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ABEL ACOSTA, CLERK

**NO. PD-1215-13
IN THE CRIMINAL COURT OF APPEALS
AUSTIN, TEXAS**

**NO. 01-10-00341-CR
IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS**

**IN THE 178th DISTRICT COURT
HOUSTON, TEXAS**

THE STATE OF TEXAS

Petitioner

v.

CAMERON MOON

Respondent

**AMICUS CURIAE BRIEF OF PROFESSOR MICHELE DEITCH
IN SUPPORT OF APPELLANT CAMERON MOON**

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STATEMENT OF IDENTITY

This brief of amicus curiae is tendered on behalf of Michele Deitch. I have not been compensated for the preparation of this brief.

I am an attorney with over 28 years of experience working on criminal justice policy issues with state and local government officials, corrections officials, judges, and advocates. I hold a joint appointment as a Senior Lecturer at the University of Texas's Lyndon B. Johnson School of Public Affairs and at the University of Texas Law School, where I teach graduate courses in criminal justice policy, juvenile justice policy, and the school-to-prison pipeline. My areas of specialty include juvenile justice, juveniles in the adult criminal justice system, sentencing policy, independent oversight of correctional institutions, institutional reform litigation, and prison conditions and management. I hold a J.D. with honors from Harvard Law School, an M.Sc. in psychology (with a specialization in criminology) from Oxford University (Balliol College), and a B.A. with honors from Amherst College.

Most of my current research focuses on the management of juvenile offenders and juveniles in the adult criminal justice system. My work on these and other subjects has been recognized both nationally and in Texas. I was invited to give lead testimony to the National Prison Rape Elimination Commission and the Commission on Safety and Abuse in America's Prisons. I also gave the keynote

address at this year's annual conference of the National Partnership for Juvenile Services, the leading national association for juvenile justice professionals, speaking on the subject of youth in adult prisons and jails. I currently co-chair the American Bar Association's committee on independent correctional oversight. Previously, I served as Reporter (draftsperson) to the American Bar Association Task Force that wrote recently adopted national standards on the treatment of prisoners. I was also invited to contribute two chapters on the management of juvenile offenders to the federal government's desktop guide publication for juvenile justice administrators. Of particular note, I co-authored the chapter on "Waiver and Transfer of Juveniles to Adult Criminal Court," in the *Sourcebook of Juvenile Justice* (Oxford University Press, 2014).

I have conducted extensive original research on the issue of young children in the adult criminal justice system. My book-length report, *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System* (LBJ School, 2009), was endorsed in a lead editorial of the New York Times and received extensive national publicity. My next two reports, *Juveniles in the Adult Criminal Justice System in Texas* (LBJ School, 2011) and *Conditions for Certified Juveniles in Texas County Jails* (LBJ School, 2012), led to legislative interest in this topic in Texas and the passage of two bills designed to address concerns about youth in adult jails. I have provided invited legislative testimony about juveniles in the

adult criminal justice system. I have also conducted research on the topic of raising the age of juvenile jurisdiction in Texas (“Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas,” 40 Amer. J. Crim. L. 1 (Fall 2012)). Additionally, I have worked closely on various initiatives with the Independent Ombudsman of the Texas Juvenile Justice Department (TJJD), agency officials at TJJD, juvenile judges and probation officials at the county level, the Commission on Jail Standards, and jail administrators in a number of counties. I also served on the Blue Ribbon Task Force on the Texas Youth Commission, a panel appointed in 2007 to recommend changes to the Texas juvenile justice system in the wake of high-profile scandals involving the statewide juvenile corrections agency.

Through my courses, I supervise students conducting high-level research projects on behalf of juvenile justice system stakeholders in Texas. Currently, my students and I are working with the House Criminal Jurisprudence Committee on various interim charges related to juvenile justice.

I have been awarded numerous honors for my work, including a 2005-06 Soros Senior Justice Fellowship by the Open Society Institute of the Soros Foundation, one of the most prestigious prizes for individuals working on criminal justice policy issues. In 2006, the Texas Legislature passed a resolution honoring me for my work on criminal justice issues. I was also given the 2013 Excellence

in Public Interest Law Award by the Texas Law Fellowships Association at UT Law School, and was named the Outstanding Juvenile Justice Advocate by the Texas Criminal Justice Reform Coalition in 2010. My work with students to address community needs through my juvenile justice research was similarly recognized by the University when I was given UT's Tower Award for Outstanding Service Learning Professor in 2011, was named a UT Professor of Excellence in 2012-13, and was given awards for the most valuable classes at the LB School in 2012 and 2013.

Prior to entering academia, I held some key positions with the Texas Legislature, including serving as General Counsel to the Texas Senate Criminal Justice Committee and as the Policy Director of the Texas Punishment Standards Commission. Working in those posts, I was involved with virtually every major criminal justice policy initiative considered by state officials in Texas in the early 1990s. Earlier, I served as a full-time monitor of conditions in the Texas prison system, appointed by Federal District Judge William Wayne Justice as part of the landmark *Ruiz* prison reform lawsuit. For more than 18 years, I served as an independent consultant to state and local policy-makers and agency officials around the country on a wide range of corrections and sentencing issues. I also served as a judicial law clerk on the U.S. Court of Appeals for the 11th Circuit.

