

## Fact Sheets and Testimony 2012

## **The Independent Ombudsman Should be Able to Talk with Any Youth In Government Custody**

### **SAFETY CONTINUES TO BE A SIGNIFICANT CONCERN AT STATE AND COUNTY FACILITIES.<sup>1</sup>**

The Office of the Independent Ombudsman (OIO) was established as part of Texas' 2007 juvenile justice reforms that arose from revelations of widespread abuse at Texas Youth Commission facilities. The Texas Legislature tasked the OIO with protecting the safety and rights of incarcerated youth at state secure juvenile facilities. Legislation in 2011 expanded the responsibilities of the OIO to include the review of data on abuse, neglect, and exploitation occurring at county facilities. However, the OIO does not have the authority to visit county juvenile facilities, or to speak with the youth in county custody, leaving a vulnerable gap in the state's protection of youth in secure facilities. Similarly, the OIO does not have the authority to visit youth held in adult corrections facilities in Texas.

### **KEY FACTS**

- **The OIO plays a crucial role in protecting the safety and rights of youth in Texas state juvenile facilities.**
  - » The OIO made 247 facility site visits in Fiscal Year 2012, interviewing over 1,400 youth.<sup>2</sup> In addition to conducting investigations, the OIO publishes quarterly oversight summaries and frequent facility-specific reports that provide invaluable information to Texas legislators and the public. These reports have alerted policy-makers to dangerous situations in juvenile facilities, allowing legislators to intervene early.<sup>3</sup>
- **State oversight of county juvenile facilities is currently inadequate.**
  - » A 2012 resolution by the Texas Juvenile Detention Association recommends that the current audit (oversight) process be revised, finding that the "current auditing process is ineffective in determining risks within facilities."<sup>4</sup>
  - » A boy died in 2011 at a Texas county facility that received little meaningful oversight, despite that facility's "history of failing to comply with routine detainee monitoring requirements."<sup>5</sup> Furthermore, there were 442 attempted suicides in Texas county juvenile facilities in 2011, and 414 injuries.<sup>6</sup>
- **State oversight for youth in adult corrections facilities is also currently inadequate.**
  - » The Internal Audit Division of the Texas Department of Criminal Justice has not conducted an audit of the Youthful Offender Program (the program for underage inmates in adult facilities) since 2009. Due to the program's small size in the large prison system, there will likely not be another audit for five to ten years. However, the 2009 audit recommended greater oversight of youth programming, noting that program practices deviate significantly from policy<sup>7</sup> – and this has yet to be addressed.

### **SOLUTIONS**

Given the OIO's critical importance to the oversight of incarcerated youth, allow OIO staff to visit with youth in county and adult facilities if data or a complaint reveals a concern at that facility.

*References on reverse.*

## References

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- <sup>1</sup> See, e.g., *Fort Worth Star-Telegram*, “Granbury juvenile center has history of troubles” (October 22, 2011); *Austin American-Statesman*, “Melee at youth lockup underscores stubborn problems at juvenile agency” (October 26, 2012).
- <sup>2</sup> Office of the Independent Ombudsman “Giddings State School Site Visit Report OIO-SV-12-145” (September 2012).
- <sup>3</sup> See, e.g., Office of the Independent Ombudsman “Giddings State School Site Visit Report OIO-SV-12-145” (April 13, 2012).
- <sup>4</sup> Texas Juvenile Detention Association, “Resolution concerning TAC 343 and related standards” (March 28, 2012).
- <sup>5</sup> *Fort Worth Star-Telegram*, “Cleburne boy fatally injured at Granbury detention center” (October 18, 2011).
- <sup>6</sup> Texas Juvenile Justice Department, “2011 Facility Registry” (2011).
- <sup>7</sup> Texas Department of Criminal Justice Internal Audit Division, “A Report on Rehabilitation Programs Division’s COURAGE Program for Youthful Offenders: Audit 0921” (October 26, 2009).



**Benet Magnuson, Policy Attorney**  
Work: (512) 441-8123, ext. 105  
Executive Director Cell: (512) 587-7010  
bmagnuson@TexasCJC.org  
www.TexasCJC.org

**FACT SHEET 2012**

## Heal the Invisible Wounds of Traumatized Youth in the Juvenile System

### ADDRESSING TRAUMA WILL REDUCE THE STRAIN ON TEXAS' JUVENILE JUSTICE SYSTEM

Traumatic events – including violence, neglect, abuse, threats, humiliation, and deprivation – have wreaked havoc on the development of many youth in the Texas juvenile justice system. Trauma in childhood often causes a youth's stress response to be over-reactive and dysfunctional, leading many youth to delinquent behavior. After a child has entered the juvenile justice system, past trauma continues to push the youth into deeper system involvement.

**Texas should implement a fully trauma-informed juvenile justice system.** Trauma-informed programs support rehabilitation and avoid re-traumatizing youth by adjusting all aspects of the service delivery system to respond to the vulnerabilities and triggers of traumatized youth. Texas should ensure its juvenile justice system offers trauma counseling by trained staff, while minimizing the use of seclusions (solitary confinement) and restraints (use of force).

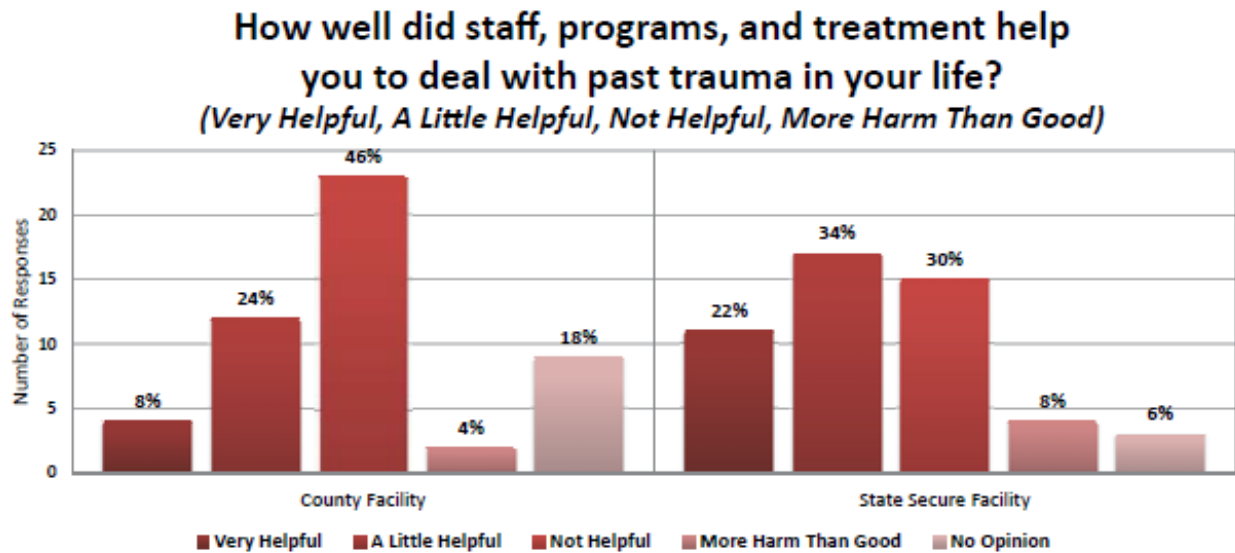
### KEY FACTS

- **Unaddressed trauma is placing enormous strain on the juvenile justice system and the youth in its care.**
  - » In Texas, over half of the youth referred to the juvenile justice system have previously experienced a significant traumatic event.<sup>1</sup>
  - » Recent research in Texas has confirmed the observations of practitioners and advocates that a youth's past experience with trauma is the largest predictor of the youth's assignment to increasingly serious secure placements.<sup>2</sup>
- **Texas' juvenile justice system is not adequately addressing the unique risks and needs of traumatized youth.**
  - » Fifty percent of girls surveyed at the Ron Jackson state secure facility said that their experiences in county probation were either not helpful or did more harm than good in helping them to deal with past trauma.<sup>3</sup>
  - » Trauma counseling is available to some youth in state secure facilities, but few local juvenile justice programs are currently able to offer sufficient support for traumatized youth.<sup>4</sup>
- **Seclusions and restraints, which are especially problematic for traumatized youth and youth with mental health concerns, are overused in many Texas juvenile facilities.**
  - » Texas youth experienced 5,333 physical restraints and 37,071 seclusions (thousands lasting longer than 24 hours) in county juvenile facilities in 2011.<sup>5</sup>
  - » Wide variation in policy and procedure among counties has led to widely different use of seclusions and restraints.<sup>6</sup>

*Solutions offered on reverse.*

## SOLUTIONS

- Do not allow seclusions longer than a few hours in Texas facilities except for assaults and similarly severe acts. Collect data from county facilities on which youth are placed in seclusion, what incident precipitated the seclusion, and how long each seclusion lasts. Require youth to complete therapeutic assignments whenever they are in seclusion for longer than fifteen minutes.
- Fund trauma-informed county initiatives, including diversion programs for traumatized youth to keep them out of facilities that may exacerbate their condition.
- Divert youth involved in prostitution from incarceration to therapeutic programs. These young women and men often need counseling support, medical care, and social services or they risk further victimization.



