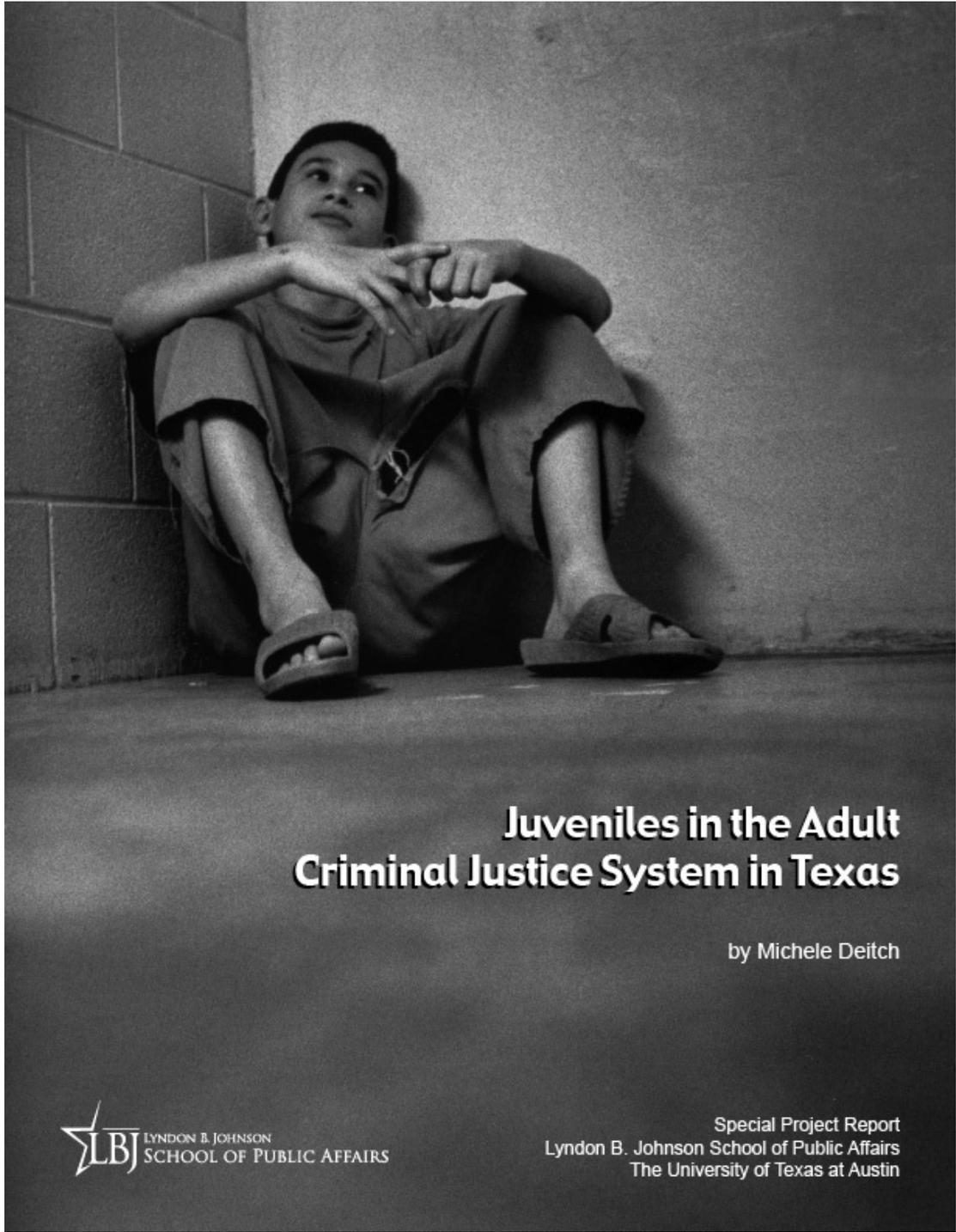


The information contained within this document was presented at the Fall 2012 Criminal Justice Forum on October 5, 2012. The Fall 2012 Criminal Justice Forums provide university faculty and students with an opportunity to share current research and findings. The views and opinions expressed in this document are those of the authors and do not necessarily reflect the official policy or position of the Legislative Budget Board or Legislative Budget Board staff.



Juveniles in the Adult Criminal Justice System in Texas

by Michele Deitch

Dual Focus of Today's Presentation

- Who are the youth who get transferred to the adult system, and how do they compare to youth who stay in the juvenile system?

--Report: "Juveniles in the Adult Criminal Justice System in Texas," LBJ School, 2011

- What are the conditions in which certified juveniles are held in adult county jails while awaiting trial?

--Report: "Conditions for Certified Juveniles in Texas County Jails," LBJ School, 2012

Texas Juvenile Sentencing Terminology

Juvenile Indeterminate Sentencing

- sentenced by juvenile judge
- available for all offenses
- can stay in TJJD up until age 19 and then must be released

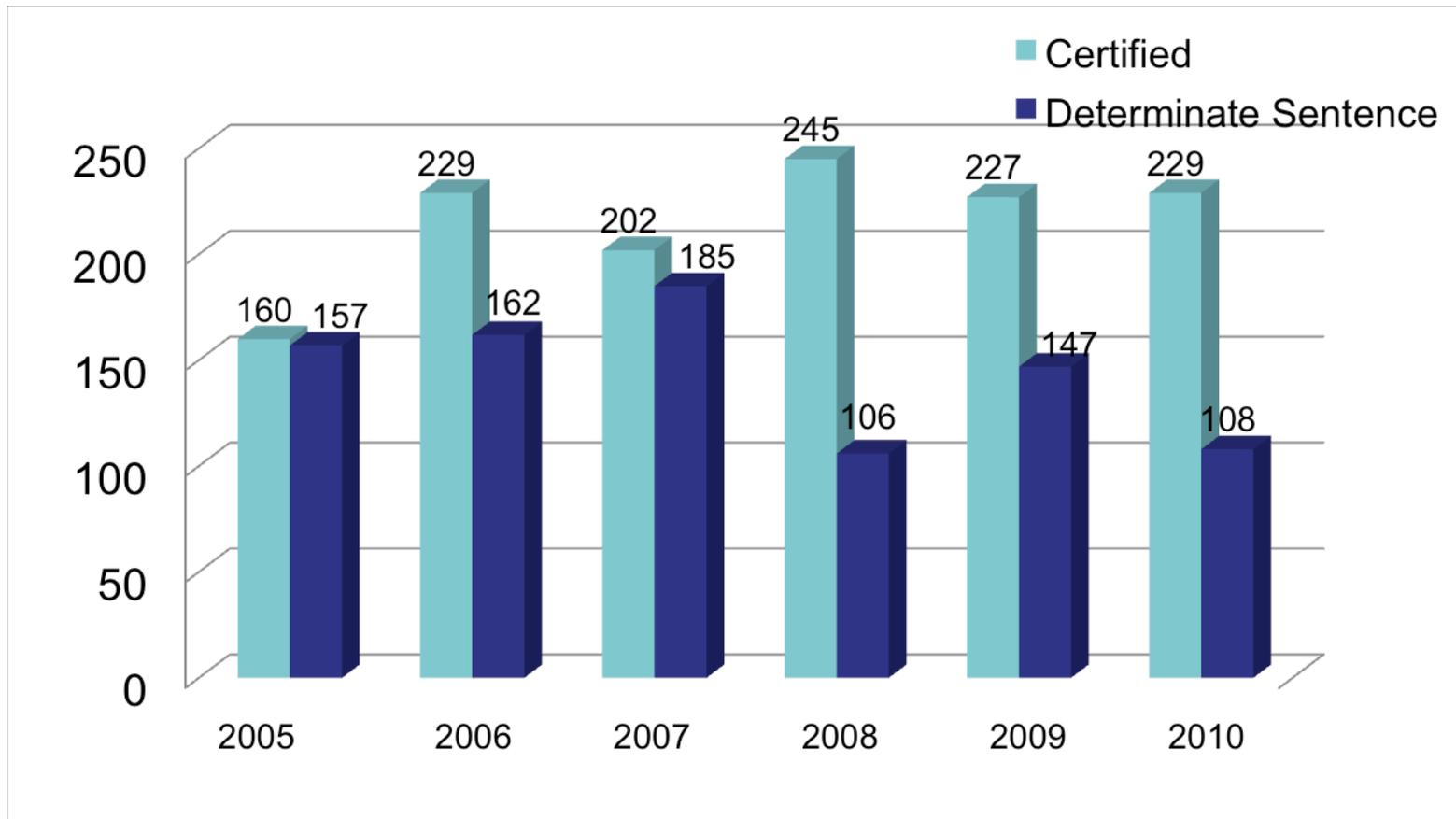
Determinate (Blended) Sentencing

- sentenced by juvenile judge
- available only for the most serious and violent offenses
- sentences up to 40 years
- start sentence in TJJD, then possible transfer to adult prison at age 19 if not rehabilitated

