
JUVENILE JUSTICE REFORM IN TEXAS: THE CONTEXT, CONTENT & CONSEQUENCES OF SENATE BILL 1630

*Sara A. Gordon**

INTRODUCTION

In 2003, Jimmy Martinez, a resident of San Antonio, entered the Texas criminal justice system after missing his school bus.¹ Charged with truancy and destruction of property, Jimmy was sent to live in a county juvenile detention center for six months.² Five months into his sentence, he was transferred to a secure state facility four hundred miles from his home and managed by the Texas Youth Commission (hereinafter TYC) (now the Texas Juvenile Justice Department).³ While a prisoner of that facility, Jimmy witnessed his best friend's murder and was regularly beaten and sexually abused by TYC security guards.⁴ Several times during the course of his stay at the secure state facility, Jimmy was sent to the on-site hospital for serious injuries he sustained from the beatings.⁵ When pressed by Jimmy's mother for an explanation of why her son kept ending up in the facility's hospital, TYC refused to answer.⁶

Jimmy emerged from his imprisonment battling both post-traumatic stress disorder and schizophrenia, constantly fearful and angry, and struggling with serious bouts of insomnia.⁷ When it came to answering questions about the abuse he suffered while in TYC custody, he would at times refuse to speak at all about his experience, and at other times would spontaneously talk for hours about it.⁸ Moreover, Jimmy struggled to find and keep a job, and eventually found his way back into the criminal justice

* Candidate for Juris Doctor, University of Notre Dame Law School, 2017; B.A., University of Texas at Austin, 2014. I would like to thank Professor Michele Deitch (University of Texas at Austin) for sparking my interest in this topic, Professor Stephen Smith (University of Notre Dame Law School) for his assistance in the development of this note, the members of the *Journal of Legislation* for their helpful feedback during the editing process, and my family and friends for their ceaseless support.

1. Tim Murphy, *Rick Perry's Juvie Record*, MOTHER JONES (Sep. 2011), available at <http://www.motherjones.com/politics/2011/09/rick-perry-juvie-record-texas-youth-commission?page=1>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Abuse and Violence in TYC Facilities, Hearing Before the Tex. Sen. Crim. Justice Comm.*, 2007 Leg., 80th Sess. Interim Charge 3 (2006) (written testimony of Texas Coalition Advocating Justice for Juveniles, 4) available at <http://www.aclutx.org/files/060905%20Juvie%20Testimony.pdf>.

6. *Id.* at 5.

7. *Id.*

8. *Id.*

system after being arrested for burglary.⁹ He was then sent to a prison facility eight hours away from home, where his situation was made even worse.¹⁰

Jimmy's story is hardly atypical. For more than a century, the archetypal model for the treatment, punishment, and supposed rehabilitation of juvenile offenders in Texas has been mostly unchanged: confinement in large correctional facilities, much like the one Jimmy was sent to.¹¹ Whatever these institutions may be called—"reform schools," "training schools," "youth corrections facilities,"—the institutions themselves have changed very little.¹² And in Texas, the record of these large juvenile facilities is dismal. Dependence on them has led to consistently high recidivism rates (for serious and non-serious offenders alike), huge costs (typically paid for through taxpayer dollars), and alarmingly rampant violence and abuse inside the facilities, as depicted by Jimmy's story.¹³ Moreover, evidence has shown that incarceration in these kinds of facilities has serious and lifelong negative impacts on youth.¹⁴ As Barry Feld writes in *Bad Kids: Race and the Transformation of the Juvenile Court*, "[a] century of experience with training schools and youth prisons demonstrates that they constitute the one extensively evaluated and clearly ineffective method to treat delinquents."¹⁵ Yet for years, no one seemed to question the state's nearly unwavering dependence on them.

From the mid-1990s until 2007, the population of juveniles in secure state institutions dramatically increased in Texas, and corruption in these institutions became commonplace. In late 2006, at the peak of the explosive growth in both crime and punishment—"when about 4,800 kids were in far-flung, state-run lock-ups scattered across the state with even more [kids] consigned to secure county-operated facilities—scandal hit."^{16,17} A news story published in *The Texas Observer* detailed allegations of child sexual abuse by staff members from across the state (many of which proved credible).¹⁸ In 2005, there had been similar allegations, but this particular news story published two years later caused the scandal to truly erupt.¹⁹ Matters were made worse when it became clear that nothing had been done to prosecute the accused in the 2005 case, but rather, there seemed to be an official cover-up of the

9. Murphy, *supra* note 1.

10. *Id.*

11. RICHARD A. MENDEL & ANNIE E. CASEY FOUNDATION, *THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS* (2010).

12. *Id.*

13. *Id.*

14. CHILDREN AT RISK, *THE STATE OF JUVENILE JUSTICE IN TEXAS: A ROADMAP TO IMPROVED OUTCOMES IN THE TEXAS JUVENILE JUSTICE DEPARTMENT, ADULT CERTIFICATION, AND MENTAL HEALTH*, 48 (2013) available at http://childrenatrisk.org/wp-content/uploads/2013/05/01_The-State-of-Juvenile-Justice.pdf [hereinafter CHILDREN AT RISK].

15. Mendel, *supra* note 11.

16. TEXANS CARE FOR CHILDREN, *JUVENILE JUSTICE IN TEXAS: WHERE WE'VE BEEN, WHERE WE'RE HEADED* (2012) [hereinafter TEXANS CARE FOR CHILDREN].

17. This figure does not take into consideration the juveniles in Texas who end up being certified to the criminal justice system and tried as adults.

18. Nate Blakeslee, *Hidden in Plain Sight*, *THE TEXAS OBSERVER* (February 23, 2007), available at <http://www.texasobserver.org/hidden-in-plain-sight/>.

19. *Id.*

allegations and of the corruption itself.²⁰ Investigations ensued, high-ranking officials resigned, and the truth of just how extensive the rampant problems in the Texas juvenile justice system were was exposed.²¹

In response to the scandals, the juvenile justice system began the long process of overhauling much of the TYC management, moving juvenile offenders out of the secure state facilities, and striving to create a system in its place more focused on keeping them in community-based alternatives, void of corruption and designed to rehabilitate. The dramatic shift in policy that resulted came in reaction not only to various scandals that erupted all over the state, but also to a statewide recognition of the drawbacks to state institutionalization and the benefits of community-based and individualized treatment programs. Since 2007, there has been consistent advocacy and reform efforts aimed at ensuring juvenile offenders would be treated and rehabilitated in community-based centers rather than sent away to secure state facilities.²²

These reform efforts eventually led to the passage of Senate Bill (SB) 1630 by the 82nd Texas Legislature in July 2015.²³ The bill's genesis was rooted in the belief that the juvenile justice system in place in Texas, focused on the state model, was developed at a different time for a different day.²⁴ As evidenced by the tumultuous and scandal-ridden history of the Texas juvenile justice system, the passage of this bill was a long time in the making. At the heart of the bill is a desire to place juvenile offenders in environments that will allow them to correct and better their lives, rather than placing them in environments riddled with abuse and harsh punishments.²⁵

Authored by Texas Senator John Whitmire, the bill, which marks the most significant change in Texas' juvenile justice system in years, moves the Texas Juvenile Justice Department to a regional model that will keep youth closer to home.²⁶ The facilities at the regional level are mostly operated by counties instead of the state—unlike the five high-security lockups that more resemble prisons than rehabilitation centers.²⁷ The bill essentially ensures that state facilities will be reserved only for those who simply cannot be accommodated elsewhere.²⁸

While this bill goes farther than any previous act of legislation in terms of reorienting the juvenile justice system in Texas to stand on healthier ground, in many ways, it is simply the logical follow-up to the sweeping reforms that have been enacted in the state since 2007. Not only will the regional model created by this piece of legislation be beneficial to the youth themselves, but it is also considerably more

20. *Id.*

21. *Id.*

22. Tony Fabelo et al., *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms*, PUBLIC POLICY RESEARCH INSTITUTE, available at <https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>.

23. S.B. 1630, 84th Leg., Reg. Sess. (Tex. 2015).

24. Mike Ward, *Reform Bill: Hold Fewer Juvenile Offenders in State Lockups*, THE HOUSTON CHRONICLE (Mar. 13, 2015) <http://www.houstonchronicle.com/news/politics/texas/article/Reform-bill-Hold-fewer-juvenile-offenders-in-6133197.php>.

