

Fact Sheets and Testimony 2015



Truancy Bills Guide—84th Legislative Session

| | |
|--|-----------|
| REFORM BILLS | 3 |
| <i>(1) Comprehensive reform bills (both decriminalize & increase school interventions)</i> | 3 |
| HB 297 (Wu) | 3 |
| HB 378 (White) | 4 |
| HB 1490 (Huberty) | 5 |
| <i>(2) Pure school accountability bills (increase school interventions only)</i> | 7 |
| HB 2397 (White) | 7 |
| SB 106 (Whitmire) | 9 |
| <i>(3) Pure decriminalization bills</i> | 10 |
| HB 93 (White) | 10 |
| SB 285 (West) | 11 |
| HB 2632 (Dutton) | 12 |
| PUNISHMENT REDUCTION BILLS | 13 |
| <i>(1) Reduce or eliminate fines</i> | 13 |
| HB 107 (White) | 13 |
| HB 697 (White) | 13 |
| <i>(2) Prohibit secure confinement of a student, allowed through contempt proceedings</i> | 14 |
| HB 110 (White) | 14 |
| PROCEDURAL BILLS | 15 |
| <i>(1) Allow truancy cases to be redistributed between courts within the same county</i> | 15 |
| HB 516 (Moody) | 15 |
| HB 519 (Moody) | 15 |

| | |
|--|-----------|
| <i>(2) Help youth pay for court costs and services</i> | <i>16</i> |
| HB 2398 (White) | 16 |
| <i>(3) Require additional procedural safeguards</i> | <i>16</i> |
| HB 1359 (Wu) | 16 |
| HB 1365 (Guillen)..... | 18 |
| HB 1571 (White) | 18 |
| HB 1753 (White) | 19 |
| SB 560 (Lucio) | 19 |
| EXPUNCTION BILLS..... | 20 |
| <i>(1) Reduce requirements for expunction.....</i> | <i>20</i> |
| SB 108 (Whitmire) | 20 |
| <i>(2) Provide a streamlined expunction procedure under certain conditions</i> | <i>21</i> |
| HB 2268 (Thompson) | 21 |

Index

| | |
|-----------------------|------------------------|
| HB 93 (White), 10 | |
| HB 107 (White), 13 | |
| HB 110 (White), 14 | |
| HB 297 (Wu), 3 | |
| HB 378 (White), 4 | |
| HB 516 (Moody), 15 | |
| HB 519 (Moody), 15 | |
| HB 697 (White), 13 | |
| HB 1359 (Wu), 16 | |
| HB 1365 (Guillen), 18 | |
| HB 1490 (Huberty), 5 | |
| HB 1571 (White), 18 | |
| HB 1753 (White), 19 | |
| | HB 2268 (Thompson), 21 |
| | HB 2397 (White), 7 |
| | HB 2398 (White), 16 |
| | HB 2632 (Dutton), 12 |
| | SB 106 (Whitmire), 9 |
| | SB 108 (Whitmire), 20 |
| | SB 285 (West), 11 |
| | SB 560 (Lucio), 19 |

REFORM BILLS

Reform bills change the way that truancy law operates in some fundamental way. There are **two types of fundamental changes proposed** by truancy bills this session: (1) **decriminalization** of the Class C misdemeanor of “Failure to Attend School” (FTAS); and (2) requiring **increased school interventions** before a court referral.

There are three categories of bills here:

- (1) Comprehensive reform bills (both decriminalize & increase school interventions);**
- (2) Pure school accountability bills (increase school interventions only); and**
- (3) Pure decriminalization bills.**

(1) Comprehensive reform bills (both decriminalize & increase school interventions)

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-------------|---|--|
| HB 297 (Wu) | § 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL) <ul style="list-style-type: none">Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor | <ul style="list-style-type: none">Repeals |
| | § 25.093, EDUC. CODE (PARENT CONTRIBUTING TO NONATTENDANCE) <ul style="list-style-type: none">Establishes “Parent Contributing to Nonattendance” as a Class C misdemeanor | <ul style="list-style-type: none">Repeals |
| | § 25.0915, EDUC. CODE (TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT) <ul style="list-style-type: none">(a) Requires school districts to adopt truancy prevention measures designed to minimize complaints or referrals to court | <ul style="list-style-type: none">Related to the above two offenses, repeals procedural statutes in the Code of Criminal Procedure, Education Code, Family Code, and Government Code(a) Adds requirement that schools adopt progressive sanctions |

| | | |
|-------------------|--|---|
| | <ul style="list-style-type: none"> • (b) Requires schools to submit a statement with every court referral or complaint stating that they applied truancy prevention measures that failed • (c) Requires court to dismiss any case where school does not comply with (b) <p>§ 25.091, EDUC. CODE (POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS)</p> <ul style="list-style-type: none"> • (a) Requires peace officer serving as attendance officers to apply and enforce truancy prevention measures | <ul style="list-style-type: none"> • (b) Adds compliance with progressive sanctions to statement requirements <p>NEW § 25.0945, EDUC. CODE (PROGRESSIVE SANCTIONS FOR FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • (a) Requires schools to impose progressive sanctions before court referral for truancy; progressive sanctions may consist of <ul style="list-style-type: none"> ○ (1) warning letter to student/parent ○ (2) (A) signed behavior contract that includes description of student's behavior, time period contract is effect (max 45 schools days), and penalties for additional absences ○ (2)(B) school-based community service ○ (3) referral of the student to counseling, community-based services, or other services • (b) May include participation by child's parents • (c) Gives authority to refer child to court for the CINS offense of truancy only if child fails to comply or complete the progressive sanctions under this section <ul style="list-style-type: none"> • (a) Also requires these attendance officers to enforce progressive sanctions |
| HB 378 (White) | Exact same language as HB 297 (Wu) | |

| | | |
|------------------------------|---|--|
| <p>HB 1490 (Huberty)</p> | <p>§ 51.03, FAMILY CODE (DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION)</p> <ul style="list-style-type: none"> • Establishes “Truancy” as CINS offense • Defines truancy to require: <ul style="list-style-type: none"> ○ At least 10 unexcused absences within a 6-month period in one school year; OR ○ At least 3 unexcused absences within a four-week period <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor <p>§ 25.093, EDUC. CODE (PARENT CONTRIBUTING TO NONATTENDANCE)</p> <ul style="list-style-type: none"> • Establishes “Parent Contributing to Nonattendance” as a Class C misdemeanor <p>§ 25.0915, EDUC. CODE (TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT)</p> <ul style="list-style-type: none"> • (a) Requires school districts to adopt truancy prevention measures designed to minimize complaints or referrals to court • (b) Requires schools to submit a statement with every court referral or complaint stating that they applied truancy prevention measures that failed | <ul style="list-style-type: none"> • Repeals 3 unexcused absences definition • Repeals • Repeals • Related to the above two offenses, repeals procedural statutes in the Code of Criminal Procedure, Education Code, Family Code, and Government Code related to the above two offenses • (a) Adds requirement that schools adopt progressive truancy interventions • (b) Adds compliance with progressive sanctions to statement requirements |
|------------------------------|---|--|

| | | |
|--|--|--|
| | <ul style="list-style-type: none"> • (c) Requires court to dismiss any case where school does not comply with (b) | <p>NEW § 25.0917, EDUC. CODE (PROGRESSIVE TRUANCY INTERVENTION SYSTEM)</p> <ul style="list-style-type: none"> • (a) Requires schools to impose progressive sanctions before court referral for truancy; the progressive sanctions must include at least three levels • (b) Shall apply first tier of sanctions at three unexcused absences, shall apply successive tiers of interventions for additional absences • (c) First tier of progressive sanctions must include: <ul style="list-style-type: none"> ○ (1) conference with student, parent, school employee & regular follow-up meetings ○ (2) signed attendance contract, includes description of students conduct, effective period (max 45 days), and description of consequences for additional absences • (d) At least one tier of sanctions after the first must include an individualized assessment of the student by a school employee that: <ul style="list-style-type: none"> ○ (1) identifies reasons for unexcused absences; ○ (2) refers student to counseling, if necessary; and ○ (3) refers student to any services that focus on addressing absences • (e) Consequences for a student with additional absences after the first tier of sanctions may include: <ul style="list-style-type: none"> ○ (1) school-based community service; ○ (2) participation in school-based restorative justice program; ○ (3) referral to school-based teen court; ○ (4) weekend courses; ○ (5) if receiving special education services, full reevaluation ○ (6) if not receiving special education services, |
|--|--|--|

| | | |
|--|--|--|
| | <p>§ 25.091, EDUC. CODE (POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS)</p> <ul style="list-style-type: none"> • (a) Requires peace officer serving as attendance officers to apply and enforce truancy prevention measures | <p>initial special education evaluation</p> <ul style="list-style-type: none"> • (a) Also requires these attendance officers to enforce progressive sanctions |
|--|--|--|

