Fact Sheets and Testimony 2011

TEXAS CRIMINAL JUSTICE COALITION

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FACT SHEET, 2011

C.S.H.B. 1205

GRANT PROBATIONERS TIME CREDIT AS AN INCENTIVE FOR THE SUCCESSFUL COMPLETION OF REHABILITATION PROGRAMS

PROBLEM

During FY 2010, Texas had an average direct supervision population of 172,893 individuals.[1] Texas also had 25,456 felony probation revocations during that time, for an average recidivism rate of 14.7%.[2] Although this recidivism rate is relatively low, probation revocations were responsible for sending 31.7% of individuals to Texas prisons during FY 2010.[3]

Probation revocations are costly from both a fiscal and public safety perspective. The programming available to probationers to safely address the causes of criminal behavior significantly reduces the likelihood of costly future convictions, whereas revocations deprive probationers of beneficial treatment.

KEY FINDINGS

- A community supervision revocation is a costly punishment. Incarceration costs $50.79 per day, whereas probation costs $1.74 per day.[4]
- Bringing probationers into compliance with fee obligations and victim restitution is a time-consuming and inefficient task often relegated to probation officers. **Time credit incentives will encourage the full satisfaction of financial obligations to the county, state, and victims.**
- The difficulty of probation conditions can often lead to recidivism, as probationers find it easier to simply take a sentence for violations of their conditions. Positive behavior reinforcement – as opposed to doling out punishments for noncompliance – is necessary for targeting the root causes of antisocial behaviors that lead an individual to break the law. Incentivizing achievement on probation not only makes incarceration a less attractive option but also reduces the likelihood of recidivism by discouraging criminal behavior.

SOLUTION: SUPPORT C.S.H.B. 1205 BY REPRESENTATIVES TURNER, ALLEN, ALISEDA, AND RODRIGUEZ

C.S.H.B. 1205 is a free tool for probation departments to encourage positive probationer behavior and reduce costly recidivism. Specifically, it creates a system of incentives that encourage the completion of behavioral milestones for probationers.

This bill provides credit toward the completion of community supervision sentences via a system of programming incentives, once a probationer has satisfied his or her fee and restitution obligations. Time credits will be awarded **with judicial approval** upon a probationer's completion of education courses, treatment, cognitive behavioral programming, and other betterment milestones. In addition, the judge must notify the attorney representing the state and the defendant or the defendant's attorney before reducing or terminating a period of community supervision.

NOTE: **C.S.H.B. 1205 does not apply to any individual who has committed a 3g offense, DWI offense, sex-related offense, or family violence offense.**

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[1] http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2011.pdf, 11.
[2] Ibid, 4.
[3] Ibid, 10.
[4] http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Uniform_Cost_Report_0111.pdf, 3.

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FACT SHEET, 2011

COMMITTEE SUBSTITUTE HOUSE BILL 2352

REDUCE PRISON OVERCROWDING AND IMPROVE THE PAROLE PROCESS

BACKGROUND AND PROBLEM

Mandatory Supervision was originally created to ensure that individuals had a supervised transition from prison to the community. Functionally similar to parole, the release mechanism established by the Legislature differs from parole insofar as Government Code Section 508.147 requires the Texas Board of Pardons and Paroles (BPP) to release a person, with various exceptions, to mandatory supervision when his or her accrued "good time" plus calendar time equals the full sentence.[1] To accrue good time, an inmate must first meet certain classification and status restrictions, which fluctuate depending on an individual's conduct and behavior while incarcerated. Furthermore, an individual must be actively engaged in various programs[2] and maintain a good disciplinary record (e.g., comply with all rules and regulations, etc.).[3] Significantly, an inmate subject to discipline may lose a portion or all of his or her good conduct time. For instance, an inmate may lose up to 30 days for a first-time refusal to attend a treatment program; on the third offense, s/he could lose up to 60 days. For more serious violations, an inmate may lose all accrued good time.[4] Furthermore, under current statute, mandatory supervision is not permitted for individuals with certain violent or sex offenses.[5]

Government Code Section 508.149 currently requires a parole panel to conduct a discretionary review of **every** individual who meets the eligibility requirements for mandatory supervision to determine whether it will release the individual to parole at the pre-determined statutory time. Because BPP also retains the right to impose discretionary review over **every** person eligible for mandatory supervision, the current mandatory supervision scheme has the effect of granting BPP, in a limited set of cases, the discretion to override pre-determined, statutory release dates.

CRITICAL FACTS

- In 2009, BPP reviewed 18,554 persons eligible for mandatory supervision on top of the 76,607 parole considerations already under evaluation; in addition, it reviewed 30,389 parole violations and 1,061 clemency cases.[6]
- BPP procedures require a 90-day review period prior to a person's mandatory supervision release date.[7] This additional review effort generates unnecessary inefficiencies, incurs additional costs, and strains resources.
- Under present code, a person denied release to mandatory supervision under a discretionary review must be reconsidered at least twice in the two years following the date of the determination;[8] pursuant to BPP policy, a person is automatically given a one year set off for her next review.[9] As a result, a single denial costs the state roughly $18,358. Additionally, BPP usually begins compiling the review file about six months prior to eligibility, so the process repeats within six months after a denial.
- As of August 31, 2010, the Texas Department of Criminal Justice (TDCJ) had a population of 8,068 inmates eligible for mandatory supervision subject to BPP review.[10] This population cost the state **$409,773.72 per day** to incarcerate.

LOGISTICS OF C.S.H.B. 2352

C.S.H.B. 2352 seeks to maximize efficiency and public safety by amending Government Code Section 508.149 so that certain low-risk individuals eligible for mandatory supervision are removed from the purview of BPP's discretionary review. Specifically, C.S.H.B. 2352 allows an isolated group of low-risk individuals who meet specific criteria to be released to mandatory supervision without being subject to further review. Importantly, BPP will continue to retain discretion over a significant segment of the prison population. Furthermore, with respect to individuals who fall

within the ambit of BPP's discretionary review, C.S.H.B. 2352 will retain the statutory language that gives the parole panel discretion to deny mandatory supervision if the panel feels the inmate's accrued good conduct time does not accurately reflect his or her potential for rehabilitation, or would endanger the public.[11] Mindful of public safety, C.S.H.B. 2352 will also:

- Maintain current restrictions that preclude an individual who is serving a sentence for or was previously convicted of specific offenses enumerated in statute from being considered for mandatory supervision.[12]
- Allow the parole panel to continue to set and approve conditions of parole and supervision for all individuals. Such conditions could include ankle monitors, mandatory participation in programming, counseling, etc.
- Provide discretionary review over the following convictions: (A) felonies of the third degree or higher for an offense under Penal Code Sections 15.031 (Criminal Solicitation of a Minor), 19.04 (Manslaughter), 20.03 (Kidnapping), 20A.02 (Trafficking of Persons), 21.12 (Improper Relationship Between Educator and Student); 22.01 (Assault), 22.05 (Deadly Conduct), 22.07 (Terroristic Threat), 25.08 (Sale or Purchase of Child), and 25.11 (Continuous Violence Against the Family) of the Penal Code; and (B) felonies of the first or second degree under Penal Code Section 22.09 (Tampering With Consumer Product).
- Ensure that the parole panel retains discretionary review over any person who has been previously convicted of a felony offense at least twice and who has served at least two terms of imprisonment in a facility operated or under contract with TDCJ.
- Provide that the parole panel maintain discretion over any inmate who is serving a sentence for or was previously convicted of an offense that was not excluded from mandatory supervision at the time of his or her conviction, but was subsequently added to the enumerated offenses no longer eligible for mandatory supervision release.
- Include a permissive recommendation review, which provides discretion over a person who has been the subject of a major disciplinary action in the 12-month period preceding the individual's scheduled release date, providing there is a recommendation that the parole panel review that person.

SOLUTION: SUPPORT C.S.H.B. 2352

Increase BPP's efficiency and save taxpayer dollars by allowing BPP to release low-risk individuals who are eligible for mandatory supervision without subjecting them to further review. By releasing specific individuals who already meet the established mandatory supervision criteria to parole, BPP can devote additional time and attention to more significant parole cases. C.S.H.B 2352 will also decrease the burden on prisons by freeing up needed space to house individuals who pose an actual threat to public safety, while providing significant savings for taxpayers.

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[1] TEX. GOV. CODE § 508.147.
[2] *Id.* at § 498.003 (regardless of the classification…department may grant good conduct time to inmate only if inmate is actively engaged in an agricultural, vocational, or educational endeavor, in an industrial program or other work program, or in a treatment program, unless the inmate is not capable of participating in such a program or endeavor.).
[3] TDCJ *Offender Orientation Handbook*, 7, Printed November 2004.
[4] TDCJ, Correctional Institutions Division: *Disciplinary Rules and Procedures for Offenders; Good Time Loss Limits Chart*, April 2010.
[5] *Id.* at § 508.149(a).
[6] Texas BPP, *Annual Report FY 2009*, http://www.tdcj.state.tx.us/bpp/publications/AR%20FY%202009.pdf, 1, 17, 21.
[7] Texas BPP, Policy Number BPP-POL.145.202, (10 Jan. 2011), http://www.tdcj.state.tx.us/bpp/policies_directives/POL.145.202%20_DMS.pdf.
[8] TEX. GOV. CODE § 508.149(d).
[9] Texas BPP, Board Policy Number BPP-POL.145.202.
[10] TDCJ: Statistical Report FY 2010, p. 17.
[11] *Id.* at § 508.149(b)(1).
[12] *Id.* at § 508.149(a) (excluded offenses include: (1) use of deadly weapon in commission of crime; (2) murder; (3) capital murder; (4) aggravated kidnapping; (5) indecency with child; (6) sexual assault; (7) aggravated sexual assault; (8) aggravated assault; (9) injury to a child, elderly individual, or disabled individual (first degree felony); (10) arson (first degree felony); (11) robbery; (12) aggravated robbery; (13) burglary (first degree felony); (14) offenses relating to employment, authorization, or inducement of sexual conduct or performance by a child; (15) continuous sexual abuse of child or children; (16) enhancements of drug offenses committed in "drug-free zones (e.g., near kids/schools); (17) use of child in commission of certain drug offenses (e.g., manufacture or delivery); and (18) solicitation to commit a capital felony). Bear in mind that the Texas Legislature occasionally amends this provision to incorporate more/new offenses.

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C.S.H.B. 3758

WRITTEN TESTIMONY, 2011

REDUCE THE OVER-CRIMINALIZATION OF SCHOOL MISBEHAVIOR AMONG ELEMENTARY AND MIDDLE SCHOOL STUDENTS

PROBLEM

The rationale behind the implementation of strict discipline policies in Texas – to deter violent misbehavior and make schools safe learning environments – is well intentioned, but the policies often lead to unfair and harsh consequences for youth already considered at-risk. For instance, the policies' heavy-handed and often inequitable use, including for minor on-campus misbehavior, increases school truancy and dropout rates, potentially resulting in more youth entering the juvenile justice or adult prison system, at tremendous cost to the state.

Data trends not only point to increasing rates of discipline in Texas schools, but to certain categories of students most likely to be targeted. Indeed, evidence indicates that bias plays a significant role in the discipline process, further undermining the legitimacy and effectiveness of schools' policies. Statistics obtained by the Texas Education Agency from school districts across the state illustrate that male students, minority students, students of low socioeconomic status, and students in special education programs are disproportionately impacted by school discipline policies.

Sadly, due to overzealous campus discipline policies**, thousands of youth in Texas who are 12-years-old and under, and some as young as 5, are being issued Class C citations for low-level behavioral issues** during school hours. A disproportionate number of these youth are minority and special needs students.

KEY FINDINGS

- Many schools utilize untrained police officers and security personnel, and, as a result, they have seen a hike in school arrests for nonviolent violations of the school's code of conduct.[1] The vast majority of students arrested on campus commit nonviolent and vague offenses, such as "disruption of class" or "disorderly conduct."[2]

- Not only do increased arrests pose long-term problems for students with records, but they clog court dockets and detention facilities with nonviolent youth who would be better served through alternatives.

- Enforcing strict disciplinary polices can especially backfire when youth are at such an early stage in their lives, effectively pushing them out of schools and increasing their potential likelihood of entering the juvenile justice system.

SOLUTION: SUPPORT C.S.H.B. 3758 BY REPRESENTATIVE GIDDINGS

C.S.H.B. 3758 prohibits students 12 years old or younger from receiving a Class C citation for nonviolent, non sexual-related, and non harassment-related offenses on school campuses or during school hours, such as disruption of class or lower-level disorderly conduct.

Under this bill, the state will experience a positive fiscal impact through savings associated with fewer youth entering the juvenile justice system unnecessarily.

[1] Texas Appleseed, "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools," December 2010, pgs. 4, 5.
[2] *Ibid.*, pg. 68

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Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding C.S.H.B. 3764 by Representative Marquez. The Texas Criminal Justice Coalition is in favor of this bill because it promotes transparency and efficiency in the criminal justice system. Although housing inmates in segregation is important in protecting the safety of guards and other inmates in a correctional setting, corrections administrators must be mindful of the consequences of the recurring and prolonged use of such measures. C.S.H.B. 3764 would make improvements to the use of segregated housing in correctional facilities throughout Texas.

IMPROVE EFFICIENCY AND TRANSPARENCY OF HOUSING INMATES IN SEGREGATION BY IMPROVING CURRENT POLICIES

PROBLEM

As of August 31, 2010, the Texas Department of Criminal Justice (TDCJ) housed 8,701 inmates (approximately 5.6 percent of the total TDCJ inmate population) in administrative segregation.[1] Categories of administrative segregation include security detention, pre-hearing detention, protective custody, and temporary detention between consecutive terms of solitary confinement. Inmates in administrative segregation are denied various privileges, including contact visits, participation in educational or vocational programs, good time credits, and other freedoms granted the general population.

TDCJ often places inmates in administrative segregation as a preventative measure, rather than as punishment for misbehavior. Some of those who are in administrative segregation have committed no institutional offenses; instead, they are placed in segregation solely because they are perceived as belonging to a gang, regardless of whether they have taken overt actions on behalf of the gang. If an inmate is identified as a gang member, the Administrative Committee reviews the prisoner for placement in administrative segregation. This Committee is also responsible for performing routine reviews for such prisoners.

Over-reliance on the isolating and restrictive qualities of administrative segregation is dangerous for inmates, staff, and the public. Especially for inmates in segregation, studies have shown that social isolation has damaging psychological effects,[2] including "hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior."[3] Inmates who return to the general population or to the community after spending time in segregation often lack the ability to control themselves because they have come to rely heavily on the restrictive structure of solitary confinement.[4] This may be one reason why inmates who are directly released to the community from a heavily isolated setting are *more* likely to commit another felony.[5]

C.S.H.B. 3764

This bill would require TDCJ to report on conditions of administrative segregation, including the number of referrals made for mental health services, the number of suicide attempts, recidivism rates of those released directly from segregation, and other information. The bill also requires that TDCJ adopt a plan that would eliminate some of the negative consequences of using administrative segregation. For instance, C.S.H.B. 3764 would require inmates housed in segregation to be subject to a risk assessment in order to determine their suitability for in-cell programming, such as educational and vocational courses.

The bill would also create an alternative administrative segregation plan for inmates housed in segregation for reasons other than disciplinary. This plan would allow more routine access to mental health services and to programs that promote social and life skills. Finally, C.S.H.B. 3764 requires TDCJ to implement a graduated review process that would examine inmates in segregated housing to determine whether further segregated housing is needed.

SOLUTION

Support C.S.H.B. 3764. Measures that will more effectively integrate segregated inmates with the general population will improve the rehabilitative process and encourage prosocial skills that will benefit inmates upon release. Supporting an initiative to examine the safe and effective use of administrative segregation, as well as promoting best practices in the use of segregated housing, is an important step forward in reaching an effective criminal justice system.

NOTES

[1] Texas Department of Criminal Justice, "Statistical Report Fiscal Year 2010," pg. 1.

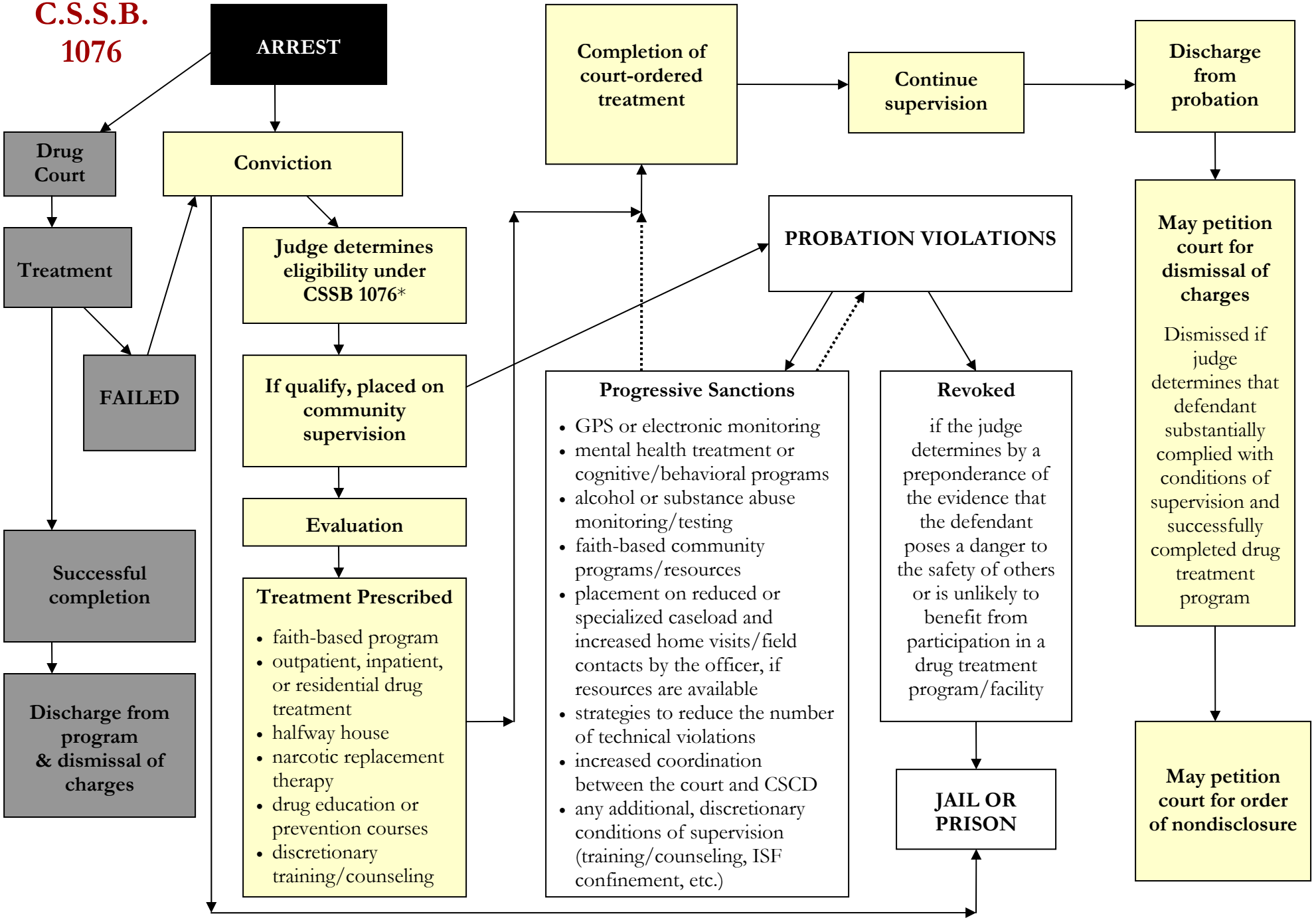
[2] The recent "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation" by Maureen L. O'Keefe found that administrative segregation had no detrimental effect on the mental health of prisoners at Colorado State Penitentiary (CSP). It is important to understand that the administrative segregation system at CSP varies widely from the TDCJ administrative segregation system. CSP institutes a transitional incentive-based program with several levels that gradually decreases restrictions and increases privileges such as work and more contact with friends and family. It is also important to heed to the report's warning that "systems that are more restrictive and have fewer treatment and programming resources should not generalize these findings to their prisons" [pg. 82].

[3] Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency,* Vol. 49, January 2003, pg. 124.

[4] *Ibid.*

5 David Lovell, Clark L. Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency*, Vol. 53, October 2007, pg. 4.

C.S.S.B. 1076



* INELIGIBLE: Defendant is a danger to the public; possessed amounts with intent to sell; has been previously or is being simultaneously convicted for any offense other than a drug possession offense/minor traffic offense; is unlikely to benefit from treatment (e.g., previously/repeatedly violated rules of treatment program) and has 2 or more drug possession convictions or has been discharged from a drug court program after failing to successfully complete it; there is a lack of available and appropriate treatment services

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WRITTEN TESTIMONY, 2011
C.S.S.B. 1076

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of the Substance Abuse Treatment and Crime Prevention Act (C.S.S.B. 1076), an effective corrections policy that will save money, rehabilitate substance abusers, and safely alleviate prison and jail overcrowding. This is truly one of the most smart-on-crime bills we have seen this session.

PROBLEM

Texas must halt the wasteful expenditure of millions of dollars each year on the status quo: incarcerating (and re-incarcerating) low-level, nonviolent drug users. Instead, the State should take steps to aggressively and proactively address drug dependence, and thereby decrease associated crime, by promoting medical and public health responses to this issue. Specifically, policy-makers must support the efforts of judges to effectively handle those suffering from substance abuse by improving and making more widely available tailored community-based rehabilitation and treatment diversion programs.

FACTS

- Treatment programs combined with community supervision cost over five times less than incarceration. According to the Legislative Budget Board, Texas spends $18,539 per year on each inmate, while community supervision along with drug treatment programs cost $3,227 per client per year.[1]

- In Fiscal Year 2010, more than 22,000 individuals (30.8% of incoming inmates) were received by TDCJ for a drug offense,[2] and 73% of those individuals were charged with possession, as opposed to delivery or other offenses.[3]

- Incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives, which are proven to be more cost-efficient *(see above)*, as well as programmatically effective. Specifically, treatment combined with cognitive skills programming can decrease criminal behavior by 44%, while incarceration can increase an individual's inclination towards criminal activity by .07%.[4]

- The Drug Abuse Treatment Outcome Survey of 10,000 treatment participants found that residential treatment reduces criminal behavior, with a 50% reduction in drug use and a 61% reduction in crime. Outpatient treatment resulted in a 50% reduction in drug use and a 37% reduction in crime.[5]

- Drug treatment can also improve employment opportunities and reduce dependence on welfare. The National Treatment Improvement Evaluation Study found that 19% more people received income from employment within 12 months of completing treatment, and 11% fewer people received welfare benefits.[6]

- Legislation similar to S.B. 1076 has been enacted in others states. For example, in February 2011, the Indiana Senate approved a criminal justice reform bill aimed at diverting those with low-level drug offenses to treatment and community corrections rather than prison. The bill also reduces penalties for drug possession offenses.[7]

- New York State implemented drug law reforms in October 2009, which have resulted in 1,400 fewer people going to prison between 2009 and 2010, a 27% decrease.[8] New York also had 688,796 fewer crimes reported in 2009.[9]

- This year, Kentucky signed H.B. 463 into law, which reduces penalties for low-risk individuals with nonviolent drug offenses who possess a small amount of a controlled substance. The savings accrued are reinvested in drug treatment opportunities. As a direct result of the measure, an estimated $420 million in savings is expected over a decade.[10]

C.S.S.B. 1076 BY SENATOR ELLIS WILL PROVIDE SMART, TAILORED, COST-EFFECTIVE TREATMENT FOR NON-DANGEROUS INDIVIDUALS CONVICTED OF DRUG POSSESSION OFFENSES

- **C.S.S.B. 1076 removes barriers to re-entry by encouraging personal responsibility.** Individuals who have reformed their behavior should be given the opportunity to avoid the stigma of a criminal record and the associated restrictions on housing, employment, and other tools for living responsibly. This bill would ensure that opportunity by allowing individuals to apply for nondisclosure of their record once they have successfully completed their term of community supervision. This bill **also addresses the recidivism problems** posed by individuals who choose incarceration for cost, convenience, or other reasons, over programs that force them to address the illness of addiction. ***Note:*** C.S.S.B. 1076 would protect public safety in cases where nondisclosure is granted by allowing law enforcement officials and prosecutors to access individuals' records when necessary.

- **C.S.S.B. 1076 applies only to *possession* – not delivery – offenses.** C.S.S.B. 1076 applies only to those who possess amounts indicative of private consumption with no intent to re-sell. This guarantees that the bill targets those suffering only from addiction, thus alleviating potential concerns that the bill could apply to drug dealers.

- **C.S.S.B. 1076 would save the state money and reinvest savings in community supervision.** As mentioned above, community supervision with treatment is considerably cheaper than prison. In fact, according to the fiscal note attached to state legislation that would have accomplished the outcomes detailed herein, taxpayers would save over $108 million in the first biennium and $474 million over 5 years. C.S.S.B. 1076 would also **reinvest 20% of verifiable cost savings** to the state realized under this bill in diversion programs used by local probation departments.

- **C.S.S.B. 1076 would only apply to jurisdictions in which adequate treatment programs are available.** Limiting this policy to jurisdictions with existing treatment resources will ensure the most successful implementation of C.S.S.B. 1076, while also allowing the state to evaluate which areas are in need of funding to properly and responsibly establish and operate a diversion program. Policy-makers who care about community supervision will have the data necessary to make a strong case for resources for the field in the future.