Of the fifty girls surveyed at the Ron Jackson state secure facility, half said that their experiences in county probation were either not helpful or did more harm than good in helping them to deal with past trauma. Source: TCJC “Girls’ Experiences in the Texas Juvenile Justice System” (October 2012).

## References

<sup>1</sup> TCJC review of calendar year 2011 data provided by TJJD (April 2012).

<sup>2</sup> E. Espinosa “An Evaluation of the Influence of Gender and Mental Health Needs on Juvenile Justice System Processing” (2011).

<sup>3</sup> TCJC “Girls’ Experiences in the Texas Juvenile Justice System” (October 2012).

<sup>4</sup> See TJJD Program Registry. Conversations with county departments revealed insufficient resources for trauma programs.

<sup>5</sup> Facility registry data provided by TJJD (January 2012). The data collected by TJJD does not distinguish between short- and long-term seclusions; however, data provided by counties to the Texas Criminal Justice Coalition (TCJC) show that each year, thousands of seclusions last longer than 24 hours.

<sup>6</sup> Based on a TCJC review of seclusion and restraint policies provided by 13 counties. County lists of “major rule violations” that are grounds for 24-hour seclusion vary significantly; items range from “violation of school expectation” to “disrespectful behavior towards staff” to “assault.” (In adult Texas prisons, the “disrespectful attitude” discipline violation category was struck down by the *Ruiz* court. 503 F. Supp. 1265 (S.D. Tex. 1980)) Some counties provide several levels of rule violations, with accompanying ranges of seclusion time; other counties use only a major level and a minor level of rule violation. Some counties allow youth to earn release from seclusion through good behavior; other counties use an automatic 24-hour period; some counties combine seclusion with therapeutic assignments.

## **Texas Must Keep Youth out of Dangerous Adult Prisons and Jails**

### **THE JUVENILE SYSTEM KEEPS KIDS SAFER AND IMPROVES REHABILITATION**

Adult prisons are a dangerous place for youth, where they face an increased risk of sexual victimization and the development of negative social behaviors, including impulsiveness (which can lead to theft and an increased likelihood of violent recidivism) and impaired logical judgment (which can lead to more rule breaking).<sup>1</sup> Adult prisons in Texas do not have the resources or expertise to meet the specialized needs of youth in custody: Inadequate staffing qualifications, limited programming, insufficient oversight, and the use of solitary confinement as punishment work against the rehabilitative model of treatment proven to be most effective for troubled youth.

**The juvenile justice system can successfully rehabilitate youth – even those with very serious offenses – while the adult system often leads youth to lives of antisocial behavior.** Every alternative, including the potential use of determinate sentencing<sup>2</sup> where appropriate, should be used before certifying a youth to the adult criminal justice system.

### **KEY FACTS**

- **Texas certifies too many youths as adults, short-circuiting the more-effective juvenile justice system.**
  - » Nearly 90 percent of the youth certified between 2005 and 2009 had never been committed to a juvenile state secure facility before their transfer to an adult criminal court.<sup>3</sup>
  - » Certifications in Texas have increased from 141 youths in 2001 to 173 youths in 2011.<sup>4</sup> Although certifications are intended for extreme cases, certified youth do not differ significantly from youth with a determinate sentence, and many certified youth have had no prior violent criminal history.<sup>5</sup>
- **The adolescent brain is still developing, making adult facilities and programs inappropriate and ineffective.**
  - » Decisions to certify a youth often ignore research on the physiological differences between adults and adolescents, including the developmental stages of the teenage brain. Research on the developing adolescent brain shows that the brain is reorganizing between the ages of 14 and 25, a period of critical brain growth.<sup>6</sup>
- **The juvenile justice system can successfully rehabilitate even youth with very serious offenses.<sup>7</sup>**
  - » Adult prisons, by contrast, are dangerous places for youth, leading to an increased risk of sexual victimization, an increased likelihood of violent recidivism, and the development of negative social behaviors.<sup>8</sup>

### **SOLUTIONS**

- Limit certifications of youth to the adult criminal justice system to only the most severe juvenile offenses.
- Where safety permits, restrict the use of administrative segregation of youth in adult facilities, and require specialized staff training for all jail and prison staff overseeing young inmates.

*References on reverse.*

## References

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<sup>1</sup> Centers for Disease Control “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System” (2007), and “National Prison Rape Elimination Commission Report” (2009).

<sup>2</sup> Under a determinate sentence, a youth is placed in a state juvenile facility for the first part of his or her sentence and then, after an additional court hearing, may be transferred to adult parole or prison.

<sup>3</sup> M. Deitch “Juveniles in the Adult Criminal Justice System in Texas” (2011).

<sup>4</sup> TJPC “Statistical Report” (2001); Calendar year 2011 data provided by TJJD (April 2012).

<sup>5</sup> M. Deitch “Juveniles in the Adult Criminal Justice System in Texas” (2011).

<sup>6</sup> “Adolescent Brain and Juvenile Justice: New Insights from Neuroscience, Genetics, and Addiction Science” (May 2012).

<sup>7</sup> M. Deitch “Juveniles in the Adult Criminal Justice System in Texas” (2011).

<sup>8</sup> Centers for Disease Control “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System” (2007), and “National Prison Rape Elimination Commission Report” (2009).



# Texas Criminal Justice Coalition

## *Talking Points*

### Occupational Licensing for Previously Incarcerated Individuals

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**CONTACT:** Jorge Renaud, Policy Analyst | (512) 441-8123, ext. 102 | [jrenaud@TexasCJC.org](mailto:jrenaud@TexasCJC.org)

## Intent of Legislation

This legislative proposal is designed to do the following:

- Boost the economy by increasing employment opportunities for previously incarcerated Texans.
- Enhance public safety by lowering recidivism.
- Allow previously incarcerated Texans to become valued and valuable members of society by decreasing their stigmatization and allowing them to work in the employment areas for which they have been trained.
- Eliminate inefficiencies and waste during the occupational licensing process.

## Background on Occupational Licensing in Texas

- Since 1945, the Texas Legislature has regulated 400 occupations and businesses through licensing requirements.<sup>1</sup> On average, between 2000 and 2007, 15 new occupations were brought under licensing requirements each legislative session.<sup>2</sup> To put these numbers into perspective, at last count, nearly 1 in 3 Texas workers was employed in a state-regulated industry.<sup>3</sup>
- Occupational regulation in Texas can occur on two fronts: performing a job may require an individual to obtain a license, or businesses in a certain field may be required to maintain a license. For example, barbers are required to maintain individual licenses to legally practice their trade in Texas.<sup>4</sup> Nurses' aides, on the other hand, are not required to maintain individual licenses, but healthcare facilities in Texas must be licensed; in such a case, certain standards must be met, including particular conditions relating to who can be employed by the facility.<sup>5</sup> Licensing requirements on individuals and businesses both create employment barriers for previously incarcerated individuals.
- Following Texas' 80<sup>th</sup> Legislative Session (2007), an interim charge was issued directing the House Committee on Government Reform to:

“Study and review current laws regarding licensing and regulation of professionals, as well as current laws regarding practice acts, and make recommendations on creating limitations and streamlining of licensure requirements, such as the public policy implications of the decriminalization of license-related violations.”<sup>6</sup>
- During the 81<sup>st</sup> Legislative Session (2009), **HB 963** (Guillen) addressed some of these issues, primarily by:
  1. Instituting a process whereby aspiring licensees can pay a \$25 fee and request a Criminal History Evaluation Letter from the licensing authority to determine potential eligibility for a license.
  2. Allowing provisional licenses to be issued to anyone not convicted of certain offenses (specifically those in Section 3g(a)(2), Article 42.12, Code of Criminal Procedure, and almost all sexually related convictions).