Adult Certification

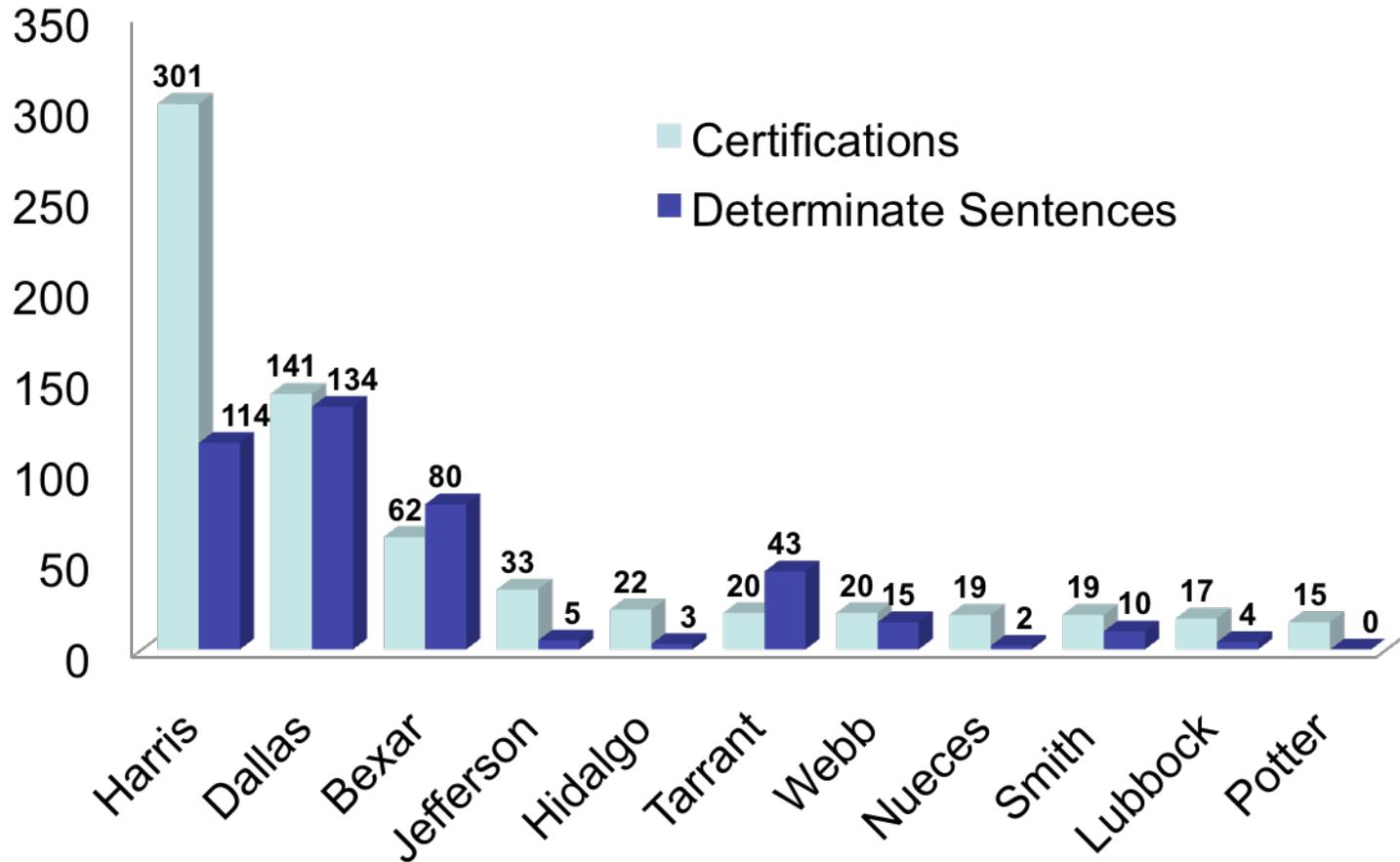
- transferred by juvenile judge to adult criminal court
- available for any felony offense, including state jail felonies and non-violent crimes
- sentences up to 99 years or life
- start sentence in adult prison as early as age 14

Adult Certifications in Texas vs. Determinate Sentences with TYC Placement FY 2005 – 10



Source: Texas Juvenile Probation Commission Data, 2010

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



Source: Texas Juvenile Probation Commission Data, 2010

Comparing Texas Certified Juvenile and Determinate Sentence Populations by Top 5 Offenses, FY 2005 - 09

CERTIFICATIONS		DETERMINATE SENTENCES WITH TYC PLACEMENT	
<i>Offense</i>	<i>% of Total Certifications</i>	<i>Offense</i>	<i>% of Total Determinate Sentences</i>
Aggravated Robbery	35.2%	Aggravated Robbery	40.7%
Sexual Assault	19.0%	Sexual Assault	16.5%
Homicide*	17.0%	Aggravated Assault	16.5%
Aggravated Assault	10.3%	Violation of Probation for Sexual Assault	6.3%
Burglary	5.6%	Homicide*	4.8%
Other	13.0%	Other	15.2%
TOTAL	100%	TOTAL	100%

Source: Texas Juvenile Probation Commission Data, 2010

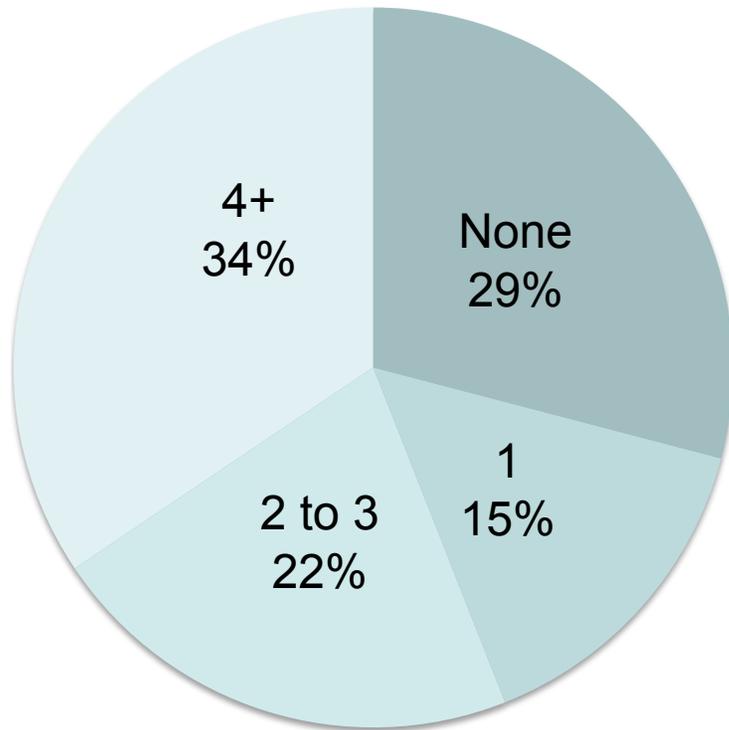
* "Homicide" includes Capital Murder, Murder, Felony Murder, Manslaughter, Involuntary Manslaughter, and Criminally Negligent Homicide.