I regularly lecture on criminal justice subjects both nationally and internationally, provide invited legislative testimony, and have organized academic conferences. I am a frequent commentator in both the national and local media, have published numerous Op-Eds, and have been interviewed by journalist Dan Rather. I have also served on several boards, including as a member of the Amherst College Board of Trustees and the inaugural board of the Barbara Jordan Freedom Foundation.

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STATEMENT OF THE CASE

Amici adopt the Statement of the Case as set forth in the brief of Respondent, Cameron Moon.

ISSUE PRESENTED

Amici adopt the Issues Presented as set forth in the brief of Respondent, Cameron Moon.

STATEMENT OF FACTS

Amici adopt the Statement of Facts in the brief of Respondent, Cameron Moon.

SUMMARY OF ARGUMENT

There is a common assumption that juveniles tried as adults are substantially different from those juveniles who are retained in the juvenile justice system and given determinate sentences with placement in the Texas Juvenile Justice Department (TJJD) (this agency was previously known as the Texas Youth Commission (TYC)).¹ The data shows, however, that there is virtually no distinction between these two groups of juvenile offenders. On all critical measures, with the notable exception of the county of conviction, these two groups of juveniles are remarkably similar.

On the two key factors that most would assume distinguish the two populations—criminal offense and criminal history—the juveniles present similar levels of criminality. Both populations are comprised primarily of juveniles who have committed instant offenses that are violent in nature, with the crimes of aggravated robbery and sexual assault being the most prevalent offense for each group. Their criminal backgrounds are also similar, with the majority of both certified juveniles and determinate sentenced juveniles having either one or no prior referrals to juvenile court. Even in cases where there were three or four prior referrals, very few of those prior referrals were for violent offenses.

¹ During the relevant timeframe of this case, the agency responsible for secure confinement of youth committed to the state was the Texas Youth Commission (TYC), and so this brief will refer to TYC for reasons of simplicity.

The one significant distinction between certified juveniles and determinate sentence juveniles is their county of conviction. Texas counties vary widely in terms of the extent to which they certify juveniles, and during the period in which Cameron Moon was certified, Harris County stood out demonstrably in this regard. Of course, Harris County has the largest number of juvenile offenders in the state, so it can be expected to have the largest certified population as well. But the enormous discrepancy in the size of the certified population between Harris County and all other counties is disproportionate to the difference in county size. The data suggests that the decision to certify a juvenile as an adult turns far more heavily on the county involved than on the youth's offense or background. Indeed, there are other large Texas counties, such as Travis County and El Paso County, that rarely if ever certify a youth to stand trial as an adult.

The fact that the two populations of certified juveniles and determinate sentence juveniles are so similar leads to the conclusion that they need similar treatment and responses to their criminal behavior. Both groups would benefit from the rehabilitative services provided to youth in the juvenile justice system.

Another prevailing assumption among practitioners and policy-makers is that those juveniles who are certified to stand trial as adults represent the "worst of the worst" among juvenile offenders. The data show that this assumption is false. This group is neither more violent nor more persistent in their criminal behavior

than the determinate sentence juveniles committed to TYC. The vast majority of certified juveniles do not have a prior violent criminal history, and many do not have any prior referrals to juvenile court at all. Thus, it is a fallacy to assume that certified youth are repeat, chronic offenders.

Another indicator that certified cases are not limited to the worst situations is that there are so many more certified juveniles than determinate sentence youth with placements in TYC. Despite the opportunity that the determinate sentencing statute presents to offer serious juvenile offenders an appropriate blend of accountability, toughness, and rehabilitation, that statute is under-utilized in certain counties when compared to the law permitting transfer of juveniles to adult court.

Also worth noting is that by the terms of the law, the certification option is not limited to “worst-case scenarios.” Any felony offense in the Penal Code, including a state jail offense, renders a juvenile eligible to be tried as an adult. There are many non-violent offenses that are considered felonies. In contrast, only about 30 felonies qualify a juvenile for determinate sentencing, and these include only the most serious and violent felonies. Thus, the determinate sentencing option—not the certification option—has come to look like it is designed for the most serious juvenile offenders.

Juveniles who are certified to be tried as adults are often considered unredeemable and as beyond the help of the juvenile justice system. But that

assumption is belied by the fact that 9 out of 10 certified youth have had no prior commitments to TYC. The vast majority of certified juveniles have never had the opportunity to benefit from the rehabilitative programs that the juvenile system has to offer before entering the adult system. The justice system prematurely concluded that “nothing works” with these juveniles, when the reality in many cases is that “nothing has been tried.” Certified youth miss out on the specialized programmatic opportunities in TYC, especially the highly successful Capital and Serious Violent Offenders Program (which has a 95% success rate when it comes to re-arrests for violent offenses within three years of release).

In addition to offering specialized rehabilitative programming, TYC offers all youth educational opportunities, including special education programs for youth with demonstrated needs. Beyond the education, rehabilitative programming, and therapeutic interventions it provides, TYC is obviously designed to meet other unique needs of juveniles, including adolescent dietary needs, recreational programming to ensure appropriate muscle development, programming to promote social development, and family visitation. Moreover, the staffing ratios at TYC and the specialized training received by staff are age-appropriate for this population and contribute to youth safety.