3. Prohibiting licensing authorities from denying licenses except for crimes “directly related” to the duties and responsibilities of the licensed occupation, or for a crime committed less than five years before application for the license.<sup>7</sup>
- Individual professional licensing in Texas is handled by a number of separate authorities. How these independent bodies account for convictions in licensing decisions is broadly governed by Chapter 53 of the Texas Occupations Code. Under section 53.023, each licensing board must consider:
    1. The extent and nature of a person’s past criminal activity;
    2. The age of the person when the crime was committed;
    3. The amount of time that has elapsed since the person’s last criminal activity;
    4. The person’s conduct and work activity before and after the criminal activity;
    5. Evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or after release; and
    6. Other evidence of the person’s fitness, including letters of recommendation.<sup>8</sup>
  - Evidence has shown that many licensing agencies view nearly all crimes as “directly related” to the occupations they issue licenses for,<sup>9</sup> meaning a previously incarcerated individual would be prohibited from procuring a license in that trade. For example, the boards that regulate water well drillers, auctioneers, and barbers each consider crimes involving illegal drugs to be directly related to their fields.<sup>10</sup>
  - How Texas licensing agencies account for past criminal convictions varies from job to job. For those in the healthcare field, 26 separate convictions carry a lifetime disqualification for the license needed to work in a healthcare facility, while eight carry a five-year disqualification.<sup>11</sup> Many of the prohibitive convictions listed for healthcare workers make sense: It is easy to see why someone convicted of felony sexual assault or murder should not be allowed to work with the vulnerable populations that healthcare workers serve. What is more questionable is why significantly lesser offense convictions—like obstruction or disorderly conduct—should make someone broadly ineligible to work in the Texas healthcare industry.

### Steps to Obtain an Occupational License in Texas

- **OPTIONAL:** For \$25, a person can request a “Criminal History Evaluation Letter” from the licensing agency. This letter, based on a person’s criminal background, determines his or her likely eligibility for a license. The letter cannot be appealed, but it is non-binding on the licensing agency if the person later requests a license.
- The person applies for a license.
- After a full investigation into the person’s criminal background, the licensing agency approves or denies the license.
- If the agency denies the license, the person can request an administrative hearing with the State Office of Administrative Hearings (SOAH) to appeal the agency’s decision. The judge will issue a “Proposal for Decision” for consideration by the licensing agency. This Proposal is not binding on the agency.
- The licensing agency makes the final decision about license eligibility. If it denies the license, it must provide notice for the denial, as well as an appeal date.
- In the case of a license denial, the person can file a motion for rehearing with SOAH to receive an ultimate decision.

## Problems with Certain Restrictions on Occupational Licenses in Texas

### Impact on Individual Productivity and Public Safety in Texas Communities

Research has shown that a key to successful reentry is helping previously incarcerated individuals find and keep a job.<sup>12</sup> However, increasing occupational regulation has made it harder for Texans with a criminal record to find meaningful work, enter high-growth fields, and achieve stability following reentry. This puts returning men and women at greater risk of re-offending, threatening public safety and increasing victims. With nearly 65,000 men and women released from the Texas Department of Criminal Justice (TDCJ) in 2011, reentry is an important concern for the state.

### Impact on Efficiency and Resource Allocation within Texas Agencies

- The Texas Education Code mandates that the Windham School District (WSD), which offers in-prison vocational training to eligible inmates, must prioritize training that results in licensure. This mandate directly affects funding and curriculum priorities for WSD, and it results in individuals being offered training in trades for which they will likely be denied licenses.
- The phrase “directly related” – for purposes of determining the relation of an individual’s past crime to a licensed trade – is too broad. It allows licensing agencies to claim that almost any behavior and any conviction could be predictive of future behavior, and thus reason to deny licensing.

## Cost-Saving and Public Safety-Driven Solutions

Proposed legislation should do the following:

1. ***Streamline procedural requirements in administrative hearings by the State Office of Administrative Hearings (SOAH).***

An applicant’s fitness for a license is often determined by letters of recommendation from officials, police, parole officers, and others with information about the nature and impact of offense. However, rules of evidence permit judges to require such individuals to be present at the hearing – which poses difficulties for people who live outside of the county or state, and jeopardizes an individual’s chance to present comprehensive information about his or her character and rehabilitative progress. All documents provided by the applicant during the SOAH hearing should be admitted as evidence if notarized or provided with affidavits, without requiring the documents’ issuers to be present during the hearing.

2. ***Amend Texas Occupations Code, Chapters 51 and 53, so that deferred adjudications successfully completed and not resulting in conviction do not have a bearing on a licensing agency’s decision to deny a license, unless those convictions were for sex offenses.***

This will expand employment opportunities for more Texans, thus improving reentry success rates.

3. ***Amend Occupations Code, Chapter 53, so that Class C misdemeanors that did not result in jail time cannot be used by a licensing agency to deny a license, while excluding those offenders who were convicted of traffic offenses from receiving licenses that require driving.***

This will likewise boost reentry success rates by opening up additional employment opportunities to returning men and women.

**4. *Require that Windham School District inform all potential vocational trade students of the following:***

- Restrictions by various state agencies limiting licensing opportunities for all WSD-taught vocational courses.
- The numbers of previously incarcerated individuals who completed WSD-offered vocational courses and were denied or granted licenses during the previous three years.
- The procedures for the following: requesting a Criminal History Evaluation Letter; requesting a hearing by SOAH to appeal a license denial by the licensing agency, and the evidence needed for a positive recommendation; and the avenues of appeal if the licensing agency denies a license after a SOAH hearing. (This information is already available for free by Texas Civil Rights Project: [http://www.texascivilrightsproject.org/docs/vets/pro\\_licenses.pdf](http://www.texascivilrightsproject.org/docs/vets/pro_licenses.pdf).)

**5. *Require TDCJ to expand the pool of potential trades for which it offers vocational training.***

This will better equip individuals with skill sets that will match available trades after release.

## References

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<sup>1</sup> <http://www.house.state.tx.us/media/pdf/committees/reports/80interim/GovernmentReform80th.pdf>.

<sup>2</sup> *Ibid*, p. 44.

<sup>3</sup> *Ibid*, pp. 44-45.

<sup>4</sup> Texas Department of Licensing and Regulation. "Licensing Restriction Guidelines for Criminal Convictions." April 7, 2008.

<sup>5</sup> Texas Health & Safety Code: <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.250.htm>.

<sup>6</sup> House Committee on Government Reform, William Callegari, Chairman, "A Report to the House Representatives of the 81<sup>st</sup> Legislative Session," pp. 43-63,

<http://www.house.state.tx.us/media/pdf/committees/reports/80interim/GovernmentReform80th.pdf>.

<sup>7</sup> TEX. OCCUPATIONAL CODE § 53.021(1), available at

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.53.htm#53.052>

<sup>8</sup> TEX. OCCUPATIONAL CODE § 53.023, available at

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.53.htm#53.052>

<sup>9</sup> Marc Levin. (2007). "Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas." Texas Public Policy Foundation, Center for Effective Justice.

<sup>10</sup> Texas Department of Licensing and Regulation. "Licensing Restriction Guidelines for Criminal Convictions." April 7, 2008.

<sup>11</sup> Texas Health & Safety Code: <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.250.htm>

<sup>12</sup> Austin Goodwill Annual Report,

<http://www.austingoodwill.org/media/literature/Annual%20Report%202007%20Web.pdf>.

## Youth Who Have Atoned for Their Offenses and Gotten Back on the Right Path Deserve A Fair Shot at Success

### TEXAS SHOULD LIMIT THE LONG-TERM COLLATERAL CONSEQUENCES OF YOUTHFUL OFFENSES

The vast majority of youth who come into contact with the juvenile justice system learn from their mistakes and go on to become productive law-abiding citizens.<sup>1</sup> Indeed, county juvenile probation departments in Texas process tens of thousands of misdemeanor referrals each year for adolescent behavior that does not lead to future crime.<sup>2</sup> As a result, a main purpose of the juvenile justice system, as set out in the Texas Family Code section 51.01(2)(B), is “to remove, where appropriate, the taint of criminality from children committing certain unlawful acts.”

