
**HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY ISSUES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2006**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
80TH TEXAS LEGISLATURE**

**HAROLD V. DUTTON, JR.
CHAIRMAN**

**COMMITTEE CLERK
NICOLE R. BATES**



Committee On
Juvenile Justice and Family Issues

July 28, 2006

HAROLD V. DUTTON, JR.
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Juvenile Justice and Family Issues of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harold V. Dutton, Jr.", written over a horizontal line.

Harold V. Dutton, Jr., Chairman

A handwritten signature in black ink, appearing to read "Toby Goodman", written over a horizontal line.

Toby Goodman

Yvonne Davis

Ana L. Hernandez

A handwritten signature in black ink, appearing to read "Mark Strama", written over a horizontal line.

Mark Strama

A handwritten signature in black ink, appearing to read "Joaquin Castro", written over a horizontal line.

Joaquin Castro

Jim Dunnam

A handwritten signature in black ink, appearing to read "Joe Nixon", written over a horizontal line.

Joseph Nixon

Senfronia Thompson

Toby Goodman
Vice-Chairman

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INTRODUCTION

At the beginning of the 79th Legislature, the Honorable Tom Craddick, Speaker of the House of Representatives, appointed nine members to the House Committee on Juvenile Justice and Family Issues. The committee membership included the following: Harold V. Dutton, Jr, Chair; Toby Goodman, Vice-Chair; Joaquin Castro, Yvonne Davis, Jim Dunnam, Joe E. Moreno, Joseph Nixon, Mark Strama, and Senfronia Thompson. In 2005, Ana L. Hernandez was appointed to the committee after the untimely death of Joe E. Moreno.

Pursuant to House Rule 3, Section 24, the Committee on Juvenile Justice and Family Issues has jurisdiction over all matters pertaining to (1) juvenile delinquency and gang violence; (2) criminal law, prohibitions, standards, and penalties as applied to juveniles; (3) criminal procedure in the courts of Texas as it relates to juveniles; (4) civil law as it relates to familial relationships, including rights, duties, remedies, and procedures thereunder; and (5) the following state agencies: the Texas Juvenile Probation Commission and the Advisory Council on Juvenile Services.

During the interim the Committee held five public hearings, with one hearing being held in San Antonio, Texas.

The Committee wishes to express appreciation to the staff of the committee members; to the state agencies that assisted the committee and supplied valuable information for the preparation of the report, in particular the Texas Youth Commission, the Texas Juvenile Probation Commission, the Office of the Attorney General. The Committee would also like to thank the many citizens, public officials and organization members who provided the Committee with testimony on the interim study charges and who provided the Committee with various forms of assistance.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY ISSUES
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

The Committee did not make any Subcommittee Assignments.

- CHARGE 1** Review the Texas Youth Commission's capacity and policies on abuse and neglect.
- CHARGE 2** Study current law relating to who is authorized to conduct marriages, and make recommendations of any possible changes.
- CHARGE 3** Evaluate child support guidelines and formulas, considering whether the current methods provide adequate support to a child. Also study child support for the costs of college.
- CHARGE 4** Research and report on how the courts handle truancy cases.
- CHARGE 5** Consider the law governing presumption of parentage, and examine the adequacy of relief available to presumed parents who are child support obligors and who assert a claim of paternity fraud.
- CHARGE 6** Study the effectiveness of prevention programs, such as after school programs, in reducing the actual indices of crime, and the rate of young offenders entering the criminal justice system. (Joint Interim Charge with the House Committee on Corrections)
- CHARGE 7** Monitor the agencies and programs under the committee's jurisdiction.
-

CHARGE 1

Review the Texas Youth Commission's capacity and policies on abuse and neglect.

CHARGE 1

The Committee was charged with reviewing the Texas Youth Commission's capacity and policies on abuse and neglect.

BACKGROUND OF THE ISSUE

As the state's juvenile corrections agency, the Texas Youth Commission ("TYC") provides to the most serious youthful offenders rehabilitation, skills, and opportunities to atone for the offenses they have committed against communities and individuals. However, amid reports of youth abuse, staff assaults, annual employee turnover as high as 90%, and an ongoing investigation by the Department of Justice, it is clear that the current structure of TYC, its capacity and policies on abuse and neglect warrant a thorough review by this Committee as well as the entire body of the Texas Legislature.

Texas Youth Commission's Mission

The mission of the Texas Youth Commission is to protect the public, and control the commission of unlawful acts by youth committed to the agency by confining them under conditions that ensure their basic healthcare and emphasize their positive development, accountability for their conduct and discipline training; to habilitate youth committed to the agency to become productive and responsible citizens who are prepared for honorable employment through ongoing education and workforce development programs; to rehabilitate youth committed to the agency and re-establish them in society through a competency-based program or Re-socialization; and to study problems of juvenile delinquency, focus public attention on special solutions for problems, and assist in developing, strengthening, and coordinating programs aimed at preventing delinquency.

TYC Principles

The Texas Youth Commission is guided by seven principles which compel them to operate clean, safe, and secure facilities and programs to protect youths, staff and the public; base its operations on sound juvenile correctional techniques and research evidence; protect the fundamental rights of youths; hold youths accountable for their behavior, and for successful completion of their rehabilitative programs; recognize staff as its most valuable resource in achieving the agency's mission; hold staff accountable for providing quality services to youths in a cost-effective manner; and make decisions based upon common sense and reason.

Commitments and Population

Generally, youth who are committed to the Texas Youth Commission are those who have committed the most serious crimes, or those youth who are the most problematic delinquents in the community. These youths have been adjudicated delinquent and committed to TYC by a juvenile court.

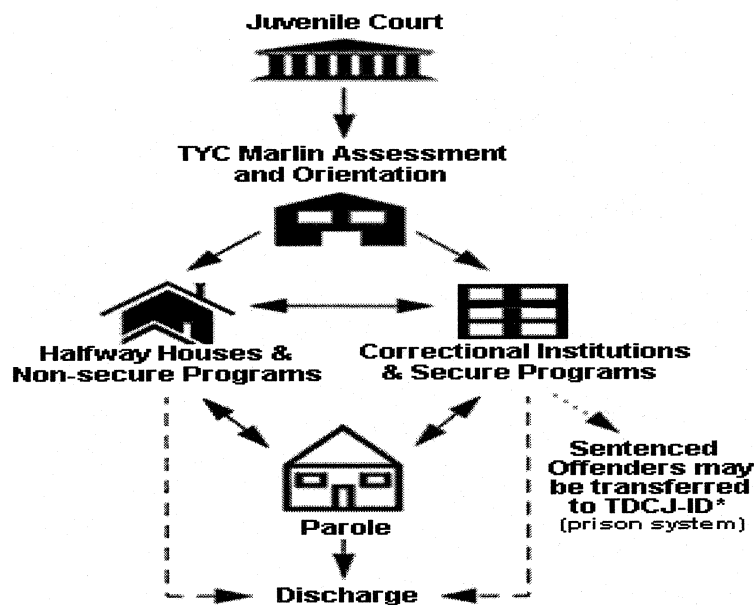
The delinquent act must have occurred when the youth was at least age 10 and under age 17. The Texas Youth Commission may retain jurisdiction for most offenders until the day prior to their 21st birthday.

In fiscal year 2005, TYC provided services to 10,536 youth committed by Texas juvenile courts, through residential or parole services and served 2,998 youth through the Interstate Compact on Juveniles.

According to the Texas State Data Center (TSDC), at the University of Texas at San Antonio, the at-risk juvenile population of youth ages 10-16 years of age is expected to grow by 1.0% from 2006-2011. The TSDC estimates that there will be approximately 2,453,752 at-risk juveniles in July 2006 with an increase of at-risk juveniles, ages 10-16, of approximately 2,478,262 by July 2011.

In 2005, the 79th Legislature passed Senate Bill 1, which included Rider 21, *Utilization of Existing Youth Commission Facilities*, which now requires TYC to average a 97.5 percent occupancy rate of state owned beds (approx. 4,600 beds) before contracting bed space from outside sources.

The Commitment Process and Classification Process



Once youth are committed to TYC, they are transferred to the Marlin Orientation and Assessment Unit. On average, each youth spends about 60 days at Marlin. During this time, he or she will experience a variety of assessment and intake procedures, including:

- a physical evaluation and medical history
- educational testing and assessment
- psychological evaluation
- social summary
- introduction to TYC's Resocialization program
- specialized needs assessment (i.e., sex offender treatment needs, chemical dependency needs, etc.)

Based on the outcome of these evaluations, youth are assigned to a residential placement. Most youth are assigned to a secure program. Secure programs include TYC-operated institutions as well as some secure contract institutions. There are currently 15 TYC institutions.

Youth are sent to TYC with either a **determinate** or an **indeterminate** sentence. Youth who receive a **determinate sentence** from the court are given an actual set amount of time that they must serve, or an actual **sentence**. Their progress through TYC differs from those who have an indeterminate sentence.

Most offenders arrive at TYC with an **indeterminate** sentence. They are assigned a **minimum length of stay**, which is the **minimum** amount of time they must spend in a residential program, and it is calculated based on their classification:

1. Type A violent offenders - 24 months
2. Type B violent offenders - 12 months
3. Chronic serious offenders, controlled substance dealers, firearms offenders - 12 months
4. General offenders - 9 months
5. Violator of CINS probation - no assigned minimum length of stay

Once youth have completed the majority of their minimum length of stay in a secure facility, they may move to a variety of other placements. They may be moved to a halfway house, a residential contract program, or be released directly to parole. At

any of these locations, if a youth commits a major rule violation, or commits a new offense, he or she may be returned to a more secure program. Additionally, youth who commit another criminal offense while under TYC jurisdiction, may be arrested and charged an adults.

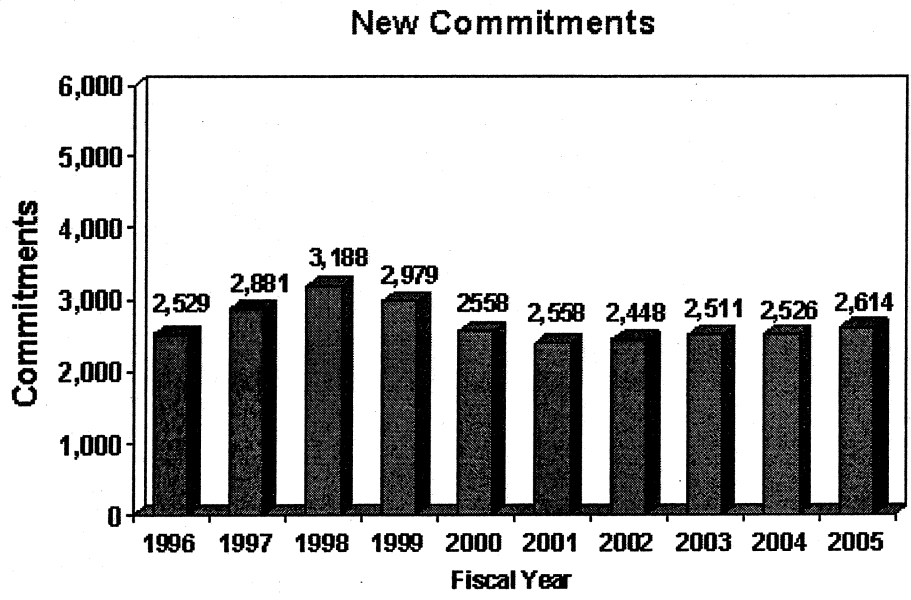
Youth on parole are supervised by a parole officer, and may receive some other services, such as specialized aftercare treatment.

Ultimately, if a youth continues to do well on parole by completing required community service hours, attending school regularly or working, attending required counseling, following parole rules and reporting to a parole officer on schedule, her or she will be discharged from the Texas Youth Commission. If a youth has not been discharged by the age of 21, discharge is automatic. TYC authority over offenders ends at age 21.

New Commitments

Although juvenile crime has declined since its peak in 1995, commitments to TYC have continued to rise slightly, and is projected to grow moderately through 2011. Commitments declined 25 percent from 3,188 in fiscal year 1998 to 2,406 in fiscal year 2001, and then gradually rose 9 percent to 2,614 in fiscal year 2005. (See Figure 1 below)

Figure 1

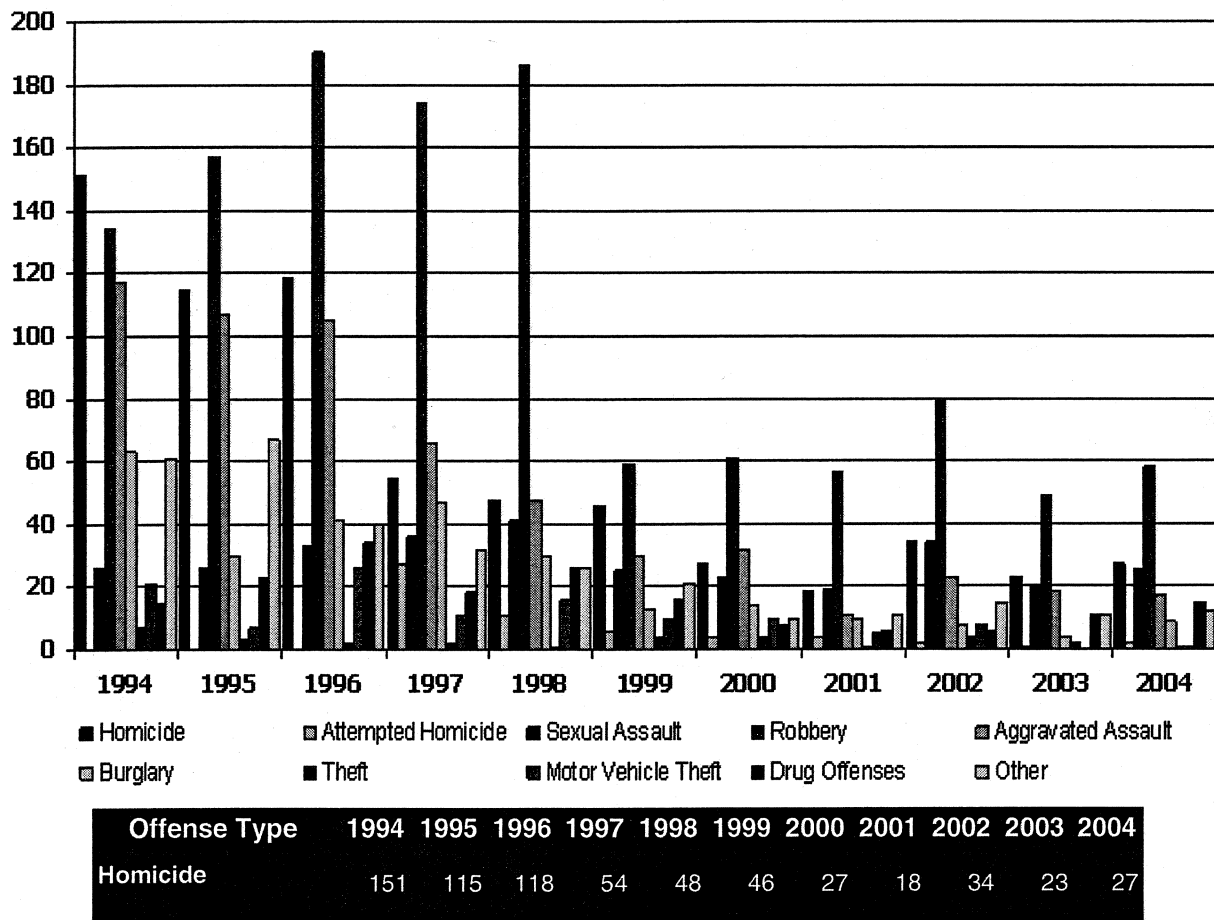


Based on 1,289 commitments for the first half of fiscal year 2006, it appears that commitments in fiscal years 2006 will remain close to 2,600, with a projected population of 5,006 by the end of fiscal year 2007. (See Appendix A)

The reduction that began in fiscal year 2000 seems to be due to legislation that now requires a felony probation revocation or at least two misdemeanor adjudications in order to commit a non-felony offender to TYC. However, the majority of the youth committed are actually non-violent offenders. In fiscal year 2005, 64 percent of the youth committed to TYC were non-violent offenders.

Furthermore, commitments for violent offenses peaked at 923 in fiscal year 2003 and has remained between 33 and 37 percent of all commitments for the last six years. The percentage of new commitments by ethnicity remained consistent through fiscal year 2002, with the percentage of Hispanic new commitments increasing by 46 percent in fiscal year 2004, and a decrease in Black-American, and Anglo commitments. (see Figure 2 & 3)

Figure 2
Juveniles Certified as Adults by Offense
1994 - 2004

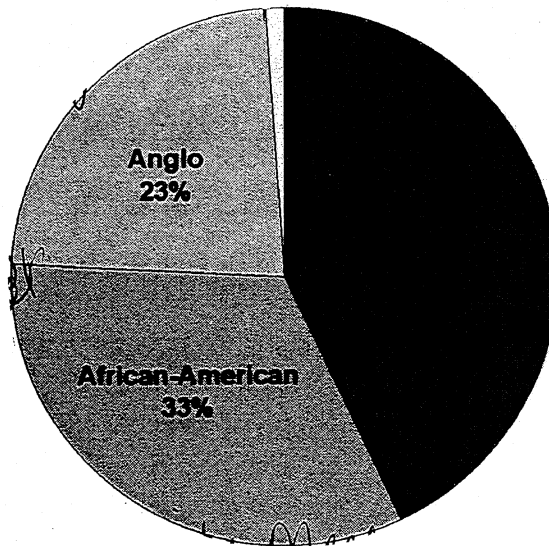


Attempt. Homicide*				27	11	6	4	4	2	1	2
Sexual Assault	26	26	33	36	41	25	23	19	34	20	25
Robbery	134	157	190	174	186	59	61	56	80	49	58
Aggravated Assault	117	107	105	66	48	30	32	11	23	18	17
Burglary	63	30	41	47	30	13	14	10	8	4	9
Theft	7	3	2	2	1	4	4	1	4	2	1
Motor Vehicle Theft	21	7	26	11	16	10	10	5	8	0	1
Drug Offenses	15	23	34	18	26	16	8	6	6	11	15
Other	61	67	40	32	26	21	10	11	15	11	12

Figure 3

Fiscal Year 2005
New Commitments By Ethnicity

Anglo- 23%
African American- 33%
Hispanic- 43%
Other- 1%



According to the Texas Legislative Budget Board, the primary driving force behind the tempered growth in the commitment population is a slowing of intakes and a steady length of stay for released juveniles. Between fiscal years 2004 and 2005, intakes increased by 0.6 percent.

Moreover, with TYC having discretion in determining offender lengths of stay, the average length of stay increased steadily from 1995 to 2002, peaking at 23 months. It then decreased the next two years, with an average stay in 2004 of 21 months¹. Thus far, it has remained constant for fiscal year 2005 at 17.4 months.

Determining Lengths of Stay

In 1996, TYC created a policy specifying that youth could not be released to parole until they had completed specified phases in their Resocialization treatment program, unless TYC was overpopulated and an Emergency Population Plan was implemented. This plan was invoked once in 2005, with the closure of the Al Price State Juvenile Correctional Facility.

Since 1996, the average length of stay for youth has increased from 13 months to almost 21 months in 2005. Moreover, since 1999, youth of color have made up the majority of total commitments to TYC. In fiscal year 2005, 76 percent of new commitments to TYC were youth of color.

It should also be noted that more than 90 percent of children committed to TYC have indeterminate sentences, which means there is no specific date on which they will be released.² (see Figure 4)

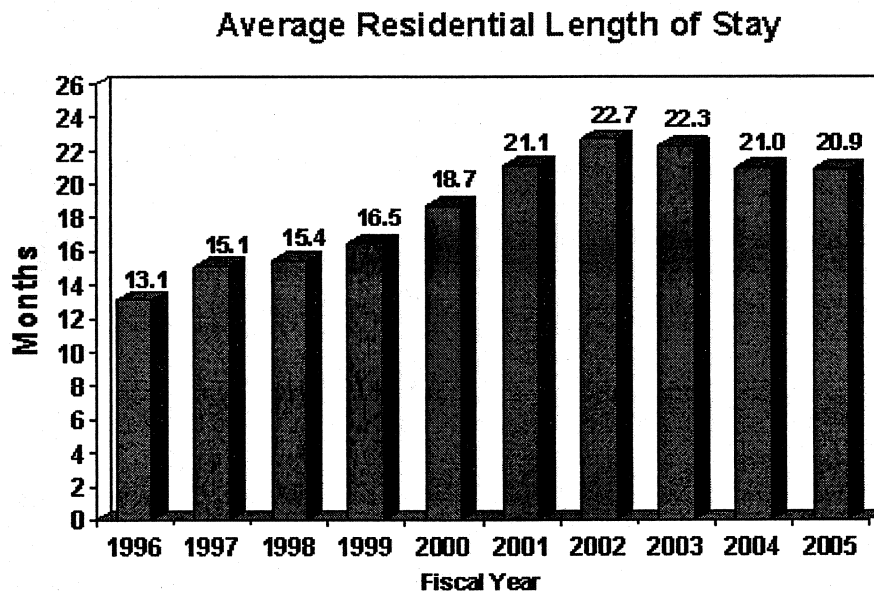


Figure 4

TYC's Alleged Abuse, Neglect and Exploitation Policy

Chapter 261, Subchapter E, of the Texas Family Code requires TYC, and other state agencies that operate or license a facility in which children are located, to make a prompt and thorough investigation of allegations of abuse, neglect, and exploitation. The TYC Board oversees the

agency's investigation process to help ensure that it is fair and thorough and that findings in confirmed cases are reviewed by executive staff for needed corrective actions.

Prior to June 2006, all allegations of abuse were reported to the Inspector General Section, of TYC's Office of General Counsel in Austin, where they were assigned to one of 22 investigators or inspector generals. Today, that policy is no longer being utilized, with the formation of the Office of Youth Care and Investigation, created specifically to handle abuse allegations independent of TYC.

Abuse and Neglect Allegations

With reports of violence at TYC facilities climbing and the launching of an official Department of Justice Investigation of conditions at the Evins Facility in Edinburg, more public attention is being drawn to the problems at the Texas Youth Commission.

According to the Texas Youth Commission, (*see Table 1*) rates of physical abuse in TYC have increased steadily for at least seven years. By 2005, three out of every 100 detainees were abused by employees³. Most abusers were juvenile correction officers, or JCOs.

Table 1

Table 1: Rates of Physical Abuse (confirmed) per Student Population

Year	Rate	%	Avg. Per Mo.
1999	18/5524	.3259%	1.5
2000	22/5646	.3897%	1.8
2001	31/5524	.5612%	2.58
2002	40/5170	.7737%	3.3
2003	56/4825	1.1606%	4.6
2004	120/4883	2.4575%	10
2005 (9 mos on pace)	135/4731	2.8535%	11.2

Source: Texas Youth Commission

Approximately 389 incidents of physical abuse (not including neglect or exploitation) by TYC employees were confirmed between January 1999 and October 2005. Yet, even as cameras keep steady watch on the inside, places like the Evins Center, built in remote areas, are meant to be invisible from the outside.

In late 2004, an influx of violence led to state investigations and lawsuits alleging abusive treatment of inmates. Public records of those proceedings provide a rare glimpse of the youth prison system at its worst, and the testimonies of those involved. State authorities have proclaimed that what happened at the Evins Center was an aberration.⁴ Eventually, more than 80

allegations of abuse were filed, with 11 being confirmed by TYC investigators. Investigators also found evidence of abuse, unnecessary force, and other policy violations among 14 TYC staff.

Once an agency responsible for conducting investigations of abuse within its own facilities, as mentioned before, much has changed in the wake of abuse allegations. The Office of Youth Care and Investigation, which reports directly to TYC's Board of Directors, has been established as a means of moving in a more positive direction toward changing the way abuse allegations are handled.

Staff Violence & Turnovers

Inmates are not the only ones suffering as a result of the violent conditions inside of TYC. Employees with TYC filed 773 worker's compensation claims for aggression-related injuries last year, compared with 454 in 2000.⁵

Every year three out of four TYC guards leave the agency. Personnel turnover creates its own turmoil as guards in understaffed facilities, which house an average of 350 juvenile offenders are forced to work 12-hour shifts on a regular basis. The staffing ratio is one guard for every 25 inmates.⁶

TYC staff are overworked, underpaid, and scared to come to work. All TYC facilities suffer from poor staffing ratios, high turnover, and a lack of qualified clinicians to carry out rehabilitative programming. Approximately 45% of new employees terminate their employment during the first six months; and about 90% in a twelve-month period.⁷ TYC exit surveys show that "most employees are leaving TYC due to working conditions and not because of pay."⁸ *(see Appendix B)*

COMMITTEE RECOMMENDATIONS

During the interim the Committee held two public hearings on this charge. It is the intent of the Committee to offer several pieces of legislation to address the ongoing issues of a youth abuse, capacity, staff assaults, and high employee turnover. The Committee recommends that funding to the Texas Youth Commission be partially restored. Additionally, it is the Committee's recommendation that TYC's mandate to operate at 97.5% be reviewed further with the possibility of decreasing the mandate in an effort to meet capacity demands.

CHARGE 2

Study current law relating to who is authorized to conduct marriages, and make recommendations of any possible changes.

CHARGE 2

The Committee was charged with studying the current law relating to who is authorized to conduct marriages.

BACKGROUND OF THE ISSUE

Under Section 2.202 of the Texas Family Code the following persons are authorized to conduct a marriage ceremony: (1) a licensed or ordained Christian minister or priest; (2) a Jewish rabbi; (3) a person who is an officer of a religious organization; and (4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, or judge or magistrate of a federal court of this state. However, this list does not include municipal judges.

During the 79th Legislative Session, H.B. 1228 was offered by Representative Diane Delisi, in an effort to authorize a current member of the state legislature, or a former member of the legislature holding that office prior to September 1, 2005, or a current statewide-elected state official, or a former statewide-elected official who held that office prior to September 1, 2005, to conduct a marriage ceremony. H.B. 1228, however failed to get the necessary vote to be voted out of committee.

Additionally, H.B.1556 offered by Rep. Roberto Alonzo, sought to include municipal judges as persons who would be authorized to conduct marriages, however due to the enormous amount of opposition to this inclusion, the bill failed to pass out of committee.

Both Judge John Vasquez and Judge C. Victor Lander, Municipal Judge for the City of Dallas testified in favor of passing H.B.1556, which would have added municipal judges to the list of those currently authorized to conduct marriages citing their exclusion was simply a mere oversight. Judge Lander stated that, "all other judges in the state of Texas are authorized to conduct marriage ceremonies with the exception of municipal court judges." He believed that there was absolutely no reason at law or logic, for municipal court judges to be excluded from the list, and H.B.1556 was merely a means of correcting this inequity. Additionally, he testified that citizens of the state of Texas should have the right to choose what judge they would like to have conduct their ceremony.

However, as a resource witness, Judge Kent Adams, Justice of the Peace for Harris County opined that counties rely on justices of the peace being able to conduct these ceremonies in order to supplement their income, because these judges are unable to practice law. Most justices of the peace rely solely on this practice as the total base of their income. As well, many justices believe it is a right and a privilege afforded under the law to all elected judges.

Judge Sandy Prindle, Texas Justice of the Peace and Constables Association, testified against H.B.1556, maintaining that there were several specific reasons as to why historically municipal

court judges were not extended the privilege of conducting marriage ceremonies. Specifically, most municipal judges are part-time judges, as well as attorneys who have a full-time legal practice as a second career. Whereas, justices of the peace are full-time judges, with a great majority not being attorneys.

Additionally, conducting marriage ceremonies, is a privilege that is essentially a civil function, that comes with civil jurisdiction responsibilities. Most justices of the peace believe that municipal judges want the privilege of conducting the ceremony, but not the responsibility that comes with maintaining this civil function.

Ceremonies Conducted by County Clerks

Though not heavily pushed, some County Clerks believe that they too should be allowed to conduct marriage ceremonies. Gerry Rickhoff, Bexar County Clerk, submitted written testimony as to the benefits that would be created by allowing County Clerks to conduct ceremonies.

Specifically, the measure would enable county governments to collect revenues for services that are already being conducted by county employees through private transactions. The measure would also provide citizens a more convenient way of having a marriage conducted and it would cut operational costs for county governments. In doing so, the measure would reduce the number of marriage licenses that must be mailed back to citizens. It is estimated that allowing county clerks to conduct marriage ceremonies would generate over \$200,000 in additional revenues in Bexar County alone.

Currently, thirteen states allow county clerks to conduct marriages.

COMMITTEE RECOMMENDATIONS

At this time, the Committee recommends no changes to Section 2.202 of the Texas Family Code, with respect to who may be authorized to conduct marriage ceremonies.

CHARGE 3

Evaluate child support guidelines and formulas, considering whether the current methods provide adequate support to a child. Also study child support for the costs of college.

CHARGE 3

The Committee was charged with evaluating child support guidelines and formulas, considering whether the current methods provide adequate support to a child. Also study implementing child support for the costs of college.

BACKGROUND OF THE ISSUE

Currently, child support guidelines work by applying a given percentage to an obligor's net income where the monthly net resources are \$6,000 or less. In such a case, where the resources are \$6,000 or less, the court applies the following schedule in rendering the child support order:

CHILD SUPPORT GUIDELINES BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child	20% of Obligor's Net Resources
2 children	25% of Obligor's Net Resources
3 children	30% of Obligor's Net Resources
4 children	35% of Obligor's Net Resources
5 children	40% of Obligor's Net Resources
6+ children	Not less than the amount for 5 children

However, under Texas Family Code, Section 154.126, if an obligor's monthly net resources exceed \$6,000 per month, the court shall presumptively apply the percentage guidelines to the first \$6,000 of the obligor's net resources. The court in its discretion may then order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.

On July 12, 2006, the Committee on Juvenile Justice and Family Issues addressed this charge by inviting testimony from R. Mark Rogers, and economic consultant, with expertise in corporate and government applications. Recognized as an expert on child costs as related to family law issues, Rogers began applying his economic expertise in public service as a governor's appointee to the Georgia Commission on Child Support in 1998. (*See Appendix C*)

Rogers conducted economic research regarding the origins and economic foundations of child support guidelines. His child cost research included, but was not limited to, review of alternative child support guideline methodologies, child costs by differing methodologies, analysis of tax treatment for custodial and non-custodial parents, and standards of living for custodial and non-custodial parents.

Rogers concluded that the current Texas guideline child support amounts are excessively high. As the federal income tax law has changed over the last few years, it has provided a huge benefit to the obligee while putting the obligor at a substantial disadvantage to financially support the

child(ren). In many cases the federal income tax advantages are of an amount double or even triple the amount of child support.

Such child-related tax benefits received by custodial parents include: head of household tax payer status, child dependency exemptions, child tax credits, and higher earned income credits for low-income working custodial parents.

Rogers further suggested that Texas' child support guidelines should be based on child cost studies that realistically have child costs decline as a percentage of net income as net income rises.

Should Costs of College be a Factor?

Current law states that the legal obligation to provide support to a child ends when that child reaches age 18, unless that child is still enrolled in high school, or some other special needs circumstances are present.

COMMITTEE RECOMMENDATIONS

Although some changes to the current guidelines do in fact need to be modified, the direction of that modification has yet to be determined. As for any additional guidelines and formulas with respect to child support for the costs of college, the Committee recommends that no changes be made at this time.

CHARGE 4

Research and report on how the courts handle truancy cases.

CHARGE 4

The Committee was charged with researching and reporting on how the courts handle truancy cases.

BACKGROUND OF THE ISSUE

Truancy occurs when a student, who is required to attend school fails to do so on ten (10) or more days or parts of days within a six-month period in the same school year. Additionally, a student can also be considered truant after he has three (3) or more unexcused absences within a 4 week period.

Once this has occurred, the school district may file a complaint against the student or the student's parent or both in a county, justice, juvenile or municipal court or refer the student to a juvenile court indicating a need for supervision. However, this discretionary referral becomes mandatory, once the student has (ten) 10 or more unexcused absences within a 6 month period, and the school district must make this referral within seven (7) school days after the tenth absence.

In the past, school districts waited so long before filing complaints on truants, that appropriate action could not be taken against the student before the school year ended, thereby making it increasingly difficult for a student to make up course work. Therefore, in order to ensure that courts were notified about a truant in a timely manner, the Legislature passed H.B.1575, giving school districts a deadline for filing complaints on truants.

School districts now have seven (7) school days to file complaints against truant students or refer them to juvenile court. If the school district does not do so within seven (7) school days after the tenth absence, the Court is required to dismiss the complaint or referral.

Once a court finds that a student has committed truancy, a Class C misdemeanor, the court has the jurisdiction to enter an order that may include that the student attend school without any further unexcused absences; attend a preparatory class for the high school equivalency exam, if the court determines that the student is too old to do well in a formal class environment, or attend a special program that the court determines to be in the best interest of the student.

These programs may range from an alcohol and drug abuse program; a class for students at risk of dropping out of school designed for the student and student's parent; a rehabilitation program; a counseling program, including self-improvement counseling; a program that provides training in self-esteem and leadership; a work and job skills training program; a program that provides training in manners, parenting, sensitivity, advocacy and mentoring to violence avoidance.

There were several programs in various counties across Texas that were introduced during the committee hearing on March 22, 2006.

Harris County

For instance, in Harris County, The Harris County Title V Truancy Program is a collaborative effort between Harris County Protective Services for Children and Adults TRIAD JP Court Program, Community Youth Services Program, Harris County District Attorney Stay in School Program, Harris County Justice of the Peace Courts, 8, 2, and 4, and 11 School Districts in Harris County.

Through this effort, and the use of the JP Court Liaison Program and the Truancy Learning Camp, the Title V Stay in School Program has reduced the total number of truancy hearings by over 80%.

Initially, the Harris County Prosecutors' Office will send an official notice letter to both the student and parent by mail, once a student has received 3 or more unexcused absences. The letter serves as notice to both the student and the parents that they may be charged in court and levied fines and/or other sanctions. A meeting is then scheduled by the school with the parent and student to address attendance issues.

Moreover, if the student continues to miss school after the warning letter has been received, the school files charges against the student and/or possibly the parent as well. Both student and parent appear in JP court and can enter into a diversion agreement with the Harris County prosecutor and TRIAD JP Court Case Manager. Once the agreement is entered, it will include completion of a Truancy Learning Camp by the student and family.

Independent evaluations have shown that completion of the Title V Truancy Camp has significantly improved knowledge for both youth's behavioral beliefs and parent's responsibilities. Results have shown that participation indicated that 100% of referred youth either remained in school, graduated or got a GED. (*see Appendix D*)

Travis County

While in Travis County, a collaboration between the Travis County Juvenile Board, Travis County Commissioner's Court, Travis County Juvenile Probation Dept., Travis County District Attorney's Office, the Austin Independent School District and the City of Austin have created the Truancy Court Program, designed to provide quick intervention to chronic truants at the students' home school. It provides a regular review of a student's progress towards reduced truancy, provides supervision, and facilitates referrals to community services for the student and family.

Launched in January 2002, the Truancy Court's primary goal was to reduce unexcused absences and prevent juveniles from committing serious crimes. The program is currently being implemented in three schools, with approximately 150 participants a year. Its primary focus is those students in grades 6th, 7th, and 8th at Fulmore and Mendez Middle Schools, and 9th graders at Travis High School. (*see Appendix E*)

COMMITTEE RECOMMENDATIONS

Despite changes made to the law regarding reporting requirements of truancy last session, it is clear to the committee that unacceptable time lapses still occur between the time a student becomes truant and the time the truancy is reported to the court. Additionally, the committee has determined that the state does not have a good system in place to keep track of how many students have committed truancy. Moreover, school districts and courts all over the state are handling truancy cases differently.

One possible solution would be to require the Texas Education Agency to develop a truancy reporting system that would be provided to all school districts. With this system, school districts would then be able to (1) report a student's truancy in real time to the appropriate court; (2) keep accurate truancy records; and (3) report accurately to the Texas Education Agency truancy statistics for that district.

Additionally, the Committee will recommend that legislation be introduced to insure that all school districts and courts are handling truancy cases in a consistent manner.

Finally, the Committee will recommend that a system be put into place that will allow for use of automated technology and communications between the school districts and courts, thus creating a better system of tracking truancy.

CHARGE 5

Consider the law governing presumption of parentage, and examine the adequacy of relief available to presumed parents who are child support obligors and who assert a claim of paternity fraud.

CHARGE 5

The Committee was charged with considering the law governing presumption of parentage, and examining the adequacy of relief available to presumed parents who are child support obligors and who assert a claim of paternity fraud.

BACKGROUND OF THE ISSUE

Paternity fraud occurs when a child is identified as being biologically fathered by someone other than the man who believes he is the father. Typically, parental fraud is associated with a woman having a sexual relationship (usually covertly) outside of her marriage or long term partnership.⁹

Here paternity fraud occurs when a child is believed to have been fathered by the husband or partner but is actually the progeny of another man. Pregnancy may be accidental but occasionally may be the reason for infidelity, for example where sex with the long term partner has not produced children a woman might seek conception elsewhere.¹⁰

Paternity fraud also occurs without infidelity. Where a woman quickly changes from one sexual relationship to another, a pregnancy resulting from a previous partner can be attributed to a new partner. Paternity fraud rarely occurs because of medical mistakes including mix ups of semen during artificial insemination and in vitro fertilization.¹¹

How common is paternity fraud?

Historically, comparisons of family members' blood groups either collected for blood donation or for other purposes provided some estimates of paternity fraud (see Table 1). More recently, investigations of familial patterns of disease inheritance have identified paternity fraud¹² and led to further estimates of its prevalence. An additional source of estimates results from commercial and public organizations offering tests to fathers who already suspect paternity fraud.

Who does paternity fraud affect most?

While few studies have measured demographic effects on levels of paternity fraud, higher rates have been found among people from lower socioeconomic groups.¹³ Furthermore, existing data on sexual behavior permit some measure of those populations at risk.¹⁴ Increased risk of paternity fraud is seen among people with concurrent sexual partners. Having concurrent sexual partners occurs more at earlier ages. Consequently, girls who conceive at early ages may have greater chances of paternity fraud with first pregnancies having been shown to be at higher risk.¹⁵

Higher rates of infidelity are seen among pairs who are not married.¹⁶ Furthermore, time spent apart in marriages, or long term relationships, for instance when one spouse travels often, is also associated with higher levels of infidelity as is living in higher population densities.¹⁷ Thus, ethnicity as well as lower socioeconomic class, younger age, and higher levels of deprivation seem to be risk factors for paternity fraud.

Consequences of Paternity Fraud

Despite increasing use of, and access to, techniques that can identify paternity fraud, very little consideration is given to the consequences of a family becoming aware of paternity fraud or what services and support are required when paternity fraud is exposed.

Furthermore, even when paternity fraud is inadvertently identified by public agencies, a public health perspective is necessary to assess how such information should be used and if and when those affected should be informed. In addition, for each child resulting from paternity fraud there is also a biological father elsewhere and such people are often part of other long term relationships involving marriages and children.¹⁸

Another important consequence of discovering paternity fraud in a marriage or other relationship is the eventual breakdown of the marriage or relationship. The effects of breakdowns in relationships include increased mental health problems for both partners while children can experience low self-esteem, anxiety, and increased involvement in antisocial behavior such as aggression.¹⁹ But, not all disclosures of paternity fraud will result in relationships ending. However, those that continue must cope with a child in the family structure who is related to only one parent and is the result of infidelity. Despite many mixed family structures working well, fathers spend more time and resources on their biological children.²⁰ Furthermore, people outside the family who are ultimately identified as true biological fathers may experience breakdown in their own relationships.

Texas Law

In the State of Texas, the biggest concern is how we vacate child support orders for a person who has been a victim of paternity fraud. Currently, the law does not provide for a remedy, unless that remedy is sought within four years.

Section 160.308 of the Texas Family Code provides that after the period for rescission of an acknowledgment for paternity has expired, a person may challenge that acknowledgment based on fraud, duress, or material mistake of fact before the fourth anniversary of the date the acknowledgment was filed with the bureau of vital statistics.

During the 79th Regular Session, House Bill 437 was filed to address this growing trend of paternity fraud.

A BILL TO BE ENTITLED

AN ACT

relating to determinations of paternity in a suit affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 154, Family Code, is amended by adding Section 154.015 to read as follows:

Sec. 154.015. PATERNITY TEST REQUIRED. (a) Except as provided by Subsection (b), a court may not render an order requiring the payment of child support unless the court finds that:

(1) the parties have completed a genetic test to determine parentage that complies with the requirements of Subchapter F, Chapter 160; and

(2) based on the genetic test, the man named as the father in the suit affecting the parent-child relationship is rebuttably identified as the father of the child in accordance with Section 160.505(a).

(b) If the parties to a suit affecting the parent-child relationship in which child support is requested have not completed a genetic test that complies with the requirements of Subchapter F, Chapter 160, the court shall order the child, the child's mother, and the alleged father to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered. If an alleged father fails to submit to a genetic test ordered under this section, the court may render an order adjudicating the alleged father to be the father of the child and requiring the alleged father to pay child support.

(c) The parties, other than a governmental entity, shall bear the cost of the genetic test ordered under this section equally.

SECTION 2. Section 160.308(a), Family Code, is amended to read as follows:

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding must be commenced before the child's 18th birthday [~~fourth anniversary of the date the acknowledgment or denial is filed with the bureau of vital statistics~~].

SECTION 3. Section 160.607, Family Code, is amended to read as follows:

Sec. 160.607. TIME LIMITATION: CHILD HAVING PRESUMED FATHER. A [~~(a)~~] ~~Except as otherwise provided by Subsection (b), a~~ proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must [~~shall~~] be commenced before the child's 18th birthday [~~not later than the fourth anniversary of the date of the birth of the child~~].

~~[(b) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:~~

~~[(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; and~~

~~[(2) the presumed father never represented to others that the child was his own.]~~

SECTION 4. Chapter 160, Family Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.801. MOTION TO VACATE COURT ORDER. (a) A person identified in a court order as the father of the child or the mother of the child may file a motion requesting the court to vacate the court order that states that the person identified in the order as the father of the child is

the father of the child identified in the motion or that requires the person identified in the order as the father of the child to pay child support for the child. The motion may be filed at any time.

(b) The motion to vacate a court order must be accompanied by a certified copy of the court order to be vacated.

Sec. 160.802. GENETIC TESTING. (a) In a proceeding under this subchapter, the court, on application by or on behalf of either party, or on its own motion, shall order the child, the child's mother, and the person identified in the court order as the father of the child to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered.

(b) Genetic testing under this section is subject to the same procedures as genetic testing ordered under Subchapter F.

Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If a mother fails to submit to a genetic test ordered under Section 160.802, the court may suspend the legal obligation of the person identified in the court order as the father of the child to pay child support until the mother submits to the genetic test.

(b) If the person identified in the court order as the father of the child fails to submit to a genetic test ordered under Section 160.802, the court may dismiss the person's motion to vacate with prejudice.

Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as otherwise provided by this section, the court shall vacate an order described by Section 160.801 if the court finds that the person identified in the court order as the father of the child:

- (1) is not the child's adoptive parent;
 - (2) did not consent to assisted reproduction by his wife under Subchapter H; and
 - (3) based on genetic testing, is not rebuttably identified as the father of the child in
-

accordance with Section 160.505.

(b) The court may not grant a motion under this section if the court finds that at any time the person who filed the motion knew that the person identified in the court order as the father of the child was not the child's biological parent, and the person identified in the court order as the father of the child:

(1) consented to his name being entered as the child's biological father on the child's birth certificate;

(2) was determined to be the child's father in a proceeding to determine parentage;

or

(3) filed an acknowledgment of paternity with the bureau of vital statistics.

Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE. (a) If the court vacates a parentage or support order in a proceeding under this subchapter and the moving party is also entitled under an order to the possession of or access to the child who is the subject of the vacated order, the court shall determine whether the possession order should be terminated, modified, or continued based on the best interest of the child.

(b) If the court vacates a child support order under this subchapter and an arrearage exists under that child support order, the court may reduce the amount of the arrearage to zero. If the court eliminates an arrearage under this subsection, the court shall issue an order stating that the child support obligation, including any arrearage, is terminated.

(c) The elimination of an arrearage under a support order that is vacated as provided by this subchapter is for purposes of correcting a mistake and is not a retroactive modification.

Sec. 160.806. COURT COSTS. If the court does not grant the motion to vacate a court order under this subchapter, the court shall order the moving party to pay the costs of the action and each

opposing party's reasonable attorney's fees.

Sec. 160.807. EXPIRATION. This subchapter expires September 1, 2007.

SECTION 5. If before implementing any provision of this Act the Title IV-D agency determines that a waiver or authorization from a federal agency is necessary for implementation of the change in law made by this Act, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 6. Section 154.015, Family Code, as added by this Act, and the change in law made by this Act to Sections 160.308 and 160.607, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2005.