The majority of certified juveniles are serving sentences of 10 years or less, meaning that most of them will be back in our communities while they are still

young, but they will not have received the services they need to be successful and productive citizens. This lack of rehabilitative programming thus has a significant public safety risk.

The poor conditions in which certified youth are confined in county jails while awaiting trial--typically involving 23-hour a day lock up in isolation settings with little access to programs or services, to protect them from adult offenders—also can have devastating consequences for the youth. Such conditions can lead to the development or exacerbation of mental health problems and puts these youth at highly increased rates of suicide. The jails' lack of programs and educational classes also have a significant impact on the youths' risk of recidivism. Research shows a 34% greater risk of violent recidivism for youth who have spent time in the adult criminal justice system.

The fact that there is such arbitrary and inconsistent use of the certification statute across the state, with little to distinguish those youth who are certified from those who remain in the juvenile system, shows the need for careful appellate review of certification decisions. Certification is intended to be reserved for the most extreme cases, but research shows it is not being used in this manner. Moreover, the decision to certify has grave consequences for the youth, not only because of the lengthy sentences available in adult court but also because of the vast differences in access to rehabilitative programming, which impacts public

safety and recidivism rates. These consequences mean that juvenile judges must be especially thoughtful and well-informed when deciding which cases deserve to result in a certification decision.

ARGUMENT

In March 2011, the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin published a Special Project Report titled *Juveniles in the Adult Criminal Justice System in Texas* (the “Report”).² In addition to being a Senior Lecturer at the LBJ School, I also served as the Project Director and lead author for the Report.³

One of the goals of the Report was to evaluate and test the veracity of what we considered to be one of the base assumptions informing the judicial process in Texas for certifying juvenile offenders to stand trial in adult criminal courts. This assumption is that “certified juveniles are the ‘worst of the worst,’ repeat, violent offenders who are beyond the rehabilitation offered by the juvenile justice system.” Report at ix.

² Available at <http://www.campaignforyouthjustice.org/documents/juvenilestexas--final.pdf>.

³ I was assisted in the Report by two student participants, Emily Ling from the LBJ School of Public Affairs and Emma Quintero from the University of Texas School of Law.

In testing this assumption, the Report considered all of the data that was available concerning juveniles who were certified in Texas.⁴ The certified juveniles were compared against the juveniles receiving determinate sentences and placement in TYC. We also looked at the differences in programming and services for the two populations of juvenile offenders.

The Report concluded that “the certification process in Texas is not working in conjunction with the determinate sentencing process as was intended to limit transfer to adult criminal court to the most heinous crimes and circumstances in which the juvenile has exhausted available options in the juvenile system.” Report at xi. The Report made the following major findings that supported this conclusion. Three of those findings are significant to the issues in this appeal.

⁴ Our quantitative data was obtained through Open Records requests to the Texas Juvenile Probation Commission (TJPC), Texas Youth Commission (TYC), and Texas Department of Criminal Justice (TDCJ). We obtained aggregate data about juveniles certified as adults in Texas, about juveniles who receive determinate sentences, and about juveniles incarcerated in TDCJ. In particular, we examined demographic information, offense data, and criminal history data. We also obtained and reviewed information about the programs and services available to these populations. To inform our interpretation of this data and as background for this report, we reviewed relevant literature on juvenile justice, with a particular focus on laws and policies relevant to juveniles tried as adults in Texas. We observed certification hearings in juvenile court, and interviewed juvenile judges, prosecutors, and defense attorneys about their practices with regard to certification cases. We also spoke with officials at TJPC, TYC, and TDCJ. Finally, we toured TYC’s Giddings State School, which houses the Capital & Serious Violent Offenders Program, as well as TDCJ’s female Youthful Offender Program at the Hilltop Unit and the male Youthful Offender Program at the Clemens facility. .

1. Minimal differences exist between certified juveniles in the adult criminal justice system and determinate sentence juveniles in TYC, except for county of conviction.

The data that we reviewed for the Report provided no meaningful distinction between the two groups of offenders:

Youth who are transferred to adult court and those retained in the juvenile system look substantially similar with respect to most demographic factors, criminal offense, prior criminal history, and sentence length. Most significantly, the juveniles present similar levels of criminality in terms of both their current offense and their criminal history. The majority in each group has committed violent offenses, with the crimes of aggravated robbery and sexual assault accounting for well over half the current offenses in each population. As for their criminal backgrounds, the majority in each population has either one or no prior referral to juvenile court. Even in cases where the juvenile has three or four prior referrals, very few of those prior referrals involved violent offenses.

Report at ix.

Based on the data, we concluded that:

The one significant difference between the two populations is the county of conviction. *More than twice as many certification cases have arisen in Harris County over a four-year period than in any other county, and Harris County in fact certified more juveniles than the next six counties combined.* Also, six counties, including Harris, Jefferson, Hidalgo, Nueces, Lubbock, and Potter, appear to disproportionately use the option of certifying youth rather than giving determinate sentences. In contrast, two of the largest counties in the state, Travis and El Paso, have extremely low certification rates. This data suggests that county of conviction plays a very large role in determining whether a juvenile offender will receive a determinate sentence in juvenile court or whether that youth will be tried as an adult.

Report at ix (emphasis added).