Comparing Criminal Offenses

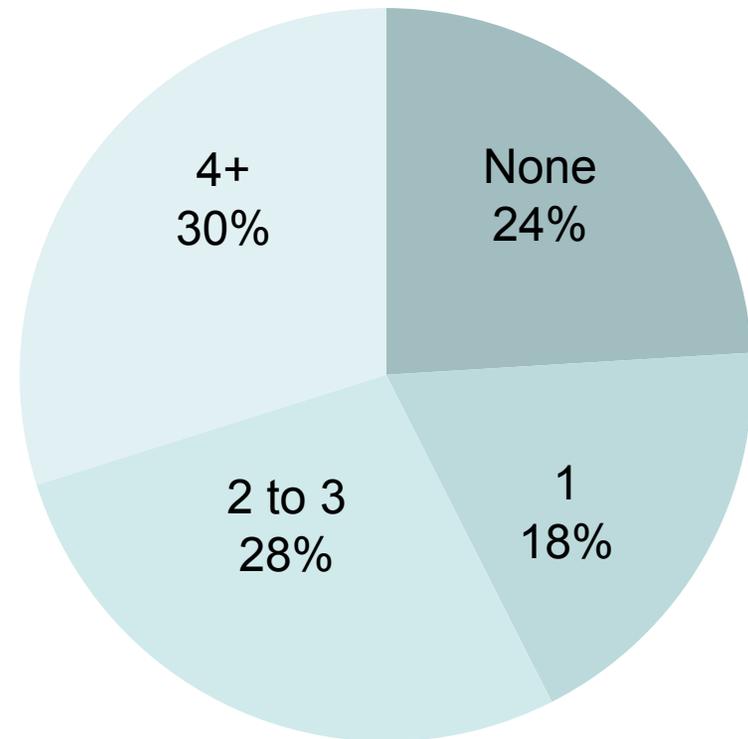
- Agg. Robbery cases dominate both populations, and together with sexual assault, accounts for more than 55% of cases in each category
- Homicide only accounts for 17% of certification cases (contrary to popular perception)
- Determinate Sentence cases include almost exclusively violent crimes, including homicide
- Non-violent offenses, including state jail felonies, account for 10-15% of certification cases

Certified juveniles and Determinate Sentence juveniles in TJJD are relatively comparable when it comes to criminal offenses. Certified youth are not demonstrably more violent than youth retained in juvenile court.

Prior referrals for certified juveniles, FY 2005-09



Prior referrals for determinate sentence juveniles, FY 2005-09



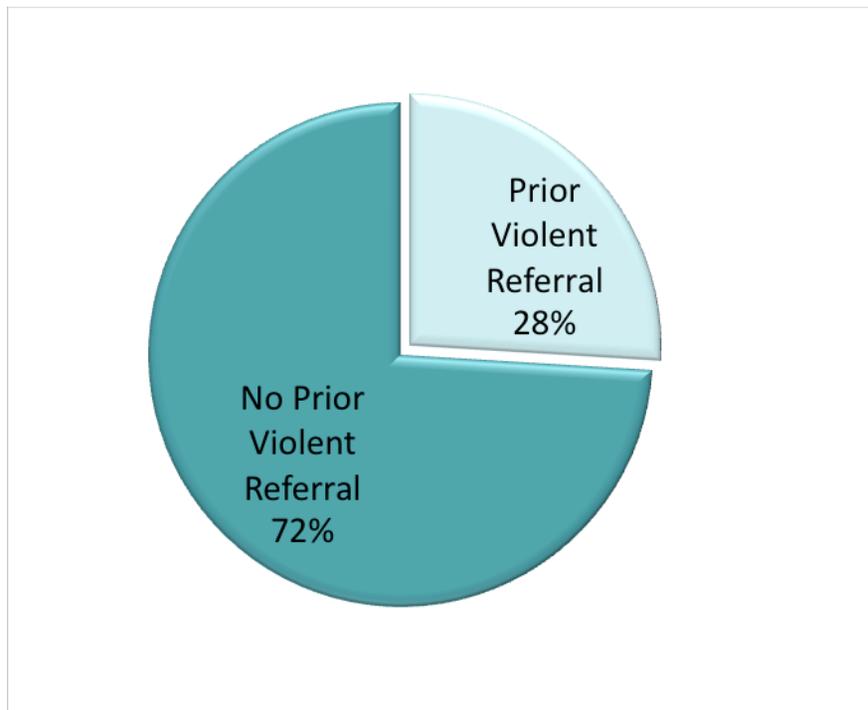
Source: Texas Juvenile Probation Commission Data, 2010

Comparing Criminal History

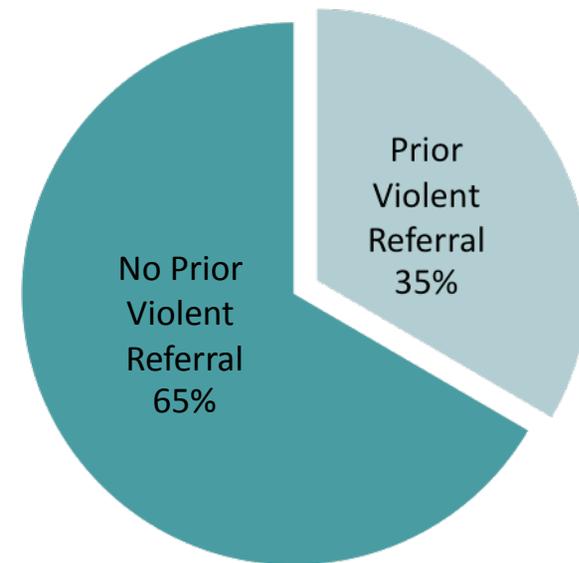
Certified youth and Determinate Sentence youth in TJJD have similar numbers of prior referrals to juvenile court

- Referrals can be for any offense, including truancy and curfew violations
- Roughly a quarter of each population have never been in trouble before
- Almost 45% have had either no prior referrals or only one
- Dispels myth that certified youth are chronic, repeat offenders