- **C.S.S.B. 1076 provides tools for judges to address individuals' substance abuse treatment needs.** This bill enables judges to place non-dangerous individuals with a low-level drug possession offense on community supervision, then undergo a risk and needs assessment and enter mandated treatment, where necessary. Treatment options include supportive **inpatient or outpatient programming** for the most severe addicts to address the triggers that set off addictive behavior. They also include initiatives for less severe cases, such as **vocational training, family counseling, or literacy training**, which assist each participating individual in understanding how to stay on course and live responsibly. This probation/treatment policy allows judges to choose from these numerous services and particularize them to the individual to better address special detoxification, relapse, or severe dependence issues, while **more efficiently expending resources and maximizing outcomes**.

  Under C.S.S.B. 1076, judges would be allowed to incarcerate an individual if s/he determines the person is either a threat to public safety, has a serious criminal history, is a drug dealer, or is not amenable to treatment. Discretion is further preserved by allowing judges to **end treatment upon ineffectiveness or danger to the public**.

- **C.S.S.B. 1076 allows judges to utilize progressive sanctions for probationers who are failing to meet their treatment terms, without unnecessarily revoking those who are non-dangerous.** Penalties aimed at risk-reduction that provide probationers more direct and informative feedback include stronger forms of treatment, intermediate sanctions including placement in Intermediate Sanctions Facilities, and more restrictive conditions, such as participation in behavioral programming and alcohol/drug testing. Progressive sanctions can keep a significant proportion of people from prison or jail while doing more to **increase public safety in the long term**.

Thank you again for allowing me the opportunity to present testimony in favor of C.S.S.B. 1076, ***a best practice guide for dealing with defendants who have substance abuse problems***, which will divert thousands of nonviolent individuals from confinement and save taxpayers millions of dollars in incarceration costs, not including potential savings in prison and jail construction avoidance. I encourage the Committee members to enthusiastically support this policy that can save the lives of many Texans.

NOTES

[1] Legislative Budget Board, "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," January 20011, pgs. 6, 11, 12; using FY 2010 prison inmate costs-per-day of $50.79; state costs-per-day for community supervision of $1.30; and state costs-per-day for substance abuse outpatient treatment of $7.54.

[2] Texas Department of Criminal Justice (TDCJ), "Statistical Report Fiscal Year 2010," pg. 2.

[3] *Ibid*., pg. 21.

[4] Judge Marion F. Edwards, "Reduce Recidivism in DUI Off enders: Add a Cognitive-Behavioral Program Component," 2006, pg. 3.

[5] Eric Martin, Roy M. Gabriel, and Steve Gallon, "Oregon Research Brief on Addiction Treatment Effectiveness," The Association of Alcoholism & Drug Abuse Counselors of Oregon, pg. 1.

[6] The National Opinion Research Center at the University of Chicago, "The National Treatment Improvement Evaluation Study: Final Report," submitted to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, March 1997, pg. 246 (Table 6.15).

[7] Brittany Tempest, "Criminal justice reform bill passes Ind. Senate," *The Indiana Daily Student*, February 28, 2011.

[8] New York State Division of Criminal Justice Services, "Preliminary impact of 2009 drug law reform, October 2009 – September, 2010," Drug Law Reform Series, Report No. 3, October 2010, pg. 4.

[9] New York State Division of Criminal Justice Services, "2009 Drug Law Reform Update," June 2010, pg. 2; http://criminaljustice.state.ny.us/drug-law-reform/documents/drug-law-reform-presentation-print-jun2010.pdf.

[10] Kentucky Justice & Public Safety Cabinet, "Public Safety & Offender Accountability Act: Gov. Beshear signs landmark corrections reform bill," 2011; http://justice.ky.gov/.

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WRITTEN TESTIMONY, 2011
C.S.S.B. 1531

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony in favor of C.S.S.B. 1531. The Texas Criminal Justice Coalition supports this bill because it will assist judges in their efforts to fight alcoholism, encourage personal responsibility, and save lives.

PROBLEM

A first-time Driving While Intoxicated (DWI) offense is a Class B misdemeanor carrying a maximum fine of $2,000. Individuals convicted of a first-time DWI offense are also required to pay a Driver Responsibility Program (DRP) surcharge of $1,000 per year for three years as a condition of maintaining their drivers' licenses.[1] Furthermore, these individuals may be required to pay for court costs, random alcohol and drug testing, and other related costs.

The tremendous financial constraints placed upon individuals with DWI convictions often lead to their failure to pay required fines and surcharges, which in turn results in license suspension – making it exceedingly difficult for individuals to maintain employment or buy insurance. In fact, Texas' rate of uninsured drivers remains one of the highest in the nation at 22%,[2] making roads *less* safe.

To address the root causes of criminal behavior and better protect public safety, judges should be permitted to waive DRP surcharges upon the successful completion of a drug court program or drug/alcohol treatment program by a person with a first-time DWI conviction.

KEY FINDINGS

- **Treatment and supervision are more effective than incarceration.** Incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives, which are proven to be more cost-efficient,[3] as well as programmatically effective. Specifically, treatment combined with cognitive skills programming can decrease criminal behavior by 44%, while incarceration can increase an individual's inclination towards criminal activity by .07%.[4]

- **DWI courts reduce recidivism and increase public safety.** Today, there are more than 2,000 drug courts operating throughout the United States, Puerto Rico, and Guam to address addiction issues.[5] These courts include specialized programs – such as DWI courts – which follow the drug court model. More specifically, DWI courts are designed to address the underlying alcohol problems of individuals with multiple DWI offenses. They guide individuals into treatment to reduce their drug and/or alcohol dependence and, in turn, improve the quality of life for them and their families.[6]

  Studies show that DWI court participants spend more time in treatment, have reduced levels of substance abuse, and are re-arrested significantly less often than comparable non-participants sentenced to traditional probation.[7] In fact, recidivism rates among DWI court participants are about 65% lower than similarly situated non-participants.[8] DWI courts use "judicial oversight to provide continuous, intensive treatment; mandatory periodic alcohol and drug testing; and the use of graduated sanctions and other rehabilitative services" to maintain program retention rates of 79% and, in some instances, recidivism rates as low as 9%.[9]

Continued on reverse.

SOLUTION: SUPPORT C.S.S.B. 1531 BY SENATOR HINOJOSA

- **Create incentives for judges to encourage participation in drug court programs and other drug/alcohol treatment programs.** C.S.S.B. 1531 would authorize judges to waive the surcharge currently imposed on an individual's driver's license for a DWI conviction if that defendant successfully completes a drug or alcohol treatment program.

  In addition to incentivizing participation in supervised treatment programs, C.S.S.B. 1531 will ultimately allow participants to reinstate their driver's licenses sooner. This will ensure they can obtain car insurance, as well as have the necessary documentation to obtain employment and housing, open a bank account, comply with mandatory supervision terms, and address many other basic needs.

- **Promote public safety.** Judges are able to monitor the recovery progress of individuals who participate in a drug court or treatment program, but they quickly lose track of non-participants. When more individuals participate in these worthwhile programs and address the root cause of their alcoholism and related crime, our communities and families benefit, and there are less victims of DWI in the future.

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[1] Texas Transportation Code §708.102.
[2] Enrique Rangel, "Uninsured drivers in Texas: Millions not covered," *Amarillo Globe News*, January 3, 2010.
[3] According to data from the Legislative Budget Board's "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," community supervision along with drug treatment programs cost the state an average of $3,227 annually; pgs. 11, 12, using FY 2010 per-day community supervision costs of $1.30 and per-day outpatient treatment costs of $7.54. Incarceration in a county jail averages $16,425 annually, using $45 average daily jail costs; from Brandon Wood, Assistant Director, Texas Commission on Jail Standards, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, December 17, 2009. **This makes treatment and supervision more than 5 times less costly than incarceration**.
[4] Judge Marion F. Edwards, "Reduce Recidivism in DUI Offenders: Add a Cognitive-Behavioral Program Component," 2006, pg. 3.
[5] Office of National Drug Control Policy, *Drug Courts*, 2008; http://www.whitehousedrugpolicy.gov/enforce/drugcourt.html.
[6] Emily Taylor, et al., "Michigan DUI Courts Outcome Evaluation: Final Report," Michigan Supreme Court and NPC Research, March 2008, pg. I.
[7] *Ibid*, pgs. II, IV, V.
[8] James C. Fell, A. Scott Tippetts, and Elizabeth A. Langston, "An Evaluation of Three Georgia DUI Courts," March 2011, pg. 3.
[9] *Ibid.,* pgs. 1, 3.

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WRITTEN TESTIMONY, 2011
HOUSE BILL 115

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony on House Bill 115 by Representative McClendon, which would establish a state Innocence Commission to investigate and prevent wrongful convictions.

PROBLEM

Texas leads the nation in wrongful convictions.[1] The conviction of the innocent destroys public trust and confidence in the justice system: guilty culprits are free, threatening communities and preventing justice for victims. Indeed, for every innocent person sent to prison, the state re-victimizes the victim by allowing the perpetrator who harmed him or her to target others. Policy-makers must work towards solutions that eliminate unfair and unjust assumptions of wrongdoing and, in turn, improper guilty convictions.

KEY FINDINGS

- A recent report by The Justice Project chronicles 39 cases in which people have had their convictions overturned in Texas. These people have spent nearly 548 years in prison, an average of 14 years, for crimes that they did not commit.[2] Furthermore, since the release of this report, at least 2 more Texans have been exonerated by DNA.[3]
- State and local governments have paid over $17 million in civil settlements and statutory compensation to those wrongfully convicted.[4]
- Currently, Texas has no state-run agency, like those established in other states to investigate the claims of wrongful convictions or the causes that lead to those convictions.

SOLUTION: SUPPORT H.B. 115 BY REP. MCCLENDON

- **H.B. 115 creates a formal Texas Innocence Commission to investigate post-conviction exonerations.** This 9-member body would work to identify common errors and defects in criminal justice procedures and processes that lead to wrongful convictions, as well as identify potential procedures, programs, and educational or training opportunities to address those issues.

  The commission would also produce publicly available annual reports, as well as interim reports where necessary, that record the identified weaknesses in Texas' criminal justice process and the proposed solutions. Biannually, the Council would make recommendations to the Legislature on the prevention of wrongful convictions or executions.

  To increase accountability, fiscal responsibility, and effective oversight, the Commission would be subject to Sunset review.

* * *

Thank you again for allowing me to provide testimony on this important bill. The state has a responsibility to the victims of crime, as well as to individuals convicted of those crimes, to do everything within its means to ensure that innocent individuals are not sent to prison. By raising awareness of the issues surrounding wrongful convictions, this Commission could increase the integrity of convictions, thus protecting the rights of defendants and safeguarding our communities from harm, while positively impacting public confidence in Texas' justice system, and decreasing costs associated with multiple appeals.

citations on reverse side

[1] The Justice Project, *Texas Wrongful Convictions;* http://www.thejusticeproject.org/texas/texas-wrongful-convictions/.
[2] The Justice Project, "Convicting the Innocent: Texas Justice Derailed," 2009, pg. 5.
[3] The Justice Project*, Convicting the Innocent: The Latest Texas Exonerations*; http://www.thejusticeproject.org/texas/convicting-the-innocent-the-latest-texas-exonerations.
[4] The Justice Project*, Convicting the Innocent: Texas Justice Derailed*, pg. 5.

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WRITTEN TESTIMONY, 2011
HOUSE BILL 215

Dear Members of the Committee,

Thank you for allowing me the opportunity to submit written testimony on the importance of strengthening identification procedures in criminal cases.

PROBLEM

The State of Texas leads the nation in wrongful convictions. The conviction of the innocent destroys public trust and confidence in the justice system: an innocent person is punished and guilty culprits remain free, thereby threatening communities and preventing justice for victims. Indeed, for every innocent person sent to prison, the state re-victimizes the victim by allowing the perpetrator who harmed him or her to target others.

Erroneous eyewitness testimony, whether offered in good faith or perjured, is the single greatest cause of wrongful convictions in the U.S. criminal justice system,[1] as well as in Texas. According to the Justice Project, more than 84% of wrongful convictions in Texas are due to eyewitness misidentification.[2]

KEY FINDINGS

- Despite eyewitness misidentification being a significant contributor to wrongful convictions in Texas, many state law enforcement agencies in 2010 had yet to implement policies or practices to reduce misidentification.[3]
- Dallas County, which has led the nation in DNA exonerations since 2001, has 18 cases of wrongful convictions. In every instance but one, a *Dallas Morning News* investigation found that police and prosecutors built their cases on eyewitness accounts, even though they knew such testimony can be fatally flawed.[4]
- Taxpayers spent more than $3 million in incarceration and compensation for the Dallas County cases alone.[5]

SOLUTION: SUPPORT H.B. 215 BY REPRESENTATIVE GALLEGO

- **H.B. 215 would require every law enforcement agency to adopt a written policy regarding the administration of photograph and live lineup identification procedures.** This policy would be written jointly between local law enforcement agencies and scientific experts in eyewitness memory research. This policy would also address the manner in which a photograph array or live lineup is administered to an illiterate person or a person with limited English proficiency.
- **H.B. 215 would protect the rights of the accused.** This bill would encourage best practices during the lineup procedure, including protections for the accused such as informing the witness that the individual may not be among those shown and that the witness is not required to make identification. This is important to ensuring that the witness does not feel pressured to make an inaccurate or improper identification.

It is essential that law enforcement officers use the most objective and reliable procedures to obtain accurate eyewitness identifications and reinforce the integrity of their procedures. H.B. 215 is a positive step towards strengthening public trust in the criminal justice system. Again, thank you for allowing me the opportunity to present testimony in favor of this critical bill.

citations on reverse side

[1] Innocence Project, *Erroneous Eyewitness ID;* http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/erroneouseyewitness/Index.html.
[2] The Justice Project, *Texas Wrongful Convictions;* http://www.thejusticeproject.org/texas/texas-wrongful-convictions/.
[3] Renée C. Lee, "Efforts to draw up policies for eyewitnesses lagging," *Houston Chronicle*, March 29, 2010.
[4] Steve McGonigle and Jennifer Emily, "18 Dallas County cases overturned by DNA relied on heavily eyewitness testimony," *Dallas Morning News*, October 12, 2008; http://truthinjustice.org/dallas-eyewitness.htm.
[5] *Ibid.*

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Written Testimony, 2011
HOUSE BILL 219

Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 219. The Texas Criminal Justice Coalition is in favor of this bill because it not only aids in the prevention of wrongful convictions and secures the rights of suspected persons in custodial interrogations, but it also provides strong tools for both police and prosecutors to ensure effective prosecutions. This bill will also enhance public safety by helping to make sure that the justice system works to apprehend and convict the right person, thereby decreasing the risk that a dangerous individual remains at large.

REQUIRE THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS

PROBLEM

The State of Texas leads the nation in wrongful convictions. Recently, we have seen waves of individuals who have been exonerated after serving sentences, sometimes for more than a decade, for crimes they did not commit. These wrongful convictions destroy public trust and confidence in the justice system. Guilty culprits are free, threatening communities and preventing justice for victims.

False confessions are significant factors in wrongful convictions.

KEY FINDINGS

- The American Bar Association,[1] the National Association of Criminal Defense Lawyers,[2] and the National District Attorneys Association[3] all support the videotaping of custodial interrogations.
- According to a special report published by the Center on Wrongful Convictions at the Northwestern School of Law, electronic recording of custodial interrogations has proven to be an efficient and powerful law enforcement tool. Both audio and video recording methods create a permanent record of what occurred, thereby preventing disputes about officers' conduct, the treatment of suspects, and/or any statements they made. Recording custodial interrogations also prevents law enforcement officers from having to be called upon later to paraphrase statements or try to describe a suspect's words, actions, or attitudes.[4]

SOLUTION: SUPPORT H.B. 219 BY REPRESENTATIVE GALLEGO

- **H.B. 219 will protect the rights of the accused.** H.B. 219 would require that each electronic recording of a custodial interrogation be preserved until the defendant's conviction is final, all appeals have been exhausted, and the time to file a petition for a writ of habeas corpus has expired. This preservation requirement will ensure that the same evidence is available and consistent at each stage of a defendant's trial or appeal, and that the integrity of that evidence will remain intact.

- **H.B. 219 will aid police and prosecutors during trials of dangerous defendants.** H.B. 219 gives police and prosecutors a meaningful opportunity to collect strong evidence for use at trial. An electronic recording is some of the strongest evidence available and will allow police to focus on questions and answers rather than documentation of the interrogation. Furthermore, if police are falsely accused of unfair interrogation practices, the recording may clear them of any wrongdoing and allow the evidence to stand on its own merits.[5] Finally, prosecutors will be able to more quickly flag improper confessions and interrogations, reduce frivolous suppression hearings, and create a more exact and effective record for trial.

[1] American Bar Association Resolution 8A, *Videotaping Custodial Interrogations*, http://www.nacdl.org/sl_docs.nsf/freeform/MERI_attachments/$FILE/ABA-MERI_Resolution(2-9-04).doc.
[2] National Association of Criminal Defense Lawyers, *Resolution Supporting Mandatory Videotaping of Law Enforcement Interrogations*, http://www.nacdl.org/public.nsf/26cf10555dafce2b85256d97005c8fd0/7cac8b149d7416a385256d97005c81bb?OpenDocument.
[3] National District Attorneys Association, *Policy on Electronic Recording of Statements*, http://www.ndaa.org/pdf/ndaa_policy_electronic_recording_of_statements.pdf.
[4] Thomas P. Sullivan, "Police Experiences with Recording Custodial Interrogations," Number 1, Northwestern University School of Law – Center on Wrongful Convictions, Summer 2004, pg. 6; http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/falseconfessions/SullivanReport.pdf.
[5] *Ibid.*, pg. 8: "If the officers conduct themselves properly during the questioning, there is no basis to challenge their conduct or exclude the defendants' responses from evidence. Officers are spared from defending themselves against allegations of coercion, trickery, and perjury during hostile cross examinations."

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WRITTEN TESTIMONY, 2011
HOUSE BILL 220

Dear Members of the Committee,

Thank you for allowing me the opportunity to submit written testimony on the importance of allowing convicted persons to file an application for a writ of habeas corpus based on relevant scientific evidence.

PROBLEM

Texas leads the nation in wrongful convictions. Recently, our state has seen waves of individuals who have been exonerated for crimes for which they were incarcerated but did not commit. These wrongful convictions undermine public trust and confidence in the justice system, decrease public safety, and create additional crime victims. In addition to punishing an innocent person, guilty culprits remain free, which threatens communities and prevents justice for victims.

One significant contributor to wrongful convictions is the use of unreliable scientific evidence, or the failure to introduce scientific evidence because it was unavailable to the convicted person at the time of her trial.

FACTS

- A recent report by The Justice Project chronicles 39 cases in which people have had their convictions overturned in Texas as a result of DNA testing on evidence from the case. These people have spent nearly 548 years in prison, an average of 14 years, for crimes that they did not commit.[1] Nine people have been released from death row as a result of evidence of their innocence.[2] Furthermore, since the release of this report, at least 2 more Texans have been exonerated by DNA.[3]
- State and local governments have paid over $17 million in civil settlements and statutory compensation to those wrongfully convicted.[4]
- 18% of the DNA exoneration cases in Texas involve false forensic testimony, while 28% of cases involve the use of unreliable or limited forensic methodologies (e.g., microscopic hair comparison, serology inclusion, bite mark matches, or voiceprint analysis).[5]

SOLUTION: SUPPORT H.B. 220 BY REPRESENTATIVE GALLEGO

- **H.B. 220 would protect the rights of the wrongfully convicted by taking into consideration advances in science-based evidence or evidence that was unavailable at or before trial.** H.B. 220 would amend the Code of Criminal Procedure to authorize a court to grant relief on an application for writ of habeas based on admissible scientific evidence that was not available to be offered at the convicted person's trial, or that discredits scientific evidence relied upon by the state at trial.

- **H.B. 220 would uphold the integrity of the judicial process and prevent the victimization of innocent persons.** By allowing guilty persons to go free while incarcerating the wrong person for a crime, the state jeopardizes public safety, justice for victims, and confidence in our judicial system. H.B. 220 preserves the integrity of Texas' criminal justice system while protecting the liberty interests of innocent people.

Again, thank you for allowing me the opportunity to present testimony in favor of H.B. 220, an imperative means of protecting victims, and a positive step towards strengthening public trust in the criminal justice system.

citations on reverse side

[1] The Justice Project, "Convicting the Innocent: Texas Justice Derailed," 2009, pg. 5.
[2] *Ibid.*
[3] The Justice Project, *Convicting the Innocent: The Latest Texas Exonerations*; http://www.thejusticeproject.org/texas/convicting-the-innocent-the-latest-texas-exonerations.
[4] The Justice Project, *Convicting the Innocent: Texas Justice Derailed*, pg. 5.
[5] *Id.*

WRITTEN TESTIMONY

SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
TEXAS CRIMINAL JUSTICE COALITION

REGARDING H.B. 299

HOMELAND SECURITY & PUBLIC SAFETY COMMITTEE

MARCH 22, 2011

TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition (TCJC) is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

TCJC'S PROJECTS

The Juvenile Justice Initiative: *Creating Avenues to Success for Troubled Youth and Their Families.*

The Public Safety Project: *Advocating for Fair, Effective Police Practices that Improve the Safety of Our Communities.*

The Fair Defense Project: *Ensuring a Just and Accountable Judicial System by Protecting the Right to Counsel.*

The Solutions for Sentencing & Incarceration Project: *Providing Proven and Cost-Effective Answers that Address Texas' Over-Reliance on Incarceration.*

Tools for Re-Entry: *Advocating for Policies that Enable the Previously Incarcerated to Live Responsibly.*

Tools for Practitioners: *Featuring Effective Criminal and Juvenile Justice Programs and Practices.*

Public Policy Center: *Providing Nonpartisan Criminal and Juvenile Justice Policy Recommendations.*

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director for the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to provide testimony in regards to the benefits of H.B. 299 which repeals the Texas' Driver Responsibility Program.

BACKGROUND

Created in 2003 as a revenue generator and originally pitched as protecting public safety, Texas' Driver Responsibility Surcharge has failed at every goal set for it. In Texas, 6% of drivers presently owe the surcharge, according to the vendor in charge of collections, and 1.2 million drivers have failed to pay. More than 60% of assessed surcharges go unpaid.

Seven years after implementation, Texas' rate of uninsured drivers remains one of the highest in the nation at 22%. And it is not just Texas: New Jersey and other states on whose programs Texas' was modeled have essentially similar results. Rather than encouraging drivers to remain licensed and insured, the program has stripped licenses from more than a million Texans, making it impossible for them to buy insurance. That includes many drunk drivers, who have the highest surcharges.

The Driver Responsibility Program (DRP) is a failed concept on many levels. We believe the surcharge should be abolished and that other budget cuts or additional revenue sources should be identified to replace funding for trauma center hospitals.

PROBLEMS

Bipartisan Consensus on Program Flaws

The problems with the DRP program are well-known, and even many of the usual "tough on crime" advocates recognize the program is doing more harm than good. Legislators from both parties have taken initial steps toward mitigating some of these problems. In 2007, Senate Finance Committee Chairman Steve Ogden carried SB 1723, authorizing the Department of Public Safety to create Indigency, Amnesty and Incentive programs aimed at reducing the burden on surcharge-owing drivers. In 2009, state Rep. Sylvester Turner won passage of an amendment to make an indigency program mandatory and to allow judges to waive fees for those with incomes below 125% of poverty starting in 2011.

Critics of the DRP have arisen from across the political spectrum. Williamson County District Attorney John Bradley has called it "taxation masquerading as a public safety initiative."[1] But even that assessment may give the program too much credit. It has produced only a fraction of the revenue projected and spawned a vast array of unintended consequences, from boosting the number of unlicensed, uninsured drivers on the road to extraordinary financial hardships for low-income drivers, many of whom lose their jobs after their driver's license is revoked.

What's more, there appears to be little public-safety benefit from the draconian assessments. A spokesman for Mothers Against Drunk Driving recently told the *Houston Chronicle* that, "We can't point to anything that says that law has caused a decline in alcohol-related fatalities. We're not going to go nuts if the Legislature decides they want to repeal it." Even former state Rep. Mike Krusee,

the original author of the legislation that created the surcharge, has said, "My feeling right now is we definitely made a mistake – that it's overly punitive … I think it's past time to either revise or repeal the program."[2]

Confusion Reigns

Because the DRP is a civil surcharge that is technically unrelated to criminal charges, many people do not realize they owe the Driver Responsibility surcharge at the time they pay their tickets. When Texas' surcharge was created in 2003, Sen. Jeff Wentworth offered an amendment on the Senate floor late in the session which would have required notice about surcharge provisions at the time defendants go to court or pay their traffic fines.[3] The Senate's unfortunate decision to table Wentworth's amendment haunts the program to this day, as people on whom the surcharge is assessed frequently think they have already cleared up the charges in question. Some drivers even believe the request for additional money on a ticket they have already paid is a scam. Confusion reigns surrounding all aspects of the program, and tougher collection methods have been tried but failed.

Economic Harms Outweigh Benefits

At a recent Texas Senate Criminal Justice Committee meeting, Sen. Kel Seliger asked a question that applies particularly well to the Driver Responsibility Program: "When do the people of the state of Texas pay more for the commission of the crime than the person who committed it?" The DRP costs Texans more than the state gains from additional revenue. As described more fully below, it reduces employment, increases costs from crashes involving uninsured motorists, and increases jail and court costs, thus placing an additional burden on counties.

– ***Reducing Employment and Economic Growth***

The economic harm from this program far outdistances the revenue it generates.