2. Certified juveniles do not represent the “worst of the worst.”

We also concluded that the data did not support a conclusion that that the juveniles being transferred from juvenile court were more violent or more persistent in their criminal behavior than the juveniles who were not certified. The Report noted that Texas did not limit certification as an adult to the worst offenses and observed that many felonies qualifying for transfer to adult criminal court were non-violent. The Report also noted that, in contrast, the determinate sentencing option is limited to the 30 most serious offenses.

3. Most certified youth have never had the opportunity to benefit from effective rehabilitative programs in the juvenile justice system.

Finally, the Report concluded that juvenile judges were certifying most juveniles prematurely based on erroneous determinations that “nothing works” with these individuals. The data we reviewed in fact showed that more often than not, “nothing had been tried” either through programs available at the local juvenile probation level or through rehabilitative programs available at TYC. As one particular example, the Capital and Serious Violent Offenders Program at the Giddings facility in TYC is nationally renowned for working with juveniles who have committed homicide and other violent crimes. Its success rate is a remarkable 95% when it comes to re-arrests for violent offenses within 3 years.

Report at 32-33. But certified youth cannot participate in this program because it is only available to juveniles who stay in the juvenile system.

Although the juvenile court in this case did not go so far as to opine that “nothing works,” it did make the conclusory finding that:

The evidence and reports heretofore presented to the court demonstrate to the court that there is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of the said Cameron Moon by the use of procedures, services, and facilities currently available to the Juvenile Court.

Nothing in the court’s form order indicated why the court thought there was little “prospect of adequate protection of the public and likelihood of reasonable rehabilitation” of Cameron. However, the court’s comments on the record indicated that the court thought there was not sufficient time for Cameron to go through an effective rehabilitation program before he was no longer subject to the court’s jurisdiction. There is no evidentiary basis in the record for such a belief and it is patently not true.

The Capital and Serious Violent Offender Treatment Program at the Giddings State School is a 24-week intensive program that has been proven to be highly effective at reducing recidivism rates. Given the length of the program, there would have been ample time for Cameron (who had not yet turned 17) to have completed it while under TYC’s jurisdiction (which the court would have until Cameron was 19). As the Report states:

Given the seriousness of the offenses they have committed, many determinate sentence youths are likely to be enrolled in the Capital and Serious Violent Offender Treatment Program (C&SVOP). Offered at TYC's the Giddings State School (males) and the Ron Jackson facility (females), the C&SVOP is a 24-week intensely structured program that has earned worldwide acclaim for its effective treatment of some of the most violent young offenders. It is "designed to help youth understand the emotional and cognitive contributors to criminal behavior, to hold youth accountable for their criminal behavior and to promote individual responsibility, to foster victim empathy, and to teach youth to interrupt negative behavior cycles to reduce future offending. The C&SVOP has been lauded in a highly-regarded book, and has been profiled in numerous research reports and national journal articles. The program has been found to significantly reduce recidivism rates among serious offenders, as shown in Tables 11 and 12.

Report at 28 (tables and references omitted).

As the data shows, three years after being released from TYC, only 5% of youth who had received the C&SVOP had been re-arrested for a violent crime, compared to almost 24% of youth who had not been enrolled in the program. Other data shows that juveniles who complete the C&SVOP are 73.6% less likely to be re-arrested after release than youth who did not participate in the program.

Report at 29.

Further, the data shows that individuals like Cameron, who may have committed a violent offense but had only one prior offense, like Cameron, have better outcomes than those who may have committed a lesser offense but significantly more prior offenses.

The available information shows that a juvenile in a situation similar to that of the Appellant, *i.e.*, a juvenile who committed a violent offense but had little past history, is a better candidate for rehabilitation than a juvenile who may have committed a lesser offense, but had a more extensive past criminal history. For example, the 2011 Annual Review of Treatment Effectiveness from the Texas Juvenile Justice Department noted:

[P]rior involvement with the juvenile justice system [was] significantly related to increased risk” of recidivism. Within six months of release from TYC, 47% of youth who had six or more offense dates prior to commitment to TYC were rearrested for a felony or misdemeanor. In contrast, only 18% of the youth referred for one offense prior to commitment to TYC were rearrested for a felony or misdemeanor.

2011 Annual Review of Treatment Effectiveness from the Texas Juvenile Justice Department at 22;

<http://www.tjjd.texas.gov/Docs/Treatment%20EffectivenessFY2011.pdf>

The Annual Review further states that “[y]outh with low and moderate severity committing offenses ... were more likely to recidivate than the 5% with a high severity offense.” 2011 Annual Review at 24 (emphasis in original). In addition, the review states:

Data show that youth who enter the high intensity C&SVOTP program can be a very different group from the youth in the ART® program (moderate intensity). Youth in the high intensity service group tend to be those who have few, or even one, very serious offense. These youth often are adjudicated without multiple prior referrals and adjudications. Youth in the moderate group may be

perceived to have a less violent offense but may demonstrate more chronic and persistent negative behavioral patterns. Data from the sample support the notion that youth with lower levels of aggression but greater chronicity are harder to treat and statistically more likely to recidivate.

2011 Annual Review at 31.

I do not believe that one prior offense, plus a subsequent violent offense, will support an inference that Cameron was not a good candidate for rehabilitation. The data and evaluations of TYC's programs suggest otherwise: youth like Cameron are routinely treated successfully through TYC's intensive programs and are released to the community without committing further offenses.

