Investigation of the Texas Juvenile Justice Department



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EXECUTIVE SUMMARY

After an extensive investigation of conditions for children in five secure facilities operated by the Texas Juvenile Justice Department (TJJD), the United States Department of Justice (DOJ) concludes that there is reasonable cause to believe that TJJD violates the Eighth and Fourteenth Amendments of the United States Constitution, the Individuals with Disabilities Education Act (IDEA),[1] and the Americans with Disabilities Act (ADA).[2] Consistent with the Civil Rights of Institutionalized Persons Act (CRIPA),[3] we provide this Report to notify Texas of DOJ's conclusions, the facts supporting those conclusions, and the recommended minimum remedial measures necessary to address the violations identified.

FINDINGS

The United States provides notice of the following identified conditions:

- **Protection from harm:** Children in TJJD's secure facilities are often exposed to excessive physical and chemical force. Children also spend prolonged periods of time in isolation, under stark conditions and without access to adequate mental health and educational services. And children endure sexual abuse by both staff and other children. These conditions cause children serious harm and violate the Constitution.
- **Mental health care:** Children in TJJD's secure facilities do not receive adequate mental health assessments, treatment planning, and counseling services. TJJD also fails to provide adequate substance use disorder treatment and treatment for children who engage in self-harm or have suicidal thoughts. TJJD's response to children's behavior exposes children to excessive force and isolation. These deficiencies in mental health services violate the Constitution.
- **Special education:** Children with disabilities in TJJD's secure facilities do not receive a free appropriate public education. Special education services are not individualized to meet learning needs; fail to include specially designed instruction, behavioral supports, related services, and transition services; and are based on outdated information about children's needs. Without appropriate services, children with disabilities cannot access the

[1] 20 U.S.C. §§ 1400–1482.
[2] 42 U.S.C. § 12132.
[3] *Id.* § 1997 *et seq*. As discussed below, DOJ conducted this investigation by its authority under both CRIPA and the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601.

general education curriculum, preventing meaningful progress. Each of these failures violates the IDEA.

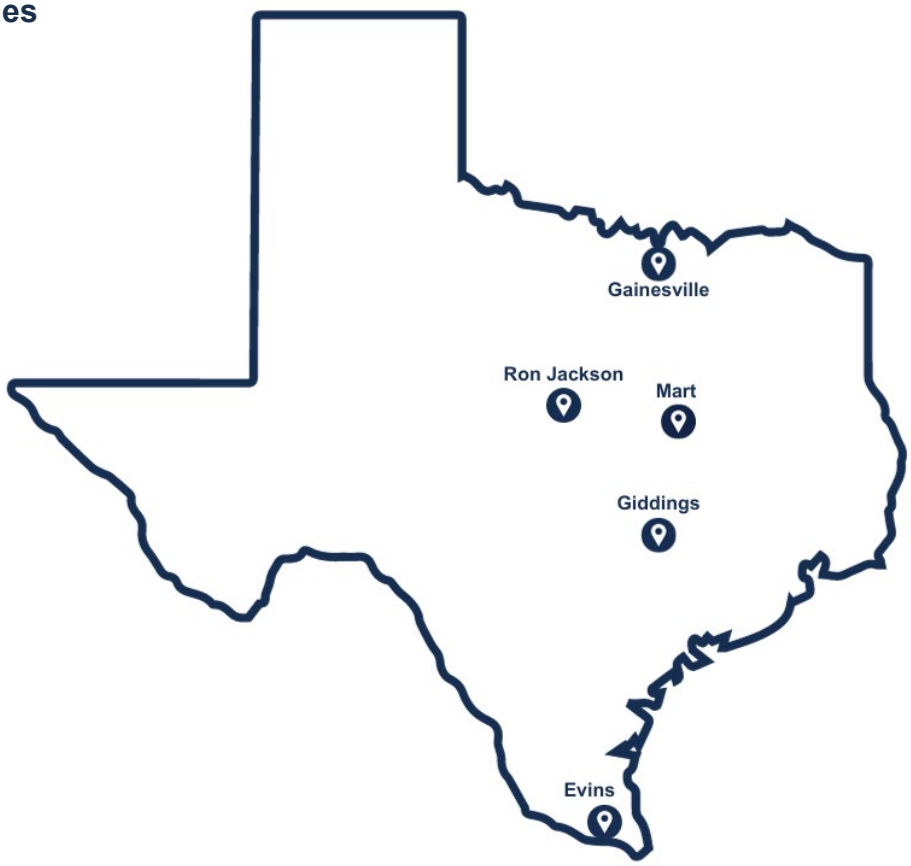
- **Discriminating against children with disabilities:** Children with disabilities in TJJD's secure facilities do not receive reasonable modifications to complete programs required for their release. Instead, children are expelled from programming due to disability-related behavior and required to repeat it, prolonging their time in TJJD's custody or resulting in their transfer to prison. TJJD also denies children with disabilities an equal opportunity to benefit from education. Both practices violate the ADA.

The negative impact of these violations is mutually exacerbating. Children in TJJD's secure facilities are exposed to conditions that cause serious and lasting physical, mental, and emotional harm. At the same time, they are denied treatment and services they need to cope with their environment, earn release, return to their communities, and become productive citizens. This harmful environment undermines any rehabilitative purpose in their commitment.

BACKGROUND

TJJD is a centralized statewide agency that includes five secure facilities subject to our investigation: (1) Evins Regional Juvenile Center in Edinburg, Texas; (2) Gainesville State School in Gainesville, Texas; (3) Giddings State School in Giddings, Texas; (4) McClennan County State Juvenile Correctional Facility (Mart) in Mart, Texas; and (5) Ron Jackson State Juvenile Correctional Complex in Brownwood, Texas.[4] TJJD's administration conducts oversight, provides resources, and sets systemwide policies for secure care. Children are often moved between the facilities to access specialized treatment programs housed in specific facilities.[5] TJJD leadership also shifts services from one facility to another.[6]

Figure 1: Map of Texas showing the locations of TJJD's five secure facilities



Hundreds of children are confined in TJJD's secure facilities every year. These facilities house children ages ten to nineteen. A Texas county juvenile court commits

[4] Aside from the five secure facilities, TJJD operates four halfway houses and a probation services division.
[5] For a full description of TJJD's specialized programs, see Appendix A.
[6] During our investigation, for example, TJJD moved intake services for boys and girls from Ron Jackson to Mart and then later moved intake services for boys back to Ron Jackson.

children to TJJD's custody when they are found to have committed an act that would be considered a crime if they were an adult or after they have violated the conditions of their probation or parole. Around eighty percent of children in TJJD's secure facilities are Black or Latinx. TJJD considers its secure facilities "the most serious place a [child] can go in Texas within the juvenile justice system." Each facility is surrounded by tall fences topped with barbed wire, has controlled and closely monitored entrances, and relies on locked doors to control and limit children's movement.

Problems have persisted at TJJD's secure facilities for decades. Throughout the early 2000s, repeated allegations of physical and sexual abuse as well as operational and safety concerns—coupled with substantial efforts by high-ranking facility staff to cover up the misconduct—led the agency to be placed under governor-ordered conservatorship.[7] In 2007, DOJ's investigation of the Evins facility found that TJJD failed to keep children safe from violence.[8] In 2011, following reports of sexual abuse and significant operational problems systemwide, the Texas legislature combined TJJD's predecessors—the Texas Youth Commission and the Texas Juvenile Probation Commission—into one agency. In 2017 and 2021, Governor Abbott ordered two separate Texas Ranger investigations of sexual abuse and "potentially illegal behavior" at the facilities.

During the same three decades, the overall population of children in TJJD's secure facilities declined, but the needs of the children that remained in custody intensified. In 2005, there were 4,127 children in secure facilities. As of July 2024, there were about 700 children, an eighty-three percent decrease. In 2021, TJJD reported that around sixty-five percent of children in its secure facilities have significant mental health issues, sixty-four percent of boys and eighty-four percent of girls report four or more traumatic events during their childhoods, and ninety-one percent of girls are identified as a clear or possible concern for being a victim of sex trafficking. On average, children are five grade levels behind in reading and six grade levels behind in math, with about thirty percent receiving special education services. According to TJJD, "[t]his is the highest concentration of acute needs . . . in the history of the agency."

[7] *Sunset Self-Evaluation Report* 44–45, Tex. Juv. Just. Dep't (Sept. 1, 2021), https://perma.cc/5883-5K6B.
[8] *See* Complaint ¶ 18, *United States v. Texas*, No. 7:08-CV-00038 (S.D. Tex. Feb. 1, 2008), ECF No. 1, https://perma.cc/FU2Z-F46M.

INVESTIGATION

In October 2021, the Special Litigation Section of DOJ's Civil Rights Division and each of the United States Attorney's Offices in Texas opened a joint investigation of conditions for children confined in TJJD's five secure facilities.[9] At first, our investigation focused on whether TJJD adequately protects children in the facilities from harm and provides adequate mental health care. As new evidence came to light, we expanded our investigation to consider whether TJJD provides children with disabilities appropriate special education services and whether TJJD denies children with disabilities access to programs required for release and an equal opportunity to benefit from education.

Seven expert consultants aided our investigation and provided expertise in areas related to facility operations and practices, including use of force, investigations, and behavior management; mental health services for children and adolescents; special education and related services for children with disabilities; and reasonable modifications for children with disabilities. We engaged these consultants based on their significant collective experience conducting evaluations and providing technical assistance to jurisdictions to improve outcomes for justice-involved children. These expert consultants accompanied us on site visits, conducted interviews, reviewed documents and videos, and provided their expert opinions to inform our investigation and conclusions.

Our team inspected all five facilities at least twice, making thirteen in-person visits. Department staff and expert consultants toured the facilities and observed correctional operations and procedures, mental health meetings and reviews, and educational instruction in the schools and on the units. We spoke with hundreds of children in custody, as well as facility leadership, security staff, clinicians, teachers, and other staff.

Over the course of our investigation, DOJ staff and expert consultants reviewed thousands of pages of documents, including incident and use of force reports, policies and regulations, training materials, mental health records, education records, general records, unit logs, grievances, and investigative files. We and our expert consultants also reviewed hundreds of hours of video footage**.** Finally, our investigation included extensive outreach to families and other stakeholders and community groups.

[9] CRIPA allows DOJ to investigate violations of children's constitutional and federal rights in state or local juvenile justice facilities when such violations are "pursuant to a pattern or practice of resistance to the full enjoyment of such rights." 42 U.S.C. § 1997a(a); *see also id.* § 1997(1)(B)(iv) (defining "institution" to include juvenile justice facilities). Section 12601 of the Violent Crime Control and Law Enforcement Act of 1994 similarly allows DOJ to investigate violations of the Constitution or federal law by those responsible for "the incarceration of juveniles." 34 U.S.C. § 12601(a).

We thank Texas for the cooperation extended to DOJ and recognize the courtesy and professionalism of all State officials and counsel involved. We also thank the advocates, families, and children across Texas who spoke with us. We are particularly grateful to those whose lives have been impacted by the juvenile justice system for trusting us with their stories.

FAILING TO KEEP CHILDREN SAFE FROM HARM

The Constitution protects children in juvenile justice facilities from harm. Unconstitutional harm includes conditions of confinement that demonstrate an "unnecessary and wanton infliction of pain" or officials' deliberate indifference to a serious threat to a person's health or safety.[10] Unconstitutional harm may also include restrictions placed on children that amount to punishment because they are not rationally related to a legitimate government objective or are excessive in relation to that objective.[11]

Texas' rehabilitative goal is relevant to whether the treatment of children who are committed to its secure facilities is constitutional. The overarching governmental objective of commitment to TJJD's secure facilities is to rehabilitate children so they return to their communities as law-abiding, productive citizens.[12] This is reflected in the State Juvenile Justice Code's purpose of "provid[ing] treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct" and "provid[ing] for the care, the protection, and the wholesome moral, mental, and physical development of [the] children."[13] This purpose is also emphasized on TJJD's website:

> While public safety and accountability are certainly considerations for youth, the juvenile correctional system emphasizes treatment and rehabilitation. Even when it is necessary to incarcerate youth, the setting is designed to be protective, not punitive, and the goal is to educate youth about discipline, values, and work ethics, thus guiding them toward becoming productive citizens.[14]

The developmental vulnerability of children is similarly relevant to whether conditions in TJJD's secure facilities are constitutional. Relying on "developments in psychology and brain science [that] continue to show fundamental differences between [child] and adult minds,"[15] the U.S. Supreme Court has recognized several times that "children are constitutionally different from adults."[16] For example, the Court has stated that children

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[10] *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotation marks and citations omitted); *Farmer v. Brennan*, 511 U.S. 825, 834–38 (1994).
[11] *Bell v. Wolfish*, 441 U.S. 520, 535–38 (1979). The United States Supreme Court has not addressed whether the Eighth Amendment or the Fourteenth Amendment provides the proper standard for assessing conditions of confinement for children committed to juvenile justice facilities. Conditions in TJJD's secure facilities violate both constitutional standards.
[12] Tex. Fam. Code Ann. § 51.01.
[13] *Id*.
[14] Tex. Juv. Just. Dep't, *The Juvenile Justice System in Texas* (2022), https://perma.cc/QS4G-KSYW.
[15] *Graham v. Florida*, 560 U.S. 48, 68 (2010).
[16] *Miller v. Alabama*, 567 U.S. 460, 476 (2012) (finding mandatory life imprisonment without parole for children is unconstitutional); *see also Graham*, 560 U.S. at 79 (finding that mandatory life imprisonment

"have a lack of maturity and an underdeveloped sense of responsibility," are "more vulnerable . . . to negative influences and outside pressures," and have characters that are not as "well formed" as those of adults.[17] The Court has also made clear that "youth is more than a chronological fact . . . . It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage."[18] Texas courts agree, long recognizing that children are different than adults and warrant additional protections.[19]

Applying these principles, we find that conditions in TJJD's secure facilities cause children serious harm and violate the Constitution. Children are regularly subjected to force, both physical and chemical. They spend prolonged time in isolation, exposing them to mental health consequences like suicidal ideation. And they are not reasonably safe from sexual abuse by staff and other children.

Several additional factors contribute to TJJD's harmful environment. An underdeveloped behavior management system does not promote positive behavior and results in an overreliance on force to manage children's negative behavior. A lack of structured daily activities and inadequate adult supervision invites misbehavior from children who are bored and lack impulse control and self-regulating skills. A dysfunctional grievance system prevents children from reporting abuse and impedes TJJD's ability to track and correct problems. Inadequate mental health and special education services, along with a lack of reasonable modifications, discussed more fully in later sections of this Report, result in children with disabilities experiencing additional punishment through the use of force and isolation, exclusion from required programs and education, and extended time in TJJD's custody.

1. TJJD uses excessive force on children.

Use of force that causes "the unnecessary and wanton infliction of pain" violates the Constitution.[20] Use of force is also unconstitutional when it is objectively unreasonable, which means the force is not rationally related to a legitimate governmental objective or is excessive in relation to that objective.[21] Factors to consider in determining whether force is unconstitutional include the need for the use of force, the amount of force used in relation to that need, the threat staff reasonably perceive, and any efforts staff make

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without parole for children who did not commit homicide is unconstitutional); *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (finding that imposing the death penalty on children is unconstitutional).
[17] *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569); *see also Graham*, 560 U.S. at 68.
[18] *Miller*, 567 U.S. at 476 (internal quotation marks and citations omitted).
[19] *See Henderson v. State*, 962 S.W.2d 544, 562 (Tex. Crim. App. 1997) ("[The] State has a legitimate, and in fact compelling, interest in protecting the well-being of its children. . . . Children are deemed to warrant protection because of their inexperience, lack of social and intellectual development, moral innocence, and vulnerability.").
[20] *Hudson v. McMillian*, 503 U.S. 1, 5 (1992).
[21] *Kingsley v. Hendrickson*, 576 U.S. 389, 396–98 (2015).

to lessen the severity of the force.[22] The extent of an individual's injury, the severity of the security problem, and whether the individual was actively resisting may also be relevant to whether force is unconstitutional.[23]

Juvenile justice facilities like TJJD should follow a continuum of responses to children's misbehavior, generally beginning with staff making themselves present and providing adult supervision when a potential problem first develops, followed by attempts to de-escalate the situation through verbal prompts and redirects to the child. Staff should use force only after these interventions fail or are impossible due to an immediate threat to other children or staff. Staff should also use only the amount of force necessary to neutralize the threat.[24]

Although TJJD's use of force policy is generally consistent with the standards set forth above, the agency's practice differs. Our review of video footage and incident reports shows that staff routinely use force that causes "the unnecessary and wanton infliction of pain" and is excessive in relation to any legitimate government purpose.[25] This violates children's constitutional rights.

1.1 TJJD harms children by using pepper spray excessively and without adequate decontamination procedures.

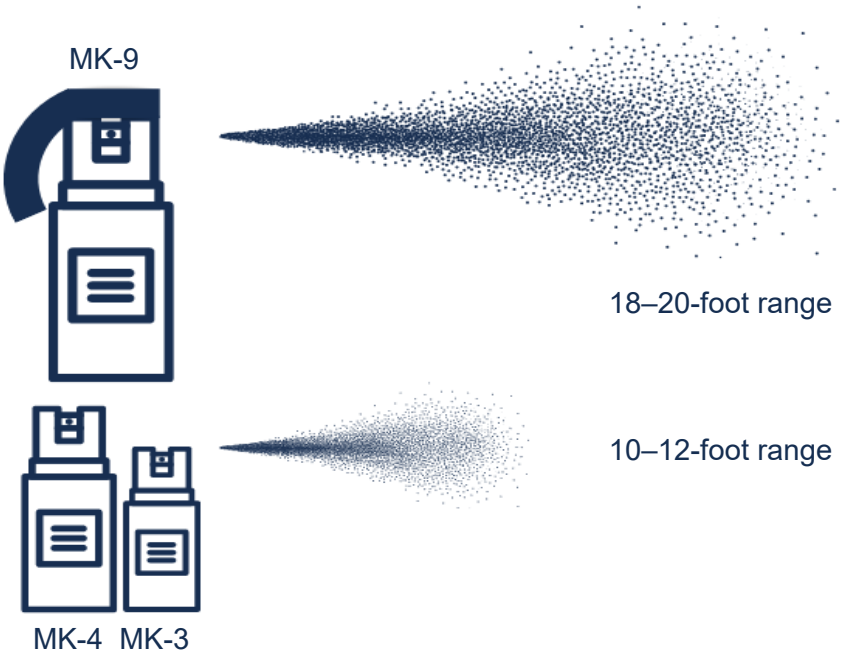
Pepper spray (also known as oleoresin capsicum or OC spray) has an intense and immediate effect on those sprayed. It is an oil made from chili pepper compounds. Pepper spray disables individuals by releasing substances within the nerve cells that cause burning, skin and eye irritation, and difficulty breathing. In significant exposures, pepper spray oils may create a rash or blisters on the skin and may damage the cornea, resulting in permanent vision loss. It may also result in death if it creates gagging and shortness of breath that leads to suffocation.