However, contact with the juvenile justice system continues to create long-term collateral consequences for Texas youth. In most jurisdictions, a juvenile is fingerprinted at the initial contact with the juvenile system; those fingerprints are forwarded to the Texas Department of Public Safety and to the FBI. Background checks for military positions or licensed jobs can reveal a juvenile record. The restriction of a child’s record<sup>3</sup> at age 17 can be imperfect, given the complicated and slow process, which involves local, state, and federal government agencies. Even after a juvenile record is restricted, some information may continue to be accessible.

### KEY FACTS

- **Low-level youthful offenses seldom lead to serious crimes.**
  - » A tracking study by Texas’ Legislative Budget Board revealed that only 2.7% of youth who entered deferred prosecution<sup>4</sup> in 2007 were later incarcerated in the following three years. Youth on probation for misdemeanors made up only 0.3% of juvenile probation revocations.<sup>5</sup>
- **The FBI does not have a process for placing juvenile records on “restricted access” and only deletes records when its resources permit.**
  - » As noted above, the automatic restriction process involves local, state, and federal government agencies, and the process can be slow and complicated. Until the FBI deletes a record, it remains in the FBI’s National Crime Information Center database.<sup>6</sup>

### SOLUTIONS

- Eliminate fingerprinting of youth charged with misdemeanor offenses.
- Automatically seal or expunge juvenile records at age 17, with limited exceptions consistent with public safety. These processes provide greater protections for young men and women who have atoned for their offenses and gotten back on the right path, easing the employment, housing, and education barriers created by a criminal record.
- Enact efficient discovery procedures in juvenile cases, including allowing defense attorneys to photocopy prosecutor files that are already open to defense attorney inspection. More efficient discovery procedures will free up defense resources to limit long-term collateral consequences for juvenile clients.

*References on reverse.*

## References

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<sup>1</sup> See, e.g., T. Moffitt “Life-course-persistent versus adolescence-limited antisocial behavior” (2006).

<sup>2</sup> Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2011).

<sup>3</sup> After a juvenile record is “restricted,” only criminal justice agencies may access the records kept by local juvenile probation departments.

<sup>4</sup> Deferred prosecution allows local juvenile probation departments to provide services and informal supervision, without a formal adjudication, to youth referred for low-level offenses.

<sup>5</sup> Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2011).

<sup>6</sup> Robert Dawson “Texas Juvenile Law, 7<sup>th</sup> Edition” (2008).



**Benet Magnuson, Policy Attorney**  
Work: (512) 441-8123, ext. 105  
Executive Director Cell: (512) 587-7010  
bmagnuson@TexasCJC.org  
www.TexasCJC.org

**FACT SHEET 2012**

## **Divert Low-Risk Youth from Facilities to Proven Community Programs**

### **REDUCING STATE CUSTODY OF YOUTH WILL PROTECT COMMUNITIES, PRESERVE FAMILIES, AND SAVE TAX DOLLARS**

**Texas should fully support measures that keep more youth out of secure facilities and in well-resourced community programming.** Proven community-based programs leverage local resources and are more conducive than secure facilities to youth rehabilitation. These community programs – such as Functional Family Therapy, Multi-Systemic Therapy, and mentoring programs – reduce recidivism, keep kids and staff safer, and cost less than secure facilities.<sup>1</sup>

**Similarly, Texas should reduce lengthy government custody of youth in secure facilities, including during the pre-adjudication (pre-trial) phase.** By fixing our overreliance on excessive stays for youth at state facilities and county detention centers, Texas will spend less and get better results.

### **KEY FACTS**

- **Texas relies too heavily on secure pre-adjudication detention of youth.**
  - » In 2011, 11,083 youth spent more than 10 days in pre-adjudication secure detention for non-felony offenses; 3,406 youth spent more than 30 days for non-felony offenses; and 283 Texas youth spent more than 100 days for non-felony offenses.<sup>2</sup>
  - » The length of stay in pre-adjudication secure detention varies significantly among counties with similar populations, suggesting that many detention decisions are not correlated to a youth's risk.<sup>3</sup>
  - » County juvenile probation chiefs in Texas rank community-based alternatives to secure detention as the second-highest need for increased funding.<sup>4</sup>
- **Secure detention of low-risk youth in Texas wastes millions of dollars each year.**
  - » Reducing the average length of stay in pre-adjudication detention by just one day across the state would save millions in direct costs each year. Broader reductions in the use of secure detention – easily within reach – would save millions more.<sup>5</sup>
  - » Placement in a secure facility creates no reduction in antisocial activity.<sup>6</sup>
- **The length of stay in Texas state juvenile facilities is too long and counterproductive.**
  - » Youth spend an average of 16 months in Texas state juvenile facilities, far longer than their minimum lengths of stay. Incarceration of youth past the minimum length of stay does not reduce recidivism.<sup>7</sup>

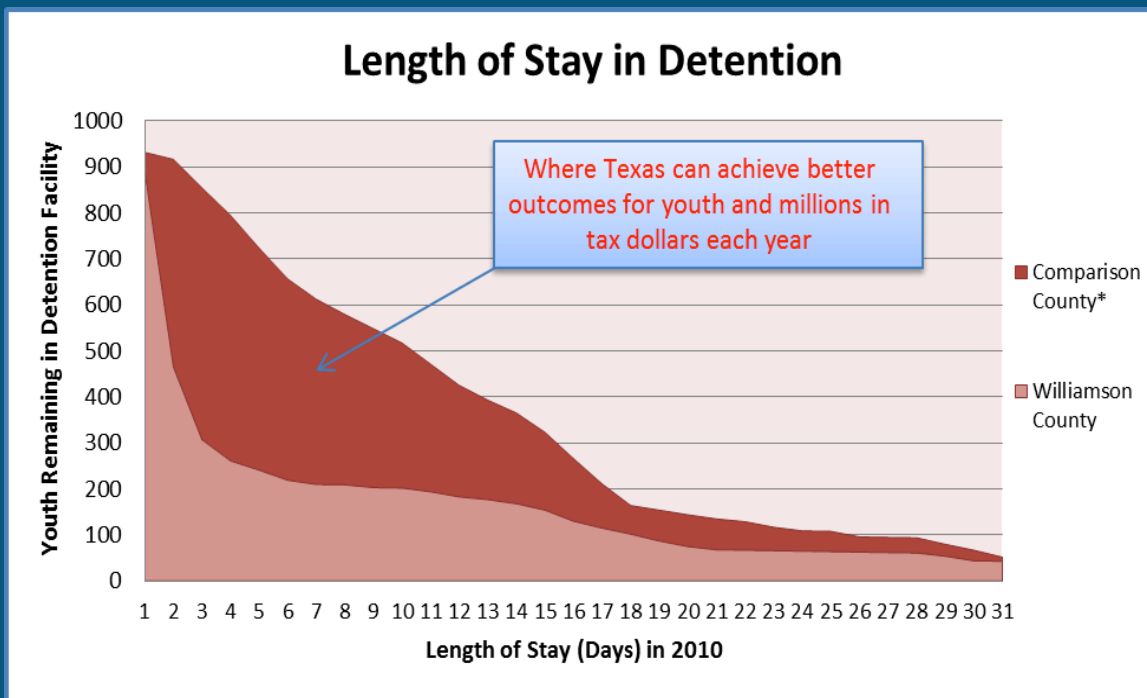
### **SOLUTIONS**

- Courts should determine the number of days that each individual pre-adjudication detention order extends, and in no event should a detention order extend more than 10 working days. Texas counties that currently voluntarily use five-day detention resets, rather than the statutory 10-day reset, efficiently reduce detention stays while protecting public safety. (See graph on reverse.)
- For any youth who qualifies for an appointed attorney, the court should appoint the attorney before the first detention hearing.

*Solutions continued on reverse.*

## SOLUTIONS (CONT.)

- Reformulate the minimum length-of-stay standards for youth in state secure facilities, so that youth are only held in confinement for periods long enough to ensure their rehabilitative progress.
- Lower counties' target commitment level to costly state secure facilities<sup>8</sup> to keep more youth in safe, effective community-based programming, and correspondingly shift funding to county programs to ensure the rehabilitative needs of additional youth are being met.



