

Fact Sheets and Testimony 2013



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TESTIMONY 2013
C.S.H.B. 937

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of C.S.H.B. 937, an effective policy that aims to strengthen communities by identifying the full spectrum of restorative justice programming available to youth at the local level. By pinpointing and examining the variety of programs offered within the community, Texas lawmakers can replicate and support community-based alternatives that are most effective, for long-term public safety gains and taxpayer cost savings.

RESTORATIVE JUVENILE JUSTICE

Rooted in a balanced approach, restorative justice programs in the juvenile justice setting prioritize rehabilitation – not only for youth engaging in delinquent conduct, but for victims and the community affected by that conduct.¹ Specifically, this approach to delinquency includes “repairing the victims’ harm, providing consequences for the crime, and [the] reintegration of [an] offender [back] into the community.”² Consequently, **restorative justice programming can lower recidivism rates and strengthen communities.**³

In 2009, the Texas Juvenile Probation Commission released a report identifying nine counties that have implemented one of the four most commonly known restorative justice programs: **victim-offender mediation.**⁴ This process, which allows interested victims a safe opportunity to discuss with criminal defendants how they were impacted by crime, has been utilized in Bexar, Dallas, Gregg, Jefferson, Kendall, McLennan, Montgomery, Tarrant, and Travis Counties.⁵ Unfortunately, less is known about **community reparative boards,**⁶ **family group conferencing,**⁷ or **circle sentencing**⁸ in Texas, the other three most widely used restorative justice programs.

Texas should identify and study ALL programs rooted in a balanced approach, so as to effectively help troubled youth and their communities reduce crime and save critical taxpayer dollars.⁹ Furthermore, to determine whether the core goal of each program is being reached, the measures used to evaluate a program’s success should be examined. Often, the success of a program is mistakenly measured by recidivism alone, when the ultimate goal is for youth to develop an understanding of the consequences associated with their delinquent conduct.¹⁰

KEY FINDINGS

- Youth who participate in restorative justice programs are less likely to recidivate, and such programming has been found to strengthen communities.¹¹
- Victim-offender mediation programs are the only type of youth reparative program that has been explored throughout Texas.¹²
- By identifying, supporting, and replicating successful restorative justice programs, Texas lawmakers can prioritize the reparative abilities of their local communities and better inform resource allocation.

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT C.S.H.B. 937 BY REPRESENTATIVE FARIAS

- **C.S.H.B. 937 will help state leadership identify ALL restorative youth justice programs being used by Texas' largest juvenile probation departments.** By pinpointing and examining the variety of programs offered, Texas lawmakers can make informed decisions about resource allocation and potential program replication, which will benefit youth and improve public safety in Texas communities.
- **C.S.H.B. 937 will support best practices in restorative youth justice programming by requiring that the variables used for program evaluation be submitted for review.** By ensuring that such programs are evaluated with their root goal in mind (e.g., closure, development of victim empathy, etc.), juvenile justice practitioners will be able to truly measure program participants' success via changed behavior, not merely track participation in the program.

CONCLUSION

Again, I would like to thank you for allowing me the opportunity to provide testimony in favor of C.S.H.B. 937, a smart-on-crime policy that will help local and state leadership identify the most successful approaches for rehabilitating youth. The Texas Criminal Justice Coalition strongly urges you to support this bill and implement evidence-based programming in juvenile justice.

Citations

¹ Office of Juvenile Justice Delinquency and Prevention, *Guide for Implementing the Balanced and Restorative Justice Model*, <http://www.ojjdp.gov/pubs/implementing/balanced.html>.

² Nancy Rodriguez, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* (2007), 53, 355.

³ Kathleen J. Bergseth and Jeffrey A. Bouffard, "The long-term impact of restorative justice programming for juvenile offenders," *Journal of Criminal Justice* (2007), 35, 433-451.

⁴ Texas Juvenile Probation Commission, *Victim Offender Mediation Programs in Texas*, January 2009.

⁵ Ibid.

⁶ Community reparative boards aim to develop a set of proposed sanctions that are openly discussed with the juvenile, with the ultimate goal of reparation. These boards are commonly made up of a small group of citizens that have been impacted by the crime.

⁷ Family group conferencing brings together all individuals impacted by a youth's delinquent conduct (e.g., family, friends, and key supporters of both), with the ultimate goal of finding a resolution to the incident.

⁸ Circle sentencing brings together all parties impacted by a youth's delinquent conduct (e.g., family, friends, and key supporters of both), as well as the juvenile justice system, with the goal of reaching a consensus on an appropriate sentencing plan. A traditional peacemaking structure is used to accommodate a comfortable agreement among everyone involved.

⁹ Gordon Bazemore and Jeanne Stinchcomb, *A Civic Engagement Model of Reentry: Involving Community Through Service and Restorative Justice*, 2004.

¹⁰ Stephanie Fagliano, *How Victim-Offender Mediation Impacts Juvenile Offenders: What it Offers and who it Benefits*, Stanford University, May 2008.

¹¹ Nancy Rodriguez, *Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism*, *Crime & Delinquency* (2007), 53, 355.

¹² Texas Juvenile Probation Commission, *Victim-Offender Mediation Programs in Texas*, January 2009.



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TESTIMONY 2013
C.S.H.B. 1544

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of C.S.H.B. 1544, an effective policy that will close a gap in Texas law and ensure that all county sheriffs are involved in critical decision-making processes about local jail contracting.

INVOLVE COUNTY SHERIFFS IN JAIL CONTRACT DECISIONS AND ENSURE COMPLIANCE WITH MINIMUM JAIL STANDARDS

Texas county sheriffs are responsible for local jails, and should thus be involved in all decisions pertaining to jail contracting. In Texas' largest county (Harris), however, the sheriff is excluded from decisions about potential privatization of jails. C.S.H.B. 1544 will correct this discrepancy and ensure that all Texas sheriffs are involved in decisions about the jails that they are responsible for.

C.S.H.B. 1544 will also ensure that all jail contractors meet or exceed the minimum standards established by the Texas Commission on Jail Standards (Commission). The Commission's mission is to assist local governments in providing safe and secure local jail facilities.¹ The Commission provides counties with technical assistance on jail operations and services, and it produces cost savings for Texas by identifying fiscal inefficiencies and helping counties avoid liabilities associated with poor conditions of confinement. By requiring contracted jail facilities to comply with established standards, C.S.H.B. 1544 will ensure that all county jails are safe, sanitary, well managed, and accountable to the state's jail oversight agency, thus better protecting those working and confined in such facilities.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT C.S.H.B. 1544 BY REPRESENTATIVE ALLEN

- C.S.H.B. 1544 will ensure that all Texas county sheriffs are included in local jail contracting decisions and able to lend their expertise on critical issues.
- C.S.H.B. 1544 will ensure that all jail contractors meet or exceed the minimum standards, inspection procedures, and enforcement policies established by the Texas Commission on Jail Standards, which will protect jail personnel and incarcerated individuals through safer and more accountable local jails.
- C.S.H.B. 1544 will promote efficient spending practices and decrease taxpayer waste.

Citations

¹ Compact with Texas, Texas Commission on Jail Standards.



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TESTIMONY 2013
C.S.S.B. 1517

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of C.S.S.B. 1517, which will end the misuse of day-long isolations in secure juvenile facilities to punish kids for minor misbehavior.

INSUFFICIENT STANDARDS FOR COUNTY JUVENILE FACILITIES HAVE LED TO INAPPROPRIATE USE OF SECLUSIONS

The overuse of seclusions (sometimes called solitary confinements) is a serious problem in some secure juvenile facilities in Texas. While short "time outs" can be effective in certain circumstances, use of day-long seclusions are counterproductive,¹ increasing safety risks for both youth and staff and harming youth rehabilitation. This overuse of seclusions is especially problematic for traumatized youth or youth with mental health concerns.²

KEY FINDINGS

- **Some county juvenile facilities keep youth in day-long seclusions for minor misbehavior. Current state standards do not provide sufficient limits on the use of these seclusions.**
 - » Texas youth experienced 37,071 seclusions in county juvenile facilities in 2011.³ The data collected by the state does not distinguish between short- and long-term seclusions; however, data provided by counties to the Texas Criminal Justice Coalition show that each year, thousands of youth seclusions last 24 hours or longer.⁴
 - » Insufficient state standards have led to the inappropriate use of seclusions for minor misbehavior in many county facilities.
 - In one county, 90 percent of seclusions lasting longer than 24 hours were in response to nonviolent behavior.⁵
 - Lists of "major rule violations" that are grounds for 24-hour seclusion vary significantly among counties: While some counties reserve 24-hour seclusion for serious incidents such as assaults, other counties include low-level misbehavior such as "horseplay" or "disrespectful behavior towards staff."⁶ (In adult Texas prisons, the "disrespectful attitude" discipline violation category was banned by the *Ruiz* court in 1980.⁷)
 - While some counties use several levels of seclusion duration tailored to specific misbehavior, other counties use automatic 24-hour seclusions for every "major rule violation."⁸
- **Most youth in Texas juvenile facilities have trauma or mental health concerns. Seclusions are especially dangerous for these youths.**
 - » The majority of youth referred to the Texas juvenile justice system have previously experienced a significant traumatic event.⁹ A third of youth under the supervision of county probation departments in Texas have a confirmed mental illness, and less than one quarter of those youth receive mental health treatment.¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT C.S.S.B. 1517 BY SENATOR VAN DE PUTTE

- **C.S.S.B. 1517 bans the use of day-long seclusions of kids for minor misbehavior in secure juvenile facilities,** though long-term seclusions are permitted in response to assault, sexual misconduct, escape, contraband, or riot. The bill also requires data collection on the number of long-term seclusions.

References on reverse

References

- ¹ L.M. Finke “The Use of Seclusion is Not an Evidence-Based Practice” (2001).
- ² S. Grassian “Psychiatric Effects of Solitary Confinement” (2006).
- ³ Facility registry data provided to the Texas Criminal Justice Coalition by the Texas Juvenile Justice Department (January 2012).
- ⁴ Open records request from Texas Criminal Justice Coalition to county juvenile probation departments (December 2011).
- ⁵ *Ibid.*
- ⁶ Texas Criminal Justice Coalition (TCJC) “Community Solutions for Youth in Trouble” (October 2012).
- ⁷ 503 F. Supp. 1265 (S.D. Tex. 1980)
- ⁸ Open records request from Texas Criminal Justice Coalition to county juvenile probation departments (December 2011).
- ⁹ Calendar year 2011 data provided to the Texas Criminal Justice Coalition by the Texas Juvenile Justice Department (April 2012).
- ¹⁰ *Ibid.*



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FACT SHEET 2013

H.B. 87

Allow More Texans to Practice their Profession and Reduce Costs to Customers By Minimizing Unnecessary Licensing Burdens

CURRENT LAW CREATES UNNECESSARY BARRIERS TO LICENSING AND EMPLOYMENT

According to the most recent data by the Texas Legislative Council, the state of Texas has regulated over 500 types of occupations, representing jobs held by nearly 3 million individuals and businesses in the state.¹ License regulations have a two-fold purpose: They grant practitioners the right to practice in a profession or trade, and they prohibit an unlicensed practice of that trade or profession. In theory, holding a license requires a certain level of competence, training, and education, and often requires an examination before the license is granted.

An unintended consequence of licensing is that it increases the cost of labor and the price of services that customers must pay.² As such, over-regulating the licensing process and criteria for various professions not only reduces employment opportunities for skilled workers, it means that customers are left paying the tab for the burdensome regulation system. While Texas must identify strategies to prevent unqualified practitioners from harming the public, it must strike a balance – ensuring both that costs are not unnecessarily passed onto customers, and that skilled practitioners are not unnecessarily prohibited from practicing their trade.

KEY FINDINGS

- Recent Texas policies have attempted to regulate sheet metal workers, roofers, laser hair removal specialists, and swimming pool installers, to name just a few. While regulation of these industries may have consumer benefits, it would also limit the numbers of Texans who could practice in those trades, potentially limiting economic growth in Texas.
- Many regulated occupations place unnecessary burdens on historically disadvantaged populations, including low-income Texans who are unable to pay for specialized education and licensing fees, or who may have criminal records, even for low-level misdemeanors or nonviolent offenses.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 87 BY REPRESENTATIVE CALLEGARI

- H.B. 87 will allow individuals to engage in regulated occupations without a license *if* they can show that regulations are substantially burdensome, an important safeguard to protect the consumer. Providing individuals this opportunity will increase the number of employed Texans and reduce the tax burden on all Texans.
- H.B. 87 will increase employment opportunities for low-income, disadvantaged individuals, thus increasing their likelihood to succeed and contribute to safer and healthier communities.

Citations

¹ Texas Legislative Council, *Occupational Regulation in Texas*. 2007.

² Kleiner, M. "Occupational Licensing," *Journal of Economic Perspectives*, Fall 2000, page 192, as cited in the House Committee on Government Reform, Interim Report, 2008.

Texas Must Address the Needs of Domestic Minor Sex Trafficking Victims *Implement an Alternative Treatment Program in Lieu of Punishment*

VICTIMS OF DOMESTIC MINOR SEX TRAFFICKING (DMST) NEED CRITICAL TREATMENT OPTIONS

Every year, approximately 100,000 youth are victimized through prostitution in the U.S.¹ In Texas, practitioners have estimated that number to be as high as 3,000.² In accordance with the federal Trafficking Victims Protection Act (2000), any youth who is recruited, harbored, transported, provided as, or obtained for the purpose of commercial sexual acts should be considered a victim, not a criminal.³ Unfortunately, this designation has not fully addressed the needs of youth who engage in prostitution, resulting in many youth unable to access to treatment and other tools necessary to exit the life of prostitution.

Also sadly, by exploiting a youth's trust, sex traffickers are able to influence their victims to carry fraudulent identification, resulting in their adjudication as a delinquent or their criminalization as an adult.⁴ Additionally, youth involved in prostitution face frequent rates of arrest for drug possession and running away.⁵ These lead to a criminal record and the lifelong barriers associated with it.

Texas must support efforts to identify youth at risk of engaging in prostitution and prioritize the treatment of DMST victims over any system involvement. Youth identified as a victim of sexual exploitation must be treated as a victim – not a criminal.⁶

KEY FINDINGS

- Between 2006 and 2012, an average of 45 youth were referred to Texas' juvenile probation departments for prostitution-related offenses each year.⁷
- Between 2006 and 2011, an average of 55 youth were arrested in Texas for prostitution-related offenses each year.⁸
- Youth who are DMST victims are subject to serious psychological disorders: post-traumatic stress disorder, substance abuse disorders, self-harming disorders, and developmental disorders, among others⁹
- Most youth who are DMST victims suffer from untreated physical and sexual abuse, only exacerbating their exposure to trauma and increasing the degree of treatment needed to address their conditions.¹⁰
- 1 in 3 youth are lured into commercial sexual exploitation within 48 hours of running away.¹¹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 91 BY REPRESENTATIVE THOMPSON

- **H.B. 91** allows courts to divert identified DMST victims from the justice system and place them in treatment.
- **H.B. 91** requires any treatment program used to address DMST victims to focus on early identification of youth at risk of engaging in prostitution, and to encourage prompt placement into the program.
- **H.B. 91** aims to safeguard a victim's future by requiring that the victim's case be dismissed upon successful completion of treatment.

Citations on reverse.

Citations

¹ Ernie Allen, National Center for Missing & Exploited Children, Testimony for the Victims' Rights Caucus/Human Trafficking Caucus, U.S. House of Representatives (July 19, 2010).

² Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," Report to the 82nd Legislature (January 2011).

³ Trafficking Victims Protection Act (TVPA) of 2000 §103(8), (9).

⁴ Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children* (May 2009).

⁵ Ibid.

⁶ Trafficking Victims.

⁷ Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," Report to the 82nd Legislature (January 2011), p. 4, in conjunction with referral data provided to the Texas Criminal Justice Coalition (TCJC) by the Texas Juvenile Justice Department (TJJD).

⁸ Texas Department of Public Safety, Crime Records Services, Texas Crime Report for 2006-2011, http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm.

⁹ Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children* (May 2009).

¹⁰ Kate Brittle, *Child Abuse by Another Name: Why the Child Welfare System is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution*, 36 Hofstra Law Review 1339, 1343 (2008).

¹¹ Trafficking Hope.org, FAQ's: Human Trafficking Stats, <http://www.traffickinghope.org/human-trafficking-stats.php>.



Dear Members of the Committee,

Thank you for allowing me the opportunity to testify in favor of H.B. 104, which will address Texas' failed Driver Responsibility Program. This program has raised costs on counties, the State, and Texas families, while resulting in more unlicensed and uninsured drivers on Texas roads.

ORIGIN OF PROGRAM AND UNSUCCESSFUL OUTCOMES

Texas' Driver Responsibility Program (DRP) was created in 2003 to encourage more responsible driving and help fill a \$10 billion budget shortfall. Half of funding raised through the program goes towards repaying Texas trauma hospitals, which absorb hundreds of millions of dollars in uncompensated healthcare costs every year.

Logistics: The 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. The 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 – assessed on top of court fines and criminal penalties – results in automatic license suspension.¹

Failures: Despite its good intentions, the DRP has failed on every front. In fact, the program'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."²

- **Extremely low collection rate.** Many DRP violators are unable to pay assessed surcharges. As a result, the DRP has **generated less than half of the revenue anticipated**. As of the end of fiscal year 2012, under 40% of the surcharges assessed since the program's inception had been collected,³ despite changes made to the program during the 2009 and 2011 legislative sessions to induce more Texans to pay overdue surcharges.⁴
- **Failure to improve driver responsibility.** While overall traffic fatalities have decreased somewhat in recent years, data indicate that the DRP has **failed to change driver behavior as it relates to a significant traffic-related offense: drunk driving**. Since 2003 when the program was created, the percentage of fatal automobile crashes in Texas that involve alcohol increased from 26% to 34%.⁵ Similarly, the percentage of traffic fatalities involving alcohol increased from 27% to 34% during that time.⁶
- **More unlicensed and uninsured drivers on Texas roads.** Unable to pay the surcharges (on top of criminal penalties and court fines), **nearly 1.3 million drivers now have invalid licenses**.⁷ Since a valid driver's license is a requirement to purchase liability insurance, many of those drivers may no longer be able to insure their vehicles. As such, the program has likely increased the number of uninsured motorists on Texas roads – as well as increasing the cost of accidents with drivers lacking liability insurance.⁸
- **Greater case backlogs and undue county costs.** In the past three years, the DRP resulted in an additional 403,517 convictions for Driving While License Invalid,⁹ **creating a new class of "criminals" and clogging court dockets**.¹⁰ Similarly, individuals with DWI offenses are declining plea deals and choosing to go to trial in hopes of acquittal and avoiding crushing surcharges – leading to skyrocketing DWI caseloads for Texas courts. At the current statewide case disposition rates, it would take 16 years to dispose of the backlog.¹¹

Continued on reverse.

The DRP also increases counties' jail costs. Because most drivers continue to drive despite defaulting on their surcharges, many of those drivers wind up in county jails due to accumulated, unpaid traffic tickets and/or for driving with a suspended license.¹² This puts more pressure on already crowded jails and, again, needlessly fills court dockets with petty cases, in turn increasing the financial burden on counties.

- **Fewer DWI convictions, and fewer opportunities for treatment.** In efforts to avoid exorbitant surcharges, more DWI cases are being prosecuted as reckless driving or other, lesser offenses.¹³ In fact, DWI conviction rates declined 10% between 2003 and 2011,¹⁴ which means that, in 2011 alone, **an additional 7,000 Texas drivers that were arrested and charged with a DWI were never convicted due to decreasing conviction rates. This makes Texans less safe** because many programs proven to change drivers' behavior and reduce DWI recidivism are typically required as a condition for probation, a common penalty for a first-time DWI conviction.¹⁵
- **Economic blow to Texas households and the workforce.** Survey data indicate 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.¹⁶ As such, **DRP surcharges may be posing a substantial and disproportionate financial hardship on low-income drivers, increasing unemployment and the public costs associated with it, and hindering the ability of men and women to meet familial obligations.**
- **Double Jeopardy.** Many Texans consider the DRP a kind of backdoor double jeopardy.¹⁷ Levying an administrative penalty on top of a criminal one for the same offense violates the spirit of the constitutional protection against double jeopardy. So, in addition to being ineffective and unfair, **the DRP represents a significant expansion of state power at the expense of individual liberty.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 104 BY REPRESENTATIVES LARRY GONZALES, LON BURNAM, ALMA ALLEN, AND SYLVESTER TURNER

- **H.B. 104 repeals Texas' Driver Responsibility Program.** It is long overdue that the State stop burdening Texas counties and families with programs that cause more harm than good.

ALTERNATIVE FUNDING SOURCES FOR TEXAS TRAUMA HOSPITALS

Given the DRP's multiple failures, Texas must seek out better ways to fund trauma centers. Below are a few options that lawmakers could consider to generate sufficient revenue to replace most of the funds that hospitals currently receive from the DRP:

- » Raise the cigarette tax by approximately \$0.15 per pack.¹⁸
- » Close a loophole to ensure that all cigarette manufacturers pay fees to the State of Texas for the sale of their product in Texas.
- » Increase the beer tax by approximately \$0.06 per six-pack (to a \$0.164 total rate per six-pack).¹⁹
- » Expand the hours or days during which alcohol may be sold in Texas.
- » Levy an approximate 1% tax on carbonated soft drinks.²⁰
- » Draw down the existing fund balance in the "Designated Trauma Facility & Emergency Medical Services Account," which contains sufficient funds to maintain disbursements to trauma hospitals at their current levels through 2019.

For more comprehensive information on Texas' Driver Responsibility Program, see the Texas Criminal Justice Coalition's report, *The Driver Responsibility Program: A Texas-Sized Failure* (2013).

Citations

- ¹ Texas Transportation Code, Chapter 708. Also see <http://www.txdps.state.tx.us/DriverLicense/drp.htm>.
- 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 Texas Department of Public Safety, email to State Rep. Sylvester Turner. *Data available upon request*.
- ⁴ *Ibid.*
- ⁵ "DUI (Alcohol) Crashes and Injuries by County (2003 - 2011)," prepared by the Texas Department of Transportation. Online at: http://www.txdot.gov/txdot_library/drivers_vehicles/publications/crash_statistics/default.htm.
- ⁶ *Ibid.*
- ⁷ Texas Department of Public Safety (DPS), email to State Rep. Sylvester Turner. *Data available upon request*.
- ⁸ 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 \$18,748 in 2012 dollars. Multiplying that figure by the number of estimated crashes with surcharge-owing drivers in Texas, the DRP could be costing Texans \$300 million per year in uncovered damages from crashes, with uninsured motorists unable to obtain or keep insurance simply because those drivers could not or would not pay punitive drivers' license surcharges.
- ⁹ Texas DPS, email to State Rep. Sylvester Turner. *Data available upon request*.
- ¹⁰ Terrence Stutz, "Texas' steep surcharges for driving violations clog courts, increase DWI dismissals, ex-judge tells panel," *The Dallas Morning News*, April 27, 2010. Online at: <http://www.dallasnews.com/news/politics/texas-legislature/headlines/20100427-Texas-steep-surcharges-for-driving-8326.ece>.
- ¹¹ Judge David Hodges (Judicial Resource Liaison), Texas Center for the Judiciary, oral testimony before the Senate Committee on Criminal Jurisprudence, July 8, 2010. See Senate Committee's Interim Report, pp. 22-23. Online at: <http://www.senate.state.tx.us/75r/senate/commit/c590/c590.InterimReport81.pdf>.
- ¹² Brandi Grissom, "Many Texans lose licenses in driver points program," *El Paso Times*, August 19, 2007.
- ¹³ Judge David Hodges' oral testimony before the Senate Committee on Criminal Jurisprudence.
- ¹⁴ Texas DPS, email to State Rep. Sylvester Turner. *Data available upon request*.
- ¹⁵ See, for example, Victor E. Flango and Fred Cheesman, "When Should Judges Use Alcohol Monitoring as a Sentencing Option in DWI Cases?" *Court Review*, no. 44.
- ¹⁶ 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.
- ¹⁷ John Henry, "Texas drunken driving surcharges meet economic reality," *Fort Worth Star Telegram*, December 6, 2010. Online at: <http://www.mcclatchydc.com/2010/12/06/v-print/104791/texas-drunken-driving-surcharges.html>. See also Brandi Grissom, "Rep. Berman files bill to end DPS surcharges," *Texas Tribune*, November 18, 2010. Online at: <http://www.texastribune.org/texas-local-news/driver-responsibility-program/rep-berman-files-bill-to-end-dps-surcharges/>.
- ¹⁸ Figure estimated based on the fiscal note for HB1810 (2011). Online at: <http://www.legis.state.tx.us/tlodocs/82R/fiscalnotes/pdf/HB01810I.pdf#navpanes=0>. Note that the suggested cigarette tax increase would not replace revenue lost to the General Revenue Fund if the DRP were abolished.
- ¹⁹ "Taxing Sin," Center for Public Policy Priorities, January 14, 2009. Online at: <http://library.cppp.org/files/7/SinTaxes.pdf>. Based on the Comptroller's estimate for 2012 beer consumption in Texas, raising the beer tax by \$3.50 per barrel (or 16.4 cents per six-pack) would generate approximately \$66 million in revenues. *Data available upon request*.
- ²⁰ According *Beverage Digest*, national carbonated soft drink sales totaled \$75.7 billion in 2011. Assuming roughly equal per capita consumption, Texas consumption in that year was approximately \$6.3 billion. So a 1% tax on soda sales would generate approximately \$63 million per year. See "Soda Consumption Down Again, Revenues Up," *United Press International*, April 2, 2012. Online at: http://www.upi.com/Business_News/2012/04/02/Soda-consumption-down-again-revenues-up/UPI-3270133344089/



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TESTIMONY 2013

H.B. 144

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 144, an effective policy that safely reduces the number of youth in lockup while tackling the root causes of crime. If adopted, H.B. 144 will increase public safety, save taxpayer money, strengthen communities, and, most importantly, provide Texas' troubled youth with an avenue to become productive members of society.

BROAD CONSENSUS: TREATMENT IS THE MOST EFFECTIVE RESPONSE FOR CHEMICALLY DEPENDENT YOUTH

Youth referred to the juvenile justice system often face many challenges, including trouble at school and home, mental illness, or substance abuse. Current Texas law allows juvenile probation departments to order youth in their care to be examined to determine whether the youth has a mental illness or intellectual disability, and juvenile probation departments are required to refer children with mental illness or intellectual disability to local providers for further evaluation and services.¹ However, current Texas law does not mandate a similar referral process for youth suffering from chemical dependency.

Research shows that community treatment programs are much more effective than incarceration in reducing recidivism among youth who suffer from chemical dependency.² As the *Dallas Morning News* Editorial Board recently wrote, "Drug courts and treatment programs have proved more effective than straight jail time in rehabilitating addicted offenders, and these approaches deserve more investment by the state."³

KEY FINDINGS

- **Almost all youthful drug offenses are personal use, not drug dealing.** 95% of all juvenile drug arrests in Texas are for possession, not distribution. 77% of all juvenile drug possession arrests are for possession of marijuana.⁴
- **Treatment programs are more effective than incarceration at rehabilitating youth who suffer from chemical dependency.**⁵ A drug intervention program for youth in Dallas successfully treated 70 percent of youth who otherwise would have required placement in a secure facility.
- **Many youth adjudicated for drug offenses do not receive chemical dependency treatment.** In 2011, 11,813 drug cases were adjudicated,⁶ but only approximately 7,300 youth likely received substance abuse treatment through juvenile probation departments that year.⁷ Approximately 9,000 youth participate annually in substance abuse prevention and intervention programs, such as drug education sessions, provided by juvenile probation departments.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 144 BY REPRESENTATIVE RAYMOND

- H.B. 144 amends section 51.20 of the Texas Family Code to allow a juvenile court to order a child under its jurisdiction to be examined by an expert to determine whether the child suffers from chemical dependency. Currently, a juvenile court may only order this to determine mental illness or intellectual disability.

Solution continued on reverse.

SOLUTION (CONTINUED)

- H.B. 144 similarly requires juvenile probation departments to refer any child found to suffer from chemical dependency to an appropriate and legally authorized agency or provider for further evaluation and services. Currently, juvenile probation departments are required to make these referrals only for mental illness or intellectual disability. This policy change will broaden access to treatment among youth in need, increasing their chances of living productive, self-sufficient lives in the community, and improving public safety.

CONCLUSION

Thank you again for allowing me the opportunity to testify on this bill. H.B. 144 not only offers an effective solution for increasing public safety, it offers a solution for protecting the future of Texas' troubled youth, and the Texas Criminal Justice Coalition strongly urges you to support it.

Citations

¹ TEXAS FAMILY CODE, SECTION 51.20.

² Texas Public Policy Foundation (TPPF), "The Right Prescription for Juvenile Drug Offenders," 2009, <http://www.texaspolicy.com/sites/default/files/documents/2009-02-PP01-juveniledrugoffenders-ml.pdf>.

³ *Dallas Morning News*, "Editorial: More sensible drug laws," 2013, <http://www.dallasnews.com/opinion/editorials/20130118-editorial-more-sensible-drug-laws.ece>.

⁴ Texas Department of Public Safety, "The Texas Crime Report for 2011," 2012, <http://www.txdps.state.tx.us/crimereports/11/citCh9.pdf>.

⁵ Texas Criminal Justice Coalition, "Effective Approaches to Drug Crimes in Texas: Strategies to Reduce Crime, Save Money, and Treat Addiction," 2013, <http://www.texascjc.org/effective-approaches-reducing-addiction>; TPPF, "The Right Prescription for Juvenile Drug Offenders"; *Dallas Morning News* "Editorial: More sensible drug laws."

⁶ Texas Juvenile Probation Commission, "The State of Juvenile Probation Activity in Texas," 2011, <http://www.tjpd.texas.gov/publications/reports/RPTSTAT2010.pdf>.

⁷ Texas Juvenile Justice Department, "Program Registry," 2013, <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

⁸ *Ibid.*



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FACT SHEET 2013

H.B. 166

Investigate Wrongful Convictions and Keep the Innocent Free

THE TIMOTHY COLE EXONERATION REVIEW COMMISSION WILL ADDRESS WRONGFUL CONVICTIONS

Far too many Texans have been imprisoned for crimes they did not commit. The conviction of the innocent ruins lives, destroys public trust in our justice system, harms public safety as guilty culprits remain free, and denies victims justice.

Texas should establish an independent commission of experts to investigate the contributors to wrongful convictions and propose meaningful reforms that will prevent these injustices in the future. If Texas fails to implement serious reforms to address the failures in our justice system, many more innocent people will suffer behind bars.

KEY FINDINGS

- **Since 1989, Texas has exonerated 10 death row inmates and 45 inmates serving life sentences.**¹ Many more inmates serving lengthy sentences have also been exonerated. **Together, these innocent Texas inmates have served well over 1,000 years in prison for crimes they did not commit.**² These failures of our justice system ruin the lives of innocent inmates, destroy public trust, keep people with serious and violent offenses on the street, and deny justice to victims.
- **Texas is falling further behind other states in preventing wrongful convictions.** California, Connecticut, Florida, Illinois, Louisiana, New York, North Carolina, Pennsylvania, and Wisconsin have already established innocence commissions to prevent future wrongful convictions.³
- **Timothy Cole's story demonstrates the moral necessity of an exoneration review commission.** Mr. Cole was wrongly convicted of rape while a student at Texas Tech in 1985. He died in prison after serving 13 years. Overwhelming evidence led a Texas district court judge in 2009 to announce "to a 100 percent moral, factual and legal certainty" that Mr. Cole was innocent; Governor Perry granted Mr. Cole the state's first posthumous pardon in 2010.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 166 BY REPRESENTATIVE MCCLENDON

- **H.B. 166 creates the Timothy Cole Exoneration Review Commission to investigate post-conviction exonerations.** This nine-member body will work to identify common errors and defects in our criminal justice procedures that lead to wrongful convictions, as well as identify potential procedures and programs to address those issues. Significantly, the commission will also be able to review habeas petitions to look for patterns of misconduct and ethical violations (the commission will not have the authority grant habeas petitions). The commission will also refer any misconduct it uncovers for corrective action.

Importantly, the commission will produce publicly available annual reports that record the identified weaknesses in our criminal justice process, as well as the commission's proposed solutions. Specifically, the commission will make recommendations to the legislature regarding the prevention of wrongful convictions or executions.

Citations on reverse.

Citations

¹ The National Registry of Exonerations. <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

² Ibid.

³ KXAN News, “New bills focus on wrongful convictions,” December 3, 2012.

⁴ Innocence Project, “Timothy Cole,” http://www.innocenceproject.org/Content/Timothy_Cole.php.



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TESTIMONY 2013

H.B. 167

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill (H.B.) 167, which will save money, increase public safety, and strengthen communities. H.B. 167 encourages the adoption of victim-offender mediation, an effective practice that holds individuals accountable for their actions while facilitating meaningful resolution for victims, the community, and the individual responsible for the crime.

VICTIM-OFFENDER MEDIATION WILL REDUCE CASELOADS AND RELIEVE THE BURDEN ON COUNTY COURT DOCKETS AND JAILS

Victim-offender mediation is an effective restorative justice practice that has produced successful results in many states.¹ These high success rates are realized because participants are required to take responsibility for their conduct and are then given a chance to understand how their actions directly impact others. This, in turn, **reduces the likelihood that they will commit another crime**. Under certain circumstances, victim-offender mediation is already permissive under Code of Criminal Procedure Article 26(g).

H.B. 167 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. Rather than be convicted and jailed, individuals meeting specific criteria could participate in a mediation program requiring them to issue an apology and provide compensation and/or community service to redress their actions. The permissive nature of this program allows victims to choose to be involved in the process of correction and rehabilitation, allowing them to discuss the impact of the crime, specify what is needed to make them whole, and obtain closure on unanswered questions. Such programs also **foster a behavioral change in offending participants** by providing them the opportunity to recognize how their actions impacted others, helping them develop a sense of empathy and take responsibility for their actions.

H.B. 167 requires the prosecuting attorney to obtain the victim's consent to participate, and if no agreement is reached, or if a defendant does not complete the terms of the mediation agreement, his or her case will be returned to normal court proceedings.

KEY FINDINGS

Population Figures

- Between February 2012 and January 2013, Texas' county jails housed an average of over 10,000 people charged or convicted of a misdemeanor, accounting for over 15% of the state's total county jail population. At a cost of \$59 per person per day, this population costs taxpayers nearly \$610,000 per day.²

Benefits of Victim-Offender Mediation Programs

- **A widely studied practice, victim-offender mediation reduces recidivism and is cost-effective;** studies show a strong correlation between mediation programs, conducted by a properly trained mediator, and lowered recidivism and costs.³ One meta-analysis that examined 27 victim-offender mediation programs in North America found that 72% of the programs lowered recidivism.⁴
- 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.⁵

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 167 BY CHAIRWOMAN MCCLENDON

- **H.B. 167 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 of the mediation agreement, based on input from the victim, including compensation and/or community service.** Upon successful completion the prosecuting attorney or defense attorney can motion the court requesting the charges be dismissed. Additionally, one year after a person successfully completes the terms of the mediation agreement, the defendant may obtain an order of non-disclosure regarding the offense for which he or she entered into mediation.

Note: Even with an order of nondisclosure in place, criminal justice agencies can disclose offense-related information to particular entities, including licensing boards; however, such orders better enable individuals to access housing and employment, important to helping them remain law-abiding, productive members of the community.

- **H.B. 167 provides a meaningful response to low-level property crime that reduces recidivism, improves victim satisfaction, and reduces jail overcrowding.** The bill empowers victims by improving their emotional and monetary outcomes. This process will also help an offending participant recognize the harm caused and take responsibility for his or her actions; this will foster a behavioral change in a defendant that can prevent continued criminal actions.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. H.B. 167 will implement an effective tool that will help individuals realize the consequences of their actions, reduce the likelihood that they will commit another offense, and bring resolve to both the community and the victims of crime. The Texas Criminal Justice Coalition strongly urges you to support it.

Citations

¹ Restorative justice methods have garnered a great deal of attention after the New York Times published an article on a high profile case in which this type of victim-offender mediation was employed. See Paul Tullis, "Can Forgiveness Play a Role in Criminal Justice," New York Times, 4 January 2013, available at http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html?pagewanted=all&_r=0.

² Brandon Wood, Assistant Director of the Texas Commission on Jail Standards (TCJS), e-mail messages to Travis Leete, Texas Criminal Justice Coalition (TCJC), 4, 12, 13, and 16 April 2012; Brandon Wood, Assistant Director of TCJS, telephone conversation with Travis Leete, TCJC, 12 April 2012; Texas Commission on Jail Standards, "Texas County Jail Population," 1 January 2013, available at <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed an average of 6,645 pretrial misdemeanants and 3,662 convicted misdemeanants. The average local population in county jails since February of 2012 amounts to 56,403 people, the average contracted population is nearly 8,309 people. Taken together this amounts to a total population of 64,712.

³ Marc Levin, "Restorative Justice In Texas: *Past Present & Future*," Texas Public Policy Foundation, 2005, p. 13.

⁴ Latimer, Dowden & Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 2000.

⁵ 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.



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TESTIMONY 2013

H.B. 191

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 191, which will exempt a parent who has been incarcerated for at least 90 days from accumulating child support debt. This policy will strengthen families, encourage recently released individuals to pursue legitimate employment, and contribute to public safety and a stronger Texas.

INCARCERATED PARENTS ARE UNABLE TO PAY CHILD SUPPORT

The U.S. Department of Health and Human Services estimates that approximately 250,000 Texas children have an incarcerated parent.¹ The future welfare of these children largely depends on the ability of their parents to pay child support when they are released from prison. Currently, however, the state of Texas does not automatically modify child support orders while parents are incarcerated.² This means that debt piles up, placing enormous and immediate burdens on non-custodial parents upon their release. Officials at the Texas Attorney General's Office estimate that the average debt owed by an incarcerated non-custodial parent at the time of release is \$36,000.³

Parents who are released from prison with child support debt must pay that debt or risk various penalties, including fines, being found in contempt of court, or re-incarceration. However, previously incarcerated individuals generally face hurdles finding employment due to low education levels, long gaps in work history, and the undeniable stigma of incarceration. As a result, many may turn to crime or to the underground economy to find ways to pay their child support,⁴ risking arrest and incarceration, and making it even less likely that the parent will be able to support his or her family.

Another consequence of this accrued debt is the disruption to families. Parents with crushing child support debt are less likely to become involved in their children's lives.⁵ Children will not only miss out on the financial support they so desperately need; they will become deprived of a nurturing maternal or paternal relationship.