TJJD staff often use far more pepper spray, and deploy it far more frequently, than necessary to meet the threat posed. In the minority of juvenile justice facilities that permit security staff to carry pepper spray,[26] staff are typically issued canisters containing 1.5-3 ounces of pepper spray (known as MK-3 or MK-4), which are intended for staff to wear on a duty belt for individual use. When the use of pepper spray is considered necessary, staff should release one short burst of pepper spray. At TJJD,

[22] *Hudson*, 503 U.S. at 7; *Kingsley*, 576 U.S. at 396–97.
[23] *Kingsley*, 576 U.S. at 397; *see also Fairchild v. Coryell Cnty., Tex*., 40 F.4th 359, 366 (5th Cir. 2022) (describing the "core of the excessive force inquiry" under *Kingsley* as whether "the amount of force [was] proportional to the need for force").
[24] *Fairchild*, 40 F.4th at 366.
[25] *Kingsley*, 576 U.S. at 396–97; *Hudson*, 503 U.S. at 7.
[26] Most juvenile justice facilities do not permit security staff to carry pepper spray. *Pepper Spray in Juvenile Facilities*, Council of Juv. Just. Adm'rs, (rev. Mar. 2019), https://perma.cc/G35P-UAK9; *see also J.H. v. Edwards*, No. CV 20-293-JWD-EWD, 2020 WL 3448087, at *38 (M.D. La. June 24, 2020) (acknowledging expert testimony that "the use of pepper spray [in juvenile justice facilities] is disfavored").

however, security staff and supervisors are armed with MK-9 canisters, which contain 13.4 ounces of pepper spray, are intended for use when managing large crowds, and discharge more pepper spray over a greater area than individual-sized canisters. TJJD staff often discharge these MK-9 canisters directly into a child's face at very close range and for excessive lengths of time. In many incidents, multiple staff discharge pepper spray at the same time, resulting in copious amounts of pepper spray throughout the unit. In some cases, this results in staff and children becoming physically incapacitated to the point of vomiting.

Figure 2: MK-9 canisters of pepper spray—intended for large crowd control—reach roughly twice the distance of MK-4 or MK-3 canisters



TJJD staff also routinely use pepper spray as a first response to children's misbehavior, rarely making any attempt to verbally defuse a situation. Verbal interventions, if attempted at all, typically consist of yelling at the child to "stop" or "chill," threatening to use pepper spray, or at times using abusive language.

Below are examples that illustrate TJJD's pattern of misuse and overuse of pepper spray:

- In September 2022, Jose[27] was being disruptive at Gainesville, jumping on furniture and banging his head. Video shows staff pepper sprayed him after

[27] To protect the identities of the children at TJJD, we have used pseudonyms based on the Social Security Administration's list of most popular boys' and girls' names for children born in Texas in 2008. *See Popular Baby Names, Popular Names by State, Popularity for top 100 names in Tex. for births in 2008*, Soc. Sec. Online, https://www.ssa.gov/cgi-bin/namesbystate.cgi (last visited July 11, 2024).

placing him in handcuffs. Staff made no effort to verbally engage with Jose before resorting to pepper spray.

- In September 2022, Emily reportedly made threats at school. The responding staff can be heard on video inciting Emily by calling her derogatory names ("ho" and "bitch") and swearing at her. At one point, the staff dares Emily to do something in response. Ultimately, the staff tells Emily to "shut up," pepper sprays her, and then says, "That's what's up, ho."

- In August 2022, a Mart staff member pepper sprayed Isabella while escorting her to the Regulation & Safety Unit (RSU)[28] in handcuffs. Staff made no attempt to engage with her verbally before spraying her.

- In July 2022, staff on a mental health unit at Giddings used excessive pepper spray on Jacob. Video footage shows one staff member intentionally discharging a MK-9 canister of pepper spray directly into Jacob's face at very close range. Staff also made minimal attempts to verbally de-escalate before resorting to pepper spray.

- In July 2022, a staff member pepper sprayed Daniel at Giddings for slamming the washing machine door. The staff can be heard warning Daniel**,** "Do it one more time and I'll [pepper spray] you. I'm not playing games." When Daniel slammed the door again, the staff sprayed him directly in the face at close range.

Accounts we heard directly from children at TJJD support this pattern: "Staff don't care and will use the whole can of [pepper] spray."

Untimely and inadequate decontamination procedures exacerbate the harmful effects of TJJD's overuse of pepper spray. As soon as the threat is over, individuals should flush their eyes with cool water to alleviate the burning sensation, wash affected skin with mild soap, and receive a medical evaluation. Consistent with these standards, TJJD's policy states that any child "affected by [pepper] spray must be decontaminated with cool water as soon as the purpose of the restraint has been achieved." But most units are not equipped with cool water showers. As a result, children who are pepper sprayed are generally not decontaminated until after transport to the RSU, causing them to suffer the effects of pepper spray long after the purpose of restraint has been achieved. Because the RSU at Mart does not have a dedicated decontamination

[28] Formally known as the Security Unit, the RSU is a self-contained unit at all five facilities used to "temporarily remove youth who engage in certain dangerous or disruptive behaviors from the general campus population." According to TJJD policy, children must be released from the RSU within 1–2 hours unless specific criteria for admission are met. Those who meet the admission criteria may be admitted to the RSU for up to twenty-four hours, with additional 24-hour extensions granted.

shower, children there may wait even longer. At the time of our site visit, Mart staff were using a garden hose over the top of a shower enclosure to decontaminate children, but for Isabella, they could not locate the hose, which significantly delayed her decontamination.

Bystanders who are exposed to pepper spray in TJJD facilities must decontaminate, if they can, in showers, sinks, or water fountains using lukewarm water. We reviewed many incidents where children who faced secondary exposure were sent to their cells without any opportunity to decontaminate. In April 2022, a Ron Jackson staff member discharged an excessively long blast from an MK-9 canister of pepper spray to stop a fight in a unit's dayroom. The staff made no attempts to verbally intervene before resorting to force and appeared to wait until the fight escalated to a physical level before taking any action at all. She gave no warning that she was about to discharge pepper spray. Multiple children were exposed and observed coughing and breathing in a distressed manner. In light of the unnecessarily long blast, the entire dayroom should have been decontaminated, but there is no evidence that this occurred.

> **"I ain't got time to deal with that[,] so soon as [the child's] shirt come off, I'm spraying her fat ass."**
>
> **Mart staff member**

Finally, for children with preexisting respiratory conditions—such as emphysema and asthma—or other health problems, exposure to pepper spray may pose a heightened risk of harm. TJJD policy appropriately prohibits the use of pepper spray on children with "chronic, serious respiratory problem[s] or other serious health condition[s] identified by TJJD ([for example], significant eye problems, known history of severe allergic reaction to [pepper spray], or severe dermatological problems)," except when "necessary to prevent loss of life or serious bodily injury." In practice, however, the only condition TJJD considers a contraindication is a severe allergy to pepper spray. In this way, TJJD violates its own policy and exposes children with respiratory and other health conditions to an increased risk of harm.

1.2 TJJD harms children by using excessive physical force and dangerous restraint techniques.

TJJD staff use more physical force than necessary, including restraints that can restrict a child's ability to breathe. Additionally, TJJD's limited supervisory review of uses of physical force undermines staff accountability.

Investigations conducted by TJJD's Office of Inspector General highlight the pattern of TJJD's use of excessive physical force. The Office of the Inspector General is a law

enforcement agency responsible for conducting investigations of allegations involving "abuse, neglect, or exploitation of children" in TJJD's secure facilities.[29] At times, these investigations result in criminal charges against TJJD staff. For example:

- In October 2023, a former Ron Jackson staff member was charged with assault after both overhead surveillance and body-worn camera video reportedly showed him lift a child up and slam him to the floor, causing a laceration above the child's eye and a concussion. A grand jury indicted the staff member on the charge of official oppression in February 2024.

- In June 2022, two Evins staff were charged with criminal offenses after both overhead surveillance and body-worn camera video reportedly showed one of the staff slamming a child's head into a brick pillar, knocking him unconscious. The boy allegedly was handcuffed with his hands and arms behind his back throughout this ordeal.[30] One of the staff members then reportedly turned off his body camera, after which one of the staff members allegedly spat on the unconscious boy before dragging him to the RSU, causing additional injuries to the child. In May 2024, one of the two staff members accepted a plea agreement on the charge of official oppression.

- In March 2022, a former TJJD staff member was criminally charged for alleged conduct stemming from an incident at Mart's RSU. According to the Office of Inspector General, the staff responded to an assault by a child by "intentionally punching the [child] in the head, face, and body." The staff then allegedly "forcefully slammed the [child] to the floor while handcuffed."

Our document and video review shows additional dangerous physical restraint practices at TJJD that present a serious risk of restricting children's breathing. Some TJJD staff use unsafe techniques such as placing children face down on the floor and kneeling on their back or torso. In April 2022, a Ron Jackson staff member pepper sprayed two girls fighting in a dayroom. A large male staff then used his full body weight to lie on top of one of the girls while she was face down on the floor.

As with pepper spray, we observed TJJD staff resorting to physical force without making meaningful attempts to use nonphysical interventions. Surveillance videos show children sitting or pacing idly in the unit dayrooms, with minimal or no staff interaction. When children then engage in misbehavior, staff physically intervene

[29] Tex. Hum. Res. Code Ann. § 242.102(a)(2).
[30] *See Hudson*, 503 U.S. at 7 (noting that in determining whether a use of force was "wanton and unnecessary," courts should consider "the threat 'reasonably perceived by the responsible officials'") (internal citation omitted).

without first trying to redirect the child or de-escalate the child through verbal prompts, regardless of the severity of the child's misbehavior.

Uses of physical force are also not consistently reviewed by supervisors, undermining staff accountability. In some cases, we found that staff failed to complete use of force reports. For example, while on site at Evins, a boy reported to us that a staff member had slammed him to the ground. We confirmed through video review that the incident the boy described had occurred. In the video, the staff can be seen slamming the boy to the floor and using his full body weight to pin the boy down while others placed him in restraints. But no staff filed a use of force or incident report.

Even where staff complete use of force reports, the supervisory review section was left blank in most of the reports we examined, suggesting that use of force reports are not regularly reviewed by a supervisor or review board. The Sunset Commission's[31] June 2023 review of site visit reports by the Office of Independent Ombudsman reflects our findings, noting ongoing problems with "[l]ate, incomplete, inaccurate, or nonexistent documentation from TJJD staff[,] including serious incident reports, records regarding youth housed in isolation units, and responses to [Office of Independent Ombudsman's] requests for follow-up action."

TJJD staff's failure to comply with body-worn camera policies likewise limits supervisory review. The Sunset Commission found that as of May 2022, TJJD still had not addressed problems identified during an August 2021 internal audit relating to violations of body-worn camera policies. That audit found that sixty-three percent of staff audited "turned off their body-worn cameras while conducting cell checks, talking to or supervising youth, or talking to each other" in violation of TJJD policy. Without adequate

An internal audit found that 63 percent of staff turned off their body-worn cameras while conducting cell checks, talking to or supervising children, or talking to each other.

[31] The Texas legislature created the Sunset process in 1977 to regularly examine the effectiveness of and need for state agencies. During an agency's review, the Sunset Commission seeks comment from agencies, stakeholders, and the public to identify problems and brainstorm opportunities for improvement. The Sunset Commission's recommendations and proposed bills regarding the agency are then considered during the legislative session. The Sunset Commission's review of TJJD took place during the 2022-2023 review cycle as part of the 88th Legislative Session. After finding that TJJD "remains caught in [a] long-standing cycle of instability," the Sunset Commission recommended about fifty changes to TJJD's funding and operations. TJJD praised the Sunset Commission's review, describing it as a "fair assessment" that "really grasped [TJJD's] issues." In May 2023, the Texas legislature adopted ninety-five percent of the Sunset Commission's recommendations related to twenty-one entities, including TJJD. *See* Tex. Sunset Advisory Comm'n, 2022-23 88th Leg., *Final Results of Sunset Reviews 2022–23*, at 1 (June 2023), https://perma.cc/DJW9-KFW8.

oversight of use of force and accountability for body-worn camera policies, excessive force will continue to occur with impunity.

1.3 TJJD's inadequate behavior management system and lack of structured programming harm children by contributing to unnecessary uses of force.

TJJD's behavior management policy generally includes key principles of effective behavior management systems in juvenile justice facilities. Such systems: (1) provide incentives to promote positive behaviors and encourage engagement in education, treatment, and programming; (2) include skill-development training aimed at helping children control their behaviors; and (3) ground staff training and policies and procedures in principles of adolescent development. But we found little evidence that TJJD's behavior management policy is operationalized systemwide. The lack of a functional behavior management system hinders children's motivation to follow the rules and contributes to unnecessary force.

We saw little evidence that TJJD staff use incentives effectively to promote positive behaviors in most of the facilities. For example, although most of the facilities had a game room as a reward for children who behaved well, there was not a well-understood system for earning that reward. There were also few signs or descriptions of the behavior program posted on most of the units. Staff generally did not mention the program during discussions of behavior management. Most children did not appear to understand the elements of the behavior management program, except to say that if they went to school and behaved, they earned points.[32]

On-site observations and video review also show that staff's interactions with children are typically minimal and reactive. Staff are largely disengaged until a child's behavior reaches a "boiling point," at which time staff respond with significant force. Sometimes, staff's initial interventions lead to an escalation of the child's behavior, resulting in violence and the use of force to regain control.

Along with an inadequate behavior management system, a lack of structured programming similarly leads to unnecessary force. Idle time for children throughout TJJD's secure facilities is extraordinarily high. On-site observations and video review show that children have very few opportunities for constructive activities to fill their day, with the lack of structured programming being even more pronounced on weekends. When children are out of their cells, the atmosphere within the dayrooms is

[32] The behavior program appeared to be more systemically applied and better understood at Gainesville than at the other facilities. The Gainesville behavior program includes a reward room called the "Main Event," where children can spend time—including overnight—as a reward for good behavior. We observed (in person and through video review) many positive interactions between staff and children on this unit, including playing games together, laughing, smiling, talking, and eating.

unstructured and chaotic. This inevitably leads to incidents of violence, as children sit around and annoy each other until frustrations result in fights, assaults, and destruction of property. As one child put it, "[S]taff think this dorm is bad, but we're just bored." Another child added, "They're setting kids up for failure."

2. TJJD harms children through excessive use of isolation.

The Constitution protects children in juvenile justice facilities from excessive isolation (that is, time spent alone in a space from which they cannot leave). Isolation of children violates the Constitution when imposed under conditions that present a serious threat to the child's health, including mental health, and officials are deliberately indifferent to that threat.[33] Officials are deliberately indifferent when they are aware of the threat of harm (or the threat is obvious) and fail to take reasonable measures to decrease the risk of harm.[34] Excessive isolation of children can also violate the Constitution when it amounts to punishment.[35] This occurs if isolation is not rationally related to a legitimate government objective or it is excessive in relation to that objective.[36]

Excessive isolation poses a serious risk of harm to all human beings. But that threat is particularly severe for children. Because children's brains are still developing, "their time spent in solitary confinement [is] even more difficult and the developmental, psychological, and physical damage more comprehensive and lasting."[37] Children also "experience time differently–-a day for a child feels longer than a day to an adult–-and have a greater need for social stimulation."[38] As a result, exposure to stressful conditions such as isolation can result in long-term negative changes in children's bodies and brains. Children placed in isolation are at high risk of harmful psychiatric effects, including hallucinations, paranoia, depression, anxiety, self-harm, and suicide. Recognizing the growing body of research about isolation's harmful effects, courts in recent cases consider children's particular vulnerability to serious harm when assessing whether the isolation at issue is constitutional.[39]

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[33] *Hope v. Harris*, 861 Fed. App'x 571, 582–83 (5th Cir. 2021); *Cleveland v. Bell*, 938 F.3d 672, 676 (5th Cir. 2019).
[34] *Farmer*, 511 U.S. at 837–43; *Cleveland*, 938 F.3d at 676.
[35] *Bell*, 441 U.S. at 561.
[36] *Id.*
[37] *Solitary Confinement (Isolation) Position Statement*, Nat'l Comm'n on Corr. Health Care (Apr. 2016), https://perma.cc/RE6L-RA76.
[38] *Id.*
[39] *See, e.g.*, *Alex A. v. Edwards*, No. CV 22-573-SDD-RLB, 2023 WL 5984280, at *18 (M.D. La. Sept. 14, 2023), *order vacated on other grounds, appeal dismissed as moot sub nom. Smith v. Edwards,* No. 23-30634, 2023 WL 8747492 (5th Cir. Dec. 19, 2023) ("There is no dispute that solitary confinement has a very negative affect [sic] on the developing brain of adolescents; it exacerbates already existing mental health problems, it can exacerbate or cause the onset of mental illness and depression, and it causes an increased risk of suicide."); *see also J.H. v. Williamson Cnty.*, 951 F.3d 709, 718 (6th Cir. 2020) ("A growing chorus of courts have recognized the unique harms that are inflicted on juveniles when they are

TJJD's isolation practices expose children to a significant risk of harm and violate the Constitution. TJJD imposes excessive periods of disciplinary isolation on children in the RSU, secure units at each facility where TJJD temporarily places children when they "engage in certain dangerous or disruptive behaviors." Children in the general campus population are also locked alone in their cells for excessive periods of time for reasons unrelated to their behavior.

Texas knows that children in TJJD's secure facilities spend too much time in isolation and that "[i]solation . . . has tremendous negative consequences."[40] In fact, the Executive Director has made repeated appeals to Texas officials regarding TJJD's need to address the excessive time children in TJJD's secure facilities spend in lockdown.[41]

"A kid in a room for 22 hours is a like a shaken bottle of soda. And you open that door[,] and you open that lid[,] and you hope that you have enough people there to keep the situation safe."