Though the program never met expectations, failing to collect nearly 2/3 of assessments, surcharges remain a significant revenue source. But no one should lose sight of the fact that these surcharges pale in comparison to state revenues generated from property and sales taxes. Creating jobs and expanding the tax base must be the long-term engine for getting out of the current economic slump. For that reason, the state has a strong self interest in ensuring that employed, low-income Texans are able to pay off outstanding surcharges and keep their jobs.

The effect of surcharges on low-income drivers have been studied in detail in states with laws similar to Texas, and they have been found to reduce overall employment levels. A 2006 survey from the New Jersey Motor Vehicles Affordability and Fairness Task Force examined the surcharge's impact on drivers with licenses suspended due to their own Driver Responsibility Program, which levies the same license surcharges as the Texas DRP.[4] According to that survey, among persons with suspended licenses whose annual income was under $30,000: (1) 64% were unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find a new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% indicated that they were unable to pay costs that were related to their suspended driving

privileges. In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.

That makes Driver Responsibility surcharges a major cause of job loss, significantly exacerbating the current economic downturn. Roughly 1.2 million Texas drivers have lost their licenses because they defaulted on DRP surcharge debts. No doubt a significant number make less than $30,000 per year.

– ***Increasing Costs to the Public from Uninsured Drivers***

The 1.2 million Texas drivers who have lost their licenses over surcharges cannot buy insurance until their fees are paid, but large numbers (if not virtually all) of them continue to drive.

Particularly problematic, DWI defendants who lose their license and insurance may also continue to drive, and if they harm someone the DRP makes it less likely they will have insurance to cover the damages. Since drunk drivers have the highest surcharges, they are also most likely to fail to pay and thus end up unlicensed and uninsured. Despite claims to the contrary at the time it was passed, the surcharge has resulted in *more* uninsured drunks on Texas roads, rather than reducing their number.

In 2007, there were 6,024,000 crashes[5] in the United States and 205,741,845 licensed drivers,[6] giving us an overall accident rate of 2.93%. If we assume those 1.2 million surcharge debtors who lost their licenses (and therefore became ineligible to purchase insurance) continued to drive, and that they crash at the same rate as other drivers, then by reducing the number of insured drivers, drivers who lost their license through the DRP are involved in approximately 35,160 accidents per year.[7] If DRP drivers were the responsible party in half of those accidents (a conservative estimate, as drivers with bad driving histories could be more likely to be at fault), then the DRP would be responsible for an additional 17,580 accidents per year in which the party at fault is not insured.

How much do those crashes cost Texans in uncompensated damages? It is possible to estimate. In 2000, a federal study analyzed costs from auto accidents, including medical costs, property damage, etc., attributing $230.6 billion in costs to 16.4 million auto accidents nationwide, at an average cost of $14,061 per accident.[8] Adjusting for inflation, that's $16,777 in 2007 dollars. Multiplying that figure by the number of estimated crashes caused involving surcharge owing drivers, we get an estimated $294,939,660 in costs from crashes in Texas caused by uninsured drivers.

Add in lost premium income to insurers, not to mention lost Department of Public Safety (DPS) fees from the more than 200,000 fewer driver license renewals each year (roughly $4.8 million annually), and nearly every facet of the Driver Responsibility Program is bleeding red ink – for the state and for average Texans – because of an array of unintended but now well-understood consequences from the program's ill-conceived design.

Harms to Public Safety

The Driver Responsibility Program harms public safety more than it helps it by increasing the number of unlicensed, uninsured drivers on the road – particularly drivers with DWI records – and by forcing counties to waste valuable resources locking up individuals who do not pose a threat to public safety but merely cannot afford the surcharge.

The DRP surcharge harms public safety in several significant ways:

- ***Higher Rates of Unlicensed, Uninsured Drivers***

  The 1.2 million drivers who lost their driver licenses because of the DRP and have not been able to get them reinstated cannot purchase insurance without a valid license. That means those drivers cannot insure their vehicles even if they wanted to do so, including drunk drivers who arguably are at greatest risk of causing damage to others. So high DRP surcharges force drivers of modest means – not just the poverty-stricken but even working class folks – to drive uninsured if they cannot pay both their surcharges and ongoing insurance premiums. Such situations are not the exception, but the general rule, with 2/3 of surcharges owed routinely going unpaid.

- ***Jails Needlessly Filled with Individuals Convicted of Petty Offenses***

  Because nearly everyone continues to drive despite defaulting on the surcharge, the Driver Responsibility Program has generated more than a million unlicensed, uninsured drivers who then frequently accumulate more tickets – a process that feeds on itself until the amounts owed can easily rise beyond average person's ability to pay. Eventually, many of those drivers wind up spending time in county jails because everyone with a defaulted surcharge who is still on the road is guilty of driving with a suspended license. After the US Supreme Court's ruling in *Atwater v. Lago Vista,* Texas police officers can legally arrest drivers and take them to jail just on that charge alone,[9] but more frequently they end up in jail when accumulated tickets go to warrant. Since the surcharges are too high for most people to pay, these Class C misdemeanors accumulate until the driver is arrested at a traffic stop or during a warrant roundup, inevitably putting more pressure on often-already overcrowded local jails and needlessly filling up court dockets with petty cases.

  Ironically, there is no evidence that license suspensions influence criminal behavior. The Texas Center for the Judiciary has recommended that the state do away with administrative license suspensions altogether, except those required in federal law,[10] to keep these cases out of the courts and jails, and to maximize the number of licensed and insured drivers. We concur with that opinion. The Driver Responsibility Program far and away is responsible for the lion's share of administrative license revocations, and eliminating that aspect of the program would go a long way towards rectifying its most problematic aspects.

Abolition is Best Option

The DRP has made Texas roads less safe. Policy-makers should abolish the program and pass H.B. 299. It is creating more harm than benefit, and it is rife with negative, unintended consequences.

Focus on Public Safety Goals

Many of the DRP's problems stem from its conflicting goals of improving road safety and maximizing revenue from what, in 2003, was considered a novel source. We believe the goal of the DRP program should be to maximize the number of licensed and insured drivers on the road – though in practice, it has radically reduced their number in pursuit of revenue that never materialized. When more than 60% of surcharges go unpaid, it makes little sense to put off reforms like waiving surcharges for indigents or implementing an Incentive program because it might reduce revenue more. The state is already foregoing most of the promised income, not to mention enduring an increasingly unacceptable array of negative unintended consequences.

SOLUTIONS THAT WILL CREATE REAL OPPORTUNITIES FOR TRUE DRIVER RESPONSIBILITY

- **Support H.B. 299 which abolishes the driver responsibility program.** This is a failed program that has generated only a fraction of promised revenue, hurt the economy, and made Texas roads less safe.

* * *

I appreciate the opportunity to testify before this Committee and to offer our organization's ideas about this important issue. We hope that the Committee will strongly consider our policy recommendation, which will improve safety on Texas roads while reducing unnecessary financial burdens on the public.

Notes

[1] TDCAA User Forum, 9/20/06. Online at: http://tdcaa.infopop.net/4/OpenTopic?a=tpc&s=347098965&f=157098965&m=9191047631&r=928103173 1#928103173 1.

[2] "Critics: Law puts drivers on road to ruin," Houston Chronicle, March 21, 2010 Online at: http://www.chron.com/disp/story.mpl/metropolitan/6922979.html.

[3] Floor Amendment 21, Third Reading, CSHB 3588, Senate Journal pp. 2963-2964. Online at: http://www.journals.senate.state.tx.us/sjrnl/78r/pdf/sj05-28-f.pdf.

[4] MOTOR VEHICLES AFFORDABILITY AND FAIRNESS TASK FORCE FINAL REPORT, February 2006. Online at: http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.

[5] NHTSA, "2008 Traffic Safety Annual Assessment – Highlights," June 2009. Online at: http://www-nrd.nhtsa.dot.gov/Pubs/811172.pdf.

[6] US Department of Transportation, Federal Highway Administration, "Highway Statistics 2007, Licensed Drivers by Sex and Ratio to Population – 2007." Online at: http://www.fhwa.dot.gov/policyinformation/statistics/2007/dl1c.cfm.

[7] To be clear, the same number of accidents would occur, according to this analysis, but 17,580 more of them have an uninsured driver as the responsible party.

[8] US Department of Transportation, National Highway Traffic Safety Administration, "The Economic Impact of Motor Vehicle Crashes 2000," 2002. Online at: http://www-nrd.nhtsa.dot.gov/Pubs/809446.PDF.

[9] Supreme Court of the United States, ATWATER V. LAGO VISTA (99-1408) 532 U.S. 318 (2001) 195 F.3d 242, affirmed.

[10] Testimony to the Texas Senate Criminal Justice Committee by David Hodges, Judicial Liaison, Texas Center for the Judiciary, July 8, 2010.

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House Bill 348

FACT SHEET, 2011

ENSURE SCHOOL POLICE OFFICERS HAVE SPECIALIZED, YOUTH-FOCUSED SKILLS

TO INCREASE APPROPRIATE RESPONSES TO INCIDENTS AT SCHOOLS

PROBLEM

Current law grants Texas school district officials broad direction to determine if and how peace officers are deployed on their campuses. Many schools have hired untrained police officers and security personnel, and, as a result, they have seen a hike in school ticketing and arrests for nonviolent violations of the school's code of conduct. [1]

KEY FINDINGS

- Overzealous campus discipline has led to the unnecessary criminalization of minor student misbehavior. The vast majority of students arrested on campus commit nonviolent and vague offenses, such as "disruption of class" or "disorderly conduct."[2]

- Not only do increased arrests pose long-term problems for students with records, but they clog court dockets and detention facilities with nonviolent youth who would be better served through less costly alternatives.

SOLUTION: SUPPORT H.B. 348 BY REPRESENTATIVE WALLE

H.B. 348 requires that law enforcement officers, before being eligible to serve as school district peace officers for more than 30 days, must complete 16 hours of specialized education and training either from TCLEOSE, the Bexar County children's crisis intervention training program, or the Texas School Safety Center at Texas State University.

- ***H.B. 348 will improve school safety through more effective campus policing.*** The training curriculum for peace officers will include such areas as child development, children with special needs, conflict resolution, and de-escalation techniques. Undergoing this supplementary training will enable school district peace officers to more appropriately address the obvious developmental and physical differences between youth and adults – matching tactics to the unique environment and vulnerable population with whom they interact – as well as mete out appropriate penalties for on-campus offenses. Ultimately, this specialized training is critical in defining officers' appropriate role in the educational environment.

- ***H.B. 348 can save school districts' valuable security spending funds.*** At a time when school districts are being forced to cut teachers due to budget constraints, they are also spending an increasing share of their budgets on school-based law enforcement (between $2 million and $20 million per year). Better-trained and efficient peace officers will enhance the quality of school-based policing, thereby necessitating fewer peace officers, and allowing the savings to be redirected elsewhere, such as teacher retention.

- ***H.B. 348 does not pose an extra financial burden on districts.*** The specialized training requirement would not present extra costs to school districts, as peace officers are already required to complete training hours to maintain their licensure. Specifically, peace officers must currently complete at least 40 hours of training every 2 years. As such, this requirement easily fits within existing training hours as required for licensed officers.

[1] Texas Appleseed, "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools," December 2010, pgs. 4, 5.
[2] *Ibid.*, pg. 68

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House Bill 349

FACT SHEET, 2011

PROVIDE SCHOOL DISTRICTS WITH ADEQUATE SCHOOL SAFETY DATA

TO IMPROVE EFFICIENCY & REDUCE THE OVER-CRIMINALIZATION OF STUDENT MISBEHAVIOR

PROBLEM

Current law grants school district officials broad direction to determine if and how peace officers are deployed on their campuses. Currently, 178 Texas school districts employ their own police departments, and numerous additional districts have formalized agreements with their local law enforcement agencies to provide a regular police presence on the districts' campuses. However, school district officials often lack essential data to effectively evaluate the use of discipline practices and security spending in schools. In part, this has contributed to overzealous campus discipline and the unnecessary criminalization of minor student misbehavior.

KEY FINDINGS

- Many schools utilize untrained police officers and security personnel, and, as a result, they have seen a hike in school arrests for nonviolent violations of the school's code of conduct.[1] The vast majority of students arrested on campus commit nonviolent and vague offenses, such as "disruption of class" or "disorderly conduct."[2]
- Not only do increased arrests pose long-term problems for students with records, but they clog court dockets and detention facilities with nonviolent youth who would be better served through alternatives.
- Data collection and transparency are essential to address and prevent increasing pressure toward the over-criminalization of Texas students who commit low-level, nonviolent violations.

SOLUTION: SUPPORT H.B. 349 BY REPRESENTATIVE WALLE

H.B. 349 ensures necessary data collection for school districts to evaluate the use of citations, arrests, and restraints involving Texas students, and it furthers standardized best practices and transparency to ensure effective campus security for all school districts.

At a time when school districts are being forced to cut teachers due to budget constraints, they are also spending an increasing share of their budgets on school-based law enforcement (between $2 million and $20 million per year), without full measure of the effectiveness and efficiency of these departments. H.B. 349 would amend the Texas Education Code to include a process that ensures school districts receive annual data pertaining to the total number of citations issued, restraints administered, and arrests made by peace officers policing their campuses.

- ***H.B. 349 will increase the transparency and effectiveness of campus police.*** Currently, very little transparency exists around campus police policies. H.B. 349 would improve transparency in public school policing by requiring school-based law enforcement to compile data regarding the number of school-based citations, arrests, and use of force instances to be shared with school superintendents, the School Board of Trustees, and the Texas Education Agency.
- ***H.B. 349 will allow school districts to evaluate and make informed decisions about their security spending.*** In addition to being a best practice according to the Texas Police Chiefs Association, standardized tracking of data will allow school administrators and school board members to evaluate the effectiveness of their school-based law enforcement and assess the necessity of their presence on each campus within the district.

Continued on reverse.

- ***H.B. 349 is not an unfunded mandate.*** Some school districts already track this data; H.B. 349 would simply provide a uniform system of collecting the data and ensuring that school district administrators and school board trustees receive the data.

Note: H.B. 349 would not impact districts' existing discretion to control if and how they police their campuses. It merely supports schools' ability to handle youths' behavior challenges more constructively.

[1] Texas Appleseed, "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools," December 2010, pgs. 4, 5.
[2] *Ibid.*, pg. 68

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Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 440. This bill proscribes an ineffective law enforcement policy and curbs costly civil litigation as a result of poor peace officer phlebotomy practices. Police officers must focus their efforts on law enforcement and evidence gathering, not on the medical procedures that aid those tasks. The criminal justice system has functioned for decades with this division of labor, and adherence to the existing requirements in the Transportation Code effectively serves public safety.

PROBLEM

Texas' Transportation Code allows qualified individuals to remove blood specimens from drivers suspected of driving under the influence of alcohol or prohibited substances. Historically, this function had been performed by professionals operating under the direction of a peace officer. Peace officers, however, have undergone venipuncture training so they too can remove blood specimens, and municipal law enforcement agencies throughout Texas have expressed interest in seeking funding to train peace officers in phlebotomy.

KEY FINDINGS

- Peace officers who perform phlebotomy do so for the purpose of gathering evidence. Medical personnel who perform phlebotomy do so for the purpose of safely gathering a biological specimen, which may then be used in law enforcement efforts. Allowing peace officers to engage in an invasive medical procedure solely for the purpose of gathering evidence leaves little incentive for peace officers to concern themselves with medical safety.
- Phlebotomy training for peace officers has been controversial and condemned in some major Texas municipalities as a poor use of police resources.[1]
- Texas Transportation Code § 724.017(b) shields qualified technicians from civil liability, but does not shield qualified technicians from suits for negligence if they take blood upon the order of law enforcement or a warrant. Therefore, by becoming qualified technicians for the purposes of §724.017, peace officers may become liable for costly negligence actions outside of their immunity for civil liability.
- Peace officers who draw blood specimens themselves also risk increased liability from civil rights litigation over the potential problems that occur as a result of taking blood specimens in the field or in unsanitary conditions.

SOLUTION: SUPPORT H.B. 440 BY REPRESENTATIVE TURNER

H.B. 440 prevents peace officers from taking a blood specimen under the Transportation Code under any circumstances, regardless of whether they have been authorized to do so.

Prohibiting peace officers from taking drivers' blood specimens, even if they have been trained in the practice, will keep them in the field and better ensure their focus remains on higher-level crime-fighting efforts.

[1] Stephen Dean, "HPD Practices on Prisoners for Drawing Blood From Drunk Driving Suspects," June 17, 2010, http://www.click2houston.com/news/23938401/detail.html.

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Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 512. This bill requires law enforcement officers to obtain drivers' written or recorded consent prior to a search of their vehicles at traffic stops, which will minimize unproductive practices and improve confidence in the criminal justice system.

PROBLEM

Texas law enforcement officers can conduct a search of a vehicle at a traffic stop without a legal basis, such as probable cause or a warrant, provided the person detained provides consent for the search. However, officers are not required to obtain a person's written or recorded consent prior to conducting a consent search, nor are there specific rules on how officers must explain or ask for consent during a no-cause search.

KEY FINDINGS

- Without written or recorded consent policies, the number of prosecutable cases declines: persons found with contraband or other evidence of wrongdoing during no-cause searches can more easily contest the search in court and have that evidence suppressed due to lack of documentation of valid consent.

- Along similar lines, in the absence of written or recorded consent policies, claims that verbal consent was coerced or fabricated[1] will continue to result in pretrial hearings that cost the state time and money.

- Many people do not realize that they have the right to say no to consent searches, and officers are not required to inform citizens that they are free to leave before providing their consent to a vehicle search. This – compounded by fact that people generally feel anxious and intimidated at traffic stops, and often believe that refusing consent will result in further detainment – leads to them consenting to searches.

- Historically, consent searches in Texas have tended to occur more heavily among Black and Latino motorists,[2] pointing to possible sources of bias-based policing. However, in some Texas communities, law enforcement agencies seem to have general policies encouraging officers to conduct consent searches at the majority of stops,[3] an investigation tool that results in thousands of people of all races being subjected to searches without legal basis, and that diverts officers and other police resources away from combating confirmed criminal activity.

SOLUTION: SUPPORT H.B. 512 BY REPRESENTATIVE DUTTON

The Legislature should require officers to obtain written or recorded consent prior to conducting a no-cause search at a traffic stop.

- **Written or recorded consent policies decrease the likelihood that the hard work of law enforcement officers is lost on technicalities, providing a more solid basis for a successful prosecution.** H.B. 512 better ensures that roadside searches will stand up in court by preventing the "he-said, she-said" problems that surface in the courtroom when defendants claim they never consented to a search.

Continued on reverse.

- **Written or recorded consent policies could reduce the number of consent searches conducted without decreasing public safety.** After the Austin Police Department implemented a 2004 policy requiring written consent at traffic stops, approximately 63% fewer drivers consented to police searches of their vehicles when they knew they had the right to refuse. Officials say there was no harm to public safety.[4]

- **Written or recorded consent policies ensure that drivers are informed of their rights at the scene before they waive them,** thus helping to build a better relationship between police and community members who have sometimes expressed that they feel unfairly targeted or bullied through the use of consent searches.

* * *

Thank you again for allowing me the opportunity to testify in favor of H.B. 512. Although written and recorded consent policies are already in place in Austin and at other agencies throughout Texas, a statewide requirement would give drivers uniform protection and ensure that officers' valuable time is focused on more productive uses, like improving 911 response times. Taxpayers will also feel confident knowing that policing resources they are funding are being most efficiently and effectively allocated.

[1] Stephen Gustitis, Criminal Defense Attorney, "Police Perjury," *The Defense Perspective*: "I can't count how many times clients told me about the police searching their vehicles without consent, but the police report showed the officer's justification for the search was consent"; http://texascriminaldefenselawyer.blogspot.com/2007/07/police-perjury.html.

[2] According to the most recent comparative report on consent searches among racial categories in Texas, approximately 3 out of 4 agencies (72%) reported consent searching Blacks more frequently than Anglos in 2005, up slightly from 71% in 2004. On the other hand, nearly 3 out of 5 agencies (56%) reported consent searching Latinos more frequently than Anglos in 2005, down slightly from 62% in 2004. Furthermore, the likelihood of Blacks and Latinos to be consent searched more frequently than Anglos remained fairly constant from 2004 to 2005. From Molly Totman, "Smarter Policing Practices," Texas Criminal Justice Coalition, March 2007, pgs. 2, 3.

[3] According to calendar year 2010 data reported by Texas law enforcement agencies, the departments vary widely in their utilization of no-cause searches. For instance, Hidalgo County Sheriff's Office reports a 100% use of consent searches. Canton Police Department conducted no-cause searches in the large majority of instances involving searches (66%), while other agencies use no-cause searches in about half of instances (e.g., Fort Worth Police Department: 48%; Garland Police Department: 46%). Other agencies, like Stephenville, Houston, and Dallas Police Departments, conducted no-cause searches in approximately one-third or fewer instances (35%, 30%, and 20%, respectively), while others greatly minimized their use of these searches (Austin Police Department: 6%; McLennan County Sheriff's Department: 11%).

[4] Scott Henson, "Austin: Drivers Refuse Searches When They Know They Can," *Grits for Breakfast*; http://gritsforbreakfast.blogspot.com/2005/03/austin-drivers-refuse-searches-when.html.

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House Bill 961

WRITTEN TESTIMONY, 2011

Dear Members of the Committee,

Thank you for allowing me the opportunity to provide testimony in favor of H.B. 961. The Texas Criminal Justice Coalition supports this bill because it will strengthen confidentiality laws to make it easier for young adults to reintegrate into their communities. Specifically, making a child's fine-only misdemeanor record confidential, lowering the age of automatic restriction of nonviolent records from 21 to 17 years of age, and lowering the age of discretionary sealing of felony records from 21 to 19 years of age will provide these youths with the opportunity to become productive and responsible members of society.

PROBLEM

Currently, an adolescent in Texas must wait until he or she turns 21 to have a juvenile criminal record restricted or sealed. In the meantime, an open record can prevent the adolescent from securing housing, employment, higher education, or military service. These obstacles increase the likelihood of further involvement with the juvenile justice system – and, potentially, the adult criminal justice system – at public safety and taxpayer expense.

KEY FINDINGS

- 93 percent of employers report conducting criminal checks on applicants; 73 percent conduct checks on *all* applicants.[1] Youth with an open record will continue to face challenges obtaining employment.
- More than 80 percent of landlords conduct criminal checks on prospective renters,[2] and a criminal record may also prevent access to public housing programs. Housing barriers negatively impact a formerly incarcerated individual's ability to reconnect with his or her family, pivotal to successful re-entry in the community.[3] Adults who are unable to secure stable housing are more likely to recidivate: Research from the Georgia Department of Corrections showed that each move after release from prison increased a person's likelihood of re-arrest by 25 percent.[4]

SUPPORT H.B. 961 BY REPRESENTATIVE TURNER

- **H.B. 961 makes a child's fine-only misdemeanor record immediately confidential.** The bill prevents disclosure to the public, but allows inspection by judges, court staff, criminal justice agencies, the Department of Public Safety, the child defendant, or his/her guardian, for public safety purposes.

- **H.B 961 lowers the age requirement – from 21 to 17 years of age – for automatic restriction of a child's records.** The restriction only applies to conduct that is not violent or a habitual felony. A restricted record cannot be viewed by employers, educational institutions, or the public. The police and other criminal justice officials are still able to access the records, again for public safety purposes.

- **H.B. 961 lowers the age requirement – from 21 to 19 years of age – for discretionary sealing of a child's felony records.** The bill allows judges to seal the felony record if the child was not tried as an adult and has not committed a felony since turning 17.

[1] Society for Human Resource Management. "Background Checking: Conducting Criminal Background Checks." (2010) Available at http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckCriminalChecks.aspx
[2] Thacher, David. "The Rise of Criminal Background Screening in Rental Housing." (2008)
[3] Jeremy Travis, Amy L. Solomon, and Michelle Waul, "From Prison to Home: The Dimensions and Consequences of Prisoner Reentry," The Urban Institute, June 2001, pgs. 35, 39.
[4] Tammy Meredith, John Speir, Sharon Johnson, and Heather Hull. "Enhancing Parole Decision-Making Through the Automation of Risk Assessment." (2003)

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House Bill 968

FACT SHEET, 2011

PROTECT ACADEMIC ACHIEVEMENT AND SCHOOL SAFETY BY CLARIFYING GROUNDS FOR EXPULSION

PROBLEM

Although expulsion is the most serious disciplinary action against students – an action that often leads to student dropout and potential entry into the juvenile or criminal system[1] – Texas does not currently define what behaviors can justify a discretionary expulsion from a Disciplinary Alternative Education Program (DAEP). This lack of guidance has resulted in inconsistent district policies that tend to have a negative impact on academic achievement, rather than increase school safety.[2] In Texas, the vast majority of discretionary expulsions are for nonviolent, non-criminal behavior, and those discretionary expulsions are disproportionately given to minority students and students with disabilities.

While maintaining schools' ability to expel students for criminal or serious misconduct, Texas legislators should clarify what behavior justifies discretionary expulsion from a DAEP.

KEY FINDINGS[3]

- Overuse of expulsion has been shown to have a negative impact on academic achievement, and has also been linked to poor school climate and increased probability for dropout.
- During the 2008-2009 school year, 71 percent of all expulsions in Texas were discretionary, and most of those discretionary expulsions were for "serious or persistent misbehavior" in a DAEP. "Serious or persistent misbehavior" is not defined in Texas law, is not an expellable offense in non-DAEP school settings, and is not a crime.
- The 15 highest expelling school districts each define "serious or persistent misbehavior" differently. The listed infractions range from violations of the school's Student Code of Conduct to murder.
- The greater determining factor in whether a student is expelled for discretionary reasons is where a child attends school – not the nature of the offense.
- Minority and special education students are significantly overrepresented in discretionary expulsions.