(2) Pure school accountability bills (increase school interventions only)

| Bill Number | Current Law Affected by Bill | Bill Changes |
|--------------------|--|---|
| HB 2397 (White) | <p>§ 51.03, FAMILY CODE (DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION)</p> <ul style="list-style-type: none"> • Establishes “Truancy” as CINS offense • Defines truancy to require: <ul style="list-style-type: none"> ○ At least 10 unexcused absences within a 6-month period in one school year; OR ○ At least 3 unexcused absences within a four-week period <p>§ 25.088, EDUC. CODE (SCHOOL ATTENDANCE OFFICER)</p> <ul style="list-style-type: none"> • Requires each school district to employ at least one school attendance officer <p>§ 25.089, EDUC. CODE (COMPENSATION OF ATTENDANCE OFFICER; DUAL SERVICE)</p> <ul style="list-style-type: none"> • (b) Attendance officer may be the probation officer or an officer of the juvenile court of the county | <ul style="list-style-type: none"> • Repeals 3 unexcused absences definition • Changes name of this employee to a school attendance enhancement facilitator (SAEF) • (b) SAEF may not be a law enforcement officer (i.e., must be employee of school district) |

| | | |
|--|--|---|
| | <p>§ 25.091, EDUC. CODE (POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS)</p> <ul style="list-style-type: none"> • (a) Requires peace officer serving as attendance officers to apply and enforce truancy prevention measures • (b) Requires attendance officer to apply and enforce truancy prevention measures <p>§ 25.0915, EDUC. CODE (TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT)</p> <ul style="list-style-type: none"> • (a) Requires school districts to adopt truancy prevention measures designed to minimize complaints or referrals to court • (b) Requires schools to submit a statement with every court referral or complaint stating that they applied truancy prevention measures that failed • (c) Requires court to dismiss any case where school does not comply with (b) | <ul style="list-style-type: none"> • (a) repealed • (b) replaces attendance officer with SAEF, has the same duties with respect to the new truancy intervention procedures <ul style="list-style-type: none"> • (a) Repealed; replaced by truancy intervention procedures in § 25.0918 • (b) Adds compliance with truancy intervention procedures to statement <p>NEW § 25.0918, EDUC. CODE (TRUANCY INTERVENTION PROCEDURES)</p> <ul style="list-style-type: none"> • (a) SAEF shall apply truancy intervention measures to address truancy, minimize need for court involvement, • (b) At first unexcused absence, SAEF shall contact student's parent and inform them of absence • (c) At second unexcused absence, SAEF shall: <ul style="list-style-type: none"> ○ (1) contact parent with specific discussion points regarding the absences and how to address them ○ (2) send record of the parent contact to student's counselor ○ (3) along with the counselor, conduct an assessment of the student, including: <ul style="list-style-type: none"> ▪ (A) evaluation of academic performance |
|--|--|---|

| | | |
|----------------------|--|--|
| | <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor | <ul style="list-style-type: none"> <ul style="list-style-type: none"> (B) whether student receives special education services (C) discuss with student’s teachers about academic progress (D) meeting with student to discuss any reasons underlying unexcused absences, and potential remedies (d) At third unexcused absence, SAEF shall: <ul style="list-style-type: none"> (1) conduct conference with student, parent, school employees (2) create student attendance plan immediately following the conference Prohibits punishment by fine, in any amount, for this offense |
| SB 106 (Whitmire) | <p>§ 25.085, EDUC. CODE (COMPULSORY SCHOOL ATTENDANCE)</p> <ul style="list-style-type: none"> (e) Allows a school to revoke the enrollment of individuals who voluntarily attend school after age 18 if they have at least 5 unexcused absences in a semester <p>§ 25.0915, EDUC. CODE (TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT)</p> <ul style="list-style-type: none"> (a) Requires school districts to adopt truancy prevention measures designed to minimize complaints or referrals to court (b) Requires schools to submit a statement with every | <ul style="list-style-type: none"> (e) Makes clear that the school may not revoke the enrollment of the individual on a day at which the individual is physically present at school New: (g) Requires school to issue an enrollment revocation warning letter to these students when they reach 3 unexcused absences New: (h) Allows schools to impose a behavior improvement plan instead of revoking enrollment New: (a-1) Sets out specific truancy prevention measures; under these, the school may... <ul style="list-style-type: none"> (1) Impose: <ul style="list-style-type: none"> (A) signed behavior improvement plan: |

| | | |
|--|---|--|
| | <p>court referral or complaint stating that they applied truancy prevention measures that failed</p> <ul style="list-style-type: none"> • (c) Requires court to dismiss any case where school does not comply with (b) <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • (e) Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor | <ul style="list-style-type: none"> • (1) description of behavior required or prohibited for the student • (2) maximum 45 day effective period • (3) penalties for additional absences <ul style="list-style-type: none"> ▪ (B) school-based community service <ul style="list-style-type: none"> ○ (2) Refer student to counseling, community-based services, or other in-school or out-of-school services for truancy • New: (d) Requires school to employ a truancy prevention facilitator to implement the truancy prevention measures • New: (e) Allows truancy prevention facilitator to be an existing district employee • Changes the classification from a Class C misdemeanor to just a “misdemeanor” • Changes the fine structure: <ul style="list-style-type: none"> ○ (1) \$100 max for 1st offense ○ (2) \$200 max for 2nd offense ○ (3) \$300 for third offense ○ (4) \$400 for 4th offense; or ○ (5) \$500 for 5th or subsequent offense |
|--|---|--|

(3) Pure decriminalization bills

| Bill Number | Current Law Affected by Bill | Bill Changes |
|------------------|---|---|
| HB 93 (White) | <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor | <ul style="list-style-type: none"> • Repeals |

| | | |
|------------------|---|--|
| | <p>§ 25.093, EDUC. CODE (PARENT CONTRIBUTING TO NONATTENDANCE)</p> <ul style="list-style-type: none"> Establishes “Parent Contributing to Nonattendance” as a Class C misdemeanor | <ul style="list-style-type: none"> Repeals Related to the above two offenses, repeals procedural statutes in the Code of Criminal Procedure, Education Code, Family Code, and Government Code |
| SB 285 (West) | <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor <p>§ 51.04, FAMILY CODE (JURISDICTION)</p> <ul style="list-style-type: none"> (a) gives juvenile court exclusive jurisdiction over delinquent conduct or conduct indication a need for supervision (CINS) (b) requires each county juvenile board to designate at least one juvenile court <p>§ 51.10, FAMILY CODE (RIGHT TO ASSISTANCE OF ATTORNEY; COMPENSATION)</p> <ul style="list-style-type: none"> (a) Allows child to be represented by an attorney at every stage of juvenile court proceedings | <ul style="list-style-type: none"> Repeals Related to the above offense, repeals procedural statutes in the Code of Criminal Procedure, Education Code, Family Code, and Government Code New: (j) allows counties of 1.75 million or more to designate a county, justice, or municipal court as the proxy of the juvenile court for hearing the truancy CINS offense New: (a-1) Creates an exception where children may not be represented by an attorney in truancy CINS offenses <p>NEW § 54.0492, FAMILY CODE (REMEDIES IN TRUANCY CASES)</p> <ul style="list-style-type: none"> Gives justice, county, or municipal courts hearing truancy CINS offenses as proxies of the juvenile court all of their previous dispositional powers that they had for FTAS cases (which were in Art. 45.054, Code of Crim. Pro.) |

| | | |
|-----------------------------|---|---|
| <p>HB 2632 (Dutton)</p> | <p>§ 25.094, EDUC. CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • Establishes “Failure to Attend School” (FTAS) as a Class C misdemeanor (i.e., maximum fine of \$500) • (d-1) allows peace officers to take students into custody with probable cause that student committed the offense | <ul style="list-style-type: none"> • (a) Changes the classification of FTAS from a Class C to a civil penalty, with maximum fine of \$200 • (d-1) also allows peace officer to issue a citation to the student instead of taking into custody • New: (e-1) a civil penalty is not a conviction and cannot be considered a conviction for any purpose • New: (e-2) district or county attorney shall bring actions in county, justice, or municipal court to collect the civil penalties of students who are issued a citation or taken into custody for truancy • Related to the shift from a Class C to a civil penalty, alters procedural statutes in the Code of Criminal Procedure, Education Code, Family Code, and Government Code |
|-----------------------------|---|---|

PUNISHMENT REDUCTION BILLS

Punishment reduction bills decrease the severity of sanctions that can be given to a student convicted of the Class C misdemeanor of “Failure to Attend School,” which under current law include a **fine of up to \$500** and placement in a **secure (locked) facility—through contempt exceptions—**for a period of time. Punishment reduction bills are distinct from reform bills because they reduce or eliminate sanctions available under current law, but do not do anything else.