Prior Violent Referral for Certified Juveniles, FY 2005 -09

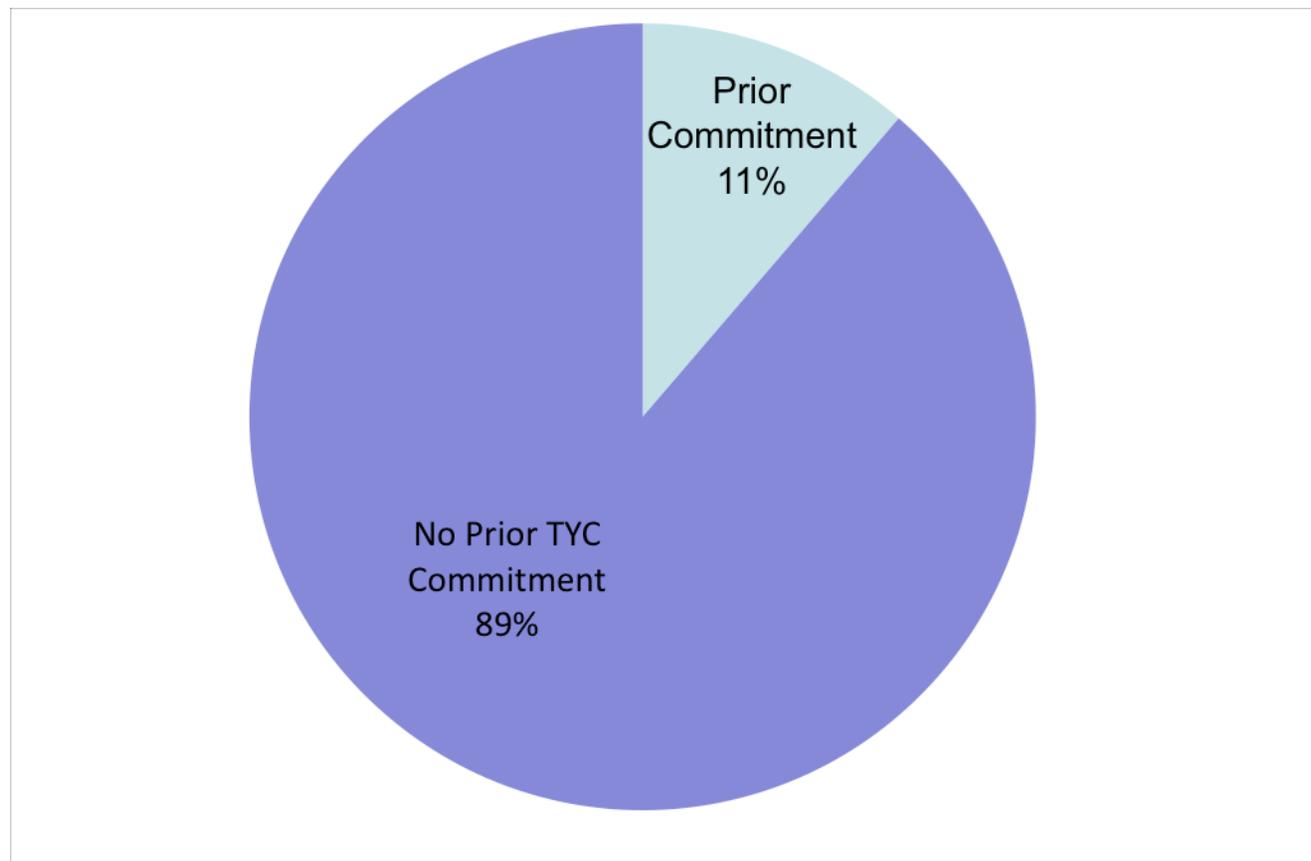


Prior Violent Referral for Determinate Sentence Juveniles, FY 2005-09



Source: Texas Juvenile Probation Commission Data, 2010

Prior TYC Commitment for Certified Juveniles FY 2005 – 09



Source: Texas Juvenile Probation Commission Data, 2010

Most certified juveniles will get out of prison while still young

- Many certified juveniles receive probation; only 47% go to TDCJ
- 58% of certified juveniles in prison received sentences of less than 10 years
- Only 9 juveniles in recent years received sentences longer than the 40 years available under determinate sentencing
- Similar sentence lengths for certified juveniles and determinate sentence juveniles
- But certified juveniles do not have access to the rehabilitative programs they need for re-entry

Conclusions about the Data

Data breaks down the common myths about which juveniles get transferred to the adult system

- Not the “worst of the worst”—many are first-time offenders, are charged with non-violent offenses, and have no prior violent criminal history
- Certified youth are almost identical to those retained in the juvenile system in terms of criminality

Vast majority of certified juveniles have never been through the toughest options in the juvenile system

- Not a case of “nothing works”; rather “nothing has been tried”
- Certified youth miss out on effective rehabilitative programs and school in juvenile system
- Determinate sentencing option is flexible—holds youth accountable while protecting public safety with potentially long sentences

These similarities may have implications for where certified youth should be confined while awaiting trial and after conviction.

Juveniles in Adult Jails and Prisons

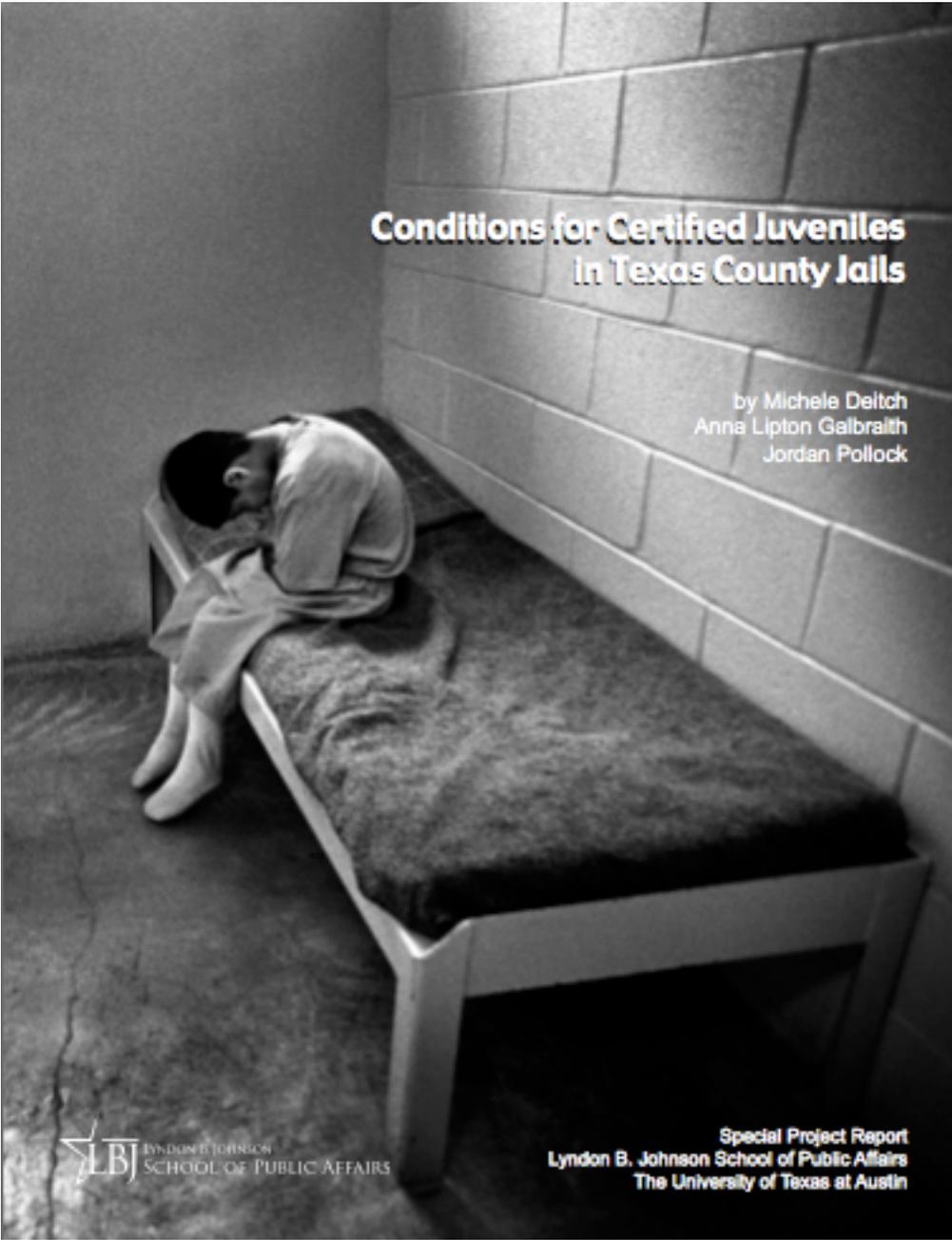
In Texas, certified juveniles ages 14-17 are required to be confined in:

- Adult county jails, while awaiting trial (unless Juvenile Bd. authorizes confinement in juvenile detention facility and judge orders in individual case—SB 1209)
- Adult prisons, after conviction

In adult prisons and jails, juveniles face vastly higher risks of:

- suicide
- sexual assault
- physical assault
- mental illness

Limited access to effective therapeutic interventions, education, specialized staff, and age-appropriate services