As the Report observed, the certification proceedings required by § 54.02 of the Family Code are conducted with serious inconsistencies from one Texas county to the next:

Courts vary tremendously in the extent to which this is a meaningful hearing. Some judges hold lengthy hearings complete with a wide range of witnesses in a trial-like environment, while others appear to rubber stamp the certification request from the prosecutor with quick hearings and only rare refusals to certify.

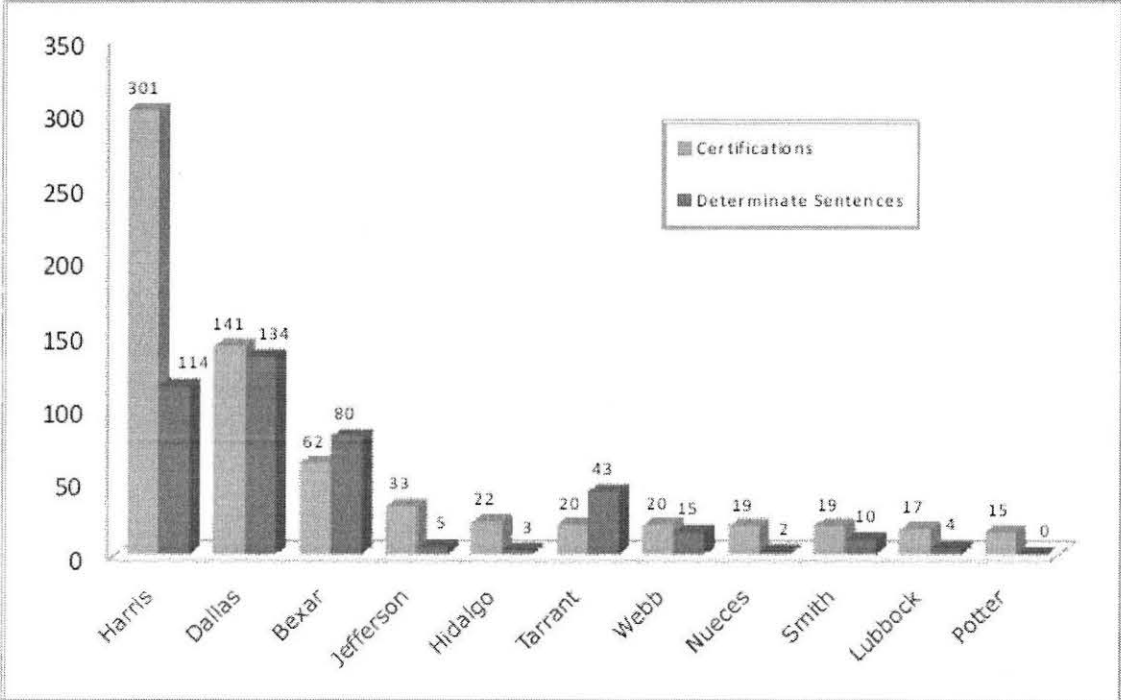
Report at 6.

The Appellant was certified for transfer to an adult criminal court on December 18, 2008. At the time of Appellant's certification, our research demonstrated that Harris County was by far certifying more juveniles for transfer to adult criminal courts than any other county in Texas. The Report compared the

number of certifications and the number of determinate sentences with placement in TYC in the 10 counties responsible for the largest number of certifications. This comparison showed that “more than twice as many certification cases [arose] in Harris County over a four-year period than in any other county. Indeed, Harris County ha[d] more certification cases than the next six counties combined.”

Figure 5 from the Report illustrates the comparison.

Figure 5
Number of Certifications and Determinate Sentences with TYC Placement by County, FY 2006-09



Source: data from the Texas Juvenile Probation Commission and Texas Youth Commission, 2010

The data also indicated that there was an extremely large discrepancy between use of certifications and use of determinate sentences in six Texas counties – Harris, Jefferson, Hidalgo, Nueces, Lubbock, and Potter. This discrepancy suggests that these six counties may have engaged in disproportionate efforts to try juveniles as

adults, without serious consideration of the determinate sentence option. The Report also noted that Travis County, the 5th largest county in the state, and El Paso County, the 7th largest, do not appear in Figure 5, suggesting that judges in those counties were not granting certifications (or that prosecutors were not seeking them) in many cases.

Although it is clear that more homicide cases are certified than are handled as determinate sentence cases, it is equally clear that individuals charged with homicide are handled under both schemes.

In general, however, our research showed that the two populations of determinate sentence juveniles and certified juveniles were relatively comparable when it came to their criminal offense. Significantly, and contrary to popular assumptions, certified youth who are tried as adults as a whole are not demonstrably more violent than the population of serious juvenile offenders who are retained by the juvenile court and given determinate sentences with placement in TYC.

Certified juveniles and determinate sentence youth are similarly situated when it comes to the number of prior referrals they have received. We found that 44% of certified youth had either never been referred to juvenile court or had only one prior referral. This finding dispels the popular rhetoric that these juveniles are repeat, chronic offenders.