There are two categories of bills here:

- (1) Reduce or eliminate fines; and**
- (2) Prohibit secure confinement of a student, allowed through contempt proceedings.**

(1) Reduce or eliminate fines

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-------------------|--|--|
| HB 107 (White) | § 25.094, EDUCATION CODE (FAILURE TO ATTEND SCHOOL) <ul style="list-style-type: none">• (a) Creates as an offense failing to attend school for a certain period• (e) An offense is a Class C misdemeanor | <ul style="list-style-type: none">• (e) changes the punishment to a Class C misdemeanor punishable only by a fine of up to \$20 |
| HB 697 (White) | § 45.054, CODE OF CRIMINAL PROCEDURE (FAILURE TO ATTEND SCHOOL PROCEEDINGS) <ul style="list-style-type: none">• (a) On a finding of Failure to Attend School, gives county, justice, or municipal courts jurisdiction to enter an order requiring a student to attend school or attend special programming• (j) A county, justice, or municipal court may waive/reduce fees or court costs if payment would cause financial hardship. | <ul style="list-style-type: none">• (j) Requires courts to waive/reduce fines, fees or court costs if payment would cause financial hardship |

(2) Prohibit secure confinement of a student, allowed through contempt proceedings

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-------------------|---|--|
| HB 110 (White) | <p>§ 25.094, EDUCATION CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none">• (a) Creates as an offense failing to attend school for a certain period• (d) If a child violates an order issued under this section, the child can be confined.• (e) An offense is a Class C misdemeanor | <ul style="list-style-type: none">• NEW: (h) Prohibits a court to punish a child for contempt of court or delinquent conduct by confinement in jail or in a juvenile detention center. |

PROCEDURAL BILLS

Procedural bills alter the procedural laws that govern how truancy cases move through the courts; they do not affect substantive policies like the reform or punishment reduction bills do. Procedural bills are designed to either **reduce the burden of truancy cases** or **protect youth through additional procedural safeguards**.

There are three categories of bills here:

- (1) Allow truancy cases to be redistributed between courts within the same county;**
- (2) Help youth pay for court costs and services; and**
- (3) Require additional procedural safeguards.**

(1) Allow truancy cases to be redistributed between courts within the same county

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-------------------|--|--|
| HB 516 (Moody) | <p>§ 25.094, EDUCATION CODE (FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none">(a) Creates as an offense failing to attend school for a certain period(b)(1-3) Allows offenses to be prosecuted in the constitutional county court, the justice court, or the municipal court where the school is located or where the individual lives, depending on the county population. | <ul style="list-style-type: none">(b)(2) Allows offenses to be prosecuted in justice courts designated to hear cases arising under this section; if there are none, the case can be heard at any county in which the individual lives or in which the school is located. |
| HB 519 (Moody) | <p>§ 25.093, EDUCATION CODE (PARENT CONTRIBUTING NONATTENDANCE)</p> <ul style="list-style-type: none">(a) Creates as an offense parents failing to require a child to attend school.(b)(1-3) Requires a school official to file a complaint against the parent in the constitutional county court, the justice court, or the municipal court where the school is located or where the individual lives, depending on the county population. | <ul style="list-style-type: none">(b)(2) Allows complaints to be filed in justice courts designated to hear cases arising under this section; if there are none, the case can be heard at any county in which the individual lives or in which the school is located. |

(2) Help youth pay for court costs and services

| Bill Number | Current Law Affected by Bill | Bill Changes |
|--------------------|------------------------------|--|
| HB 2398 (White) | None – creates a new chapter | <p>NEW CHAPTER: SUBTITLE B, SECTION 2, GOVERNMENT CODE (JUDICIAL DONATION TRUST FUNDS)</p> <p>§ 36.001, GOVERNMENT CODE (ESTABLISHMENT OF TRUST FUNDS)</p> <ul style="list-style-type: none"> (a-b) Allows a municipality or county to establish a judicial donation trust fund, into which donations and gifts can be placed. <p>§ 36.002, GOVERNMENT CODE (PROCEDURES AND ELIGIBILITY)</p> <ul style="list-style-type: none"> (a-b) A municipality or county must adopt procedures and eligibility requirement necessary to disperse money in the fund to needy children and families who appear before local courts, specifically with the purpose to eliminate barriers to school attendance or to prevent delinquent conduct. <p>§ 36.003, GOVERNMENT CODE (USE OF FUNDS IN ACCOUNT)</p> <ul style="list-style-type: none"> (a) The judge of a justice or municipal court will award the money to eligible children and families who appear in court for truancy, curfew violations, or other proceedings. |

(3) Require additional procedural safeguards

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-----------------|------------------------------|--|
| HB 1359 (Wu) | | <p>NEW § 45.02151, CODE OF CRIMINAL PROCEDURE (INSTRUCTION TO MINOR BEFORE PLEA)</p> <ul style="list-style-type: none"> (a-b) Requires that before a court takes the plea of a defendant younger than 18, the court must inform the |

| | | |
|----------------------|---|---|
| | <p>§ 25.0951, EDUCATION CODE (SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • (a-b) Requires school districts, after an extended period of truancy, to file a complaint against a student or the student's parents or to refer the student to juvenile court. • (d) Requires a court to dismiss a complaint or referral made by a school district that is not in compliance with this section. | <p>otherwise defective, and requires that these dismissals occur before a hearing and without requiring the presence of the defendant.</p> <ul style="list-style-type: none"> • New: (d)(1-2) Requires the agency to adopt rules creating minimum standards for truancy prevention measures adopted by school districts, and to establish a set of best practices for truancy prevention. • (d) Adds the requirement that courts must dismiss complaints or referrals that do not satisfy the elements required for the offense, are not timely filed, or are otherwise defective, and requires that these dismissals occur before a hearing and without requiring the presence of the defendant. |
| HB 1365 (Guillen) | This bill is identical to HB 1359 (Wu) | |
| HB 1571 (White) | <p>§ 25.0951, EDUCATION CODE (SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL)</p> <ul style="list-style-type: none"> • (a-b) Requires school districts, after an extended period of truancy, to file a complaint against a student or the student's parents or to refer the student to juvenile court. • (d) Requires a court to dismiss a complaint or referral made by a school district that is not in compliance with this section. | <ul style="list-style-type: none"> • New: (b-1) Adds the requirement that school districts must provide notice to parents that they are entitled to employ an attorney to represent them • (d) Adds that a complaint or referral is not in compliance if the school district did not provide notice of the parent and student's right to counsel. |

| | | |
|----------------------------|--|--|
| <p>HB 1753 (White)</p> | <p>§ 54.03, FAMILY CODE (ADJUDICATION HEARING)</p> <ul style="list-style-type: none"> • (a) Requires an adjudication hearing to determine whether a child has engaged in delinquent conduct or requires supervision • (g) Requires that if a court or jury finds that a child did not engage in delinquent conduct, the court must dismiss the case with prejudice | <p>NEW § 45.0531, CODE OF CRIMINAL PROCEDURE (DISMISSAL OF PARENT CONTRIBUTING TO NONATTENDANCE OR FAILURE TO ATTEND SCHOOL CHARGE)</p> <ul style="list-style-type: none"> • Permits a court to dismiss a parent contributing to nonattendance or failure to attend school charge if there is a low likelihood of recidivism by the defendant, or there is sufficient justification for the failure to attend school. • New: (g-1) Permits courts to dismiss a case alleging a child engaged in conduct indicating a need for supervision with prejudice if there is a low likelihood of recidivism, or if there is sufficient justification for the failure to attend school. |
| <p>SB 560 (Lucio)</p> | <p>This bill is identical to HB 1359 (Wu)</p> | |

EXPUNCTION BILLS

Expunction bills make it easier for youth to protect from public disclosure the adult criminal records that comes with a Class C “Failure to Attend School” conviction. Under the current procedure, only some youth are eligible for an expunction and the youth must apply and pay a fee. Few youth go through this process. These bills **make it easier for “Failure to Attend School” records to be expunged**, protecting youth from the collateral consequences of a public criminal history.