COMMITTEE RECOMMENDATIONS

Although the Legislature has addressed this issue several times in past sessions, there are still concerns that ultimately hinge on the ramifications of vacating a judgment for child support, and if done, addressing the legal ramifications involved.

Also, one must determine how to locate the biological father, so that assistance, such as TANF that may have been given to the mother by the state can be refunded back to the state as well as determining responsibility for the arrears that have accrued.

However, every child needs to know who their biological father is, whether it is for medical or heredity concerns. Just simply naming a person to be a father because he can provide financial support, or because of embarrassment of not knowing who the biological father really is, is no excuse.

It is the intent of the Committee to offer legislation to address paternity fraud issues as well as establish mandatory genetic testing prior to any acknowledgment of paternity. Additionally, legislation will be introduced that will notify parties involved in any parent child litigation, that they have the right to request genetic testing to determine the probability of parentage and that failure to do so could bar future action concerning parentage.

CHARGE 6

Study the effectiveness of prevention programs, such as after school programs, in reducing the actual indices of crime, and the rate of young offenders entering the criminal justice system.

**(JOINT INTERIM CHARGE WITH THE
HOUSE COMMITTEE ON CORRECTIONS)**

CHARGE 6

The Committee was charged with Study the effectiveness of prevention programs, such as after school programs, in reducing the actual indices of crime, and the rate of young offenders entering the criminal justice system.

BACKGROUND OF THE ISSUE

There are two main state agencies that address juvenile crime in Texas: the Texas Youth Commission and the Texas Juvenile Probation Commission. The cost of keeping youth in the system as well as the recidivism rate for youth who have been in the system is high.

According to The Texas Youth Commission's 2003 Review of Agency Treatment Effectiveness, the reported recidivism rates for TYC youth is as follows:

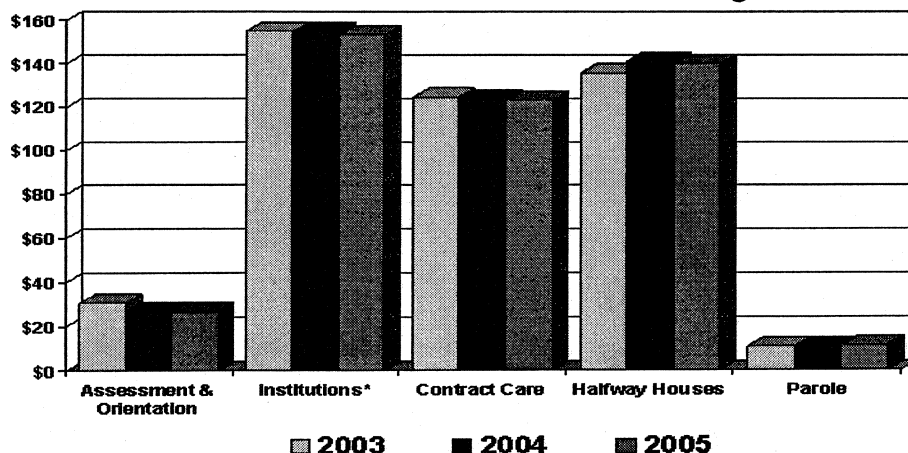
- 55.76% are re-arrested within 1 year for any offense
- 48.74% are re-incarcerated within 3 years
- 26.08% are re-incarcerated within 1 year

According to the Texas Juvenile Probation Commission Report, August 2005, the number of youth referred to TJPC that have already had prior referrals is as follows:

1. 20% have two prior referrals
2. 31% have four prior referrals
3. 14% have three prior referrals

Along with the high recidivism rate and high number of repeat offenders, TYC and TJPC also see a large number of youth overall. The end of year residential population of TYC was 4,875 in Fiscal Year 2005, 4,883 in Fiscal Year 2004, and 4,825 youth in Fiscal Year 2003. Of those that spend time in TYC facilities, the average residential length of stay for a youth was 20.9 months in Fiscal Year 2005, 21.0 months in Fiscal Year 2004, and 22.3 months in Fiscal Year 2003. These youth remain in the system at the cost of state dollars, with the average TYC cost per day per youth as follows:

The Texas Juvenile Probation Commission also sees a high number of youth, receiving



The Texas Juvenile Probation Commission also sees a high number of youth, receiving 107,342 juveniles by referral in Calendar Year 2003 and 107,781 juveniles in Calendar Year 2004.ⁱⁱ

There are a number of factors that many juveniles referred to one of the two State Agencies have in common. Of the 2,614 youth committed to TYC in Fiscal Year 2005, only 206 of those youth had completed 10th grade or higher (8% of offenders). Of those juveniles committed, all of their average reading and math levels were far below those of the majority of youth in their respective grade levels.

Categories	Fiscal Year									
	2001		2002		2003		2004		2005	
	#	%	#	%	#	%	#	%	#	%
TOTALS	2406	100%	2448	100%	2511	100%	2526	100%	2614	100%
NOT KNOWN GANG MEMBER	1392	58%	1491	61%	1683	67%	1656	66%	1701	65%
KNOWN GANG MEMBER	1014	42%	957	39%	828	33%	870	34%	913	35%
LAST GRADE COMPLETED-4TH OR LESS	7	0%	7	0%	9	0%	10	0%	12	0%
LAST GRADE COMPLETED-5TH	47	2%	52	2%	30	1%	28	1%	39	2%
LAST GRADE COMPLETED-6TH	174	7%	172	7%	136	5%	106	4%	110	4%
LAST GRADE COMPLETED-7TH	417	17%	396	16%	336	13%	280	11%	273	11%
LAST GRADE COMPLETED-8TH	1021	43%	952	39%	1145	46%	1105	44%	1167	46%
LAST GRADE COMPLETED-9TH	567	24%	603	25%	668	27%	794	32%	720	28%
LAST GRADE COMPLETED-10TH OR MORE	164	7%	253	10%	180	7%	190	8%	206	8%
MISSING	9		13		7		13		87	

FISCAL YEAR	IQ AT COMMITMENT	AGE AT COMMITMENT	LAST GRADE COMPLETED	READING GRADE LEVEL AT COMMITMENT	MATH GRADE LEVEL AT COMMITMENT
2001	91	16yr 0mo	8	6yr 0mo	5yr 3mo
2002	90	16yr 1mo	8	5yr 8mo	5yr 3mo
2003	91	16yr 2mo	8	5yr 9mo	5yr 4mo
2004	90	16yr 2mo	8	5yr 8mo	5yr 3mo
2005	89	16yr 2mo	8	5yr 8mo	5yr 4mo

iii

Research has repeatedly argued that dropouts and academic failure or dissatisfaction often leads to juvenile delinquency, and Texas ranks among the states with higher dropout rates. According to the Texas Education Agency's 2004-2005 Report on

Secondary School Completion and Dropouts in Texas Public Schools, Texas graduated 73.5% of freshman in 2001-2002 and 75.5% in 2002-2003, ranking 30th and 29th respectively among the 50 states.^{iv} The total number of dropouts for the TEA 2000-2001 dropout year was 6,276 and for the 2001-2002 dropout year was 8,538, with the majority of dropouts occurring in the higher secondary school years.^v

The delinquency that often accompanies the educational failure and dissatisfaction that usually causes dropouts also leads to increasing costs in the criminal and juvenile justice system and negative impacts on the community.

Along with the high number of high school dropouts, there are other factors that lead to juvenile delinquency, including the high number of youth left without adult supervision after school is over. According to the U.S. Department of Labor, 28 million+ youth have both of their parents or their only parent in the workforce full-time. This leaves millions of children without parental supervision between the hours of 3 and 6 p.m., and enables these youth to become involved in juvenile crime or affected by juvenile crime. In fact, the peak hours for juvenile crime on school days are in fact from 3-6 p.m., unsupervised hours that can sometimes be replaced by some sort of after school program.

What Texas is Currently Doing

The Texas Education Agency and the Texas Department of Family and Protective Services currently list multiple federal, for-profit, and non-profit after school or preventative programs for Texas residents to participate in. Those aimed toward education and dropout prevention include but are not limited to the following:

- **The Texas 21st Century Community Learning Center** is a branch of a federal program that allows students and families to “continue to learn new skills and discover new abilities after the school day has ended”^{vi} This program was authorized under Title IV, Part B of the No Child Left Behind Act and is funded through a federal grant.
- **Afterschool Alliance** is a non-profit organization that exists to advocate the need for after school programs for all children. Their goal is to see that all children are offered this option by the year 2010.
- **Big Brothers Big Sisters** is a non-profit mentorship program that aims to pair mentors with youth to create a lasting bond and help youth reach their potential. They have found that "littles" are 52% less likely to skip school, 46% less likely to begin using illegal drugs, and more likely to get along with their families and peers.^{vii}
- **Camp Fire USA** is a for-profit youth development organization that serves approximately 750,000 youth and children. It is a nation-wide program that aims to “build caring, confident youth and future leaders.”^{viii}
- **Communities in Schools (CIS)** is a nation-wide program created to help kids stay in school and prepare for adult life. The program focuses on building one-on-one relationships between adults and youth and encouraging and aiding the

development of before and after school programs. They boast more than 1300 CIS sites that offer such programs during the 2004-2005 school year.

The Texas Department of Family and Protective Services focuses on prevention and early intervention (PEI) programs that aim to prevent abuse, neglect, delinquency, and truancy of children in Texas. The following programs are all offered in Texas, but not all are available in every area of the state.

- **Community Youth Development:** "The CYD program contracts with Fiscal Agents to develop juvenile delinquency prevention programs in ZIP codes that have a high incidence of juvenile crime. Approaches used by communities to prevent delinquency have included mentoring, youth employment programs, career preparation, and alternative recreation activities. Communities prioritize and fund specific prevention services identified as needed locally. Services must have been evaluated and determined to be effective in reducing juvenile delinquency. CYD services are available in 15-targeted Texas ZIP codes. Currently, DFPS provides ongoing training and technical assistance for all local CYD programs. DFPS also supports an annual youth conference, the Teen Summit, to promote youth leadership and provide training and activities."^{ix}
- **Services to At-Risk Youth:** "Through community contracts with community agencies, STAR offers family crisis intervention counseling, short-term emergency residential care, and individual and family counseling to youth up to age 17 who experience conflict at home, have been truant or delinquent, or have run away. STAR services are available in all 254 Texas counties. Each STAR contractor, ranging from local media campaigns to informational brochures and parenting classes, also provides universal child abuse prevention services."^x
- **Evidence-Based Juvenile Delinquency Prevention Services:** "Services that have been evaluated and proven to be effective in preventing juvenile delinquency (At-Risk Prevention Services) or that have utilized best practices and sound research in program design (Innovative Prevention Services). A variety of services are available across the state that are designed to increase know protective factors to increase youth resiliency while preventing juvenile delinquency. Programs must also foster strong community collaboration to provide for a continuum of services for youth participants."^{xi}

Some Texas school districts and counties offer their own after school programs with these same objectives. Travis County is one such county that offers after school programs and has found their specific program to have beneficial and positive results. The programs are offered from 3-6 p.m. in the Austin Independent School District and run by teachers and adult supervisors with the help of volunteers. In addition to paid staff, they have 87 mentors from the community, 25 University of Texas student assistants, additional volunteers from Dell, and numerous others.

The AISD after school program is a pilot program funded by Travis County and is in its second year of operation. It is currently funded at a little bit less than \$400,000 a year and serves approximately 1300 students. It runs about \$1.50 per participant per day. This cost

does not include the cost that is covered by non-profit agencies, etc. They also offer an "after-school" program on Saturdays from 9 a.m. to 3 p.m. that serves between 180 and 215 youth regularly. For those students that don't have transportation, transportation is provided home for those youth.

This program is aimed toward high-risk youth that might usually be those youth that eventually end up in the criminal justice program and in this instance was geared toward 2 Travis County middle schools that have the highest number of youth in the criminal justice system. The program offers tutorial assistance, a variety of recreational activities, and science and chess programs through Dell and the University of Texas. The results have been higher academic accomplishment, higher scores on standardized tests, higher school attendance, more interest in school, and staying out of trouble.^{xii}

Another type of after school program that has been successful in some school districts is a fee-based program in which parents pay to send their children to after-school care. Plano Independent School District operates such an after-school program in their schools called PASAR (a Spanish word meaning "to surpass or exceed"). It is a fee-based program not funded by PISD or taxpayer funds and is for children in grades K-5. The standard monthly fees are about \$200 with discounts of around \$100 for those students that receive free and reduced lunches. Students in PASAR participate in various activities at all elementary school sites including academic and homework tutorials, outdoor play and board games, fine arts activities, relaxation, and snack time. PASAR is offered at the child's home elementary school and provides for a safe after-school environment from 2:45 to 6:30 p.m. when many children would be home alone and unsupervised while parents were at work. PASAR also offers Summer and Holiday programs at an additional cost.^{xiii}

What Other States Are Doing: California and Michigan

On November 5, 2002 California voters passed Proposition 48, the After School Education and Safety Program Act of 2002, by 56.6%. The act does the following:

- Provides grants to elementary and middle schools in California for after-school programs. When fully funded, it will provide more than \$400 million in additional state funds for after-school programs. Schools are required to provide a 50% match to all state funding and grants will not be made until the economy improves sufficiently to provide the state with enough additional revenue to fund the program.
- The act establishes three priorities for the funds:
 - To continue existing after-school grants. One provision requires level funding each year after Fiscal Year 2004 for existing grants.
 - To make every public and charter school in the state eligible for after-school funds. Each elementary school will be eligible for a grant of \$50,000 per year, and each middle and junior high school \$75,000 per year.

- To target schools in which 50% or more of students are eligible for free or reduced lunch by increasing funds for before school and intersession programs and for schools with waiting lists for after-school programs.

Proposition 49 also stipulates some of the content and operation of programs. It suggests the inclusion of computer training, fine arts, and physical fitness programs. It allows such programs to be off school sites as long as the site meets certain safety and transportation standards and calls for the community to participate and aid in the operation of such programs.

An independent study of the costs and benefits of Proposition 49 by the Rose Institute of State and Local Government at Claremont McKenna College found that every dollar invested in after-school programs will save taxpayers approximately \$3, and could save more than \$6.50 for crime victims.

In September of 2004, the Michigan Legislature passed legislation to create the Michigan After-School Partnership to carry out the goal of ensuring quality after-school programs for each and every child in Michigan. The Legislature stated that the Michigan After-School Partnership be co-chaired by the Michigan Department of Human Services and the Michigan Department of Education. They broadened their goal to include an increase in qualified staff and volunteers, child care, development services and crime and violence prevention. Each year, the Michigan After-School Partnership must report its progress to the Legislature and the Governor. Their mission statement is to "provide statewide leadership to build and sustain high-quality after-school programs for children and youth in all communities throughout the State."^{xiv}

The Michigan After-School Partnership is funded through monies received from the Charles Stewart Mott Foundation, The Robert Wood Johnson Foundation, the Michigan Department of Human Services, and the Michigan Department of Education.

COMMITTEE RECOMMENDATIONS

The Committee recommends additional funding and restoration of funding for those prevention and early intervention programs that resulted from the Juvenile Justice Reform legislation passed in 1995.

ⁱ http://www.tyc.state.tx.us/research/cost_per_day.html

ⁱⁱ Publication prepared by the Texas Juvenile Probation Commission for the March 22nd Hearing

ⁱⁱⁱ <http://www.tyc.state.tx.us/research/profile.html>

^{iv} <http://tea.state.tx.us>

^v Secondary School Completion and Dropouts in Texas Public Schools 2004-2005, Texas Education Agency

^{vi} www.ed.gov

vii www.bbbs.org

viii www.campfire.org

ix <http://www.dfps.state.tx.us/>

x <http://www.dfps.state.tx.us/>

xi <http://www.dfps.state.tx.us/>

xii Testimony of Travis County Judge, Samuel Biscoe

xiii <http://www.pisd.edu/parents/program.pasar/index.shtml>

xiv http://www.michigan.gov/mde/0,1607,7-140-5234_6809-130165--,00.html

CHARGE 7

Monitor the agencies and programs under the committee's jurisdiction

Office of Attorney General, Child Support Division

Child Support Program Overview

Since 1984, the Office of the Attorney General has been the official child support agency for the State of Texas. The duties required of the Attorney General's Child Support Division under Title IV, Part D, of the federal Social Security Act are to locate absent parents, establish paternity for children born out of wedlock, establish and modify child support orders, enforce child support orders, and collect and disburse child support payments.

The Title IV-D Child Support Program's mission has expanded from just cost recovery to providing income support for families. The Title IV-D program originated as a mechanism to recover public welfare expenditures. Collections obtained from the non-custodial parent of a family that had received cash assistance would repay the state and federal government for their cash assistance costs. The cost recovery effort continues, but also embraces the program's role of supporting family self-sufficiency by appropriately passing collections to the family.

Only a quarter of new child support cases enter the Title IV-D system as public assistance referrals. Every caretaker receiving Temporary Assistance for Needy Families (TANF) is referred, as are Medicaid recipients in need of child support services. Referred cases remain eligible for child support services after public assistance benefits end. Child support services are also provided upon application to families who have never received public assistance. For FY 2005, TANF cases made up 9% of the caseload, Former TANF cases 43%, and Never TANF cases 48%. About one-fifth of the Never TANF cases are Medicaid recipients.

In the majority of incoming cases, a child support order must be established because the parents are unmarried or separated, but not divorced. In many cases involving unwed parents, paternity is established when the parents sign an Acknowledgment of Paternity (AOP). The Child Support Division works diligently with hospital staff, county birth registrars and the Bureau of Vital Statistics to secure paternity acknowledgments at the time of birth. If an AOP has not been signed, staff must take steps to establish paternity before an order for child support can be issued.

The Child Support Program is in an environment of accelerating change and faces challenges in the near future. Despite record-breaking child support collections and the attainment of maximum federal incentives, it is likely that available revenues will decrease due to two forces: 1) plateaus or declines in TANF caseloads, and 2) federal budget cuts to all child support programs in fiscal year 2006. FTE caps will remain in place, which will limit our in-house human capital and increase our reliance on outsourced services. At the same time, customer expectations will likely increase, and the demand for child support services to Texans will grow. With attention focused on managing change and a comprehensive planning process in place, leadership can assure that the Child Support Program will respond positively and effectively to meet increasing demands.

EXECUTIVE SUMMARY
Child Support Performance Data
March 2006

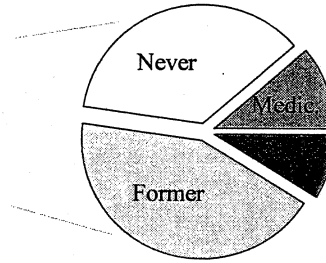
The Child Support Program tracks and monitors performance goals and assesses internal and external factors that influence the success of the program. Among the program's data highlighted in the following pages is the composition of a changing caseload, numbers on obligated and paying cases, and a success story of the record-breaking collections disbursed to families.

Child support collections have grown rapidly over the program's history – from \$25 million in 1984 when the Office of the Attorney General became the official child support agency for the State of Texas to a record-breaking \$1.8 billion dollars in 2005. In addition, dollars collected per paid staff has risen dramatically – from \$80,000 in 1984 to \$690,000 in 2005.

While collections have grown rapidly, the amount of retained Temporary Assistance for Needy Families (TANF) has been declining since 1999. Current TANF cases have decreased from 239,000 in 1999 to 81,000 in 2005. The number of these cases that pay have increased by 25%, from 20,000 in 1999 to 25,000 in 2005. Most retained TANF now comes from former TANF cases.

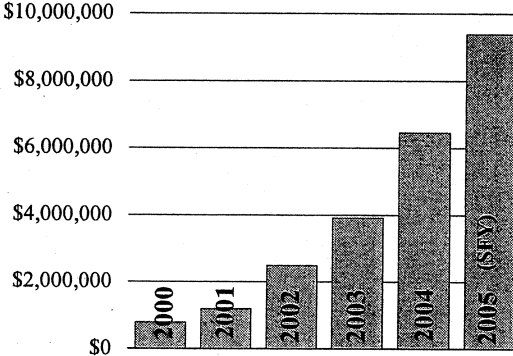
CASELOAD OVERVIEW: August 2005

IV-D Caseload	912,922	100%
Obligated	750,170	82%
% of All Cases Paying in Year	616,025	67%
% of Obligated Paying in Year		82%
Current TANF	81,381	9%
Former TANF	395,981	43%
Never TANF	332,364	36%
Never TANF Medicaid	103,196	11%
Interstate Received	48,917	5%
Interstate Initiated	26,692	3%
Medicaid Active Cases	580,558	64%



CASH MEDICAL SUPPORT

Collected on Medicaid Active Cases	\$10,000,000
Including TANF, MAO & Foster Care	
2000	\$790,764
2001	\$1,191,718
2002	\$2,485,165
2003	\$3,909,769
2004	\$6,460,183
2005	\$9,392,138



Vouchers sent to Health & Human Services Comm.

OTHER DATA

83 Legislative inquiries per month in 2005

80% decrease from 1998

\$2.45 billion processed at SDU

15% increase over prior year

82% of cases have court orders

5% improvement over prior year

National average (for 2004) is 74%

Child Support Facilities:

65 Field offices

8 Regional Admin. offices

8 Regional Customer Service Centers - Arlington, Austin, El Paso, Houston, Lubbock, McAllen, San Antonio & Tyler

5 Local Rule Offices - Dallas, Fort Worth, Houston (2), San Antonio

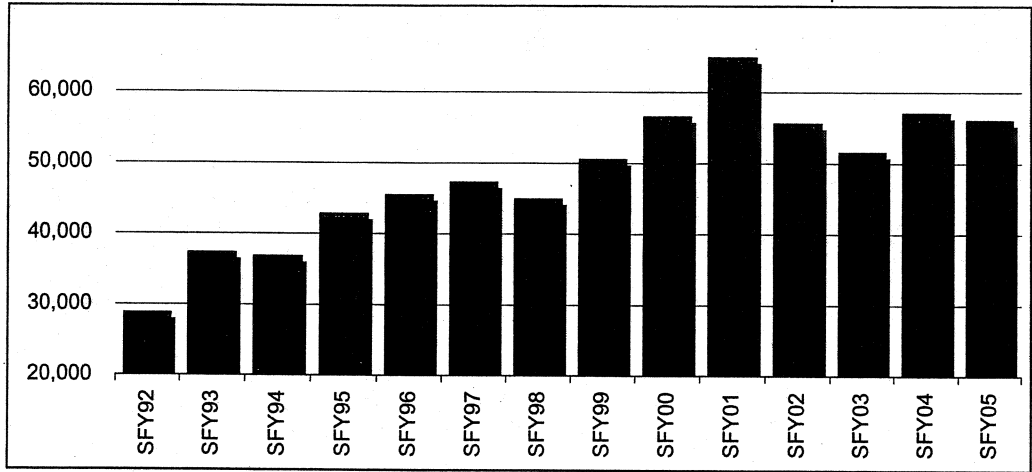
3 Financial Institution Data Match (FIDM) offices

1 Insurance Lien office

Obligations Established

per Executive Summary

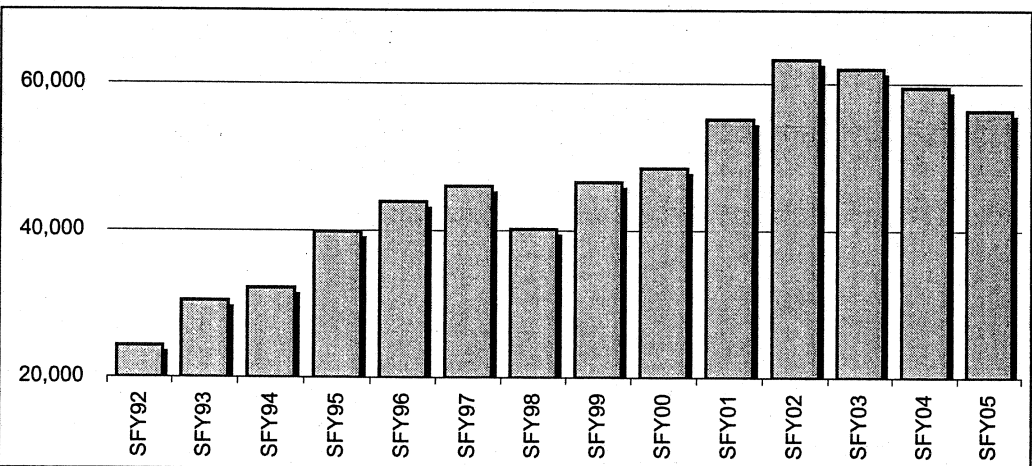
SFY92	28,692
SFY93	37,180
SFY94	36,709
SFY95	42,648
SFY96	45,335
SFY97	47,145
SFY98	44,794
SFY99	50,423
SFY00	56,423
SFY01	64,711
SFY02	55,472
SFY03	51,396
SFY04	56,905
SFY05	55,922



Decline in FY02 stems from a change in definition that excluded modifications to court orders.

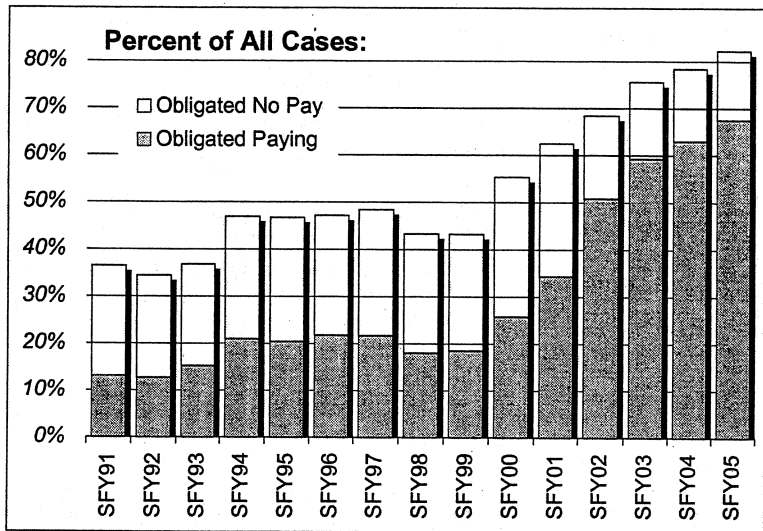
Paternity Children

SFY92	24,297
SFY93	30,429
SFY94	32,202
SFY95	39,799
SFY96	43,891
SFY97	46,030
SFY98	40,173
SFY99	46,556
SFY00	48,481
SFY01	55,168
SFY02	63,215
SFY03	61,953
SFY04	59,433
SFY05	56,315



Obligated & Paying Cases

	All Cases	Obligated	Paying
SFY91	579,571	211,085	75,531
SFY92	741,538	254,791	93,581
SFY93	758,364	278,739	114,737
SFY94	664,250	311,521	138,482
SFY95	766,352	357,535	155,550
SFY96	847,243	399,528	183,732
SFY97	915,064	442,962	198,056
SFY98	1,117,888	483,689	200,801
SFY99	1,206,632	520,918	222,366
SFY00	1,058,111	586,114	271,279
SFY01	1,008,210	629,627	344,670
SFY02	955,253	653,840	485,373
SFY03	897,300	677,790	531,086
SFY04	907,076	710,790	571,341
SFY05	912,922	750,170	616,025

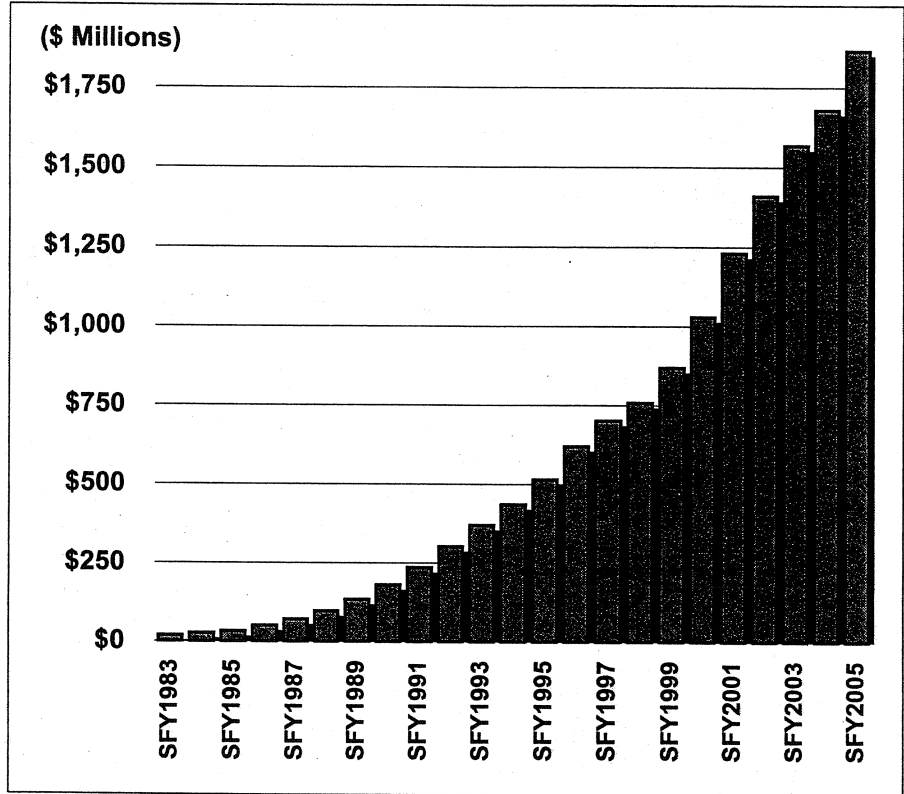


	Obligated Paying	Obligated No Pay	Children w/Support
SFY91	13%	23%	90,637
SFY92	13%	22%	112,297
SFY93	15%	22%	137,684
SFY94	21%	26%	166,178
SFY95	20%	26%	186,660
SFY96	22%	25%	220,478
SFY97	22%	27%	237,667
SFY98	18%	25%	240,961
SFY99	18%	25%	266,839
SFY00	26%	30%	325,535
SFY01	34%	28%	413,604
SFY02	51%	18%	582,448
SFY03	59%	16%	637,303
SFY04	63%	15%	685,609
SFY05	67%	15%	739,230

Child Support Performance

	\$ Millions	Growth
SFY1983	\$18	
SFY1984	\$25	41%
SFY1985	\$32	26%
SFY1986	\$50	56%
SFY1987	\$70	41%
SFY1988	\$96	37%
SFY1989	\$133	38%
SFY1990	\$181	36%
SFY1991	\$235	30%
SFY1992	\$302	28%
SFY1993	\$370	23%
SFY1994	\$435	18%
SFY1995	\$514	18%
SFY1996	\$619	20%
SFY1997	\$700	13%
SFY1998	\$757	8%
SFY1999	\$868	15%
SFY2000	\$1,029	19%
SFY2001	\$1,230	19%
SFY2002	\$1,409	15%
SFY2003	\$1,567	11%
SFY2004	\$1,678	7%
SFY2005	\$1,864	11%

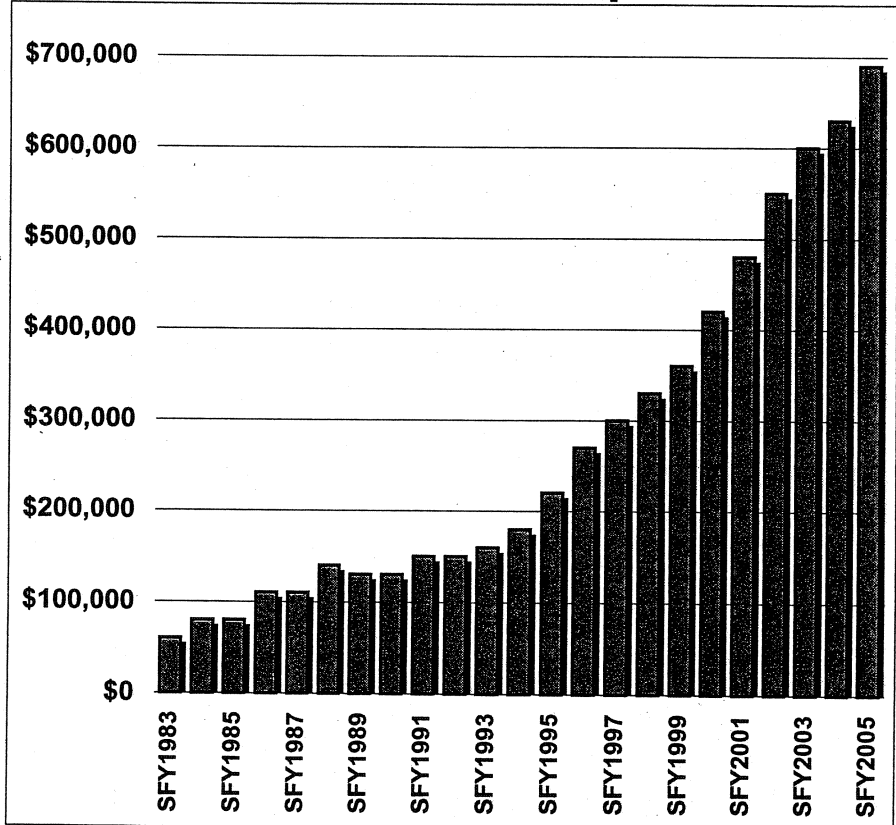
Annual Collections



Child Support Productivity

State F.Year	FTE Staff	\$ Collect. per FTE
SFY1983	304	\$60,000
SFY1984	330	\$80,000
SFY1985	399	\$80,000
SFY1986	468	\$110,000
SFY1987	629	\$110,000
SFY1988	697	\$140,000
SFY1989	1,012	\$130,000
SFY1990	1,419	\$130,000
SFY1991	1,618	\$150,000
SFY1992	1,950	\$150,000
SFY1993	2,245	\$160,000
SFY1994	2,485	\$180,000
SFY1995	2,368	\$220,000
SFY1996	2,308	\$270,000
SFY1997	2,324	\$300,000
SFY1998	2,321	\$330,000
SFY1999	2,393	\$360,000
SFY2000	2,446	\$420,000
SFY2001	2,551	\$480,000
SFY2002	2,558	\$550,000
SFY2003	2,609	\$600,000
SFY2004	2,652	\$630,000
SFY2005	2,706	\$690,000

\$ Collected per Paid Staff



FREQUENTLY ASKED QUESTIONS ABOUT CHILD SUPPORT

MISSION STATEMENT

The Child Support Division in the Office of the Attorney General assists parents in obtaining the financial support necessary for children to grow up and succeed in life. To encourage parental responsibility, the Office of the Attorney General establishes paternity of children, establishes court orders for financial and medical support, and enforces support orders.

The Attorney General promotes the involvement of both parents in the life of the child by working with community groups, schools, and hospitals. In the performance of their duties on behalf of Texas children, child support staff focus on quality, efficiency, effectiveness, and customer service. Custodial parents can call the 24-hour hotline at (800) 252-8014 to receive automated information. With their customer identification numbers (CIN), they can receive information on payments and case status without having to wait for a caseworker.

SERVICES

What does the child support program do?

The Office of the Attorney General is responsible for:

- locating absent parents;
- establishing paternity;
- establishing, enforcing, and modifying child and medical support orders; and
- collecting and distributing child support payments.

Who can apply for child support services and what is the fee?

The Attorney General's Office accepts applications from mothers, fathers, and other individuals who request services. Our attorneys represent the State of Texas in providing child support services and do not represent either parent in the case.

Customers do not have the right to select what enforcement actions are taken in their cases. The Office of the Attorney General is required to provide all appropriate services for the benefit of the children.

Temporary Assistance for Needy Families (TANF) and certain Medicaid recipients automatically receive child support services after they are certified for public assistance. Persons who do not receive TANF or Medicaid must apply for child support services. There is **no fee** to apply for child support services provided by the Office of the Attorney General.

Where do people apply for child support services with the Office of the Attorney General?

The Child Support Division of the Office of the Attorney General operates field offices throughout the state where people may apply for services. The telephone numbers and addresses for these offices may be found in local telephone directories or on the Attorney General's Internet site at www.oag.state.tx.us.

A parent also can request an application for services by calling our toll-free telephone number at (800) 252-8014 or by visiting our Web site. An applicant who is deaf or hard of hearing can call TTY (800)572-2686 or (512) 460-6124 (voice).



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

How long before payments begin?

Obtaining child support involves a wide variety of factors, making it difficult to predict the time required to secure payments on individual cases. For example, one case may require the full range of services — locating the absent parent, establishing paternity and a support order, and enforcing the order. Another case may have a divorce decree with an established order, a social security number, and an employer for the non-custodial parent, allowing enforcement of payment through an administrative income withholding order.

What information does the Office of the Attorney General need to locate a non-custodial parent?

The most important information an applicant can provide, aside from the non-custodial parent's current address, is the name and address of the non-custodial parent's current employer. If the current employer is not known, the name and address of the last known employer should be provided.

Additionally, the following information about the non-custodial parent should be provided, if known:

- social security number and date of birth;
- names and addresses of relatives and friends;
- names of banks or creditors such as utility companies;
- names of organizations, unions, or clubs to which the non-custodial parent belongs; and
- places where the non-custodial parent spends free time.

What documents are needed by the Office of the Attorney General?

If available, child support applicants should submit **copies** of the following:

- the divorce decree, separation agreement, or court order for child support;
- the acknowledgment of paternity, if one has been signed;
- the birth certificate(s) of the child(ren) involved;
- all documents reflecting both parents' incomes and assets (paycheck stubs, tax returns, bank statements, etc.); and
- evidence of child support payment history.

How do TANF recipients seek child support?

To receive TANF benefits through the Texas Health and Human Services Commission, recipients must cooperate with the Office of the Attorney General's efforts to identify the child(ren)'s non-custodial parent and collect child support.

TANF recipients must assign to the State their right to child support collections. Payments collected in the case while the family receives TANF benefits are applied toward reimbursing the state and federal governments for TANF benefits received by the family. However, the family will receive up to \$50 a month as a supplemental TANF payment during any month that a current child support payment is made. When the family no longer receives TANF, all current child support payments are sent to the custodial parent.

I have some child support issues, but I am deaf. How do I go about communicating with the Attorney General's Office?

You may call (toll-free in Texas) (800) 572-2686 (TTY) or (512) 460-6124 (voice) or (512) 460-6043 (fax). When you call, please have the following information available: Your name, social security number, and TTY number. You also may learn valuable information on the Attorney General's Web site at www.oag.state.tx.us.

What if a person no longer wants the Office of the Attorney General's services?

If the parent no longer receives TANF or Medicaid and wishes to discontinue child support enforcement services, the case can be closed by written request, provided no arrears are owed by the non-custodial parent that are assigned to the state.

How can child support be changed?

Only the Court can modify the child support order. It cannot be done by agreement of the parties. Grounds for a modification include a material and substantial change in the circumstances of a child or a person affected by the order, or the passage of three years since the last child support order and a difference in monthly payment by either 20 percent or \$100 from the child support guidelines. A parent subject to a child support order may request a review of the ordered child support amounts every three years by contacting the Office of the Attorney General.

What if the non-custodial parent is still in school and has no money?

Remember, a non-custodial parent is responsible for supporting his or her child even if that parent is still a minor. The judge will look at a young parent's income while he or she is still in school and decide how much support must be paid.

The non-custodial parent's income can be reviewed again after he or she has finished school and begins working. The judge will decide what changes need to be made in the child support payment.

PATERNITY

If an unmarried father is already providing support, is it necessary to establish paternity?

Yes. Even though the child's father is providing support, he may change his mind, become disabled, or even die. In most cases, unmarried parents can ensure certain benefits for their children only if paternity has been established.

Children who are supported by only one parent often do not have enough money for even basic needs. Every child is entitled to financial support and other resources from both parents.

The custodial parent, the child, and the child's doctor need to know whether the child has inherited any diseases or disorders, which may not be detected at birth or in childhood. Children can receive better medical treatment if doctors know the full medical history of the family.

If paternity has been established, a child has a legal father and will have the possible right of inheritance from both parents. The child also may be eligible for other benefits, such as Social Security, medical insurance, life insurance and veteran's benefits.

How does paternity establishment affect custody and visitation?

Each parent has a duty to financially and emotionally support his or her child, and is presumed to possess the right to custody or visitation. If the parents cannot agree, custody, child support, and visitation will be decided by a court. Both parties must obey the court order. One parent cannot refuse to pay support because the other parent is refusing visitation and vice versa.

How is paternity established?

Paternity may be established voluntarily by agreement of both the mother and the father of the child. The parents can sign an Acknowledgment of Paternity (AOP), which becomes a legal finding of paternity when it is filed with the Texas Vital Statistics Unit. If the mother or alleged father is not sure about the paternity of the child, neither should sign an AOP. Paternity should be established through the courts.

What happens if the father signs the Acknowledgment of Paternity?

Effective September 1, 1999, Texas law states that a biological father will become the legal father if both he and the mother sign an AOP. This makes him legally responsible for paying child support if he lives apart from the child, and enables the court to grant him visitation or custody. In order to obtain child support and visitation rights, a parent must go to a child support office or a private attorney.

Where can we get the Acknowledgment of Paternity form?

An Acknowledgment of Paternity (AOP) form can be obtained from a certified entity, such as a local birth registrar or child support office. Parents completing an AOP form through a child support office are not required to open a child support case. Information on local certified entities and information about establishing paternity is available toll-free at 1-866-255-2006.

What if the father wants to sign the Acknowledgment of Paternity but cannot come to the hospital?

The AOP can be signed before or after the birth of the child. However, the AOP must be processed through a certified entity. If the father cannot be at the hospital, both parents can go to a certified entity (child support office or local birth registrar's office) to process the AOP and get an entity code. Then, the mother can bring the AOP to the hospital and have it completed at the time of the birth of the child. The AOP also can be processed after the birth of the child by going to a certified entity. Parents who live out of state can get assistance in completing the AOP over the phone by calling 1-866-255-2006.

What if the mother is married to someone else at the time of the child's birth or the baby is born within 300 days of the date of her divorce?

If the mother is married to someone other than the biological father at the time of the child's birth or the baby is born within 300 days of her divorce from a man who is not the biological father, the man she was married to at the time of the birth must sign a Denial of Paternity. The biological father cannot become the legal father by signing the AOP until the man she was married to at the time of the child's birth signs the Denial of Paternity, which is part of the AOP form. If the Denial is not signed, either biological parent can open a case with the Attorney General or establish paternity through the courts.

What if the mother is not sure who the father is?

If the mother applies for services or is referred to the Child Support Division to establish paternity, she will be asked questions about men who may have fathered the child. It is very important for the mother to provide as much information as she can to help determine the father's identity. Paternity may be established even if the father is still in school or if he lives in another state.

What if the pregnancy was unplanned?

Texas law says that both parents are responsible for supporting their children. Just as the mother is responsible for the child even if the pregnancy was not planned, so is the father. This means that once the court determines the identity of the biological father, the man must help support his child.

What if the father does not believe it is his child?

He may ask for scientific paternity testing. A court will examine the results of the paternity test and then decide whether the alleged father is the biological father.

Who pays for the paternity test?

If the Child Support Division files the case, the Office of the Attorney General will pay for the test. If the alleged father is found to be the biological father of the child, he may be ordered to repay the cost of the test.

What if one or both parents change their mind after they have signed the AOP and it has been filed at VSU?

Anyone who signed the AOP may file a petition to rescind it. The petition must be filed in court within the first 60 days after the AOP has been filed with VSU or before the first court hearing, whichever is earlier. After the period to rescind has expired, any person who signed the AOP may challenge the document in court, but only on the basis of fraud, duress, or material mistake of fact. Four years after being filed with VSU, the AOP **cannot** be challenged. Effective Sept. 1, 2005, a minor signing the AOP has a four-year time limit to challenge the AOP. The time-limit is four years from the date he or she becomes an adult and **not** the date the AOP was filed with VSU.

ENFORCEMENT

What if the non-custodial parent lives in another state?

The law requires states to cooperate with each other. The non-custodial parent is legally required to make regular child support payments, no matter where he or she lives.

What if the non-custodial parent gets behind in child support payments or refuses to pay?

If a non-custodial parent does not pay child support, he or she is subject to enforcement measures to collect regular and past-due payments. The Child Support Division uses many techniques to enforce child support orders, including:

- requiring employers to deduct court-ordered child support from the non-custodial parent's paycheck through income withholding;
- intercepting federal income tax refund checks, lottery winnings, or other money due from state or federal sources;
- filing liens against his or her property or other assets;
- suspending driver's, professional, and hunting and fishing licenses; and
- filing a lawsuit against the non-custodial parent asking the court to enforce the order. A judge may sentence a nonpaying parent to jail and enter a judgment for past due child support.

LICENSE SUSPENSION

Who is affected by the license suspension law?

Non-custodial parents who hold a state license, owe more than three months of past-due child support, and are not in compliance with an existing court-ordered or voluntary repayment schedule face license suspension.

