

Foreword

Message from President Bill Clinton

Message from California Supreme Court Justice Stanely Mosk

Article

*1 TEXAS REVISED JUVENILE JUSTICE AND EDUCATION CODES: NOT ALL CHANGE IS GOOD

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Introduction

Juvenile crime is among the most talked about issues of the day. Ironically, one of the major reasons for the subject's popularity is the widely held view that juvenile crime has reached epidemic levels. [FN1] Yet, this is not necessarily fact. [FN2] Nevertheless, a nation's concern about the welfare of its children and anything which threatens that welfare should always be an important social issue. Consequently, the focus of this Article is not whether juvenile crime poses a more serious problem today than yesterday, but whether our approaches to remedying it are sufficient. The Article looks at the latest legislation enacted in the state of Texas and critiques its impact on black and brown communities. It also provides some insight from Texans who have worked with juveniles for decades in support of the view that to *2 be successful at eliminating juvenile crime, the issue needs to be addressed comprehensively and effectively.

There is absolutely no reason to believe that juvenile crime will be curbed solely by legislative action. There is every reason to believe that to curb juvenile crime, collective action, including legislation is needed. Without regard to what is done, there should be continuing dialogue on the effectiveness of proposed and implemented changes to the Juvenile Justice and Education Codes in Texas. To that end, Part I of this Article discusses numerous provisions selected from these codes and their impact on juvenile justice in general, and the black and brown communities in particular. As a result, Part I focuses on the Legislative Acts and responsibilities our communities must accept and fulfill.

Sometimes the sheer weight of the burden we must bear causes us to buckle. As overwhelming as the problem may appear, it is important to know that we are not alone. In Part II of this Article, experts in the areas of juvenile justice and education share their ideas for assuring the welfare of our children.

I. The Texas Codes

A. Texas Juvenile Justice Code

The Texas legislature significantly changed the focus of the Texas juvenile justice system during the 74th Regular Session. [FN3] Effective, generally, on January 1, 1996, the new juvenile justice system is tougher and provides more punitive measures than before. Many changes to the code represent a marked shift away from the rehabilitative model of juvenile justice. The philosophical basis for this change is apparently rooted in the goals of public protection as well as holding people responsible for their actions. [FN4] Even where the code seems to enhance available resources to benefit the juvenile offender, this enhancement may prove negligible, at best, since the probable effect of the new juvenile justice system is to increase the number of children subject to its jurisdiction, while providing insufficient resources *3 to meet this increased need. Based on existing numbers which show a dramatic overrepresentation of black and brown children in the Texas juvenile justice system, it is apparent that an overwhelming number of the children who will be most affected by these changes are generally urban, black, and brown. [FN5] Consequently, it is essential that these communities understand and address these changes responsibly.

1. Affecting the Rights of the Juvenile

The legislature has stated that its intent in making the changes to the prior code is "to provide for the protection of the public and public safety; [[to act] consistent with the protection of the public and public safety: .
."
." [FN6] However, the code continues to place the status offender under the increasingly punitive measures of the code.

The status offender, which is defined as "a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult," [FN7] is subject to the juvenile justice system. [FN8] For example, failure to attend school constitutes delinquent conduct subjecting the child to the jurisdiction of the system under the code.

[FN9]

In fact, under the new code, upon probable cause to believe a child has committed delinquent conduct, the child may be taken into custody and referred to the juvenile court. The court retains the discretion to determine how the case will be handled. Statistics show that black and brown offenders are more likely to be institutionalized than Anglo offenders. [FN10]

Additionally, children are now subject to the juvenile justice system when the child is removed from class and placed in an alternative education program. [FN11] Every child who is expelled from school must be referred to the juvenile court for a determination to proceed with delinquency or conduct indicating a need for supervision (CINS) proceedings. [FN12] This change in the juvenile justice code is consistent with *4 various provisions of the revised Education Code. [FN13] These provisions are among the most controversial sections of the codes and are discussed more fully herein.

Children are subject to discretionary transfer under the new code at a younger age. [FN14] Transfers occur when a juvenile is determined to have

committed a crime which should subject him or her to the adult criminal system rather than a system for children. [FN15] Though all children are entitled to be represented by an attorney, [FN16] this right does not accrue until after a detention hearing is held where a determination was made to detain the child. [FN17] It is only at this point that the court is required to appoint counsel to represent the child or order the child's parents to hire counsel to represent the child.

2. The Child's Rights in Juvenile Court

While a juvenile court adjudication will still not constitute a criminal conviction, a juvenile tried and convicted as an adult does have a criminal conviction. [FN18] The legislature's move from rehabilitation to punishment is also apparent under the revised code that provides that juvenile adjudicative proceedings are governed by the Code of Criminal Procedure and the Texas Rules of Criminal Evidence. [FN19] As a result, the child is now unable to use interrogatories or requests for admissions to prepare his or her case. Depositions are available only *5 upon leave of court. Although the child is entitled to the same constitutional and common law discovery rights that an adult defendant in a criminal case would have, this revision indicates a movement away not only from a rehabilitation model, but from a separate juvenile system altogether.

A comparison of the old code with the new on the intake process requisite to placing the child in the system shows an increased possibility that a child will be subject to the scrutiny of the juvenile justice system. Before 1996, it was determined during the intake process, (1) whether the person referred is a child; (2) whether probable cause exists that the child is engaged in delinquent conduct or conduct indicating a need for supervision, and (3) whether further proceedings are in the child's or the public's interest. There had to be an affirmative finding on all three requirements or the child would be released and all juvenile proceedings terminated. [FN20] Under the revised code, intake need only determine whether the person referred is a child and whether probable cause exists that the child is engaged in delinquent conduct. [FN21] If intake determines the person referred is not a child, all proceedings are terminated. If intake determines that there is not probable cause, the referral must be released, although the case is not automatically terminated.

The revised code also allows a court to take into consideration any conduct which the child admits to, even when such conduct has not been adjudicated. [FN22] However, the prosecuting attorney must agree, in writing, before the court may take the admitted conduct into account in the disposition of the child and the case. [FN23] This provision is somewhat similar to a Texas Penal Code provision affecting adults. [FN24]

Under the revised code, the child still enjoys the protection of restricted juvenile records. [FN25] Generally, the fingerprinting or photographing of a child is prohibited unless the juvenile court consents to same, or the information is for inclusion in the missing children clearinghouse, or when a

child is taken into custody for a felony or jailable misdemeanor or when such fingerprints are required for an application for a driver's license or identification card. [FN26] Current law restricts fingerprinting and photographing to offenses subject to certification *6 for transfer or handling under the determinate sentencing act. [FN27]

Law enforcement agencies are required to destroy the fingerprint and all photograph records of juveniles. Under the revised code, the juvenile board is required to conduct an audit of law enforcement records to ensure that these juvenile records have been destroyed. [FN28] The revised code also confers on juveniles who have been adjudicated for non-felony offenses the right to have their records sealed two years after the juvenile has left the system. [FN29] These and other provisions of the revised code tend to reinforce the rights of children participating in juvenile proceedings to enjoy a shield of confidentiality. Closer inspection of the code may suggest otherwise, especially those provisions which prioritize victim rights and public safety over the rights of the child. Such provisions can erode the protective shield of confidentiality long afforded children in juvenile proceedings. [FN30]

The changing philosophy supporting the revised code's provisos for destroying juvenile records is rooted in the best interest of the public. The rules provide for the creation and maintenance of a juvenile rap sheet which can be used by law enforcement and judicial personnel to make decisions affecting the child. [FN31] Although the code declares these records exempt from public disclosure, the exceptions present a laundry list of possibilities for public disclosure. [FN32]

Further erosion of the records-protection provisos are found in revisions to the Code of Criminal Procedure. [FN33] This code allows for the maintenance of so-called Gang Books. Such information may be compiled and disclosed whenever a child is associated with a combination. Evidence or proof the child committed an offense is not required. [FN34] In the interest of the public and its safety, the revised code requires the appropriate law enforcement agency to notify the school superintendent when a child has been arrested for a specified offense. [FN35] The superintendent is then required to notify all school personnel who regularly come in contact with the student. [FN36]

*7 3. The Rights of the Victim/Public

The revised code provides what may be described as "the best interest of the victim" model which can decidedly impact the traditional "best interest of the child" consideration in juvenile courts. To begin with, the revised code expands the definition of victim. [FN37] The effect of the expansion is to afford victims of juvenile offenders at least the same rights as those enjoyed by victims of adult offenders. [FN38] Consequently, a victim's rights in juvenile proceedings are now consistent with a victim's rights in adult proceedings. [FN39] The victims in juvenile proceedings are also given "any

other right appropriate to the victim that a victim would have under the Texas Code of Criminal Procedure." [FN40]

In a move to permit the public a greater role in juvenile court proceedings, the revised code adopts the presumption that the public may attend court hearings unless the juvenile court closes them. [FN41] Prior law excluded the public from juvenile proceedings, unless permitted by the court. [FN42]

The revised code also prohibits the juvenile court from excluding a victim of the conduct of a child from attending a hearing unless the victim is a witness and the court determines that the victim's testimony *8 would be materially affected if the victim hears other testimony at trial. [FN43]

To assist victims through the juvenile justice system, the revised code authorizes the designation of a victim assistance coordinator. [FN44] Under the auspices of the juvenile board, the coordinator assists the victim in knowing their rights and in completing a victim's impact statement. [FN45] The victim impact statement is sent by the coordinator to the court which conducts the disposition hearing. [FN46]

The revised code further authorizes a court to issue protective orders in an effort to shield victims from juvenile offenders. [FN47] The order may issue if the victim risks further harm by the child because of the victim's participation in the juvenile justice process. [FN48] The order is issued against the child. [FN49]

In an effort to protect children, sex offenders are required to register with appropriate authorities. The information registered is subject to public disclosure as public information. [FN50]

4. Interest of the Child

The revised code expands the responsibility of the parent, but tempers it by expanding the role of the system in preventing juvenile crime. [FN51] To the existing services which the state has provided for runaways, the state will now provide mentoring and advocacy training programs for at-risk youth. A child is determined to be at-risk if the child has violated a penal law, been absent from school for a certain number of days within a four-week or six-month period, been a runaway or has violated driving while intoxicated (DWI) or driving under the influence (DUI) laws. [FN52] A court may declare a child to be at-risk and order the child, the child's parents or guardian to participate in at-risk services. [FN53]

*9 a. Parental Responsibility

The revised code seeks also to address the parents' role in their child's behavior and involvement in the juvenile justice system. Under section 51.115, the parent or supervisory adult is required to attend each hearing held which affects the child. [FN54] The parent's failure to attend will

subject the parent to a fine of between \$100 and \$1000. [FN55] The parent may also be ordered to attend parenting skills or other educational programs or to receive counseling. [FN56] Though the section does not specifically provide for the arrest of the non-appearing parent or for imposition of jail time, it does specifically provide for findings of contempt of court, and presumably thereby permits the full range of penalty assessable against a parent found to be in contempt of court, including arrest and jail time. [FN57] The provision also provides for some exceptions to attending and lists the specific type of hearing subject to the attendance requirement. [FN58] The bill also prohibits a parent's employer from firing or otherwise injuring a parent who misses or is late to work because of attendance under the Act. [FN59]