There are two categories of bills here:

- (1) Reduce requirements for expunction; and**
- (2) Provide a streamlined expunction procedure under certain conditions.**

(1) Reduce requirements for expunction

| Bill Number | Current Law Affected by Bill | Bill Changes |
|----------------------|---|---|
| SB 108 (Whitmire) | <p>§ 45.054, CODE OF CRIMINAL PROCEDURE (FAILURE TO ATTEND SCHOOL PROCEEDINGS)</p> <ul style="list-style-type: none">• (a)(1-5) Allows a court to order an individual found guilty of a failure to attend school offense to a variety of punishments, including attending school, special programming, community service, etc.• (i)(1-2) Requires a court to dismiss a complaint if the student has successfully complied with the conditions imposed by the court or if the student has obtained a high school diploma or a high school equivalency certificate. <p>§ 45.055, CODE OF CRIMINAL PROCEDURE (EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CASES)</p> <ul style="list-style-type: none">• (a-b) Allows a person convicted of not more than one failure to attend school offense to apply to the court to have their conviction and records related to the | <ul style="list-style-type: none">• (i)(1) Repeals this section, which requires a dismissal if the student has successfully complied with the conditions imposed by the court• (a-b) Repeals the portion of the code that requires a person to have only been convicted of a single failure to attend school violation |

| | | |
|--|---|--|
| | <p>conviction expunged, any time on or after the person's 18th birthday.</p> <ul style="list-style-type: none"> • (c) The court can order the expunction with or without a hearing, but will only order the expunction after finding that the person has only been convicted of a single violation. | <ul style="list-style-type: none"> • (c) Requires the court to order the expunction as soon as the court receives the expunction application; removes the single violation requirement. |
|--|---|--|

(2) Provide a streamlined expunction procedure under certain conditions

| Bill Number | Current Law Affected by Bill | Bill Changes |
|-----------------------|--|--|
| HB 2268 (Thompson) | <p>§ 45.055, CODE OF CRIMINAL PROCEDURE (EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CASES)</p> <ul style="list-style-type: none"> • (a-b) Allows a person convicted of not more than one failure to attend school offense to apply to the court to have their conviction and records related to the conviction expunged, any time on or after the person's 18th birthday. • (c) The court can order the expunction with or without a hearing, but will only order the expunction after finding that the person has only been convicted of a single violation. • (e) Requires the court to grant the expunction if the person has completed all conditions of the court or the person presents proof of a high school diploma or equivalency exam before 21st birthday | <ul style="list-style-type: none"> • (b) Allows the persons parent or guardian to file the application • (c) Removes the single violation requirement; court may consider any factors in deciding whether to grant the expunction • (e) Requires court to order an expunction—without an application being made—whenever an individual successfully complies with all of the court's orders |

Stop Treating Truancy as an Adult Criminal Offense

Decriminalizing Truancy and Shifting the Responsibility to Schools Will Alleviate Court Dockets, Reduce the Burden on Families, and Help Youth Access Behavioral Services

TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called “failure to attend school” (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students’ needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student’s control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

KEY FINDINGS

- Failure to Attend School is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.⁸ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.⁹ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁰
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹¹

Continued on reverse.

KEY FINDINGS (CONTINUED)

- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.¹²
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 93 BY REPRESENTATIVE WHITE

- **CSHB 93 repeals “failure to attend school” as an adult criminal offense, meaning truancy cases can only be heard as a Child in Need of Supervision (CINS) offense in juvenile court.** Under CINS, students and their families will have access to remedial services designed to address their underlying needs, which are simply not available for adult Class C misdemeanors. While there is some concern that juvenile courts could not handle an influx of truancy cases, requiring schools to be more accountable for their students’ unexcused absences through progressive truancy interventions should drastically reduce the number of students referred to court. CSHB 93 will remove the trappings of criminality from student behavior and get students and families the services they need.
- **CSHB 93 requires schools to employ truancy intervention procedures that are designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. CSHB 93 accomplishes this by requiring schools to implement truancy intervention procedures. Each school will have a school attendance enhancement facilitator (SAEF) to oversee and apply these procedures. Importantly, the SAEF can be an existing school truancy employee, but cannot be a peace officer. CSHB 93 requires the SAEF to take specific remedial actions to address the student’s underlying causes of truancy at one, two, and three or more unexcused absences. Going through these interventions before sending students to court will substantially reduce the burden that “failure to attend school” cases currently place on the court system by handling more of these cases in schools.
- **CSHB 93 provides for a streamlined expunction procedure for truancy records, and authorizes courts to set up judicial trust funds that accept donations and distribute those funds to needy students and families.**

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ 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.

⁷ Ibid.

⁸ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

⁹ Tex. Educ. Code § 25.0915.

¹⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹¹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

¹² LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

¹³ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.



Douglas Smith, Policy Analyst
Work: (512) 441-8123, ext. 102
Cell: (512) 960-0534
dsmith@TexasCJC.org
www.TexasCJC.org

TESTIMONY 2015
CSHB 548 by Johnson

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of CSHB 548, which will delay criminal background questions for state employment applicants, giving individuals with criminal histories a fair chance to explain the factors leading to criminal justice system involvement, as well as their efforts to overcome their past mistakes. This policy will reduce recidivism, improve the economy, save money, and increase the pool of talented candidates for state employment.

DELAYING BACKGROUND CHECKS ALLOWS INDIVIDUALS TO STRESS PERSONAL RESPONSIBILITY AND JOB READINESS

There are approximately 4.7 million adults in Texas with criminal record,¹ all of whom could potentially face some degree of difficulty getting an interview for a position with a Texas employer.

The use of background checks as a pre-employment screening tool is almost universal and has significant ramifications. According to one study, employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.²

The single most negative determining factor contributing to recidivism is a lack of employment.³

A study by the Center for Economic and Policy Research estimated that the Gross Domestic Product shrunk by \$57-\$65 billion per year as a result of lowered employment among formerly incarcerated individuals.⁴ Also, a study of women released from Texas prisons showed that 18 percent were still on public assistance almost a year after release.⁵

At last count, 15 states, along with more than 100 cities and counties, have enacted Fair Chance policies that allow job applicants to be initially judged on their qualifications for employment and not on their criminal histories.⁶

FAIR CHANCE LEGISLATION: WHAT IT **WILL AND **WILL NOT** DO**

It **WILL INCREASE** the employment opportunities of people with criminal records by delaying questions about criminal history until the applicant has been offered an interview or conditional employment.

It **WILL ENSURE** that Texas employers have access to the largest pool of qualified applicants.

It **WILL ENHANCE** employment opportunities for work-ready individuals with criminal histories, thus reducing the chances they will commit further crimes.

It **WILL NOT PREVENT** state employers from performing background checks; it merely delays such checks until an applicant has been offered an interview or conditional offer of employment.

It **WILL NOT PROHIBIT** any state employers from asking on an application for information about specific history that is required by law.

Citations on reverse.

Citations

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas*, The University of Texas School of Law, 2013, 2,

<http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords.pdf>.

² D. Pager, 2003. As cited by Maurice Emsellem and Michelle Natividad Rodriguez, “Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action,” *National Employment Law Project*, January 2015, 2, <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

³ M. Berg & B. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* (2011: 28), 382-410, <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.

⁴ J. Schmitt & K. Warner, *Ex-offenders and the Labor Market*.” *Center for Economic and Policy Research*, 2012, 14, <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁵ L. Brooks, et al., *Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas*, Urban Institute, Justice Policy Center, 2009, http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf.

⁶ National Employment Law Project, *Ensuring People with Convictions Have a Fair Chance to Work*, <http://www.nelp.org/campaign/ensuring-fair-chance-to-work/>.

