

**REPORT FOR TARRANT COUNTY COMMISSIONERS COURT ON
OVERCROWDING AT TARRANT COUNTY JUVENILE DETENTION
CENTER**

August 1, 2022

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I. INTRODUCTION

On April 12, 2022, Tarrant County Juvenile Services reported that the population in the Tarrant County Juvenile Detention Center had reached a record high of 138, a number that exceeded facility capacity by 18. Strained resources in both staff and space created an unsafe environment and placed the facility out of compliance with mandatory state standards. County Commissioners and other county authorities, including members of the Tarrant County Juvenile Board, expressed concern and raised questions as to the cause(s) of this increase. As a professional justice administrator and former Director of Tarrant County Juvenile Services 1984

– 2004, my services were engaged to identify reasons for the increased population, through a contract executed by Commissioners Court on May 10, 2022. The contract “Scope of Services” stated that those services would include “strategies, advice and recommendations related to Tarrant County Juvenile Services, including the assessment of detention practices and programs, as determined by the County Administrator.”

II. DEFINITION AND PURPOSE OF DETENTION

National juvenile justice experts generally agree with the definition of detention utilized by the Annie E. Casey Foundation that “juvenile detention is short-term confinement, primarily used after a youth has been arrested, but before a court has determined the youth’s innocence or guilt”. The Casey Foundation has stated that pretrial detention is appropriate only when a court believes a youth to be at risk of committing crimes or fleeing during a court processing. The Texas Family Code, which governs the operations of Texas juvenile detention facilities, parallels the Casey definition of detention, stating in Title III, Sec. 51.02 (14) that a “Secure detention facility” means a facility “that is used for the temporary placement of any juvenile who is accused of having committed an offense”. The operations of the Tarrant County Juvenile Detention Center have historically complied with this definition of secure detention. As required by the Texas Family Code, the Center is inspected yearly by the Tarrant County Juvenile Board for certification as a place fit for the temporary detention of juveniles.

The Family Code identifies the following conditions under which a child may be detained.

According to Title III, Sec. 53.02 (b),

A child taken into custody may be detained prior to hearing on the petition only if:

- 1) The child is likely to abscond or be removed from the jurisdiction of the court;
- 2) Suitable supervision, care or protection for the child is not being provided by a parent, guardian, custodian, or other person;
- 3) The child has no parent, guardian, custodian, or other person able to return the child to the court when required;
- 4) The child may be dangerous to himself or herself or the child may threaten the safety of the public if released;

- 5) 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
- 6) The child's detention is required under Subsection (f) (related to use of a firearm in the commission of an offense).

III. METHODOLOGY

The "assessment of detention practices and programs" and "strategies, advice and recommendations related to Tarrant County Juvenile Services" required by the contract are based in part on interviews with the following persons:

- Tarrant County Administrator
- Director and senior leadership of Tarrant County Juvenile Services
- Chair of the Tarrant County Juvenile Board
- Judge of the 323rd Family District Court
- Staff of Columbia University, Justice Lab

In addition, the following written materials were obtained and reviewed:

- Tarrant County Juvenile Services Annual Reports
- Tarrant County Juvenile Services Detention Logs
- Tarrant County Juvenile Services policies regarding detention, case processing and referral to the District Attorney
- Tarrant County Juvenile Board minutes
- Texas Juvenile Justice Department annual reports
- Juvenile Court Dockets for Tarrant County Juvenile Court Judge and Associate Judges
- Report summary by Columbia University, Justice Lab, of observed detention hearings conducted by Tarrant County Juvenile Courts on YouTube.