25. *Id.*

26. *Id.*

27. *2015 Legislative Wrap-Up and Appreciation*, TEXAS CRIMINAL JUSTICE COALITION (2015).

28. *Id.*

cost-efficient than the previous state model.

Part I of this Note will provide an overview of the Texas juvenile justice system to help clarify the context surrounding the passage of SB 1630. Part I will be divided into three sections. The first will detail the Texas juvenile justice system prior to the 1990s, when, while there were some instances of mistreatment in various state-run facilities, the system was largely properly focused on rehabilitative efforts. The second section will then detail the time period beginning in the 1990s until 2007, when, due to dramatic spikes in the juvenile crime rate throughout the nation and especially in Texas, the state subscribed to “tough on crime” policies that resulted in widespread abuse, neglect, and corruption. These events in particular led to the abuses that resulted in the passing of SB 1630. Lastly, the third section will detail 2007 until 2015 and explain the scandal of 2007 and the resultant series of legislation passed in Texas aimed at restructuring the juvenile justice system.

Part II of this Note will provide an in-depth analysis of SB 1630 by examining its legislative history, genesis, purposes, various components, and efficacy thus far. Part III will then compare Texas’ approach to juvenile justice under the bill to approaches taken in both Missouri, where a similar approach has been implemented and quite effective, and Louisiana, where a similar approach has been implemented but has not yet proven successful. Part III will conclude by predicting the probable success of SB 1630 on the Texas juvenile justice system by examining how similar legislation has played out under different approaches in both Missouri and Louisiana.

I. THE STATE OF JUVENILE JUSTICE IN TEXAS PRIOR TO SENATE BILL 1630

A. Pre-1990s

The Texas Youth Commission (TYC) (now the Texas Juvenile Justice Department) was not always reliant on high-security, state-run lockups as a way to manage juvenile offenders.²⁹ Prior to the mid-1990s, the prevailing rhetoric of the Texas juvenile justice system praised the value of rehabilitation for juvenile offenders. The main differences between the Texas juvenile and adult criminal justice systems, as outlined in the *Texas Family Code* and *Texas Penal Code*, revolve around the fact that “the primary purpose of juvenile justice procedures is protection and rehabilitation and for adults the goal is to punish the guilty.”³⁰ This distinction characterized the juvenile justice system in its early years.

The differences in the semantics used to describe the adult and juvenile justice systems’ processes correlate to deeper, more tangible differences between the two systems, and understanding these differences helps to illustrate the important facets that characterized the Texas juvenile justice system for many years.³¹ Some of these differences include:

29. CHILDREN AT RISK, *supra* note 14.

30. Ruby Shaw & Everett B. Penn, *Purpose and Scope of the Texas Juvenile Justice System*, JUVENILE JUSTICE 3 (6th ed. 2007), available at <http://studysites.sagepub.com/juvenilejustice6study/state/tx/Chapter%205.pdf>.

31. *Id.*

Juveniles are detained and adjudicated and adults are arrested and convicted; age determines the jurisdiction of the juvenile court and the nature of offense determines the jurisdiction of the adult court; juveniles can be apprehended for acts that would not be criminal if they were committed by an adult, such as smoking; juvenile court procedures are generally informal and may be private but adult court procedures are more formal and are open to the public. . . A juvenile who is certified as an adult cannot be sentenced to death if the crime occurred before the youth was 18 years of age.³²

As it was established, the Texas juvenile justice system, along with all juvenile justice systems in the United States, was focused on rehabilitation and setting each juvenile offender on a path free from future crime. Despite this well-meaning and deeply rooted intention, the concern for safety and national trends involving spikes in juvenile crime resulted in frequent pushes for a more intense approach to punishment, and the juvenile justice system in Texas, even prior to the mid-1990s, saw the outbreak of many scandals and hidden injustices throughout the various secure state institutions.³³

Morales v. Turman brought much of this to light.³⁴ *Morales* was a landmark federal case in which Alicia Morales and eleven other teenagers sued the Texas Youth Council, seeking both damages and injunctive relief, for physical and mental abuse, segregation, and neglect suffered in juvenile detention facilities.³⁵ Moreover, Morales was bringing a separate due process charge because previously, in the El Paso juvenile court, she had been given no notice of charges brought against her, given no opportunity for a court appearance, and provided no legal representation.³⁶

In *Morales*, the District Court found that “constitutional rights violations were rampant in TYC” at the time the plaintiffs live there.³⁷ The court, in an influential opinion authored by Judge Justice, ruled that many practices at TYC constituted cruel and unusual punishment, in explicit violation of the Eighth Amendment of the United States Constitution.³⁸ Examples of these violations included: beatings, solitary confinement, the use of chemical crowd-control devices, and the use of drugs instead of psychotherapy as a means to control behavior.^{39,40}

32. *Id.*

33. *Id.*

34. *Morales v. Turman*, 326 F.Supp. 677 (E.D. Tex. 1971).

35. *Id.*

36. Laurie E. Jasinski, *Texas Youth Commission*, TEXAS STATE HISTORICAL ASSOCIATION: A DIGITAL GATEWAY TO TEXAS HISTORY (Jun. 15, 2010), <https://tshaonline.org/handbook/online/articles/mdt35>.

37. Shaw, *supra* note 30, at 9.

38. *Id.*

39. *Id.*

40. It is dangerous for juveniles to rely on medication alone for behavior modification for two main reasons. First, medication alone often does not resolve any underlying issues that may have triggered the behavioral issues in the first place. And second, drugs have the potential to heavily sedate patients or produce dangerous

Morales led to sweeping changes in the Texas juvenile justice system by bringing to light many instances of injustice in several Texas correctional facilities.⁴¹ Reforms that followed this case included: the closings of two institutions, the elimination of corporal punishment, the elimination of segregation, increased staff and supervision of services, the establishment of clearer policies and procedures, and a newly adopted Student Bill of Rights.⁴² Additionally, specialized community-based alternatives and treatment programs were created, TYC-operated “halfway house” programs were founded, stricter staff requirements for TYC employees were established, many youth were transferred from institutions to foster care, and a county assistance program was founded in order to help reduce the number of commitments to TYC by directing a portion of state funds to youth probation services in their local communities.⁴³ By and large, the agency sought to lower recidivism rates, both as a means to decrease the exorbitant expense of maintaining several state-run facilities and to help set the once-troubled juveniles on a path to a more successful future.⁴⁴

All of these reform efforts were part of the “back to basics” approach taken by the Texas juvenile justice system. The “back to basics” philosophy emphasized greater structure, more strictly enforced discipline, and increased accountability. The backbone of this new philosophy was its intent to balance public safety and punishment for criminal acts with the need for rehabilitation.

The years prior to the mid-1990s exemplify the constant tension that existed between the two philosophies of rehabilitation and punishment. Although the Texas juvenile justice system at its founding strove to create a balance between the two philosophies, their efforts proved idealistic. *Morales v. Turman* and the Texas Youth Commission’s “back to basics” philosophy were significant in establishing refined and more intentional practices focused on rehabilitation and on creating safer environments both at the county-level and in the secure state institutions that continued to exist. Certain trends and policies that arose during the 1990s, however, caused the juvenile justice system to develop many characteristics and practice remiss of any of these measures.

B. The 1990s—2007

Despite the Texas Youth Commission’s efforts to remain focused on the rehabilitative ideal and keeping juveniles in safer environments, an extreme spike in the national juvenile crime rate caused much of that rehabilitative ideal to be lost.⁴⁵ From the late 1980s to the early 1990s, the rate of murder committed by teenagers aged 14-

side effects.

41. William Field et al., *Gatesville State School for Boys*, TEXAS STATE HISTORICAL ASSOCIATION: A DIGITAL GATEWAY TO TEXAS HISTORY.

42. *Id.*

43. Shaw, *supra* note 30.

44. *See generally id.*

45. James Alan Fox, *Trends in Juvenile Violence*, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE 4 (Mar. 1996), available at <http://www.bjs.gov/content/pub/pdf/tjvfox2.pdf>.