Reinforcing the legislative intent to mandate parental responsibility for their child's behavior is a provision which authorizes a court to endorse an order directing the parent to bring the child to a detention hearing. [FN60] Though this requirement is not significantly different from the former proviso, what is different is that the juvenile court may proceed against the noncompliant parent by issuing a writ of attachment. [FN61] The bill also provides that such a writ is executed in the same manner as in a criminal proceeding under the Texas Code of Criminal Procedure. [FN62]

Although the provisions for providing for punishment will be discussed later, there are certain provisions which specifically involve parental participation in the punishment of the child. [FN63] The code provides the court authority to order the child's parent to perform community service with the child, and community service orders are enforceable through contempt of court proceedings. [FN64] The code also *10 permits parents who are unable to prevent their children from continued criminal conduct to be excluded from the requirement as long as the parents have acted in good faith. [FN65] Section 59.003(b) may be applicable in determining what actions contribute good faith. [FN66] It provides that once a parent notifies the court that the child refuses to comply with the rules of the court, the good faith effort is met. [FN67]

Parents may also be required to participate in CINS services; failure to participate could result in contempt charges against the parent. [FN68] Further, if a defendant is a juvenile who violates the Alcoholic Beverage Code, the child will be required to attend an alcohol awareness course. [FN69] The child's parents may be required to attend the course with the child. [FN70]

The code also places additional focus on the financial liability of the parent. Judgments for payment of child support, including payments for medical care provisions, are specifically governed by the general child support rules. [FN71] Enforcement of judgments under this code continues to include garnishment of wages. [FN72] The code continues to authorize a court to order a parent to make full or partial restitution for property damage or

loss or personal injury. [FN73] However, such orders are now conditioned on a finding by the court that the child has been adjudicated guilty of conduct indicating a need for supervision. [FN74] A parent may be excused from payment if he or she can show and the court finds that the parent has made a reasonable, good faith effort to prevent the child's participation in conduct indicating a need for supervision. [FN75]

The bill also provides that when a child's parents can afford it, the court is authorized to order them to pay the costs of any appeals. [FN76]

*11 5. Punishment

The legislature established sentencing guidelines for children adjudicated for criminal conduct. [FN77] The guidelines attempt to link the penalty to the offense, based on the severity of the crime. The sanctions continue to be progressive and conform to the process employed by juvenile courts before the enactment of the bill. The purposes of the guidelines are to ensure uniform punishment, while trying to balance public safety and juvenile rehabilitation.

The child's circumstances are considered, and the guidelines allow the sanctions actually imposed to be influenced thereby while effectively allocating funds for the juvenile justice system. [FN78]

a. Sanction Level One

Generally, level one sanctions are reserved for the first-offender level.

A child may, as a level-one offender, be required to participate in counseling or in a community-based citizen intervention program, or she may be released into the custody of her parents. [FN79]

b. Sanction Level Two

A child penalized under level two is subject to court-ordered or informal probation. [FN80] The child may also be required to make restitution to the victim, perform community service restitution, participate in a community-based citizen intervention program, and be subject to any appropriate conditions of probation. [FN81]

Youth on probation may be assigned to a Youth Boot Camp. [FN82] Under the revised juvenile code, the Texas Juvenile Probation Commission is authorized to establish a youth boot camp program. [FN83] Boot camps emphasize physical and correctional training and military-style discipline. [FN84] Boot camps are also available for youths at higher sanction levels. [FN85]

*12 c. Sanction Level Three

Sanction level three extends the minimum and maximum periods of time a child can be sentenced to probation. [FN86] It provides authority for requiring more stringent official monitoring of the child's conduct while on probation and more stringent conditions of probation. [FN87]

d. Sanction Level Four

Children whose conduct subjects them to level-four sanctions may be required to participate in a highly intensive and regimented program where discipline, physical fitness, social responsibility, and productive work are involved. [FN88] It is at this stage that participation in Youth Boot Camps as a

condition of probation seems specifically encouraged. [FN89] This condition is in addition to those specified in levels one to three. [FN90]

e. Sanction Level Five

Level five provides for sanctions which require the child be sent to a highly structured residential program. [FN91] Levels one to four sanctions are also included in level-five sanctions. [FN92]

f. Sanction Level Six

Level six mandates disposition up to and including referral of a child to the custody of the Texas Youth Commission. [FN93] On release from Texas Youth Commission facilities, the child may be subject to certain parole programs. [FN94] A child may be discharged under this section once all conditions are met or when the child reaches his nineteenth birthday, whichever is earlier. [FN95]

g. Sanction Level Seven

Level seven is the maximum sanction level still under the jurisdiction of the juvenile justice system. [FN96]

*13 After a child becomes sixteen years of age, but before the child reaches twenty-one years, the commission may refer the child for approval to be transferred to the institutional division of the Texas Department of Criminal Justice under certain circumstances. [FN97] Further, the commission is mandated to "transfer a person sentenced under a determinate sentence to commitment . . . for delinquent conduct constituting the offense of capital murder to the institutional division of the Texas Department of Criminal Justice on the person's 21st birthday . . ." [FN98] under certain circumstances. [FN99]

When a juvenile court assesses punishment which deviates from the sanctions, it is required to provide written reasons in support of disposition to the juvenile board. [FN100]

h. Age as a Factor in Punishment

The bill [FN101] provides a controversial change to the waiver of jurisdiction and discretionary transfer to criminal court. [FN102] The provision lowers the minimum age a child may be certified for transfer out of the juvenile court and into the adult criminal system. [FN103] The fourteen-year-old is subject to transfer when the crime alleged is a capital felony, aggravated controlled substance felony, or a felony of the first degree. [FN104] Prior to this provision, the legislature had enacted various determinate sentence provisions in an apparent attempt to avoid reducing the minimum age for certification.

i. Mental Illness or Retardation

The bill requires the Texas Youth Commission to accept a mentally retarded child committed to the Commission. [FN105]

*14 j. Intermediate Sanction Facilities

In an apparent effort to address the issues of safety and security in juvenile detention facilities, the legislature adopted federal requirements for the confinement of children (V.T.C.S., Family Code). [FN106] The code prohibits detaining children in county or municipal jails unless certain

criteria are met. [FN107]

Children who are placed on probation may be assigned to an intermediate sanction facility, including Youth Boot Camps. [FN108] The commission is authorized to establish its own or contract with private entities to establish secure residential facilities for children. [FN109]

The Human Resources Code requires the adoption of minimum standards for certain secure facilities. [FN110] The code requires the Texas Juvenile Probation Commission to develop the standards, to annually monitor the facilities and to assess the condition of the children in the facilities. [FN111]

Any contract between the Commission and the private provider of a secure facility for children must be left subject to a request for proposal process. [FN112]

Section 51.12 was amended by the bill to conform to federal requisites for the secure confinement of children. [FN113] It provides standards for pre and post adjudicative facilities. Architectural issues, as well as the location of the facilities are addressed. Children are required to be separated in all things and at all times from adult offenders. This requirement is especially important under those circumstances where child offenders and adult offenders are housed in the same location. [FN114]

*15 k. Effect of Punishment

Generally, juveniles who are adjudicated have not been convicted of a crime.

[FN115] The adjudications are considered civil actions. For some limited purposes, an adjudication that a child engaged in a felony offense resulting in commitment to the Texas Youth Commission is a final conviction. [FN116]

6. Rehabilitation Measures

The revised Juvenile Justice Code addresses rehabilitative measures which are aimed at reforming children who have come into the juvenile justice system.

7. Training and Education

The Texas Youth Commission is authorized to establish employment and vocational training for children. [FN117] These programs are structured to mimic programs which have been successful with rehabilitating adult offenders.

[FN118]

Children adjudicated for violating the Alcoholic Beverage Code shall be required to attend an alcohol awareness course. [FN119] The purpose of the mandatory attendance is to discourage the child's use of alcoholic beverages.

Over half the children committed to the Texas Youth Commission have some substance abuse problem. The revised code provides that "the commission may not release a child under supervision or parole if the child has a substance abuse problem . . . and . . . the child has not completed a treatment program for the problem. [FN120]

a. Coordinated Systems

The revised Juvenile Justice Code places value in coordinating divisions and departments within the juvenile justice system. Under one provision of the revised code, a coordinated strategic plan for the juvenile justice system is required between the Texas Youth Commission *16 and the Texas Juvenile Probation Commission. [FN121] it is anticipated that a coordinated plan will increase the efficiency of the juvenile justice system.

Additionally, the duties of the Texas Criminal Justice Policy Council have been expanded in an effort to increase coordination and effective operations of the juvenile justice system. [FN122] Section 413.009 of the Texas Government Code was specifically amended to provide that the policy council may perform any function to promote an effective and cohesive juvenile justice system.

B. The Revised Education Code

The revisions to the Texas Education Code are here considered as they relate to the revisions to the Juvenile Justice Code. The revisions to the Education Code include emphasis on parental participation and responsibility. There is also greater emphasis on alternative education programs and their use as bridges between the education and juvenile justice systems. There are also stiffer penalties for violating provisions of the Education Code.

Any peace officer is authorized to enforce the compulsory attendance laws under the Education Code. [FN123] The Education Code also requires that each school district adopt a student code of conduct for the district. [FN124] Such a code of conduct must have been established and adopted by September 1, 1996. A teacher with knowledge that a student has violated the code of conduct must report it to the school principal or other appropriate administrator. [FN125] A teacher is authorized to remove a student from class. Once the child is removed, the child can be placed in in-school suspension or assigned to an alternative education program. [FN126] In an effort to ensure fairness, the code requires each school to establish a three-member committee to review the removing teacher's decision and determine placement. [FN127] However, the committee is not required to consider the uniformity of decisions of its code of conduct with other codes throughout the state.

The Education Code also identifies those criminal offenses for which a student may be removed from the general classroom for alternative placement. [FN128]

*17 1. The Juvenile Justice Alternative Education Program

The juvenile justice alternative education program is created to institute another level of placement between the education and system of juvenile incarceration.

The alternative education program (AEP) is a last chance program. Expulsion

from an AEP may require referral of the child to juvenile court. [FN129] Once referred to juvenile court, the court is prohibited from conditioning probation on the child's return to the general classroom or an AEP. [FN130]

In an apparent effort to increase safety (or the illusion of safety), the new code provides that the Texas criminal laws apply to all areas under the control and jurisdiction of any school district. [FN131] Furthermore, the board of trustees are authorized to adopt rules to protect students, employers, and school property. [FN132] The board may prohibit any undesirable person or person without a legitimate business purpose from entering or remaining on school property. [FN133] Trespass on school property constitutes a Class C misdemeanor. [FN134]

a. Subjecting the Child to the Juvenile Justice System

One of the more apparent effects of these code changes is the fact that more children will be subject to the juvenile justice system. This fact alone causes concern because although more children, regardless of ethnicity, could come under the system, sheer numbers show that the greater percentage of children subjected to the various stages of the system will be black or brown.

[FN135] This increased vulnerability *18 should cause the black and brown communities to closely monitor the impact and implementation of these codes.

Nowhere is there greater opportunity for abuse than the growing partnership between the education and the juvenile justice systems. [FN136] The revised code enhances the role of the educator as police. [FN137] There has long been animosity between the black community and a system which has historically excluded them, and even today isolates black children in special education programs in school. [FN138] Many of these children are classified as discipline problems. [FN139] The isolation results in a de-emphasis on educating the children and an increased emphasis on discipline. [FN140]

In what can only be viewed as an even greater focus on discipline and isolation, the revised education code subjects a child to the juvenile*19 justice system when a child is removed from class. [FN141] Every child expelled from school is referred to the juvenile justice system. Additionally, a child could be subject to violating a code of conduct in one school district in Texas, which would not be deemed improper conduct in another Texas school district. [FN142]

b. What Should be Done?