We also deemed it important to analyze the nature of those prior court referrals. We found that the overwhelming majority of both certified juveniles and determinate sentence juveniles did not have a history of violence. Only a quarter of the certified juveniles and a third of the determinate sentence juveniles had any history of violence. The population of certified juveniles and determinate sentenced juveniles appeared very similar when it came to prior violent criminal behavior, or the lack thereof.

When it came to criminal history, then, the data indicated that certified youth and determinate sentence youth were relatively similar. Moreover, the majority of youth in both groups have relatively minor and nonviolent criminal histories, if any. And perhaps most strikingly, certified youth have overwhelmingly had no chance to be served by TYC.

The lost opportunity for certified youths to participate in the Texas Youth Commission's highly effective rehabilitative programming is a serious matter. In 2007, a Task Force appointed by the Centers for Disease Control reviewed all the available scientific research and reached a stark conclusion: "[T]ransfer of juveniles to the adult criminal justice systems generally results in increased rather than decreased subsequent violence, compared with violence among juveniles retained in the juvenile justice system. . . . [Transferring juveniles to the adult system] is counter-productive for the purpose of reducing juvenile violence and

enhancing public safety.”⁵ The evidence supporting this finding was so clear that the CDC Task Force took the highly unusual step of recommending that legislators repeal laws and policies that facilitate the transfer of youth from the juvenile to the adult system.⁶

In contrast to certification, determinate sentencing allows a juvenile court judge the option of imposing a tough sentence, while still providing for the possibility that the juvenile would benefit from the rehabilitative programs available under the TYC. As stated in the Report:

To a very large degree, the increase in recidivism seen among juveniles who were transferred to the adult criminal justice system stems from the lack of services and programming available to them in adult facilities, as opposed to what they could have received in juvenile institutions. Youth in adult facilities have limited access to either educational programs or specialized therapy and treatment. Moreover, staff in adult jails and prisons do not have specialized training to work with this age population or to meet their unique needs as very young prisoners.

Report at 7 [internal citations omitted].

⁵ Angela McGowan, et. al., Centers for Disease Control Task Force on Community Preventive Services, “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” 32 (4S) American Journal of Preventive Medicine (2007), p. S20, [hereinafter, CDC, “Effects on Violence”], <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

⁶ Centers for Disease Control Task Force on Community Preventive Services, “Recommendation Against Policies Facilitating the Transfer of Juveniles from Juvenile to Adult Justice Systems for the Purpose of Reducing Violence,” 32 (4S) American Journal of Preventive Medicine (2007), p. S5, <http://www.thecommunityguide.org/violence/taskforcearticle3.pdf>.

A. There are minimal differences between juveniles who are certified as adults and those who receive a determinate sentence with placement in TYC.

There is a common assumption that juveniles tried as adults are substantially different from those juveniles who are retained in the juvenile justice system and given determinate sentences with placement in TYC. Our analysis, however, which covers the time period in which Cameron Moon was certified, shows little to distinguish these two groups of juvenile offenders. On all critical measures, with the notable exception of the county of conviction, these two groups of juveniles look remarkably similar.

The data reveals that the two groups are essentially the same when it comes to demographic factors, such as age, gender, and ethnicity. Both groups are overwhelmingly male and minority, and disproportionately African-American. In terms of age, 16-year-olds are the most prevalent in each population, followed by 17-year olds.

On the two key factors that most would assume distinguish the two populations—criminal offense and criminal history—the juveniles present similar levels of criminality. Both populations are comprised primarily of juveniles who have committed instant offenses that are violent in nature, with the crimes of aggravated robbery and sexual assault being the most prevalent offense for each group. Their criminal backgrounds are also similar, with the majority of both

certified juveniles and determinate sentenced juveniles having either one or no prior referrals to juvenile court. Even in cases where there were three or four prior referrals, very few of those prior referrals were for violent offenses.

In terms of their sentence length, these groups are also similar. Most juveniles who are certified as adults receive sentences of less than 10 years, which is also the case for juveniles who receive determinate sentences.

The one significant distinction between certified juveniles and determinate sentence juveniles is their county of conviction. Counties vary widely in terms of the extent to which they certify juveniles, and Harris County stands out demonstrably in this regard. Of course, Harris County has the largest number of juvenile offenders in the state, so we would expect it to have the largest certified population as well. But the enormous discrepancy in the size of the certified population between Harris County and all other counties is disproportionate to the difference in county size.⁷ A number of other counties also certify a disproportionate number of youth compared to their use of the determinate sentencing option. In contrast, certain large counties – Travis and El Paso, in particular – certify almost no juveniles, while other counties appear to depend more heavily on determinate sentencing. This data suggests that the decision to

⁷ Notably, the disproportionate use of certification in Harris County has been a long-term issue. Back in 1999, the Criminal Justice Policy Council reported its finding that Harris County accounted for more than 52% of certifications in the top 12 counties. Criminal Justice Policy Council, *An Overview of Juvenile Certification in Texas*, 1999, p. 16.

certify a juvenile as an adult turns far more heavily on the county involved than on the youth's offense or background.

The fact that the two populations of certified juveniles and determinate sentence juveniles are so similar leads to the conclusion that they need similar treatment and responses to their criminal behavior. Both groups would benefit from the rehabilitative services provided to youth in the juvenile justice system, and there is little justification for confining the two groups under significantly different conditions.