17 increased 172 percent.⁴⁶ These national trends, already shocking, were outpaced by the trends in Texas alone.⁴⁷ In Texas, between 1988 and 1993, there was a 69 percent increase in referrals to juvenile probation for delinquent activity, and a 161 percent increase in referrals for violent offenses.⁴⁸ Texas' juvenile homicide rate was almost twice the national rate in 1992, and there was a 285 percent increase in youth committed to the Texas Youth Commission for violent offenses.⁴⁹ The spike in violent crime during this time period triggered widespread speculation and fears about the causes and extent of juvenile crime.⁵⁰

This apparent need to point to something—anything—as the cause of such an intense change in juvenile crime led to the popularity of the rather unfounded belief that there had been a dramatic and fundamental transformation in child development.⁵¹ This supposed “transformation” of child development “corroded empathy and morality, spawning a new generation of remorseless youths who were feared to be ‘muggers, killers, and thieves.’”⁵² These “remorseless youths” were also referred to as “juvenile super-predators”—a term coined by Princeton professor John Dilulio that the American public quickly latched onto.⁵³

Dr. Dilulio coined the term “super-predator” “to call public attention to what he characterized as a ‘new breed’ of offenders, ‘kids that have absolutely no respect for human life and no sense of the future . . . [they] are stone-cold predators!’”⁵⁴ The media nearly immediately latched on to this idea, and through furthering and disseminating the discussion, society as a whole latched on too.⁵⁵ In hopes of winning approval from the public during this time and in order to do what they thought would be best for their constituents, politicians and policymakers nearly uniformly developed “tough on crime” platforms that resulted in harsher punishments and longer sentences for juvenile offenders.⁵⁶ Dr. Dilulio himself even said, speaking about the nation as a whole: “by my estimate, we will probably need to incarcerate at least 150,000 juvenile criminals in the years just ahead. In deference to public safety, we will have little choice but to pursue genuine get tough law-enforcement strategies against the super-predators.”⁵⁷ This statement proved prophetic.

46. *Id.* at 2.

47. Tony Fabelo, *An Overview of Texas Juvenile Justice Population Trends and Dynamics*, CRIMINAL JUSTICE POLICY COUNCIL 2 (2000).

48. Texas Youth Commission, *Agency Strategic Plan 2011-2015* (2010) 12, available at http://www.tjjd.texas.gov/about/TYC_Strategic_Plan_2011_to_2015.pdf.

49. *Id.*

50. See generally Clyde Haberman, *When Youth Violence Spurred ‘Superpredator’ Fear*, THE NEW YORK TIMES (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html?_r=0.

51. James C. Howell, *PREVENTING AND REDUCING JUVENILE DELINQUENCY: A COMPREHENSIVE FRAMEWORK 4* (Sage Publications, 2nd ed. 2009).

52. *Miller v. Alabama*, 132 S.Ct. 2455 (2012) Amicus Brief 12.

53. John J. Dilulio Jr., *The Coming of the Super-Predators*, THE WEEKLY STANDARD (Nov. 27 1995), <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

54. Howell, *supra* note 51.

55. *Id.*

56. See generally *id.*

57. Dilulio, *supra* note 53.

The stories of “superpredators” drove many states, and Texas in particular, to utilize increasingly harsh measures, foregoing the rehabilitation ideal in favor of great dependence on juvenile facilities that resembled adult prisons featuring barbed wire, guards, and isolated cells. The theory behind the “tough on crime” movement was that the juveniles of America were “too far gone” and beyond the help or reform that rehabilitation or therapy could bring. As it unsurprisingly turned out, the idea of the “juvenile super-predator” never proved true; it was simply an unfounded myth that grabbed hold of society, producing detrimental effects.⁵⁸ Although juvenile offenders often have some kind of mental disorder—and are sometimes genetically predisposed to such characteristics—the idea that a new generation of children was “born evil” was inaccurate and misleading. Despite its falsehood, the idea of the super-predator successfully catalyzed policymakers and the public into action because “it readily accessed the public’s hidden stereotype of the violent youth as someone who is dangerous, living in a hopeless situation and not worthy of empathy or support.”⁵⁹

The extent and popularity of the resulting “tough on crime” movement cannot be overstated. Not only was the movement prevalent at the grassroots level, with individual citizens advocating for harsher penalties for the corrupted youth, but even presidents fought the “war on crime” too. Beginning with Nixon, presidents took action as far into their own hands as possible by consciously and actively painting a picture of their administrations as composed of incredibly resolute “crime-fighters.”⁶⁰ Indicative of the changes the Texas juvenile justice system specifically would soon see, Nixon argued that “doubling the conviction rate in this country would do more to cure crime in America than quadrupling the funds for [Hubert] Humphrey’s war on poverty.”⁶¹ And over time, the model supported by various presidential administrations became so popular that tough sentences, harsher punishment, and the resulting loss of the rehabilitative ideal became the norm.⁶²

Almost immediately, Texas enacted legislation aimed at expanding the treatment of juveniles as adults (for purposes of both sentencing and punishment) and imposing determinate sentences and mandatory minimum periods of incarceration for juveniles convicted of certain violent or serious crimes.⁶³ Texas also modified its laws to make easier the process of certifying juveniles to the adult criminal system—meaning that juvenile offenders were being subjected to regimes that were originally conceived specifically for adults.⁶⁴ The laws passed in Texas during the 1990s monumentally expanded the punishments imposed on juveniles and transformed the ju-

58. Haberman, *supra* note 50.

59. Kenneth A. Dodge, *Framing Public Policy and Prevention of Chronic Violence in American Youths*, NATIONAL INSTITUTE OF HEALTH (7th ed.).

60. Gary Cohen, *Punishment and Rehabilitation: A Brief History of the Texas Prison System*, 75 Tex. B.J. 604, 605 (2012).

61. Benjamin Jealous et al., *The Root: We Can’t Afford to Not Fix Justice*, NAT’L PUBLIC RADIO (Apr. 7, 2014), <http://www.npr.org/2011/04/07/135203031/the-root-we-cant-afford-to-not-fix-justice-system>.

62. *Id.*

63. Cohen, *supra* note 60.

64. Shaw, *supra* note 30.

venile justice system into one quite different from its rehabilitation-focused predecessor. Much of what had been established by *Morales v. Turman* and in various community-based rehabilitation centers across the state was replaced with an ever-increasing number of state-run confinement facilities housing an also ever-increasing number of juveniles. During this time, the population of juveniles in state-run lock-ups in Texas reached more than 5,000.⁶⁵

Much of the reform that both the national “tough on crime” movement and the specific work of the Texas legislature brought about was not initially intended to drastically affect juvenile offenders in the way that it ultimately did. The collective turning of a blind eye away from a more holistic approach to handling juvenile crime had grave and dramatic consequences.⁶⁶ Although there was a pervasive obsession with the idea of the juvenile “super-predators,” the reforms were directed at the criminal justice system, not specifically the juvenile justice system.⁶⁷ However, in light of the process of certification, which involves juveniles being certified as adults and their cases being moved to the adult criminal justice system, the effects of the “get tough” reforms trickled down to the juvenile justice system.⁶⁸

The sharp increase in crime eventually tapered off (as was to be expected from the cyclical nature of crime rates), but the effects that the response to such an increase had on the juvenile justice system were much more enduring.⁶⁹ The reduction in crime rates did not correlate to a cessation of “tough on crime” policies in Texas. In many ways, the response that Texas took to juvenile crime demonstrates how damaging a reliance on a metric as fragile as crime rates can be—especially when that response included a use of secure state facilities, institutions on which a surfeit of evidence and research existed illustrating their damaging effects. Although the state of Texas, at the time, had arguably legitimate reasons for believing that becoming tougher on juvenile offenders would be successful, the reforms that the state made during the 1990s erupted in a juvenile just system wrought with injustice and corruption.

The “tough on crime” policies ultimately resulted in a Texas juvenile justice system that failed. It failed citizens who could no longer rely on the security of the facilities, it failed youth by not equipping them with the skills needed to turn from a life of crime toward becoming responsible, productive citizens, and it even failed taxpayers, by essentially training far too many youth to become hardened criminals—ultimately costing taxpayers as juveniles go through a revolving door in the juvenile system and ultimately ‘graduate’ to adult prisons. The state’s response for over a decade was, sadly, static. It primarily featured confinement in large correctional facilities operated under a punitive system rather than a supportive, rehabilitative one.