KEY FINDINGS

- Penalties for non-payment of child support fees may include garnished wages, withholding of tax refunds, liens against property, forfeiture of driver's license, and incarceration.⁶
- Large debt in the form of child support, and the tension it creates within families already struggling with the incarceration of a parent, make it less likely that a parent will provide either monetary or material support for a child.⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 191 BY REPRESENTATIVE DUTTON

- **H.B. 191 will exempt a parent who has been incarcerated for at least 90 days from accumulating child support debt.** This will allow an individual who is leaving prison to reenter society without the fear of immediate penalization, and it will encourage that parent to pursue legal employment opportunities. This will contribute to lower recidivism and help create stronger families and safer communities.
- **H.B. 191 mandates that an incarcerated parent who has the means to pay child support must continue to pay it,** ensuring that children will continue to be financially supported by parents capable of doing so.

Citations on reverse.

Citations

¹ Project to Avoid Increasing Delinquencies: Office of Child Support Enforcement, “Realistic Child Support Orders for Incarcerated Parents,” June 2012, Administration for Children & Families, U.S. Department of Health and Human Service, http://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf.

² TEX..FAMILY. CODE, 53.021 TITLE 5, SUBTITLE D, CHAPTER 231, SUBCHAPTER A.

³ Information provided by Oscar Esquivel, NCP Program Specialist for the Texas Office of the Attorney General.

⁴ Kirsten D. Levingston and Vicki Turetsky, (2007), “Debtors’ Prison: Prisoner’s Accumulation of Debt as a Barrier to Reentry,” *Journal of Poverty Law and Policy*, Volume 41, (3-4), <http://www.clasp.org/admin/site/publications/files/0394.pdf>.

⁵ Project to Avoid Increasing Delinquencies, “Realistic Child Support.”

⁶ “Pay your child support to avoid penalties.” Greg Abbot, Texas Attorney General, <https://www.oag.state.tx.us/agency/weeklyag/2006/0406csd.pdf>.

⁷ Project to Avoid Increasing Delinquencies, “Realistic Child Support.”



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FACT SHEET 2013

H.B. 191

Support Texas Children by Modifying Support Orders of Incarcerated Parents

***Enable Parents who are Incarcerated to Reenter Society
With the Hope of Providing for their Children***

INCARCERATED PARENTS ARE UNABLE TO PAY CHILD SUPPORT

The U.S. Department of Health and Human Services estimates that approximately 250,000 Texas children have an incarcerated parent.¹ The future welfare of these children largely depends on the ability of their parents to pay child support when they are released from prison. Currently, however, the state of Texas does not automatically modify child support orders while parents are incarcerated.² This means that debt piles up, placing enormous and immediate burdens on non-custodial parents upon their release. Officials at the Texas Attorney General's Office estimate that the average debt owed by an incarcerated non-custodial parent at the time of release is \$36,000.³

Parents who are released from prison with child-support debt must pay that debt or risk various penalties, including fines, being found in contempt of court, or re-incarceration. However, previously incarcerated individuals generally face hurdles finding employment due to low education levels, long gaps in work history, and the undeniable stigma of incarceration. As a result, many may turn to crime or to the underground economy to find ways to pay their child support,⁴ risking arrest and incarceration, and making it even less likely the parent will be able to support his or her family.

Another consequence of this accrued debt is the disruption to families. Parents with crushing child support debt are less likely to become involved in their children's lives.⁵ Children will not only miss out on the financial support they so desperately need; they will become deprived of a nurturing maternal or paternal relationship.

KEY FINDINGS

- Penalties for non-payment of child support fees may include garnished wages, withholding of tax refunds, liens against property, forfeiture of driver's license, and incarceration.⁶
- Large debt in the form of child support, and the tension it creates within families already struggling with the incarceration of a parent, make it less likely that a parent will provide either monetary or material support for a child.⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 191 BY REPRESENTATIVE DUTTON

- H.B. 191 will exempt a parent who has been incarcerated for at least 90 days from accumulating child support debt. This will allow an individual who is leaving prison to reenter society without the fear of immediate penalization, and it will encourage that parent to pursue legal employment opportunities. This will contribute to lower recidivism and help create stronger families and safer communities.
- H.B. 191 mandates that an incarcerated parent who has the means to pay child support must continue to pay it, ensuring that children will continue to be financially supported by parents capable of doing so.

Citations on reverse.

Citations

¹ Project to Avoid Increasing Delinquencies: Office of Child Support Enforcement, “Realistic Child Support Orders for Incarcerated Parents,” June 2012, Administration for Children & Families, U.S. Department of Health and Human Service, http://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf.

² TEX..FAMILY. CODE, 53.021 TITLE 5, SUBTITLE D, CHAPTER 231, SUBCHAPTER A.

³ Information provided by Oscar Esquivel, NCP Program Specialist for the Texas Office of the Attorney General.

⁴ Kirsten D. Levingston and Vicki Turetsky, (2007), “Debtors’ Prison: Prisoner’s Accumulation of Debt as a Barrier to Reentry,” *Journal of Poverty Law and Policy*, Volume 41, (3-4), <http://www.clasp.org/admin/site/publications/files/0394.pdf>.

⁵ Project to Avoid Increasing, “Realistic Child Support.”

⁶ “Pay your child support to avoid penalties.” Greg Abbot, Texas Attorney General, <https://www.oag.state.tx.us/agency/weeklyag/2006/0406csd.pdf>.

⁷ Project to Avoid Increasing, “Realistic Child Support.”



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TESTIMONY 2013

H.B. 212

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill (H.B.) 212, an effective policy that will improve efficiency in our courts and reduce unnecessary pretrial incarceration. H.B. 212 improves the judicial process by ensuring that certain issues that may render a trial unnecessary are addressed during the pretrial process. This will avoid unnecessary court costs and can ultimately reduce court dockets.

MANDATING PRETRIAL HEARINGS AT EITHER PARTIES' REQUEST WILL DECREASE TRIAL COSTS AND REDUCE THE NEED TO KEEP INDIVIDUALS IN DETENTION WHILE AWAITING TRIAL

Pretrial hearings offer an opportunity to rule on the admissibility of evidence, as well as other important issues that can determine whether a case goes to trial. This is critical because, in many cases, a pretrial hearing will avoid the need for trial, thereby saving counties and taxpayers unnecessary costs.

Current law permits judges to schedule pretrial hearings when and if they see fit. The governing statute only provides that a judge "may" hold a hearing. As a result, some hearings that could eliminate the need for a full trial are never scheduled, forcing the parties to go to court even when the only issue is addressable in a pretrial setting. Bringing the State, the trial judge, the defendant, and a jury into the courtroom to litigate issues related to pretrial matters is economically inefficient.

H.B. 212 improves the judicial process and saves the state money by mandating a judge to set a pretrial hearing if either party requests it. This improves efficiency by forcing courts to address certain issues in a pretrial setting prior to trial—before embarking on a costly trial and before hailing all parties, a judge, and a jury into court.

KEY FINDINGS

- Between February 2012 and January 2013, Texas' county jails housed an average of over 10,000 people charged or convicted of a misdemeanor, accounting for over 15% of the state's total county jail population. At a cost of \$59 per person per day, this population costs taxpayers nearly \$610,000 per day.¹
- As of January 1, 2013, pretrial detainees made up approximately 60% of Texas' county jail population.² H.B. 212 will help reduce the time and money spent keeping such individuals in pretrial detention by increasing efficiency in the pretrial process, and forcing courts to address evidentiary issues early in the process.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 212 BY VICE CHAIRMAN ALONZO

- **H.B. 212 will ensure that only reliable evidence is admissible in a trial court.** H.B. 212 amends Article 28.01, Code of Criminal Procedure by mandating a court to set a pretrial hearing in any criminal case if the state or defendant requests the hearing no later than 60 days prior to the trial. It also requires the hearing to be held no later than the 30th day before the trial commences.
- **H.B. 212 will enhance judicial economy by requiring the Judge to conduct a pretrial hearing upon request by the State or the defense.** If the primary dispute is the legality of evidence, or any other dispositive issue, it is more cost effective and economically sustainable for the state to address the issue before bringing all parties, judges, and a jury into court for a full trial.

Citations on reverse.

Citations

¹ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards (TCJS), e-mail messages to Travis Leete, Texas Criminal Justice Coalition (TCJC), 4, 12, 13, and 16 April 2012; Brandon Wood, Assistant Director of TCJS, telephone conversation with Travis Leete, TCJC, 12 April 2012; Texas Commission on Jail Standards, "Texas County Jail Population," 1 January 2013, available at <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed an average of 6,645 pretrial misdemeanants and 3,662 convicted misdemeanants. The average local population in county jails since February of 2012 amounts to 56,403 people; the average contracted population is nearly 8,309 people. Taken together, this amounts to a total population of 64,712.

² Texas Commission on Jail Standards, "Texas County Jail Population," 1 January 2013, available at <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed 36,414 pretrial detainees and a total population of 61,196 individuals.



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Allow Access to Essential Needs and Tools for Personal Responsibility For Individuals who have Successfully Completed a Term of Deferred Adjudication

CURRENT LAW CREATES HARMFUL BARRIERS TO HOUSING, EMPLOYMENT, AND LICENSING

A criminal record can severely limit an individual's access to housing, employment, and other benefits, thus increasing the likelihood of re-offending. Barriers to these necessities are especially troubling when an individual has successfully completed a term of deferred adjudication, which allows the sentencing judge to set aside the conviction after the person has fulfilled all obligations of community supervision.¹ Especially in these situations – when the courts have decided that individuals should be provided a chance to rehabilitate, rather than be saddled with a life-long criminal record – any barriers to successful reintegration should be removed.

Between Sept. 1, 2010, and Dec. 2012, Texas courts placed 290,971 people on deferred adjudication.² Under current law, these individuals – and thousands before them – may face obstacles to housing, employment, and occupational licensing that reduce their likelihood of living successfully in our communities.

KEY FINDINGS

- **Deferred adjudication can be imposed for almost any offense, including minor misdemeanor offenses like gambling or state jail felony offenses like marijuana possession.**³ Such offenses should not prohibit future access to a home or job.
- **Criminal records pose barriers to basic living essentials.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.⁴
- **Criminal records pose barriers to employment.** Former felons cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others), even if they have successfully completed a sentence of deferred adjudication and the judge dismisses the conviction.⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 321 BY REPRESENTATIVE DUTTON

- H.B. 321 will remove barriers to housing, employment, and licensing that are unnecessarily and unfairly placed on those who successfully complete their court-ordered community supervision.
- By opening housing opportunities, H.B. 321 will decrease the incidents of homelessness experienced by those with felony deferred adjudications, and it will increase the chances that families negatively affected by crime will reunite, creating stronger and safer communities.
- By increasing employment opportunities, H.B. 321 lessens the tax burden on Texans, and it allows people with deferred adjudications to maintain their lives as working citizens.

Citations on reverse.

Citations

¹ TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(C).

² Office of Court Administration, *2011 Annual Report*, District Courts Activity Detail, <http://www.courts.state.tx.us/pubs/AR2011/toc.htm>.

³ TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC.3.

⁴ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety* (March 2006), <http://www.urban.org/publications/411061.html>.

⁵ TEX. OCC. CODE, 53.021 (c)(3).



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FACT SHEET 2013

H.B. 361

Allow Spouses and Dependents of Wrongfully Incarcerated Individuals To Purchase Health Insurance Offered to TDCJ Employees

WRONGFUL CONVICTIONS CAUSE MATERIAL, EMOTIONAL, AND PHYSICAL PROBLEMS FOR SPOUSES AND DEPENDENTS

Texas leads the nation in exonerations of the wrongfully convicted,¹ and it has been taking steps to compensate exonerees who have suffered because of the state's mistake. In 1985, the Texas Legislature enacted S.B. 797, which created Chapter 103 of the Civil Practice and Remedies Code, governing compensation for wrongful imprisonment. Since then, provisions of Chapter 103 have been amended to ease certain restrictions for those seeking to receive compensation and to grant additional privileges, **such as health insurance benefits.**²

However, the **families** of the person wrongfully convicted also suffer, and those problems often linger after innocence has been established and the exoneree released. Of the 147 Texas exonerees, 139 have been men,³ many of whom were their family's primary wage earners. The loss of income can place their spouses and dependents, many already living in poverty, into a position where they are forced to choose between paying for basic living expenses or paying expensive insurance premiums. Furthermore, the stress caused by having a loved one falsely imprisoned may itself lead to medical problems in spouses and dependents, including depression, hypertension, heart disease, and post-traumatic stress – all of which require medical treatment.

Texas should allow the dependents and spouses of wrongfully convicted Texans to receive the group health coverage provided to employees of the Texas Department of Criminal Justice (TDCJ), at the same rate as those employees, while still requiring them to pay full premium costs. This will acknowledge the devastating impact of wrongful incarceration on families and provide some help to make them whole.

KEY FINDINGS

- Uninsured children are 20 to 30 percent more likely to lack immunizations, prescription medications, asthma care, and basic dental care. Uninsured children with conditions requiring ongoing medical attention, such as asthma or diabetes, are six to eight times more likely to have unmet health care needs.⁴ This can result in long-term medical problems, at great cost to taxpayers.
- Uninsured pregnant women use fewer prenatal services, and uninsured children and adults are less likely than their uninsured counterparts to report having a regular source of care, to see medical providers, or to receive all recommended treatment.⁵ Again, this causes significant – while preventable – costs to taxpayers.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 361 BY REPRESENTATIVES ANCHIA, SMITHEE, MCCLENDON, AND SHEETS

- **H.B. 361 will help dependents and spouses of wrongfully imprisoned individuals access stable health insurance** for the same length of time their loved one was wrongfully in prison and, if applicable, on parole. While family members will still be required to pay full insurance premiums, being allowed onto an existing plan will offer much-needed relief to those who may have had problems acquiring insurance elsewhere, and who may have lingering medical conditions that arose from having a loved one falsely imprisoned. This is a viable step that Texas can take to compensate spouses and dependents for the state's mistake.

Citations on reverse.

Citations

¹ The Justice Project, *Texas Wrongful Convictions*; <http://www.thejusticeproject.org/texas/texas-wrongful-convictions/>.

² See, e.g., [SB 536](#) (2001), [HB 1736](#) and [SB 2014](#) (2009), [SB 1686](#) and [HB 2230](#) (2011, and granting health insurance benefits to exonerees).

³ Northwestern Law, Center on Wrongful Convictions;

<http://www.law.northwestern.edu/wrongfulconvictions/exonerations>.

⁴ “America’s Uninsured Crisis: Consequences for Health and Health Care.” Testimony before the Subcommittee on Health, Committee on House Energy and Commerce, U.S. House of Representatives; Statement of Jack C. Ebeler, Institute of Medicine, The National Academies, on March 10, 2009;

http://www7.nationalacademies.org/ocga/testimony/Americas_Uninsured_Crisis.asp.

⁵ Bovbjerg, R. & Hadley, J., *Why Health Insurance is Important*, The Urban Institute, Health Policy Briefs, 2007;

http://www.urban.org/UploadedPDF/411569_importance_of_insurance.pdf.

Improve the Educational Progress of Youth Placed in Disciplinary Alternative Education Programs

TEXAS MUST ADDRESS THE UNINTENDED CONSEQUENCES OF DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

The Texas Legislature created Disciplinary Alternative Education Programs (DAEPs) to provide students with an appropriate educational setting while they are suspended from school.¹ Unfortunately, due to insufficient oversight, some Texas DAEPs offer students poor programming and inadequate resources.²

In fact, in a recent review of four major school districts' DAEPs, the state's Legislative Budget Board identified the following areas of concern: (1) failure to staff DAEPs with certified teachers, **(2) failure to provide a learning environment equivalent to mainstream campuses**, (3) inadequate training for DAEP instructors and staff, **(4) lack of instructional alignment between DAEPs and mainstream campuses**, (5) insufficient communication between DAEPs and mainstream campuses, and (6) an absence of transitional programming following a student's return to a mainstream campus after leaving a DAEP.³ These inadequacies hinder youths' ability to correct their misbehavior, potentially leading to further involvement in the juvenile justice system⁴ and, with it, life-altering consequences (e.g., reduced opportunities for employment, military service, or college enrollment).

Texas must ensure that all youth placed within DAEP settings receive educational programming consistent with their progress and with the goal of promoting a child to the next grade level.

KEY FINDINGS

- DAEPs do not currently meet the standards under which they were created. Students sent to a DAEP face poor programming, inadequate staff, and a multitude of barriers to successful reintegration to their main campus.⁵
- Students sent to a DAEP are at higher risk for expulsion⁶ and dropping out,⁷ resulting in fewer youth graduating from Texas' public schools and greater risk of justice system involvement.
- Providing direct instruction, aligning the curriculum with the regular classroom curriculum, and providing youth with regular classroom experiences were among the top five challenges identified by administrators and instructors in regards to educating youth in an alternative setting.⁸
- In 2012, over 90,000 youth were placed in DAEPs across Texas.⁹
- According to a 2012 Texas Appleseed report, Texas is spending significant costs on school disciplinary practices. On average, the districts examined in the report spent \$140 per student placed within a DAEP.¹⁰ Given this high cost, it is incumbent upon Texas school administrators to provide an appropriate level of educational programming to DAEP participants.

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 482 BY REPRESENTATIVE ALVARADO

- **Under H.B. 482, youth placed in a DAEP for one semester or more must be afforded an education equivalent in content and rigor as provided in a regular classroom setting.** Current law requires any youth placed within a DAEP to undergo the minimum amount of instructional time per day: seven hours.¹¹ How this day is filled, however, is unspecified in statute. H.B. 482 delineates these requirements for any youth who is assigned to a DAEP for one semester or more, better ensuring educational progress in core subjects (e.g., English language arts, math, science, and history).
- **H.B. 482 aims to address the negative correlation between current discipline practices and the rate of dropouts.** Youth who face lengthy placements within a DAEP are at risk of falling behind and ultimately dropping out. H.B. 482 would require all DAEPs to establish a thorough curriculum for each grade level that will provide students with the opportunity to achieve promotion to the next grade level or to graduate on the same schedule as their classmates.

Citations

¹ Texas Education Code §37.008.

² Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (October 2007).

³ Legislative Budget Board, *Amarillo Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Dallas Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Fort Bend Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Ingleside Independent School District – A Review of the Student Behavior Management System* (2011).

⁴ The Council of State Governments Justice Center and the Public Policy Research Institute, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Student's Success and Juvenile Justice Involvement* (July 2011).

⁵ Legislative Budget Board, *A Review of Student Behavior Management Systems* (2011).

⁶ The Council of State Governments, et al., *Breaking School Rules*.

⁷ Texas Appleseed, *Texas' School-to-Prison Pipeline*. "DAEP's have five times the dropout rate of mainstream schools," p. 3.

⁸ Legislative Budget Board, *Student Behavior Management Review Summary* (2011).

⁹ Data provided to Texas Criminal Justice Coalition by the Texas Education Agency, February 6, 2013.

¹⁰ Texas Appleseed, *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* (October 2012).

¹¹ Texas Education Code § 25.082 (a).



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TESTIMONY 2013

H.B. 528

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 528, an effective policy that will close a gap in Texas law and ensure that juvenile criminal records for minor offenses are not disclosed to the public.

A GAP IN STATUTE CURRENTLY LEAVES SOME JUVENILE RECORDS OPEN TO THE PUBLIC

Most juvenile offenses in Texas are handled by the juvenile justice system, with the stated goal, as set out in the Texas Family Code, "to remove, where appropriate, the taint of criminality from children committing certain unlawful acts."¹ Accordingly, Texas law requires that the records maintained by the juvenile justice system remain confidential and not disclosed to the public.² However, working against this purpose of the juvenile justice system, children charged with fine-only misdemeanors – such as failure to attend school,³ disruption of class,⁴ or disorderly conduct⁵ – are adjudicated in adult criminal courts rather than juvenile courts. Under current law, these juvenile records maintained by adult criminal courts are open to the public until the child is convicted and has satisfied the judgment⁶ – leaving the records of youth charged but not convicted (for example, youth who have received deferred prosecution) open to the public.

KEY FINDINGS

- **Many juvenile fine-only misdemeanor records are open to the public, exposing the personal information of thousands of juveniles.** In Harris County, for example, information such as a juvenile's address, phone number, height, and weight was available through a search engine on the Justice of the Peace website.⁷
- **Low-level youthful offenses seldom lead to serious crimes.** A tracking study by Texas' Legislative Budget Board revealed that only 2.3 percent of youth who entered deferred prosecution in 2009 – including youth receiving deferred prosecution for offenses more serious than fine-only misdemeanors – were later incarcerated in the following three years.⁸
- **Open juvenile records are a serious problem in Texas.** In addition to the fine-only misdemeanor records addressed by this bill, most records in the juvenile justice system are also fully open to employers, landlords, and schools because they are not on "restricted access." The Department of Public Safety currently maintains records on 604,818 people who were arrested when they were younger than 17 years old. Only 40 percent of those records are on restricted access.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 528 BY REPRESENTATIVE TURNER

H.B. 528 makes juvenile fine-only misdemeanor records confidential, even when the youth is not ultimately convicted. Current law leaves these juvenile records open to the public until the child is convicted and has satisfied the judgment⁹ – so the records of youth charged but not convicted (for example, youth who have received deferred prosecution) are open to the public. This bill closes that inadvertent gap in Texas law.

References on reverse

References

- ¹ Texas Family Code, Chapter 51.
- ² Texas Family Code, Chapter 58.
- ³ Texas Education Code, section 25.094
- ⁴ Texas Education Code, section 37.124
- ⁵ Texas Penal Code, section 42.01
- ⁶ Texas Family Code, section 58.00711
- ⁷ Houston Chronicle “Loophole seems to make some Texas juvenile records public” (March 1, 2012).
- ⁸ Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2013).
- ⁹ Texas Family Code, section 58.00711



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TESTIMONY 2013

H.B. 529

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 529, which will protect certified youth from the dangers of adult jail. By requiring that counties detain certified youth in juvenile detention centers pending trial, rather than house them in adult county jails, the state will ensure that youth continue to have access to age-appropriate rehabilitative services and programs that are unavailable in adult jails.

CONDITIONS OF CONFINEMENT FOR CERTIFIED YOUTH

Under current law, Texas juvenile courts are allowed to transfer youth to adult criminal courts in certain instances. However, current law does not allow those juvenile courts to order that the youth continue to be detained in a juvenile detention facility pending trial. The result is that **many Texas youth are detained in adult county jails, environments that pose severe danger to youths' rehabilitation and mental and physical health.** The lack of standards regulating how youth are supervised within adult jails and the inadequate educational programming for youth in such facilities pose particular rehabilitative challenges and dangers.

Texas should require courts to continue detention of certified youth in juvenile facilities pending trial, which will improve access to programming and services that decrease recidivism, and minimize the chances of abuse against youth in age-inappropriate adult county jails.

KEY FINDINGS

- While in adult jail, **youth are more likely than their peers in juvenile facilities to be violently assaulted.**¹
- Due to large adult criminal court caseloads, **youth transferred to adult courts wait much longer for trial than their peers in the juvenile system.** Long waits in adult jails place youth at great 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 acts as a "crime college," adding to their overall knowledge of crime, while also heightening their risk of recidivism.³ Indeed, **youth who have been detained in adult jails are more likely to re-offend** than youth with similar offense histories who have been detained in a juvenile facility.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 529 BY REPRESENTATIVE TURNER

- **H.B. 529 requires 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 does limit this new authority by allowing the judge in the adult criminal court to override the juvenile court and order the juvenile held in adult jail.
- **H.B. 529 reduces the time that a juvenile must wait in an adult jail, when necessary, thus lowering the risk of psychiatric and physical harm.** The bill adds the prosecution of juveniles under the age of 17 to the list of case types that must receive priority in trial scheduling in adult criminal courts.

Citations on reverse.

Citations

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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FACT SHEET 2013
H.B. 529

Require Courts to Continue Juvenile Detention Following a Youth's Transfer to an Adult Criminal Court

Confining youth in adult facilities pending trial is inappropriate and dangerous

CONDITIONS OF CONFINEMENT FOR CERTIFIED YOUTH

Under current law, Texas juvenile courts are allowed to transfer youth to adult criminal courts in certain instances. However, current law does not allow those juvenile courts to order that the youth continue to be detained in a juvenile detention facility pending trial. The result is that many Texas youth are detained in adult county jails, environments that pose severe danger to youths' rehabilitation and mental and physical health. The lack of standards regulating how youth are supervised within adult jails and the inadequate educational programming for youth in such facilities pose particular rehabilitative challenges and dangers.

Texas should require courts to continue detention of certified youth in juvenile facilities pending trial, which will improve access to programming and services that decrease recidivism, and minimize the chances of abuse against youth in age-inappropriate 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
- Due to large adult criminal court caseloads, youth transferred to adult courts wait much longer for trial than their peers in the juvenile system. Long waits in adult jails place youth at great 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 acts as a "crime college," adding to their overall knowledge of crime, while also heightening their risk of recidivism.³ Indeed, Texas youth who have been detained in adult jails are more likely to re-offend than youth with similar offense histories who have been detained in a juvenile facility.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 529 BY REPRESENTATIVE TURNER

- **H.B. 529 requires 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 does limit this new authority by allowing the judge in the adult criminal court to override the juvenile court and order the juvenile held in adult jail.
- **H.B. 529 reduces the time that a juvenile must wait in an adult jail, when necessary, thus lowering the risk of psychiatric and physical harm.** The bill adds the prosecution of juveniles under the age of 17 to the list of case types that must receive priority in trial scheduling in adult criminal courts.

Citations on reverse.

Citations

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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FACT SHEET 2013

H.B. 587

Increase Government Efficiency and Enhance Childrens' Health By Amending Restrictions for SNAP Eligibility

CURRENT RESTRICTIONS AGAINST ELIGIBILITY FOR SNAP BENEFITS WASTE TAX DOLLARS AND HARM CHILDREN

The Supplemental Nutrition Assistance Program (SNAP) – at one time called the Food Stamps Program – is a federal program, administered by each state, which provides money to qualifying recipients so they can buy food. Texas is one of a handful of states that denies these benefits to otherwise-qualified recipients, for one of two reasons: either the head of household does not comply with certain requirements, so Texas disqualifies the entire household; or an individual has a drug conviction.

No state actually pays SNAP benefits. Those are federally funded. Administrative costs are divided equally between states and the federal government. **Under current state policy, Texas taxpayers are paying for unnecessary investigations** by the Health and Human Services Commission (HHSC) into the eligibility of recipients:

- A head of household who is not working must participate weekly in 30 hours of employment and training programs. If he or she does not do so, the entire household is denied benefits. According to HHSC, **the administrative costs involved in assigning, tracking, and clearing sanctions may be reduced** if households continued to receive benefits regardless of the head of household's status.
- An individual with a drug conviction is currently denied all SNAP benefits. This ban was imposed by the 1996 Personal Responsibility and Work Opportunity Act, a federal bill that extended to states the right to comply with its dictates or amend them. Texas currently complies with the ban, although most other states have either modified or eliminated it. The HHSC estimates that **eliminating the necessity of checking each SNAP applicant for a drug conviction would save enough time to reduce current staffing levels by seven full-time-equivalent positions** statewide. This would increase the agency's efficiency by allowing it to better use those employees' time in other areas.

There is another, more human cost to Texas' current SNAP policy: It **leaves many children without the food they need to perform well in school**. Children have no control as to whether their parents or guardians comply with state-imposed requirements, and allowing otherwise-eligible households to continue to receive SNAP benefits would ensure Texas children lead healthier lives.

KEY FINDINGS

- Amending current restrictions relating to SNAP eligibility would reduce administrative costs currently absorbed by the Health and Human Services Commission, as well as increase the flow of federal funds to low-income Texans, resulting in "marginal increases to both state and local sales tax revenue."¹
- Allowing otherwise-qualified households to receive benefits, regardless of the compliance of the head of household with certain requirements, would reduce food insecurity, which is "associated with detrimental physical, psychological, behavioral, social, and educational functioning in children and adults."²

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 587 BY REPRESENTATIVE BURNAM

- H.B. 587 will amend eligibility requirements for Texans seeking SNAP benefits, resulting in **increased federal funding and an easing of bureaucratic duties** currently borne by the Health and Human Services Commission. This will allow the agency to move staffers to more crucial positions, resulting in a more efficient and streamlined agency.
- H.B. 587 will allow children who are currently denied critical benefits due to noncompliance by their head of household to continue to receive much-needed assistance. This will **enhance their food security**, improving their health and educational performance.

Citations

¹ Legislative Budget Board, "Texas State Government Effectiveness and Efficiency Report," January 2013, p. 166. Available at <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.

² Courtney C. Nalty, Joseph R. Sharkey & Wesley R. Dean, "Children's reporting of food insecurity in predominately food insecure households in Texas border colonias," *Nutrition Journal*, 2013, 12: 15. Available at <http://www.nutritionj.com/content/12/1/15/abstract>.



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TESTIMONY 2013

H.B. 634

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 634, an effective policy that will improve the identification of veterans who are incarcerated in the Texas Department of Criminal Justice, thus improving their access to treatment programs and assisting them as they apply for benefits. This bill will lessen the financial burden on local and state agencies as these veterans receive federal benefits, which includes medical care provided by the Veteran's Administration; college funding; and many other benefits that their service in the military entitles them to receive.

INCARCERATED VETERANS SUFFER FROM SERVICE-RELATED DISEASES AND MAY NOT REALIZE THE BENEFITS THEY OR THEIR FAMILIES ARE ENTITLED TO RECEIVE

Incarcerated veterans suffer disproportionately from Post-Traumatic Stress Disorder (PTSD), a health condition triggered by exposure to a psychologically terrifying event. The general population exhibits PTSD symptoms at a rate of 3.6 percent,¹ but it is estimated that 30 percent of veterans have PTSD,² which can contribute to depression, substance abuse, and suicidal thoughts and actions. PTSD can be a driving force behind criminal behavior, and it is often worsened by incarceration.³

Texas must make efforts to address the specialized needs of veterans who have been caught up in the criminal justice system, especially so that these men and women are equipped to lead productive, law-abiding lives in the community upon release from confinement. However, a recent report by the Texas Coordinating Council for Veterans Services (TCCVS) reported that the Texas Department of Criminal Justice (TDCJ) does not have "sufficient support from the U.S. Department of Veterans Affairs (VA) to determine veteran status of incarcerated veterans."⁴ Without the ability to confirm veteran status, TDCJ is unable to effectively offer PTSD-tailored mental health services to the individuals who would benefit from it. Neither is TDCJ able to help veterans obtain VA-provided benefits for themselves or their families.

TDCJ must rely on incarcerated individuals to self-identify as veterans. At one time, TDCJ provided that information to the VA for verification, but the federal system has ended that program. However, the VA exchanges this type of information with Texas' Health and Human Services Commission (HHSC) through the Public Assistance Reporting Information System (PARIS). TDCJ should coordinate with PARIS to verify the veteran status of each incoming individual. It should then use that information to do the following: assist incarcerated veterans in their efforts to apply for military benefits; compile meaningful reentry plans that will help veterans as they transition back into society; and coordinate with the VA in its efforts to provide critical mental health counseling and assistance to the men and women who have served our country.

KEY FINDINGS

- There are an estimated 11,000 incarcerated veterans in Texas prisons.⁵
- Veterans are more likely to have a history of alcohol dependence (30.6%) as opposed to non-veterans (23.6%), and they are more likely to report suffering from some degree of mental illness (19.3%) than non-veterans (15.8%).⁶

Findings continued on reverse.

KEY FINDINGS (CONTINUED)

- Veterans are at especially high risks for suicide; the VA estimates that 18 veterans commit suicide every day,⁷ and the risk is greatest upon release from confinement.⁸
- The controlling offense for almost three quarters (70%) of incarcerated veterans is nonviolent, and 82% of incarcerated veterans have either honorable discharges (65%) or general (under honorable conditions) discharges (17%), making almost all of them eligible for military benefits.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 634 BY REPRESENTATIVE FARIAS

- **H.B. 634 will assist TDCJ in identifying incarcerated veterans, thereby allowing those men and women to be offered the mental health care many need for service-related or service-acquired problems.** This will increase in-prison safety, and it will ease the transition of these individuals to society, further reducing crime and strengthening families.
- **H.B. 634 will better enable TDCJ to assist incarcerated veterans as they attempt to acquire military benefits, which will shift some of the financial burden of providing services to these men and women from the State of Texas to the federal government.**

CONCLUSION

The veterans incarcerated in Texas deserve the opportunity to remake their lives, to access the benefits that their service earned for them, and to become full-fledged, honorable members of their community. I ask that you vote for H.B. 634, which will go a long way toward fulfilling that goal. Thank you.

Citations

¹ Kessler RC, Chiu WT, Demler O, Walters EE. *Prevalence, severity, and comorbidity of twelve-month DSM-IV disorders in the National Comorbidity Survey Replication (NCS-R)*. Archives of General Psychiatry, 2005 Jun;62(6):617-27.

² Anderson, M., et al., *Invisible Wounds of War. Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*. Santa Monica, CA: Rand Corporation, 2008, <http://www.rand.org/pubs/monographs/MG720.html>.

³ Brett Stetka, MD. *Caring for Convicts: Mental Healthcare in Current and Past Prisoners – An Expert Interview with Elizabeth Ford, MD*, Medscape Today, January 21, 2011, http://www.medscape.com/viewarticle/735988_4.

⁴ Texas Coordinating Council for Veterans Services, *First Report*, October 2012, 54, http://www.tvc.state.tx.us/tvc/documents/TCCVS_Report_2012.pdf.

⁵ Brian McGiverin, attorney for Justice for Veterans Campaign, the Texas Civil Rights Project, phone conversation with Jorge Renaud, Policy Analyst, Texas Criminal Justice Coalition, January 31, 2013.

⁶ Marc Levin, *Veteran's Courts*, Texas Public Policy Foundation: Policy Brief, November 2009, <http://www.texaspolicy.com/sites/default/files/documents/2009-11-PB22-VeteransCourts-ml.pdf>.

⁷ Department of Veterans Affairs, *VA Suicide Prevention Program: Facts about Veteran Suicide*, Office of Patient Care Services Office of Mental Health Services: Fact Sheet, April 2010, 1.

⁸ Drug Policy Alliance, *Healing a Broken System: Veterans and the War on Drugs*, 4, November 2012, http://www.drugpolicy.org/sites/default/files/DPA_Healing%20a%20Broken%20System_Veterans%20and%20the%20War%20on%20Drugs_November%202012_Final_0.pdf.

⁹ Department of Veterans Affairs, *VA services for Veterans involved in the justice system: The Veterans Justice Outreach Initiative*, Office of Patient Care Services – Office of Mental Health Services, November 2009, 1, http://www.oregon.gov/ODVA/docs/PDFs/Criminal_Justice_Portal/VJOFactSheet.pdf.



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FACT SHEET 2013

H.B. 637

Keep Kids In School and Out of the School-to-Prison Pipeline
*Choose to Preserve the Childhood of Texas' Youth through Improvements
In Disciplinary Alternative Education Program Placements*

TEXAS MUST ADDRESS THE UNINTENDED CONSEQUENCES OF DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

The Texas Legislature created Disciplinary Alternative Education Programs (DAEPs) to provide students with an appropriate educational setting while they are suspended from school.¹ Unfortunately, due to insufficient oversight, some Texas DAEPs offer students poor programming and inadequate resources.²

In fact, in a recent review of four major school districts' DAEPs, the state's Legislative Budget Board identified the following areas of concern: (1) failure to staff DAEPs with certified teachers, (2) failure to provide a learning environment equivalent to mainstream campuses, (3) inadequate training for DAEP instructors and staff, (4) lack of instructional alignment between DAEPs and mainstream campuses, (5) insufficient communication between DAEPs and mainstream campuses, and (6) an absence of transitional programming following a student's return to a mainstream campus after leaving a DAEP.³ These inadequacies hinder youths' ability to correct their misbehavior, potentially leading to further involvement in the juvenile justice system⁴ and, with it, life-altering consequences (e.g., reduced opportunities for employment, military service, or college enrollment).

Texas must re-evaluate the current use of DAEPs, especially in regards to Texas' youngest population: children 10 years of age and under. Placing a child in a disciplinary setting at such a young age not only exacerbates the potential for future system involvement, but also disregards the socially accepted age at which Texas communities have agreed to hold youth responsible for their actions: 10 years old.

KEY FINDINGS

- DAEPs do not currently meet the standards under which they were created. Students sent to a DAEP face poor programming, inadequate staff, and a multitude of barriers to successful reintegration to their main campus.⁵
- Students sent to a DAEP are at higher risk for expulsion⁶ and dropping out,⁷ ultimately increasing the likelihood of their involvement in the juvenile justice system.
- In 2012, over 90,000 youth were placed in DAEPs across the state. More than 2,300 of those placements were of youth under 10 years old, and 364 were under 7 years old.⁸
- According to a 2012 Texas Appleseed report, Texas is spending significant costs on school disciplinary practices. On average, the districts examined in the report spent \$140 per student placed within a DAEP.⁹ Given the number of six-year-olds placed in DAEPs in 2012, the state spent approximately \$51,000.

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 637 BY REPRESENTATIVE GIDDINGS

- **H.B. 637 aims to prevent the stigmatization and other consequences associated with school disciplinary practices by raising the age at which youth can be placed in a DAEP from six to seven years old.** The eventual consequences associated with placing a child in a DAEP – including school expulsion, dropping out, the potential for future system involvement, and barriers associated with a criminal conviction – are only exacerbated for children introduced into DAEP settings at such a young age. Furthermore, the more immediate stigmatization associated with early placement in a disciplinary alternative program can result in ongoing bias and unfair treatment.
- **H.B. 637 aims to address the unnecessary costs of placing kids in DAEPs at such a young age.** Rather than spending high costs on the placement of youth in substandard programs, Texas should invest in more appropriate and cost-effective methods, including positive behavioral interventions and supports, social emotional learning, or restorative justice.

Citations

¹ Texas Education Code §37.008.

² Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (October 2007).

³ Legislative Budget Board, *Amarillo Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Dallas Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Fort Bend Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Ingleside Independent School District – A Review of the Student Behavior Management System* (2011).

⁴ The Council of State Governments Justice Center and the Public Policy Research Institute, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Student's Success and Juvenile Justice Involvement* (July 2011).

⁵ Legislative Budget Board, *A Review of Student Behavior Management Systems* (2011).

⁶ The Council of State Governments, et al., *Breaking School Rules*.

⁷ Texas Appleseed, *Texas' School-to-Prison Pipeline*. "DAEP's have five times the dropout rate of mainstream schools," p. 3.

⁸ Texas Criminal Justice Coalition's analysis of data provided by the Texas Education Agency on February 6, 2013.

