



# Judging for Juvenile Justice

3 judges share lessons of juvenile justice reform

## Overview

Judges sit at a critical juncture in the juvenile justice system, determining the most appropriate sanctions and services for young offenders. However, judges often lack viable options to hold these offenders accountable and ensure they receive the interventions they need to get back on track with their families, schools, and communities.

These frustrations are increasingly prompting judges to engage in juvenile justice reform in their states. Pew recently spoke with three of them—Steven Teske of Georgia, Lisa Jones of Kentucky, and R. Mark Browning of Hawaii.

Although their experiences varied, all three judges said they championed reform efforts because of concerns that placing large numbers of youth in out-of-home facilities for low-level offenses was a high-cost strategy that produced disappointing results. They also agreed that judges contribute a vital perspective to reform initiatives and urged their colleagues in the judiciary to get involved.

## Juvenile Court judges



**Steven Teske**  
Georgia



**Lisa Jones**  
Kentucky



**R. Mark Browning**  
Hawaii



Once you understand how detrimental this approach is for children and how expensive it is, then from a court perspective you want to dive in, understand the problem, see what's driving it, and come up with a better way."

Lisa Jones, district court judge, Daviess County, Kentucky

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## Q: What motivated you and your colleagues in the judiciary to get involved in juvenile justice reform in your state?

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**Teske:** More than anything it was the frustration of having too many kids before us in court who had high needs, yet were nonviolent and not having options that would allow us to keep them in the community and treat them. As a result, what we were doing by default in Georgia was committing all these low-risk, high-need kids to state facilities. And as we all know, sending those kids into the system only makes them worse—delinquent in a serious way—by mixing them with the type of juvenile offenders who truly scare us.

**Browning:** Ultimately, what motivated us to act was the fact that we care passionately about our children. And the children who come to our court, who become involved in our system, are our children. So we needed to do better. Our system was failing them. I also feel that it's very important for judges to speak up, to get out in the community, and work in a variety of capacities to find solutions.

**Jones:** We've all seen the research showing that for many youth, incarceration can lead to trauma, increased recidivism, more mental health issues, greater trouble in school, and multiple other problems, so that was certainly one factor. But I think what really stirred everyone to action and made this issue something we could successfully address through the Legislature was the financial aspect, seeing how much we were spending to isolate and house these children away from their families, to no purpose. Once you understand how detrimental this approach is for children and how expensive it is, then from a court perspective you want to dive in, understand the problem, see what's driving it, and come up with a better way.

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## Q: What were the major juvenile justice issues facing your state when the reform effort began?

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**Jones:** When you imagine what type of child might be committed to a state facility, you think of a child with a long history of offenses or a child charged with multiple offenses or a felon. But that wasn't the type of child we primarily had in our facilities. Instead we had children who were charged with misdemeanors or were status offenders who had violated rules of the court, sometimes for something as simple as making a bad grade. I don't think we set out to incarcerate this population. But there was such a lack of services, especially in rural communities, that not only was commitment to the Department of Juvenile Justice the biggest tool in judges' toolbox, often it seemed like the only tool we had to deal with these cases. The other major issue was the funding structure. We needed to figure out a way to spend less on commitment and shift that money to help children on the front end.

**Browning:** The system we were running was simply backwards. Like many states, Hawaii had a system back-loaded in favor of incarceration, and it was tremendously expensive. If we had taken the money we were spending—about \$200,000 per kid per year in our state—and invested it up front on mental health services, drug treatment, and other programs, it would have cost the community exponentially less while delivering better results. Beyond dollars and cents, there were other costs created by the old system. Kids coming out were more likely to end up in prison, to be on welfare, to become homeless, and so forth. So there were those painful human costs as well.

**Teske:** First of all we had too many kids in the system. We also realized that the cost was extremely high—\$91,000 a year just to house one kid in a secure facility—and the recidivism rate was 65 percent. So there was a clear realization that we were not doing a very good job investing the taxpayers’ money. We also lacked community-based options for treating many of the needs that were producing delinquent conduct. These kids needed family and cognitive-behavioral programming and other services, and we needed to reconfigure our system so we had the money to provide that support.

## Georgia

In fiscal year 2013, Georgia lawmakers directed nearly two-thirds of the state’s \$300 million juvenile justice budget to out-of-home facilities, where each bed in a secure facility cost taxpayers approximately \$91,000 a year. The results, however, demonstrated a poor return on this investment. More than half of all adjudicated juveniles were readjudicated as delinquent or convicted as adults of a new crime within three years of their release.