What types of licenses are usually suspended?

Most adults have a driver license. Computer matches can determine which obligors have other licenses and permits ranging from medical, dental, and law licenses to hunting and fishing licenses.

How many licensing agencies are involved?

The statute identifies 60 licensing agencies. However, this list is not exclusive. For example, "licensing authority" includes political subdivisions and any other board or agency not listed by name.

How does the process work?

The Attorney General's Child Support Division matches its caseload with computer tapes from different licensing agencies. When the match shows that a parent who meets the statutory criteria for license suspension holds one or more of the identified licenses, the Office of the Attorney General will send the license holder a warning and provide an opportunity to resolve the outstanding delinquency.

If the parent fails to respond, the Child Support Division will confirm his or her location and other information necessary to suspend the license and then refer the case for administrative or judicial prosecution.

CUSTODY AND VISITATION

Can a parent take custody of the child instead of making child support payments?

Both parents must provide for the child, no matter which parent has primary custody. Child support is normally paid to the custodial parent for the benefit of the child. Legal custody can be changed, but only if the parents go to court to modify the previous child support order and establish a child support amount for the new non-custodial parent.

Does the Office of the Attorney General handle custody and visitation disputes?

Federal regulations do not allow the Office of the Attorney General to provide services for custody or visitation disputes. The Attorney General encourages mediation of these issues, and most cases are resolved by agreement. In the rare case where custody and/or visitation are contested, the Office of the Attorney General encourages each parent to hire a private attorney.

Parents who cannot afford a lawyer may be eligible for federally funded legal assistance. Sometimes, the court will appoint a lawyer for the child. Also, many law schools operate legal clinics where law students assist people under the supervision of a law professor or other lawyer. Parents should contact the law school nearest them for more information or look in the phone book under "Legal Aid" or "Legal Services."

Is a non-custodial parent entitled to visit the child if he or she is not paying child support?

Child support and visitation rights are separate issues. The court determines both and will usually order the non-custodial parent to pay child support and the custodial parent to make the child available for visits.

The custodial parent has a duty to obey the court order for visitation, even if the non-custodial parent cannot or will not pay child support. The court can enforce its orders against either parent.

PRIVATE CHILD SUPPORT COLLECTION AGENCIES

Can any other agency handle child support enforcement cases?

In Texas, county-operated domestic relations or child support offices, private attorneys, and private collection agencies also provide some child support enforcement services.

Private agencies charge for their services. Parents who use the services of a private child support collection agency should fully understand any contract they sign.

Can a private child support collection agency process my case faster?

The majority of the Child Support Division's incoming cases do not have established paternity or child support orders. These cases take longer to process than cases with established paternity and child support orders. Private child support collection agencies and county domestic relations offices generally handle only cases with established paternity and existing child support orders.

The Office of the Attorney General is required to provide child support services to all families applying for services. Services must also be provided to Temporary Assistance for Needy Families (TANF) and Medicaid families referred to the Child Support Division by the Texas Health and Human Services Commission. Moreover, the Child Support Division provides a full range of child support services. The division's caseload is very large — much larger than that of any private collection agency. Therefore, private agencies may be able to process some cases more quickly. This must be balanced against the cost of using a private agency.

COMMUNITY SERVICES AND VOLUNTEER PROGRAM

I have some extra time on my hands and would like to put that time to good use helping others. Does the Office of the Attorney General need volunteers?

Absolutely. The Office of the Attorney General uses many volunteer workers. In fact, volunteers contributed a cost-equivalent value of \$1.3 million last year. All 86 Child Support Division offices and Customer Service Centers across the state utilize volunteers for everything from preparing packets for court cases to filing and other clerical tasks.

Students seeking internships to satisfy course requirements are also needed.

Information on how to volunteer or become an intern is available by calling the Community Services and Volunteer Program at (512) 460-6124.

CONTACT INFORMATION

BY US MAIL

Office of the Attorney General
Child Support Division
P.O. Box 12017
Austin, TX 78711-2017

ON THE INTERNET

Web site - www.oag.state.tx.us
E-mail - child.support@oag.state.tx.us

BY TELEPHONE

Regional Customer Service Centers
and Administrative Offices

Harris County	(713) 243-7100
Dallas/Tarrant County	(972) 339-3100
Bexar County	(210) 841-8450
Travis County	(512) 514-7000
Lubbock	(806) 765-0094
McAllen	(956) 682-5581
Tyler	(903) 595-6900
El Paso	(915) 779-2388

24-HOUR PAYMENT AND CASE STATUS INFORMATION

(800) 252-8014

FOR THE DEAF AND HARD OF HEARING

(800) 572-2686 (TTY)
(512) 460-6124 (voice)



TEXAS CHILD SUPPORT GUIDELINES REPORT

**OFFICE OF THE ATTORNEY GENERAL
CHILD SUPPORT DIVISION
2006**

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Texas Family Code § 111.001. Review of Guidelines

(a) Prior to each regular legislative session, the standing committees of each house of the legislature having jurisdiction over family law issues shall review and, if necessary, recommend revisions to the guidelines for possession of and access to a child under Chapter 153 and for support of a child under Chapter 154. The committee shall report the results of the review and shall include any recommended revisions in the committee's report to the legislature.

(b) Not later than December 1 of each even-numbered year, the Title IV–D agency shall submit a report to the standing committees of each house of the legislature having jurisdiction over family law issues for use by the committee in conducting the review required by Subsection (a). The report must contain:

(1) economic data obtained from the United States Department of Agriculture on the cost of raising children;

(2) an analysis of case data on the application of and deviations from the child support guidelines; and

(3) a summary of any federal legislation enacted since the date of the last review.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, § 6, eff. Sept. 1, 1999.

The following information is provided in order to comply with this statutory requirement.

Child Support Guidelines – Background Information

Congress passed child support guidelines legislation in 1984 and 1988 in an attempt to increase the use among the states of objective criteria in the establishment of support obligations, instead of leaving the determination of a support award primarily to the discretion of the court, case-by-case, based on the needs of the child. The Child Support Enforcement Amendments of 1984 required states to establish by October 1987 guidelines for determining the amounts of child support awards “by law or by judicial or administrative action” and to make the guidelines available “to all judges and other officials who have the power to determine child support awards within the State.” Federal regulations promulgated to implement this requirement made the provision more specific: state child support guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation. The 1984 provision made state child support guidelines advisory rather than mandatory with respect to their use by judges and others with authority to set support awards. The Family Support Act of 1988, however, required states to pass legislation making the guidelines a “rebuttable presumption” in any administrative or judicial proceeding and establishing the amount of the order resulting from the application of the state guidelines as the correct amount to be awarded. Courts may deviate from the guidelines in a particular case: “A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.” [42 U.S.C. 667(b)(2)] Federal rules further require that the criteria by which the presumption may be rebutted “take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. [45 CFR 302.56(g)]

Under the 1988 provision, states are required to review their child support guidelines at least once every four years “to ensure that their application results in the determination of appropriate child support award amounts.” As part of the review, states must consider current economic data on the costs of raising children to ensure that the support awards prescribed by the guidelines meet the children's economic needs. States must also review child support cases and see how often they deviate from the guidelines in order to ensure that deviations from the guidelines are limited. Furthermore, at a minimum, the guidelines set by the state must take into consideration all earnings and income of the noncustodial parent, be based on specific descriptive and numeric criteria, and provide for the health care needs, through insurance or other means, of the child(ren). [45 CFR 302.56(b)]

Because there is no specific federal requirement for how states are to establish guidelines, state methods have varied. States use one of the following methods to establish guidelines: the legislature adopts guidelines through statute; the court system adopts guidelines through court rule; or the state child support agency adopts guidelines through administrative rule.

The federal legislation also did not mandate any particular model for state guidelines. Most states adopted the income shares guideline model, in which child support is determined based on

both parents' income. The most common alternative to the income shares model is the percentage of income model, which considers only the income of the noncustodial parent (e.g., the model adopted in Texas). Finally, a few states adopted the Melson model, which is somewhat more complex than the others and provides a self-support reserve for the noncustodial parent. (Please see the chart on Page 7.)

Many states, particularly those with income shares and Melson models, also permitted certain deviations from the basic child support calculation to provide for expenses such as health care, childcare and private education.

Award amounts in guideline tables are based on an estimate of the expenses of raising children. Child support experts have not reached a consensus on which economic model is the most accurate, so states have generally continued to follow the model they used when first adopting their guidelines, making small adjustments for inflation or regional variations in the cost of living.

In addition to studying the economic basis, states are required to review case data to track common deviations from the guidelines. Deviation reviews can help states adjust the guidelines to account for specific expenses and, thus, reduce the necessity of deviations. States have had some difficulty in this process. Many courts do not track the kind of information that would be useful for guideline reviews, or reviewers are unable to obtain data for confidentiality reasons. Case reviews can also be relatively expensive, so some states choose to look at a limited sample of cases and draw conclusions based on that.

Almost all states conducting guideline reviews in recent years have modified or at least debated several common topics. Most of these are types of deviations. Parenting time adjustments and childcare expenses are two of the most common areas of debate. Many states have recently debated adjustments for prior or subsequent children of the noncustodial parent. States are also considering whether to include private school or college expenses in the child support guidelines.

Adjustments for very low- and very high-income parents have also been a common topic of debate during guideline reviews. The unique challenges of helping low-income, noncustodial parents pay child support are being recognized, and some states have responded by including a variety of adjustments in the child support guidelines. Many states, in addition to those that have adopted the Melson model, have incorporated a self-support reserve for low-income parents.

Variations in review processes are independent of which governmental entity formulates the guidelines. In states with administrative rules, for example, some reviewing bodies seek substantial public input early in the process. In other states, agencies draft changes to the guidelines and wait for formal public hearings. Many states form review committees that examine guidelines for a year or more before recommending policy changes. Review committees or task forces often include legislators, members from advocacy groups representing both custodial and noncustodial parents, judges and clerks of the court, and representatives of the state child support agency. In states with statutory guidelines, an interim committee may be appointed to study the guidelines and draft a bill

for introduction in the next legislative session.

References:

National Conference of State Legislatures. "Reviewing Child Support Guidelines." NCSL Legisbrief, April/May 2000, vol 8, no.23. www.ncsl.org/programs/cfy/legis0400.htm.

United States Commission on Interstate Child Support. Supporting Our Children: A Blueprint for Reform. Washington D.C.: U.S GPO.

Guideline Models as of August 2006

Income Shares		Percentage of Income	Melson Formula
Alabama	New Jersey	Alaska	Delaware
Arizona	New Mexico	Arkansas	Hawaii
California	New York	Georgia	Montana
Colorado	North Carolina	Illinois	
Connecticut	Ohio	Massachusetts	
Florida	Oklahoma	Minnesota	
Idaho	Oregon	Mississippi	
Indiana	Pennsylvania	Nevada	
Iowa	Rhode Island	North Dakota	
Kansas	South Carolina	Texas	
Kentucky	South Dakota	Wisconsin	
Louisiana	Tennessee	Wyoming	
Maine	Utah		
Maryland	Vermont	Guam	
Michigan	Virginia		
Missouri	Washington		
Nebraska	West Virginia		
New Hampshire	District of Columbia		

Information concerning Puerto Rico and the Virgin Islands was not available.

Source: OCSE Interstate Roster and Referral Guide (IRG)
<http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm>

Report Element 1: USDA Cost of Raising Children

The U.S. Department of Agriculture is required every year to estimate family expenditures on children from birth to age 17. *Expenditures on Children by Families, 2005 Annual Report* finds that child-rearing expenses for the nation as a whole ranged from \$10,220 to \$11,290 for the youngest child in a two-child, married-couple family in the middle income group. However, this rather broad statement in and of itself tells us little, except that child-rearing expenses are a large portion of a family budget.

The report offers some more specific information that gives a little better idea of the child-rearing costs for those in specific geographic areas and those who fit different demographic profiles. For example, the chart below, “Estimated annual expenditures on a child by husband-wife families, urban South, 2005,” gives some idea of the level of child-rearing expenditures that families in Texas with different levels of income could expect to incur. Depending on the age of the child, a family with a before tax yearly income of less than \$42,800 could expect annual child-rearing expenditures of between \$7,310 and \$8,410 for a child depending on the age of the child. Those figures increase to between \$10,280 and \$11,480 for families with before-tax income between \$42,800 and \$72,000, and between \$15,100 and \$16,490 for families with before-tax income of more than \$72,000.

The chart also breaks down expenditures by category. Housing is the biggest expense ranging from \$2,650 per year for a child for low-income families when the child is under two years old to \$5,600 per year for a child for upper-income families with the same age child.

Table 4. Estimated annual expenditures* on a child by husband-wife families, urban South,† 2005

Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child care and education	Miscellaneous‡
Before-tax income: Less than \$42,800 (Average = \$26,700)								
0 - 2	\$7,310	\$2,650	\$970	\$870	\$370	\$600	\$1,210	\$640
3 - 5	7,520	2,630	1,090	850	360	570	1,360	660
6 - 8	7,530	2,580	1,400	970	410	650	820	700
9 - 11	7,560	2,400	1,700	1,060	450	700	500	750
12 - 14	8,370	2,620	1,780	1,200	750	720	360	940
15 - 17	8,410	2,160	1,930	1,610	670	750	600	690
Total	\$140,100	\$45,120	\$26,610	\$19,680	\$9,030	\$11,970	\$14,550	\$13,140
Before-tax income: \$42,800 to \$72,000 (Average = \$56,900)								
0 - 2	\$10,280	\$3,580	\$1,170	\$1,320	\$440	\$780	\$1,970	\$1,020
3 - 5	10,590	3,560	1,350	1,290	430	750	2,170	1,040
6 - 8	10,490	3,520	1,730	1,420	480	850	1,410	1,080
9 - 11	10,370	3,330	2,050	1,500	530	910	930	1,120
12 - 14	11,090	3,560	2,060	1,650	870	930	700	1,320
15 - 17	11,480	3,100	2,300	2,080	780	960	1,200	1,060
Total	\$192,900	\$61,950	\$31,980	\$27,780	\$10,590	\$15,540	\$25,140	\$19,920
Before-tax income: More than \$72,000 (Average = \$107,700)								
0 - 2	\$15,100	\$5,600	\$1,540	\$1,850	\$570	\$900	\$2,930	\$1,710
3 - 5	15,500	5,580	1,750	1,820	560	870	3,180	1,740
6 - 8	15,180	5,530	2,110	1,950	610	990	2,220	1,770
9 - 11	14,950	5,350	2,470	2,030	670	1,050	1,560	1,820
12 - 14	15,710	5,570	2,580	2,180	1,090	1,060	1,220	2,010
15 - 17	16,490	5,120	2,730	2,630	1,000	1,100	2,150	1,760
Total	\$278,790	\$98,250	\$39,540	\$37,380	\$13,500	\$17,910	\$39,780	\$32,430

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2005 dollars using the regional Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year-old). The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

†The Southern region consists of Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

‡Miscellaneous expenses include personal care items, entertainment, and reading materials.

According to the report, family expenditure per child will vary depending on the age of a child. Families with children between the ages of 12 and 17 incur more expenses than those with younger children. Food, transportation, and clothing costs appear to account for this difference.

The report states that the child-rearing expenses will also be affected by the number of children within a family. Most of the cost estimates are based on the assumption that a family is composed of two parents and two children. For three-children families, an economy of scale appears to develop; the expenses associated with a third child are much less than a second or single child in a family.

The national child-rearing expenditures of single-parent families are different than for two-parent families. Only national estimates are available; there is no attempt, as there was with two-parent families, to determine expenses by region. The following chart provided by the USDA also contains only two income-groups, those whose pre-tax income is less than \$43,200 annually and those whose pre-tax income is equal to or more than \$43,200. The national expenditure range for single-parent families with annual incomes below \$43,200 is between \$6,080 and 8,440 depending on the age of the child. For those with pre-tax income above \$40,700 the national expenditure range is between \$14,000 and \$16,670.

Table 7. Estimated annual expenditures* on a child by single-parent families, overall United States, 2005

Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child care and education	Miscellaneous†
Before-tax income: Less than \$43,200 (Average = \$18,100)								
0 - 2	\$6,080	\$2,480	\$1,110	\$820	\$310	\$270	\$680	\$410
3 - 5	6,880	2,820	1,170	720	330	390	920	530
6 - 8	7,720	3,000	1,470	840	390	460	840	720
9 - 11	7,140	2,880	1,710	600	390	580	400	580
12 - 14	7,650	2,890	1,710	690	670	620	510	560
15 - 17	8,440	3,060	1,860	1,090	780	610	390	650
Total	\$131,730	\$51,390	\$27,090	\$14,280	\$8,610	\$8,790	\$11,220	\$10,350
Before-tax income: \$43,200 or more (Average = \$65,500)								
0 - 2	\$14,000	\$5,350	\$1,720	\$2,510	\$450	\$610	\$1,670	\$1,690
3 - 5	15,100	5,690	1,820	2,400	470	810	2,090	1,820
6 - 8	15,990	5,870	2,180	2,520	540	930	1,950	2,000
9 - 11	15,320	5,750	2,620	2,290	540	1,120	1,140	1,860
12 - 14	16,230	5,750	2,570	2,380	890	1,180	1,620	1,840
15 - 17	16,670	5,930	2,720	2,580	1,020	1,170	1,320	1,930
Total	\$279,930	\$103,020	\$40,890	\$44,040	\$11,730	\$17,460	\$29,370	\$33,420

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2005 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year-old). The figures represent estimated expenses on the younger child in a single-parent, two-child family. For estimated expenses on the older child, multiply the total expense for the appropriate age category by 0.93. To estimate expenses for two children, the expenses on the younger child and older child after adjusting the expense on the older child downward should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.35. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.72 after adjusting the expenses on the older children downward. For expenses on all children in a family, these totals should be summed.

†Miscellaneous expenses include personal care items, entertainment, and reading materials.

An important difference between single-parent and husband-wife families is that a greater percentage of single-parent families fall below the \$43,200 income level. According to the report, "Expenditures on children do not appear to differ very much among single-parent and husband-wife households. What differs is household income levels. As single-parent families have one less potential earner, their total household income is lower and child-rearing expenses consume a greater percentage of income."

References:

United States Department of Agriculture. Center for National Nutrition Policy and Promotion. Expenditures on Children by Families, 2005 Annual Report. Washington D.C., April 2006

**Comparison of
 USDA “Expenditures on Children by Families 2005 Annual Report”
 to
 Texas Child Support Guideline Computations
 Using
 BLS Covered Employment and Wages Data**

The Office of the Attorney General (OAG) used USDA data to estimate the annual costs to raise one, two or three children in a single-parent family home. (Source: USDA Expenditures on Children by Families 2005 Annual Report, Table 7: Estimated annual expenditures on a child by single-parent families, overall United States, 2005. The OAG used Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages data (Series Id: ENU4800050010; State: Texas; Area: Texas – Statewide; Industry: Total, all industries; Owner: Total Covered; Size: All establishment sizes; Type: Average Annual Pay) to determine the statewide average annual income to perform a child support guideline computation. The results of the child support guideline computation were compared to the estimated costs to raise the children to determine the percentage of estimated costs covered by the guideline computation.

For the family described by these computations:

The custodial parent (obligee) would be earning less than \$43,200 per year. (The USDA data indicate the average income in this bracket is \$18,100 per year.)

The non-custodial parent (obligor) would be earning \$40,156 per year (BLS Quarterly Census of Employment and Wages preliminary data for 2005).

1 child			
Age	Annual Cost to Raise 1 Child (By Age)	Annualized Guideline Order (20%) Based on \$40,156 /year	Guideline Order Pays % of Average Expenses:
0 to 2	\$8,208.00	\$6,486.00	79.02%
3 to 5	\$9,288.00	\$6,486.00	69.83%
6 to 8	\$10,422.00	\$6,486.00	62.23%
9 to 11	\$9,639.00	\$6,486.00	67.29%
12 to 14	\$10,327.50	\$6,486.00	62.80%
15 to 17	\$11,394.00	\$6,486.00	56.92%

2 children			
Age	Annual Cost to Raise 2 Children (Both in the Same Age Bracket)	Annualized Guideline Order (25%) Based on \$40,156 /year	Guideline Order Pays % of Average Expenses:
0 to 2	\$11,734.40	\$8,107.50	69.09%
3 to 5	\$13,278.40	\$8,107.50	61.06%
6 to 8	\$14,899.60	\$8,107.50	54.41%
9 to 11	\$13,780.20	\$8,107.50	58.83%
12 to 14	\$14,764.50	\$8,107.50	54.91%
15 to 17	\$16,289.20	\$8,107.50	49.77%

3 children			
Age	Annual Cost to Raise 3 Children (All in the Same Age Bracket)	Annualized Guideline Order (30%) Based on \$40,156 /year	Guideline Order Pays % of Average Expenses
0 to 2	\$12,519.94	\$9,729.00	77.71%
3 to 5	\$14,167.30	\$9,729.00	68.67%
6 to 8	\$15,897.02	\$9,729.00	61.20%
9 to 11	\$14,702.69	\$9,729.00	66.17%
12 to 14	\$15,752.88	\$9,729.00	61.76%
15 to 17	\$17,379.65	\$9,729.00	55.98%

Report Element 2: Deviation Analysis

Methods

The Office of the Attorney General (OAG) used several methods to review the frequency of deviation from child support guidelines. To analyze deviation in Title IV-D cases (those cases handled by the OAG) a Statistical Analysis System (SAS) report was used to capture deviation information recorded on the OAG Child Support automated system. Non-IV-D orders in one county were manually reviewed for deviation. Both reviews focused on orders established since the previous Child Support Guidelines Study. Additionally, surveys were distributed to Assistant Attorneys General working in the Child Support Division and participants at State Bar Family Law Conferences asking them to estimate the frequency and reasons for court orders deviating from guidelines.

IV-D Orders

The SAS analysis reviewed deviation information for 121,667 newly established or modified Title IV-D support orders. According to that analysis 80% percent of the orders comply with the guidelines, 20% do not comply with the guidelines and in 2% of the orders compliance is unknown. The analysis indicated the most common reasons for deviation were:

- agreement of the parties
- use of multifamily guidelines
- additional child support to cover medical insurance
- other reasons

Non-IV-D Orders

Information on deviation in non-IV-D cases is not as readily available as information on IV-D cases. Generally, counties registries and domestic relation offices do not maintain data on deviations similar to that available on the IV-D automated system. In order to collect information on non-IV-D orders, OAG staff went to the Travis County Domestic Relations Office¹ and manually examined 397 orders. Orders that were also on file with the OAG were not included in this analysis. Staff looked for child support findings to explain any deviation from the guidelines as required by §154.130 Texas Family Code. Orders that did not contain findings were assumed to be within guidelines.

Analysis of the non-IV-D orders indicated that 96% of the orders did not have findings and were presumed to be set within guidelines. Only 16 orders or 4% contained findings that the order was set outside guidelines. The most common reasons for deviating from the guidelines were:

- additional child support to cover medical/life insurance
- agreement of the parties
- ability of the non-custodial parent to contribute to child support
- the amount of possession and access to the child
- use of multifamily guidelines

¹ Cecelia Burke, Director, Travis County DRO again graciously allowed OAG staff access to DRO case files. As with previous studies, her staff was courteous and helpful.

Deviation Survey

Child Support Guidelines Deviation Survey forms were distributed to the participants at the 2006 Advanced Family Law Conference (August 2006, San Antonio, Texas). Child Support Guidelines Deviation Survey forms were distributed to the participants at the 2006 Meeting of Title IV-D Associate Judges (July 2006, Austin, Texas). Child Support Guidelines Deviation Survey forms were distributed to the participants at the 2006 Statewide Assistant Attorneys General Conference (July 2006, Houston, Texas).

458 individuals (392 identified as attorneys, 40 identified as judges and 26 not identified) completed surveys. The responses indicated that when orders do deviate from guidelines, it is more often because the calculation pursuant to the guidelines results in a support amount that is too high than that it is too low. The participants were also asked to indicate the most common reasons for deviating from the guidelines when calculating child support awards. A detailed explanation of the responses follows:

Question 1 asked how often their child support orders varied from the amount computed as a percentage of net resources.

76.42% (350) responded that their orders seldom vary (1-30% of orders)
16.38% (75) responded that their orders commonly vary (31-70% of orders)
1.75% (8) responded that their orders usually vary (71-99% of orders)
1.31% (6) responded that their orders never vary (0% of orders)
0.00% (0) responded that their orders always vary (100% of orders)
4.15% (19) had multiple responses or no response

Question 2 asked whether deviation from the percentage of net resources was necessary because the initial computation of a percentage of net resources tended to be too high (and deviation was needed to decrease the final award), or too low (and deviation was needed to increase the final award).

54.80% (251) responded that the initial computation tended to be too high
33.19% (152) responded that the initial computation tended to be too low
12.01% (55) had multiple responses or no response

Question 3 asked the survey participants to select the top five (5) statutory justifications for deviations used when their orders deviated.

74.67% (342)	Section 154.124	Agreements
40.17% (184)	Section 154.123(b)(4)	Possession and access issues
38.43% (176)	Section 154.128 & .129	Multiple families
33.84% (155)	Section 154.122(b)	Unjust, inappropriate
30.79% (141)	Section 154.123(b)(12)	Health & medical expenses

29.26% (134)	Section 154.123(b)(14)	Visitation travel expenses
28.60% (131)	Section 154.123(b)(2)	Ability to contribute
26.86% (123)	Section 154.133	Obligor receives Social Security
19.87% (91)	Section 154.123(b)(7)	Other children
15.72% (72)	Section 154.123(b)(6)	Child care expenses
14.63% (67)	Section 154.123(b)(13)	Extraordinary expenses
14.19% (65)	Section 154.132	Disabled obligor
14.19% (65)	Section 154.183(b)	Obligee pays health insurance
13.76% (63)	Section 154.123(b)(1)	Age or needs of the child
12.23% (56)	Section 154.123(b)(17)	Other, best interest
12.01% (55)	Section 154.126	Over \$6000 net resources
11.57% (53)	Section 154.123(b)(5)	Obligee's net resources
10.70% (49)	Section 154.123(b)(3)	Financial resources available
9.83% (45)	Section 154.123(b)(10)	Other benefits
6.11% (28)	Section 154.123(b)(16)	Debts assumed
4.59% (21)	Section 154.123(b)(9)	College expenses of other children
2.84% (13)	Section 154.123(b)(11)	Other deductions
2.40% (11)	Section 154.123(b)(15)	Business cash flow
1.53% (7)	Section 154.123(b)(8)	Alimony

		All Participants 100.00%			Non-IV-D 55.46%			IV-D 44.54%		
How often do you vary?		#	%	Rank	#	%	Rank	#	%	Rank
1a	a. Never (0%)	6	1.31%	5	6	2.36%	4	0	0.00%	5
1b	b. Seldom (1% to 30%)	350	76.42%	1	201	79.13%	1	149	73.04%	1
1c	c. Commonly (31% to 70%)	75	16.38%	2	36	14.17%	2	39	19.12%	2
1d	d. Usually (71% to 99%)	8	1.75%	4	4	1.57%	5	4	1.96%	4
1e	e. Always (100%)	0	0.00%	6	0	0.00%	6	0	0.00%	5
1	other, multiple or none	19	4.15%	3	7	2.76%	3	12	5.88%	3
		458			254			204		
Usually vary b/c calc is:		#	%	Rank	#	%	Rank	#	%	Rank
2a	a. Too Low	152	33.19%	2	111	43.70%	2	41	20.10%	2
2b	b. Too High	251	54.80%	1	113	44.49%	1	138	67.65%	1
2	other, multiple or none	55	12.01%	3	30	11.81%	3	25	12.25%	3
		458			254			204		
Top 5 reasons to vary:		#	%	Rank	#	%	Rank	#	%	Rank
3a	154.122(b) unjust, inapprop	155	33.84%	4	111	43.70%	2	44	21.57%	9
3b	154.123(b)(1) age, needs	63	13.76%	14	45	17.72%	9	18	8.82%	15
3c	154.123(b)(2) abil to contrib	131	28.60%	7	94	37.01%	4	37	18.14%	11
3d	154.123(b)(3) finan srscs avail	49	10.70%	18	33	12.99%	14	16	7.84%	16
3e	154.123(b)(4) poss and access	184	40.17%	2	110	43.31%	3	74	36.27%	5
3f	154.123(b)(5) obligee net	53	11.57%	17	40	15.75%	12	13	6.37%	19
3g	154.123(b)(6) child care exp	72	15.72%	10	51	20.08%	8	21	10.29%	14
3h	154.123(b)(7) other children	91	19.87%	9	37	14.57%	13	54	26.47%	6
3i	154.123(b)(8) alimony	7	1.53%	24	6	2.36%	24	1	0.49%	23
3j	154.123(b)(9) college exp	21	4.59%	21	20	7.87%	20	1	0.49%	23
3k	154.123(b)(10) other benefits	45	9.83%	19	29	11.42%	15	16	7.84%	16
3l	154.123(b)(11) other deductions	13	2.84%	22	8	3.15%	22	5	2.45%	20
3m	154.123(b)(12) health & med exp	141	30.79%	5	54	21.26%	7	87	42.65%	4
3n	154.123(b)(13) extraord exp	67	14.63%	11	44	17.32%	10	23	11.27%	13
3o	154.123(b)(14) visitation trav exp	134	29.26%	6	89	35.04%	5	45	22.06%	8
3p	154.123(b)(15) busn cash flow	11	2.40%	23	8	3.15%	22	3	1.47%	22
3q	154.123(b)(16) debts assumed	28	6.11%	20	23	9.06%	17	5	2.45%	20
3r	154.123(b)(17) other, best int	56	12.23%	15	23	9.06%	17	33	16.18%	12
3s	154.124 agreements	342	74.67%	1	173	68.11%	1	169	82.84%	1
3t	154.126 net res over 6000	55	12.01%	16	41	16.14%	11	14	6.86%	18
3u	154.128 & .129 mult family form	176	38.43%	3	64	25.20%	6	112	54.90%	2
3v	154.132 disabled obligor	65	14.19%	12	14	5.51%	21	51	25.00%	7
3w	154.133 obligor receives SS	123	26.86%	8	22	8.66%	19	101	49.51%	3
3x	154.183(b) obligee pays hlth ins	65	14.19%	12	26	10.24%	16	39	19.12%	10

New questions were asked for the first time on the 2006 survey.

Question 4 asked if an order must deviate from the initial computation because there are child care expenses incurred by the custodial parent in order to maintain gainful employment (TFC154.123(b)(6)), how do they arrive at the amount of the deviation

52.62% (241) never use this deviation factor.
18.12% (83) add one-half (50%) of the child care expenses to the computed amount
11.79% (54) use some other adjustment
6.11% (28) add the full amount of the child care expenses to the computed amount
11.35% (52) had multiple responses or no response

Question 5 asked whether the survey participants would be in favor of modifying TFC 154.130 to require findings in all child support orders (to document the basis of child support computations for the purpose of future modifications).

52.84% (242) responded "Yes"
41.48% (190) responded "No"
5.68% (26) had multiple responses or no response

Question 6 asked whether survey participants would be in favor of modifying the specific findings in TFC 154.130 to more clearly document the basis of child support computations.

51.97% (238) responded "Yes"
41.48% (190) responded "No"
6.55% (30) had multiple responses or no response

Question 7 asked whether Texas should provide for payments beyond age 18 to support higher education costs.

57.64% (264) responded "No"
36.68% (168) responded "Yes"
5.68% (26) had multiple responses or no response

Sample Survey Form



Adv Fam Law Course August 2006

Texas Child Support Guidelines Deviation Survey 2006

TFC Sec. 111.001. REVIEW OF GUIDELINES

- (a) Prior to each regular legislative session, the standing committees of each house of the legislature having jurisdiction over family law issues shall review and, if necessary, recommend revisions to the guidelines for possession of and access to a child under Chapter 153 and for support of a child under Chapter 154. The committee shall report the results of the review and shall include any recommended revisions in the committee's report to the legislature.
- (b) Not later than December 1 of each even-numbered year, the Title IV-D agency shall submit a report to the standing committees of each house of the legislature having jurisdiction over family law issues for use by the committee in conducting the review required by Subsection (a). The report must contain:
- (1) economic data obtained from the United States Department of Agriculture on the cost of raising children;
 - (2) an analysis of case data on the application of and deviations from the child support guidelines; and
 - (3) a summary of any federal legislation enacted since the date of the last review.

Please assist the Attorney General in complying with the requirements of TFC 111.001(b)(2) by completing this brief survey. Place the completed survey in one of the boxes marked "Texas Child Support Guidelines Deviation Survey" located in the back of the Ballroom, or in the foyer outside the Ballroom. Mail, Fax and E-mail instructions may be found on the back of this page. You may include any comments concerning the guidelines on the back of this page.

To compute child support using the Texas Child Support Guidelines, you must calculate a percentage of net resources. The final order may deviate from the computed amount for many reasons. Please answer the following questions concerning Child Support Guideline deviations based on your experience and the orders you obtain.

- | | |
|---|---|
| <p>1) How often do your child support orders deviate from the amount calculated as a percentage of net resources?
(Circle one)</p> <p>a Never (0%)
b Seldom (1% to 30%)
c Commonly (31% to 70%)
d Usually (71% to 99%)
e Always (100%)</p> | <p>2) When your orders deviate from the amount calculated as a percentage of net resources, it is because the initial computation of a percentage of net resources more often is:
(Circle one)</p> <p>a Too Low (a deviation is needed to increase final award)
b Too High (a deviation is needed to decrease final award)</p> |
|---|---|

3) Select the five (5) most common statutory reasons you use to deviate from the percentage of net resources: **(Circle five)**

TFC Section:	TFC language:
a 154.122(b)	the application of the guidelines would be unjust or inappropriate under the circumstances
b 154.123(b)(1)	the age and needs of the child
c 154.123(b)(2)	the ability of the parents to contribute to the support of the child
d 154.123(b)(3)	any financial resources available for the support of child
e 154.123(b)(4)	the amount of time of possession of and access to a child
f 154.123(b)(5)	the amount of the obligee's net resources, including the earning potential of the obligee...
g 154.123(b)(6)	child care expenses incurred by either party in order to maintain gainful employment
h 154.123(b)(7)	whether either party has the managing conservatorship or actual physical custody of another child
i 154.123(b)(8)	the amount of alimony or spousal maintenance actually & currently being paid or received by a party
j 154.123(b)(9)	the expenses for a son or daughter for education beyond secondary school
k 154.123(b)(10)	whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity
l 154.123(b)(11)	the amount of other deductions from the wage or salary income and from other compensation for personal services of the parties
m 154.123(b)(12)	provision for health care insurance and payment of uninsured medical expenses
n 154.123(b)(13)	special or extraordinary educational, health care, or other expenses of the parties or of the child
o 154.123(b)(14)	the cost of travel in order to exercise possession of and access to a child
p 154.123(b)(15)	positive or negative cash flow from any real and personal property and assets, including a business and investments
q 154.123(b)(16)	debts or debt service assumed by either party
r 154.123(b)(17)	any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents
s 154.124	AGREEMENT CONCERNING SUPPORT
t 154.126	APPLICATION OF GUIDELINES TO NET RESOURCES OF MORE THAN \$6,000 MONTHLY
u 154.128 & .129	COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD
v 154.132	APPLICATION OF GUIDELINES TO CHILDREN OF CERTAIN DISABLED OBLIGORS
w 154.133	APPLICATION OF GUIDELINES TO CHILDREN OF OBLIGORS RECEIVING SOCIAL SECURITY
x 154.183(b)	If the court finds and states in the child support order that the obligee will maintain health insurance coverage for the child at the obligee's expense, the court may increase the amount of child support to be paid by the obligor in an amount not exceeding the total expense to the obligee for maintaining health insurance coverage

There are additional questions on the back.

4) If an order must deviate from the initial computation because there are child care expenses incurred by the custodial parent in order to maintain gainful employment (TFC154.123(b)(6)), how do you arrive at the amount of the deviation?

(Circle the one most commonly used)

- a You never use this deviation factor.
- b You add the full amount of the child care expenses to the initially computed amount
- c You add one-half (50%) of the child care expenses to the initially computed amount
- d You use some other adjustment. (If so, please describe below.)

5) Would you be in favor of modifying TFC 154.130 to require findings in all child support orders (to document the basis of child support computations for the purpose of future modifications)?

(Circle one)

- a Yes
- b No

6) Would you be in favor of modifying the specific findings in TFC 154.130 to more clearly document the basis of child support computations?

(Circle one)

- a Yes
- b No

7) Should the Child Support Guidelines be amended to provide for payments beyond age 18 to support higher education costs?

(Circle one)

- a Yes
- b No

8) Your practice is primarily in:

(Circle one)

- a An urban area
- b A rural area

9) You are:

(Circle one)

- a A Judge or an Associate Judge
- b An Attorney

10) **Optional Comments.** Please use this space to offer any comments concerning changes you feel should be made to the Texas Child Support Guidelines.

Optional

Your Name:

Contact Information:

Place this survey in one of the boxes marked "Texas Child Support Guidelines Deviation Survey" located in the back of the Ballroom or in the foyer outside the Ballroom, or you may return it by:

Mail:	Fax:	*E-mail:
Ted N. White Assistant Attorney General Child Support Division POB 12017 (MC039-2) Austin, Texas 78711-2017	(512) 460-6028	ted.white@cs.oag.state.tx.us *If using e-mail, you may send the question numbers and the letters corresponding to your responses; it is not necessary to send the questions.

Report Element 3: Summary of Federal Legislation Since Last Review

There has been no federal legislation concerning the child support guidelines since the last child support guidelines review in 2002.

Appendix A - 2006 Tax Charts

OFFICE OF THE ATTORNEY GENERAL 2006 TAX CHARTS

Pursuant to § 154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§ 154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

**EMPLOYED PERSONS
2006 TAX CHART**

Monthly Gross Wages	Social Security Taxes		Federal Income Taxes**	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Hospital (Medicare) Insurance Taxes (1.45%)*		
\$100.00	\$6.20	\$1.45	\$0.00	\$92.35
\$200.00	\$12.40	\$2.90	\$0.00	\$184.70
\$300.00	\$18.60	\$4.35	\$0.00	\$277.05
\$400.00	\$24.80	\$5.80	\$0.00	\$369.40
\$500.00	\$31.00	\$7.25	\$0.00	\$461.75
\$600.00	\$37.20	\$8.70	\$0.00	\$554.10
\$700.00	\$43.40	\$10.15	\$0.00	\$646.45
\$800.00	\$49.60	\$11.60	\$9.58	\$729.22
\$892.67***	\$55.35	\$12.94	\$18.85	\$805.53
\$900.00	\$55.80	\$13.05	\$19.58	\$811.57
\$1,000.00	\$62.00	\$14.50	\$29.58	\$893.92
\$1,100.00	\$68.20	\$15.95	\$39.58	\$976.27
\$1,200.00	\$74.40	\$17.40	\$49.58	\$1,058.62
\$1,300.00	\$80.60	\$18.85	\$59.58	\$1,140.97
\$1,400.00	\$86.80	\$20.30	\$72.92	\$1,219.98
\$1,500.00	\$93.00	\$21.75	\$87.92	\$1,297.33
\$1,600.00	\$99.20	\$23.20	\$102.92	\$1,374.68
\$1,700.00	\$105.40	\$24.65	\$117.92	\$1,452.03
\$1,800.00	\$111.60	\$26.10	\$132.92	\$1,529.38
\$1,900.00	\$117.80	\$27.55	\$147.92	\$1,606.73
\$2,000.00	\$124.00	\$29.00	\$162.92	\$1,684.08
\$2,100.00	\$130.20	\$30.45	\$177.92	\$1,761.43
\$2,200.00	\$136.40	\$31.90	\$192.92	\$1,838.78
\$2,300.00	\$142.60	\$33.35	\$207.92	\$1,916.13
\$2,400.00	\$148.80	\$34.80	\$222.92	\$1,993.48
\$2,500.00	\$155.00	\$36.25	\$237.92	\$2,070.83
\$2,600.00	\$161.20	\$37.70	\$252.92	\$2,148.18
\$2,700.00	\$167.40	\$39.15	\$267.92	\$2,225.53
\$2,800.00	\$173.60	\$40.60	\$282.92	\$2,302.88
\$2,900.00	\$179.80	\$42.05	\$297.92	\$2,380.23
\$3,000.00	\$186.00	\$43.50	\$312.92	\$2,457.58
\$3,100.00	\$192.20	\$44.95	\$327.92	\$2,534.93
\$3,200.00	\$198.40	\$46.40	\$342.92	\$2,612.28
\$3,300.00	\$204.60	\$47.85	\$362.08	\$2,685.47
\$3,400.00	\$210.80	\$49.30	\$387.08	\$2,752.82
\$3,500.00	\$217.00	\$50.75	\$412.08	\$2,820.17
\$3,600.00	\$223.20	\$52.20	\$437.08	\$2,887.52
\$3,700.00	\$229.40	\$53.65	\$462.08	\$2,954.87
\$3,800.00	\$235.60	\$55.10	\$487.08	\$3,022.22
\$3,900.00	\$241.80	\$56.55	\$512.08	\$3,089.57
\$4,000.00	\$248.00	\$58.00	\$537.08	\$3,156.92
\$4,250.00	\$263.50	\$61.63	\$599.58	\$3,325.29
\$4,500.00	\$279.00	\$65.25	\$662.08	\$3,493.67
\$4,750.00	\$294.50	\$68.88	\$724.58	\$3,662.04
\$5,000.00	\$310.00	\$72.50	\$787.08	\$3,830.42
\$5,250.00	\$325.50	\$76.13	\$849.58	\$3,998.79
\$5,500.00	\$341.00	\$79.75	\$912.08	\$4,167.17
\$5,750.00	\$356.50	\$83.38	\$974.58	\$4,335.54
\$6,000.00	\$372.00	\$87.00	\$1,037.08	\$4,503.92
\$6,250.00	\$387.50	\$90.63	\$1,099.58	\$4,672.29
\$6,500.00	\$403.00	\$94.25	\$1,162.08	\$4,840.67
\$6,750.00	\$418.50	\$97.88	\$1,224.58	\$5,009.04
\$7,000.00	\$434.00	\$101.50	\$1,290.46	\$5,174.04
\$7,500.00	\$465.00	\$108.75	\$1,430.46	\$5,495.79
\$8,000.00	\$486.70****	\$116.00	\$1,570.46	\$5,826.84
\$8,245.44*****	\$486.70	\$119.56	\$1,639.18	\$6,000.00
\$8,500.00	\$486.70	\$123.25	\$1,710.46	\$6,179.59
\$9,000.00	\$486.70	\$130.50	\$1,850.46	\$6,532.34
\$9,500.00	\$486.70	\$137.75	\$1,990.46	\$6,885.09

\$10,000.00	\$486.70	\$145.00	\$2,130.46	\$7,237.84
\$10,500.00	\$486.70	\$152.25	\$2,270.46	\$7,590.59
\$11,000.00	\$486.70	\$159.50	\$2,410.46	\$7,943.34
\$11,500.00	\$486.70	\$166.75	\$2,550.46	\$8,296.09
\$12,000.00	\$486.70	\$174.00	\$2,690.46	\$8,648.84
\$12,500.00	\$486.70	\$181.25	\$2,830.46	\$9,001.59
\$13,000.00	\$486.70	\$188.50	\$2,973.54	\$9,351.26
\$13,500.00	\$486.70	\$195.75	\$3,115.59	\$9,701.96
\$14,000.00	\$486.70	\$203.00	\$3,278.72	\$10,031.58
\$14,500.00	\$486.70	\$210.25	\$3,447.35	\$10,355.70
\$15,000.00	\$486.70	\$217.50	\$3,614.77	\$10,681.03

Footnotes to Employed Persons 2006 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,300.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction (\$5,150.00).

For a single taxpayer with an adjusted gross income in excess of \$150,500.00, the deduction for the personal exemption is reduced by two-thirds (2/3) of two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$150,500.00. The deduction for the personal exemption is no longer reduced for adjusted gross income in excess of \$273,000.00. For example, monthly gross wages of \$15,000.00 times 12 months equals \$180,000.00. The excess over \$150,500.00 is \$29,500.00. \$29,500.00 divided by \$2,500.00 equals 11.80. The 11.80 amount is rounded up to 12. The reduction percentage is 16.00% (2/3 x 2% x 12 = 16.00%). The \$3,300.00 deduction for one personal exemption is reduced by \$528.00 (\$3,300.00 x 16.00% = \$528.00) to \$2,772.00 (\$3,300.00 - \$528.00 = \$2,772.00). For adjusted gross income in excess of \$273,000.00 the deduction for the personal exemption is \$1,100.00.

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage (\$5.15 per hour) for a 40 hour week for a full year. \$5.15 per hour x 40 hours per week x 52 weeks per year equals \$10,712.00 per year. One-twelfth (1/12) of \$10,712.00 equals \$892.67.