65. Maurice Chammah, *Closing Corsicana: Lessons from a Juvenile Lock-Up*, THE TEXAS TRIBUNE (Feb. 12, 2014), <http://www.texastribune.org/2014/02/12/corsicana-closure-lessons-juvenile-lock-/>.

66. See generally *id.*

67. There had been an increase in crime rate among adult offenders as well.

68. Certifying juveniles as adults to be tried in the criminal justice system is a vast topic, complicated with both moral and political considerations. A complete discussion of the process is beyond the scope of this Note.

69. See generally Cohen, *supra* note 60.

The harsher and longer sentences enacted as a result of the reforms previously discussed consequently produced a system far too dependent on punishment and far too apathetic about understanding the root causes of crime, entrenched in the individual situations of the juvenile offenders themselves. The “tough on crime” movement caused two significant expansions. First, there was an expansion of opportunities to transfer youth to adult court (and therefore to adult prisons and jails) through certification. Second, there was an expansion in the construction and use of state-run secure confinement facilities for juveniles who would not be charged as adults.

Despite its widespread support throughout Texas, juvenile incarceration was both unwarranted and ineffective.⁷⁰ “[O]verwhelming evidence [shows] that wholesale incarceration of juvenile offenders is a counterproductive public policy.”⁷¹ Secure state facilities are often dangerous, ineffective, unnecessary, obsolete, wasteful, and inadequate, and institutionalization in general has the likely potential of “[harming] the well-being and [dampening] the future prospects” of the majority of juvenile offenders.⁷² Much of this has to do with the actual conditions of the facilities—over time, the facilities have become “exceedingly difficult to operate in a consistently safe and humane fashion.”⁷³ Most significantly, the actual outcomes of correctional confinement are shockingly poor. Juveniles are often released back into the public as troubled as they were when they first entered confinement.⁷⁴

Although there is a clear public safety need for some kind of confinement, especially for those juveniles who have committed more serious crimes, the drawbacks and damaging consequences of Texas’ heavy reliance on secure state facilities are difficult to ignore. Poor conditions and high rates of recidivism aside, arguably the central concern raised by dependence on secure state facilities is how such dependence undermines the very purpose of a juvenile justice system.

The juvenile justice system was founded on the concept of rehabilitation through individualized justice.⁷⁵ Its existence—its theoretical distinction from the adult criminal justice system—rests on the idea that there is an inherent difference between a juvenile who commits a crime and an adult who commits a crime. While root causes of criminality may align, society has historically treated juvenile offenders as somehow “different” from adult offenders for various reasons.⁷⁶ The very age of juvenile offenders causes their cases to be even more subjective than an adult offender’s situation might be. For instance, the brains of juveniles are not yet fully developed.⁷⁷

70. Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, THE ANNIE E. CASEY FOUNDATION 3 (2011), <http://files.eric.ed.gov/fulltext/ED527944.pdf>.

71. *Id.*

72. *Id.*

73. *Id.* at 6.

74. *Id.* at 3.

75. U.S. Dep’t of Justice, *Juvenile Justice: A Century of Change* in 1999 NAT’L REPORT SERIES: JUVENILE JUSTICE BULLETIN, (Dec. 1999), https://www.ncjrs.gov/html/ojjdp/9912_2/juv1.html.

76. *Id.*

77. National Institute of Mental Health, *The Teen Brain: Still Under Construction*, U.S. DEP’T. OF HEALTH AND HUMAN SERVICES (2011), available at http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/teen-brain_141903.pdf.

Juvenile brains lack the ability to regulate their own emotions, and they are still undergoing changes to both their brain structure and their neural circuits.⁷⁸ While juveniles' cognitive functioning is similar to adults, their emotional development is not, and a stressful and terrifying experience—such as incarceration—is more difficult for them to process and bear than it would be for a normal-functioning adult.⁷⁹ Therefore, not only are juvenile offenders traumatized and oftentimes physically hurt as a result of incarceration, but they frequently are damaging mental consequences as well.⁸⁰

Moreover, as a juvenile offender's delinquency is often caused or triggered by a situation or condition unique to him or her, there is inherent value in responding to those situations and conditions on a more individualized basis than secure state institutionalization allows. Another cause of criminality that would be better treated on an individualized basis is mental disorder. Incarceration in secure state facilities can have even more severe effects on a juvenile when he or she is mentally ill, a condition unfortunately quite common among juvenile offenders.⁸¹ While the presence of a mental disorder rarely provides a complete explanation of criminality, it is oftentimes a factor to be considered when trying to understand the root causes of a juvenile offender's criminal activity.⁸²

Until recent reform in Texas, the manner in which the juvenile justice system dealt with mental disorders was alarming, and is illustrative of many of the troubling issues that plagued the system for years. In an article entitled "Repeat Offenses in Texas Raise Questions Over Release of Mentally Ill Juveniles," The Associated Press discusses two unique and disturbing situations.⁸³ One of the cases involves a sixteen-year-old former juvenile detainee who was accused of stabbing a high school teacher to death with a butcher knife, and the other case involves a teenager who was convicted of killing a roofer during a robbery spree.⁸⁴ Both offenders were released by the Texas Youth Commission because the agency was simply unable to treat their mental illness, and as required by law, forced to let them go.⁸⁵

As the article explains, "under a 1997 law meant to keep mentally ill juveniles from being held in detention centers where they cannot get proper treatment, youths in Texas who are serving indeterminate sentences and who have completed their minimum required time in custody are released to parents or guardians."⁸⁶ While it was arguably laudable for the Texas juvenile justice system to disallow such offenders to be housed in facilities where they cannot receive treatment, it seems illogical to

78. *Id.*

79. *Id.*

80. *See generally id.*

81. Mendel, *supra* note 70.

82. *Id.*

83. The Associated Press, *Repeat Offenses in Texas Raise Questions Over Release of Mentally Ill Juveniles*, N.Y. TIMES (Dec. 20, 2009), http://www.nytimes.com/2009/12/21/us/21texas.html?_r=3&partner=rss&emc=rss.

84. *Id.*

85. *Id.*

86. *Id.*

merely release juveniles who are troubled and ill back into society. There were no requirements for supervision upon release, and the Texas Youth Commission's only option was to merely "recommend" that the juveniles receive treatment, and to refer them to their local Mental Health and Mental Retardation centers.⁸⁷ They had no power to enforce such a recommendation, however.⁸⁸ Although this law has since been changed, it represents the extent of not only the necessity for programs and services that are primarily dedicated to juvenile offenders and strictly focused on rehabilitation, but also the dearth of options supporting rehabilitation that existed during this era of Texas history.

The severe rise in juvenile crime and consequent intensifying of policies focused on punishment led to a dependence on state-run facilities in Texas unmatched by any other state and by any other time period in Texas history. Increasing punitive measures failed to reduce criminal recidivism in the way that many thought it might, and instead led to a rapidly growing correctional system that strained government budgets, exploited taxpayer dollars, and worsened the conditions and lives of countless Texas youth.

While problems were by no means completely overlooked or accepted as unchangeable, throughout the course of the 1990s and into the early 2000s there was no unified rallying force advocating for juvenile justice. The "tough on crime" movement was not nearly as polarizing as it seems it should have been in hindsight, and it was not until the mid-2000s that the voices of family and youth advocates speaking out against the use of secure state facilities were finally heard. Simultaneously sparking and reinforcing their pleas for justice was the uncovering of various scandals associated with the Texas Youth Commission that rendered the problems associated with the juvenile justice system impossible to ignore.

A news story published by *The Texas Observer* hit the stands on February 23rd, 2007 which detailed serious allegations of child sexual abuse by staff members in various secure state institutions. The story set the wheels in motion for deeply concerned parents, youth and family advocates, and legislators across the state to begin the long process of voicing their concerns in hopes of bringing about much-needed reform.⁸⁹ This particular news story ignited an upheaval of similar allegations (many of which proved to be true) from across the state.