The school system must refocus on educating children. That is its purpose. If a child has special needs, those needs should be directly addressed. Many children who tend to show problems are hungry, without needed family support, or in need of medical attention. [FN143] Children are often referred to disciplinary sanction for merely challenging the accuracy or efficacy of a proposed solution. [FN144] Such challenges, considered a sign of intelligence in some schools, are often basis for discipline in others. [FN145]

Many parents will not be able to monitor the school's action against their children for various reasons, including their own parental infirmities. While all parents should be encouraged to participate in their child's education,

organizations which purportedly represent the interest of black and brown communities must meet the challenge of monitoring our school systems, ensuring that they meet our needs and the needs of our children.

A number of education programs throughout the country prove that all children, regardless of their risk factors, can learn. [FN146] The system must accept that fact and teach all children, and our community must require nothing less. [FN147]

c. Uniform Codes of Conduct

The revised Education Code requires that each Texas school district establish a code of conduct to be developed by September 1, 1996. [FN148] The opportunity for disparity in treatment between children *20 in the various districts is apparent. Consequently, these codes of conduct must be reviewed to ensure that our children are not subject to harsher codes and harsher penalties than other children.

d. Equal Protection

Indeed, the United States Constitution commands that we be equally protected by the laws which protect other Americans. [FN149] There are two well-recognized tiers to the equal protection analysis: (1) the rational basis test and (2) the strict scrutiny test. [FN150] Under the rational basis test, a statutory classification must bear some rational relationship to the legislature's intent, which must be predicated on the "general good." The Constitution invalidates only that governmental choice which is clearly wrong, arbitrary, or not an exercise of judgment. [FN151] However, when the statute impinges upon a fundamental right or employs a suspect classification, such as race, the test the court uses is the strict scrutiny test. [FN152] To meet this test, the state must show that its classification is precisely tailored to serve a compelling governmental interest. Consequently, any statute which effectively treats its citizens differently based on race must be closely scrutinized. To avoid impermissibly disparate treatment, the state legislature should require a uniform code of conduct for public school districts.

e. Alternative Education Programs (AEP)

The County AEP presents a number of problems for our communities. First, Texas counties have never had educating children as their primary function. Public education has been left to independent school districts. [FN153] Although this lack of experience can have its benefits (by not being burdened with the baggage of the traditional school system), it is a program which must be monitored closely. The foundation of the program appears rooted in a legislative trend moving the juvenile justice system away from rehabilitation and toward punishment. The first question to answer is whether the AEP is geared to a transition toward juvenile incarceration or to education and behavior modification. If not geared toward penal institutionalization, we must ensure that it does not become such a transition.

*21 Second, the county's lack of experience is an issue because the children

who it will be teaching are often functioning at a high risk level. Many of these children have often been moved through the grades without having mastered the educational skills needed. [FN154] How do neophytes rise to the challenges of this and similar failures of the education system?

Third, there is the issue of privatization. Counties are subcontracting this educational requirement to private providers. There must be controls established to select private companies and there must be measures of accountability and performance.

Again, there is an equal protection issue regarding the education available to our children. The separate but equal philosophy was struck down, less in challenge to the propriety of separateness than in recognition of the fallacy of equality in a separate system. The AEP, as revised, effectively creates a separate education system. Is there any doubt that such a system should be highly suspect?

f. What Must We Do?

First, we must recognize that it is not insignificant that throughout this country, laws have been enacted and enforced which have prohibited the education of black people. [FN155] These laws were rooted in the recognition of the power and value of education. [FN156] Education must become a priority for us and our children, and the standards we set and require must be high.

Second, we must ensure that AEPs meet our standards. As the AEPs are being designed, we must be part of the design team. And we, as parents and surrogates, must monitor the AEPs to make certain that they prepare our children for a future of success rather than one of imprisonment.

Finally, we cannot continue to allow children to be expelled to the streets.

Such expulsion encourages the child, now perennially idle, to engage in criminal conduct. Children who do not adjust to the educational*22 requirements should be prepared for the marketplace. [FN157] These too, may be considered alternative programs, but should focus on preparation for the future technological market rather than the past industrial marketplace. [FN158]

g. Punishment

The revised codes present two areas of primary concern: the age at which our children become subject to the system, and the efficacy of the program of punishment, particularly boot camps and similar programs.

There is growing public sentiment favoring the institutionalization of younger and younger children. [FN159] As news reports feature criminal acts by younger children, the movement appears justified. Our community focus must be that our children be permitted to be children, and as a consequence thereof to be treated as children. This requires affirmative action from our communities to ensure our children live and act like children.

The legislature's interest in punishment must be tempered by our communities' interest to rehabilitate. The simple fact is that once the punishment has ended, the children return to the community. It is important

that these children return as productive rather than destructive citizens.

Many of the common modes of punishment have not proved to be the most effective rehabilitative measures. [FN160] One such program is the boot camp, which plays an important role in the juvenile justice code sanction levels. [FN161]

The boot camp is generally a program based on military-style drills, physical training, and rules. [FN162] National statistics seem to show that children who complete the boot camp program rarely commit new crimes; however, they do get in trouble for violating probation and for committing non-criminal acts. [FN163] This information is skewed by the fact that thirty to forty percent of boot camp recruits drop out *23 of the program. [FN164] These recruits are generally non-violent first-offenders who probably would have received probation without a boot camp penalty. [FN165] Their drop out of the boot camp program subjects them to prison time. [FN166] This is also true for those children who finish boot camp, but violate the terms of their post-boot camp probation. It is for these reasons that some criminologists argue that the boot camp program is effectively a feeder to prison. [FN167]

A recent study shows that the most effective child rehabilitation programs were found to have three criteria: (1) efforts to improve scholastic performance; (2) increase job skills; and (3) change children's anti-social responses to other people. The least effective programs included talk therapy and scared straight programs, which use intimidation and fear. [FN168]

II. The Experts

A. Policy Makers

1. Representative Garnet Coleman Houston, 147th Legislative strictIt's a relatively simple economic fact. We just do not have the money to continue to warehouse people as the solution to escalating crime.

Rep. Garnet Coleman

Texas State Representative Garnet Coleman served as a member of the Texas Commission on Children and Youth. [FN169] In December, 1994, that commission produced its report on the state of children in Texas. Although the report reviewed considerations affecting children other than in juvenile crime, part of its review directly impacts the juvenile justice system and the treatment of juveniles in that system. [FN170] Representative Coleman is proud of that report. He was asked about *24 the legislature's trend as it affects juvenile justice and the changes, if any, he would like to see occur. [FN171] These are his comments.

Representative Coleman believes that the criminal justice system, public and political policy and technological advances have played significant roles in

developing a permanent criminal class. This class, he avers, is ever growing and will continue to grow if allocation of funds are not put in preventative measures. Assume that the class began as a group of adult men incarcerated in the Texas Department of Corrections for committing a crime. Upon release, the former prisoners are almost assured of facing serious difficulties in securing legal employment. This is commonly due, in part, to poor education and a lack of employable skills. The problem of job placement is often exacerbated by the increasing need for technologically literate workers as we move away from the industrial and virtually abandon the agricultural workplace. [FN172]

Representative Coleman believes public outcry against crime and in favor of victim rights laws also acts to increase the permanent criminal class. Communities' protests against permitting a convicted criminal from being released into their geographical boundaries perennially brand the former convict as a criminal. [FN173] Faced with little or no education, and poor prospects from employment and housing, the likelihood of their return to the corrections system is great. Thus, the representative concludes, the system does not work to reduce criminal activity but instead, to increase it. This phenomenon, he states, deleteriously impacts the juvenile justice system. [FN174]

When asked how he would change the system, the representative stated that he believes the major problem of coordinating the various service provider agencies must be solved to adequately address the incidence of juvenile delinquency. Money, he states, must be based on need, rather than on "squeaky wheels or as spoils in the turf wars." He thinks that during the last legislative session, there was a big move *25 toward coordination by creating a steering committee comprised of representatives from all service providers, including the Texas Youth Commission, Mental Health-Mental Retardation, and Probation. This committee, among other duties, is responsible for determining how the money will be divided. Additionally, the legislature required the Texas Youth Commission and the Texas Juvenile Probation Commission to work together to produce a report on various juvenile service issues.

Representative Coleman also faults the state's limited consideration of the in-system youth, as opposed to the entire juvenile system. [FN175] This entire juvenile system includes school systems, protective and regulatory services, children's mental health, social environment, status offenders (especially truants and runaways), and children who have not fallen under the juvenile penal system, but who are at risk due to family and other factors. Representative Coleman states that this broader approach supports the best interest of the child model of juvenile correction and rehabilitation. Using a four-step approach,

- I. Prevention,
- II. Rehabilitation,
- III. Punitive, and

IV. Follow-up Care,

Coleman believes we can begin to stem the trend of increasingly violent juvenile crimes.

Finally, Coleman emphasizes the role of education in deterring juvenile crime. He supports publicly funded education for inmates, but would require such funding to be loans. He would require these loans be repaid as a condition of the inmates' release. He does not support vocational training, and says such training is not geared toward getting marketable skills for the world outside prison. Representative Coleman says, "Society must recognize that it is in its best interest to educate all its citizens and not merely to lock up those who are black and brown."

2. Harris County Commissioner Steve RaddackI met a 19-year-old grandmother the other day. She gave birth to her daughter when she was 9 years old, and now her 10-year-old *26 daughter is a mother. What do you do [to successfully address these kinds of situations]?

Harris County Commissioner Steve Raddack

If Commissioner Steve Raddack had his way, [FN176] the juvenile justice system would be substantially overhauled. He believes that an essential element of prevention is that the child realize that he will be punished if he breaks the law. This certainty of punishment would assure punitive consequences even on the first offense. The commissioner tempers this position by distinguishing felonious acts or crimes against the person from misdemeanor, non-violent crimes or crimes against property. Though this position may seem contradictory to some, the commissioner would modify the juvenile justice system to accommodate what falsely appears inconsistent.

a. The Modified Juvenile Justice System

The commissioner's system would not actually separate the juvenile system from the adult system. It would, instead, be a part of a general justice system. A child under the age of fourteen years would come into the system the same as an adult would, but the child would be processed by the juvenile division. A child fourteen years or older would also come into the system as an adult would. For this child to be processed through the juvenile division, a determination would be made at the initial detention stage that the child would be prosecuted as a juvenile. Otherwise, the child would remain in the adult justice system. In succinct terms, this modified system presumes, for purposes of the criminal justice system, that a person is an adult at age fourteen years. This presumption can be rebutted by the fact-finder's determination that the child should be adjudicated under the juvenile division.

Once that modified system is in place, the commissioner would turn to the specific problems which must be addressed by the juvenile justice division.

b. Juvenile Justice

The only children subject to juvenile justice under the modified plan are those who have committed non felonious acts. It is not challenged that such a child, left to his own wiles, would likely escalate his activities to that of

adult crimes. The commissioner believes that it is important to spend our limited resources in an effort to rehabilitate *27 this child, as opposed to spending the money counseling the child who has already become a violent offender.

c. Economic EfficiencyThe money is there. It's just not being spent effectively.