Sunset Advisory Commission Testimony from Shandra Carter, TJJD Executive Director

2.1 Children spend excessively long periods of time in the RSU under unnecessarily restrictive conditions.

Although TJJD policy appropriately limits most initial RSU admissions to one to two hours, we found many instances where children spent days or weeks in the RSU. In some cases, TJJD placed children there for non-behavioral reasons. For example, Abigail spent eight days in Mart's RSU in October 2022 pending transfer to a halfway house.[42]

While in the RSU, children typically spend 22–23 hours a day in their cells, with some children spending twenty-four hours a day there. Out-of-cell time is generally limited to

placed in solitary confinement."); *C.P.X. v. Garcia*, 450 F. Supp. 3d 854, 909 (S.D. Iowa 2020) ("Due to their traumatic backgrounds and mental health issues, juveniles in detention facilities are 'exquisitely vulnerable to psychiatric and behavioral decompensation when housed in solitary confinement.'") (internal citation omitted); *G.H. v. Marstiller*, 424 F. Supp. 3d 1109, 1116 (N.D. Fla. 2019) (finding that plaintiffs had alleged sufficient facts to show that the practice of isolating children "violates contemporary standards of decency" due to "children's heightened vulnerability and continued physical, psychological, and social development").

[40] *See Hearing Before Tex. House Comm'n on Juv. Just. & Fam. Issues*, 88th Leg., R.S. (Aug. 9, 2022) (testimony by Exec. Interim Dir., Tex. Juv. Just. Dep't, Shandra Carter at 27:19-27:39), https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=23404 (last visited June 27, 2024).

[41] *Farmer*, 511 U.S. at 837–43 (explaining that officials are deliberately indifferent when they are aware of the threat of harm and fail to take reasonable measures to decrease the risk of harm).

[42] We also found several children who TJJD held in the RSU for weeks prior to transfer to Evins. For example, Ethan was confined in Mart's RSU for about fourteen days. Angel was confined for about thirteen days. Juan was confined for about eleven days.

about fifteen minutes for a shower, one hour of large muscle exercise (which typically consists of walking around the dayroom alone), and sometimes a short visit to the medical unit. In some cases, RSU logs reflect that TJJD "offers" children large muscle exercise inside the child's cell. The only education services that children in the RSU receive are daily packets that teachers pass out with minimal interaction, generally spending about five minutes on the RSU. All meals are served to children inside their cells. Based on unit logs, counselors typically visit children for about one minute and talk to children through their doors. This type of isolation exposes children to a significant risk of harm.

2.2 Children are isolated for excessively long periods of time in the general population units.

Children across TJJD's secure facilities also experience excessive amounts of time alone in their cells under "operational lockdowns" and security practices unrelated to their behavior. While in their cells, children have virtually nothing to do to pass the time. Most children are permitted minimal or no property in their cells. Regardless of what it is called or why it is imposed, excessive time that children spend locked alone in their cells poses a serious risk of harm.[43]

Children regularly spend 17–22 hours per day locked alone in their cells.

Security video and cell check logs show that children in all five of TJJD's facilities regularly spend about 17–22 hours a day alone in their cells. Children are routinely locked in their cells during shower and bathroom time,[44] shift change, medication pass, and many mealtimes.

Although TJJD administrators state that bedtime for children is around 8:00-9:00 p.m., we found that children are often locked in their cells for the night much earlier. At Mart, for example, our consultants' review of randomly selected security video showed that children in all units were locked in their cells for the night before 7:00 p.m.[45] At Evins, where staff and children referred to the practice as "racking up," we observed children on one unit locked down for the night at 4:39 p.m.[46] At Giddings, we observed some children locked down for the night at 5:25 p.m. In general, once in their cells for the

[43] *See Hearing Before Tex. House Comm'n on Juv. Just. & Fam. Issues*, 88th Leg., R.S. (Aug. 9, 2022) (testimony by Exec. Interim Dir., Tex. Juv. Just. Dep't, Shandra Carter at 27:19-27:39), https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=23404 (last visited June 27, 2024) (stating that "[i]solation, we know, has tremendous negative consequences" and acknowledging that "operational room confinement . . . has the same impact as isolation").

[44] The cells in TJJD's general population units do not have plumbing. Staff must let children out to use the toilet and take a shower.

[45] TJJD released children from their rooms in the morning as early as 5:45 a.m. in some facilities to as late as 10:00 a.m. in others.

[46] We observed six staff on the unit at the time, suggesting that low staffing levels were not the cause of the lockdown.

night, children do not come back out until the next day around 6:00 a.m. at the earliest. But in many cases, children remained in their cells later, often eating breakfast there. Indeed, throughout our visits, children reported that they would be locked in their cells if we were not on site.

In many cases we reviewed, use of force occurs after children become upset about having to rack up. For example, in December 2022 at Evins around 4:45 pm, Michael refused to rack up for the day, instead running into the dorm's shower area. A staff member followed him, physically pulled him out, and restrained him by pulling his arms behind his back. Michael was then handcuffed and escorted to his cell by two staff. Once in his cell, right after removing Michael's handcuffs, one staff pushed him to the ground. From there, the child covered his head. While in that position, another staff pepper sprayed him. He was then re-cuffed and taken to the RSU, where he spent several days.

On a Saturday in December 2022 at Evins, Anthony also became upset because he could not make his telephone call before staff directed the unit to rack up. The resulting use of physical force by staff left Anthony with a cut on his chin that required a trip to the infirmary. It was 11:30 a.m. when staff ordered children to rack up.

Consistent with our observations, the Sunset Commission found that "[y]outh will go to great—and at times, dangerous—lengths to avoid all-day lockdowns." The Commission's Report describes an example of one child who "timed the tying of a ligature around his neck to ensure staff performing routine door checks would pull him out of isolation before he was critically injured." Children in TJJD's custody supported this finding, telling us that at times: "You gotta get yourself in trouble to get attention."

Because of the high risk of harm whenever children are locked alone in their cells, staff should regularly conduct safety checks of each child at random intervals, something TJJD staff fail to do. Review of surveillance video and security check logs shows that staff often fail to look in the child's cell to confirm their safety. There were also several times when staff did not conduct cell checks at random intervals, which increases the chances that children will engage in self-harm and suicide since they can anticipate when staff will check on them. At one facility, our consultants' review of almost 130 hours of surveillance video showed that only about twenty percent of cell checks complied with TJJD's policy. Consistent with our observations, TJJD's Office of Inspector General found that in February 2023, a staff member at Evins falsified records by documenting that he had conducted five-minute cell checks—which are required for children on suicide alert[47] status—when, in fact, he neglected to check on

[47] Children on suicide alert status are supposed to receive a heightened level of monitoring by staff to ensure their safety.

them for nearly an hour. Failing to perform timely cell checks for children on suicide alert status exposes them to a serious risk of harm, including death. Our conversations with children echoed this concern: “If I’m behind a door, I feel like I could kill myself. They don’t check on us there.”

3. TJJD fails to adequately protect children from sexual abuse.

Children in juvenile justice facilities have a constitutional right to be free from sexual abuse by staff.[48] State officials also have a constitutional duty to protect children from assaults by other children.[49] The State must take reasonable steps to protect the children in its care from sexual abuse whenever the threat is known or should have been apparent.[50] Widespread sexual abuse, “coupled with[ ] inadequate supervision, creates a constant threat to [children’s] safety” that violates the Constitution.[51]

When determining whether conditions are incompatible with contemporary standards of decency (and therefore violate the Constitution), courts consider “objective indicia of society’s standards, as expressed in legislative enactments and state practice.”[52] Texas family law defines “abuse,” in relevant part, as “sexual conduct harmful to a child’s mental, emotional, or physical welfare,” including conduct that constitutes criminal offenses under the Texas penal code.[53] Texas’ penal code criminalizes a range of child sexual misconduct, including “sexual assault,”[54] “improper sexual activity with a person in custody or under supervision,”[55] “indecency with a minor,”[56] and “official oppression.”[57]

Reports of sexual abuse have plagued TJJD for decades. In 2007, “[t]he agency was placed under conservatorship by the governor” and state agencies “investigated

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[48] *See Alberti v. Klevenhagen*, 790 F.2d 1220, 1223–24 (5th Cir. 1986) (holding that pattern of sexual violence among both pretrial and convicted adults violates the Eighth Amendment).
[49] *Johnson v. Johnson*, 385 F.3d 503, 524 (5th Cir. 2004) (citing *Farmer*, 511 U.S. at 833–34) (“Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.”) (alterations omitted).
[50] *Farmer*, 511 U.S. at 834; *Stokes v. Delcambre*, 710 F.2d 1120, 1125–26 (5th Cir.1983) (finding that officials have a duty to not confine an individual under conditions that make it “likely he would be beaten and sexually assaulted”).
[51] *Alberti*, 790 F.2d at 1226.
[52] *Graham*, 560 U.S. at 61 (quoting *Roper*, 543 U.S. at 572).
[53] Tex. Fam. Code Ann. § 261.001(1)(E).
[54] Tex. Penal Code Ann. § 22.011 (criminalizing a range of sexual contact with children regardless of knowledge of the victim’s age and specifying that there is no consent where the perpetrator is “an employee of a facility where the other person is a resident”).
[55] *Id.* § 39.04 (criminalizing a range of sexual contact, as well as the inducement to engage in a range of sexual contact, with an individual in the custody of TJJD).
[56] *Id.* § 21.11 (criminalizing a range of child sexual misconduct, including where the perpetrator exposes, or causes the child to expose, the anus or any genitals “with intent to arouse or gratify the sexual desire of any person”).
[57] *Id*. § 39.03(c) (criminalizing a public servant’s “sexual harassment,” including the “unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly”).

thousands of complaints and allegations [of sexual misconduct,] work[ing] with prosecutors to address the criminal violations found."[58] In 2011, following reports of sexual abuse and significant operational problems systemwide, the Texas legislature combined TJJD's predecessors—the Texas Youth Commission and the Texas Juvenile Probation Commission—into one agency. In 2017, allegations of sexual misconduct prompted Governor Abbott to request that the Texas Rangers investigate "a significant number of sexual misconduct allegations."[59] This resulted in several more staff arrests.

A December 2019 report from the Bureau of Justice Statistics provided TJJD with additional notice of a pattern of abuse in its secure facilities. The Bureau of Justice Statistics found that, in three of the five TJJD secure facilities, children reported some of the highest rates of sexual victimization in the country.[60] At Ron Jackson, fourteen percent of the children reported being sexually victimized by staff or other children.[61] The rate was even higher at Gainesville and Mart, where one in six children reported abuse.[62]

Despite ample notice over two decades, TJJD has failed to implement measures to prevent this pattern of sexual abuse from continuing. Instead, following another Texas Rangers' investigation of sexual misconduct in 2021 that resulted in more staff arrests, TJJD issued a statement narrowly focusing on the Rangers' conclusion that its investigation uncovered no "anomalies, trends, or patterns (e.g., the same suspect committing multiple offenses, crimes committed at a specific time of day, crimes at a particular facility, etc.)." TJJD's response ignored obvious problems with staff training, oversight, supervision, and accountability. It also disregarded the serious and often irreparable harm that sexual abuse causes children. Indeed, the Office of Inspector General's investigation reports show that this pattern of abuse continues.

3.1 TJJD fails to prevent staff from sexually abusing children.

Our review of hundreds of investigation reports from the Office of Inspector General shows a pervasive atmosphere of sexual abuse, grooming, and lack of staff accountability and training at TJJD. This atmosphere undermines the treatment and rehabilitation of children—many of whom already have been victims of sexual abuse

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[58] *Sunset Self-Evaluation Report* 44–45, Tex. Juv. Just. Dep't (Sept. 1, 2021), https://perma.cc/5883-5K6B.
[59] *Id.*
[60] U.S. Dep't of Just., Off. of Just. Programs, Bureau of Just. Stats., *Special Report on Sexual Victimization in Juvenile Facilities Reported by Youth, 2018*, at 28–30 (Dec. 2019), https://perma.cc/4FP2-9JZX [hereinafter BJS Report].
[61] The BJS Report defines sexual victimization as "any forced or coerced sexual activity with another youth or any sexual activity with facility staff that takes place in a juvenile correctional facility." *Id*. at 1.
[62] *Id*.

and trafficking—and causes children serious and often lasting harm. Below are examples that illustrate TJJD's pattern of abuse:

- In December 2022, the Office of Inspector General concluded that a Mart staff member had abused a child. According to its report, video surveillance footage shows that the staff walked into a unit closet, turned off the light, and waited for a child to enter the closet. The video further shows the staff and child "lean forward and kiss each other on the lips," after which they exited the closet.

- In October 2022, the Office of Inspector General concluded that an Evins staff member had abused a child by engaging in an "inappropriate relationship" with him. The Office of Inspector General found that the staff had mailed the child inappropriate letters and engaged in inappropriate phone calls with the child. The staff also mailed the child about fifty pictures of herself, two of which were nude pictures. Both the staff and the child had tattooed each other's names on their wrists.

- In September 2022, the Office of Inspector General concluded that a Mart staff member had committed abuse after body camera footage revealed that he appeared to "have an overly friendly demeanor" with a child that "bordered on an inappropriate relationship" and had engaged in overtly sexual conversations with a child about "female genitalia, oral sex, and other sexual acts," mentioning "'hickies, breasts, fingering,' and other sexual acts." Transcripts from his body-worn camera reflect the use of violent, sexually graphic, and obviously inappropriate language about the children in his care, including advising that children should be on guard or they may "wake up with a dick in [their] ass."[63]

  "You gonna give it to him or he gonna take it. Knock the n**rs out, you wake up with a dick in your ass."**

  Mart staff member

- In July 2022, the Office of Inspector General concluded that a Ron Jackson staff member had abused a child by soliciting and enticing her to "play with herself" in her cell. This incident was reported after another staff found the child's notebook containing detailed notes "of when [the staff] watched her masturbate." Investigators determined that the staff had turned off his body

[63] The Office of Inspector General also concluded that the staff had violated TJJD policy requiring 15-minute room checks at random intervals.

camera over a dozen times during his shift on that day and that he had engaged in inappropriate conversation right before turning off his camera.[64]

- In March 2022, a contractor who was not to have any direct contact with children engaged in conversations that were sexually explicit and emotionally harmful to a child. The Office of Inspector General determined that this contractor "exhibited grooming and predatory behaviors" that were targeted at specific children.

- In July 2021, the Office of Inspector General concluded that an Evins staff member committed the criminal offenses of indecency with a child and improper sexual activity with person in custody and referred the case for prosecution. According to its report, the staff was found by a coworker in the unit shower area performing oral sex on a child. The staff turned their body-worn camera off just before the incident. In April 2024, the staff was indicted on charges of indecency with a child, improper sexual activity with a person in custody, and violation of the civil rights of a person in custody.

Our on-site observations are consistent with the Office of Inspector General's findings about inappropriate relationships between staff and children. We witnessed a staff member holding hands with a girl, referring to her as "baby," and playfully grabbing another child's shoulders. This type of conduct—coupled with the problems identified above regarding staff reporting, oversight, and compliance with body-worn camera policies—fosters an environment where sexual abuse by staff can occur without detection.

3.2 TJJD fails to prevent children from sexually abusing other children.

Aside from abuse by staff, we found a pattern of sexual victimization and misconduct among children that reflects a lack of adequate staff supervision. In August 2022, the Office of Inspector General sustained allegations that a boy at Gainesville forced another to perform oral and anal sex. In May 2021, the Office of Inspector General referred for criminal prosecution allegations that a boy at Giddings forced his penis on a younger boy's forehead. In an example from Ron Jackson, two children were found to have been together in one of the children's cells for thirty minutes unsupervised. Many Office of Inspector General investigations sustained allegations involving sexual misconduct in unit bathrooms, dayrooms, classrooms, and workshops. All these areas

[64] The Office of Inspector General also found that the staff member "failed to conduct door log checks on the required interval numerous times" throughout his shift. The staff member was responsible for "two offenders who were on [suicide alert] status at this time, both of whom he failed to conduct appropriate checks based on the [suicide alert] precautions outlined on their paperwork (10-minute intervals)." The Office of Inspector General found that the staff member "often completed four entries at one time while doing door logs to make it appear as though the intervals had been maintained although the entries were incorrect."

should have been under the direct supervision of staff. Yet the activity went undetected until surveillance video later revealed it.

Our own review of hundreds of hours of surveillance video confirms that TJJD staff do not provide adequate supervision to the children in their care. Staff generally appear complacent and disengaged. In many cases, staff ignore behaviors that could jeopardize the safety of children. We observed multiple situations where staff left children unsupervised. This lack of supervision, coupled with significant periods of unstructured time, invites incidents of violence and victimization.

4. TJJD's dysfunctional grievance system contributes to TJJD's harmful environment.

Interviews of staff and children and a review of over 500 grievances show deficiencies in TJJD's grievance system. These deficiencies contribute to the dangerous and harmful environment in several ways.

TJJD's grievance procedures do not provide children with an adequate method of reporting abuse and harm. Children should be able to obtain a grievance form without having to request it from someone and submit it themselves via secure boxes on every unit and in other facility common areas. At TJJD, however, a child on each unit is given the responsibility to distribute and collect grievance forms upon request from other children. Children on the RSU must request a grievance form from staff and then submit it through staff. These practices inhibit children's ability to submit grievances confidentially and without fear of retaliation.

TJJD also operates an Incident Reporting Center Hotline for children to submit grievances, but it is not effective. Children can only use this phone in the unit dayrooms at limited times and the phone does not always work. The grievance reports staff generate from calls made to this hotline often do not provide the date of the call, making it difficult to track response times.

Where dates are available, we found many grievances where TJJD did not respond promptly to complaints children raised. Several grievances that TJJD should have treated as emergency grievances and addressed immediately were instead assigned TJJD's standard ten-day response time for non-emergencies.

We also reviewed many grievances that TJJD categorized as resolved because the child received a response, even though the response did not meaningfully address the child's complaint. In April 2022, Jayden filed a grievance at Evins stating, "Everyday [sic] I feel like committing suicide because [another boy] is taking my trays! I don't feel safe in the pod because he's there." TJJD responded by placing the child on constant suicide precautions because of his "suicidal thoughts due to a peer taking your food."

After noting that mental health staff would follow up with Jayden, the response stated that the grievance "is now considered resolved." There is no mention of any follow up conducted or planned for the child's complaint about another child stealing his food.

Finally, TJJD does not assign grievance outcomes in a consistent manner. For example, a child at Mart submitted a grievance claiming he had been in TJJD for four months and his Minimum Length of Stay was being extended because he had not yet begun a required six-month treatment program. The grievance response states that staff explained to the child that he is on the waitlist to begin the program and he would begin it as soon as possible. The grievance was then marked as resolved, even though his request to start treatment was denied.[65] In yet another grievance, a girl at Mart complained that she was placed in the RSU for several days without adequate justification. TJJD's response to this grievance was that she was being held in the RSU pending an opening in the Behavior Stabilization Unit.[66] Her grievance was denied. There is no discernable reason that some grievances are considered resolved, while others are denied or approved. This inconsistency hinders oversight and quality assurance reviews.