Journalists uncovered that in 2005, there had been sexual assault allegations at West Texas State School, but they were quickly covered up and no actions were taken to prosecute the accused.⁹⁰ *The Texas Observer* news story explains how, following an investigation by the Texas Rangers and the FBI in early 2005, two of the highest-ranking officials at that school—the assistant superintendent and the principal—were accused of having sexual relations with several students over an extended period of

87. *Id.*

88. *Id.*

89. Nate Blakeslee, *Hidden in Plain Sight*, THE TEXAS OBSERVER (Feb. 23, 2007), <https://www.texasobserver.org/hidden-in-plain-sight/>.

90. *Id.*

time.⁹¹ At the time, “both men denied the allegations, but investigators collected dozens of statements from students and staff, conducted polygraph tests on students, and collected DNA samples.”⁹² The two men had already resigned from their positions at the time *The Texas Observer* article was released, but then-current Director of the Texas Youth Commission was accused of helping cover up the scandals, along with several other high-ranking employees.⁹³ *The Texas Observer*, however, obtained records proving that the abuse was real, based on “internal agency documents [that] describe in considerable detail numerous incidents of sexual misconduct that Texas Youth Commission administrators were able to confirm at the facility.”^{94,95}

Thorough investigations at various state schools and the Texas Youth Commission itself ensued. Many of these investigations resulted in a “torrent of revelations.”⁹⁶ Simply stated, the original West Texas State School scandal of 2007 shed light on countless other issues that had silently plagued the juvenile justice system in Texas for years.⁹⁷ The seriousness of the allegations against the Texas Youth Commission, the fact that most of the allegations proved true, and the fact that it resulted in such a collective and purposeful unification of people concerned about the state of the Texas juvenile justice system meant that Texas needed to respond in a serious manner. To simply fire and hire new leaders at the Texas Youth Commission would have disappointed many and presumably would not have solved any real issues. The scandals would have to—and did—lead to a much-needed uprooting of the juvenile justice status quo. The key characteristic of the many changes that took place in response to the Texas Youth Commission scandals was the shift in focus to keeping juvenile offenders in their communities, and to the extent that they had to be held in secure confinement, those institutions would be more purposefully designed to both confine and rehabilitate them.⁹⁸ These shifts alone represented a monumental change from the focus on punishment and institutionalization that had dominated Texas since the mid-1990s, and they demonstrated a collective recognition that the system in place was quite dangerous to juvenile offenders.⁹⁹

C. 2007-2015

The brunt of the statutory changes from 2007 until 2015 came in the form of juvenile justice-related legislation passed in 2007, 2009, and 2011 during three consecutive Texas legislative sessions.¹⁰⁰ The legislation passed during these three years

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. To make matters worse, additional illegalities including financial mismanagement and fraud were discovered during the investigation.

96. Richard Whittaker, *Texas Youth Commission Trouble*, THE AUSTIN CHRONICLE (Mar. 16, 2007), <http://www.austinchronicle.com/news/2007-03-16/456316/>.

97. *Id.*

98. Mendel, *supra* note 70.

99. *Id.* at 6.

100. Fabelo, *supra* note 22.

led to the current juvenile justice climate in Texas and to the major reform movement that occurred most recently in 2015. Much of the reform was grounded in ideas encapsulated by Governor of Texas Rick Perry's statement in 2007: "I believe we can take an approach to crime that is both tough *and* smart. . . [T]here are thousands of non-violent offenders in the system whose futures we cannot ignore. Let's focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again."¹⁰¹ By and large, Texas slowly but surely realized how much more could be done to make juvenile justice more ethical and effective.

The first of the major statutory changes was Senate Bill (SB) 103 passed during the 83rd Texas Legislature in 2007 soon after details of the Texas Youth Commission scandals first broke.¹⁰² "Juvenile Justice in Texas: Where We've Been, Where We're Headed" explains that, broadly speaking, the statutory reforms that Texas has passed since 2007 have "sought to ensure smaller populations, fewer abuses and better treatment at lock-ups; to give children and teens fair hearings, sentences and representation in court; and to increase the focus on community-based treatment rather than state-administered incarceration."¹⁰³ SB 103 epitomized this most directly. It was an omnibus reform bill with three major goals: to address the abuse in state-run institutions, to better the conditions and lower the populations in those institutions, and to move the state toward a community-based treatment model.¹⁰⁴ In order to address the abuse in the secure state institutions, the bill called for a required additional 220 hours of training for officers working in the institutions.¹⁰⁵ Additionally, the Office of Inspector General and the Office of Independent Ombudsman were created to increase oversight of the institutions throughout the state.¹⁰⁶ And lastly, a new advisory board was founded and its leadership structure was modified in order to ensure greater accountability and communication between each level of every institution and the state.¹⁰⁷

In order to better the conditions for juveniles and to lower the populations in secure state institutions, the reform called for the segregation of children based on age and crime.¹⁰⁸ It also stipulated that only juvenile offenders who committed felonies could be committed to the Texas Youth Commission facilities, and juveniles who were charged with misdemeanors would be diverted to county-operated programs and services.¹⁰⁹ Prior to this reform bill, countless juveniles were sent to secure state institutions even though they were nonviolent and had only committed misdemeanors.¹¹⁰ SB 103 also stipulated that juveniles nineteen years and older would "age

101. Tex. H. Rick Perry, *House Journal*, 80th Leg., Reg. Sess. 324 (Feb. 6, 2007) (statement of Governor Rick Perry) (emphasis added) *House Journal of the Regular Session of the Eightieth Legislature* (2007), available at http://www.lrl.state.tx.us/scanned/govdocs/Rick%20Perry/2007/SOS_Perry_2007.pdf.

102. S.B. 103, 80th Leg., Reg. Sess. (Tex. 2007).

103. TEXANS CARE FOR CHILDREN, *supra* note 16.

104. S.B. 103, 80th Leg., Reg. Sess. (Tex. 2007).

105. *Id.*

106. *Id.*

107. *Id.*

108. *See generally id.*

109. *Id.*

110. TEXANS CARE FOR CHILDREN, *supra* note 16. Further, there seemed to be no rhyme or reason as to

out” of Texas Youth Commission facilities, either through probation or by transfer to adult prisons.¹¹¹ As a result of the third main goal of SB 103—to move toward a more community-based treatment model—the use of community-based alternatives for juvenile offenders increased.¹¹² This led to the expansion of county-based programs for both misdemeanants and felons in many of Texas’ largest counties.¹¹³

The second wave of legislative reform aimed at helping and bettering the juvenile justice system came in 2009. The General Appropriations Bill led the state toward a community-based treatment model by creating additional grant programs that would provide incentives to keep youth in their community.¹¹⁴ The Legislature created financial incentives in order to influence the prevalence and success of programs and services offered at the county level—as will be discussed shortly.¹¹⁵ Also in 2009, House Bill (HB) 3689 sought to better the conditions of secure state institutions through measures such as improving the mental health services that the Texas Youth Commission had to offer, by supporting reading programs for Texas Youth Commission students, and also by taking appropriate steps to improve the transition for juveniles reentering their communities.¹¹⁶ 2009 also saw SB 1374, which established a pilot program as an alternative for nonviolent juvenile offenders.¹¹⁷ This was part of an effort to move toward sentencing, remediation, and representation that were more appropriate for the age of the offender and the crime he or she committed. Along the same lines, HB 1793 mandated that juvenile judges receive specific training, and SB 518 sought to reduce the number of juveniles sent to adult court and to ensure that juveniles were receiving due process and treatment that fit their age and crime.¹¹⁸

The legislation passed in 2011 served to both further and strengthen past juvenile justice legislation. Major reforms during the 2011 legislative session included: more piloting of community-based treatment models, continuing the move toward more appropriate sentencing and remediation for juveniles, enhancing accountability, and streamlining administration. As part of the pilot program to develop more (and improved) community-based treatment models, HB 35 extended an already existing community pilot program designed to help children who were at risk of being placed in the child welfare or juvenile justice systems.¹¹⁹ To enhance accountability among the different branches and administrations of the Texas Youth Commission, SB 501 served to create an interagency council that addressed racial, ethnic, and regional disparities across state agencies that serve children.¹²⁰ This was in response to several youth advocacy programs and lobbyists.

which juveniles were sent to secure state institutions and which ones were kept in less intense and harmful environments in their communities in programs more focused on rehabilitation.