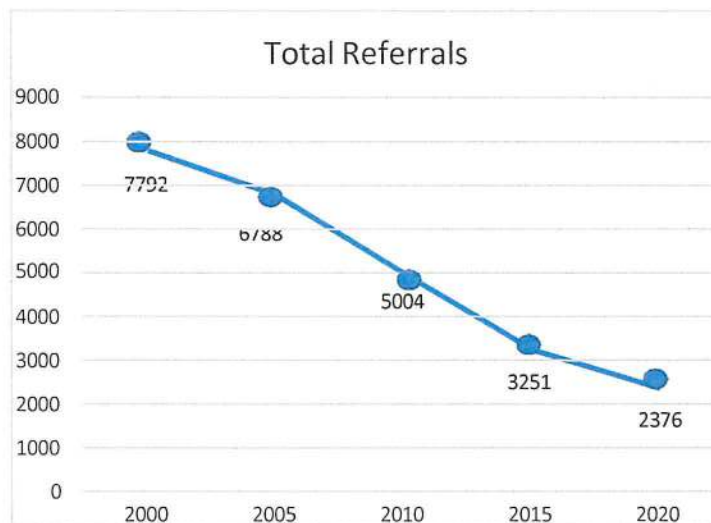
To guide exploration of the stated issues and concerns, it should be understood that many factors impact the number of juveniles detained and their lengths of stay, but the most common two are 1) Workload, which is determined by the number of referrals (law violations) sent by law enforcement for case processing, and (2) Case processing from the point of referral to the end of the case or disposition, which includes work performed by staff of Juveniles Services, the District Attorney, and the Juvenile Court. For the purposes of this report, case processing by the District Attorney's Office will be discussed separately from case processing by the Juvenile Court.

IV. FINDINGS

A. Number of Referrals (workload)

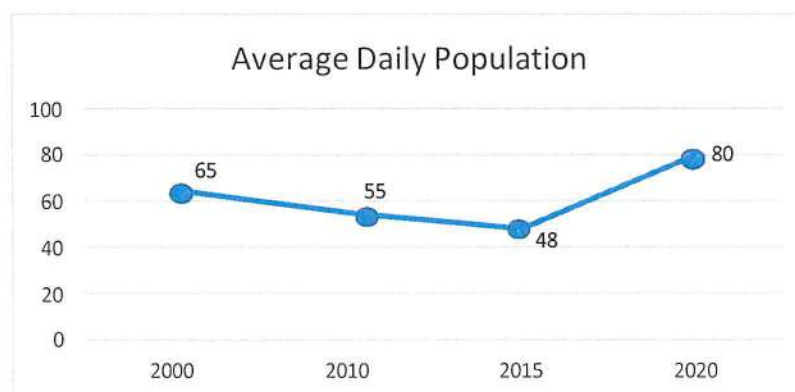
The number of referrals to Tarrant County Juvenile Services has declined steadily and significantly since 2000. As reported in the Texas Juvenile Justice Department (TJJD) Annual Report, the number of referrals to Tarrant County Juvenile Services in 2000 was 7792; in 2010, there were 5004 referrals, and in 2020, there were 2376. (See Table below)

It should be noted that the low number of referrals in 2020, and possibly 2021 referrals (2534), are probably impacted by COVID. The data trends in TJCS records indicate that 2022 referrals may be more in line with 2019 referrals (3682); however, the rate is still significantly less than in previous years.



B. Average Daily Population (ADP):

The TJJD annual reports reveal that even though referrals were decreasing, the Average Daily Population was increasing: In 2000, the ADP was 65; in 2010, ADP was 55, and in 2020, the ADP had increased to 80.

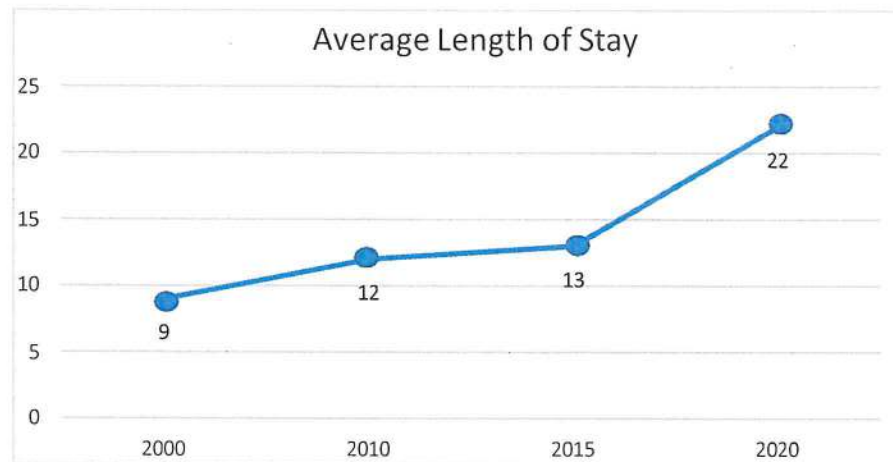


It should be noted that so far in 2022, the Average Daily Population is 118.5, which reached a daily record high of 138 in April 2022.