[65] We reviewed several additional grievances from children complaining about not receiving required treatments in time to complete them before their Minimum Length of Stay deadlines. TJJD's response to these grievances generally acknowledges the delay and references waitlists for these treatments, subsequently marking the grievances as resolved.

[66] This self-contained unit is for up to four children with "immediate and significant mental health issues that engage in frequent aggressive event[s]." The Behavior Stabilization Unit is located at Mart. TJJD conducts weekly treatment team meetings for children in this unit and provides "increased psychiatric oversight."

FAILING TO PROVIDE ADEQUATE MENTAL HEALTH CARE

The Eighth Amendment protects children from TJJD's deliberate indifference to their medical needs,[67] including mental health care.[68] TJJD officials are deliberately indifferent to children's mental health needs when they know of a substantial risk of serious harm and disregard that risk by failing to take reasonable measures to decrease it.[69] The risk of serious harm can arise from a series of individual failures or a combination of conditions that mutually reinforce one another to produce a single serious harm.[70] Officials' knowledge of a substantial risk can be inferred from the risk being obvious.[71]

Systemic deficiencies in mental health care in TJJD's secure facilities severely harm children. TJJD fails to accurately assess and diagnose children's mental health disorders, create adequate treatment plans, and provide counseling. TJJD also automatically suspends mental health services except medication for children whose mental health disorders cause disruptive or violent behaviors. TJJD similarly fails to provide adequate mental health services to children who are dually diagnosed with mental health and substance use disorders or engage in acts of self-harm or suffer from suicidal thoughts. These systemic deficiencies effectively deny children access to adequate care, causing suffering and often interfering with their ability to complete programs required for their release.

Texas is aware of the longstanding nature of its inadequate mental health services and the obvious harms that result. Because State officials have consistently failed to act despite this knowledge, they are deliberately indifferent to children's mental health needs.

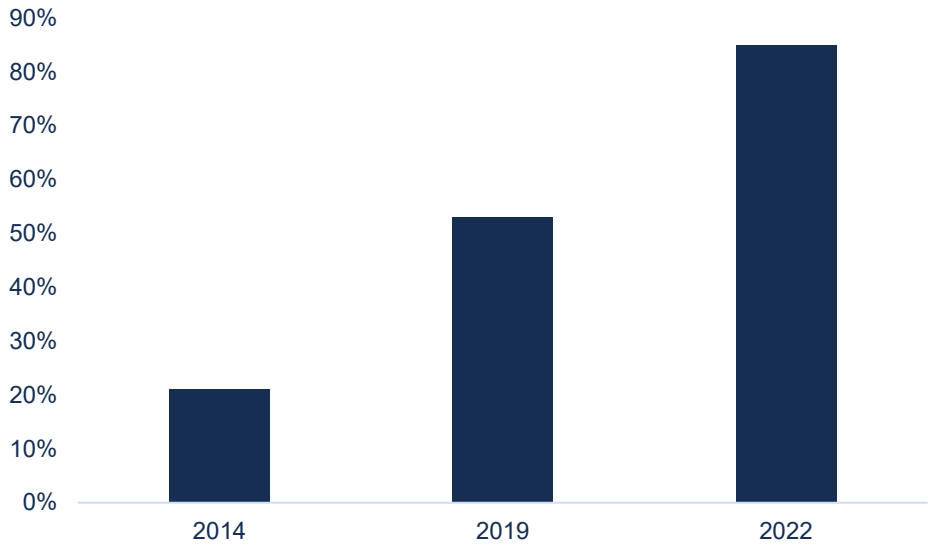
1. Most children in TJJD's secure facilities have serious mental health needs, including histories of trauma, requiring treatment.

The percentage of children with serious mental health needs in TJJD's custody has grown at a staggering rate. In January 2020, then Executive Director Camille Cain reported to TJJD's Board of Directors: "In 2014, at the point of intake, we identified

[67] *Farmer*, 511 U.S. at 834; *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004).
[68] *Gates*, 376 F.3d at 343 ("[I]t is important to remember that mental health needs are no less serious than physical needs.") (citation omitted); *see also Partridge v. Two Unknown Police Officers of Hous., Tex.*, 791 F.2d 1182, 1187 (5th Cir. 1986) ("A psychological or psychiatric condition can be as serious as any physical pathology or injury, especially when it results in suicidal tendencies.").
[69] *Farmer*, 511 U.S. at 847; *Gates*, 376 F.3d at 333.
[70] *Gates*, 376 F.3d at 333.
[71] *Farmer*, 511 U.S. at 842.

21% of our youth as having moderate to severe mental health needs. In 2019, we were at 53%."[72] When current TJJD Executive Director Shandra Carter testified in August 2022 before a committee of the Texas legislature, she informed lawmakers that "85% of our kids have high or moderate mental health needs."[73] According to the Sunset Advisory Commission, over a similar timeframe, "the proportion of youth entering TJJD facilities with moderate or high mental health needs nearly quadrupled."

Figure 3: Increase in children with moderate or severe mental health needs in TJJD's custody



Trauma is one of the most common causes of mental health issues for children in the juvenile justice system. It is an emotional response that results from living through a highly stressful experience, such as physical or sexual abuse, crime, death of a loved one, or exposure to family and other violence. Trauma can produce serious and debilitating symptoms, including flashbacks, repeated intrusive thoughts,[74] physical reactions to reminders of trauma, unpredictable emotions, irritability, angry outbursts, reckless or self-destructive behavior, hypervigilance,[75] problems with concentration, and sleep disturbance.

The effect of trauma on children, whose brains are still developing, can be particularly severe and lasting. In children, repeated episodes of stress and the accompanying excessive, repeated stimulation of the body's production of stress hormones impacts

[72] Tex. Juv. Just. Dep't, *Board Meeting Minutes* 2 (Jan. 24, 2020), https://perma.cc/UY8P-PJPD.
[73] *See Hearing Before Tex. House Comm'n on Juv. Just. & Fam. Issues*, 88th Leg., R.S. (Aug. 9, 2022) (testimony by Exec. Interim Dir., Tex. Juv. Just. Dep't, Shandra Carter at 26:32), https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=23404 (last visited June 27, 2024).
[74] Intrusive thoughts are uninvited and usually unwanted ideas and images that come to one's mind.
[75] Hypervigilance refers to a state of watchfulness, where a person is constantly on guard and on the lookout for danger, even when there is little or no risk of something bad happening.

brain development and eventually impairs the child's ability to regulate their response to stressors. Instead of a stress response being a temporary reaction to danger, it becomes a constant, uncontrollable physiological warning of danger that persists, even when no danger is present. As a result, a child who is exposed to repeated trauma has more difficulty differentiating between safe and dangerous situations, is hyperresponsive to situations they perceive as frightening, and has more difficulty calming down once triggered.[76]

"This is the highest concentration of acute needs . . . in the history of the agency."

Texas House of Representatives Testimony from Shandra Carter, TJJD Executive Director

According to TJJD, most children in its secure facilities have experienced trauma. TJJD estimates that around sixty-four percent of boys and eighty-four percent of girls have been exposed to four or more potentially traumatic events during their childhood, with ninety-one percent of girls identified as vulnerable to child sex trafficking. As TJJD reports, "[t]his is the highest concentration of acute needs . . . in the history of the agency."

During our investigation, we met many children with intense mental health needs who have cycled through TJJD's facilities and programs, yet their conditions have not improved and their mental health symptoms have not stabilized. Many continue to engage in serious self-harm and exhibit behaviors related to their mental health difficulties that expose them to disciplinary sanctions. William, for example, entered TJJD's custody at eleven years old. His mental health quickly deteriorated, resulting in over 1,000 suicide risk assessments and over eighty acts of suicidal behavior while in TJJD's custody. As soon as William turned sixteen, TJJD transferred him to adult prison for allegedly hitting TJJD staff during an incident. William died by suicide six months later. As set forth below, TJJD's mental health care systematically fails to meet children's needs.

2. Children at TJJD face serious harm and the substantial risk of serious harm because of inadequate mental health care.

We found several deficiencies in TJJD's mental health services, which have a cumulative effect of subjecting children to serious harm or the substantial risk of serious harm. Mental health staff do not properly assess children and therefore fail to identify their mental health care needs. Clinicians make little effort to coordinate across disciplines, resulting in different clinicians making different diagnoses for the same

[76] These difficulties are more likely if the child does not have the type of family nurture and support that would help them calm down and, eventually, learn to calm the hormonal response on their own.

child, without any meaningful effort to develop an integrated approach to a child's care. Clinicians similarly do not create treatment plans for many children and do not meet with children with sufficient frequency, including discontinuing mental health treatment altogether for children placed in specialized programs. TJJD's clinicians likewise fail to provide effective substance use disorder treatment for children with trauma-related and other mental health problems. Finally, children experience TJJD's overly restrictive response to suicidal ideation or acts of self-harm as punishment.

Although TJJD claims to adhere to a trauma-informed philosophy of care in which trained professionals help children "feel physically and emotionally safe, build[] appropriate trusting relationships, and [learn] . . . self-regulation," we found that TJJD's mental health services do not reflect a trauma-informed approach**.** On top of its other deficiencies, TJJD's failure to identify, assess, and treat trauma impacts every aspect of mental health services children receive, from assessments to treatment plans to counseling to substance use disorder treatment to suicide prevention.

2.1 TJJD fails to provide adequate mental health assessments and treatment plans.

To provide adequate mental health care, juvenile justice facilities should have "a systematic program for screening and evaluating [incarcerated people] in order to identify those who require mental health treatment."[77] Individualized mental health assessments and accurate diagnoses that lead to a proposed approach to treatment are essential components.

Most of TJJD's psychological assessments we reviewed are inadequate. They fail to examine family, social, and developmental histories—including traumatic experiences—that are often critical to understanding the context for the child's behavioral functioning. They also fail to meaningfully consider children's extensive histories of past mental health assessments and interventions. They similarly fail to connect a history of mental health problems and trauma with specific behaviors.[78] Screening tools—which are intended to flag conditions for further assessment or intervention—are also not used appropriately or consistently. Clinicians do not, for example, conduct follow-up clinical interviews with children flagged for trauma to assess symptoms of any trauma-related disorders. Instead, clinicians list problematic behaviors that resulted in the child's commitment to TJJD, prior diagnoses, and

[77] *Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980), *aff'd in part, rev'd in part on other grounds*, 679 F.2d 1115 (5th Cir. 1982), *opinion amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982); *see also Gates*, 376 F.3d at 336 (affirming district court injunction requiring that incarcerated people in an adult correctional facility be provided "a comprehensive mental health examination").

[78] Because of the disconnect between mental health and behavior, TJJD staff consistently view challenging behaviors as within the child's control, rather than a symptom of trauma or mental health disorder.

cognitive testing results without attempting to integrate all this information into a cohesive, current clinical plan. Even once a psychological assessment is completed, it is rarely updated to reflect changes in the child's symptoms or circumstances.[79]

TJJD's diagnostic conclusions from this assessment process do not provide meaningful guidance for treatment. Assessments typically conclude with a long list of diagnoses, many of which are repetitive and nonspecific. For example, many children at TJJD are given multiple diagnoses of behavior-related disorders (conduct disorder and oppositional defiant disorder), which largely describe the same set of problems. Often, the only impairments identified about a child's ability to function are their law-breaking behaviors. Because assessments are rarely updated, TJJD's diagnoses for children remain stagnant too.

Treatment plans resulting from TJJD's ineffective diagnoses are also inadequate. The content is generic and could apply to any child, including goals such as "improve anger management" or "decrease aggression," which do not provide a meaningful plan for intervention. Some children receive treatment plans too late. One clinician created a child's treatment plan about a year after their admission to TJJD, while another clinician created the plan four days before the child's release. Moreover, many children who should have treatment plans do not. In a random sampling of mental health records from all five facilities, only about half of the children identified with moderate or severe mental health needs had treatment plans.

Similar problems exist with TJJD's psychiatric process. Off-site psychiatrists with the University of Texas Medical Branch provide psychiatric services at TJJD. Their psychiatric assessments, which are conducted remotely over a virtual platform, are even less rigorous than the psychological assessments and generally default to behavior-related disorders without adequate exploration of other mental health issues. They often reach different diagnostic conclusions than the psychological assessments. We found no evidence that TJJD's clinicians seek to address these inconsistencies or develop an integrated treatment plan. In fact, when asked, TJJD staff stated that weekly virtual treatment team meetings enable clinicians to collaborate and ensure consistency. But only a few minutes are devoted to each child's case during these weekly meetings, which is not enough time to develop an integrated treatment plan, and inconsistencies remain unresolved.

Emma's experience illustrates TJJD's failure to provide adequate mental health assessments and treatment plans for children, especially those who have experienced trauma. She has a significant history of trauma—including family violence and sex

[79] Assessments for the children on the mental health units at Giddings are updated upon referral and intake to the unit.

trafficking—as well as both inpatient and outpatient psychiatric treatment. But TJJD's mental health assessment of Emma does not reflect this traumatic history and her treatment plan does not identify mental health care to cope with it. TJJD's clinicians did not schedule any counseling sessions with Emma until four months after her admission, despite her being recommended for counseling during intake. They then met with her sporadically, with breaks in between sessions lasting a month or more. Even then, there is no evidence that TJJD ever addressed her mental health symptoms or trauma, instead focusing on her law-breaking behavior. In the meantime, Emma experienced depression and feelings of anger and distress.

Without accurate and thorough mental health assessments and treatment planning, TJJD fails to protect children from serious harm and death. For example, two children died by suicide when TJJD failed to adequately consider critical information in assessing their needs. One child died by suicide after arriving at TJJD from a psychiatric hospital, where he had been hospitalized following a suicide attempt. Even though he was still on suicide alert status when released from the hospital, TJJD failed to consider whether he needed a safety plan or other suicide precautions. Another child died by suicide after TJJD failed to meaningfully consider the extensive information available about the child's mental health difficulties and instead classified the child as having "low mental health treatment needs."

2.2 TJJD does not provide adequate counseling services.

Given both the absence and inadequacy of treatment plans, it is no surprise that TJJD does not provide adequate counseling services.[80] We received differing reports regarding the required frequency of counseling services for children of varying mental health needs. Some of the facility clinical directors reported that children with moderate mental health needs should receive one counseling session every other week. Another facility clinical director stated that he could not respond and directed us to the TJJD mental health director. A third facility clinical director conceded that there were insufficient clinical staff to meet the children's counseling needs.

9 out of 10 children with mental health needs experience breaks between counseling sessions lasting two months or more.

As a result, the number of counseling sessions children receive is inadequate. After reviewing a random sample of mental health records from all five facilities, we found that children receive an average of 1.04 counseling sessions per month. Almost ninety percent of them have breaks in

[80] *Ruiz*, 503 F. Supp. at 1339 (explaining that minimally adequate mental health care requires individualized treatment by trained mental health professionals).

counseling sessions of two months or longer with no documented clinical reason as to why.

In many other cases, children go months without any counseling. For example, we found several children who were identified as having moderate or high mental health treatment needs who went anywhere from six weeks to thirteen months without counseling after admission. Even when children received counseling, notes from those sessions show little indication that trauma is regularly addressed with children who have trauma histories and diagnoses.

Alexander's experience highlights TJJD's failure to provide counseling services. His mother died by suicide five months before his admission to TJJD. Although his intake assessment identified this event as traumatic for Alexander and concluded he had a moderate need for counseling, he received no counseling for fifteen months. When he finally met with a counselor, the session lasted only fifteen minutes. Although both Alexander and his unit staff expressed concern about his mental health functioning—specifically his distress, anger, and self-harm—nearly a month passed before his next session. He then waited another 3.5 months for his third session. When TJJD transferred Alexander to the Violence Intervention Continuum[81] at Evins, TJJD terminated his counseling.[82] Alexander reported that by the time he saw any counselor regularly—about 1.5 years into his commitment—he had become frustrated and began acting out. Alexander's mental health struggles, left largely untreated, likely contributed to the behaviors that became the basis for TJJD moving Alexander to the Violence Intervention Continuum.

For most children like Alexander who TJJD knows have significant mental health difficulties, TJJD's promise of counseling is illusory, leaving them to manage their own symptoms while coping with the conditions of secure confinement. Children we spoke with recognized this, observing: "Sometimes, I think I'd rather be dead than be in here" because "[t]his place ain't made to rehab you."

[81] The Violence Intervention Continuum is a specialized program operated by security staff designed to help children develop skills to reduce risk factors related to violent or aggressive behavior. It includes the Intensive Intervention Program, Redirect program, and Phoenix program. The Intensive Intervention Program is the lowest level of intervention available at Evins, Mart, and Gainesville. It provides a 30-day program to twelve children per housing unit. Children in the Intensive Intervention Program are typically allowed to leave their unit for school and other essential services. Redirect is the next level of intervention and is available at Evins. It provides a 30-day program on self-contained units, meaning that children cannot leave their units. Phoenix is the most restrictive program and is available at Evins. It provides a 45-day program on self-contained units, ranging from six to ten children.

[82] We discuss the systemic problems with TJJD's practice of discontinuing mental health services for children in the Violence Intervention Continuum below.

2.3 TJJD denies mental health treatment to children in its Violence Intervention Continuum.

TJJD's policy of automatically withholding most mental health treatment for children sent to the Violence Intervention Continuum conflicts with minimum constitutional standards of care.[83] The Violence Intervention Continuum—a specialized program for children who exhibit violent and aggressive behavior run by security staff—is not a substitute for mental health treatment, which involves care by trained mental health clinicians for mental health disorders. TJJD's practice of pausing mental health treatment while children complete this program ignores that a child's violent or aggressive behavior may result from untreated mental health issues. In some cases, these behaviors can be an indirect consequence of a symptom, such as poor impulse control in a child with attention deficit hyperactivity disorder or fatigue and irritability in a child who is not sleeping due to nightmares or anxiety. In other cases, violence or aggression can reflect general problems that occur alongside—and are worsened by—a mental health disorder, such as challenges in peer interactions or general problems managing stress. For other children, violent or aggressive behavior can be a symptom of trauma that the child previously experienced. In any of these circumstances, withholding mental health treatment as a consequence is both counterproductive, since adequate treatment may be important to addressing the behavior, and punitive, since it effectively punishes the child for symptoms of a mental health disorder.[84]

TJJD offered two justifications for this practice, neither of which addresses the harm of suspending mental health treatment for children who need it. First, one facility clinical director stated that children may request to meet with a mental health professional while in the Violence Intervention Continuum. But reports from children and the mental health professionals assigned to those units—as well as records we reviewed—show that this rarely occurs. In fact, many children we spoke with were not even aware that they could make such a request. Second, TJJD's policy requires monitoring of children's mental health while they are in the Violence Intervention Continuum. But this is not a reason to pause mental health care. To the contrary, the fact that these children require monitoring by mental health clinicians supports continued treatment from those same clinicians.[85]

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[83] Children in the Violence Intervention Continuum continue to receive prescribed psychiatric medications. But without a clinician's individualized assessment and judgment, medication generally should not be employed as a stand-alone mental health treatment.