111. S.B. 103, 80th Leg., Reg. Sess. (Tex. 2007).

112. *Id.*

113. *Id.*

114. TEXANS CARE FOR CHILDREN, *supra* note 16.

115. *Id.*

116. H.B. 3689, 81st Leg., Reg. Sess. (Tex. 2009).

117. S.B. 1374, 81st Leg., Reg. Sess. (Tex. 2009).

118. TEXANS CARE FOR CHILDREN, *supra* note 16.

119. *Id.*

120. *Id.*

Without question, the most significant juvenile justice bill in 2011 was SB 653. This bill created the Texas Juvenile Justice Department (TJJD), which is still in place today, through the merging of two different agencies—the Texas Youth Commission and the Texas Juvenile Probation Commission.¹²¹ This was not simply a renaming; it was the replacement of a broken, scandal-ridden system with one more progressive and ethical in both philosophy and action. SB 653 charged the newly formed TJJD with forming programs that would help detect delinquency earlier on in future offenders.¹²² The TJJD was also charged with working to ensure that fewer kids who come into contact with the juvenile justice system are incarcerated, children who remain at home are given the opportunity to enter programs designed to help them avoid delinquency in the future, children who are incarcerated at the county level are kept close to their community, and children who must be sent to secure state institutions have opportunities for rehabilitation.¹²³ As its website explains:

The Texas Juvenile Justice Department has a vision of providing safety for citizens of the State of Texas through partnership with communities and the delivery of a continuum of services and programs to help youth enrich and value their lives and the community by focusing on accountability of their actions and planning for a successful future.¹²⁴

County probation departments and courts are the backbone of the TJJD. All juveniles who are referred to juvenile courts have services provided to them by probation departments operated by the counties.¹²⁵ As the TJJD website explains, “county juvenile probation departments handle most of the sanctions and therapeutic interventions the courts may impose.”¹²⁶ This represents the greater role that communities, and programs and institutions at the county-level in general, began to play as a result of the statutory changes. Deborah Fowler explains in “A True Texas Miracle” how the bill creating the TJJD prioritizes the use of community-based or family-based programs and services for youth “over the placement or commitment of youth to a secure facility.”¹²⁷ Moreover, it ensures that secure state facilities—that continue to exist “for youthful offenders that cannot be safely served in another setting” are more rehabilitative in nature than they were in the past.¹²⁸

The creation of the Texas Juvenile Justice Department helped lead to more streamlined efforts to keep youth in their communities. SB 653 required that the TJJD struck a balance between the interests of rehabilitative needs and public safety and

121. S.B. 653, 81st Leg., Reg. Sess. (Tex. 2009).

122. *Id.*

123. *Id.*

124. *What We Do Our Mission*, TEXAS JUVENILE JUSTICE DEPARTMENT CENTER (2016), http://united-waysatx.galaxydigital.com/agency/detail/?agency_id=20711.

125. *Id.*

126. *Id.*

127. Deborah M. Fowler, *A True Texas Miracle: Achieving Juvenile Justice Reform in a Tough Economic Climate*, TEXAS APPLESEED 5 (2012), available at www.firstfocus.net.

128. *Id.*

created funding priorities without incentivizing incarceration.¹²⁹ SB 653 also worked toward “[codifying] mechanisms to address juvenile infractions” that utilized the community-based alternatives more so than secure state institutions.¹³⁰ Although, in all of these statutory reforms, the focus was on increasing the amount and quality of community-based rehabilitative institutions, SB 653 also laid out the goals and frameworks for smaller state-run lock-up facilities so that they would better promote youth rehabilitation than they had in the past. Lastly, SB 653 created additional grant programs that provided a financial incentive for counties to house and treat juvenile offenders in their communities.¹³¹

As legislation such as SB 103 redirected juvenile offenders from state institutions to their communities, greater pressure fell on the individual counties to fund programs and institutions for the juveniles. All of a sudden, counties across the state had more juvenile offenders that they were responsible for and not enough resources to devote to their accommodation and rehabilitation. As “No Place for Kids: The Case for Reducing Juvenile Incarceration” explains, in most states, “commitments to state custody are funded entirely with state funds, whereas local jurisdictions must foot the bill for community-based supervision and treatment programs.”¹³² This is not exactly true in Texas, where county programs are funded through a combination of state and local funds. Despite this, it is still cheaper for juveniles to be sent to state facilities.¹³³ Judges were often forced to make “an untenable choice between probation or incarceration for adolescents with moderately serious offending histories who do not pose an immediate or significant threat to public safety.”¹³⁴ For years, community-based rehabilitation was not a legitimate or feasible option for some youth. In light of the many statutory changes aimed at shifting more juveniles to communities instead of to state institutions, it became imperative for the state to eliminate the financial incentives that encouraged an overreliance on state institutionalization.

As previously mentioned, a series of legislative initiatives shifted funds toward the counties, creating less of a financial disincentive for them to keep more juvenile offenders in their communities in non-residential programs or in rehabilitation-focused institutions, rather than send them to state correctional facilities.¹³⁵ As Marc Levin and Jeanette Moll explain in “Comprehensive Juvenile Justice Reform: Cutting Costs, Saving Lives,” the Texas Legislature included a rider in the budget in 2009 that “authorized the Texas Juvenile Probation Commission (TJPC) to fund grants to local juvenile probation departments that pledged to reduce commitments to TYC through the diversion of suitable juvenile offenders to community-based treatment and vocational programs.”¹³⁶ These programs were required—by statute—to cost

129. S.B. 653, 81st Leg., Reg. Sess. (Tex. 2009).

130. TEXANS CARE FOR CHILDREN, *supra* note 16.

131. *Id.*

132. Mendel, *supra* note 70.

133. *Id.* at 36.

134. *Id.* at 30.

135. TEXANS CARE FOR CHILDREN, *supra* note 16.

136. Marc Levin, et al., *Comprehensive Juvenile Justice Reform: Cutting Costs, Saving Lives* (2011),

less than half of the per-day cost of state lockups.¹³⁷ Additionally, the law was written so that these programs were only funded if evidence from other jurisdictions using similar approaches was positive and ongoing results from the Texas programs themselves demonstrated an overall reduction in recidivism.¹³⁸

Fortifying the statutory changes and financial incentives for courts and correctional systems to keep juvenile offenders in their communities was a statewide change in personal and public mindsets toward juvenile crime.¹³⁹ Although the 2007 Texas Youth Commission scandals served as the impetus for change to occur, people quickly saw the many dangers and drawbacks to incarcerating juveniles in secure state institutions—with the stories behind the scandals serving as their main source of information. People came to see that “the case against juvenile correction facilities is overwhelming. Countless studies and decades of experience show that these institutions are both dangerous and ineffective.”¹⁴⁰ While this certainly is not true for every secure state institution in the country—nor should state institutions automatically be labeled as “dangerous” or entirely punitive—there are benefits to community-based rehabilitation programs that Texas as a whole has consistently acknowledged and acted upon in recent years. This genuine change in mindset reinforced the changes in legislation and finances that have been occurring since 2007. During this time, remembering the jagged and complex history of the juvenile justice system in Texas became helpful to legislators, advocates, and even parents of juvenile offenders. The 2007 Texas Youth Commission scandals caused people to realize the downward spiral that the juvenile justice system has been on since the mid-1990s and, not only that, but to take action to reform the system to one more closely identified with its roots.¹⁴¹ In “Right on Crime: The Texas Model – Part II,” an article written by Stephen Lilienthal, Levin is quoted saying, “current reform efforts are returning us to policies that are more consistent with the history of the United States.”¹⁴² In this statement, Levin is referring to the rehabilitation model that Texas more or less honored until the mid-1990s (and the ensuing crime explosion and “tough on crime” movements that have been discussed).¹⁴³ His statement highlights the cyclic nature of Texas’ juvenile justice system. The statutory changes and the shift in financial incentives would arguably not have occurred if advocates, parents, legislators, and others had not genuinely believed in the necessity for state and local courts and correction systems to invest in and expand access to intensive and high-quality alternatives to incarceration.

<http://www.texaspolicy.com/library/doclib/2011-09-PB43-TexasModel-JuvenileJustice-CEJ-MarcLevinJeanetteMoll-online.pdf>.

