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TEXAS CAN RECLAIM JUSTICE REFORM BY ADDRESSING JUVENILE JUSTICE ISSUES

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INTRODUCTION

Texas has become a leader in criminal justice reform by replacing old, “tough on crime” policies with more appropriate “smart on crime” ones. And although this new approach has seen success in the adult system, progress has stalled in the juvenile justice system. Accordingly, if Texas is to reassert its position as a leader in reforms, the best and most effective way is to improve their juvenile justice system by raising the age of criminal majority, by providing a “second look” for those juveniles who were sentenced to life in prison, and by shifting the way the state views and prosecutes youth who have committed serious and violent crimes.

A BRIEF HISTORY OF CRIMINAL AND JUVENILE JUSTICE REFORM IN TEXAS

Texas has been heralded as a leader in the criminal justice reform space for at least the past decade. The need for reform began circa 2000, when the prison population reached over 150,000 inmates.¹ Until 2007, the focus had been on merely

building additional facilities. However, at that point, then-Speaker of the House Tom Craddick issued a simple mandate: “don’t build new prisons, they cost too much.”²

And, indeed, once key lawmakers began to understand the need for alternative solutions to incarceration, real and effective reforms began to take hold. In response to the Speaker’s comments, in 2007, legislation was passed to bolster substance abuse treatment beds behind bars by adding an additional 2,700 spaces.³ It also added 1,400 new intermediate-sanction beds,⁴ an additional 300 halfway-house beds and worked to establish workable goals for effective community supervision. In short, the 2007 Justice Reinvestment Initiative shifted the landscape of criminal justice reform in Texas and created space for additional reforms to be discussed and implemented.⁵

Already, the Justice Reinvestment Act has been successful in Texas and across the country. Specifically, fewer people have returned to prison due to parole violations. In fact, in the first years following its implementation, parole revocations dropped by 25 percent.⁶ Additionally, the Texas prison population dropped by 1,257 people in 2008 alone.⁷ Because of the nearly immediate success of the Act, other states adopted it as a model, including Arizona, Connecticut, Indiana, Kansas, Michigan, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin.⁸

After adoption, Texas lawmakers and advocates kept pushing forward. For instance, the Texas Department of Criminal Justice restored “good time” credits that were previously revoked for minor infractions. They also expanded record clearing provisions, or orders of nondisclosure, to certain first-time, non-violent offenders. These allow those individuals to seal their criminal records for the purposes of securing employment and housing.⁹

Unfortunately, however, the most recent (2019) legislative session in Texas was more “miss” than “hit” with respect to further progress. In fact, Scott Henson, a criminal justice researcher, called the 86th session a “killing field” for criminal justice reforms.¹⁰ And, this is particularly the case with respect to reform in the juvenile justice space. This is because the Justice Reinvestment Act only made changes to the adult criminal justice system and thus the juvenile system was unaffected.

However, reform within the juvenile system is vitally necessary in large part because children—as offenders—are different from adults and thus are in need of even greater care and consideration. The Supreme Court has repeatedly articulated the distinction between the treatment of youth versus the treatment of adults by ruling that imposing the death penalty for minors is unconstitutional, that life in prison should be an exceptional last resort and that a child’s age is a factor in

deciding their understanding of the criminal process.¹¹

Indeed, even the stated goals of the juvenile justice system are different than that of the adult system, as rehabilitation—rather than punishment—is both the key focus and the measure of success. Even the Texas Juvenile Justice Department (TJJD) believes in this distinction: “[T]he adult system focuses on public safety and punishment for criminal conduct. While public safety and accountability are certainly considerations for youth, the juvenile correctional system emphasizes treatment and rehabilitation.”¹²

CURRENT PROBLEMS WITH JUVENILE JUSTICE IN TEXAS

In recent years, massive problems with the juvenile justice system in Texas have arisen from outcries of mistreatment in youth detention facilities. In November 2017, scandal rocked the state when five TJJD employees were arrested and accused of sexual misconduct with youth from the Gainesville State School. At that time, Gainesville State held about 250 young people. As a result of those accusations, the Texas Rangers investigated all of the state’s five large and rural juvenile facilities, and found even more problems.¹³ More employees were arrested for excessive use of force.