[84] TJJD takes a similar approach to children in its Capital Offender Group, a 6- to 9-month program designed to address risk factors for children with violent or aggressive offenses. Like children in the Violence Intervention Continuum, "individual therapy is paused" for these children.

[85] One facility clinical director explained that mental health treatment is suspended as a way to help children focus on better managing their behavior, which has become the primary concern. Others who offered a justification for the practice echoed that view. But this approach largely neglects the causes of

2.4 TJJD does not provide effective substance use disorder treatment for children with trauma and other mental health problems.

Because substance use as self-medication is extremely common with children who suffer from trauma and other mental health difficulties, treatment of these children requires an individualized approach to understanding the child's reasons for substance use.[86] For example, a child with a history of trauma and depression may be using substances to cope with overwhelming emotions, while another child may simply lack the skills needed to avoid peer pressure. Effective substance use disorder treatment counselors must be knowledgeable in substance use disorder intervention methods, adolescent development, mental health disorders, and the influence that trauma can have on a child's behavior.

Contrary to this principle, TJJD's substance use disorder treatment program reflects a one-size-fits-all approach destined to fail for many children. Substance use treatment counselors explicitly confirmed that interventions are identical for all children, regardless of diagnosis or individual reasons for use. Because some children must complete substance use disorder treatment to earn release, TJJD's failure to provide an effective substance use treatment program for children with trauma and mental health problems may create an insurmountable obstacle to going home.

2.5 TJJD's one-size-fits-all suicide prevention program increases the risk of harm to children.

Some of the children with mental health problems in TJJD's secure facilities express their anger and pain through suicidal ideation and self-harm. We talked to several children who had been cutting themselves and using materials they found to create and tie ligatures around their necks or otherwise harm themselves. Some of their efforts were intended to cause death, some were expressions of anger and frustration, and some were attempts to get attention when less drastic measures had failed.

While restrictions in response to suicidality may be unavoidable, limitations on movement, access to personal property, or placement in isolation should be imposed only after individualized assessments and only to the minimum extent necessary. Our experts found that TJJD's practices fail to meet this standard. Their responses are often severely restrictive and implemented in a one-size-fits-all fashion, occurring without adequate consideration of the actual imminent risk, the context of threat or

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the behavior and fails to recognize the interconnectedness between trauma and other mental health problems, substance use, and the behavior that TJJD seeks to "correct."

[86] While maintaining boundaries between therapeutic disciplines may be appropriate, an integrated approach to treatment requires the disciplines to work together to develop a comprehensive assessment and integrated treatment plan for each child. This is not the case at TJJD, where substance use treatment is provided without regard to any co-occurring mental health difficulties and mental health treatment is provided without addressing co-occurring substance use difficulties.

ideation, or the individualized treatment needs.[87] Children who engage in suicidal behavior are sometimes restrained, subjected to pepper spray, and sent to the RSU. If not sent to the RSU, their cells are stripped of their bedding, clothes, and all personal possessions. Restrictions of this magnitude should not be routine, but used only when a heightened level of risk makes these practices necessary.

Imposing unnecessarily severe levels of restriction causes harm without any incremental increase in safety. In fact, TJJD's overly restrictive approach is experienced by the child as punishment. As a result, children report that they are reluctant to share their suicidal thoughts with TJJD staff.

Madison's experience shows TJJD's overly restrictive and generic approach to suicide precautions. Madison was on suicide alert status when security staff asked her to change her clothes, purportedly concerned that her current clothing could be used for self-harm. Surveillance video shows that, as Madison stood in her cell, she refused to change and threatened to spit in the staff's face. Staff responded, "Please. Please do it," in what looked like an attempt to escalate the situation.[88] As Madison continued to stand in her doorway without moving, one of the staff whispered, "I'm going to spray," and another staff responded sarcastically, "I feel threatened. I feel terrified." When Madison did not move, staff pepper sprayed her. In the subsequent incident report, staff justified their use of pepper spray by alleging they feared for Madison's safety.

"Intervention is needed (possible [pepper] spray) if youth is engaging in self-harm and not responding to prompts to stop."

TJJD mental health counselor's note

On top of its overly restrictive approach, TJJD fails to provide children who exhibit self-harm or suicidal thoughts with adequate clinical interventions. At most, mental health counselors make periodic visits to assess any immediate danger, but there is no effort to understand the meaning behind the child's behavior, update (or create) the child's treatment plan, or work with the child to constructively manage these thoughts and feelings. The thoughts and feelings that lead children to such desperate and harmful actions are left untreated. Although suicidal behavior or ideation should be a considered a signal that more clinical intervention is needed, at TJJD, it leads to less.

[87] For example, in our Failing to Keep Children Safe from Harm Section above, we describe a child who filed a grievance about another child stealing his food trays. In the grievance, the child stated that this made him "feel like committing suicide." TJJD's response was to place the child on "constant" suicide precautions, rather than to address his complaint about his food being stolen.
[88] We also discuss Madison's experiences in TJJD custody on page 42.

FAILING TO PROVIDE APPROPRIATE SPECIAL EDUCATION & RELATED SERVICES

TJJD operates a year-round school district for children committed to its secure facilities. Each facility has a high school in a stand-alone building where children are assigned to classes based on their dorms, rather than their grade, educational needs, or disability. Instruction is provided almost exclusively through an online curriculum called Apex Learning, which is intended to be used for first-time credit, as a credit recovery system for students who have failed a middle or high school course, and expanded course access. Apex offers both core subjects (English, math, science, and social studies) as well as electives (Spanish, business law, and art appreciation).[89] It requires children to independently review content and answer multiple-choice or fill-in-the-blank questions to demonstrate mastery. TJJD's teachers act as facilitators only, answering questions when asked by children on whatever course they are completing but providing no direct instruction.[90] TJJD's school district provides education to children with disabilities.

The IDEA offers federal funds to States to help educate children with disabilities. In exchange for those funds, States must comply with several requirements.[91] Among them, States must ensure that all children suspected of having a disability are properly evaluated for eligibility for special education and related services. Once eligible, States must provide a free appropriate public education to all children. Each child receives an individualized education program, or IEP, which must include both specially designed instruction tailored to meet that child's unique needs and related services to permit them to benefit from that instruction. States must also ensure that all children's needs are re-evaluated at least once every three years. Once children turn sixteen, States must provide transition services to plan for each child's post-school activities. Finally, States must establish and follow procedures designed to protect children with behavioral challenges from repeated classroom removals and ensure parents' right to meaningfully participate in the IEP process. The IDEA applies to "all political subdivisions of the State that are involved in the education of children with disabilities," including "[s]tate and local juvenile and adult correctional facilities."[92] Yet TJJD does not comply with its requirements.

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[89] Some students also participate in career and technical education classes, including culinary arts, welding, woodshop, horticulture, auto repair, construction, and graphic arts. These courses are designed to teach practical skills, but TJJD does not always offer hands-on instruction.

[90] Direct instruction involves: (a) breaking down complex skills; (b) using modeling and thinking aloud to draw children's attention to important features; (c) systematically decreasing supports as children become proficient at demonstrating the skill or concept; and (d) creating purposeful practice opportunities with timely corrective feedback.

[91] Texas receives IDEA funds. *See* Tex. Educ. Agency, *Annual State Application under IDEA Part B & IDEA Eligibility Documentation*, https://perma.cc/F5HE-GVGW.

[92] 34 C.F.R. § 300.2(a), (b)(1)(iv).

1. TJJD fails to properly evaluate all children suspected of having disabilities.

The IDEA requires States to develop and implement an effective system to identify, locate, and evaluate all children—regardless of the severity of their disability—who may be eligible for special education and related services.[93] This is known as a "child find" system. TJJD violates this IDEA requirement.

Typically, school districts engage in organized activities throughout each academic year to identify eligible children. These activities can include a screening process to determine whether children should be referred for initial evaluations because they are struggling academically or behaviorally. Child find activities can also include public awareness campaigns to provide information to families in the languages they speak about the child find process. Finally, these activities may include tracking targeted supports and interventions provided to children for effectiveness.

TJJD's schools fail to engage in any organized activities to identify eligible children. We found no evidence that TJJD has a screening process at intake or during a child's time in custody to identify those struggling academically or behaviorally. The only standardized assessment TJJD uses is the Test of Adult Basic Education, which is limited to math and reading.[94] But TJJD does not use it to flag children with potential disabilities.[95] We also found no evidence of public awareness campaigns to explain the child find process on TJJD's website or anywhere on-site at the facilities. Although the youth handbook shares the process, it is confusing and inaccurate. For example, it accurately explains that a request for initial evaluations can be made at any time and that the school will respond to written requests within fifteen school days, but falsely suggests that requests can be made to any staff (when requests must go to certain staff, such as the director of special education or school principal). Finally, there is no system in place to track academic and behavioral interventions to identify children for referral who continue to struggle after intake. Without these organized activities, TJJD's child find system is ineffective.

TJJD identified and referred only 1 out of 575 children (less than one percent) for initial special education evaluations.

During a random 20-month review period, TJJD identified and referred for initial evaluation only one child out of 575 children—less than one

[93] 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a)(1)(i).
[94] TJJD uses untrained individuals to administer the Test of Adult Basic Education, casting doubt on the validity of any results.
[95] TJJD policy also indicates that the Test of Word Reading Efficiency (TOWRE) is used as another standardized assessment, but we found no evidence to confirm its use.

percent. At Mart, the diagnostician[96] reported that they had not conducted a single initial evaluation in the last five years. That is not because most children in custody who may be eligible already receive special education and related services. Only about thirty-three percent of children have IEPs, even though eighty-five percent have high or moderate mental health needs and are, on average, five or six grade levels behind. This suggests that TJJD fails to identify and refer other eligible children for initial evaluations. That failure includes Madison, who TJJD never referred for initial evaluations, despite her behavior leading her to spend one-quarter of her time in TJJD's custody (115 out of 458 days) in the RSU.[97]

2. TJJD systematically reduces, changes, or eliminates special education and related services, ignoring children's individualized needs.

The IEP is "'the centerpiece of the [IDEA's] education delivery system for . . . children [with disabilities].'"[98] It is a comprehensive plan developed by the child's IEP team—including teachers, school officials, and the child's parent—following a detailed set of procedures.[99] These procedures emphasize collaboration among parents and educators and require careful consideration of each child's individual circumstances.[100]

The IDEA requires that every IEP include: (1) "a statement of the child's present levels of academic achievement and functional performance;" (2) "how the child's disability affects the child's involvement and progress in the general education curriculum;" (3) "measurable annual goals, including academic and functional goals;" and (4) a "description of how the child's progress toward meeting" those goals will be monitored.[101] The IEP must also describe the "special education and related services . . . that will be provided" so that the child may "advance appropriately toward [achieving] the[ir] annual goals" and "make progress in the general education curriculum."[102] For children who may not otherwise be able to achieve on grade level, IEPs must be appropriately ambitious and include challenging objectives to ensure they make progress that is appropriate in light of their circumstances.[103]

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[96] A diagnostician is a special educator who provides assessments and evaluations to determine children's eligibility for special education services. *See* 19 Tex. Admin. Code Ann. § 239.80. At TJJD's schools, they cover all suspected areas of disability except emotional disturbance.
[97] We also discuss Madison's experiences in TJJD custody on pages 38.
[98] *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)); *see also Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 158 (2017) (explaining that the IEP "serves as the 'primary vehicle' for providing each child with the promised FAPE").
[99] *Endrew F.*, 580 U.S. at 391; 20 U.S.C. § 1414(d)(1)(B). In Texas, the IEP team is called the Admissions, Review, and Dismissal Committee.
[100] *Endrew F.*, 580 U.S. at 391 (citing 20 U.S.C. § 1414).
[101] 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(III).
[102] *Id.* § 1414(d)(1)(A)(i)(IV).
[103] *Endrew F.*, 580 U.S. at 402–03.

The IDEA similarly requires the IEP team to determine each child's placement on a continuum of educational placement options[104] after considering which services and supports that child needs to be successful and where and how those services and supports can be provided effectively. This is known as the IDEA's least restrictive environment principle, which requires that children with disabilities receive special education and related services in the same classroom as children without disabilities to the maximum extent appropriate.[105]

TJJD consistently reduces, changes, or eliminates children's special education and related services, regardless of their "present levels of achievement, disability, and potential for growth."[106] Of the 74 IEPs we reviewed where the child's IEP from their prior school was available, 73 revealed that TJJD made significant changes. These changes de-individualize children's IEPs in violation of their right to a free appropriate public education under the IDEA.

Comparison of IEPs at TJJD vs. Prior Schools

- **In nearly 70 percent of IEPs, TJJD recommends the bare minimum special education supports, even though many of these same children received substantially more support in their prior schools.**
- **In nearly 85 percent of IEPs, TJJD reduces special education and related services by an average of nearly 5 hours per week.**
- **In every IEP, TJJD uses generic, boilerplate annual goals.**
- **In nearly every IEP, TJJD eliminates children's behavior intervention plans.**

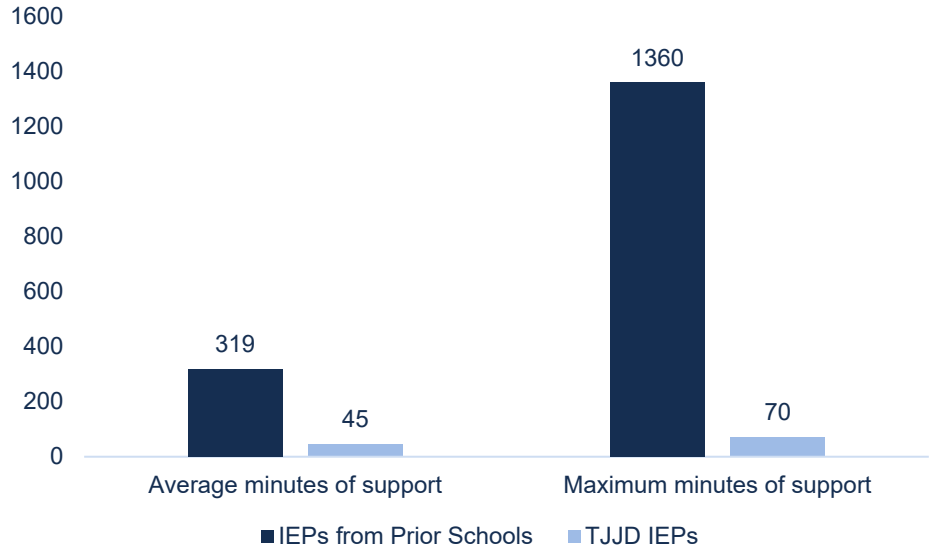
TJJD almost uniformly recommends minimal, if any, specialized programs or services for children with disabilities, disregarding the intensity of their needs in favor of the only supports that TJJD has available. Indeed, nearly seventy percent of the IEPs we reviewed recommended the bare minimum supports for children with disabilities in TJJD's custody, even though most of those children had previously received substantially more support in their prior schools. TJJD explained these changes by claiming to provide all special education supports in an inclusive setting. But TJJD's

[104] To comply with the IDEA, school districts must offer a continuum that includes, among others, general education classes, special education classes, and specialized schools. 34 C.F.R § 300.115.
[105] *Id.* § 300.114(a)(2).
[106] *Endrew F.*, 580 U.S. at 400.

general education classes are not inclusive. Although special educators enter the classroom for brief periods to work with students, they do not provide any specialized instruction to children with disabilities and do not collaborate with general educators to plan or deliver lessons, both hallmarks of inclusion. We also found no evidence that TJJD offers supplementary aids and services to help children progress in general education, such as providing small group instruction outside the classroom for some portion of the day (known as “resource room”). Without resource room, TJJD fails to properly implement at least twenty children’s IEPs that require it. TJJD’s failure to consider individualized needs prevents children who require more intensive supports from making meaningful progress.

TJJD also dramatically reduces the amount of support children receive from a special educator or related service provider once in general education classes. Nearly eighty-five percent of IEPs we reviewed reflect a reduction in services by an average of nearly five hours per week. For example, TJJD reduced Sophia’s special education services from 300 minutes daily to zero. TJJD also reduced Christian’s special education services from 240 minutes daily to forty-five minutes every two weeks. TJJD’s systematic reduction of services is not based on children’s individualized needs.

Figure 4: TJJD’s reduction in children’s special education support per week



In addition, TJJD-created IEP goals are generic, including the same measure of success and boilerplate language from Texas’ state learning standards that all children are expected to achieve. Matthew’s IEP is one example of TJJD’s inappropriate alteration of IEP goals. Matthew is a 17-year-old with an intellectual disability and “severe cognitive deficits” who requires explicit instruction in functional skills, reads on a third-grade level, and has failed multiple state assessments. Matthew is in the ninth

grade for the second academic year. Given his intellectual disability, TJJD should have created individualized goals that modified the ninth-grade curriculum with adapted texts, reduced complexity of assignments, and a slower pace. Instead, TJJD rewrote his individualized goals to reflect the language of sixth and seventh grade state standards, two grades he already completed.

Finally, TJJD automatically eliminates behavior intervention plans from children's IEPs without considering their individualized needs. Behavior intervention plans should outline strategies for school staff to prevent problematic behaviors and teach skills designed to promote positive behaviors. Half of the IEPs we reviewed from prior school districts included a behavior intervention plan. TJJD eliminated nearly all of them after admission to its secure facilities. This includes Mia's, despite her being housed in the Behavior Stabilization Unit at the time of our visit and receiving 163 incident reports and sixty-six referrals to the RSU in a single year. In the rare times where TJJD retains the child's behavior intervention plan, it does not update that plan to reflect the child's placement in TJJD. For example, Andrew's behavior intervention plan from his prior school district includes interventions such as sending him to the office, calling his family, or giving him detention, none of which are available at TJJD.