C. Average Length of Stay (ALOS):

In addition to ADP, Average Length of Stay was also increasing during a time of declining referrals. In 2000, the ALOS was 9; in 2010, it was 12, increased to 13 in 2015, and in 2020, it was 22.

TCJS reported that in 2021, the ALOS was 27 days, and year to date in 2022, the ALOS is 25.



D. Cost of Detention

The cost of detaining high numbers of youth is another factor of significant concern. Comparing the ADP of 2016 (59) to the ADP for 2022 (118) reveals that TCJS is currently detaining 59 more youth per day than in 2016. At a current cost of \$257 per youth per day in detention, the increased yearly cost of these additional detainees is \$5,458,680:

$$\begin{aligned} 59 \text{ detainees} \times \$257 \text{ per day} &= \$15,163 \text{ increased daily cost} \times 30 \text{ days per month} = \\ & \$454,890 \text{ increased monthly cost} \times 12 \text{ months/year} = \$5,458,680 \text{ increased yearly cost.} \end{aligned}$$

According to TCJS, the annual budget for the Juvenile Detention Center in FY 18 was \$6,879,931. The projected budget for FY 23 is \$11,731,959.

So, while referrals have been declining significantly, the ADP and the ALOS have been increasing significantly. It should be noted when comparing data for the first six months of FY 2021 to the same months in FY2022, an increase in violent referrals was observed, but it was not significant enough to account for the increase in ADP and ALS.

E. DISTRICT ATTORNEY'S OFFICE CASE PROCESSING

i. Three-Day Rule

In 1999, a provision was added to The Texas Family Code, Title 3, Section 54.01, allowing the District Attorney in each county a maximum of thirty days to file a juvenile petition for a felony offense and 15 days for a misdemeanor offense when the juvenile was detained for the offense. This provision also stated that the county juvenile board could impose an earlier deadline for case filing if it wished, but it could not authorize deadlines greater than these maximums.

These expanded time frames would have allowed the District Attorney in Tarrant County much more time for case filing than had historically been authorized by the Tarrant County Juvenile Board. As early as 1975, the Tarrant County Juvenile Board had adopted a guideline of three days (the "three-day rule") within which a case had to be filed if the juvenile was detained. According to the rule, if the DA's office did not file a petition within three days of the detention hearing, the Juvenile Court could choose to release the juvenile.

Pursuant to the changes of 1999, however, some members of the Juvenile Board asked in 2003 for the Board to review and re-consider its approval of "the three-day rule". In preparation for that review, Dr. Tony Fabelo, Director of the Texas Criminal Justice Policy Council at the time, was engaged by TCJS to assess the impact if the 30- and 15-day maximum filing deadlines were fully implemented by Tarrant County. Utilizing TCJS detention data for 2002, Dr. Fabelo inserted the 30- and 15-day case filing deadlines as the only variable in the data set and projected the impact of these deadlines for 2003 detention operations. Dr. Fabelo's data indicated that there would be significant increases in the detention population as well as in lengths of stay. Dr. Fabelo specifically predicted that ADP would increase to 127 and ALOS to 18 by the very next year if the guidelines were fully applied, compared to 66 ADP and 9.4 ALOS under the Board's existing three-day rule. He further projected that the yearly cost of detention services would increase by approximately \$3,000,000. (Text of Dr. Fabelo's complete analysis is attached in Appendix A)

Further preparation for the Juvenile Board's reconsideration of the three-day rule occurred in the form of an opinion provided by Prof. Robert Dawson, Bryant Smith Chair of Law at University of Texas School of Law, and co-author of the Texas Family Code. Inasmuch as Prof. Dawson drafted the 1999 provisions for changing the filing deadlines for the legislature, his opinion was highly valued. In correspondence dated November 11, 2003, to Judge Randy Catterton, Chair of the Juvenile Board, Prof. Dawson wrote as follows, referring to the 1999 provision (Title III, Sec. 54.01 (q)):

That section was enacted to correct an abusive situation in a few counties in which the prosecutor delayed filing petitions against children in detention, but the judge refused to order the child's release. It was intended to mandate release in extreme situations, not to authorize the prosecutor to delay the filing of a petition for 30 or 15 working days. (Text of Prof. Dawson's full opinion is attached in Appendix A)

In its March 2004, Juvenile Board meeting, the Board voted to re-approve the three-day rule, based in part on Prof. Dawson's opinion and on Dr. Fabelo's impact analysis.