To his credit, Governor Greg Abbott decided to immediately make changes to ensure the safety of youth being housed in facilities operated by the state. First, a new director was appointed to oversee the TJJD, and the Governor ordered additional supports to be made available for anonymously reporting abuses in state facilities, as well as additional resources to identify sex trafficking victims in the facilities.¹⁴ In addition to these efforts, Camille Cain, the TJJD Executive Director, outlined a robust plan to improve the state of juvenile justice, and has taken the steps that are within her power to effect those changes. However, Cain acknowledges that to fulfill all of her stated goals, support from the legislature is necessary.¹⁵

But, despite the Governor’s and TJJD’s best efforts, problems continue in youth detention facilities. For instance, in late-November 2018, a six-day riot erupted in Gainesville. In response to a report detailing the disturbance, the TJJD noted that it was aware of the “lack of consistent structured programming,” and further said that “the youth were confined to their dorms for a larger portion of the day than is optimal.”¹⁶

In order for the TJJD to fully implement their long-term goals and be able to create a more effective and equitable system for all justice-involved youth, the legislature has an obligation to support its mission legislatively. Specifically, Director Cain’s long-term goals outline ways to: 1) reduce the number of young people who are held in the state’s juvenile detention facilities; 2) move those who are detained closer

to their homes and families and; 3) shift the perception of youth who are involved in the juvenile justice system so as to refocus on their future potential, rather than their past transgression.¹⁷

Key Issues the Legislature Should Address

In addition to supporting the ongoing efforts of Director Cain and the TJJD, the legislature has the authority to make lasting changes to the way Texas interacts with young people who have committed a crime. To do so, the most pressing priorities are raising the age of criminal majority, reviewing the cases of juveniles who have been sentenced to life in prison, and examining the treatment of those youth who have engaged in serious and violent offenses.

Raise the Age

Texas is one of the last three states, along with Georgia and Wisconsin, that automatically prosecute 17-year-olds as adults. This means that all 17-year-olds who are accused of committing a crime, even low-level offenses, are placed in the adult system. Sadly, young people who are prosecuted and housed in adult jails and prisons have higher suicide rates and often do not receive proper educational services.¹⁸ It also means that even teens who commit minor offenses end up with an adult record. And this is despite the fact that of the 20,000 17-year-olds arrested in Texas in 2017, more than 95 percent were arrested for nonviolent and misdemeanor offenses.¹⁹ Furthermore, youth in the juvenile justice system are 37 percent less likely to recidivate than those placed with adults.²⁰ What’s more, the negative effects of adult incarceration continue throughout a child’s life. Young people with adult records are less likely to receive employment opportunities in the future, which hurts the fabric of our economy and society.²¹ In short, placing kids in the adult system permanently harms their well-being, and our communities suffer with them.

The best legislative solution to correct this injustice has already been proposed in past sessions.²² “Raise the Age” legislation would have increased the automatic age of criminal jurisdiction from 17 to 18, meaning that minors would automatically be processed through the juvenile system. It also provided for judicial discretion to transfer youth with the most serious offenses to the adult system on a case-by-case basis.²³

Unfortunately, key members of the Texas Senate have stalled passage of any such bill. Specifically, in 2017, Senate Justice Committee Chairman and Houston Democrat, John Whitmire, did not allow a bill that would have gradually implemented raise the age²⁴ even to be heard in the Senate.²⁵ And this was despite the fact that it passed with overwhelming support in the House. According to Senator Whitmire, all

other issues in the Texas juvenile justice system must be addressed before the legislature can even consider raising the age.²⁶ However, with other previous hold-out states like Michigan successfully passing their own versions of raise-the-age legislation, Texas lawmakers must shift perspective to pass and implement this juvenile justice reform if they are to regain their position as a leader in the criminal justice reform space.