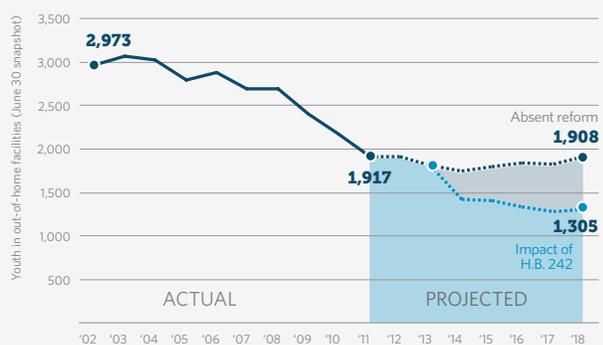
Policymakers sought to understand the problem through the work of the Special Council on Criminal Justice Reform for Georgians. After a comprehensive review of state data, the council found that Georgia sent many low-level, low-risk offenders to expensive, out-of-home facilities, with little benefit for public safety. The council urged the state to prioritize its secure facilities for higher-level offenders; invest in evidence-based programs and practices to prevent recidivism; and require data collection and performance-based contracting.

Georgia lawmakers adopted the council’s recommendations in House Bill 242, which both chambers of the General Assembly passed unanimously and Governor Nathan Deal signed into law May 2, 2013. The overhaul is expected to help Georgia save \$85 million through 2018 and avoid the need to add two juvenile residential facilities, while encouraging the state to fund effective alternatives to incarceration. Through a combination of state and federal funds, Georgia invested \$6 million in fiscal 2014 and is investing \$8.85 million in fiscal 2015 to expand community-based programs and practices that help reduce recidivism.\*

### Georgia Council’s Policies To Save \$85 Million Out of home population expected to drop by more than 30%

Source: Georgia Department of Juvenile Justice (historical data), Pew analysis (projected data)

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\* The Pew Charitable Trusts, “Georgia’s 2013 Juvenile Justice Reform: New Policies to Reduce Secure Confinement, Costs, and Recidivism” (July 2013), <http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/georgias-2013-juvenile-justice-reform>; updated investment figures provided by the Georgia Department of Juvenile Justice.

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## Q: What was the most important part of the judiciary's role in the juvenile justice reform effort?

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**Browning:** One contribution was to educate the public and our partners in the process and to make sure the final legislative package reflected the reality of the problems we were facing. I don't mean that in a pejorative way. I just mean that our courtrooms are the epicenter of this system and all the problems are very visible when a child ends up there. And we needed the other branches of government to see that we simply lacked the tools and resources to help these kids. I also think judges have the ability to bring people together and help build trust and get everyone rowing in the same direction. It took time, but we got there.

**Teske:** When you start having a conversation about reconfiguring the system so that we stop committing so many kids, that worries judges. Because to do that we talk about creating limits on judges' discretion on whether to commit or not, and that's a very scary notion for judges. So in that context I think it was helpful to have judicial leadership convey to our peers that there's a trade-off here. We will no longer be allowed to commit kids on misdemeanor offenses in Georgia unless they have four prior adjudications and at least one on a felony. But in exchange we will get savings to invest back in the community, and you will have more and better options for these kids. I think by explaining the dynamics that created the mess in the first place and showing judges the benefits of the new approach, we made them an important part of the solution.

**Jones:** One reason we had so many kids committed in Kentucky was that the diversion program designed to keep certain kids from coming to court in the first place wasn't working well. There was a lack of services, there were problems identifying risk and need levels, and in many counties prosecutors would use their power to block diversion, sending a lot of these cases directly to court. During the reform process, one big contribution of our Administrative Office of the Courts was to build up this system, find a good risk and needs assessment tool, and really set us up to make diversion work. Also, the judiciary agreed to limitations on our ability to override diversion and on our contempt powers. Judges don't like to give up powers they have traditionally held. But we agreed we were using incarceration too often and that we needed to change.

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## Q: What policy reforms were you advancing and why?

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**Teske:** My number one goal was that we had to stop committing low-risk kids and kids with misdemeanor offenses. Another important change I wanted related to reducing the amount of time kids spend in facilities under our designated felony law, because a lot of beds were filled with kids who didn't need to be there. We also needed to stop incarcerating status offenders in Georgia. And I wanted to make sure we had a reinvestment program, so we would capture savings from reduced incarceration and pump that money into evidence-based programs for those kids we were no longer committing.

**Jones:** One key reform was increasing our use of diversion so that most of these kids would not even be coming to court. All first-offense misdemeanors now have a statutory entitlement to be diverted, so we've eliminated all overrides for those cases. Along with that, it was critical to strengthen and increase our use of front-end services and to make sure the programs for these children are evidence-based, so kids get appropriate services that will



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R. Mark Browning, senior judge, Family Court of the 1st Circuit, Hawaii

make a difference in their lives. That's very important so we don't throw good money at bad programs with no record of success. Another key change is a requirement for more family engagement, which has been missing from our handling of a lot of these cases.