⁹ Texas Appleseed, *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* (October 2012).



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FACT SHEET 2013

H.B. 797

Remove Barriers To Personal Responsibility ***Require the Windham School District to Provide Crucial Information to Incarcerated Vocational Students Preparing for Their Future***

INDIVIDUALS TAKING IN-PRISON VOCATIONAL COURSES SHOULD HAVE INFORMATION ABOUT THE LICENSING PROCESS

Individuals with criminal felony convictions are restricted from license eligibility in certain fields and in particular circumstances,¹ despite many having participated in trade-specific vocational training during incarceration. In fact, the Texas Education Code mandates that entities like the Windham School District (WSD), which provide in-prison vocational courses, prioritize teaching trades that require licensure.²

Incarcerated individuals who do not realize that they may face stringent and perhaps insurmountable post-release obstacles to obtaining a licensing may sign up to learn a trade that they will never be able to practice. This is costly, both to the individuals who pay course fees and to WSD.

During 2011-2012, the average monthly number of individuals waiting to enroll in a Career and Technical Education (CTE) course totaled more than 26,000.³ These individuals met the specified enrollment criteria and had been identified by education counselors as a good fit for a given course. But WSD is only wasting money by teaching trades to individuals who likely cannot practice them after leaving prison.

To best use its limited resources, WSD should seek to offer trade courses to individuals who have a realistic opportunity to practice those trades after release. By providing vocational course applicants with information about their likelihood of post-release licensure, WSD will help to identify stronger candidates for vocational courses, reduce waiting lists, and improve its operational efficiency.

KEY FINDINGS

- WSD provides vocational training in more than 30 trades. Approximately 3,200 individuals participate in CTE courses each day. During the 2011-2012 school year, a total of 10,074 individuals participated in such courses.⁴
- Licensing authorities can deny licenses to individuals for having committed crimes “directly related” to the duties and responsibilities of the licensed occupation, or for crimes committed less than five years before application for the license.
- Evidence has shown that many licensing agencies view nearly all crimes as “directly related” to the occupations they issue licenses for.⁵ 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.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 797 BY REPRESENTATIVE THOMPSON

- **H.B. 797 requires WSD to provide potential vocational trade students with information about post-release licensing restrictions, rates of licensing among past WSD students, and the licensing and appeals process.** This will allow incarcerated individuals to make better decisions about enrolling in vocational courses, thus enabling the best possible opportunities to find meaningful employment and contribute as a taxpayer in the community after release from prison. It will also help WSD identify students who will most benefit from limited vocational course slots, while reducing long waitlists.

Citations on reverse.

Citations

¹ Texas Code provisions and agency standards contain innumerable licensing restrictions that take many forms and depend on trade, license sought, conviction, and other criteria.

² TEX. EDUC. CODE § 19.004 (c)(1-a), <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.19.htm#19.005>.

³ Legislative Budget Board, *Windham School District Evaluation*, January 2012, 2, http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Windham/Windham%20School%20District%20Evaluation%20Reports2013.pdf.

⁴ *Ibid.*, pp. 1, 2.

⁵ Marc Levin, *Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas*, Texas Public Policy Foundation, Center for Effective Justice.

⁶ Texas Department of Licensing and Regulation, *Licensing Restriction Guidelines for Criminal Convictions*, April 7, 2008, <http://www.license.state.tx.us/crimconvict.htm>.



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FACT SHEET 2013

H.B. 798

Enhance Employment Opportunities for Individuals With Class C Misdemeanor Convictions for Improved Public Safety Outcomes

REDUCING LICENSING BARRIERS RESULTS IN INCREASED EMPLOYMENT AND HEALTHIER COMMUNITIES

Individuals with felony or certain misdemeanor convictions are restricted from license eligibility in certain fields and in particular circumstances.¹ While some restrictions are in the interest of public and individual safety, **other restrictions are overbroad**. Consequently, they degrade the American ethos of the value of work and stigmatize previously incarcerated individuals, decreasing the positive affirmation that comes from practicing a trade for which they have been trained and through which they could contribute to the welfare of their family and community.

Texas Occupation Code, Chapter 53, allows licensing agencies to deny an individual a license for having previously been convicted of a Class C misdemeanor. Yet such low-level offenses result only in the issuance of a ticket and the imposition of a fine; they almost never result in jail time. **The denial of a license in these circumstances removes the possibility of practicing an occupation for which an individual may have specialized education and long-term experience.**

KEY FINDINGS

- Previously incarcerated individuals who are employed are at least three times less likely to re-offend than those who are unemployed,² reaffirming the importance of work during the critical reentry transition.
- Occupational regulation in Texas occurs in two ways: 1) by requiring an individual to obtain a license to perform a job, or 2) by requiring businesses in certain fields to maintain a license.
- Licensing authorities can only deny licenses to individuals for having committed crimes “directly related” to the duties and responsibilities of the licensed occupation, or for crimes committed less than five years before application for the license.³
- Evidence has shown that many licensing agencies view nearly all crimes as “directly related” to the occupations for which they issue licenses.⁴ 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.⁵ This practice leaves individuals with requisite training and experience scrambling to find work.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 798 BY REPRESENTATIVE THOMPSON

- **H.B. 798 will expand employment opportunities for individuals who have been convicted of Class C misdemeanors.** This will allow these individuals to support their families, contribute to their communities, and make positive strides toward rehabilitation.
- **H.B. 798 will reduce the likelihood of reoffending by individuals who are unable to work due to licensing barriers.** Lack of employment is one of the biggest reasons that individuals turn to crime. This bill vastly improves the chance that an individual with a conviction for a Class C misdemeanor will be able to find and keep work for which he or she has been trained.

Citations on reverse.

Citations

¹House Committee on Government Reform, Texas House of Representatives, *Interim Report 2008*, <http://www.house.state.tx.us/media/pdf/committees/reports/80interim/GovernmentReform80th.pdf>.

²Goodwill Industries of Central Texas, *Annual Report 2007*, <http://www.austingoodwill.org/media/literature/Annual%20Report%202007%20Web.pdf>.

³Section 53.021(a), Texas Occupations Code.

⁴Marc Levin, "Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas," *Texas Public Policy Foundation, Center for Effective Justice*, 2007.

⁵Texas Department of Licensing and Regulation, *Licensing Restriction Guidelines for Criminal Convictions*, April 7, 2008.



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FACT SHEET 2013

H.B. 799

Update Vocational Programs for Incarcerated Individuals To Increase Employment Opportunities After Release

VOCATIONAL TRAINING IN TDCJ SHOULD REFLECT THE TEXAS JOB MARKET

The Windham School District (WSD), which is the entity that provides vocational training for individuals incarcerated in the Texas Department of Criminal Justice (TDCJ), offered 30 vocational trades for individuals during fiscal year 2011.¹ But Texas licensing agencies demand that individuals receive a license in only three of those trades to be eligible to practice: electrical; piping/plumbing; and heating, ventilation, air conditioning, and refrigeration. In other words, inmates are being trained – and certified – in trades that will not require licensure upon release.

However, the Texas Education Code mandates that WSD “prioritize the programs that result in certification or licensure, considering the impact that a previous felony conviction has on the ability to secure certification, licensure, and employment.”² While certification is surely a positive outcome for incarcerated individuals, the individuals who prefer to pursue an occupation that demands licensing – with its greater prestige, occupational security, and increased income – are limited by the selection currently offered by WSD.

WSD should assess Texas job markets in order to update, augment, and expand the vocational training programs offered to incarcerated individuals, and, by doing so, ensure that those individuals are released with the skills to compete in occupations that will allow them to provide for their families and be contributing members of their communities.

KEY FINDINGS

- Efforts to increase public safety have made employment and/or licensure in certain occupations more difficult for incarcerated or previously incarcerated individuals to obtain. A broader range of educational opportunities will increase the chances that individuals leaving prison will be able to find employment.
- Research has shown that “one of the most important conditions that leads to less offending is a strong tie to meaningful employment.”³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 799 BY REPRESENTATIVE THOMPSON

- **By requiring WSD to continually assess the Texas job market and provide vocational programs that will build relevant skill sets, H.B. 799 will ensure that more returning individuals are matched with available trades in Texas communities.** This bill will reduce the likelihood that such individuals will become unemployed and return to crime, and, in doing so, it will create safer communities.
- **H.B. 799 will provide incarcerated individuals with a greater range of educational opportunities, resulting in a larger qualified workforce.** This will allow Texas employers a much broader set of options, ensuring that they have the most skilled, qualified employees possible, thus leading to a more vibrant and healthy Texas economy.

Citations on reverse.

Citations

¹ Legislative Budget Board, *Windham School District Evaluation*, January 2012, 30.

² TEX..ED. CODE, SECTION 19.004(c)

³ Roger Przyblski, *What Works: Effective Recidivism Reduction and Risk Focused Prevention programs*, RKC Group, February 2008, 38.



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TESTIMONY 2013

H.B. 877

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 877, which will increase efficiency, accountability, transparency, and safety throughout Texas' massive corrections system by creating an independent committee and staff to investigate and report on critical functions and responsibilities.

INDEPENDENT OVERSIGHT OF TEXAS PRISONS WILL INCREASE PUBLIC TRUST, ACCOUNTABILITY, EFFICIENCY, AND TRANSPARENCY

As the largest prison system in the country, the Texas Department of Criminal Justice (TDCJ) is charged with the responsibility of effectively and efficiently managing an immense operation. Decades of research and experience have demonstrated that all public institutions, from schools to hospitals, benefit from independent, external oversight.¹

Strong oversight has several critical functions. It **protects the rights and well-being of incarcerated individuals**, who have limited ways to defend their interests,² and who frequently suffer from mental illness or addiction. It ensures that correctional facility staff have **safe and sanitary working environments**. And it is a proven mechanism for **identifying and addressing issues** before they lead to expensive litigation, media scandals, or other human and fiscal costs.³

TDCJ asserts in its own philosophy statement that it "will be open, ethical and accountable" to the public. Independent oversight is consistent with this intention and ensures that it may become fully realized. Given that taxpayers spend more than \$3 billion per year on corrections, they deserve the accountability and transparency that come with real oversight. If Texas' county jails are subject to external supervision, why should the state get a free pass?

KEY FINDINGS

- TDCJ is massive: It employs as many paid employees as Google and spends over \$3 billion annually.⁴
- TDCJ has a variety of **internal** accountability mechanisms, including the offender grievance process, the Ombudsman office (which handles inquiries from the public), and the Office of the Inspector General (which conducts investigations and policy monitoring). However, these mechanisms cannot and do not serve the same role or offer the same advantages as **external** oversight, which can successfully introduce accountability and transparency.⁵
- Other Texas agencies have external oversight. The Office of the Independent Ombudsman for the Texas Juvenile Justice Department was established in 2007 to investigate, evaluate, and secure the rights of children committed to the Department.⁶ **By contrast, the TDCJ Ombudsman is not independent, and its role fails to protect the rights of adults incarcerated in Texas prisons.**
- In 1973, the *Ruiz vs. Estelle* case determined that Texas prison conditions violated inmates' constitutional rights to protection from cruel and unusual punishment. The case resulted in court oversight of TDCJ facilities that lasted until 2002, exposing many problems with Texas prison operations that had traditionally remained hidden, including: prison overcrowding, excessive use of force, substandard health care, and serious safety, sanitation, and hygiene concerns.⁷

Continued on reverse.

- Since 2002, reports of inhumane conditions have continued to emerge, including a report detailing the appalling conditions for individuals with mental health problems incarcerated in Texas prisons,⁸ accounts of constitutionally inadequate health care,⁹ and a report showing that Texas prisons have the highest reported number of alleged incidents of sexual assault (four times the national average).¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 877 BY REPRESENTATIVE ALLEN

- **H.B. 877 will develop an independent body, called the Texas Criminal Justice Department Oversight Committee, tasked with comprehensive oversight of all TDCJ correctional facilities.** Through regular inspections of at least 25 facilities per biennium, this Committee will help determine long-range facility and system needs; identify critical issues and corresponding solutions; and assist in the evaluation and assessment of the efficacy of existing programs. This will result in a more efficient use of tax dollars, and will decrease waste.
- **H.B. 877 will require the Committee to compile a comprehensive report** for submission to the Texas Board of Criminal Justice every six months, and for submission to the Legislature every biennium, outlining the results of facility inspections, including an evaluation of the inmate grievance procedure at each inspected facility, and providing any recommendations concerning policy changes or other strategies that could improve the conditions or operations of Texas' correctional facilities.

This reporting requirement will enable TDCJ to better pinpoint issues before they become future problems, helping agency administrators find more cost-efficient ways to fulfill the agency's mission, provide rehabilitative services to incarcerated individuals, and protect the public.

- **H.B. 877 will ensure that the Committee receives full and open input from incarcerated individuals and facility staff.** It does not allow TDCJ to restrict a person from speaking to the Committee, nor does it allow punitive action against any person who does choose to speak with the Committee.
- **H.B. 877 will increase the frequency and opportunity for public input** on important criminal justices to TDCJ, allowing the agency to further its stated mission, resulting in improved public safety.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. In the past, policy-makers and officials have only intervened in Texas prisons when a crisis demanded it, or when ordered by the courts. This hands-off attitude has cost Texas taxpayers billions of dollars, resulted in the unnecessary deaths of incarcerated individuals and correctional officers, and caused the public to view TDCJ with great mistrust. This bill is necessary and timely, and the Texas Criminal Justice Coalition strongly urges you to support it.

Citations

¹ John Gibbons & Nicholas Katzenback, "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons," *Federal Sentencing Reporter*, 24, no. 1 (2011): 36-41.

² David Fathi, "The Challenge of Prison Oversight." *American Criminal Law Review* 47 (2010): 1453-62.

³ Michele Deitch, "The Need for Independent Prison Oversight in a Post-PLRA World." *Federal Sentencing Reporter*, 24, no. 4 (2012): 236-44.

⁴ Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire*. Metropolitan Books, Henry Hold and Company, 2010.

⁵ American Bar Association (2008). "Resolution 104B: Prison Oversight and Monitoring of Juvenile and Adult Facilities, <http://www.abanet.org/crimjust/policy/am08104b.pdf>.

⁶ Independent Ombudsman for the Texas Juvenile Justice Department, <http://www.tjjd.texas.gov/ombudsman/index.aspx>.

⁷ Robert Perkinson, "Ruiz v. Estelle," *Encyclopedia of Prisons & Correctional Facilities*, (2005): 864-67.

⁸ Mike Ward, "Expert Portrays Texas Prisons as Horrific Home for Mentally Ill," *Austin American-Statesman*, June 23, 2002.

⁹ Ben Raimer, Owen Murray & John Pulvino, "Health Care in the Texas Prison System: A Looming Fiscal Crisis," May, 2010.

¹⁰ James Austin, Tony Fabelo, Angela Gunter, & Ken McGinnis, "Sexual Violence in the Texas Prison System." National Criminal Justice Reference Service, March 2006.



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FACT SHEET 2013

H.B. 968

Require TDCJ to Provide Detailed Reporting of Grievance Resolutions To Help Facilities Effectively Resolve Issues

ENHANCED REPORTING WILL ALLOW TDCJ TO PINPOINT SPECIFIC PROBLEMS AND INCREASE EFFICIENCY

The primary mechanism provided to individuals incarcerated in state prisons to resolve problems is the offender grievance system, which is under the supervision of the Texas Department of Criminal Justice's (TDCJ) executive director. Grievances are examined first on a unit level as Step One grievances. If a satisfactory resolution is not provided, the individuals may appeal to the Central Grievance Office via Step Two grievances. In 2011, incarcerated individuals in TDCJ filed 174,525 Step One grievances and 43,323 Step Two grievances.¹

By far the greatest issue grieved in Step One grievances is a problem with facility operations, not medical, religious, disciplinary, or complaints against staff. In 2011, individuals filed 54,213 Step One complaints about some aspect of a unit facility, representing 31 percent of all Step One grievances. This issue also resonated in Step Two grievances, as 23 percent of all Step Two appeals represented complaints about facility operations.

The sheer number of complaints filed about the operations of TDCJ facilities point to a **need for a stronger mechanism to assist TDCJ administrators as they deal with outdated facilities, overburdened infrastructures, and insufficient staffing**. This bill will strengthen the strategies currently being used by TDCJ in its efforts to address patterns identified through grievances, and it will provide a valuable tool to administrators and legislative committees as they look for ways to more effectively manage and appropriate funds to help TDCJ fulfill its mission.

In addition, this bill will ultimately improve the grievance system, increasing fairness and responsiveness to complaints by incarcerated individuals, resulting in a prison system that is safer, more secure, and more conducive to rehabilitation.

KEY FINDINGS

- In TDCJ's appropriations request for 2013, submitted in 2010, the agency requested more than \$200 million for Institutional Operations and Maintenance.² Creating a system whereby administrators could pinpoint specific problems around this issue would greatly assist them in better managing TDCJ units, resulting in a more efficient use of funds and potential cost savings.
- From 2010 to 2011, Step One grievances increased by .56 percent.³ Annual increases place larger burdens on unit grievance officers, who must investigate, file, and respond to each grievance.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 968 BY REPRESENTATIVE TURNER

- **H.B. 968 will help TDCJ administrators continue to pinpoint ongoing issues and better manage the Department, including through improved allocation of funds to each unit.** More information about grievances will help TDCJ administrators expand their current understanding of the problems that frequently occur on a given unit or within a region. Under this bill, TDCJ will **create an annual report** that summarizes the grievances filed on and appealed from each unit, explain why appealed grievances were overturned, and provide an overview at the unit level and across units about major contributors to grievances and tools needed to address them.

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION [CONTINUED]

- **H.B. 968 will increase the safety and security of TDCJ units.** A recent survey of incarcerated individuals by TCJC pointed to tremendous dissatisfaction with the current grievance system, leading to units that are unsafe and not conducive to rehabilitation.⁴ A system that uses the grievances of incarcerated individuals to pinpoint problems will help the system become more fair and responsive. Furthermore, the bill's implementation of a zero-tolerance policy for retaliation against inmates for filing a grievance will ideally make individuals more comfortable grieving complaints about problems on the unit that can be addressed to improve individuals' safety and well being.

Citations

¹ Texas Department of Criminal Justice, *Offender Grievance Program, Fiscal Year 2011 Report*, 3.

² Texas Department of Criminal Justice, Legislative Appropriations Request for Fiscal Years 2012 and 2013, August 30, 2010, 26.

³ TDCJ, *Offender Grievance*, 1.

⁴ Texas Criminal Justice Coalition, *Perceptions of Texas Criminal Justice and Corrections Agencies: Incarcerated Individuals and Their Loved Ones*, 2012, 7-8.



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FACT SHEET 2013

H.B. 977

Examine the Use of the Junior Reserve Officers' Training Corps (JROTC) as an Alternative to Placement in a Disciplinary Alternative Education Program

THE UNINTENDED CONSEQUENCES OF DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

The Texas Legislature created Disciplinary Alternative Education Programs (DAEPs) to provide students with an appropriate educational setting while they are suspended from school.¹ Unfortunately, due to insufficient oversight, some Texas DAEPs offer students poor programming and inadequate resources.²

In fact, in a recent review of four major school districts, the state's Legislative Budget Board identified the following areas of concern: (1) failure to staff DAEPs with certified teachers, (2) failure to provide a learning environment equivalent to mainstream campuses, (3) inadequate training for DAEP instructors and staff, (4) lack of instructional alignment between DAEPs and mainstream campuses, (5) insufficient communication between DAEPs and mainstream campuses, and (6) an absence of transitional programming following a student's return to a mainstream campus after leaving a DAEP.³ These inadequacies hinder youths' ability to correct their misbehavior, potentially leading to further involvement in the juvenile justice system⁴ and, with it, life-altering consequences (e.g., reduced opportunity for employment, military service, or college enrollment).

Texas must re-evaluate the current use of DAEPs and support the use of more effective alternatives to address youth misbehavior, including Junior Reserve Officers' Training Corps (JROTC), which emphasizes both student engagement and interpersonal/communal relationships through modification of individual behaviors.

KEY FINDINGS

- DAEPs do not currently meet the standards under which they were created. Students sent to a DAEP are met with poor programming, inadequate staff, and a multitude of barriers to successful reintegration to their main campuses.⁵
- Students sent to a DAEP are at higher risk for expulsion⁶ and dropping out,⁷ ultimately increasing the likelihood of their involvement in the juvenile justice system.
- Youth placed in alternative programs that emphasize student engagement and interpersonal relationship development (over strict discipline) have demonstrated more positive development and behavior.⁸
- Youth who choose to participate in the JROTC have improved in areas of leadership, goal setting, civic engagement, respect for authority, and positive youth development.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 977 BY REPRESENTATIVE RAYMOND

- **H.B. 977 creates a JROTC pilot program in certain large Texas high school municipalities as an alternative to placing students in DAEPs.** Examining the use of JROTC through this pilot program model can provide a strong estimate of potential cost savings for Texas communities with large populations of at-risk youth. Indeed, as JROTC programs are largely funded by the US Department of Armed Forces, school districts that choose to offer JROTC programs could save millions in costs otherwise associated with funding DAEPs.¹⁰

Solution continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION (CONTINUED)

- **Under H.B. 977, only certain youth are permitted to participate in the pilot program, and those who do participate will continue to attend regularly assigned classes**, with modifications as necessary for program participation. **Participation will extend for up to one year**, unless prolonged placement will be in the best interests of the student.
- **H.B. 977 also requires comprehensive data collection about students placed in JROTC pilot programs**, including their race, gender, and age; conduct precipitating placement in the program; number of days assigned to the program; educational performance before, during, and after placement in the program; and any dropout information. With data collection and analysis, local and state decision-makers will be better informed about the pilot programs' efficacy, for future resource allocation.

Citations

¹ Texas Education Code §37.008.

² Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (October 2007).

³ Legislative Budget Board, *Amarillo Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Dallas Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Fort Bend Independent School District – A Review of the Student Behavior Management System* (2011); Legislative Budget Board, *Ingleside Independent School District – A Review of the Student Behavior Management System* (2011).

⁴ The Council of State Governments Justice Center and the Public Policy Research Institute, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Student's Success and Juvenile Justice Involvement* (July 2011).

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⁷ Texas Appleseed, *Texas' School-to-Prison Pipeline* (2007). "DAEP's have five times the dropout rate of mainstream schools," p. 3.

⁸ Janay B. Sander, Jill D. Sharkey PhD and NCSP, Roger Olivarri, Diane A. Tanigawa & Tory Mauseth (2010): *A Qualitative Study of Juvenile Offenders, Student Engagement, and Interpersonal Relationships: Implications for Research Directions and Preventionist Approaches*, *Journal of Educational and Psychological Consultation*, 20:4, pp. 288-315.

⁹ Tyrone Walls, *Junior Reserve Officers' Training Corps: A Comparison with Other Successful Youth Development Programs and an Analysis of Military Recruits who Participate in JROTC*, Naval Post-Graduate School (June 2003).

¹⁰ Texas Appleseed, *Breaking Rules, Breaking Budgets: The Cost of Exclusionary Discipline in 11 Texas School Districts* (October 2012). Dallas I.S.D. alone spends \$9 million to support three DAEPs, which have "markedly lower attendance rates," meaning that the district is at a financial loss once its reimbursement for weighted average daily attendance is taken into consideration.



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TESTIMONY 2013

H.B. 990

Dear Committee Members,

Thank you for the opportunity to present testimony in favor of H.B. 990. Although Texas spends \$2.5 billion per year on incarceration, the state's sentencing laws have not been updated or evaluated since 1993. H.B. 990 will establish a sentencing commission to review, update, streamline, and simplify the Penal Code, for improved fiscal efficiencies and public safety outcomes, and a more balanced state criminal justice system.

A CLOSER LOOK AT TEXAS SENTENCING POLICIES AND PRACTICES

Texas spends approximately \$2.5 billion per fiscal year on incarceration, but the state's sentencing laws have not been evaluated since 1993.¹ In fact, the Legislative Budget Board (LBB) bases cost and population projections on data that is two decades old.²

According to a recent report by the LBB, nearly half of all states, as well as the District of Columbia and the federal government, have sentencing commissions.³ These commissions are tasked with reviewing sentencing policies to ensure the relevancy and uniformity of criminal sentences, align punishments with crimes, and identify strategies to increase diversion and eliminate wasteful spending in strained budgets.⁴

Establishing a Texas sentencing commission will help ensure the integrity of the criminal justice system, promote fairness and equity in the administration of justice, protect public resources, and increase public safety.

KEY RESPONSIBILITIES OF A SUCCESSFUL SENTENCING COMMISSION FOR TEXAS

- Streamline and simplify the Penal Code
- Balance sentencing practices and policies with budget constraints
- Identify strategies to safely reduce incarceration in costly state prisons, and promote evidence-based diversion programs and other effective alternatives to incarceration
- Investigate the factors contributing to recidivism, evidence-based recidivism-reduction initiatives, and cost-effective crime prevention programs⁵
- Conduct an empirical study of the impact of existing sentencing policies and practices on the state criminal justice system, including state prison capacity, local jail capacity, community supervision and parole resources, judicial operations, public defense expenditures, and law enforcement responsibilities⁶
- Prepare a report of findings and recommendations, including evidence-based analysis and data⁷
- Study and evaluate the outcomes of commission recommendations as implemented⁸

KEY FINDINGS

- Texas spends approximately \$2.5 billion per fiscal year on incarceration, but the state's sentencing laws have not been evaluated since 1993.⁹
- Sentencing commissions across the nation have led to cost savings and safe decreases in incarceration levels.¹⁰
- A Texas sentencing commission can streamline the state's overly complicated Penal Code, evaluate sentencing practices, promote safe reductions in prison and county jail populations, and promote the fair administration of justice.

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT H.B. 990 BY REPRESENTATIVE THOMPSON

- **H.B. 990 will adopt the recommendation by Texas' Legislative Budget Board to establish a sentencing commission.** This body, called the Texas Sentencing Policy, Accountability, and Review Council, will analyze state sentencing practices to identify disparities between the severity of offenses and their prescribed penalties, determine appropriate adjustments, and ascertain other strategies for enhancing consistency and reducing disparity in sentencing; the Council will also identify strategies for balancing state and county criminal justice responsibilities and sentencing policies with available corrections resources.

Additionally, **the Council will compile a report of its findings for submission to the Legislature** by 2015. This will help policy-makers have a clear picture of areas in need of reform, along with recommended improvements for implementation during the state's next legislative session.

- **NOTE:** The Legislative Budget Board has recommended that \$1.15 million be appropriated from General Revenue Funds to operate a sentencing commission and implement a statewide sentencing dynamics study.

CONCLUSION

Thank you again for the opportunity to present testimony in favor of H.B. 990. Evaluating the state's sentencing policies will provide Texas with the opportunity to align punishments with crimes, balance sentencing practices with budget constraints, and identify strategies to safely reduce incarceration.

Citations

¹ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations*, January 2013, 271.

² Ibid.

³ Ibid.

⁴ LBB, *Effectiveness and Efficiency Report*, 276.

⁵ Colorado Senate, Bill 09-286.

⁶ Governor Eliot Spitzer, Executive Order No 10: Establishing the New York State Commission on Sentencing Reform, 2007.

⁷ Colorado Senate, Bill 09-286.

⁸ Ibid.

⁹ LBB, *Effectiveness and Efficiency Report*, 271.

¹⁰ Ibid.



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FACT SHEET 2013

H.B. 1188

Remove Barriers to Personal Responsibility

Limit Negligent Hiring Actions Against Employers To Improve Employment Options for Individuals with Criminal Records

PEOPLE WITH CRIMINAL RECORDS NEED GAINFUL EMPLOYMENT TO CONTRIBUTE TO SOCIETY AND KEEP TEXAS COMMUNITIES SAFE

Texas law designates more than 2,500 offenses as felonies,¹ which ultimately results in a huge felon population in Texas. These are people who, upon release from prison or state jail, must find employment or risk turning to illegal activity to survive. However, employers often view job seekers with a criminal history as sources of potential liability in negligent hiring actions. As a result, employers may avoid candidates with a history of incarceration during hiring decisions to avoid potential liability.

In an economy that is righting itself, Texas businesses must have every available applicant in their candidate pool that can help their business thrive. Removing the fear of being sued for simply hiring someone with a felony conviction enables Texas businesses to grow and can keep the Texas economy strong.

Furthermore, for individuals with felony convictions to live responsible, productive, and law-abiding lives, they must have the tools to succeed. Expanding employment options will lower their chances of re-offending and reduce taxpayer spending on costly re-incarceration.

KEY FINDINGS

- Job seekers with a criminal record receive half as many offers as job seekers without a criminal record.²
- Previously incarcerated individuals who are employed are three to five times less likely to re-offend.³
- After five years of a clean record, individuals have a very low chance of re-offending.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS:SUPPORT H.B. 1188 BY REPRESENTATIVE THOMPSON

- ***H.B. 1181 will provide business owners*** – whether employers, general contractors, premises owners, or other third parties – ***with more hiring options by limiting their liability*** on charges of negligently hiring or failing to adequately supervise an employee who has a criminal conviction. This will allow Texas business owners to expand their candidate pool, enhance their work force, and strengthen the Texas economy.

NOTE: Any policy change should not totally eliminate liability. Causes of action should still be permitted for offenses committed by employees in the routine performance of business if the business owner knew or should have known of the conviction **and** the conviction was for a sexually violent offense, or an act that falls under Section 3(g), Article 42.12, Code of Criminal Procedure. Likewise, employer liability protections should not apply in certain suits involving employee fraud or the misuse of funds.

- ***H.B. 1181 will expand employment opportunities for individuals with criminal records***, providing them with more options and assisting them in their efforts to become law-abiding, self-sufficient, contributing members of their communities.

Citations on reverse.

Citations

¹ Texas Board of Pardons and Paroles, *Current Offense Severity Rankings List*, February 2012, http://www.tdcj.state.tx.us/bpp/parole_guidelines/PG%20OFF%20SEV%20RANK%20LIST%20%2802-09-2012%29.pdf.

² Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, 22, [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

³ Goodwill Industries of Central Texas, *Annual Report 2007*, <http://www.austingoodwill.org/media/literature/Annual%20Report%202007%20Web.pdf>.

⁴ Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement*, March 2006, <http://blogs.law.columbia.edu/4cs/files/2008/11/crime-and-delinquency-racine.pdf>.



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TESTIMONY 2013

H.B. 1266

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill (H.B.) 1266, an effective policy that will help criminal justice agencies improve policies and practices related to administrative segregation. Improvements to administrative segregation practices will ensure greater rehabilitative assistance for individuals in seclusion, thus increasing the likelihood that those who are released from administrative segregation and eventually return to our communities will live productive, law-abiding lives. This will save the state money, increase public safety, and strengthen communities.

CURRENT ADMINISTRATIVE SEGREGATION PRACTICES ARE UNSUSTAINABLE AND MUST BE IMPROVED

In 2012, the Texas Department of Criminal Justice (TDCJ) housed 8,238 prisoners—over 5% of its total prison and jail population—in administrative segregation.¹ This is compared to a national average of 1-2% of individuals in correctional administrative segregation.² **While in administrative segregation, inmates typically spend all but one hour per day confined in a small cell with little or no human contact, are denied participation in rehabilitation, education, and religious programming, and are deprived of contact visits with other individuals.** The average length of stay in administrative segregation in Texas is about 3 years.³ Given the general 23 hours a day of segregated confinement, this amounts to 26,864 hours of isolation on average. However, this average represents a broad range of time spent in administrative segregation. The Texas Criminal Justice Coalition (TCJC) has received numerous letters from individuals who are in or have been recently released from administrative segregation. One person who wrote us recently from administrative segregation to express concerns about his mental and physical wellbeing spent the last 18 years confined in administrative segregation.

Given the myriad of mental health and rehabilitative complications that arise from prolonged isolation, it is disconcerting to note that 2,060 individuals in administrative segregation were recently identified with a serious mental health or mental retardation diagnosis. This is an increase from 1,960 in 2010.⁴ Contemporary studies indicate that prolonged isolation in prison segregation, coupled with extensive deprivation of human contact, may “exacerbate mental health disturbances, assaultive and other antisocial behaviors, and chronic and acute health disorders.”⁵

Moreover, segregation leads to discomfort with social interactions and difficulties being around other people, whether in a prison setting or in the community. It should come as no surprise, therefore, that **many individuals released directly to the community reoffend at higher rates.**⁶ 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.⁷ **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.**⁸

Releasing individuals directly from administrative segregation into the community fails to properly equip them with necessary tools to succeed. In addition to deficient socialization skills training and lack of human interaction, inmates in administrative segregation are denied various privileges and opportunities, including contact visits, participation in educational or vocational programs, the opportunity to earn participatory work or educational good time credits, access to important programs, and other freedoms granted the general population. This not only jeopardizes public safety, it further encumbers an individual's likelihood to successfully reintegrate into his or her community.

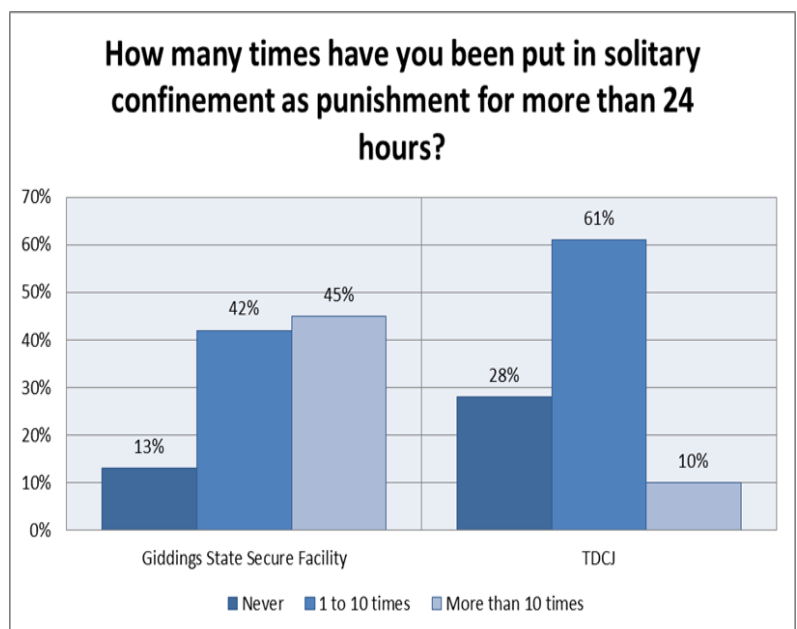
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KEY FINDINGS REGARDING ADULT ADMINISTRATIVE SEGREGATION

- Especially for those in segregation, studies have shown that social isolation has damaging psychological effects,⁹ including “hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior.”¹⁰
- In 2011, TDCJ identified 2,060 individuals in administrative segregation (nearly 25%) who had a mental health or mental retardation diagnosis.¹¹
- **In 2011, Texas released 1,347 individuals directly from administrative segregation to the streets¹² without having provided them any rehabilitative programming, which may endanger public safety in both the short and long term.** Texas released 878 inmates on flat discharge, meaning without supervision or support, directly from administrative segregation. In that same year, TDCJ released 466 individuals directly from administrative segregation to parole.¹³ Inmates on parole have the advantage of being able to participate in a District Reentry Center, which generally offers more robust programming and resources during the transition into the community.
- Of those released in 2007 directly to the community, 33% re-offended and returned to prison within three years.¹⁴ TDCJ’s rehabilitative responsibility requires that TDCJ pay particular attention to inmates who have spent extensive amounts of time in isolation without appropriate programming or treatment to hone positive social skills and address other critical needs.

KEY FINDINGS REGARDING YOUTH ADMINISTRATIVE SEGREGATION

In February 2013, TCJC’s Solution for Youth Justice Project conducted a survey of 670 individuals who had either been certified or transferred from juvenile supervision to the Texas Department of Criminal Justice. Of those 670 surveys sent, 277 responded. The chart at right shows the number of times they have been placed in solitary confinement at a state secure juvenile facility and at a TDCJ facility. These preliminary findings have been compared with a previous survey conducted among youth within the Giddings State Secure Facility, which is under the jurisdiction of the Texas Juvenile Justice Department. As you can see, initial findings indicate that youth incarcerated in TDCJ are more susceptible to isolation than their counterparts served in the juvenile system.



These findings are quite alarming, especially given that the ramifications of isolation can be exponentially worse for youth who are still undergoing mental and physical development. Indeed, the use of isolation not only hinders the developmental process, it perpetuates the harmful exposure of youth to traumatic experiences.¹⁵

Research on the developing brain and the effects of trauma shows the following:

- The brain is reorganizing during adolescence (ages 14 to 25), which is a critical brain growth period.¹⁶
- By age 16, adolescents are similar in cognitive functioning to adults, but they lack the ability to regulate their emotions, leading to a disconnect between what they think and how they feel. It is psychological and social development that continues into adulthood.¹⁷
- Stress and trauma during this time of brain growth cause the development of socially negative behavior due to chemical changes in the brain, signaling the brain to eliminate unused or undesired connections permanently. This leaves the body in a heightened state and manifests as impulsiveness (e.g., theft, aggression) and impaired logical judgment (e.g., rule breaking).¹⁸

A SAFE REDUCTION IN ADMINISTRATIVE SEGREGATION IS ACHIEVABLE

Ohio and Mississippi, during the mid-2000s, effectively reduced their supermax populations by 89% and 85% respectively. Mississippi's segregated population fell from 1,000 to 150 inmates, while Ohio reduced its population from 800 to 90.¹⁹ Mississippi also saw a near 70% drop in prisoner-on-prisoner and prisoner-on-staff violence. Further, use of force by officers in the unit decreased.²⁰ Inspired by the successful reduction of administrative segregation in both Ohio and Mississippi, the Vera Institute launched a Segregation Reduction Project in 2010. In an effort to safely reduce the number of individuals kept in isolation, the Segregation Reduction Project works with states to facilitate policies that: "(a) reassess the violations that qualify a prisoner for segregation and (b) recalibrate the length of stay in segregation, especially for minor incidents."²¹ Importantly, the Vera Institute also promotes improved conditions and program enhancement to support a safe transition from segregation. Vera is currently partnered with the Illinois Department of Corrections, the Washington State Department of Corrections, and the Maryland Department of Public Safety and Correctional Services.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 1266 BY CHAIRMAN GUILLEN

- **H.B. 1266 will provide criminal justice agencies, in cooperation with an independent third party, the opportunity to carefully review policies and practices related to administrative segregation and solitary confinement of youth and adults.** H.B. 1266 would require an independent third party to help conduct this comprehensive evaluation and provide outside expertise on best practices related to isolation and solitary confinement. This third party will submit a report of its findings and recommendations to the legislature by December 31, 2014.
- **A careful examination of the use of administrative segregation will help increase the likelihood that individuals confined in an isolated setting will successfully reintegrate into the community if and when they are released, thus improving public safety and saving taxpayer money otherwise spent on costly re-offending.** Over-reliance on the isolating and restrictive qualities of administrative segregation is dangerous for inmates, staff, and the public. This is especially true given that TDCJ releases a significant number of individuals directly from administrative segregation into our communities. Additionally, because many of these individuals have diagnosed mental health issues, it is critical that TDCJ employs the best practices and minimizes reliance on administrative segregation.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of H.B. 1266. It is an effective policy that will help improve the policies and practices related to administrative segregation as it applies to both adults and juveniles confined in a criminal justice facility. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations on reverse.