SUPPORT H.B. 968 BY REPRESENTATIVE STRAMA

- **H.B. 968 defines "serious misbehavior" to provide clear guidance for discretionary expulsions from Disciplinary Alternative Education Programs.** The bill defines "serious misbehavior" as deliberate violent behavior, extortion, coercion, public lewdness, indecent exposure, criminal mischief, hazing, or harassment. The bill removes "persistent misbehavior" as grounds for discretionary expulsion. The bill also requires documentation of the serious misbehavior and the district's behavioral interventions.

- **H.B. 968 creates greater consistency by adding aggravated robbery to the list of crimes requiring a child's removal from the classroom.** Because the crime involves serious bodily injury or a weapon, it should be included.

[1] Texas Appleseed, *Texas' School to Prison Pipeline: School Expulsion, The Path From Lockout to Dropout*, 2010, http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=380&Itemid.
[2] Texas Appleseed, *Texas' School to Prison Pipeline: Dropout to Incarceration*, 2007, www.texasappleseed.net.
[3] *Ibid.*

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WRITTEN TESTIMONY, 2011
HOUSE BILL 1106

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony on House Bill 1106. This bill is an important step to ensure that defendants that receive deferred adjudication community supervision after entering a plea of guilty or nolo contendere, are aware of their rights regarding nondisclosure as they endeavor to lead a law-abiding life.

PROBLEM

A criminal record is a difficult obstacle for any person to overcome. Many people placed on deferred adjudication community supervision after offering a plea of guilty or nolo contendere, however, are unaware of their right to petition the court for an order of nondisclosure. Furthermore, in the event that the court discharges or dismisses a person's charges after serving a period of time on community supervision, the record-keeping functions of the criminal justice system might not reflect the dismissal of the charge. The presence of criminal charges on the record of a person that has plead guilty or nolo contender, and successfully completed a period of community supervision in lieu of an adjudication of guilt, can be a serious and difficult impediment to that individual's participation in society.

Defendants that have pleaded in this manner must be apprised of their rights and privileges, and the effects of the offense on their progress as a productive member of society. It is important to support policies that give individuals with a criminal offense on their record an opportunity to maximize their contribution to free society. Providing them with the tools to take responsibility for their record, and how it might affect their ability to move forward, is an important step toward rehabilitation and reducing the likelihood that they will commit a new offense.

H.B. 1106 requires that, for those individuals to whom the court grants deferred adjudication community supervision, the court must provide notice of that person's right to petition for an order of nondisclosure, provided they are eligible for the order.

H.B. 1106 also requires that when a court dismisses or discharges any proceedings against an individual that has pleaded guilty or nolo contendere, and served a period of community supervision, the court must provide a copy of the order of dismissal and notice of the right to petition the court for an order of nondisclosure when that person is eligible for such an order.

KEY FINDINGS

- Job seekers with criminal records receive half as many job offers as job seekers with no such history.[1]
- Research has shown that 5 years of a clean record, the probability of an individual re-offending declines dramatically.[2]
- Defendants that plead guilty or nolo contendere are often unaware of the fact that criminal charges remain on their record before discharge, and that they may in fact have the right petition the court for an order of nondisclosure.
- Ensuring that defendants offering pleas of guilty or nolo contendere have been apprised of all of their rights serves the interests of justice.

SOLUTION: SUPPORT H.B. 1106

- **H.B. 1106 gives notice to defendants that enter a plea of guilty or nolo contendere of their rights regarding their criminal record.**

[1] Pew Center on the States, "Collateral Costs: Incarceration's Effect on Economic Mobility." http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653, 22.
[2] Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, "Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement," http://www.reentry.net/library.cfm?fa=download&resourceID=81140&print

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TESTIMONY, 2011

H.B. 1205

Dear Members of the Committee,

Thank you for allowing me the opportunity to submit written testimony regarding the public safety benefits associated with permitting judges to grant time credits to eligible probationers as an incentive for the successful completion of certain rehabilitation and educational programs.

PROBLEM

During FY 2010, Texas had an average total direct supervision population of 172,893 individuals.[1] Texas also had 25,456 felony probation revocations during that time, for an average recidivism rate of 14.7%.[2] Although this recidivism rate is relatively low, probation revocations were responsible for sending 31.7% of individuals to Texas prisons during FY 2010.[3]

Probation revocations are costly from both a fiscal and public safety perspective. The programming available to probationers to address the causes of criminal behavior significantly reduces the likelihood of costly future convictions, whereas revocations deprive probationers of beneficial treatment. **H.B. 1205 creates a system of incentives that encourage the completion of behavioral milestones for probationers.** Specifically, this bill will provide credit towards the completion of community supervision sentences via a system of programming incentives, once a probationer has satisfied his or her fee and restitution obligations. Time credits will be awarded **with judicial approval** upon a probationer's completion of education courses, treatment, cognitive behavioral programming, and other betterment milestones. ***NOTE:*** **H.B. 1205 does not apply to any individual who has committed a 3g offense, DWI offense, sex-related offense, or family violence offense.**

FACTS

- A community supervision revocation is a costly punishment. Incarceration costs $50.79 per day, whereas probation costs $1.74 per day.[4]
- Bringing probationers into compliance with fee obligations and victim restitution is a time-consuming and inefficient task often relegated to probation officers. **Time credit incentives will encourage the full satisfaction of financial obligations to the county, state, and victims.**
- The difficulty of probation conditions can often lead to recidivism, as probationers find it easier to simply take a sentence for violations of their conditions. Positive behavior reinforcement – as opposed to doling out punishments for noncompliance – is necessary for targeting the root causes of antisocial behaviors that lead an individual to break the law. Incentivizing achievement on probation not only makes incarceration a less attractive option but also reduces the likelihood of recidivism by discouraging criminal behavior.

SOLUTION

- **Support H.B. 1205, a free tool for probation departments to encourage positive probationer behavior and reduce costly recidivism.**

[1] http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2011.pdf, 11.
[2] Ibid, 4.
[3] Ibid, 10.
[4] http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Uniform_Cost_Report_0111.pdf, 3.

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House Bill 1340

FACT SHEET, 2011

ENSURE TEXAS TEACHERS HAVE ACCESS TO EFFECTIVE CLASSROOM MANAGEMENT TOOLS

PROBLEM

Many Texas school districts – facing tremendous cuts to resources, as well as increased burdens through higher student-to-teacher class ratios and growing populations of at-risk students – lack access to training on effective classroom management tools, such as Positive Behavioral Interventions and Supports (PBIS). Without the ability to implement recognized best practices for classroom management, teachers and administrators may rely more heavily on the use of campus police to handle discipline issues as they arise. Such reliance on law enforcement can increase costs to communities through an increased burden on the juvenile and criminal justice systems, often for minor behavior problems, while harming families and creating life-long penalties for children who could have benefited from earlier interventions.

KEY FINDINGS ABOUT POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS

PBIS is an already existing and approved disciplinary framework shown to prevent problem behaviors by students in the classroom, including those with mental or behavioral health issues, through the utilization of interventions and rewards. It is promoted by both the Texas Education Agency and U.S. Department of Education, and it represents an effective alternative to the over-utilized practice of ticketing students for routine misbehavior.

More specifically, PBIS is not a curriculum, intervention, or practice, but rather a decision-making guide for a school's selection, integration, and implementation of a continuum of evidence-based practices aimed at improving students' learning and behavior. Instead of waiting for inappropriate behavior to occur before intervening, **PBIS facilitates the establishment of a climate in which appropriate behavior is the norm, by teaching behavioral expectations and rewarding students for following them.** Students who do not respond to prevention interventions receive more targeted interventions based on their individual needs, in a graduated, multi-tiered process.

Schools that have implemented PBIS report the following:

- Fewer disciplinary actions
- Improved sense of safety at school
- Increased academic performance
- Increased attendance
- Decreased referral of students to special education

H.B. 1340 BENEFITS

- **H.B. 1340 establishes a diverse Leadership Team – composed of PBIS experts, school representatives, child-serving agencies, parents, and others – who are tasked with creating a public input-based statewide plan for aligning and coordinating programs and resources to support schools interested in implementing PBIS.** There is no "one-size-fits-all" way to implement PBIS; schools can consider their unique community and implement PBIS to best address their needs. While some schools choose to seek additional funds to support their PBIS efforts, most can implement PBIS for minimal or no additional money. This bill helps schools give teachers and administrators more time to spend on student learning rather than addressing discipline or bullying problems, thereby improving academic outcomes for all children.

- **H.B. 1340 requires the PBIS Leadership Team to submit a report during each even-numbered year to the Council on Children and Families regarding the progress of the statewide plan**. After implementing the plan, the Team is required to make recommendations in a report to the Legislature and the Governor on the continuation, discontinuation, and/or reorganization of the Team.

Note: H.B. 1340 does not mandate PBIS; it assists districts that want to implement PBIS.

SOLUTION: SUPPORT H.B. 1340 BY REPRESENTATIVE WALLE

H.B. 1340 facilitates the effective and sustained incorporation of a well-recognized framework of positive behavior supports, which can serve as a tool for Texas school administrators and educators seeking to establish clear, school-wide expectations about appropriate student behavior. H.B. 1340, through this framework, supports school staff in modeling and reinforcing those norms, while furthering the effective use of classroom time on educating students.

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Written Testimony, 2011
HOUSE BILL 1477

Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 1477. The Texas Criminal Justice Coalition is in favor of this bill because it not only saves taxpayers money, it addresses both state prison and county jail overcrowding while addressing inefficiencies in the criminal justice system.

AVOID OVERCROWDING BY ALLOWING INDIVIDUALS WITH A TECHNICAL PAROLE VIOLATION TO APPLY CREDIT FOR "STREET TIME" TOWARDS THEIR SENTENCE

PROBLEM

Texas prisons and jails will be operating at 99.7% internal operating capacity by the end of FY 2011, and they will exceed capacity by .2% at the end of FY 2012.[1] This course is unsustainable.

In FY 2010 alone, Texas prisons received 6,678 individuals due to parole revocations. Of those new receives, 1,062 had committed a technical violation of a condition of parole.[2] Examples of a technical violation might include checking in late with a parole officer or missing one meeting. Revoking an individual's parole for purely administrative violations and sending him or her back to prison without credit for the time spent successfully on supervision places a costly burden on the state and contributes to prison overcrowding, without any real effect on public safety. H.B. 1477 removes restrictions on a judge's ability to grant street time credit, and it requires street time for parolees revoked on technical violations at least one year after the date of their release to parole supervision.

FACTS

- Since FY 2006, approximately 50% of parole revocations to Texas prisons have been for technical violations.[3]
- Incarcerating an individual in prison costs the state $50.79[4] per day, as opposed to $3.74 to keep him or her on parole.[5]
- In FY 2010, TDCJ received a total of 1,062 individuals who were sent back to prison on a technical violation. The cost to incarcerate them totaled $53,939 per day, as opposed to $3,972 per day to keep them on parole.
- Street time credit will function as a cost-saving mechanism to defray incarceration costs associated with technical violations of parole conditions. Granting street time under H.B. 1477 will save the state at least $18,538.35 annually per person impacted by this bill.
- **Street time credit will only apply to nonviolent individuals with low-level offenses**, in order to mitigate any potential increased risk to public safety.

SOLUTION

- **Support H.B. 1477.** The high cost of maintaining overcrowded prison and jail systems in Texas makes the current course of incarceration unsustainable. Supporting an initiative to grant street time credit for technical violations is a practical and responsible measure to help ease the strain that the criminal justice system places on the state budget while providing relief to an overburdened system.

citations on reverse side

Endnotes

[1] Legislative Budget Board, *Adult and Juvenile Correctional Population Projections: Fiscal Years 2011-2016*, (January 2011), 10, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2011.pdf.
[2] Texas Department of Criminal Justice, *Statistical Report: Fiscal Year 2010*, 18, http://www.tdcj.state.tx.us/publications/executive/FY2010StatisticalReportFiscalYear2010.pdf.
[3] LBB, *Statewide Criminal Justice Recidivism and Revocation Rates*, (January 2011), 10, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2011.pdf.
[4] LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010* (January 2011), 3, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Uniform_Cost_Report_0111.pdf.
[5] Ibid, 6.

TEXAS CRIMINAL JUSTICE COALITION

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Written Testimony, 2011
House Bill 1706

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony regarding H.B. 1706. This bill offers a unique opportunity to increase fairness and flexibility in the Penal Code for criminal mischief penalties.

PROBLEM

Under Section 28.03 of the Penal Code, the offense of criminal mischief carries penalties according to a series of escalating monetary thresholds. The penalties go up a ladder of value thresholds from Class C misdemeanors to felonies, with each penalty delineated via the value of the amount of pecuniary loss inflicted during the crime. **These threshold amounts, however, have not been adjusted or indexed for inflation since 1993.**

Inflation in general is the upward price movement of goods and services within an economy. Because of this trend, units of currency become less valuable, as they can purchase fewer goods and services in the economy. **Due to inflation, the penalty grades for criminal mischief offenses may not reflect the actual value of the property that has been damaged or lost** due to increases in prices. Therefore, there is a fundamental disconnect in the Penal Code between the severity of the crime and the severity of the penalty.

KEY FINDINGS: OTHER STATES' EXAMINATION OF PENALTY THRESHOLDS

- **Oregon:** Raised criminal mischief thresholds in 2009.[1]
- **Washington:** Raised malicious mischief thresholds in 2009.[2]
- **California:** Raised financial thresholds for certain property crimes in 2009.[3]

SOLUTION: SUPPORT H.B. 1706 BY REPRESENTATIVE GUTIERREZ

H.B. 1706 amends penalty thresholds for the first time in over a decade to account for the dynamics of inflation and to more accurately reflect the value of property that has been damaged or lost due to criminal mischief. The proposed penalty ladder amends the Class B misdemeanor threshold from $50 to $100.

This is especially important given the following findings:

- According to the United States Department of Labor's Consumer Price Index, consumer goods with a value of $49 in 1993 are worth $75.05 today.[4]
- $49 worth of pecuniary loss in 1993-equivalent dollars is now a Class B misdemeanor.
- Each Class B misdemeanor entails costly incarceration, and requires the appointment of counsel for indigent defendants.

Please consider this information in your analysis of H.B. 1706, and support this bill to increase fairness and flexibility in the Penal Code.

[1] National Conference of State Legislators, *Significant State Sentencing and Corrections Legislation in 2009*. http://www.ncsl.org/?TabId=19122.
[2] Ibid.
[3] Ibid.
[4] http://www.bls.gov/data/inflation_calculator.htm.

WRITTEN TESTIMONY

SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
TEXAS CRIMINAL JUSTICE COALITION

REGARDING H.B. 1810

HOMELAND SECURITY & PUBLIC SAFETY COMMITTEE

MARCH 22, 2011

TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition (TCJC) is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

TCJC'S PROJECTS

The Juvenile Justice Initiative: *Creating Avenues to Success for Troubled Youth and Their Families.*

The Public Safety Project: *Advocating for Fair, Effective Police Practices that Improve the Safety of Our Communities.*

The Fair Defense Project: *Ensuring a Just and Accountable Judicial System by Protecting the Right to Counsel.*

The Solutions for Sentencing & Incarceration Project: *Providing Proven and Cost-Effective Answers that Address Texas' Over-Reliance on Incarceration.*

Tools for Re-Entry: *Advocating for Policies that Enable the Previously Incarcerated to Live Responsibly.*

Tools for Practitioners: *Featuring Effective Criminal and Juvenile Justice Programs and Practices.*

Public Policy Center: *Providing Nonpartisan Criminal and Juvenile Justice Policy Recommendations.*

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director for the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to provide testimony in regards to the benefits of H.B. 1810 which repeals the Texas' Driver Responsibility Program.

BACKGROUND

Created in 2003 as a revenue generator and originally pitched as protecting public safety, Texas' Driver Responsibility Surcharge has failed at every goal set for it. In Texas, 6% of drivers presently owe the surcharge, according to the vendor in charge of collections, and 1.2 million drivers have failed to pay. More than 60% of assessed surcharges go unpaid.

Seven years after implementation, Texas' rate of uninsured drivers remains one of the highest in the nation at 22%. And it is not just Texas: New Jersey and other states on whose programs Texas' was modeled have essentially similar results. Rather than encouraging drivers to remain licensed and insured, the program has stripped licenses from more than a million Texans, making it impossible for them to buy insurance. That includes many drunk drivers, who have the highest surcharges.

The Driver Responsibility Program (DRP) is a failed concept on many levels. **H.B. 1810 abolishes DRP and provides additional revenue to replace funding for trauma center hospitals.**

PROBLEMS

Bipartisan Consensus on Program Flaws

The problems with the DRP program are well-known, and even many of the usual "tough on crime" advocates recognize the program is doing more harm than good. Legislators from both parties have taken initial steps toward mitigating some of these problems. In 2007, Senate Finance Committee Chairman Steve Ogden carried SB 1723, authorizing the Department of Public Safety to create Indigency, Amnesty and Incentive programs aimed at reducing the burden on surcharge-owing drivers. In 2009, state Rep. Sylvester Turner won passage of an amendment to make an indigency program mandatory and to allow judges to waive fees for those with incomes below 125% of poverty starting in 2011.

Critics of the DRP have arisen from across the political spectrum. Williamson County District Attorney John Bradley has called it "taxation masquerading as a public safety initiative."[1] But even that assessment may give the program too much credit. It has produced only a fraction of the revenue projected and spawned a vast array of unintended consequences, from boosting the number of unlicensed, uninsured drivers on the road to extraordinary financial hardships for low-income drivers, many of whom lose their jobs after their driver's license is revoked.

What's more, there appears to be little public-safety benefit from the draconian assessments. A spokesman for Mothers Against Drunk Driving recently told the *Houston Chronicle* that, "We can't point to anything that says that law has caused a decline in alcohol-related fatalities. We're not going to go nuts if the Legislature decides they want to repeal it." Even former state Rep. Mike Krusee, the original author of the legislation that created the surcharge, has said, "My feeling right now is we

definitely made a mistake – that it's overly punitive … I think it's past time to either revise or repeal the program."[2]

Confusion Reigns

Because the DRP is a civil surcharge that is technically unrelated to criminal charges, many people do not realize they owe the Driver Responsibility surcharge at the time they pay their tickets. When Texas' surcharge was created in 2003, Sen. Jeff Wentworth offered an amendment on the Senate floor late in the session which would have required notice about surcharge provisions at the time defendants go to court or pay their traffic fines.[3] The Senate's unfortunate decision to table Wentworth's amendment haunts the program to this day, as people on whom the surcharge is assessed frequently think they have already cleared up the charges in question. Some drivers even believe the request for additional money on a ticket they have already paid is a scam. Confusion reigns surrounding all aspects of the program, and tougher collection methods have been tried but failed.

Economic Harms Outweigh Benefits

At a recent Texas Senate Criminal Justice Committee meeting, Sen. Kel Seliger asked a question that applies particularly well to the Driver Responsibility Program: "When do the people of the state of Texas pay more for the commission of the crime than the person who committed it?" The DRP costs Texans more than the state gains from additional revenue. As described more fully below, it reduces employment, increases costs from crashes involving uninsured motorists, and increases jail and court costs, thus placing an additional burden on counties.

– ***Reducing Employment and Economic Growth***

The economic harm from this program far outdistances the revenue it generates.

Though the program never met expectations, failing to collect nearly 2/3 of assessments, surcharges remain a significant revenue source. But no one should lose sight of the fact that these surcharges pale in comparison to state revenues generated from property and sales taxes. Creating jobs and expanding the tax base must be the long-term engine for getting out of the current economic slump. For that reason, the state has a strong self interest in ensuring that employed, low-income Texans are able to pay off outstanding surcharges and keep their jobs.

The effect of surcharges on low-income drivers have been studied in detail in states with laws similar to Texas, and they have been found to reduce overall employment levels. A 2006 survey from the New Jersey Motor Vehicles Affordability and Fairness Task Force examined the surcharge's impact on drivers with licenses suspended due to their own Driver Responsibility Program, which levies the same license surcharges as the Texas DRP.[4] According to that survey, among persons with suspended licenses whose annual income was under $30,000: (1) 64% were unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find a new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% indicated that they were unable to pay costs that were related to their suspended driving

privileges. In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.

That makes Driver Responsibility surcharges a major cause of job loss, significantly exacerbating the current economic downturn. Roughly 1.2 million Texas drivers have lost their licenses because they defaulted on DRP surcharge debts. No doubt a significant number make less than $30,000 per year.

– ***Increasing Costs to the Public from Uninsured Drivers***

The 1.2 million Texas drivers who have lost their licenses over surcharges cannot buy insurance until their fees are paid, but large numbers (if not virtually all) of them continue to drive.

Particularly problematic, DWI defendants who lose their license and insurance may also continue to drive, and if they harm someone the DRP makes it less likely they will have insurance to cover the damages. Since drunk drivers have the highest surcharges, they are also most likely to fail to pay and thus end up unlicensed and uninsured. Despite claims to the contrary at the time it was passed, the surcharge has resulted in *more* uninsured drunks on Texas roads, rather than reducing their number.

In 2007, there were 6,024,000 crashes[5] in the United States and 205,741,845 licensed drivers,[6] giving us an overall accident rate of 2.93%. If we assume those 1.2 million surcharge debtors who lost their licenses (and therefore became ineligible to purchase insurance) continued to drive, and that they crash at the same rate as other drivers, then by reducing the number of insured drivers, drivers who lost their license through the DRP are involved in approximately 35,160 accidents per year.[7] If DRP drivers were the responsible party in half of those accidents (a conservative estimate, as drivers with bad driving histories could be more likely to be at fault), then the DRP would be responsible for an additional 17,580 accidents per year in which the party at fault is not insured.

How much do those crashes cost Texans in uncompensated damages? It is possible to estimate. In 2000, a federal study analyzed costs from auto accidents, including medical costs, property damage, etc., attributing $230.6 billion in costs to 16.4 million auto accidents nationwide, at an average cost of $14,061 per accident.[8] Adjusting for inflation, that's $16,777 in 2007 dollars. Multiplying that figure by the number of estimated crashes caused involving surcharge owing drivers, we get an estimated $294,939,660 in costs from crashes in Texas caused by uninsured drivers.

Add in lost premium income to insurers, not to mention lost Department of Public Safety (DPS) fees from the more than 200,000 fewer driver license renewals each year (roughly $4.8 million annually), and nearly every facet of the Driver Responsibility Program is bleeding red ink – for the state and for average Texans – because of an array of unintended but now well-understood consequences from the program's ill-conceived design.

Harms to Public Safety

The Driver Responsibility Program harms public safety more than it helps it by increasing the number of unlicensed, uninsured drivers on the road – particularly drivers with DWI records – and by forcing counties to waste valuable resources locking up individuals who do not pose a threat to public safety but merely cannot afford the surcharge.

The DRP surcharge harms public safety in several significant ways:

- ***Higher Rates of Unlicensed, Uninsured Drivers***

  The 1.2 million drivers who lost their driver licenses because of the DRP and have not been able to get them reinstated cannot purchase insurance without a valid license. That means those drivers cannot insure their vehicles even if they wanted to do so, including drunk drivers who arguably are at greatest risk of causing damage to others. So high DRP surcharges force drivers of modest means – not just the poverty-stricken but even working class folks – to drive uninsured if they cannot pay both their surcharges and ongoing insurance premiums. Such situations are not the exception, but the general rule, with 2/3 of surcharges owed routinely going unpaid.

- ***Jails Needlessly Filled with Individuals Convicted of Petty Offenses***

  Because nearly everyone continues to drive despite defaulting on the surcharge, the Driver Responsibility Program has generated more than a million unlicensed, uninsured drivers who then frequently accumulate more tickets – a process that feeds on itself until the amounts owed can easily rise beyond average person's ability to pay. Eventually, many of those drivers wind up spending time in county jails because everyone with a defaulted surcharge who is still on the road is guilty of driving with a suspended license. After the US Supreme Court's ruling in *Atwater v. Lago Vista,* Texas police officers can legally arrest drivers and take them to jail just on that charge alone,[9] but more frequently they end up in jail when accumulated tickets go to warrant. Since the surcharges are too high for most people to pay, these Class C misdemeanors accumulate until the driver is arrested at a traffic stop or during a warrant roundup, inevitably putting more pressure on often-already overcrowded local jails and needlessly filling up court dockets with petty cases.

  Ironically, there is no evidence that license suspensions influence criminal behavior. The Texas Center for the Judiciary has recommended that the state do away with administrative license suspensions altogether, except those required in federal law,[10] to keep these cases out of the courts and jails, and to maximize the number of licensed and insured drivers. We concur with that opinion. The Driver Responsibility Program far and away is responsible for the lion's share of administrative license revocations, and eliminating that aspect of the program would go a long way towards rectifying its most problematic aspects.

Abolition is Best Option

The DRP has made Texas roads less safe. Policy-makers should abolish the program and pass H.B. 299. It is creating more harm than benefit, and it is rife with negative, unintended consequences.