The three-day deadline for case filing by the DA remained in place from 2004 until the beginning of 2019, at which time the maximal deadlines of 30- and 15-days began to be utilized for Juvenile Court cases. No record of an action taken by the Juvenile Board authorizing this change has been found.

As suggested by Dr. Fabelo's projections in 2003, full implementation of the extended case filing deadlines seems to have had the impact predicted: detention ADP increased from 58 in 2017 to 118 in 2022, ALOS increased from 14.7 to 25, and additional costs in excess \$5.5 million were incurred. As previously noted, these increases have occurred while referrals were decreasing.

ii. Discretionary Referrals

The Texas Family Code, Title 3, Section 53.01, specifies what juvenile cases are required to be referred to the District Attorney. In December 1995, the Juvenile Board adopted guidelines that placed Tarrant County in compliance with these requirements of the Family Code.

On August 1, 2019, a new Tarrant County Juvenile Alternative Offense Referral Plan was adopted by the Tarrant County Juvenile Board. A change was implemented that was subtle, but significant: it stated that "If Juvenile Services elects to refer a Discretionary Referral Offense to the Criminal District Attorney for review, such a referral must be made not later than thirty (30) calendar days from receipt of the offense referral by Juvenile Services from the referring law enforcement agency".

It should be noted that these are discretionary cases, i.e., misdemeanor offenses, and most of these cases do not involve detention. The new plan change imposing a 30-day deadline prevents Juvenile Services from having sufficient time to work with a juvenile and his/her family to identify a community plan that might be helpful, nor does it allow the Victims' Unit time to establish restitution needs or requirements. The new time constraints also mean that Juvenile Services staff may not be able to set up agreements with the juvenile and family for programmatic needs nor are they able to utilize informal case alternatives, such as Diversion, Informal Adjustment or Deferred Prosecution. The thirty-day referral requirement limits the enforcement of juvenile agreements and results in many cases being unnecessarily referred to the DA, increasing DA workload and further slowing the DA review process.

F. JUVENILE COURT CASE PROCESSING

i. Docketing

Review of Tarrant County Juvenile Court dockets and case processing through the courts reveals that the process is not efficient. A review of the detention docket for 6/27/2022 showed 116 juveniles in detention. Of these, 25 were awaiting review by the DA's office

Another 25 had already been in detention over 100 days with no case disposition. Of those 25:

- One had been in detention 515 days, had been certified to be tried as an adult, and was awaiting trial in Criminal District Court downtown;
- One had been in detention for 336 days and was pending a pretrial hearing set for 8/5/22;
- One had been in detention 263 days and was awaiting transfer to TJJD;
- One had been in detention 230 days and was awaiting transfer to TJJD;
- One had been in detention 219 days and was pending a certification hearing to determine whether to be tried as an adult on 7/28/22;
- One had been in detention 219 days and was pending a pretrial hearing on 7/29/22;
- One had been in detention 215 days and was awaiting transfer to TJJD;
- The remaining 18 had been in detention for an average of 144 days

Of the 18, two were pending certification hearings, one had no setting and ten were set for just pretrial. Of the ten set for a pretrial hearing, all will have been in detention for over 200 days before a final hearing can be set. (Five of the 18 were pending transfer to TJJD, which is a separate issue). These lengths of stay certainly do not appear to align with the accepted definition of juvenile detention as “temporary” or “short-term.”

It should be noted that of the 116 youth that were detained in the detention center on this date, 92% or 107 were youth of color. Only 7% or 9 were white. One white youth had been in for 219 days and was awaiting a pre-trial hearing. The remaining white youth had an average length of stay of 27 days.