Citations

- ¹ Texas Department of Criminal Justice (TDCJ), Fiscal Year 2012 Statistical Report, p. 1, 2013, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf. See total number of individuals on hand in TDCJ in administrative segregation (8,238) as of August 31, 2012, and the total number of individuals on hand in prison and state jail as of that date (148,824).
- ² James Austin and Emmitt Sparkman, "Colorado Department of Corrections Administrative Segregation and Classification Review," National Institute of Corrections, October 2011, http://www.ccjrc.org/pdf/2011_Solitary_Confinement_Report.pdf.
- ³ Data gleaned from Texas Department of Criminal Justice (TDCJ) Response to Open Records Request, "Administrative Segregation," 12 December 2011; information available upon request.
- ⁴ *Ibid.*
- ⁵ Angela Browne, Alissa Cambier and Suzanne Agha, "Prisons within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter*, Vol. 24, no. 1 (October 2011), p. 46 (citing David Lovell, L. Clark Johnson, and Kevin C. Caine, *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME DELINQUENCY 633-56 (2007); David Lovell & Clark Johnson, FELONY AND VIOLENT RECIDIVISM AMONG SUPERMAX PRISON INMATES IN WASHINGTON STATE: A PILOT STUDY (University of Washington, 2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidism-4-19-04.pdf>).
- ⁶ *Ibid.*
- ⁷ Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, Vol. 49, January 2003, p. 124; accord Browne, *supra* note 5.
- ⁸ David Lovell, Clark L. Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency*, Vol. 53, October 2007, p. 4.
- ⁹ 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" [p. 82].
- ¹⁰ Haney, *supra* note 11, at 124.
- ¹¹ Open Records Request, *supra* note 3.
- ¹² TDCJ, Statistical Report: Fiscal Year 2011, p. 3, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf.
- ¹³ Open Records Request, *supra* note 3.
- ¹⁴ Open Records Request, *supra* note 3.
- ¹⁵ C. Haney, "Mental health issues in long-term solitary and "supermax" confinement," *Crime and Delinquency*, Issue 49, pp. 124-156 (2003).
- ¹⁶ J. McIntosh & A. Schore, *Family Law and the Neuroscience of Attachment: Part 1*. Family Court Review, vol. 49(3), July 2011.
- ¹⁷ Montgomery, *Neurobiology Essentials for Clinicians*; also see Arizona State University, "Adolescent Brain and Juvenile Justice: New Insights from Neuroscience, Genetics, and Addiction Science Panels," May 2012, available at <http://lsi.law.asu.edu/adolescentbrains2011/index.html>.
- ¹⁸ A. Schore, "Affect Dysregulation and Disorders of the Self," New York: W. W. Norton & Co, 2003.
- ¹⁹ Michael Jacobson, President and Director Vera Institute of Justice, Written Testimony Provided for the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, 19 June 2012, p. 2 (citing Terry Kupers et al., "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," *Criminal Justice and Behavior* 36 (2009): 1037-50, available at <http://www.vera.org/files/michael-jacobson-testimony-on-solitary-confinement-2012.pdf> (citing James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222181).
- ²⁰ *Ibid.*
- ²¹ Jacobson, *supra* note 19, at 3.



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TESTIMONY 2013

H.B. 1318

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 1318, an effective policy that will ensure timely access to counsel for detained kids.

APPOINTING COUNSEL BEFORE A YOUTH'S FIRST DETENTION HEARING WILL IMPROVE INTERVENTIONS AND SAVE MONEY

Community-based programs are the highest priority for Texas' juvenile justice system because growing evidence shows that, for most youth, the time spent in a secure detention facility impedes, rather than helps, rehabilitation. Youth do not have access to bail, and too many youth entitled to appointed counsel are not represented by prepared counsel at their first detention hearing. As a result, **Texas is needlessly keeping thousands of low-risk youth in pre-adjudication secure detention, at a cost of \$216 per day per youth.**¹

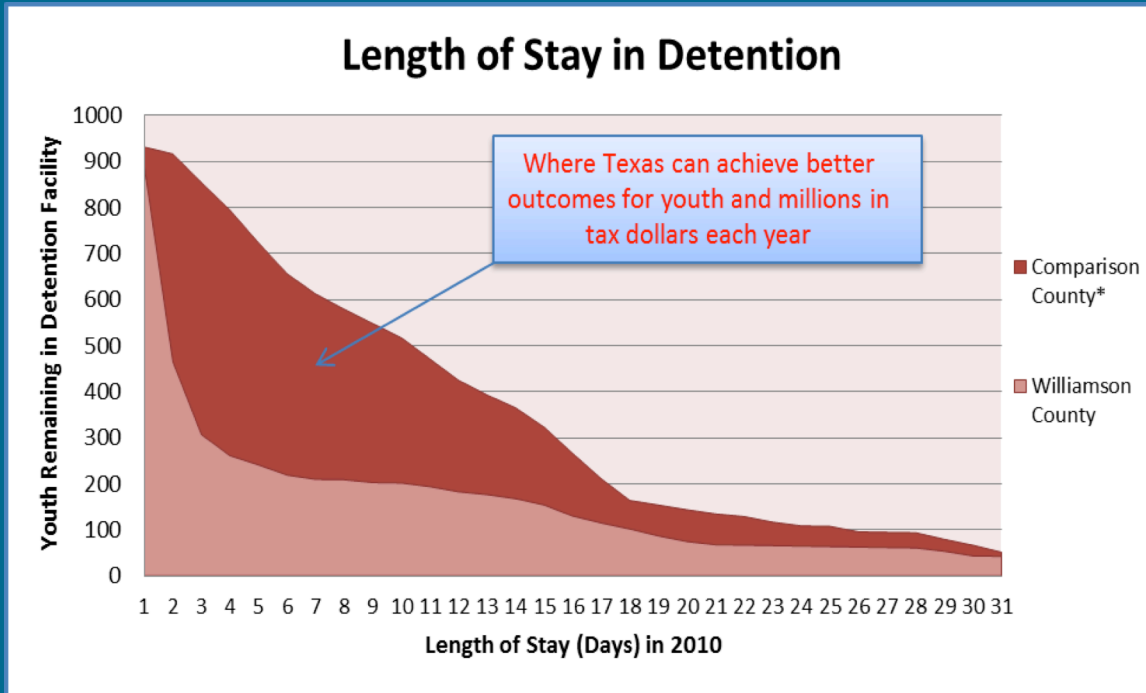
KEY FINDINGS

- **Inefficient pre-adjudication detention processes are keeping thousands of low-risk youth in lockup.**
 - » 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.²
 - » In 2011, 10,542 youth were placed in secure pre-adjudication detention facilities but were never deemed a high enough risk to be placed on probation;³ appointing counsel before the first detention hearing will help ensure these low-risk youth are identified earlier.
 - » 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.⁴
- **Secure detention of low-risk youth in Texas wastes millions of dollars each year.**
 - » Pre-adjudication detention costs **\$216 per day per child.**⁵ 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.⁶
 - » Placement in a secure facility creates no reduction in antisocial activity.⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 1318 BY REPRESENTATIVE TURNER

- **H.B. 1318 will protect public safety by improving interventions for youth.** Time spent in a secure detention facility does not reduce recidivism for the vast majority of youth, and it may actually worsen recidivism for low-risk youth.⁸ In contrast, proven community-based programs reduce recidivism, keep kids and staff safer, and cost less than secure facilities.⁹ Texas law instructs county juvenile probation departments to serve youth, families, and their communities by “prioritizing the use of community-based or family-based programs and services for youth over the placement or commitment of youth to a secure facility.”¹⁰
- **H.B. 1318 will likely save millions of dollars through more efficient youth detention processes.** H.B. 1318 requires counsel to be appointed for qualifying youth before the first detention hearing; because these attorneys must inevitably be appointed, this bill will not create any additional costs. In fact, by improving the efficiency of detention decisions, H.B. 1318 will likely create millions of dollars in savings statewide: Williamson County, for example, appoints counsel for youth before the first detention hearing and has realized hundreds of thousands of dollars in savings (*see chart on reverse*).

Ensure Timely Access to Counsel for Detained Youth



*“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

- ¹ Legislative Budget Board “Uniform Cost Report” (January 2013).
- ² TCJC review of calendar year 2011 data provided by TJJD (April 2012).
- ³ *Ibid.*
- ⁴ *Ibid.*
- ⁵ Legislative Budget Board “Uniform Cost Report” (January 2013).
- ⁶ TPPF “Texas Counties Can Unlock Kids and Savings” (2009).
- ⁷ E.P. Mulvey “Highlights From Pathways to Desistance” (2011).
- ⁸ See, e.g., Annie E Casey Foundation “No Place for Kids” (2011).
- ⁹ *Ibid.*
- ¹⁰ Texas Human Resources Code section 201.002.



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TESTIMONY 2013

H.B. 1417

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 1417, which will provide individuals with certain first-time low-level drug offenses greater access to treatment. This policy will save money otherwise spent on costly incarceration, while increasing public safety and public health, and strengthening communities.

THE HIGH COSTS OF INCARCERATION FOR LOW-LEVEL DRUG POSSESSION

Texas incarcerates high numbers of individuals for low-level drug possession. In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction. Of these individuals, 88% were convicted of possessing *less than a gram* of a controlled substance without the intent to deal or distribute (a gram equals one packet of Sweet'N Low).¹ As of August 31, 2012, nearly one-third (31%) of the total Texas state jail population was incarcerated for possession of less than a gram.²

In 2011 and 2012, the Texas Department of Criminal Justice (TDCJ, comprised of state jails, prison units, and Substance Abuse Felony Punishment Facilities) received 43,793 individuals convicted of drug crimes.³ Approximately 42% of these individuals were incarcerated for possession of less than a gram.⁴

Many individuals convicted of low-level drug offenses struggle with mental illness and chemical dependency. For that reason, **incarcerating individuals for possession of less than one gram of a controlled substance often costs the state more on average than incarcerating those convicted of other types of offenses.**

Indeed, individuals convicted of possession of less than a gram fill beds in TDCJ medical, psychiatric, and intellectually disabled units at high expense:

- **Medical Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 465⁵ had been placed in a medical unit (\$661.86/day)⁶ during the span of their incarceration. These individuals alone filled beds in the medical unit for a total of 5,812 days,⁷ costing the state \$3,846,730.
- **Psychiatric Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 113⁸ had been placed in a psychiatric unit (\$63.10/day)⁹ during the span of their incarceration. These 113 individuals alone filled beds in the psychiatric unit for 13,969 days,¹⁰ costing the state \$881,443.
- **Intellectually Disabled Program:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 18¹¹ individuals had been placed in an intellectually disabled program (\$66.35/day)¹² during the span of their incarceration. These 18 individuals alone filled beds in intellectually disabled units for 6,550 days,¹³ costing the state \$434,592.

Continued on reverse.

COMMUNITY SUPERVISION AND TREATMENT: A MORE EFFECTIVE, COST-EFFICIENT APPROACH

Community supervision (also referred to as probation) is far less expensive than incarceration, costing the state only \$1.38 per person per day compared to state jail (\$42.90/day) or prison (\$50.04/day).¹⁴ Furthermore, community supervision is often more effective at addressing addiction and mental illness than incarceration: individuals on probation typically have more access to drug treatment and mental health services than those incarcerated, and treatment programming results in lower levels of re-offending than strict incarceration.¹⁵

H.B. 1417 would change the penalty for *first-time* possession of less than a gram of a controlled substance from a state jail felony to a Class A misdemeanor, **allowing individuals the opportunity to access community-based addiction and mental health services, while being monitored by qualified probation officers**. This measure will increase public safety and public health, and produce significant savings for the state of Texas.

KEY FINDINGS

- In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction. Of these individuals, 88% were convicted of possessing *less than a gram* of a controlled substance.¹⁶
- Nearly one-third (31%) of the total Texas state jail population is incarcerated for possession of less than a gram.¹⁷ Individuals incarcerated in state jails have little to no access to substance abuse treatment.¹⁸
- Treatment is more effective and less expensive than incarceration.¹⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 1417 BY REPRESENTATIVE THOMPSON

H.B. 1417 would change the penalty for *first-time* possession of less than a gram of a controlled substance from a state jail felony to a class A misdemeanor, allowing individuals the opportunity to access effective community-based addiction and mental health services, while being monitored by qualified probation officers. This is a proactive, common sense approach to addiction and correlated issues that will increase public safety and cost savings.

CONCLUSION

Thank you again for allowing me the opportunity to present testimony in favor of H.B. 1417. This policy has broad support and will increase public safety while saving taxpayers money.

Citations

¹ Open Records Request, Texas Department of Criminal Justice.

² Ibid.

³ Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

⁴ Open Records Request, Texas Department of Criminal Justice.

⁵ Ibid.

⁶ Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010-2012* (2013), p. 8.

⁷ Open Records Request, Texas Department of Criminal Justice.

⁸ Ibid.

⁹ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹⁰ Open Records Request, Texas Department of Criminal Justice.

¹¹ Ibid.

¹² LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹³ Open Records Request, Texas Department of Criminal Justice.

¹⁴ LBB, *Criminal Justice Uniform Cost Report*, pp. 8, 14.

¹⁵ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment.1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*, <http://www.ncjrs.gov/nties97/index.htm>. Also see: Dustin Johnson, Ph.D., “Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice – Community Justice Assistance Division: Research and Evaluation,” May 2011, pp. 13, 23 (individuals completing residential programs have significantly lower two-year arrest and incarceration rates than those who do not complete their program).

¹⁶ Open Records Request, Texas Department of Criminal Justice.

¹⁷ Ibid.

¹⁸ Mike Ward, “State jails struggle with lack of treatment, rehab programs,” *Austin American-Statesman*, December 30, 2012.

¹⁹ See notes 14 and 15.



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FACT SHEET 2013

H.B. 1543

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

THE OMBUDSMAN HAS BEEN VERY EFFECTIVE BUT DOES NOT HAVE ACCESS TO COUNTY OR ADULT FACILITIES

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 FINDINGS

- **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. 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.¹
- **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."²
 - » 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."³ There were 442 attempted suicides in Texas county juvenile facilities in 2011.⁴
- **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 policy⁵ – and this has yet to be addressed.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 1543 BY REPRESENTATIVE ALLEN

- **H.B. 1543 allows OIO staff to visit with youth in county and adult secure facilities.** The bill will bridge the current gap in protections for youth in secure government custody. The OIO has been critically important in protecting youth in state juvenile facilities, but many youth are also placed in county and adult facilities, and it is equally important to protect them from the risk of abuse, neglect, or exploitation.

References on reverse

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- ² Texas Juvenile Detention Association, “Resolution concerning TAC 343 and related standards” (March 28, 2012).
- ³ *Fort Worth Star-Telegram*, “Cleburne boy fatally injured at Granbury detention center” (October 18, 2011).
- ⁴ Texas Juvenile Justice Department, “2011 Facility Registry” (2011).
- ⁵ 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).



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TESTIMONY 2013
H.B. 1566

Dear Members of the Committee,

Thank you for allowing me the opportunity to present testimony in opposition to H.B. 1566. Current Texas law already requires juveniles who are adjudicated for sexual offenses to undergo testing for HIV and sexually transmitted diseases (STDs), in part to alert victims of any disease they may have been exposed to. By requiring testing after a youth has been adjudicated, current law allows victims to rely on testing results with an assurance that they are indeed the test results of the actual perpetrator and not the test results of the wrongfully accused.

HB 1566 would amend the law to instead require HIV and STD testing of youth who have merely been accused of sexual offenses, a very low threshold that creates a high risk that victims will receive misinformation from a wrongfully accused person, rather than the test results of the actual perpetrator.

TCJC urges this committee not to adopt this bill because current Texas law better protects victims of sexual offenses.

COMPARISON OF CURRENT LAW AND H.B. 1566

	Current Law ¹	H.B. 1566
<i>Is HIV/STD testing required for juvenile offenders?</i>	Yes	Yes
<i>For what offenses?</i>	<ul style="list-style-type: none">• Sexual contact with a child• Sexual assault• Aggravated sexual assault	<ul style="list-style-type: none">• Sexual contact with a child• Sexual assault• Aggravated sexual assault
<i>What is the risk to victims that they will receive misinformation from the test results of the wrongfully accused?</i>	<p><u>LOW risk</u></p> <p>A juvenile is tested for HIV or STDs only after being <u>adjudicated</u> for a sexual offense. The victim has the assurance that a judge has determined that the accused is the actual perpetrator. The victim can trust that the HIV/STD test results are from the actual perpetrator.</p>	<p><u>HIGH risk</u></p> <p>A juvenile is tested for HIV or STDs after having merely been <u>alleged</u> to have committed a sexual offense. (This is even looser than HIV/STD testing of adults: Adults in Texas may be tested for HIV or STDs only after being indicted by a grand jury.²) The victim has no assurance that the accused is the actual perpetrator. The victim faces too high of a risk that he or she will receive negative test results when the perpetrator in fact does have HIV/STD, or that he or she will receive positive test results when the perpetrator in fact does not have HIV/STD.</p>

Citations

¹ Texas Family Code Section 54.033

² Texas Code of Criminal Procedure Article 21.31



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Testimony 2013

H.B. 1934

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 1934, which prohibits life insurance companies from discriminating against individuals based solely on their criminal background. H.B. 1934 will help families avoid financial hardships, thus increasing family and community stability.

ENCOURAGE RESPONSIBLE APPROACHES FOR PAYING FAMILY DEBTS, FOR LONG-TERM FAMILY AND COMMUNITY STABILITY

Many obstacles prevent individuals with minor criminal backgrounds from accessing legitimate opportunities to succeed. Discrimination in employment, public housing, and public benefits are a few critical barriers that these individuals face during the reentry transition. While some measures are appropriate and necessary to protect public safety, many are counterproductive, creating unreasonable roadblocks for those seeking to turn their lives around. **Life insurance serves an important function to provide family stability**, helping to cover the sometimes significant expenses associated with the death of a loved one. Individuals who are able to take the responsible step of paying for insurance coverage should not be penalized for a past criminal conviction.

Currently, the Texas Insurance Code prohibits discrimination by insurance companies based on race, color, religion, national origin, age, gender, marital status, geographic location, disability, or partial disability;¹ however, the **code does not specifically prohibit discrimination based on the status of an individual's criminal background**. As such, life insurance companies may withhold insurance from individuals with criminal backgrounds by refusing to insure or provide coverage; refusing to continue to insure or provide coverage; limiting the amount, extent, or kind of coverage available; or charging a rate that is different from the rate charged to other individuals for the same coverage. **Sadly, an insurance provider may refuse service to an individual for having any sort of a criminal history, not necessarily relating to having any connection with a shorter life expectancy**. A person's criminal background should never be a deciding factor in whether an insurance company provides life insurance.

KEY FINDINGS

- **Being denied eligibility or having higher premiums for a basic life insurance policy unfairly penalizes individuals and their families** long after a conviction and term of incarceration.
- Many families who depend on a loved one with a past criminal conviction already struggle with the basics of housing, food, and other types of required insurance. For some, **having life insurance is a responsible, long-term approach to reducing a future financial hardship on loved ones**.
- **Access to fair life insurance policies reduces the negative impact on communities** by helping families to meet their debt obligations in the event of a death.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 1934 BY REPRESENTATIVE ALLEN

H.B. 1934 ensures that individuals with criminal backgrounds are not refused life insurance solely for that reason. While the Texas Insurance Code prohibits discrimination in providing life insurance based on age, sex, race, and other factors, it does not prohibit discrimination based on an individual's criminal background.² H.B. 1934 will ban life insurance companies from refusing policies based on one's criminal background alone. This will increase individual responsibility, create more stable families, and strengthen communities.

Citations on reverse.

Citations

¹ Tex. Insur. Code. Ann. §544.002.

² Ibid.



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TESTIMONY 2013

H.B. 2289

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2289, the Sunset legislation for Texas' corrections agencies. The Texas Criminal Justice Coalition (TCJC) especially supports bill provisions that will create more comprehensive and uniform assessments, and improve reentry and reintegration efforts through fully implemented reentry plans, as well as expanded Reentry Task Force membership and duties.

As an organization, TCJC's primary focus is on creating stronger families, less taxpayer waste, and safer communities throughout Texas. This is possible through improved rehabilitation and reentry efforts, access to treatment resources and other assistance, improved efficiency throughout the system, and fiscal responsibility.

2011-2013 SUNSET REVIEW

In late 2011, Texas' corrections agencies began undergoing a Sunset review; these agencies include the Texas Department of Criminal Justice, the Texas Board of Pardons and Paroles, and the Windham School District. The Sunset review process offered TCJC the opportunity to provide a multitude of recommendations for improvements to the state's criminal justice system. We thank the Sunset Advisory Committee and its staff for its commitment to the evaluation of these important agencies, and for working diligently to compile reports and analyses that informed the legislation being heard before this Committee today.

Texas' criminal justice and corrections agencies continue to face challenges, and we are appreciative of the opportunity to present this Committee with information on the provisions of H.B. 2289 that will help to address the burden of strained budgets while preserving public safety and meeting the needs of individuals directly impacted by the system. **Given the state's massive expenditures on incarceration, probation, and parole (totaling over \$3 billion annually), it is critical that this Committee fully consider viable strategies that will protect taxpayer investments, reduce recidivism, and strengthen communities.**

KEY PROVISIONS OF H.B. 2289

TCJC is strongly supportive of bill provisions that will create more comprehensive and uniform assessments, and improve reentry and reintegration efforts.

Assessments

- **Creation of a Standardized Risk and Needs Assessment Instrument.** Under this bill, the Texas Department of Criminal Justice (the Department) must adopt a standardized instrument to assess the risks and needs of each individual in the adult criminal justice system, based on criminogenic factors, to be fully implemented by 2015. [SECTION 4, Sec. 501.0921(a); (d)]
- **Use of an Assessment in Prisons and State Jails.** Each facility under the oversight of the Department's Correctional Institutions Division must establish a case management committee to assess each inmate in the facility and ensure the inmate is receiving appropriate services or participating in appropriate programs. [SECTION 2, Sec. 493.031(a)]

Continued on reverse.

Assessments (Continued)

- **Regarding: Use of an Assessment in Prisons and State Jails.** The Department must also include the results of any assessment in an inmate's individual treatment plan, including any assessment made using the risk and needs assessment instrument and any vocational, educational, or substance abuse assessment. [SECTION 19, Sec. 508.152(b-1)]
- **Use of an Assessment in Probation.** The Department's Community Justice Assistance Division, which oversees probation ("community supervision"), must require each probation department to use the risk and needs assessment instrument to assess each defendant at the time of his or her initial placement on probation. [SECTION 21, Sec. 509.0041]
- **Use of an Assessment in Reentry Planning.** The Department's comprehensive reentry and reintegration plan (*see below*) must incorporate the use of the risk and needs assessment instrument. [SECTION 3, Sec. 501.092(b)(1)]

Comprehensive Reentry and Reintegration Plan

- **Implementation of a Reentry Plan.** The Department must develop *and* adopt a comprehensive plan to reduce recidivism and ensure the successful reentry and reintegration of individuals into the community following their release or discharge from a correctional facility. [SECTION 3, Sec. 501.092(a)]

This plan must provide for programs to address assessed needs; provide for a comprehensive network of transition programs; identify Department-offered transition services and eligible participants; coordinate the provision of reentry and reintegration services for effective and efficient service provision; provide for data collection on inmates eligible for services and those who actually received them; provide for outcome measurements to evaluate the efficacy of services provided; identify providers of existing reentry and reintegration services that can assist the Department; and provide for information sharing among all service providers. [SECTION 3, Sec. 501.092(b)(2)-(9)]

- **Ongoing Evaluation of and Updates to the Reentry Plan.** Each even-numbered year, the Department must submit a report evaluating the plan via the results of the plan's outcome measurements. Furthermore, the Department must update the plan at least once every three years. [SECTION 3, Sec. 501.092(d); (i)]

Expansion of State's Reentry Task Force

- **Expanded Task Force Membership.** The State's Reentry Task Force, established in 2009, must increase to include representatives from the Board of Pardons and Paroles, the Windham School District, the Texas Commission on Jail Standards, the Department of State Health Services, the Texas Court of Criminal Appeals, the County Judges and Commissioner's Association of Texas, the Sheriff's Association of Texas, the Texas District and County Attorneys Association, the Texas Conference of Urban Counties, a probation department, an organization that advocates on behalf of system-involved individuals, and a local reentry planning entity. [SECTION 5, Sec. 501.098(a)-(b)]

Expansion of State's Reentry Task Force (Continued)

- **Expanded Task Force Duties.** The Task Force must (rather than may) identify gaps in services for returning individuals relating to employment, housing, substance abuse treatment, medical care, and other areas, and coordinate with existing local program providers to recommend the provision of comprehensive services to such individuals. The Task Force must also identify its goals and deliverables, specify member responsibilities, and create a timeline for achieving its goals. [SECTION 5, Sec. 501.098(e)-(f)]

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2289 BY REPRESENTATIVE PRICE

H.B. 2289 will increase efficiency and cost savings throughout Texas' criminal justice system through various measures that will ensure individuals are assessed, placed in appropriate treatment programs, and assisted during the critical reentry transition. Through this tailored, rehabilitative approach – in conjunction with strategies that will improve transparency and information sharing – Texas will slow the likelihood of costly re-offending, thus ensuring corrections resources are allocated effectively and protecting taxpayer investments.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill, which provides for much-needed strategies that will equip individuals with the tools and information they need to live successful, self-sufficient, law-abiding lives in the community. The Sunset process is a unique opportunity to make improvements to state agencies, and we appreciate this Committee's consideration of measures that will help Texas' corrections agencies fulfill their mission by effectively targeting the root causes of criminal behavior and creating safer communities. The Texas Criminal Justice Coalition urges you to support H.B. 2289.



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TESTIMONY 2013

H.B. 2398

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2398, which calls for a study on visitation practices at state corrections facilities. This is critical given that visitation during incarceration has been demonstrated to boost parent-child interactions and reduce recidivism. Examining current visitation policies will help identify promising practices and create opportunities for replication, for healthier families and long-term public safety gains.

VISITOR-FRIENDLY POLICIES CAN IMPROVE FAMILY INTERACTION AND HELP REDUCE RECIDIVISM

Hundreds of thousands of Texans have a loved one incarcerated in the Texas Department of Criminal Justice (TDCJ). Visitation policies and practices thus impact many Texans, and directly affect the ability of families to stay connected during incarceration. Visitation plays an important role in maintaining positive connections between incarcerated individuals and their families and friends.¹ **A recent robust study on the effects of prison visitation on recidivism found that visitation can help reduce recidivism by up to 25%.²** Furthermore, the study found that “visitor friendly” policies “could yield public safety benefits by helping offenders establish a continuum of social support from prison to the community.”³

It is critical to ensure that visitation policies facilitate safe contact between adults, child-friendly areas, an atmosphere that is conducive to maintaining family relationships, and environments that reduce noise and allow for adequate space.

KEY FINDINGS

- Visitation during incarceration has been shown to reduce recidivism by up to 25%.⁴
- Denying the parent-child connection can lead to behaviors by youth that can spur involvement with the juvenile justice system.⁵ As of 2011, nearly 95,000 individuals incarcerated in Texas prisons self-reported as having children.⁶
- Appropriate play with children in a developmentally appropriate setting positively impacts attachment, increasing the probability of establishing stable, healthy relationships and in turn **contributing to the safety and security of the unit.**⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2398 BY REPRESENTATIVE TURNER

- **H.B. 2398 calls for a study of visitation policies in Texas’ state jails and prisons**, including recommendations for methods to improve these policies and replicate promising practices. Creating visitation environments that are more conducive to safe, healthy interaction can ease incarcerated individuals’ transition process into the community and help keep the family unit strong – a key to successful reintegration.

Citations on reverse.

Citations

¹ Texas Department of Criminal Justice, *General Information Guide for Families of Offenders*, December 2012.

² Minnesota Department of Corrections, *The Effects of Prison Visitation on Offender Recidivism*, November 2011.

³ Ibid.

⁴ Ibid.

⁵ Charlene Wear Simmons, Ph.D., *Children of Incarcerated Parents*, Prepared at the request of Assemblymember Kerry Mazzone, California Research Bureau (CRB) Note Vol. 7, No. 2, March 2000, p. 1; with regards to “children whose parents have been arrested and incarcerated [...] the behavioral consequences can be severe, absent positive intervention – emotional withdrawal, failure in school, delinquency and risk of intergenerational incarceration.”

⁶ Data gleaned from a TDCJ information request, 2011; actual number: 94,635. Note additionally: 8,150 inmates in state jails self-reported children, while 2,160 individuals in Substance Abuse Felony Punishment Facilities self-reported children; *information available upon request*.

⁷ S. Pollack, “Parent-child connections: The essential component for positive youth development and mental health, safe communities and academic achievement,” *New Directions for Youth Development*, vol. 2004 (103), 2004, pp. 17-30; information also taken from: Perry, B.D. (n.d.) Bonding and Attachment in Maltreated Children: Consequences of emotional neglect in childhood.



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TESTIMONY 2013

H.B 2399

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2399, an effective policy that aims to sustain positive reform in Texas' juvenile justice system through a system-wide evaluation that will allow leadership to evaluate progress, recommend improvements, effectively allocate resources, and increase agency transparency and accountability.

TEXAS MUST TAKE STEPS TO PROTECT AND SUSTAIN POSITIVE JUVENILE JUSTICE REFORM

Since 2007, Texas legislators have made significant strides in reforming the state's juvenile justice system. Various improvements, such as independent oversight of state secure facilities, the safe deincarceration of low-level youthful offenders, and a prioritization on community-based treatment, have contributed to Texas becoming a national model of juvenile reform. However, since its creation slightly over a year ago, the Texas Juvenile Justice Department (TJJD) has come under the direction of three different leaders and has experienced significant administrative staff turnover. This, in conjunction with various isolated incidents of mistreatment of incarcerated youth, has shown that **further measures must be taken to sustain positive reform.**

To ensure that TJJD continues down the path towards becoming a successful, efficient front-end agency, it must delineate how it will achieve the purpose and goals set forth in S.B. 653 [82(R)], the agency's enabling legislation. **A comprehensive study conducted by TJJD employees on system-wide facility infrastructure, treatment and rehabilitative strategies, oversight, outcome measures, and funding priorities** will allow state leadership to evaluate current system progress, make recommendations for further improvements, effectively allocate resources, and increase transparency and accountability.

KEY FINDINGS

- Since the passage of S.B. 653 [82(R)], TJJD has been working diligently to meet its legislative goals and mandates. However, some goals, like the use of system-wide performance measures and the promotion of service designs and interventions proven to be most effective, have not yet been met. **With a timely evaluation of the system, leadership will have clarity on system strengths and weaknesses, which can inform recommendations and resource allocation.**
- The number of youth committed to state-secure facilities has significantly decreased, falling from 2,738 in FY 2006 to 860 in FY 2012.¹ This decrease has resulted in the majority of youth referred to the system being served at the front-end through community-based supervision, programming, and services. **Further analysis will help leadership determine the success of this approach and how practitioners can continue to effectively meet youths' needs.**

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2399 BY REPRESENTATIVE TURNER

H.B. 2399 aims to create a “roadmap” for TJJD that will aid in sustaining positive reforms. By requiring the agency to delineate how it will meet the remainder of the goals set forth in S.B.653 [82(R)], lawmakers can ensure that all changes made within the system facilitate successful youth rehabilitation, the effective use of resources, and agency transparency and accountability.

CONCLUSION

Again, I would like to thank you for providing me the opportunity to testify in favor of H.B. 2399, an effective policy that will help Texas stay the course in its efforts to improve its juvenile justice system. The Texas Criminal Justice Coalition strongly urges you to support it, for increased public safety, cost savings, and the identification of effective approaches to address our youths’ needs.

Citation

¹ Texas Juvenile Justice Department, *Commitment Profile for New Commitments Fiscal Years 2006 – 2012*, <http://www.tjjd.texas.gov/research/profile.aspx>.



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TESTIMONY 2013

H.B. 2045

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2045 by Representative Turner. This bill will save taxpayer money otherwise spent on costly incarceration, and give individuals with first-time low-level drug offenses a better chance at accessing rehabilitative services and gaining employment.

THE HIGH COSTS OF INCARCERATION FOR LOW-LEVEL DRUG POSSESSION

Texas incarcerates high numbers of individuals for low-level drug possession. In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction,¹ annually costing taxpayers approximately **\$15,500 per person.**² Of these individuals, 88% were convicted of possessing less than a gram of a controlled substance without the intent to deal or distribute (a gram equals one packet of Sweet’N Low).³ As of August 2012, nearly one-third (31%) of the total Texas state jail population was incarcerated for possession of less than a gram.⁴

In 2011 and 2012, the Texas Department of Criminal Justice (TDCJ), comprised of state jails, prison units, and Substance Abuse Felony Punishment facilities, received 43,793 individuals convicted of drug crimes.⁵ Approximately 42% of these individuals were incarcerated for possession of less than a gram.⁶

Many individuals convicted of low-level drug offenses struggle with mental illness and chemical dependency. For that reason, **incarcerating individuals for possession of less than one gram of a controlled substance often costs the state more on average than incarcerating those convicted of other types of offenses.**

Indeed, individuals convicted of possession of less than a gram fill beds in TDCJ medical, psychiatric, and intellectually disabled units at high expense:

- **Medical Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 465⁷ had been placed in a medical unit (\$661.86/day)⁸ during the span of their incarceration. These individuals alone filled beds in the medical unit for a total of 5,812 days,⁹ costing the state \$3,846,730.
- **Psychiatric Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 113¹⁰ had been placed in a psychiatric unit (\$63.10/day)¹¹ during the span of their incarceration. These 113 individuals alone filled beds in the psychiatric unit for 13,969 days,¹² costing the state \$881,443.
- **Intellectually Disabled Program:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 18¹³ individuals had been placed in an intellectually disabled program (\$66.35/day)¹⁴ during the span of their incarceration. These 18 individuals alone filled beds in intellectually disabled units for 6,550 days,¹⁵ costing the state \$434,592.

KEY FINDINGS

- In 2011 and 2012 alone, TDCJ received 18,535 individuals for possession of less than a gram of a controlled substance.¹⁶
- In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction.¹⁷ 88%, or 14,309 of these individuals, were sentenced for possession of less than a gram.¹⁸ Individuals incarcerated in state jails have little to no access to substance abuse treatment.¹⁹

Continued on reverse.

KEY FINDINGS (CONTINUED)

- Altogether, nearly one-third (31%) of the total Texas state jail population is incarcerated for possession of less than a gram.²⁰
- Under the administration of former Harris County District Attorney Pat Lykos, trace amounts of controlled substances were prosecuted as Class C misdemeanors instead of state jail felonies.²¹ This policy safely decreased incarceration, saved money, and freed up time in the Houston Police Department Crime Lab and local courts.²² **Notably, the crime rate steadily dropped during Lykos's tenure.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2045 BY REPRESENTATIVE SYLVESTER TURNER

H.B. 2045 would change the penalty for *first-time* possession of less than a gram of a controlled substance from a state jail felony to a Class C misdemeanor. This is a proactive, common sense approach to minor drug crimes will save taxpayers money by reducing costly state jail stays, while also preventing individuals from being burdened with the devastating, lifelong consequences of a felony conviction.

CONCLUSION

Thank you again for allowing me the opportunity to present testimony in favor of H.B. 2045. This policy has broad support and will save taxpayers money while helping more individuals access critical rehabilitative services.

Citations

¹ Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

² Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, p. 8.

³ Open Records Request, Texas Department of Criminal Justice.

⁴ Ibid.

⁵ TDCJ, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

⁶ Open Records Request, Texas Department of Criminal Justice.

⁷ Ibid.

⁸ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

⁹ Open Records Request, Texas Department of Criminal Justice.

¹⁰ Ibid.

¹¹ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹² Open Records Request, Texas Department of Criminal Justice.

¹³ Ibid.

¹⁴ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹⁵ Open Records Request, Texas Department of Criminal Justice.

¹⁶ Open Records Request, Texas Department of Criminal Justice.

¹⁷ TDCJ, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

¹⁸ Open Records Request, Texas Department of Criminal Justice.

¹⁹ Mike Ward, *State jails struggle with lack of treatment, rehab programs*. "The state jails [...] have fewer treatment and rehabilitation programs than many of the regular prisons — the opposite of the original goals."

²⁰ Open Records Request, Texas Department of Criminal Justice.

²¹ Emily DePrang, "Houston's New DA Brings Back 'Trace' Felonies, the Eighties," *Texas Observer*, February 15, 2013.

²² Ibid.



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FACT SHEET 2013

H.B. 2650

Expand the Role of the Criminal Justice Legislative Oversight Committee to Increase Efficiency and Accountability in the Texas Department of Criminal Justice

THE STATE AND TAXPAYERS WILL BENEFIT FROM REGULAR FACILITY INSPECTIONS AND POLICY OVERSIGHT

The Texas Department of Criminal Justice (TDCJ) operates the nation's largest prison system and spends over 3 billion taxpayer dollars annually but it is not subject to external oversight. Decades of research have demonstrated that all public institutions, from schools to hospitals, benefit from oversight.¹

In correctional systems, oversight has been proven to identify problems before they become costly crises. Specifically, oversight serves several critical functions. It **protects the rights and well-being of incarcerated individuals**, who have limited ways to defend their interests,² and who frequently suffer from mental illness or addiction. It ensures that correctional facility staff has **safe and sanitary working environments**. And it is a proven mechanism for **identifying and addressing issues** before they lead to expensive litigation, media scandals, or other human and fiscal costs.³ Ultimately, oversight is the cornerstone of accountability, transparency, and good government.

H.B. 2650 would expand the duties and responsibilities of the *already existing* Criminal Justice Legislative Oversight Committee to include TDCJ facility inspections, reports to the legislature and public, and the development of recommendations that will improve TDCJ policies and practices.