Enhance Employment Opportunities for Individuals Returning to Texas Communities

Emphasizing Current Qualifications Results in More Working Texans And a Deeper Employee Pool for Texas Employers

DELAYING BACKGROUND CHECKS ALLOWS INDIVIDUALS TO STRESS PERSONAL RESPONSIBILITY AND JOB READINESS

The path to the American dream has always rested on an individual's willingness to seek and find employment and climb the ladder to success. However, technological advancements that allow for instantaneous background checks, combined with employers' reluctance to shoulder perceived liability if hiring people with criminal records, have resulted in dwindling employment opportunities for people with criminal histories. **There are approximately 4.7 million adults in Texas with a criminal record,¹ all of whom could potentially face some degree of difficulty getting an interview for a position with a Texas employer.**

The use of background checks as a pre-employment screening tool is almost universal. A study by the Society for Human Resource Management found that 69 percent of surveyed organizations conducted background checks on all applicants, with another 18 percent running checks on selected candidates.² The impact of these checks, and of a criminal history, are undeniable. One study showed that employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.³

At last count, 15 states, along with more than 100 cities and counties, have enacted Fair Chance policies that allow job applicants to be initially judged on their qualifications for employment and not on their criminal histories.⁴ Three of the more recent states to institute Fair Chance policies include traditionally "red" Nebraska, New Jersey (with legislation signed by Governor Chris Christie, a Republican), and Georgia (whose Republican Governor signed an executive order eliminating criminal history questions on the state application for employment).⁵

FAIR CHANCE LEGISLATION: WHAT IT WILL AND WILL NOT DO

It **WILL INCREASE** the employment opportunities of people with criminal records by delaying questions about criminal history until the applicant has been offered an interview or conditional employment.

It **WILL ENSURE** that Texas employers have access to the largest pool of qualified applicants.

It **WILL ENHANCE** employment opportunities for work-ready individuals with criminal histories, thus reducing the chances they will commit further crimes.

It **WILL NOT PREVENT** state employers from performing background checks; it merely delays such checks until an applicant has been offered an interview or conditional offer of employment.

It **WILL NOT PROHIBIT** any state employers from asking on an application for information about specific history that is required by law.

Continued on reverse.

KEY FINDINGS

- The single most negative determining factor contributing to recidivism is a lack of employment.⁶
- The economic consequences of denying employment to individuals with criminal histories can be devastating. A study by the Center for Economic and Policy Research estimated that the Gross Domestic Product shrunk by \$57-\$65 billion per year as a result of lowered employment among formerly incarcerated individuals.⁷ These figures do not take into account individuals with criminal histories who are not working but have not been incarcerated; thus, the actual impact may be much higher.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: CSHB 548 BY REPRESENTATIVE JOHNSON

- **CSHB 548 will delay background checks for state agency applicants until those applicants are promised an interview or extended a conditional position, thus allowing job-seeking individuals to present their relevant qualifications for employment without fear of automatic denial.** Employers will benefit from having a larger pool of qualified applicants for available positions, while retaining the choice to run criminal history checks. Combined with HB 1188 (83rd Regular Session) by Representative Senfronia Thompson, which extended protection to employers hiring people with criminal records, this legislation will greatly increase employment opportunities for individuals with criminal histories, thus leading to more stable families and safer communities.
- **CSHB 548 will increase the employment opportunities available for work-ready Texans, lessening the amount of public assistance debt that would otherwise be borne by taxpayers.** A study of women released from Texas prisons showed that 18 percent were still on public assistance almost a year after release.⁸

Citations

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas*, The University of Texas School of Law, 2013, 2,

<http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords.pdf>.

² Society for Human Resources Management, *Background Checking – The Use of Background Checks in Hiring Decisions*, 2012, 2, <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

³ D. Pager, 2003. As cited by Maurice Emsellem and Michelle Natividad Rodriguez, “Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action,” *National Employment Law Project*, January 2015, 2, <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

⁴ National Employment Law Project, *Ensuring People with Convictions Have a Fair Chance to Work*, <http://www.nelp.org/campaign/ensuring-fair-chance-to-work/>.

⁵ National Employment Law Project, *Ban the Box: U.S. Cities, Counties and States Adopt Fair Hiring Policies to Reduce Barriers to Employment for People with Conviction Records*, April 2015, 9-12, <http://www.nelp.org/content/uploads/2015/04/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>.

⁶ M. Berg & B. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* (2011: 28), 382-410, <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.

⁷ J. Schmitt & K. Warner, *Ex-offenders and the Labor Market*.” Center for Economic and Policy Research, 2012, 14, <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁸ L. Brooks, et al., *Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas*, Urban Institute, Justice Policy Center, 2009, http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf.

Allow a Summons Instead of Incarceration for Employed and Stable Parolees

The Process that Requires Incarceration Pending a Hearing Is Costly to Texas Counties and Communities

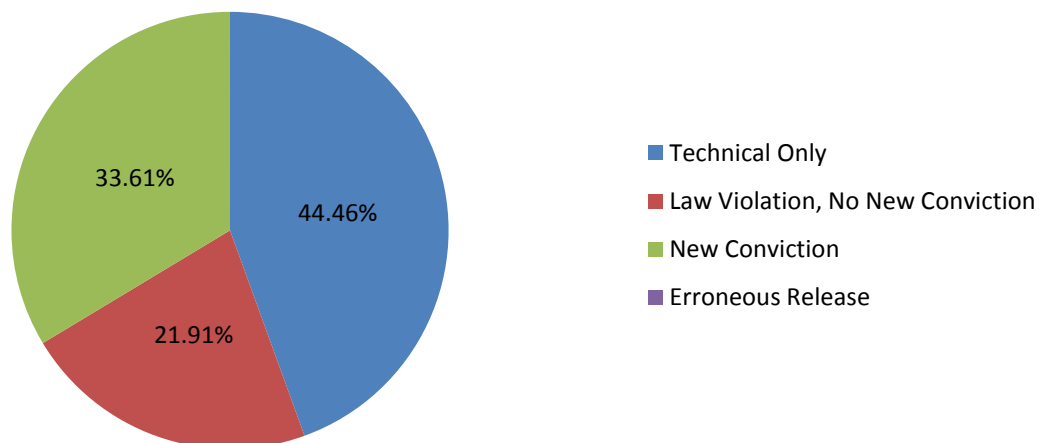
INCARCERATING PAROLEES ACCUSED OF CERTAIN MISDEMEANORS UNNECESSARILY BURDENS COUNTIES

In fiscal year 2013, the 10 most populous Texas county jails together paid almost **\$98,000 per day** to house individuals who were incarcerated as the result of warrants issued by the Parole Division of the Texas Department of Criminal Justice (TDCJ). Known as “blue warrants,” these orders are issued by TDCJ for individuals under supervision (parole or mandatory supervision) who are accused of violating their terms of release or committing a new crime. These individuals are then incarcerated in a county jail, without access to bond or bail, until they are provided a hearing by the Board of Pardons and Paroles that will decide whether to revoke their release or reinstate the conditions of their release, with or without new conditions.

Blue warrants can be issued for an arrest ranging from capital murder to the lowest level of misdemeanor, which would not normally constitute a jail-able offense but may be a violation of release conditions. Blue warrants can be lifted in preliminary hearings but many proceed to revocation hearings, where hearing officers listen to evidence and recommend an outcome to the Board, which then renders the final decision.

In fiscal year 2013, the Board of Pardons and Paroles held 20,662 hearings¹ to decide whether to return individuals to supervision or revoke their supervision. Ultimately, the Board reinstated the supervision or re-paroled more than half, or 10,777, of those individuals,² which means the Board did not deem them a threat to society. And yet, each one of these individuals spent, on average, 34 days in the county jail.

**Disposition to Continue Supervision or Re-parole,
FY 2013**



Source: Texas Board of Pardons and Paroles Annual Statistical Report, FY 2013

Continued on reverse.

The Board of Pardons and Paroles does not provide information as to whether those who were released from jail were charged with new misdemeanors or felonies, but it is likely that the overwhelming number of these were for low-level misdemeanors. This means that many of the 10,777 individuals kept in the county jail during 2013 were held at significant county expense, potentially losing whatever employment they had, and endangering the stability of their families for infractions that normally would not have merited incarceration; likewise, they otherwise would have been eligible for bond and bail – if not for the requirement by TDCJ that all individuals for whom blue warrants are issued **MUST** be held until they waive their hearing or that hearing is conducted.