Conditions for Certified Juveniles in Texas County Jails

by Michele Deitch
Anna Lipton Galbraith
Jordan Pollock

 **LBJ** LYNDON B. JOHNSON
SCHOOL OF PUBLIC AFFAIRS

Special Project Report
Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin

Conditions for Certified Juveniles in Texas County Jails

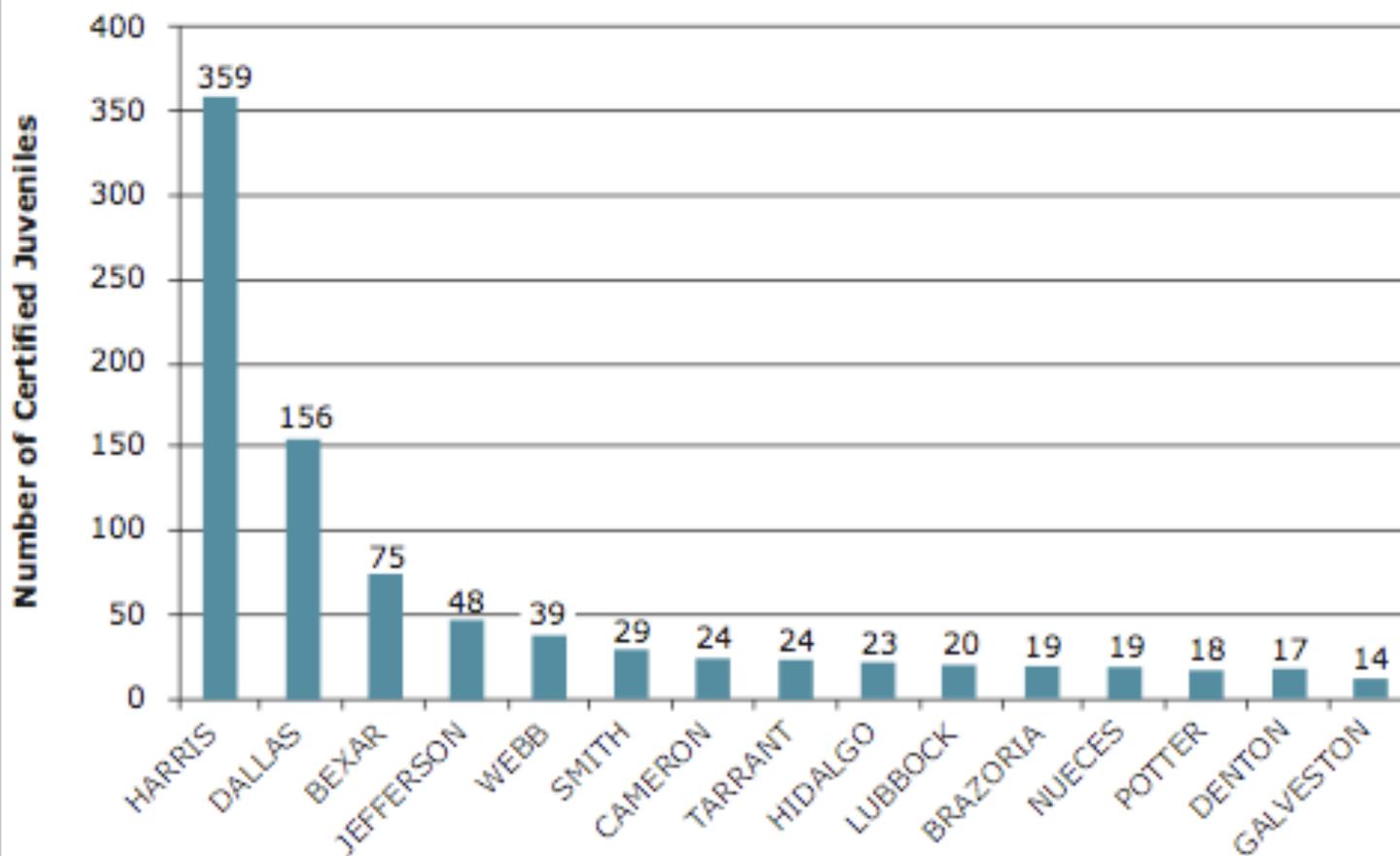
Project Objective: Provide comprehensive information about how certified juveniles are housed in Texas county jails, including the challenges jail administrators face in housing certified youth

- To inform juvenile boards as they consider implementation of SB 1209
- To inform future discussions about the most appropriate way to manage the confinement of certified juveniles

Collaboration with Texas Commission on Jail Standards

- Survey designed in collaboration with the Texas Commission on Jail Standards
- Survey distributed to 53 jails in counties where juveniles had historically been certified
- Received responses from 41 jails with experience confining certified youth, including all counties with significant numbers of certifications in recent years

Figure 1
Number of Certifications in Top 15 Counties, 2006-2010



Source: Texas Juvenile Probation Commission, *The State of Juvenile Probation Activities in Texas, 2006-2010*, (Austin, TX: Texas Juvenile Probation Commission, 2007, 2009, 2010, 2011).

Survey Content

Through the survey, we collected information on:

- The number of certified juveniles in county jails
- The average length of time certified juveniles spend in county jails
- Housing of certified juveniles
- Level of contact certified juveniles have with adults
- Out-of-cell time
- Educational programming
- Rehabilitative programming

Impact of Certified Juveniles on Jail Operations

The survey and follow-up interviews revealed that:

- Jails face a difficult choice between protecting certified juveniles' physical safety and their mental health
- Separating certified juveniles from adults requires significant staffing resources, and in many cases is made difficult by a jail's architecture
- Jails that house certified juveniles often absorb additional costs that go well above the costs of housing an adult offender

Table 1
On-Hand Certified Juvenile Population in County Jails
September–October 2011

County	On-Hand Certified Juvenile Population September–October 2011	Number of Juveniles Certified in 2010
Bell	1	3
Bexar	1	13
Brazoria	2	1
Cameron	6	12
Dallas	8	35
Galveston	2	2
Harris	4	53
Harrison	1	0
Jefferson	6	13
Lubbock	1	4
Smith	1	7
Travis	1	4
Total	34	144

