

JUVENILE JUSTICE & SCHOOL DISCIPLINE

THE ISSUE

There are over 150,000 juveniles arrested every year in Texas, and more than 50,000 are incarcerated at Texas Youth Commission (TYC) and local detention and postadjudication facilities. The Texas Juvenile Probation Commission (TJPC) monitors these local lockups. Also, some 68,000 Texas youths are on probation or parole.

Another 7,000 Texas youths are in Juvenile Justice Alternative Education Programs (JJAEPs), which are non-residential educational facilities overseen by counties for students who have been expelled, committed certain criminal offenses, or engaged in serious and persistent misbehavior while at alternative schools called Disciplinary Alternative Education Programs (DAEPs). Under zero tolerance policies, Texas students have been expelled for accidentally bumping into an alarm and possessing prescription drugs and asthma inhalers that they were legitimately using but failed to register with school authorities.

In 2005, honor student and soccer team goalkeeper Pavlos Karnezis in Fort Bend ISD was expelled and banished for months to a JJAEP for a small knife used for a school-sponsored internship at Texas Instruments that was volunteered to a physics teacher when she asked for something to cut with. His graduation would have been delayed had his parents not moved him to a private school.

Additionally, more than 286,000 Texas students are placed in out-of-school suspension, resulting in more than 1 million school days missed. Texas students are 35 times more likely to commit a criminal offense while suspended.

Some 106,000 students are suspended and placed in DAEPs. All districts must have a DAEP, but smaller districts often share them with one or more neighboring districts. Most DAEPs are operated by school districts although several in Houston and Dallas are run by private entities that contract with school districts. DAEPs have five times the drop-out rate of regular campuses, and some 80 percent of Texas adult prisoners are drop-outs.

In 2007, policymakers addressed the crisis at TYC by enacting SB 103. Among other reforms, SB 103 instituted cameras, an inspector general, and an ombudsman to root out abuses; prevented sex offenders from working at TYC; ended the placement of misdemeanants at TYC; created a parental bill of rights; and required that youth at TYC be paroled or transferred to adult prison upon turning 19.

Also in 2007, the Legislature enacted measures requiring the Texas Education Agency to promulgate standards for DAEPs and that DAEPs, for the first time, provide a full school day and administer an intake and outtake exam for students placed there for 90 days or more. The Iowa Test of Basic Skills is already administered to students placed at JJAEPs for

90 days or more. This has provided a barometer indicating that JJAEP students make academic progress that is more than commensurate with their placement period while also allowing for comparisons among different types of JJAEPs (classroom, military, and therapeutic) and JJAEPs in various counties.

THE FACTS

- ★ The number of youths incarcerated at TYC residential facilities, including institutions, halfway houses and contract facilities, has declined from 5,646 in 2000 to 4,709 in February 2007 and, following SB 103, to 2,882 in February 2008.
- ★ DAEP placements have increased from 70,728 in 1999-2000 to 105,530 in 2005-06. Approximately 76 percent of DAEP placements are discretionary while the remainder is mandatory, because they involve conduct on or near the campus such as assault, drug or alcohol possession, and setting off a false alarm that automatically trigger suspension and DAEP placement under provisions in Chapter 37 of the Education Code.
- ★ Some 569 pre-kindergarten and at least 3,118 first-grade students have been referred to DAEPs.

RECOMMENDATIONS

- ★ *Pool TYC and juvenile probation funds for nonviolent offenders.* Ohio reduced recidivism two-to-six-fold and reduced commitments to state youth lockups by 36 percent through its RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) program. This involves pooling state probation and incarceration funds for nonviolent offenders and remitting the money to counties based on population and delinquency levels. Counties can then purchase slots in state lockups or use the same funds for less expensive, but often more effective, local programs, such as day treatment. This funding approach could be initially applied in connection with the 300 youths referred annually to TYC for drug offenses.
- ★ *Link a share of juvenile probation funding to outcomes.* Some portion of juvenile probation funding should be linked to performance benchmarks for each department, such as the percent of probationers who successfully complete a program, the percent of probationers who commit additional crimes (with a greater weight for violent crimes), school attendance, academic and behavioral progress, employment for youth who are not full-time students, and percent and amount of restitution collected.
- ★ *Streamline TYC facilities.* Despite the costs of implementing SB 103, such as increasing juvenile correction officer training to 300 hours (the adult prison guard standard) and staffing the inspector general and ombudsman's office, TYC's operating budget declined from \$454.6 million in 2006-07 to \$445.3 million in 2008-09, largely due to fewer incarcerated youth and the reconversion of two facilities to the adult prison system. However, the cost per youth has increased from \$62,000 per year to over \$100,000. TYC institutions are not being fully utilized and must be further consolidated to control costs. Unnecessary TYC lockups should be prioritized for closure based on their recidivism rate, the available local workforce, the number of current and recent staff vacancies, and the remaining lifespan, maintenance costs, and overall suitability of the physical plant.
- ★ *Emphasize vocational training at TYC facilities.* Given that the average youth committed to TYC has an IQ of 88, functions at a 5th to 6th grade level despite being 16 years old, and typically has few if any high school credits, high school graduation is often not realistic, particularly in light of the shorter confinement periods at TYC since SB 103. Moreover, most youths discharged from TYC have no source of financial support and thus do not re-enter school. Research indicates employment of ex-offenders substantially reduces recidivism. Consequently, TYC programming should emphasize earning a GED and obtaining vocational training in fields such as welding, automotive repair, and construction. While TYC has vocational programs, each type of program is not available at each facility. TYC should include as a performance measure the number of GEDs and occupational certificates obtained by incarcerated youths.

