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To: Juvenile Probation Counties <CountyProbationDepts@tjjd.texas.gov>
Subject: Update: Managing Populations

Good Afternoon:

As you know, Texas is dealing with rising numbers of COVID-19 cases, including in juvenile justice facilities. The Texas Juvenile Justice Department previously sent out a message on ways to manage the population of detained youth while also ensuring public safety during this time. While we understand that each local community has developed its own protocols, given the ongoing nature of this issue, we thought it would be beneficial to send that information again, with a couple of new ideas, such as the implementation of First Offender Programs where feasible and the use of electronic monitoring when appropriate.

We are reaching a critical juncture in bed space in the juvenile justice system, so it is important that local policies and procedures that will look at a “priority population” for detention and placement consideration. Also, departments within a region that collectively utilize a specific facility may want to develop a regional response to see which youth being considered for detention will be provided “priority consideration.” We know that juvenile probation cannot do this alone – this will require your coordination with courts and local law enforcement as well. As always, TJJD is available to assist as we can. These are suggestions only, but we hope they will be useful to you.

Coordinate with law enforcement

Ensure they are aware of legal alternatives to detention:

- Section 52.02, Family Code, allows a law-enforcement officer to take a child into custody and then release that child to a parent, guardian, custodian of the child, or other responsible adult upon that person’s promise to bring the child before the juvenile court as requested by the court – the referral to juvenile is done in paper format without taking the child to the detention center. No juvenile board action is necessary – this requires only coordination with law enforcement.
- Section 52.01, Family Code, allows a law-enforcement officer to issue a warning notice in lieu of taking a child into custody if:
 - The law-enforcement officer’s agency has issued guidelines to do so
 - The juvenile board has approved the guidelines;
 - The warning notice is authorized by the guidelines;
 - The warning notice identifies the child and the child’s alleged conduct;
 - A copy of the warning notice is sent to the child’s parent, guardian, or custodian as soon as practicable; and
 - A copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile board. The warning notice may be used as the basis of further action if necessary.

- Section 52.03, Family Code, allows a law-enforcement officer to dispose of a case of a child taken into custody without referring the child to the juvenile court. Such dispositions may include a referral to an agency other than the juvenile court, a brief conference with the child and his parent, guardian, or custodian, or a referral of the child and parent/guardian/custodian for early intervention services under Section 264.302, Family Code. This option is available to law enforcement if:
 - Guidelines for such disposition have been adopted by the juvenile board;
 - The disposition is authorized by the guidelines; and
 - The officer makes a written report of the officer’s disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

- Section 52.031, Family Code, allows a law-enforcement officer to dispose of a case of a child taken into custody with referring the child to the juvenile court if the law enforcement agency operates a First Offender Program. This a means of providing intervention services to youth and preventing them from ever being referred to juvenile court. First Offender Programs may be operated only with the approval of the Juvenile Board. Probation departments may wish to coordinate with law enforcement to create programs if they do not already exist.

Carefully Evaluate the Need for Detention

Once children are brought to detention, Section 53.02, Family Code, mandates that children taken into custody may be detained only if one of the following criteria is met:

- the child is likely to abscond or be removed from the jurisdiction of the court;
- suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;
- the child has no parent, guardian, custodian, or other person able to return the child to the court when required;
- the child may be dangerous to himself or herself or the child may threaten the safety of the public if released;
- the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released, or
- detention is required because the child used, possessed, or exhibited a firearm in the commission of an alleged act of delinquent conduct.

The only instance in which the conduct charged may mandate detention is when the child used, possessed, or exhibited a firearm in the commission of an alleged act of delinquent conduct. Jurisdictions are not legally permitted to mandate detention for any other class of offense (for example: it is not permissible to mandate the detention of “all children accused of a Class A misdemeanor or higher”).

It is important to ensure that the person responsible for intake thoroughly vets each child so that if none of the criteria to detain is present, the child is released. Jurisdictions may wish to consider ways to conduct this review prior to introducing the child to the facility. Ideas include:

- A phone consultation with the law enforcement officer prior to law enforcement bringing the child to the facility; if the decision is made that criteria for detention are not present, the child should be released to a parent and a paper referral made.
- Creating a secure area with limited space and access for the child to be in while the intake decision is made. This area should be cleaned after the assessment.
- Creating a secondary screening process in the event the initial intake individual determines detention criteria exist, such as an escalation to a supervisor to determine if steps short of detention are appropriate for the situation.

Determine if Detained Youth Can Be Released

Apart from the initial mandatory detention when a firearm is involved, detention is never mandated. Local officials may wish to conduct a routine review of youth in custody to determine if juveniles can be released. There is no legal requirement to wait until the next detention hearing to release; jurisdictions can develop or update their current processes to handle situations in which detention was warranted at the hearing but release may be appropriate before the next hearing. Jurisdictions may also wish to hold detention hearings more frequently than every 10 working days to determine if juveniles can be released.

Post-Adjudication Population

From a statutory standpoint, there is no prohibition on reducing the length of time a juvenile is kept in placement. As the length of the placement is a condition of probation ordered by the court, a modification under Section 54.05, Family Code, is the appropriate legal vehicle.

Any of the following may petition for a modification and the court is required to set a hearing to consider the request: the state, a probation officer, the child and his parent, guardian, guardian ad litem, or attorney, or the court itself. However, except in instances in which the disposition is commitment to TJJD or placement in a post-adjudication secure correctional facility for more than 30 days, the hearing may be waived by the child and his parent, guardian, guardian ad litem, or attorney in accordance with Section 51.09.

Given this flexibility, it is possible from a legal standpoint to efficiently get modified court orders reducing the time in placement in order to provide for release. Other conditions of probation can be added or modified as necessary to ensure public safety and to provide appropriate supports if releasing youth early.

Consider Electronic Monitoring

If appropriate, jurisdictions may wish to use electronic monitoring as a condition of release to ensure a juvenile's return to court after release from detention or as a condition of probation when releasing early from a post-adjudication facility.

If you have any questions or concerns, please know that we are here to assist. There have been many questions already submitted to TJJD, and we will do everything we can to respond in a timely manner. Along with this, please share with each other on ways your community has

addressed these issues. Together we can continue our work to maintain public safety while dealing with the current situation.

Appreciate all of you as we continue to work through this.

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