



PolicyPerspective

The Right Prescription for Juvenile Drug Offenders

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Recommendations

- Make youth with only drug offenses ineligible for commitment to TYC.
- Increase flexibility of DSHS funding to permit greater use of day treatment.
- Streamline TJPC funding.
- Pool TYC and TJPC funding for drug offenders and remit to counties.
- Adopt and publish performance measures for all state youth facilities.
- Increase coordination between DSHS and juvenile probation departments and enhance data collection on private substance abuse treatment providers.
- Account for departures from progressive sanctions model.
- Expand drug courts.

Introduction

How best to deal with Texas students who abuse alcohol and drugs? The question grows in importance and immediacy, despite four decades of public commitment to protecting young people from harmful substances such as alcohol, marijuana, and inhalants.

Substance abuse is a major challenge facing the juvenile justice system, as it is one of the most common reasons for youths to be arrested. In 2007, 609 Texas juveniles were arrested for a drug offense for every 100,000 youths. Also last year, some 12,324 juveniles were referred to probation for a drug offense, representing a 7 percent increase in referrals since 2000.¹ Nearly 9,000 of these referrals were attributable to misdemeanors.² These misdemeanor drug referrals are primarily marijuana offenses since the smallest amounts of all other illegal drugs are at least a state jail felony.

Additionally, a significant percentage of youths referred for other types of offenses have a substance abuse problem that contributed to their delinquency. An Office of National Drug Policy study found that more than half of all male juveniles tested positive for drugs upon being arrested.³ In 2006, the Texas Department of State Health Services (DSHS) conducted a survey of Texas secondary school students, which found marijuana, inhalants, and cocaine were the most commonly used illegal drugs. While higher numbers of students in grades 7 to 12 had tried illegal drugs, 6 percent were classified as heavy, regular users of illicit drugs based on their responses.⁴ Clearly, the substance abuse problem is pervasive.

School anti-drug initiatives and other prevention strategies remain a major component of federal, state, and local efforts to root out the scourge of illegal drugs. Despite such initiatives, the volume of youths who try and subsequently become addicted to illegal drugs far outstrips the number of available beds at local facilities and the Texas Youth Commission (TYC), particularly given the demand for those beds to house youths adjudicated for violent, sex, or serial property offenses.

The pervasiveness of the problem effectively dictates that juvenile probation be the primary strategy for those youths who have not committed more serious offenses and are not involved in dealing drugs. The evidence indicates that strengthening community-based correctional approaches for juvenile drug offenders is the most effective way to reduce recidivism and costs to taxpayers.

Drug Offenders at TYC

Current Policy & Practice

Under existing Texas law, a juvenile can be referred to the Texas Youth Commission (TYC) for a single drug possession felony, even if it involved possession of less than a gram of a controlled substance and the juvenile had no prior offenses. In practice, such referrals have been the exception rather than the rule and are becoming less common. In fact, the number of offenders at TYC for whom a drug offense is their classified offense has declined from 306 in 2006 to only 138 in 2008.⁵ Part of this decline stems from the passage of SB 103 in 2007. This legislation excluded misdemeanants, and therefore low-level marijuana offenders, from TYC.

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Texas Secondary School Students Reporting Having Used Substances

Alcohol	56%
Tobacco	35%
Cocaine	8%
Inhalants	17%
Marijuana	26%
Ecstasy	4%
Downers	6%
Rohypnol	3%
Hallucinogens	5%
Heroin	1.5%
Steroids	1.5%

Source: Texas Department of State Health Services

The classification offense represents the most serious crime the youth had committed, so many violent, property, and sex offenders at TYC also have committed a drug offense. Some youth in this group of offenders at TYC were placed on probation for another type of felony before being revoked either for a new drug offense or the technical violation of testing positive for drugs. For example, felony probationers can still be revoked to TYC for possessing or testing positive for marijuana. TYC currently has 270 offenders on hand who have been convicted of a felony drug offense and 348 offenders who have been convicted of a misdemeanor drug offense. Of all youths committed to TYC for felonies, some 41 percent are identified as having a substance abuse problem.⁶

Results of TYC Drug Treatment

TYC’s Chemical Dependency Treatment Program has produced mixed results. Offenders completing the program have a higher one-year re-arrest rate, but a slightly lower one-year violent offense re-arrest rate. On a three-year basis, offenders completing the program performed slightly better in both categories. It is important to note, however, that the majority of offenders in each cohort had classification offenses other than drug offenses, including many who had committed numerous violent and property offenses. Additionally, these cohorts consist entirely of offenders released prior to the passage of SB 103, as newer data is not yet available.