KEY FINDINGS

- The 10 Texas county jails with the largest populations on November 1, 2014, housed 1,585 individuals who were being held on blue warrants for new charges.³ At an average aggregate daily cost of \$97,808, these ten counties spent approximately \$36 million in fiscal year 2013 to house individuals on blue warrants for new charges, half of whom were ultimately released back into their communities.
- Individuals with criminal records who are seeking employment are offered half as many positions as job seekers with identical qualifications but no record.⁴ When individuals with records find stable employment, it is crucial that they face as few obstacles as possible to keeping that employment, or risk recidivating.
- Formerly incarcerated individuals have a much more difficult time finding housing than individuals without a record; an estimated four out of five landlords employ background checks to help them screen out prospective tenants with criminal records.⁵ Again, challenges to keeping stable housing should be kept at a minimum to prevent re-offending.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 710 BY CHAIRMAN TURNER

- **CSHB 710 will allow the Parole Division of the Texas Department of Criminal Justice to issue a summons, rather than a blue warrant, for certain individuals accused of violating their terms of release or committing a new crime.** More specifically, this will apply to individuals who have been charged with certain misdemeanors and who can show a record of stability and employment.
- **CSHB 710 will save counties millions of dollars, allowing them to devote funds to other local endeavors that will increase community prosperity and contribute to public safety.** County jails are obligated to house individuals charged with blue warrants, even though these individuals otherwise qualify for and are able to pay for release on bond or bail. This drains county coffers of funds that could be used to address other, more immediate issues that could have a huge impact on local communities.
- **CSHB 710 will allow individuals who have committed minor crimes but have demonstrated long-term stability to keep their housing and employment while they await the decision of the Board of Pardons and Paroles.** The data demonstrates the undeniable barriers that formerly incarcerated individuals face when seeking housing and employment. This points to the necessity of ensuring that individuals be allowed to keep working and paying their bills, while not eliminating the consequences of parole violation.
- **CSHB 710 will give the Board of Pardons and Paroles adequate time to determine an appropriate modification of parole conditions, if it is determined that an individual violated the terms of release.** According to current statute, a warrant is issued immediately upon conclusion of a revocation hearing if it is determined that a parole violation occurred, and the individual is held in custody pending further action by the Board. This Committee Substitute makes this action permissive and only in circumstances where the review panel decides to send the individual to an Intermediate Sanction Facility or revokes parole entirely.

Citations

¹ Texas Board of Pardons and Paroles, *Annual Statistical Report, Fiscal Year 2013*, 18, <http://www.tdcj.state.tx.us/bpp/publications/BPP%20StatisticalReport%20FY%202014.pdf>.

² Ibid., 22.

³ Texas Commission on Jail Standards, *Abbreviated Population Report for 11/1/2014*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf> (To arrive at cost per day, access “Immigration Detainer Report,” <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf> and divide total cost to county by number of inmate days).

⁴ Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010, 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf.

⁵ Rebecca Vallas and Sharon Dietrich, “One strike and you’re out: How we can eliminate barriers to economic security and mobility for people with criminal records.” *Center for American Progress*, 19, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of CSHB 710, which will allow the Texas Department of Criminal Justice (TDCJ) to issue a summons rather than a warrant to individuals with certain minor parole violations. Most low-level violations, including Class C or B misdemeanors, are handled through a modification of parole conditions rather than revocation to prison. Issuing a summons allows those who are suspected of violating parole conditions to remain in the community, keeping their jobs and rental housing, while the Board of Pardons and Paroles determines the appropriate response. This will promote stability and prevent recidivism, while relieving the costly strain on county resources.

INCARCERATING PAROLEES ACCUSED OF CERTAIN MISDEMEANORS UNNECESSARILY BURDENS COUNTIES

- In FY 2013, the 10 most populous Texas county jails together paid almost **\$98,000 per day** to house individuals who were incarcerated as the result of warrants issued by the Parole Division of TDCJ.
- In FY 2013, the Board of Pardons and Paroles held 20,662 parole violation hearings.¹ **Ultimately, the Board kept half, or 10,777, of those individuals in the community,² yet each one of these individuals spent, on average, 34 days in the county jail.**
- The 10 Texas county jails with the largest populations on November 1, 2014, housed 1,585 individuals who were being held on blue warrants for new charges.³ **At an average aggregate daily cost of \$97,808, these 10 counties spent approximately \$36 million in fiscal year 2013 to house individuals on blue warrants for new charges, half of whom were ultimately released back into their communities.**

UTILIZING A SUMMONS INSTEAD OF WARRANT PROMOTES STABILITY AND PREVENTS RECIDIVISM

- Individuals with criminal records who are seeking employment are offered half as many positions as job seekers with identical qualifications but no record.⁴ When individuals with records find stable employment, it is crucial that they face as few obstacles as possible to keeping that employment, or risk recidivating.
- It is exceptionally difficult for paroled individuals to find rental housing; an estimated four out of five landlords employ background checks to help them screen out prospective tenants with criminal records.⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 710 BY CHAIRMAN TURNER

- **CSHB 710 will allow the TDCJ Parole Division to issue a summons, rather than a blue warrant, for certain individuals accused of violating their terms of release or committing a new crime.**
- CSHB 710 will **save counties millions of dollars**, allowing them to devote funds to other local endeavors that will increase community prosperity and contribute to public safety.
- CSHB 710 will allow individuals who have committed minor crimes but have demonstrated long-term stability to **keep their housing and employment** while they await the decision of the Board of Pardons and Paroles.
- CSHB 710 will **give the Board of Pardons and Paroles adequate time to determine an appropriate modification of parole conditions**, if it is determined that an individual violated the terms of release.

Citations on reverse.

Citations

¹ Texas Board of Pardons and Paroles, *Annual Statistical Report, Fiscal Year 2013*, 18, <http://www.tdcj.state.tx.us/bpp/publications/BPP%20StatisticalReport%20FY%202014.pdf>.

² Ibid., 22.

³ Texas Commission on Jail Standards, *Abbreviated Population Report for 11/1/2014*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf> (To arrive at cost per day, access “Immigration Detainer Report,” <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf> and divide total cost to county by number of inmate days).

⁴ Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010, 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf.

⁵ Rebecca Vallas and Sharon Dietrich, “One strike and you’re out: How we can eliminate barriers to economic security and mobility for people with criminal records.” *Center for American Progress*, 19, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

Streamline the Process to Grant Diligent Participation Credit in State Jails

DILIGENT PARTICIPATION CREDITS ARE NOT GRANTED IN A UNIFORM MANNER, LIMITING THE INCENTIVE TO PARTICIPATE IN REHABILITATIVE PROGRAMS AND LEAVING MANY TO SERVE LONGER SENTENCES

Individuals serving time in state jails do not have the opportunity to earn “good time” credit like the general prison population, nor have they historically had an opportunity for early release or parole. Instead, they are required to serve every day of their sentence behind bars. However, Texas’ 82nd Legislature (2011) provided a unique opportunity for individuals in state jails to earn time towards early release, allowing them to receive diligent participation credit for every day they participate in educational, vocational, treatment, or work programs; ultimately, participants may reduce their sentences by no more than 20%.¹

Under that 2011 legislation, the Texas Department of Criminal Justice (TDCJ) records participation, sends a report to the judge of the sentencing court, and waits for the judge to issue an order for early release. **The effectiveness this program has been limited at best**, as the responsibilities split between TDCJ and judges are confusing and inefficient, and because judges are not currently required to grant diligent participation credits or order early release for individuals who qualify.

In order to truly incentivize the participation of individuals serving time in state jails, and to save taxpayer dollars by allowing the early release of those who participate in beneficial programs, the process to grant diligent participation credit in state jails should be streamlined. **CSHB 1546 will, in specific circumstances, give authority to grant diligent participation credits to TDCJ, rather than consume state and judicial resources by reporting to the sentencing court and waiting for judges to order early release.** CSHB 1546 will also allow TDCJ to grant credit at any time prior to the termination of the original sentence rather than waiting until 30 days before the date on which the individual would have served 80% of the sentence.

KEY FINDINGS

- **The average cost per day per person in a state jail facility is approximately \$47.**² The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.³ *However, the High Value Data Set available on TDCJ’s website indicates otherwise, showing that in May 2014, 23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years*⁴ (the maximum sentence for state jail felonies is two years). The High Value Data Set does not distinguish individuals serving state jail sentences and individuals serving prison sentences while housed in state jails.
- Since the beginning of the diligent participation program in 2011, **judges who were sent electronic notices of diligent participation eligibility responded at a rate of 44%.** Of those judges who responded, 73% awarded some level of diligent participation credit. On average, sentences were reduced by 38 days for those individuals who were awarded diligent participation credit by a judge.⁵

Continued on following page.