Focus on Public Safety Goals

Many of the DRP's problems stem from its conflicting goals of improving road safety and maximizing revenue from what, in 2003, was considered a novel source. We believe the goal of the DRP program should be to maximize the number of licensed and insured drivers on the road – though in practice, it has radically reduced their number in pursuit of revenue that never materialized. When more than 60% of surcharges go unpaid, it makes little sense to put off reforms like waiving surcharges for indigents or implementing an Incentive program because it might reduce revenue more. The state is already foregoing most of the promised income, not to mention enduring an increasingly unacceptable array of negative unintended consequences.

SOLUTION THAT WILL CREATE REAL OPPORTUNITIES FOR TRUE DRIVER RESPONSIBILITY

- **Support H.B. 1810 which abolishes the driver responsibility program and creates new revenue for trauma center hospitals.** This is a failed program that has generated only a fraction of promised revenue, hurt the economy, and made Texas roads less safe.

* * *

I appreciate the opportunity to testify before this Committee and to offer our organization's ideas about this important issue. We hope that the Committee will strongly consider our policy recommendation, which will improve safety on Texas roads while reducing unnecessary financial burdens on the public.

Notes

[1] TDCAA User Forum, 9/20/06. Online at: http://tdcaa.infopop.net/4/OpenTopic?a=tpc&s=347098965&f=157098965&m=9191047631&r=928103173 1#928103173 1.

[2] "Critics: Law puts drivers on road to ruin," Houston Chronicle, March 21, 2010 Online at: http://www.chron.com/disp/story.mpl/metropolitan/6922979.html.

[3] Floor Amendment 21, Third Reading, CSHB 3588, Senate Journal pp. 2963-2964. Online at: http://www.journals.senate.state.tx.us/sjrnl/78r/pdf/sj05-28-f.pdf.

[4] MOTOR VEHICLES AFFORDABILITY AND FAIRNESS TASK FORCE FINAL REPORT, February 2006. Online at: http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.

[5] NHTSA, "2008 Traffic Safety Annual Assessment – Highlights," June 2009. Online at: http://www-nrd.nhtsa.dot.gov/Pubs/811172.pdf.

[6] US Department of Transportation, Federal Highway Administration, "Highway Statistics 2007, Licensed Drivers by Sex and Ratio to Population – 2007." Online at: http://www.fhwa.dot.gov/policyinformation/statistics/2007/dl1c.cfm.

[7] To be clear, the same number of accidents would occur, according to this analysis, but 17,580 more of them have an uninsured driver as the responsible party.

[8] US Department of Transportation, National Highway Traffic Safety Administration, "The Economic Impact of Motor Vehicle Crashes 2000," 2002. Online at: http://www-nrd.nhtsa.dot.gov/Pubs/809446.PDF.

[9] Supreme Court of the United States, ATWATER V. LAGO VISTA (99-1408) 532 U.S. 318 (2001) 195 F.3d 242, affirmed.

[10] Testimony to the Texas Senate Criminal Justice Committee by David Hodges, Judicial Liaison, Texas Center for the Judiciary, July 8, 2010.

WRITTEN TESTIMONY

SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
TEXAS CRIMINAL JUSTICE COALITION

REGARDING H.B. 1915

THE HOUSE COMMITTEE ON CORRECTIONS

MARCH 9, 2011

TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition (TCJC) is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on H.B. 1915.

BACKGROUND

In January 2011, the state's Sunset Advisory Commission members voted in favor of a motion to abolish both the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC), instead transferring their discrete functions to a newly created umbrella agency. Preliminarily designated as the Texas Juvenile Justice Department, this new state agency would be created by September 1, 2012. The Department's mission would prioritize the use of local probation over incarceration at the state level. In other words, the number of inmates in youth prisons would fall, and community-based alternatives for handling youth with more serious offenses would expand.[1]

Independently of this restructuring, the Senate and House budgets reduce TYC's funding by nearly $96 million for Fiscal Years 2012-2013, while a new TYC rider may result in the closure of up to three facilities. This reduction in institutional capacity will likely redirect currently incarcerated youth to the juvenile probation system or to remaining lock-ups.

At the end of the day, funding must follow the youth. Any possible cost savings that may result from facility closures must be reinvested in age-appropriate and effective community-based, non-institutional services at the county level. Additionally, the state should create a fund to be strictly utilized for the full implementation of this strategy in the long term.

COLLECTIVE REFORMS

(1) Ensure that all critical components of previous reform legislation (S.B. 103 [2007] and H.B 3689 [2009]) are incorporated into any legislation governing the new juvenile justice entity.

In 2007, following the exposure of abuse, neglect, and violence in TYC facilities, state leaders passed omnibus reform legislation (S.B. 103) with unanimous support. Legislative reforms included increased funding for community-based programs at the local level as an alternative to incarceration, a change in sentencing guidelines to ensure that misdemeanants are handled locally,[2] rules for the placement and classification of incarcerated youth intended to improve safety, and improved procedures governing both the termination of a child's placement in TYC and the re-integration into his or her home community.

In 2008 and 2009, Texas' juvenile justice agencies – TYC, TJPC, and the Office of the Independent Ombudsman[3] – underwent Sunset review. The final Sunset bill, H.B. 3689, put into place a variety of elements to improve the function of the juvenile justice system at state and local levels. Most significantly, H.B. 3689 created a pilot project to promote community-based alternatives to TYC, called the Community Corrections Diversion Program. Specifically, policy-makers allocated $46 million to TJPC to re-distribute to juvenile probation departments in

efforts to place youth in proven programming.[4] In the first three quarters of FY 2010, more than 2,200 youth were served through the diversion pilots.[5]

The Sunset legislation also mandated a 5-year juvenile justice strategic planning process to determine where service gaps exist and to develop collaborative solutions to address unmet needs. Furthermore, to ensure the bill's reforms are appropriate and undergoing successful implementation, H.B. 3689 also called for an additional Sunset review of TYC and TJPC in 2010and 2011.

We can now see that the policy reforms initiated in 2007 have led to tangible gains. The number of youth incarcerated in TYC facilities has decreased significantly, from 4,705 youth in FY 2006 to 1,977 youth in FY 2010, [6] a drop of 58%. Furthermore, according to the Texas Public Policy Foundation (TPPF), after passage of S.B. 103, "filings to revoke probation for a new offense or rule violation dropped 6.3 percent [2008 to 2009]. In Bexar County (San Antonio), juvenile referrals declined 5.8 percent from 2007 to 2008 and then another 10.0 percent in 2009. In Dallas County, the juvenile felony referral rate has declined 7.8 percent from 2005 to 2008. Also in Dallas County, offenses filed in court fell 16.5 percent from 2007 to 2008 and have been projected to decline another 20.0 percent in 2009 based on data for the first three quarters of the year."[7]

Given the positive outcomes of the juvenile reform efforts to date, policy-makers should continue their commitment to reducing the state's over-reliance on incarceration of nonviolent youth, while increasing the continuum of evidence-based, family-focused interventions and sentencing options available to youth and families at the local level.

Leadership must ensure that all critical components of previous reform legislation are incorporated into any legislation that may govern a new juvenile justice entity. *(Please see Appendix A for a comprehensive list of the key components of previous reform legislation.)*

(2) Ensure that youth continue to be kept separate from the state's adult criminal population.

Under current practices, certain youth may be sent to an adult prison if they fail to progress in treatment while in TYC. According to TYC on the issue of determinate commitments:

> Some courts send youth to TYC with specific sentences, which can be for up to 40 years. State law requires a *minimum period of confinement* in a residential placement. The minimum period of confinement is based upon the severity of the offense committed by the youth. A youth with a determinate commitment is given a chance to participate in treatment in TYC, but **if the youth fails to progress in treatment, he or she may be transferred to adult prison on or before his or her 19th birthday** [emphasis added]. If a determinate commitment youth is successful in TYC treatment and has completed his or her minimum period of confinement, he or she may be allowed to transfer from TYC to adult parole rather than to prison.[8]

This practice is both ineffective and dangerous. The adult prison system and the adult model of criminal justice are inappropriate responses to juveniles' unique need for age-appropriate

services, specifically in regard to treatment and rehabilitation: "When they are locked up with adults, young people learn criminal behaviors. They are also deprived of the counseling and family support that they would likely get in the juvenile system, which is more focused on rehabilitation."[9] Furthermore, studies have proven that confinement in adult facilities exposes youth to physical and sexual victimization, and increases the risk of suicide.[10]

The state must identify alternative methods that will keep youth in juvenile settings, both pre-trial and post-conviction. Certification and the use of adult courts for youth must be avoided when at all possible.

TEXAS JUVENILE PROBATION COMMISSION

Introduction

Ensuring that sufficient alternatives to incarceration are available in the community is critical to sustaining positive, long-term change in Texas' juvenile justice system, and improving the chances of success for at-risk youth.

TJPC and local juvenile probation departments are the most imperative components of the juvenile diversion strategy. Indeed, local departments are the "workhorses" of the juvenile justice system, handling 98% of juvenile justice-involved youth.[11] **The state also derives great savings from a strong probation system**: TJPC's objective to reduce commitments to TYC through the use of various preventative "risk-reduction" (rehabilitation and early intervention) strategies[12] saves Texas money in juvenile incarceration costs.[13] Family-focused programming especially results in better outcomes for youth and their families, which in turn boosts public safety, another long-term cost saver.[14]

Policy-makers must continue to support community-based non-residential and residential services for ongoing economic gains, including through the new Community Corrections Diversion pilot grants that are helping divert youth from placement in TYC.[15]

Policy Recommendations

As proven by recent investments in juvenile probation,[16] community-based supervision is an appropriate fit for many youth. Yet, it is only effective with ***strong, well-resourced programming*** (e.g., behavioral, educational, or vocational courses), ***qualified probation officers*** to ensure tailored supervision settings, and the ***funding to contract with specialized treatment providers*** (e.g., mental health or special education practitioners) to meet the needs of various populations and in various regions.

Absent a full funding structure for juvenile probation, the youth who will be supervised in our communities are at high risk of re-offending, leading to more victims, more local costs spent on law enforcement, and more reasons to incarcerate youth who do not need it. Texas policy-makers must adopt a responsible approach to downsizing TYC that bears in mind the concerns of local probation departments, our communities' calls for public safety, and the needs of juveniles currently incarcerated. Certainly, stranding youth in current lock-ups with poor conditions of confinement is

not the answer, but neither is shifting all of the costs to our communities and transferring the responsibility for juvenile care to already over-burdened, under-funded counties struggling to provide basic services. Youth will fall through the cracks, and Texans will pay the price for years to come.

A piecemeal approach that allocates only limited dollars to key services will roll back established progress and create a fractured system of broken program implementation throughout Texas.

(1) Support the juvenile probation system.

If the Legislature follows through on Sunset Commission recommendations to reduce TYC admissions by having counties manage higher-risk youth in community-based programs, funding cuts for Community Corrections not only must be rescinded but, as noted above, **savings from any TYC unit closures should be partially spent to increase this line item**.

According to TJPC, "Thirty-five percent of juveniles disposed have been assessed as high risk and/or as having high levels of need. The factors contributing to these high levels of risk and need include family criminal history, substance abuse, traumatic experiences, mental health needs and school truancy and disciplinary problems."[17] In fact, over 40% of youth in Texas' juvenile probation system are mentally ill.[18] According to TJPC, "These juveniles recidivate at a rate over fifty percent higher than juveniles that are not mentally ill."[19] Furthermore, according to the results of TJPC's Risk and Needs Assessment Instrument, 25% of all juveniles assessed from June 1, 2009 – May 31, 2010 were "frequent drug users."[20]

Policy-makers must ensure that resources are targeted towards rehabilitating youth in proven, community-based diversion programs. Such interventions, which include comprehensive treatment assessments[21] and components to build healthy family relationships,[22] not only save costs in incarceration, but they are more effective at addressing treatable addiction through effective tackling of the root cause. The Legislature should create a budget rider mandating that grant funding for counties must go towards research-based programming, as identified by TJPC. (*Note:* This will also prevent counties from having to expend their own limited funds on research.) Already, Texas has seen success with holistic, family-driven programming,[23] as well as first-offense programs.[24]

The end goal must be increasing the number of youth successfully rehabilitated in their communities, at substantial cost-savings to the state in both the short and long term. Such an emphasis on what truly decreases crime – programming, treatment, community supervision – is not only clear but crucial given the limited dollars Texas can devote to juvenile justice.

(2) Maintain current funding levels for juvenile probation officer trainings.

Juvenile probation officers are required to take 80 hours of continuing education every two years.[25] Qualified staff are key in implementing effective programming and supervision that reduce the risk of re-offending. To realize Texas' public safety needs, state leadership must maintain training funding for juvenile probation officers. Specifically, staff must be trained to meet the needs of youth who require treatment for mental health, substance abuse, sex offenses, and past trauma. Early identification and prompt placement into appropriate programming will best help youths with addiction, mental health, or behavioral problems.

The effective implementation of rehabilitative treatment and programming is key. According to the Texas Public Policy Foundation, "Saving a youth from becoming a chronic offender results in $1.7 million to $2.3 million in avoided lifetime costs to taxpayers and victims."[26]

TEXAS YOUTH COMMISSION

Introduction

Policy-makers must ensure that, regardless of how many lock-ups remain in place by session's conclusion, only high-risk, chronic violators who pose a danger to themselves or others should be incarcerated, and they must be provided proven treatment programming and services to reduce their likelihood of re-offending after release.

Policy Recommendations

(1) As an alternative to incarceration for high-risk youth, create a regionalized system of state-operated juvenile correctional and transition facilities that are smaller (<100 beds), more therapeutic, and closer to the communities that youth come from.

To effectively address the needs of our most troubled youth, those for whom there is no programming at the county level, the state should consider smaller, regional facilities with specialized programs and services.

A large majority of youth under supervision in TYC require specialized assistance. According to that agency, "Of the 1,481 commitments in FY 2009, 54% were categorized as high-risk offenders, 47% were chemically dependent, 37% had serious mental health problems, and 36% were identified as eligible for special education services."[27] Emphasizing treatment and least-restrictive care through the establishment of various service delivery regions would better ensure that youth have access to localized, qualified medical and mental health care professionals in age-appropriate settings. Such a system would also bring youth closer to their parents or caretakers, facilitating inclusion of families and communities in the rehabilitation process, and paving the way for lower recidivism rates upon independent reintegration to the community.

To best create a seamless continuum of care, a regionalized plan should include wrap-around services, halfway houses, and targeted aftercare. Halfway houses, which cost $70 less than confinement in current TYC facilities per day,[28] should be especially prioritized for youth who have succeeded in confinement and could be safely supervised in the community.

Note: **Throughout any regionalization effort, Texas should adopt aspects of juvenile justice models that work, specifically those that replace the historical punitive philosophy with one centered on treatment. This will be integral to the success of the entire system.**

For example, the "Missouri model" is widely acclaimed by juvenile justice advocates and has garnered bipartisan praise from across Missouri's political spectrum.[29] Throughout the 1960s

and into the early 1970s, Missouri's large juvenile institutions were struggling with very high numbers of assaults and escapes. By 1971, this violent atmosphere had left about a quarter of staff positions vacant.[30] In 1975, Missouri adopted a five-year plan that laid the groundwork for today's accomplishments. It called for the closing of the large facilities, the expansion of community-based services, and the establishment of five service delivery regions. The end goal for the change was the creation of a quality continuum of care, which would provide a range of services to youth in each of the five regions within 30 to 50 miles of their homes, bringing them closer to medical and mental health care professionals, as well as their families.

In the three decades since its adoption, the Missouri model has been heralded as a "guiding light" for reform in juvenile justice.[31] Its unconventional approach emphasizing treatment and least-restrictive care is considered to be far more successful than the incarceration-oriented systems used in most other states.[32] Furthermore, according to the Texas Public Policy Foundation, "the one-year re-incarceration rate in Missouri where group homes replaced institutions is 11 percent compared with 22 percent for TYC."[33]

Please see Appendix B for other guiding principles of juvenile justice reform.

(2) Continue investments in re-entry practitioners and programs.

The population of youth that is currently incarcerated requires risk/needs assessments, tailored programming that addresses the root causes of criminal behavior, and a strong re-entry infrastructure to ensure the youth succeed after juvenile justice involvement. Current staff levels are imperative in implementing such strategies.

As noted above, a large percentage of youth in TYC are chemically dependant.[34] Sadly, "fewer than half of TYC youth in need of substance abuse treatment receive it," according to Texans Care for Children.[35] Likewise, just over one-third of youth are receiving needed mental health services.[36] Youth in TYC are also typically 4-5 grade levels below standard when they enter confinement, and most require accelerated instruction to obtain a diploma or GED.[37]

Without effective treatment, substance abuse and mental health disorders will follow youth into the community upon release, leaving them without the tools to participate in society in a fulfilling and productive way. Low education levels and a lack of vocational training will only increase the likelihood of re-offending. Limited community- and family-based support networks will further burden youth entering the community. A continued investment in re-entry practitioners and programs – the foundations of successful reintegration – are important in maintaining progress to keep recidivism rates low, to the benefit of public safety and taxpayers' wallets.

(3) Strengthen the juvenile parole system to protect public safety and give troubled youth, families, and communities a chance at success.

The real measure of a juvenile justice system's effectiveness is a youth's behavior post-release. The first several months following a youth's institutional confinement are critical, where the lessons learned in secure care can be easily undone without proper supports. For instance, in FY 2009, nearly 3,750 youths were on parole,[38] but approximately 420 youths were sent to TYC after a revocation.[39]

Because the period of re-entry should be viewed as the last and most important phase of a youth's treatment while in secure care, the role of parole should be to support youth in applying newly acquired tools for personal accountability, to connect them with needs-based resources, and to closely monitor their progress.

To provide the most meaningful oversight and support to youth exiting juvenile institutions, the juvenile parole program requires an increased investment and focus from the Legislature. Current staffing levels must remain in place, and juvenile parole offices must be able to do the following:

- Provide youth more structured reintegration into their home environments, including day treatment programs, re-entry support groups, and family counseling.

- Increase family and community involvement in parole by implementing elements of proven, non-residential programming such as Functional Family Therapy,[40] Multisystemic Therapy,[41] and Multidimensional Treatment Foster Care.[42] TYC has already considered implementing Functional Family Parole (FFP), an evidence-based program that provides youths and their families with needed reintegration and intervention services.[43] The new juvenile justice entity should fully employ FFP.

Policy-makers must also allocate sufficient resources to the parole division so that offices have funds to send a youth to specialized **aftercare services** (e.g., chemical dependency, sex offender, etc.), or to family counseling. Currently, youth are directed to county-provided services. If counties do not provide adequate medical, behavioral health, educational, or vocational resources, a youth is simply on his or her own.

* * *

Thank you for allowing me the opportunity to provide feedback to this Committee on what an effective juvenile just system should encompass. Again, in order to create avenues to success for troubled youth and their families, we strongly encourage the Committee to incorporate each of the reforms from the previous two sessions, as well as the guiding principles provided in this testimony, into this new system.

APPENDIX A: KEY COMPONENTS OF PREVIOUS REFORM LEGISLATION

Below are some critical components of previous juvenile justice reform legislation, passed by Texas policy-makers, which must be incorporated into any legislation governing a new juvenile justice entity in Texas.

Senate Bill 103 (2007)

Key Components of Omnibus Reform Legislation

- Increased funding for community-based programs at the local level as an alternative to incarceration.
- A system for the inspection and supervision of all locally operated juvenile detention and secure post-adjudication facilities, public or private.
- A change in sentencing guidelines to ensure that misdemeanor offenders are handled locally.
- Increased, specialized training programs for juvenile corrections officers.
- Specialized intake and Texas Juvenile Probation Commission (TJPC) guidelines.
- Appointment of a commission caseworker for each child in custody.
- Rules for the placement and classification of incarcerated youth intended to improve safety.
- An independent ombudsman to act as an advocate for incarcerated youth.
- A special prosecution system and an Office of Inspector General for the independent investigation and prosecution of crimes occurring in Texas Youth Commission (TYC) facilities. *Note:* The future juvenile justice entity must emphasize the protection of youth.
- A zero-tolerance sexual abuse and sexual contact policy, as well as sexual abuse and sexual contact reporting mechanisms.
- Public reporting of cases of abuse occurring in TYC facilities.
- Access to commission facilities for advocacy groups specializing in juvenile justice, mental health, victims of sexual assault, and victims of abuse.
- A Parents' Bill of Rights.
- A duty to file complaints against TJPC with law enforcement.
- Gender parity in programs, treatment, and facilities.
- Time-credit for time served in the juvenile justice system for youth with determinate criminal sentences.
- Improved procedures governing the termination of a child's placement in TYC and improved re-integration back into his or her home community.
- A governing board for TYC to include a majority of people with experience addressing rehabilitation and reestablishment in society of youth offenders.

Note: S.B. 103 also directed the Sunset Commission to investigate the benefits of a transition towards a regionalized juvenile corrections system with smaller facilities closer to children's home communities.

House Bill 3689 (2009)

Key Components of Sunset Legislation Pertaining to the Texas Youth Commission (TYC), Texas Juvenile Probation Commission (TJPC), and Office of the Independent Ombudsman (OIO)

System-Wide Reforms

- Creates the Coordinated Strategic Planning Committee with members appointed by the directors of TYC and TJPC for the purpose of agency collaboration on a variety of initiatives, including implementation of a common data source and data sharing among TYC, TJPC, and various other state agencies that serve youth in the juvenile justice system (Texas Education Agency, Department of State Health Services, Department of Family Protective Services, and the Health and Human Services Commission).
- Requires TYC, TJPC, and various other state agencies to adopt a Memorandum of Understanding (MOU) with the Texas Correctional Office on Off enders with Medical or Mental Impairments (TCOOMMI) for continuity of care for juvenile off enders with mental impairments. Requires TCOOMMI, in coordination with TYC, TJPC, and other participating state and local agencies, to collect data and report on the outcomes of the MOU.

TYC Reforms

- Requires TYC to create a "reading and behavior plan" for special ed students, and requires 60 minutes per day individualized reading instruction for youth identified with reading deficits.
- Requires TYC to provide information regarding a youth's progress to the committing court upon request.
- Requires TYC to provide the committing court with notice of a youth's release no later than the 30th day before the release date.
- Requires TYC to provide the committing court or the county/state to which the youth is being released with the youth's re-entry and reintegration plan and a report on the youth's progress.
- Requires TYC to develop a comprehensive plan to reduce recidivism and ensure successful re-entry of juveniles into the community upon release from state facilities.

TJPC/County-Operated Juvenile Probation Department Reforms

- Requires TJPC to regulate, and local juvenile boards to inspect and certify, all non-secure correctional facilities that accept only youth on probation.
- Requires TJPC to ensure that its rules related to minimum standards for confined juveniles comport with constitutional standards, federal law, and state law.
- Requires juvenile probation departments to complete a risk and needs assessment prior to disposition, using a validated risk and needs assessment instrument.
- Requires TJPC to adopt rules for the use of both the mental health screening and risk-needs assessment instruments. Requires juvenile probation departments to report data from the use of both instruments to TJPC.
- Allows TJPC to contract with local MHMR authorities for mental health residential treatment services.

OIO Reforms

- Requires the OIO and TYC to enter into a Memorandum of Understanding concerning the development of formal procedures to help ensure timely and informative communication between the two agencies on OIO reports and areas of overlapping responsibility.
- Authorizes the OIO to withhold information concerning matters under active investigation from TYC and to report the information to the Governor.

APPENDIX B: GUIDING PRINCIPLES OF JUVENILE JUSTICE REFORM

Below are principles supported by Advocacy, Inc., the American Civil Liberties Union of Texas, Texans Care for Children, Texas Appleseed, Texas Criminal Justice Coalition, Texas Network of Youth Services, and other juvenile justice advocates.

These principles should guide the efforts of Texas policy-makers and stakeholders in shaping a more effective, efficient, and compassionate juvenile justice system.

- Changes in the governance structures of various components of the juvenile justice system should not be confused with reform. While governance and organizational structure may have a significant impact on the delivery of services to youth, they do not in and of themselves constitute meaningful reform.

- The adult prison system and the adult model of criminal justice are damaging and ineffective options for youth, ignoring their needs for age-appropriate rehabilitation and treatment services. The state should look for ways to remove those youth who are housed in adult prisons and jails and instead place them in more appropriate juvenile settings.

- Recognizing that proven, non-institutional, community-based programs are less expensive and more effective than secure facilities, Texas should move away from prioritizing state spending on institutional care and towards an emphasis on using taxpayer dollars to fund proven and effective community-based services for youth and families.

- The state should keep all but the most serious juvenile off enders (those who present a significant risk to public safety) out of secure facilities. True reform means that significantly fewer youth are incarcerated and more are being treated at home with appropriate strength-based and family-focused interventions and supports. Or, if necessary to protect public safety, youth should be housed in out-of-home programs conducive to rehabilitation. Closing state-run facilities while merely increasing the size of secure county-run facilities does not represent a step towards reform.

- For confined youth, Texas should move towards a juvenile justice system of small juvenile justice facilities that prioritizes youths' treatment needs, provides meaningful rehabilitation in a therapeutic environment, and locates youth in or near their home communities.

- Facilities should be staffed with qualified personnel who are trained to meet the needs of youth who require mental health, substance abuse, and sex off ender treatment. Facilities should also offer services to address traumas that youth have experienced. Consistent with the goals of providing effective, trauma informed treatment, staff supervising youth should receive continuing training in the safest protocols possible with respect to restraints, verbal de-escalation techniques, suicide risk and prevention, sexual assault, protection of vulnerable youth, and recognition of signs that a youth that may be overmedicated or having adverse reactions to medication.

- Funding should follow the youth; if more youth are being served at the county level, the state should redirect funding to counties for the provision of appropriate and effective community-based, non-institutional services in those locations.