- ★ *Revise Education Code Section 29.012 to allow juvenile probation departments to receive education funding directly from the state for youths in residential facilities.* Currently, some school districts send over low-performing teachers to these facilities, and there is no principal or other instructional leader in charge. In 1999, the Dallas County Juvenile Probation Department and Dallas ISD agreed to put the county's residential facilities under a charter school operated by the Juvenile Probation Department, and student performance has dramatically improved. The state should allow counties to independently decide to receive state per-student funding along with the obligation to provide instruction for youth in postadjudication and detention facilities. These departments could then charter a school or contract with a school district or other provider. Such charters should be exempt from the state cap on charters, and their accountability evaluations should be based on customized criteria that reflect the uniquely challenging population and shorter period of enrollment prior to returning to a traditional campus. For the majority of juveniles who spend less than six months in a residential facility and its school, an intake and outtake diagnostic test, such as the Iowa Test of Basic Skills which is administered to students placed at Juvenile Justice Alternative Education Programs (JJAEPs) for 90 days or more, is much more useful than the TAKS test for assessing the efficacy of the educational program, because it solves the disaggregation problem by measuring the change in proficiency while in the new setting.
- ★ *Make expulsion discretionary for students caught with prescription drugs and asthma inhalers.* Expulsion is mandatory if a student is caught with Xanax or other legitimately prescribed medications that they have not registered with school authorities. Section 37.007 (a)(3) of the Education Code requires expulsion for any drug offense that is punishable as a felony, and drug offenses that would otherwise be misdemeanors are punishable as felonies under the Section 481.134 of the Health & Safety Code if they occur within 1,000 feet of a school. Schools should be free to exercise discretion in whether to expel such students based on their disciplinary history, intent, and other factors, as they may achieve better outcomes with such students through in-school discipline and/or suspension.
- ★ *Make suspension to a DAEP discretionary instead of mandatory for possession of alcohol and abuse of volatile chemicals, such as glue and correction fluid.* A high school student with a beer can in the trunk of his car parked in the school lot could be disciplined in ways other than being sent to a DAEP, which tends to disrupt academic progress. Principals, not state lawmakers, are best situated to make disciplinary decisions based on the unique facts in each case.

RESOURCES

- *The ABC's Before TYC: Enhancing Front-End Alternatives in the Juvenile Justice System* by Marc Levin, Texas Public Policy Foundation (Feb. 2008) <http://www.texaspolicy.com/pdf/2008-02-PP04-ABCofTYC-ml.pdf>.
- *Schooling a New Class of Criminals* by Marc Levin, Texas Public Policy Foundation (Mar. 2006) <http://www.texaspolicy.com/pdf/2006-03-PP-DAEP-ml.pdf>.
- *Disciplinary Alternative Education Programs: What Is and What Should Be* by Marc Levin, Texas Public Policy Foundation (Dec. 2005) <http://www.texaspolicy.com/pdf/2005-12-DAEPs-pb.pdf>.
- *Texas' School-to-Prison Pipeline: Dropout to Incarceration*, Texas Appleseed (Oct. 2007) <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>.
- *Transforming Juvenile Justice in Texas: A Framework for Action - TYC Blue Ribbon Task Force Report* by David Springer (Sept. 2007) <http://www.dallasnews.com/s/dws/img/09-07/0913tycreport.pdf>.
- *Zero Tolerance Horror Stories* by George Clowes, Heartland Institute (June 2003) <http://heartland.org/Article.cfm?artId=12352>.

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ABOUT THE AUTHOR

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