- Based on a one-year sentence, the maximum diligent participation credit that may be earned is 73 days. At \$47 per person per day, the state could save up to \$3,431 for each individual serving time in a state jail. In fact, **the Legislative Budget Board estimates cost savings over \$81 million for the 2016-17 biennium.**⁶
- The Legislative Budget Board reports that, as of August 31, 2012, 99% of people in state jails (11,729 men and women) were incarcerated for a **nonviolent, non-sexually based offense.**⁷ In Fiscal Year 2012, over 80% of those sent to state jail were sentenced to one year or less of incarceration; 37% of these were admitted for a drug- or alcohol-related offense, while another 25% were admitted for a larceny offense.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 1546 BY REPRESENTATIVE ALLEN

- **CSHB 1546 will give judges the option to streamline the process involved in awarding diligent participation credits to those participating in educational, vocational, treatment, or work programs in state jails.** CSHB 1546 will allow the judge to make an affirmative finding at sentencing that the defendant is eligible to earn credits in real time for participating in programs; if the judge does so, TDCJ will be authorized to automatically apply earned credits to the individual's sentence. If the judge makes no such finding, TDCJ will send an electronic participation report to the judge, as under current law (30 days before 80 percent of the sentence is served), and await the judge's response to determine if credit should be applied.
- **CSHB 1546 will encourage greater participation in state jail rehabilitative and self-improvement programs for those whom judges allow to earn program credits in real time, and will allow judges to continue to deny credits for any defendant they believe should serve their sentence day-for-day.** CSHB 1546 will allow TDCJ to grant credit for program participation at any point prior to the end of the original sentence to those defendants permitted by judges to earn credits in such a manner. Alternatively, judges will have the authority to continue to grant credits under the current system if they choose to do so.

Citations

¹ House Research Organization, Bill Analysis, Tex. H.B. 2649, 82nd Leg., R.S. (2011).

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4;

http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities.

³ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2; http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.

⁵ Bryan Collier, Deputy Executive Director, Texas Department of Criminal Justice, e-mail message to Sushma Smith, Chief of Staff, Office of Senator Jose Rodriguez, March 18, 2015.

⁶ Legislative Budget Board, Fiscal Note, 84th Legislative Regular Session, In Re HB 1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail facility.), As Introduced, March 20, 2015, p. 1; <http://www.legis.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01546I.pdf#navpanes=0>.

⁷ LBB, "Who Is In State Jail? Select Data for Those On-Hand as of August 31, 2012," (February 2013): 1, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/541_Who_is_in_StateJail12.pdf

⁸ LBB, "Who Entered State Jail? Select Data for Fiscal Year 2012 Admissions," (February 2013): 1,2, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/540_Admissions_StateJail12.pdf.



Sarah D. Pahl, Policy Attorney
Work: (512) 441-8123, ext. 106
Cell: (817) 229-7868
spahl@TexasCJC.org
www.TexasCJC.org

CALENDARS COMMITTEE
FACT SHEET 2015
CSHB 2700 by Senfronia Thompson

Ensure Long-Term Accuracy of Bulk Criminal Records by Either Eliminating Duplicative Dissemination or Adopting Rules to Regularly Update Information Released in Bulk
Eliminate the costly burden on counties without increasing state expenses

WIDESPREAD DISSEMINATION OF CRIMINAL RECORDS HARMS THE WORKFORCE AND TEXAS FAMILIES

Open access to criminal records through government repositories and commercial vendors, combined with the rise of the Internet and the emergence of electronic databases, has enabled more than 40 million criminal background checks to be performed annually for non-criminal justice purposes.¹

As a result of this online expansion, individuals across our state are frequently denied employment and housing based on criminal records that have been sold and published online—some of which *never* resulted in a conviction, and some of which are *completely inaccurate* and unfairly punish those who never committed a crime. Not only do these individuals suffer as a result of inadequate policies that regulate the storage and dissemination of criminal records, but our workforce and families suffer as well.

The widespread commercial publication of criminal records before a disposition is entered, as well as the long-lasting nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing. **In order to allow individuals to give back to their communities and families in ways that enhance public safety, Texas must reform its laws related to the dissemination of criminal records.**

KEY FINDINGS

- **In Texas, nearly 12 million individuals are included in the state criminal history records.**² These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, those who have completed their sentences, those who have shown stability and established themselves in their communities, and those who are desperately trying to support themselves and their families while facing the many obstacles that automatically accompany any kind of criminal record.
- **Employers and housing providers often rely on inaccurate or incomplete criminal records.** The Texas Department of Public Safety reported in January 2013 that only 81% of Texas adult arrests in 2011 had a reported disposition.³ In other words, **nearly 1 in 5 of all Texas criminal records do not include final dispositions**. The inaccuracies that can result from disseminating records without final dispositions have allowed individuals to be denied employment and housing even without a criminal conviction. Additionally, even if certain records are ordered sealed or expunged, there is no guarantee that third-party commercial vendors will purge the information from their systems or that the event will be erased from media archives,⁴ creating additional challenges for system-involved individuals seeking employment and housing.
- **Multiple public agencies across Texas jurisdictions participate in disseminating criminal records to private entities in response to public information requests.** These include, but may not be limited to:
 - » County and district clerks, and clerks in justice or municipal courts
 - » Law enforcement agencies
 - » Texas Department of Public Safety (DPS)
 - » Community Justice Assistance Division (CJAD), a division of the Texas Department of Criminal Justice (TDCJ)

Continued on reverse.

- **The dissemination of outdated and incorrect information results from an inadequate update process.** The above agencies release criminal records to private entities in response to public information requests. While county and district clerks must submit updates on orders of nondisclosure and expunctions to DPS, DPS is the **only** agency that provides updates to the private entities to which it releases records. Consequently, private entities that request criminal records from any agency other than DPS—whether from county and district courts, TDCJ, or elsewhere—are not routinely notified of updates reflecting orders of nondisclosure, expunction, or even final dispositions. **Countless individuals are adversely affected by this practice that encourages the widespread dissemination of outdated and incorrect criminal records.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 2700 BY REPRESENTATIVE SENFRONIA THOMPSON

- **CSHB 2700 gives jurisdictions the option to either (1) redirect to the Department of Public Safety (DPS) all requests for bulk criminal records concerning Class A and B misdemeanor and felony offenses for which a final disposition has been rendered, or (2) adopt rules to ensure that updates are provided within 30 days of any change for records that are released in bulk.** Currently, multiple agencies and jurisdictions disseminate criminal records to private entities. However, there are no standardized systems or procedures for releasing or providing updates to criminal records. In order to better steward the sensitive information that impacts millions of lives, Texas should require that DPS be the sole agency that can disseminate criminal records in bulk for all disposed offenses except Class C misdemeanors, or require that local jurisdictions implement the same rules that DPS follows to ensure long-term accuracy of criminal records released in bulk.
- **By giving jurisdictions the option to redirect requests for bulk criminal records to DPS, CSHB 2700 may save counties and municipalities the substantial time and money required to sufficiently respond to requests for bulk criminal records, while not incurring any additional cost to the state.** Because DPS currently has a system in place to respond to requests for bulk criminal records and to provide updates to criminal records to all requestors on a monthly basis, it is fiscally and socially responsible to redirect requests for bulk criminal records to DPS. **Alternatively, for those jurisdictions that choose to continue releasing criminal records in bulk, such records will be updated in a manner similar to that already required by DPS.**
- **CSHB 2700 will increase transparency in the dissemination process** by requiring clerks and criminal justice agencies that grant bulk records requests for Class C disposed offenses and pending cases to maintain a record of the name and contact information of the requestor and the most recent date the bulk records were provided. This information must be published on the clerk's or agency's website or prominently displayed in a public area of the clerk's or agency's place of business.

Citations

¹ Helen Gaebler, "Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas," (William Wayne Justice Center for Public Interest Law, The University of Texas School of Law, 2013): 2.

² Dennis A. DeBacco & Owen M. Greenspan, "Survey of State Criminal History Information Systems, 2012," (Bureau of Justice Statistics, U.S. Department of Justice, 2014): Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. The number of individual offenders in the state criminal history file was 11,824,200.

³ Texas Department of Public Safety, "Eleventh Report Examining Reporting Compliance to the Texas Computerized Criminal History System," (January 2013): 3, http://www.txdps.state.tx.us/administration/crime_records/pages/complianceRpt11.pdf.

⁴ SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2010): 83, <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.