137. *Id.*

138. *Id.*

139. Mendel, *supra* note 70.

140. *Id.* at 28.

141. *Id.*

142. Stephen M. Lilienthal, *Right on Crime: The Texas Model – Part II*, RIGHT ON CRIME (2013).

143. *Id.*

II. A COMPREHENSIVE LOOK AT TEXAS SENATE BILL 1630

The advocacy and legislative efforts to address the corruption and dysfunction in the Texas Juvenile Justice Department eventually culminated in the passage of Senate Bill (SB) 1630.¹⁴⁴ This bill solidified into law what so much of the drastic reform movements in Texas since 2007 had been leading to. SB 1630 focuses on shifting the entire Texas juvenile justice system away from the century-old “state model,” designed to place serious and non-serious offenders alike in high-security, state-run lockups, to a “regional model,” in which juvenile offenders are kept, when possible, in community-based facilities closer to their homes, in an environment focused on their rehabilitation.¹⁴⁵ The bill relies heavily on a 2015 report created by the Council of State Governments Justice Center finding that system-involved youth detained within their communities have better outcomes than youth sent to distant, state-run juvenile justice facilities.

SB 1630 requires the Texas Juvenile Justice Department (TJJD) to develop a plan for juvenile probation departments across the state to keep youth in regional facilities rather than committing them to TJJD facilities.¹⁴⁶ Under the new model, youths will only be sent to state facilities if resources in their community cannot meet their needs.¹⁴⁷ Essentially, the bill ensures that local juvenile probation departments continue to effectively serve youth, making it a requirement for the probation department to use risk- and needs-assessments on youth immediately upon their entrance into the juvenile justice system.¹⁴⁸ This means that each youth will be given the individualized focus and attention that he or she needs in order to become successfully rehabilitated and not prone to recidivism. The overarching requirement of this bill is for the success of the juvenile justice system “to be measured not only by the number of youth who reoffend but also by various factors indicative of youths’ well-being, such as family and community engagement.”¹⁴⁹

To make this more feasible, the bill expands the jurisdiction of the Office of the Independent Ombudsman (OIO), an external advocate for the rights of youth in custody.¹⁵⁰ The expansion of this office will help address the great number of youth that will be held at the county level and ensure that there is greater oversight in the switch to this regional model.¹⁵¹ The bill would allow the OIO to investigate any complaints alleging that the rights of youths committed to post-adjudication facilities for juvenile offenders were being violated.¹⁵² The bill stems from two major trends: 1) all the corruption and resulting advocacy for change, and 2) the consistent and convincing

144. S.B. 1630, 84th Leg., Reg. Sess. (Tex. 2015).

145. 2015 *Legislative Wrap-Up and Appreciation*, Texas Criminal Justice Coalition 4 (2015).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

research that it would be far more effective to keep juvenile offenders in their communities than in state-run institutions.

Under the new regionalization plan proffered by SB 1630, each region would be required to operate defined, appropriate, research-based programs for youth.¹⁵³ TJJD is required to consult with juvenile probation departments to identify capacity at post-adjudication facilities operated by juvenile probation departments, counties, or private operators that could help support the regionalization plan.¹⁵⁴ That reorganization plan includes a budget review, redirection of staff, and funding mechanisms needed to support the plan.¹⁵⁵ TJJD is even required to create a brand new division to administer the regionalization plan, monitor program accountability, and perform other functions, such as providing training, assisting in research-based program development, and analyzing TJJD data in order to provide clear guidance to local probation departments on outcome measures.¹⁵⁶

One of the most major obstacles in supporting such a dramatic overhaul of the status quo is the issue of funding. SB 1630 addresses this issue too, however, by establishing a probation funding formula.¹⁵⁷ Prior to SB 1630, TJJD was required to allocate annually state aid funds to juvenile boards to provide juvenile services. SB 1630 requires TJJD to use the new formula for this purpose, with the intention of allotting as much money as is needed to ensure that the goals of SB 1630 can become a reality.¹⁵⁸ The bill would also allow the Legislature to appropriate funds to initiate the regionalization plan in a way that actually generated savings to the state through a decreased population of youth detained in TJJD-operated secure facilities.¹⁵⁹ Further, TJJD would have to set aside a portion of its discretionary state aid appropriations in order to fund projects with established recidivism reduction goals dedicated to serving specific populations based on risk and needs.¹⁶⁰ Lastly, TJJD would reimburse counties for the placement of youth under the regionalization plan at a rate that, again, would offer savings to the state compared with the relative cost for detaining a juvenile at a secure facility.¹⁶¹

Simply stated, SB 1630 would continue the successful reforms that the state of Texas has undertaken in its juvenile justice system over the past several years by ensuring that juveniles are sent to appropriate and safe programs where they will undergo treatment designed to help rehabilitate them rather than strictly punish them. By keeping juveniles closer to their communities, by increasing oversight, and by appropriating sufficient funds, Texas, through SB 1630 aims protect a vulnerable and large subset of its population and complete and maintain the successful reform of the juvenile justice system.

153. S.B. 1630, 84th Leg., Reg. Sess. (Tex. 2015).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *See id.*

161. *See id.*

III. COMPARING AND ANALYZING 'THE TEXAS APPROACH'

Given the comprehensiveness and progressive nature of SB 1630, the Texas approach to juvenile justice seems unquestionably commendable and on the fast track to success. The bill not only passed during the summer of 2015, which was an accomplishment in and of itself, but it received a great deal of praise across the board from families of juvenile offenders, legislators, various advocacy groups, and taxpayers. Adjudging Texas' true success in the realm of juvenile justice reform, however, entails not only comparing its present state to the corruption-riddled and punishment-obsessed past, but also comparing the state's efforts with that of other states.

Much of the reform initiated in Texas was modeled on reform that was—and is—in the process of occurring in Missouri.¹⁶² Similar to Texas, Missouri's juvenile justice system took a turn for the worst in the mid-1990s as a result of escalating juvenile crime around the country and the subsequent explosive "tough on crime" reaction.¹⁶³ But the state of Missouri, through an intense and still ongoing process of reform, "has created a juvenile justice system that has proved so successful over the last thirty years it is known as the 'Missouri Miracle.'"¹⁶⁴ Nearly thirty years ago, Missouri closed its training schools and, since then, the state's Youth Corrections Agency has consistently produced better outcomes in the state than ever before, all without breaking the state's budget.¹⁶⁵ Similar to Texas, Missouri went about this process focused on offering a more humane, constructive, and positive approach to juvenile justice.¹⁶⁶ Its system, impressively unique and progressive at the time (and still), is made up of small facilities, designed to hold between ten and thirty juveniles, located at sites throughout the state that keep young people close to their own homes.¹⁶⁷ The facilities themselves are a far cry from the isolation rooms the state used to heavily rely on, and are now more group-focused and staffed by highly trained and educated individuals who treat the juveniles with respect and dignity.¹⁶⁸ The results Missouri has witnessed speak for themselves: "fewer than 8 percent of the youths in the Missouri system return against after their lease, and fewer than 8 percent go on to adult prison."¹⁶⁹ Further, "one-third of the youths return to their communities with a high school diploma or GED, and another fifty percent successfully return to school."¹⁷⁰ Missouri continues to see such impressive results today.

The crux of reform in Missouri—switching to the community-based alternative system rather than sending juveniles to far-flung state lock-ups—was the main source

162. THE MISSOURI MODEL, *supra* note 11.

163. *Id.* at 49.

164. Marian Wright Edelman, *Juvenile Justice Reform: Making the 'Missouri Model' an American Model*, THE HUFFINGTON POST (May 15, 2015), http://www.huffingtonpost.com/marian-wright-edelman/juvenile-justice-reform-m_b_498976.html.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

of influence that the state had on Texas. SB 1630 made the Missouri approach to juvenile justice reform more of a reality in Texas by making it *law* that the default location for the vast majority of juvenile offenders would be community-based alternative facilities rather than state institutions. And the success that Missouri has had thus far in reducing recidivism and avoiding the corruption that so easily attaches to secure state institutions can thus serve as an indication of the probable success that the Texas juvenile justice system is likely to experience as well.