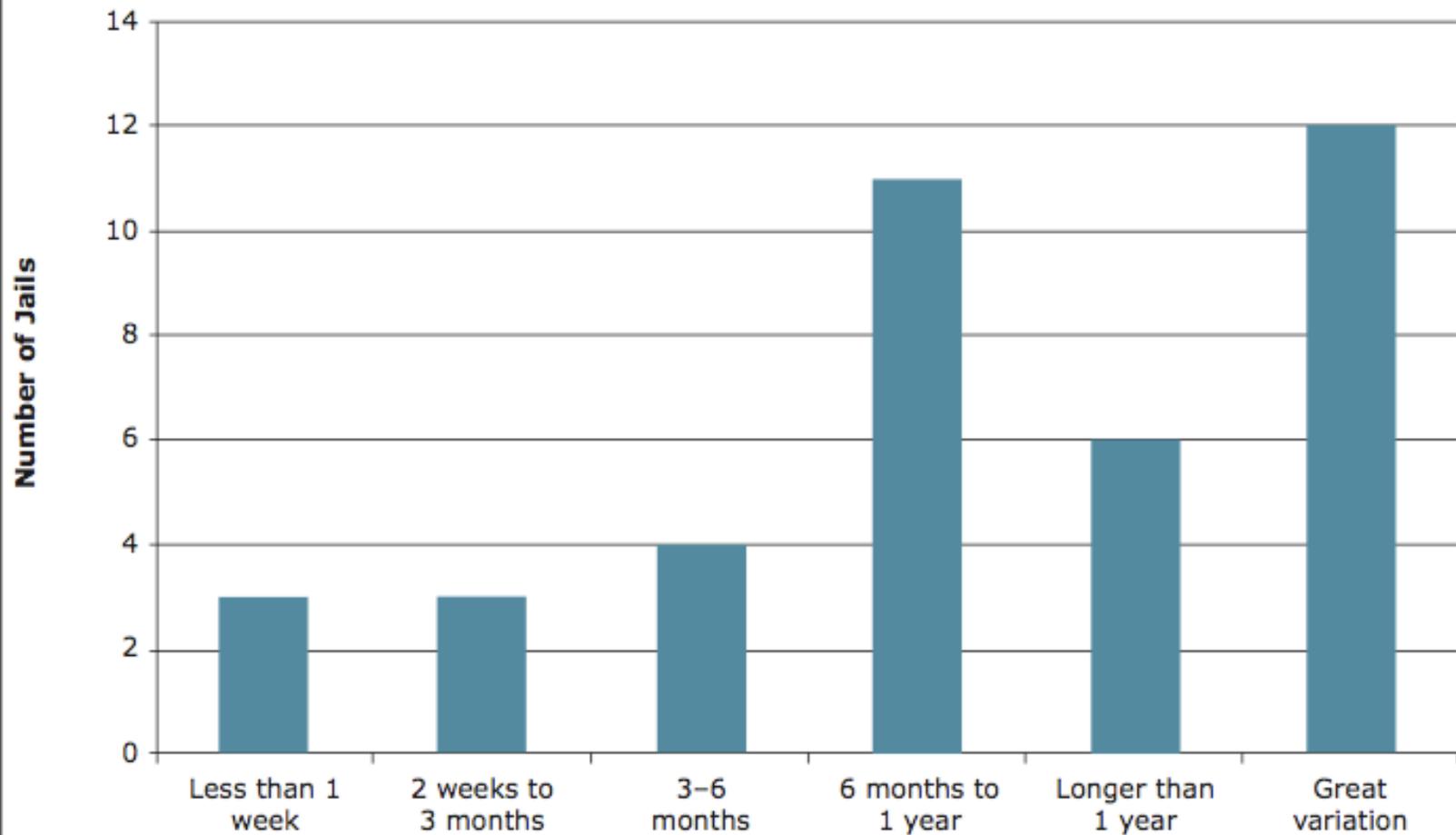
Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011; and Texas Juvenile Probation Commission, *The State of Juvenile Probation Activities in Texas, 2006-2010*.

Number of Certified Juveniles Confined in County Jails

Key Findings

- Significantly fewer certified juveniles were being held in county jails during the survey time period (September and October 2011) than would have been anticipated based on the 2006 to 2010 data on the number of statewide certifications.
- The small number of certified juveniles in jail custody suggests holding the youth in juvenile pre-adjudication facilities would not be a significant burden for the juvenile facilities.

Figure 2
Estimated Average Length of Stay for Certified Juveniles in County Jails



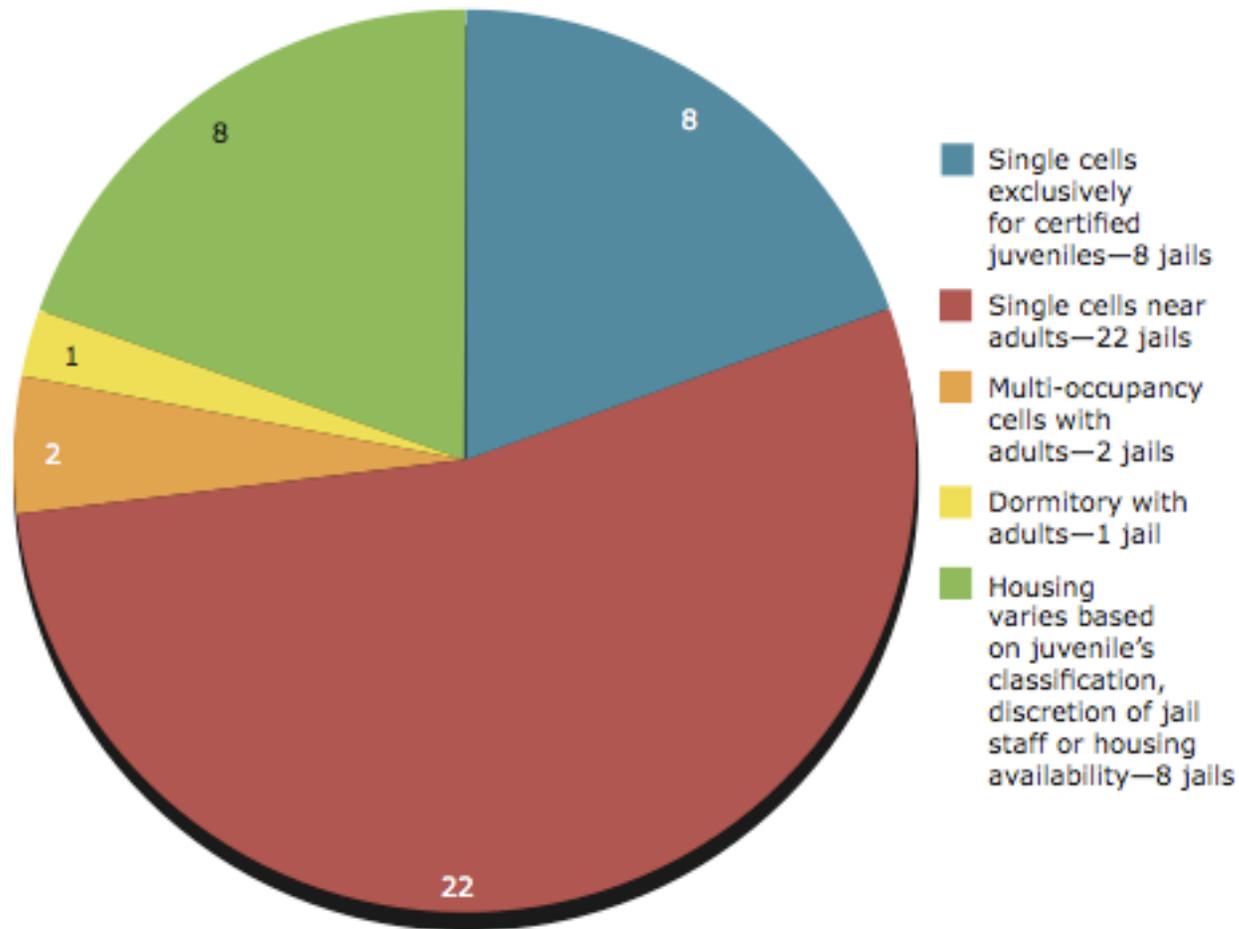
Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011.

Length of Stay in County Jails

Key Findings:

- The average length of stay for certified juveniles in county jails ranges from less than 1 week to more than 2 years.
- 42% of jails estimated that the average length of stay for certified juveniles was longer than 6 months.
- The length of time juveniles spend awaiting their trials in county jails:
 - is a significant financial and operational burden for the jails that house them, and
 - elevates concerns about the impact of prolonged isolation on juveniles' mental health.

Figure 3
Percentage of County Jails Using Each
Housing Approach for Certified Juveniles



Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011.