Harris County Commissioner Steve Raddack

The commissioner posits that one of the major problems confronting government is economic waste. To exemplify his position, he cites instances where different arms of government duplicate services, [FN177] misuse existing facilities and resources, [FN178] and raise taxes to support these inefficiencies. [FN179] With specific respect to the juvenile justice system, he avers that 60% of the money in juvenile probation is spent trying to rehabilitate 6% of youth he describes as nonrehabilitable. The commissioner believes that the money is better spent investing on first-offenders who would be under his proposed modified juvenile justice division. Rather than spending taxpayer money on the violent offender, the commissioner would focus resources in areas he believes would yield the greatest return to the public.

This justice system would achieve the goal of prudent fiscal management of taxpayer money as follows:

1. Coordination

*28 a. Juvenile justice system would work with the adult system toward crime prevention.

b. Local and statewide bureaucracies would work together to create a long-term comprehensive plan to eliminate juvenile crimes.

c. Coordinate school districts and juvenile justice.

1. Share facilities, including school libraries and gymnasiums for after hour programs.

2. Reprioritize school districts so that they live up to their responsibilities for the children all day.

2. Develop a focused program of rehabilitation

a. Screen youth better by assessing not only the youth, but the family and its social and economic background.

b. Increase level of parent participation in rehabilitation process; include parent training where advisable.

c. Identify causes of the child's problems, reasons for misbehavior.

d. Identify what it takes to successfully address the problem and prevent reoccurrence.

e. Maintain an efficient youth tracking system.

f. Develop a special program for children who are in unsupporting environments/families.

Commissioner Raddack suggests that the failure to employ more fiscally sound programs will result in a taxpayer revolt. He foresees this revolt as imminent. He says taxpayers are not going to permit continued fiscal mismanagement which allows, for example, the county to spend \$58 per child to keep her in a county facility, while paying \$17 for that same child in foster care, with no conscientious approach to emphasizing faster foster placement and de-emphasizing institutional home placement.

Finally, he suggests that in lieu of establishing numerous funds, one large fund administered by one justice agency would help ensure more responsible spending.

3. Kimbra Ogg Director, Anti-Gang Office

Kimbra Ogg is the director of Houston's Anti-Gang Office and the Gang Task Force. Ms. Ogg believes that to discuss solving the problem of juvenile delinquency is an exercise in futility. Juvenile delinquency has existed since the beginning of time, she suggests. However, she does see things which can be done to curb the rise in violent, and particularly gang-related, juvenile crime.

*29 She opines that crime operates like any other profitable business: maximum profit is sought at minimal risk. Part of reducing that risk to adult criminals is to use children as perpetrators because of the lesser penalties to which they are supposedly exposed. To overcome this incentive to recruit children to crime, Ogg recommends increased police funding and staffing and reinforcement of support programs which focus on youth. [FN180] In addition, she recommends increasing the availability of jobs for youth, a refocus on education, and adjusting media negativity. [FN181]

Ogg believes that children need encouragement to participate in extra-curricular activities and that such programs need to be made available to children. Her office has released a directory of social service organizations which provide educational, [FN182] entertainment, recreational and crisis intervention programs for children. [FN183]

*30 But Ogg warns that government will not solve the problem of juvenile delinquency; it is merely a resource. She urges active community involvement.

B. Educators

1. Thaddeus Lott Principal, Wesley Elementary School We must stop arguing about whose duty it is to teach moral values. We all have that responsibility--parents, churches, and schools.

Thaddeus Lott

Thaddeus Lott has become an icon in education. As principal of the Wesley Elementary Public School in the Acres Homes community in North Harris County, Texas, he has seen tremendous adversity. He talks about adversity as it affects the delinquent behavior of children.

He acknowledges that the lifestyles of children today are different from years before. These lifestyles, he avers, directly impact the child and his or her behavior for several reasons. First, he points to the community's abandonment of inner city children. Second, he identifies the saturation of violence in the child's real-life experiences. Third, he focuses on the de-emphasis of character and enhanced emphasis on materiality, and fourth, the fall from grace of education. These he sees as the greatest adversities that society faces in its struggle against juvenile delinquency, particularly violent crimes.

Despite these overwhelming barriers to acceptable socialization, Dr. Lott is undaunted. He merely states that "with God, all things are possible," and works to make them so.

a. Community Abandonment

Many children in the juvenile justice system really believe that no one cares for them. This notion is supported by the wholesale abandonment of them at the first opportunity. Dr. Lott reminisces about his own childhood years growing up in Acreage Homes. He was not a *31 child in a family of substantial financial means; however, he remembers the strong sense of community which served as his expanded family. This community or village model, as Lott refers to it, was significant to the socialization process. Everyone, all adults, were accountable for monitoring the behavior of the child. And children recognized that they were accountable to all adults for their behavior. The significance of this system was the adults sharing of experiences with the children, as well as providing for them a knowledge of history and sense of self. The child did not have to solicit role models from outside the community because the role models lived in the community. When these people decided that they had "arrived" and moved up in the world, they moved out of the community. This abandonment by some of the communities' stronger links weakened our children's future. In many instances, the only role models who remained in the community were involved in various criminal activities.

b. The Reality of Violence

Children are seeing such graphic violence at early ages. They are experiencing child abuse in unimaginable proportions. They are being forced to live with adult problems during their childhood. Lott says that many children live with constant violence. This continued violence desensitizes them to the violence itself, as well as to the impact and effects of the violence. An additional effect of this sustained violence is that children are trained in committing violent acts. This training is then transmitted to their children and generations to follow.

Lott served on the Governor's Commission on Children and Youth and participated in numerous hearings throughout the State of Texas. The Commission heard from a number of youngsters who were in the juvenile justice system. Lott says the most startling realization for him was the increasing

number of children who have no empathy--no compassion for other human beings. This child, he warns, is the child to be most feared, the child who poses the biggest threat to society. This is the child with no remorse. Nonetheless, Lott strongly believes it is but another barrier which can be overcome.

c. Money Over Morals We have become a society where people do what's good for them without any concern for others or the impact their actions will have on others. In many instances, there is no longer a battle between good and evil.

Thaddeus Lott

*32 Lott avers that our overall embrace of materiality over morals has spilled over to our children. This breakdown of morality he lays at the parent's doorstep. He states that the parent's failure to take a primary and fundamental role in the child's development has had a serious impact on the rise of juvenile disruption. Simply stated, parents are the child's first role model, and if the parent's behavior is immoral, then it teaches the child

immorality. Thus, he says, parent involvement is crucial, but he says it is not the sole requisite, and if positive parent involvement is lacking, it is but another barrier to overcome.

Although he re-emphasizes the value of parents fulfilling their responsibility, Lott believes that their failure should not justify the schools and religious institutions shirking their responsibility. He suggests that the school is a proper forum for teaching socialized behavior--ethics.

d. The Decline of Education There is no excuse for not teaching children.

There

is no excuse for not teaching children. There is no excuse for not teaching children.

Thaddeus Lott

Finally Dr. Lott points to education's fall from grace. He says the once reverence for education no longer exists. Instead of pushing children to learn, to acquire knowledge, we are pushing them to attain material wealth to the exclusion of education. Somehow, somewhere, society conveniently altered history and created the notion that some people cannot learn. Dr. Lott rejects the concept of the uneducable and challenges the education system to recall its mission to ensure that children are educated. Lott identifies several reasons this mission has been abandoned for many children. Among those reasons are the belief by educators that the children cannot learn, the belief by the children that they cannot learn, and the failure of the system to address the educational needs of the individual student. Lott says his mother, Mrs. A. A. Lott, would tell her children often, "There's no such thing as can't." He is guided by her wisdom today. He has found that the children who have come to Wesley Elementary and the thousands of Wesleys across the country are saying,

"Okay, yeah, I've got all these disadvantages. I live in a violent environment with irresponsible or no parental supervision; I'm poor; I'm hungry--so what? Teach me." *33 Lott takes the position that the education system must stand ready to meet that challenge if we are going to deter the trend in juvenile crime. How?

When you go to your doctor suffering from some ailment, you want a cure. The doctor wants a cure too, but to determine how best to reach that goal, she determines whether you have any allergies, any intolerance to medications, what your overall physical condition is, whether you drink, smoke, exercise regularly, and what your family history is before deciding what treatment is best for you to attain the goal--the cure. Education has to work the same way.

Dr. Lott has some basic rules for effective teaching.

1. Believe in the children.
2. Teach children at early ages--three, four, and five years old. Teach academics at this age.
3. Diagnose children. Test them to determine their academic and school readiness, strengths, and weaknesses.
4. Select curricula designed to the needs of the children, as well as to reach the goals to be achieved.
5. Teach mastery. Mastery should not be below the 90% level.
6. Teach independence of mind and thought.
7. Teach competitive skills to empower the child for the global marketplace.
8. Teach basic skills plus high order skills of analysis, reasoning, and thinking.
9. Do not forego the proven techniques for the latest new-fangled theory. Try out what you do not know, but do not turn loose the proven for the unknown. The cost may be a generation or more of children.
10. Always remember that there is no societal ill acceptable as a reason not to teach children. There is no acceptable excuse for not teaching children.

2. George Scott Education Systems Researcher If an educator doesn't believe that black and hispanic children can be taught to learn, then they must get the hell out of the public school system. We have to close the equity gap, not wane it, not narrow it, but close it.

George Scott

George Scott has been active in the research of education systems throughout the country, with an emphasis on Texas programs. He believes *34 that public education effectively supports the criminal justice system in three crucial areas. First, public education disproportionately impacts poor and minorities. Second, public education fails in its moral and educational responsibility. Third, public education has become stifled by an increasingly powerful bureaucracy.

a. Disproportionate Impact

Scott shares a story which he believes illustrates one of the major obstacles to poor and minority children receiving a quality public education. He recalls that during a visit to a suburban elementary school, he noticed a display of student writings posted on a bulletin board. He stopped and read a few before reading one which was rife with grammatical and other errors. When he asked the school principal why that paper had been posted, he was informed that the paper had been written by a hispanic student.

Scott was appalled by the principal's response, but he is angrier at an education system which fails to have expectations of its minority students to perform. Further, he notes with frustration, is that there is no rational explanation for the bias against black and brown students.

Indeed, in a study he performed for and published in the New Katy News, he compared the academic performance of black students at Wesley Elementary with predominately white students at the various suburban schools in Katy, Texas. Scott's comparisons do not "mix apples and apples." Wesley Elementary students are black, overwhelmingly lower income, less likely to come into the school system with early exposure to reading, writing, and other academics, and generally outside the "standard" public school student criteria. On the other hand, the Katy school students are predominately white, overwhelmingly upper middle and higher incomes, likely to come into the school system with significant early exposure to reading, writing, and other academics, and generally exceed the "standard" public school student criteria.

Yet, despite this "apple to orange" comparison, the results were directly opposite of what we have stereotypically come to expect. The Wesley Elementary School children excelled at higher rates than the suburban children, despite the indicators for failure (race, gender, income levels, environment and the like). Similar incidences have occurred in other schools throughout the country.

Scott says this data can only indicate one thing--that academic performance does not have to be race-based, economic-based, or environment-based. He believes academic excellence is instead based on certain criteria lacking from the public school systems:

- *35 1. Utilize tailored vs. standardized processing.
2. Implement effective remedial programs.
3. Eliminate passing without skills mastery approach.
4. Expect students to perform well.
5. Establish aggressive performance goals for all students.
6. Mix grade levels even within one classroom.
7. Increase accountability of schools.
8. Establish objective standards.

b. Moral and Educational Responsibility

The second area of failure in the public school system which must be addressed is the failure of the system to fulfill its educational and moral responsibility. Scott recognizes that the public education system should not be expected to solve all social ills. However, it should be expected to teach children to read, to write, to add, and it should be expected to do that in an environment of loving discipline.