*“Comparison County” and Williamson County had roughly equal-sized juvenile populations in 2010; the two counties’ juvenile felony and misdemeanor offense rates were also roughly identical. **Williamson County efficiently lowers the length of stay in its juvenile detention facility by resetting detention orders every five days and by ensuring defense attorneys are present and prepared at a youth’s first detention hearing.***

*Source: TCJC “Community Solutions for Youth in Trouble” (2012).*

## References

- <sup>1</sup> Washington State Institute for Public Policy “Benefits and Costs of Prevention and Early Intervention Programs for Youth” (2004).
- <sup>2</sup> TCJC review of calendar year 2011 data provided by TJJD (April 2012).
- <sup>3</sup> TCJC review of calendar year 2011 data provided by TJJD (April 2012).
- <sup>4</sup> TCJC “Survey of County Juvenile Probation Chiefs” (August 2012).
- <sup>5</sup> TPPF “Texas Counties Can Unlock Kids and Savings” (2009).
- <sup>6</sup> E.P. Mulvey “Highlights From Pathways to Desistance” (2011).
- <sup>7</sup> TPPF “Out for Life” (2012), and E.P. Mulvey “Highlights From Pathways to Desistance” (2011).
- <sup>8</sup> Texas Juvenile Probation Commission Budget Rider 15 (FYs 2012 & 2013) designated funding to maintain commitments of youth to state juvenile facilities at or below 1,111 youth for fiscal year 2012.

## **The Driver Responsibility Program: A Texas-Sized Failure**

### **Origin of Program and Unsuccessful Outcomes**

Created in 2003 to help fill a \$10 billion budget shortfall and to encourage more responsible driving, Texas' Driver Responsibility Program (DRP) requires drivers convicted of a certain number of low-level traffic offenses, or specific higher-level driving offenses, to pay an annual surcharge to maintain their drivers' licenses. This surcharge varies based on the number or type of offenses committed over the preceding 3 years; in some instances, individuals are required to pay the surcharge for 3 consecutive years, at amounts of \$1,000 or higher. Failure to pay the surcharge, which is assessed on top of court fines and criminal penalties, results in automatic license suspension.<sup>1</sup>

The DRP has failed on every front. It has generated far less revenue than anticipated, and it has not increased public safety. In fact, as of August 31, 2011, only 40% of surcharges assessed have been collected, despite recent attempts to incentivize payment of overdue surcharges and alleviate the burden on low-income Texans.<sup>2</sup> Many of the approximately 1.2 million Texans whose drivers' licenses have been suspended due to unpaid surcharges are driving with invalid licenses.<sup>3</sup> As a result, the DRP has created a new class of "criminals" and has led to more uninsured motorists on Texas roads.

The DRP's failures are of such magnitude that former State Representative Mike Krusee, the original author of the bill creating the Program, has now called it "a mistake," saying it is "past time to either revise or repeal the program."<sup>4</sup>

### **Seven Reasons to Repeal the Driver Responsibility Program**

- 1. Failure to improve driver responsibility.** There is no evidence that the DRP has increased driver responsibility or public safety. In fact, despite levying 3-year surcharges between \$3,000 and \$6,000 on drivers with DWI convictions, for example, the share of traffic fatalities involving alcohol in Texas actually increased by 7% between 2003, the year DRP surcharges went into effect, and 2011.<sup>5</sup>
- 2. Extremely low collection rate.** Most DRP violators are unable or unwilling to pay the assessed surcharges. The result is that, in the first eight years since the DRP's inception, 60% of the surcharges assessed under the DRP have not been collected.<sup>6</sup>
- 3. More uninsured motorists on Texas roads.** Because many drivers whose licenses have been suspended due to unpaid DRP surcharges cannot obtain insurance until their outstanding fees are paid, the DRP has increased the number of uninsured motorists on Texas roads, costing Texans as much as \$300 million per year in damages from accidents involving uninsured drivers.<sup>7</sup>
- 4. Fewer DWI convictions.** Due to extremely high surcharges for DWI offenses, the DRP has perversely led to fewer DWI convictions. Defendants who would normally accept plea bargains are choosing to go to trial in hopes of avoiding the DRP surcharges, adding thousands of additional cases to courts' already backlogged caseloads.<sup>8</sup>

*Continued on reverse*



5. **Economic blow to Texas households.** Survey data indicates that low-income drivers are more likely to lose their jobs, are less likely to find a new job, and are less able to afford increased insurance premiums after having their drivers' licenses suspended for unpaid surcharges.<sup>9</sup> As such, DRP surcharges may be increasing unemployment and the public costs associated with it, while hindering the ability of men and women to meet familial obligations.
6. **Overcrowded jails and undue county costs.** DRP license suspensions have significantly increased the number of unlicensed and uninsured drivers in Texas, and many Texans are unable to afford the resulting, accumulated traffic tickets. As a result, these drivers may end up in jail for driving with suspended licenses or for outstanding warrants due to unpaid citations. This puts more pressure on already crowded jails and needlessly fills court dockets with petty cases, in turn increasing the financial burden on counties.
7. **Double Jeopardy.** Levying an administrative penalty on top of a criminal penalty for the same offense violates the spirit of the constitutional protection against double jeopardy – being punished multiple times for the same offense. As such, the DRP represents a significant expansion of state power at the expense of individual liberty.

## References

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<sup>1</sup> Texas Transportation Code, Chapter 708. Also see <http://www.txdps.state.tx.us/DriverLicense/drp.htm>.

<sup>2</sup> Data provided via email to State Rep. Sylvester Turner by the Texas Department of Public Safety.

<sup>3</sup> "Interim Report to the 82<sup>nd</sup> Texas Legislature" House Committee on Public Safety, January 2011, p. 19. Online at: [http://www.house.state.tx.us/\\_media/pdf/committees/reports/81interim/House-Committee-on-Public-Safety-Interim-Report-2010.pdf](http://www.house.state.tx.us/_media/pdf/committees/reports/81interim/House-Committee-on-Public-Safety-Interim-Report-2010.pdf)

<sup>4</sup> "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>.

<sup>5</sup> Calculated from "Crashes and Injuries by County" and "DUI (Alcohol) Crashes and Injuries by County," 2003 to 2011, Texas Department of Transportation. Online at: <http://www.txdot.gov/government/enforcement/crash-reports.html>

<sup>6</sup> See reference (2) above.

<sup>7</sup> Original calculation by the Texas Criminal Justice Coalition. See testimony submitted by Ana Yáñez Correa, Texas Criminal Justice Coalition, to the House Committee on Homeland Security and Public Safety, March 23, 2011.

<sup>8</sup> According to Judge David Hodges, the DRP has added 25,000 cases to Texas court dockets – a number that would take 16 years to dispose of given current trial capacities. See testimony submitted by Judge David Hodges, Texas Center for the Judiciary, to the Senate Committee on Criminal Jurisprudence, July 8, 2010. See Senate Committee's Interim Report, p. 22-23. Online at: <http://www.senate.state.tx.us/75r/senate/commit/c590/c590.InterimReport81.pdf>.

<sup>9</sup> 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](http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf)

## **Texas Must Adopt Effective Approaches For Reducing Graffiti In Texas**

### ***Proactive Strategies will Save Money and Beautify Communities***

#### **OVERLY PUNISHING GRAFFITI OFFENSES LEADS TO EXPENSIVE, INEFFICIENT OUTCOMES**

Graffiti is defined as any marking, etching, or painting that defaces public or private property without the owner's permission. Despite the belief that graffiti is typically associated with gangs, it is found in all locales and jurisdictions, and in fact only a small portion of all graffiti is done by gang members.<sup>1</sup> Most graffiti is caused by the common "tagger," someone who marks easily accessible locations, sometimes repeatedly, feeling little connection to place or neighborhood.