KEY FINDINGS

- TDCJ is massive: It employs as many paid employees as Google and spends over \$3 billion annually.⁴
- TDCJ has a variety of **internal** accountability mechanisms, including the offender grievance process, the Ombudsman office (which handles inquiries from the public), and the Office of the Inspector General (which conducts investigations and policy monitoring). However, these mechanisms cannot and do not serve the same role or offer the same benefits as **external** oversight by the Criminal Justice Legislative Oversight Committee, which can successfully introduce accountability and transparency.⁵
- Other Texas agencies have external oversight. The Office of the Independent Ombudsman for the Texas Juvenile Justice Department was established in 2007 to investigate, evaluate, and secure the rights of children committed to the Department.⁶ **By contrast, the TDCJ Ombudsman is not independent, and its role fails to protect the rights of adults incarcerated in Texas prisons.**
- In 1973, the *Ruiz vs. Estelle* case determined that Texas prison conditions violated inmates' constitutional rights to protection from cruel and unusual punishment. The case resulted in court oversight of TDCJ facilities that lasted until 2002, exposing many problems with Texas prison operations that had traditionally remained hidden – including prison overcrowding, excessive use of force, substandard health care, and serious safety, sanitation, and hygiene concerns.⁷
- **Since 2002, reports of inhumane conditions have continued to emerge**, including a report detailed appalling conditions for individuals with mental health problems incarcerated in Texas prisons,⁸ accounts of constitutionally inadequate health care,⁹ and a report showing that Texas prisons have the highest reported number of alleged incidents of sexual assault (four times the national average).¹⁰

Solution offered on reverse

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2650 BY REPRESENTATIVE ALLEN

- **H.B. 2650 will expand the functions of the current Criminal Justice Legislative Oversight Committee to ensure a more thorough examination of Texas' state corrections system.** Through regular inspections of at least 25 correctional facilities per biennium, this Committee will help determine long-range facility and system needs; identify critical issues and corresponding solutions; and assist in the evaluation and assessment of the efficacy of existing programs. This will result in a more efficient use of tax dollars, and will decrease waste.
- **H.B. 2650 will require the Committee to compile a comprehensive report** for submission to the Texas Board of Criminal Justice every six months, and for submission to the Legislature every biennium, outlining the results of facility inspections, including an evaluation of the inmate grievance procedure at each inspected facility, and providing any recommendations concerning policy changes or other strategies that could improve the conditions or operations of Texas' correctional facilities.

This reporting requirement will enable TDCJ to better pinpoint issues before they become future problems, helping agency administrators find more cost-efficient ways to fulfill the agency's mission, provide rehabilitative services to incarcerated individuals, and protect the public.

- **H.B. 2650 will ensure that the Committee receives full and open input from incarcerated individuals and facility staff.**
- **H.B. 2650 will increase the frequency and opportunity for public input** on important criminal justices to TDCJ, allowing the agency to further its stated mission, resulting in improved public safety.

Citations

¹ Gibbons, John & Katzenback, Nicholas. "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons." *Federal Sentencing Reporter* 24, no. 1 (2011): 36-41.

² Fathi, David. "The Challenge of Prison Oversight." *American Criminal Law Review* 47 (2010): 1453-62.

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⁴ Perkinson, Robert, *Texas Tough: The Rise of America's Prison Empire*. Metropolitan Books, Henry Hold and Company, 2010.

⁵ American Bar Association (2008). "Resolution 104B: Prison Oversight and Monitoring of Juvenile and Adult Facilities, <http://www.abanet.org/crimjust/policy/am08104b.pdf>.

⁶ Independent Ombudsman for the Texas Juvenile Justice Department, <http://www.tjjd.texas.gov/ombudsman/index.aspx>.

⁷ Perkinson, Robert. "Ruiz v. Estelle." *Encyclopedia of Prisons & Correctional Facilities*, (2005): 864-67.

⁸ Ward, Mike. "Expert Portrays Texas Prisons as Horrific Home for Mentally Ill." *Austin American Statesman*, June 23, 2002.

⁹ Raimer, Ben; Murray, Owen & Pulvino, John. "Health Care in the Texas Prison System: A Looming Fiscal Crisis." May, 2010.

¹⁰ Austin, James; Fabelo, Tony; Gunter, Angela; & McGinnis, Ken. "Sexual Violence in the Texas Prison System." National Criminal Justice Reference Service, March 2006.



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FACT SHEET 2013

H.B. 2652

Provide Exiting Inmates All Necessary Information About Community Resources To Help These Men and Women be Responsible During the Critical Post-Release Period

INFORMATION ABOUT COUNTY-SPECIFIC SERVICES WILL PROVIDE EXITING INDIVIDUALS WITH TOOLS FOR SUCCESS

The Texas Department of Criminal Justice (TDCJ) has 64 Reentry Coordinators to provide assistance to the more than 75,000 incarcerated individuals who leave prison each year. Given Texas' large returning population, it is difficult, if not impossible, for these reentry professionals to provide meaningful services and information to most returning individuals, many of whom are in desperate need of housing assistance, employment opportunities, and contact information for agencies that will provide medical and mental health care.

Yet many Texas organizations – private, non-profit, local, and faith-based – have compiled locale-specific resource lists that could be made available to incarcerated individuals preparing for their return to society. Access to this information would greatly help incarcerated individuals formulate reentry plans based on available community providers, and it would increase the chances that these individuals will successfully reintegrate into their community and become productive, law-abiding citizens.

KEY FINDINGS

- Texas statute mandates that TDCJ develop a comprehensive reentry plan that includes, “programs that address the assessed needs of offenders; a comprehensive network of transition programs; the identification or providers of existing local programs and transitional services; and other providers of services as necessary to adequately assess and address the needs of each offender.”¹ Providing exiting inmates with already-compiled information about available community-based service providers and other relevant organizations will assist TDCJ in this effort at very low or no cost.
- Research suggests that the most critical period for someone leaving prison is the period immediately following release.²

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2652 BY REPRESENTATIVE ALLEN

- **H.B. 2652 will provide critical information to incarcerated individuals, preparing them for successful return to their communities.** This bill stipulates that TDCJ contact organizations that have compiled comprehensive, locale-specific resource lists containing basic, easily accessible, and accurate contact information, and make that information available to all incarcerated individuals. This will assist men and women as they prepare for the critical post-release period.
- **H.B. 2652 will provide every incarcerated individual who is within six months of release their own community-specific resource list, enabling those individuals to readily access information in the event they must change their plans.** Reentry is not a static process; plans often must be changed in light of housing or job opportunities. With these personal resource packets, exiting individuals will be better prepared to deal with the transitory nature of reentry, and will be equipped with the tools they need to make a successful transition.

Citations on reverse.

Citations

¹ TEX. GOV. CODE § 501.092(b)(2)-(5)

² Council of State Governments. Reentry Policy Council. *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, New York: Council of State Governments, January 2005, <http://www.reentrypolicy.org/Report/About>.



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TESTIMONY 2013

H.B. 2653

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2653, an effective policy that allows judges to adopt a system for progressive sanctions and incentives that will strengthen community supervision. This will lead to greater rehabilitative success among probationers, for long-term reductions in recidivism, cost savings, and stronger communities.

THE CURRENT SYSTEM OFFERS PROBATION OFFICERS AND JUDGES LIMITED TOOLS TO ENCOURAGE COMPLETION OF PROBATION

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, probationers must go before a judge for sentencing. Yet incarceration is not a universal solution to a probation violation.

Texas should allow judges to make individual determinations and fashion alternative sanctioning or incentive mechanisms to keep probationers in the community, which will continue the progress that Texas has made in safely diverting individuals from jails through community-based programming and treatment.

KEY FINDINGS

- On average, probation costs the state \$1.38 per probationer per day.¹
- On the other hand, prison averages \$50.04 per person per day,² while costs for a local jail bed average \$59.00 per day.³ These are each **more than 35 times costlier than probation.**
- In Fiscal Year 2012, felony community supervision revocations accounted for 13,523 of 44,608 prison admissions (30.3%), and they accounted for 9,926 of 23,226 state jail admissions (42.7%).⁴ **50% of probation revocations were for technical violations.**⁵ According to the Legislative Budget Board, "A technical violation is any violation of community supervision conditions other than committing a subsequent new offense (e.g., positive urinalysis or failure to pay court-ordered fees)."⁶
- For the past two fiscal years, revocation rates for community supervision averaged 14.5%. Among individuals released from prison in 2008 and 2009 (measured through 2011 and 2012, respectively), recidivism rates were approximately 22.5%, while they were approximately 30.9% for individuals released from state jail in 2008 and 2009 (measured through 2011 and 2012).⁷
- A recent survey from the Texas Public Policy Foundation found that 80% of respondents favored requiring first-time, low-level probationers to work and pay restitution while on mandatory probation supervision, given how expensive prison is.⁸

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2653 BY REPRESENTATIVE ALLEN

- **H.B. 2653 allows judges of each judicial district to adopt a single system of progressive intermediate incentives and sanctions for probationers.**
 - » Judges may impose ***sanctions for probation violations***, including for failure to report; failure to participate in a program or service; use of alcohol or a controlled substance; or failure to pay fines, fees, and costs. Sanctions may also target special cases or individuals with high-risk offenses.
 - » Judges may award ***incentives for consistent exemplary conduct***, including earned time credits, reduced reporting, certificates of recognition, and other positive responses to reinforce a pattern of exemplary behavior.

This low-cost approach will encourage rehabilitative progress and law-abiding behavior, thus reducing the future likelihood of re-offending

- **H.B. 2653 allows each judicial district to establish a review process to consider candidates for reduction or early termination of probation.** This safeguard will ensure that probationers who continue to require rehabilitative assistance receive it.
- **H.B. 2653 also contains other critical provisions that will strengthen community supervision, thereby boosting rehabilitative success and reducing costly recidivism:**
 - It requires the Community Justice Assistance Division to establish a model list of intermediate sanctions that judges may use in each judicial district.
 - It authorizes judges to empower probation officers to modify probation conditions to impose a progressive intermediate sanction for a probation violation, unless the violation constituted a felony offense.

Under this provision, a progressive sanction cannot include extending the length of community supervision, increasing a fine, or imposing a period of confinement in a correctional facility.

Furthermore, under this provision, probation officers must notify probationers of their violation and sanction, and must permit an administrative review of the sanction, thus protecting due process.

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

CONCLUSION

Thank you again for allowing me the opportunity to present testimony in favor of H.B. 2653. Ultimately, 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.

References

¹ Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, p. 14; available at http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf.

² *Ibid.*, p. 8.

³ Brandon Wood, Then-Assistant Director of the 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.

⁴ Legislative Budget Board, "Statewide Criminal Justice Recidivism and Revocation Rates," Submitted to the 83rd Texas Legislature, January 2013, p. 19.

⁵ *Ibid.*, p. 11.

⁶ *Ibid.*, p. 19.

⁷ *Ibid.*, pp. 11, 23, 31. This refers to individuals sent or returned to a correctional facility.

⁸ Texas Public Policy Foundation, *Texas Voter Survey: March 20-22, 2011*; available at <http://www.rightoncrime.com/wp-content/uploads/2011/04/TX-Poll-Toplines.pdf>.



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TESTIMONY 2013

H.B. 2734

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill (H.B.) 2734, establishing a comprehensive study that will help Texas lawmakers understand ways in which the state jail system can be improved. Without a proper examination of what works and what is lacking, Texas policy-makers cannot help implement changes that will have a long-term impact.

POLICY MAKERS NEED MORE INFORMATION RE: THE STATE JAIL SYSTEM IN ORDER TO MAKE MEANINGFUL CHANGES

The state jail system was originally designed to 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 higher risk to public safety.¹ Today, however, as a result of various statutory changes, tens of thousands of Texans, primarily with low-level drug or property offenses, have been sentenced directly to state jail with little (if any) access to treatment, and without post-release community supervision or support. Additionally, incarceration in state jails results in higher recidivism rates (nearly 63 percent re-arrested and over 31 percent re-incarcerated) than both prison and community supervision. Furthermore, state jails are dramatically more costly (averaging nearly \$43 a day per person) than incarceration alternatives such as community supervision (\$1.38 a day per person) and diversion treatment (less than \$7 a day per person).²

While policy-makers and stakeholders recognize the need to improve the state jail system, more information is necessary to implement meaningful changes that will have a lasting impact. H.B. 2734 will create a committee that will conduct a comprehensive study of the state jail system to identify systemic failures, gaps in services and programs, areas where improvements can be made, and what programs are working. The committee will also make recommendations based on its findings. The committee will meet and study the state jail system during the interim between the 2013 and 2015 legislative sessions. As part of its duties, the committee will report its findings to the legislature and the Department of Criminal Justice no later than January 1, 2015. This report will also be made available to the public.

KEY FINDINGS

- **STATE JAIL COST:** In 2012, there were nearly 12,000 individuals on hand in a state jail facility (8% of all individuals incarcerated) and over 23,000 new receives throughout the year.³ Incarcerating these men and women cost taxpayers over \$500,000 a day and over \$180 million annually.⁴
- **STATE JAIL DEMOGRAPHICS:**
 - About 85% of the individuals in a state jail are there for nonviolent drug or property offenses.⁵
 - Over 50% of the individuals in a state jail are there for their first or second offense.⁶
 - The majority of individuals are in for drug possession (nearly 30%), followed by larceny and burglary.⁷
 - The average state jail sentence is 1.02 years, while the average length of time an individual will spend in a state jail is about 6 months.⁸
- **RECIDIVISM RATES:** **31.1%** of individuals released from a state jail in FY 2009 (measured through FY 2012) were re-incarcerated.⁹ By way of comparison, **22.6%** of individuals released from prison in FY 2009 (measured through FY 2012) were re-incarcerated¹⁰ and an average **14.8%** of individuals on felony direct supervision were revoked from their probation from FY 2008 through FY 2012.¹¹

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2734 BY VICE CHAIRMAN WHITE

- **H.B. 2734 will establish the Texas State Jail Committee to study and make recommendations to improve the state jail system.** The committee will be composed of 10 members including legislators, prosecutors, defense attorneys, advocates, and individuals with expertise in criminal law. The committee will conduct an in-depth analysis of the state jail system, assessing cost-effectiveness, program outcomes, gaps in care and services, and recidivism rates. This will also provide the committee an opportunity to observe programs and practices that work and are effective. Ultimately, this will help the committee identify problems within the state jail system and will enable the committee to make meaningful recommendations regarding potential solutions, as well as long term strategies for overall state jail improvement.

The committee will meet no less than six times during its duration, and it will be abolished February 1, 2015. Under H.B. 2734, the committee may hire staff or contract with universities or suitable entities to carry out its duties. It will submit a report detailing its findings and recommendations to the Department of Criminal Justice, the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees in the senate and house of representatives primarily responsible for criminal justice issues.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of H.B. 2734. This bill will equip policy-makers with critical knowledge that will enable them to make effective, well-informed recommendations to improve the state jail system. Although there are a number of observable statistical deficiencies in the state jail system, lawmakers need more comprehensive and detailed information regarding systemic shortcomings in order to make substantial improvements. The Texas Criminal Justice Coalition strongly urges you to support H.B. 2734.

Citations

¹ House Research Organization, Bill Analysis, Tex. S.B. 1067, 73rd Leg., R.S. (1993); House Research Organization, Bill Analysis, Tex. S.B. 532, 73rd Leg., R.S. (1993).

² Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report Fiscal Years 2010-2012*, Submitted to the 83rd Texas Legislature, January 2013, pp. 8, 14, 15 (state jail costs are estimated at \$42.90 a day per person; substance abuse outpatient treatment is estimated at \$5.30 a day per person, while the Treatment Alternatives to Incarceration Program is estimated at \$6.51 a day per person).

³ Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2012*, pp. 1, 2. Available at http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf.

⁴ Based on LBB, *Uniform Cost Report*, p. 8.

⁵ TDCJ, *Statistical Report*, pp. 1, 2.

⁶ TDCJ Open Records Response, 16 October 2012, information available upon request. Over 3,000 individuals (nearly 30%) are on their first offense.

⁷ *Id.*

⁸ *Id.* 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).

⁹ LBB, *Statewide Criminal Justice Recidivism and Revocation Rates*, Submitted to the 83rd Texas Legislature, January 2013, pp. 4, 31, 35; available at www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf. 62.7% of individuals released from state jail in FY 2008 (measured through FY 2011) were re-arrested.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 11.



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TESTIMONY 2013

H.B. 2736

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of House Bill (H.B.) 2736, which will encourage greater rehabilitative success among individuals with certain offenses, resulting in significant taxpayer cost savings, increased public safety, and strengthened communities.

COMMUNITY SUPERVISION ALTERNATIVES WILL INCREASE PUBLIC SAFETY, PERSONAL RESPONSIBILITY, AND COST SAVINGS

The state jail system was originally designed to 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 higher risk to public safety.¹ Community supervision often provides a better, less expensive opportunity to obtain meaningful services and resources that address substance abuse issues, mental health issues, employment problems, etc. By way of comparison, state jails are dramatically more costly (averaging nearly \$43 a day per person) than incarceration alternatives such as community supervision (\$1.38 a day per person) and diversion treatment (less than \$7 a day per person).²

Most importantly, while the creation of state jail felony offenses was intended to carve out a population of individuals more amenable to rehabilitative services and treatment programs, **persons convicted of state jail felony offenses actually have a higher rate of recidivism than individuals exiting prisons and those on community supervision.** This may be due to the lack of rehabilitative programming provided at state jail facilities, the relatively short terms of incarceration that prohibit engagement in effective treatment programs, or the lack of post-release supervision and structured support in the community. Yet today, tens of thousands of Texans, primarily with low-level drug or property offenses, are sentenced directly to state jail.

H.B. 2736 will address systemic failures in the state jail system that have resulted in increased taxpayer costs and decreased public safety by offering a split-sentencing alternative for state jail felonies. H.B. 2734 will allow individuals convicted of a state jail felony to serve one-half of their sentence in a state jail facility, followed by an automatic placement on community supervision, where they would have access to important community-based programs and services that will increase their chances of success upon reintegrating to the community. With both the probation and state jail systems sharing the load, Texas will be promoting public safety while efficiently using taxpayer dollars.

KEY FINDINGS

STATE JAIL RECIDIVISM RATES: **31.1%** of individuals released from a state jail in FY 2009 (measured through FY 2012) were re-incarcerated.³ By way of comparison, **22.6%** of individuals released from prison in FY 2009 (measured through FY 2012) were re-incarcerated⁴ and an average **14.8%** of individuals on felony direct supervision were revoked from their probation from FY 2008 through FY 2012.⁵

STATE JAIL POPULATION AND COST

- In Fiscal Year (FY) 2012, there were nearly 12,000 individuals on hand in a state jail facility (8% of all individuals incarcerated) and over 23,000 new receives throughout the year.⁶ Incarcerating these men and women cost taxpayers over \$500,000 a day and over \$180 million annually.⁷
- In FY 2012, nearly 23,000 individuals were released from such facilities that fiscal year.⁸

Continued on reverse.

STATE JAIL DEMOGRAPHICS:

- About 85% of individuals in a state jail are there for nonviolent drug or property offenses.⁹
- Over 50% of individuals in a state jail are there for their first or second offense.¹⁰
- The majority of individuals are in for drug possession (nearly 30%), followed by larceny and burglary.¹¹
- The average state jail sentence is 1.02 years. The average time spent in a state jail is about 6 months.¹²

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2736 BY VICE CHAIRMAN WHITE

- ❖ **H.B. 2736 will improve public safety by providing a short term of confinement for individuals convicted of a state jail felony, followed by a term of community supervision.** Most individuals serve a short term in a state jail facility, often without the benefit of rehabilitation treatment or other services. By providing a follow-up term of community supervision, individuals will have access to rehabilitative programs and resources that will better ensure a successful reintegration to the community. Furthermore, by implementing a period of community supervision, H.B. 2736 will provide an appropriate measure of accountability and supervision; this will decrease the likelihood a person will reoffend and ultimately improve public safety.
- ❖ **H.B. 2736 will also decrease costs to taxpayers by reducing the period of confinement in a state jail facility and placing individuals convicted of a state jail felony on a term of community supervision.** Please see the attached document on the cost savings that would accompany a split-sentencing scheme for state jail offenses, including short-term cost savings of up to \$26.6 million per year and long-term cost savings of up to \$128 million per year.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of H.B. 2736. The Texas Criminal Justice Coalition strongly urges you to support this bill, which promotes increased rehabilitative success and will ultimately result in significant cost savings and recidivism reductions.

Citations

¹ House Research Organization, Bill Analysis, Tex. S.B. 1067, 73rd Leg., R.S. (1993); House Research Organization, Bill Analysis, Tex. S.B. 532, 73rd Leg., R.S. (1993).

² Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report Fiscal Years 2010-2012*, Submitted to the 83rd Texas Legislature, January 2013, pp. 8, 14, 15 (state jail costs are estimated at \$42.90 a day per person; substance abuse outpatient treatment is estimated at \$5.30 a day per person, while the Treatment Alternatives to Incarceration Program is estimated at \$6.51 a day per person).

³ LBB, *Statewide Criminal Justice Recidivism and Revocation Rates*, Submitted to the 83rd Texas Legislature, January 2013, pp. 4, 31, 35 (62.7% of individuals released from state jail in FY 2008, measured through FY 2011, were re-arrested); available at www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf.

⁴ *Id.* at 4.

⁵ *Id.* at 11.

⁶ Texas Department of Criminal Justice (TDCJ), *Fiscal Year 2012 Statistical Report*, pp. 1, 2; available at http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf.

⁷ Based on LBB, *Criminal Justice Uniform Cost Report*, p. 8.

⁸ TDCJ, *Fiscal Year 2012 Statistical Report*, p. 34.

⁹ *Id.* at 1, 2.

¹⁰ TDCJ Open Records Response, 16 October 2012; *information available upon request*. Over 3,000 individuals (nearly 30%) are on their first offense.

¹¹ *Id.*

¹² *Id.* 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).



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TESTIMONY 2013

H.B. 2811

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2811, which further strengthens efforts by the Texas Department of Criminal Justice (TDCJ) to encourage volunteers to collaborate with prison units across Texas, thus enhancing public safety by leveraging existing resources.

IDENTIFICATION, RECRUITMENT, AND REPORTING OF VOLUNTEER INVOLVEMENT IN PRISON UNITS IMPROVES OUTCOMES

Throughout the years, volunteers have played a key role in helping TDCJ fulfill its mission by providing supplemental and support services, while helping currently confined individuals engage in learning opportunities that will increase pro-social behaviors and actions. Faith-based volunteers have been particularly critical in volunteer programming, which not only brings hope to the men and women currently incarcerated, but also assists during the critical reentry transition.

TDCJ should adopt and fully implement a policy that will require each warden to identify and recruit local volunteers who can provide programming to incarcerated individuals, such as literacy and educational programs, life and job skills training, drug and alcohol rehabilitation programs, mental health and wellness training, parenting skills training, arts and crafts programs, faith-based programming, and other programs that will further assist TDCJ in its efforts to improve outcomes. Additionally, each warden should write a brief annual report detailing his or her efforts to identify, encourage, and provide volunteer programming; this will help other wardens strengthen their volunteer recruitment practices, and help policy-makers identify which regions need more community engagement in the rehabilitative and reentry processes.

KEY FACTS

- More than 75,000 individuals leave state-level incarceration each year in Texas.¹ The more programming that is offered to confined individuals, the more likely they are to succeed upon release.
- TDCJ already allows programming by volunteer organizations like AA/NA sponsors and faith-based groups. Requiring each warden to create a brief report showcasing strategies used to identify and reach out to volunteer groups will allow wardens to share information about successful approaches to recruiting a broader range of volunteers.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2811 BY REPRESENTATIVE TOTH

- **H.B. 2811 will increase cost savings and reduce recidivism** by involving the participation of more cost-free volunteer organizations in prisons to help inmates build literacy and education skills, life skills, job skills, parent-child relationship-building skills, and other valuable skills prior to release.
- **H.B. 2811 will enable wardens to share information about which volunteer services and programs work best with particular populations** by generating a brief annual report.
- **H.B. 2811 will lead to more positive relationships between prisons and local municipalities and organizations**, which can later assist individuals during the critical reentry transition.

¹ Texas Department of Criminal Justice, *Fiscal Year 2012 Statistical Report*, 2013, p. 3.



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TESTIMONY 2013

H.B. 2812

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2812, which will increase accountability and efficiency throughout Texas' parole and reentry systems through improved data collection, reporting, and tracking of outcomes.

REPORTING & RECORDING WILL ENABLE PAROLE OFFICERS & REENTRY COORDINATORS TO ASSIST INDIVIDUALS AS THEY SAFELY REENTER TEXAS COMMUNITIES

As professionals assigned the duties of risk and needs assessment, supervision, and case management, parole officers and reentry coordinators are responsible for overseeing and assisting individuals who are transitioning from a correctional facility into the community.¹ However, without robust record-keeping, reporting requirements, or information sharing, it is difficult for state and local decision-makers to identify gaps in service delivery, or to ensure that parole officers and reentry coordinators are tracking their success in case management and supervision. Improved reporting systems and more publicly available data will increase accountability and strengthen the state's reentry infrastructure, better enabling returning individuals to access the tools they need to live successfully in the community. It will also help stakeholders identify parole officers and reentry coordinators who surpass their daily obligations, for recognition by their department or the state.

BACKGROUND AND KEY FACTS

- **Current Individualized Reporting Requirements:** Currently, TDCJ maintains an electronic record in the Offender Information Management System (OIMS) for each inmate prior to release.² After individuals are released, their parole officers review certain relevant information in their OIMS record, and they are required to update that record with new information, such as special conditions or education,³ or to verify counseling and employment.⁴ However, information that parole officers review and input is often limited, and does not necessarily contain all important data on an inmate or previous inmate.
- **Current Reentry Coordinator Responsibilities:** Workforce and Reentry Coordinators perform case management and assist in developing and monitoring reentry programs targeted toward individuals leaving a correctional facility. They are expected to review and assess such individuals to identify reentry barriers, track their progress through case management, and develop reentry case plans. Importantly, their tasks also include: coordinating with appropriate agencies to obtain necessary identification documents; helping individuals obtain and apply for various reentry benefits and services; and serving as liaisons between program staff, government agencies, inmate families, support groups, and other organizations. For case management purposes, reentry coordinators also: develop and maintain records regarding participating individuals; document case records and review reports; and compile and analyze data and prepare summary reports.⁵
- **Current General Reporting Requirements:** Parole District Reentry Centers (DRCs) develop partnerships between institutional officers, parole officers, and the community to help facilitate reentry.⁶ DRCs create a continuum of care in programming for eligible persons by providing such things as cognitive intervention, substance abuse education, anger management, and pre-employment preparation classes for unemployed parolees.⁷ DRCs also require constant coordination between TDCJ divisions and community-based service providers, and the reporting requirements are fairly robust.⁸ DRCs, however, are limited to qualified parolees, and their extensive communication efforts and reporting do not extend to all releasees.⁹

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2812 BY REPRESENTATIVE TOT

- **H.B. 2812 will increase efficiency and accountability** by requiring TDCJ's Reentry and Integration Division and Parole Division to submit **an annual joint report** to the state's Reentry Task Force, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the standing committees in the Senate and House of Representatives primarily responsible for criminal justice issues.¹⁰ These reports will also be made available to the public.
- **H.B. 2812 will improve the efficacy of parole by clarifying the information each office should collect and track.** The annual joint report will capture the following parole data: (1) the number of referrals for employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs; (2) the outcomes of these referrals; (3) the identified areas where referrals are not possible due to unavailable resources or providers; (4) information on available community resources; and (5) data regarding parole officer training.
- **H.B. 2812 will improve the efficacy of the Reentry Division by clarifying the information that must be collected and monitored.** The annual joint report will capture the following reentry coordinator data: (1) the outcomes of programs and services that are available to releasees based on follow-up inquiries evaluating clients' progress after release; (2) the common reentry barriers identified during releasees' individual assessments, including in areas of employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs; (3) the common reentry benefits and services that reentry coordinators help releasees obtain or apply for; (4) information on available community resources; and (5) data regarding reentry coordinator training.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill, which will help identify gaps in reentry services (especially in historically underserved areas), thus leading to a stronger reentry infrastructure in Texas that will enable returning individuals to access the tools they need to live successfully in the community.

REFERENCES

¹ Under TEX. GOV. CODE § 508.001(7), a parole officer is a person "assigned the duties of assessment of risks and needs, investigation, case management, and supervision of releasees...."

² Under TEX. GOV. CODE § 508.152, TDCJ is required to create a record of an inmate's progress, detailing previous social history, physical and mental health, employment history, etc. See e.g., Texas Department of Criminal Justice (TDCJ) – Parole Division, "Case File Material Processing for Release," Policy and Operating Procedure Number PD/POP 2.1.13, 5 May 2011, p. 1.

³ TDCJ – Parole Division, "Initial Interview," Policy and Operating Procedure Number PD/POP 3.1.1, 13 August 2009, pp. 3-4.

⁴ See e.g., TDCJ – Parole Division, "Contact Standards for Regular Supervision of Cases," Policy and Operating Procedure Number PD/POP 3.2.8, 19 August 2009, pp. 2-3; TDCJ – Parole Division, "Offender Employment," Policy and Operating Procedure Number PD/POP 3.2.12, 1 September 2009.

⁵ Texas Department of Criminal Justice, *Position Description: Case Manager III – Workforce and Reentry Coordinator*, 27 October 2009.

⁶ TDCJ – Parole Division, "District Reentry Center (DRC) Administrative and Caseload Supervision Guidelines," Policy and Operating Procedure Number PD/POP-3.13.1, 30 August 2010.

⁷ *Id.* p. 1.

⁸ *Id.* pp. 10-11.

⁹ Project RIO was a program that partnered parole divisions with community-based resources, through the Texas Workforce Commission, to help releasees obtain employment. It provided meaningful job support and helped guide parolees in their search for employment. While Project RIO no longer exists, its implementation and function demonstrated how developing relationships, maintaining ongoing communication, and reporting on these community resources can ensure that individuals have access to relevant services and necessary job assistance. Project RIO was statutorily implemented in TEX. LAB. CODE § 306.001-.008. The statute included a provision explicitly detailing "Data Sharing" to ensure information is adequately exchanged, see TEX. LAB. CODE § 306.008.

¹⁰ This is generally consistent with the annual reporting requirements of the Board of Pardons and Paroles under TEX. GOV. CODE § 508.1445 and the reentry recidivism reporting requirements under TEX. GOV. CODE § 501.100.

Amend Property Offense Thresholds

Updating Long-Outdated Thresholds Will Improve Efficiency and Fairness in the Justice System

AMENDING PROPERTY OFFENSES WILL DECREASE COSTS AND IMPROVE EQUITY IN THE JUSTICE SYSTEM

Currently, offense thresholds for various property-related crimes are spread throughout the Penal Code. The penalties for property-related offenses (e.g., criminal mischief, graffiti, theft, etc.¹) correspond to a monetary threshold based on the dollar amount lost or damaged. **These thresholds, however, have not been changed since 1993 and therefore fail to reflect nearly two decades of inflation.** For instance, the threshold for a Class A misdemeanor, as set in 1993 and still used today, is \$500 or more but less than \$1,500; if the property value is \$1,500, it becomes a state jail felony. However, due to inflation rates, consumer goods with a value of \$1,500 today were worth less than \$1,000 in 1993.² In other words, **what amounted to a Class A misdemeanor 20 years ago may now constitute a state jail felony—a de facto “criminal inflation.”** Consequently, the penalty grades for many property offenses do not appropriately correspond to the value of the property that has been stolen, damaged, or lost.

This outdated scheme creates excessive costs for Texas taxpayers. Convictions based on these disproportionate offense thresholds can result in incarceration in county jail or state-level correctional facilities, all at a cost that can exceed \$50 per person per day.³ Additionally, at counties' expense, individuals may be detained in a county jail while awaiting indictment or trial. Furthermore, offenses over and including Class B misdemeanors (e.g., theft of \$50 in goods) may require appointment of counsel for indigent defendants, again at taxpayer expense. **Incarcerating these individuals is costly to taxpayers, depletes resources that can be directed toward individuals who pose a high risk to public safety, and further burdens already crowded jails and prisons.** In addition to these costs, **convictions for even low-level crimes can burden individuals with lifelong collateral consequences**, including limited access to housing and employment—often worsening their situation and decreasing the likelihood that they can maintain a legitimate and productive life in the community.

KEY FINDINGS

A Snapshot of Property Crimes in Texas:

- In 2010, larceny theft⁴ alone accounted for slightly more than 10% of the over one million arrests made in Texas that year.⁵
- Property-related crimes comprise over 50% of the population in state jail facilities.⁶ As of August 2012, there were nearly 12,000 individuals on hand in a state jail facility; over 35% were serving time for larceny or burglary, two of the most prevalent offenses in a state jail.⁷ These individuals cost taxpayers nearly \$180,000 per day to incarcerate and almost \$65 million annually.⁸
- More than 5,700 individuals are currently incarcerated in a Texas Department of Criminal Justice (TDCJ) facility for a larceny offense, over 3,000 of whom are in a state jail.⁹ Those individuals in a state jail cost the state over \$130,000 each day.¹⁰

A Snapshot of Property Crimes in Texas (*Continued*):

- The most recent numbers indicate that there are currently 265 people serving time for a criminal mischief offense and 12 individuals serving time for a graffiti offense in a state-level corrections facility.¹¹ These individuals are housed in various facilities run by TDCJ, but even if all were confined in the least expensive institution—state jails—this population still would cost taxpayers nearly \$12,000 per day.¹²
- As of Fiscal Year 2011, over 60,000 individuals were on direct community supervision (probation) for either a misdemeanor or felony property offense.¹³

How Other States Have Adjusted Thresholds to Account for Inflation Rates:

- Alabama passed legislation raising theft thresholds in 2003.¹⁴
- In the last few years, Georgia, Nevada, Ohio, Utah, and the District of Columbia have each enacted laws increasing felony thresholds for various property-related crimes, such as criminal mischief or theft.¹⁵ In Ohio, projected savings were \$1,294,290 annually.¹⁶
- Oregon and Washington raised criminal mischief, theft, and other thresholds in 2009.¹⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2849 BY VICE CHAIRMAN WHITE

- ❖ **H.B. 2849 will improve efficiency and create consistency** by consolidating offense thresholds and penalties related to various property offenses into one section of the Penal Code. Creating a single provision of the Penal Code that lays out the thresholds, corresponding offense levels, and related penalties will provide clarity and make it easy for prosecutors, defense attorneys, and judges to determine the appropriate penalty for property-related crimes. Centralizing the penalty amounts will also make it easier to modify in the future to account for future inflation rates.
- ❖ **H.B. 2849 will also save taxpayer dollars and increase fairness in the judicial system** by updating the antiquated value thresholds upon which property offenses are based. This will make penalties more proportional to the offenses committed and avoid wasting valuable resources on prosecution and incarceration for petty crimes.
- ❖ **Please see the attached document for a comparison of the current penalty amounts for each of the property offenses listed here, along with the proposed changes under H.B. 2849.**

Citations

- ¹ Criminal mischief, graffiti, and theft can be found in TEX. PENAL CODE §§ 28.03, 28.08, and 31.03 respectively.
- ² Based on the United States Department of Labor's Consumer Price Index (CPI), goods that were valued at \$50 in 1993 are worth \$80.33 today, and goods valued at \$20,000 in 1993 are now worth \$32,133.70. See United States Department of Labor: Bureau of Labor Statistics, "Databases, Tables & Calculators by Subject," CPI Inflator Calculator, website last accessed 6 April 2013, available at http://www.bls.gov/data/inflation_calculator.htm.
- ³ According to the Legislative Budget Board (LBB), per-day prison costs average \$50.04 per person, while per-day state jail costs average \$42.90 per person; from LBB, "Criminal Justice Uniform Cost Report Fiscal Years 2010-2012," January 2013, p. 8. Also note: According to Brandon Wood, Director of the Texas Commission on Jail Standards (TCJS), per-day county jail costs average \$59 per bed; TCJS presentation at American Bar Association, Criminal Justice Section, Roundtable on Pretrial Detention in Texas, held in Austin, Texas, March 30, 2012.
- ⁴ Larceny theft is distinguishable (i.e., it is a separate offense) from burglary, robbery, and motor vehicle theft.
- ⁵ Texas Department of Public Safety (DPS), Texas Arrest Data: 2010, available at <http://www.txdps.state.tx.us/crimereports/10/citCh9.pdf>.
- ⁶ Texas Department of Criminal Justice (TDCJ), "Fiscal Year 2012: Statistical Report," p. 11, available at http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf.
- ⁷ TDCJ, information received via Freedom of Information Request, 16 October 2012. Information available upon request.
- ⁸ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8.
- ⁹ TDCJ, information received via Freedom of Information Request, January 10, 2013. Information available upon request.
- ¹⁰ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8. This figure does not include costs of investigation, arrest, detention, or trial.
- ¹¹ TDCJ, information received via Freedom of Information Request, January 10, 2013. Information available upon request.
- ¹² LBB, *Criminal Justice Uniform Cost Report*, January 2011, p. 6. This figure does not include costs of investigation, arrest, detention, or trial.
- ¹³ TDCJ, *Statistical Report*, *supra* note 6, at 6. The cost is significantly less to place a person on probation; community supervision amounts to a fraction of the costs of incarceration.
- ¹⁴ Vera Institute of Justice, "Memorandum to South Carolina Sentencing Commission," June 26, 2009. <http://www.scstatehouse.gov/archives/citizensinterestpage/SentencingReformCommission/RetreatPresentations/WilhelmFinalVersionSRCRetreat.pdf>, 2.
- ¹⁵ National Conference of State Legislators, *State Sentencing and Corrections Legislation*. <http://www.ncsl.org/issues-research/justice/state-sentencing-and-corrections-legislation.aspx>.
- ¹⁶ Vera Institute of Justice, *Memorandum*, *supra* note 37, at 2.
- ¹⁷ National Conference of State Legislators, *Significant State Sentencing and Corrections Legislation in 2009*. <http://www.ncsl.org/issues-research/justice/sentencing-and-corrections-legislation-in-2009.aspx>.



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TESTIMONY 2013

H.B. 2854

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2854, an effective policy that ensures youth who have atoned for their offense and gotten back on the right path have a fair shot at success.

TEXAS SHOULD REMOVE THE APPLICATION REQUIREMENT FOR YOUTH ENTITLED TO A RECORDS SEALING

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.¹ 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.² As a result, a main purpose of the juvenile justice system, as set out in the Texas Family Code, is "to remove, where appropriate, the taint of criminality from children committing certain unlawful acts."