Scott recognizes these responsibilities as both moral and educational. He says the current system assumes all children come in at a certain level, and if they are not there, they are passed through anyway. To illustrate this phenomenon, he points to studies which show that students will perform poorly in end-of-course examinations, at a passage rate of 0-28%; however, grade passage rates are three times higher (for example, 80-85% of the same group passed the grade notwithstanding their inability to pass the end-of-course exam).

Scott surmises that the failure of school responsibility is the single factor which permits, and even encourages, this pass-through phenomenon--and that it is this pass-through phenomenon which ensures the public school will continue to graduate young adults who cannot read.

c. The Bureaucracy
The two great victims in public education are the students and the teachers.

George Scott

Finally, Scott fingers the public education bureaucracy for the failure of the school system to educate our children. Scott identifies the bureaucracy as the greatest threat to quality public education. He avers that the principals and teachers are not to blame for education's failure; rather, it is the philosophy of the bureaucracy which dooms the schools and the children to failure.

When challenged, Scott refers his listener to a story about a twenty-three-year-old newspaper news editor. It seems the editor *36 wrote for a paper which received poor ratings and was a poor paper by all accounts. The editor tried to submit other articles for publishing, but his ideas were routinely rejected. Soon a new publisher purchased the paper. Before he could unpack, the new publisher was greeted by the young editor with a list of story lines and ideas and a demand that if the new publisher did not allow this kind of innovation, he would quit. The new publisher read the submissions, thought the editor's ideas were great, and the editor kept his job. More important, the paper greatly improved.

The moral of his story is that given an environment for success, the editor performed admirably. In an environment designed to ensure failure, the prophecy will be fulfilled.

That, Scott claims, is what is happening with public education: the bureaucracy is geared to fail. Its primary focus is the standardized or one-world approach to teaching. It supports little or no risks, and it rejects innovation--Wesley Elementary being a case in point. As long as the public education bureaucracy is permitted to fester, Americans can expect a swelling juvenile justice penal system.

3. David Wingard Director, Harris County Juvenile Justice Alternative Education

David Wingard [FN184] recently moved to Houston, Texas. But as director of Harris County juvenile justice alternative education, he will be forced to learn the lay of the land quickly. His job requires him to develop, direct, and oversee the alternative education program, which has become the responsibility of Texas counties under the Safe Schools Act. [FN185]

Wingard anticipates that the new system will fill an essential void in the current placement system. He says that the current process is the expulsion of the student from school to the juvenile justice system. That student is returned to the school as part of probation or is released to the streets. Alternative education will be designed to provide for placement in a county program of education.

Alternative education programs are not new in Texas, so what does Wingard expect from his program that is different? Although he warns that the program has not been designed, Wingard has some very concrete conceptual ideas for such a program. He emphasizes *37 that the program should be designed and embraced by the entire community, and to that end, he conducted community forums throughout the city to elicit community input. And though he stresses that the alternative education program is not really a part of the juvenile justice system, but a part of the education system, he is aware of the special needs for his program.

One of the greatest deterrents to a successful program is the inconsistent language of the Act itself. While one provision of the Act provides that the alternative program will be funded at a greater per student cost than students in regular placement, another part of the Act equalizes the per student allocation. [FN186] Several of the school districts within the county posit that their obligation is only to fund at the equalized level. [FN187] Wingard believes that if this program prevails, the impact on his program would be devastating.

It can reasonably be expected that students assigned to the alternative education program will need more guidance counselors, greater teacher to student ratios, and more stringent academic work to exact remedial to grade-level performance. This idea of spending more now or paying more later is not novel. Arguably, to some extent, that happens now in the public school system as money for guards, other security systems, and the like can be unequally allocated to a small minority of students, many of whom will participate in Wingard's program. [FN188]

The question is how is this new county program going to ensure that the money spent today yields the kind of positive return that makes this investment worthwhile?

Wingard says there are things which can be done to ensure that such an investment is wise. The following are concepts he would like to see included in the program in an effort to curb juvenile crime.

1. Provide valid diagnostic profiles for each participatin g child

to determine the academic need.

2. Adopt self-paced teaching and learning approaches.
3. Establish specific program goals which would include:
 - a. restore children to age appropriateness grade levels;
 - b. close the gap between race performance levels;
 - *38 c. consider G.E.D. [FN189] as alternative to a high school diploma where appropriate;
 - d. implement vocational training designed for the technological age;
 - e. increase the passage of TAAS tests [FN190]
 - f. ensure the passage of TASP [FN191]
 - g. focus on quality education, results and accountability

Wingard believes the failure of the public school system is that although it does a good job with children who fit the "standard," it inadequately addresses the needs of the growing number of students who do not fit that "standard." He sees his county program as an opportunity to fill that gap.

C. Care Providers

1. Gloria Batiste Roberts Many adolescent offenders are children society has given up on. Perhaps there are children who cannot be rehabilitated, but in most of the cases, if we as a society don't have a sense of hopelessness for them, and we don't share our sense of hopelessness with them, then they can be rehabilitated.

Gloria Batiste Roberts

Gloria Batiste Roberts, in her twenty years of service to children, has found that many child offenders are easy to bond with. They seem to soak up attention and love. One consistent characteristic of the offenders she has worked with is the child's loss of a significant family member. This family member is often a father, grandparent, or other family member the child is particularly close to. The child then tends to respond inappropriately to his or her grief. When other influences, particularly negative influences, are added to the child's experience, delinquency often occurs. The incidence of delinquency is significantly enhanced, she avers, by pressure from peers. All of this, she says, is additionally impacted by the hormonal changes which are naturally occurring in the adolescent's life. Roberts also finds a significant number of these child offenders have suffered from the effects of poverty, including hunger and deprivation of commonly accepted necessities, including shelter, utilities, and the like. These children, she says, tend to yearn for material things, particularly gold teeth, cars, and money. This yearning is the impetus for them to do any act they *39 think will fulfill these material needs or desires, things which manifest their worth.

Roberts recommends parenting training and mandated family involvement in the child's rehabilitative process. Her experience is that most of the families of these child offenders really do care for their children. Once they see how their own actions or inactions may be, in part, to blame for the child's offensive behavior, they are generally anxious to work toward resolution.

In those cases where the family is so dysfunctional that children must be placed outside the home, Roberts recommends a focus in two areas: (1) improving child protective services agencies; and (2) improving foster parent care.

Child protective services can be improved by increasing staff to accommodate the overwhelming number of children which are referred to them. Roberts also suggests that due to the intense emotional drain this job can place on staff, there should be regular evaluation to ensure that staff assigned to child care remain committed to children and families. Furthermore, she avers, the agencies should be able to work with consultants, other agencies, utility services, and other service providers to assist families. [FN192]

Roberts would also re-examine foster parents criteria. All criteria, she states, must be guided by what is in the best interest of the child. Foster parents who are motivated by love and caring are usually better for the child than the foster parents who are motivated solely by monetary reasons.

Finally, Roberts strongly recommends using parent group assemblies as a means of improving parenting skills. Her experience has been that parents help each other in these situations and that this kind of sharing and networking positively impacts their children.

2. The Burnett Bayland Residential Facility Children will make sure we acknowledge them. Either we recognize their potential to be productive citizens or we will recognize them because they are committing violent acts.

Bayland Official

The Burnett Bayland Residential Facility is a placement center for children who have been adjudicated delinquent. Their children range from children who have been expelled from school for misbehavior, *40 to children who have committed economic crimes, to children who have committed serious crimes against people. [FN193]

Children who enter this facility are diagnostically screened to determine their individual needs. The child then meets with staff personnel, and finally with psychologists, for a psychological assessment. Many of the children at Burnett need behavior modifying drugs. Most commonly, these drugs are prescribed to help control hyperactivity, depression, attention deficit disorder, conduct disorder, and more rarely, sociopathology. One of the problems for many of the children who need this medication is the failure of parents to ensure that the child continues to receive the medication once they graduate from the facility.

Additional problems for many of the children seen at Burnett are due to the lack of nurturing and caring when they are at home. Burnett has found that nurturing pays off. As a result, Burnett focuses on providing a nurturing environment for their children. Notwithstanding such focus, Burnett recognizes the children will return to the same homes, schools, and communities which provided so little care before. To address that, they teach

the children that the burden is ultimately on them. They teach them that they must work to overcome the lack of support systems. Of course, they recognize the overwhelming burden that this independence ultimately places on the child.

Bayland personnel identify the lack of effective after-care as one of the real challenges. They admit they have not been able to focus much attention on follow-up care once the child is released from their facility.

Still another problem identified is the constantly changing approach. It is difficult for service providers to be effective because of legislative mandates: the rules keep changing. This makes it difficult for caretakers to become proficient in one program before that program is replaced with some other program. Although there are ongoing efforts to diminish the effect of the ever-changing rules, such as by encouraging agencies to coordinate their efforts and work together to solve some of these problems, these efforts have not been successful. Apparently, despite the efforts, territorial battles still interfere with the adequate addressing of issues such as best placement for the child, which agency provides medical or psychological attention to the child, and so on.

*41 In addition to these major hurdles, children at Burnett are now in residence three to six months less than they need because of the backlog of cases. The Burnett facility provides residential placement. There are residential cottages sprawled on acres of park-like land. Each cottage houses eleven to eighteen children in brightly decorated rooms. Classrooms are located at the campus, as well as recreational facilities, including the gymnasium with cafeteria area. The children appear well-mannered and anxious to please. They appear happy, and some do not want to go home.

Burnett personnel describe the children in loving terms, much like proud parents would do. However, they recognize that many of the children are detached from society. Indeed, some have no comprehension of society as a concept. There simply is no such idea as a greater good. For these children, their experience is one of rejection. They feel that schools and teachers are against them. For many, this is probably true. The medical care system has been one of long hours of waiting at publicly funded hospitals to receive rushed treatment, with little time for bedside manners. These children are often part of racial dissension. They often justify their criminal acts as economic, but many experts suggest that they are screaming for acknowledgement. In effect, they are forcing society to acknowledge them. Perhaps in the long run, it is society's choice to acknowledge their potential to be productive or to be criminal.

Some staffers referred to the changing family structure as an obstacle the child and society must overcome. Many children at Burnett have no positive adult influences at home. They are being reared by drug-addicted parents or by elderly grandparents who are ill and on fixed incomes.

One person said simply, "These children are in pain." To ease that pain,

they create or join the gang family which provides the support and nurturing and love they miss and long for.

This separation from functioning families and environment--from reality--is exacerbated from generation to generation. Many of these children are so out of touch with society's realities that their goals, their dreams, and their aspirations are rooted in fantasy. When they fail to reach these goals, it is but another failed effort until making any effort seems fruitless. To exemplify this phenomenon, one teacher talks of a child who has dreams of leaving the eighth-grade to join a professional basketball team. With the odds so great against any child becoming a professional player, they certainly are impossible odds that a child will leave eighth grade to go directly to such a career. Somehow, the child was simply never shown what must be *42 done to achieve these goals. This tends to evidently increase the child's need for instant gratification.