Regardless of the features or motive behind graffiti, it is considered a crime, and it costs some Texas cities millions of dollars in cleanup costs each year.<sup>2</sup> While the reaction to ongoing graffiti in the community may be to penalize graffitists more harshly, many Texas cities are seemingly seeing no decrease in graffiti from such an approach.<sup>3</sup>

What's worse, punitive approaches to graffiti come with high price tag, draining city budgets and saddling graffitists, many of them youth, with criminal convictions that pose lifelong obstacles, including limited employment and housing opportunities. In addition, criminal convictions mean those individuals will contribute less to their community's tax base, while lessening opportunities, which may lead to further criminal behavior.<sup>4</sup>

#### **KEY FINDINGS**

- Corpus Christi<sup>5</sup> and Houston<sup>6</sup> have invested in a "rapid response"<sup>7</sup> approach to graffiti that has had success. This strategy involves two crucial components: (1) a community-wide campaign, where citizens detect and report graffiti as soon as it occurs, and (2) the ability of the community to respond to the graffiti within 24 to 48 hours, to remove it as quickly as possible. More specifically, these efforts include neighborhood education, hotlines, and referrals of probationers as clean-up crews from local probation departments.<sup>8</sup>
- Philadelphia has pioneered the diversion of adjudicated graffitists into mural making, allowing them to express their artistic impulses and be recognized as legitimate artists. Beginning in 1984, the city began offering youth charged with graffiti a chance to conceive of and assist in painting murals that celebrated their neighborhood's achievement and history. The resulting murals created a large economic boost to Philadelphia, and the beauty and variety of the murals were recognized in a report as crucial to the development of vibrant commercial corridors in Philadelphia.<sup>9</sup> The report recommended more efforts like the Mural Arts Program (much of which is funded through private investments<sup>10</sup>), calling such programs "effective and cost-efficient ways of replacing eyesores with symbols of care."<sup>11</sup>

#### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS**

- Other than graffiti offenses committed as part of gang activity or in conjunction with burglary or criminal trespass, graffiti should be designated as a misdemeanor offense, and all efforts should be made to redirect graffitists into community supervision and community-sponsored arts programs.

*Solutions continued on reverse.*

## SOLUTIONS (Continued)

- Cities should implement a “rapid response” model, which focuses on the prompt eradication of graffiti to remove the perception of blight and decay. Additionally, cities’ “rapid response” teams should be comprised of convicted graffitiists, as part of their community service.
- Cities should seek creative methods of discouraging graffiti by investing in products that diminish or eliminate opportunities for graffiti on public buildings, and by encouraging property owners to do the same. These include paint-like products such as polyurethane-based coatings, sealers, wash-off coatings, and textured surfaces on outer walls to obscure graffiti legibility.

## References

<sup>1</sup> C. Thompson & R. Hills, *Congress Paper on Graffiti Vandalism in America – Shaping the Municipal Response*, Paper presented to World Jurist Association’s 24<sup>th</sup> Biennial Congress on the Law of the World, Oct. 23-28, 2011. Available at <file:///C:/Users/jrenaud/Desktop/Graffiti/municipal-responses-to-graffiti-vandalism.htm>.

<sup>2</sup> Julia Narum, Child Development Program Supervisor, City of Austin Health and Human Services [dedicated budget of \$500,000 to \$600,000 yearly for graffiti], telephone conversation with Jorge Renaud, Texas Criminal Justice Coalition (TCJC), Oct. 22, 2012; Lisa McKenzie, Neighborhood Services Coordinator, City of San Antonio [dedicated budget of \$1,008,000 in 2012], telephone conversation with Jorge Renaud, TCJC, Oct. 22, 2012; Jerry McDowell, City of Fort Worth Parks Department [dedicated budget of \$464,000 in 2012], telephone conversation with Jorge Renaud, TCJC, Nov. 26, 2012.

<sup>3</sup> “Austin seeing a spike in graffiti,” KXAN-TV report, aired July 19, 2011 (cites 22% increase in graffiti from 2010); available at <http://www.kxan.com/dpp/news/local/austin-seeing-a-spike-in-graffiti->. “CCPD reports increase in graffiti,” KIII-TV report, aired Jan. 27, 2012; available at <http://www.kiiitv.com/story/16565472/ccpd-reports-increase-in-graffiti?clienttype=printable>; Martin Chavez, Director, Graffiti Abatement, Greater East End District Management, in telephone conversation with Jorge Renaud, TCJC, Nov. 20, 2012; Mr. Chavez made the caveat that greater community recognition and reporting may account for increases.

<sup>4</sup> Research has consistently found unemployment to be linked with crime (and crime’s associated costs to victims and communities): “one of the most important conditions that leads to less offending is a strong tie to meaningful employment.” Information from Roger Przybylski, “What Works: Effective Recidivism Reduction and Risk Focused-Prevention Programs,” RKC Group, February 2008, p. 38. *Also note:* Housing barriers contribute to homelessness and recidivism; information from Jeremy Travis, Amy L. Solomon, and Michelle Waul, “From Prison to Home: The Dimensions and Consequences of Prisoner Reentry,” The Urban Institute, June 2001, pp. 35, 39.

<sup>5</sup> Lawrence Mikalajczk, Asst. Dir. Of Solid Waste Dept., City of Corpus Christi, in telephone conversation with Jorge Renaud, TCJC, Nov 13, 2012, discussing the high-priority, rapid-response model initiated in 2008.

<sup>6</sup> Martin Chavez, Director, Graffiti Abatement, Greater East End District Management, in telephone conversation with Jorge Renaud, TCJC, Nov. 20, 2012, discussing the program which initiated in 2001. Program details available at <http://www.greatereastend.com/graffiti-abatement>.

<sup>7</sup> C. Thompson & R. Hills, *Congress Paper on Graffiti Vandalism in America – Shaping the Municipal Response*, Paper presented to World Jurist Association’s 24<sup>th</sup> Biennial Congress on the Law of the World, Oct. 23-28, 2011.

<sup>8</sup> Telephone conversations with Mikalajczk and Chavez, *noted directly above*.

<sup>9</sup> *Commercial Corridors: A strategic investment framework for Philadelphia – Executive Summary*, March 2009, p. 7. Available at [http://www.philadelphialisc.org/pdfs/Strategic\\_Investment\\_Framework\\_Econsult.pdf](http://www.philadelphialisc.org/pdfs/Strategic_Investment_Framework_Econsult.pdf)

<sup>10</sup> A. Markusen & A. Gadwa, *Creative Placemaking*, Executive Summary for the Mayor’s Institute on City Design, a leadership initiative of the National Endowment for the Arts in Partnership with the United States Conference of Mayors and American Architectural Foundation, 2010. Available at <http://www.arts.gov/pub/CreativePlacemaking-Paper.pdf>.

<sup>11</sup> *Ibid.*, p. 9.



**Dr. Ana Yáñez-Correa**, Executive Director

Work: (512) 441-8123, ext. 109

Cell: (512) 587-7010

acorrea@TexasCJC.org

www.TexasCJC.org

**FACT SHEET 2012**

## **State and County Leadership Must Support the Texas Commission on Jail Standards**

*Agency creates cost savings through avoided lawsuits, fewer inefficiencies, and effective jail operations*

### **THE COMMISSION DESERVES SUFFICIENT FUNDING AND RESOURCES TO PROVIDE VALUABLE ASSISTANCE TO TEXAS COUNTIES**

The Texas Commission on Jail Standards (Commission) serves various critical functions. For example, it enforces county compliance with jail standards through facility inspections, and it provides counties with much-needed and frequently requested technical assistance on the creation and operation of their jails and services. **In addition to producing vital cost savings for Texas, the Commission's work keeps local jail staff and inmates in safe environments, and it facilitates the safer reentry of men and women to Texas communities.**

With continued support by the Legislature, including through full funding of the Commission's biennial budget request, Commission staff will be able to strengthen their relationship with local Sheriffs and jail administrators. **Through their collective efforts to create accountability and effective resource allocation, the Commission and local leadership are ensuring that Texas' county jail system is strong, efficient, cost-effective, and well managed, while relieving taxpayers of the financial burden associated with growing jail populations.**

Texas must continue to support this agency in its crucial efforts to help local governments stay out of the courtroom by making smart choices about jail operations and management.