The agency cites difficulty in recruiting qualified chemical dependency counselors to work in its remote facilities as a key limitation on the program’s effectiveness.⁷ Another factor may be that the program only involves one hour of individual counseling per week, far less than a youth would receive in a non-profit residential treatment facility.

One-Year TYC Chemical Dependency Program Recidivism⁸

Group	Status	Rearrest Rate	Violent Rearrest Rate	Reincarceration Rate
Group 1	Enrolled (N=513)	63.7%	10.7%	30.6%
Group 2	Not Enrolled (N=206)	51.9%	8.3%	22.8%
Group 1	Completed (N=304)	57.9%	9.5%	30.0%
Group 2	Not Completed (N=209)	72.2%	12.4%	31.6%

Three-Year TYC Chemical Dependency Program Recidivism⁹

Group	Status	Rearrest Rate	Violent Rearrest Rate	Reincarceration Rate
Group 1	Enrolled (N=529)	86.0%	21.2%	51.4%
Group 2	Not Enrolled (N=271)	82.7%	21.2%	48.7%
Group 1	Completed (N=371)	84.9%	24.0%	48.8%
Group 2	Not Completed (N=178)	88.6%	28.5%	57.6%

In contrast to the results at TYC, the reincarceration rate for all offenders in state youth facilities in Missouri is 14 percent, including both juvenile and adult incarceration.¹⁰ Missouri gained national attention for converting its large lockups, which were similar to TYC facilities, to a group home model. Similarly, a meta-analysis examining 65 studies of incarceration-based substance abuse programs for adults and juveniles found a 7 percent reduction in recidivism, which exceeds TYC’s performance.¹¹

While the cost of the Chemical Dependency Treatment Program is not separately calculated, the TYC’s stated cost per day in the third quarter of 2008 was \$136.04 per youth, which equates to an annual cost of \$49,665. However, if the 2,200 youths in TYC’s institutions are divided by its total budget minus direct parole and contracted capacity costs (\$247 million - \$40.5 million = \$206.5 million), the resulting cost is \$257 per youth per day, equating

to an annual cost of \$93,864 per youth. This figure fully allocates administrative costs to the institutional division. While some of TYC's administration is devoted to parole or contract facilities, most is appropriately attributable to institutions, particularly given that parole in some areas is subcontracted to juvenile probation departments and contract beds are down to 228 following the 2007 closure of the Coke County facility.

Given the recidivism rates, it appears TYC's drug treatment program is, at best, marginally effective. However, several considerations must be taken into account in evaluating the results. First, many of these youths may have failed out of treatment programs during their time on probation, so they are the offenders most difficult to reform. Second, the majority of youths receiving drug treatment at TYC committed serious non-drug offenses that indicated they threatened public safety. Placement of such youths at TYC or any secure correctional facility does achieve the goal of preventing them from re-offending during the period of incarceration. This benefit, however, is more salient in the adult system where some offenders serve most of their life in prison or are not released until they have aged out of criminal behavior. At TYC, the average length of stay is less than two years.¹² Consequently, with the exception of the small group of offenders transferred to the adult prison system, the vast majority of youth at TYC will soon reenter society. Therefore, while incapacitation of the most dangerous offenders remains a justification for incarceration, the long-term impact on the crime rate will be determined more by the extent to which youths, including those in substance abuse treatment at TYC, can be redirected into a law abiding life.

Drug Offenders on Juvenile Probation

Current Policy & Practice

Texas has 254 counties that have a juvenile probation department, although some of the smallest counties share an office. Juvenile probation remains the primary means of dealing with juvenile drug offenders, as more than 95 percent of juvenile drug offenders will neither be initially sentenced nor revoked to TYC. The Texas Juvenile Probation Commission (TJPC) reports that probation departments placed 18,998 probationers in substance abuse programming in 2007.¹³

Such programs are funded in several ways. TJPC provides about a third of juvenile probation budgets, with the remaining amount coming from county budgets, along with some federal grants. Within TJPC's allocations,

most of the money is distributed based on the number of probationers and the county's population, but an additional stream of money supports placement in the 32 county-run lockups called postadjudication facilities. Youth who have committed a serious offense but avoided TYC placement and youth who are failing on juvenile probation are typically placed in these facilities, often as a final effort to avert revocation to TYC. Placement at a postadjudication facility often lasts three to six months, whereas detention facilities are generally limited to 30 days at the most.

