

Testimony to the Joint Hearing of the Judicial Commission on Mental Health

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Introduction:

Hello My name is Elizabeth Henneke and I am the Executive Director of a nonprofit, the Lone Star Justice Alliance. I am honored and overwhelmingly nervous to be here today.

I am the third generation in my family to work in the criminal justice field: my grandfather was an assistant warden of the Walls Unit, my father retired from TDCJ, and my grandmother was a sheriff's deputy in Walker County. I graduated from Yale University and UT Law before clerking with Judge Edward Prado on the 5th Circuit. After a stint in big law, I joined the faculty at USC Law, where I taught criminal law before returning to my home state.

Statistics:

I am here today to speak about the gaps in coordination between the mental health system and courts in child welfare, juvenile justice, and criminal justice. I want to begin with a few important facts:

Treatment Needs.

What we know is that youth who commit crime have extensive mental health needs, sometimes undiagnosed and often not treated in their communities prior to their justice involvement.

Among youth committed to TJJJ's care in 2016:

- 99% needed specialized treatment (e.g., substance abuse, sexual behavior, mental health, capital or serious violent offender); and
- **55% needed mental health treatment.**

TJJJ report to senate finance

Overall,

- **Mental Health—70% of youth in custody have mental illness, and 27% have severe mental health issues**

Sources: Data from CJAD (2014); National Center for Mental Health and Juvenile Justice (2006)

I wish we knew more their prior histories, most importantly the number of youth who have experienced abuse or neglect.

- Data regarding the number of youth in TJJJ's care who have previously been placed in foster care is not currently available. **TJJJ does not have a means to identify children that were in temporary managing conservatorship prior to commitment. When a juvenile arrives into the state system, his or her case is typically closed in CPS.**

TJJJ has provided data regarding so-called cross over youth in 2016. **33% of newly committed youth had been part of a CPS investigation that ended with confirmation or a finding of "reason to believe" abuse or neglect.**

In my experience, this history of trauma is rarely connected to the challenges facing that youth. Mental health providers do not have a comprehensive understanding of those circumstances that may have impacted a youth's mental health. Without family histories, they are unable to properly identify potential mental health needs. And so we leave our juvenile justice stakeholders making decisions with only part of the picture, which impedes their ability to address a youth's criminogenic behavior.

Youth Outcomes:

This has a direct impact on the outcomes for our youth. The Council of State Governments recently reported sixty-four percent of youth under juvenile probation supervision in 2010 were rearrested within three years, while 77 percent of youth released from a state-run juvenile correctional facilities were rearrested during the same period. ¹

Individuals in Texas Adult Prison for Crimes Committed when a Child

Unsurprisingly, many Texas youth end up in the adult criminal justice system, which is woefully unprepared to receive and act upon information regarding a child's experience with abuse and neglect, and to provide proper mental health care for these youth. To my knowledge, evidence regarding this past history is rarely if ever transmitted to the adult criminal justice system, even in those cases where a youth is certified to stand trial as an adult. I often see case files in which a juvenile court has done an extensive social and mental health history on a child, as required for the certification hearing, and yet this evidence is never provided to adult criminal justice stakeholders. This has wide implications:

- In 2016, TDJC indicated that more than 6500 individuals were currently in their custody for crimes an individual committed before their 18th birthday. Almost 2000 of these individuals were 16 or younger.
- In addition, TDCJ currently supervises over 3200 individuals on parole for crimes they committed before they turned 18.

Outcomes for youth in the adult system:

- Before they are processed in court, youth in the adult and juvenile justice systems have similar mental health diagnoses. However, after only short periods of confinement, youth in adult facilities face drastically different psychological outcomes. See also U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Detained Youth Processed in Juvenile and Adult Court: Psychiatric Disorders and Mental Health Needs 8* (2015).
- A report I have just completed shows that youth who enter TDCJ are 6 times more likely to report sexual assaults or misconduct than their adult counterparts.
- As a result, Some of the most compelling evidence against placing youth in adult prisons comes from the report of a Task Force on violence prevention appointed by the Centers for

¹ The 3-year reincarceration rate for these youth was 13 percent for juveniles in probation supervision and 44 percent for juveniles released from a state-run juvenile correctional facility.

Disease Control and Prevention (CDC). This CDC Task Force investigated the effects of transferring youthful offenders to the adult criminal justice system and found that the policy was counterproductive, resulting in a **34% increase in recidivism**.

Stories

LSJA recently hosted a two and a half day conference for families with loved ones sentenced to TDCJ for crimes they committed when they were youth. Over the course of that conference, we heard again and again stories of systemic gaps that had failed the youth involved.

- One mother described being evacuated during Katrina, moving to San Antonio and watching as her traumatized teen turned to the only people from home who understood what he had experienced, New Orleans gang members. Her son never received mental health services to deal with the trauma he had experienced while in the convention center in New Orleans.
- An Army Sergeant, a single dad, described leaving his teenager at home to fight Sadaam Hussein during Desert Storm. Teachers reported that the teen's mental health condition declined, to the point where the teenager began threatening suicide. But when the father returned home and tried to admit his son to a local mental health facility the facility notified him that the teenager had to consent. After the teen declined to give consent, he ran away from home and later committed the offense which lead to his incarceration.
- A minister described meeting a young man in a juvenile facility. Years later he ran into that same youth in TDCJ and learned that no one had visited that young man for more than 8 years. A product of the child welfare system, there was no one to visit him and so the young man languished with no family or emotional support.

Finally, we have heard stories about children tried as adults within 30 days of arrest, children under CPS conservatorship who faced their trial with only a court appointed attorney by their side, as their case worker was in a different county or unable to make it to the hearing. In the audience today is a woman who adopted a child and was asked by CPS to give up her parent rights so that CPS could fully cover the costs of the residential mental health treatment. She did so, only to learn later that the child had run away from that facility and later been convicted of a crime. No one called her. No one held that child's hand during the trial. No one made sure that the depth of trauma that child experienced before that court day was taken into account at adjudication.

Texas is a great state and we have made many advances. But it is time to recognize that our children are paying for our mistakes: our failure to provide mental health and other social services to survivors of crime, our failure to integrate systems so that courts and attorneys are aware of the challenges already faced by the children standing before them in court, and our failure to invest in our future.

Thank you for having me here today and I look forward to working with this Commission to advance solutions so that our state can live up to the aspirations we all have for it.