### **KEY FINDINGS**

- The Commission's purview extends to **244 jail facilities**;<sup>1</sup> as of November 1, 2012, Texas' county jails held nearly 66,000 inmates,<sup>2</sup> though nearly a million individuals cycle through local jails every year.<sup>3</sup>
- The Commission was **created in 1975 in response to lawsuits filed against Texas counties** for the poor conditions of confinement in local jails, as well as for the lack of regulated and funded inspections of those jail facilities.<sup>4</sup> Various groups, including the Sheriffs' Association of Texas and Baptist General Convention of Texas, advocated for the legislation, which protects the state and counties against costly lawsuits.
- The Commission's annual budget is less than \$1 million.<sup>5</sup> **The Texas Department of Criminal Justice spends that amount in approximately 2.5 hours.**<sup>6</sup>
- The Commission has a staff of just 16 people,<sup>7</sup> four of whom are facility inspectors.<sup>8</sup> **A 10% agency cut could result in the loss up to 3 staff members, possibly inspectors,** and pose retention problems should the Commission lose the ability to provide merit pay or travel expenditures.
- Commission budget cuts would also threaten the agency's crucial functions: inspections and enforcement of standards that help keep jail staff and inmates safe, vital technical assistance and training for counties, and facility needs analyses.<sup>9</sup> **This opens the door to costly federal lawsuits against counties for failure to properly operate their county jails or adequately manage inmates, which could devastate counties already struggling to meet the needs of their community members.**

*Solutions offered on reverse.*

## **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS**

- (1) Provide the Commission its Baseline Budget Request to Maintain Operations.** Fully supporting the Commission's baseline budget request (\$900,710 per year) is the least that Texas can do to continue to help counties cost-effectively meet the state's public safety needs. We especially support funding to protect the Commission's general operations, staff and inspectors, and training and resource availability.
- (2) Provide the Commission with Funding for Exceptional Items to Improve its Assistance to Counties.** Fully supporting the Commission's two exceptional item requests is also critical to facilitate agency efficiency. This includes one staff person to provide support for other staff (\$28,450), and technology upgrades to increase information accessibility and streamline information dissemination (\$7,500 per year for two years).
- (3) Promote the Commission's Long-Term Strategic Planning.** The state should allow the Commission to carry over money not fully spent on inspections and other strategies to the following year, for use during later inspections or for technical assistance to counties. In 2012, the Commission was forced to reimburse the state \$2,386 that it had been able to maintain due to frugal travel expenses and inspection efficiencies.<sup>10</sup>
- (4) Fully Equip the Commission to Expand its Role in the Prevention of Jail Overcrowding and the Facilitation of Successful Reentry.** Counties frequently ask the Commission for assistance in identifying strategies that will help them better manage their inmate populations. With fuller support from the state, the Commission can sit alongside local stakeholders during the planning stages of such strategies, helping counties bring down costly overcrowding and, in turn, creating safer, more manageable jail environments – a benefit to staff and inmates alike.

With increased staffing support, the Commission can also better assist counties in preparing individuals for a more seamless reentry to our communities, specifically through technical assistance relating to in-jail program development and implementation.

## **References**

<sup>1</sup> Texas Commission on Jail Standards (TCJS), "Legislative Appropriations Request (LAR) For Fiscal Years 2014 and 2015," August 2012, p. 1. (1 of 3); available at [www.tcjs.state.tx.us/docs/LAR2012.pdf](http://www.tcjs.state.tx.us/docs/LAR2012.pdf).

<sup>2</sup> Texas Commission on Jail Standards, "Texas County Jail Population," November 1, 2012; total population: 65,975. Available at [www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf](http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf).

<sup>3</sup> Texas Department of Criminal Justice (TDCJ), "H.B. 1711 Implementation Report," Submitted to Governor, Lieutenant Governor, Speaker of the House, Senate Criminal Justice & House Corrections Committees, September 1, 2010, p. 4: "One million plus offenders are processed in local jails on an annual basis."

<sup>4</sup> Brandon Wood, Texas Commission on Jail Standards, in presentation at American Bar Association, Criminal Justice Section, *Roundtable on Pretrial Detention in Texas*, held in Austin, Texas, March 30, 2012.

<sup>5</sup> TCJS, *LAR For Fiscal Years 2014 and 2015*, pp. 1. (3 of 3) and 2.A. (2 of 2).

<sup>6</sup> Texas Department of Criminal Justice, *Fiscal Year 2013 Operating Budget and Fiscal Years 2014-2015 Legislative Appropriations Request* (summary document), August 23, 2012, p. 1; available at [www.tdcj.state.tx.us/documents/finance/Operating\\_Budget\\_FY2013\\_LAR\\_Summary\\_FY2014-15.pdf](http://www.tdcj.state.tx.us/documents/finance/Operating_Budget_FY2013_LAR_Summary_FY2014-15.pdf). Estimated FY12 budget totaled \$3,002,158,965, or \$342,712 per hour.

<sup>7</sup> TCJS, *LAR For Fiscal Years 2014 and 2015*, pp. 1. (3 of 3) and 2.A. (2 of 2).

<sup>8</sup> Brandon Wood, Texas Commission on Jail Standards, in communication with Texas Criminal Justice Coalition, November 5, 2012.

<sup>9</sup> TCJS, *LAR For Fiscal Years 2014 and 2015*, p. 1. (3 of 3).

<sup>10</sup> Brandon Wood, Texas Commission on Jail Standards, in communication with Texas Criminal Justice Coalition, November 5, 2012.



# Texas Criminal Justice Coalition

## Talking Points

### Safe Alternatives to State Jail will Increase Cost Savings, Public Safety, and Personal Responsibility

**CONTACT:** Travis Leete, Policy Attorney | (512) 441-8123, ext. 106 | [tleete@TexasCJC.org](mailto:tleete@TexasCJC.org)

#### Intent of Recommendations: More Successful Outcomes through Greater Use of Safe Diversions

These recommendations are designed to do the following:

- **Save taxpayer dollars and avoid wasteful expenditures on incarceration** by encouraging judges to use their discretion to redirect specific low-risk individuals away from costly state jails and place them on community supervision (probation).
- **Enhance public safety** by lowering recidivism through increased access to community-based services and tools that help people become responsible members of Texas communities.

#### History of the State Jail System in Texas

- In 1993, faced with prison overcrowding and an inmate population that could potentially break the state budget, the Texas Legislature passed S.B. 1067 and S.B. 532, creating the state jail system. In developing this system, the Legislature created a new class of state jail felonies, consisting primarily of low-level drug and property crimes, as well as guidelines for sentencing and corrections operations.
- **The state jail system was originally designed to restructure and improve the state criminal justice and corrections systems by redirecting individuals with low-level offenses out of overcrowded prisons, providing them the opportunity to serve their sentence on community supervision while reserving space in prisons for those who posed a legitimate risk to public safety.<sup>1</sup>**

More specifically, individuals convicted of state jail felonies would have their confinement immediately suspended and they would be placed on probation. While on community supervision, these individuals would have access to community-based resources and programs, but they would also have adequate supervision to maintain stability and compliance with various probation conditions.

- **For individuals who did not comply with community supervision conditions, state jail facilities were intended serve as a back-up,<sup>2</sup> offering judges an option to incarcerate someone for a short time if necessary.** These individuals were expected to be assessed for criminogenic needs, such as substance abuse, mental health, employment, etc., and state jail facilities were supposed to provide robust rehabilitative options, such as substance abuse and education opportunities. With proper rehabilitation services, this system was created to offer a viable option if community-based rehabilitation methods were not working.
- The original plan was also to have state jails near the sentencing jurisdiction, which would allow men and women to rehabilitate near their homes if they violated the terms of probation and were sent to a state jail facility to serve the remainder of their sentence. Also, at the judge's discretion, a person could have been required to serve "upfront" time at a nearby state jail facility, where a prescribed amount of time was served prior to being sent to probation for a suspended sentence.



- **However, over time, and partially due to continued legislative modifications, state jails have become warehouses for individuals, offering little (if any) meaningful access to rehabilitation programs and devolving into an extension of the very system they were designed to improve.**
    - » In 1995, shortly after state jails were created, the Legislature began to dilute the efficacy of the state jail system by making placement on community supervision for state jail felons discretionary for certain individuals and increasing the upfront time a person could serve.<sup>3</sup>
    - » Subsequently, in 1997, the Legislature removed all mandatory community supervision, allowing direct sentencing straight to state jails.<sup>4</sup>
    - » In 2003 and 2007, the Legislature again revised this, returning to a more rehabilitative and community-based strategy, by ratifying HB 2668 and HB 1610; the first bill mandated community supervision for certain first-time drug offenses, while the second provided judges the discretion to lower certain state jail felony convictions to a Class A misdemeanor, allowing individuals to participate in community-based rehabilitation and treatment.<sup>5</sup>
- Yet still, in contrast to the original conception that state jails would be secondary to community supervision, most individuals are sentenced directly to the state jails.

## STATE JAIL FACTS

A state jail felony carries a penalty of six months to two years in a facility, or community supervision (probation) for two to five years.<sup>7</sup>

Individuals sentenced to a facility must serve day-for-day, with no opportunity to earn “good time” credit or gain early release through parole. However, based on 2011 legislation, state jail inmates do have the opportunity to become eligible for time credits if they participate in a rehabilitation or education program, in which case they are either granted or denied time credit.