**Browning:** Probably the most important change was ensuring that judges only send a kid to our secure facility, the Hawaii Youth Correctional Facility, if he is a threat to the public. Period. So we required that the court had to enter a finding of fact for any kid sent to the facility, explaining the threat to public safety. That's in statute. We also needed to make sure all of our circuits were using standardized best practices for probation, because everyone had been doing their own thing and there was no consistency. And of course in order for the legislation to have any impact, in order to help these kids, our probation officers needed tools and we needed to invest in community alternatives. Finally, we needed to institutionalize our collaborative statewide group to keep pushing reform forward, and we wanted to create some accountability by requiring regular reporting of data.



Given that the judiciary will be crucial to the successful implementation of the reforms, what efforts are being made to educate judges on the changes in the system?

**Teske:** From the time we first started coming up with our initial recommendations, we've been very open with the judiciary and very inclusive. And even though some judges were skeptical, that transparency helped many of them buy in. After the law passed, we dedicated an entire conference of the Council of Juvenile Court Judges to educating the judiciary on the best way to implement the reforms. We've also enlisted judges as active participants in every facet of this reform process, from implementation to oversight. The more judges who invest their time to develop these new systems, the more judges you have who are believers and who then become leaders, teachers, and trainers for the rest.

**Jones:** We have our District Judges College coming up, where we will spend half a day educating everyone on the changes. Family Court judges will receive the same training in January. And periodically our Administrative Office of the Courts sends out to all judges a summary of the bill, in chart format, that shows implementation dates and explains different sections of the bill, what they cover, and where they are found in statute. It's a helpful reference document to keep on the bench as the law takes effect.



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Steven Teske, chief judge, Clayton County Juvenile Court, Georgia

**Browning:** We started that a long time ago, even before the governor signed the bill. There are two parts of the judiciary: the judges and the administrative side, which includes the court officers and probation officers. Our educational meetings with the administrative folks began a long time ago, because it takes time and it's challenging to make sure all the probation officers have the same risk assessment instrument, receive the same training, and use the same data collection methods. All of our judges have been provided with information about the law, but you've got to sit down and talk about it.

## Kentucky

In fiscal 2013, residential facilities consumed more than half of the Kentucky Department of Juvenile Justice's \$102 million budget, with most beds costing taxpayers an estimated \$96,000 a year.\*

To understand the state's situation more clearly, the Kentucky Task Force on the Penal Code and Controlled Substances Act conducted a review of the juvenile justice system. The task force found that lower-level offenders made up the majority of the juveniles in out-of-home placement and that lengths of stays had increased sharply between 2002 and 2012 for certain offenders. Misdemeanor offenders, for example, had a 21 percent increase in their lengths of stay during that period, while those who violated probation and court orders had a 31 percent increase. The panel recommended that state lawmakers restrict the commitment of lower-level offenders and the lengths of their stay in out-of-home placements, expand and strengthen evidence-based programs, create a fiscal incentive program, and establish an Oversight Council.

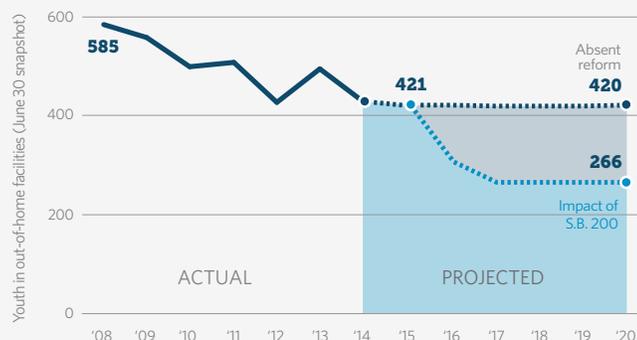
Kentucky lawmakers adopted the task force's recommendations in Senate Bill 200, which passed both chambers of the Legislature and was signed into law by Governor Steve Beshear on April 25, 2014. The reforms are projected to reduce the department's out-of-home population by more than a third and save Kentucky as much as \$24 million over five years. These savings can then be reinvested into community-based programs and practices that yield better outcomes for children and families.†

### Reforms Expected to Reduce Out-of-home Population

Kentucky stands to save up to \$24 million over 5 years

Source: Kentucky Department of Juvenile Justice (historical data), Pew analysis (projected data)

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\* Updated cost figures provided by the Kentucky Department of Juvenile Justice.

† The Pew Charitable Trusts, "Kentucky's 2014 Juvenile Justice Reform: New Law Will Strengthen Community Supervision and Reduce Secure Confinement" (July 2014), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/07/kentuckys-2014-juvenile-justice-reform>.

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## Q: What have you learned as a result of your efforts in this reform? Any surprises?