Generally, personnel identified numerous problems their children confront in the real world. The world they call "the free." They also identified recommendations for change, including:

1. Increase children's exposure to therapy and treatment. Usually, the minimum period for effectiveness is six months.
2. Make transitional housing available for children once they leave the institutional center, rather than returning them to their homes.
3. Increase community involvement by establishing a job market for the children, as well as parenting education, mentoring and day care centers.
4. Make available basic necessities to all families, including utilities, food, and shelter.
5. Educate legislators.
6. Create after-care outreach programs.

D. Judiciary

1. Judge Eric Andell Appellate Court Adolescent misbehavior has become an epidemic. The vaccine for this epidemic is education, pure and simple. There are no ifs, ands, or buts about it Education is the cure.

Judge Eric Andell

Judge Eric Andell is currently an appellate court judge; formerly he was a juvenile court judge and maintains a significantly high profile in the juvenile justice community. [FN194] Judge Andell suggests that part of society's preoccupation with juvenile crime is that we are ignoring that juvenile crime has existed through the centuries. Part of our preoccupation then is rooted in our belief in the novelty of the phenomenon. Actually, he avers, the problem today is the rate of criminal acts committed by children, and the numbers of children who are involved in crime and who are in the "pool" of potential actors. [FN195]

Judge Andell has seen hundreds of these children who are part of these overwhelming juvenile crime statistics. Many causative factors *43 he deems as "no-brainers;" [FN196] however, he has also recognized a factor he believes is psychologically clinical. That factor is anger. This anger, and in some instances rage, appears closely related to family relationship (like father abandonment); but perhaps is more indirectly related to societal abandonment. [FN197]

Notwithstanding the various influencing factors, [FN198] Judge Andell believes steadfastly that there is only one answer to the problem: Education.

a. The Answer

Judge Andell's dogmatic posture is rooted in experience. To exemplify this experience, he looks at several things. First, he considers what he calls 'the wealthy model.' Judge Andell states that wealthy families have always ensured their children's participation in the educational environment at an early age-- preschool. For these families, he says, education is first. To naysayers, he says, "Yes, children from wealthy families do get in trouble." However, he argues the proof is in the numbers, in the percentages of these children who become involved in the juvenile criminal justice system when compared to those children who are not exposed to more rigorous education criteria and performance expectations.

This wealth-model experience supports Judge Andell's recommendation that all children receive early education exposure. To achieve this goal, he suggests that all children begin this kind of exposure from eighteen months of age.

Additionally, he states that more wealthy children often attend private schools. Children from these schools often have higher skills performance, do better on standardized tests and the like. From this, he states, society has learned what the model school should be. For example, there should be a ten or less students-to-teacher ratio. The teachers should be highly trained and compensated; the facilities should be of good quality and well maintained; and the equipment, supplies and resources should be state-of-the-art. This, he states, is the type of school we should have for all children. Our efforts should be to achieve this goal.

*44 Clearly he says, to achieve this goal costs money. To this, he simply says we must raise the money, whether through increasing taxes, dedicating taxes, or creating a children's district (much like existing utility districts, or mosquito districts).

Furthermore, Andell challenges the notion that any model should be exclusive. That is, he infers, a denial of the essence of American life--its diversity. This essence must be suitably addressed by our educational system. Andell suggests establishing numerous school models, including military academies, public boarding schools, all-male academies, and all-female academies.

Judge Andell also proposes that equalizing educational opportunity and exposure as discussed herein would also serve to eliminate racial disrespect.

Respect for a person's intelligence, he opines, is essential for eliminating biases against black and brown and red people.

Finally, Andell recommends extending the school day for all students, not to just the chosen few, the athletes or the gifted child [FN199] for example. He further recommends after-school intramural activities. These activities, he says, deter delinquency while teaching teamwork, discipline, and other positive social values.

2. Joseph Funchess Harris County Juvenile Court AdministratorThe system's got to want to work; not for just some children, but for all children.

Joseph Funchess

Mr. Joseph Funchess is the Juvenile Court Administrator for Harris County. Funchess is intimately aware of the process for handling juvenile delinquency cases. His concerns are apparently less about the juvenile justice system itself than about the management and administration of the system.

He opines that there should be established a juvenile coordinating agency which acts to eliminate duplication between agencies. He also suggests that this agency should serve to somehow remove children from families before justice problems arise. This would replace the emphasis on punitive measures with an emphasis on preventive measures.

Funchess would also collect smaller counties under a regional administration in an effort to equalize services, grants in aid, and administration *45 across the state. Funchess recommends handling matters, such as probation and the incarceration of youth, at the county rather than the state level.

He would also revise the child protective services to encourage more mature employee evaluators, education, and training in the area of child care and parenting.

Finally, he would recommend that the system maintain accurate records for serious offenders, supervision success rates, recidivism, and the like. Currently, information at the various facilities is incomplete or not kept at all. Consequently, it is difficult to accurately access what works and what does not. He believes "we need to know" if we are to achieve our goal.

Conclusion

Revisions to the Texas Juvenile Justice and Education Codes represent the legislature's attempt to punish juveniles who commit crime. Less a program geared toward eliminating crime, the legislative approach is geared toward ensuring that the system is prepared to isolate and institutionalize offending children.

For many of us, eliminating crime and its causes is the real challenge. Consequently, we must work to keep the system from creating a permanent class of criminal offenders. We cannot accept any and everything tossed our way as being good for us. We must determine what is good for us and for our children, and ensure its occurrence.

Many of the changes in the Texas codes of Juvenile Justice and Education are not good for our children. Other provisions require close and continued scrutiny.

[FN1]. Marcia Johnson is an associate professor of law at the Thurgood Marshall School of Law at Texas Southern University. She created the Earl Carl Institute for Legal and Social Policy, Inc. at the school in 1992 and serves as its director. She is a long time community activist in areas including community development, women's rights and public interest. She volunteers as a member of numerous non-profit boards. She received her Bachelor of Science degree in Broadcast Journalism from the University of Florida. She received her Juris Doctor degree from Spessard Holland College of Law at the University of Florida.

The author wishes to thank Voni Welch for her typing assistance. I appreciate the support from my mom, Adams Ndiaye, my husband, Lockett Johnson and children, Jules, Vincent and Anthony.

[FN1]. Roger J. R. Levesque and Alan J. Tomkins, *Revisioning Juvenile Justice: Implications of the New Child Protection Movement*, 48 Wash. U. J. Urb. & Contemp. L. 87 (1995).

[FN2]. *Id.* at 88. Also, see a report by the Office of Justice Programs, U.S. Dept. of Justice, second printing (June 1994).

[FN3]. *Juvenile Justice Code, Acts 1995*, tit. 3, ch. 262, <section> 1 (1995); *Tex. Fam. Code Ann. ch. 51* (West 1995).

[FN4]. See Abbe Smith, *They Dream of Growing Older: On Kids and Crime*, 36 B.C. L. Rev. 953 (1995), which discusses growing public sentiment to treat juvenile offenders as adult criminals. The article discusses the opinion of the judge of a Pennsylvania superior court that society should not forget that juvenile offenders are not just skipping school or performing childish pranks; they are committing adult crimes and are injuring innocent victims. On the other hand, polls of the general public reveal strong support for treating violent juveniles as adults. However, polls show continued support to maintain a separate juvenile justice system that is firm and compassionate.

[FN5]. See, e.g. Houston Police Department arrest records from 1988 to date.

[FN6]. *Tex. Fam. Code Ann.* <section><section> 51.01(1), (2) (West 1995).

[FN7]. *Tex. Fam. Code Ann.* <section> 51.02(15) (West 1995).

[FN8]. *Id.*

[FN9]. *Tex. Fam. Code Ann.* <section> 51.03 (West 1995).

[FN10]. See Erika L. Johnson, *A Menace to Society: The Use of Criminal Profiles and its Effects on Black Males*, 38 *How. L.J.* 629 (1995); and see Rose

Ochi, Race Discrimination in Criminal Sentencing, Judges Journal as Reprinted in Race, Sentencing, and Criminal Justice, 159 PLI/Crim. 31 (1991).

[FN11]. Id. See Tex. Fam. Code Ann. <section> 52.041 (West 1995); Tex. Educ. Code Ann. <section> 37.010 (West 1995).

[FN12]. Id.

[FN13]. The Education Code specifically provides that the juvenile court will determine whether to conduct delinquency or CINS proceedings. See <section> 37.010. The Education Code also requires that a child be removed from class and placed in alternative education if identified criminal offenses are committed on school property or at a school function. See <section> 37.006. Furthermore, the Education Code provides for the expulsion of a child who commits criminal offenses or even when no criminal offense is committed if the child is already enrolled in an alternative school. See <section><section> 37.007 and 37.007(b).

[FN14]. Tex. Fam. Code Ann. <section> 51.02(1) (West 1995) (lowering the age from 15 years to 14 years for aggravated controlled substances felonies and felonies of the first degree).

[FN15]. Once transferred, the children become subject to what is generally perceived to be more rigid procedural rules and harsher punishment. It is also true that once in the adult system, the child is also entitled to the protections afforded any adult criminal defendant.

[FN16]. Tex. Fam. Code Ann. <section> 51.10(c) (West 1995).

[FN17]. Id.

[FN18]. See Tex. Fam. Code Ann. <section> 51.13(a) (West 1995), which provides: (a) Except as provided by Subsection (d), an order of adjudication or disposition in a proceeding under this title is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

Subsection (d) reads: (d) an adjudication under Section 54.03 that a child engaged in conduct that constitutes a felony offense resulting in commitment to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) is a final felony conviction only for the purposes of Sections 12.42(a)-(c), and (e), Penal Code (emphasis added).

Sections 12.42(a)-(c) and (e) provide for enhancement of punishment.

[FN19]. Tex. Fam. Code Ann. <section><section> 51.17(b), (c) (West 1995).

[FN20]. Tex. Fam. Code Ann. <section> 53.01 (West 1995).

[FN21]. Tex. Fam. Code Ann. <section> 53.01(a) (West 1995).

[FN22]. Tex. Fam. Code Ann. <section> 54.045 (West 1995).

[FN23]. Tex. Fam. Code Ann. <section> 54.045(b) (West 1995).

[FN24]. Tex. Penal Code Ann. <section> 12.45 (West 1995).

[FN25]. Tex. Fam. Code Ann. <section><section> 58.001-58.113 (West 1995).

[FN26]. Tex. Fam. Code Ann. <section> 58.002 (West 1995).

[FN27]. Id.

[FN28]. Tex. Fam. Code Ann. <section> 58.002(b) (West 1995).

[FN29]. Tex. Fam. Code Ann. <section> 58.003(a) (West 1995).

[FN30]. Tex. Fam. Code Ann. <section><section> 58.001, 58.005, 58.113 (West 1995).

[FN31]. Id.

[FN32]. Id.

[FN33]. Tex. Code Crim. P. Ann. <section> 61.04 (West 1993).

[FN34]. Id. The statute reads: (a) Notwithstanding Section 51.14, Family Code, criminal information relating to a child associated with a combination may be compiled and released under this chapter regardless of the age of the child.

[FN35]. Tex. Code Crim. P. Ann. art. 15.27 (West 1995).

[FN36]. Id.

[FN37]. Tex. Fam. Code Ann. <section> 57.001(c) (West 1995).

[FN38]. The revised code defines victim to mean a person who:

(A) is the victim of the delinquent conduct of a child that includes the elements under the penal law of this state of sexual assault, kidnapping, or aggravated robbery;

(B) has suffered bodily injury or death as a result of the conduct of a child that violates a penal law of this state; or (C) is the owner or lessor of property damaged or lost as a result of the conduct of a child that violates a penal law of this state. (emphasis on added language).