The average 2008 population at postadjudication facilities (including secure and non-secure) was 3,089. In addition, some 2,853 probation youth in 2008 were in placement, which includes drug treatment programs. Generally, the large urban departments operate facilities for only their youths, while the midsize and small departments contract with postadjudication facilities run by non-profit organizations. At a cost of \$90.62 per day, postadjudication facilities are significantly less costly than TYC, but more than twice the cost of outpatient or day treatment.

Most of the 32 postadjudication facilities provide at least drug education, though no statewide data is available concerning the specifics of the drug education, treatment programming, or their effectiveness. Of these facilities, nine have been certified as specialized substance abuse facilities and provide substance abuse treatment through TJPC's certification program that began in 2008.

In addition to postadjudication facilities, the Department of State Health Services (DSHS) provides funds through which indigent probation youth are referred to inpatient and outpatient drug treatment programs, most of which are operated by non-profit organizations. More than 80 percent of these funds come from federal grants, not general revenues. In fiscal year 2008, DSHS covered substance abuse treatment and intervention for 3,318 youths. Of these youths, 874 were referred to residential treatment programs, with the remaining 2,444 referred to outpatient programs. Among these cases, 2,846 were for marijuana as the primary substance, accounting for 85.8 percent of the total. In addition to treatment programs, DSHS funds drug education for 81,147 youths, again primarily by passing through federal funds.¹⁴ DSHS treatment per diem costs range from \$54 for outpatient treatment to \$102 for supportive residential, and \$150 per day for intensive residential.

Results of Juvenile Probation

Juvenile probation departments are achieving considerable success in reforming drug offenders through means other than commitment to TYC. However, when comparing outcomes at various levels of the juvenile justice system, it must be taken into account that those offenders that advance to TYC are the most difficult to reform—often the youths that have failed in every other setting. Nonetheless, it is instructive to examine the outcomes juvenile probation departments are achieving through substance abuse treatment.

TJPC categorizes substance abuse programming to which probation youths are referred as “substance abuse intervention” and “substance abuse treatment.” Intervention consists of drug education classes, while treatment is more intensive and may consist of outpatient treatment, day treatment, or residential treatment. In 2003, the most recent year for which data is available, youths successfully completing an intervention or treatment program were significantly less likely to be referred to TYC within two years than those who failed the program.

Two-Year TYC Referral Rates

Juvenile Probation Program	Successful	Unsuccessful
Substance Abuse Intervention	4.5%	9.2%
Substance Abuse Treatment	5.0%	33.7%

Source: Texas Juvenile Probation Commission

In the absence of more recent and detailed statewide data, the Dallas County Juvenile Probation Department provided the Foundation with outcome data for their drug treatment programs. The Department reports that they generally follow a series of increasingly intensive approaches with drug possession offenders. First, the Department operates its own outpatient program that involves five hours of counseling per week, which includes group counseling held at the probation facility and several hours of in-home sessions. These sessions are designed to strengthen the capacity of the family to successfully address the youth’s drug problem. The Department reports that this program is effective approximately 50 percent of the time, meaning that the youth is no longer testing positive for drugs and is enrolled in school or has a job.

Youth that do not succeed in this outpatient program are typically channeled into the Department’s day treatment program, which operates 9 to 5 every day and includes

classes at the Department’s charter school and family groups in evenings. The day treatment program costs \$41 per day. Total treatment time is 15 hours per week. This program has had a 43 to 47 percent success rate by the same definition, though the most recent group of offenders with a “cheese heroin” addiction have been less successful because the heroin spiked with pain relievers is particularly addictive.