**** For annual gross wages above \$94,200.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2006 maximum Old-Age, Survivors and Disability Insurance tax of \$5,840.40 per person (6.2% of the first \$94,200.00 of annual gross wages equals \$5,840.40). One-twelfth (1/12) of \$5,840.40 equals \$486.70.

***** This amount represents the point where the monthly gross wages of an employed individual would result in \$6,000.00 of net resources.

* * * * *

References Relating to Employed Persons 2006 Tax Chart:

Old-Age, Survivors and Disability Insurance Tax

Contribution Base

Social Security Administration's notice dated October 18, 2005, and appearing in 70 Fed. Reg. 61,677 (October 25, 2005)

Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

Tax Rate

Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

Hospital (Medicare) Insurance Tax

Contribution Base

Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

Tax Rate

Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

Federal Income Tax

Tax Rate Schedule for 2006 for Single Taxpayers

Revenue Procedure 2005-70, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

Standard Deduction

Revenue Procedure 2005-70, Section 3.10(1), which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

Personal Exemption

Revenue Procedure 2005-70, Section 3.17, which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

**SELF-EMPLOYED PERSONS
2006 TAX CHART**

Monthly Net Earnings From <u>Self-Employment *</u>	Social Security Taxes		Federal Income Taxes***	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (12.4%**)	Hospital (Medicare) Insurance Taxes (2.9%**)		
\$100.00	\$11.45	\$2.68	\$0.00	\$85.87
\$200.00	\$22.90	\$5.36	\$0.00	\$171.74
\$300.00	\$34.35	\$8.03	\$0.00	\$257.62
\$400.00	\$45.81	\$10.71	\$0.00	\$343.48
\$500.00	\$57.26	\$13.39	\$0.00	\$429.35
\$600.00	\$68.71	\$16.07	\$0.00	\$515.22
\$700.00	\$80.16	\$18.75	\$0.00	\$601.09
\$800.00	\$91.61	\$21.43	\$3.93	\$683.03
\$900.00	\$103.06	\$24.10	\$13.23	\$759.61
\$1,000.00	\$114.51	\$26.78	\$22.52	\$836.19
\$1,100.00	\$125.97	\$29.46	\$31.81	\$912.76
\$1,200.00	\$137.42	\$32.14	\$41.11	\$989.33
\$1,300.00	\$148.87	\$34.82	\$50.40	\$1,065.91
\$1,400.00	\$160.32	\$37.49	\$59.69	\$1,142.50
\$1,500.00	\$171.77	\$40.17	\$72.02	\$1,216.04
\$1,600.00	\$183.22	\$42.85	\$85.96	\$1,287.97
\$1,700.00	\$194.67	\$45.53	\$99.90	\$1,359.90
\$1,800.00	\$206.13	\$48.21	\$113.84	\$1,431.82
\$1,900.00	\$217.58	\$50.88	\$127.78	\$1,503.76
\$2,000.00	\$229.03	\$53.56	\$141.72	\$1,575.69
\$2,100.00	\$240.48	\$56.24	\$155.66	\$1,647.62
\$2,200.00	\$251.93	\$58.92	\$169.60	\$1,719.55
\$2,300.00	\$263.38	\$61.60	\$183.54	\$1,791.48
\$2,400.00	\$274.83	\$64.28	\$197.48	\$1,863.41
\$2,500.00	\$286.29	\$66.95	\$211.42	\$1,935.34
\$2,600.00	\$297.74	\$69.63	\$225.36	\$2,007.27
\$2,700.00	\$309.19	\$72.31	\$239.30	\$2,079.20
\$2,800.00	\$320.64	\$74.99	\$253.24	\$2,151.13
\$2,900.00	\$332.09	\$77.67	\$267.18	\$2,223.06
\$3,000.00	\$343.54	\$80.34	\$281.13	\$2,294.99
\$3,100.00	\$354.99	\$83.02	\$295.07	\$2,366.92
\$3,200.00	\$366.44	\$85.70	\$309.01	\$2,438.85
\$3,300.00	\$377.90	\$88.38	\$322.95	\$2,510.77
\$3,400.00	\$389.35	\$91.06	\$336.89	\$2,582.70
\$3,500.00	\$400.80	\$93.74	\$350.83	\$2,654.63
\$3,600.00	\$412.25	\$96.41	\$373.50	\$2,717.84
\$3,700.00	\$423.70	\$99.09	\$396.73	\$2,780.48
\$3,800.00	\$435.15	\$101.77	\$419.97	\$2,843.11
\$3,900.00	\$446.60	\$104.45	\$443.20	\$2,905.75
\$4,000.00	\$458.06	\$107.13	\$466.43	\$2,968.38
\$4,250.00	\$486.68	\$113.82	\$524.52	\$3,124.98
\$4,500.00	\$515.31	\$120.52	\$582.60	\$3,281.57
\$4,750.00	\$543.94	\$127.21	\$640.69	\$3,438.16
\$5,000.00	\$572.57	\$133.91	\$698.77	\$3,594.75
\$5,250.00	\$601.20	\$140.60	\$756.86	\$3,751.34
\$5,500.00	\$629.83	\$147.30	\$814.94	\$3,907.93
\$5,750.00	\$658.46	\$153.99	\$873.03	\$4,064.52
\$6,000.00	\$687.08	\$160.69	\$931.11	\$4,221.12
\$6,250.00	\$715.71	\$167.38	\$989.20	\$4,377.71
\$6,500.00	\$744.34	\$174.08	\$1,047.28	\$4,534.30
\$6,750.00	\$772.97	\$180.78	\$1,105.36	\$4,690.89
\$7,000.00	\$801.60	\$187.47	\$1,163.45	\$4,847.48
\$7,500.00	\$858.86	\$200.86	\$1,282.10	\$5,158.18
\$8,000.00	\$916.11	\$214.25	\$1,412.21	\$5,457.43
\$8,500.00	\$973.37	\$227.64	\$1,542.32	\$5,756.67
\$8,849.16*****	\$973.40*****	\$236.99	\$1,638.77	\$6,000.00
\$9,000.00	\$973.40	\$241.03	\$1,680.44	\$6,105.13
\$9,500.00	\$973.40	\$254.42	\$1,818.56	\$6,453.62

\$10,000.00	\$973.40	\$267.82	\$1,956.69	\$6,802.09
\$10,500.00	\$973.40	\$281.21	\$2,094.81	\$7,150.58
\$11,000.00	\$973.40	\$294.60	\$2,232.94	\$7,499.06
\$11,500.00	\$973.40	\$307.99	\$2,371.06	\$7,847.55
\$12,000.00	\$973.40	\$321.38	\$2,509.19	\$8,196.03
\$12,500.00	\$973.40	\$334.77	\$2,647.31	\$8,544.52
\$13,000.00	\$973.40	\$348.16	\$2,785.44	\$8,893.00
\$13,500.00	\$973.40	\$361.55	\$2,925.62	\$9,239.43
\$14,000.00	\$973.40	\$374.94	\$3,065.80	\$9,585.86
\$14,500.00	\$973.40	\$388.33	\$3,219.03	\$9,919.24
\$15,000.00	\$973.40	\$401.72	\$3,384.25	\$10,240.63

Footnotes to Self-Employed Persons 2006 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of \$2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:
 $\$2,500.00 \times 92.35\% \times 12.4\% = \286.29

(ii) Hospital (Medicare) Insurance Taxes:

$\$2,500.00 \times 92.35\% \times 2.9\% = \66.95

*** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,300.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction (\$5,150.00).

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$11,680.80 ($\$94,200.00 \times 12.4\% = \$11,680.80$). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$4,820.67 ($\$180,000.00 \times .9235 \times 2.9\% = \$4,820.67$). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals \$16,501.47 ($\$11,680.80 + \$4,820.67 = \$16,501.47$). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of \$16,501.47 or \$8,250.74.

For a single taxpayer with an adjusted gross income in excess of \$150,500.00, the deduction for the personal exemption is reduced by two-thirds (2/3) of two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$150,500.00. The deduction for the personal exemption is no longer reduced for adjusted gross income in

excess of \$273,000.00. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The \$180,000.00 amount is reduced by \$8,250.74 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of \$171,749.26. The excess over \$150,500.00 is \$21,249.26. \$21,249.26 divided by \$2,500.00 equals 8.50. The 8.50 amount is rounded up to 9. The reduction percentage is 12% ($2/3 \times 2\% \times 9 = 12\%$). The \$3,300.00 deduction for one personal exemption is reduced by \$396.00 ($\$3,300.00 \times 12\% = \396.00) to \$2,904.00 ($\$3,300.00 - \$396.00 = \$2,904.00$). For adjusted gross income in excess of \$273,000.00 the deduction for the personal exemption is \$1,100.00.

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above \$94,200.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2006 maximum Old-Age, Survivors and Disability Insurance tax of \$11,680.80 per person (12.4% of the first \$94,200.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals \$11,680.80). One-twelfth (1/12) of \$11,680.80 equals \$973.40.

***** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in \$6,000.00 of net resources.

* * * * *

References Relating to Self-Employed Persons 2006 Tax Chart:
Old-Age, Survivors and Disability Insurance Tax

Contribution Base

Social Security Administration's notice dated October 18, 2005, and appearing in 70 Fed. Reg. 61,677 (October 25, 2005)

Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

Tax Rate

Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

Deduction Under Section 1402(a)(12)

Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

Hospital (Medicare) Insurance Tax

Contribution Base

Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

Tax Rate

Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

Deduction Under Section 1402(a)(12)

Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

Federal Income Tax

Tax Rate Schedule for 2006 for Single Taxpayers

Revenue Procedure 2005-70, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

Standard Deduction

Revenue Procedure 2005-70, Section 3.10(1), which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

Personal Exemption

Revenue Procedure 2005-70, Section 3.17, which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005

Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

Deduction Under Section 164(f)

Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

Appendix B: Summary of Statute or Case Law on Child Support for Higher Education

Termination of Support at Age of Majority.

All state child support guidelines include an age at which financial support normally ends, but nearly all allow for deviations in certain cases. Most involve children's college or vocational education expenses or children who have special needs and are unlikely to become self-supporting. Frequently, state legislators build these "exceptions to the rule" into their guidelines.

Child Support for Higher Education.

In 1993, the U.S. Commission on Interstate Child Support recommended that states have laws providing courts with discretionary power to order post-secondary support in suitable cases. Accordingly, no state specifically prohibits the ordering of post-secondary support if both parties agree to it. However, since no uniform policy exists regarding post secondary educational child support, each state treats the issue differently. Some states have specific statutory provisions providing the court with discretionary authority to order post-secondary support upon the motion of a party or its own motion. In the absence of such provision, the court may not unilaterally order post-secondary support. To date, seventeen states* have included provisions within their own individual statute or case law that provide the court with discretionary authority to order post-secondary support.

In Texas, the law is silent with regard to child support for higher education. Although Texas Family Code Ann. §154.002 allows extension of support beyond age 18 if the child is enrolled in a joint high school/junior college program, no statute or case law holds parents to a duty to provide college support unless there is an explicit agreement to do so.

*Note: See chart on following page.

References:

National Conference of State Legislatures. "Child Support And Educational Expenses Past The Age Of 18." NCSL Legisbrief, April/May 1999, vol. 7, no.24.
www.ncsl.org/programs/pubs/lbriefs/legis724.htm.

National Conference of State Legislatures chart. Termination of Child Support and Support Beyond Majority. <http://www.ncsl.org/programs/cyf/educate.htm>

Post-secondary Support Table

State	Duty to Provide College Support
Colorado	Colo. Rev. Stat. § 14-10-115(1.5)(b) provides that if the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute to the education expenses of the child. This section only applies to orders established prior to July 1, 1997.
Connecticut	§ 46b-56c The court may enter an educational support order for up to a total of four full academic years at an institution of higher learning for a child who is under twenty-three years of age. The court may not enter an educational support order for post-secondary education unless the court finds as a matter of fact that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were intact.
Hawaii	Haw. Rev. Stat. § 580-47 provides that courts may order support of adult children for college.
Illinois	750 Ill. Law. Con. Stat. § 5/513 provides that the court may make provisions for the education expenses of the children of the marriage, whether of minor or majority age. Specifies that post-secondary support terminates when the child receives a baccalaureate degree.
Indiana	Ind. Code § 31-16-6-2 provides that a child support order may include sums for the child's education at institutions of higher learning, where appropriate. Ind. Code § 31-16-6-6 provides that duty to support a child ceases when the child becomes 21.
Iowa	Iowa Code § 598.21F provides that the court may order a postsecondary education subsidy if good cause is shown.
Massachusetts	Mass. Gen. Laws. Ch. 208, § 28 allows a court order for support for a child between 21 and 23 who is domiciled in the home of a parent and principally dependent upon that parent because the child is enrolled in an educational program excluding educational costs beyond an undergraduate degree.
Minnesota	Minn Stat § 518.551 Subd. 5d. Parties may agree to designate a sum of money above any court-ordered child support as a trust fund for the costs of post-secondary education. No provision for post-secondary educational support.
Missouri	Mo. Rev. Stat. § 452.340.5 provides that if the child is enrolled in an institution of higher education, the parental support obligation shall continue until the child completes his education or until the child reaches the age of 22, whichever occurs first.
New Jersey	Newburgh v. Newburgh, 88 N.J. 529, 443 A.2d 1031 (1982) held that the court has jurisdiction to award a payment of support and expenses of a child attending college even though the child has reached the age of majority.
New York	NYC CLS Family Ct Act § 413 (1)(c)(7) provides that the court may award educational expenses, such as for post-secondary or private school or for special enriched education for a child under the age of twenty-one.
Oregon	Or. Rev. Stat. § 107.108 authorizes a court to order a parent to pay support for a child regularly attending post-secondary education to age 21.

Pennsylvania	23 Pa C.S § 4327 – Court may order either or both parents to provide for educational costs, including postsecondary education but not beyond 23 rd birthday. Section describes relevant factors to consider when calculating costs and circumstances under which a parent cannot be ordered to pay educational costs.
Rhode Island	1998 R.I. Pub. Laws, §15-8-18 allows court to consider the need and capacity of the child for higher education in determining amount and time period of support order.
Utah	Utah Code Ann. § 15-2-1 provides that in divorce actions, courts may order support to age 21. This provision does not mention post-secondary education.
Washington	Wash. Rev. Code § 26.19.090 provides that the court may, in its discretion and according to enumerated factors, award college support. College support may not be awarded past the child 23rd birthday.
West Virginia	W. Va. Code § 48-11-103 –previous enactment of this section allowed awards for educational and related expenses for an adult child accepted or enrolled and making satisfactory progress at a certified or accredited college. Most recent version does not provide for educational expenses but states that orders under previous enactment are valid.

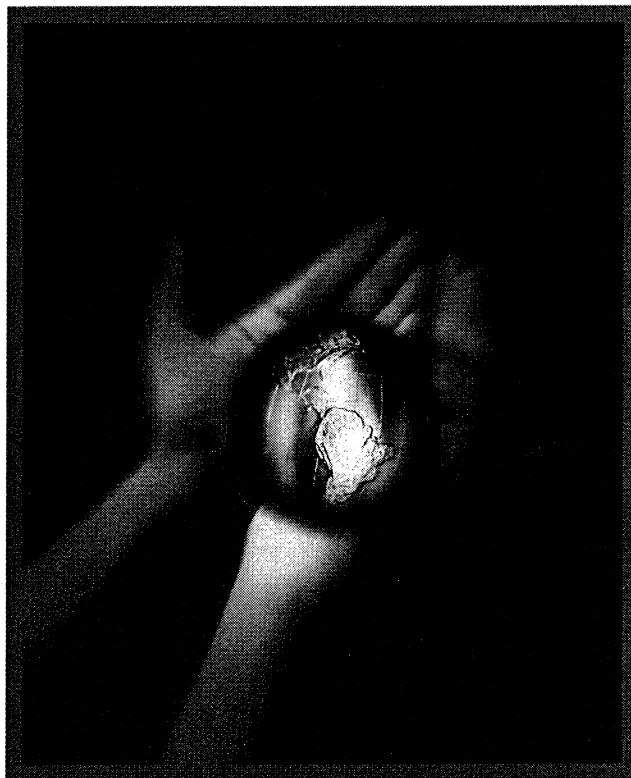
Texas Juvenile Probation Commission

Texas Juvenile Probation Commission
**JOINT HOUSE COMMITTEE ON
JUVENILE JUSTICE AND FAMILY ISSUES
AND CORRECTIONS**

March 22, 2006

Texas Juvenile Probation Commission

Vicki Spriggs, Executive Director
4900 North Lamar Boulevard, 5th Floor East
P.O. Box 13547
Austin, Texas 78711
512.424.6700
www.tjpc.state.tx.us



"There are two lasting bequests we can give our children...one is roots, the other is wings."

-Hodding Carter, Jr., Journalist

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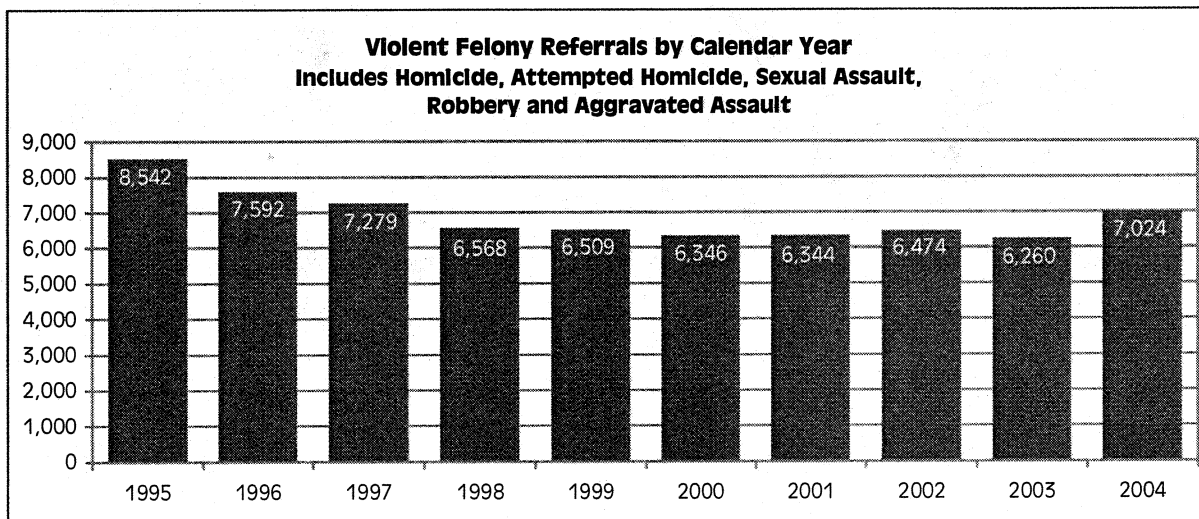
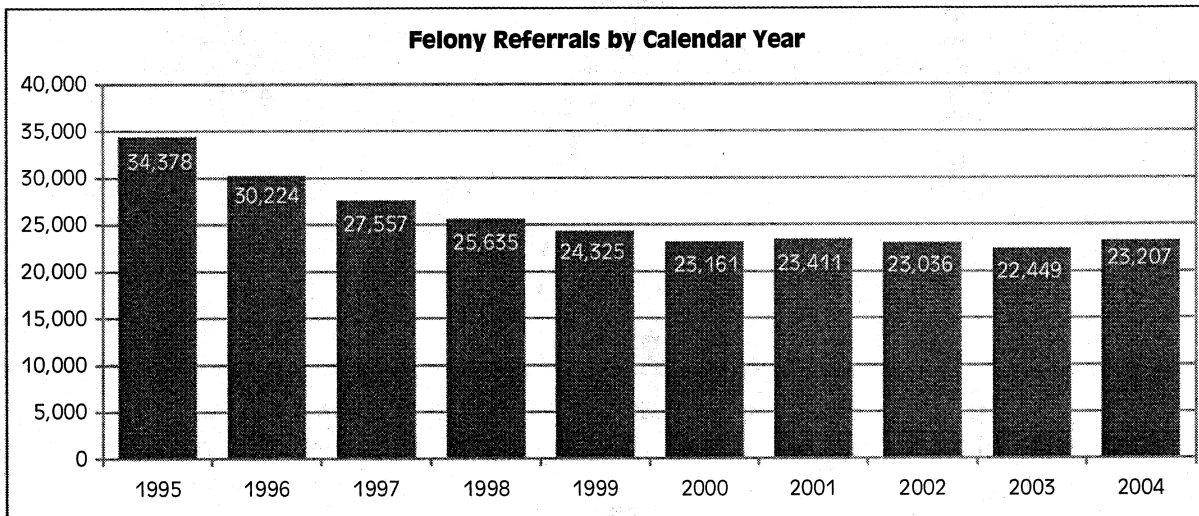
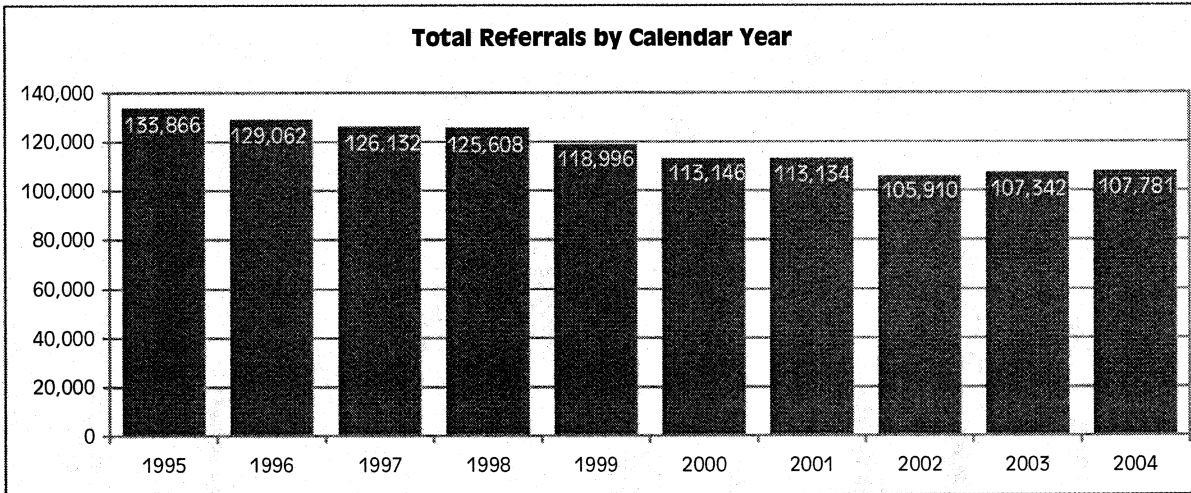
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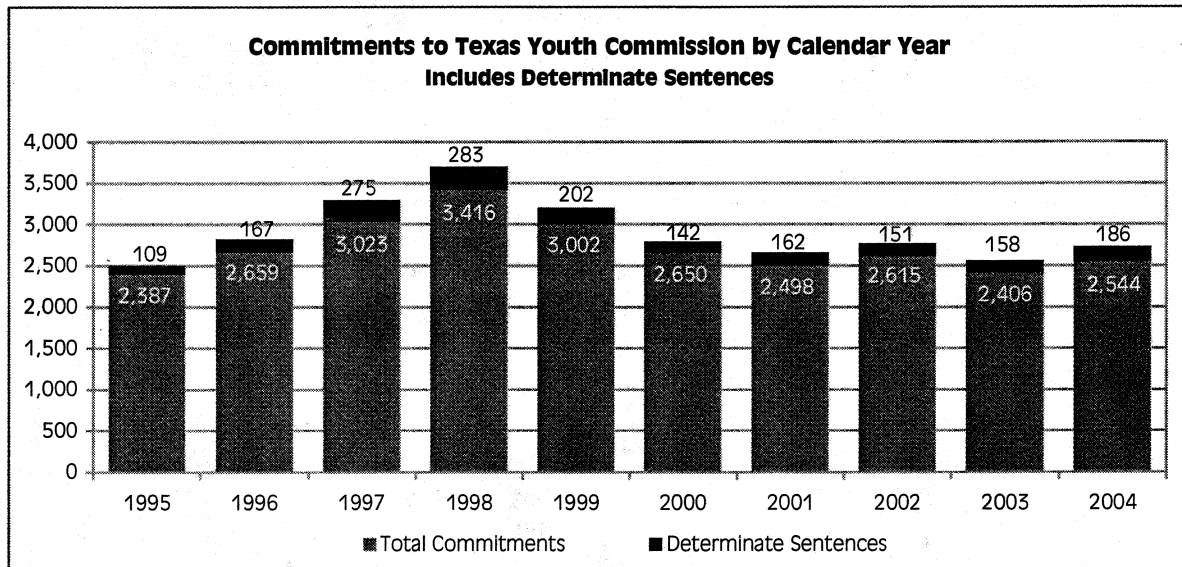
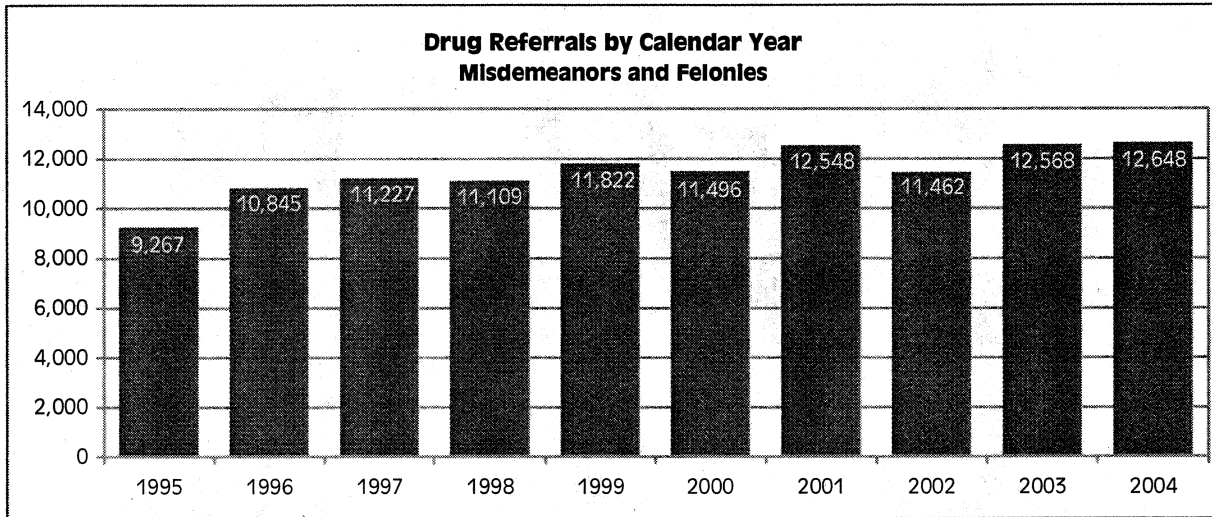
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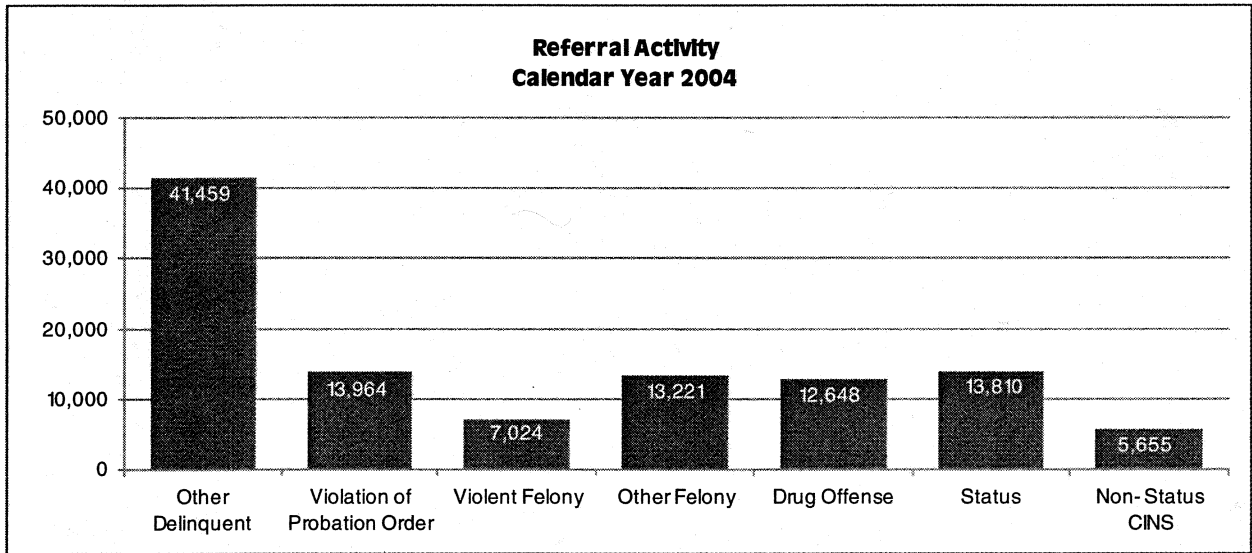
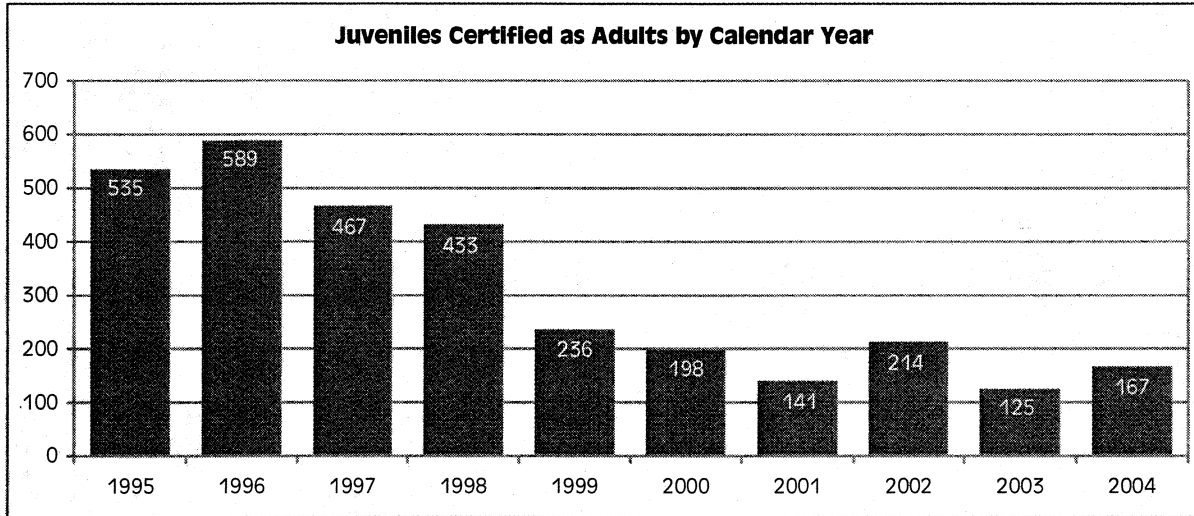
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Statewide Statistical Information







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Juvenile Justice Alternative Education Programs

Juvenile justice alternative education programs (JJAEPs) are designed to provide educational services for youth that have been expelled from the public school system. The mission of the Juvenile Justice Alternative Education Programs is to enable students to perform at grade level.

Bell	Bexar	Brazoria	Brazos	Cameron
Collin	Dallas	Denton	El Paso	Fort Bend
Galveston	Harris	Hidalgo	Jefferson	Johnson
Lubbock	McLennan	Montgomery	Nueces	Smith
Tarrant	Taylor	Travis	Webb	Wichita
Williamson				

Program Statistics

MANDATORY EXPULSIONS				
SCHOOL YEAR	2001-2002	2002-2003	2003-2004	2004-2005
<i>Student Entries</i>	1,732	1,826	2,209	2,451
<i>% Growth</i>	8.7%	5.4%	21.0%	11.0%
DISCRETIONARY EXPULSIONS				
SCHOOL YEAR	2001-2002	2002-2003	2003-2004	2004-2005
<i>Student Entries</i>	4,477	4,126	4,234	4,277
<i>% Growth</i>	7.1%	-7.8%	2.6%	1.0%
OTHER				
Students that are non-expelled students placed in a JJAEP through juvenile court, adult court or a school district.				
SCHOOL YEAR	2001-2002	2002-2003	2003-2004	2004-2005
<i>Student Entries</i>	1,039	955	639	547
<i>% Growth</i>	-2.0%	-8.1%	-31.7%	-14.0%

JJAEP Mandatory Attendance Days Actual Days of Attendance by School Year

	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June
2002 - 2003	3,633	7,827	9,819	8,626	7,722	7,898	8,652	8,572	12,262	13,514	497
2003 - 2004	3,922	7,722	9,454	8,309	8,855	10,201	12,607	13,606	16,733	16,715	0
2004 - 2005	6,818	12,234	13,552	13,145	10,112	11,042	13,001	11,836	16,113	16,639	70
2005 - 2006	6,328	10,369	12,214	12,140	9,247	12,249	14,819				

- TJPC reimburses mandatory student's attending days in the JJAEP at the rate of \$59 per day.
- The 79th Texas Legislative session appropriated an increase of \$2.1 million for the 2007 and 2008 biennium to accommodate the anticipated rise in mandatory attendance days. An additional \$400,000 was also appropriated for a supplemental appropriation request to accommodate the dramatic increase in mandatory student attendance days during the 2004 – 2005 school year.

**JJAEP Projected Mandatory Attendance Days
Difference by Month to Month Growth**

	May / Aug	Aug / Sept	Sept / Oct	Oct / Nov	Nov / Dec	Dec / Jan	Jan / Feb	Feb / Mar	Mar / Apr	April / May
2002 – 2003	-73.12%	115.44%	25.45%	-12.15%	-10.48%	2.28%	9.55%	-0.92%	43.05%	10.21%
2003 – 2004	-76.54%	96.89%	22.43%	-12.11%	6.57%	15.20%	23.59%	7.92%	22.98%	-0.11%
2004 – 2005	-59.02%	79.44%	10.77%	-3.00%	-23.07%	9.20%	17.74%	-8.96%	36.14%	3.26%
2005 – 2006	-61.97%	63.86%	17.79%	-0.61%	-23.83%	32.46%	20.98%			
Average	-67.66%	88.91%	19.11%	-6.97%	-12.70%	14.79%	17.97%	-0.65%	34.06%	4.46%

- Mandatory student attendance days for January and February of 2006 are higher than ever before.

**JJAEP Projected Mandatory Attendance Days
School Year 2005 – 2006**

	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	Days	Funding
Scenario 1	6,328	10,369	12,214	12,140	9,247	12,250	14,819	14,723	19,737	20,618	132,444	\$7,814,219
Scenario 2	6,328	10,369	12,214	12,140	9,247	12,250	14,819	15,993	22,878	25,213	141,450	\$8,345,578
Scenario 3	6,328	10,369	12,214	12,140	9,247	12,250	14,819	14,683	18,057	18,037	128,143	\$7,560,454

- Scenario 1** Based on average monthly growth during three year period
- Scenario 2** Based on largest monthly growth during three year period
- Scenario 3** Based on lowest monthly growth during three year period

- TJPC was appropriated \$8,187,641 for Fiscal Year 2006. \$500,000 is set aside out of the appropriated amount as grant funds.
- If scenarios 1 and 2 hold true, attendance days may exceed the appropriated amount.

Mental Health Issues and Programs

- National estimates of youth in the juvenile justice system with diagnosable mental health disorders range from 50% to 75%, with approximately 20% having a serious mental health disorder.
- In 2001, the 77th Texas Legislature authorized TJPC to design a mental health screening instrument to be used by all juvenile probation departments. The Commission selected the Massachusetts Youth Screen Instrument, Second Version (MAYSI-2) after extensive research.
- In fiscal year 2005, approximately 14,977 or 16.9% of all referrals screened met the established guidelines for further mental health assessment.

Prevalence of Mental Illness

	Number Supervised	Estimated Mentally III*		Mentally III Receiving Mental Health Services		Mentally III <u>Not</u> Receiving Mental Health Services	
		n	%	n	%	n	%
FY 2001	69,300	17,053	24.6%	5,235	30.7%	11,818	69.3%
FY 2002	70,536	18,139	25.7%	6,390	35.2%	11,749	64.8%
FY 2003	71,075	18,583	26.1%	6,821	36.7%	11,762	63.3%
FY 2004	71,461	18,929	26.5%	6,208	32.8%	12,721	67.2%

- Estimated Mentally III is defined as offenders age 10-17 who have ever had a recorded contact with Texas' public mental health system.

Prevalence of Mental Illness Fiscal Year 2004

	Percent Estimated Mentally III	Percent Mentally III Receiving Mental Health Services
Not Detention or Placement	19.7%	23.1%
Detention	37.5%	41.7%
Other Placement	55.9%	45.1%
Secure Placement	59.3%	60.3%
All Supervised	26.5%	32.8%

Children of Rage and Sorrow — More Children are Battling Mental Illness

Web Posted: 03/19/2006 12:00 AM CST

**Marina Pisano
News Staff Writer
San Antonio Express News**

It's 3 o'clock and following her afternoon ritual, Kim Smith carefully places a little blue pill on the table in front of son Tyler, "the magic pill," she calls it, a talisman of the peace, healing and normalcy they both long for and seek every day.

Tyler, a thin, serious-looking boy with dark, short-cropped hair, just finished a weekly session with his therapist, and he has been spinning in a swivel chair and pacing the room at the Southwest Mental Health Center, in constant motion. He quickly downs the pill with a drink, and everyone waits the 30 minutes or so it takes to kick in.

This is only one talisman, one of 16 pills, half a dozen medications the 10-year-old takes every day. His condition was diagnosed as bipolar disorder, manic-depression, at 6 — his mother thinks he was sick long before that. He also has oppositional defiant disorder, ODD, and like about 90 percent of youth with bipolar disorder, he suffers from attention-deficit/hyperactivity disorder. He is on two mood stabilizers, along with the stimulant Adderall for the ADHD (the blue pill) and several sleep medications, the last because without them, he can go for days without sleeping. In addition to the psychiatric medications, he takes medicine for asthma and for severe migraine headaches that send him to his dark, quiet bedroom until the pain and nausea subside.

It's a mountain of trouble for a little boy to deal with, and even with medications and therapy, Tyler has terrible days, so bad that already in his young life, he has been hospitalized at Southwest 17 times, with several stays lasting 90 days.

Tyler's story is a disturbing glimpse into the far- from-carefree lives experienced by millions of American youngsters and their families dealing with serious illnesses such as major depression, bipolar disorder, a raft of anxiety disorders and, in very rare instances, even early onset of the devastating mental illness, schizophrenia.

A Harvard Medical School researcher last year found that half of all cases of mental illness start by age 14, often with mild symptoms that go untreated and turn into serious disorders. According to the Surgeon General's Report on Mental Illness, one in 10 American children has a mental disorder severe enough to cause impairment.

The report lays out a public crisis in mental health care, including an acute shortage of child and adolescent psychiatrists and fragmented, limited treatment services, in which only one in five of these children gets the specialized care he or she needs. In some tragic cases, parents without the money or health insurance to cover needed psychiatric residential treatment are relinquishing custody of their children to state child protective services or the juvenile justice system to get them treated. About 250 families a year in Texas do this, according to the Mental Health Association in Texas.

Some specialists fear psychiatric disorders, which are linked to both genetic and environmental factors, are increasing in children. Perhaps most astonishing and controversial for many, researchers studying the early onset of depressive disorders and bipolar disorder are finding them in preschoolers — 3- to 6-year-olds. Clinicians tell of 5-year-olds with depression who talk about killing themselves.

Beyond the rage

When Tyler was just a toddler, he had raging temper tantrums with kicking and screaming that lasted for hours, episodes that went way beyond normal childhood tantrums.

By kindergarten, his condition was diagnosed as attention-deficit/hyperactivity disorder. But as his mother Kim Smith recounts, treating the ADHD with Ritalin only made his manic symptoms worse. He bloodied one child's nose and stabbed another kindergartener in the side with a pencil. After he was suspended for the third time for aggressive outbursts in first grade, she was desperate and camped out in the doctor's busy waiting room until he could see the boy. While they waited, Tyler kicked a patient. He was hospitalized at Southwest Mental Health Center, where his bipolar disorder was diagnosed. It was the beginning of help and understanding but not the end of Tyler's manic episodes.

He once wrecked a classroom, and he can be violent at home as well. "He has punched me. He has hit me. He has kicked me. He has bit me. You name it, he's done it," Smith says. "But I don't get mad. You just have to know that at that point in time, he's not in control of his body."

There are times she has to physically restrain the 10-year-old, sitting on him and holding his crossed arms down on his chest. And there are the calls at work from home or school when he's out of control.

Mornings are worst. Having gone all night without medication, Tyler is bouncing off the walls, and Smith needs to give him his pills immediately, so he is stable by the time he gets to school. As bad as the mania is, his depressive cycles are heartbreaking. "It's awful to see him so sad," his mom says.

He struggles with his emotions. "Sometimes I get mad over nothing, and sometimes I get mad at somebody who does something to me. A lot of times, I get real bored, or I just get really sad because I think about my past."

Like many with his disorder and severe mood swings, he finds it difficult to make and keep friends, so he spends a lot of time playing computer games, and he and mom enjoy going to movies.

A single parent working full time on the night shift at a hospital and going to school as well, Smith was living with her parents but now has her own apartment. Tyler has been making progress recently, moving from a special-education classroom to a regular fifth-grade class at Oak Grove Elementary School. He's getting good grades and loves math. It helps that his father, Paul Koberstein, is doing more with him lately. The boy's face brightens as they meet one afternoon at a fast-food restaurant.

The severity of it all

The National Institute of Mental Health reports that, overall, disorders such as bipolar appear to be more severe in children and adolescents than adults.

The recognition of childhood disorders took some time.

"Twenty or 30 years ago, psychiatrists and other physicians believed that childhood was a happy time," says Thomas Anders, president of the American Academy of Child & Adolescent Psychiatry and a professor at the University of California at Davis. "We had a belief that psychiatric disorders didn't begin until a child reached puberty or after. That wasn't based on science. It was based on the philosophical sense that children are always happy."

When troubled children acted out or were unmanageable, they were simply labeled "bad kids." Or the blame fell on bad parenting. That misperception was changed by science, controlled clinical trials and epidemiological studies with children. "We began to see that these disorders — anxiety disorders, depression, bipolar disorder, obsessive compulsive disorder — were present in younger and younger children. Research changed practice," Anders says.

Tristan's story

Wendy Glover-Strom received the kind of call parents of children with mental disorders dread— it was from the school psychologist telling her to "come quickly, your son is threatening to stab himself with a knife."

By late afternoon that day in early March, Tristan is in Southwest Mental Health Center. By 8:30, after intake processing, psychiatric evaluation and a wrenching, emotional parting with his mother, he is admitted into a locked unit, where he is watched and checked every 15 minutes, for 24 hours.

"You have to take these suicide threats seriously," explains Juan Zavala, the psychiatry fellow on call. "That's because he's not in control of his impulses. The impulsivity with bipolar disorder can be overwhelming."

Tristan, who turns 9 this week, was acting out aggressively at 4 and 5. By the time his bipolar disorder was diagnosed at age 7, he was suicidal with a plan to get a gun from a relative's home and put a bullet in his stomach. He hears voices telling him whom he should kill and, at various times, has threatened to kill his mother, his little sister and stepfather. In the throes of mania, he kicks, punches, bites and tears things apart.

Still, "I'm not afraid of him," Glover-Strom says. "When he's rapid cycling, he's like a demon. I hate to say that word because they don't understand why they're doing what they're doing. When he's not rapid cycling, he's a very loving child."

When the boy is totally out of control, mom restrains him with hug holds for periods lasting from minutes to hours. "Ten or 12 restraints a month, that's mild," she says. After violent outbursts, Tristan goes into a depressive state and says he's sorry. Along with bipolar, he has ODD and ADHD. He suffers from paranoia and says people hate him. When he's stable, he's bright and chatty, but like Tyler and many other children with mental disorders, he has trouble making friends.

The family lives in Castroville, and Tristan is in third grade in a behavioral class at LaCoste Elementary School in the Medina Valley district. He's reading considerably above the grade level.

After hospitalization for a difficult two weeks in which Tristan's medication had to be readjusted several times because of side effects, the boy finally went home. But for Glover-Strom, who works at the Center for Health Care Services, the public mental-health provider in Bexar County, the stress of caring for her son is unrelenting. So is the anguish of seeing Tristan struggle with the illness.

"I asked him once what was going on inside him," she says. "He said, 'Mommy, there's a war raging in my brain, and there's a good general and a bad general, and the bad general is trying to wipe out all the good. I hate my life. I want to die.'"

Possible causes

It has been discussed but not proven that childhood disorders might be getting worse because of a genetic effect called "anticipation" in which certain genes are magnified down the generations. Each cohort of children born is more susceptible to earlier onset of mood disorders and to a more severe form of it.