B. Certified juveniles do not represent “the worst of the worst.”

A prevailing assumption exists among practitioners and policy-makers that those juveniles who are certified to stand trial as adults represent the “worst of the worst” among juvenile offenders. The data show that this assumption is false. This group is neither more violent nor more persistent in their criminal behavior than the determinate sentence juveniles, as discussed above.

Moreover, while the large majority of certified juveniles have indeed committed violent offenses, data from the time period in which Cameron Moon was certified shows that only 17% were charged with homicide. And about 15% of juveniles transferred to adult court were charged with non-violent offenses, including state jail felonies. Those figures have become even more skewed in

recent years: in 2013, less than 11% of certifications were for homicide, and about 24% were for non-violent felony crimes.

The vast majority of certified juveniles do not have a prior violent criminal history, and many do not have any prior referrals to juvenile court at all. For more than one-quarter of the certified population, the instant offense was the first time they were ever in trouble with the justice system. Thus, it is a fallacy to assume that certified youth are repeat, chronic offenders. Strikingly, 89% of certified juveniles had never before even been in TYC, suggesting that few of them have a serious history of delinquency of any kind. This is especially significant considering that the time period covered by the data includes years when juveniles could be sent to TYC for misdemeanor conduct.

Another indicator that certified cases are not limited to the worst situations is that there are so many more certified juveniles than determinate sentence youth with placements in TYC. Despite the opportunity that the determinate sentencing statute presents to offer serious juvenile offenders an appropriate blend of accountability, toughness, and rehabilitation, that statute is under-utilized in certain counties when compared to the law permitting transfer of juveniles to adult court.

Also worth noting is that by the terms of the law, the certification option is not limited to “worst-case scenarios.” Any felony offense in the Penal Code, including a state jail offense, renders a juvenile eligible to be tried as an adult.

There are many non-violent offenses that are considered felonies. In contrast, only about 30 felonies qualify a juvenile for determinate sentencing, and these include only the most serious and violent felonies. Thus, the determinate sentencing option—not the certification option—has come to look like it is designed for the most serious juvenile offenders.

C. The vast majority of certified youth have not previously had access to the rehabilitative programming available in the juvenile system.

Juveniles who are certified to be tried as adults are often considered unredeemable and as beyond the help of the juvenile justice system. But that assumption is belied by the fact that 9 out of 10 certified youth during the time period when Cameron Moon was certified had no prior commitments to TYC. The vast majority of these certified juveniles never had the opportunity to benefit from the rehabilitative programs that the juvenile system has to offer before entering the adult system. Juvenile judges prematurely concluded that “nothing works” with these juveniles, when the reality in many cases is that “nothing has been tried.” Certified youth miss out on the specialized programmatic opportunities in TYC, especially the highly successful Capital and Serious Violent Offenders Program discussed below.

D. The programming in TYC, especially the Capital and Serious Violent Offenders Program, is far more successful in meeting the specialized needs of juveniles than the Youthful Offender Program in TDCJ.

The programming available to juveniles at TYC is specially designed to offer therapy and interventions that are proven to reduce the likelihood of offenders committing additional violent crimes. The Capital and Serious Violent Offenders Program (C&SVOP) in particular is nationally renowned as a model program for rehabilitating juveniles who have committed some of the worst possible offenses. C&SVOP, based at the Giddings State School, has a three-year success rate of 95% in ensuring that its graduates are not re-arrested for violent offenses (in contrast, those juveniles without this specialized treatment have a success rate of only 76%). The Sexual Behavior Treatment Program has also demonstrated significant success in working with its target population, reducing the risk of re-arrest by up to 80%.

In addition to offering specialized rehabilitative programming and therapeutic interventions, TYC offers all youth educational opportunities, including special education programs for youth with demonstrated needs.

Beyond the educational and rehabilitative programming it provides, TYC is obviously designed to meet other unique needs of juveniles, including adolescent dietary needs, recreational programming to ensure appropriate muscle development, programming to promote social development, and family visitation.

Moreover, the staffing ratios at TYC and the specialized training received by staff are age-appropriate for this population and contribute to youth safety.

In comparison to the program designed to work with juveniles at TYC, the adult prison system (TDCJ) is ill-equipped to meet the specialized needs of the population of juveniles certified as adults. While TDCJ has developed a housing option to keep these juveniles separated from adult offenders until the day they turn 18, the fact remains that these are adult prisons focused much more on the agency's security mission than on rehabilitation. Any services provided to these youths are considered an add-on to the primary program objective of providing housing that separates youth from adults. These limited services offered by TDCJ have never been evaluated to see if they make any difference in outcomes for the youth.

Also, staffing ratios in TDCJ are significantly higher than in juvenile facilities, and correctional staff assigned to work with this population receive only limited specialized training (36 hours to meet basic ACA requirements). Juveniles who are housed in TDCJ's Youthful Offender Program receive minimal specialized programming, especially compared to those in TYC. Also, the majority of these youth are not in school. Due to a lack of resources and the minimal time frame in which most offenders are able to participate in programming, the YOPs are unable to provide the necessary rehabilitative

programming that young offenders need to successfully foster positive reform in their lives prior to their release and return back into their communities.

Moreover, those juveniles who are in TDCJ but who are not in the YOPs, including those who are in state jails, administrative segregation, transfer facilities, or medical or mental health facilities, do not have access even to this minimal programming.