Nonetheless, assuming a 50 percent outpatient success rate and 43 percent day treatment success rate, a pool of 1,000 initial offenders who might otherwise have been placed in residential treatment or incarcerated at TYC or a postadjudication facility has been whittled down to 215 offenders. In Dallas, most of the male drug possession offenders who fail these first two programs are referred to the Lyle Medlock Treatment Facility, a postadjudication center that has been certified for drug treatment by TJPC. The remaining youth go to a DSHS-funded residential treatment facility such as Phoenix House. Their female counterparts are sent to a DSHS-funded private facility, since Medlock is only for males.

There is also outcome data specifically for probation youths referred to a licensed treatment provider using funds from DSHS. In fiscal year 2008, 81 percent of adjudicated youths leaving DSHS treatment programs were reporting being abstinent upon follow up, which takes place 60 to 90 days later. The re-arrest rate upon follow up was 12 percent. However, this data from DSHS has several limitations. First, the follow up period is relatively short. Second, and most importantly, self-reporting of sobriety may tend to inflate results. Finally, the reporting is done through the treatment provider, and providers are aware that they must maintain a 70 percent sobriety success rate to keep their contract with DSHS.

Drug Courts

Current Policy & Practice

Texas has 87 drug courts, including DWI courts.¹⁵ About half of these are juvenile or family drug courts. In these courts, a judge generally defers disposition of the case contingent upon the youth’s successful completion of treatment, which is measured through frequent testing and reporting. The juvenile probation department provides ongoing supervision, drug testing, ancillary support, and monitoring of the youth’s progress. At regular intervals, the youth receives official recognition for achieving treatment milestones. After successful conclusion of treatment,

pending charges are dismissed by the court. Though juvenile drug court participants are typically on probation, the active, ongoing role of the judge distinguishes the drug court model.

HB 530, enacted in 2007, created additional funding for drug courts through a \$50 offender fee applicable to certain drug and intoxication offenses. The bill lowered the county population threshold for requiring the establishment of drug court programs from 550,000 to 200,000, although the requirement is contingent upon the availability of sufficient state or federal funding.

A comprehensive drug court program typically costs between \$2,500 and \$4,000 annually for each offender.¹⁶ An Arizona drug court reports savings of more than \$600,000 annually in pretrial expenses, due to the fact that the drug court procedure combines arraignment, change of plea, and sentencing in one hearing and held within 14 days of arrest, eliminating multiple court hearings, court-appointed counsel, police interviews, trials, and presentence reports.¹⁷

Results of Drug Courts

Juvenile drug courts are reducing recidivism both in Texas and throughout the nation. In the Tarrant County Juvenile

Drug Court, 83 percent of youths successfully complete the program, and of those youths, 98 percent have no further referrals resulting in adjudication or commitment to TYC.¹⁸ A study of an Oregon juvenile drug court found it cut re-referrals within 18 months by more than half.¹⁹ Of 50 studies on juvenile drug courts, 46 have found recidivism reductions compared to the control group of similar offenders.²⁰

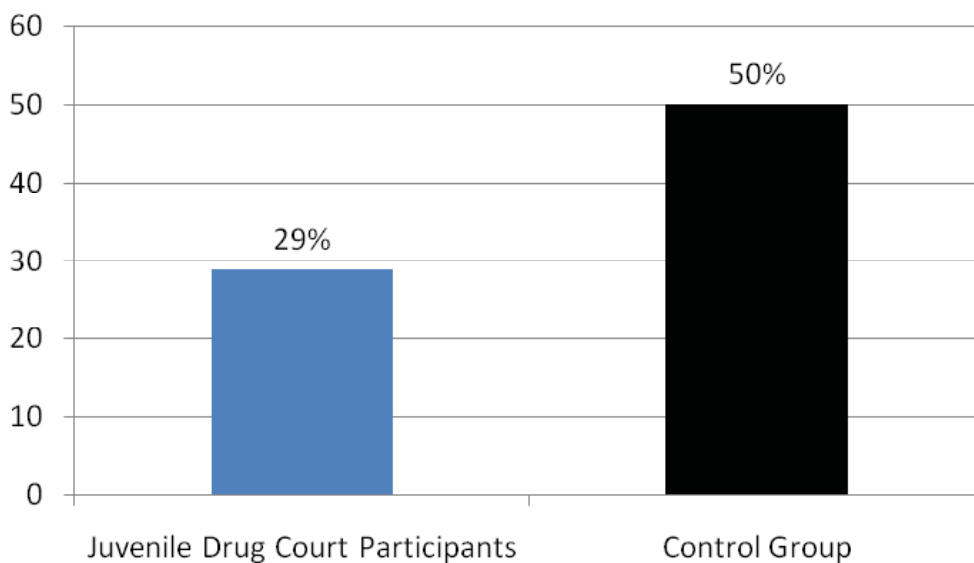
Nationally, the average recidivism rate for adult and juvenile drug court graduates is between 4 percent and 29 percent as compared to 48 percent for the control group.²¹