Some psychiatrists believe these pediatric cases have always been there and better diagnostic tools and more awareness — despite the stigma of mental illness — are bringing more of them forward. But others also cite greater pressures on kids. "I believe life has become more stressful for young, growing children. Kids are growing up in a much more stressed environment," Anders says. "These are multiple gene disorders and, like diabetes, not everyone with the gene gets diabetes. But if they have the genetic vulnerability to become depressed or anxious or obsessive compulsive, it will express itself in the kind of social pressure cooker we are putting our children in."

These children desperately need treatment, and without it, they can wind up in the juvenile justice system, later adult prisons, or face a lifetime of failure in their personal and work lives. But treatment is fraught with unanswered questions. Fears about an increased risk of suicide led the Food and Drug Administration to issue black box warnings on all antidepressants, which in the absence of large-scale clinical trials in youngsters, are not approved for children. The exception is Prozac, which is FDA approved for children older than 8. Antidepressants are used "off label" by physicians, who look at clinical pediatric experience, extrapolate from adult data and adjust dosages. At this writing, the FDA also is looking at pediatric cardiovascular concerns with widely prescribed Ritalin.

University of Maryland researcher Julie Zito in 2000 found the use of psychotropic medications in children, 2 to 4, had jumped dramatically from 1990 to 1995, when some 150,000 preschoolers were on them. That increase and the dearth of studies on children have raised alarms about both short-term effects and possible long-term consequences for developing bodies.

About 2.3 million Americans have bipolar disorder, but with solid statistics on children lacking, it's not clear how many kids suffer the rapid cycling, sometimes from one hour to the next, of manic and depressive moods marked by irritability, aggression, grandiose beliefs and even thoughts of suicide. The Child and Adolescent Bipolar Foundation cites studies showing about one-third of the children and adolescents who suffer from depression have early onset bipolar without the mania.

The issue is more than academic because early identification and early treatment can ease the severity of manic and depressive episodes in the future. Researcher Joan Luby, an associate professor of child psychiatry at Washington University School of Medicine in St. Louis who has found bipolar disorder in preschoolers, says treatment for the very young doesn't necessarily mean medications. It can start with psychotherapy.

Bipolar disorder diagnosis in 8- or 9-year-olds remains controversial. Critics of psychiatric "labeling" of children and anti-psychiatry groups such as the Church of Scientology oppose the screening and diagnosis of the disorders in children. But even within psychiatry, there are reservations about the bipolar diagnosis, which some say has become almost trendy. Claudio Cepeda, a child and adolescent psychiatrist at Southwest Mental Health Center, believes the diagnosis of bipolar disorder is being "abused." And child and adolescent psychiatrist Jon McClellan of the University of Washington at Seattle is also critical of the widespread diagnosis in children.

"There's no doubt that there's lots of kids that have trouble regulating their moods or behavior, and they might have explosive and angry outbursts," McClellan allows. "It just never was the case that we used to call that bipolar disorder. Simply by calling it the same name as the adult disorder doesn't mean that it's the same thing or that the same treatments may work or are indicated. I think it (the diagnosis) is being used so broadly now that it has lost a lot of its meaning."

Actually, medications for bipolar disorder do tend to help children with explosive behavior and anger, and McClellan, who heads the state hospital in Lakewood, Wash., says that leads some to think they've made the correct diagnosis. The diagnosis may be controversial, but parents like Kim Smith have no doubt. "I've done a lot of research into this, and it all comes back to bipolar disorder."

When you ask her what's the hardest thing about Tyler's illness, her eyes tear up. "He gets to the point where he says, 'I don't want to be like this anymore. I want to get better.' That's the hardest part. Watching him try to deal with it."

MISSION OF TEXAS STATE GOVERNMENT

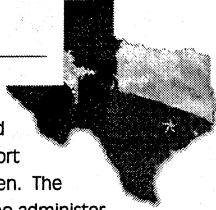
Texas State Government must be limited, efficient and completely accountable. It should foster opportunity and economic prosperity, focus on critical priorities and support the creation of strong family environments for our children. The stewards of the public trust must be men and women who administer state government in a fair, just and responsible manner. To honor the public trust, state officials must seek new and innovative ways to meet state government priorities in a fiscally responsible manner.

Aim high...we are not here to achieve inconsequential things!

PHILOSOPHY OF TEXAS STATE GOVERNMENT

The task before all state public servants is to govern in a manner worthy of this great state. We are a great enterprise and as an enterprise we will promote the following core principles:

- First and foremost, Texas matters most. This is the overarching, guiding principle by which we will make decisions. Our state and its future is more important than party, politics or individual recognition;
- Government should be limited in size and mission, but it must be highly effective in performing the tasks it undertakes;
- Decisions affecting individual Texans, in most instances, are best made by those individuals, their families and the local government closest to their communities;
- Competition is the greatest incentive for achievement and excellence. It inspires ingenuity and requires individuals to set their sights high. And just as competition inspires excellence, a sense of personal responsibility



drives individual citizens to do more for their future and the future of those they love;

- Public administration must be open and honest, pursuing the high road rather than the expedient course. We must be accountable to taxpayers for our actions;
- State government has a responsibility to safeguard taxpayer dollars by eliminating waste and abuse, and providing efficient and honest government; and
- Finally, state government should be humble, recognizing that all its power and authority is granted to it by the people of Texas and those who make decisions wielding the power of the state should exercise their authority cautiously and fairly.

TEXAS PUBLIC SAFETY AND CRIMINAL JUSTICE PRIORITY GOALS AND BENCHMARKS

The statewide elements shape and guide all other elements of individual agency strategic plans. These elements articulate the state leader's vision for the future of Texas while focusing on the broad direction of state government, including the policy areas of core values and principles and ultimate ends toward which state government directs its efforts.

STATE PRIORITY GOAL FOR PUBLIC SAFETY AND CRIMINAL JUSTICE AGENCIES: To protect Texans by enforcing laws quickly and fairly; Maintaining state and local emergency, terrorism and disaster preparedness and response plans; Policing public highways; and confining, supervising and rehabilitating offenders.

RELEVANT STATEWIDE BENCHMARKS FOR TJPC:

- Juvenile violent crime arrest rate per 100,000 population; and
- Felony probation revocation rate.

TEXAS JUVENILE PROBATION COMMISSION MISSION

The Texas Juvenile Probation Commission (TJPC) works in partnership with local juvenile boards and juvenile probation departments to support and enhance juvenile probation services throughout the state by providing funding, technical assistance and training; establishing and enforcing standards; collecting, analyzing and disseminating information; and facilitating communications between state and local entities.

TEXAS JUVENILE PROBATION COMMISSION PHILOSOPHY

TJPC values a high degree of personal responsibility and professionalism. We promote staff growth and development; facilitate quality interaction among staff, field and related entities; foster teamwork; respect diversity; and encourage participatory decision-making and innovative approaches to problem solving. TJPC creates an environment that recognizes the importance of family in the staff's personal lives and in their interactions with each other. The actions of our agency impact the juvenile justice field, children, the public and state government entities.

With respect to local juvenile justice practitioners,

TJPC values:

- the need for local solutions for local problems;
- limited and efficient state government;
- timely and professional customer service;
- the field's involvement in agency decision making; and
- cooperative and personal relationships.



In terms of the state's children, TJPC values:

- the care, protection and the mental and physical development of children;
- early identification and intervention for children at risk;
- the supervision of children within the context of community and family whenever possible; and
- the safety, supervision and appropriate treatment of children who need to be removed from the home.

With respect to the public, TJPC values:

- citizen protection and safety;
- the efficient use of tax dollars;
- accountability for outcomes; and
- open access to juvenile justice information.

In term of state government entities, TJPC values:

- cooperation and collaboration; and
- positive interaction with state leadership resulting in sound policy and budgeting decisions.

External/Internal Assessment Section One OVERVIEW OF AGENCY SCOPE & FUNCTIONS

STATUTORY BASIS

The Texas Juvenile Probation Commission (TJPC) was created in 1981 by the 67th Legislature and was re-authorized after Sunset Review in 1987 by the 70th Legislature and again in 1997 by the 75th Legislature. The statutory basis and enabling legislation for TJPC is Chapter 141 of the Texas Human Resources Code. The purposes of the agency, according to this enabling legislation, Section 141.001, are to:

- make probation services available to juveniles throughout the state;
- improve the effectiveness of juvenile probation services;
- provide alternatives to the commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services;
- establish uniform standards for the community-based juvenile justice system;
- improve communications among state and local entities within the juvenile justice system; and
- promote delinquency prevention and early intervention programs and activities for juveniles.

WHO WE ARE

The Texas Juvenile Probation Commission achieves its mission through a comprehensive range of funding, monitoring and technical assistance programs and services. Functionally, the Texas Juvenile Probation Commission provides a variety of services to assist local juvenile boards, juvenile probation departments and juvenile justice practitioners across the state of Texas. These functions include:

Conduit for Legislative Appropriations. The Commission allocates funds appropriated by the Texas Legislature in the form of grants to assist local juvenile boards in operating juvenile probation departments, juvenile detention and correctional facilities and providing basic and special services to children in the juvenile justice system. The Commission allocates over 97% of the funding received from the Legislature while less than 3% of the funds are utilized for agency administration.



Contract and Grant Management. TJPC allocates nearly \$200 million biennially to local juvenile probation departments through multiple contracts and grants to each of 169 local juvenile boards. The agency is mandated pursuant to Section 141.051 of the Texas Human Resources Code to monitor contracts to ensure compliance with financial and performance requirements. The Commission also evaluates program costs to ensure that costs are reasonable and necessary to achieve program objectives. TJPC utilizes its new automated, web-based Compliance Monitoring, Enforcement and Tracking System (COMETS) to monitor contract and grant requirements.

Legal Assistance. The Commission's Legal Division provides legal assistance and training to juvenile probation departments, judges, prosecutors, defense attorneys, law enforcement, school officials and other juvenile justice practitioners across the state on a variety of juvenile law and procedural topics. Additionally, the Legal Division provides legal expertise to the Commission's governing board and staff.

Technical Assistance and Training. The Commission's 62 staff members provide technical assistance to juvenile justice practitioners statewide on a daily basis through telephone assistance, email, fax and personal on-site visits. The Commission provides free or low cost training to juvenile justice professionals across the state including juvenile board members, juvenile court judges, justice and municipal court judges, juvenile prosecutors, probation officers, detention officers, law enforcement, students, state agencies, and the public.

Promulgate, Monitor and Enforce Statewide Standards. The Commission is legislatively mandated to promulgate administrative standards to regulate the administration of juvenile probation departments, standards relating to the physical construction, and operation of secure juvenile pre-adjudication detention and secure post-adjudication correctional facilities. The Commission is also statutorily required to monitor the programs and facilities provided by local juvenile probation departments.

Certification of Probation and Detention Officers. The Texas Juvenile Probation Commission certifies juvenile probation and detention officers to ensure these officers meet the minimum statutory requirements for education, work experience and specialized training. The Commission certified a total of 3,710 officers in fiscal year 2005. To become a certified juvenile probation officer an applicant must possess a bachelor's degree, be 21 years of age, have one year of related experience or one year of graduate studies, be of good moral character and have the requisite specialized training. To become a certified juvenile detention officer an applicant must be 21 years of age, have a high school diploma or its equivalent and receive the required specialized training.

Strategic Planning and Policy Development. The Commission regularly conducts a formal strategic planning process in conjunction with key stakeholders in the system to project the needs of the juvenile justice system and develop policy accordingly. The Strategic Planning Division

develops in-depth plans biennially for the TJPC Strategic Plan, TJPC/TYC Coordinated Strategic Plan, TJPC/TEA Joint JJAEP Strategic Plan, and the TJPC Workforce Strategic Plan.

Research and Statistics. The TJPC Research and Statistics Division provides the agency's internal and external users of information with valid and reliable data for ongoing decision-making regarding juvenile justice, criminal justice, health and human services, and public education policies. The division also:

- Collects, verifies, analyzes and evaluates statewide statistical information related to juvenile justice;
- Serves as statistical research consultants and furnishes necessary statistical and other research data;
- Provides training and technical assistance related to statistical reporting;
- Provides research and literature research/review relevant to juvenile justice issues.

Juvenile Secure Facility Registry. The Texas Juvenile Probation Commission is statutorily required to establish and operate a statewide facility registry as mandated by Section 141.042(c) of the Texas Human Resources Code.

- The statewide registry functions as a database of information about each secure juvenile facility operating in the state. Under the Texas Family Code, no child shall be placed into a secure facility that is not registered.
- Registry information is available on TJPC's website at www.tjpc.state.tx.us.

Management Information Systems. The Commission's Management Information Division provides a variety of software programs at no cost to local juvenile probation departments to assist them with their daily operations in addition to providing custom software applications for the agency's internal use.

- *CASEWORKER/5 – Juvenile Tracking and Case Management System.* CASEWORKER Version 5 is an automated juvenile tracking and case management system designed, developed and provided by the Commission to all juvenile probation departments and juvenile justice facilities in Texas to collect, store, retrieve, and print juvenile caseload information. There is no cost to local probation departments or facilities for the use of CASEWORKER. CASEWORKER is utilized by more than 90% of probation departments in Texas to facilitate case management and statistical compilation of data.
- *Web-Enabled Applications.* The use of web-enabled applications has greatly improved the collection and management of information related to several agency-sponsored programs. These include the Automated Certification Information System (ACIS), Family Preservation Program, Substance Abuse Prevention and Intervention System, Juvenile Justice Alternative Education Program System (JJAEP), and Special Needs Diversionary Program (TCOMI). Additionally, TJPC has deployed the Compliance Monitoring and Enforcement Tracking System (COMETS) onto laptops, which allow agency staff to issue onsite performance monitoring reports. These performance reports are transmitted to TJPC using wireless Internet technology.
- *TJPC Hosted Email for Local Juvenile Probation Departments.* TJPC provides one e-mail address for each department as a quick and cost-effective means of communicating between local departments and the Commission.



Interagency Workgroups and Projects. The Commission has been instrumental in developing interagency workgroups with the governing boards and staffs of other state agencies that provide services to children. The goal of these projects is to improve the delivery of services to children and to reduce or minimize barriers to efficient service delivery.

Child Abuse, Neglect and Exploitation Investigations. TJPC conducts official investigations of all reported and alleged cases of child abuse and neglect in all secure juvenile facilities and in any program operated by a probation department or under a contract with a juvenile board. TJPC employs four investigators who conduct investigations in juvenile programs and facilities throughout the state and provide on-going training and technical assistance.

HISTORICAL PERSPECTIVE

Only 25 years ago, many Texas children were detained in adult jails alongside older, hardened criminals. TJPC and its local partners have brought an end to this practice. Today, there are more than 50 facilities designated for the secure detention of juveniles in Texas. Since the creation of TJPC in 1981, significant strides have been made in fulfilling the agency's purpose.

1981	2006
No juvenile probation services in 32 counties	All 254 counties have juvenile probation services
No juvenile boards in 107 counties	All 254 counties have juvenile boards
No state standards for juvenile probation	Comprehensive probation, detention, pre- and post-adjudication, case management, child abuse and neglect investigations, juvenile justice alternative education program, and data collection standards in place
No professional certification for juvenile probation practitioners	TJPC requires that all Texas juvenile probation officers be certified as having earned necessary academic degrees and having completed 40 hours annually of approved continuing education
No systematic training of juvenile probation practitioners	All probation and detention officers receive at least 40 hours of training each year
No system of fiscal accountability for local use of state funds	Each local probation department and county and private detention centers and post-adjudication centers undergo annual fiscal audit and/or standards compliance monitoring
No intensive supervision programs for serious juvenile offenders	131 departments offer intensive supervision programs for serious offenders with TJPC funds
No centralized source of professional information and data for juvenile probation practitioners	TJPC offers resource information and technical assistance for all juvenile probation practitioners
No automated information system for juvenile justice in Texas	247 Texas counties are on state-wide automated CASEWORKER system
Only 29 juvenile detention centers in Texas; 12,353 juveniles held in adult jails	90 juvenile facilities (51 pre-adjudication facilities, 34 post-adjudication facilities, and 5 holdover facilities) in Texas; children prohibited from being held in adult jails

External/Internal Assessment Section Three
FISCAL ASPECTS

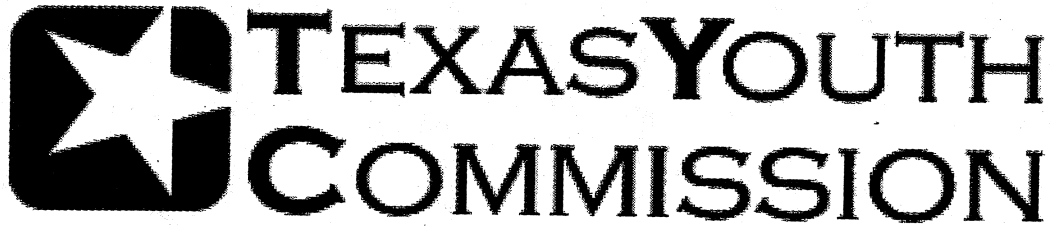
The legislature approved a total TJPC biennial budget of \$270,484,455 for FY 2006-FY 2007. This is an increase of 2.8% over the previous biennium.

BUDGET

Items of Appropriation	Appropriated FY 2006	Appropriated FY 2007
Basic Probation	\$46,993,577	\$46,258,679
Community Corrections	\$45,885,581	\$45,885,581
Probation Assistance	\$32,382,738	\$32,382,738
JJAEP	\$8,187,641	\$8,951,455
Indirect Administration	\$1,076,801	\$1,076,801
Total	\$134,526,338	\$135,958,117

Method of Finance	Appropriated FY 2006	Appropriated FY 2007
General Revenue Fund	\$93,643,697	\$94,311,662
Federal Funds	\$30,025,000	\$30,250,000
Appropriated Receipts	\$1,245,000	\$1,245,000
Interagency Contracts - Transfer		
Foundation School Fund No. 1 93	\$8,187,641	\$8,951,455
Criminal Justice Grants	\$1,200,000	\$1,200,000
Total	\$134,526,338	\$135,958,117

Texas Youth Commission



House Committee
on
JUVENILE JUSTICE & FAMILY ISSUES

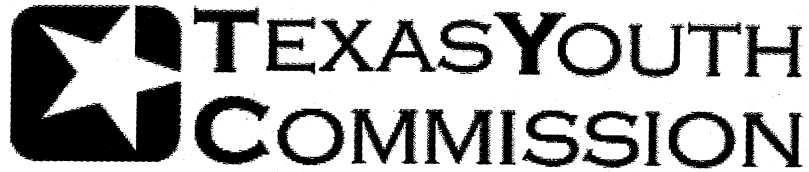
March 22, 2006

Texas Youth Commission
Dwight Harris, Executive Director
4900 North Lamar Boulevard
Austin, Texas 78751
(512) 424-6130
www.tyc.state.tx.us

TEXAS YOUTH COMMISSION

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TYC MISSION

Protection – To protect the public, and control the commission of unlawful acts by youth committed to the agency by confining them under conditions that ensure their basic healthcare and emphasize their positive development, accountability for their conduct and discipline training (Family Code, Section 51.01(1), (2) and (4) and Human Resources Code, Section 61.101 (c));

Productivity – To habilitate youth committed to the agency to become productive and responsible citizens who are prepared for honorable employment through ongoing education and workforce development programs (Human Resources Code, Section 61.034(b) and 61.076(a)(1));

Rehabilitation – To rehabilitate youth committed to the agency and re-establish them in society through a competency-based program of Resocialization (Human Resources Code, Section 61.002, 61.047, 61.071, 61.072, 61.076(a)(1)(2) and 61.0761); and

Prevention – To study problems of juvenile delinquency, focus public attention on special solutions for problems, and assist in developing, strengthening, and coordinating programs aimed at preventing delinquency (Human Resources Code, Section 61.031, 61.036 and 61.081(c)).



TYC ROLE IN JUVENILE JUSTICE SYSTEM

The Texas Youth Commission (TYC) is the state's juvenile corrections agency. Juvenile offenders committed to TYC are the most problematic three percent of youth who get in trouble with the law each year. The vast majority of Texas delinquents are dealt with on the local level by county juvenile probation departments. Admission to TYC is possible only on a judge's order.

Main Functions

The main functions of TYC are to: protect the public, habilitate committed youth to become productive citizens, provide rehabilitative treatment, and assist in delinquency prevention. The protection component includes providing correctional programs necessary to protect the public from delinquent and criminal behavior and hold youth accountable for their actions. The productive citizen component consists of providing educational and workforce development opportunities. The rehabilitative component includes: providing correctional treatment through a competency-based Resocialization program with individual and group therapy; specialized-needs programs such as substance abuse treatment, psychological treatment, and specific offense-related treatment programs such as sex offender or capital and serious violent offender treatment; and aftercare services. The prevention component includes providing leadership, information, and technical assistance to state and local efforts aimed at preventing all youth, including those not under TYC's jurisdiction, from committing delinquent acts. Youth under the agency's jurisdiction are provided care for their basic needs, such as food, clothing, shelter, safety, medical care, legal rights, proper parenting and spiritual needs.

Statutory Basis

The mission of TYC as a juvenile corrections agency has its basis in the Texas Family Code, Title 3, and the Texas Human Resources Code, Chapter 61. In 1943, the legislature passed the Juvenile Court Act intended to take delinquent children out of the criminal courts and prisons. Those purposes were carried forward into the laws governing juvenile court proceedings.

These laws, by their language and spirit, require the Commission to attempt to provide the skills, education and training necessary to give delinquent youth the means to become responsible members of the community. At the same time, the laws require

TYC to confine youth as needed to protect the public and to instill in them a sense of self-discipline and accountability for misconduct.

Historical Perspective

The antecedents of TYC lie in the nineteenth century. In 1859, the Texas Legislature recognized the need for separate juvenile and adult correctional facilities, but it was not until 1887 that funds were appropriated to build the Gatesville State School for Boys.

A number of independent institutions for delinquent boys and girls were established across the state after that time, some converted from institutions for dependent and neglected youth.

In 1957, the Texas Youth Council was established to provide administrative oversight of all state homes and schools for delinquent and dependent and neglected youth through a central administrative office in Austin.

In 1961, TYC began community care with the initiation of a parole system.

In 1971, the *Morales v. Turman* lawsuit was filed against TYC. During the next thirteen years, TYC underwent major reforms as a result of this federal class action suit, which alleged abuse and violation of due process. The suit was settled in 1984.

In 1974, TYC began using residential contract programs for community placement of youth. State appropriations for community-based care began in 1975, and these funds allowed TYC to operate halfway houses and contract for primary treatment and independent living programs.

In 1981, the Texas Juvenile Probation Commission was created to distribute funds and set standards for local juvenile probation departments, which had been TYC's responsibility from 1975-1981.

In 1983, the Texas Youth Council was renamed the Texas Youth Commission.

In 1987, the Texas Legislature enacted a "Determinate Sentencing" statute, which enabled courts to sentence juveniles adjudicated for six enumerated violent offenses. Prior to that, TYC determined the length of stay for all youth.

In 1995, the Texas Legislature enacted an omnibus juvenile justice reform statute. Additional offenses were added to "Determinate Sentencing." TYC was given parole authority of sentenced offenders after mandatory lengths of stay at TYC, based on the severity of the offense. TYC was required to accept offenders with mental retardation.

Progressive Sanctions Guidelines were established for juvenile court dispositions, including the guideline that youth committed to TYC should be violent offenders or felony offenders who have already undergone placement in a residential program.

In 1997, the Texas Legislature authorized for the first time the admission of youth with mental illness. It required TYC to discharge these youth (if they are not sentenced offenders) when they have completed the minimum length of stay applicable to their committing offense and cannot progress in the regular rehabilitation program.

TYC is required to initiate court proceedings to obtain appropriate mental health services for the youth.

In 1999, the Texas Legislature changed the definition of conduct that makes a youth eligible for commitment to TYC to include only felony conduct or repeated jailable misdemeanor conduct. It authorized TYC to establish infant care and parenting programs for youth who are parents, including the authority to approve a mother keeping possession of her baby after the mother's commitment to TYC. The punishment for a youth's escape from a secure facility was increased to a third degree felony.

In 2001, the Texas Legislature revised the juvenile justice reform statute. The additional offenses of manslaughter and intoxication manslaughter were added to "Determinate Sentencing". TYC commitment criteria was changed to include a youth who has committed a Class A or B misdemeanor, if the offense follows at least one previous felony adjudication. Exemption or deferral of sex offender registration for some youth by the Juvenile Court was approved. Also authorized was automatic restriction of access to juvenile records after supervision ends, with prosecutors and law enforcement still having access.

In 2003, the Texas Legislature made a number of substantive and technical amendments to the Family Code, Code of Criminal Procedure and other statutes relating to juvenile justice. Capital murder offenders will automatically be transferred to TDCJ parole at age 21 to finish their sentence rather than to adult prison, if they have not already been discharged or transferred to prison. School districts are required to grant credit towards high school graduation for courses students successfully completed in TYC's educational program. The Department of Public Safety, local law enforcement authorities, and private providers are required to remove all information from the sex offender registry when the duty to register is expired.

In 2005, the Texas Legislature made revisions to juvenile justice statutes that affected TYC. It is now a third degree felony to provide a controlled substance or other contraband, to youth in juvenile facilities (such items as drugs, money, or cell phones) – or to possess a controlled substance there. It is now required that money possessed by youth in TYC facilities in excess of the amount allowed, be placed in a general student benefit fund. The changes authorize release of sentenced offender youth on parole without court approval, at any time during the last 9 months of the youth's sentence;

and, it authorizes direct referral to juvenile court of sentenced youth on parole, who have been convicted or adjudicated for felony offenses. Other legislation expanded the requirement that TYC take DNA samples to now include all youth residing in TYC operated or contracted residential facilities that have ever been adjudicated for any felony offense. Previously DNA samples were taken only from youth committed for the offenses of murder, aggravated assault, burglary and other offenses that make an offender eligible for sex offender registration.



TYC PROGRAMS

Institutions

In addition to the initial intake facility, Marlin Orientation & Assessment Unit, TYC currently operates juvenile correctional institutions in Beaumont, Brownwood, Crockett, Gainesville, Giddings, Pyote, San Saba, Edinburg and Mart; Corsicana Residential Treatment Center for seriously emotionally disturbed youth; and, boot camps in Sheffield and Vernon.

Youth who are committed to TYC must successfully complete TYC's Resocialization program or appropriate alternative treatment program in a contracted program and a minimum length of time set by TYC policy before they are eligible for parole. This minimum length of stay varies depending on the offense committed and the classification of each youth. The minimum length of stay for offenders who receive a determinate sentence (sentenced offenders) is determined by the felony level of the offense. The average length of stay for youth in secure and non-secure residential programs was 17.4 months in 2005, including 20.9 months for new commitments, and 8.3 months for youth returned from parole. In 2005 on average, TYC had 4,127 youth in custody in institutions, 221 youth in halfway houses, 562 youth in private contracted residential facilities and 2,729 on parole.

Resocialization: A Performance-Based Program

In order for rehabilitation to work, services must address the factors supporting the delinquency in the first place. The majority of TYC youth have been involved in delinquent activities for a long time. They have developed delinquent habits, recurring offense patterns, and belief systems to justify their delinquent activities. Untreated emotional disturbances, chemical dependency, or other specialized needs also contribute to continued delinquency. Many youth are likely to return to crime upon release from incarceration unless there is a successful intervention in the factors that support their antisocial behaviors.

TYC developed a comprehensive rehabilitation program called Resocialization. The program emphasizes personal accountability for behavior, self-control, victim empathy, positive work ethic, discipline, community service, and academic and vocational skills development.

The Resocialization program is built around three foundations: **academic/workforce development, behavior, and correctional therapy**. These cornerstone activities occur within a highly structured 16-hour day. Youth are engaged in these activities during all waking hours.

The structured day starts from the first day a youth enters the Marlin Orientation and Assessment Unit and continues throughout the youth's stay at TYC, including placement in community residential correctional facilities such as halfway houses. The resocialization program is phase-progressive and competency-based, which means youth move gradually from high restriction confinement to parole, based on completion of both minimum lengths of stay and demonstrated mastery of objectives in each component of the program.

TYC's goal is to resocialize youth in a manner that is respectful of cultural differences and validates the reality of their developmental experiences. It is based, at a minimum, on the notion of social contract—i.e., that members of society agree to uphold certain rules of behavior for the good of all members; that individuals must be accountable for their own actions; and that reparation should be made when harm is intentionally caused. The TYC Resocialization process attempts to address biological factors and underlying emotional dynamics that fuel delinquent behaviors, remove cognitive justifications used by youth for continued delinquency, and teach skills that will enable youth to make prosocial choices in the future.

Academic/Workforce Development

The educational curriculum is based on Texas Education Agency standards known as Texas Essential Knowledge and Skills (TEKS). The focus of the educational component emphasizes basic proficiency in reading, writing, math, and career technology education. Most youth come to TYC with fifth grade math and reading skills.

Youth attend school throughout the year and may earn credits toward completion of a high school diploma or prepare to attain a certificate of General Educational Development (GED). The primary goals of the academic program are to improve basic proficiency in reading and math as well as provide basic employment skills. Some youth are also involved in compensated work activities.

TYC research indicates the majority of youth make consistent monthly gains in reading and math skills, and youth who complete their GEDs have lower recidivism rates. Education and correctional therapy are integrated when youth work on English assignments in which they may write an autobiography or discuss the feelings of victims identified in current event articles or literature. Thus youth continue to focus on factors directly related to their delinquency while they improve their academic skills. Students with special needs, such as those eligible for special education services and/or instruction in English as a second language (ESL), receive services required under federal statute.

The educational program incorporates current technology and an array of effective vocational offerings to prepare students for successful and productive exit from the TYC institution.

Behavior

The Behavior component includes compliance with structure and rules. Youth engage in discipline training that involves regimentation, military-style movement from one location to another, physical training, leadership and social skills training, and high personal performance expectations. Youth also engage in a work component that stresses the value of a positive work ethic. Youth must demonstrate consistency in behavior in all areas of a highly regimented and structured program.

All of these activities and rehabilitative programming make up the structured 16-hour day: classroom education and workforce development, discipline training, correctional therapy sessions, behavior groups, work activities, facility maintenance, community service both on campus and in the community, homework, meals and personal hygiene routines. Other elements of the Resocialization program that have created a more structured environment for TYC youth include uniform dress and privileges that are tied to the competency based program. Privileges are earned through progress in treatment. Basic rights such as due process, medical care, food, shelter, and clothing are provided to all youth.

Correctional Therapy

Therapeutic interventions are used to stop negative behavior patterns and are necessary before delinquent youth will be motivated and ready to acquire new skills. Intervention may include psychological and psychiatric treatment to address underlying emotional disturbance or mental illness. However, the primary intervention strategy in the Resocialization program is correctional therapy that occurs in a group format. Youth attend three types of groups on a routine basis: core intervention groups where they share life stories, identify patterns of criminal thinking and offending and learn how to interrupt their own negative behaviors; daily behavior groups where they focus on rule violations and problem-solving; and social skills groups in the areas of anger management, conflict resolution, interpersonal communication, and independent living. TYC also offers issue-specific programming for youth with special needs. These include programs for those diagnosed with emotional disturbance and/or chemical dependency and for those who have committed sexual or homicidal offenses.

Community Reintegration

The final goal of Resocialization is successful community reintegration. In order for youth to maintain the treatment gains realized up to this point, appropriate follow-up services must be in place. The return to the community is the testing ground for changed behaviors and relationship patterns.

Safe transition to the community depends upon the youth's motivation, self-control, acquisition of skills, and the presence of a meaningful support system.

Strengthening families, continuing of specialized treatment services, learning methods for stabilization during crises, and opportunities for education, employment, recreation, and age-appropriate relationships are all parts of lasting Resocialization.

Resocialization concepts extend to halfway houses and the parole program.

Halfway Houses

The primary focus of the halfway house program is to assist youth in making a successful transition into the community from a high restriction program. Halfway houses also serve parole violators returned to residential placement. Halfway houses allow youth to field-test the skills they have acquired during their stay in the agency's secure programs. The programs offered at the halfway house include community service, education, employment, independent living preparation and Resocialization at all sites. There are eight (8) halfway houses for male offenders and one (1) halfway house for female offenders. These 9 facilities have a budgeted bed capacity of 218 youth. The average age of the youth served ranges generally between 16 and 21 years of age.

Project RIO-Y (Employment Training Program)

Project RIO-Y is a collaboration between TYC and the Texas Workforce Commission (TWC) to provide TYC youth with workforce development training and employment assistance. Project RIO-Y was established in the 74th Legislative Session. TYC and TWC entered into an interagency agreement for the management and operation of Project RIO-Y. This program prepares TYC youth to enter the workforce and/or access educational/training opportunities that will ultimately lead to meaningful employment. Project RIO-Y services include aptitude and interest testing, workforce development training and counseling, and employment referral and placement services

Parole

The goal of TYC's Parole Program is to protect the public by promoting the successful Resocialization and reintegration of youth through surveillance, sanctions, core services, and collaboration with community volunteers and service agencies.

The Parole Program includes:

- A comprehensive program of increased accountability for constructive activity. Youth in the Parole program are required to participate in structured 40-hour constructive activity weeks. The constructive activity week includes community service, employment, school attendance, and treatment.
- A parole sanction model, which increases the effectiveness of the reporting, tracking and levying of minor parole violations and disciplinary sanctions.

- TYC parole staff in major urban areas with the highest commitment numbers: Harris, Tarrant, Dallas, Travis, and Bexar counties. In the remote rural areas where fewer youth are located, parole services are contracted with the county juvenile probation departments and private providers.

Independent Living Preparation Program

The Independent Living Preparation Program (ILPP) is offered toward the end of a youth's length of stay. In this performance-based program, youth must demonstrate their ability to solve problems appropriately prior to release from an institution, halfway house or contract care facility and eventual discharge from the agency. Supervision is decreased as youth demonstrate positive behavior and become accountable for their actions.

Prevention

Statutes mandate that TYC study the problem of juvenile delinquency, focus public attention on solutions and assist in developing, strengthening, and coordinating programs aimed at preventing delinquency. In order to meet these requirements, TYC established the first and largest on-line worldwide directory of programs, resources, references, and research on the prevention of youth problems and the promotion of youth development. TYC's Prevention pages, *A World of Prevention*, offers a link to the best available prevention material, including executive summaries of successful programs and the latest journal articles, research reports, government documents, and on-line resources.

TYC's Prevention website has been recognized at the state and national level. Google, recognized as one of the best search engines on the Internet, ranks TYC's Prevention web section in first place out of 438,000 listings on the topic of prevention of youth problems. TYC staff have published articles on the local, state, and national levels, and routinely make presentations to citizens throughout the state and nation. TYC prevention staff provide information to legislators, provide technical assistance to various state agencies, work with communities interested in preventing delinquency and providing programs to keep youth out of trouble, and help parents find the resources they need to help their children grow up to be productive, literate, lawful, and responsible citizens.

Contract Monitoring

Program performance measures are used for evaluating all residential contract programs. These measures are the basis for establishing contract program effectiveness and play a key role in contract renewal. TYC believes performance

standards have a positive effect on the quality of the contracted program. The Texas Youth Commission makes its expectations clear to the providers.

A residential contract monitoring system ensures contractors consistently provide quality services. TYC selects contracts for monitoring based on a combination of risk factors, provides technical assistance to correct deficiencies, specifies monitoring procedures, and establishes documentation that includes a control system for assessing the quantity and quality of monitoring.

Religious Programs and Services

The Texas Youth Commission strives to protect the religious freedom and rights of youth by providing varied opportunities to participate in religious programs and services. TYC provides religious support for youth through chaplains and approved religious volunteers. They help youth, their families, and communities promote safe and productive lifestyles through religious practice.

The religious program, as part of the broader Resocialization program, assists youth to develop and internalize a set of personal moral values that address their spiritual needs. It teaches tolerance and mutual respect for differing philosophies and religious beliefs. Youth participation in religious programs and services is strictly voluntary.

Volunteer Services

The mission of the Texas Youth Commission's Volunteer Services Program is to maximize community resources and utilize volunteers to provide opportunities that enable youth to become responsible and productive citizens. We embrace the philosophy that, through volunteers, the community has the ability to enhance lives of youth by providing meaningful activities and resources that promote pro-social, educational, emotional, and spiritual growth; thus, expanding services provided by staff.

The TYC Volunteer Services Program consists of four primary initiatives for community involvement: Mentoring, Tutoring, Community Resource Councils, and Chaplaincy Services. It is our belief that community citizens can dramatically influence the successful rehabilitation and reintegration of juvenile delinquents through these four primary volunteer activities. By offering their time and talents, volunteers can provide the personal relationships through which troubled youth can be helped to find their way as responsible, productive members of society. Volunteers also assist the agency in providing goods and services the state cannot provide.

There are currently over 1,952 volunteers in the program. During FY 2004, TYC volunteers logged 113,543 hours of service. In addition, these volunteers have contributed generously with cash and in-kind donations to the agency.

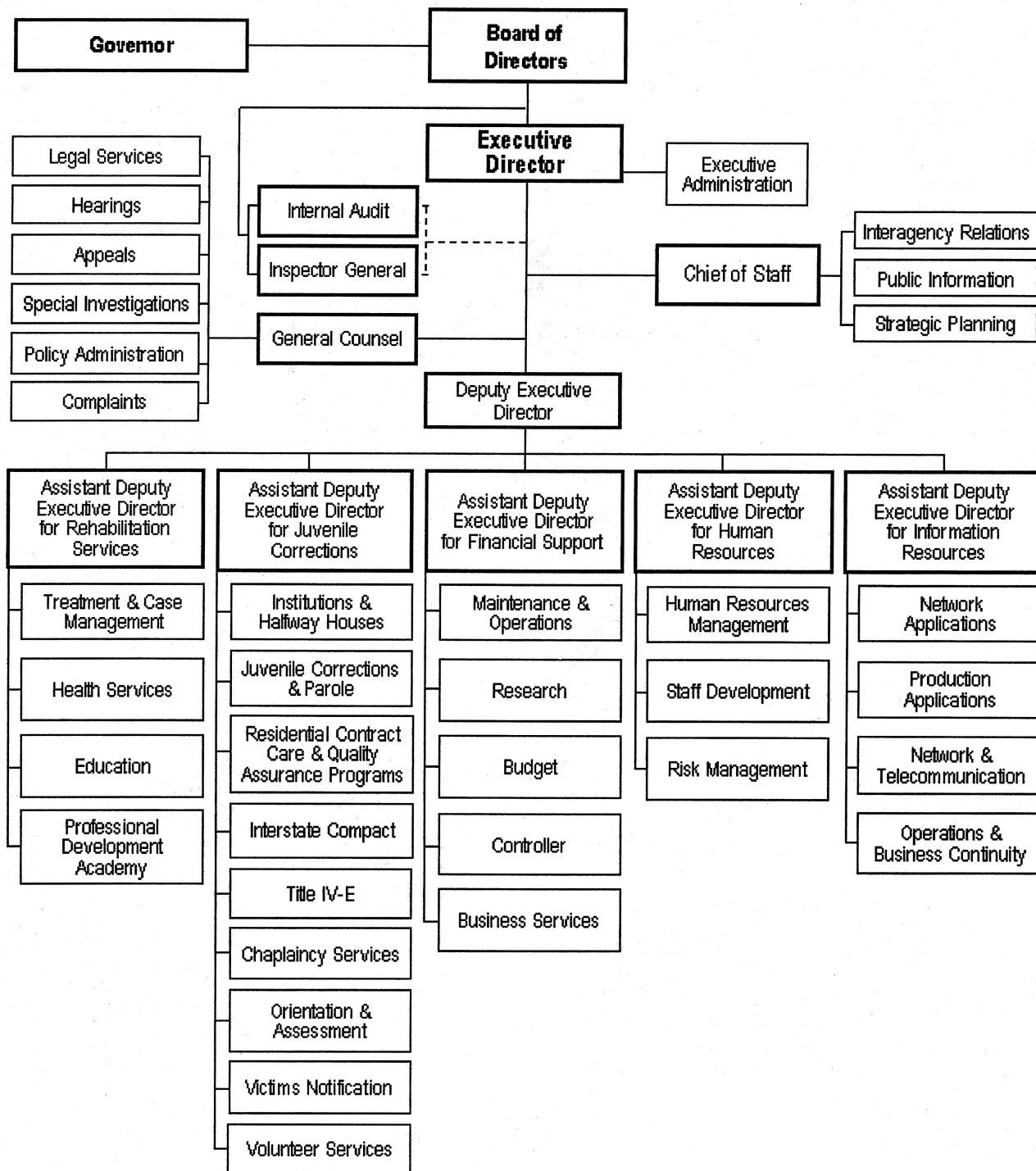
Victim Services

The Texas Youth Commission is committed to providing victims of juvenile crime their rights under the law, ensuring that they are informed, involved, and treated with dignity, fairness and respect. Upon request, TYC provides victims with accurate and timely information regarding their juvenile offender. TYC assists victims by acting as a referral source to available services and maintains a toll-free telephone line for victims' convenience. Agency staff are trained in the areas of victim sensitivity and victim rights. Crime victims make presentations to TYC youth, giving the victims an opportunity to tell their stories and assist youth in changing their attitudes and beliefs about victims. These sessions have been proven to be powerful tools in the rehabilitation process.



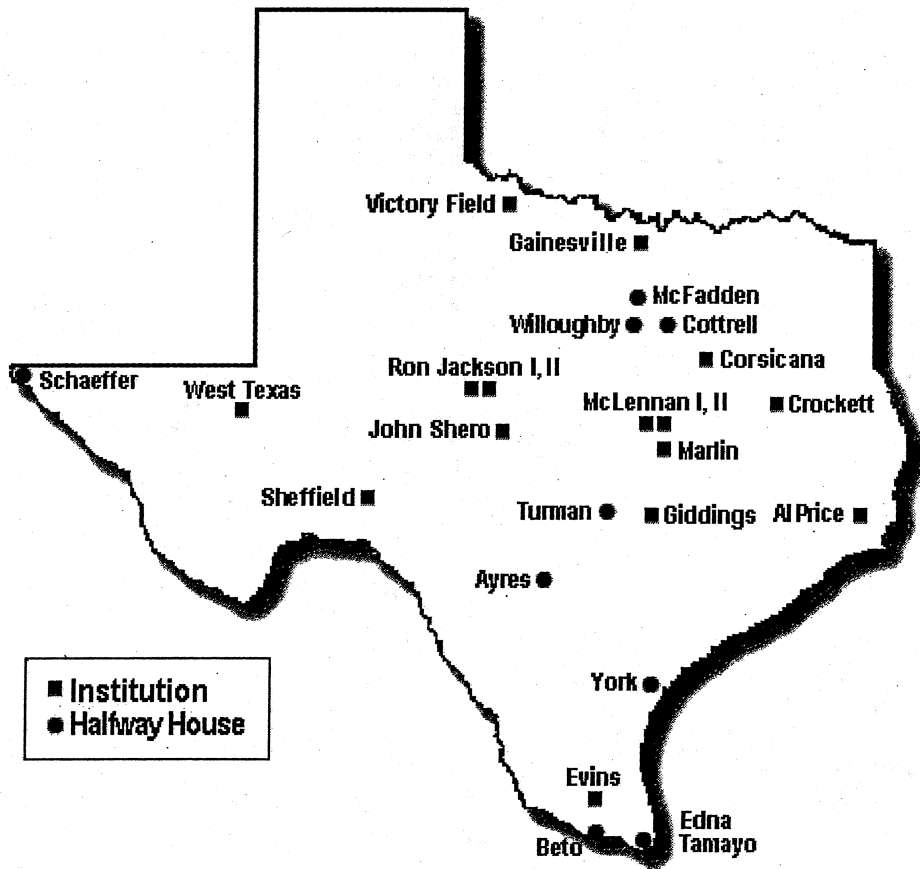
Organizational Chart

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TYC Institutions and Halfway Houses

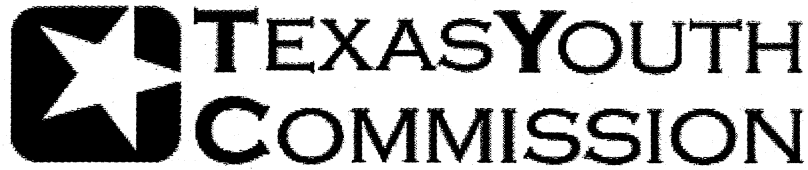




WHO ARE TYC OFFENDERS?

The youth sent to the Texas Youth Commission (TYC) are the state's most serious or chronically delinquent offenders. In fiscal year 2005, 33% of new arrivals had committed violent offenses, the same percentage as in fiscal year 2004. Overall, 38% of new arrivals were categorized as high-risk offenders.