Once a petition is filed by the DA, the Family Code requires that a hearing be set within 10 days for a detained juvenile:

Texas Family Code, Title 3, Sec. 53.05 states

- a) After the petition has been filed, the juvenile court shall set a time for the hearing.
- b) The time set for the hearing shall not be later than 10 working days after the petition was filed if:
 1. the child is in detention, or
 2. the child will be taken into custody under Section 53.06(d) of this code.

Review of the data indicates that compliance with these statutory requirements does not appear to be occurring at present, further lengthening the time frame for case processing.

During discussions held with Juvenile Services staff regarding court processing, concern was expressed that one of the Associate Courts was referred to as a “ghost” court because it was so seldom in session. To assess this, approximately eighty days were randomly selected from a time period between July 2021, and June 2022. Court dockets were requested for varied days of the week.

The number of hearings and hearing results were tabulated for each docket and summarized for each judge. One associate court had 744 hearings set, but 61% were passed, cancelled, or reset. The other associate court had only 431 cases set, of which 67% were passed, cancelled, or reset.

Analysis of dockets for all three courts revealed a period between mid-February and mid-March, 2022, in which there were no hearings except for detention hearings. Certainly, this should be considered a contributing factor in the detention of a record high number of 138 youth on April 12, 2022.

ii. Behavioral Ratings as a Basis for Detention

It is apparent from observing detention hearings conducted by Tarrant County Juvenile Courts on YouTube and from reviewing detention logs that juveniles are commonly being held in detention solely based on ratings of their behavior assigned by detention staff during their detention stay. While the good behavior of a detained juvenile is encouraged and desired, it is not a criterion recognized within the Texas Family Code as a legal basis for the detention of a youth nor for extending the detention of a youth. Utilizing this criterion for detention or continued detention of a youth highly impacts detention ADP and ALS.

iii. Juvenile Court Proceedings

Juvenile cases in Texas have always been structured to be separate from the adult criminal justice system. Juvenile court proceedings are civil, not criminal, in nature, and detained juveniles are not subject to bond or bail procedures. A clear purpose of the Texas Family Code is “to provide for the protection of the public and public safety. It also seeks “to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions” as well as “to protect the welfare of the community and to control the commission of unlawful acts by children”. The Texas Family Code requires the accomplishment of these stated purposes “in a family environment whenever possible, separating the child from the child’s parent only when necessary for the child’s welfare or in the interest of public safety, and when a child is removed from the child’s family, to give the child the care that should be provided by parents, and to provide a simple judicial procedure through which the provisions of the title (Title 3) are executed and enforced, and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.”

As outlined in these excerpts from the Family Code, lengthy stays in detention such as those noted above for juveniles in the Tarrant County Juvenile Detention Center do not align with the purposes set out in the Family Code.

It is certainly unscientific, but from this reporter’s observations and exploration of the stated issues, and from reviewing the data, it seems that the juvenile justice system in Tarrant County is seen as a “mini-adult” system that has lost many of the tenets that should be inherent in juvenile and civil proceedings.

V. OTHER CONCERNS

During discussions with the staff at Tarrant County Juvenile Services and in reviewing reports and data, thirty-five (35) seventeen-year-old juveniles were identified who were pending only juvenile cases but were transferred to the Tarrant County Jail by the Juvenile Court to be held, based solely on reports of their behavior in the juvenile detention center. Two of these cases had

mental health concerns and two were also CPS cases. In my professional opinion, the Texas Family Code does not allow for this. This practice is very troubling and potentially increases Tarrant County's liability. The Texas Family Code, Sec. 51.02 (2), defines these individuals as juveniles who should be detained in a detention center certified by the Tarrant County Juvenile Board. Further, federal juvenile justice and the Texas Family Code guidelines require the separation by sight and sound of any adults and juveniles who may be detained in the same facility. The 35 juveniles transferred to the Tarrant County Jail for behavior were housed in the general population with no separation of sight and sound. This practice was discontinued only after an opinion was issued by the Tarrant County District Attorney's Office on September 28, 2021.

VI. CONCLUSIONS

The number of referrals from law enforcement entities to TCJS (Workload) are not the reason for increases in the average daily population or average length of stay in the Tarrant County Juvenile Detention Center. Since 2000, referrals have decreased significantly.