Recommendations

Make Youth with Only Drug Offenses Ineligible for Commitment to TYC

Research indicates that better outcomes are achieved for youth with substance abuse problems through community-based treatment programs. Youth that simply have one or more drug offenses, but have not committed a violent or property offense, do not need to be incarcerated to protect public safety. TYC should be reserved for those youth that pose a danger to the public. Additionally, TYC’s substance abuse treatment program has not proven to be successful.

One-Year Recidivism Comparison of Clackmas County Oregon Juvenile Drug Court



Source: *Juvenile Drug Courts: Some Answers to Our Burning Questions*, National Association of Drug Court Professionals

Increase Flexibility of DSHS Funding to Permit Greater Use of Day Treatment

DSHS allocates funding by region, which allows a certain number of probation youths to be placed into inpatient and outpatient substance abuse treatment. However, DSHS offers no funding for day treatment, which is an approach more restrictive than outpatient counseling, but less restrictive and costly than a residential program. At the \$41 per day cost in Dallas County, day treatment for drug offenders who are in a safe home environment offers significant savings over postadjudication facilities and residential treatment. The DSHS funding scheme should be modified so that probation departments can use the funds for day treatment programs. Several counties, including Tarrant, have inquired with Dallas County to explore creating day treatment as an intermediate option between outpatient and residential settings and would be more likely to go forward if some of the existing DSHS funds they receive could be used for this purpose.

Streamline TJPC Funding

Two streams of TJPC funding are earmarked for youths at postadjudication facilities and cannot be used for other probation strategies. This limits the flexibility of counties to use existing state funds for non-residential sanctions for drug and other offenders that might yield the same or better results at a lower cost. TJPC has proposed in its legislative appropriations request that some of its various funding streams be consolidated to increase flexibility.²² The Sunset Commission recommends consolidating funding streams in its staff report on TYC and TJPC.²³ If all 18 of TJPC's funding streams were consolidated, counties could receive all probation funds based on their population, the number of adjudicated youth, and risk level of their probation caseload. Such a consolidated approach to juvenile probation funding would allow the state to benefit from efficiencies achieved through the use of sanctions that are less expensive than postadjudication facilities.

Pool TYC and TJPC Funding for Drug Offenders and Remit to Counties

The Sunset Commission also recommended the creation of a “new pilot program in which local probation departments would have access to funds that were previously appropriated solely for the commitment of youth to TYC.” The rationale for this was stated in a 2003 report by the Comptroller which noted, “In some cases, for instance, county juvenile probation departments will send youths to TYC simply because available TJPC funding has

run out—even if the youths’ offenses do not merit TYC placement, and despite the fact that TYC placement is far more expensive than probation options.”²⁴

The model for this initiative is Ohio’s RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors), a funding system adopted more than a decade ago in which the state pooled incarceration and probation funding for nonviolent offenders. Under RECLAIM, juvenile judges may use the funds allocated to treat nonviolent juvenile offenders in the local community or pay to commit the youth to the Ohio Department of Youth Services (DYS). A separate fund was established to allow juvenile judges to sentence youth convicted of violent offenses including murder, attempted murder, kidnapping, voluntary manslaughter, involuntary manslaughter, rape, arson, and violent gun offenses without using the RECLAIM funds.

A University of Cincinnati study found that the RECLAIM funding change resulted in 36.2 percent fewer commitments to DYS than projected.^{25/26} Most importantly, RECLAIM has reduced recidivism. The recidivism rate for moderate risk youth placed through RECLAIM was 22 percent, compared with a 54 percent rate of such offenders in DYS—comparable to TYC’s 52 percent rate.²⁷

Such a pooled funding program would be well suited to heavily populated Texas counties that account for a significant number of TYC commitments of drug and other nonviolent offenders. By adopting a RECLAIM-style funding approach, like the pilot program recommended by the Sunset Commission, TYC, postadjudication facilities, private sector facilities, and day treatment programs would compete for youth placements on the basis of their outcomes. This would eliminate the incentive to refer youths to TYC simply as a means of shifting the cost to the state.