- ☆ 90% were boys; 10% were girls.
- ☆ 43% were Hispanic.
- ☆ 33% were African-American.
- ☆ 23% were Anglo.
- ☆ 35% admitted at intake that they are gang members.
- ☆ Median age at commitment was 16.
- ☆ Median reading and math achievement was 5th grade (five years behind their peers).
- ☆ 40% were identified as eligible for special education services.
- ☆ 10% of the TYC population were limited English Proficient.
- ☆ 81% had IQs below the mean score of 100.
- ☆ 39% had a high need for drug treatment.
- ☆ 36% had severe mental health problems.
- ☆ 76% had parents who never married, or who divorced or separated.
- ☆ 35% had a documented history of being abused or neglected.
- ☆ 62% came from low-income homes.
- ☆ 74% came from chaotic environments.
- ☆ 54% had families with histories of criminal behavior.
- ☆ 11% had family members with mental impairments.
- ☆ 49% had two or more felony-level offenses before TYC commitment.



ALLEGED ABUSE, NEGLECT AND EXPLOITATION POLICY

Abuse and Neglect Investigation Process

Role of Inspectors General

Chapter 261, Subchapter E, of the Texas Family Code requires TYC, and other state agencies that operate or license a facility in which children are located, to make a prompt and thorough investigation of allegations of abuse, neglect, and exploitation. The TYC Board oversees the agency's investigation process to help ensure that it is fair and thorough and that findings in confirmed cases are reviewed by executive staff for needed corrective actions.

Any person having cause to believe a youth has been or may be abused or neglected must report it. By agency rule, employees are subject to discipline if they do not report. IGs from the Inspector General Section of TYC's Office of General Counsel in Austin monitor the youth grievance reporting process monthly to help ensure that notices about the process are properly posted. They meet with youth grievance clerks to discuss any issues that may arise with regard to the process.

All allegations are reported to the Inspector General Section where they are assigned for investigation by one of its 22 inspectors general. These independent IGs are stationed around the state and report to their supervisors in the Inspector General Section, not to local administrators.

The investigation report is reviewed for thoroughness and accuracy by the supervising Deputy Chief Inspector General. A determination is made from the investigator's findings whether or not the allegation is confirmed. All the allegations, as well as the investigation findings, are reported to local law enforcement officials and the youth's parents.

A youth or parent, a facility administrator, or a person found to have engaged in abuse or neglect may appeal an investigation finding to the agency's Executive Director. The Executive Director considers the recommendations of the Office of General Counsel in reaching a decision.

An executive review board made up of chief agency administrators meets bi-monthly to review cases that were confirmed during the reporting period and corrective actions that are being taken to prevent their recurrence. Significant trends are analyzed. Facility administrators and inspectors general from across the state attend the meeting by video conference.

A bi-monthly report of all alleged abuse and neglect cases that were closed during the reporting period is also reviewed by the TYC Board at each of its regular meetings. Confirmed cases are summarized. The report also includes a summary of decisions made by the Executive Director on appeals of investigation findings.

The Board is required by law to ensure that its procedure for investigating abuse, neglect and exploitation allegations is periodically reviewed under the agency's internal audit program.



General Administrative Policy Manual

GAP.93.33

Chapter 93: Youth Rights and Remedies
Rule 33: Alleged Abuse, Neglect and Exploitation

Effective Date: 9/21/05, T-74

ACA Standard(s):3-JTS-3D-06, 3D-06-01

Replaces: GAP.93.33

Dated: 12/18/03, T-63

[Purpose](#) | [Applicability](#) | [Terms](#) | [Reporting Requirements](#) | [Report Contents](#)
[CLA Actions Upon Notification](#) | [Referral of Report](#) | [Standards for Investigations](#) | [Submission & Closure](#)
[CLA Actions on Report](#) | [Complaints](#) | [Information & Confidentiality](#) | [Management Requirements](#)

I. RULE

a. Purpose.

This rule provides for the investigation of allegations of abuse, neglect or exploitation in programs and facilities under Texas Youth Commission (TYC) jurisdiction. This rule provides standards for investigations and for the compilation of investigation information. The purpose of all provisions in this rule is the protection of youth.

b. Applicability.

1. This rule applies to all programs and facilities under TYC jurisdiction including institutions, halfway houses, contracted residential services, and parole services.
2. For procedures regarding the resolution of youth complaints, refer to (GAP) §93.31 of this title (relating to Complaint Resolution System).
3. For procedures regarding appeals to the executive director, refer to (GAP) §93.53 of this title (relating to Appeal to Executive Director).
4. For procedures regarding reporting the death of a youth, refer to (GAP) §99.51 of this title (relating to Death of a Youth).

c. Explanation of Terms Used.

1. **Abuse** - an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or death of, a youth.
2. **Neglect** - a negligent act or omission, including failure to comply with an individual case plan, that causes or may cause substantial emotional harm or physical injury to, or death of a youth.

3. **Exploitation** - the illegal or improper use of a youth or the resources of a youth, for monetary or personal benefit, profit, or gain.
4. **Chief local administrator (CLA)** - the person employed in a TYC facility or district office that is responsible for overseeing the operations of a facility, contract program or parole services. For institutions, halfway houses, boot camps, the Corsicana Residential Treatment Center and the Marlin Orientation and Assessment Unit (MOAU), the CLA is the superintendent. For contract programs the quality assurance administrator (QAA) is the CLA and for TYC supervised parole, the parole supervisor is CLA.
5. **Deputy Chief Inspector General** - the person employed in TYC's Office of General Counsel who is responsible for overseeing investigations of allegations of abuse, neglect or exploitation and compiling investigation information.
6. **Inspector General** - the person employed in TYC's Office of General Counsel and located in a TYC facility or district office who is responsible for conducting investigations.

d. Reporting Requirements.

1. Any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer or contractor in programs or facilities under TYC jurisdiction will report the matter in accordance with the provisions of this rule. The report may be made also to an appropriate law enforcement agency or to the Department of Family and Protective Services (DFPS).
2. The CLA will report the following incidents and injuries in accordance with the same provisions of this rule that are applicable to reports of persons having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer, or contractor:
 - A. A communication or activity that suggests an inappropriate adult-youth relationship of a sexual nature involving a staff member, volunteer, or contractor;
 - B. A youth's suicide attempt;
 - C. Discovery of contraband drugs or cash in a facility;
 - D. A youth's escape from a high-security facility;
 - E. A sexual contact between youth under circumstances suggesting the possibility that it was not consensual or that it involved penetration of the anus, mouth, or sex organ;
 - F. A serious medical incident that requires emergency treatment or that results in exacerbation or complication or pre-existing symptoms; or

G. Any of the following youth injuries that are not clearly accidental (such as sports injuries):

- i. eye injury;
- ii. broken bones;
- iii. loss of consciousness;
- iv. loss of teeth or portions of teeth;
- v. cuts requiring stitches;
- vi. internal bleeding;
- vii. eardrum injury;
- viii. loss of skin or hair;
- ix. joint injury; and
- x. extensive welts and bruises.

3. A report under subsection (d)(1) of this section will be made immediately or no later than by the end of the current work shift if the person making the report is an employee, volunteer, or contractor. A report under subsection (d)(2) of this section will be made immediately upon the CLA's first knowledge of the incident or injury prompting the report.
4. The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.
5. Except for investigation purposes, the identity of a person making a report is confidential.

e. Reporting Contents.

1. A report under subsection (d)(1) of this section will be made orally or in writing to the facility's CLA or any TYC staff member. A youth or parent may also make the report by filing a complaint under the complaint resolution procedures in (GAP) §93.31 of this title. A TYC staff member who receives a report made under subsection (d)(1) of this section will refer it immediately to the facility's CLA.
2. The person making a report will provide as much detailed information as possible regarding the circumstances of the report, including the identity of persons involved, the location and time of relevant events, and the identity of others who may provide further information.
3. The person receiving a report under this section will take whatever immediate steps the person believes are necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter.

f. Actions of the Chief Local Administrator Regarding Report.

Upon receipt of a report under subsection (d)(1) of this section or upon the CLA's first knowledge of an incident or injury under subsection (d)(2) of this section, the CLA will immediately take the following actions:

1. notify the appropriate law enforcement agency, the youth, and the youth's parents or guardian of the report;
2. notify any employee, volunteer, or contractor accused of wrongdoing of the nature of the investigation and of the person's duty to cooperate with it; and
3. take any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth is protected.

g. Referral of the report to the Deputy Chief Inspector General.

By the end of the workday in which a report is received, the facility's CLA will refer the report to the deputy chief inspector general who will take the following actions before the end of the next working day:

1. record all reports for tracking; and
2. assign an investigator.

h. Standards for Investigations.

1. In this subsection:
 - A. "Physical injury" means an injury that normally requires examination or treatment by a trained health care professional, whether or not examination or treatment is actually received.
 - B. "Emotional harm" means an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, whether or not evaluation or treatment is actually received. Sexual conduct in residential facilities is presumed to cause substantial emotional harm.
 - C. "Sexual conduct" means a lewd exhibition or a sexual contact with another person, including orifice penetration, fondling or sexual stimulation, whether or not the conduct is consensual.
2. The person assigned to conduct an investigation will be qualified by experience and training to conduct quality investigations.

3. A report that alleges an immediate risk of physical or sexual abuse of a youth that could result in the death or serious harm to the youth will be investigated jointly with a peace officer from the local law enforcement agency. The initial response by the assigned investigator and the peace officer will take place not later than 24 hours after the law enforcement agency is notified of the report. In the event a law enforcement agency has assumed the investigation of a report, a person who has been assigned to conduct the investigation in this section will cooperate and assist with the law enforcement agency's investigation and not take any action that might be detrimental to it.
4. A preliminary investigation will be conducted regarding all reports to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred. An abbreviated investigation report will be prepared in cases where no such evidence is found.
5. A thorough investigation shall be conducted regarding all reports that are not disposed of following the preliminary investigation. All evidence that is relevant and reasonably available will be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.
6. The investigation will be directed at resolving all the relevant issues raised by the report.
 - A. With regard to a report of alleged abuse, the investigator will find whether the
 - i. alleged act or failure to act occurred;
 - ii. act or failure to act caused emotional harm or physical injury to the youth; and
 - iii. person who took the action or who failed to act did so intentionally, knowingly, or recklessly.
 - B. With regard to a report of alleged neglect, the investigator will find:
 - i. whether there was substantial emotional harm or physical injury of the youth as alleged;
 - ii. the standard of care or duty expected under the circumstances that are alleged;
 - iii. whether the actions or failure to act under the circumstances violated the standard of care or duty; and
 - iv. whether the actions or failure to act caused the substantial emotional harm or physical injury of the youth.
 - C. With regard to a report of alleged exploitation, the investigator will find whether:
 - i. a youth or a youth's resources were used by the accused person in the manner alleged;

- ii. the use was for monetary or personal benefit, profit, or gain; and
 - iii. the use was illegal or improper.
7. The investigator's findings will be based on a preponderance of the evidence. In the event a finding based on a preponderance of the evidence cannot be made regarding an issue, the investigator will indicate that the evidence is inconclusive.
 8. The investigator will prepare a written report of the findings, including a summary and analysis of the evidence relied upon in reaching the findings. Copies of relevant documents and photographs will be attached to the report.
 9. The investigator may make findings on misconduct other than abuse, neglect or exploitation that is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the respondent or other employees as to policy violations or other misconduct indicated by the evidence.

i. Investigation Report- Submission and Closure.

1. Within 15 workdays following the assignment, the investigator will submit the completed investigation report to the deputy chief inspector general. The deputy chief inspector general may approve an extension in the time for submission for good cause.
2. Within five (5) workdays following receipt of the report, the deputy chief inspector general will review the report and consult with the investigator regarding any necessary additions or clarifications. The deputy chief inspector general may extend the time for this review if it is required for a thorough and complete report.
3. The deputy chief inspector general will indicate whether the report of mistreatment is confirmed or not as follows:
 - . if all the requisite findings for abuse, neglect, or exploitation are affirmed by the evidence, the deputy chief inspector general will indicate that the report is confirmed as alleged;
 - A. if all the requisite findings for abuse, neglect, or exploitation are not affirmed, the deputy chief inspector general will indicate that the report is not confirmed as alleged. However, if the findings constitute a violation of agency policy or standards of care, even though they do not constitute abuse, neglect, or exploitation, the deputy chief inspector general may confirm the report as a violation of agency policy or standards of care.
4. The deputy chief inspector general will indicate approval of the investigation findings by officially closing the report as confirmed or not confirmed, and referring it to the CLA of the program or facility that generated the allegation.
5. If the allegation was reported by a medical health provider (MHP) who is employed by or contracts with University of Texas Medical Branch (UTMB) or the Texas Tech University Health Sciences Center (TTUHSC), the MHP will be notified in writing by the deputy chief

inspector general or designee of the results of the investigation and the MHP's right to appeal the findings of the investigation report pursuant to (GAP) §93.53 of this title.

j. Actions of the Chief Local Administrator Regarding Investigation Report.

1. Within five (5) working days of receiving a closed investigation report, the CLA will review the report and:
 - . notify the appropriate law enforcement agency, the youth, the youth's parents or guardian, and the respondent of the results of the investigation and the right to appeal the investigation findings (see subsection (k) of this section); and
 - A. if the report is confirmed, take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances.
2. The CLA will appeal to the executive director under subsection (k)(2) of this section any investigation findings with which the administrator is not satisfied.

k. Complaints Regarding the Conduct of Investigations and Periodic Audits.

1. Youth and parent complaints regarding the conduct of investigations and appeals of investigation findings will be handled in accordance with the provisions of (GAP) §93.53 of this title.
2. Any employee, volunteer, or contractor who is found to have engaged in wrongdoing or the CLA may appeal the investigation findings to the executive director within ten (10) working days of receipt of notice of the outcome of the investigation.
3. Appeals to the executive director will be made in writing and clearly describe the grounds for the appeal. The executive director will consider the recommendations of the Office of General Counsel in reaching a decision on the appeal, including any additional findings or information that may result from its further investigation into the matter.
4. The complaint or appeal, and the executive director's decision regarding the complaint or appeal, will be referred to the TYC Board for its review at the next regularly scheduled meeting.
5. The TYC Board will take whatever action it determines appropriate with regard to the complaint to ensure the investigations are conducted properly.
6. The TYC Board will ensure there is a periodic internal audit of procedures in the section related to alleged abuse, neglect, and exploitation investigations.

l. Standards for Compiling Investigation Information and Confidentiality of Reports.

1. Accurate and timely investigation information will be compiled related to the number and nature of reports filed and confirmed, the dates and locations of reported incidents, the average length of time required for investigations and the identification of significant trends. This information will be compiled at least twice each year and be available for public inspection.
2. Additional information including a summary of the findings and corrective actions taken with regard to all confirmed reports will be prepared for periodic review and analysis by the TYC executive staff and the TYC Board.
3. The identity of the person making an allegation, and the files, reports, records, tapes, communications, and working papers used or developed in an investigation, or in providing services as a result of the investigation, are confidential and not open for public inspection under the provisions of §261.201 of the Family Code, chapter 552 of the Government Code, and §61.073 of the Human Resources Code.
4. A report will be provided to a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution upon request.
5. A report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.
6. A report will be provided to the MHP employed by or who contracts with UTMB or the TTUHSC who reported the allegation upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.
7. Evidence gathered in the course of an investigation may be provided, upon request, to an employee having a right to the information in order to appeal the investigation findings or defend against a disciplinary action arising from the investigation findings.

Investigation reports are confidential youth records and the information contained therein may be used by the employee only for the appeal of investigation findings or to defend against a disciplinary action arising from an investigation.

- A. The CLA has the discretion to delete names when the CLA determines the names are not necessary for the fair resolution of contested facts. The CLA must ensure that any information which is confidential by law is deleted prior to delivery to the respondent.

(TAC effective date(s): 9/21/05; 12/14/03; 4/21/03; 12/20/01; 7/31/01; 1/31/01; 8/16/00; 10/01/97; 12/31/96)

II. MANAGEMENT REQUIREMENTS

a. Referral of the Report.

1. Reports made to the CLA shall be submitted electronically on the Notification of Alleged Abuse, Neglect, or Exploitation form, **LS-051**. The form shall be complete with information entered for all fields detailing each allegation made and sent by electronic mail to the agency's alleged mistreatment notification mailbox for processing.
2. Submission of the **LS-051** form to the alleged mistreatment notification mailbox shall occur immediately but no later than 24 hours of receipt of the allegation by the CLA.
3. In the event the alleged mistreatment is reported directly to the deputy chief inspector general, the deputy chief inspector general will notify the CLA of the report by electronic mail or fax. Once the report has been received, the CLA will complete and electronically mail the **LS-051** form to the alleged mistreatment notification mailbox.
4. New allegations that arise during the course of the initial investigation shall be reported in the manner described in subsection (g) of this section.

b. Actions of Deputy Chief Inspector General Regarding Report.

1. The deputy chief inspector general will assign the primary investigator on all investigations.
2. The deputy chief inspector general or designee will notify the assigned investigator via electronic mail no later than one (1) working day after receipt of the notification. If notification is not received within the allotted time, the CLA should contact the deputy chief inspector general to determine the status of the assignment.

c. Actions of the Chief Local Administrator Regarding Report.

1. Law enforcement shall be notified of all reports by forwarding a copy of the **LS-051** form to the law enforcement agency with jurisdictional authority for the facility.
2. A copy of the written notification to the youth and the youth's parents or guardian shall be maintained in the investigation record.
3. A copy of the written notification to any employee, volunteer, or contractor accused of wrongdoing shall be maintained in the investigation record.
4. In the event the CLA is accused of wrongdoing, the appropriate director of juvenile corrections shall ensure completion of the notification process according to subsection (f) of the rule section.

d. Standards of Investigations.

1. The assigned investigator must consult the deputy chief inspector general when DFPS or law enforcement agencies conduct or assist in the investigation of an allegation.

2. Each investigation report must be submitted to the deputy chief inspector general and shall be completed in a format approved by the deputy chief inspector general.
3. A Notification of Alleged Abuse, Neglect, or Exploitation form, LS-051, and any written statements/documentation completed related to the investigation shall be attached and submitted with the investigation report.

e. Actions of the Chief Local Administrator Regarding Investigation Report.

1. Once the investigation report has been closed, the CLA shall take the following actions immediately upon receipt and review of the investigation report. In the event the CLA is accused of wrongdoing, the appropriate director of juvenile corrections shall take the following actions immediately upon receipt and review of the investigation report:
 - A. if the CLA does not agree with the investigation report, within ten (10) days of receipt of the report, file a request for review (LS-052r) of the investigation report;
 - B. if the CLA does agree with the investigation report, provide a request for review (LS-052r) to the youth and to the accused employee. The CLA shall send the form signed by the youth to the deputy chief inspector general. Where the report confirms the allegations, and the youth has not requested review, the CLA shall notify the accused employee that corrective actions, including any disciplinary actions will be enforced in eleven days, unless the accused employee requests review of the investigation report.
 - C. The deputy chief inspector general will ensure that alleged mistreatment files and their corresponding logs are maintained for a period of five (5) calendar years from the date of filing. No reference to the filing of an allegation of mistreatment is included in files pertaining to the individual youth about which the allegation is filed.

f. Appeals of Investigation Findings.

1. For procedures for youth and parents filing an appeal to the executive director, see (GAP) §93.53.
 2. For procedures for any employee, volunteer, or contractor who is found to have engaged in wrongdoing or the CLA filing an appeal of the investigation findings to the executive director, see (TYC's Personnel Policy and Procedure (PRS) Manual) PRS.35.11, relating to Response to and Appeals of Investigation Findings.
-

Committee Discussion
on
House Concurrent Resolution 153

BACKGROUND OF THE ISSUE

On March 22, 2006, the committee heard public testimony from Harry Tindall regarding H.C.R. 153, which had an original purpose of changing Family Code terminology.

H.C.R. No. 153

HOUSE CONCURRENT RESOLUTION

WHEREAS, Title 1 of the Texas Family Code was originally enacted by Chapter 888, Acts of the 61st Legislature, Regular Session, 1969; subsequently, Titles 2 and 3 were added by the 63rd Legislature in 1973, Title 4 was added by the 66th Legislature in 1979, and Title 5 was added by the 74th Legislature in 1995; and

WHEREAS, The codification of the Family Code and the amendments thereto by successive legislatures have done much to advance the interests of Texas families and children; and

WHEREAS, The 1973 enactments provided for suits affecting the parent-child relationship and introduced the terms "managing conservator," "possessory conservator," "possession," and "access" as they relate to the family; and

WHEREAS, The legislature has declared it to be a public policy of this state, in cases of marital dissolution, to encourage parents to have frequent contact with their children, as appropriate for the circumstances; and

WHEREAS, During the past 32 years, significant research in family dynamics has led to an emergence of new terms that are more commonly used to describe the relationship between parents

in a dissolution of marriage, including "parenting plans" and "parenting time" and other neutral terms; similarly, advances in the field have rendered obsolete such terms as "managing conservator" and "possessory conservator"; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas hereby request that the Texas Legislative Council schedule a revision of the Family Code during the 2005-2006 interim using updated terminology as described in this resolution; and, be it further

RESOLVED, That the secretary of state forward an official copy of this resolution to the joint chairs of the Texas Legislative Council.

BILL ANALYSIS

Senate Research Center
79R14886 SMC-D

H.C.R. 153
By: Dutton (West)
Jurisprudence
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Title 1 of the Texas Family Code was originally enacted by Chapter 888, Acts of the 61st Legislature, Regular Session, 1969; subsequently, Titles 2 and 3 were added by the 63rd Legislature in 1973, Title 4 was added by the 66th Legislature in 1979, and Title 5 was added by the 74th Legislature in 1995. The codification of the Family Code and the amendments thereto by successive legislatures have done much to advance the interests of Texas families and children. The 1973 enactments provided for suits affecting the parent-child relationship and introduced the terms "managing conservator," "possessory conservator," "possession," and "access" as they relate to the family. The legislature has declared it to be a public policy of this state, in cases of marital dissolution, to encourage parents to have frequent contact with their children, as appropriate for the circumstances. During the past 32 years, significant research in family dynamics has led to an emergence of new terms that are more commonly used to describe the relationship between parents in a dissolution of marriage, including "parenting plans" and "parenting time" and other neutral terms; similarly, advances in the field have rendered obsolete such terms as "managing conservator" and "possessory conservator."

RESOLVED

That the 79th Legislature of the State of Texas hereby request that the Texas Legislative Council schedule a revision of the Family Code during the 2005-2006 interim using updated terminology as

described in this resolution; and that the secretary of state forward an official copy of this resolution to the joint chairs of the Texas Legislative Council.

COMMITTEE RECOMMENDATIONS

The Committee intends to re-evaluate the need for this legislation in the upcoming 80th Regular Session.

APPENDIX

A - E

APPENDIX

A

**JUVENILE RESIDENTIAL PROJECTED POPULATION
FISCAL YEARS 2006–2011**

FISCAL YEAR	TYC POPULATION (END-OF-YEAR)	TYC STATE-OPERATED FACILITY CAPACITY ³	PROJECTED POPULATION EXCEEDING STATE-OPERATED CAPACITY	
			NUMBER	PERCENT
2006	4,891	4,462	429	9.6%
2007	5,006	4,462	544	12.2%
2008	4,969	4,462	507	11.4%
2009	5,096	4,462	634	14.2%
2010	5,188	4,462	726	16.3%
2011	5,315	4,462	853	19.1%

FISCAL YEAR 2007	END-OF-MONTH POPULATION	FISCAL YEAR 2008	END-OF-MONTH POPULATION	FISCAL YEAR 2009	END-OF-MONTH POPULATION
Sep-06	4,940	Sep-07	4,970	Sep-08	4,938
Oct-06	5,012	Oct-07	4,964	Oct-08	4,993
Nov-06	4,983	Nov-07	4,917	Nov-08	5,006
Dec-06	4,976	Dec-07	4,909	Dec-08	5,021
Jan-07	4,992	Jan-08	4,933	Jan-09	5,024
Feb-07	4,963	Feb-08	4,949	Feb-09	5,011
Mar-07	4,988	Mar-08	4,993	Mar-09	5,047
Apr-07	4,977	Apr-08	4,988	Apr-09	5,066
May-07	5,023	May-08	4,993	May-09	5,106
Jun-07	5,025	Jun-08	4,957	Jun-09	5,129
Jul-07	5,009	Jul-08	4,959	Jul-09	5,090
Aug-07	5,006	Aug-08	4,969	Aug-09	5,096
FY 07 Average	4,991	FY 08 Average	4,958	FY 09 Average	5,044

³ The state operating capacity for the Texas Youth Commission (TYC) is 97.5 percent of the total bed capacity. As of May 1, 2006, the total state capacity was 4,576 beds. TYC received funding to contract for, on average, 539 beds in fiscal year 2006 and 613 beds in fiscal year 2007 in addition to their state-operated facility capacity.

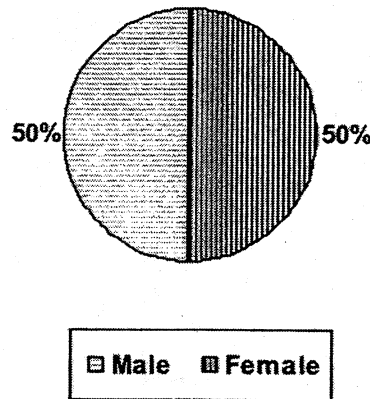
APPENDIX

B

- Thirty-one percent have been with the agency 5-9 years, while 14% have ten or more years of tenure with TYC.
- Fifty-five percent of the remaining employees have less than five years of service with TYC. Based on age, tenure distribution and impending retirements, the major strategies in the TYC Workforce Plan will continue to be employee training and professional management development.

FIGURE 20: TYC WORKFORCE BREAKDOWN

Breakdown by Gender



Breakdown by Age

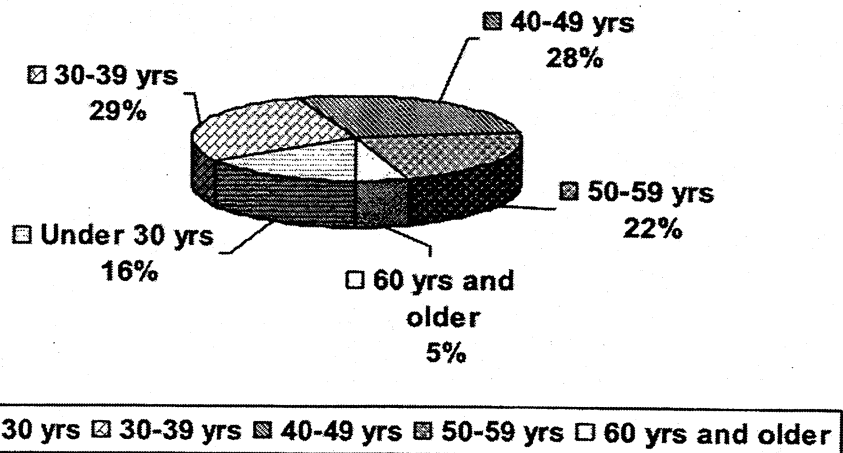


FIGURE 20: TYC WORKFORCE BREAKDOWN -continued
Breakdown by Tenure

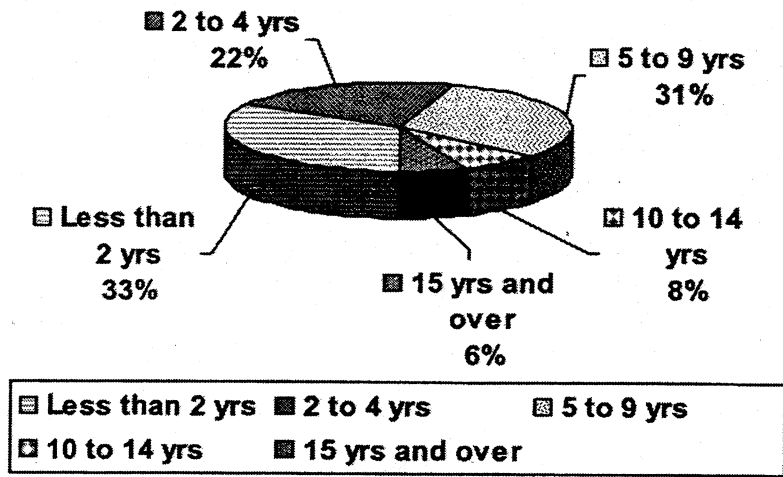


Figure 21 expresses the overall agency utilization of minorities and females compared to the available civilian workforce within the state. TYC's overall minority representation exceeds the overall state civilian workforce.

FIGURE 21: TYC JOB CATEGORY STATISTICS

Job Category	African American		Hispanic		Female	
	TYC %	State %	TYC %	State %	TYC %	State %
	Employed	Available	Employed	Available	Employed	Available
Officials, Administrators	16.1%	7.1%	8.6%	15.2%	35.5%	44.1%
Professional	23.9%	7.9%	13.6%	14.4%	54.9%	54.4%
Technical	0%	10.4%	50.0%	19.8%	0%	47.5%
Para-Professional	34.9%	17.9%	20.4%	31.8%	70.4%	55.6%
Administrative Support	12.0%	9.9%	19.9%	23.2%	92.9%	61.5%
Skilled Craft	6.7%	4.7%	20.0%	34.1%	0%	7.0%
Service & Maintenance	20.5%	8.7%	27.6%	33.0%	47.6%	39.9%
Protective Services	50.1%	18.0%	18.9%	22.1%	41.2%	21.6%

EMPLOYEE TURNOVER

Although overall, TYC has a well diversified workforce, the agency has been challenged with retention issues particularly in the Juvenile Correctional Officer (JCO) positions (Figure 22). The turnover rate for JCOs climbed from 35.5% in FY 2004 to 42.3% in FY 2005. TYC is finding it increasingly difficult to retain well-qualified direct care staff, which has an effect on our day-to-day operations. In addition, TYC is also having difficulty recruiting licensed Chemical Dependency Counselors (LCDC case managers) and masters and doctoral psychologists. The low unemployment rate for the cities in which TYC recruits and the

economic upturn have made it increasingly difficult to recruit and retain employees.

Consequently, additional programs and initiatives are being developed and implemented to improve training and working conditions for direct care staff. When these programs are fully implemented and the facilities become adequately staffed and stabilized, TYC should experience a noticeable decrease in turnover. In fact, turnover is projected to show a steady decrease over the next six years when these programs are fully implemented (Figure 23).

**FIGURE 22: TYC EMPLOYEE TURNOVER TRENDS
2001-2005**

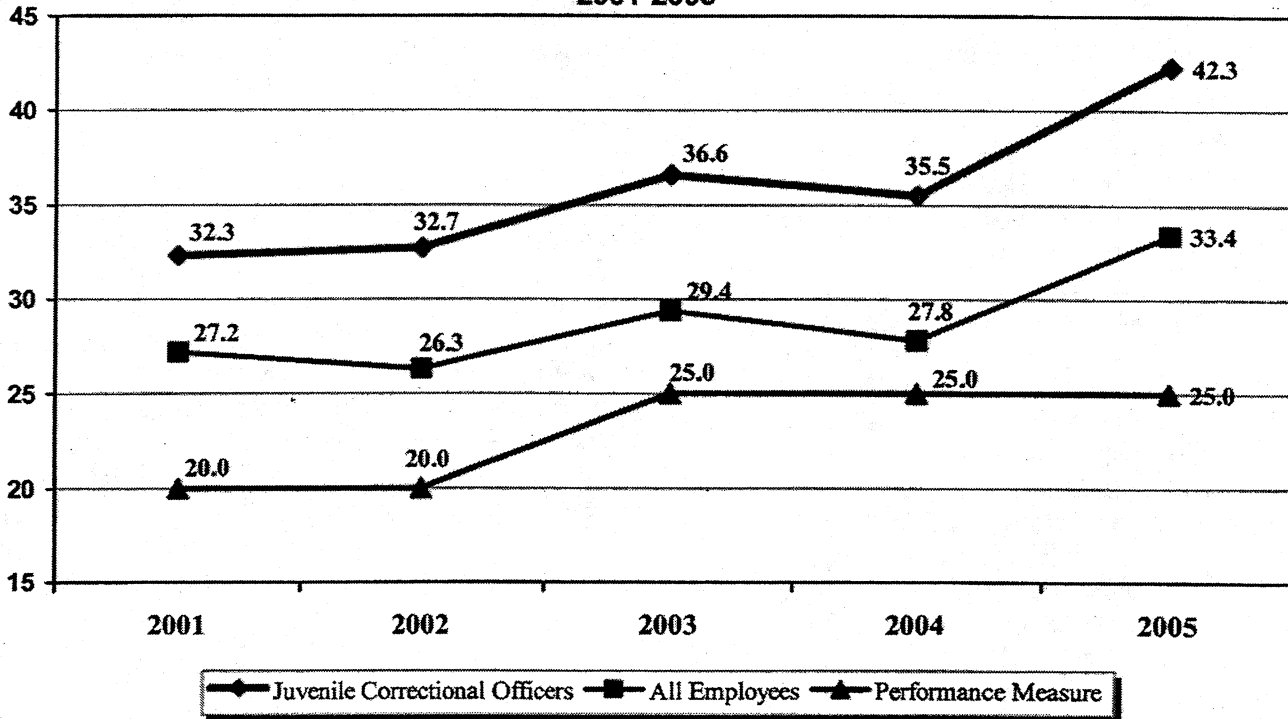
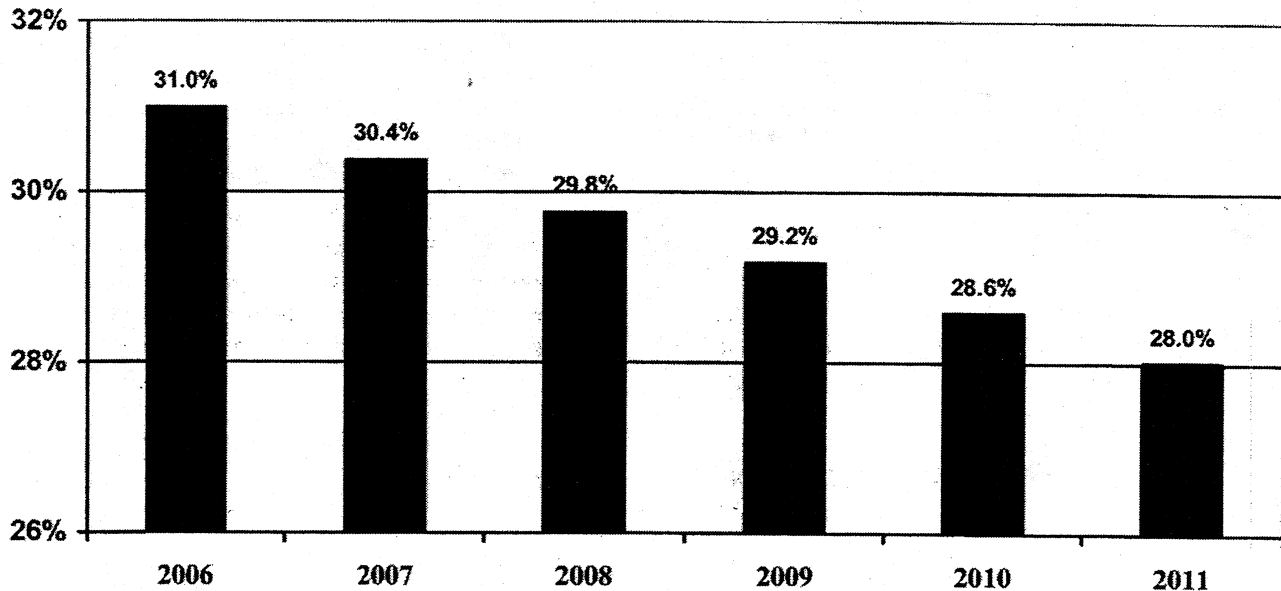


FIGURE 23: TYC PROJECTED TURNOVER



LENGTH OF SERVICE

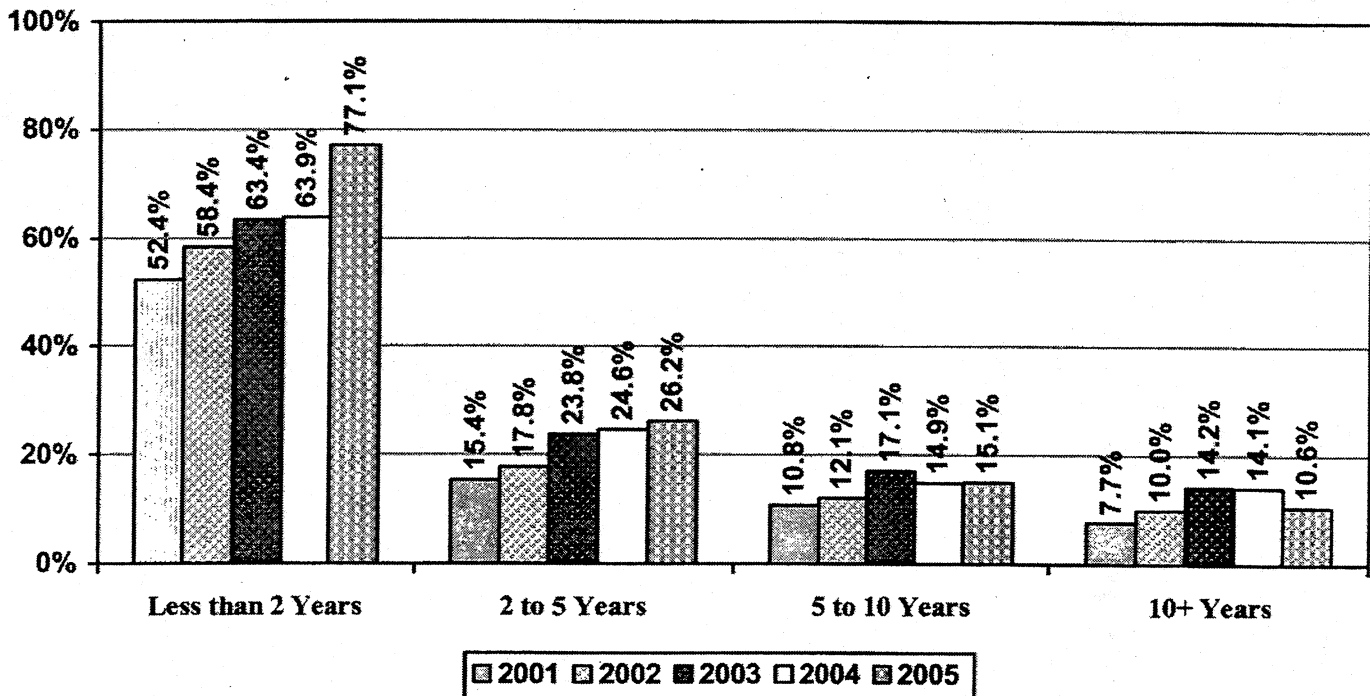
The group with the highest turnover rate at TYC is employees with less than two years of service (Figures 24 and 25). This is especially true of the Juvenile Correctional Officer (JCO) with less than two years whose turnover rate is 77.1 percent. This unusually high turnover rate is attributable to the challenging nature of the JCO's work. Long hours, constant supervision of and interaction with delinquent youth are demanding and stressful work. Consequently, many new employees discover within their initial six months of employment that they are not suited for this type of work. Additionally, some of the more tenured staff tend to burn out due to the long hours, high demand work, and inadequate staffing. Employee exit surveys show that most employees are leaving TYC due to personal reasons and working conditions, and not because of pay.

The JCO turnover rate decreases substantially after two years of employment to 26.2 percent and decreases further to 15.1 percent with over five years of service, which is similar to the overall state turnover rate for all employees. However, TYC will continue to see a higher turnover rate with JCOs when compared to other positions as more tenured staff reach the top of the JCO pay range (they are ineligible for merit increases) or are eligible to retire.

FIGURE 24: TYC LENGTH OF SERVICE STATISTICS

2005	TYC Turnover	State Turnover	% of TYC Employees	% of State Employees
< 2 Years	66.68%	24.6%	32.90%	42.33%
2-5 Years	22.83%	15.4%	22.03%	15.74%
5-10 Years	12.78%	9.3%	31.13%	18.59%
10-15 Years	9.61%	8.6%	7.56%	12.22%
15-20 Years	7.64%	6.9%	3.50%	5.94%
20+ Years	12.75%	11.11%	2.85%	5.18%

FIGURE 25: JCQ TURNOVER BY TENURE



AGE

The turnover rate for employees under the age of 30 is 63.28 percent, the highest turnover rate of all the age groups in TYC (Figure 26). Employees under 40 years of age represent 44.15% of TYC employees and has a turnover rate at 44.39% compared with a turnover rate of 23.28% for employees over 40 years of age. TYC will need to focus its efforts on developing and retaining the under 40 age group in order to secure the future availability of talent required to sustain and lead this agency.

The rapid expansion also placed a strain on the existing pool of qualified and seasoned managers. In addition, several of the agency's managers will be eligible for retirement in the next five years. TYC is also challenged to recruit and retain well-qualified Juvenile Correctional Officers. The agency recognizes how critical they are. Consequently, hiring highly qualified staff to ensure the safety of youth, staff, and the public is imperative in the operation of the agency.

RETIREMENT ELIGIBILITY

Over the next five years, 7.5 percent of the TYC workforce will be eligible to retire. The majority of those eligible to retire are in TYC's leadership positions and seasoned JCO staff, resulting in a critical loss of institutional knowledge and expertise. In anticipation of this occurrence, management development and enhancement of direct care skills will remain as the major elements of the TYC workforce plan.

TYC has developed a succession plan to develop the managers for the future.

CRITICAL FUNCTIONS

The main functions of TYC are to protect the public, habilitate committed youth to become productive citizens, and provide rehabilitation and treatment. The agency's most critical function is the delivery of the comprehensive rehabilitation program called Resocialization®. The four cornerstones of Resocialization® are correctional therapy, education, work, and discipline training. Delivery of these components requires well-trained juvenile correctional officers, case managers and psychologists, certified and experienced teachers, and managers.

FUTURE WORKFORCE PROFILE

As previously stated, the Texas Youth Commission experienced a period of rapid expansion from 1994 to 2000, when TYC more than doubled its workforce. This expansion presented a unique challenge in attracting and retaining professionals such as psychologists, caseworkers, and teachers.

FIGURE 26: TYC AGE STATISTICS

2005	TYC Turnover	State Turnover	% of TYC Employees	% of State Employees
Under 30 Years	63.28%	35.3%	16.03%	14.56%
30-39 Years	33.62%	16.2%	28.12%	24.67%
40-49 Years	23.63%	9.8%	28.42%	30.77%
50-59 Years	21.81%	13.5%	22.20%	24.74%
60 + Years	27.86%	21.0%	5.23%	5.5%

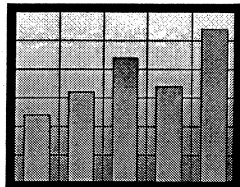
APPENDIX

C

Economic Commentary on the Underlying Basis of Texas' Child Support Guidelines and Needed Directions for Study and Reform

July 12, 2006

**Submitted to:
Texas House Juvenile Justice and
Family Issues Committee
Austin, Texas**



RogersEconomics.com

Submitted by:
R. Mark Rogers
R. Mark Rogers Economic Consulting
617 Garamond Place
Peachtree City, GA 30269
678-364-9105

Economic Commentary on the Underlying Basis of Texas' Child Support Guidelines and Needed Directions for Study and Reform

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CHAPTER I

Executive Summary by Chapter

Chapter II—Child Support Guidelines: A Legal Presumption or Mere Public Policy?

Texas' child support guidelines are a legal presumption and should be held to standards for a legal presumption. A legal presumption should not be arbitrary. A legal presumption should be set aside (rebutted) when the case facts do not fit the presumed facts.

Chapter III—Background and Underlying Study of Texas' Child Support Guidelines

A review of Texas' child support guidelines finds that the Office of the Attorney General does not have readily available for the general public the economic basis for the state's child support guidelines. The underlying study can only be found based on the guidelines' economic characteristics and is found to be obligor-only guidelines with origins from a 1982 Wisconsin study by Jacques van der Gaag. From the underlying study, the guidelines are designed only to be applicable to low income cases for welfare recovery.

The guidelines' underlying study assumes: no income for the custodial parent, no parenting time for the obligor, the obligor is low income, the parents have available income as if they still live in the same household, the parents share child-related tax benefits as cost offsets, and the award is limited to the amount of the welfare payment to the custodial parent. The guidelines are inappropriately applied outside of these assumed circumstances based on the guidelines matching the characteristics of the 1982 Wisconsin study.

The guidelines underlying facts rarely fit case facts and should be set aside in nearly all cases.