In my opinion, increases in the Average Daily Population and the Average Length of Stay at the Tarrant County Juvenile Detention Center should be attributed to the following factors:

- The length of time the District Attorney's office takes to review cases for filing:

Although the Texas Family Code first enacted maximal filing deadlines for the District Attorney in 1999 (30 days for felonies; 15 days for misdemeanors), they were not utilized in Tarrant County juvenile processing until 2019. The impact of full application of these filing deadlines was predicted in Dr. Fabelo's 2004 report to the Juvenile Board, when his analysis made clear that both ADP and ALOS would double in one year if the new filing deadlines were implemented. The Juvenile Board voted at that time to retain its prior case filing deadline of (3) days for all cases. From 2004 until 2019, when the Tarrant County Juvenile Court began to permit use of the maximal filing deadlines, ADP and ALOS had remained stable and proportionate to referrals.

- The Alternative Referral Plan adopted in 2019

The adoption of this plan has not only created barriers for Juvenile Services' probation officers to utilize informal dispositions of juveniles and appropriately address Victims' rights, it has created additional workload for the DA's office. The Alternative Referral Plan was adopted during 2019, the same year that the Juvenile Court began to apply maximal case filing deadlines mentioned previously, both of which have influenced ADP and ALOS.

- The setting and processing of cases by the Tarrant County Juvenile Court specifically of concern:
 - a. Hearing settings for detained juveniles not occurring within 10 days of DA filing petition, as required by law;

- b. Docketing and disposition of complex cases not timely, such as certifications and cases awaiting transfer to TJJD;
- c. The use of detention behavioral ratings as sole criterion for detaining a youth is not in the Family Code;
- d. High frequency of court cases passed or cancelled, or few/no cases being set;

As noted in this report, the increase in ADA and ALOS has also resulted in a significant increase in the costs of juvenile detention incurred by Tarrant County.

VII. RECOMMENDATIONS

In considering the following recommendations, it should be noted that juveniles are detained and released solely at the order of the Juvenile Court.

1. The Juvenile Board should consider decreasing the maximal lengths of time the DA is allowed for filing a petition for a juvenile in detention.
2. The Juvenile Board should consider amending the Alternative Referral plan, giving Juvenile Services a longer time period to develop cases before they are required to be submitted to the DA. It is assumed that these cases would not be those of youth in the detention center.
3. Juveniles should be detained only for reasons stated in the Texas Family Code. They should not be detained or continue to be detained because of perceived behavior in the detention setting.
4. After a petition is filed by the DA, the Juvenile Court should schedule a hearing within ten days if the juvenile is in detention.
5. Attention and exploration should be given as to why such a large percentage of juveniles in detention are youth of color. On June 27, 2022, 92% of the detainees were youth of color. Black juveniles represented 67% and 25% were Hispanic. Only 9% were white. This is gross over representation of juveniles of color in Tarrant County.
6. Tarrant County should enter into an agreement with the Columbia University Justice Lab or the Annie E. Casey Foundation and its Juvenile Detention Alternative Initiative. Both would be at no cost to the county, and both would provide technical assistance to reduce the use and resultant high cost of detention.
7. Utilize community-based programs that are already in place to reduce reliance on detention. An example is Community Based Detention through the Tarrant County Advocate Program. This program has demonstrated success serving marginal juveniles in the community and returning them to court in time with their families without reoffending.
8. A position should be created to monitor time frames involving cases in detention and to ensure those cases are expedited to comply with regulatory guidelines. This position would review each daily detention log including each juvenile's days in detention, cases awaiting DA review, settings on the court docket. This position would seek information from Juvenile Services and court staff. Recommendations for more efficient movement would be made to the Juvenile Services and to court staff. The position would report to the Chair of the Juvenile Board or the County Administrator.

9. The Juvenile Board appointed a committee of its members that meets as necessary when the detention population reaches a certain threshold. Juvenile Services' staff complete a report each Thursday which examines cases in the detention center and contains recommendations. This report should be made available to the Juvenile Board committee.