On the opposite end of the spectrum, the Louisiana juvenile justice system remains entrenched in the corruption-riddled and punishment-obsessed form that Texas, Missouri, and other states have strived so hard to escape.¹⁷¹ Similar to Texas and Missouri, and many other states following the nationwide “tough on crime” movement, before any reform efforts were considered in Louisiana, the reality of the situation in juvenile institutions across the state was as dire as one can imagine.¹⁷² Regular reports of “gladiator-style fighting, guards molesting children, and a lack of basic education for kids as young as 14” gave Louisiana’s juvenile justice system the reputation as one of the worst in the country.¹⁷³ Like Texas, the state had its work cut out for it, when, in 2003, the Louisiana Legislature passed sweeping reforms aimed at restructuring the juvenile justice system and transforming it into one that resembles the Texas system under SB 1630. Again like Texas, Louisiana’s intent was to whittle down the number of juveniles locked in sprawling, prison-like facilities and instead switch to relying on community-based services in order to help target the root causes of juvenile delinquency.

On paper, Louisiana’s plan sounded promising and in tune with the reforms of its neighboring states who similarly had great need for an improved juvenile justice system. The Louisiana approach, compared with Missouri and Texas, however, proved too idealistic for the support and resources that were actually granted to it. Simply stated, while the reforms were commendable in theory, the state of Louisiana did not invest enough of its resources into the reformed, alternative methods of rehabilitating juvenile offenders.¹⁷⁴ And to make matters worse, the state actually began building even more prison-like facilities following the legislation.¹⁷⁵ Further, for the community-based alternatives that had enough resources to remain open, the conditions there were not much better than the conditions in the prison-like, state-run facilities. Despite the intentional focus on rehabilitation, the Louisiana Office of Juvenile Justice provided inadequate monitoring of the community-based alternative

171. Della Hasselle, *Critics Point to Problems in Louisiana’s Reformed Juvenile Justice System*, JUVENILE JUSTICE INFO. EXCH. (Oct. 5, 2014), <http://jjie.org/critics-point-to-problems-in-louisianas-reformed-juvenile-justice-system/>.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

facilities.¹⁷⁶ The forty-four facilities are not managed by the same organization, resulting in no uniform oversight or monitoring system.¹⁷⁷ This has resulted in inefficiency and abuse. While more juveniles have been sent to those alternative facilities than ever before, the severe lack of funding and the inadequacy of oversight resulted in an alternative option that was not actually an improvement from its predecessor.

The present situation in Louisiana is as important for Texas to acknowledge and learn from as is the situation in Missouri, despite the great discrepancy in success levels between the two states. This is primarily because the case of Louisiana essentially demonstrates what can potentially go wrong with reform plans of this style and size. The two main obstacles faced by Louisiana are genuine threats to Texas, Missouri, and any other state that seeks to reform their juvenile justice systems to a rehabilitative-focused, community-based alternative method. These obstacles relate to resources and oversight.

First, a state's true commitment to a piece of legislation becomes completely transparent when examining how much money is actually allotted to the furtherance of that legislation. In Texas, local jurisdictions have funded the community-based alternatives in a number of ways including: "state funds in the form of a line item in the budget or grants; Medicaid funding for some behavioral health services; Workforce Investment Act dollars; grants from non-profit foundations that invest in juvenile justice; local government tax collection initiatives; and money saved from closing down juvenile facilities."¹⁷⁸ It is markedly more affordable to house juveniles in community-based alternatives than in secure state institutions, but for any kind of facility to function properly, there obviously has to be some sort of consistent and dependable source of funding.¹⁷⁹ Fortunately, due to the nature of services provided by the community-based alternatives, there are several different sources of funding available. However, so much comes down to how much the state in particular is willing to allocate. For instance, if a state is unwilling to allocate sufficient resources to community-based alternatives, but had little hesitancy allocating funds to fully state-run lock-ups, it becomes questionable how invested the state actually is in pursuing rehabilitation-focused, community-based alternatives. In this realm in particular, where so much is dependent on government action, without the backing of the state, true reform would be hard to come by.

Second, a major issue with the Louisiana system was the lack of organized oversight. The story of the Texas juvenile justice system during the mid-1990s until 2007 depicts why oversight is so critical to a juvenile justice system. Its importance in protecting youth, enabling community involvement, monitoring and reporting on reform efforts, and fostering a legitimate and humane system cannot be overstated. While Louisiana surely was aware of the importance of oversight in the research compiled and considered before the passing of its reform legislation, the reality on

176. *Id.*

177. *Id.*

178. *Key Issues Ideas*, JUVENILE JUSTICE INFO. EXCH., available at <http://jjie.org/hub/community-based-alternatives/key-issues/> (last visited Apr. 17, 2016).

179. *Id.*

the ground indicated that oversight was not a priority. While some opponents to SB 1630 in Texas argued that additional and clear oversight could perhaps be a burden, it is a far better situation to have too much oversight than too little. The situation in Louisiana makes that clear. The position of the OIO in the Texas Juvenile Justice Department—an office created with the sole purpose of it allowing one person (and his/her office) to oversee, in a uniform and strict manner) the inner workings of each institution and facilities, is critical to achieving the kind of reform sought by Texas and Louisiana alike.

While more and more states have successfully shifted their ideologies away from a punishment/retribution ideal and to a more rehabilitation-focused mindset, the results have not always been promising, as indicated by the situations in Missouri and Louisiana, two states on opposite ends of the spectrum. Because, at this point, SB 1630 is still being implemented across the state, it is not possible to conclusively declare what its success will be, though it is possible to make informed predictions. Because the juvenile justice system in Texas had become as corrupt and backwards of an institution as it did during the early 2000s, legislators, policymakers, and advocates had their work cut out for them in terms of reform—more so than nearly all other states. But SB 1630 is not the first of its kind to attempt to shift the underlying principles of the juvenile justice system. Rather the bill is a culmination of a long lineage of similarly focused legislation, occurring every other year since 2007. Although unfortunate in some ways that it took nearly eight years for a piece of legislation like SB 1630 to pass, its success is made even more probable by the fact that it considers all of the legislation that the three preceding legislative sessions have produced. The two most pressing concerns for reform in this realm, resources and oversight, are more accounted for with SB 1630 than would have been possible had previous legislation not paved the way.

SB 1630 has successfully put into place a much-needed regional model that has the potential to serve juvenile offenders better than ever before. In allowing more youth to be closer to home, have youth receive mental or drug treatment that they need, and maintaining a focus on safety and accountability, SB 1630 has the extreme potential to place Texas on solid ground in terms of having a juvenile justice system that is stable, transparent, and effective.

IV. CONCLUSION

Riddled with corruption and full of neglect, abuse, and cruel and unusual punishment, the Texas juvenile justice system reached a point where it could prolong dramatic reform no longer. Although juveniles in the system were mistreated for years, largely due a nationwide “tough on crime” movement catalyzed by spikes in the national juvenile crime rate, it took until a serious scandal leaked in 2007 for enough attention to be gained by advocates, legislators, and policymakers for any real and lasting change to be made. In 2007, when allegations of extreme corruption and abuse at a heavily populated Texas secure state juvenile institution proved true, the stage was set for a series of legislation aimed at completely reforming the entire juvenile justice system from the ground up. These reform efforts culminated in Senate

Bill 1630, which went into effect in September of 2015. This progressive bill focuses on two main goals: first, switching the Texas juvenile justice system to a regional model rather than a state model, wherein juvenile offenders are kept in facilities in their communities rather than far away in prison-like state-run lock-ups, and, second, within those facilities, placing a far greater emphasis on rehabilitation rather than on punishment.

While it is too soon to know definitively just how successful this new model will be, based on past experience, through examining the purpose and language of the bill itself, and comparing the newest reform bill with efforts in different states, it is clear that this model has a high probability of being exceptionally effective. Missouri and Louisiana are both states similar to Texas in that the histories of their juvenile justice systems are comparably filled with corruption and an extreme focus on punishment. Of the two, however, only Missouri has actually experienced success and a truly reformed juvenile justice system. Properly leaning on the Missouri model and striving to avoid the mistakes made through the Louisiana model, Texas seems to be in remarkably good shape in terms of ensuring that the progressive and well-meaning intent behind and language of SB 1630 will be appropriately implemented and maintained in the years to come.