Chapter IV—Overview of Key Economic Characteristics of Child Support Guidelines That Conform to Due Process and Equal Protection Standards

Key economic characteristics of sound child support guidelines include:

- Being based on economically valid child costs reflecting reduced available income due to both parents incurring household expenses in two separate households and with child costs declining as a percentage of net income as net income rises;
- Taking into account both parents' child costs associated with their own parenting time; and
- Treating child-related tax benefits as a cost offset to be shared by both parents.

Chapter V—Standard of Living Impact Analysis of Presumptive Awards

The child support guidelines currently in use typically generate awards that are much higher than would be the case if based on economically sound cost concepts and with an equal duty of support for both parents. These guidelines do not conform to equitable standard of living outcomes.

Specifically, current guidelines have presumptive awards that exceed child costs to such an extent that:

- In many cases where the custodial parent has significantly lower gross income than the non-custodial parent, the custodial parent still receives a significantly higher standard of living than the non-custodial parent.
 - In other cases where the custodial parent has significantly higher gross income than the non-custodial parent, the presumptive award boosts the custodial parent's relative standard of living rather than narrowing it.
- The inappropriate standard of living outcomes are due to three key factors:
- The presumptive percentages do not reflect child costs but instead are merely arbitrary income transfers.
 - Both parents' parenting time costs are not part of the presumptive calculation.
 - The child-related tax benefits are not shared proportionally between both parents and are a windfall to the custodial parent.

Chapter VI—Two Alternative Approaches to Child Cost Schedules that Take Into Account the Added Costs and Reduced Available Income of Maintaining Two Separate Households

Texas' child support guidelines are fixed percentages of obligor net income and conflict with professional studies that indicate that child costs decline as a percentage of net income as net income increases.

Texas should adopt more economically sound child costs that decline as a share of net income. However, most child cost studies use intact family data which overstates available income in divorce or never married situations. In these situations, two households are supported instead of one, reducing available income for other expenses—including child costs. There are two economic solutions to the presumption of intact family child costs not fitting case facts of divorced or never married parents:

1. Use single-parent child costs based on an average of the two parents' incomes, or
2. Make adjustments to the intact family data to reflect the additional adult overhead from two single-parent households compared to one intact household.¹

These alternatives would be Cost Shares or Income Shares adjusted with a second household discount.

Chapter VII—The Issue of Child-Related Tax Benefits as a Cost Offset

The child-related tax benefits received by custodial parents can include:

- head of household tax payer status,
- child dependency exemptions,
- child tax credits,
- additional child tax credits
- child care tax credits, and
- higher earned income credits for low-income working custodial parents.

Child-related tax benefits typically equal an extra \$100 per month in extra after-tax income per child. These child-related tax benefits should be cost offsets shared by both parents. Texas presumptively only allows the custodial parent to enjoy these cost offsets.

¹ More detailed discussion of these alternative methodologies can be found in *Alabama, Economic Report on Alternative Child Support Cost Schedules and Related Issues*, Advisory Committee on Child Support Guidelines and Enforcement, Administrative Office of Courts, Montgomery, Alabama, March 31, 2006.

Chapter VIII—The Issue of Parenting Time Adjustments

Without taking into account both parents' incurred child costs, child support guidelines do not apply a standard of equal duty of support. Additionally, the children are not support in both households on the same basis.

Texas' guidelines assume that the non-custodial parent has no child costs. There is no built in parenting time adjustment.

In contrast, Texas' custody law presumes joint legal custody with either significant standard parenting time or extended parenting time for the non-custodial parent. The presumptive child support guidelines conflict with Texas' custody presumption.

There are a number of ways that states presumptively take into account parenting time. The most economically sound parenting time adjustment is based on types of costs by categories for duplicated fixed costs (housing), non-duplicated fixed costs (clothing), and variable (time varying) costs (food and transportation).

CHAPTER II

Child Support Guidelines: A Legal Presumption or Mere Public Policy?

One issue in particular creates substantial disagreement over what should be the appropriate features of child support guidelines. And that issue is whether such guidelines are legal presumptions designed to assure the correct amount of child support, or public policy choices designed to achieve a certain distribution of wealth. The author takes the position that child support guidelines are legal presumptions, and not public policy choices. When it is asked, for example, how long an unemployed worker should be eligible for unemployment benefits, a question of public policy arises. And when that determination is made from economic data, budget figures, and fiscal considerations, a public policy choice is made. But once this choice is made, the level of unemployment benefits is not presented in court as presumptive evidence against a litigant. Child support guidelines, however, are used as presumptive evidence in court against a child support obligor. There are stricter standards for legal presumptions than public policy choices.

The following summarizes key characteristics of a sound legal presumption for child support determination—the guidelines:

- Must be based on correct use of authentic economic data in their development;
- Must reasonably indicate in most cases an amount of child support due, assuming an equal duty of both father and mother to supply the reasonable needs of their children according to the resources available to each;
- Must be fully and fairly rebuttable;
- Shall not include arbitrary features; and
- Must be developed by responsible public authority on the basis of appropriate economic data and legal principles.

A key issue is whether Texas' child support guidelines confirm to these principles.

Documentation of these legal principles—with case citations—can be found in Appendix I.

CHAPTER III

Background and Underlying Study of Texas' Child Support Guidelines

Texas' child support guidelines work by applying a given percentage to obligor net income. From Texas' code:

Sec. 154.125. Application of Guidelines to Net Resources of \$6,000 or Less

(a) The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are \$6,000 or less.

(b) If the obligor's monthly net resources are \$6,000 or less, the court shall presumptively apply the following schedule in rendering the child support order:

**CHILD SUPPORT GUIDELINES
BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR**

1 child	20% of obligor's net resources
2 children	25% of obligor's net resources
3 children	30% of obligor's net resources
4 children	35% of obligor's net resources
5 children	40% of obligor's net resources
6+ children	Not less than the amount for 5 children

Section 154.126. Application of Guidelines to Net Resources of More Than \$6,000 Monthly.

(a) If the obligor's monthly net resources exceed \$6,000 per month, the court shall presumptively apply the percentage guidelines to the first \$6,000 of the obligor's net resources. Without further reference to the percentage recommended by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.

(b) The proper calculation of a child support order that exceeds the presumptive amount established for the first \$6,000 of the obligor's net resources requires that the entire amount of the presumptive award be subtracted from the proven total needs of the child. After the presumptive award is subtracted, the court shall allocate between the parties the

responsibility to meet the additional needs of the child according to the circumstances of the parties. However, in no event may the obligor be required to pay more child support than the greater of the presumptive amount or the amount equal to 100 percent of the proven needs of the child.

Net resources are gross income of the obligor and excluding standard withholding for federal income taxes and Social Security taxes. The guideline percentages are fixed percentages of net income, varying only according to the number of children.

Text of Correspondence Requesting Documentation of the Underlying Study for Texas' Child Support Guidelines

The underlying facts of a legal presumption should be readily available. The underlying study for Texas' child support guidelines were requested.

Exhibit 1.

Ms. Amanda Crawford
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

June 15, 2001

Subject: Request for information on study underlying Texas's child support guideline

Dear Ms. Crawford:

I am an economic consultant with one of my areas of specialization being child cost issues. I have a Texas client interested in this issue. As a result of the 1988 federal Family Support Act, each state was required to implement a statewide child support guideline based on economic data. I would like to obtain a copy of the economic study underlying Texas's current child support guideline. If the guideline is in essentially the same basic form as when initially implemented, I would like a copy of the underlying study that was the basis of the original implementation of the guideline. If possible, would you please forward a copy to the above address? If other steps are necessary to obtain this study, would you please notify me by mail or by email to the below address?

Sincerely,

R. Mark Rogers
Economic Consulting
770-412-1059
Email: RMRogers@mindspring.com

Response to Request for Underlying Study

Exhibit 2.



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

June 26, 2001

Mr. R. Mark Rogers
Economic Consulting
130 Woodmont Drive
Griffin, GA 30224

Re: Your letter to Amanda Crawford dated June 15, 2001 requesting study on Child Support Guidelines; RQ # 01-8052

Dear Mr. Rogers:

The above referenced request received on June 19 has been forwarded to me for response under the Texas Public Information Act.

You will find a 47 page packet enclosed that is responsive to your request. There is no charge for providing you these copies. We do not have a copy of the study that was the basis of the original implementation of the guidelines.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carol Campbell".

Carol Campbell
Assistant Attorney General

Enclosures

The Office of the Attorney General has no documentation of the economic basis of Texas' child support guidelines. This lack of documentation conflicts with the due process concept that any party that is affected by a legal presumption has the right to examine the basis for the legal presumption in order to be able to make an argument that the presumption does not apply to that particular case. Any state should be readily able to provide the underlying economic basis for its child support guidelines in order to comply with due process standards. Texas is not able to do this.

The Underlying Study for Texas' Child Support Guidelines Can Only Be Inferred from Its Characteristics

Texas has child support guidelines that are a fixed percentage of obligor income. The custodial parent's income is not a part of the presumptive award calculation. Obligor only guidelines have their origin in Wisconsin and are based on a 1982 study by Jacques van der Gaag. A summary of this study indicates that Texas's child support guidelines have no economic basis for application to child support cases in general. A comparison of typical case facts with underlying facts indicates that the presumptive calculation should be rebutted in nearly every case.

Rebuttal of the Presumption of Applicability of Texas' Child Support Guidelines Based on Comparing Typical Case Facts with Underlying Presumptive Facts

Texas' child support guidelines are a variation of child support guidelines initially implemented by the state of Wisconsin for Title IV-D welfare cases. Texas' guidelines conform to the characteristics of so-called Wisconsin-style guidelines. The underlying economic study and conditions for appropriate application of the guidelines were conducted and published by Dr. Jacques van der Gaag in 1982.² The guidelines were designed to be applicable only if the household had certain economic characteristics. These underlying economic characteristics of the household are:

² Jacques Van der Gaag, "On Measuring the Cost of Children," Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982.

- For the study, the households (both parents) averaged annual gross income of \$12,000 in 1982 dollars. In year 2005 dollars, this would be household income of \$24,286.³ The underlying study specifically states that at higher incomes, the applicable percentage should decline.⁴ The study also assumed the percentage would be applied only after setting aside a self-support reserve.
- The custodial parent is assumed to care for the children and not earn any income outside the home.
- The non-custodial parent is the sole income earner and the percentages applied to the non-custodial parent's income are based on tax law of 1982. Under the tax code in which the percentages are derived, the non-custodial parent that provided over half of the child's support would receive use of all child-related income tax benefits.
- The low-income characteristic also includes the fact that the guidelines were to be applied to income earners paying little or no income tax. Hence, under the appropriate low-income application, there is no need to take into account differences between gross income and net income.
- The guideline percentages were derived based on the assumption that the non-custodial parent is absent and that the children are with the custodial parent 100 percent of the time.
- The guideline percentages were to be applied with the amount of the award limited to the size of the welfare payments to the custodial household.⁵ The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

In rebuttal to presumption of the applicability of these guidelines, the following are counter to conditions necessary for the application of the guidelines to be fair, just, and economically appropriate, and the presumption of applicability of the guidelines is rebutted:

³ The 2005 figure was calculated by the author by applying the ratio of the 2005 CPI (All Urban, annual average) to the 1982 CPI to the 1982 household income figure.

⁴ Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

⁵ Institute for Research on Poverty, University of Wisconsin-Madison. "Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program," *Child Support: Technical Papers, Volume III, SR32C, Special Report Series*, 1982, pp. 143-144.

- The household income (combined for both parents) in question frequently is not low income. Lower percentages are economically appropriate at higher incomes as stated in the underlying economic study.⁶
- The obligee typically has income or should be imputed to have income instead of the presumption of no income based on the underlying facts. The underlying study states that when the obligee earns income, that both parents' income should factor into the child support determination and with lower percentages.⁷
- Since 1984, federal tax code gives the custodial parent the child-related tax benefits but this change is not reflected in the child support guidelines.⁸ No changes have been made in the basic percentages since the original study. The tax benefit "swing" from the non-custodial parent to the custodial parent is substantial. Additionally, the guidelines assume that both parents share in all child-related tax benefits as cost offsets. These child-related tax benefits are to be equitably shared as offsets to overall child costs but the guidelines do not address this issue, violating equal protection standards.
- The guidelines assume that the obligor has no parenting time and no associated costs with parenting time. In contrast, in typical cases the obligor has substantial court ordered parenting time with the child. The underlying study states that under shared parenting, adjustments should be made in the award.⁹

⁶ Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

⁷ Institute for Research on Poverty, University of Wisconsin-Madison. "Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program," *Child Support: Technical Papers, Volume III, SR32C, Special Report Series*, 1982, pp. 143-144.

⁸ The Deficit Reduction Act of 1984 significantly affected domestic relations taxation in the areas of alimony, property divisions and transfers, and dependency exemptions. For custody decrees subsequent to 1984, this act allocated the dependency exemption to the custodial parent in all cases unless the custodial parent signed a written declaration each year that the non-custodial could claim the dependency exemption. See Steven D. Kittrell. "An Overview of the 1984 Domestic Relations Tax Provisions," *Improving Child Support Practice, Volume Two*, The American Bar Association, 1986, page IV-57.

⁹ Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

- This case is not a welfare case and the guidelines are not intended by the underlying studies to be applied outside of situations in which the award is limited to low benefits.

In general, typical case circumstances are in complete contrast to the guidelines' underlying facts and rebut the applicability of the presumptive award. Additionally, case law indicates that when the underlying facts of a statutory presumption no longer exist, the presumption is unconstitutional. See *Leary v. United States*, 395 U.S. 6 at 32-37 (1969) and especially footnote 68. The underlying facts for the guidelines' presumptions are that the percentages are to be applied only in welfare cases and only up to recovering welfare payments made to the custodial parents. These underlying facts no longer exist.

See also See *Manley v. Georgia*, 279 U.S. 1, 49 S.Ct. 215 (1929). A presumption that is irrebuttable or denies a fair opportunity for rebuttal violates the due process clause of the Fourteenth Amendment of the U.S. Constitution.

Once the presumption set forth in Chapter 154 of Texas Code has been rebutted, the Court must exclude the presumption from the consideration of the jury or other trier of fact in order not to deny due process of law. See *Seaboard Coastline Railroad Co. v. Wroblewski*, 138 Ga. App. 793 (1976) regarding the rebuttal of a presumption forces the presumption to disappear from further consideration by the court in that case. A showing of credible evidence of more appropriate child costs for the instant case rebuts the presumptive child costs and the presumptive award is no longer to be considered by the court. This would suggest that the guidelines should be set aside in nearly all cases.

The bottom line is that the underlying study for Texas' child support guidelines is not readily available to the average affected party, given that the Office of the Attorney General does not have a copy on record nor documents the underlying basis for the guidelines.

CHAPTER IV

Overview of Key Economic Characteristics of Child Support Guidelines That Conform to Due Process and Equal Protection Standards

The first economic issue of child support guidelines is that the measure of child costs should be based on valid empirical studies that reasonably reflect typical case circumstances. These case circumstances would include the fact that the parents live in separate households and do not have the same available income as if they lived in the same household and in only one household. Additionally, the guidelines would take into account that typically both parents incur child costs and that both parents should share in the other parent's child costs in proportion to available resources (income). Child costs should be shared net of child-related tax benefits in order to apply an equal duty of support standard. The custodial parent generally receives large, child-related tax benefits that are cost offsets and in which the non-custodial parent generally is not entitled.

Hence, the key economic characteristics of sound child support guidelines include:

- **Being based on economically valid child costs reflecting reduced available income due to both parents incurring household expenses in two separate households and with child costs declining as a percentage of net income as net income rises;**
- **Taking into account both parents' child costs associated with their own parenting time; and**
- **Treating child-related tax benefits as a cost offset to be shared by both parents.**

CHAPTER V

Standard of Living Impact Analysis of Presumptive Awards

A traditional standard-of-living comparison uses the federal poverty threshold as a benchmark.¹⁰ Poverty thresholds vary according to household size. Starting with the one-child case, the issue here is one of how the payment of presumptive child support awards affect the standard of living for a one-adult household of the non-custodial parent and for the one-adult and one-child household of the custodial parent. Comparisons are also made for the one-adult household versus a one-adult-and-two-children household.

The poverty thresholds established by the Bureau of the Census vary by the number of children, so that using these varying thresholds takes into account the custodial parent's higher costs from supporting the children. The relevant poverty thresholds are:

Exhibit 3.

Poverty Thresholds, 2004, U.S. Bureau of the Census
Annual, Current Dollars

One adult, under age 65	\$9,827
One adult, one child	\$13,020
One adult, two children	\$15,219
One adult, three children	\$19,223

However, non-custodial parents often have significant amounts of parenting time. This increases the non-custodial parent's poverty threshold costs while reducing those of the custodial parent. Conservatively, it is assumed that the non-custodial parent has 25 percent of total parenting time and that the children's portion of the poverty threshold shifts between the parents by that proportion. This 25 percent share is a little lower than the standard parenting time award. For one child, the difference between a one-adult household and a one-adult, one-child household is \$3,193 annually. Allocating 25 percent of this amount to the non-custodial parent results in a one-child poverty threshold of \$10,625 for the non-custodial parent and \$12,222 for the custodial parent. This adjustment takes into account the non-custodial parent's need to provide for the children while in his or her care.

¹⁰ The standard of living impact analysis is based on earlier research using 2004 tax code and 2004 poverty thresholds. Updated numbers would push the standard of living advantage a little more toward the custodial parent given that child-related tax benefits have risen since 2004.

It can be argued that because of fixed costs such as housing, a straight-line allocation of the child portion of the poverty threshold is inappropriate. However, while studies indicate that custodial parent child costs go down less than proportional to parenting time, they also indicate that a non-custodial parent's child costs go up more than proportional to parenting time.¹¹ Therefore, straight-line allocation appears to be a conservative measure of the non-custodial parent's share of poverty threshold levels as compared to that of the custodial parent. These are provided in Exhibit 4.

Exhibit 4.

Parenting Time Adjusted Poverty Thresholds, 2004, Annual
25 Percent Parenting Time Assumption for the NCP

	<u>Custodial Parent (CP)</u>	<u>Non-custodial Parent (NCP)</u>
One child case	\$12,222	\$10,625
Two children case	\$13,871	\$11,175
Three children case	\$16,874	\$12,176

In the analysis below, the standard of living is expressed as multiples of the appropriate poverty threshold provided in Exhibit 4. Scenarios start with custodial parent gross incomes that are 50 percent of that of the non-custodial parent. Additional comparisons assume the ratio of custodial parent gross income to non-custodial parent gross income of 70 percent, 100 percent, 130 percent, and 200 percent.

What are reasonable expectations for the outcomes of these standard of living comparisons? After income and FICA taxes have been deducted and after a presumptive child support transfer, an equitable outcome would be such that when both parents have equal gross incomes, that they both end up equal standards of living after taking into account differences in household size and the cost of the children. However, in cases where the non-custodial parent begins with a higher gross income, one would expect that the non-custodial parent would still have the higher standard of living after paying support. One might consider it equitable that the standard of living gap be narrowed somewhat, but not eliminated, by the child support transfer when one parent has a significantly higher gross income. However, one would not expect child support transfers to increase the initial standard of living gap for the higher earning parent.

¹¹ Henman, Paul and Kyle Mitchell (2001), "Estimating the Costs of Contact for Non-residential Parents: A Budget Standards Approach," *Journal of Social Policy*, 30 (July), 495-520.

Exhibit 5 shows the basic calculations for both parents' living standards relative to the poverty threshold.

The example provided in Table 6 starts with equal gross incomes. An equitable result would be to end with equal living standards after accounting for tax differences, the child support award, and household size inclusive of parenting time. However, the standard of living outcome is very different. As can be seen, the custodial parent's living standard is more than one-third higher than that of the non-custodial parent.

The standard of living analysis in Exhibit 5 is expanded in Exhibits 6.a. through 8.b. There are scenarios for one, two, and three children, and for non-custodial parent monthly gross incomes ranging from \$1,500 through \$6,000. Custodial parent income is then set at different percentages of non-custodial parent income: 50 percent, 70 percent, 100 percent, 130 percent, and 200 percent. These tables show the standard of living outcomes which are comparable to the final figure given in Table 6.

Exhibit 5.

The Standard of Living Impact of Texas' Child Support Guidelines: An Example

For One Child, 25%/75% Parenting Division

	<u>NCP</u>	<u>CP</u>
Gross income, annual	\$48,000	\$48,000
After-tax income	\$37,572	\$40,237
Presumptive child support	-7,512	+7,512
After tax, after presumptive Child support income	\$30,060	\$47,749
Appropriate poverty threshold	\$10,625	\$12,222
Income as multiple of threshold	2.829	3.907
Custodial parent's higher(+) or lower (-) standard of living compared to non- custodial parent		+38 %

As can be seen in these tables, Texas' guideline award creates a substantial shift in the living standards from the non-custodial to the custodial parent. As discussed below, when the

custodial parent has moderately lower income than the non-custodial parent, the former typically ends with a higher standard of living than the latter. For situations where the custodial parent has the higher gross income, the combination of child-related tax benefits and the child support transfer boosts the custodial parent's advantage. The income sharing mechanism does not share the child cost burden in a manner to narrow any standard of living difference between higher and lower income parents in a consistent manner, regardless of whether the custodial or the non-custodial parent has the higher income. Instead, these guidelines always boost the custodial parent's standard of living—even when the custodial parent is the one with the higher income level.

How do the tables show these outcomes? With Texas guidelines, as reported in Exhibits 6.a. and 6.b. for situations with custodial parent income one-half the income of the non-custodial parent (see lines CP Gross = 50% < NCP Gross), the child support award so exceeds actual child costs that the custodial parent's whole household has almost the same standard of living as the non-custodial parent. For situations in which the custodial parent has 70 percent of the non-custodial parent's income, the former ends up with a notably higher standard of living than the non-custodial parent—6 to 22 percent higher. When gross incomes are equal, the custodial parent ends up with a sharply higher standard of living—37 to 52 percent higher. And when the custodial parent has a higher gross income, the custodial parent's standard of living advantage is boosted even further. For example, with the custodial parent's gross income 30 percent higher than that of the non-custodial parent, with one child, the custodial parent achieves over a 66 to 78 percent higher standard of living. When the custodial parent has gross income that is double that of the non-custodial parent (100 percent higher), the custodial parent typically ends with a 130 to 140 percent higher standard of living following the child support transfer.

This standard of living analysis is carried further in Exhibits 7.a. and 7.b. for two-children cases. For situations in which the custodial parent has only half (50 percent) of the obligor's gross income, the standard of living gap is either eliminated or nearly eliminated. When the custodial parent has 30 percent less gross income than the obligor, the custodial parent ends up with a somewhat higher standard of living than the obligor. At equal incomes, the custodial parent ends up with a 40 to 65 percent higher standard of living than the non-custodial parent. Finally, when the custodial parent has the higher gross income, the child support award actually boosts the custodial parent's relative standard of living even further instead of narrowing the gap.

For the three-children analysis found in Exhibits 8.a. and 8.b., the outcomes are very similar to those for two-children.

Summary of Standard of Living Impact Analysis

The child support guidelines currently in use typically generate awards that are much higher than would be the case if based on economically sound cost concepts and with an equal duty of support for both parents. These guidelines do not conform to equitable standard of living outcomes.

Specifically, current guidelines have presumptive awards that exceed child costs to such an extent that:

- In many cases where the custodial parent has significantly lower gross income than the non-custodial parent, the custodial parent still receives a significantly higher standard of living than the non-custodial parent.
- In other cases where the custodial parent has significantly higher gross income than the non-custodial parent, the presumptive award boosts the custodial parent's relative standard of living rather than narrowing it.

**Custodial Parent's % Higher/Lower Presumptive
Standard of Living Compared to NCP
Texas Child Support Guidelines**

Exhibit 6.a.

ONE CHILD

NCP Monthly Gross Income:	1,500	2,000	2,500	3,000	3,500
CP Gross = 50 % < NCP Gross	-2	-4	-7	-10	-11
CP Gross = 30 % < NCP Gross	22	17	13	8	6
CP Gross = NCP Gross	52	44	38	36	37
CP Gross = 30 % > NCP Gross	78	69	68	67	68
CP Gross = 100 % > NCP Gross	139	139	136	132	131

Exhibit 6.b.

ONE CHILD

NCP Monthly Gross Income:	4,000	4,500	5,000	5,500	6,000
CP Gross = 50 % < NCP Gross	-13	-14	-16	-16	-16
CP Gross = 30 % < NCP Gross	6	6	6	7	7
CP Gross = NCP Gross	38	38	38	37	37
CP Gross = 30 % > NCP Gross	67	67	66	65	66
CP Gross = 100 % > NCP Gross	133	135	137	138	139

Exhibit 7.a.

TWO CHILDREN

NCP Monthly Gross Income:	1,500	2,000	2,500	3,000	3,500
CP Gross = 50 % < NCP Gross	10	9	5	0	-2
CP Gross = 30 % < NCP Gross	37	30	23	19	17
CP Gross = NCP Gross	66	57	50	44	44
CP Gross = 30 % > NCP Gross	93	82	76	74	76
CP Gross = 100 % > NCP Gross	149	147	144	139	138

Exhibit 7.b.

TWO CHILDREN

NCP Monthly Gross Income:	4,000	4,500	5,000	5,500	6,000
CP Gross = 50 % < NCP Gross	-3	-5	-7	-8	-9
CP Gross = 30 % < NCP Gross	13	13	13	13	13
CP Gross = NCP Gross	45	45	45	44	43
CP Gross = 30 % > NCP Gross	75	74	73	72	71
CP Gross = 100 % > NCP Gross	138	140	141	142	143

**Custodial Parent's % Higher/Lower Presumptive
Standard of Living Compared to NCP
Texas Child Support Guidelines**

Exhibit 8.a.

THREE CHILDREN					
NCP Monthly Gross Income:	1,500	2,000	2,500	3,000	3,500
CP Gross = 50 % < NCP Gross	10	10	6	1	-1
CP Gross = 30 % < NCP Gross	37	30	24	19	18
CP Gross = NCP Gross	65	56	50	47	47
CP Gross = 30 % > NCP Gross	90	82	78	76	77
CP Gross = 100 % > NCP Gross	151	148	145	140	137

Exhibit 8.b.

THREE CHILDREN					
NCP Monthly Gross Income:	4,000	4,500	5,000	5,500	6,000
CP Gross = 50 % < NCP Gross	-2	-3	-4	-5	-6
CP Gross = 30 % < NCP Gross	16	16	16	16	16
CP Gross = NCP Gross	47	47	47	46	45
CP Gross = 30 % > NCP Gross	77	75	74	73	72
CP Gross = 100 % > NCP Gross	137	138	139	139	140

- Texas' child support guidelines clearly include alimony for the custodial parent under the guise of child support—which is not the purpose intended for child support guidelines.

Summary Findings from Standard of Living Analysis Regarding Guideline Equity

- The Texas presumptive awards do NOT allocate the child support burden according to the parents' relative ability to pay.
- Importantly, the gains in the standard of living of the custodial parent reflect the economic fact that the custodial parent contributes to child costs at a far lower rate than the non-custodial parent. Economic data show that any case law that assumes that the custodial parent contributes at the same rate as the non-custodial parent is unfounded. The logic of such an assumption is quite bizarre. If one assumes that the custodial parent always spends in the same proportion implicitly as the non-custodial parent explicitly, then the logic is that one could make the custodial parent spend more on a child by making the non-custodial parent spend more on the child. Such assumptions also violate the principles of the underlying economic study.
- Texas' child support guidelines do not explicitly provide for financial support of a child when in the care of the non-custodial parent.
- Texas' guideline awards include such large amounts of hidden alimony that a non-custodial parent is unable to provide for a child when in the non-custodial parent's care to the same extent as in the custodial parent's household. This violates equal protection standards for both the child and the non-custodial parent. Such excessive child support awards are not in the best interest of the child.
- The guidelines are biased toward including hidden alimony for the custodial parent even when the custodial parent earns substantially higher gross income than the non-custodial parent. The guidelines do not even meet standards of fairness for alimony. If the guidelines did, there would be a narrowing of the standard of living gap for the non-custodial parent when the custodial parent has a higher gross income. Instead, the guideline boosts the standard of living of the custodial parent relative to non-custodial parent in both circumstances—when the custodial parent earns either substantially less or substantially more than the non-custodial parent.
- The child support guidelines are arbitrary and bear no relationship to the intended federal purpose of the guidelines of determining an economically appropriate child support award.

- The child support guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.

- The inappropriate standard of living outcomes are due to three key factors:
 - The presumptive percentages do not reflect child costs but instead are merely arbitrary income transfers.

 - Both parents' parenting time costs are not part of the presumptive calculation.

 - The child-related tax benefits are not shared proportionally between both parents and are a windfall to the custodial parent.

CHAPTER VI

Two Alternative Approaches to Child Cost Schedules that Take Into Account the Added Costs and Reduced Available Income of Maintaining Two Separate Households

Child Cost Studies Indicate that Child Costs Decline as a Percentage of Net Income as Net Income Increases

First, Texas' child support guidelines are fixed percentages of obligor net income. This presumptive fact for child costs conflicts with professional studies on child costs. Professional studies indicate that child costs decline as a percentage of net income as net income increases.

See:

- Van der Gaag, Jacques. "On Measuring the Cost of Children," *Child Support: Technical Papers*, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, pp. 1-44.
- Thomas Espenshade, *Investing in Children: New Estimates of Parental Expenditures*, the Urban Institute Press, 1984.
- David Betson working with Policy Studies, Inc., Denver, CO. See Robert G. Williams, "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-8.
- Mark Lino, "Expenditures on Children by Families, 2000 Annual Report, U.S. Department of Agriculture, May 2001.
- R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," presented to Southern Economic Association, National Association of Forensic Economics section, November 12, 2000.
- Virginia General Assembly. See "Technical Report: The Costs of Raising Children," Virginia General Assembly, November 7, 2000, the Joint Legislative Audit and Review Commission (JLARC).

Texas' child support guidelines should be based on child cost studies that realistically have child costs decline as a percentage of net income as net income rises. Additionally, presumptive child costs should reflect available income. As discussed below, the Income Shares methodology (without adjustments) assumes that the parents still have available income based on living in the same house and sharing just one set of household overhead.

Two economic approaches to improved presumptive child costs would be to adopt cost tables based on either an adjusted version of the Income Shares methodology (to take into account the added cost of a second household) or the Cost Shares methodology. These are discussed below.

It is important to keep in mind that adopting either of these cost tables leaves the issues of parenting time adjustments and child-related tax benefits separately. Use of either of these cost schedules does not result in economically sound awards unless there also are also presumptive parenting time adjustments and sharing of child-related tax benefits.

Background and Assumptions of the Income Shares Methodology

Income Shares cost schedules are based on national research on child costs as discussed in *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, by David M. Betson, University of Notre Dame, September 1990. These underlying economic characteristics of the household include, among others:

- The household is intact.
- The child support award is based on combined parental incomes.
- The household does not have the additional overhead that is incurred by a separated family that would reduce income available to spend on children.
- The cost schedule assumes that the household has income available for children based on both parents sharing adult overhead costs as found in one, combined household.

Use of Intact Family Data on Child Costs Overstates Child Costs for Situations in Which There Are Two, Single-Parent Families

The use of intact family data results in child cost schedules that reflect situations in which for any given level of combined income (of the two parents), there is only one set of adult "overhead" or adult fixed costs such as housing and utilities. Once the fixed costs of a mortgage or rent

payment and utilities are paid and shared by the two parents, the remaining after-tax income can be spent on other “things”—including children. In contrast, when the two parents are divorced or unwed, there are two sets of adult overhead for the same level of combined income. There is less after-tax income after paying for housing and utilities. There is less discretionary income available combined for other things—including children. In each of the two households, there is on average half of the income available less housing and utilities. Less income is spent on children in a divorced situation simply because in part there is less combined income after paying for adult fixed costs. This has been recognized in the forensic economic literature.

A joint income standard for child support imposes a greater burden on the NCP [non-custodial parent] than the CP [custodial parent]. The NCP is forced to pay for child costs assuming less burdensome intact family overhead that is not the actual circumstance. Instead, the NCP pays child support for intact family expenditure standards but truly can only afford one-parent household spending because of higher overhead. In contrast, the CP receives intact family based child support that exceeds one-parent based child support but actually spends on the child as though the CP is in a one-parent household because that indeed is the case. The intact family based child support that exceeds one-parent based expenditures is then a windfall—or profit—for the CP.¹²

Use of Intact Family Data for the Child Cost Schedule Gives the Child the Right to a Higher Standard of Living than Either Parent

A simple example shows the economic inequity of using intact family data for child cost schedules. Assume that the mother and father each earn \$4,000 gross income per month. The child is entitled under intact family guidelines to a standard of living based on \$8,000 per month. In contrast, each of the parents spends on themselves based on \$4,000 gross income per month. In reality, the non-custodial parent is required to pay child support based on an intact family standard, the custodial parent receives child support based on an intact family standard, but the custodial parent only spends the child support as if in a single-parent household. Not all of the child support is spent on the child and the custodial parent receives a sizeable financial windfall from child support based on intact family data.

Solutions to the Presumption of Intact Family Child Cost Schedule's Conflict with the Fact that Child Support Is Applied to Non-Intact Family Situations

There are two economic solutions to the presumption of intact family child costs not fitting case facts of divorced or never married parents:

¹² See R. Mark Rogers and Donald J. Bieniewicz, “Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines,” Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, p. 358.

3. Use single-parent child costs based on an average of the two parents' incomes, or
4. Make adjustments to the intact family data to reflect the additional adult overhead from two single-parent households compared to one intact household.¹³

Use of single-parent data is the more economically sound approach. Such an approach is discussed by Rogers and Bieniewicz in various economics articles and professional presentations.¹⁴ The child cost schedule should be based on single-parent household data and on an average of the two parents' incomes. Average income is the maximum standard of living that can be sustained in both households.

The Income Shares intact family data on child costs can be at least partially corrected for the additional adult overhead of a second household to be maintained after divorce or in unwed situation. One can deduct the cost of a second mortgage (or rent) and utilities from combined income used in the "look up" of child costs. That is, the "look up" value of income should not be just combined gross income but combined gross income minus the additional mortgage and utilities. Should there be some question as to which parent's mortgage and utilities should be deducted, it may be reasonable to use an average of the two parents. The same cost schedule can be used but the income used should be redefined for this adjustment.

Adjusting a standard Income Shares cost schedule for a second household's expenses may be a more "comfortable" approach, given that it keeps the traditional Income Shares cost schedule as its starting point. Additionally, adjusting an intact family data cost schedule for the added cost of a second household is not a novel idea. Kansas has built in such a calculation in its presumptive child cost schedule. Kansas uses a variation of the Income Shares methodology. As noted in the Kansas guidelines:

¹³ More detailed discussion of these alternative methodologies can be found in *Alabama, Economic Report on Alternative Child Support Cost Schedules and Related Issues*, Advisory Committee on Child Support Guidelines and Enforcement, Administrative Office of Courts, Montgomery, Alabama, March 31, 2006.

¹⁴ See R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, pp. 333-380. See also "Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living," R. Mark Rogers and Donald J. Bieniewicz, Conference on the Law and Economics of Child Support Payments, University of California, Santa Barbara, September 20, 2002 as published in *The Law and Economics of Child Support Payments*, William S. Comanor, ed., Edward Elgar Publishing, 2004.

The [child cost] schedules also include a built-in reduction from average expenditures per child (the dissolution burden), because of the financial impact on the family of maintaining two households instead of one.¹⁵

Virginia has conducted research into this approach. But this approach was not adopted not so much due to the second household adjustment but due to the novel approach to estimating the alleged standard costs.¹⁶

Introduction to the Cost Shares Methodology

In the mid-1990s, the Children's Rights Council (CRC) developed a prototype child support guideline based on long-established principles in state law in order to correct the perceived problems with existing state child support guidelines.¹⁷ This model guideline has since been developed into a working version called the Cost Shares child support guideline.¹⁸ The Cost Shares guideline diverges from percent-of-obligor-income guidelines and the Income Shares guideline in several key ways. Most importantly, the Cost Shares guideline bases its child cost schedule on numbers derived directly from actual surveys of parents, rather than by using income equivalence measures.

The Cost Shares approach using data on direct expenditures on children, although not yet fully adopted by a state for presumptive cost schedules, is used by most states for add-ons such as medical insurance premiums, day care costs, and special expenses. It may be considered rational to extend this same approach—using data on direct expenditures on children instead of

¹⁵ See Kansas Judicial Branch, Rules Adopted by the Supreme Court, Rules Relating to District Court, Administrative Order 180, Re: 2003 Kansas Child Support Guidelines, Kansas Child Support Guidelines, II(C).

¹⁶ See *Review of Child Support Guideline, Report to the Secretary of Health and Human Resources, the Honorable Jane H. Woods and the General Assembly of Virginia*, by Secretary's Triennial Child Support Panel, October 31, 2002, pp. 8-9. See also "Determining the Level of Child Support," discussion paper, submitted to Secretary's Child Support Guideline Review Panel, Richmond, Virginia, November 2002, by William M. Rodgers III, Associate Professor of Economics, The College of William and Mary, Williamsburg, Virginia, pp. 20-24. This study based child costs largely on per capita child cost from the U.S. Department of Agriculture and other sources. Per capita costs inappropriately assume that each child's share of housing costs (and others) is the same as each parent's share even though many adult costs are incurred whether the adults have children or not.

¹⁷ Donald J. Bieniewicz, "Child Support Guidelines Developed by Children's Rights Council," in U.S. Department of Health and Human Services, *Child Support Guidelines: the Next Generation*, 1994, pp. 104-125.

¹⁸ See R. Mark Rogers and Donald J. Bieniewicz, "Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living," in *The Law and Economics of Child Support Payments*, William S. Comanor, ed., Edward Elgar Publishing, 2004.

indirect equivalence measures—to all cost categories rather than be limited to add-ons. The Cost Shares approach is receiving favorable reviews by some child support agencies and child support guideline review commissions.¹⁹

The full Cost Shares methodology has three key elements beginning with the cost schedule. The two additional features generally not included in most states' guidelines are the sharing of the tax benefits attributable to the children and incorporating parenting time adjustments to ensure that the children are supported in both parents' households on the same basis. At this point, this report focuses solely on the child cost schedule (Schedule of Basic Child Cost Obligations).

The Cost Shares Schedule of Basic Child Cost Obligations relies primarily on the U.S. Department of Agriculture (USDA) child cost tables as the key inputs but with specific adjustments to reduce the USDA reliance on per capita estimates for some components. The Cost Shares schedule of child costs is based upon components for housing, food, transportation, clothing, education, health care, and "other."

There are important reasons why the Cost Shares methodology uses average income instead of combined income for developing child cost schedules. However, it should be noted that the Cost Shares cost schedule can be converted to a combined income basis. There are both legal and economic reasons for using average income. First, traditional principles of legal presumptions require that a presumption fit the intended circumstances—the presumption should be based on circumstances similar to which it is applied. See *Leary v. United States*, 395 U.S. 6 at 32-37 (1969) and especially footnote 68. For child support cases, guidelines are applied to non-intact families and the presumption should reflect that as a matter of due process.

The use of intact family data does not reflect typical finances for non-intact families—this is an economic reason for using average income instead of combined income. Specifically, intact family data assume that the parents live in the same house and have only one set of bills for a mortgage or rent payment and for household utilities. Child cost schedules based on intact family data assume the parents have available income assuming only one set of housing costs. In fact the parents have two households to support—even if the children live in only one household all of the time. The available income for child support should take into account that

¹⁹ See *The Guideline Review Project: A Primer for the Participant*, prepared by Montana's Child Support Enforcement Department for its 2002 guideline review panel. See pages 8 and 9 of Part I in the January 2005 update of this document. See also *Final Report* by New Hampshire's Commission to Study Child Support and Related Child Custody Issues, December 1, 2004, page 20 and pages 25-30.

there are two single-parent households with combined income spread over two households, not one. Average income is the most income that can be found in both households—this is the maximum standard of living for both households.

It has been argued that the children's standard of living should not be impacted by divorce or by parents not living together. However, maintaining the children's standard of living can place a significant burden on the obligor parent. Additionally, it is unclear from a legal perspective whether or not a child has a right to a higher standard of living than the parents. As an example, during marriage two parents each earn \$4,000 per month in gross income for combined gross income of \$8,000 per month. The married household's standard of living is based upon \$8,000 in gross income per month. After divorce, each parent's household has a standard of living based upon \$4,000 in gross income per month. The use of intact family child costs data says that the children have a right to an \$8,000 per month standard of living while each of the parent's would provide themselves with a standard of living based upon \$4,000 per month. Also, in many cases, the parents never lived together and the child never lived at the \$8,000 standard of living. The Cost Shares methodology puts both the parents and children on the same basis for the appropriate standard of living for sharing child costs.

Underlying Economic Studies for the Cost Shares Basis Schedule of Basic Child Support Obligations

The primary source of data for the Cost Shares child support model is *Expenditures on Children by Families*, published annually by the Family Economics Research Group (FERG), U.S.

Department of Agriculture. Data used to estimate expenditures on children are from the 1990-92 Consumer Expenditure Survey—Interview portion. This survey is administered by the Bureau of Labor Statistics, U.S. Department of Labor. This survey is based on a sample of 12,850 husband-wife households and 3,395 single-parent households. The Bureau of Labor Statistics weights the survey data to reflect the composition of the overall U.S. population of interest. Econometric analysis was used to estimate household and child-specific expenditures. That is, statistical techniques were used to evaluate the expenditure data to control for family size, income, and other factors to determine expenditures on children by family size.

The FERG report provides estimates of family expenditures on children for separate cost categories. These are housing, food, transportation, clothing, health, child care & education, and "other." Each category is based on an average of the expenditures by category from survey data.

The FERG estimates are on a marginal cost basis, except for the housing, transportation, and other miscellaneous cost estimates, which are per capita (household costs are allocated equally to all household members, including children). Per capita estimation is known to yield much higher estimates of child costs than marginal cost estimation and should be viewed as an "upper limit" for child costs for these categories.

To obtain marginal housing costs for children, the Cost Shares model incorporates housing cost data from the latest U.S. Department of the Interior's "Regional Quarters Rental Survey." These are extensive surveys of private housing to provide a basis for determining market rents to charge government employees for government-furnished housing. The housing data used for Cost Shares guidelines are for owner-occupied types of houses but which are rentals. The current version of the Cost Shares child cost schedules has an expanded definition for the housing component cost. The housing component includes not only the rental cost but also includes utilities, maintenance, and furnishings. These costs are derived from cost ratios (of these costs to shelter costs) from the Bureau of Labor Statistics.

The Cost Shares model has the same components as the FERG estimates. However, for the Cost Shares model, child expenditure levels were interpolated at \$50 income increments using a regression based technique.

CHAPTER VII

The Issue of Child-Related Tax Benefits as a Cost Offset

Texas' child support guidelines do not presumptively share child-related tax benefits as a cost offset. Additionally, the underlying study is based on both parents sharing these cost offsets but the application of the guidelines results in only the custodial parent enjoying these cost offsets. This violates applying a principle of equal duty of support in which both parents share child costs net of cost offsets (from tax benefits) on the same basis.

What Are Child-Related Tax Benefits?

The child-related tax benefits received by custodial parents can include:

- head of household tax payer status,
- child dependency exemptions,
- child tax credits,
- additional child tax credits
- child care tax credits, and
- higher earned income credits for low-income working custodial parents.

Before quantifying the magnitude of these child-related tax benefits, what are some of the specifics of these benefits?

Differences in Tax Treatment between the Custodial Parent and the Non-custodial Parent

The Internal Revenue Service generally attributes child-related tax benefits to the custodial parent in divorced and unwed situations. The custodial parent is entitled to head of household status while the non-custodial parent typically has single tax payer status. Child-related tax benefits are summarized in Federal Form 1040 from the Internal Revenue Service.

From Federal form 1040 from the Internal Revenue Service for calendar tax year of 2005, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 40, Form 1040), for a single person (the non-custodial parent) was \$5,000 compared to \$7,300 for a head of household taxpayer (the custodial parent). This is a bonus of \$2,300 in deductions for the custodial parent.

- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 42, Form 1040). The 2005 value of each dependent exemption is \$3,200.
- For low income and moderately low income working parents, custodial parents receive dramatically more favorable treatment than do non-custodial parents in terms of the size of earned income credits under Federal income tax law, calendar 2005 code.

The earned income credit was as much as:

- \$399 if you did not have a qualifying child (non-custodial parent),
 - \$2,662 if you had one qualifying child, or
 - \$4,400 if you had two qualifying children.
- The Taxpayer Relief Act of 1997 gave custodial parents a tax credit of up to \$400 per child. The credit went to up to \$500 per child in 1999. Subsequent legislation boosts child tax credits to up to \$1,000 per child by 2010.
 - The marginal tax rate increases for head of household taxpayers begin at higher income threshold levels than for single, non-custodial parents. This is seen in Schedule X and Schedule Z, 2005 1040, Forms and Instructions, Department of the Treasury, page 82.