The data presented in this Report show that the majority of certified juveniles are serving sentences of 10 years or less, meaning that most of them will be back in our communities while they are still young, but they will not have received the services they need to be successful and productive citizens. This lack of rehabilitative programming thus has a significant public safety risk. Indeed, a Task Force appointed by the Centers for Disease Control found that youth in the adult criminal justice system have a 34% greater risk of violent recidivism than those who remain in the juvenile system. Another nationally-reported study found that certified juveniles who spend at least a year in an adult prison or jail doubled their risk of violent recidivism.

E. Youth certified as adults and awaiting trial are harmed by their placement in adult county jails, in contrast to those who remain in the juvenile system.

Decisions to certify a youth as an adult have serious implications for their health, well-being, and safety even while awaiting trial. Under the law in place at

the time of Cameron Moon’s certification decision, all youth certified to stand trial as adults were required to be confined in adult county jails.⁸ In 2011, I conducted a study in conjunction with the Commission on Jail Standards to assess the conditions under which these youth were being held. We surveyed every county in Texas with a history of holding certified youth in recent years to gather this information, and toured a number of jails, including the Harris County Jail. This study was published as a report titled “Conditions for Certified Juveniles in Texas County Jails” (LBJ School, 2012) (“Conditions Report”),⁹ and I served as lead author of that report.

The Conditions Report found that many certified youth confined in Texas county jails come into contact with adults. In some jails, youth are even housed with adult offenders, but even where they are housed separately, they can come into contact with them in other parts of the jail, such as shower and toilet areas, dining areas, recreation yards, and common areas. These periods of contact with adult offenders put youth at increased risk for physical and sexual assault. National research indicates that juveniles in adult facilities are five times more

⁸ In 2011, the law changed to permit a county to allow certified youth to be held in juvenile detention facilities instead of adult jails. Some counties have adopted this policy, while others continue to hold youth in the adult jails.

⁹ Available at <http://www.utexas.edu/lbj/sites/default/files/file/news/Conditions%20for%20Certified%20Juveniles%20in%20Texas%20County%20Jails-FINAL-3.pdf>

likely to be victims of sexual abuse and rape than youth who are kept in the juvenile system. (Conditions Report at 4.) They are also 50% more likely than adults to be physically attacked with a weapon of some sort. (Conditions Report at 5.) Yet more than a quarter of the jails in our survey said that they provided youth with no special supervision when they come into contact with adults.

The majority of jails in Texas, however, do try to separate youth from adults, in order to protect them. To achieve such separation, these jails keep the youth in isolation in their cells. Over 60% of the jails we surveyed indicated that they provide youth with less than one hour a day of out-of-cell time. Most jails reported the average length of stay in the jails for these youth was between 6 months to longer than a year, meaning that these youth experience this isolation for long periods of time. As the Report notes, this long-term 23-hour a day lockup “may have grave consequences for a youth’s mental stability and physical health.” Conditions Report at x.

The Harris County Jail, where Cameron Moon was held, kept youth confined in isolation cells up to 23 hours a day, with little access to services or programs. There is no access to fresh air or sunlight. This status could continue for years on end. During my visit to the Harris County Jail, I met one youth who had been locked in this status for two years, since the age of 14. He said he had not seen sunlight for that entire time. (Conditions Report at 21.)

The isolation conditions and lack of out-of-cell time for certified juveniles “can have a detrimental impact on the juvenile’s mental health, aggravating existing mental illness and augmenting suicidal ideation.” Conditions Report at 19. There is a great deal of national research documenting the impact of solitary confinement on the development of mental illness in adult prisoners; such effects are exacerbated in the case of juveniles held in isolation. Youth in adult prisons and jails have a 36 times greater risk of suicide than their counterparts held in juvenile detention facilities. (Conditions Report at 20.) As the Conditions Report observes:

Segregation may also hurt adolescents’ chance for proper socialization and damage their ability to develop a healthy adult identity. This reduction in socialization and impairment to identity formation may limit the possibility for future mental health recovery.... Even short periods of isolation can produce symptoms of paranoia, anxiety, and depression.

Conditions Report at 19-20.

The Conditions Report also found that certified juveniles held in Texas county jails have very limited access to educational classes and other rehabilitative programming. Almost half the jails offer no formal education program at all, while the rest have extremely limited GED classes. Of those that do offer any classes, the majority of jails provide less than five hours per week in total. This lack of educational programming can be a huge setback for a youth’s educational achievement, and may make it difficult for a youth to reintegrate in their schools when they are released. Since the majority of certified youth (53%) do not end up

serving time in prison, this lack of education while they are incarcerated in the jail awaiting trial can have serious deleterious effects. Even for those who do go to jail, they typically serve sentences of less than 10 years. The lack of education means they have a higher risk of recidivism when they return to their communities.

The harms that are caused by placement of a certified youth in a county jail mean that it is especially important that judges make thoughtful and well-informed decisions about certification.

CONCLUSION

I respectfully request that this Court reverse the decision of the juvenile court to waive its exclusive original jurisdiction over the Appellant.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies this 2nd day of May, 2014, that this computer-generated document has a word count of 6,343 words, based on the representation provided by the word processing program used to create this document.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the counsel below by electronic or first class mail on this 2nd day of May 2014.

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