Adult offenders are subject to Chapter 56 of the Code of Criminal procedure, which does not give such a broad definition of "victim."

[FN39]. Tex. Fam. Code Ann. <section> 57.002; and see <section> 57.0031 regarding the role of probation departments in aiding victims by informing them of their rights in a timely manner.

[FN40]. Tex. Fam. Code Ann. <section> 57.002 (West 1995) gives new rights to victims of criminal conduct of children including:

(a) notification of appellate proceedings;

(b) the right to be informed of juvenile justice system procedures in deferred prosecution and the appeal of the case;

(c) the right to be informed of compensation to victims as provided by the Code of Criminal Procedure;

(d) to be informed of procedures governing the transfer of a TYC youth to adult parole supervision;

(e) to participate in the process transferring to the adult parole process;
and

(f) to be notified of transfer to adult parole.

[FN41]. Tex. Fam. Code Ann. <section> 54.10 (West 1995).

[FN42]. Id. prior to revision.

[FN43]. See supra note 30.

[FN44]. Tex. Fam. Code Ann. <section> 57.003 (West 1995).

[FN45]. Tex. Fam. Code Ann. <section> 57.003(d)(3) (West 1995).

[FN46]. Tex. Fam. Code Ann. <section> 57.003(f) (West 1995).

[FN47]. Tex. Fam. Code Ann. <section> 57.008 (West 1995), generally.

[FN48]. Tex. Fam. Code Ann. <section> 57.008(a) (West 1995).

[FN49]. Tex. Fam. Code Ann. <section> 57.008(b) (West 1995).

[FN50]. See generally Tex. Rev. Civ. Stat. art. 6252-13c.1. et. seq.

[FN51]. Tex. Fam. Code Ann. <section><section> 264.301(b)(6),(7) (West 1995).

[FN52]. Id. at <section> 264.304.

[FN53]. Id. at <section> 264.305.

[FN54]. Tex. Fam. Code Ann. <section> 51.115 (West 1995).

[FN55]. Id.

[FN56]. Id.

[FN57]. Id.

[FN58]. Id.

[FN59]. Tex. Fam. Code Ann. <section> 51.116 (West 1995).

[FN60]. Tex. Fam. Code Ann. <section> 53.06 (West 1995).

[FN61]. Tex. Fam. Code Ann. <section> 53.08 (West 1995).

[FN62]. Id.

[FN63]. Tex. Fam. Code Ann. <section> 54.044 (West 1995).

[FN64]. Id.

[FN65]. Id.

[FN66]. Tex. Fam. Code Ann. <section> 59.003(b) (West 1995).

[FN67]. Id.

[FN68]. Tex. Fam. Code Ann. <section> 264.306 (West 1995).

[FN69]. H.B. 1375 <section> 106.115(a).

[FN70]. Id.

[FN71]. Tex. Fam. Code Ann. <section> 54.06 (West 1995).

[FN72]. Id.

[FN73]. Tex. Fam. Code Ann. <section> 54.041(b) (West 1995).

[FN74]. Id.

[FN75]. Id. Furthermore, the parents must show that despite their good faith effort, the child continues to engage in such conduct. This language tends to relate to restitution which could be imposed for the continued acts of CINS rather than the prior CINS where restitution had already been imposed.

[FN76]. Tex. Fam. Code Ann. <section><section> 56.01(1), (m) (West 1995).

[FN77]. Chapter 59. Progressive Sanctions Guidelines. House Bill 327 identifies maximum sentence terms under each sanction level. These terms are specified in section 54.04 and amends the determinate sentencing act.

[FN78]. Tex. Fam. Code Ann. <section> 59.001 (West 1995).

[FN79]. Tex. Fam. Code Ann. <section><section> 59.004(a)(1), (6), (7) (West 1995).

[FN80]. Tex. Fam. Code Ann. <section> 59.005(a)(1) (West 1995).

[FN81]. Tex. Fam. Code Ann. <section><section> 59.005(a)(2), (6), (7) (West 1995).

[FN82]. Tex. Fam. Code Ann. <section> 61.101 (West 1995).

[FN83]. Id. at (a), (b).

[FN84]. Id. at (e).

[FN85]. Id. at (e), (f).

[FN86]. Tex. Fam. Code Ann. <section> 59.006(a)(1) (West 1995).

[FN87]. Tex. Fam. Code Ann. <section><section> 59.006(3), (4) (West 1995).

[FN88]. Tex. Fam. Code Ann. <section> 59.007(a)(1) (West 1995).

[FN89]. Id.

[FN90]. Tex. Fam. Code Ann. <section><section> 59.007(a)(2), (3), (4), (5), (6), (7) (West 1995).

[FN91]. Tex. Fam. Code Ann. <section> 59.008(a)(1) (West 1995).

[FN92]. Id. at (a)(2-7).

[FN93]. Tex. Fam. Code Ann. <section> 59.009(a) (West 1995).

[FN94]. Tex. Fam. Code Ann. <section> 59.009(b) (West 1995).

[FN95]. Tex. Fam. Code Ann. <section> 59.009(c) (West 1995).

[FN96]. Tex. Fam. Code Ann. <section> 59.010 (West 1995).

[FN97]. Tex. Fam. Code Ann. <section> 61.079(a) (West 1995).

[FN98]. Tex. Fam. Code Ann. <section> 61.084(d) (West 1995).

[FN99]. The purpose of this provision is to reduce early release of persons convicted of certain violent crimes.

[FN100]. Tex. Fam. Code Ann. <section> 59.003(e) (West 1995).

[FN101]. Juvenile Justice Code, Acts 1995 tit. 3, ch. 262 (West 1995).

[FN102]. Tex. Fam. Code Ann. <section> 54.02 (West 1995).

[FN103]. Id.

[FN104]. Id. at (a)(2).

[FN105]. Tex. Fam. Code Ann. <section> 61.077(b) (West 1995). This represents a fundamental change in the juvenile justice system's treatment of mentally ill or mentally retarded children who had been adjudicated. Now instead of assigning the child to handling by the Texas Department of Mental Health and Mental Retardation, the child can be handled as any other juvenile in the juvenile justice system. The only exception is when the child is declared unfit to proceed with juvenile proceedings or not responsible because of mental retardation.

[FN106]. Tex. Fam. Code Ann. <section> 51.12 (West 1995).

[FN107]. Id. at <section> 51.12(f), which provides:

(f) a child detained in a building that contains a jail, lockup, or other place of secure confinement, including an alcohol or other drug treatment facility, shall be separated by sight and sound from adults detained in the same building. Children and adults are separated by sight and sound only if they are unable to see each other and conversation between them is not possible. The separation must extend to all areas of the facility, including sally ports and passageways, and those areas used for admission, counseling, sleeping, toileting, showering, dining, recreational, educational, or vocational activities, and health care. The separation may be accomplished through architectural design.

Juvenile facilities providing services solely for the Texas Youth Commission are exempt from Section 42.041 licensing requirements of the Human Resources Code. They are also exempted from the Sec. 42.042 certification and registration requirements of that act.

[FN108]. Tex. Fam. Code Ann. <section> 61.0386 (West 1995).

[FN109]. Id. at (a).

[FN110]. Tex. Hum. Rev. Code Ann. <section> 141.042 (West 1989).

[FN111]. Id.

[FN112]. Id. <section> 141.0433.

[FN113]. Tex. Fam. Code Ann. <section> 51.12 (West 1995).

[FN114]. Id. at (f).

[FN115]. Tex. Fam. Code Ann. <section> 51.13(a) (West 1995).

[FN116]. Id. at (d). Such limited purpose is provided in Tex. Penal Code Ann.

<section><section> 12.42(a)-(c), (e) (West 1993), which provide that such an adjudication may be considered a final conviction for purposes of punishment enhancement.

[FN117]. Tex. Fam. Code Ann. <section> 61.121 (West 1995).

[FN118]. The programs include the Industries Program which works with private businesses to train and employ youths. As incentive for private business participation, franchise tax credits and ad valorem tax abatements are authorized. Another program aimed at rehabilitation is Project RIO (Reintegration of Offenders).

[FN119]. Tex. Alco. Bev. Code Ann. <section> 106.115(a) (West 1993).

[FN120]. Tex. Fam. Code Ann. <section> 61.0812 (West 1995).

[FN121]. Tex. Hum. Rev. Code Ann. <section> 141.0471 (West 1989).

[FN122]. Tex. Gov't. Code Ann. <section> 413.009 (West 1983).

[FN123]. Tex. Educ. Code Ann. <section> 25.096 (West 1995).

[FN124]. Id. at <section> 37.001(a).

[FN125]. Id. at (a), (b).

[FN126]. Id. at <section> 37.002.

[FN127]. Tex. Educ. Code Ann. <section> 37.003 (West 1995).

[FN128]. Tex. Educ. Code Ann. <section> 37.006 (West 1995).

[FN129]. Tex. Educ. Code Ann. <section> 37.010(b) (West 1995).

[FN130]. Id. There are some exceptions to this rule prohibiting replacement. All such exceptions seem to hinge on the school's or its authorities' willingness to accept the student's return.

[FN131]. Tex. Educ. Code Ann. <section> 37.101 (West 1995).

[FN132]. Tex. Educ. Code Ann. <section> 37.102 (West 1995).

[FN133]. Tex. Educ. Code Ann. <section> 37.105 (West 1995).

[FN134]. Tex. Educ. Code Ann. <section> 37.107 (West 1995).

[FN135]. See Robert O. Dawson, *An Empirical Study of Kent Style Juvenile Transfers to Criminal Court*, 23 St. Mary's L.J. 975, 998 (1992), where the author shows a significant correlation between a child's race and the likelihood he will be transferred as an adult. Dawson shows that "motions [to transfer] were filed in only four-tenths of one percent of the referrals of white, while they were filed in one percent of Hispanics and 1.2 percent of the black/others. Blacks/others were filed on at a rate three times higher than whites and Hispanics were filed on at a rate over twice that of whites." Id.

See Rose Ochi, *Race, Sentencing, and Criminal Justice*, 159 PLI/Crim. 31 (1991), where one writer recounts statistics showing that more than twice as many whites are on probation or parole (806,578) than blacks (397,438). The article reprints an article by Rose Ochi (*Race Discrimination in Criminal Sentencing*, *Judges Journal*) wherein Ms. Ochi writes, "There is no getting around the evidence: Racial minorities receive disproportionately stiffer sentences for comparable crimes." Studies show that blacks are not only arrested more often, but punished more harshly. In one study, data revealed that blacks were arrested 5.8 times more than whites and were sentenced to prison 9.8 times more than whites. (citing M.A. Forsland, *A Comparison of Negro and White Crime Rates*, 61 J. Crim. Law, Criminology and Police Service 214 (June 1970).

[FN136]. The Education Code provides greater intrusion of the juvenile justice system. This can be a significant problem since many experts recognize the failure of the education system as a direct link to juvenile crime. See Arnold Binder et. al., *Juvenile Delinquency Historical, Cultural, Legal Perspectives* 455 (1988), stating that one of the two prevailing theories which account for the increasing incidences of juvenile delinquency is that "the school itself as well as the way it chooses to educate children are themselves major causes of juvenile delinquency."

[FN137]. See generally Tex. Educ. Code Ann. <section><section> 25.094-25.095 and ch. 37 (West 1995).

