from 10 to 12 or 13.

## HARMS OF INCARCERATING KIDS

- Exposes youth to high levels of violence and abuse
- Does not reduce recidivism among offending youth
- Wastes taxpayer dollars
- Provides no overall benefit to public safety
- Can exacerbate kids' social, academic, and emotional difficulties

Kids aged 10-11 make up a small percentage of kids referred to the juvenile justice system. Most are referred for misdemeanors. Referrals to probation increase the likelihood that youth will be involved in the justice system later in life.<sup>1</sup>

Further, when pre-adolescent children exhibit law-breaking behavior, there are often family dysfunction or behavioral health issues that are better addressed outside of the juvenile justice system. For example, FAYS (Family and Youth Services)<sup>2</sup> is a prevention program available in all 254 Texas counties that can provide counseling or parenting classes. Anyone can refer a child to FAYS, including school officials, which can provide much needed help to young people without criminalizing them.

“

*It was a helpless feeling. We couldn't touch him, hug him, or comfort him.*

”

## SNAPSHOT

**Half** of the 10- to 12-year-olds in detention in 2018 had mental health needs.

**Twenty percent** of 10- to 12-year-olds in detention in 2018 were special education students.

In 2019, there were **435** probation referrals for 10-year-olds and 1,202 for 11-year-olds, representing **9.1%** of total referrals.<sup>3</sup>

In 2015, at least **46%** of 10- to 12-year-olds were referred to probation because of school-related behaviors.<sup>4</sup>

Black youth are referred to probation for school-based offenses at a **higher rate** than their White peers.<sup>5</sup>

<sup>1</sup> The Annie E. Casey Foundation, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2007), available at <https://www.aecf.org/resources/the-dangers-of-detention/>.

<sup>2</sup> FAYS was formerly known as Services to At Risk Youth (STAR).

<sup>3</sup> This tracks with data for the past 10 years in Texas. See Texas Juvenile Justice Department, *The State of Juvenile Probation Activity in Texas 2019* (2019), available at <https://www.tjjd.texas.gov/index.php/doc-library/send/334-state-of-juvenile-probation-activity/2479-the-state-of-juvenile-probation-activity-in-texas-2019>.

<sup>4</sup> The Texas Juvenile Justice Department (TJJD) will not release aggregate data to update this statistic; without that data, we are unable to know how many young people are referred by age due to school-based behaviors. See Texas Appleseed & Texans Care for Children, *Dangerous Discipline* (2015), available at <http://stories.texasappleseed.org/dangerous-discipline>.

<sup>5</sup> In 2015, Black youth were referred to juvenile probation for school-related offenses at a rate 2.86 times higher than their White peers. See Texas Appleseed & Texans Care for Children, *Dangerous Discipline* (2015), available at <http://stories.texasappleseed.org/dangerous-discipline>.

### For More Information:

**Alycia Castillo**, Policy Analyst  
Texas Criminal Justice Coalition  
512.441.8123, ext. 107  
210.392.1593 (cell)  
[acastillo@texasajc.org](mailto:acastillo@texasajc.org)  
[www.texasajc.org](http://www.texasajc.org)

**Deborah Fowler**, Executive Director  
Texas Appleseed  
512.473.2800, ext. 105  
512.757.1458 (cell)  
[dfowler@texasappleseed.net](mailto:dfowler@texasappleseed.net)  
[www.texasappleseed.org](http://www.texasappleseed.org)



Published March 2021