Adopt and Publish Performance Measures for All State Youth Facilities

TJPC should collect and report data on the outcomes of postadjudication facilities, including recidivism and sobriety upon follow-up for youths who undergo substance abuse treatment at these facilities. Since the state is subsidizing these facilities, taxpayers should be privy to their outcomes.

TJPC should publish the outcome data for all postadjudication facilities and TYC should do the same

for each of its facilities. Armed with this information, there will be a mechanism to hold these facilities accountable, as judges and probation departments will be empowered to make placements of drug and other offenders based on performance data, particularly to the extent that funding is devolved through a RECLAIM-style initiative. With TYC moving towards regionalization, judges and probation departments would know the facility that the youth would likely end up at and the judge could check outcome data on that facility, as well as the alternatives, before deciding whether to place the youth there, in a postadjudication facility, or at a private sector treatment provider.

Increase Coordination Between DSHS and Juvenile Probation Departments and Enhance Data Collection on Private Substance Abuse Treatment Providers

The outcome data for DSHS-funded treatment referrals would be more reliable if it was reported by juvenile probation officers, rather than based on self-reporting. While there is currently communication in some instances on an ad hoc basis, there is no protocol for information sharing between DSHS and probation caseworkers, and there is no record indicating how often this occurs. Given that a drug offender on probation is likely undergoing regular drug tests through the probation department and is in regular contact with the probation officer, the probation officer is in a better position to report outcome measures, such as sobriety, after a youth leaves an outpatient or inpatient program funded through DSHS. This would also enable results to be collected over a longer horizon in cases where the juvenile remains on probation for a considerable period. These results collected by probation departments should then be reported to DSHS and TJPC.

Account for Departures from Progressive Sanctions Model

TJPC has adopted progressive sanction guidelines that categorize offenders at different levels based on their criminal history. These guidelines indicate the recommended response to each type of probation violation based on its severity.²⁸ However, use of the guidelines, which have seven levels of severity, is not mandatory, as judges and probation departments may depart from them.

Such departures may be warranted and those closest to the case may be in the best position to make that decision, even at the expense of ensuring uniform treatment of similar offenders. However, there is no statewide mechanism for keeping track of the departures, as TJPC does not require

that they be reported. One stream of TJPC funding—grants for the placement of youth at Level 5 in postadjudication facilities—is related to the guidelines because a juvenile must have reached at least the fifth of the seven levels in order for this stream of state funds to support placement of that youth in a postadjudication facility. This funding stream accounts for \$4.4 million of the TJPC's \$132.5 million in grants that TJPC distributes to probation departments.

A reporting requirement for departures from the guidelines would enable TJPC and policymakers to better assess how different departments handle similar cases.

Expand Drug Courts

Juvenile drug courts have proven to be highly successful and can be implemented at a modest cost. For example, Brooks County began one in 2006 with a \$125,000 grant from the Governor's Criminal Justice Division, which distributes federal grant funds and money collected through court costs and fees. The Division distributed \$91.8 million in 2008. The Division could fund additional juvenile drug courts with funds scheduled to be received in 2009 and future years.

Another way to fund drug courts, without a new appropriation, is by allocating 10 percent of the funds generated from seized assets, as proposed in 2007 by Senator John Whitmire (D-Houston) in SB 1780. These funds are currently spent by prosecutors for any purpose they see fit. It has been revealed that some of these assets have been used for inappropriate purposes, such as travel and parties.²⁹ Given that a high percentage of seized assets are contraband from the drug trade, it makes sense to use some of those funds to combat juvenile substance abuse.

Conclusion

Substance abuse among youths is a widespread problem in Texas. While better data on outcomes is needed, there is considerable evidence that community-based treatment options are more effective and less expensive than commitment to TYC. Funding approaches that provide more flexibility and take into account outcomes would incentivize increased utilization of community-based options for juvenile drug offenders, benefiting youths and taxpayers alike. ★

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