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**Browning:** I was very happy to learn that we could all come together and build relationships and put aside our differences. We live in a world where there's a lot of tragedy, and certainly in Family Court you see it, and it's easy to get pessimistic about life and people. But one of the privileges we have working as judges is that we get the opportunity to make a difference and to witness miracles. And when all these people with long lists of differences and their own agendas can get together and work hard and come out united with a passion to make the system better for kids, then I think that's a miracle.

**Teske:** I was pleasantly surprised by how well we all worked together on the Criminal Justice Reform Council and how quickly my counterparts in law enforcement and the legislative and executive branches understood the importance of best practices in juvenile justice. I walked in thinking, "OK, I wonder how many of them are going to need to be convinced that what looks soft on crime is actually smart on crime." And as it turned out there was no struggle at all. There was just no way to argue with the data.

**Jones:** It was a surprise to learn the facts about our juvenile population, because you want to think that you are just committing those "bad" kids and the fact is we really weren't. It was also surprising to see the amount of money spent on beds in facilities compared to the really paltry amount spent on front-end services, such as the treatment of substance abuse, which is such a widespread problem in Kentucky.

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## Q: What advice would you give to judges in other states who are interested in engaging in juvenile justice reform?

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**Jones:** You definitely want to be part of this because if you aren't, you are going to be stuck enforcing laws that you had no say in creating. So you need to get engaged in the process to make sure it reflects things judges care about—such as constitutionality, due process rights—and to make sure the concerns you see every day in your courtroom are addressed. These reforms definitely lead to system change and require a change in mentality for everyone. It's going to take some work and some getting used to. But it's worth it. And as judges, we carry a lot of influence and have a responsibility to identify needs in our community, speak out about them, and seek changes.

**Browning:** Do it! If you have the opportunity to reform your system and make it better, then why not? You've got nothing to lose, and my experience has been fulfilling and worthwhile. It's a work in progress, but I know that most judges share the same passion I have. They want to make a difference. One thing I tell kids in my court is that you're only limited by how you think. We all suffer from that to a certain degree. So I say to other judges: Who better to understand the problems and take them on than you?

**Teske:** Have an open mind, and let the process work for your state. Think outside of that judicial box of due process, sitting on the bench, wearing that robe. Step down, and take on a collaborative role, and immerse yourself in what's going on in the community. You won't regret it.

## Hawaii

In 2013, taxpayers were spending about \$200,000 per bed at the Hawaii Youth Correctional Facility, but the state still struggled to control recidivism. Three out of 4 juveniles released from custody were readjudicated as delinquent or convicted of new crimes as adults within three years of their release.

In an assessment of the state's juvenile justice system, the Hawaii Juvenile Justice Working Group found that between 2004 and 2013, overall commitments had declined 41 percent, but juvenile offenders' average length of stay had increased 188 percent. The working group also determined that more juveniles were being adjudicated for misdemeanors (61 percent in 2013, compared with 47 percent in 2004), and that nearly half of all those committed had no prior felony records. The working group recommended that the state reduce the use of secure confinement, increase proven community-based options, and strengthen probation supervision.

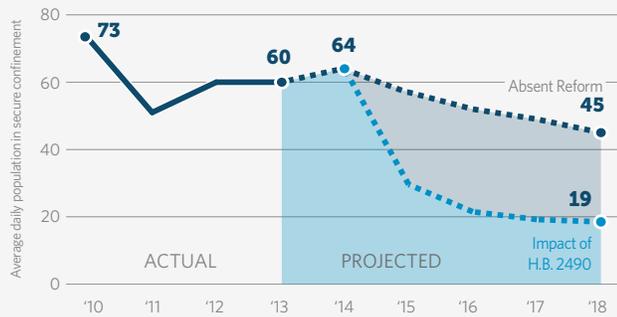
The Hawaii Legislature approved the working group's recommendations by unanimously passing House Bill 2490, which Governor Neil Abercrombie signed into law July 2, 2014. The law is projected to reduce the population of the Hawaii Youth Correctional Facility by 60 percent, allow for the closure of two facilities on the campus, and save taxpayers \$11 million by 2019. The measure also redirects the savings into effective community-based alternatives and provides an up-front investment in mental health and substance abuse treatment and other areas of reform.\*

### Reforms Projected to Cut Committed Population

Alternatives will reduce youth population in the secure facility by 60%

Sources: Office of Youth Services (historical data); The Pew Charitable Trusts (projections)

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\* The Pew Charitable Trusts, "Hawaii's 2014 Juvenile Justice Reform: New Law Will Strengthen Community Supervision and Reduce Secure Confinement" (July 2014), <http://www.pewtrusts.org/Research-and-Analysis/Issue-Briefs/2014/07/Hawaii-2014-Juvenile-Justice-Reform>.

**Contact:** Christina Zurla, communications officer **Email:** [czurla@pewtrusts.org](mailto:czurla@pewtrusts.org) **Project website:** [pewtrusts.org/publicsafety](http://pewtrusts.org/publicsafety)

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