However, despite existing safeguards, many juvenile records are still widely accessible, which creates serious burdens for youth who have gotten their lives back on track. Most juvenile records in Texas are not on "restricted access," so employers, landlords, and schools have easy access to this sensitive information. Even after a juvenile record is restricted, some information may continue to be accessible, especially through the FBI database.

KEY FINDINGS

- **Most juvenile records are fully open to employers, landlords, and schools because they are not on "restricted access."** The Department of Public Safety currently maintains records on 604,818 people who were arrested when they were younger than 17 years old. Only 40 percent of those records are on restricted access.³
- **Low-level youthful offenses seldom lead to serious crimes.** A tracking study by Texas' Legislative Budget Board revealed that only 2.3 percent of youth who entered deferred prosecution in 2009 were later incarcerated in the following three years.⁴
- **Sealing records – a process already established by law – provides significantly more protections than "restricted access."** The Department of Public Safety treats a sealed juvenile record the same as an adult expunction. The Department destroys all documentation and removes the record from the Texas system and the FBI system.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2854 BY REPRESENTATIVE MILES

- **H.B. 2854 automatically seals the records of misdemeanor youth after two years.** Current law entitles misdemeanor youth to have their records sealed after two years, but they must first make an application to the court. This application requirement creates an expensive barrier for most youth. **H.B. 2854 removes this unnecessary barrier by requiring a juvenile court to seal these records on the court's own motion.** The bill also creates a safeguard by requiring the juvenile court to provide notice to the prosecuting attorney; if the prosecuting attorney objects to sealing a youth's record, the court must hold a hearing to determine if the record should be sealed.

References on reverse

References

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

² Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2013).

³ Texas Department of Public Safety response to open records request (January 2013).

⁴ Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2013).



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FACT SHEET 2013

H.B. 2855

Increase Opportunities for Hard-Working Individuals with Criminal Records By Reducing the Onerous Fees Required for Non-Disclosure Petitions

LESSENING COSTS ASSOCIATED WITH FILING CIVIL PETITIONS WILL ALLOW LOW-INCOME INDIVIDUALS TO RETURN TO WORK

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have a difficult time, or be absolutely barred from, finding housing or employment; becoming licensed for a particular occupation; obtaining an educational loan; or receiving federal or state benefits for basic human needs.¹

In recognition of this, Texas courts have the option of ordering the criminal conviction of an individual to be sealed, especially if that person has successfully completed a term of deferred adjudication and petitioned for an order of non-disclosure.²

However, the fees necessary to file a civil court petition may sometimes prevent otherwise-qualified individuals from petitioning the courts for an order of non-disclosure. Those fees average between \$250 and \$300 in most Texas district courts, which may be a week's paycheck for an individual in a low-paying job who is seeking to climb the employment ladder and would benefit from a sealed record.

KEY FINDINGS

- **Criminal records compromise an individual's ability to enter the workforce.**³ Individuals with a conviction cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others),⁴ leaving many returning individuals scrambling to find employment.
- In fact, **people with criminal convictions receive half as many job offers as job seekers without convictions**,⁵ which means that sealing an individual's criminal record, if ordered by a court, has enormous impact on the employment options and future success of those individuals.
- **Criminal records also destabilize Texans by creating barriers to safe housing.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2855 BY REPRESENTATIVE MILES

- **H.B. 2855 will waive the usual fee imposed for initiating a civil petition, while still requiring a \$28 filing fee.** Many individuals who are caught in the cycle of low-level crime are often under-employed and without the means to pay the \$250 or more needed to initiate a civil petition for non-disclosure. This bill will give these men and women a fair chance to re-enter the work force without fear of being discriminated against for a criminal record, thus reducing the likelihood of costly re-offending.

Citations on reverse.

Citations

¹ National Institute of Justice and the American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, 2012, <http://www.abacollateralconsequences.org/>.

² Tex. Gov. Code § 411.081(d)

³ Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, *The Journal of Law and Criminology*, Vol. 100, No. 3, Northwestern University, School of Law, 2010, p. 1215.

⁴ TEX. OCC. CODE, 53.021 (c)(3)

⁵ Pew Charitable Trust, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, p. 22, [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

⁶ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, March 2006, <http://www.urban.org/publications/411061.html>.



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FACT SHEET 2013

H.B. 2863

Texas Should Improve First Offender Prostitution Prevention Programs

Amending First Offender Prostitution Programs to Expand Eligibility to Participate and to Offer Targeted Education and Counseling Services Will Lead to Cost Savings and Healthier Communities

PUNITIVE APPROACHES TO PROSTITUTION ARE COSTLY AND INEFFECTIVE, THREATENING PUBLIC HEALTH AND SAFETY

Texas incarcerates sex workers at a higher rate than most other states.¹ This punitive approach has not significantly deterred individuals from prostitution or decreased the number of prostitution arrests. Instead, Texas' policies have resulted in high costs associated with policing, prosecuting, and incarcerating these individuals, and they have created collateral consequences for the arrested individuals themselves and the communities where prostitution occurs.² Indeed, individuals face lifelong barriers associated with conviction, including limited access to housing and employment, while communities struggle to address populations that are under-employed or homeless, and thus draining local budgets.

Prostitution diversion programs have a proven track record of success in offering individuals a safe, permanent exit from prostitution, while simultaneously saving the state and counties much-needed funds and positively impacting both public health and public safety. **Currently, various first offender programs in Texas are open only to individuals who solicit sex workers. We urge legislators to open participation in such programs to sex workers themselves**, as well as add offense-specific counseling and education to participant programs. Without assistive services in place, it is not easy for prostitutes to simply abandon their primary means of support.

KEY FINDINGS

- As per a 2001 Texas law, prostitution is a felony if an individual has been convicted of the offense on three or more occasions. In the summer of 2012, an *Austin American-Statesman* study estimated that there are **currently 350 individuals serving time in state jail or prison due to prostitution convictions**.³
- It costs an average of \$15,500 to \$18,500 annually to house an individual in a state jail or prison, while participation in a community-based rehabilitation program costs only \$4,300 per individual per year. **The repeal of the 2001 law and the increased use of prostitution diversion programs could result in savings of over \$4 million annually**, money that could instead be funneled into much needed treatment programs.⁴
- Individuals become involved with prostitution for a variety of reasons. It may be a conscious, voluntary decision; it may be a means of survival; or it may have been forced upon them. The men and women who engage in sex work are **far more likely to suffer from mental illness, drug and alcohol addiction, and past trauma** than both the general population and many other individuals entering the criminal justice system; if left untreated, these conditions will result in continuous relapses, re-offending, and re-incarceration, at further taxpayer expense.⁵
- **Unfortunately, current laws related to prostitution have failed to adequately address the problems related to prostitution, and have actually made it more difficult for prostitutes to leave the profession**, since once a prostitute has a criminal record, finding legitimate work becomes that much more difficult. In addition, the criminalization of prostitution forces prostitutes to retreat even further from public view, making an already vulnerable population even more susceptible to violence and abuse.

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT H.B. 2863 BY REPRESENTATIVE CARTER

In order to significantly reduce the number of individuals working as prostitutes and to save long-term taxpayer dollars associated with arrest and incarceration, H.B. 2863 expands first offender program participation to those convicted of offering (not just soliciting) prostitution, and it provides for tailored assistance based on the particular offense committed.

- **H.B. 2863 expands the eligible individuals who are able to participate in first-time prostitution diversion programs, saving the state much-needed funds and making communities safer and healthier.** Under current law, only those who have committed prostitution under section 43.02(a)(2) of the Penal Code are eligible to enroll in certain first offender prostitution programs. H.B. 2863 further expands eligibility to those who have committed prostitution under section 43.02(a)(1), which includes individuals offering, agreeing, or engaging in sexual conduct for a fee. This bill will help to reduce long-term costs associated with policing, prosecuting, and incarcerating individuals who commit prostitution.
- **H.B. 2863 improves the outcomes of first offense prostitution diversion programs by adding provisions for counseling, services, and classroom instruction to participants.** Separate and appropriate assistive services will significantly increase the success rate of prostitution diversion programs by informing participants of the risks involved with prostitution – whether offering or soliciting prostitution – and they will help to encourage other life choices to be responsible, law-abiding citizens.

References

¹ Mike Ward, "Texas Rethinks Law Making Repeat Prostitution a Felony," *Austin American-Statesman*, August 25, 2012.

² Dominique Roe-Sepowitz, Kristine Hickie, Martha Perez Loubert, & Tom Egan, "Adult Prostitution Recidivism: Risk Factors and Impact of a Diversion Program," *Journal of Offender Rehabilitation* 50, no. 5 (1990): 272-85.

³ Ward, "Texas Rethinks."

⁴ *Ibid.*

⁵ Melissa Farley & Howard Barkan, "Prostitution, Violence, and Posttraumatic Stress Disorder," *Women & Health* 27, no. 13 (1998): 37-49.



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FACT SHEET 2013

H.B. 2881

Implement a DWI Reduction Task Force to Study and Recommend Evidence-Based Prevention and Treatment Solutions

EFFORTS TO CURB INTOXICATION-RELATED DRIVING OFFENSES MUST BE IMPROVED

Over the past decade, Texas' rate for alcohol-impaired fatalities has increased compared to other states. Texas now ranks ninth highest out of 50 states for alcohol-related driving fatalities.¹ Taking a closer look at the data, the percentage of traffic fatalities involving alcohol increased from 27% to 34% since 2003.² This upward trend is particularly striking when one considers that overall traffic fatalities have decreased by 27% in Texas over the same time period.³

Texas relies on graduated criminal sanctions to address Driving While Intoxicated (DWI) offenses.⁴ Specifically, convictions for a DWI offense may carry the following penalties:

- *Punitive sanctions* – these include incarceration, probation, fines, and/or community service.
- *Rehabilitative measures* – these include education classes, treatment programs, and victim panels.
- *Incapacitation* – this includes impounding vehicles and license plates, installing ignition interlocks, requiring electronic monitoring, and/or home incarceration.

Regarding efforts to minimize DWI offenses, punitive criminal justice sanctions alone do not effectively address the root causes of alcohol abuse/dependency. Nor do they present opportunities for prevention. As such, habitual engagement in intoxicated driving DWI continues to pose a problem, both at the individual and community level. **Communities must employ effective education, screening, intervention, and treatment strategies if they fully intend to reduce incidences of DWI among their local populations. Likewise, they must implement prevention alternatives that would more effectively reduce cases of DWI and the dangerous consequences that accompany alcohol abuse and dependency.** However, many communities lack the resources necessary to do so, or the knowledge about specific strategies that would improve driving outcomes.

KEY FINDINGS

- **Those with DWI offenses often have a previous history of alcohol abuse/dependency issues.** Most DWI arrestees have driven many times while intoxicated without ever being caught or arrested.⁵ Nationally, 1.5 million DWI arrests occur each year,⁶ and according to Mothers Against Drunk Driving (MADD), one-third of all those arrested for driving under the influence have re-offended.⁷
- **Participation in treatment and monitoring reduces recidivism more effectively than punitive sanctions.** Individualized treatment programs that incorporate counseling, education, traditional alcoholism treatment, peer/sponsor support programs, and integration of medication, technology, and/or community supervision increase effectiveness in addressing alcohol abuse/dependency. Only limited evidence suggests that incarceration and fines alone have a deterrent effect on individuals who commit DWI offenses; however, research does indicate that criminal justice sanctions used in tandem with specialized treatment and interventions may increase compliance and successful outcomes to reduce recidivism.⁸

Continued on reverse.

- **Preventative measures reduce possible DWI arrests and accidents.** A targeted investment in community-based education, prevention, and intervention programs can save lives.⁹ For example, Texas A&M's "Carpool" program founded in 1999, where students can call for a ride home with no questions asked, prevents an average of 650 drunk drivers each weekend.¹⁰ This model program has been nationally recognized and has received numerous awards.¹¹
- **Expanded opportunities for screening, treatment, and monitoring for at-risk individuals would reduce recidivism.** Again, one-third of DWI arrestees have been classified as "problem drinkers" who have driven under the influence before and have proven alcohol dependence and abuse issues.¹² Because of this high rate, policy-makers and local leadership must ensure that, in addition to appropriate education and prevention programs, incentives are available to encourage participation in and completion of treatment programs. Likewise, leadership must increase opportunities for interventions from community health providers, while also ensuring that those undergoing treatment are continually supervised throughout their programming. Monitoring is an especially critical factor in ensuring treatment effectiveness and recovery.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT H.B. 2881 BY REPRESENTATIVE TOTH

H.B. 2881 will help communities identify strategies for improving public safety by creating a task force dedicated to reducing habitual incidents of DWI. The task force – comprised of professionals, experts, and community members directly impacted by DWI – will study ways to minimize repeat DWI offenses. Specifically, the task force will study evidence-based best practices to responsibly reduce habitual DWI offenses and the number of fatalities due to DWI, and it will create a detailed report of its findings and recommendations. The results of the study and implementation of recommendations will effectively reduce repeat DWIs, saving significant costs associated with enforcement and incarceration, and increasing public safety.

Citations

¹ David Strickland (Administrator, National Highway Safety Administration), in remarks prepared for Texas Traffic Safety Conference, San Antonio, Texas, June 5, 2012, <http://www.nhtsa.gov/>.

² DUI (Alcohol) Crashes and Injuries by County (2003 - 2011)," prepared by the Texas Department of Transportation, http://www.txdot.gov/txdot_library/drivers_vehicles/publications/crash_statistics/default.htm.

³ In 2003, there were 1.75 deaths per 100 million vehicle miles travelled, compared with 1.28 in 2011. See "Comparison of Motor Vehicle Traffic Deaths, Vehicle Miles, Death Rates, and Economic Loss (2003 - 2011)," Texas Department of Transportation, http://ftp.dot.state.tx.us/pub/txdot-info/trf/crash_statistics/2011/comparison.pdf

⁴ Texas Penal Code §49.04 and §49.09. First time conviction of DWI, with no other extenuating factors, is considered a Class B misdemeanor with a minimum confinement of 72 hours. A second time conviction of DWI, again with no extenuating factors, is considered a Class A misdemeanor and carries a minimum confinement of 30 days. A third conviction results in a third degree felony.

⁵ Robert B. Voas, Ph. D. and Deborah A. Fisher, Ph. D., *Court Procedures for Handling Intoxicated Drivers*, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, <http://pubs.niaaa.nih.gov/publications/arh25-1/32-42.htm>.

⁶ *Ibid.*

⁷ Mothers Against Drunk Driving, *Mandatory Alcohol Assessment/Treatment*, Mothers Against Drunk Driving, http://www.madd.org/laws/law-overview/Mandatory_Alcohol_Assessment_and_Treatment_Overview.pdf.

⁸ Voas and Fisher, *Court Procedures*. Authors state that "although the effectiveness of jail sentences is doubtful, the desire to avoid jail is an essential incentive for offenders to comply with sanctions that appear to be more effective, such as treatment interventions."

⁹ National Institutes of Health (NIH), *Fact Sheet, Alcohol – Related Traffic Deaths*, <http://report.nih.gov/NIHfactsheets/ViewFactSheet.aspx?csid=24&key=A#A>.

¹⁰ CARPOOL History, "About Us," <http://carpool.tamu.edu/about/history>.

¹¹ CARPOOL Awards, "About Us," <http://carpool.tamu.edu/about/awards>.

¹² Voas and Fisher, *Court Procedures*.

¹³ *Ibid.*



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TESTIMONY 2013

H.B. 2914

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 2914 by Representative Thompson, an effective policy that will save taxpayer money otherwise spent on costly incarceration, and protect due process.

CHASING TRACES: AN INEFFECTIVE AND COSTLY RESPONSE TO FIRST-TIME LOW-LEVEL DRUG POSSESSION

Individuals found in possession of even residue or trace amounts of a controlled substance (less than .02 grams) can be convicted of a state jail felony and sent to state jail or prison, at costs of \$15,700 - \$18,300 per person per year.¹ H.B. 2914 would establish .02 grams of a controlled substance in Penalty Group 1 as the minimum weight necessary to constitute a state jail felony. **This amount will protect due process by allowing both the State and defense to test the controlled substance in a crime lab.** Furthermore, H.B. 2914 makes possession of less than .02 grams of a controlled substance a class C misdemeanor, and possession of more than .02 grams but less than one gram a state jail felony.

Texas incarcerates high numbers of individuals for low-level drug possession. In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction.² Of these individuals, 88% were convicted of possessing less than a gram of a controlled substance without the intent to deal or distribute (a gram equals one packet of Sweet'N Low).³ As of August 2012, nearly one-third (31%) of the total Texas state jail population was incarcerated for possession of less than a gram.⁴

In 2011 and 2012, the Texas Department of Criminal Justice (TDCJ, comprised of state jails, prison units, and Substance Abuse Felony Punishment facilities) received 43,793 individuals convicted of drug crimes.⁵ Approximately 42% of these individuals were incarcerated for possession of less than a gram.⁶

Many individuals convicted of low-level drug offenses struggle with mental illness and chemical dependency. For that reason, **incarcerating individuals for possession of less than one gram of a controlled substance often costs the state more on average than incarcerating those convicted of other types of offenses.**

Indeed, individuals convicted of possession of less than a gram fill beds in TDCJ medical, psychiatric, and intellectually disabled units at high expense:

- **Medical Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 465⁷ had been placed in a medical unit (\$661.86/day)⁸ during the span of their incarceration. These individuals alone filled beds in the medical unit for a total of 5,812 days,⁹ costing the state \$3,846,730.
- **Psychiatric Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 113¹⁰ had been placed in a psychiatric unit (\$63.10/day)¹¹ during the span of their incarceration. These 113 individuals alone filled beds in the psychiatric unit for 13,969 days,¹² costing the state \$881,443.
- **Intellectually Disabled Program:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 18¹³ individuals had been placed in an intellectually disabled program (\$66.35/day)¹⁴ during the span of their incarceration. These 18 individuals alone filled beds in intellectually disabled units for 6,550 days,¹⁵ costing the state \$434,592.

Continued on reverse.

KEY FINDINGS

- .02 grams is the minimum weight necessary for both the prosecution and defense to test a controlled substance in a crime lab, thus protecting due process rights.¹⁶
- In 2011 and 2012 alone, TDCJ received 18,535 individuals for possession of less than a gram of a controlled substance.¹⁷
- In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction.¹⁸ 88%, or 14,309 of these individuals, were sentenced for possession of less than a gram.¹⁹
- Under the administration of former Harris County District Attorney Pat Lykos, trace amounts of controlled substances were prosecuted as Class C misdemeanors instead of state jail felonies.²⁰ This policy safely decreased incarceration, saved money, and freed up time in the Houston Police Department Crime Lab and local courts.²¹ **Notably, the crime rate steadily dropped during Lykos's tenure.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 2914 BY REPRESENTATIVE THOMPSON

H.B. 2914 will establish .02 grams as the minimum weight necessary to constitute a state jail felony. This is a proactive, common sense approach to minor drug crimes that will save taxpayers money, protect due process, and prevent individuals from being burdened with a felony conviction – and the devastating lifelong barriers that accompany it.

CONCLUSION

Thank you again for allowing me this opportunity to testify in favor of this bill. H.B. 2914 will decrease jail overcrowding, save county taxpayers money, increase confidence in the criminal justice system, and facilitate more opportunities for rehabilitation, to reduce rates of re-offending. The Texas Criminal Justice Coalition strongly urges you to support this policy.

Citations

¹ Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010-2012* (2013), p. 8; costs reflect an annual term of incarceration in a state jail (\$42.90 per person per day) and an annual term of incarceration in a prison (\$50.04 per person per day).

² Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

³ Open Records Request, Texas Department of Criminal Justice.

⁴ Ibid.

⁵ Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

⁶ Open Records Request, Texas Department of Criminal Justice.

⁷ Ibid.

⁸ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

⁹ Open Records Request, Texas Department of Criminal Justice.

¹⁰ Ibid.

¹¹ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹² Open Records Request, Texas Department of Criminal Justice.

¹³ Ibid.

¹⁴ LBB, *Criminal Justice Uniform Cost Report*, p. 8.

¹⁵ Open Records Request, Texas Department of Criminal Justice.

¹⁶ Emily DePrang, "Houston's New DA Brings Back 'Trace' Felonies, the Eighties," *Texas Observer*, February 15, 2013.

¹⁷ Open Records Request, Texas Department of Criminal Justice.

¹⁸ Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

¹⁹ Open Records Request, Texas Department of Criminal Justice.

²⁰ Houston's New DA Brings Back 'Trace' Felonies, the Eighties.

²¹ Ibid.



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Testimony 2013

H.B. 3004

Dear Members of the Committee,

Thank you for allowing me to present testimony in favor of H.B. 3004, which will clarify procedures related to granting time credits to individuals who participate in rehabilitative and self-improvement programs in state jails. This bill will increase efficiency in the process and better encourage participation in crucial programming, thus reducing the likelihood of costly re-offending and strengthening communities.

CONFUSION IN THE ALLOCATION OF TIME CREDITS MAKES IT DIFFICULT FOR INDIVIDUALS IN STATE JAILS TO RECEIVE CREDIT FOR SUCCESSFUL PARTICIPATION IN REHABILITATION OR VOCATIONAL PROGRAMS.

Until recently, and unlike in state prisons, individuals serving their sentence in state jails were ineligible for any time credits and had to serve their full sentence (up to two years) with no eligibility for parole or early release. Consequently, there was no legitimate incentive to participate in rehabilitative, educational, or vocational programs, nor were there significant advantages to maintaining a positive disciplinary record. It should come as little surprise that state jail inmates have a higher recidivism rate than state prisoners.¹

Recognizing that individuals in a state jail facility would benefit significantly from rehabilitative and self-improvement programs, Texas' 2011 Legislature ratified H.B. 2649, which allows individuals to receive limited "diligent participation" credits for successful participation in state jail programs. In other words, H.B. 2649 incentivized participation in programming by allowing judges to reduce the original sentences of eligible individuals by as much as one-fifth.

However, the implementation of this incentive scheme has been impeded by confusion amongst practitioners in the court and jail system with regard to who is authorized to grant credits to a state jail inmate and who should receive such credits, leaving judges unwilling to grant diligent participation credits when appropriate. **H.B. 3004 will clarify the duties of H.B. 2649 and clear up confusion in the process by allowing the Texas Department of Criminal Justice (TDCJ) to grant program credits.** Furthermore, H.B. 3004 will allow TDCJ to grant the credits at any time prior to the termination of the original sentence; currently, a judge may only grant credits until the 30th day before the date on which the individual will have served 80% of his or her sentence.

KEY FINDINGS

- A study of more than 3,600 individuals who participated in prison education programs showed they were **29% less likely to be re-incarcerated than non-participants.**²
- The average cost per day per person in a state jail facility is approximately \$43.³ As of August 2012, state jails held 11,729 men and women,⁴ **costing taxpayers more than \$500,000 per day.**
- Also as of August 2012, 99% of people in state jails (11,578 men and women) were incarcerated for a **nonviolent, non-sexually based offense.**⁵
- The average sentence length for a person in a state jail is 1.02 years, and the average length of time served in a TDCJ facility is about 6 months (typically 6 months in a state jail and about 4 months in a county facility).⁶ This costs the state **over \$7,000 per person.**
- Based on a 10-month sentence, the average maximum credit earned through diligent participation in rehabilitative programs would be 60 days, which **saves the state more than \$2,500 per person.**⁷

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3004 BY REPRESENTATIVE ALLEN

- **H.B. 3004 will provide much-needed clarity about the role and responsibilities related to awarding credit for diligent participation in state jail educational, vocational, or rehabilitative programs**, placing the power to grant credit in the hands of the Texas Department of Criminal Justice. This clarification will improve efficiency and accuracy in the crediting process, thus incentivizing wider program participation.
- **H.B. 3004 will encourage greater participation in state jail rehabilitative and self-improvement programs by allowing the TDCJ to grant program credits at *any* time prior to the termination of an individual's sentence.** Currently, an individual is only eligible for program credits until 30th day before the date on which 80% of his or her sentence has been completed. For example, if a defendant is serving a 180-day sentence, he or she would not be eligible for credits after the 114th day, leaving no incentive to participate in rehabilitation programs after that point. To encourage wider participation in rehabilitation programs for long-term public safety gains, H.B. 3004 allows TDCJ to grant credit at any point prior to the end of the original sentence.

CONCLUSION

Thank you again for allowing me the opportunity to present testimony in favor of H.B. 3004. Fully implementing the Legislature's plan to grant credit to individuals who choose to improve their lives through programming is a practical and responsible measure that will help ease the strain of costly state jail stays while improving public safety and strengthening communities.

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² The Pew Center on the States, *Collateral Costs: Incarceration's Effects on Economic Mobility*, 23 September 2010, p. 23; available at http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653.

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⁶ TDCJ Open Records Response, 16 October 2012, *information available upon request*.

⁷ Legislative Budget Board: *Criminal Justice Impact Statement*, 6 April 2011, p. 1; available at <http://www.capitol.state.tx.us/tlodocs/82R/impactstmts/html/HB02649IB.htm>.



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FACT SHEET 2013

H.B. 3079

Legally Protect Landlords Who Provide Housing to People with Criminal Records

Limiting Negligent Actions Against Landlords will Improve Housing Options For Individuals with Criminal Histories, Increasing their Stability and Overall Public Safety

PEOPLE WITH CRIMINAL RECORDS NEED STABLE HOUSING TO CONTRIBUTE TO SOCIETY AND KEEP TEXAS COMMUNITIES SAFE

Nearly a million individuals cycle through local jails every year in Texas,¹ while approximately 650,000 people are under some form of state supervision (incarceration, probation, or parole) on an annual basis.² Individuals who are released from incarceration or who have a criminal record must overcome many barriers to becoming self-supporting, contributing members of their society. One critical barrier is housing.

Studies have shown that reducing discrimination in housing minimizes criminal justice system involvement and mitigates risk for re-incarceration.³ While many public housing providers are prohibited by law from renting to people with certain convictions, private landlords retain discretion as to when and to whom to rent their properties. Some private landlords are hesitant to rent or lease property to individuals with a criminal record, citing the fear of being sued if that person commits a crime on their property. This leaves many individuals scrambling to find housing and risks costly re-offending.

KEY FINDINGS

- On a single night in January 2011, a statewide census counted 36,911 homeless individuals in Texas.⁴
- A 2012 study by the National Alliance to End Homelessness reported that Texas had five urban areas ranked in the top 60 in regard to homeless populations: the **Houston** area ranked 13th with 9,217 homeless people; **Dallas/Ft. Worth** ranked 29th with 5,865 people; **San Antonio** ranked 33rd with 3,222 people; **Austin/Round Rock** ranked 37th with 2,362 people; and **El Paso** ranked 60th with 1,331 people.⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3079 BY REPRESENTATIVE THOMPSON

- **H.B. 3079 will provide landlords with limited protection against liability solely for renting or leasing to someone with a criminal record, thus increasing housing opportunities among these individuals.** This policy will help individuals with records stabilize their living situation, be better able to support their families, and live law-abiding lives in our communities.

NOTE: Causes of action are still permitted for offenses committed by renters or leasees if the landlord knew or should have known of the conviction **and** the conviction was for a sexually violent offense, or a violent act that falls under Section 3(g), Article 42.12, Code of Criminal Procedure.

- **H.B. 3079 will help reduce homelessness, thus reducing the costly, destructive cycle of incarceration, homelessness, and re-incarceration.** Providing private landlords with limited liability will encourage them to base their renting decisions on a wider range of personal attributes, instead of summarily dismissing someone with a criminal history.

Citations on reverse.

Citations

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FACT SHEET 2013

H.B. 3336

Dear Members of the Committee,

Thank you for the opportunity to present testimony in favor of H.B. 3336, an effective policy that will provide policy leaders and practitioners with additional information about why individuals with drug offenses are sentenced to a term of incarceration rather than placed on probation or in a treatment program – crucial for future corrections planning and resource allocation.

TRACKING JUDICIAL DECISIONS WILL PROVIDE CRITICAL INFORMATION TO POLICY-MAKERS

Judges should be required to record why they choose to incarcerate individuals charged solely with possession of a controlled substance instead of placing them on community supervision (probation) or in treatment, and make this data available to the public via the Office of Court Administration. Collecting data about sentencing decisions for drug possession crimes will help policy-makers and practitioners identify statewide sentencing patterns, which will assist in planning for future treatment services and corrections capacity.

KEY FINDINGS: INCARCERATING ADDICTION FAILS TEXANS

A considerable percentage of individuals arrested, tried, and incarcerated in Texas are charged with low-level drug possession.

- About 90% of all drug-related arrests in Texas are for possession of a controlled substance, not delivery or distribution.¹ In FY 2012, almost 30% of individuals who entered the Texas Department of Criminal Justice were admitted for a drug offense – and nearly 73% of those individuals were charged with drug possession, as opposed to delivery or other offenses.² Incarcerating individuals for drug possession costs Texas taxpayers more than \$1 million daily, or about \$397 million per year.³
- Prescription drug abuse is on the rise in Texas,⁴ putting more people at risk of criminal justice system involvement – particularly youth, older adults, women,⁵ and veterans returning from Iraq and Afghanistan.⁶

Incarceration-driven responses to addiction are bad for Texas.

- Many Texans struggle with addiction, and increasingly, research indicates that chemical dependency is a brain disease that can be treated with proper resources and services – not incarceration. By altering the chemistry of the brain, drug addiction can lead to compulsive cravings and limits the ability of an individual to make voluntary decisions.⁷ Treatment is critical to address these issues.
- Incarceration in prison (\$18,265/year) is almost seven and a half times more expensive than community supervision with treatment (\$2,438/year).⁸
- Incarceration creates barriers to accessing housing, employment, education, and other services, and it reduces the ability of individuals to pay child support and meet other obligations. These challenges can trigger relapse, leading to re-arrest or re-incarceration.⁹

COMMUNITY SUPERVISION AND TREATMENT: A MORE EFFECTIVE, COST-EFFICIENT APPROACH

Community supervision is far less expensive than incarceration, costing the state only \$1.38 per person per day compared to county jail (\$59.00/day¹⁰), state jail (\$42.90/day), or prison (\$50.04/day).¹¹ Furthermore, community supervision is often more effective at addressing addiction and mental illness than incarceration: **individuals on probation typically have more access to drug treatment and mental health services than those incarcerated, and treatment programming results in lower levels of re-offending than strict incarceration.**¹²

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3336 BY REPRESENTATIVE HUGHES

H.B. 3336 will require Texas judges to report why they sentence individuals with drug possession charges to prison or jail instead of placing them on community supervision or in treatment. Improving transparency around judicial decision-making through the collection of additional information can inform future criminal justice policies and practices related to low-level drug possession and chemical dependency.

CONCLUSION

Thank you again for the opportunity to provide testimony in favor of H.B. 3336. Collecting information about drug sentencing practices will increase the ability of Texas leadership to plan for and meet the needs of individuals with low-level possession charges. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations

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¹¹ LBB, *Criminal Justice Uniform Cost Report*, pp. 8, 14.

¹² U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment. 1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*, <http://www.ncjrs.gov/nties97/index.htm>. Also see: Dustin Johnson, Ph.D., "Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice – Community Justice Assistance Division: Research and Evaluation," May 2011, pp. 13, 23 (individuals completing residential programs have significantly lower two-year arrest and incarceration rates than those who do not complete their program).



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TESTIMONY 2013

H.B. 3494

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 3494, which will introduce a diversion option for individuals convicted of a graffiti offense. This will facilitate positive behavioral change in graffitists while helping them avoid the lifelong collateral consequences of a felony conviction, and it will provide property owners relief through restoration of their damaged property.

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.¹ 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.² 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.³

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. This lack of access to employment and housing may lead to further criminal behavior⁴ and result in fewer contributions to the community's tax base.

KEY FINDINGS

- **Corpus Christi⁵ and Houston⁶ have invested in a "rapid response"⁷ 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.⁸
- **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.⁹ The report recommended more efforts like the Mural Arts Program (much of which is funded through private investments¹⁰), calling such programs "effective and cost-efficient ways of replacing eyesores with symbols of care."¹¹

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3494 BY REPRESENTATIVE MOODY

- **H.B. 3494 will allow a pretrial diversion program, requiring community service and victim restitution, for long-term reductions in recidivism and its associated costs.** Participation in a deferred prosecution program, as based on the consent of the district attorney, will require community service, including graffiti removal where possible, and may involve participation in outreach education focused on graffiti prevention and eradication, youth mentoring in art programs, mural painting, or other available community service opportunities. Furthermore, successful completion of the program may result in dismissal of the charges. This will give a fair chance to individuals who have taken responsibility for their actions, helping them avoid the reentry barriers typically associated with a criminal record.
- **H.B. 3494 creates a new, minor offense level (a Class C misdemeanor) for graffiti that causes up to \$200 worth of damage.** Currently, all graffiti up to \$500 worth of damage is a Class B misdemeanor, which brings with it potential county jail time and the aforementioned collateral consequences.
- **H.B. 3494 also adjusts value amounts for certain graffiti offenses.** Current offense thresholds for graffiti offenses were set in 1993 and do not reflect two decades of inflation. Consequently, the penalty grades for graffiti do not appropriately correspond to the value of the property that has been damaged. In other words, what amounted to a Class C misdemeanor 20 years ago may now constitute a Class B misdemeanor – a de facto “criminal inflation.” Amending the threshold offense amounts for graffiti will save taxpayer dollars otherwise needlessly spent on incarceration costs for increasingly low-level offenses.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. It will ease the financial burden on property owners, seek to involve community members in cleanup and beautification, and facilitate positive behavioral change in graffitiists, instead of merely seeking harsher penalties that criminalize and punish. This offers the best possible approach to a problem that is not meaningfully addressed through incarceration, and the Texas Criminal Justice Coalition strongly urges you to support it.

Citations

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¹¹ *Ibid.*, p. 9.



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TESTIMONY 2013

H.B. 3531

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 3531, which will provide much-needed educational opportunities for individuals incarcerated in the Texas Department of Criminal Justice (TDCJ) by building upon innovative programming that already exists in our state prisons. This low-cost approach will decrease in-prison disciplinary actions, result in safer prisons, and allow participating individuals to become better educated, preparing them for a successful life after prison.

EXPANDING INNOVATIVE PROGRAMS CURRENTLY IN TDCJ WILL INCREASE EDUCATIONAL OPPORTUNITIES

In 2011, state budget cuts resulted in the loss of 271 employees from the Windham School District (WSD), the in-prison entity that provides educational and vocational programming for inmates in the Texas Department of Criminal Justice (TDCJ); this included the loss of 157 teachers.¹ Due to these cutbacks, WSD officials estimated that 16,700 individuals would lose seats in WSD classrooms.² **Because education is such an integral component of a successful rehabilitative process, individuals incarcerated in TDCJ should have access to educational opportunities**, whether or not those opportunities result in the granting of a degree or a certificate.

In place since 1999, TDCJ's Peer Educator Program trains qualified incarcerated individuals to hold workshops for their peers in select subjects. In 2012, more than 79,000 individuals on 100 TDCJ units participated in such workshops.³ This program should be expanded: **TDCJ should identify incarcerated individuals with specialized knowledge and encourage them to initiate workshops in their area of expertise.**

Specifically, TDCJ should identify prisoners with academic or professional degrees, those who have served as shop assistants to the instructors in the various vocational programs, or those who have extensive professional expertise. The Department could use the training procedures already in place for the Peer Educator Program, and provide existing space in classrooms or libraries for the newly identified Peer Educators to hold workshops on various topics for interested participants. This would help fill the educational gap created by the budget cuts to WSD.

KEY FINDINGS

- The Texas Government Code stipulates that TDCJ shall allow incarcerated individuals to act as tutors to other incarcerated individuals.⁴ This stipulation supports the current Peer Educator Program and allows for its expansion, with the codicil that **these individuals function only as teachers and exercise no supervisory authority over other incarcerated individuals.**⁵
- **Studies consistently show that in-prison educational programs can decrease misconduct, violence, and in-prison disciplinary infractions,**⁶ with peer education teachers developing "a positive focus and purpose in their lives, empowered by the perception of their ability to influence others in ways never believed possible – thus improving self-esteem, knowledge, and renewed commitment to the community."⁷
- **In-prison education programs are critical in helping individuals prepare for future employment opportunities**, which contributes to lowered recidivism.⁸

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3531 BY REPRESENTATIVE ROSE

H.B. 3531 will increase educational opportunities for incarcerated individuals, filling the gap created by recent budget cuts to the Windham School District. In-prison education is effective and cost-efficient. This bill encourages incarcerated individuals to participate in informal education, which will enhance their rehabilitative progress, providing them with tools they will need when they are released to the community.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. It is a much-needed measure that will enable incarcerated individuals to become better informed, more disciplined, and able to maintain responsible, productive lives in their communities after release. The Texas Criminal Justice Coalition strongly urges you to support it.

Citations

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TESTIMONY 2013

H.B. 3533

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of H.B. 3533. This policy will strengthen the family bonds between incarcerated individuals and their loved ones, resulting in a lesser likelihood of future re-offending, and enhance the safety and security of corrections units.

VISITATION BY LOVED ONES IS ESSENTIAL TO REHABILITATION; PROSPECTIVE VISITORS SHOULD BE INFORMED OF CHANGES TO VISITATION STATUS

Visitation is critical in helping incarcerated individuals maintain strong, healthy family units and meaningful relationships with children; through safe and appropriate interaction, visitation can also decrease aggression, thus improving security on prison units.¹ Unfortunately, disciplinary infractions can result in the denial of visitation privileges for individuals incarcerated in the Texas Department of Criminal Justice (TDCJ). In addition, emergency lockdowns imposed for security reasons may render entire groups of incarcerated individuals ineligible for visits. Sometimes it is impossible for incarcerated individuals to inform their next of kin that they are no longer allowed visits. For example, if an incarcerated individual is part of a group placed on lockdown, or is put on disciplinary action and denied visitation and phone call rights, that person will likely have no way of quickly reaching his or her loved ones to inform them that visitation is temporarily suspended.²

Many Texans who visit loved ones in TDCJ often travel long distances at great personal and financial expense. While this is a burden for all visitors, it is especially difficult for disabled individuals and the elderly. **When visitors are turned away due to visitation ineligibility, not only have the family members' time and financial resources been significantly impaired, but inmates' expectations for time spent with loved ones are frustrated, and their inability to notify family members and friends about suspended visitation may cause their loved ones to reconsider making future visits. Families may also lose confidence in TDCJ's ability to communicate effectively with them.**

H.B. 3533 requires TDCJ to inform an incarcerated individual's next-of-kin, as stated in that individual's visitation records, that a disciplinary action or unit disturbance has prohibited their visitation. This will ensure that family members do not waste their time and valuable financial resources by traveling hundreds of miles only to find that they cannot visit their loved one. H.B. 3533 will also facilitate stronger, more trusting relationships between TDCJ, Texas families, and incarcerated men and women.