Exhibit 9.

Schedule X—If your filing status is Single

If your taxable income is:		The tax is:		
Over—	But not over—			of the amount over—
\$0	\$7,300	-----	10%	\$0
7,300	29,700	\$730.00 +	15%	7,300
29,700	71,950	4,090.00 +	25%	29,700
71,950	150,150	14,652.50 +	28%	71,950
150,150	326,450	36,548.50 +	33%	150,150
326,450	-----	94,727.50 +	35%	326,450

Schedule Z—If your filing status is Head of household

If your taxable income is:		The tax is:		
Over—	But not over—			of the amount over—
\$0	10,450	-----	10%	\$0
10,450	39,500	\$1,045.00 +	15%	10,450
39,500	102,800	5,447.50 +	25%	39,500
102,800	166,450	21,197.50 +	28%	102,800
166,450	326,450	39,019.50 +	33%	166,450
326,450	-----	91,819.50 +	35%	326,450

Defining the Value of Child-Related Tax Benefits

The value of child-related tax benefits is defined as the difference in after-tax income for a parent with the child-related tax benefits versus without the child-related tax benefits. These benefits generally are limited to head of household status, the child exemption, and the child tax credits. There may also be earned income credits and child care credits. The below table is an example of calculating the child-related tax benefits for a custodial parent in Texas using official 2005 tax code. The example is for two children (under age 17) and with head of household status, child dependency exemptions, and child tax credits.

In Exhibit 10, one sees an example for a moderate income custodial parent with \$3,000 monthly gross income—or \$36,000 annual salary. The example is for two children. One sees the child-related tax benefits in part with the higher federal standard deduction for head of household status for the CP with tax benefits (\$7,300 versus \$5,000), the two extra federal dependency exemptions (\$9,600 versus \$3,200), and the child tax credits (\$2,000 versus zero). Additionally at the federal level, the with-benefits federal income tax is \$2,346 versus \$3,809 without. The net impact of the child-related tax benefits is that the custodial parent's after-tax income is

\$32,900 with the child-related tax benefits versus \$29,437 without. The annual child-related tax benefit is an extra \$3,463 in after-tax income, or \$289 monthly. Essentially, the custodial parent has \$289 per month in child-related tax benefits as a cost offset against spending on the children.

Exhibit 10.

Quantifying Child-Related Tax Benefits	Custodial Parent With Tax Benefits	Custodial Parent Without Tax Benefits
Monthly Gross Wages/Salary	\$3,000	\$3,000
Monthly Gross Income Total	3,000	3,000
Annual Total Gross Income	\$36,000	\$36,000
Standard Deduction (2005 tax code)	-7,300	-5,000
Exemptions	-9,600	-3,200
Federal Taxable Income	19,100	27,800
Federal Income Tax	-2,346	-3,809
Earned Income Credit	+0	+0
Child Tax Credits	+2,000	+0
Social Security Tax	-2,232	-2,232
Medicare Tax	-522	-522
After Tax Income, Annual	\$32,900	\$29,437
Addendum: After-Tax Income, Monthly	\$2,742	\$2,453

Based on final 2005 tax code, Federal.

The Impact of Tax Benefits on Each Parent's Ability to Pay Shares of Child Costs

Exhibit 11 summarizes the difference in Federal tax code treatment of custodial parents (CPs) to that of non-custodial parents (NCPs). The horizontal axis is gross income for each parent (with each having the same gross income). The vertical axis is the net income advantage that the custodial parent has at each level of gross income. It shows the after-tax income of the CP minus the after-tax income of the NCP. Taxes are Federal personal income taxes, Medicare, and Social Security taxes (2005 tax). Earned income credits are added. Standard deductions are used. Exhibit 34 shows a dramatic after-tax advantage for the custodial parent.

- As seen in Exhibit 11, child-related tax benefits are a very significant offset to total child costs—typically worth \$250 to \$400 in extra monthly after-tax income for the custodial parent (for one to two children). Child-related tax benefits typically include head of household status, exemptions, child tax credits, and earned income credits.

As seen in Exhibit 12, even if only the child exemptions and tax credits are considered, the extra after-tax monthly income from child-related tax benefits is quite substantial—generally about \$100 per child per month.

**Child-Related Tax Benefits: Additional Net Income Per Month,
Federal Income Tax Code, 2005**

Exhibit 11.

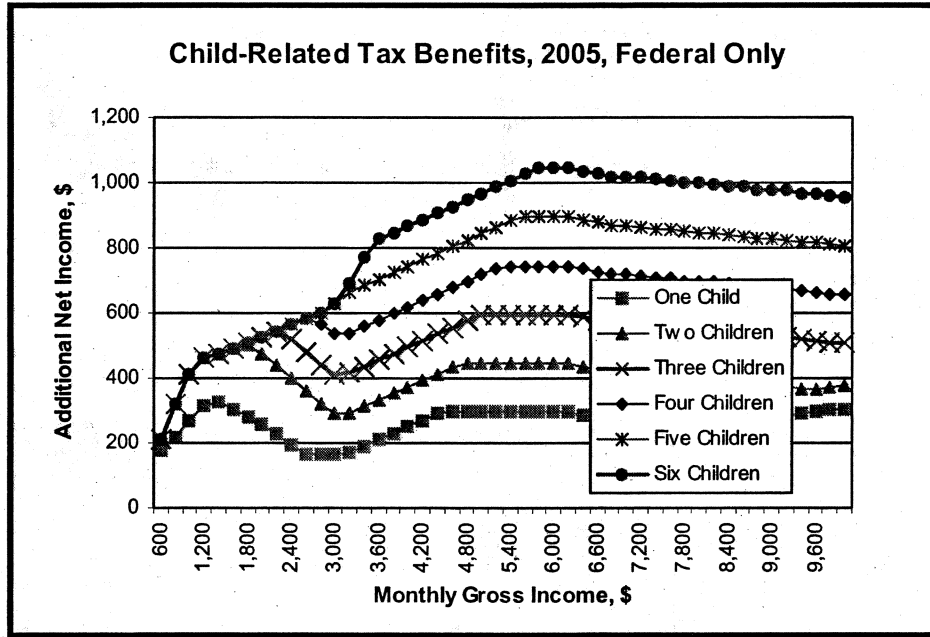
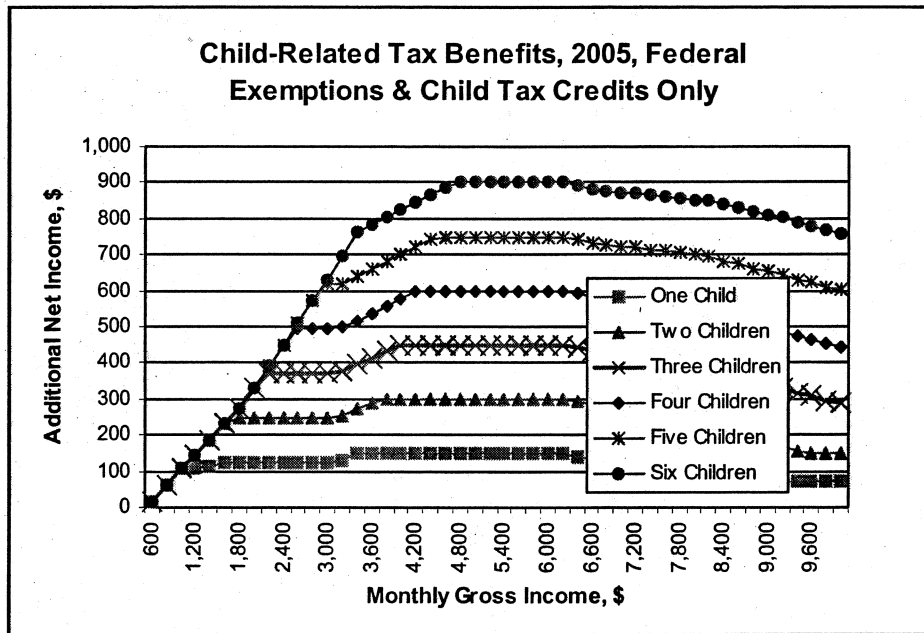


Exhibit 12.



CHAPTER VIII

The Issue of Parenting Time Adjustments

Without taking into account both parents' incurred child costs, child support guidelines do not apply a standard of equal duty of support. Additionally, the children are not supported in both households on the same basis.

Texas' guidelines assume that the non-custodial parent has no child costs. There is no built in parenting time adjustment.

In contrast, Texas' custody law presumes joint physical custody. The presumptive child support guidelines conflict with Texas' custody presumption.

There are a number of ways that states presumptively take into account parenting time. Some are more economically sound than others. A non-exhaustive list of parenting time adjustments include:

- Cross crediting percentages for obligor only guidelines with percentages pro-rated by parenting time. An example would be Minnesota, although their guidelines change in 2007 and adopt a different approach at that time.
- Cross-crediting in Income Shares states by allocating the standard child cost amount by parenting time into expense columns for each parent and then having each parent proportionally share in the other's child costs. Some states set threshold for such a methodology and some states have multipliers that allegedly take into account the added costs of duplicated housing. An example would be North Carolina.
- "Retained costs" is a version of cross crediting in some Income Shares states. Standard child costs are pro-rated by shares of combined income. Then, each parent is credited against their share of child costs in proportion to each parent's share of parenting time. These net amounts are then offset against each other with the difference paid by the higher net owed parent.
- Some Income Shares states calculate both parents' shares of standard child costs and then the non-custodial parent is credited with a sliding scale percentage of the total costs

with that credit applied to that parent's income share of standard costs. The sliding scale of percentage credit rises as parenting time share rises. An example is Arizona.

- Some Income Shares states cross credit the standard child costs based on parenting time and based on types of costs by categories for duplicated fixed costs (housing), non-duplicated fixed costs (clothing), and variable (time varying) costs (food and transportation). Examples include Missouri and New Jersey. This approach probably is the most economically sound while applying a standard of equal duty of support.

Example of Economically Sound Parenting Time Adjustments

Most methods of making a parenting time adjustment assume that all child costs vary in fixed proportions to parenting time shares. Another more economically sound method of making a parenting time adjustment is to recognize that not all child costs vary by parenting time. Some costs are fixed and some costs do vary by parenting time. Fixed costs include such as housing and clothing. Variable costs include such as food and transportation. Also, some fixed costs are duplicated by both parents (housing) and some are incurred by only one of the parents (perhaps activity fees). One economic study calculated estimates for three basic categories of fixed duplicated costs, fixed non-duplicated costs, and variable costs. The best known study on this issue is *Determining the Cost of Raising Children in Non-intact Arizona Households*, by Dr. James W. Shockey, University of Arizona, presented to the Arizona Judicial Council, February 1995. Based on this study, the average shares of total child costs allocated to these three components are: fixed duplicated costs, 28.17 percent; fixed non-duplicated costs, 33.87 percent; and variable costs, 37.96 percent.

One scenario could be relatively modest amounts of parenting time for the secondary custodial parent. The variable costs would be pro-rated by parenting time but not any of the fixed costs. The secondary custodial parent would have low parenting time and would not have set aside housing for the child. The below applies such a parenting time adjustment using New Mexico's child cost schedule.

Example 1. Mother is the obligee. Father has 30 days of parenting time annually. Only the variable costs are pro-rated by parenting time shares.

Exhibit 13.

	Mother	Father	Combined
PART I. Basic Support Obligation			
1. Gross Monthly Income	\$3,000	\$4,000	\$7,000
2. Percentage of Combine Income	42.86%	57.14%	100.00%
3. Number of Children			1
4. Basic Support from Schedule			\$815
5. Number of 24 Hour Days with Each Parent, Annually	335	30	
6. Percentage with Each Parent	91.8%	8.2%	
7. Each Parent's % Share of Fixed Non-duplicated Costs	100.0%	0.0%	
8. Each Parent's Fixed Duplicated Child Costs	\$230	\$0	
9. Each Parent's Fixed Non-Duplicated Child Costs	\$276	\$0	
10. Each Parent's Variable Child Costs	\$284	\$25	
11. Basic Support Allocated by Parenting Time	\$790	\$25	
PART II. ADDITIONAL PAYMENTS			
12. Children's Health and Dental Insurance Premium	\$0	\$0	
13. Work-Related Child Care	\$0	\$0	
14. Additional Expenses	\$0	\$0	
15. Each Parent's Total Additional Payments	\$0	\$0	
16. Each Parent's Total Child Expenses	\$790	\$25	
PART III. ALLOCATION OF COSTS ON PRO-RATA BASIS			
17. Father's Share of Mother's Total Expenses		\$451	
18. Mother's Share of Father's Expenses	\$11		
19. Net Child Support Obligation with Parenting Time Adjustment and Additional Payments	-\$441	\$441	

Example 2. Mother is the obligee. Father has 110 days of parenting time annually. The variable costs are pro-rated by parenting time shares. Additionally, the father has the same fixed duplicated costs as the mother. Only the mother incurs fixed, non-duplicated costs.

Exhibit 14.

	Mother	Father	Combined
PART I. Basic Support Obligation			
1. Gross Monthly Income	\$3,000	\$4,000	\$7,000
2. Percentage of Combine Income	42.86%	57.14%	100.00%
3. Number of Children			1
4. Basic Support from Schedule			\$815
5. Number of 24 Hour Days with Each Parent, Annually	255	110	
6. Percentage with Each Parent	69.9%	30.1%	
7. Each Parent's % Share of Fixed Non-duplicated Costs	100.0%	0.0%	
8. Each Parent's Fixed Duplicated Child Costs	\$230	\$230	
9. Each Parent's Fixed Non-Duplicated Child Costs	\$276	\$0	
10. Each Parent's Variable Child Costs	\$216	\$93	
11. Basic Support Allocated by Parenting Time	\$722	\$323	
PART II. ADDITIONAL PAYMENTS			
12. Children's Health and Dental Insurance Premium	\$0	\$0	
13. Work-Related Child Care	\$0	\$0	
14. Additional Expenses	\$0	\$0	
15. Each Parent's Total Additional Payments	\$0	\$0	
16. Each Parent's Total Child Expenses	\$722	\$323	
PART III. ALLOCATION OF COSTS ON PRO-RATA BASIS			
17. Father's Share of Mother's Total Expenses		\$413	
18. Mother's Share of Father's Expenses	\$139		
19. Net Child Support Obligation with Parenting Time Adjustment and Additional Payments	-\$274	\$274	

Example 3. Mother is the obligee. Father has 182 days of parenting time annually. The variable costs are pro-rated by parenting time shares. Additionally, the father has the same fixed duplicated costs as the mother. The father and mother share fixed, non-duplicated costs equally.

Exhibit 15.

	Mother	Father	Combined
PART I. Basic Support Obligation			
1. Gross Monthly Income	\$3,000	\$4,000	\$7,000
2. Percentage of Combine Income	42.86%	57.14%	100.00%
3. Number of Children			1
4. Basic Support from Schedule			\$815
5. Number of 24 Hour Days with Each Parent, Annually	183	182	
6. Percentage with Each Parent	50.1%	49.9%	
7. Each Parent's % Share of Fixed Non-duplicated Costs	50.0%	50.0%	
8. Each Parent's Fixed Duplicated Child Costs	\$230	\$230	
9. Each Parent's Fixed Non-Duplicated Child Costs	\$138	\$138	
10. Each Parent's Variable Child Costs	\$155	\$154	
11. Basic Support Allocated by Parenting Time	\$523	\$522	
PART II. ADDITIONAL PAYMENTS			
12. Children's Health and Dental Insurance Premium	\$0	\$0	
13. Work-Related Child Care	\$0	\$0	
14. Additional Expenses	\$0	\$0	
15. Each Parent's Total Additional Payments	\$0	\$0	
16. Each Parent's Total Child Expenses	\$523	\$522	
PART III. ALLOCATION OF COSTS ON PRO-RATA BASIS			
17. Father's Share of Mother's Total Expenses		\$299	
18. Mother's Share of Father's Expenses	\$224		
19. Net Child Support Obligation with Parenting Time Adjustment and Additional Payments	-\$75	\$75	

APPENDIX I

Detailed Commentary: Child Support Guidelines—A Legal Presumption or Mere Public Policy?

One issue in particular creates substantial disagreement over what should be the appropriate features of child support guidelines. And that issue is whether such guidelines are legal presumptions designed to assure the correct amount of child support, or public policy choices designed to achieve a certain distribution of wealth. The author takes the position that child support guidelines are legal presumptions, and not public policy choices. When it is asked, for example, how long an unemployed worker should be eligible for unemployment benefits, a question of public policy arises. And when that determination is made from economic data, budget figures, and fiscal considerations, a public policy choice is made. But once this choice is made, the level of unemployment benefits is not presented in court as presumptive evidence against a litigant. Child support guidelines, however, are used as presumptive evidence in court against a child support obligor. There are stricter standards for legal presumptions than public policy choices.

In order to be legally sound, child support guidelines:

- Must be based on correct use of authentic economic data;
- Must reasonably indicate in most cases an amount of child support due, assuming an equal duty of both father and mother to supply the reasonable needs of their children according to the resources available to each;
- Must be fully and fairly rebuttable as against the equal duty of both parents to supply the reasonable needs of their children according to their respective resources;
- Must not include arbitrary or unfounded assumptions; and
- Must be developed by responsible public authority.

The reports by Policy Studies Inc. and R. Mark Rogers Economic Consulting should be reviewed, keeping these legal principles in mind.

At the request of the author, the following legal commentary has been prepared by John Remington Graham of the Minnesota Bar (#3664X), who has served as a founding professor in the Hamline University School of Law, and also as a public prosecutor and a public defender in the State of Minnesota. Since his admission to practice in 1967, Mr. Graham has actively litigated both in the collection of child support and in the defense of child support obligors.

Underlying Legal Principles for Sound Child Support Awards

A. Introduction. Our purpose here will be to lay out general principles in a systematic manner to assist the court in better understanding the motion now pending for determination and modification of child support.

For many years there has been a conventional standard of child support in family law, which turns on right reason, and has never been difficult to apply once the necessary facts of a particular case were gathered. There would be no insurmountable problem today if this conventional standard were routinely applied and we had no child support guidelines at all.

This conventional standard is that *both father and mother have an equal duty to provide for the reasonable needs of their children on an ability-to-pay basis.* By reasonable needs we mean basic needs plus or minus whatever special circumstances dictate, -- i. e., the actual costs of raising a child, not a theoretical sum which is not related to economic reality. And those costs

must be shared by both parents according to their resources. The leading case on this interpretation of child support statutes is *Smith v. Smith*, 626 Pac. 2d 342 (Ore. 1981).

The problem now causing no end of trouble arose from the seemingly plausible idea that we needed child support guidelines to assist family courts in determining how much it costs to raise a child and in treating like cases in like manner. The theory was fair enough, but justice was frequently a casualty in the implementation, for guidelines were actually devised in some parts of the country to increase child support far beyond the actual needs of the children, to promote exploitation of child support obligors, to create economic incentives for divorce, and to create a child support industry. And even where these guidelines have been designed in good faith, they have not infrequently been put together in economic ignorance. The difficulties vary from one State to another. Some States have better guidelines than others. And some guidelines not only have relatively fewer flaws, but are easier to repair.

B. The Constitutional Standard of Child Support: In order to provide a cogent analysis, we must restate constitutional principles against which the soundness of a particular set of guidelines must be measured. For the conventional standard of child support is also reinforced by principles of fundamental law, which produce a constitutional standard of child support.

Procreation is a joint act and a joint responsibility. Men and women are equal before the law under the guarantee of equal protection in the United States Constitution, particularly as impacted by the 19th Amendment. See, e. g., *Adkins v. Children's Hospital*, 261 U. S. 525 at 552-553 (1923), and *Frontiero v. Richardson*, 411 U. S. 677 at 685 (1973). Particularization of this principle has been necessary especially in the field of family law. In the wake of *Frontiero*, it was held fairly early that there may be no legal preference or presumption in favor of father or mother on the question of child custody, as held in *State ex rel. Watts v. Watts*, 350 N. Y. S. 2d 285 (N. Y. City Fam. Ct. 1975), and *Commonwealth ex rel. Spriggs v. Carlson*, 368 Atl. 2d 635 (Pa. 1977). The leading case on equal protection in the field of family law is *Orr v. Orr*, 440 U. S. 268 (1979), in which it was held that a statute allowing alimony to women, but not to men, is per se unconstitutional, and there are clear suggestions in the opinion of the court (440 U. S. at 273) that the same principle applies to child support. In *Conway v. Dana*, 318 Atl. 2d 324 (Pa. 1974), it has in any event been held that both father and mother have an equal duty to pay child support in proportion to their respective means.

The constitutional standard of child support places further emphasis on the proper amount to be awarded. The State's interest is limited to assuring that the reasonable needs of the child are met, in light of his or her social, cultural, economic, or other circumstances. Child support may not be used as a pretext for tax-free alimony or transfer of wealth or social engineering by public authority. The amount ordered may be increased somewhat if the parents of the child enjoy greater wealth, but may not be measured by an arbitrary percentage of the income of either or both parents when such percentage exceeds the reasonable needs of the child. Married parents may not be ordered to use a certain percentage of their income in supporting their children, so long as reasonable needs are met, and the same is true of parents divorced. See, e. g., *Moylan v. Moylan*, 384 N. W. 2d 859 at 866 (Minn. 1984), and *Melzer v. Witzberger*, 480 Atl. 2d 991 at 995 (Pa. 1984). This inherent limit on child support follows from an acknowledged domain of family privacy which is protected by the 14th Amendment, and shield reasonable discretion of parents in raising their children, free of governmental intrusion or regulation, whether the parents are married, single, or divorced. The leading cases on point are *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Wisconsin v. Yoder*, 406 U. S. 205 (1972); and *Troxel v. Granville*, 530 U. S. 57 (2000).

C. Statutory guidelines adopted by the several States: In order to capture conditional grants of Congress to promote child support collections under the Federal Family Support Act of 1988 (42

United States Code, Sections 654, 666, and 667, implemented by 45 Code of Federal Regulations, Sections 302.33, 302.55, and 302.56), all States of the Union adopted guidelines for the determination of child support for all obligators.

For a moment let us consider the nature of such guidelines. The most striking feature is that they amount to *statutory presumptions* which ordain that, given certain basic facts about the resources of the parents and the number of children, a certain amount of child support suggested by the guidelines is presumed by law to be the correct amount that should be paid by one parent to the other. The amount suggested can be rebutted by the evidence introduced in a particular case. But in the absence of such evidence, the amount presumed is the amount ordered.

In any event, these guidelines must conform to a significant body of jurisprudence on the characteristics of statutory presumptions, expounded in the twin cases of *Manley v. Georgia*, 279 U. S. 1 at 6 (1920), and *Western & Atlantic R. R. v. Henderson*, 279 U. S. 629 at 642-644 (1929). The underlying principle in both cases was thus stated in identical language: "A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the 14th Amendment."

In any event, two rules have been shaped to govern statutory presumptions both in criminal prosecutions and in civil litigation. The first rule is that there must be a reasonable relationship between the basic facts and the presumed facts. See *Leary v. United States*, 395 U. S. 6 at 32-37 (1969). The second rule is that a statutory presumption must always be fully and fairly rebuttable. See *Vlandis v. Kline*, 412 U. S. 441 at 446-447 (1973). If a presumption is ill-founded, it is to that extent unconstitutional even if rebuttable. If a presumption is irrebuttable to correct injustice in particular cases, it remains to that extent unconstitutional even if otherwise reasonable as a generality.

And child support guidelines, as statutory presumptions, must always be read in conformity with guarantees of equal protection, family privacy, and due process in the 14th Amendment, and more generally in keeping with the principle that, if legislation can be fairly read in different ways, one constitutionally sound and the other constitutionally invalid or dubious, the constitutionally sound interpretation should be adopted, notwithstanding legislative history and all other considerations. See, e. g., *Jones & Laughlin Steel Corporation v. National Labor Relations Board*, 301 U. S. 1 at 30 (1937).

It will, therefore, be necessary to review the key provisions of the Federal Family Support Act of 1988.

Two provisions are of key importance:

The first is 42 United States Code, Section 667, which reads,

"(a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every four years to ensure that their application results in the determination of appropriate award amounts.

"(b)(1) The guidelines established pursuant to subsection (a) of this section shall be available to all judges or other officials who have the power to determine child support awards within the State.

"(b)(2) There shall be a rebuttable presumption, in any judicial proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or a specific finding on the record that the application of the guidelines would be unjust or inappropriate in a

particular case, as determined under the criteria established by the State, shall be sufficient to rebut the presumption in that case."

The other is 45 Code of Federal Regulations, Section 302.56(h), which reads as follows:

"A State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from the guidelines. The analysis must be used in the State's review of the guidelines to ensure that deviations are limited."

Read in light of the guarantees of equal protection and family privacy the United States Constitution, an award is "appropriate" within the meaning of 42 United States Code, Section 667(a), not by meeting a purely subjective standard, but by meeting an objective legal standard which is shaped by conventional definition and constitutional principle, -- the equal duty of both father and mother to supply the reasonable needs of their children in proportion to their respective means.

Again read in light of the guarantee of due process in the 14th Amendment, the Family Support Act of 1988 requires that child support guidelines be well founded in fact, that they be fully rebuttable when individual situations require deviation, and that they be based on correct use of authentic economic data. The importance of correct use of authentic economic data is brought out by the *Federal Register*, Vol. 56, No. 94, May 15, 1991, p. 22348, where it says that "any legitimate view of guidelines would include analysis of case data on the application of the guidelines, as well as analysis of current economic data on costs of raising children."

Contrary to what is commonly assumed, therefore, the Federal Family Support Act of 1988 read in light of conventional standards and constitutional principles does not authorize or countenance the creation of child support guidelines to accomplish the objectives of "public policy" developed by legislators or bureaucrats. All social and political agendas must be set aside, and the entire focus must be upon correct use of authentic economic data to achieve a best generalized estimate of what an obligor's monthly payment should be, based on his or her equal duty to provide for the reasonable needs of the children in proportion to his or her share of the total resources of both parents.

John Remington Graham
Counselor at Law

B. A. in philosophy 1963, LL. B. 1966, University of Minnesota; admitted to the Bar of the Minnesota Supreme Court, 1967; admitted to the Bar of the United States Supreme Court, 1971; Public Defender, United States District Court for Minnesota, 1969-1973; Founding Professor, teaching common law pleading, judicial writs and remedies, American constitutional law, admiralty, copyrights, legal writing, conflict of laws, legal history, and modern civil procedure, and serving as chairman of the admissions committee, Hamline University School of Law, 1972-1980; Advisor on questions concerning constitutional law and equitable remedies to the Minnesota State Board of Bar Examiners, 1974-1978; Special Counsel for the City of Brainerd, 1974-1980; Crow Wing County Public Defender, 1981-1984; Occasional lecturer in comparative British, American, and Canadian constitutional law at Laval University, 1989-1991, 1997, and 2000, and in public international law, 2003; Crow Wing County Attorney, 1991-1995; and Advisor on British constitutional law and history to the Amicus Curiae for Quebec before the Supreme Court of Canada in *Reference on certain Questions concerning the Secession of Quebec from Canada*, [1998] 2 S. C. R. 217.

APPENDIX

D

Juvenile Justice & Family Issues
Texas House of Representatives
Rep. Harold V. Dutton, Jr. Chair
Committee Meeting
3/22/06

Interim Charge 4: Research and report on how the courts handle truancy cases

HARRIS COUNTY TEXAS
HARRIS COUNTY PROTECTIVE SERVICES FOR CHILDREN AND ADULTS
TRIAD PREVENTION PROGRAM

JP Court Liaison Program

Court Case Managers work with youth and families who appear before the JP Court for various Class C misdemeanor offenses such as truancy, disorderly conduct and disruption of school classes. Court Case managers perform a variety of duties, which include intensive case management, crisis intervention, information and referral and sentence recommendations during court dockets. To coordinate services and better serve clients, court case managers also work in collaboration with community and faith based organizations, local school districts as well as other branches of the judicial system.

Truancy Learning Camp

The Truancy Learning Camp (TLC) is a truancy prevention and early intervention program specifically designed to address the issues that may contribute to excessive absences in school. A JP Court Case Manager refers youth and their families who have appeared before the JP Court Judge.

The Truancy Learning Camp Program is a two-day camp held at various locations throughout Harris County. Camps are held on consecutive Saturdays for 8-hour sessions, youth and families attend both days.

Group topics include:

- Truancy Laws and Responsibilities
- Life and Communication Skills (Teen Survival Workshop),
- Anger Management
- Substance Abuse Prevention
- Parenting Skills
- Survival Workshops
- Family Low R.O.P.E.S. workshop.

These groups are based on age and culturally appropriate curricula. On Day 1, parent groups are held simultaneously with youth groups in the morning.

Families meet for lunch then participate in family groups and activities. On Day 2, parents and youth attend separate groups and join together for a Low R.O.P.E.S exercise to promote family cooperation and goal achievement.

Staff members and a parent who has successfully completed the program facilitate each camp.

The Truancy Learning Camp is funded by the Harris County Community and Economic Development Department and by Title V grant funds.

HARRIS COUNTY TITLE V TRUANCY PROGRAM

The Harris County Title V Truancy Program is a collaborative effort between the Harris County Protective Services for Children and Adults (HCPS) TRIAD JP Court Liaison Program, and Community Youth Services Program, Harris County District Attorney (HCDA) Stay in School Program, four Harris County Justice of the Peace Courts: Precinct 8, Pl. 1&2; Precinct 2, Pl. 1; and Precinct 4, Pl. 1; & 11 school districts: Clear Creek, Pasadena, Houston ISD-Southeast District, LaPorte, Aldine, Spring, Cy-Fair, Tomball, Waller , Klein & the Juvenile Justice Alternative Education Program.

The Harris County Title V Truancy Program provides services through three (3) levels of intervention:

Tier I: Truancy Prevention & Intervention Media Campaign:

The HCDA Juvenile Division's designated Truancy prosecutor coordinates Tier I functions, which include:

- 1) Distribution of truancy prevention posters and brochures to 24 Harris County school districts for use at local elementary, middle & high school campuses;
- 2) Local public service announcements in English & Spanish regarding school attendance laws & truancy consequences,
- 3) Student and parent information forums conducted in English & Spanish held at participating schools to educate participants about truancy laws & consequences for non-compliance.

Tier II: Official Truancy Warning Letter Campaign:

First-time truants enter the Title V Truancy Program when the school district notifies the designated HCDA Truancy prosecutor that a student has 3 unexcused absences. The prosecutor sends an official notice letter to both the child (via the home school) and the parent (by mail). The letter serves notice that both the child and parents may be charged in court and levied fines and/or other sanctions, and a meeting is scheduled by the school with the parent and child to address the attendance issues.

Tier III: Diversion Agreements and Truancy Learning Camp:

If the student continues to miss school after receipt of the offense letter, the school files charges against the youth and possibly the parent. The youth and parent appear in the participating JP Court and at that time can enter into a diversion agreement with the HCDA prosecutor and TRIAD JP Court Case Manager. This agreement includes completion of a Truancy Learning Camp by

the youth and family. The JP court case manager screens the youth and their family and refers them to the Truancy Learning Camp coordinator, who schedules them for the next available camp.

The program objectives included a reduction of the number of truancy cases filed in the justice of the peace courts and an increase in school attendance.

Title V Stay in School Program has reduced the total number of truancy hearings in the selected JP court by over 80%.

The initial letter and early intervention has shown to be extremely effective in keeping youth in school. These early intervention efforts have allowed for services to be provided to families to address circumstances that have affected the truancy.

An independent evaluation has shown that completion of the Title V Truancy Camp significantly improved knowledge for both youths' behavioral beliefs and parents' responsibilities. Families also reported they thought the camp experience was positive, fun and non confrontational.

Results of a follow up survey with families completed at 90 days post camp participation indicated 100% of referred youth remained in school, graduated, or got a GED.

HARRIS COUNTY TRUANCY PROGRAM SUMMARY INFORMATION

1. The Harris County Truancy Program is a collaborative effort between Harris County Protective Services for Children and Adults (HCPS) TRIAD JP Court Program, and Community Youth Services Program, Harris County District Attorney (HCDA), Harris County Justice of the Peace Courts & school districts.
2. HCDA sends an official notice letter to both the child and parent when a student has 3 unexcused absences. A meeting is scheduled by the school with the parent and child to address the attendance issues. A Community Youth Services worker is available to assist as needed.
3. JP Court Case Managers work with youth and families who appear before the JP Court for Class C misdemeanor truancy offenses.
4. The Truancy Learning Camp (TLC) is specifically designed to address the issues that may contribute to excessive absences in school. A JP Court Case manager refers youth and their families who have appeared before the JP Court Judge.
5. Title V Stay in School Program has reduced the total number of truancy hearings in the selected JP courts by over 80%
6. Results of a follow up survey with families completed at 90 days post camp participation indicated 100% of referred youth remained in school, graduated or got a GED.
7. The Truancy Learning Camp is funded by the Harris County Community and Economic Development Department and by Title V grant funds.

For additional information contact:

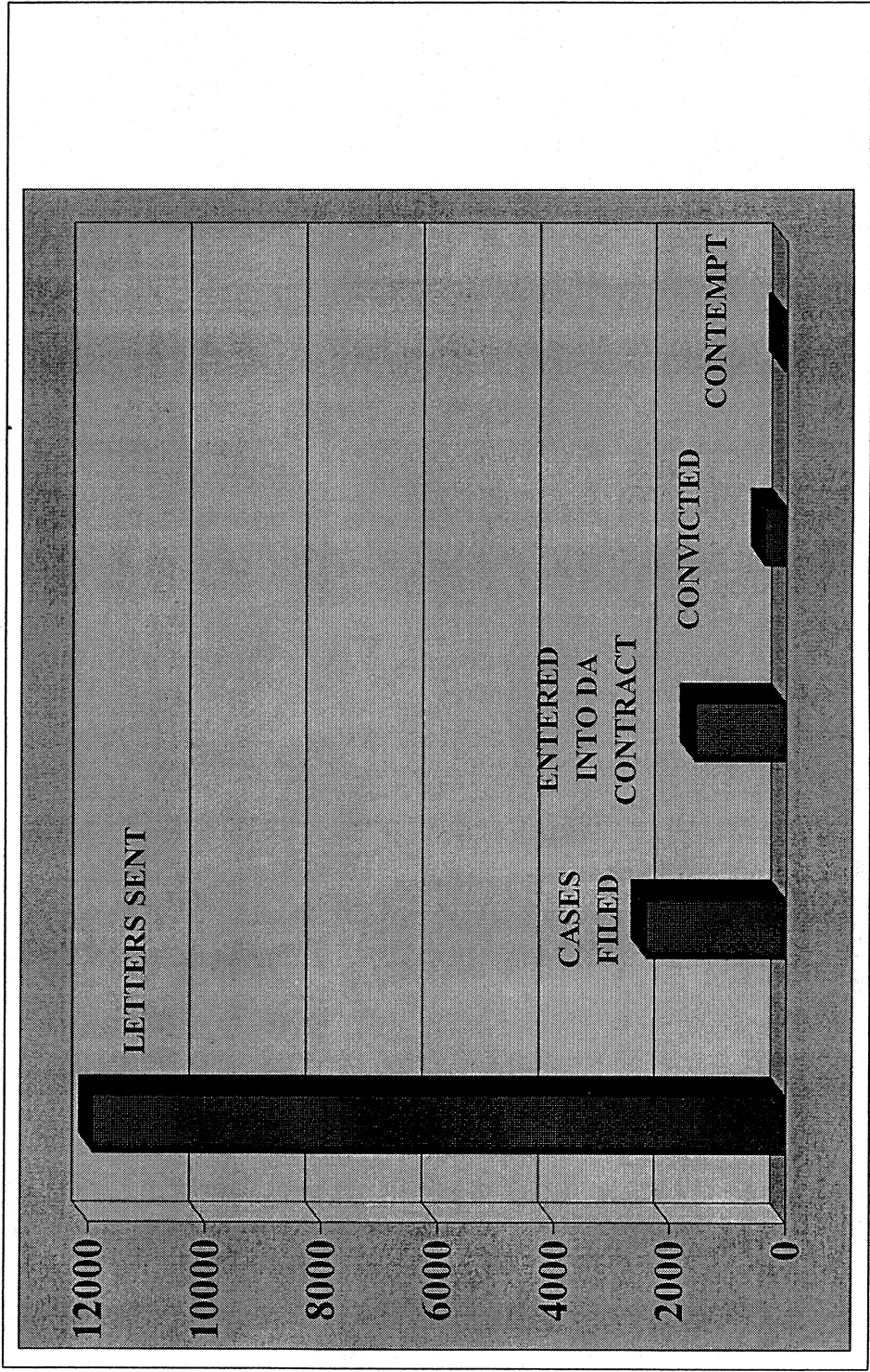
Bill Hawkins
Chief of Juvenile Division
Harris County District Attorneys Office
713.755-5874 ***Hawkins Bill@dao.hctx.net***

Deborah Colby
TRIAD Director
Harris County Protective Services for Children and Adults
713.295-2500 ***deborah.Colby@cps.hctx.net***



School Year 2004-2005

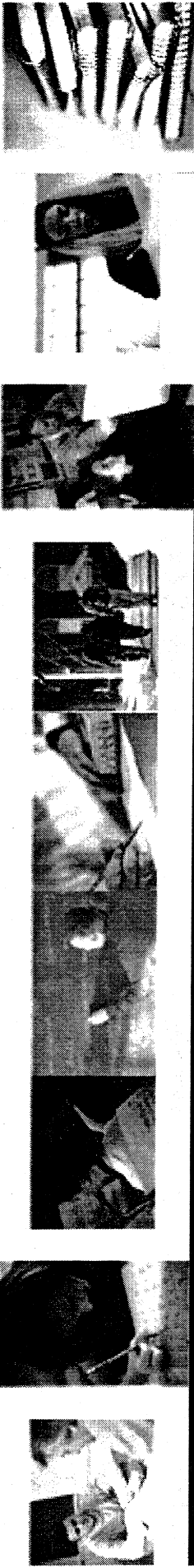
Stay in School Truancy Prevention Program



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APPENDIX

E



Travis County Truancy Court: A Program and Process Evaluation

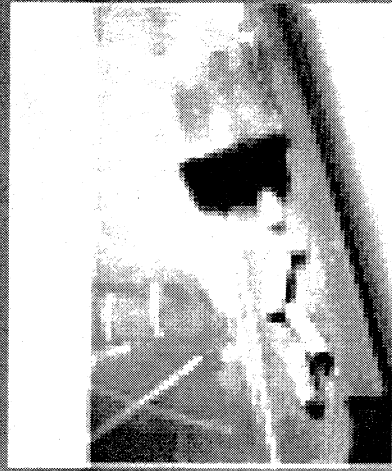
Travis County Juvenile Probation Department

Associate Judge Leonard Ray Saenz

Jamie Watson, Senior Research Specialist
Joan Miller, Research Specialist

House Committee on Juvenile Justice
and Family Issues

March 22, 2006



Truancy Court

Presentation Outline

- Program Overview
- Description of Program Evaluation
- Findings from the Evaluations
- Conclusions and Next Steps

Truancy Court Community Partnership Model

- Travis County Juvenile Board
- Travis County Commissioner's Court
- Travis County Juvenile Probation Department
- District Attorney's Office
- Austin Independent School District
- City of Austin

The program is designed to provide quick intervention to chronic truants at the students' home school. It provides a regular review of a student's progress towards reduced truancy, provides supervision, and facilitates referrals to community services for the student and family.

Truancy Court

Program Overview

- Calls for a different approach to truancy
- Partnerships developed
- Launched Truancy Court in Jan. '02
- Primary Goals
 - Reduce unexcused absences
 - Prevent juveniles from committing serious crimes

Truancy Court Program Participants

- Currently in 3 schools
- Approx. 150 participants a year
- Primarily serves 6th - 8th and 9th grades
- Eligibility Criteria
 - 7 + days of 3+ unexcused absences in a day within a 4 week period or
 - 10 + days of 3+ unexcused absences in a day within a 6 month period

TRUANCY COURT

Fulmore and Mendez Middle Schools
6th, 7th and 8th grades
Travis High School
9th grade

Letter @ 3 Days
From AISD
8th grade:
Mailed to parents



File @ 7 Days or part of days, (3 U's in a day) of unexcused absences within 6 week period



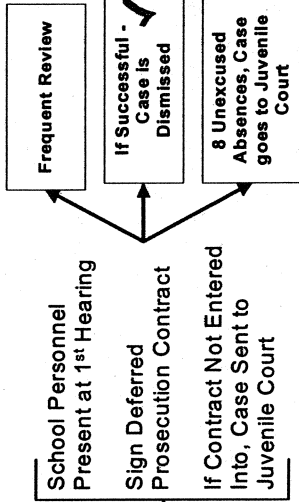
Judge at School
Mon. & Weds. @ Travis
Tues. & Thurs. afternoon @ Fulmore
Tues. & Thurs. morning @ Mendez
(9:00, 10:00, 11:00, 2:00, 3:00 4:00)
Contests @ Gardner Betts during non-jury weeks 1:00



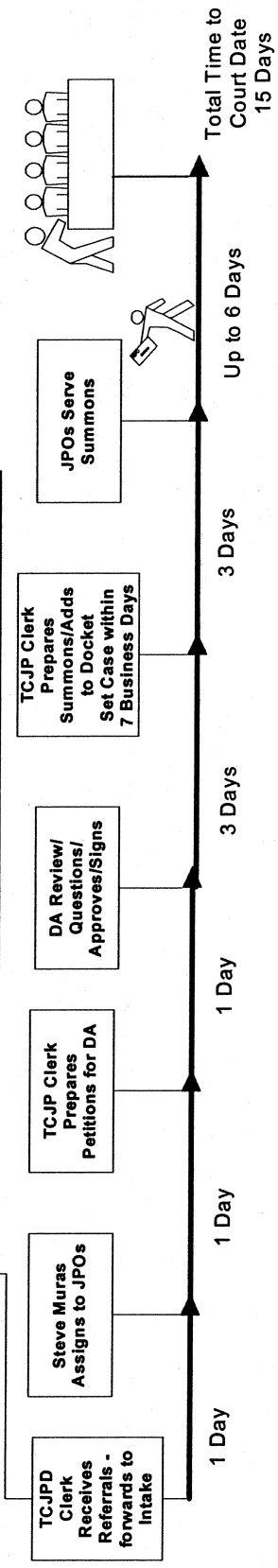
JPO's review cases - check priors

Fulmore, Mendez and Travis forwards Referrals to TCJPD

Fax acceptable - notarized



Time Line From Referral to Court Date



Truancy Court

Program Structure

- 90-day, deferred-prosecution program
- Better addresses root causes of truancy
 - Assesses juveniles' needs
 - Connects juveniles to community services
 - Involves family members
- More accountability & individual attention
 - Bi-monthly review hearings (most on school campus)
 - School, home, and office visits by probation officers

Truancy Court

Evaluation Overview

- Assessments conducted annually
 - Components:
 - Program Evaluation
 - Process Evaluation
- Purpose
 - Track whether meeting goals
 - Identify program's strengths & areas to improve
 - Help make case for continued funding
- Cost
 - Approximately \$31.00 day/ per student

Truancy Court

Evaluation Overview

- Program Evaluation Measures
 - Change in number of unexcused absences
 - Re-referrals to program
 - Referrals to TCJPD for delinquent conduct
 - Program completion rates
 - Case processing time
 - Consistency with best practices

Truancy Court

Evaluation Findings – Overall Averages

- Program Evaluation Findings
 - Unexcused absences fell 38% on average
 - 10% were re-referred to program
 - 16% were referred to TCJPD within a year

Truancy Court

Evaluation Findings – Overall Averages

- Process Evaluation Findings
 - 83% successfully complete program
 - Average processing time: 27 days

Truancy Court

Evaluation Findings

- **Process Evaluation Findings**
 - Generally consistent with best practices
 - Connects juveniles to needed services
 - Provides a system of sanctions and rewards
 - Encourages family participation
 - Regularly assess program's effectiveness

Truancy Court

Conclusions and Next Steps

- Program Evaluations
 - Short-term effects were positive
 - Currently examining long-term effects
- Process Evaluations
 - High completion rates
 - Processing time reduced significantly
 - Generally consistent with best practices (and will continue to collect more data)

Contact Information

Associate Judge Leonard Ray Saenz
2515 S. Congress Ave.
Austin Texas 78704
(512) 854-7063
Leonard.Saenz@co.travis.tx.us

Jamie Watson, Senior Research Specialist
2515 S. Congress Ave.
Austin Texas 78704
(512) 854-7046
Jamie.Watson@co.travis.tx.us

Joan Miller, Research Specialist
2515 S. Congress Ave.
Austin Texas 78704
(512) 854-7078
Joan.Miller@co.travis.tx.us

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