### Key Demographics

Over the years, tens of thousands of Texans, primarily with low-level drug or property offenses, have been sentenced directly to state jail, serving less than a year on average.

- Over 50% of the individuals in a state jail are there for their first or second offense. Over 3,000 individuals (nearly 30%) have only one offense, while nearly 40% have one or two prior offenses.<sup>8</sup>
- Over 83% of the individuals in a state jail are there for nonviolent property or drug offenses.<sup>9</sup>
- The majority of individuals are in for drug-possession (nearly 30%), followed by larceny, and then burglary.<sup>10</sup>
- Almost two-thirds of the individuals released in 2006 and 2007 were rearrested and about one-third recidivated within three years.<sup>11</sup>
- About 40% of those who were released in 2006 and 2007 and recidivated were originally convicted of a drug felony offense.<sup>12</sup>
- The average sentence for an individual in a state jail is 1.02 years.
- The average length of time an individual will spend in a state jail is about 6 months.<sup>13</sup>

Figures as of 31 August 2012 <sup>14</sup>			
Total State Jail Population: 11,732			
Individuals in State Jail And Number of Offenses		Individuals in State Jail And Type of Offense	
# of Individuals	# of Offense(s)	# of Individuals	Offense Type
3,392 (28.9%)	1	3,371	Drug Possession
2,599 (22%)	2	3,049	Larceny
1,825 (15.5%)	3	1,064	Burglary

## State Jails are More Expensive, Less Effective, and Leave the Community Worse Off

- **From an economic standpoint, state jails are failing our communities.** State jails provide a poor return on taxpayers' investment: Texas pays more to put low-level individuals in a deficient system that produces worse outcomes. Indeed, state jails cost significantly more money—averaging about \$43 per day per person<sup>14</sup>—than incarceration alternatives such as diversion treatment and community supervision, which together average \$10 per day.<sup>15</sup> In 2011, there were nearly 12,000 individuals on hand in a state jail facility and over 23,000 new “receives” (individuals entering state jail) throughout the year.<sup>16</sup> Incarcerating these men and women cost taxpayers over \$500,000 a day and over \$187 million annually.<sup>17</sup>
- **State jails are less effective at improving public safety.** Incarceration in state jails typically results in higher recidivism rates than both prison and community supervision. In fact, almost two-thirds of all individuals released from state jail in 2006 and 2007 were re-arrested within three years, and about one-third were re-incarcerated during that period.<sup>18</sup> Individuals with drug offenses have particularly high recidivism rates, at about 40%.<sup>19</sup> By way of comparison, revocation rates for felony community supervision, which costs the state less than \$1.50 per day per person, has dropped below 15%, less than half that of the state jail.<sup>20</sup>
- **State jails do not adequately prepare or equip individuals under their care for success in the community.** The average sentence for an individual in a state jail is 1.02 years, and the correlated length of stay is about six months;<sup>21</sup> this offers little opportunity for an individual to participate in meaningful rehabilitation or treatment, if any is even available at the facility. Moreover, after serving a brief stint in a state jail, and after having been ripped away from jobs, family, and other responsibilities, these individuals will return to the community without support or resources. Typically, individuals are discharged from a state jail without any post-release supervision; in fact, of the over 22,000 individuals released from a state jail in fiscal year 2011, only 158 were released to community supervision.

Recidivism Rates		
	State Prison	State Jail
Re-Incarceration Rate	24.3%	31.9%
Re-Arrest Rate	48.8%	64.2%
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Community Supervision Revocation Rate: 14.7%		

Yet continually, individuals choose to serve time in state jail rather than take advantage of the support and resources offered by community supervision, due primarily to the extra requirements of community supervision. Community supervision terms are generally longer than state jail terms and require a higher level of personal accountability to ensure compliance with probation terms.

## Cost-Saving and Public Safety-Driven Solutions

1. **Encourage judges to utilize their current discretion to place individuals with certain state jail offenses on community supervision, which will hold individuals accountable and save tax dollars.**

Heavy reliance on incarceration in state jail facilities is incongruent with the concept of state jails, insofar as it removes a critical piece in the reintegration continuum. Community supervision was intended to be judges' first response to state jail offenses, so an individual would receive needed



treatment or programs. State jail facilities were supposed to serve as a backup, to support individuals by providing more robust rehabilitation services in the event they failed on probation. Now, state jails are often judges' first choice, and because of underfunding and a lack of resources, rehabilitation programs in these facilities are deficient, leaving individuals without critical tools to address their criminal behavior. Furthermore, once released from a state jail, the majority of individuals have no community supervision or support to help them avoid falling into the same patterns that landed them in the system to begin with. This is partially to blame for high recidivism rates.

To comport with the original intent of state jails, judges should use their discretion under Section 15(b), Article 42.12 of the Texas Code of Criminal Procedure, to effectively utilize community supervision instead of directly sentencing eligible individuals to state jails.

## **2. Modify existing statutes to offer a split-sentencing alternative for state jail felonies.**

With rehabilitative programming options few and far between in state jail facilities, many individuals are unable to acquire the treatment and training that will help them become law-abiding citizens. Both community supervision and state jail facilities make up important components of the state jail felony system. However, we recognize that sending every individual with a state jail felony directly to community supervision may not be viable for the community. As such, Texas should consider a split-sentencing program, where certain individuals would serve a limited time in a state jail facility (e.g., half of the original sentence), followed by a period of post-release supervision—with access to community-based programs and services that will increase the success of the reentry transition. Most critical during the post-release phase will be community programs that assist individuals in overcoming education/employment problems, substance abuse issues, family conflict, and mental health problems.

With both systems sharing the load, Texas will be promoting public safety while more efficiently using taxpayer dollars. According to TDCJ statistics, if half of all individuals with drug and property offenses in the state jail system were to receive split-sentencing, the state could save millions of dollars that could go towards much needed and underfunded treatment and diversion programs in Texas communities.

## References

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- <sup>1</sup> House Research Organization, Bill Analysis, Tex. S.B. 1067, 73<sup>rd</sup> Leg., R.S. (1993); House Research Organization, Bill Analysis, Tex. S.B. 532, 73<sup>rd</sup> Leg., R.S. (1993).
- <sup>3</sup> Senate Bill 15, 74<sup>th</sup> Legislature.
- <sup>4</sup> Senate Bill 663, 75<sup>th</sup> Legislature.
- <sup>5</sup> House Bill 2668, 78<sup>th</sup> Legislature; and House Bill 1610, 80<sup>th</sup> Legislature.
- <sup>6</sup> House Research Organization, Bill Analysis, Tex. S.B. 1067, 73<sup>rd</sup> Leg., R.S. (1993).
- <sup>7</sup> TDCJ Open Records Response, 16 October 2012, information available upon request.
- <sup>8</sup> Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2011*, pp. 1, 2. Available at [http://www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2011.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf).
- <sup>9</sup> TDCJ Open Records Response, 16 October 2012, information available upon request.
- <sup>10</sup> Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, pp. 21, 25.
- <sup>11</sup> Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 23.
- <sup>12</sup> TDCJ Open Records Response, 16 October 2012, information available upon request (the average stay is about 6 months in a TDCJ state jail facility, and about 3.5 months in county facility—confinement averages less than 10 months (.8 years)).
- <sup>13</sup> TDCJ Open Records Response, 16 October 2012, information available upon request.
- <sup>14</sup> Legislative Budget Board, *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, Submitted to the 82<sup>nd</sup> Texas Legislature, January 2011, p. 6 (estimated at \$43.03 a day per person).
- <sup>15</sup> LBB, “Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010,” January 2011, pp. 6, 11, 12.
- <sup>16</sup> Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2011*, pp. 1, 2. Available at [http://www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2011.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf).
- <sup>17</sup> Based on Legislative Budget Board, *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, Submitted to the 82<sup>nd</sup> Texas Legislature, January 2011, p. 6.
- <sup>18</sup> Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, pp. 21, 25 (recidivism rates are calculated on three-year cycles, so the Legislative Budget Board’s numbers reflect offenders who were arrested or returned in 2007).
- <sup>19</sup> Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 23.
- <sup>20</sup> Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 11.
- <sup>21</sup> The average stay is about 6 months in a TDCJ state jail facility, and about 3.5 months in county facility—confinement averages less than 10 months (.8 years).