Policy Impact Analysis

Revised Impact of Change to Petition Filing Deadlines on
Tarrant County Juvenile Department Detention Population

May 28, 2003

Tarrant County Juvenile Detention Analysis

- The Tarrant County Juvenile Department operates a juvenile detention facility with a capacity of 72 beds. The cost per day to house a juvenile in the detention in 2002 was \$121.00 per day.
- Juveniles detained by the Department receive an initial detention hearing within 24 hours of admission. A juvenile may be released after their initial hearing or judicially detained by the Juvenile Court.
- The Tarrant County Juvenile Board currently requires that a petition be filed by the District Attorney's Office within 3 days of a juvenile being judicially detained.
- The proposed change would allow the District Attorney's Office up to 30 days to file a petition on juveniles detained for capital, 1st degree and aggravated drug felonies and up to 15 days to file a petition on juveniles detained for all other offenses.

Assumptions for Tarrant County Juvenile Detention Analysis

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- The number of admissions to detention in 2003 will remain at 2002 levels
 - There will be no change in the proportion of admissions to detention for felony and misdemeanor offenses from 2002 to 2003
 - In 2002, 70% of admissions to detention were the result of a misdemeanor or CINS offense, 30% were the result of a felony offense
 - There will be no change in the way detention decisions are made by the juvenile department or the juvenile court
 - Juveniles released after their initial detention hearing will not be impacted by the change in petition filing deadlines
 - Juveniles judicially detained after their initial detention hearing will serve an additional 27 days if detained for a capital, 1st degree or aggravated drug felony and an additional 12 days for all other offenses under Scenario 1 (Petition in 15 or 30 days)
 - Juveniles judicially detained after their initial detention hearing will serve an additional 37 to 39 days if detained for a capital, 1st degree or aggravated drug felony and an additional 16 to 18 days for all other offenses under Scenario 2 (Petition in 15 or 30 business days) depending on the day of the week the juvenile was admitted to detention
 - There will be no change in the time it takes to process a juvenile's case between filing and adjudication/release
 - The cost to house a juvenile in detention is \$121.00 per day

Impact of Proposed Petition Filing Deadline

	2002 Current Policy Petition In 3 Days	2003 Scenario 1 Petition in 15 or 30 days	2003 Scenario 2 Petition in 15 or 30 Business Days
Admissions to Detention	2,566	2,566	2,566
Total Child Care Days	24,126	46,362	55,204
Average LOS	9.4 days	18.07 days	21.51 days
Average Daily Population	66	127	151
Estimated Total Cost	\$2,919,246	\$5,609,802	\$6,679,684



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November 12, 2003

Hon. Randy Catterton
Chairman
Tarrant County Juvenile Board
FAX 817-884-3577

Dear Judge Catterton:

You have asked my opinion regarding the so-called "three-day rule" in Tarrant County, adopted by the Tarrant County Juvenile Board in 1975. As I understand the rule, it encourages the juvenile court judge to release a child from detention when a petition has not been filed within three days of the child being placed in detention by the judge. The rule deals only with the continued detention of a child after three days. It does not require that a petition be filed within three days, nor does it prevent the later filing of a petition against a child who was released from detention under the three-day rule.

Is the three-day-rule inconsistent with Section 54.01(q)? As I understand it, an argument has been made that the three-day rule is inconsistent with Family Code Section 54.01(q), which the legislature enacted in 1999. That subsection requires that a child must be released from detention "not later than" 30 working days if the child is in custody for a capital felony, aggravated controlled substance felony or a first degree felony and no petition has been filed. It also provides that a child must be released "not later than" 15 working days if the child is being held for any other offense and no petition has been filed.

I drafted 54.01(q) for the legislature, much as I have drafted most of the juvenile legislation that is on the books. That section was enacted to correct an abusive situation in a few counties in which the prosecutor delayed filing petitions against children in detention but the judge refused to order the child's release. It was intended to mandate release in extreme situations, not to authorize the prosecutor to delay the filing of a petition for 30 or 15 working days. The language "not later than" was used to make it clear that the legislature did not intend to restrict the power of the juvenile court judge to release a child earlier when a petition was not filed. I, therefore, believe that Section 54.01(q) supports, not contradicts, a rule such as the Tarrant County three-day rule.

Is there a difference between juvenile and criminal pre-trial release policies? To oversimplify, in criminal cases there is a presumption that an arrested person will remain in jail until trial unless a judge grants personal bond or the person is able to make a money bond. In juvenile cases, Family Code Sections 53.02 and 54.01 establish as a matter of law a presumption that a child taken into custody should be released unless one

Judge Catterton
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of the five approved reasons for detention is shown to exist. Even if there were no three-day rule, a conscientious juvenile court judge would be compelled to consider release of a child held for a period without a petition being filed. In the juvenile justice system, one has to justify detention, not release.