Sophia's IEP illustrates the deficiencies we found in TJJD's IEPs. At her prior school, she received all academic instruction in a class taught by a special educator for children with IEPs only. She also had a behavior intervention plan that noted that she "will get herself involved when she sees peers that are becoming escalated," but can be "easily redirected." Sophia succeeded in school with those supports**.**

Once at TJJD, the IEP team overhauled her IEP. TJJD placed Sophia in the general education classroom full-time without explaining how it met her individualized needs. TJJD removed all services provided by a special educator, noting they were "not needed at this time" with no explanation. TJJD also changed her IEP to reflect that her behavior no longer impeded learning, without providing any evidence, and replaced her behavior intervention plan with generic language.

Without these individualized supports and services, Sophia earned failing grades in each of her classes at Ron Jackson and began exhibiting problematic behaviors. Yet when the IEP team convened to discuss her struggles, it made no changes to her IEP. In fact, in every record we reviewed where an IEP team convened to discuss children failing one or more classes, the IEP team made no changes to the child's special education and related services, despite TJJD's obligation under the IDEA to do so to ensure a child's meaningful progress. Instead, TJJD blamed children's poor academic performance on their "lack of effort and lack of completion of assignments."

3. Children whose behavior impedes learning do not receive required behavioral supports.

TJJD violates the IDEA's requirement that it "consider the use of positive behavioral interventions and supports[] and other strategies" when a child's behavior impedes learning.[107] The first step in this process is typically to conduct a functional behavioral assessment, which gathers information to identify which behavioral challenges need to be addressed and their possible causes. The IEP team should use that assessment to create or update a behavior intervention plan. Over a nineteen-month period, TJJD did not conduct any functional behavioral assessments or create a single behavior intervention plan for children who exhibited ongoing, intense emotional or behavioral challenges in the classroom, even when specifically requested to do so by advocates.[108]

TJJD did not conduct a single functional behavioral assessment or create a single behavior intervention plan for children who exhibited ongoing, intense emotional or behavioral challenges in the classroom.

TJJD special education staff are not adequately trained about the IDEA's requirements related to positive behavioral supports. None of the special educators we interviewed could identify any formal training they have received on how to conduct a functional behavioral assessment or create and implement a behavior intervention plan. Teachers' lack of training contributes to TJJD's failure to provide children with disabilities appropriate behavioral supports.

Rather than providing these supports, TJJD disproportionately subjects children with disabilities to disciplinary practices. These children receive almost twice as many incident reports as children without disabilities. Children classified with emotional disturbance on their IEPs receive 2.6 times more incident reports than any other children in TJJD's secure facilities. Children with disabilities also experience about twice as many referrals and admissions to the RSU. Those numbers are even higher for children with emotional disturbance, who experience nearly three times as many referrals and admissions. Once admitted, children with disabilities stay twice as long too, averaging over twelve days or 288 hours. Again, the numbers are higher for

[107] 20 U.S.C. § 1414(d)(3)(B)(i).

[108] School districts need not conduct functional behavioral assessments if the child's IEP "adequately identifies [their] behavioral impediments and implements strategies to address that behavior." *B. S. v. Waxahachie Indep. Sch. Dist.*, No. 22-10443, 2023 WL 2609320, at *6 (5th Cir. Mar. 23, 2023) (per curiam) (unpublished) (citing *M.W. v. N.Y.C. Dep't of Educ.*, 725 F.3d 131, 140 (2d Cir. 2013)). As discussed above, TJJD-created IEPs systematically eliminate behavior intervention plans and de-individualize behavioral goals once children enter its secure facilities.

children with emotional disturbance, whose stays are three times as long, averaging nearly seventeen days or nearly 400 hours. TJJD's use of disciplinary practices in lieu of appropriate behavioral supports violates the IDEA.

4. TJJD's special educators do not provide any specially designed instruction.

The IDEA requires that children with IEPs receive specially designed instruction. Specially designed instruction involves special educators changing—based on a child's individualized learning needs—the "content, methodology, or delivery of instruction" to ensure that the child can achieve their annual goals and master grade-level concepts.[109] Specially designed instruction can address any area of individual need, including academic, behavioral, social, communication, health, and functional. Examples include intensive small group or one-on-one instruction for children who lack core mathematics skills, explicit instruction in using supports such as a self-monitoring checklist for a child who exhibits executive functioning deficits, or implementing a schedule to reinforce on-task behaviors and ignore verbal outbursts from a child with emotional and behavioral disabilities. The delivery of specially designed instruction must be closely monitored to ensure it achieves the desired results.

TJJD provides no specially designed instruction to children with disabilities. Instead, its special educators enter classrooms, ask if anyone needs help, provide 1:1 assistance to children who request it, and document in logs that they provide special education services if they happen to assist children with disabilities. But this 1:1 assistance does not include direct, explicit instruction tailored to any child's unique learning needs. It includes no changes to content, methodology, or delivery of instruction. And it does not address any child's IEP goals. Instead, the special educators' 1:1 assistance is limited to, for example, helping children locate answers to questions for Apex's online curriculum. Children with disabilities at all five facilities unsurprisingly express frustration with their inability to understand what they are learning.

A typical example of TJJD's lack of specially designed instruction occurred during our observations of a Ron Jackson classroom. While a child struggled to answer questions on Apex, a special educator sat next to him for nearly twenty minutes. At one point, the child remarked, "I don't even know what it's asking me." The special educator did not provide any direct instruction tailored to the child's individualized needs, nor adjust his methodology or delivery to facilitate the child's learning. Instead, the special educator's assistance included generic suggestions to read the question aloud and look in Apex

[109] 34 C.F.R. § 300.39(b)(3).

for the answer. Without specially designed instruction, the child failed to complete the assignment.

The lack of specially designed instruction is especially problematic in reading, given that forty percent of children with disabilities in TJJD's secure facilities read below the third-grade level and more than half of children with disabilities read below the fifth-grade level, even though most are in high school. All the IEPs we reviewed included no specially designed instruction in reading. These IEPs also excluded any IEP goals related to reading, preventing the use of such goals to guide instruction and monitor progress. When asked which reading supports they provide to children with disabilities, TJJD's special educators responded that they "encourage them to read," "read to them," and let Apex read to them "if they'll let it." None of these activities qualify as specially designed instruction.

5. TJJD fails to provide related services to eligible children due to a lack of qualified related service providers on staff.

The IDEA requires States to provide related services to children with disabilities who need them to benefit from special education.[110] Related services can include speech-language pathology and audiology services, physical and occupational therapy, social work, psychological services, and counseling.[111] A child's evaluations determine whether they are eligible for a particular related service.[112] Once the child is eligible, the related service provider should work with the IEP team to create an annual goal that supports the child's individualized needs. Specific details about the related service—such as how it will be delivered, how often, for how long, and where—should all be in the child's IEP.[113] The related service must be implemented by qualified or licensed related service providers as set forth in the IDEA.[114] Any failure to deliver related services not only leads to children with disabilities struggling academically, but may also impact their ability to execute essential life tasks, like navigating social settings, regulating their emotions, or adequately expressing themselves.

Despite the importance of related services, none of TJJD's schools have qualified related service providers on staff. We could not identify any such providers during our site visits to each facility's high school. TJJD also failed to identify any providers when asked, providing a list of teachers who also serve as academic counselors. But it is

[110] 20 U.S.C. § 1414(d)(1)(A)(i)IV); 34 C.F.R. § 300.1.
[111] 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34.
[112] 20 U.S.C. § 1414(a)-(b).
[113] *Id.* § 1414(d)(1)(A)(IV).
[114] 34 C.F.R. § 300.34.

unclear whether these teachers are qualified under the IDEA to provide related services like counseling or psychological services.

None of TJJD's five schools have qualified related service providers on staff. None of the schools provide related services.

TJJD's lack of qualified providers prevents eligible children from receiving related services. For example, of the IEPs we reviewed at Ron Jackson, twenty-one include related services, specifically counseling or psychological services. The frequency and duration of services children are entitled to receive ranges from twenty minutes per semester to fifteen minutes every two weeks. Without a qualified provider, these children miss out on 40–360 minutes of related services each academic year. Ron Jackson's school principal confirmed this IDEA failure, stating that no related services are delivered at that facility. We observed a similar pattern of failing to provide related services—including counseling, psychological services, and speech-language pathology services—to children at TJJD's other four secure facilities. Without related services from qualified providers, children cannot receive a free appropriate public education under the IDEA.

6. TJJD fails to conduct required evaluations for children with disabilities at least once every three years.

School districts like TJJD's must conduct an evaluation of each child with an IEP "at least once every [three] years, unless the parent and the [school district] agree that [it] is unnecessary."[115] This is called a triennial evaluation. The triennial evaluation provides an objective look at how each child is doing in each area of disability. It also confirms whether a child remains eligible for special education services and identifies appropriate services for their new IEP. Despite the importance of these evaluations, TJJD routinely fails to provide them.

TJJD has not conducted a single triennial evaluation for children with disabilities. Instead, staff rely upon prior evaluations, even when they are six years old or date back to elementary school.

From June 2021 until June 2023, TJJD conducted no triennial evaluations for children with disabilities. At Mart, the diagnostician reported that they had conducted a triennial only once: "It doesn't happen very often." Diagnosticians at Gainesville and Evins reported they had never conducted a triennial while

[115] 20 U.S.C. § 1414(a)(2)(B); *see also* 34 C.F.R. § 300.303. Although the IDEA provides a mechanism for waiving the triennial evaluation, it is almost always a bad idea to do so, as children can change significantly in three years. We found no evidence that TJJD asks parents to waive this requirement.

working for TJJD. A diagnostician at Ron Jackson remarked that they would not conduct a triennial evaluation unless the prior evaluations were at least six years old. Instead, TJJD's IEP teams review prior evaluations to make recommendations for services, even where those evaluations date back to elementary school for high school students or a child's current performance suggests that they may need additional or different support. TJJD's failure to provide triennial evaluations leaves IEP teams without essential information to ensure a free appropriate public education under the IDEA.

7. TJJD fails to provide transition planning and services.

Once children with disabilities turn sixteen years old, the IDEA requires their IEPs to include transition planning that is "designed to . . . facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation."[116] Their IEPs must include "appropriate measurable postsecondary goals . . . related to training, education, employment, and . . . independent living skills" and "transition services (including courses of study) needed to assist the child in reaching those goals."[117] Their IEPs must also include measurable annual goals that each child is expected to achieve by the end of the year.[118] Transition planning is particularly important for children with disabilities in juvenile justice facilities, as they typically have poor post-release education and employment outcomes. Yet TJJD fails to prepare children with disabilities for this transition.

Many IEPs we reviewed include transition goals only (with poorly developed or missing transition plans), but these goals are largely inappropriate. For example, Aiden's transition goal states that he "will attend a 1-2-year technical school with emphasis in airplane mechanics, and upon completion of that certification, Aiden will be employed as an airplane mechanic." While this may be an appropriate postsecondary goal for Aiden, it is not an appropriate annual goal for his IEP, given that there is no evidence he can leave TJJD's secure facilities to achieve it. Instead, TJJD should have created an annual goal that would bring Aiden one step closer to becoming an airplane mechanic post-release, such as comparing the admission requirements for airplane

[116] 34 C.F.R. § 300.43(a)(1); *see also Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 798 (5th Cir. 2021) (explaining that the IDEA requires that schools provide older children "a transition plan and transition services to help th[em] emerge from high school into the real world of postgraduation life"). In Texas, this planning must start two years earlier than the IDEA requires, when children turn fourteen years old. Tex. Educ. Code Ann. § 29.0111.
[117] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).
[118] *Id.* § 1414(d)(1)(A)(i)(II).

mechanic programs at different technical schools or completing applications for admission and financial aid.

None of the IEPs we reviewed identify the transition services—including courses of study, related services, or preparation for post-school experiences—that TJJD will provide to children while in custody. Nor can TJJD staff identify who is responsible for providing transition services. Some special educators told us that vocational teachers provide these services, yet vocational teachers denied playing any role.[119] Other special educators reported that the re-entry specialist provides these services, but we found no evidence that this is true. Without any special education staff responsible for coordinating transition services, there is no one to ensure that children work on their transition goals and receive such services.

8. TJJD fails to hold manifestation determination reviews designed to protect children with behavior-related disabilities from repeated classroom removals.

If a school seeks to remove a child with disabilities from their current placement for more than ten days in a school year, the IDEA requires that an educational team conduct a manifestation determination review.[120] This review involves an evaluation of all relevant information from the child's IEP, teacher observations, and their parent to answer two questions: (1) whether the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or (2) whether the conduct directly resulted from a failure to implement the child's IEP.[121] If the team answers yes to either question, then it must conduct a functional behavioral assessment, develop or modify the child's behavior intervention plan, and return the child to their original educational placement.[122] TJJD fails to conduct manifestation determination reviews for children who have been repeatedly removed from class for behavior-related reasons.

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[119] Even if vocational teachers provided transition services, TJJD's career and technical education programming is inadequate. These courses are not offered as part of the daily school schedule, resulting in children being pulled from their general education classes to attend. The same vocational courses are also not available at all five facilities. When a child with a disability transfers between facilities, their progress in any course stops. This is particularly true at Ron Jackson, where only computer technology is available, and at Evins, where no hands-on instruction is possible because of staffing shortages.

[120] 20 U.S.C. § 1415(k)(1)(B), (E). The IDEA specifies that "the [school district], the parent, and relevant members of the IEP Team (as determined by the parent and the [district])" must conduct the manifestation determination review. *Id.* § 1415(k)(1)(E)(i).

[121] *Id.* § 1415(k)(1)(E).

[122] *Id.* § 1415(k)(1)(F), (G); *see also* Tex. Educ. Code Ann. § 37.004. There are limited special circumstances in which the school may remove a child from their educational placement for more than ten school days regardless of disability, including possession of weapon or illegal drugs on school property or where the child causes "serious bodily injury" that involves "a substantial risk of death," "extreme physical pain," "protracted and obvious disfigurement," or "protected loss or impairment of the function of a bodily member, organ, or mental faculty." 20 U.S.C. § 1415(k)(7)(D); 18 U.S.C. § 1365(h)(3).

TJJD does not track the amount of instructional time lost through classroom removals, making it impossible to determine when a child has been removed for more than ten school days and a manifestation determination review must be held. TJJD sends children who disrupt learning to a dedicated room at each high school intended as short-term breaks and to the RSU, neither of which TJJD classifies as removals from the child's current placement. But any instance in which a child with a disability is removed from their current placement counts toward the need for a manifestation determination review.[123]

Between June 1, 2021, and January 10, 2023, TJJD reported conducting zero manifestation determination reviews in any of its five secure facilities. Because it fails to hold these reviews, TJJD also does not conduct or review functional behavioral assessments and create or update children's behavior intervention plans. This prevents children who exhibit challenging behavior from receiving appropriate behavioral supports "designed to address the behavior violation so it does not recur."[124]

Over approximately 18 months, TJJD did not hold a single manifestation determination review in any of its five schools.

Natalie's experience highlights why manifestation determination reviews are necessary. During her first month in TJJD's custody in August 2022, Natalie received eight RSU referrals, where she spent nearly 150 hours. Even though Natalie has an IEP for behavior-related disabilities, TJJD removed her behavior intervention plan from her prior school's IEP at her initial IEP meeting in September 2022. For the next three months, Natalie spent over 500 hours in the RSU. From May through July 2023, she spent over 600 hours in the RSU. Since then, TJJD staff continued to refer Natalie to the RSU, but stopped documenting the time, dates of admission, or rationales. During this year-plus span, TJJD staff did not hold a single manifestation determination review for Natalie, despite her classroom removals far exceeding ten school days in an academic year. To explain this decision, a special educator at Mart remarked: "Like a male animal, they have to take some time to adjust to their new setting."

TJJD's failure to hold manifestation determination reviews means that it routinely changes children's educational placements for disciplinary reasons without following the IDEA's procedural requirements. For example, although parents must participate in any IEP meeting that makes decisions about the educational placement of their child,[125] we found no evidence that TJJD ever convenes these meetings when changes

[123] 34 C.F.R. §§ 300.530, 300.536.
[124] 20 U.S.C. § 1415(k)(1)(D).
[125] *Id.* § 1414(e); 34 C.F.R. § 300.501(c).

in placement occur. We also found no evidence that TJJD revises children's IEPs to reflect changes in placement to self-contained units, such as when TJJD admitted Natalie to the Behavior Stabilization Unit in early 2023. Instead, children's IEPs continue to state that their educational program is general education, suggesting they attend school with all other children.

TJJD similarly ignores the IDEA's requirement that children with disabilities removed from their educational placements for disciplinary reasons—whether justified or not—still receive educational services necessary "to participate in the general education curriculum" and "progress toward meeting the[ir IEP] goals."[126] Indeed, children in the RSU at TJJD's secure facilities do not receive any general or special education services. Children in self-contained housing units—like the Violence Intervention Continuum, Behavior Stabilization Unit, and Crisis Stabilization Unit[127]—also fail to receive general and special education services consistent with their individualized needs or with those provided in TJJD's general education classrooms. In some cases, staffing shortages have meant that they do not receive instruction at all.

9. TJJD routinely excludes parents from the IEP process.

The IDEA requires that parents have a chance to play "a significant role" in the development of their child's IEP.[128] Parents must provide consent for initial evaluations and for special education services.[129] Parents also serve as members of the team that develops the IEP,[130] where their "concerns" about how to "enhanc[e]" their child's education must be considered.[131] The IEP team must likewise ensure that parents "are members of any group that makes decisions on the educational placement of the child"

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[126] 20 U.S.C. § 1415(k)(1)(D)(i). These IDEA "protections apply regardless of whether a [child] who violates a code of student conduct is subject to discipline in the facility or removed to restricted settings, such as confinement to the [child's] cell or 'lockdown' units." Letter from Melody Musgrove, Dir., Off. of Special Educ. Programs, & Michael K. Yudin, Acting Assistant Sec'y, Off. of Special Educ. & Rehab. Servs., to Colleague 5, U.S. Dep't of Educ., Off. of Special Educ. & Rehab. Servs. (Dec. 5, 2014), https://perma.cc/F95R-GWS4; *see also V.W. v. Conway*, 236 F. Supp. 3d 554, 587 (N.D.N.Y. 2017) (finding plaintiffs demonstrated they are substantially likely to succeed on the merits of their IDEA claims where they alleged that "the routine use of solitary confinement . . . in response to behavioral issues" violates the manifestation hearing requirement of the IDEA and that the distribution of work packets to children with disabilities in solitary confinement violates the requirement that "the education provider must continue to provide the services necessary to 'enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP'") (internal citations omitted).