Housing For Certified Juveniles

Key Findings:

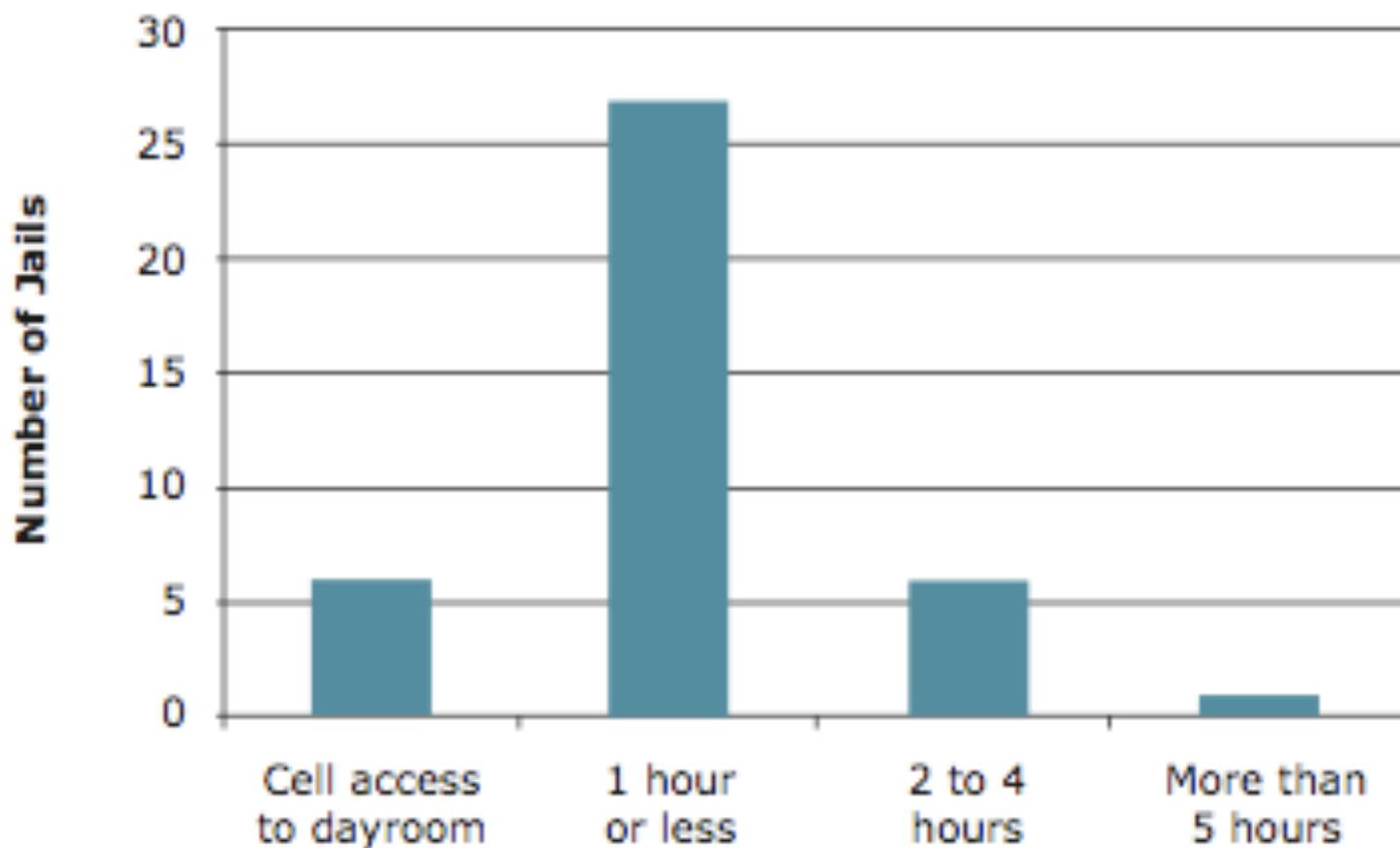
- In 73% of the jails that responded to the survey, certified juveniles are being held in single or separation cells.
- Jail administrators recognize the physical safety risks for certified juveniles in adult jails, and are making efforts to minimize these risks in most cases.
- In 27% of jails, certified juveniles are sometimes or always housed with adult offenders.
- When housing certified juveniles, jails are forced to make a difficult choice between protecting the physical safety or mental health of the juvenile.

Contact With Adult Offenders

Key Findings:

- Jails are making efforts to separate juveniles from adults, but very few jails achieve sight and sound separation at all times.
- Of the jails that responded to the survey:
 - 11 commingle juveniles with adults
 - 12 allow minimal and supervised contact
 - 18 allow no contact with adults
- Youth might come into contact with adults in: housing, showers, toilets, dining facilities, common areas, recreational activities, educational classes, programs, the chapel, and the medical wing.

Figure 4
Daily Out-of-Cell Hours for Certified Juveniles in County Jails



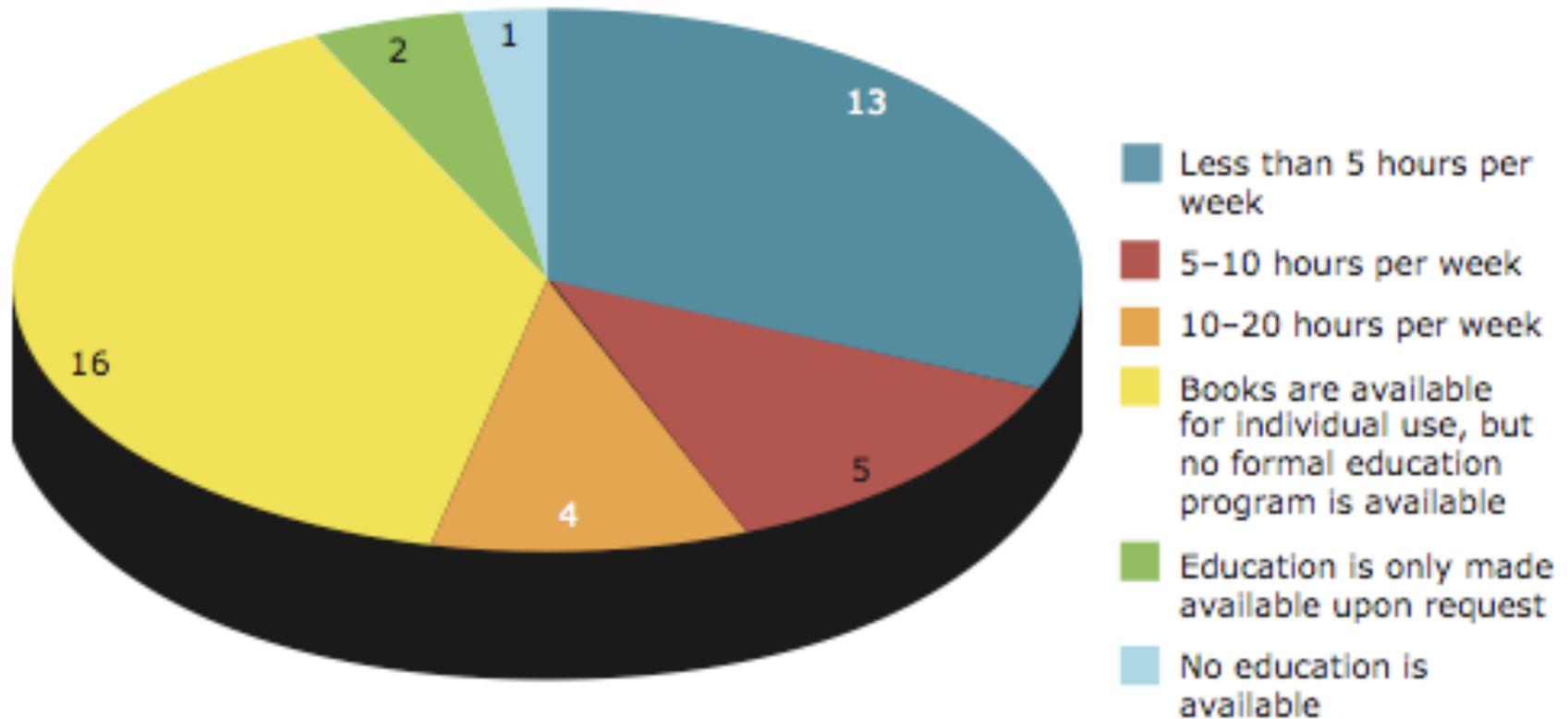
Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011.

Out-Of-Cell Time

Key Findings:

- The majority of jails allow certified juveniles out of their cells for one hour or less per day.
- Jails noted the logistical challenges associated with providing certified juveniles with out-of-cell time while preventing contact with adults.
- Juveniles are spending long periods of time in isolation.
- Prolonged isolation may have a detrimental impact on a youth's mental health.