Is there a difference between juvenile and criminal processing time frames? It is common knowledge that the powers of adolescents to respond to future threats of punishment are quite limited. For punishment of an adolescent to be effective, it must be swift. For that reason, juvenile courts throughout the United States require their cases to be moved at a pace that is much faster than cases move in the criminal justice system. And juvenile courts pay particular attention to children in detention, giving priority to those cases. In 2002, according to TJPC figures, Texas juvenile courts disposed of cases of children not in detention in an average of 83 days, while they disposed of cases of children in detention in an average of 23 days. Such swift dispositions would not be possible if delays in the initial filing of the petition were permitted.

Are Texas Supreme Court guidelines applicable? In 1984, the Texas Supreme Court adopted guidelines for the disposition of juvenile and other civil cases. See Rules of Judicial Administration Rule 6(d). In those guidelines, the Court provided that if the child is detained, a certification or adjudication hearing should be held not later than 10 days following admission to detention, "except for good cause shown of record." While these guidelines do not carry sanctions for their violation, they do show that the policy of the State of Texas is the very speedy disposition of cases when a juvenile is detained. The Tarrant County three-day rule certainly fits that policy well.

Is three days enough time to draft a petition? I understand the argument to be made that three days is not enough time to draft a juvenile petition. I find that argument difficult to understand. Police are required by Code of Criminal Procedure article 15.17 to file a criminal complaint and present the arrested person before a magistrate on that complaint within 48 hours of arrest. The offense-charging portion of a juvenile petition and of a criminal complaint should be similar if not identical. The only difference is that the juvenile petition must identify the child's age and address and the names and addresses of parents, guardians or custodians and must contain a boilerplate prayer for relief. It seems to me if police can file a criminal complaint within 48 hours of arrest, a prosecutor ought to have no difficulty filing a juvenile petition within 72 hours of a juvenile court's order of detention.

How easy is it to amend a juvenile petition? Of course a criminal complaint is not the final charging instrument—it will be superseded by an indictment in a felony case or matched with an information in a jailable misdemeanor case. A juvenile petition is the final charging instrument. However, a juvenile petition is more easily and readily amendable than is an indictment or even an information. Under liberal civil amendment

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rules, a juvenile petition can even be amended during trial to make the pleadings match the proof, subject, of course, to defense surprise and prejudice claims. The fact that an initial juvenile petition may have to be amended should present little difficulty because of the liberal amendment rules applicable in juvenile cases.

How does offense seriousness impact drafting a petition? As I understand it, the argument is made that the three-day rule may have made sense in 1975 when juvenile courts dealt with relatively trivial offenses, but that it is totally unworkable today when juvenile crime is much more serious. It takes no more time to draft a petition for a serious offense than for a trivial offense. The fact that juvenile offenses may be more serious than in the past, as are criminal offenses, is a reason for proceeding speedily with court proceedings in order to achieve maximum deterrent effects on the juvenile respondent and the relevant adolescent population.

Does the three-day rule promote budget savings? I don't know what the Tarrant County numbers are concerning the costs per day of detaining a child, but I know they must be substantial, just like in any other county. To the extent judges can push detention cases as fast as fairness to both sides permits, that judge is saving the county substantial sums of money and is doing so while also furthering community safety goals by disposing of cases of adolescents as quickly as possible. To permit delay in filing the petition would result in children being detained for longer periods of time until a crisis of detention capacity is created. The budgetary implications for the county are significant.

I hope these comments will prove helpful in the juvenile board's deliberations. I encourage you to share this letter with the other members of the board. If I can be of further assistance, please do not hesitate to ask.

Allow me to add a personal note. There are two figures who are essential to the quality of any juvenile justice system—the juvenile court judge and the chief juvenile probation officer. Tarrant County, in my opinion, is blessed by the best of both. As a result, you have a system of juvenile justice in Tarrant County that is the envy of most other counties and that is by common consensus among the very best around. You should be proud.

Sincerely,



Robert O. Dawson
Bryant Smith Chair in Law