A Second Look for Juveniles Sentenced to Life Without Parole

In response to a number of Supreme Court cases, every state was required to eliminate mandatory life-without-parole sentences for young people under eighteen. In response to this directive, Texas shifted its laws to require people who would have received a sentence of life without parole to instead serve 40 years before becoming eligible.²⁷

However, such an interpretation was not in the spirit of the ruling made by the Supreme Court. Housing an individual who was convicted as a teen for forty years in prison does not provide a real opportunity for life outside of detention, even for those who have been rehabilitated. In fact, most other states that revised their laws after the ruling against mandatory life allowed a parole hearing after 20 years. The Texas legislature should therefore align its law more closely with the national standard.²⁸

Young adults are still maturing, and are genuinely open to personal growth and rehabilitation. By allowing young people the opportunity to demonstrate improvement sooner than the 40-year mandatory sentence, taxpayer money could be saved without causing a decrease in public safety. Research has demonstrated that people “age out” of crime.²⁹ For example, arrests for robbery peak at age 19 but decline by more than half by age 30, and by three-quarters at age 40, and that same trend exists for other violent crimes.³⁰

For all these reasons, one piece of legislation that has been introduced consecutively for a number of legislative sessions would require the state to provide a “second look” for people convicted of crimes when they were younger than eighteen to be eligible for parole sooner. Specifically, during the last legislative session, House Bill 256 and Senate Bill 155 proposed cutting the mandatory detention period in half and requiring the Parole Board to consider mitigating factors, such as the growth, maturity and rehabilitation of the incarcerated person.³¹

Passing “Second Look” legislation would not only align better with the goals of rehabilitation but also would save taxpayers millions of dollars. In fact, it costs approximately \$2.5 million to incarcerate a person for life, whereas the cost to incarcerate a person for 20 years is only about \$626,000.³²

The savings to the state would be significant and could be poured back into projects that would promote rehabilitation and workforce development.³³ In any event, the legislature must take steps to provide for earlier parole eligibility for people who have served time for a youthful offense. Addressing Serious and Violent Youth Offenses

In discussing plans to raise the age of criminal majority or provide earlier access to parole eligibility, a common argument against such practices has to do with young people who commit serious and violent offenses. And while it is certainly true that a state must balance its duty to ensure accountability and promote public safety, it also has special responsibilities to ensure the treatment of minors does not permanently harm their development or rehabilitation.³⁴ Fortunately, there are solutions that can accomplish both.

One solution is to propose and pass legislation aimed at keeping minors within the juvenile court system whenever possible. Not only is the juvenile justice system the most appropriate place to address non-violent juvenile offenses but also the juvenile system can be most helpful in rehabilitating youth who have committed violent crimes. Indeed, research has shown that the juvenile justice system is best suited to rehabilitate violent youth.³⁵ Those who commit violent criminal acts will likely have different risk factors and may need different, lengthier interventions, but by receiving age-appropriate services and individualized care plans, young people can begin their life anew and become productive members of society.

Another solution would be to return to and review the stated goals of the Director of the Texas Juvenile Justice Department by supporting programs that would limit or eliminate remote facilities and replace them with smaller programs, closer to the child’s community. Many states are considering “close to home” models, with New York having experienced successful implementation of the initiative.³⁶ With the premise that one-size-fits-all is ineffective, New York undertook a project that focused on community-based alternatives to detention, limited the use of formal detention to a last resort and replaced large institutional facilities with smaller programs closer to home. Not only have youth arrests decreased dramatically, but from 2008 to 2012, New York City was able to cut the number of youths admitted to detention facilities by 52 percent.³⁷

Additionally, individualized rehabilitation, education and mental health needs are important factors to consider when addressing serious and violent criminal behavior.³⁸ Passing these multiple legislative proposals and funding those long-term plans outlined by the TJJD are therefore the best ways the Texas legislature can effectuate change and become a leader in juvenile justice reform.

CONCLUSION

The Texas Legislature convenes every other year, so lawmakers have an entire year to think critically and develop juvenile justice reform legislation that will propel the state forward. Historically, the reforms that the state of Texas passed have truly been an inspiration to other states who have undertaken criminal justice reforms, but with great power comes great responsibility. To once again lead the way and to create meaningful change in the lives of individuals affected and positive change in our communities, Texas should seriously consider implementing and funding needed juvenile justice reforms, and hopefully, as in the past, other states and even the federal government will follow.

ABOUT THE AUTHOR

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