[127] This self-contained unit is for up to eight children with "immediate and significant mental health issues that threaten the safety of themselves or others." The Crisis Stabilization Unit exists at Giddings only. It is designed to "[p]sychiatrically stabilize youth experiencing a behavioral health crisis" through "[i]ncreased psychiatric oversight" and "onsite unit support from nurses." According to TJJD policy, children must be transferred out of the Crisis Stabilization Unit within ninety days after the admission hearing, unless an extension is granted.

[128] *Schaffer v. Weast*, 546 U.S. 49, 53 (2005).

[129] 20 U.S.C.§ 1414(a)(1)(D).

[130] *Id.* § 1414(d)(1)(B).

[131] *Id.* § 1414(d)(3)(A)(ii).

and revise the IEP to address information parents provide.[132] To protect parents' informed involvement, the IDEA includes several procedural safeguards. For example, States must ensure that one or both parents are present at all IEP meetings or given the opportunity to participate.[133] States must also provide an opportunity for parents to examine all records,[134] send prior written notice to parents in their native language any time they propose to initiate or change (or refuse to initiate or change) evaluations or IEP recommendations,[135] and create an opportunity for mediation or to present a complaint when parents disagrees with their child's special education services.[136] "A central purpose of the parental protections [under the IDEA] is to facilitate the provision of a free appropriate public education, which must be made available to the child in conformity with the [IEP]."[137]

TJJD staff do not adequately ensure that parents are equal participants in the IEP decision-making process. Although TJJD must provide written notice of an IEP meeting to all parents five school days before the meeting and reschedule if the date, time, and location does not work for the parent, staff routinely request that parents waive their right to this five-day notification period. Once waived, TJJD staff provide insufficient notice to permit parents to attend. For example, TJJD's first attempt to contact Andrew's mother about his IEP meeting was via email on June 1, 2023, the same day the meeting took place. Christian reported that TJJD tried calling his mother once as his IEP meeting began. When she did not answer, the IEP team held the meeting without her. She had not attended any IEP meetings since Christian's admission to TJJD in October 2022, despite regularly attending all his IEP meetings at his prior school. TJJD's exclusionary practices cause the IEP team to lose a key perspective from parents about how to support their child's unique needs.

Nor does TJJD comply with the IDEA's procedural safeguards related to challenging recommended services, which protects parents' informed involvement in the process. Although TJJD includes a notice of these safeguards and a "Parent's Guide to the Admission, Review, and Dismissal Process" on its website, TJJD's exclusion of parents from IEP meetings makes it less likely that parents will challenge the IEP team's recommendations, as evidenced by no parents exercising their right to request mediation or file a due process complaint from June 2021 through September 2023. Without parents' continued presence throughout the IEP process, children with

[132] *Id.* § 1414(d)(4)(A), (e).
[133] 34 C.F.R. § 300.322.
[134] 20 U.S.C. § 1415(b)(3)–(4).
[135] *Id.* § 1415(b)(5)–(6).
[136] *Id.*
[137] *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 524 (2007) (citing 20 U.S.C. § 1401(9)) (internal quotation marks omitted).

disabilities may lose their best and most knowledgeable advocate to ensure that their IEP results in a free appropriate public education.

10. TJJD's reliance on the online Apex curriculum, combined with lost instructional time, compounds TJJD's IDEA failures.

Apex's online curriculum—the main method of teaching new material in TJJD's schools—sets up children with disabilities for failure. To be successful using Apex, students need solid reading and test-taking skills, the ability to work independently, and prior knowledge of the material. But TJJD expects Apex to teach children new, unfamiliar information. With few exceptions, teachers outsource to Apex the content of all lesson plans, the sequence in which children learn new information, how that information is presented, and how children must show mastery. TJJD provides no direct teacher-led instruction.[138] Instead, TJJD expects children to use Apex to teach themselves. For children who are already multiple grade levels behind, especially those with disabilities, that is impossible.

Figure 5: TJJD classroom seating arrangement for Apex instruction



TJJD's reliance on Apex is particularly concerning with respect to reading instruction. To earn their release, children who are behind in reading must complete a reading program that complies with Texas law.[139] TJJD purports to provide this required reading program through Apex-based courses: Reading Horizons, Foundations in English I, or Foundations in English II. Despite Texas law requiring individualized

[138] TJJD's reliance on Apex also means that its general educators do not offer any differentiated instruction, a hallmark of effective teaching. This type of instruction involves adapting lesson plans to respond to children's different learning styles. Examples include pulling small groups to re-teach an idea to struggling learners or extend the knowledge or skills of advanced learners, offering manipulatives, allowing children to work alone or with a buddy, and making sure there are places to work in the classroom quietly and without distraction. We observed no evidence of differentiated instruction at any of TJJD's schools.
[139] Texas law requires TJJD to provide at least sixty minutes of individualized reading instruction to all children who demonstrate deficits in reading, even if those children are not eligible for special education services. *See* Tex. Educ. Code Ann. § 30.106.

instruction, none of these courses provide it.[140] Given the inadequacies of TJJD's reading program, it is hard to imagine how any child—including one several grades behind or with a reading disability—can meaningfully complete it. Indeed, Ashley struggled to meet this requirement, contributing to two separate extensions of one month each to her time in TJJD's custody.

An example from a Mart classroom highlights the problems with TJJD's use of Apex. We observed a general educator direct children to log into Apex at the start of the class period. She then sat at her desk and logged into her own computer. For about forty-five minutes, security staff engaged several students in a loud discussion of non-academic topics, including smoking marijuana and cigarettes, what prisons are like in Russia and Mexico, being like DeShaun Watson (an NFL player accused of multiple sexual assaults), and why a high school diploma is better than a GED. During this time, Jonathan, a child with disabilities, attempted multiple quizzes on Apex. He completed the first quiz within two minutes, faster than we could read the quiz's questions. Jonathan received a score of twenty percent. Immediately after, he started another quiz, answering about seventeen questions within sixty seconds. Jonathan failed that quiz. He then started another quiz, answering about thirty questions within sixty seconds. Jonathan failed that one too. He continued this pattern with three other quizzes before signing out of Apex and joining the conversation happening in the room. At no point did a general or special educator offer Jonathan any instructional support. Instead, the only interaction the general educator had with the children in her classroom was to threaten them once that they would have to go back to working on Apex if they did not stop cursing.

TJJD's daily school schedule also does not allow for adequate instructional time, impacting the potential of children with disabilities to make meaningful progress. Even if TJJD complies with its own school schedule, children receive only sixty percent of the instructional minutes that Texas law requires. Lengthy transitions and transportation issues further decrease instructional time. At Mart, for example, the different dorms of female students arrived between fifteen and forty-five minutes late on three separate days during our site visit. At Ron Jackson, the girls began school almost twenty-five minutes late and transitioned to lunch over thirty minutes early on two separate days during our site visit. The total amount of lost instructional time for the Ron Jackson girls equaled twenty-five percent of their school day. When instructional time is lost or never offered at all, TJJD compounds its IDEA failures.

[140] *Id.* TJJD acknowledges that these three courses are insufficient, noting in its Reading Program Curriculum that "students still needing direct phonics instruction may have this need addressed during one-on-one/small group time." But we found no evidence that children received this instruction.

DISCRIMINATING AGAINST CHILDREN WITH DISABILITIES

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[141] The ADA's protections extend to individuals with physical and mental impairments that substantially limit one or more major life activities. To establish a Title II claim, an individual must demonstrate: (1) that they are a qualified individual within the meaning of the ADA; (2) that they are being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or are otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of their disability. Title II covers state correctional institutions, including those for children.

TJJD discriminates against children with disabilities in two ways. First, by failing to provide reasonable modifications, TJJD denies children with disability-related behavioral needs access to programs required for their release. Second, TJJD denies the same children equal opportunity to benefit from education once placed in TJJD's self-contained programs. Both failures violate the ADA and undermine any rehabilitative purpose in their commitment to TJJD.

1. TJJD's disability discrimination prevents children from earning their release and creates a pipeline to prison.

The ADA imposes an affirmative obligation on public entities like TJJD to make reasonable modifications to ensure children with disabilities can access programs, unless such modifications "fundamentally alter the nature of the service, program, or activity."[142] TJJD's decision to refer children with known disability-related behavioral needs to the Violence Intervention Continuum, where they cannot access programs required for their release, results in disability discrimination. This discrimination prolongs some children's time in TJJD's custody and results in other children's transfer to prison as early as their sixteenth birthday.[143]

When children exhibit challenging disability-related behaviors, TJJD often refers them to one of its Violence Intervention Continuum programs: the Intensive Intervention

[141] 42 U.S.C. § 12132.
[142] 28 C.F.R. § 35.130(b)(1)(i), (ii), (7).
[143] Most children in TJJD's secure facilities receive indeterminate sentences, meaning they are given a minimum length of stay (from 3–24 months) based on their offense and risk level. A smaller group of children receives determinate sentences, meaning that they are given a minimum period of confinement (from 1–10 years) based on their offense. All children must complete this time before demonstrating their eligibility for release.

Program, Redirect, Phoenix, or Phoenix Max. These programs mainly focus on managing violent and aggressive behavior through graduated levels of restrictions.

Once it admits children to the Violence Intervention Continuum, TJJD denies them access to programs necessary to demonstrate their eligibility for release. Children lose credit for any progress they have made in required treatment programs, including those that target children with offenses involving sexual behavior[144] or violence and aggression[145] as well as children with confirmed or suspected substance use disorder.[146] As discussed in the next section, access to education is significantly limited. Yet children are still expected to complete two statutorily required programs offered exclusively at school: positive behavior support system (all children) and reading improvement (struggling readers only). If placed in Redirect or Phoenix, children likewise lose their current stage and their ability to earn additional stages in TJJD's behavior management system for at least twenty-one-days and often longer.[147] But they must achieve the highest stage for release.

Although TJJD refers children to the Violence Intervention Continuum because of their challenging behavior, it fails to provide behavioral and mental health supports to prevent that behavior from reoccurring once they are there. TJJD purports to offer behavioral support plans to a small subset of children and update all children's individual case plans. But its behavioral support plans consist of generic strategies that could apply to any child in any setting (such as "be consistent" and "remind him of his strengths/goals") and are not tracked for effectiveness. And its individual case plans list problematic behaviors without identifying specific behavioral interventions staff will implement. TJJD also halts all mental health services, except psychotropic medication. But adequate treatment can be key to addressing challenging behavior. The lack of behavioral and mental health supports sets children with disabilities up to fail—remaining stuck in the Violence Intervention Continuum without access to programs necessary to earn release—when they cannot manage their complex behavioral needs on their own.

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[144] The Sexual Behavior Treatment Program is unit-based and offered at Gainesville only. A licensed sex offender treatment provider manages the program, which offers individual, group, and family counseling.
[145] The Capital & Serious Violent Offender Program includes three levels of intervention: Aggression Replacement Therapy, Power Source, and Capital Offender Group. Aggression Replacement Therapy is a 12-week program. Power Source is a 12- to 16-week program. Capital Offender Group is a 6- to 9-month program. Aggression Replacement Therapy and Power Source are offered at all five facilities, while Capital Offender Group is offered at Gainesville and Giddings only.
[146] The Alcohol & Other Drug treatment program includes individual and group counseling, life skills training, and Aggression Replacement Therapy. It is offered at all five facilities.
[147] In Redirect, children are demoted at least one stage and are ineligible for promotion until they earn their way to the fourth level of Redirect programming, which takes at least twenty-one days. In Phoenix, children are demoted to the lowest stage and are ineligible for promotion until they earn their way back to Redirect (including the fourth level of Redirect programming once there) or general programming.

Languishing in the Violence Intervention Continuum results in significant extensions to children's time in TJJD's custody. TJJD's Review & Release Panel examines the files of children with indeterminate sentences once their Minimum Lengths of Stay approach and recommends releasing them to the community or extending their sentence. Of the sample we reviewed over a 13-month period, the Review & Release Panel voted to extend one hundred percent of children with disabilities at least once and ninety-three percent of children with disabilities at least twice, all of whom spent time in the Violence Intervention Continuum. On average, TJJD extended these children's sentences by eight months—1.6 times longer than their prior Minimum Lengths of Stay and a roughly sixty percent increase in their time in TJJD's custody. The Review & Release Panel most often votes to extend children's sentences because they fail to complete required treatment programming or continue to exhibit challenging behaviors. But the Review & Release Panel does not consider children's disabilities and their resulting limitations when making recommendations, nor does it assess whether TJJD's programming meets children's needs. Instead, TJJD continues to blame children for their failure to make progress toward rehabilitative goals, no matter how children's disabilities impact their ability to do so.

Over a 13-month period, TJJD's Review & Release Panel voted to extend 100 percent of sentences for children with disabilities at least once and 93 percent of their sentences at least twice. On average, TJJD added eight months to their sentences.

Luis' experience illustrates how TJJD's use of the Violence Intervention Continuum impacts children with indeterminate sentences. Luis is eligible for special education services based on Other Health Impairment, a disability category that covers his attention deficit hyperactivity disorder. He has also been diagnosed with conduct disorder, oppositional defiant disorder, and several substance use disorders. From October 2022 to October 2023, nearly all of 370 incidents that described his rule violations involved disability-related behavior, such as being non-compliant, disruptive, and aggressive.[148] TJJD admitted him to the RSU nearly 80 times during this period. Rather than considering whether Luis' behavior is a limitation related to one of his disabilities and providing reasonable modifications like behavioral supports to address the underlying behaviors, TJJD cycled Luis through the Intensive Intervention Program

[148] Children with attention deficit hyperactivity disorder demonstrate difficulty listening, focusing, and staying on task; fidget and move about constantly; and act without thinking or have difficulty with self-control. Children with conduct disorder or oppositional defiance disorder typically exhibit an inability to follow rules. Finally, children experiencing withdrawal from substance use often display anger, irritability, and depression.

(twice), Redirect, Phoenix, the Behavior Stabilization Unit, and the Crisis Stabilization Unit. The Review & Release Panel reviewed his file five separate times. Each time, the Review & Release Panel noted that he had not completed his required treatment programs, either because he was in the Violence Intervention Continuum (where he could not enroll in those programs) or because his disability-related behavior (which could be prevented with behavioral supports) interfered with treatment. In the last extension we reviewed, the Review & Release Panel justified adding more time to Luis' sentence in part because his treatment team needed to "create a viable treatment plan," something TJJD should have done to address his complex needs from the start.

Cycling through the Violence Intervention Continuum also creates a pipeline to prison for children with determinate sentences. TJJD central office staff conduct program completion reviews to recommend to juvenile courts whether children should be released, transferred to parole with the Texas Department of Criminal Justice, or transferred to prison. Children can earn release or parole if they meet certain criteria, including completing required treatment programs. But placement in the Violence Intervention Continuum prevents children from meeting half of these criteria and worsens their disability-related behaviors, which TJJD then relies on to recommend their transfer to prison. Indeed, of the sample we reviewed over a 13-month period, TJJD recommended transfer to prison for every child with a disability in the Violence Intervention Continuum. TJJD compounds its failure to meet children's disability-related needs by pushing them into the adult criminal justice system.

Over the same 13-month period, TJJD recommended transfer to prison for 100 percent of children with disabilities in the Violence Intervention Continuum.

Noah's experience illustrates TJJD's pipeline to prison for children with determinate sentences. Noah is eligible for special education services based on Emotional Disturbance.[149] He has also been diagnosed with attention deficit hyperactivity disorder, conduct disorder, disruptive mood dysregulation disorder, posttraumatic stress disorder, and several substance use disorders.[150] After 2.5 months in general programming without reasonable modifications like behavioral supports, TJJD referred Noah to the Violence Intervention Continuum. TJJD first placed him in Redirect, where

[149] Children with emotional disturbance have a range of characteristics that lead them to struggle academically, socially, and behaviorally. Common behaviors include fighting, an inability to control their temper, an inability to avoid trouble, and arguing with others.
[150] Children with posttraumatic stress disorder can exhibit several symptoms, including emotional distress and physical reactivity when exposed to traumatic reminders, negative affect, decreased interest in activities, irritability or aggression, heightened startle reactions, and difficulty concentrating or sleeping.

he remained for three months, before TJJD placed him in Phoenix and then Phoenix Max. TJJD notes in its recommendation for transfer to prison a "significant uptick" in challenging behaviors once Noah joined the Violence Intervention Continuum, increasing from one incident per week in general programming to four incidents per week in Redirect to over six incidents per week in Phoenix. But TJJD never considered whether the Violence Intervention Continuum's lack of behavioral and mental health supports was to blame for Noah's worsening behavior. Instead, TJJD recommended prison because Noah had not completed his required treatment programs (which were unavailable in the Violence Intervention Continuum), remained on the lowest stage of TJJD's behavior management system (when he had been largely ineligible for promotion), and continued to exhibit behavior related to his disabilities (such as non-compliance, disrupting activities, not getting along with his peers, fighting, and aggression). Noah had only been in TJJD's custody for roughly nine months for a probation violation before TJJD abandoned attempts at rehabilitation and recommended transfer to the adult criminal justice system.

TJJD's disability discrimination occurs despite children's disabilities and related limitations being "open, obvious, and apparent" to TJJD.[151] In fact, TJJD collects and creates detailed information in children's education, mental health, and disciplinary records about their diagnoses and symptoms throughout their time in TJJD's custody. For example, TJJD's intake process requests children's educational records from their prior schools. These records can identify a child's disability that qualifies them for special education services, highlight areas of struggle, describe individualized behavioral supports for the child's disability, and discuss how the child's disability affects their academic progress. TJJD's intake process also collects and reviews children's prior mental health assessments or conducts new ones. These assessments evaluate a child's mental health symptoms and ability to function, leading to mental health diagnoses commonly associated with specific characteristics or behaviors. TJJD's incident reports and admissions to the RSU likewise provide ongoing data on patterns of challenging behavior for each child. Together, these records establish that children's disabilities and their resulting limitations are readily apparent to TJJD.

Yet TJJD fails to act on this knowledge when it refers children to the Violence Intervention Continuum. Each referral packet includes an explanation of how the child meets TJJD's criteria for placement, information about the related incident (which must have been proven true at a disciplinary hearing for Redirect and Phoenix), and a brief checklist of the child's mental state at the time of the referral. Central office staff review these referrals, but rarely consider information TJJD already has about children's

[151] *Windham v. Harris Cnty., Tex.*, 875 F.3d 229, 237 (5th Cir. 2017) (internal quotation marks and citation omitted).

disabilities and their related limitations as part of that review. Despite receiving over 1,000 referrals in twelve months, central office staff also do not assess whether TJJD's programming requires modifications to meet the needs of children with disabilities. Instead, TJJD often blames children for their lack of success.