- Better monitoring, oversight, and reporting of county programs should be ensured by providing the Texas Juvenile Probation Commission (TJPC) the mandate and resources to regularly conduct on-site inspections of both secure and non-secure facilities, use a graduated sanctioning system for facilities that fail to comply with set standards, and provide an annual report to the Legislature addressing violations of standards.

ENDNOTES

[1] Mike Ward, "Sunset Panel: Merge TYC and TJPC," *Austin American-Statesman*, January 12, 2011.
[2] Due to S.B. 103's preclusion of misdemeanants from incarceration in TYC facilities, the state provided counties with an additional $57.8 million to handle these youths, which was about half the cost that would have been incurred by the state had the youth been sent to TYC. From Marc Levin, "Texas Criminal Justice Reform: Lower Crime, Lower Cost," Center for Effective Justice – Texas Public Policy Foundation, January 2010, pg. 2. Note additionally: "juvenile adjudications declined 10.3 percent from fiscal year 2008 to 2009" [pg. 2].
[3] This position was created by S.B. 103 to act as an advocate for incarcerated youth.
[4] 143 departments accepted this funding. From Senate Committee on Criminal Justice, "Senate Committee on Criminal Justice Interim Report to the 82nd Legislature," December 15, 2010, pg. 74. These funds must be used for programs that are proven to reduce re-off ending. Most programs are non-residential and focus on treatment, community service, and strengthening the family. From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost,* pg. 2. Note additionally: Juvenile probation departments that receive the new diversion funding are required to report a variety of information to TJPC about their use of the monies, including details about the kinds of programs that will be developed or expanded, and outcomes for all youth placed in the diversion programs as an alternative to TYC commitment.
[5] House Committee on Corrections, Interim Report to the 82nd Texas Legislature, December 2010, pg. 8.
[6] Sunset Advisory Commission, "Commission Decisions: Texas Youth Commission, Texas Juvenile Probation Commission, Office of Independent Ombudsman," January 2011, pg. 4.
[7] Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 2.
[8] Texas Youth Commission, *Determining How Long Youth Stay in TYC;* http://www.tyc.state.tx.us/about/how_class.html.
[9] "The Case for Juvenile Courts," *The New York Times* – Editorial, August 13, 2008.
[10] Office of the Independent Ombudsman (OIO), "OIO Special Report: SB 103 and Rising Adult Certification Rates in Texas Juvenile Courts," prepared at the behest of Senator Juan Hinojosa, January 12, 2009, pg. 34
[11] During FY 2010, there were 88,344 referrals to juvenile probation departments. From House Committee on Corrections, *Interim Report to the 82nd Texas Legislature,* pg. 4. On the other hand, 1,977 youth were held in institutions, contract care facilities, or halfway houses in FY 2010. From Sunset Advisory Commission, *Commission Decisions,* pg. 4.
[12] Texas Juvenile Probation Commission; *About Us: Our Mission;* http://www.tjpc.state.tx.us/aboutus/default.aspx#Our%20Mission.
[13] Marc Levin, *New Day for Texas Juvenile Justice*, Texas Public Policy Foundation, December 30, 2008; http://www.texaspolicy.com/commentaries_single.php?report_id=2341.
[14] "For example, intensive in-home programs with both a probation officer and family therapist making frequent home visits significantly reduce re-offenses and cost a fraction of TYC. As such local programs take root, juvenile crime continues to drop and TYC commitments have fallen 38 percent this year. Every youth redirected from TYC saves taxpayers about $80,000 a year." From Marc Levin, *In Juvenile Justice, Less Is Often More,* Texas Public Policy Foundation, May 7, 2010; http://www.texaspolicy.com/commentaries_single.php?report_id=3081.
[15] In 2009, policy-makers allocated $46 million to TJPC to re-distribute to juvenile probation departments in efforts to place youth in proven programming. 143 departments accepted this funding. From Senate Committee on Criminal Justice, *Interim Report to the 82nd Legislature,* pg. 74. These funds must be used for programs that are proven to reduce re-offending. Most programs are nonresidential and focus on treatment, community service, and strengthening the family. From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost,* pg. 2. Note additionally: Juvenile probation departments that receive the new diversion funding are required to report a variety of information to TJPC about their use of the monies, including details about the kinds of programs that will be developed or expanded, and outcomes for all youth placed in the diversion programs as an alternative to TYC commitment.
[16] In the first three quarters of FY 2010, more than 2,200 youth were served through the diversion pilots. From House Committee on Corrections, *Interim Report to the 82nd Texas Legislature*, pg. 8. Representatives from Cameron, Dallas, Jefferson, Randall, and Travis Counties have specifically testified before the Senate Committee on Criminal Justice about reductions in commitments to TYC through the use of Community Corrections Diversion Program funding. From Senate Committee on Criminal Justice, *Interim Report to the 82nd Legislature,* pgs. 78, 79.
[17] Texas Juvenile Probation Commission (TJPC), "Legislative Appropriations Request for Fiscal Years 2012 and 2013," August 9, 2010, pg. 3 of 6 (Administrator's Statement).
[18] Texans Care for Children, Press Release: "Juvenile Corrections System Acts as Mental Health Provider of Last Resort for Many Texas Families," January 27, 2010; http://texanscareforchildren.org/For-the-Press/Juvenile-Corrections-System-Acts-as-Mental-Health-Provider-of-Last-Resort-for-Many-Texas-Families?&Sort=
[19] TJPC, *Legislative Appropriations Request for Fiscal Years 2012 and 2013,* pg. 3 of 6 (Administrator's Statement).
[20] Texas Juvenile Probation Commission (TJPC), "Strategic Plan: Fiscal Years 2011-15," June 2010, pg. 23.

[21] National Institute on Drug Abuse (NIDA), "Frequently Asked Questions (FAQs)," *#15: What are the unique treatment needs of juveniles in the criminal justice system?:* "Assessment is particularly important, because not all adolescents who have used drugs need treatment"; http://www.nida.nih.gov/podat_cj/faqs/faqs2.html.
[22] *Ibid.*: "The effective treatment of juvenile substance abusers often requires a family-based treatment model that targets family functioning and the increased involvement of family members."
[23] Bexar County operates the Kids Averted from Placement Services (KAPS), which provides intensive family-based services for youths and their families in efforts to address the underlying issues that have led to youth misbehavior. According to the Texas Public Policy Foundation, the program's success rates are significant: the majority of KAPS participants have not been adjudicated for later offenses, and the one-year re-referral rate is 15% lower than the state average for juvenile probation. The cost-savings are also significant: the program costs $58.33 per day, compared to $138.25 per day for the Bexar County post-adjudication facility or a county-contracted residential program. From Marc Levin, "Getting More for Less in Juvenile Justice: Innovative and Cost-Effective Approaches to Reduce Crime, Restore Victims, and Preserve Families," Texas Public Policy Foundation, March 2010, pg. 30.
[24] The Dallas Police Department created a voluntary, education-based program to divert first-time offenders, aged 10-16, from the justice system for Class A and B misdemeanor offenses, as well as for nonviolent state jail felonies. Over time, the program has diverted 6,154 youth first-time offenders from probation and, frequently, detention. The program costs 13 times less per day than detention and 25% less than probation. From Marc Levin, "Texas Counties Can Unlock Kids and Savings," Center for Effective Justice – Texas Public Policy Foundation, December 2009, pgs. 1-2.
[25] Texas Administrative Code, Sec. 344.640 (a): A juvenile probation officer or juvenile supervision officer shall complete a minimum of 80 hours training every 24 months in topics related to the officer's job duties and responsibilities in order to maintain an active certification: (1) For juvenile supervision officers, this training shall include the facility's suicide prevention plan and requirements necessary to maintain certification in CPR, First Aid and personal restraint technique approved by the [Texas Juvenile Probation] Commission.
[26] Marc Levin, *Getting More for Less in Juvenile Justice,* pg. 4.
[27] Texas Youth Commission (TYC), "Legislative Appropriations Request For Fiscal Years 2012 and 2013," August 30, 2010, pg. 29.
[28] Legislative Budget Board, "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," pg. 17; comparing FY 2008 costs-per-day for halfway houses ($282.01) and state-operated facilities ($359.58).
[29] Dick Mendel, "Small is Beautiful: The Missouri Division of Youth Services," *Advocasey: Juvenile Justice at a Crossroads,* Vol. 5, No. 1, Spring 2003, pgs. 30-31.
[30] Douglas Abrams, "A Very Special Place in Life: The History of Juvenile Justice in Missouri," Missouri Juvenile Justice Association, 2003, pg. 198.
[31] Dick Mendel, *Small is Beautiful,* pg. 34.
[32] Douglas Abrams, *A Very Special Place in Life,* pg. 206.
[33] Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 5.
[34] TYC, *Legislative Appropriations Request For Fiscal Years 2012 and 2013,* pg. 29.
[35] Texans Care for Children, *Press Release: Juvenile Corrections System Acts as Mental Health Provider.*
[36] TJPC, *Strategic Plan: Fiscal Years 2011-15,* pgs. 22, 24.
[37] *Ibid.,* pg. 53.
[38] Sunset Advisory Commission, *Commission Decisions,* pg. 5.
[39] *Ibid.*, pg. 4.
[40] Functional Family Therapy is "an empirically grounded, well-documented and highly successful family intervention for at-risk youth ages 10 to 18 whose problems range from acting out to conduct disorders to alcohol and/or substance abuse" From *Functional Family Therapy;* http://www.fftinc.com.
[41] Multisystemic Therapy is "an intensive family-and community-based treatment program that focuses on the entire world of chronic and violent juvenile offenders – their homes and families, schools and teachers, neighborhoods and friends." From MST, *What is Multisystemic Therapy;* http://www.mstservices.com.
[42] Multidimensional Treatment Foster Care is "a cost-effective alternative to regular foster care, group or residential treatment, and incarceration for youth who have problems with chronic disruptive behavior. The evidence of positive outcomes from this unique multi-modal treatment approach is compelling." From TFC Consultants, Inc.; http://www.mtfc.com/TFC_Consultants.html. Note additionally: Each of these three programs has been proven to save money and reduce crime. From "Washington State Institute for Public Policy, "Evidence-Based Juvenile Offender Programs: Program Description, Quality Assurance, and Cost," June 2007, pg. 7.
[43] Texas Youth Commission, *Regionalization Plan: Evolving Regionalization & Population Management (continued);* http://www.tyc.state.tx.us/reform/regionalization/2_bonds_highlights.html.

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WRITTEN TESTIMONY, 2011
HOUSE BILL 2065

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony regarding the need for pretrial victim-offender mediation programs. The Texas Criminal Justice Coalition supports House Bill 2065 because such programs are an effective way to implement justice and have had successful results in many states. Largely, these high success rates can be attributed to fact that the offending participants are required to take responsibility for their conduct and understand that their actions have a direct impact on other human beings, namely their victims.

HOUSE BILL 2065 BY REPRESENTATIVE ALLEN

H.B. 2065 would allow individuals with no serious criminal history who have been charged with a misdemeanor property offense under Title 7 of the Penal Code to be eligible to participate in pretrial mediation. The offending participants are required to issue their victims an apology and provide compensation or community service to appropriately redress their actions, rather than be convicted and jailed. This program allows property crime victims to choose to become involved in a defendant's correction and rehabilitation as the defendant takes responsibility for his or her actions.

If no agreement is reached or if a defendant does not complete the terms of the mediation agreement, his or her case will proceed as usual. This encourages personal accountability and successful completion of the program.

Note: This bill makes the implementation of victim-offender mediation programs permissive, not mandatory.

KEY FINDINGS

Victim-Offender Mediation Programs Have Numerous Benefits

- **Victim-offender mediation for low-level offenses can dramatically reduce court caseloads and jail overcrowding,** helping to relieve the burden on county court dockets and local jails.

- **Victim-offender mediation programs have been successful.** The U.S. Department of Justice has recommended victim-offender mediation and has published guidelines for its successful implementation.[1] In fact, over 300 victim-offender mediation programs exist in North America, and there are over 1,300 worldwide.

- **Victim-offender mediation creates an opportunity for dialogue.** This allows victims to discuss the impact of the crime, specify what is needed to make them whole, and obtain closure on unanswered questions.

- **Victim-offender mediation helps the offending participant realize the harm they have caused the victim and develops a sense of empathy.** The more indirect the connection between the crime and the actual victim, the easier it is for the violator to rationalize his or her conduct. Proximity to the victim can aid in humanizing that person for the offending participant and can prevent future offenses.

Continued on reverse.

Victim-Offender Mediation Improves Outcomes for Victims

- A multi-site study found that 79% of victims who participated in victim-offender mediation programs were satisfied, compared with 57% of victims who went through the traditional court system.[2]

- A study of mediation programs serving adults and juveniles found that 89% of agreements were successfully completed, meaning restitution was fully paid in these cases, compared with a national average of 20-30%.[3]

- In mediation programs in the U.S. and Canada, victims who participated in mediation were more than 50% less likely to express fear of re-victimization than a sample of victims who did not participate in mediation.[4]

Victim-Offender Mediation Reduces Recidivism and is Cost-Effective

- A meta-analysis that examined 27 victim-offender mediation programs in North America found that 72% lowered recidivism and that the average decline was by 7%.[5]

SOLUTION: SUPPORT H.B. 2065 BY REP. ALLEN

H.B. 2065 creates an opportunity for pretrial defendants charged with low-level property offenses to enter structured victim-offender mediation, in which the charged individual must successfully complete terms, based on input from the victim, for compensation and/or community service. This bill provides for a meaningful response to low-level property crime that reduces recidivism, improves victim satisfaction, and reduces jail overcrowding.

* * *

Thank you again for allowing me the opportunity to present testimony on this bill. I hope you will support H.B. 2065, which is a cost-effective policy that empowers victims by improving their emotional and monetary outcomes, and allows offending participants to understand how their actions have impacted others.

[1] http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/restorative_justice_ascii_pdf/ncj176346.pdf.
[2] Umbreit, M., with R. Coates and B. Kalanj. 1994. Victim Meets Offender: The Impact of Restorative Justice and Mediation. Monsey, N.Y.: Criminal Justice Press.
[3] Gehm, J. Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation. In B. Galaway & J. Hudson (Eds.), Criminal Justice, Restitution, and Reconciliation, Monsey, NY: Criminal Justice Press.
[4] Umbreit, Mark, Coates, Robert & Vos, Betty, Impact of Restorative Justice Conferencing with Juvenile Offenders: What We Have Learned From Two Decades of Victim Offender Dialogue Through Mediation and Conferencing, Balanced and Restorative Justice Project, Community Justice Institute, Florida Atlantic University, November 28, 2000, available at http://rjp.umn.edu/img/assets/13522/Victim_Impact_RJC_with%20_Juvenile_Offenders.pdf.
[5] Latimer, Dowden & Muise, The Effectiveness of Restorative Justice Practices: A Meta-Analysis, 2000.

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House Bill 2143

WRITTEN TESTIMONY, 2011

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony in favor of H.B. 2143. The Texas Criminal Justice Coalition, as a member of the state's Reentry Task Force, strongly supports this bill because it will improve the reentry infrastructure in Texas and ultimately assist more individuals in accessing basic services that reduce rates of re-offending.

PROBLEM

This bill addresses two challenges facing the state's newly created Reentry Task Force:

- ***Current Membership of Reentry Task Force:*** Texas' statewide Reentry Task Force promotes increased collaboration and coordination among localized re-entry initiatives and state-level entities, specifically in efforts to help stakeholders minimize barriers that impact individuals' successful reintegration into Texas communities. However, the current membership of the Task Force does not specifically include representatives of **veterans organizations** or **faith-based organizations**, and it limits others interested in the successful reintegration of returning individuals to one organization.

- ***Task Force Reporting Difficulties:*** The Task Force is required to report its research findings to various members of the Legislature, including on family unity and participation efforts. This particular reporting element is quite difficult for the Task Force to undertake, as it potentially requires a study of thousands of returning individual's unification successes or challenges.

SOLUTION: SUPPORT H.B. 2143 BY REPRESENTATIVE TURNER

- **H.B. 2143 strengthens the membership of the state's Reentry Task Force** to include the Texas Veterans Commission and a faith-based organization. It also improves representation among the judiciary, and it allows other organizations, agencies, or individuals who advocate for or have significant interest in the successful reentry of returning individuals to participate as members.

- **H.B. 2143 streamlines Task Force reporting.** This bill cleans up current statutory language to ensure the Task Force will report to the Legislature on measurable outcomes of its activities and research, rather than use valuable resources in efforts to report on outcomes that cannot be quantified.

Thank you again for allowing me to testify in favor of this important bill. It is a smart policy that will further improve re-entry practices in Texas.

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Written Testimony, 2011
HOUSE BILL 2352

Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 2352. The Texas Criminal Justice Coalition is in favor of this bill because it not only saves taxpayers money, it addresses both state prison and county jail overcrowding while addressing inefficiencies in the criminal justice system.

INCREASE PAROLE BOARD EFFICIENCY, REDUCE PRISON OVERCROWDING, AND IMPROVE THE PAROLE PROCESS

PROBLEM

Under Government Code, Section 508.149, mandatory supervision requires the Texas Board of Pardons and Paroles (Parole Board) to release an individual to parole when his or her good time plus calendar time equals the full sentence. Mandatory supervision is not permitted for individuals with certain violent or sex offenses. Section 508.149, however, also requires the Parole Board to review certain individuals eligible for mandatory supervision and determine at its discretion whether it will release the individual to parole at the pre-determined statutory time. In 2009, the Parole Board reviewed an additional 18,554 persons eligible for mandatory supervision, on top of the 76,607 parole considerations already under evaluation.

H.B. 2352 will amend Section 508.149 to remove certain low-level, low-risk individuals eligible for mandatory supervision from the purview of the Parole Board. Under this bill, the Board will retain discretion over a limited class of individuals to maximize efficiency and public safety. By releasing other individuals who already meet the established mandatory supervision criteria to parole, the Parole Board can devote additional time and attention to more significant parole cases. This legislation will also decrease the burden on prisons by freeing up needed space to house those individuals who pose an actual threat to public safety, and provide significant savings for taxpayers.

FACTS

- The current mandatory supervision system has the effect of granting the Parole Board, in a limited set of cases, the discretion to override pre-determined, statutory release dates.
- Parole Board procedures require a 90-day review period prior to a person's mandatory supervision release date.[1] This additional review effort generates unnecessary inefficiencies, incurs additional costs, and strains resources.
- As of August 31, 2010, the Texas Department of Corrections had a population of 8,068 inmates eligible for mandatory supervision subject to Parole Board review.[2] This population costs the state **$409,773.72 per day** to incarcerate.
- A person denied release under the current process must wait one year for his or her next review.[3] Thus, a single denial costs the state $18,358.35.
- Based on the August 31, 2010, TDCJ statistics, under the proposed bill an estimated 5,455 inmates who meet mandatory supervision requirements would no longer be subject to Parole Board review.
- **H.B. 2352 will generate approximately $187,000,000 in savings over the biennium.**

SOLUTION

- **Support H.B. 2352.** Increase Parole Board efficiency and save taxpayer dollars by allowing the Parole Board to release individuals with nonviolent, low-level offenses who are eligible for mandatory supervision, without subjecting them to further review.

citations on reverse side

Endnotes

[1] Texas Board of Pardons and Paroles, Policy Number BPP-POL.145.202, (Jan. 10, 2011), http://www.tdcj.state.tx.us/bpp/policies_directives/POL.145.202%20_DMS.pdf.
[2] Texas Criminal Justice Department: Statistical Report FY 2010, p. 17.
[3] Texas Board of Pardons And Paroles, Board Policy Number BPP-POL.145.202.

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Written Testimony, 2011
House Bill 2412

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill 2412. Under this bill, inmates who have committed certain drug possession offenses will be released to mandatory supervision. The Texas Criminal Justice Coalition supports this bill because it will reduce the financial strain otherwise associated with further incarceration, safely free up prison beds for those who pose a true threat to public safety, and allow nonviolent individuals with substance abuse issues to participate in and complete treatment while being supervised in the community.

PROBLEM

Texas must halt the wasteful expenditure of millions of dollars each year on the status quo: incarcerating low-level, nonviolent drug users. In Fiscal Year 2010, more than 11,000 individuals (27% of incoming inmates) were received by state prisons for a drug offense,[1] and 62% of those individuals were charged with possession, as opposed to delivery or other offenses.[2] At rates of $50.79 per day to incarcerate these individuals,[3] Texas is spending ***more than $350,000 daily*** to house individuals who committed nonviolent possession offenses.

KEY FINDINGS

- With prison beds costing the state more than $50 per inmate per day and parole costing only $3.74 per individual per day,[4] the beds must be preserved for individuals who have committed violent offenses and who carry a higher risk of failure on parole.

- Incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives, which are proven to be more cost-efficient, as well as programmatically effective. Specifically, treatment combined with cognitive skills programming can decrease criminal behavior by 44%, while incarceration can increase an individual's inclination towards criminal activity by .07%.[5]

SOLUTION: SUPPORT H.B. 2412 BY REPRESENTATIVE MILES

- ***H.B. 2412 makes fiscal sense and would free up prison space for legitimate threats to public safety.*** Costly prison beds should be reserved for individuals who represent a danger to society. Someone who has already served years in prison for drug possession is unlikely to benefit from more time behind bars, especially given the scarcity of effective treatment programming inside prison walls. Furthermore, keeping drug addicts in prison for extended periods of time consumes space and exhausts other institutional resources, thereby allowing for potential prison overcrowding.

- ***H.B. 2412 would put many individuals with substance abuse issues on the path to rehabilitation. Permitting*** individuals with small-time drug possession offenses to qualify for mandatory supervision will allow them to return to their communities, seek out the support of their families, and become responsible, self-reliant citizens.

- ***H.B. 2412 would allow the Texas Board of Pardons and Parole more time to focus on necessary casework.*** This bill will allow the Parole Board to spend more time reviewing files for individuals convicted of violent, sex, and property offenses, and promote better decision-making.

I appreciate the opportunity to testify before this Committee and to offer our organization's ideas about this important issue. H.B. 2412 offers a pragmatic ways to safely reduce the state's costly prison population and focus limited resources on individuals who truly pose a threat to public safety. We hope that this Committee will vote in favor of this bill.

Citations on reverse.

[1] Texas Department of Criminal Justice, "Statistical Report Fiscal Year 2010," pg. 2.
[2] *Ibid*., pg. 21.
[3] Legislative Budget Board, "Criminal Justice Uniform Cost Report: Fiscal Years 2008 – 2010," Submitted to the 82nd Texas Legislature, January 2011, pg. 6; using Fiscal Year 2010 per-day CID incarceration costs.
[4] *Ibid*., pg. 10; using Fiscal Year 2010 per-day active supervision costs.
[5] Judge Marion F. Edwards, "Reduce Recidivism in DUI Off enders: Add a Cognitive-Behavioral Program Component," 2006, pg. 3.

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Written Testimony, 2011
HOUSE BILL 2624

Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 2624. The Texas Criminal Justice Coalition is in favor of this bill, specifically Section 4 which relates to requiring a presentence investigation to include information on whether a defendant is a current or former member of the military, and whether he or she has served in the armed forces of the United States in an active-duty status.

PROBLEM

Countless studies show that war can have a disastrous effect on both a person's physical and mental state. The challenges faced by returning service members are numerous and difficult; reconnecting with family, adjusting to civilian life, and finding stable employment each can pose problems. An added burden on returning service members is the emotional and mental strain that accompanies combat and long periods of sustained stress, namely post-traumatic stress disorder (PTSD) and other mental health disorders.

The current wars in Iraq and Afghanistan have made this discussion especially timely. As of September 2008, 1.7 million troops had been deployed to Iraq and Afghanistan,[1] with another 34,000 troops deployed in 2009.[2] Additional data from 2009 shows that 35,000 individuals have been wounded in action,[3] with an unparalleled 90 percent surviving their injuries.[4] However, physical injuries are not these wars' only consequence. In fact, PTSD and Traumatic Brain Injury (TBI) caused by blasts are considered the 'signature' injuries of the wars in Iraq and Afghanistan:[5] an estimated 30 percent of veterans report signs of PTSD, depression, and other mental health issues,[6] which does not include those individuals who may experience other symptoms coupled with mental disorders – such as depression and anxiety – that can contribute to aggressive behavior.[7]

SOLUTION

- **Support H.B. 2624.** Requiring a defendant's military service – and especially any combat-related service – to be part of a presentence investigation is an important step in ensuring that judges have all the information necessary to consider mitigating factors when sentencing veterans suffering from combat-related mental health disorders.

[1] Dan Heilman, "Veterans with post-traumatic stress disorder present challenges for the criminal justice system," *Minnesota Lawyer*, October 24, 2008, http://www.minnlawyer.com/article.cfm?recid=79487.
[2] Ann Scott Tyson, "Support Troops Swelling U.S. Force in Afghanistan: Additional Deployments Not Announced and Rarely Noted," *The Washington Post*, October 13, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/10/12/AR2009101203142.html.
[3] Heidi Golding and others, "Understanding recent estimates of PTSD and TBI from operations Iraqi Freedom and Enduring Freedom," *Journal of Rehabilitation Research and Development* 46, no. 5 (2009): vii-xiii.
[4] Constantina Aprilakis, "The Warrior Returns: Struggling to Address Criminal Behavior by Veterans with PTSD," *The Georgetown Journal of Law and Public Policy*, Vol. 3 (2006): 547.
[5] Hillary S. Burke, Charles E. Degeneffe, and Marjorie F. Olney, "A New Disability for Rehabilitation Counselors: Iraq War Veterans with Traumatic Brain Injury and Post-Traumatic Stress Disorder." *Journal of Rehabilitation* 75, no. 3 (2009): 5.
[6] Drug Policy Alliance. Healing a Broken System: Veterans Battling Addiction and Incarceration. (Issue Brief: November 4, 2009), 2.
[7] Matthew Jakupcak and others, "Anger, Hostility, and Aggression Among Iraq and Afghanistan War Veterans Reporting PTSD and Subthreshold PTSD, *Journal of Traumatic Stress* 20, no. 6 (2007): 950.