KEY FINDINGS

- Family members who arrive at corrections facilities but are denied visitation may forego making future visits, thus reducing the positive impact on inmates and unit security created by meaningful visitation.³
- Visitation during incarceration is critical to reentry, having been shown to reduce recidivism by up to 25%.⁴ Again, transparency around visitation will facilitate ongoing opportunities for visits by loved ones.

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3533 BY REPRESENTATIVE ROSE

H.B. 3533 requires the Texas Department of Criminal Justice to contact the next-of-kin of an inmate whose visitation eligibility has been suspended. This will inform potential visitors that there has been a change in an incarcerated individual's visitation eligibility, saving prospective visitors significant time and financial resources otherwise spent on a long trip to a correctional facility. Furthermore, this bill will reduce the risks of damaging personal relationships between inmates, visitors, and TDCJ staff by improving transparency in communication and reducing frustration for all parties involved.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. It will greatly increase the confidence that the public has in TDCJ to provide timely, necessary information about incarcerated individuals, and it will allow family members of those individuals to reschedule unnecessary, expensive visits. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations

¹ Appropriate play with children in a developmentally appropriate setting positively impacts attachment, increasing the probability of establishing stable, healthy relationships and in turn contributing to the safety and security of the unit. See William S. Pollack, "Parent-child connections: The essential component for positive youth development and mental health, safe communities and academic achievement," *New Directions for Youth Development*, vol. 2004 (103), 2004, pp. 17-30; information also taken from: Perry, B.D. (n.d.) Bonding and Attachment in Maltreated Children: Consequences of emotional neglect in childhood.

² TDCJ visitations are normally allowed on Saturdays and Sundays between 8:00 am and 5:00 pm. See Texas Department of Criminal Justice, *General Information Guide for Families of Offenders*, December 2012, p. 4.

³ See note 1.

⁴ Minnesota Department of Corrections, *The Effects of Prison Visitation on Offender Recidivism*, November 2011.



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FACT SHEET 2013

H.B. 3634

Implement a Task Force to Examine the Possibility of Extending Juvenile Jurisdiction To 17-Year-Olds

Policy change can protect youth from the dangers of the adult system and increase access to age-appropriate rehabilitative programs and services

ADULT JURISDICTION IN TEXAS: THE HARMS TO 17-YEAR-OLDS IN THE ADULT SYSTEM

In Texas, a slew of rights are granted to teens when they reach 18 years of age: the rights to vote, join the military, and buy a lottery ticket are among them. Unfortunately, the right to be charged as an adult for a criminal offense comes sooner. The day a teen turns 17, he or she is legally considered an adult. Not only is this practice inconsistent with our societal consensus for “maturity,” it also defies neurological research findings, which have indicated that youth of this age are unable to fully comprehend the consequences of their actions.¹

Bringing 17-year-olds under adult jurisdiction has impacted hundreds of thousands of youth across the state.² These youth may be exposed to unsupervised interrogations, isolation, and detention within a jail setting or incarceration within a prison setting – all of which pose a severe danger to youths’ mental and physical health. Sadly, the majority of these youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record.³

Texas should examine current policies to determine the harms or benefits of keeping the age of juvenile jurisdiction at 17, and make all necessary changes to protect young Texans from the unnecessary risk of abuse or danger.

KEY FINDINGS

- The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws, public drunkenness, vandalism, and larceny theft,⁴
- Texas is only one of 13 states that sets the age of juvenile jurisdiction below 18 years of age.⁵
- Setting the age of adult criminal justice jurisdiction at 17 negates neurological research findings that identify this age as a crucial point in developing cognitive reasoning.⁶
- Youth who are subjected to the adult criminal justice process face a range of dangers (e.g., unsupervised interrogations to physical and sexual assault in confinement), which can ultimately impact their mental and physical health.⁷

Solution on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 3634 BY REPRESENTATIVE MCCLENDON

H.B. 3634 mandates a juvenile jurisdiction task force to review the plausibility of extending juvenile court jurisdiction to 17-year-olds, who are legally considered adults in Texas. The Juvenile Court Jurisdiction Task Force must determine whether the Legislature should **consider the proposal, based on various criteria** (including benefits to the 17-year-olds, victims, and taxpayers; federal law and case law; available services for 17-year-olds; best practices; and others), and **develop an implementation plan as appropriate**. Furthermore, the Task Force must submit an interim report of its findings and recommendations, as well as a final report describing the results of potential plan implementation, to the Legislature, Texas Department of Criminal Justice, and Texas Juvenile Justice Department by 2014 and 2016 respectively.

This process will allow for a comprehensive evaluation of potential policy reform prior to implementation, with broad stakeholder input and full transparency that will ensure that Texas is taking the correct steps to meet the needs of system-involved adolescents.

Citations

¹ S. Johnson, R. Blum, and J. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Health Policy*, Journal of Adolescent Health (2009).

² Between 2007 and 2011, approximately 213,000 17-year-olds were arrested in the state of Texas. Texas Department of Public Safety, Criminal Arrest Records 2007-2011.

³ Michele Deitch, Rebecca Breeden, and Ross Weingarten, *Seventeen, Going on Eighteen: An Operational Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, American Journal of Criminal Law, p. 40 (2013).

⁴ Ibid.

⁵ Ibid.

⁶ J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, Annals of the New York Academy of Sciences (2004).

⁷ S. Johnson, R. Blum, and J. Giedd, *Adolescent Maturity and the Brain*.

Investigate Wrongful Convictions and Keep the Innocent Free

THE TEXAS INNOCENCE COMMISSION WILL INVESTIGATE EXONERATIONS TO PREVENT FUTURE WRONGFUL CONVICTIONS

Far too many Texans have been imprisoned for crimes they did not commit. The conviction of the innocent ruins lives, destroys public trust in our justice system, harms public safety as guilty culprits remain free, and denies victims justice.

Texas should establish an independent commission of experts to investigate the contributors to wrongful convictions and propose meaningful reforms that will prevent these injustices in the future. If Texas fails to implement serious reforms to address the failures in our justice system, many more innocent people will suffer behind bars.

KEY FINDINGS

- **Since 1989, Texas has exonerated 10 death row inmates and 45 inmates serving life sentences.¹** Many more inmates serving lengthy sentences have also been exonerated. **Together, these innocent Texas inmates have served well over 1,000 years in prison for crimes they did not commit.²** These failures of our justice system ruin the lives of innocent inmates, destroy public trust, keep people with serious and violent offenses on the street, and deny justice to victims.
- **Texas is falling further behind other states in preventing wrongful convictions.** California, Connecticut, Florida, Illinois, Louisiana, New York, North Carolina, Pennsylvania, and Wisconsin have already established innocence commissions to prevent future wrongful convictions.³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 89 BY SENATOR ELLIS

- **S.B. 89 creates a formal Texas Innocence Commission to investigate post-conviction exonerations.** This nine-member body will work to identify common errors and defects in our criminal justice procedures that lead to wrongful convictions, as well as identify potential procedures and programs to address those issues.

The commission will also produce publicly available annual reports that record the identified weaknesses in our criminal justice process, as well as the commission's proposed solutions. Specifically, the commission will make recommendations to the legislature regarding the prevention of wrongful convictions or executions.

Citations

¹ The National Registry of Exonerations. <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

² Ibid.

³ KXAN News, "New bills focus on wrongful convictions," December 3, 2012.

Implement Effective Responses to Chemical Dependency in Texas

SMARTER STRATEGIES WILL REDUCE CRIME, SAVE MONEY, AND TREAT ADDICTION

Texas wastes millions of taxpayer dollars every year imprisoning individuals who pose no legitimate risk to public safety. Instead, their low-level drug possession offenses often result from a struggle with chemical dependency that cannot be “treated” through incarceration. Properly assessing addiction and matching individuals with appropriate evidence-based treatment and community supervision is far more effective and less expensive than simply locking them up.

Failure to address chemical dependency as a public health issue will produce the same predictable results Texas has witnessed for decades: a cycle of individuals with addiction filling prison beds and running up a huge bill, payable by Texas taxpayers.

INCARCERATING ADDICTION FAILS TEXANS

A considerable percentage of individuals arrested, tried, and incarcerated in Texas are charged with low-level drug possession.

- About 90% of all drug-related arrests in Texas are for possession of a controlled substance, not delivery or distribution.¹ In FY 2012, almost 30% of individuals who entered the Texas Department of Criminal Justice were admitted for a drug offense – and nearly 73% of those individuals were charged with drug possession, as opposed to delivery or other offenses.² Incarcerating individuals for drug possession costs Texas taxpayers more than \$1 million daily, or about \$397 million per year.³
- Prescription drug abuse is on the rise in Texas,⁴ putting more people at risk of criminal justice system involvement – particularly youth, older adults, women,⁵ and veterans returning from Iraq and Afghanistan.⁶

Incarceration-driven responses to addiction are bad for Texas.

- Many Texans struggle with addiction, and increasingly, research indicates that chemical dependency is a brain disease that can be treated with proper resources and services – not incarceration. By altering the chemistry of the brain, drug addiction can lead to compulsive cravings and limits the ability of an individual to make voluntary decisions.⁷ Treatment is critical to address these issues.
- Unlike effective treatment programming, strict incarceration results in higher rates of re-offending and relapse.⁸
- Incarceration (\$18,265/year) is almost seven and a half times more expensive than community supervision with treatment (\$2,438/year).⁹
- Incarceration creates barriers to accessing housing, employment, education, and other services, and reduces the ability of individuals to pay child support and meet other obligations. These challenges can trigger relapse, leading to re-arrest or re-incarceration.¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 90 BY SENATOR ELLIS

- S.B. 90 is a crime-prevention policy, and a best practice guide for dealing with defendants who have substance abuse problems. It will divert thousands of nonviolent individuals from confinement and save taxpayers millions of dollars in incarceration costs.

Citations

¹ Texas Department of Public Safety, *Crime in Texas: Texas Arrest Data*, 1999 – 2011.

² Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2012*, pp. 2, 21.

³ Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 – 2012*, January 2013, p. 8.

⁴ The Texas Drug Demand Reduction Advisory Committee, *Report to State Leadership*, January 2009, pp. 12-13, <http://www.dshs.state.tx.us/sa/ddrac/default.shtm>.

⁵ National Institute of Health: National Institute on Drug Abuse, “Prescription Drugs: Abuse and Addiction,” Research Report Series, U.S. Department of Health and Human Service, pp. 7-8, <http://www.drugabuse.gov/publications/research-reports/prescription-drugs>.

⁶ American-Statesman Investigative Team, “Uncounted Casualties: Home, But not Safe,” *Austin American-Statesman*: statesman.com, September 29, 2012, <http://www.statesman.com/news/news/local-military/texas-war-veteran-deaths-studied/nSPJs/>.

⁷ National Institutes of Health, National Institute on Drug Abuse, *Medical Consequences of Drug Abuse*, <http://www.drugabuse.gov/related-topics/medical-consequences-drug-abuse>.

⁸ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment, *The National Treatment Improvement Evaluation Study: NTIES Highlights*, 1997, <http://www.ncjrs.gov/nties97/index.htm>. Also see: Dustin Johnson, Ph.D., “Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice – Community Justice Assistance Division: Research and Evaluation,” May 2011, pp. 13, 23 (individuals completing residential programs have significantly lower two-year arrest and incarceration rates than those who do not complete their program).

⁹ Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 – 2012*, January 2013, pp. 8, 14, 15; using FY 2012 prison inmate costs-per-day of \$50.04; state costs-per-day for community supervision of \$1.38; and state costs-per-day for substance abuse outpatient treatment of \$5.30.

¹⁰ U.S. Department of Health and Human Service, National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, <http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations>.

Texas Must Address the Needs of Domestic Minor Sex Trafficking Victims *Implement an Alternative Treatment Program in Lieu of Punishment*

VICTIMS OF DOMESTIC MINOR SEX TRAFFICKING (DMST) NEED CRITICAL TREATMENT OPTIONS

Every year, approximately 100,000 youth are victimized through prostitution in the U.S.¹ In Texas, practitioners have estimated that number to be as high as 3,000.² In accordance with the federal Trafficking Victims Protection Act (2000), any youth who is recruited, harbored, transported, provided as, or obtained for the purpose of commercial sexual acts should be considered a victim, not a criminal.³ Unfortunately, this designation has not fully addressed the needs of youth who engage in prostitution, resulting in many youth unable to access to treatment and other tools necessary to exit the life of prostitution.

Also sadly, by exploiting a youth's trust, sex traffickers are able to influence their victims to carry fraudulent identification, resulting in their adjudication as a delinquent or their criminalization as an adult.⁴ Additionally, youth involved in prostitution face frequent rates of arrest for drug possession and running away.⁵ These lead to a criminal record and the lifelong barriers associated with it.

Texas must support efforts to identify youth at risk of engaging in prostitution and prioritize the treatment of DMST victims over any system involvement. Youth identified as a victim of sexual exploitation must be treated as a victim – not a criminal.⁶

KEY FINDINGS

- Between 2006 and 2012, an average of 45 youth were referred to Texas' juvenile probation departments for prostitution-related offenses each year.⁷
- Between 2006 and 2011, an average of 55 youth were arrested in Texas for prostitution-related offenses each year.⁸
- Youth who are DMST victims are subject to serious psychological disorders: post-traumatic stress disorder, substance abuse disorders, self-harming disorders, and developmental disorders, among others⁹
- Most youth who are DMST victims suffer from untreated physical and sexual abuse, only exacerbating their exposure to trauma and increasing the degree of treatment needed to address their conditions.¹⁰
- 1 in 3 youth are lured into commercial sexual exploitation within 48 hours of running away.¹¹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 92 BY SENATOR VAN DE PUTTE

- **S.B. 92** allows courts to divert identified DMST victims from the justice system and place them in treatment.
- **S.B. 92** requires any treatment program used to address DMST victims to focus on early identification of youth at risk of engaging in prostitution, and to encourage prompt placement into the program.
- **S.B. 92** aims to safeguard a victim's future by requiring that the victim's case be dismissed upon successful completion of treatment.

Citations on reverse.

Citations

¹ Ernie Allen, National Center for Missing & Exploited Children, Testimony for the Victims' Rights Caucus/Human Trafficking Caucus, U.S. House of Representatives (July 19, 2010).

² Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," Report to the 82nd Legislature (January 2011).

³ Trafficking Victims Protection Act (TVPA) of 2000 §103(8), (9).

⁴ Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children* (May 2009).

⁵ Ibid.

⁶ Trafficking Victims.

⁷ Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," Report to the 82nd Legislature (January 2011), p. 4, in conjunction with referral data provided to the Texas Criminal Justice Coalition (TCJC) by the Texas Juvenile Justice Department (TJJD).

⁸ Texas Department of Public Safety, Crime Records Services, Texas Crime Report for 2006-2011, http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm.

⁹ Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children* (May 2009).

¹⁰ Kate Brittle, *Child Abuse by Another Name: Why the Child Welfare System is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution*, 36 Hofstra Law Review 1339, 1343 (2008).

¹¹ Trafficking Hope.org, FAQ's: Human Trafficking Stats, <http://www.traffickinghope.org/human-trafficking-stats.php>.



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TESTIMONY 2013

S.B. 107

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 107, which will honor the intent of court orders to seal the records of individuals who have successfully completed a term of deferred adjudication.

TEXAS MUST CLOSE THE LOOPHOLE ALLOWING DISCLOSURE OF RECORDS THAT A COURT HAS ORDERED TO BE SEALED

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have a difficult time, or be absolutely barred from, finding housing or employment; becoming licensed for a particular occupation; obtaining an educational loan; or receiving federal or state benefits for basic human needs.¹

In recognition of this, Texas courts have the option to order the criminal conviction of an individual to be sealed, especially if that person has successfully completed a term of deferred adjudication and petitioned for an order of non-disclosure.²

However, **the wording of the relevant Texas Government Code is ambiguous.** It prohibits “criminal justice agencies” from disclosing criminal history information that has been sealed. Yet, the Code does not include courts in its definition of what entities constitute criminal justice agencies,³ thereby **creating a loophole allowing courts to disclose criminal history information that is intended to be sealed.** Furthermore, it is the opinion of the Office of Court Administration that the current statute does “not prohibit courts and court clerks from disclosing information about a defendant’s conviction.”⁴

KEY FINDINGS

- **Criminal records compromise an individual’s ability to enter the workforce.**⁵ Individuals with a conviction cannot qualify for many employment positions that require licenses leaving many returning individuals scrambling to find employment.⁶
- In fact, **people with criminal convictions receive half as many job offers as job seekers without convictions,**⁷ which means that the sealing of an individual’s criminal record, if ordered by a court, has enormous impact on the employment options and future success of those individuals.
- **Criminal records also destabilize Texans by creating barriers to safe housing.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 107 BY SENATOR WEST

- **S.B. 107 will allow the orders of the courts to be carried out, sealing the records of individuals who have successfully completed a period of deferred adjudication and petitioned the court.** These individuals have shown themselves to be motivated and law-abiding citizens, and sealing their records will allow them to continue productive lives and contribute to their communities in positive ways.
- **S.B. 107 will enhance faith in and respect for court orders, fostering respect for the criminal justice system.** This will encourage Texans to place more trust in the court system.

Citations

¹ National Institute of Justice and the American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, 2012, <http://www.abacollateralconsequences.org/>.

² Tex. Gov. Code § 411.081(d)

³ Tex. Gov. Code § 411.082(3)

⁴ Ted Wood, Office of the Court Administration, *Problems With the Nondisclosure Statute*, Memorandum issued September 24, 2010.

⁵ Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, The Journal of Law and Criminology, Vol. 100, No. 3, Northwestern University, School of Law, 2010, p. 1215.

⁶ TEX. OCC. CODE, 53.021 (c)(3)

⁷ Pew Charitable Trust, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, p. 22, [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

⁸ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, March 2006, <http://www.urban.org/publications/411061.html>.



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FACT SHEET 2013

S.B.107

Increase Opportunities for Individuals with Criminal Records By Ensuring Non-Disclosure Orders are Honored

CLOSE THE LOOPHOLE THAT ALLOWS DISCLOSURE OF RECORDS THAT A COURT HAS ORDERED TO BE SEALED

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have a difficult time, or be absolutely barred from, finding housing or employment; becoming licensed for a particular occupation; obtaining an educational loan; or receiving federal or state benefits for basic human needs.¹

In recognition of this, Texas courts have the option to order the criminal conviction of an individual to be sealed, especially if that person has successfully completed a term of deferred adjudication and petitioned for an order of non-disclosure.²

However, **the wording of the relevant Texas Government Code is ambiguous**. It prohibits “criminal justice agencies” from disclosing criminal history information that has been sealed. Yet, the Code does not include courts in its definition of what entities constitute criminal justice agencies,³ thereby **creating a loophole allowing courts to disclose criminal history information that is intended to be sealed**. Furthermore, it is the opinion of the Office of Court Administration that the current statute does “not prohibit courts and court clerks from disclosing information about a defendant’s conviction.”⁴

KEY FINDING

- **Criminal records compromise an individual’s ability to enter the workforce.**⁵ Individuals with a conviction cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others), leaving many returning individuals scrambling to find employment.⁶
- In fact, **people with criminal convictions receive half as many job offers as job seekers without convictions**,⁷ which means that the sealing of an individual’s criminal record, if ordered by a court, has enormous impact on the employment options and future success of those individuals.
- **Criminal records also destabilize Texans by creating barriers to safe housing.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 107 BY SENATOR WEST

- **S.B. 107 will allow the orders of the courts to be carried out, sealing the records of individuals who have successfully completed a period of deferred adjudication and petitioned the court.** These individuals have shown themselves to be motivated and law-abiding citizens, and sealing their records will allow them to continue productive lives and contribute to their communities in positive ways.
- **S.B. 107 will enhance faith in and respect for court orders, fostering respect for the criminal justice system.** This will encourage Texans to place more trust in the court system.

Citations on reverse.

Citations

¹ National Institute of Justice and the American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, 2012, <http://www.abacollateralconsequences.org/>.

² Tex. Gov. Code § 411.081(d)

³ Tex. Gov. Code § 411.082(3)

⁴ Ted Wood, Office of the Court Administration, *Problems With the Nondisclosure Statute*, Memorandum issued September 24, 2010.

⁵ Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, The Journal of Law and Criminology, Vol. 100, No. 3, Northwestern University, School of Law, 2010, p. 1215.

⁶ TEX. OCC. CODE, 53.021 (c)(3)

⁷ Pew Charitable Trust, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, p. 22, [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

⁸ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, March 2006, <http://www.urban.org/publications/411061.html>.



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TESTIMONY 2013

S.B. 110

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of Senate Bill (S.B.) 110. To adequately compensate those who have suffered because of the state's mistake, Texas must ensure that all individuals who have been wrongfully convicted receive just compensation.

TEXAS MUST ASSUME GREATER RESPONSIBILITY FOR COMPENSATING PEOPLE CONVICTED OF A CRIME THEY DID NOT COMMIT

As Texas leads the nation in wrongful convictions,¹ it is the state's duty and obligation to take every step necessary to fully compensate people exonerated of a crime they did not commit. While it is impossible to fully compensate a person for the minutes, days, or years of freedom that are stolen because of a wrongful conviction, Texas must ensure that these individuals receive some compensation for their loss.

In 1985, the Texas Legislature enacted Senate Bill (S.B.) 797, which created Chapter 103 of the Civil Practice and Remedies Code, governing compensation for wrongful imprisonment. Since then, provisions of Chapter 103 have been amended to ease certain restrictions for those seeking to receive compensation and to grant additional privileges, such as health insurance benefits and an increase in the amount of compensation.² However, many people who meet the statutory requirements to file compensation—e.g., those who have been pardoned or exonerated—cannot file a claim because they fall outside the statutory limit to claim compensation. S.B. 110 seeks to remedy this and to provide all exonerated persons with the benefits and compensation to which they are entitled for the years they were erroneously imprisoned.

KEY FINDINGS

- **According to the National Registry of Exonerations, there have been 117 exonerees from Texas since 1989.** Since 1989, Texas has exonerated 10 death row inmates and 45 inmates serving life sentences.³
- **There are nearly 140 exonerees from Texas listed on Northwestern Law's Center on Wrongful Convictions website, a list that contemplates individuals exonerated prior to 1989.**⁴
- **Together, these wrongfully imprisoned individuals served well over 1,000 years in prison for crimes they did not commit.**⁵ These failures in our justice system ruin the lives of innocent people, hurt their families, and create substantial difficulties for those exonerated persons trying to reestablish a productive, meaningful life in their community.

PLEASE SUPPORT S.B. 110 BY CHAIRMAN WEST

- **S.B. 110 eases the time burden placed on individuals attempting to claim compensation for wrongful imprisonment and ensures that individuals are justly compensated for the time spent in prison.** S.B. 110 amends the current process used to compensate individuals by removing the three year statute of limitation to file a claim. By repealing this time limit provision, S.B. 110 will remove an unnecessary barrier for individuals who are currently barred from making a claim simply because of the date on which they were exonerated.
- **S.B. 110 will also provide statutory clarity with respect to when a person may file a specific claim related to tuition and fees for educational pursuits.**

Citations on reverse.

Citations

¹ The Justice Project, Texas Wrongful Convictions; <http://www.thejusticeproject.org/texas/texas-wrongful-convictions/>.

² See, e.g., [SB 536](#) (2001), [HB 1736](#) and [SB 2014](#) (2009), [SB 1686](#) and [HB 2230](#) (2011, and granting health insurance benefits to exonerees).

³ The National Registry of Exonerations; <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

⁴ Northwestern Law, Center on Wrongful Convictions;
<http://www.law.northwestern.edu/wrongfulconvictions/exonerations>.

⁵ The National Registry of Exonerations; <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.



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FACT SHEET 2013

S.B. 110

Compensate Those Who Have Suffered Because of the State's Mistake *Ensure Proper Compensation for Individuals Wrongfully Convicted*

TEXAS MUST ASSUME GREATER RESPONSIBILITY FOR COMPENSATING PEOPLE CONVICTED OF A CRIME THEY DID NOT COMMIT

As Texas leads the nation in wrongful convictions,¹ it is the state's duty and obligation to take every step necessary to fully compensate people exonerated of a crime they did not commit. While it is impossible to fully compensate a person for the minutes, days, or years of freedom that are stolen because of a wrongful conviction, Texas must ensure that these individuals receive some compensation for their loss.

In 1985, the Texas Legislature enacted Senate Bill (S.B.) 797, which created Chapter 103 of the Civil Practice and Remedies Code, governing compensation for wrongful imprisonment. Since then, provisions of Chapter 103 have been amended to ease certain restrictions for those seeking to receive compensation and to grant additional privileges, such as health insurance benefits and an increase in the amount of compensation.² However, many people who meet the statutory requirements to file compensation—e.g., those who have been pardoned or exonerated—cannot file a claim because they fall outside the statutory limit to claim compensation. S.B. 110 seeks to remedy this and to provide all exonerated persons with the benefits and compensation to which they are entitled for the years they were erroneously imprisoned.

KEY FINDINGS

- **According to the National Registry of Exonerations, there have been 117 exonerees from Texas since 1989.** Since 1989, Texas has exonerated 10 death row inmates and 45 inmates serving life sentences.³
- **There are nearly 140 exonerees from Texas listed on Northwestern Law's Center on Wrongful Convictions website, a list that contemplates individuals exonerated prior to 1989.**⁴
- **Together, these wrongfully imprisoned individuals served well over 1,000 years in prison for crimes they did not commit.**⁵ These failures in our justice system ruin the lives of innocent people, hurt their families, and create substantial difficulties for those exonerated persons trying to reestablish a productive, meaningful life in their community.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 110 BY CHAIRMAN WEST

- **S.B. 110 eases the time burden placed on individuals attempting to claim compensation for wrongful imprisonment and ensures that individuals are justly compensated for the time spent in prison.** S.B. 110 amends the current process used to compensate individuals by removing the three year statute of limitation to file a claim. By repealing this time limit provision, S.B. 110 will remove an unnecessary barrier for individuals who are currently barred from making a claim simply because of the date on which they were exonerated.
- **S.B. 110 will also provide statutory clarity with respect to when a person may file a specific claim related to tuition and fees for educational pursuits.**

Citations on reverse.

Citations

¹ The Justice Project, Texas Wrongful Convictions; <http://www.thejusticeproject.org/texas/texas-wrongful-convictions/>.

² See, e.g., [SB 536](#) (2001), [HB 1736](#) and [SB 2014](#) (2009), [SB 1686](#) and [HB 2230](#) (2011, and granting health insurance benefits to exonerees).

³ The National Registry of Exonerations; <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

⁴ Northwestern Law, Center on Wrongful Convictions;
<http://www.law.northwestern.edu/wrongfulconvictions/exonerations>.

⁵ The National Registry of Exonerations; <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.



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FACT SHEET 2013

S.B. 126

Establish a Mental Health and Substance Abuse Public Reporting System *Monitor and Publicize Outcomes of Behavioral Health Programs*

ENSURE ACCOUNTABILITY AND TRANSPARENCY IN THE TEXAS BEHAVIORAL HEALTH SYSTEM

Many Texans struggle with mental illness and chemical dependency. The Texas Department of State Health Services (DSHS) is responsible for contracting with a range of service providers to meet the needs of these individuals. S.B. 126 requires DSHS to create a reporting system where members of the public can access information about the performance of community mental health and substance abuse providers.

Gathering and publishing accurate data about available programming serves two central purposes: 1) it increases contract accountability and transparency, and 2) it allows members of the public to make informed decisions about which programs are the most successful and the most likely to address their specific needs. This can help decision-makers determine where resources should flow, thus improving investments in effective programming. Furthermore, ensuring appropriate treatment matches will reduce costly emergency room visits and potentially decrease the number of mentally ill and chemically dependent individuals who, without access to effective treatment, may otherwise enter the criminal justice system.

KEY FINDINGS

- The Texas Department of State Health Services contracts with community centers, managed care pilot programs, and individual practitioners to provide mental health and substance abuse services.
- Individuals with mental illnesses and/or chemical dependency need access to quality behavioral health treatment that is tailored to their specific needs.
- Individuals who access appropriate mental health and addiction services are less likely to enter the criminal justice system.¹
- Incarceration (\$18,265/year) is almost seven and a half times more expensive than community supervision with treatment (\$2,438/year).²

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 126 BY SENATOR NELSON

- **S.B. 126 will provide information about which behavioral health programs in Texas are the most successful**, specifically through the use of performance and outcome measures that will help to increase the accountability and transparency of such programs.
- **S.B. 126 will help Texans select substance abuse and mental health programs that are appropriate for their needs, while also helping state and local decision-makers determine which programs warrant ongoing or increased investments.** With continued support of effective programs, more individuals will have the opportunity to address the root causes of criminal behavior.

Citations on reverse.

Citations

¹ National Alliance on Mental Illness, *Dual Diagnosis and Integrated Treatment of Mental Illness and Substance Abuse Disorder*, accessed May 4, 2012.

² Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 – 2012*, January 2013, pp. 8, 14, 15; using FY 2012 prison inmate costs-per-day of \$50.04; state costs-per-day for community supervision of \$1.38; and state costs-per-day for substance abuse outpatient treatment of \$5.30.



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TESTIMONY 2013

S.B. 393

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B.393, an effective policy that will safely reduce the over-criminalization of misbehavior in Texas' public schools. By requiring the use of a more cost-effective and "common sense" approach to discipline (e.g., counseling and progressive sanctions), S.B. 393 will minimize the state's harmful school-to-prison pipeline.

CLASS C TICKETING IN TEXAS' PUBLIC SCHOOLS CREATES HARMFUL OUTCOMES

While well intentioned, school discipline practices in Texas – like "zero-tolerance policies" – have resulted in a multitude of negative consequences: the over-criminalization of adolescent behavior, disproportionate discipline among youth of color and youth with disabilities,¹ greater numbers of expulsions,² and a path to future juvenile justice system involvement.³ Furthermore, schools' uses of School Resource Officers (on-campus law enforcement officers) have led to a dramatic uptick in Class C misdemeanor citations among youth.⁴

Texas should more effectively address adolescent misbehavior within public schools through the use of counseling and alternative sanctions that do not result in costly, long-term collateral consequences (e.g., a criminal record and a hefty fine).

KEY FINDINGS

- Texas Appleseed reports that the use of **Class C misdemeanor tickets within the school setting are frequently issued for minor level offenses** (e.g., indecent language or an offensive gesture), which are behaviors that historically have been addressed by school administrators.⁵
- Ticketing practices within Texas' schools are highly disproportionate, with both African-American and Hispanic students being overrepresented among those disciplined.⁶
- Texas' school disciplinary practices increase the likelihood of future juvenile justice involvement,⁷ at great expense to taxpayers and to students saddled with the long-term collateral consequences of system involvement.
- **Implementing "common sense" discipline practices (e.g., behavioral therapy and progressive sanctions) rather than relying heavily on ticketing has resulted in success for multiple school districts across the nation.**⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 393 BY SENATOR WEST

- **S.B. 393 will allow certain courts, schools, or probation departments to provide at-risk youth with case managers and prevention and intervention services, to help them target the root causes of their misbehavior and improve their likelihood of graduating.** As opposed to receiving a Class C misdemeanor citation for certain conduct, students will have the opportunity to address their misbehavior through counseling and avoid justice system involvement.

Continued on reverse.

SOLUTION (CONTINUED)

- **S.B. 393 will allow school districts to alternatively sanction youth who engage in disorderly conduct, disruption of class, or disruption of transportation.** Rather than receiving citations for misbehavior, youth will be subject to progressive sanctions including a warning, a behavioral contract, school-based community service, or counseling or other services aimed at addressing behavioral problems.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of S.B. 393. It is an effective policy that provides a safe, cost-effective solution for addressing Texas' school-to-prison pipeline, and it will help thousands of youth go on to become productive members of our communities. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations

¹ Council of State Governments, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (July 2011).

² Ibid.

³ Council of State Governments, *Breaking Schools' Rules* (July 2011).

⁴ Texas Appleseed, *Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools* (2010).

⁵ Ibid.

⁶ Ibid.

⁷ Council of State Governments, *Breaking Schools' Rules* (July 2011).

⁸ Advancement Project, *Ending the Schoolhouse to Jailhouse Track* (2012), <http://www.advancementproject.org/issues/stopping-the-school-to-prison-pipeline/pages/stories-and-victories>.

Improve Long-Term Outcomes for Youth Who Receive a Deferred Disposition For Certain Fine-Only Offenses

THE COLLATERAL CONSEQUENCES OF A JUVENILE RECORD

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.¹ 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.² 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.” This should especially hold true for youth who have fulfilled the conditions of a deferred disposition for low-level, fine-only offenses.

Without improved confidentiality practices, youth with criminal records – even for such low-level, fine-only offenses – can face significant collateral consequences, including future barriers to employment or housing. Texas must take all steps to assist youth who have successfully completed the conditions of a deferred disposition and who ultimately received a dismissal of their charges.

KEY FINDINGS

- Under current law, any youth who has been **convicted** of a fine-only misdemeanor is afforded the right to a restricted record.³ This limits criminal record information to judges or court staff, criminal justice agencies,⁴ the Department of Public Safety, an attorney for a party to the proceeding, the child defendant, and the defendant’s parent, guardian, or managing conservator.
- Youth who receive a deferred disposition for a similar offense are not afforded the right to a restricted record.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 394 BY SENATOR WEST

- **S.B. 394 will improve long-term outcomes for youth by restricting access to records of youth who received a dismissal after a deferred disposition for a fine-only offense.** This will limit inspection of a youth’s record after he or she received the least restrictive sanction for a fine-only offense.

Citations

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

² Legislative Budget Board, “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2011).

³ Texas Code of Criminal Procedure, Section 1, Article 44.2811.

⁴ Allowed criminal justice purposes are defined in Texas Government Code, Section 411.082.



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FACT SHEET 2013

S.B. 395

Relieve the Financial Burden on Youth Convicted of Fine-Only Offenses

Allow Courts to Provide Alternatives to Fines Or Waive Fines Altogether on the Basis of Childhood

THE IMPOSITION OF FINES ON TEXAS' CHILDREN

Any imposed fines and costs in a criminal case are the sole burden of the defendant. Even when defendants are children, the obligation to pay such costs and fines falls on them, not on their parents or legal guardians. These requirements impose an unfair financial burden on children who, by virtue of their age, are considered to be indigent. Furthermore, unlike indigent adult defendants, who are afforded the right to pay fines via community service, children are not provided the right to do so.¹

Texas lawmakers should make every effort to strike a balance between accountability and fairness for youth who receive criminal fines, including allowing for alternative methods of restitution (e.g., community service) or by allowing the dismissal of a case in warranted circumstances.

KEY FINDINGS

- Fines imposed on children for a misdemeanor do not fall on their parents or guardians. All costs associated with a child's conviction are his or her responsibility, despite the fact that he or she is indigent by virtue of age.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 395 BY SENATOR WEST

- **S.B. 395 aims to strike a balance between accountability and fairness for youth charged with certain fine-only misdemeanors.**

This bill will extend the procedures applicable to indigent adults convicted of a fine-only misdemeanor to children who are convicted of similar offenses. This includes allowing a judge to replace any cost or fine associated with a child's case with a term of community service. It also includes allowing a judge to waive a defendant's payment of fines due to childhood.

Citations

¹ Texas' Code of Criminal Procedure §42.15, §43.091, §45.041, and §45.0491.



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FACT SHEET 2013

S.B. 915

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

TEXAS SHOULD REMOVE THE APPLICATION REQUIREMENT FOR YOUTH ENTITLED TO A RECORDS SEALING

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.¹ 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.² As a result, a main purpose of the juvenile justice system, as set out in the Texas Family Code, is "to remove, where appropriate, the taint of criminality from children committing certain unlawful acts."

However, despite existing safeguards, many juvenile records are still widely accessible, which creates serious burdens for youth who have gotten their lives back on track. Most juvenile records in Texas are not on "restricted access," so employers, landlords, and schools have easy access to this sensitive information. Even after a juvenile record is restricted, some information may continue to be accessible, especially through the FBI database.

KEY FINDINGS

- **Most juvenile records are fully open to employers, landlords, and schools because they are not on "restricted access."** The Department of Public Safety currently maintains records on 604,818 people who were arrested when they were younger than 17 years old. Only 40 percent of those records are on restricted access.³
- **Low-level youthful offenses seldom lead to serious crimes.** A tracking study by Texas' Legislative Budget Board revealed that only 2.3 percent of youth who entered deferred prosecution in 2009 were later incarcerated in the following three years.⁴
- **Sealing records – a process already established by law – provides significantly more protections than "restricted access."** The Department of Public Safety treats a sealed juvenile record the same as an adult expunction. The Department destroys all documentation and removes the record from the Texas system and the FBI system.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 915 BY SENATOR WEST

- **S.B. 915 automatically seals the records of misdemeanor youth after two years.** Current law entitles misdemeanor youth to have their records sealed after two years, but they must first make an application to the court. This application requirement creates an expensive barrier for most youth. **S.B. 915 removes this unnecessary barrier by requiring a juvenile court to seal these records on the court's own motion.** The bill also creates a safeguard by requiring the juvenile court to provide notice to the prosecuting attorney; if the prosecuting attorney objects to sealing a youth's record, the court must hold a hearing to determine if the record should be sealed.

References on reverse

References

- ¹ See, e.g., T. Moffitt “Life-course-persistent versus adolescence-limited antisocial behavior” (2006).
- ² Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2013).
- ³ Texas Department of Public Safety response to open records request (January 2013).
- ⁴ Legislative Budget Board “Statewide Criminal Justice Recidivism and Revocation Rates” (January 2013).



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TESTIMONY 2013

S.B. 977

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 977, which will allow qualified individuals to petition for non-disclosure of their convictions electronically or by mail on standardized forms. This low-cost option will allow many disadvantaged individuals the opportunity to have their records sealed, enabling them to return to work, access safe housing, and become contributing, responsible members of Texas communities.

LESSENING COSTS ASSOCIATED WITH FILING CIVIL PETITIONS WILL ALLOW LOW-INCOME INDIVIDUALS TO RETURN TO WORK

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have a difficult time, or be absolutely barred from, finding housing or employment; becoming licensed for a particular occupation; obtaining an educational loan; or receiving federal or state benefits for basic human needs.¹

In recognition of this, Texas courts have the option of ordering the criminal conviction of an individual to be sealed if that person has successfully completed a term of deferred adjudication and petitioned for an order of non-disclosure.²

However, **the requirement that individuals must proactively draft and file a petition often brings with it attorney costs, placing an inordinate financial burden on an individual in a low-paying job** who is seeking to climb the employment ladder and who would benefit from a sealed record. But if the state does not object, attorney fees can be eliminated by allowing petitions to be filed electronically or submitted on a standardized form. This will leave petitioners to pay only court costs, which average between \$250 and \$300 in most Texas district courts, along with a \$28 filing fee.