[FN138]. Theresa Glennon, *Race, Education, and the Construction of a Disabled Class*, 1995 Wis. L. Rev. 1237, 1239-42 (1995). The author states:

African American students are identified as disabled and placed in special education at twice the rate of white students The overrepresentation of African-American students in special education reflects the belief that a higher percentage of these students are deficient in some important manner

....
The dramatic racial disparities and negative consequences of identification as disabled occur in a society that claims to stand for racial equality but has historically had difficulty recognizing and remedying pervasive racial discrimination. Special education has been used as a tool of racial discrimination. Id.

And see Martin A. Kotler, *The Individuals with Disabilities Education Act: A Parent's Perspective*, 27 U. Mich. J.L. Reform 331, 362-63 (1994), where the author states, "Nonwhite and non English-speaking parents ... more often

[[[fought to have their children's education declared a public responsibility because] their children were being classified as handicapped and were being channeled into special education programs with little pretense that they would be education.

[FN139]. Glennon, *supra* note 138, at 1328-31, which includes a case study of an African American male who was placed in a special education class due to discipline problems.

[FN140]. See generally Alfreda A. Sellers-Diamond, *Disposable Children in Black Faces: The Violence Initiative as Inner-City Containment Policy*, 62 *UMKC L. Rev.* 423 (1994), where Ms. Sellers-Diamond discusses a national policy of experimentation on and eradication of the black child. The author also shows the significant role of the education system in reaching the goals of the violence initiative.

[FN141]. Although this is not new, the bases for which, and the procedure for, removing a child from class have been relaxed.

[FN142]. The statute fails to require any uniformity of conduct codes.

[FN143]. Theresa Glennon, *Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities*, 60 *Tenn. L. Rev.* 395 (1993).

[FN144]. *Id.*

[FN145]. *Id.*

[FN146]. Various programs around the country include the Thaddeus Lott education program in Houston, Texas, and the Marva Collins program in Chicago, Illinois. See interview with Dr. Thaddeus Lott, Area Supt. of Houston Indep. Sch. Dist., in Houston, Texas (Nov. 1995).

[FN147]. *Id.*

[FN148]. See *supra* note 124.

[FN149]. U.S. Const. amend. XIV.

[FN150]. Ron R. Reed, *Education and the State Constitutions: Alternatives for Suspended and Expelled Students*, 81 *Cornell L. Rev.* 582 (1996).

[FN151]. *Id.*

[FN152]. *Id.*

[FN153]. *Tex. Educ. Code Ann.* <section> 11.301 (West 1995).

[FN154]. Tax Research Ass'n of Houston and Harris County & Acres Home Citizens Chamber of Commerce, *A Citizen's Workbook for School District Accountability*, vol. 1 (1995) (relying on statistics from the Houston Independent School

District, which shows that in every grade level, students are graduating to the next grade while failing mastery examinations for their grade level).

[FN155]. Denise C. Morgan, *What is Left to Argue in Desegregation Law? The Right to Minimally Adequate Education*, 8 Harv. Blackletter J. 99 (1991), wherein the author discusses the historical denial of education to black Americans and the reason for the denial...." All slaveholders agreed that the thinking slave was a potentially rebellious slave." Id.

[FN156]. Id.

[FN157]. *Transition from School to Work: States are Developing New Strategies to Prepare Students for Jobs*, U.S. General Accounting Office Report, 1993.

[FN158]. Id.

[FN159]. Abbe Smith, *They Dream of Growing Older: On Kids and Crime*, 36 B.C. L. Rev. 953, 1024 (1995) (recognizing the public's support of more punitive treatment but also supporting a compassionate rehabilitative juvenile model).

[FN160]. *Juvenile Justice, Do Juveniles Rehabilitation Programs Work?* Cong. Q., Feb. 1994, at 75.

[FN161]. Id.

[FN162]. Id.

[FN163]. Id.

[FN164]. Id. (citing Doris Layton MacKenzie, "Boot Camp Prisons in 1993," Nat'l Inst. Just. J., Nov. 1993, at 21-28).

[FN165]. Id.

[FN166]. Id.

[FN167]. See generally Marcia Johnson, *Juvenile Justice*, 17 Whittier L. Rev. 713 (1996).

[FN168]. Id., citing Mark W. Lipsey, *Juvenile Delinquent Treatment: A Meta-Analytic Inquiry into the Variability of Effects* (Thomas D. Cook et al. eds., 1992); *Meta-Analysis for Explanation* Cong. Q. Res., 1992, at 83-126.

[FN169]. Garnet Coleman is a Texas State Representative of the 149th Legislative District in Houston, Harris County, Texas.

[FN170]. *Tex. Comm'n on Children & Youth, Safeguarding Our Future* (Dec. 1994).

[FN171]. Representative Coleman generally supports the legislation enacted by the 74th Legislature. He believes that the new laws offer various progressive measures in spite of their toughened penalties. It will be up to future legislatures to address important issues such as after care programs, housing, and education.

[FN172]. The representative would emphasize the need for training offenders, especially youthful offenders, in skills marketable in our technological age. Training them to tend gardens and work assembly lines, he believes, dooms them to a criminal class.

[FN173]. Texas has incorporated victims rights provisions in its legislation as discussed earlier in this report. Among other things, sexual offenders, upon release, must register with local authorities. Victims rights groups have become more vocal in determining whether sexual and other offenders will be "permitted" to reside in their communities.

[FN174]. In effect, Representative Coleman feels the current system produces no real alternative to crime as a means of economic and social survival.

[FN175]. There is some inconsistency about where the juvenile justice system begins and ends. While some would limit the system to a point after a child has committed an adjudicable offense, Representative Coleman believes it should be painted with a broader brush. This approach requires the care provider to look at the various factors and indicators which might impact whether the child ever becomes an offender.

[FN176]. Steve Raddack is a Harris County Commissioner.

[FN177]. The commissioner used the example of duplication in public health services. Harris County, as well as the City of Houston, provide such services but under different administrative bodies. As a result, the commissioner says there is significant duplication of costs of operations and facilities. He would also spend more money on preventive health care than crisis management.

A prior proposal to merge these health services was not well received by the public. Numerous problems, including economic impact due to layoffs, disparate impact on racial minorities by moving the system under the Anglo majority county, and administrative concerns made the proposal unacceptable. Conceivably, a proposal which resolves these concerns may be acceptable.

[FN178]. The commissioner cites to a public hospital facility, Ben Taub, which has over 120 available beds. Mental Health Mental Retardation (MHMR) needs 40-50 beds for its patients, but they are not able to use the Taub facility because administrators there think they might need the beds in the future. Similarly, the commissioner points to the need for entertainment facilities for children after school--this, in the face of numerous gymnasiums in schools which are not being used during these hours.

[FN179]. Commissioner Raddack says the money is already in the coffers, but not being spent efficiently. Moreover, he believes that even if available funds are insufficient, the public would allow increased taxation if they believed the money would be spent prudently.

[FN180]. Curfew is a valuable tool that has contributed to Houston's reduction in the juvenile victimization and crime rate. However, statistics illustrate that daytime curfew (9:30 a.m.-2:00 p.m.) was more heavily utilized than

nighttime curfew (12 midnight-6:00 a.m.). Enforcement at night was historically more difficult because of fewer juvenile drop-off centers. To increase use of nighttime curfew, the Mayor's Anti-Gang Office replicated a Phoenix program and began using a public park as a regional curfew processing center. Juvenile offenders are now processed more quickly, allowing for increased nighttime street sweeps by police. Municipal courts partnered with police and the Parks Department on the program by providing community service assignments for parents and juveniles, in lieu of fining the offenders.

[FN181]. Too often, government neglects to include in the planning of programs the very population served by those programs. The Mayor's Anti-Gang Office established a Youth Council to solicit input on anti-gang programs and policies.

Seventeen high school students with diverse backgrounds meet weekly with the Anti-Gang Office staff to discuss city strategies and ensure participation of youth in addressing juvenile programs. Additionally, youth council concerns over negative media attention about youth crime prompted the Mayor's Anti-Gang Office to provide area media with news about prevention programs, featuring teens who have achieved success despite adversity. The idea is to promote optimism among young people, countering the impression that "they have no future."

[FN182]. The Gang Education Awareness Resistance (G.E.A.R.) program was implemented for all Houston Independent School District (H.I.S.D.) school administrators in early 1995. A tri-agency ten (10) hour gang training curriculum designed by the Mayor's Anti-Gang Office, the Houston Police Department Gang Task Force, and the school district has been provided to administrators from 244 H.I.S.D. schools. The initial training focused on gang identification, related behavior, and resource referral services.

In addition to learning to train their teaching staffs, school district policy requires these "campus experts" to intervene with identified gang members by calling a parent/student conference. The conference is geared toward referral of students and parents to area service providers offering counseling and support services. It is a single student intervention plan providing an educated, consistent response from Houston's largest school district, which currently serves 200,000 children.

[FN183]. Instead of recreating another "youth program," the Mayor's Anti-Gang Office assessed services and activities available for young Houstonians. An early review revealed most educators and policy officers knew of few, if any, supplemental social services available to the people they served. In response, 75,000 Youth Service Provider Directories were published and distributed to schools, police departments and civic associations for use in directing parents and youth to 190 identified Houston area providers. In 1994, the Mayor's Anti-Gang Office distributed \$150,000 of Community Development Block Grant funds to twenty-one (21) of those same youth programs in an effort to financially supplement successful neighborhood after-school mentoring, employment and tutorial services. Those youth providers meet quarterly with members of the Mayor's Anti-Gang Office and the H.P.D. Gang Task Force to promote cooperation in dealing with youngsters floating between service providers and the criminal justice system. Through such meetings, neighborhood service providers and police work together in dealing with troubled youth.

[FN184]. David Wingard is the director of the Harris County Juvenile Justice Alternative Education Program.

[FN185]. Tex. Educ. Code Ann., Subtitle G: SAFE SCHOOLS, ch. 37 (West 1995).

[FN186]. Compare Tex. Educ. Code Ann. <section><section> 37.008 and 37.012 (West 1995).

[FN187]. There are 24 school districts which operate all or part of their systems in Harris County. Twenty of them are wholly within Harris County. To date, the Houston Independent School District is the only one which has agreed to the per student allocation identified in Section 37.

[FN188]. Wingard anticipates 6,700 children participating during the first year of the program, with that number escalating before it levels off.

[FN189]. G.E.D. is the acronym for General Education Degree.

[FN190]. T.A.A.S. is the acronym for Texas Assessment of Academic Skills.

[FN191]. T.A.S.P. is the acronym for Texas Assessment of Scholastic Performance.

[FN192]. Ms. Roberts says some families need lights, beds and food. The caring is there, but the supplies aren't. The cost of providing these things are significantly less than foster care costs.

[FN193]. My meeting at the facility was with numerous personnel, and the recommendations and comments are not ascribed to any one advisor.

[FN194]. Judge Eric Andell is a justice in the First Court of Appeals--Houston.

[FN195]. Teen pregnancy etc., and high risk factors.

[FN196]. Judge Andell refers to poverty, low self-esteem, absent parents, substance abuse, and the like as factors which would obviously influence a child's propensity to commit delinquent acts.

[FN197]. More are discussed throughout this report.

[FN198]. Andell says that in his experience a family history of alcohol abuse is a recurring factor among juvenile offenders.

[FN199]. Andell says most schools have zero periods so that gifted children can have extended periods of study or stay on the school's campus, or so that athletes can remain on school grounds otherwise closed.