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WRITTEN TESTIMONY, 2011
HOUSE BILL 2649

Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 2649, a criminal justice initiative that will empower wardens and state jail staff with an effective behavioral tool, while incentivizing participation in rehabilitative, educational, and vocational programs.

PROBLEM

Unlike state prison and county jail inmates, individuals serving their sentence in state jail are ineligible for good time credits and must serve "flat" time (day for day) up to two years with no eligibility for parole. As such, there is little incentive for state jail inmates to participate in rehabilitative or educational programs because they cannot accrue any benefit from diligent participation in such programming. Similarly, there is little advantage to maintaining a positive disciplinary record while serving a sentence in state jail.

Individuals in a state jail facility would benefit significantly from rehabilitative and self-improvement programs. According to the Legislative Budget Board's recent recidivism report, state jail inmates have a higher recidivism rate than state prisoners.[1]

KEY FINDINGS

- A study of more than 3,600 individuals who participated in prison education programs were 29% less likely to be re-incarcerated than non-participants.[2]
- In fiscal year 2010, the average total cost per day per inmate in a state jail facility was $43.03.[3]
- In fiscal year 2010, there were 23,537 admissions to state jails.[4]
- According to the Legislative Budget Board, the average sentence served in a state jail facility in fiscal year 2010 was 10 months.[5] This costs the state roughly $12,909 per person.
- Based on an average 10-month sentence, the average maximum credit earned through diligent participation in rehabilitative programs would be roughly 60 days, reducing the average length of incarceration to eight months.[6] This could save the state roughly $2,582 per person.
- The fiscal note on H.B. 2649 projects a positive impact of $48,994,711 over the biennium.[7]

SOLUTION: SUPPORT H.B. 2649 BY REPRESENTATIVE ALLEN

Under H.B. 2649, an individual in a state jail facility will have the opportunity to earn time credit toward his or her sentence through self-improvement programming, vocational achievement, or involvement in a work program. This will encourage personal responsibility, provide wardens an effective behavior management mechanism, and reduce costs by decreasing recidivism. While creating a useful tool for state jail management, as well as an effective incentive for participation in rehabilitative and educational programs, this initiative also provides important limitations that are mindful of public safety.

- Awarding time credit is permissive, and it will remain **under judicial discretion**.
- Time credits earned **may not exceed one-fifth of the original sentence**.
  - EXAMPLE: A person serving a 180-day sentence would be limited to a maximum credit of 36 days.
- No credit may be awarded under H.B. 2649 during the time an individual is subject to disciplinary action.

Continued on reverse

Importantly, H.B. 2649 will also provide a procedural mechanism to facilitate the awarding of time credit to an individual who participates in an educational, vocational, treatment, or work program. Under the bill, 30 days prior to the date on which the inmate will have served 80 percent of his or her sentence, a report detailing that inmate's conduct and programmatic progress will be sent to the sentencing court. This report will describe the inmate's participation in and completion of various programs, such as substance abuse treatment or an educational program.

Additionally, H.B. 2649 will provide a special exception for an inmate who is progressing toward completion of an offered educational, treatment, vocational, or work program, but is unable to complete the program due to illness, injury, or another circumstance outside the control of the inmate. Under the circumstances described by this exception, a report may still be submitted to the sentencing court and a judge may consider awarding a portion of time toward that person's sentence.

* * *

The high cost of maintaining an overcrowded jail system in Texas makes the current trajectory of incarceration unsustainable. Supporting an initiative to grant good time credit to individuals who choose to improve their lives by participating in rehabilitation and educational programs is a practical and responsible measure that will help ease the strain that the criminal justice system places on the state budget, while providing relief to an overburdened system. Furthermore, participation in these programs can have a significant impact on reducing recidivism. Importantly, H.B. 2649 will also provide a useful disciplinary tool for wardens and state jail staff.

ENDNOTES

[1] Legislative Budget Board Report: *Statewide Criminal Justice Recidivism and Revocation Rates*, January 2011, available at http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2011.pdf, 21, 31.
[2] The Pew Center on the States, "Collateral Costs: Incarceration's Effects on Economic Mobility," 23 September 2010. http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653, 23.
[3] Legislative Budget Board Report: *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, available at http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Uniform_Cost_Report_0111.pdf, 6.
[4] Texas Criminal Justice Department: Statistical Report FY 2010, 21.
[5] Legislative Budget Board: *House Bill 2649, As Engrossed: Criminal Justice Impact Statement*, 19 May 2011, available at http://www.capitol.state.tx.us/tlodocs/82R/impactstmts/html/HB02649EB.htm, 1.
[6] *Id.*
[7] Legislative Budget Board: *House Bill 2649, As Engrossed: Fiscal Note*, 19 May 2011, available at http://www.capitol.state.tx.us/tlodocs/82R/fiscalnotes/pdf/HB02649E.pdf#navpanes=0, 1.

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FACT SHEET, 2011
House Bill 2650

Dear Members of the Committee,

Thank you for the opportunity to present testimony in favor of H.B. 2650. This bill empowers judges with the flexibility to make particularized assessments of probationers and fashion progressive sanctions that will maintain public safety and facilitate probationers' success. Texas' use of probation has led the nation as a model of correctional reform, and the ability to keep probationers on supervision reduces costly recidivism, while aiding their rehabilitation as probationers lead a productive life in free society. H.B. 2650 is an important step in continuing this success.

PROBLEM

Judges and probation officers play important roles in reducing recidivism, as they are the gatekeepers of the correctional system. Unfortunately, the current system offers judges and probation officers limited tools to tailor effective remedies that address the particular needs of individual probationers. Specifically, the Texas probation system lacks flexibility in its revocation process. For violations of probation conditions, all probationers must go before a judge for sentencing. Yet incarceration is not a universal solution to a violation of a probation condition.

In addition, Texas has led the nation in probation reform by focusing on treatment, programming and rehabilitation within the community. The current system, however, does not sufficiently equip judges or probation officers with the ability to make individual determinations and fashion alternative sanctioning mechanisms to keep probationers in the community, and thus it effectively undermines the progress that Texas has made thus far.

FACTS

- The average per day cost for individuals on basic direct community supervision was $2.92 in fiscal year 2010.[1] Probationers are responsible for $1.62 of that fee, and the state pays $1.30.[2]

- A recent survey from the Texas Public Policy Foundation found that 80% of respondents favored requirements that would allow first-time, low-level probationers to work and pay restitution while on mandatory probation supervision, which would help close the budget shortfall. Approximately 77% of conservatives surveyed favored this approach.[3]

SOLUTION: SUPPORT H.B. 2650 BY REPRESENTATIVE ALLEN

➢ H.B. 2650, which will have no fiscal impact on the state, would do the following:

- It requires the judges of each judicial district to adopt a single system of progressive intermediate sanctions that includes penalties in lieu of incarceration for each of the following violations, including but not limited to:

  (1) Failure to report
  (2) Failure to participate in programming or services
  (3) Failure to refrain from alcohol or drug use
  (4) Failure to pay fines, fees, and costs
  (5) High-risk cases

- It requires the Community Justice Assistance Division (CJAD) to establish a model list of intermediate sanctions that judges may use in each judicial district.

Continued on reverse.

- It prevents probation officers from using a progressive intermediate sanction as punishment for a felony.

- It authorizes judges to empower probation officers to modify probation conditions in accordance with a progressive intermediate sanction.

- It provides probationers with due process via notice and a hearing when they receive a progressive intermediate sanction.

- It prevents courts from revoking a probationer to incarceration for a violation after the completion of a progressive intermediate sanction.

- It prevents probation officers from extending the length of community supervision via a progressive intermediate sanction or from imposing a period of confinement in a correctional facility as a progressive intermediate sanction.

- It requires each judicial district to establish a review process to consider candidates for reduction or early termination of probation.

* * *

Thank you again for the opportunity to testify in favor of H.B. 2650. Giving judges and probation departments the option of imposing non-custodial, administrative sanctions for probation violations will enable them to place the probationer in more appropriate or intensive treatment or programming as needed. This will more swiftly and effectively prevent further violations and future revocations, as well as prevent criminal behavior down the road. It will also better encourage leniency for the lower-level, nonviolent violators whose offenses do not warrant treatment or programming.

This is an effective bill regarding bolstering the existing success of Texas' community supervision. Please consider this testimony in your analysis of the policy.

[1] LBB Criminal Justice Uniform Cost Report Fiscal Years 2008-2010, 3.
[2] *Ibid*, 11.
[3] Texas Voter Survey: March 20-22, 2011 (preliminary results), Texas Public Policy Foundation. http://www.rightoncrime.com/wp-content/uploads/2011/04/TX-Poll-Toplines.pdf.

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Dear Members of the Committee,

Thank you for this opportunity to offer testimony in support of H.B. 2735. This bill is a chance to correct an expensive and problematic issue within current law. Counties typically bear the financial burden of state parolee recidivism by housing parole violators in county jails prior to a revocation hearing. This Legislature should make efforts to responsibly ease county jail overcrowding while continuing the rehabilitative functions of parole.

PROBLEM

Under current law, an individual on parole for whom a warrant has been issued for a revocation (a "blue warrant") cannot bond out of detention prior to the hearing. As such, county jails that already face significant overcrowding issues must hold these people in custody as they await their hearings. This system not only costs counties a significant amount of money, but it pulls parolees out of their life in free society. In the event of a mere administrative violation of parole conditions, these individuals have often found success in free society under supervision but they have been placed in detention awaiting a hearing that *may not* actually result in a revocation. This procedure removes parolees from their occupations and families with no recourse until their hearing, with disastrous effects on their rehabilitation and dependents.

FACTS

- The practice of detaining "blue warrant" parolees in county jails comes at huge taxpayer expense: at least $42 million per year.[1]

- **The Fiscal Note for H.B 2735 indicates a potential savings of $8,278,200 over the biennium for Harris County alone.**

- As of March 1, 2011, there were 2,232 blue warrant parolees detained in Texas' county jails who could have been released to make room for violent or higher-level violators.[2]

- According to the most recent data, technical parole violators comprise 14% of statewide parole revocations (1,045 out of 7,471 total revocations in 2009).[3]

- The effects of incarceration on families are significant:

  - Families destabilized by a parent in incarceration are more likely to experience a decline in household income and an increase in the likelihood of poverty.[4]
  - 23% of children with a parent who has been incarcerated have been expelled or suspended from school, compared with 4% of children with parents who have never been incarcerated.[5]

- Again, a blue warrant does not necessarily mean that the individual will be revoked from supervision. Each person with a blue warrant issued for their detention receives a hearing to determine whether or not the judge will revoke their parole. Proscribing bond for every single blue warrant is fundamentally unfair, and it undermines the success of Texas' parole system.

Continued on reverse.

SOLUTION: SUPPORT H.B. 2735 BY REPRESENTATIVE MADDEN

H.B. 2735 allows "blue warrant" parolees to post bond for release from county custody pending their revocation hearing. County magistrates have final authority as to whether the individual may post bond.

Under the bill, parolees may post bond *only if* the following apply:

- They committed an administrative violation of a condition of release.
- The magistrate determines that they are not a threat to public safety.
- They violated conditions of release by committing a new, bond-eligible offense that *is not:* a felony; various offenses punishable as a Class A or Class B misdemeanor, including intoxication and alcohol-related offenses, assaultive offenses, false imprisonment, indecent exposure, or sexual offenses; or any offense involving family violence.
- The Parole Division includes notice of their eligibility on the blue warrant (as required in this bill).

The Parole Division must include a notice that the individual is eligible for a bond if the following apply:

- The person is not a threat to public safety.
- The person has not been previously convicted of: robbery; any of the offenses listed above that are punishable as a felony (also including homicide, kidnapping, or trafficking of persons); or any offense involving family violence.
- The person is not on intensive supervision or super-intensive supervision.
- The person is not an absconder.

Ultimately, H.B. 2735 is critical because it will permit magistrates to allow certain parolees to bond out of detention prior to a revocation hearing, thus facilitating success in their rehabilitation and their ability to provide for themselves and their families.

* * *

Thank you again for the opportunity to present testimony in favor of H.B. 2735. Releasing low-risk individuals on bail/bond prior to a revocation hearing will prevent community members from footing the bill while nonviolent individuals sit in jail awaiting a hearing by the Texas Board of Pardons and Paroles to determine whether the charges against them will result in their re-incarceration. It will also allow individuals the opportunity to remain with their family and continue with their employment, thereby increasing the stability and the overall success of their parole.

Please consider this information in your analysis, and support this initiative to promote fairness, efficiency, and cost-savings in the correctional system.

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[1] James Pinkerton, "Sheriff s say new parole law could free beds," *Houston Chronicle*, December 13, 2010.
[2] Texas Commission on Jail Standards, "Texas County Jail Population," March 1, 2011.
[3] Texas Board of Pardons and Paroles, "Annual Report FY 2009," 2010, pgs. 30, 31.
[4] The Pew Center on the States, "Collateral Costs: Incarceration's Effects on Economic Mobility." September 23, 2010. http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653, 18.
[5] *Ibid.*

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WRITTEN TESTIMONY, 2011
HOUSE BILL 3366

Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 3366, a criminal justice initiative that will empower wardens and state jail staff with an effective behavioral tool, while incentivizing participation in rehabilitative, educational, and vocational programs.

PROBLEM

Unlike state prisons and county jails, individuals serving their sentence in state jail are ineligible for good time credits and must serve "flat" time (day for day) up to two years with no eligibility for parole. As such, there is little incentive for state jail inmates to participate in rehabilitative or educational programs because they cannot accrue any benefit from diligent participation in programming. Similarly, there is little advantage to maintaining a positive disciplinary record while serving a sentence in a state jail.

Individuals in a state jail facility would benefit significantly from rehabilitative and self-improvement programs. According to the Legislative Budget Board's recent recidivism report, state jail inmates have a higher recidivism rate than state prisoners.[1] Moreover, providing a transitional period of community supervision between incarceration and full discharge can aid an individual in his or her productive reintegration into the community.

FACTS

- A study of more than 3,600 offenders who participated in prison education programs were 29% less likely to be re-incarcerated than non-participants.[2]
- In fiscal year 2010, the average total cost per inmate per day in a state jail facility was $43.03.[3]
- In fiscal year 2010 there were 23,537 admissions to state jails.[4] After removing any offenses excluded under H.B. 3366, an estimated 22,744 incarcerated persons would be impacted by its provisions.[5]
- According to the Legislative Budget Board, the average sentence served in a state jail facility in fiscal year 2010 was 10 months.[6] This sentence length costs the state roughly $12,909 per person.
- By removing qualified individuals from jail and allowing them to serve a portion of their sentence on community supervision, H.B. 3366 can reduce the average period of confinement within a state jail by nearly 3 months, bringing the average total down to roughly 7 months.[7]
- Releasing individuals to community supervision after serving 75% of their sentence saves up to 25% of the cost of incarceration. Factoring in the cost to place an individual on community supervision, this would amount to roughly $3,009 in savings to the state per person.
- **The Legislative Budget Board estimates that H.B. 3366 will save a projected $52,381,236 through the biennium ending August 31, 2013.[8]**

Continued on reverse.

H.B. 3366 REQUIREMENTS

Under H.B. 3366, an individual in a state jail facility who maintains a positive disciplinary record may earn the privilege to serve a portion of his or her sentence on community supervision through participation in in-house self-improvement programming or vocational achievement. **This will encourage personal responsibility, provide wardens an effective behavior management mechanism, and reduce costs by decreasing recidivism.** Providing a period of community supervision will also help an individual transition to a productive life in the community.

This initiative provides important limitations that are mindful of public safety:

- Release to community supervision is subject to the sentencing court's discretion, and is subject to TDCJ and the unit Warden's approval.
- To be eligible, a person must have served at least 75% of his or her sentence; only 25% may be served on community supervision.
- The provisions of H.B. 3366 will not apply to an individual who fails to maintain a positive disciplinary record, does not meet full compliance with programs, has prior felony convictions for violent or sexual offenses, and is a member of a security threat group.

Again, H.B. 3366 will create a cost effective mechanism to reduce the burden on Texas' jails while providing a viable method for increasing public safety.

SOLUTION

Support H.B. 3366. The high cost of maintaining an overcrowded jail system in Texas makes the current trajectory of incarceration unsustainable. Supporting an initiative that allows individuals to serve a portion of their sentence on community supervision, provided they demonstrate an effort to improve their lives by participating in rehabilitation and educational programs, is a practical and responsible means of easing the strain placed on the state budget by the criminal justice system, while also providing relief to an overburdened system. Furthermore, participation in these programs can have a significant impact on reducing recidivism. Importantly, H.B. 3366 will also provide a useful disciplinary tool for wardens and state jail staff.

ENDNOTES

[1] Legislative Budget Board Report: *Statewide Criminal Justice Recidivism and Revocation Rates*, January 2011, available at http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2011.pdf, 21, 31.
[2] The Pew Center on the States, "Collateral Costs: Incarceration's Effects on Economic Mobility." 23 September 2010. http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653, 23.
[3] Legislative Budget Board Report: *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, available at http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Uniform_Cost_Report_0111.pdf, 6.
[4] Texas Criminal Justice Department: Statistical Report FY 2010, 21.
[5] Legislative Budget Board: *HB 3366 Criminal Justice Impact Statement*, 12 April 2011, available at http://www.capitol.state.tx.us/tlodocs/82R/impactstmts/html/HB03366IB.htm, 1.
[6] *Id.* at 1.
[7] Legislative Budget Board: *HB 3366 Fiscal Note*, 12 April 2011, available at http://www.capitol.state.tx.us/tlodocs/82R/fiscalnotes/pdf/HB03366I.pdf#navpanes=0, 2.
[8] Legislative Budget Board: *HB 3366 Fiscal Note*, 12 April 2011, available at http://www.capitol.state.tx.us/tlodocs/82R/fiscalnotes/pdf/HB03366I.pdf#navpanes=0, 1.

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Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 3538. The Texas Criminal Justice Coalition is in favor of this bill because it addresses one of the largest problems facing the criminal justice system, specifically costs borne by the state to house prisoners with serious medical issues. H.B. 3538 saves taxpayers money, addresses prison overcrowding, and diminishes negative effects on public safety by freeing up bed space for high-risk individuals with more serious offenses.

SAVE MONEY AND AVOID PRISON OVERCROWDING BY ALLOWING INDIVIDUALS WITH A SERIOUS MEDICAL CONDITION TO BE SAFELY RELEASED TO THE COMMUNITY

PROBLEM

One of the largest contributors to correctional costs is the aging incarcerated population. The U.S. Bureau of Justice Statistics reported that during an 8-year span – 1999 to 2007 – the number of individuals aged 55 or older in state and federal prisons grew nearly 77 percent.[1] Older prisoners cost more because they are plagued with health conditions, both minor and serious, and they are at heightened risk for chronic health difficulties.[2] In addition, the needs of the elderly incarcerated population are difficult to manage in a correctional setting due to inadequate resources and lack of staff.[3]

Because of the increased needs of elderly and seriously ill inmates, these individuals use a disproportionate share of the funds allocated for prison health care costs. It has been estimated that, on average, older inmates visit prison health facilities five times more frequently than their younger counterparts.[4] However, many older prisoners are no longer a threat to the public due to prolonged or chronic conditions that often leave them incapacitated. In addition, research has consistently found that the likelihood of someone committing additional crimes decreases as they age.[5]

Although Texas has a medical release policy in place – called Medically Recommended Intensive Supervision (MRIS) – cost savings will not be realized until it is used to its full potential. The Parole Board's approval rates of MRIS cases remain low despite the increase in the number of cases the Board reviews. For instance, although 1,318 individuals were screened for MRIS release in FY 2009, only 50 were approved and only 40 were released.[6] The approval rate fell from 35% in 2007 to 24% in 2008; although one major factor contributing to the low rate is the number of deaths that occur during the review process, which increased by 62% during the same time period.[7] In 2009, 74 individuals died while awaiting review for a MRIS release vote.[8] The 2009 Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) concludes that although the sudden onset of a serious medical condition affected timely referrals, some cases could have been referred by unit medical providers in a more suitable fashion.[9]

A report by the Committee on Correctional Managed Health Care (CCMHC) states that the cost of an elderly prisoner's health care is three times higher than their younger counterparts,[10] and it asserts that there are individuals who could be released without a threat to public safety.[11] Although Texas has a well developed MRIS policy in place, it is imperative that the process be reviewed regularly to address obstacles that are limiting releases that could save the state millions.[12]

Other states have considered and passed legislation that would allow elderly and ill prisoners to complete their sentences in the community, where costs are lower for the state and individuals can spend their last days with their families.[13] In Texas, large cost savings could be realized if the Board would release more individuals who have been screened and identified as eligible for MRIS. According to a 2010 Legislative Budget Board report, releasing just 17 additional individuals per year could yield over $200,000 in medical cost savings alone.[14]

Stakeholders must consider other strategies that can save the state money and safely release aging and costly prisoners. Again, allowing certain individuals to complete their sentences in the community should be evaluated.[15] In 2009, the Federal Bureau of Prisons began a program called the "Elderly Offender Home Detention Pilot Program," which allows inmates who are 65 years of age and older to complete their sentence in their own home.[16] A similar pilot in Texas could have vast cost savings to the state; individuals would be eligible for Medicare, social security, or VA benefits if they were able to complete their sentence in the community.

RECENT MRIS DATA

- In FY 2010, MRIS received 1,443 referrals. Of these, 457 individuals were recommended, and 102 were approved for the program.[17]
- Of the total referrals made to the MRIS program, 556 individuals had not met clinical criteria for approval, 254 were sex offenders who did not have organic brain syndrome and were not in a persistent vegetative state (both required for release under MRIS), and 59 died before the Board could consider them for release.[18]
- As noted, in FY 2010, 457 individuals were presented to the Board or judge for MRIS consideration. Of these, 113 individuals were terminally ill, 9 were physically handicapped, 79 were elderly, 250 required long-term care, and 6 were mentally ill.[19]
- Since the program's inception on December 1, 1991, 1,356 individuals have been released.[20]
- The current status of individuals released to MRIS is as follows: 65% are deceased post MRIS-release, 17% have discharges their sentence, 11% are currently on MRIS supervision, 4% returned to TDCJ or were released under other supervision, and 4% was "other."[21]

H.B. 3538 REQUIREMENTS

This bill amends the Government Code by adding two separate sections:

- **Section 508.1451** – This section creates a mandatory supervised release program for certain elderly inmates. "Elderly" is defined as 55 years of age or older, lowering the current age from 65. All individuals released under this section would be placed on super-intensive supervision parole, the highest level of supervision provided by the Parole Division. Individuals would only be released if they had served enough time on their sentence and met their first parole eligibility date.

  Ineligible individuals include those who are serving a sentence of death or life imprisonment, or for high-level, violent offenses such as murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, some drug crimes, improper relationship between educator and student, and any crime with a finding of a deadly weapon. Individuals with a major disciplinary case 60 days prior to release to this program would also be ineligible.

- **Section 508.1459** – This section creates a mandatory release mechanism on MRIS for inmates if it has been determined by two physicians that they are terminally ill, have a condition requiring long-term care, are in a persistent vegetative state, or have organic brain syndrome with significant to total mobility impairment. This section also requires TCOOMMI and TDCJ to prepare a medically recommended supervision plan that promotes public safety. Finally, this section requires as a condition of release that the individual remain under the care of a physician and in a medically suitable living environment.

H.B. 3538 also amends Government Code, Section 508.146 – which relates to MRIS – by making this release type discretionary for individuals who are identified as elderly (55 years of age or older), having a physical disability, or suffering from mental illness or mental retardation.

SOLUTION

Support H.B. 3538. The high cost of maintaining the prison system in Texas makes the current course of incarceration unsustainable. Supporting an initiative to grant release to certain eligible individuals with a serious medical condition can alleviate the financial burden to the corrections system.

NOTES

[1] Vera Institute of Justice, Tina Chiu, *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*, (April 2010), http://www.vera.org/download?file=2973/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf, 4.
[2] Ibid, 5.
[3] Legislative Budget Board, *Texas State Government Effectiveness and Efficiency*, (January 2010), http://www.lbb.state.tx.us/Performance%20Reporting/TX_Govt_Effective_Efficiency_Report_82nd.pdf, 351.
[4] Vera Institute of Justice, *It's About Time*, 5.
[5] Ibid.
[6] The Texas Board of Pardons and Paroles, *Annual Report Fiscal Year 2009*, (August 2009), http://www.tdcj.state.tx.us/bpp/publications/AR%20FY%202009.pdf, 23.
[7] The Texas Correctional Office on Offenders with Medical and Mental Impairments, *The Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments*, (January 2009), http://www.tdcj.state.tx.us/publications/tcomi/Biennial%20Report%202009%20FINAL.pdf, 20.
[8] LBB, *Texas State Government Effectiveness and Efficiency*, 347.
[9] TCOOMMI, *The Biennial Report*, (January 2009), 21.
[10] Ibid, 22.
[11] Ibid.
[12] Vera Institute of Justice, *It's About Time,* 2.
[13] Ibid.
[14] LBB, *Texas State Government Effectiveness and Efficiency*, 353.
[15] Vera Institute, *It's About Time,* 2.
[16] Ibid, 11.
[17] TCOOMMI, *The Biennial Report*, (January 2009), 5.
[18] Texas Department of Criminal Justice, Reentry and Integration Division, Texas Correctional Office on Offenders with Medical and Mental Impairments, *Medically Recommended Intensive Supervision Fiscal Year 2010 Annual* Report, http://www.tdcj.state.tx.us/publications/tcomi/MRIS%20Statistical%20Report%20FY10.ppt, 4.
[19] Ibid, 7.
[20] Ibid, 12.
[21] Ibid.