Figure 5
Educational Programming for
Certified Juveniles in County Jails

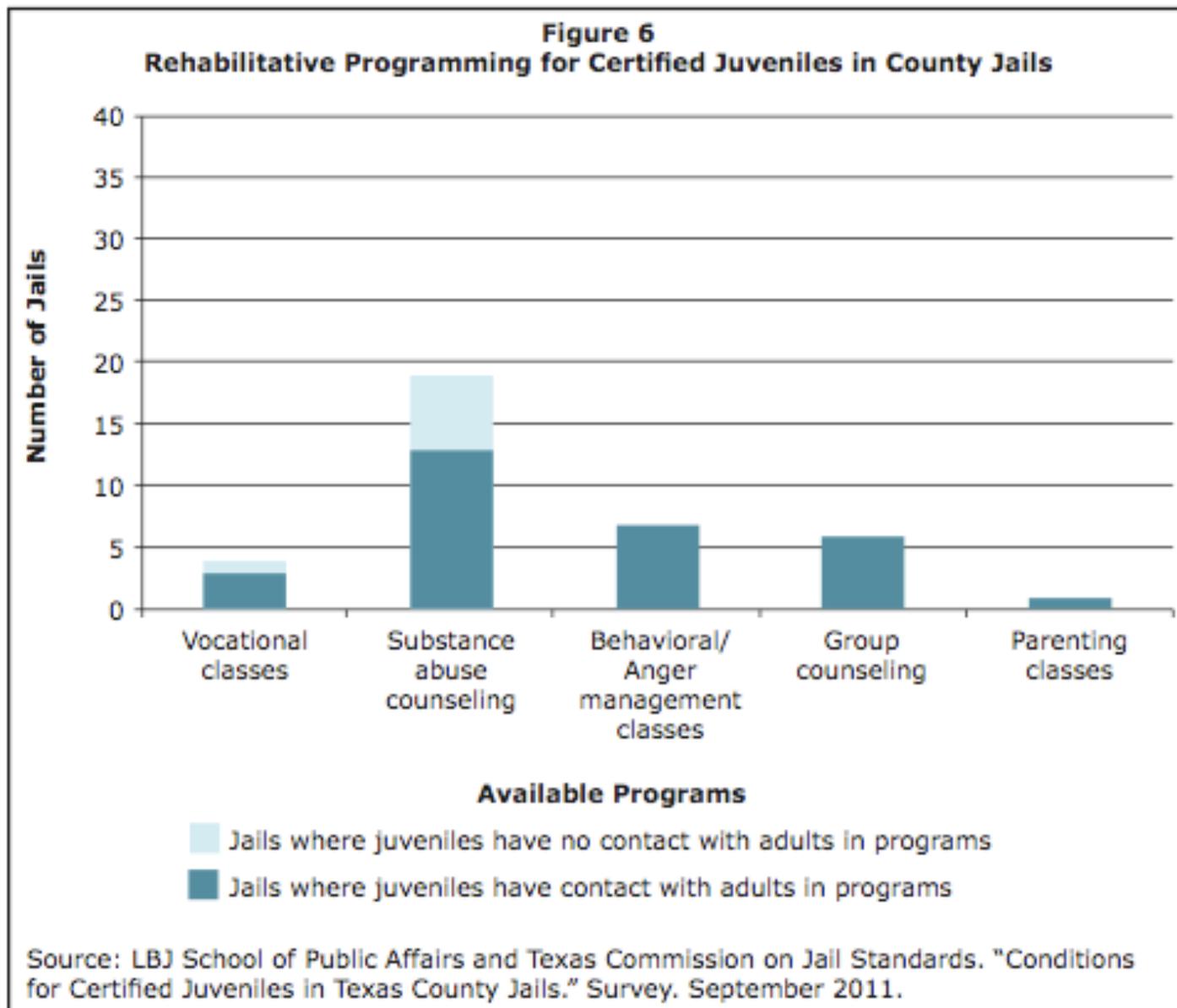


Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011.

Educational Programming

Key Findings:

- Certified juveniles have very limited access to educational programming in county jails, and only 54% of jails have a formal education program.
- The number of hours of educational programming available for certified juveniles on a weekly basis is very limited. Only 4 jails offer more than 10 hours per week.
- This lack of educational programming may make it difficult for youth to reintegrate at grade-level after they are released. Many certified youth are released on probation after trial or receive short sentences.
- **This lack of educational programming appears to violate both state and federal law.**



Rehabilitative Programming

Key Findings:

- Certified juveniles in county jails have limited access to rehabilitative programming.
- When certified youth do have access to the limited programming available in jails, it is often alongside adult offenders.
- This lack of rehabilitative programming may have a detrimental impact on youths' ability to reintegrate into the community after release.
- The majority of juvenile pre-adjudication facilities offer programming tailored for youth.

Summary of Survey Findings

- ✓ There were fewer certified juveniles in custody than anticipated.
- ✓ Many certified youth confined in county jails come into contact with adult offenders, either in housing or during programming.
- ✓ The majority of certified youth confined in county jails are held in isolation for long periods of time.
- ✓ Certified youth confined in county jails do not have access to the services and programming that they need, or to the educational programming that they may be legally required to receive.
- ✓ Housing certified youth is a burden on county jails, and requires additional staff time and financial resources beyond those required to house adult offenders.
- ✓ There are no standards governing the confinement of certified juveniles in adult county jails.

Public Safety Concerns

- Centers for Disease Control: **“transferring juveniles to the adult system is counter-productive as a strategy for preventing or reducing violence”**
- One study found that transferred juveniles who served at least a year in adult prison had a 100% greater risk of violent recidivism.

Senate Bill 1209—82nd Leg.

- Gives counties the option to house certified juveniles in juvenile detention centers instead of jails while awaiting trial
- Two-step process:
 - Juvenile Board has to adopt a policy to allow this arrangement
 - Judge has to order youth to be held in detention center instead of jail
- TX Attorney General's Office opinion: There must be sight and sound separation of certified juveniles from adults at all times if they are confined in county jail
 - most Texas jails cannot comply with this strict requirement**
 - this ruling may exacerbate isolation of juveniles in jails**

New Federal PREA Requirements

PREA Standard on Youthful Offenders--§115.14 imposes significant restrictions on housing of certified youth in adult facilities.

- Juveniles must be sight and sound separated from adult offenders until **age 18**.
- Juveniles should not be isolated or denied programs to comply with that requirement.
- May require higher staff-inmate ratio in any facility that houses certified youth or 17-year old adult offenders.
- States/counties can lose federal funds for non-compliance.

Considerations for Policymakers

- ✓ Who should be eligible to be certified? How can we ensure that certification is limited to the “worst of the worst”?
- ✓ Where should certified youth be housed pre-trial? Post-conviction?
 - Consider the operational challenges, costs, risks, and liabilities of housing youth in adult settings
 - Consider the availability of educational classes, programs, services, and trained staff in juvenile facilities
- ✓ How will Texas come into compliance with PREA requirements regarding youth under age 18 in adult facilities?
- ✓ What kind of guidance do jails need from the Commission on Jail Standards on these issues?
- ✓ What should be the age of juvenile jurisdiction in Texas?

National Trends

- Treating serious juvenile offenders differently from adult offenders and recognizing juveniles' capacity for change
 - US Supreme Court decisions in life without parole and death penalty cases: *Miller* (2012); *Graham* (2011); *Roper* (2005)
- Reducing transfer to adult court
 - 10 states in last 5 years
- Removing youth from adult jails
 - Colorado (2012); Pennsylvania (2010); Virginia (2010)
 - PREA Standards
- Raising age of juvenile jurisdiction
 - Connecticut (phased in, 2010, 2012); Mississippi (2010); Illinois (2010)
 - Serious negotiations underway in New York and North Carolina

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To download full reports, visit:

<http://www.utexas.edu/lbj/news/2011/juvenile-justice-report>

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