KEY FINDINGS

- **Criminal records compromise an individual's ability to enter the workforce.**³ Individuals with a conviction cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others),⁴ leaving many returning individuals scrambling to find employment.
- In fact, **people with criminal convictions receive half as many job offers as job seekers without convictions**,⁵ which means that sealing an individual's criminal record, if ordered by a court, has enormous impact on the employment options and future success of those individuals.
- **Criminal records also destabilize Texans by creating barriers to safe housing.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.⁶

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. BY SENATOR WEST

- **S.B. 977 will allow filing of non-disclosure petitions electronically or by mail, which will remove the necessity of paying costly attorney fees** if the state does not object. Many individuals who are caught in the cycle of low-level crime are often under-employed and without the means to pay an attorney for help in drafting and filing a civil petition for non-disclosure. This bill will relieve men and women of that burden, enabling them to file a petition on their own. This, in turn, will give more people a fair chance to re-enter the work force or access housing without fear of being discriminated against for a criminal record, thus reducing the likelihood of costly re-offending.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of this bill. It will remove a sometimes insurmountable obstacle facing low-income individuals who wish to file a petition for non-disclosure, and it will facilitate a return to meaningful employment and access to safe housing. The Texas Criminal Justice Coalition strongly urges you to support S.B. 977.

Citations

¹ National Institute of Justice and the American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, 2012, <http://www.abacollateralconsequences.org/>.

² Tex. Gov. Code § 411.081(d)

³ Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, The Journal of Law and Criminology, Vol. 100, No. 3, Northwestern University, School of Law, 2010, p. 1215.

⁴ TEX. OCC. CODE, 53.021 (c)(3)

⁵ Pew Charitable Trust, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, p. 22, [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

⁶ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, March 2006, <http://www.urban.org/publications/411061.html>.



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TESTIMONY 2013

S.B. 991

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of Senate Bill (S.B.) 991, an effective policy that will improve efficiency and focus resources more effectively during the Medically Recommended Intensive Supervision (MRIS) release process.

SAFELY STREAMLINING THE MEDICAL RELEASE PROCESS WILL IMPROVE EFFICIENCY AND REDUCE COSTS TO THE STATE

It is costly and unnecessary to keep individuals with a serious medical condition in prison. Currently, certain incarcerated individuals are eligible for parole release under the Medically Recommended Intensive Supervision (MRIS) program; these individuals pose no legitimate risk to public safety—as determined by the Board of Pardons and Paroles (BPP)—and they have a serious medical condition that meets strict statutory criteria. Before being considered for release by the BPP, inmates are sent through a referral process where they are screened by the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI).

In addition to various offense restrictions, eligibility for MRIS currently requires an individual to be elderly, physically disabled, mentally ill, terminally ill, mentally retarded or having a condition requiring long-term care, be in a persistent vegetative state, or have an organic brain syndrome with significant to total mobility impairment.¹ **Each year, the MRIS-eligible caseload increases, and as inmates get older, medical symptoms worsen** and health issues increase. From 2010 to 2012, the caseload increased over 28 percent from 1,443 to 1,857 referrals.²

Furthermore, the current MRIS process requires a variety of review procedures, which often results in resources being allocated to evaluate individuals who are not even eligible for MRIS release. Such deficiencies waste resources that could be devoted to thorough evaluations of individuals who meet all statutory and medical criteria.

Because of the increased needs of seriously ill inmates, **individuals who would likely qualify for medical release use a disproportionate share of the funds allocated for prison health care costs.** In a recent publication on government efficiency and effectiveness, the Legislative Budget Board (LBB) points out that incarcerated persons are ineligible for public health benefits such as Medicare or Medicaid, thus placing the financial burden on the state to care for these individuals. **If seriously ill individuals are allowed to serve the remainder of their sentence in an alternative setting, like approved nursing homes, the state can draw from federal funds to offset medical care costs.**³ The LBB recommends that the statute governing MRIS be improved by amending the medical criteria used to determine eligibility for MRIS, and by removing automatic disqualification based on offense criteria.⁴ Rather, eligibility for MRIS should first be based on specific medical criteria, determined through a medical examination, and then be based on the BPP's determination that the person does not pose a danger to the public. S.B. 991 is consistent with these recommendations and will help improve the MRIS process.

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.⁵ For instance, in 2011, Arkansas, Rhode Island, and Colorado all reframed their eligibility requirements related to medial parole.⁶ In Texas, large cost savings could be realized if the BPP released more individuals who have been screened and identified as eligible for MRIS.

Continued on reverse.

KEY FINDINGS

- Since its inception over 20 years ago, only 1,484 individuals have been released on MRIS.⁷
- In FY 2012 there were 1,857 individuals referred to TCOOMMI for MRIS review, 516 of whom were ineligible due to offense restrictions. MRIS referrals have increased over 28 percent since 2010.⁸
- Of the 1,341 individuals determined eligible for MRIS review in FY 2012, only 491 were presented to the BPP for MRIS release and only 72 were ultimately approved for MRIS.⁹
- Of those who were referred for MRIS during FY 2012, 187 died while in prison.¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 991 BY CHAIRMAN WEST

- **S.B. 991 will streamline the MRIS release process by creating clearer standards with respect to the medical conditions considered for MRIS release.** The current MRIS review process creates excessive waste because valuable resources are devoted to evaluating individual cases that do not meet standard eligibility criteria. These resources should be allocated to careful examinations of individuals who have a legitimate chance of being considered and released on MRIS. S.B. 991 will streamline the statutory criteria for MRIS, clarifying that it applies only to individuals requiring permanent long-term care, with a terminal illness, or with a severe mental illness or intellectual and developmental disability.
- **H.B. 991 will improve the MRIS release process and save significant costs by removing unnecessary offense exclusions.** Currently, offense restrictions limit the use and availability of MRIS release. Many inmates who are severely ill and who could safely be transferred to an alternative setting are confined to a prison setting while the state incurs excessive medical care costs.

Importantly, S.B. 991 only amends the mechanism through which individuals are reviewed for MRIS release; it does not guarantee or mandate the release of specific individuals.

CONCLUSION

Thank you again for allowing me the opportunity to testify on S.B. 991, which tightens statutory language to reduce unnecessary, costly review procedures. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations

¹ TEX. GOV. CODE § 508.146.

² Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI), “Medically Recommended Intensive Supervision (MRIS) FY 12 Annual Report.” Available at <http://www.tdcj.state.tx.us/publications/index.html>.

³ Legislative Budget Board (LBB), “Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations,” Submitted to the 83rd Texas Legislature, January 2013, p. 282. Available at <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf#ReviseMedicallyRecommendedIntensive>.

⁴ LBB, *Texas State Government Effectiveness and Efficiency*, p. 282.

⁵ Vera Institute of Justice, Tina Chiu, *It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*, (April 2010), p. 5. Available at <http://www.vera.org/download?file=2973/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

⁶ LBB, *Texas State Government Effectiveness and Efficiency*, p. 286.

⁷ TCOOMMI, *Medically Recommended Intensive Supervision*.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*



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TESTIMONY 2013

S.B. 1003

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of Senate Bill (S.B.) 1003, an effective policy that will help criminal justice agencies improve policies and practices related to administrative segregation. Improvements to administrative segregation practices will ensure greater rehabilitative assistance for individuals in seclusion, thus increasing the likelihood that those who are released from administrative segregation and eventually return to our communities will live productive, law-abiding lives. This will save the state money, increase public safety, and strengthen communities.

CURRENT ADMINISTRATIVE SEGREGATION PRACTICES ARE UNSUSTAINABLE AND MUST BE IMPROVED

In 2012, the Texas Department of Criminal Justice (TDCJ) housed 8,238 prisoners—over 5% of its total prison and jail population—in administrative segregation.¹ This is compared to a national average of 1-2% of individuals in correctional administrative segregation.² **While in administrative segregation, inmates typically spend all but one hour per day confined in a small cell with little or no human contact, are denied participation in rehabilitation, education, and religious programming, and are deprived of contact visits with other individuals.** The average length of stay in administrative segregation in Texas is about 3 years.³ Given the general 23 hours a day of segregated confinement, this amounts to 26,864 hours of isolation on average. However, this average represents a broad range of time spent in administrative segregation. The Texas Criminal Justice Coalition (TCJC) has received numerous letters from individuals who are in or have been recently released from administrative segregation. One person who wrote us recently from administrative segregation to express concerns about his mental and physical wellbeing spent the last 18 years confined in administrative segregation.

Given the myriad of mental health and rehabilitative complications that arise from prolonged isolation, it is disconcerting to note that 2,060 individuals in administrative segregation were recently identified with a serious mental health or mental retardation diagnosis. This is an increase from 1,960 in 2010.⁴ Contemporary studies indicate that prolonged isolation in prison segregation, coupled with extensive deprivation of human contact, may “exacerbate mental health disturbances, assaultive and other antisocial behaviors, and chronic and acute health disorders.”⁵

Moreover, segregation leads to discomfort with social interactions and difficulties being around other people, whether in a prison setting or in the community. It should come as no surprise, therefore, that **many individuals released directly to the community reoffend at higher rates.**⁶ 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.⁷ **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.**⁸

Releasing individuals directly from administrative segregation into the community fails to properly equip them with necessary tools to succeed. In addition to deficient socialization skills training and lack of human interaction, inmates in administrative segregation are denied various privileges and opportunities, including contact visits, participation in educational or vocational programs, the opportunity to earn participatory work or educational good time credits, access to important programs, and other freedoms granted the general population. This not only jeopardizes public safety, it further encumbers an individual's likelihood to successfully reintegrate into his or her community.

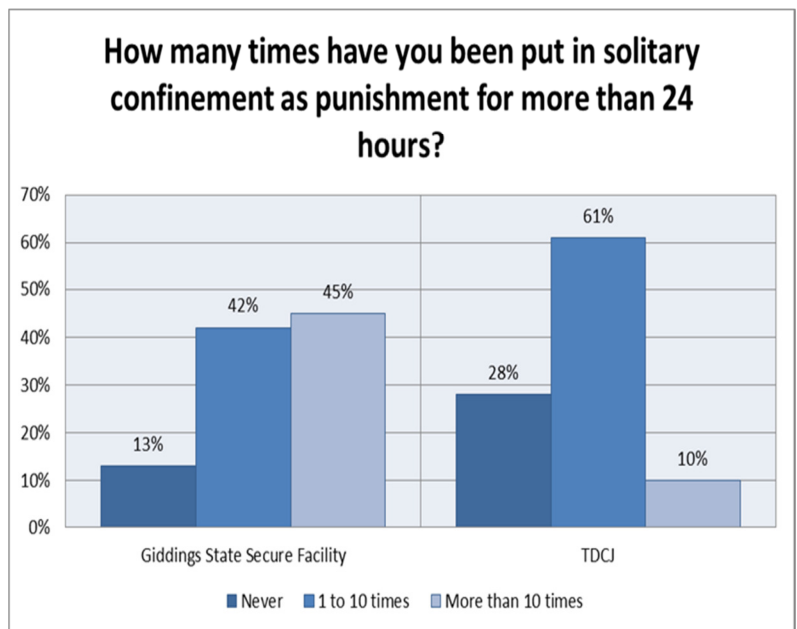
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KEY FINDINGS REGARDING ADULT ADMINISTRATIVE SEGREGATION

- Especially for those in segregation, studies have shown that social isolation has damaging psychological effects,⁹ including “hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior.”¹⁰
- In 2011, TDCJ identified 2,060 individuals in administrative segregation (nearly 25%) who had a mental health or mental retardation diagnosis.¹¹
- **In 2011, Texas released 1,347 individuals directly from administrative segregation to the streets¹² without having provided them any rehabilitative programming, which may endanger public safety in both the short and long term.** Texas released 878 inmates on flat discharge, meaning without supervision or support, directly from administrative segregation. In that same year, TDCJ released 466 individuals directly from administrative segregation to parole.¹³ Inmates on parole have the advantage of being able to participate in a District Reentry Center, which generally offers more robust programming and resources during the transition into the community.
- Of those released in 2007 directly to the community, 33% re-offended and returned to prison within three years.¹⁴ TDCJ’s rehabilitative responsibility requires that TDCJ pay particular attention to inmates who have spent extensive amounts of time in isolation without appropriate programming or treatment to hone positive social skills and address other critical needs.

KEY FINDINGS REGARDING YOUTH ADMINISTRATIVE SEGREGATION

In February 2013, TCJC’s Solution for Youth Justice Project conducted a survey of 670 individuals who had either been certified or transferred from juvenile supervision to the Texas Department of Criminal Justice. Of those 670 surveys sent, 277 responded. The chart at right shows the number of times they have been placed in solitary confinement at a state secure juvenile facility and at a TDCJ facility. These preliminary findings have been compared with a previous survey conducted among youth within the Giddings State Secure Facility, which is under the jurisdiction of the Texas Juvenile Justice Department. As you can see, initial findings indicate that youth incarcerated in TDCJ are more susceptible to isolation than their counterparts served in the juvenile system.



These findings are quite alarming, especially given that the ramifications of isolation can be exponentially worse for youth who are still undergoing mental and physical development. Indeed, the use of isolation not only hinders the developmental process, it perpetuates the harmful exposure of youth to traumatic experiences.¹⁵

Research on the developing brain and the effects of trauma shows the following:

- The brain is reorganizing during adolescence (ages 14 to 25), which is a critical brain growth period.¹⁶
- By age 16, adolescents are similar in cognitive functioning to adults, but they lack the ability to regulate their emotions, leading to a disconnect between what they think and how they feel. It is psychological and social development that continues into adulthood.¹⁷
- Stress and trauma during this time of brain growth cause the development of socially negative behavior due to chemical changes in the brain, signaling the brain to eliminate unused or undesired connections permanently. This leaves the body in a heightened state and manifests as impulsiveness (e.g., theft, aggression) and impaired logical judgment (e.g., rule breaking).¹⁸

A SAFE REDUCTION IN ADMINISTRATIVE SEGREGATION IS ACHIEVABLE

Ohio and Mississippi, during the mid-2000s, effectively reduced their supermax populations by 89% and 85% respectively. Mississippi's segregated population fell from 1,000 to 150 inmates, while Ohio reduced its population from 800 to 90.¹⁹ Mississippi also saw a near 70% drop in prisoner-on-prisoner and prisoner-on-staff violence. Further, use of force by officers in the unit decreased.²⁰ Inspired by the successful reduction of administrative segregation in both Ohio and Mississippi, the Vera Institute launched a Segregation Reduction Project in 2010. In an effort to safely reduce the number of individuals kept in isolation, the Segregation Reduction Project works with states to facilitate policies that: "(a) reassess the violations that qualify a prisoner for segregation and (b) recalibrate the length of stay in segregation, especially for minor incidents."²¹ Importantly, the Vera Institute also promotes improved conditions and program enhancement to support a safe transition from segregation. Vera is currently partnered with the Illinois Department of Corrections, the Washington State Department of Corrections, and the Maryland Department of Public Safety and Correctional Services.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1003 BY CHAIRMAN CARONA

- **S.B. 1003 will provide criminal justice agencies, in cooperation with an independent third party, the opportunity to carefully review policies and practices related to administrative segregation and solitary confinement of youth and adults.** S.B. 1003 would require an independent third party to help conduct this comprehensive evaluation and provide outside expertise on best practices related to isolation and solitary confinement. This third party will submit a report of its findings and recommendations to the legislature by December 31, 2014.
- **A careful examination of the use of administrative segregation will help increase the likelihood that individuals confined in an isolated setting will successfully reintegrate into the community if and when they are released, thus improving public safety and saving taxpayer money otherwise spent on costly re-offending.** Over-reliance on the isolating and restrictive qualities of administrative segregation is dangerous for inmates, staff, and the public. This is especially true given that TDCJ releases a significant number of individuals directly from administrative segregation into our communities. Additionally, because many of these individuals have diagnosed mental health issues, it is critical that TDCJ employs the best practices and minimizes reliance on administrative segregation.

CONCLUSION

Thank you again for allowing me the opportunity to testify in favor of S.B. 1003. It is an effective policy that will help improve the policies and practices related to administrative segregation as it applies to both adults and juveniles confined in a criminal justice facility. The Texas Criminal Justice Coalition strongly urges you to support this bill.

Citations on reverse.

Citations

¹ Texas Department of Criminal Justice (TDCJ), Fiscal Year 2012 Statistical Report, p. 1, 2013, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf. See total number of individuals on hand in TDCJ in administrative segregation (8,238) as of August 31, 2012, and the total number of individuals on hand in prison and state jail as of that date (148,824).

² James Austin and Emmitt Sparkman, "Colorado Department of Corrections Administrative Segregation and Classification Review," National Institute of Corrections, October 2011, http://www.ccjrc.org/pdf/2011_Solitary_Confinement_Report.pdf.

³ Data gleaned from Texas Department of Criminal Justice (TDCJ) Response to Open Records Request, "Administrative Segregation," 12 December 2011; information available upon request.

⁴ *Ibid.*

⁵ Angela Browne, Alissa Cambier and Suzanne Agha, "Prisons within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter*, Vol. 24, no. 1 (October 2011), p. 46 (citing David Lovell, L. Clark Johnson, and Kevin C. Caine, *Recidivism of Supermax Prisoners in Washington State*, 53 *CRIME DELINQUENCY* 633-56 (2007); David Lovell & Clark Johnson, *FELONY AND VIOLENT RECIDIVISM AMONG SUPERMAX PRISON INMATES IN WASHINGTON STATE: A PILOT STUDY* (University of Washington, 2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidism-4-19-04.pdf>).

⁶ *Ibid.*

⁷ Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, Vol. 49, January 2003, p. 124; accord Browne, *supra* note 5.

⁸ David Lovell, Clark L. Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency*, Vol. 53, October 2007, p. 4.

⁹ 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" [p. 82].

¹⁰ Haney, *supra* note 11, at 124.

¹¹ Open Records Request, *supra* note 3.

¹² TDCJ, Statistical Report: Fiscal Year 2011, p. 3, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf.

¹³ Open Records Request, *supra* note 3.

¹⁴ Open Records Request, *supra* note 3.

¹⁵ C. Haney, "Mental health issues in long-term solitary and "supermax" confinement," *Crime and Delinquency*, Issue 49, pp. 124-156 (2003).

¹⁶ J. McIntosh & A. Schore, *Family Law and the Neuroscience of Attachment: Part 1*. Family Court Review, vol. 49(3), July 2011.

¹⁷ Montgomery, *Neurobiology Essentials for Clinicians*; also see Arizona State University, "Adolescent Brain and Juvenile Justice: New Insights from Neuroscience, Genetics, and Addiction Science Panels," May 2012, available at <http://lsi.law.asu.edu/adolescentbrains2011/index.html>.

¹⁸ A. Schore, "Affect Dysregulation and Disorders of the Self," New York: W. W. Norton & Co, 2003.

¹⁹ Michael Jacobson, President and Director Vera Institute of Justice, Written Testimony Provided for the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, 19 June 2012, p. 2 (citing Terry Kupers et al., "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," *Criminal Justice and Behavior* 36 (2009): 1037-50, available at <http://www.vera.org/files/michael-jacobson-testimony-on-solitary-confinement-2012.pdf> (citing James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222181).

²⁰ *Ibid.*

²¹ Jacobson, *supra* note 19, at 3.



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FACT SHEET 2013

S.B. 1114

Reduce the Costly and Unnecessary Over-Criminalization of Misbehavior in School *Implement Counseling and Progressive Sanctions in Lieu of Class C Misdemeanors*

SAFELY REDUCE CLASS C TICKETING IN TEXAS' PUBLIC SCHOOLS

While well intentioned, school discipline practices in Texas – like “zero-tolerance policies” – have resulted in a multitude of negative consequences: the over-criminalization of adolescent behavior, disproportionate discipline among youth of color and youth with disabilities,¹ greater numbers of expulsions,² and a path to future juvenile justice system involvement.³ Furthermore, schools’ use of School Resource Officers (on-campus law enforcement officers) have led to a dramatic uptick in Class C misdemeanor citations among youth.⁴

Texas should more effectively address adolescent misbehavior within public schools through the use of counseling and alternative sanctions that do not result in costly, long-term collateral consequences (e.g., a criminal record and a hefty fine).

KEY FINDINGS

- Texas Appleseed reports that the use of **Class C misdemeanor tickets within the school setting are frequently issued for minor level offenses** (e.g., indecent language or an offensive gesture), which are behaviors that historically have been addressed by school administrators.⁵
- Ticketing practices within Texas’ schools are highly disproportionate, with both African-American and Hispanic students being overrepresented among those disciplined.⁶
- Texas’ school disciplinary practices increase the likelihood of future juvenile justice involvement,⁷ at great expense to taxpayers and to students saddled with the long-term collateral consequences of system involvement.
- **Implementing “common-sense” discipline practices (e.g., behavioral therapy and progressive sanctions) rather than relying heavily on ticketing has resulted in success for multiple school districts across the nation.**⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1114 BY SENATORS WHITMIRE AND WEST

- **S.B. 1114 will allow certain courts, schools, or probation departments to provide at-risk youth with case managers and prevention and intervention services, to help them target the root causes of their misbehavior and improve their likelihood of graduating.** As opposed to receiving a Class C misdemeanor citation, students will have the opportunity to address their misbehavior through counseling and avoid justice system involvement.
- **S.B. 1114 will allow school districts to alternatively sanction youth who engage in behavior that is punishable by a Class C misdemeanor.** Rather than receiving citations for misbehavior, youth will be subject to progressive sanctions including a warning, a behavioral contract, school-based community service, or counseling or other services aimed at addressing behavioral problems.

Citations on reverse.

Citations

¹ Council of State Governments, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (July 2011).

² Ibid.

³ Council of State Governments, *Breaking Schools' Rules* (July 2011).

⁴ Texas Appleseed, *Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools* (2010).

⁵ Ibid.

⁶ Ibid.

⁷ Council of State Governments, *Breaking Schools' Rules* (July 2011).

⁸ Advancement Project, *Ending the Schoolhouse to Jailhouse Track* (2012),
<http://www.advancementproject.org/issues/stopping-the-school-to-prison-pipeline/pages/stories-and-victories>.



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FACT SHEET 2013

S.B. 1185

Implement a Mental Health Pilot Program in Harris County

Targeted Diversion Strategies and Data Tracking will Create Cost Savings and Safer Communities

PUNITIVE APPROACHES TO MENTAL ILLNESS ARE COSTLY AND INEFFECTIVE, THREATENING PUBLIC HEALTH AND SAFETY

County jails are inappropriate environments for individuals with mental illness who need targeted assistance. In Harris County, which operates Texas' largest county jail (approximately 9,000 inmates¹), a high population of mentally ill individuals cycle through the jail, with over a quarter of inmates receiving psychotropic medication on any given day.² This is not only a costly approach that burdens local taxpayers; it fails to meet the long-term needs of individuals who will inevitably return to the community and likely re-offend without proper care.

Harris County could more efficiently spend its limited resources on this population – while keeping local communities safer – through a multi-year, service-oriented program that would offer mentally ill individuals the tailored assistance they need to live responsibly in the community, following their release from jail.

Also key, if such a program proves successful, it will serve as a model for other Texas jurisdictions struggling to address large populations of criminal justice system-involved individuals with mental health needs.

KEY FINDINGS

- **Without tailored assistance, people with mental health issues will continue to struggle to adapt and may turn to unlawful methods to survive.** In fact, hundreds of inmates with mental problems cycled in and out of Harris County jail five or more times from 2011 to 2012,³ a revolving door marked by high costs associated with policing, prosecuting, and re-incarcerating these individuals.
- **Addressing the various needs of jail inmates with mental illness comes at significant taxpayer expense.** A study by the Mental Health and Mental Retardation Authority of Harris County and Harris County's Office of Budget and Management examined all releases from jail between January 1, 2004, and January 29, 2008, and found persons with mental illness represented 25% of all inmates but accounted for 37% of the cost of jail stays. The study also found that Harris County's annual cost for an inmate with mental illness was \$7,017 per year, compared to \$2,599 for other inmates (excluding police and court costs).⁴
- **Supportive housing is especially critical for people with mental health issues.** 17% of jail detainees with mental illness had been homeless at least once during the year prior to arrest, in contrast to 9% of those without mental illness.⁵ Furthermore, many members of the mentally ill homeless population rotate between the streets and shelters, emergency centers, and jail cells, and the costs to Harris County attributable to their increased re-arrest rates exceed \$14 million per year.⁶
- **Punitive approaches to mental illness are a clear example of a policy driven by public opinion rather than systematic analysis.** One theory is that incarcerating individuals with mental illness makes it an unattractive option to those who might consider committing another crime after they get out of jail. Unfortunately, the current laws and the lack of support for the mentally ill have not only failed to help those individuals, but have actually made it **more likely for them to continue to commit crimes**, since once an individual has a criminal record, finding legitimate work and safe housing becomes more difficult.

Solution offered on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1185 BY SENATOR HUFFMAN

- **S.B. 1185 will create a 4-year mental health pilot program in Harris County, in specific efforts to reduce recidivism among people with mental illness.** Under this bill, the Department of State Health Services (DSHS) will develop a “criminal justice mental health service model” to initially address the needs of at least 200 participants, with redesigns of the model permitted as DSHS acquires more information about its performance. **The program will give access to available social, clinical, housing, and welfare services during the first weeks after a person’s release from jail.** S.B. 1185 also seeks the cooperation and critical input of a variety of local stakeholders and service providers, to assure that the most effective program is in place considering existing programs and strategies.

This preventive approach will provide the mentally ill with the resources to adapt and rehabilitate, keeping them from repeatedly re-offending and being re-incarcerated at massive expense.

- **S.B. 1185 requires the Harris County Commissioner to submit a report on the pilot program to the Legislature by the end of 2016, ensuring transparency and accountability.** This report will enable decision-makers to better understand the scope of the problem, be clear about the successes of the program, and potentially respond with appropriate policies to implement such programs in other Texas counties, and well as extend it in Harris County. Currently, the pilot program is scheduled to end in September of 2017.

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<http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>.

² Dennis Spellman. “Bill Would Remove Most Mentally-ill from Texas County Jails.” *News 92 FM Houston*. March 6, 2013.

<http://news92fm.com/334131/bill-would-remove-most-mentally-ill-from-texas-county-jails/>.

³ *Ibid.*

⁴ Treatment Advocacy Center & National Sheriffs’ Association. “More mentally ill persons are in jails and prisons than hospitals: A survey of the states.” (2010): 84.

http://treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

⁵ Mary L. Held, Carlie A. Brown, Lynda E. Frost, J. Scott Hickey, and David S. Buck. “Integrated Primary and Behavioral Health Care in Patient-Centered Medical Homes for Jail Releases with Mental Illness,” *Criminal Justice and Behavior* 39 (2012): 535.

⁶ David S. Buck, Carlie A. Brown, Scott Hickey. “The Jail Inreach Project: Linking Homeless Inmates Who Have Mental Illness With Community Health Services,” *Psychiatric Services* 62 (February 2011): 120.
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FACT SHEET 2013

S.B. 1234

Increase Efforts to Keep Truancy Out of Adult Courts

Progressive Sanctions and Recategorization of Truancy will Alleviate Court Dockets, Reduce the Burden on Families, and Help Youth Access Behavioral Services

TEXAS MUST IMPLEMENT A MORE EFFECTIVE APPROACH TO REDUCE THE FAILURE TO ATTEND SCHOOL

In 1993, in an effort to alleviate juvenile court dockets of truancy cases, Texas lawmakers created a separate criminal school attendance offense, commonly known as "failure to attend school,"¹ which is categorized as a Class C misdemeanor punishable under a municipal or justice of the peace court.

While this effort may have been well intentioned, it has resulted in a number of unintended consequences. For instance, once issued a citation for failure to attend, both students² and parents³ are subject to a maximum fine (not including court costs) of \$500; this is a **significant burden on indigent families**, with ongoing legal and financial consequences for failure to pay all money owed. Another burden results from the requirement to appear in an adult court to resolve the citation, which may lead to **students missing further school time**. Also sadly, Class C citations have **disproportionately impacted certain student populations**, including African-American students, Hispanic students,⁴ and students with intellectual disabilities.⁵

KEY FINDINGS

- Receiving a citation for failure to attend school is considered a Class C misdemeanor and is documented as a criminal (not juvenile) offense.⁶
- According to Texas Appleseed, Class C tickets for failing to attend school accounted for 29% of all Class C tickets issued in one year.⁷
- Students who face persistent complications with the school disciplinary system are more likely to drop out or become involved with the juvenile justice system.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1234 BY SENATOR WHITMIRE

- **S.B. 1234 will repeal "failure to attend school" as a criminal offense, re-directing all cases of truancy to juvenile court where the offense is considered a Child in Need of Supervision (CINS) offense.** By eliminating "failure to attend school" from the Education Code, all persistent truancy cases will be required to be handled within a juvenile court. This designation will enable the juvenile justice system to provide youth and their families with the necessary services to address truant behavior. Repealing this offense will likewise eliminate any criminal liability that falls onto a youth's parents.
- **S.B. 1234 also requires the use of progressive sanctions for truancy cases, which will alleviate juvenile courts dockets.** By requiring school districts to implement a progressive sanctions model for persistent truancy cases (including a behavioral contract, school-based community service, or counseling or other services), fewer referrals will be made to juvenile courts, allowing judges to focus their time and resources on higher-level cases. Furthermore, this approach will keep school matters in school and out of the justice system.

Citations on reverse.

Citations

¹ Texas Education Code § 25.094.

² Texas Penal Code § 12.23.

³ Texas Code of Criminal Procedure, Article 45.054. Under this Article, a municipal or justice of the peace court is required to endorse a summons issued to the parent of the individual. If the parent fails to obey the summons, he or she commits a Class C misdemeanor offense with a maximum fine of \$500.

⁴ Texas Appleseed, *Texas' School-to-Prison Pipeline: Ticketing, Arrest, & Use of Force in Schools, How the Myth of the "Blackboard Jungle" Reshaped School Disciplinary Policy*, December 2010.

⁵ Ibid.

⁶ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

⁷ Texas Appleseed, *Texas' School-to-Prison Pipeline: Ticketing, Arrest, & Use of Force in Schools*, December 2010.

⁸ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students' Success of Juvenile Justice Involvement*, July 2011.



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TESTIMONY 2013

S.B. 1356

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 1356, an effective bill that will help heal the invisible wounds of traumatized youth in the Texas juvenile justice system. S.B. 1356 is an important step in breaking the cycle of trauma, incarceration, and crime for Texas children, and the Texas Criminal Justice Coalition strongly urges you to support the bill.

SPECIALIZED TRAINING WILL GIVE STAFF THE SKILLS NEEDED TO WORK WITH TRAUMATIZED KIDS

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. Sadly, 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, starting with specialized training for staff to respond to the unique vulnerabilities of traumatized youth.

KEY FINDINGS

- **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, such as violence, neglect, abuse, threats, humiliation, or deprivation.¹
 - » 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.²
- **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.³
 - » 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.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1356 BY SENATOR VAN DE PUTTE

- **S.B. 1356 requires staff who work with youth in the juvenile justice system to receive specialized training in trauma-informed care.** This training will equip staff with the specialized skills they need to work successfully with kids who have experienced past traumatic events. When staff are trained to respond appropriately to the unique vulnerabilities and triggers of traumatized youth, they are able to build a sustainable positive environment that increases safety for youth and staff. A trauma-informed juvenile justice system will help protect public safety by improving interventions to help heal these youth and get them on a path to success.

References on reverse

References

¹ Texas Criminal Justice Coalition (TCJC), review of calendar year 2011 data provided by the Texas Juvenile Justice Department (TJJD), (April 2012).

² E. Espinosa, "An Evaluation of the Influence of Gender and Mental Health Needs on Juvenile Justice System Processing," (2011).

³ TCJC, "Girls' Experiences in the Texas Juvenile Justice System," (October 2012).

⁴ TJJD Program Registry. Conversations with county departments revealed insufficient resources for trauma programs.



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FACT SHEET 2013

S.B. 1717

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

THE OMBUDSMAN HAS BEEN VERY EFFECTIVE BUT DOES NOT HAVE ACCESS TO COUNTY OR ADULT FACILITIES

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 with youth in county juvenile facilities or in adult prisons, leaving a vulnerable gap in the state's protection of youth in secure facilities.

KEY FINDINGS

- **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. 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.¹
- **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."²
 - » 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."³ There were 442 attempted suicides in Texas county juvenile facilities in 2011.⁴
- **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 policy⁵ – and this has yet to be addressed.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1717 BY SENATOR RODRIGUEZ

- **S.B. 1717 allows OIO staff to visit with youth in county juvenile facilities and adult prisons.** The bill will bridge the current gap in protections for youth in secure government custody. The OIO has been critically important in protecting youth in state juvenile facilities, but thousands of youth are placed in county and adult facilities, and it is equally important to protect them from the risk of abuse, neglect, or exploitation.

References on reverse

References

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- ² Texas Juvenile Detention Association, “Resolution concerning TAC 343 and related standards” (March 28, 2012).
- ³ *Fort Worth Star-Telegram*, “Cleburne boy fatally injured at Granbury detention center” (October 18, 2011).
- ⁴ Texas Juvenile Justice Department, “2011 Facility Registry” (2011).
- ⁵ 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).

Making Deferred Adjudication WORK *Record expunction can save money and increase public safety*

WHAT IS DEFERRED ADJUDICATION AND HOW CAN WE MAKE IT WORK BETTER?

Through deferred adjudication, a judge suspends a determination of a defendant's guilt and places him or her on probation; the defendant is released into the community and supervised by the court, with conditions of supervision.¹ After successful completion of a term of deferred adjudication and fulfillment of all community supervision obligations, the judge dismisses the proceedings and discharges the person from court supervision.²

Deferred adjudication in Texas can increase public safety and save money by allowing individuals charged with certain crimes to be supervised and treated in the community as opposed to filling beds in expensive corrections facilities. Additionally, deferred adjudication can mitigate the barriers created by having been found guilty of a crime. However, **current practice dictates that anyone placed on deferred adjudication – even for a minor misdemeanor offense – will have a permanent criminal record.**³

- » Texas law **does not** allow expunction of deferred adjudication offenses ranked as Class B misdemeanors or higher.⁴ An expunction would clear a defendant's record of the offense.⁵
- » Though Texas law **does** allow individuals to request an order of nondisclosure after set time periods for certain offenses, such orders still enable criminal justice agencies to disclose offense-related information to particular entities, including licensing boards.⁶

A criminal record can severely limit individuals' ability to support themselves. Having a record – even for a deferred adjudication resulting from a misdemeanor offense – can compromise an individual's ability to enter or re-enter the workforce, access housing, and receive needed benefits from programs such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families.⁷ Criminal records, in other words, destabilize people. In certain circumstances, this vulnerability can increase the likelihood of re-offending.

It is time that Texas removes barriers to successful participation in the workforce, and helps ensure that Texans can access employment, safe housing, and critical tools for personal responsibility.

HUNDREDS OF THOUSANDS OF TEXANS ARE PLACED ON DEFERRED ADJUDICATION

Since September 1, 2010, Texas courts assigned 290,000 cases with a deferred adjudication.⁸ Some of these individuals will serve between five and ten years on community supervision.⁹ Of the approximately 178,000 individuals placed on deferred adjudication for misdemeanor offenses during this time, about 40,000 (22%) were charged with traffic offenses, and about 30,000 (17%) were charged with possession or delivery of small amounts of marijuana.¹⁰ Of the approximately 113,000 individuals placed on deferred adjudication for felonies, over 30,000 (27%) were charged with drug possession.¹¹ Even after these individuals complete deferred adjudication, they may face major barriers to obtaining employment and housing resulting from the inclusion of their deferred adjudication disposition on their criminal record.

CASES PLACED ON DEFERRED ADJUDICATION BETWEEN SEPTEMBER 2010 AND DECEMBER 2012¹²

Total Cases Placed on Deferred Adjudication (Sept 2010 – Aug 2012)	290,971
Total for Felonies	113,222
<i>Felony Drug Possession</i>	30,055
Total for Misdemeanors	177,749
<i>Misdemeanor Traffic Offense</i>	39,824
<i>Misdemeanor Possession of Marihuana</i>	30,794

KEY FINDINGS

- Since September 2010, Texas courts have placed over 290,000 individuals on deferred adjudication.¹³
- Deferred adjudication can be imposed for even minor misdemeanor offenses like gambling or state jail felony offenses like marihuana possession.¹⁴ Such offenses should not prohibit future access to a home or job.
- Criminal records compromise an individual's ability to enter the workforce.¹⁵ Individuals with a felony conviction cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others), even if they have successfully completed a sentence of deferred adjudication.¹⁶
- Criminal records destabilize Texans by creating barriers to safe housing. Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.¹⁷
- Allowing for record expunction is aligned with the intention of deferred adjudication. Barriers to housing, employment, and other benefits are especially troubling when a judge has decided that an individual should be provided a chance to rehabilitate, rather than be burdened with a lifelong criminal record. In these circumstances, any barriers to successful reintegration should be removed.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION

- Allow record expunction for certain deferred adjudication cases after designated periods of time.
 - ✓ For certain misdemeanors, allow record expunction for deferred adjudication after five years.
 - ✓ For certain felonies, allow record expunction for deferred adjudication after ten years.

Supporting individuals who successfully complete deferred adjudication sentences will save money and increase public safety.

Citations

¹ TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(C)

² TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(C)

³ Texas Department of State Health Services, *What exactly is a deferred adjudication?*, <http://www.dshs.state.tx.us/emstraumasystems/Deferredweb.shtm>.

⁴ TEX. CODE OF CRIM. PROCEDURE, ART. 55.01(A)(2)

⁵ TEX. CODE OF CRIM. PROCEDURE, ART. 55.03

⁶ TEX. GOV. CODE, SEC. 411.081

⁷ Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, The Journal of Law and Criminology, Vol. 100, No. 3, Northwestern University, School of Law, 2010, 1215.

⁸ The Texas Office of Court Administration: Court Activity Reporting and Directory System, <http://card.txcourts.gov/ReportSelection.aspx>

⁹ TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(A)

¹⁰ The Texas Office of Court Administration.

¹¹ The Texas Office of Court Administration.

¹² The Texas Office of Court Administration.

¹³ The Texas Office of Court Administration.

¹⁴ TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC.3

¹⁵ Pinard, *Reflections and Perspectives*, 1215.

¹⁶ TEX. OCC. CODE, 53.021 (c)(3)

¹⁷ Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, (March 2006), <http://www.urban.org/publications/411061.html>.