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Senate Bill 35

FACT SHEET, 2011

SUPPORT TRANSITION SERVICES FOR STUDENTS WITH DISABILITIES

PROBLEM

An adult with a disability is three times as likely as an adult without a disability to be unemployed in Texas. This disadvantage has its roots in childhood, when students with disabilities are far more likely to be expelled from school and often do not receive meaningful transition services for adult living. To be most effective, support services need to begin in school to ensure higher graduation rates and a strong transition to further education, employment, and independent living.

KEY FINDINGS

- Special education students in Texas face expulsion at a disproportionate rate: Special education students are 10 percent of Texas students, but they account for over 20 percent of all expulsions in Texas.[1]
- Expulsion creates especially negative consequences for special education students: Research shows that removing these students from their regular classrooms can increase negative behaviors and interrupt academic gains.[2]
- In 2010, 70 percent of adults without a disability were employed in the state of Texas, while only 21 percent of adults with disabilities were employed.[3]

SUPPORT S.B. 35 BY SENATOR ZAFFIRINI

S.B. 35 helps students with disabilities achieve higher graduation rates and receive transition services for further education, employment, and independent living.

- The bill mandates transition planning for students with disabilities to begin before the student turns 14.
- The bill requires school districts to designate a school transition and employment services coordinator.
- The bill mandates the development of a transition and employment guide for students with disabilities.

[1] Texas Appleseed, *Texas' School to Prison Pipeline: Dropout to Incarceration*, 2007, www.texasappleseed.net.
[2] *Ibid.*
[3] Texas Council for Developmental Disabilities, 2010, http://www.txddc.state.tx.us/public_policy/pubpolprior82.asp.

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Senate Bill 718

FACT SHEET, 2011

PROTECT ACADEMIC ACHIEVEMENT AND SCHOOL SAFETY BY CLARIFYING GROUNDS FOR EXPULSION

PROBLEM

Although expulsion is the most serious disciplinary action against students – an action that often leads to student dropout and potential entry into the juvenile or criminal system[1] – Texas does not currently define what behaviors can justify a discretionary expulsion from a Disciplinary Alternative Education Program (DAEP). Students at a DAEP can be expelled for "serious or persistent misbehavior," but this term is not defined in Texas law, is not an expellable offense in non-DAEP school settings, and is not a crime.

This lack of guidance has resulted in inconsistent school policies that tend to have a negative impact on academic achievement, rather than increase school safety.[2] In Texas, the vast majority of discretionary expulsions are for nonviolent, non-criminal behavior, and those discretionary expulsions are disproportionately given to minority students and students with disabilities. While maintaining schools' ability to expel students for criminal or serious misconduct, Texas legislators should clarify what behavior justifies discretionary expulsion. As a first step, Texas should insist that "serious misbehavior" – not "serious or persistent misbehavior" – is grounds for a discretionary expulsion from a DAEP.

KEY FINDINGS[3]

- Overuse of expulsion has been shown to have a negative impact on academic achievement, and has also been linked to poor school climate and increased probability for dropout.
- During the 2008-2009 school year, 71 percent of all expulsions in Texas were discretionary, and most of those discretionary expulsions were for "serious or persistent misbehavior" in a DAEP.
- The 15 highest expelling school districts each define "serious or persistent misbehavior" differently. The listed infractions range from violations of the school's Student Code of Conduct to murder.
- The greater determining factor in whether a student is expelled for discretionary reasons is where a child attends school – not the nature of the offense.
- Minority and special education students are significantly overrepresented in discretionary expulsions.

SUPPORT S.B. 718 BY SENATOR VAN DE PUTTE

S.B. 718 allows expulsion from a Disciplinary Alternative Education Program only for "serious misbehavior" – not for "persistent misbehavior." This change provides better guidance to school districts and will address the disproportionate use of expulsions for low-level misbehavior. The bill will also improve academic achievement while decreasing the risk for dropout and future criminal involvement.

[1] Texas Appleseed, *Texas' School to Prison Pipeline: School Expulsion, The Path From Lockout to Dropout*, 2010, http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=380&Itemid.
[2] Texas Appleseed, *Texas' School to Prison Pipeline: Dropout to Incarceration*, 2007, www.texasappleseed.net.
[3] *Ibid.*

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Senate Bill 1116

FACT SHEET, 2011

SUPPORT S.B. 1116 BY SENATORS WHITMIRE AND HINOJOSA

FOCUS SCHOOL DISCIPLINARY RESOURCES ON HIGH-LEVEL MISBEHAVIOR

PROBLEM

Each year, campus police at Texas schools issue hundreds of thousands of Class C misdemeanor citations to students. The overwhelming majority of these citations are for low-level, nonviolent offenses. Although school disciplinary plans should be designed to provide a safe and supportive learning environment for Texas students, significant resources are instead spent processing these low-level offenses through courts, with no effective measure of decreased student misbehavior.[1] The use of positive behavior supports that could more appropriately address minor disciplinary issues are often overlooked. Worse, these citations – a disproportionate number of which are issued to minorities and students with disabilities[2] – often draw students away from school and into the criminal justice system.[3]

The use of Class C misdemeanor citations should be reserved for those situations where intervention by law enforcement and courts is truly warranted.

KEY FINDINGS

- Texas schools are safe: The vast majority of the approximately 300,000 Class C misdemeanor citations issued to Texas juveniles at school each year are based on low-level, nonviolent behavior, such as truancy.[4]
- Because a juvenile must appear in court to resolve a misdemeanor, he or she often is required to miss significant class time.
- Prioritizing positive behavior support for minor disciplinary issues can reduce dropout rates and minimize involvement in the costly school-to-prison pipeline.

SUPPORT S.B. 1116 BY SENATORS WHITMIRE AND HINOJOSA

- **S.B. 1116 protects children younger than 12.** For behavior occurring at school or on a school vehicle, the bill raises the minimum age for a citation to 12 years old. This common sense change recognizes that a misdemeanor citation is not an effective disciplinary response for very young students.

- **S.B. 1116 focuses disciplinary action on serious offenses.** The bill requires that courts receive an offense report, a statement by a witness, and a statement by a victim, if any, for each citation. These reports ensure that a court can focus its resources on conduct that causes serious harm to school discipline.

- **S.B. 1116 clarifies that "disorderly conduct" – not "disruption" – is a student criminal offense.** The bill amends the Education and Penal Codes, clarifying that a student's disruption of a class is not a criminal offense, but a student's disorderly conduct ("breach of the peace") is an offense. This ensures only high-level misbehavior receives the attention of law enforcement.

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[1] Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance,* (October 2007), 145, http://texasappleseed.net/pdf/Pipeline%20Report.pdf.
[2] *Ibid.* 88, 95.
[3] *Ibid.*
[4] Texas Appleseed, *Ticketing, Arrest & Use of Force in Schools*, December 2010, 76, http://www.texasappleseed.net/images/stories/reports/Ticketing_Booklet_web.pdf.

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SENATE BILL 1209

FACT SHEET, 2011

ALLOW COURTS TO CONTINUE JUVENILE DETENTION FOLLOWING TRANSFER TO ADULT CRIMINAL COURT

PROBLEM

Under current law, Texas juvenile courts are allowed to transfer juveniles to adult criminal courts. However, current law does not allow those juvenile courts to order that the juvenile continue to be detained in a juvenile detention facility. The result is that many Texas youth pending trial are detained in adult county jails, environments that pose severe danger to the youth's rehabilitation and mental and physical health. Granting juvenile courts the power to continue detention in juvenile facilities will create more consistent incarceration policies, decrease recidivism, and minimize abuse against juveniles in adult county jails.

KEY FINDINGS

- While in adult jail, Texas youth are more likely than their peers in juvenile facilities to be violently assaulted.[1]
- Youth in adult jails wait much longer for trial than their peers in juvenile facilities, placing them at greater risk of psychiatric problems stemming from separation from loved ones, facility crowding, or solitary confinement.[2] Programs and services offered to adult inmates are not geared towards rehabilitating juveniles, and therefore can be ineffective for youth inmates.
- Housing juveniles in adult jails adds to their overall knowledge of crime, acting as a "crime college," and ultimately heightening their risk of recidivism.[3] Texas youth who have been detained in adult jail are more likely to re-offend than youth with similar offense histories who have been detained in juvenile facilities.[4]

SUPPORT S.B. 1209 BY REPRESENTATIVE WHITMIRE

- **S.B. 1209 provides greater consistency in juvenile incarceration by allowing juvenile courts to order youth under 17 years of age to be detained in a certified juvenile detention facility pending trial in an adult criminal court**. The bill limits this new authority by allowing the judge in the criminal court to override the juvenile court and order the juvenile held in adult jail.
- **S.B. 1209 prevents psychiatric and physical harm to juveniles by reducing the time that a juvenile waits in an adult jail.** The bill adds the prosecution of juveniles under the age of 17 to the list of trials that must receive priority in trial scheduling in adult criminal courts.

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[1] Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, 2007.
[2] Jason J. Washburn, Ph.D., et al, *Psychiatric Disorders Among Detained Youth: A Comparison of Youths Processed in Juvenile and Criminal Court*, Psychiatric Services, September, 2008.
[3] John Roman, *Putting Juveniles in Adult Jails Doesn't Work,* Urban Institute Public Policy Center, Publications, 2008, http://www.urban.org/publications/901138.html.
[4] Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 2008.

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Senate Bill 1489

FACT SHEET, 2011

END CLASS C MISDEMEANOR TRUANCY PROSECUTIONS FOR CHILDREN UNDER 12

PROBLEM

Currently, a child as young as 6 years old in Texas can be prosecuted for a Class C misdemeanor for truancy (meaning the child has ten or more unexcused absences within a six-month period, or three or more unexcused absences within a four-week period). This exposure to criminal courts at such a young age is not only damaging, it has not been shown to deter truancy.

KEY FINDINGS

- In 2009, Texas issued over 120,000 truancy violations, a Class C misdemeanor. Children as young as 6 can be prosecuted for truancy in Texas.[1]

- Exposure to criminal courts at a young age has not been shown to deter truancy; instead, the introduction of these very young children into criminal courts will likely initiate harsh labeling and stigmatization that may increase their risk for future system involvement.

- The impact of a truancy citation is long lasting, leading to serious negative affects in a child's future. For example, if a youth fails to pay the truancy fine, a court may issue a Notice of Continuing Obligations – and then an arrest warrant – when the youth turns 17. Thousands of young adults in Texas are arrested each year for unpaid truancy obligations. African American and Latino youth are disproportionately affected by this practice, with 30 percent of the warrants issued for African American youth and 59 percent issued for Latino youth.[2]

- Prioritizing truancy prevention measures could save Texas millions of dollars each year. Front-end investments can reduce dropout rates and minimize further involvement in the costly school-to-prison pipeline.

SOLUTION: SUPPORT S.B. 1489 BY SENATOR WHITMIRE

- **S.B. 1489 will protect children younger than 12.** The bill raises the minimum age for truancy to 12 years old. This common sense change recognizes that very young children are not solely responsible for their truancy, and that a Class C misdemeanor charge is unlikely to shape the conduct of a very young child.

- **S.B. 1489 will prioritize prevention, leading to cost savings.** The bill requires school districts to implement truancy prevention measures. These prevention efforts are likely to lead to significant cost savings for Texas.

- **S.B. 1489 time-limits some of the long-lasting harmful effects of a truancy charge.** The bill requires that truancy convictions be expunged once a student obtains a high school diploma or equivalent. The bill also limits dispositional orders to the earlier of 180 days or the end of the school year.

[1] Texas Appleseed, *Ticketing, Arrest & Use of Force in Schools*, (December 2010), 76, http://www.texasappleseed.net/images/stories/reports/Ticketing_Booklet_web.pdf.
[2] *Ibid.*, 71.

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WRITTEN TESTIMONY, 2011
S.B. 1681

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 1681, which clarifies appointed counsel requirements and thus improves the state's indigent defense system, and which has the support of Texas' Task Force on Indigent Defense.

S.B. 1681 BY SENATOR RODNEY ELLIS

This bill makes three important clarifications to ensure that indigent defendants on appeal and in probation revocation proceedings are guaranteed their right to appointed counsel.

(1) S.B. 1681 clarifies that Texas' Fair Defense Act (FDA, effective 2002) applies to attorney appointments for probation revocations and appeals.

The FDA requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender.

- ***PROBLEM:*** Some jurisdictions believe the FDA requirements apply to attorney appointments for appeals and probation revocation hearings, while others do not.

- ***SOLUTION:*** S.B. 1681 clarifies that appointment requirements do apply during probation revocation hearings and on appeal.

(2) S.B. 1681 clarifies procedures for withdrawal of trial counsel and appointment of appellate counsel.

- ***PROBLEM:*** Many jurisdictions routinely allow appointed trial counsel to withdraw after the plea or trial, and these jurisdictions maintain a separate list of attorneys to represent defendants on appeal. However, this practice can result in Sixth Amendment violations if the transition from trial counsel to appellate counsel is not handled properly.

- ***SOLUTION:*** S.B. 1681 requires trial counsel to (a) advise a defendant of his or her right to file a motion for new trial or motion for appeal, and (b) help the defendant request appointment of replacement counsel if the defendant wishes to pursue either remedy, before being permitted by the court to withdraw representation.

(3) S.B. 1681 authorizes any magistrate to provide warnings to probation revocation arrestees about the right to counsel.

Like other judges, magistrates already provide warnings on defendants' rights, including the right to counsel, if the arrest is for a new offense. In some areas, they also provide the warnings to probation revocation arrestees.

- ***PROBLEM:*** Current law requires defendants arrested for Motions to Revoke Probation to be brought back before the judge overseeing their probation, who then will administer required warnings. This may result in long delays in rural parts of the state where judges must sit in multiple counties.

- ***SOLUTION:*** S.B. 1681 provides magistrates clear authority to give required warnings to persons arrested on Motions to Revoke Probation, while not permitting magistrates to release such persons on bail. S.B. 1681 also requires the warnings be provided within 48 hours of arrest as they are when a person is arrested for a new offense.

  Note: Additionally, S.B. 1681 requires the court to hear the Motion to Revoke Probation Case within 20 day of arrest, rather than within 20 days of the filing of the motion, if the defendant has not been released on bail.

Thank you again for allowing me the opportunity to present testimony in favor of S.B. 1681, which will clarify defendants' rights to counsel at various stages throughout the criminal justice process, as well as strengthen the integrity of the justice system.

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WRITTEN TESTIMONY, 2011
S.B. 1682

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 1682, an effective policy that will relieve judges of burdensome administrative duties while providing greater oversight of indigent defense delivery.

BACKGROUND

As per Article 26.04, Code of Criminal Procedure, judges in Texas who try criminal cases are required to screen attorneys for court-appointment eligibility, assign appointments in individual cases, make compensation decisions for appointed attorneys, and control access to investigators and experts. However, the judiciary is intended to be an objective arbiter in the courtroom, influencing neither the prosecution nor the defense.

Also under Article 26.04, counties are authorized to establish indigent defense systems that (1) are based on the default rotation model, (2) include a public defender office, or (3) fit into the definition of an "alternative program." A managed assigned counsel program does not qualify either as a default rotation system or an alternative program because, under such systems, Texas statutes require judges to screen defense attorneys seeking to receive appointments. A managed assigned counsel program also does not qualify as a public defender because it does not itself provide legal representation to defendants.

Where they so choose, counties should be explicitly authorized to create and operate managed assigned counsel programs, through which the judicial obligations above would be handled instead by a government office or nonprofit agency independent of the judiciary.

FACTS

- Lubbock County has established a pilot managed assigned counsel program to represent mentally ill offenders. According to Texas' Task Force on Indigent Defense, the program has been successful and the county wants to expand the program to handle *all* indigent criminal cases.

- Montgomery County's Managed Assigned Council Program, which was approved for funding in 2010 by Texas' Task Force on Indigent Defense,[1] will soon begin providing specially trained defense attorneys, case management services, and investigators to support eligible, mentally ill defendants. The program's overarching intent is to address, in a cost-efficient and humane manner, the 30-35% of jail inmates in Montgomery County with documented mental health issues, a large percentage of whom are indigent.[2]

- The concept for these assigned counsel programs came from San Mateo County, California, which has successfully implemented this type of service. The initiative has proven to be an exemplary model by which to provide indigent defense services.

- Independent assigned counsel programs come closer to meeting national standards for public defense services than do the judicially managed assigned counsel systems now common in Texas.[3]

- The programs in Lubbock and Montgomery Counties cannot be implemented as true managed assigned counsel programs without this legislation, which will also assist other counties seeking to implement such programs.

SOLUTION: SUPPORT S.B. 1682 BY SENATOR ELLIS

- **S.B. 1682 explicitly allows counties to create assigned counsel programs**, which will establish greater independence among attorneys and the judiciary, and thereby reduce bias. This alternative to the traditional court appointed system is strictly a local option that would require both the judges and county commissioners court to assent to the implementation, thus preserving county control and honoring analyses of local resources.

Thank you again for allowing me the opportunity to present testimony in favor of S.B. 1682, which will help Texas support a quality defense bar, as well as assist counties in providing appropriate, timely appointment of counsel to defendants in need.

NOTES

[1] On August 25, 2010, the Task Force awarded Montgomery County $547,400 for the program's first year. The county will provide more funding as the program continues, resulting in an estimated 50/50 funding split over four years. From the Task Force on Indigent Defense, "Staff Grant Recommendation: Montgomery County Managed Assigned Counsel Program," *Meeting Book: August 25, 2010*, pg. 35.

[2] *Ibid.*, pgs. 35-50.

[3] American Bar Association, "Ten Principles Of A Public Defense Delivery System," February 2002. *Principle 1:* "The public defense function, including the selection, funding, and payment of defense counsel, is independent."

Sunset Process and Legislation for Texas' Juvenile Justice Agencies 2010 – 2011

With the input of various stakeholders throughout 2010, but largely as a cost-savings measure, the Sunset Commission in January 2011 voted in favor of a motion to abolish both the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC), instead transferring their discrete functions to a newly created umbrella agency.

S.B. 653, the resulting legislation, which was signed by the Governor in mid-May 2011 and takes effect September 1, 2011, creates a unified juvenile justice agency, the new Texas Juvenile Justice Department, by **abolishing and combining the powers and duties of TYC and TJPC**.[1]

Senate Bill 653

Major Logistical and Structural Reforms

* The new Department will take effect December 1, 2011, though agency merger activities will continue beyond the start date.

* The merger will be overseen by a 7-member transition team (appointed September 1 to October 1), composed of agency representatives, executive/legislative representatives, a representative on behalf of youth/family/victim interests, and a representative with experience in organizational mergers. The team will work through March 1, 2012. Specifically, the transition team will include the following members:
  - a representative of TJPC, appointed by TJPC
  - a representative of TYC, appointed by TYC
  - a representative of the Governor;
  - a representative of the Lieutenant Governor, appointed by the Governor
  - a representative of the Speaker of the House, appointed by the Governor
  - one member, appointed by the Governor, who represents the interests of:
    - youthful offenders or the families of youthful offenders;
    - an organization that advocates on behalf of youthful offenders or the families of youthful offenders; or
    - an organization that advocates on behalf of the victims of delinquent or criminal conduct; and
  - one member with experience in organizational mergers, appointed by the Governor

* The transition team will have the following powers and duties:
  - Coordinating and overseeing the transition of services and facilities from TJPC and TYC to the new Department (September 2, 2011 – November 30, 2011).
  - Assisting the Department and advising its board in the implementation of the transition of services and facilities (December 1, 2011 – February 29, 2012).
  - Preparing a transition plan that will include short-term, medium-term, and long-term transition goals for the Department, and which may include benchmarks and timelines as appropriate (December 1, 2011 – February 29, 2012).

* The Governor will appoint a new 13-member Department board by December 1, 2011, composed of judges, a juvenile court prosecutor, chief juvenile probation officers, an adolescent mental health treatment professional, an educator, and members of the general public. Specifically, the Board will include the following members:
  - One district court judge of a juvenile court
  - Three members of a county commissioners court
  - One juvenile court prosecutor
  - One chief juvenile probation officer of a probation department serving a county with fewer than 7,500 persons younger than 18 years of age
  - One chief juvenile probation officer of a probation department serving a county with at least 7,500 but fewer than 80,000 persons younger than 18 years of age
  - One chief juvenile probation officer of a probation department serving a county with 80,000 or more persons younger than 18 years of age

    NOTE: A chief juvenile probation officer board members may not vote on any board decision that solely impacts the officer's department or regards any matter of abuse or neglected regarding the officer's department[2]
  - One adolescent mental health treatment professional
  - One educator
  - Three members of the general public[3]

* The Board will appoint a 13-member Advisory Council, comprised largely of chief juvenile probation officers, which will assist the Board in identifying the needs and problems of counties. Council members will conduct long-range strategic plans, review and propose revisions to newly proposed standards, analyze potential cost impacts of those standards, and advise the Board in other matters, as necessary. Specifically, the Advisory Council will include the following members:
  - The Executive Director of the Department or the Executive Director's designee;
  - The Director of probation services of the Department or the Director's designee;
  - The Executive Commissioner of the Health and Human Services Commission or the Commissioner's designee;
  - One representative of the county commissioners courts appointed by the Board;
  - Two juvenile court judges appointed by the Board; and
  - Seven chief juvenile probation officers appointed by the Board.[4]

    NOTE: The chief juvenile probation officers will be pulled from a nomination pool provided to the Board by each regional chiefs association. These nominations should include one chief juvenile probation officer who serves a county with a population of:
    - 7,500 persons younger than 18 years of age;
    - 7,500 but fewer than 80,000 persons younger than 18 years of age; and
    - 80,000 persons younger than 18 years of age. [5]

* The Office of Independent Ombudsman (OIO) will be maintained as an independent agency to oversee the rights of youth committed to state facilities, and it will be authorized to review local probation department data on complaints.[6] The Office of Inspector General (OIG) will also be maintained to oversee crimes in state-run facilities.[7] All reports will be made directly to the Department's board. Finally, criminal investigations related to probation will be referred to local departments.

* The Department is authorized to transfer a closed facility to the county or municipality in which the facility is located if the facility will be used for a purpose that benefits the public interest of the state. If the property is not used for a public purpose, ownership of the property will automatically revert back to the Department. This applies only to facilities in counties with a population of less than 100,000.[8]

Other Key Components of Legislation

* Prioritizes the use of community- and/or family-based programs over the commitment of youths to secure facilities.[9]

* Encourages the Department to create a juvenile justice system that produces positive outcomes for juveniles, their families, and communities by:
  - Operating state facilities to effectively house and rehabilitate youth that cannot otherwise be safely served in an alternative environment.
  - Assuring accountability, quality, and transparency through effective monitoring the use of statewide performance measures.
  - Promoting the use of programs and service designs proven to be most effective.
  - Protecting and enhancing the cooperative agreements between state and local county governments.[10]

* Encourages – rather than requires – the Department to seek accreditation for each of its facilities from the American Correctional Association.[11]

* Requires the Department to create a toll-free number and to share any complaints received at the number with both the OIG and OIO.[12]

* Adds specialized treatment to intake planning and adds histories of medical, sex offense, and violent offense to the current examinations.[13]

* Maintains an ongoing zero-tolerance policy on sexual abuse.[14]

* Requires the Department to encourage compliance with educational service standards and maintains continuity of educational services to youth, including special education services.[15]

* Requires the Department to provide prevention and intervention services for at-risk youth ages 6-17 who are subject to compulsory school attendance or under juvenile court jurisdiction.[16]

* Clarifies individualized re-entry plans for each child to ensure the child receives continuity of care, including, as applicable, housing assistance, step-down programs, family counseling, academic and vocational mentoring, trauma counseling for any child who is a victim of abuse while in the Department's custody, and/or other specialized treatment services.[17]

[1] S.B. No. 653, Sec. 201.002, Sub-Sec. 1
[2] S.B. No. 653, Sec. 202.005
[3] S.B. No. 653, Sec. 202.001, Sub-Sec a, Div(s). 1-9
[4] S.B. No. 653, Sec. 203.0081
[5] *Ibid.*, Sub-Sec b
[6] S.B. No. 653, Sec. 261.003, Sub-Sec a; S.B. No. 653, Sec. 203.0105
[7] S.B. No. 653, Sec. 203.010
[8] S.B. No. 653, Sec. 4.007
[9] S.B. No. 653, Sec. 201.002, Sub-Sec. 2, Div. C
[10] S.B. No. 653, Sec. 201.002, Sub-Sec 2, Div(s). A, B, D, E
[11] S.B. No. 653, Article 2, Sec. 2.001, Sub-Sec c
[12] S.B. No 653, Sec. 203.014
[13] S.B. No. 653, Sec. 244.001, Sub-Sec a, Div(s) 1, 2
[14] S.B. 653, Sec. 242.101
[15] S.B. No. 653, Sec. 221.005
[16] S.B. No. 653, Sec. 203.0065
[17] S.B. No. 653, Sec. 245.0535