To avoid disability discrimination, TJJD must provide reasonable modifications so children with disabilities can receive support to manage their disability-related behaviors, avoid referral to the Violence Intervention Continuum, and maintain access to services required for their release. TJJD could provide evidence-based behavioral supports that effectively prevent or reduce disability-related behaviors, increasing safety in TJJD's programs and supporting TJJD's goal of rehabilitation. For example, TJJD could conduct functional behavioral assessments that identify and define each child's behavioral challenges that need addressing, identify the possible factors that cause the behavior, and collect information about which conditions trigger the behavior to identify the behavior's purpose. TJJD could then use those assessments to develop individualized behavior intervention plans. These plans should outline specific steps TJJD staff will take to prevent triggers of each child's challenging behavior, provide strategies to support the child in building short-term skills to manage that behavior, explain in detail how staff will respond to triggers and the behavior (including de-escalation and appropriate consequences), and provide a schedule to measure the plan's effectiveness. Together with behavioral supports, TJJD staff could consider information about children's disabilities and their related limitations when making placement decisions in programs and recommendations for release, extension, parole, or transfer to prison. Finally, TJJD could provide training for staff on effective behavioral interventions for children with disabilities to improve their ability to manage challenging behavior.

These modifications will not fundamentally alter TJJD's programs but instead will support the purpose of children's confinement to TJJD: ensuring their rehabilitation while promoting safety. The IDEA already requires TJJD to conduct functional behavioral assessments and create behavior intervention plans for children with IEPs. Information about children's disabilities and their related limitations is also in TJJD's possession and sometimes included in Violence Intervention Continuum referral packets. TJJD similarly provides at least some training to staff on behavior management strategies. Although TJJD may create safety requirements for its programs, such requirements must be based on actual risks, not speculation or stereotypes about children's disabilities.[152] Moreover, TJJD cannot transfer children with disabilities to the Violence Intervention Continuum based on a safety risk without conducting an individualized assessment first, including deciding whether modifications

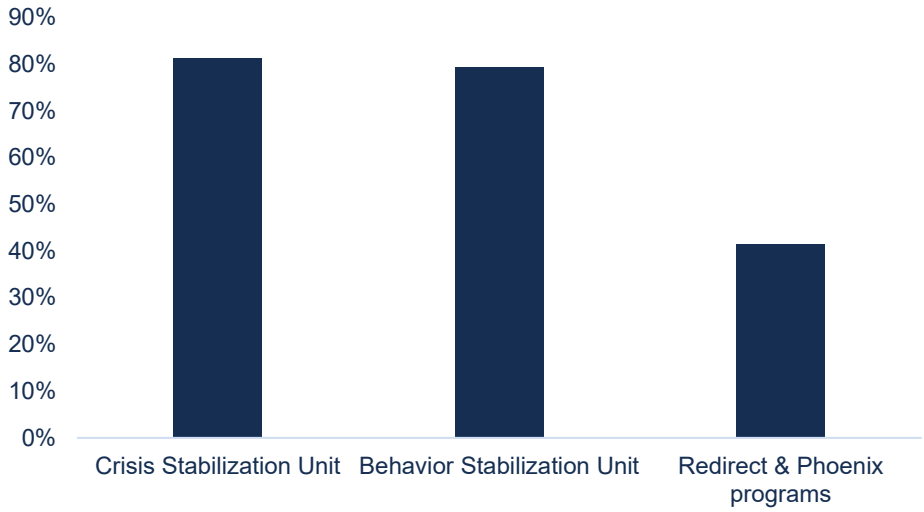
[152] 28 C.F.R. § 35.130(h).

or services could mitigate that risk.[153] We found no evidence that TJJD does so. Because these modifications are reasonable, TJJD is "liable simply by denying [them]."[154]

2. TJJD denies children with disabilities an equal opportunity to benefit from education.

The ADA also prohibits public entities like TJJD from providing benefits, services, or programs to individuals with disabilities that are "not equal to that afforded others" or "not as effective in affording equal opportunity . . . as that provided to others."[155] To prevent this type of disability discrimination, the ADA imposes an affirmative obligation on public entities to reasonably modify their policies and procedures.[156] TJJD's specialized programs on self-contained units do not ensure an equal opportunity to benefit from education for children with disabilities.

Figure 6: Percentage of children with IEPs or Section 504 plans in TJJD's specialized programs



Most of the children that TJJD admits to its self-contained programs (Behavior Stabilization Unit, Crisis Stabilization Unit, Intensive Intervention Program at Mart, Redirect, and Phoenix) have disabilities that qualify them for additional support to meet their learning needs.[157] From October 2022 through November 2023, over eighty percent of children in the Crisis Stabilization Unit, nearly eighty percent of children in

[153] *Id.* § 35.139.
[154] *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 455 (5th Cir. 2005).
[155] 28 C.F.R. § 35.130(b)(1)(ii), (iii).
[156] *Id.* § 35.130(b)(7).
[157] This group of children includes those with IEPs or Section 504 plans. Section 504 of the Rehabilitation Act of 1973 makes it illegal for schools receiving federal funds to discriminate against children with disabilities. Section 504 also requires schools to provide reasonable accommodations and services to allow children with disabilities to participate in and benefit from school programs and activities. *See generally* 29 U.S.C. § 794.

the Behavior Stabilization Unit, and over forty percent of children in the Violence Intervention Continuum's Redirect and Phoenix programs had disabilities.[158]

Once admitted to these programs, children receive significantly less education than their peers. Education is provided exclusively on the units, yet most of the dorms do not have designated classroom spaces. Most children also cannot access computers, so they cannot work on Apex's online curriculum. Instead, TJJD provides children with worksheets to complete independently. In theory, teachers are supposed to be available to answer questions. But teachers spend significantly less time with children in TJJD's self-contained programs. The assigned teacher in the girls' Behavior Stabilization Unit at Mart estimates that she spends about forty minutes per day on the unit. This is just twenty percent of the yearly instructional minutes children receive in TJJD's high schools. Our review of education logs in the Crisis Stabilization Unit at Giddings demonstrate a similar pattern. From March through July 2023, Andrew received instruction for only three hours total. In each case we observed, children receive far less instructional minutes than their peers who attend the facilities' high schools.

The limited educational opportunity provided in TJJD's specialized programs—often chaotic and uncontrolled environments—is not equal to the educational opportunity provided to other children at TJJD. In the Redirect and Phoenix dorms at Evins, children stopped and started work repeatedly, talked to peers and staff, left the classroom (where one existed) or table, wandered around, stood on furniture, banged on doors, performed cartwheels and flips, shadowboxed, and sang. At any given time, only two or three children completed worksheets. We did not observe any teachers or security staff explaining expectations for learning or behavior during this time.

By admitting children with disabilities to its specialized programs and then providing limited access to education, TJJD "actively undercut[s] the ability of [its] public program to benefit those with disabilities."[159] Without an equal opportunity to benefit from education, children who are already multiple grade levels behind fall behind even further. TJJD also considers each child's educational progress when assessing their eligibility for release, potentially prolonging children's time in custody. But this disability discrimination can be prevented. TJJD could modify its specialized programs to ensure that children receive the minimum number of instructional minutes that Texas law requires.

[158] Some of the children experienced multiple admissions to these units, increasing the amount of time TJJD denied them an equal opportunity to benefit from education.
[159] *Van Velzor v. City of Burleson*, 43 F. Supp. 3d 746, 752 (N.D. Tex. 2014).

RECOMMENDED MINIMUM REMEDIAL MEASURES

To remedy the constitutional and statutory violations identified in this Report, we recommend that TJJD implement, at minimum, the remedial measures listed below.

Use of Force

1. Implement a use of force continuum that:
    a. Requires non-force interventions, such as verbal redirection and de-escalation techniques, to be utilized whenever possible;
    b. Limits physical and chemical force to only when non-force interventions have been tried or are impossible because of exigent circumstances;
    c. Requires restraint techniques safe for use with children; and
    d. Ensures that only the amount of force necessary to neutralize the immediate threat is used.
2. Eliminate the use of MK-9 canisters of pepper spray.
3. Ensure adequate and timely decontamination of all children exposed to pepper spray (including secondarily exposed children) via timely access to cold-water decontamination showers.
4. Ensure adequate decontamination of all physical areas exposed to pepper spray.
5. Identify and prohibit pepper spray use on children with chronic, serious respiratory problems or other serious health conditions that would make pepper spray exposure particularly dangerous.
6. Implement a system for review and oversight to ensure compliance with use of force and body-worn camera policies and procedures.

Behavior Management

1. Implement a systemwide positive behavior management program that:
    a. Offers meaningful incentives for positive behaviors;
    b. Provides a skills-based curriculum to teach the children skills needed to regulate their behaviors; and
    c. Includes appropriate consequences for negative behaviors.

2. Ensure consistent implementation of the positive behavior management program in all secure facilities throughout the day and across settings (unit, classroom, groups).

3. Implement a daily schedule in all facilities that includes an array of structured activities out of cells that are age-appropriate, available to all children, occur outside of school hours, and are led by staff that are adequately trained to lead the activities.

Isolation

1. Limit use of the RSU to brief periods of time for children who pose an imminent and serious threat to safety.

2. Implement a system for ensuring that children who are placed in the RSU are returned to the general population within twenty-four hours or as soon as they no longer pose a serious threat to safety.

3. Prohibit the use of isolation as punishment.

4. Implement a system for ensuring adequate mental health review of and input into RSU placement decisions.

5. Ensure children in the RSU receive adequate supports and services—including medical, mental health, and education—as well as adequate access to exercise, grievances, and hygiene facilities.

6. Adjust facility operational practices to reduce reliance on operational lockdown practices (shift change, unit cleaning, showers, etc.) and create a data tracking measure to monitor all forms of cell confinement.

7. Ensure adequate visual checks, at random intervals at least every fifteen minutes, of all children who are in any form of cell confinement.

Sexual Abuse

1. Ensure that housing and common areas are adequately supervised and monitored through direct supervision whenever and wherever children are present.

2. Review surveillance camera placement and implement changes necessary for identification of abuse.

3. Implement a system for review and oversight to ensure:

    a. Appropriate interactions between staff and children, including healthy

boundaries and age-appropriate communications;

b. Compliance with body-worn camera policy, and

c. Adequate supervision of children.

Mental Health Care

1. Provide adequate mental health intake screening and assessments, including integration of trauma-related mental health difficulties in clinical formulations.

2. Provide adequate ongoing assessments of children's mental health needs at set time intervals and following behavior that indicates a current mental health difficulty or events likely to impact mental health (for example, where a child participates in an assault or is the subject of use of force).

3. Provide adequate mental health treatment to children, including timely counseling at appropriate intervals by practitioners who are licensed or license-eligible and actively clinically supervised by licensed practitioners with demonstrated competency in the treatment of the various populations held within TJJD's secure facilities.

4. Integrate mental health, psychiatric, substance use, and behavioral treatment programs and require multidisciplinary planning and information-sharing to allow for unified, individualized, coherent, consistent, and integrated plans and treatment across disciplines.

5. Create communication and information-sharing protocols between mental health, case management, and security to ensure that security responses and security-related discipline processes are informed by any underlying psychological causes of the child's behavior and their current mental health status and needs. Such a protocol should ensure that contraindicated security procedures are known and accounted for when staff engage in security measures and during the discipline decision making process.

6. Eliminate isolation and wide-ranging deprivations as uniform tactics in response to all threats of suicide and self-harm. Implement suicide screening protocols and responses that reflect individualized assessments of risk and the minimal necessary responses to address the determined risk.

Special Education and Related Services

1. Create an effective child find system that includes a reliable screening process to identify children who need initial evaluations and ensures timely evaluations in all areas of need, including functional behavioral assessments.

2. Provide a full continuum of educational placement options appropriate to children's individualized needs.

3. Develop IEPs based on children's individualized needs that include:

    a. Accurate statements of current levels of performance;

    b. Appropriate goals that consider all areas of each child's individualized needs;

    c. Appropriate levels of services and supports to address all areas of need;

    d. Appropriate numbers of special education service minutes for each child's individualized needs; and

    e. A behavior intervention plan for any child whose behavior interferes with learning.

4. Provide adequate functional behavioral assessments for every child with a disability (or suspected of having a disability) who exhibits behavior that interferes with learning.

5. Provide adequate behavior intervention plans for every child with a disability (or suspected of having a disability) who exhibits behavior that interferes with learning.

6. Provide specially designed instruction and related services to children with disabilities based on their individualized needs.

7. Conduct triennial evaluations every three years.

8. Provide transition planning—including appropriate goals, courses of study, and a coordinated set of transition-related activities—to all children with disabilities ages 14 and up.

9. Track all classroom removals based on behavior, including children sent to any alternate setting, to determine when a manifestation determination review must be held.

10. Conduct a manifestation determination review whenever a child's behavior results in classroom removals totaling eleven days or more in the same academic year.

11. Conduct an IEP meeting for any child TJJD moves from their IEP's recommended educational placement (general education, inclusion, resource room, specialized class, or TJJD's self-contained specialized programs) to a different placement to determine whether the change is appropriate, given each child's individualized needs.

12. Ensure parents can meaningfully participate in the IEP decision making process.

13. Provide appropriate special education and related services to any children with disabilities who need to take online classes.

Disability Discrimination

1. Provide appropriate behavioral supports, including functional behavioral assessments and behavior intervention plans, to all children with disabilities in any setting where their successful completion of certain criteria is required to earn their release.

2. Ensure that information about a child's disability is reviewed and considered as part of:

    a. Any referral and placement decision involving the RSU or specialized programs; and

    b. Any review of a child's rehabilitative progress, including the Review & Release Panel for children with indeterminate sentences and program completion reviews for children with determinate sentences.

3. Implement a system for tracking disciplinary data that analyzes patterns of incident reports, referrals to the RSU, admissions to the RSU, and lengths of stay in the RSU involving children with disabilities. This system should also examine whether any disciplinary action occurs for behaviors related to children's disabilities.

4. Ensure that children with disabilities receive an equal opportunity to benefit from a full day of educational instruction in TJJD's self-contained units.

5. Implement a system for review and oversight to monitor TJJD's programs, services, and activities for disability discrimination.

Grievances

1. Implement a grievance system that ensures:

    a. Children have unimpeded access to grievance forms and the grievance hotline;

b. Locked grievance boxes are accessible on all units and common areas of the facility;

c. The staff grievance coordinator makes daily rounds to collect grievances from the locked boxes and takes immediate action on emergency grievances (medical, mental health, and so forth); and

d. Defined, uniform grievance responses.

2. Eliminate the use of children as grievance coordinators and any other role in providing or collecting grievance forms.

3. Implement a system for review and oversight to ensure compliance with grievance policies and procedures.

CONCLUSION

DOJ has reasonable cause to believe that TJJD violates children's constitutional and federal statutory rights by subjecting them to excessive physical and chemical force, harmful isolation, and sexual abuse; failing to provide adequate mental health care; failing to provide appropriate special education and related services; and discriminating against children with disabilities. We look forward to working cooperatively with Texas to reach agreement on the remedies for these violations.

We must advise you that forty-nine days after issuance of this letter, the Attorney General may initiate a lawsuit under CRIPA to correct deficiencies identified in this letter if State officials have not satisfactorily addressed our concerns.[160]

This Report is a public document. It will be posted on the Civil Rights Division's website.

[160] 42 U.S.C. § 1997b(a)(1).

APPENDIX A: SPECIALIZED TREATMENT PROGRAMS

TJJD's secure facilities offer several types of programming:

- **Violence Intervention Continuum**. The Violence Intervention Continuum is designed to manage violent and aggressive behavior. It includes the Intensive Intervention Program, Redirect program, and Phoenix program. The Intensive Intervention Program is the lowest level of intervention available at Evins, Mart, and Gainesville. It provides a 30-day program to twelve children per housing unit. Children in the Intensive Intervention Program are typically allowed to leave their unit for school and other essential services. Redirect is the next level of intervention and is available at Evins. It provides a 30-day program on self-contained units, meaning that children cannot leave their units. Phoenix is the most restrictive program and is available at Evins. It provides a 45-day program on self-contained units, ranging from six to ten children.

- **Capital & Serious Violent Offender Treatment Program.** This treatment program includes varied services to address risk factors specific to children with violent or aggressive offenses. There are three levels of intervention: Aggression Replacement Therapy, Power Source, and Capital Offender Group. Aggression Replacement Therapy is a 12-week program. Power Source is a 12- to 16-week program. Capital Offender Group is a 6- to 9-month program. Aggression Replacement Therapy and Power Source are offered at all five secure facilities, while Capital Offender Group is offered at Gainesville and Giddings only.

- **Behavior Stabilization Unit.** This self-contained unit is for up to four children with "immediate and significant mental health issues that engage in frequent aggressive event[s]." In 2022, the Behavior Stabilization Unit for girls was located at Ron Jackson, but by 2023, it had moved to Mart. The Behavior Stabilization Unit for boys is also located at Mart. It is designed to "[b]ehaviorally stabilize youth[,] with an emphasis on increasing safety towards self and others." TJJD conducts weekly treatment team meetings for children in the Behavior Stabilization Unit and provides "increased psychiatric oversight."

- **Crisis Stabilization Unit.** This self-contained unit is for up to eight children with "immediate and significant mental health issues that threaten the safety of themselves or others." The Crisis Stabilization Unit exists at Giddings only. It is designed to "[p]sychiatrically stabilize youth experiencing a behavioral health crisis" through "increased psychiatric oversight" and "onsite unit support from nurses." TJJD conducts weekly treatment team meetings for children in the Crisis Stabilization Unit to assess stabilization and reintegration plans to

transition them to the Mental Health Treatment Program. According to TJJD policy, children must be transferred out of the Crisis Stabilization Unit within ninety days after the admission hearing, unless an extension is granted.

- **Mental Health Treatment Program.** Children identified as having a high need for mental health services can be placed in the Mental Health Treatment Program. The boys' Mental Health Treatment Program is located at Giddings and the girls' Mental Health Treatment Program is located at Ron Jackson. The Mental Health Treatment Program provides normal programming with added mental health supports for up to eight children.
- **Sexual Behavior Treatment Program.** This unit-based program serves children whose offenses involve sexual behavior. It is offered at Gainesville only. The program is managed by a licensed sex offender treatment provider and offers individual, group, and family counseling.
- **Alcohol & Other Drug.** This treatment program provides services to children with a diagnosis of Substance Use Disorder and those identified as being at risk of developing the disorder. It is offered at all five secure facilities. The program includes individual and group counseling, life skills training, and Aggression Replacement Therapy.