Offenses and Penalties Addressed by CSHB 3326

| Offense | Current Offense Level | Proposed Offense Level |
|---|--|--|
| Credit card or debit card abuse | <i>CSHB 3326, Sections 1 and 18</i> § 502.001(c), Business & Commerce Code § 32.31(d), Penal Code | |
| | State jail felony | Class A misdemeanor |
| Possession of less than an ounce of marijuana | <i>CSHB 3326, Sections 2, 9, 10, 11</i> § 14.06(d), Code of Criminal Procedure § 481.121(b), Health and Safety Code § 481.126(a), Health and Safety Code § 481.134(c), (d), (e), (f), Health and Safety Code | |
| | Class B misdemeanor | Class C misdemeanor |
| Possession of less than a gram of a controlled substance in Penalty Group 1 | <i>CSHB 3326, Sections 3, 8, 11</i> § 15(a)(1), Art. 42.12, Code of Criminal Procedure § 481.115(b), Health and Safety Code | |
| | State jail felony | Class A misdemeanor |
| Prostitution | <i>CSHB 3326, Sections 4, 5, 6, 7, 20</i> § 51.03(b), Family Code § 261.001(1), Family Code § 169.002(a), Health and Safety Code § 169A.002(a), Health & Safety Code § 43.02, Penal Code | |
| | <ul style="list-style-type: none"> - Class B misdemeanor: first conviction - Class A misdemeanor: previously convicted one or two times - State jail felony: previously convicted three or more times - 2nd degree felony: person solicited is younger than 18 years | <ul style="list-style-type: none"> - Class B misdemeanor: first conviction (<i>in return for a fee only</i>) - Class A misdemeanor: previously convicted one or more times (<i>in return for a fee only</i>) - 2nd degree felony: person solicited is younger than 18 years |
| Criminal Mischief | <i>CSHB 3326, Section 12</i> § 28.03 (b), Penal Code | |
| | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$50</u> - Class B misdemeanor: <u>\$50</u> or more but less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u>; less than <u>\$1,500</u> if damage is caused by a firearm or explosive weapon or if the property was fence to contain livestock or game animals | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$500</u> - Class B misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u> - Class A misdemeanor: <u>\$1,500</u> or more, but less than <u>\$20,000</u> - State jail felony: less than <u>\$20,000</u> if damage is caused by a firearm or explosive weapon or if the property was fence to contain livestock or game animals |
| Graffiti | <i>CSHB 3326, Section 13</i> § 28.08(b) and (d), Penal Code | |
| | <ul style="list-style-type: none"> - Class B misdemeanor: less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u> | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$100</u> - Class B misdemeanor: <u>\$100</u> or more but less than <u>\$750</u> - Class A misdemeanor: <u>\$750</u> or more but less than <u>\$2,500</u> |

Offenses and Penalties Addressed by HB 3326

| | | |
|--|--|---|
| | <ul style="list-style-type: none"> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u> - State jail felony: marking is made on a school, institution of higher education, place of worship or human burial, public monument, or community center that provides medical, social, or education programs and the damage is less than <u>\$20,000</u> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u> - 1st degree felony: <u>\$200,000</u> or more | <ul style="list-style-type: none"> - State jail felony: <u>\$2,500</u> or more but less than <u>\$30,000</u> - State jail felony: marking is made on a school, institution of higher education, place of worship or human burial, public monument, or community center that provides medical, social, or education programs and the damage is <u>\$750</u> or more but less than <u>\$30,000</u> - 3rd degree felony: <u>\$30,000</u> or more but less than <u>\$150,000</u> - 2nd degree felony: <u>\$150,000</u> or more but less than <u>\$300,000</u> - 1st degree felony: <u>\$300,000</u> or more |
| Burglary of a building other than a habitation | CSHB 3326, Section 14 § 30.02(c), Penal Code | |
| | State jail felony | Class A misdemeanor |
| Theft | CSHB 3326, Section 15 § 31.03(e), Penal Code | |
| | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$50</u>, or less than <u>\$20</u> and the defendant obtained the property by issuing a bad check - Class B misdemeanor: <u>\$50</u> or more but less than <u>\$500</u>, or <u>\$20</u> or more but less than <u>\$500</u> and the defendant obtained the property by issuing a bad check; less than <u>\$50</u> and the defendant has previously been convicted of any grade of theft, or less than <u>\$20</u> and the defendant has previously been convicted of any grade of theft and the theft was by bad check; a driver's license, commercial driver's license, or personal identification certificate - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u>; or the property is less 10 head of sheep, swine, or goats or any part thereof under the value of <u>\$20,000</u>; property stolen from a human corpse or grave; property is a firearm; less than <u>\$1,500</u> and the defendant has been previously convicted two or more times of any grade of theft; property is an | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$500</u> - Class B misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u>; less than <u>\$500</u> and the defendant has previously been convicted of any grade of theft; a driver's license, commercial driver's license, or personal identification certificate - Class A misdemeanor: <u>\$1,500</u> or more, but less than <u>\$20,000</u> - State jail felony: the property is less 10 head of sheep, swine, or goats or any part thereof under the value of <u>\$20,000</u>; property stolen from a human corpse or grave; property is a firearm; less than <u>\$20,000</u> and the defendant has been previously convicted two or more times of any grade of theft; property is an official ballot or official carrier envelope |

Offenses and Penalties Addressed by HB 3326

| | | |
|---|---|---|
| | <p>official ballot or official carrier envelope for an election; less than <u>\$20,000</u> and the property is aluminum, bronze, copper, or brass</p> <ul style="list-style-type: none"> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u>, or the property is cattle, horses, or exotic livestock, exotic fowl, 10 or more head of sheep, swine or goats stolen during a single transaction and having an aggregate value of less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u>, or less than <u>\$200,000</u> and the property stolen is an ATM or the contents or components of an ATM - 1st degree felony: <u>\$200,000</u> or more | <p>for an election; less than <u>\$20,000</u> and the property is aluminum, bronze, copper, or brass</p> <ul style="list-style-type: none"> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u>, or the property is cattle, horses, or exotic livestock, exotic fowl, 10 or more head of sheep, swine or goats stolen during a single transaction and having an aggregate value of less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u>, or less than <u>\$200,000</u> and the property stolen is an ATM or the contents or components of an ATM - 1st degree felony: <u>\$200,000</u> or more |
| Theft of service | <p><i>CSHB 3326, Section 16</i> § 31.04(b) and (e), Penal Code</p> | |
| | <ul style="list-style-type: none"> - Intent to avoid payment is presumed if the actor failed to return property held under a rental agreement within 5 days after receiving notice demanding return if the property is valued at less than <u>\$1,500</u>, or within 3 days after receiving notice demanding return if the property is valued at <u>\$1,500</u> or more - Class C misdemeanor: less than <u>\$20</u> - Class B misdemeanor: <u>\$20</u> or more but less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u> - 1st degree felony: <u>\$200,000</u> or more | <ul style="list-style-type: none"> - Intent to avoid payment is presumed if the actor failed to return property held under a rental agreement within 5 days after receiving notice demanding return if the property is valued at less than <u>\$2,500</u>, or within 3 days after receiving notice demanding return if the property is valued at <u>\$2,500</u> or more - Class C misdemeanor: less than <u>\$100</u> - Class B misdemeanor: <u>\$100</u> or more but less than <u>\$750</u> - Class A misdemeanor: <u>\$750</u> or more, but less than <u>\$2,500</u> - State jail felony: <u>\$2,500</u> or more but less than <u>\$30,000</u> - 3rd degree felony: <u>\$30,000</u> or more but less than <u>\$150,000</u> - 2nd degree felony: <u>\$150,000</u> or more but less than <u>\$300,000</u> - 1st degree felony: <u>\$300,000</u> or more |
| Forgery | <p><i>HB 3326, Sections 17 and 21</i> § 32.21(c) and (d), Penal Code</p> | |
| | State jail felony | Class A misdemeanor |
| Fraudulent use or possession of identifying information | <p><i>HB 3326, Section 19</i> § 32.51(c), Penal Code</p> | |
| | - State jail felony: less than 5 items | - Class A misdemeanor: less than 5 items |

Offenses and Penalties Addressed by HB 3326

| | | |
|--|---|---|
| | <ul style="list-style-type: none">- 3rd degree felony: 5 or more but less than 10 items- 2nd degree felony: 10 or more but less than 50 items- 1st degree felony: 50 or more items | <ul style="list-style-type: none">- State jail felony: 5 or more but less than 10 items- 3rd degree felony: 10 or more but less than 50 items- 2nd degree felony: 50 or more items |
|--|---|---|



John Kreager, Policy Fellow

Work: (512) 441-8123, ext. 104

Cell: (310) 850-2881

jkreager@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

CSSB 106

Dear Members of the Committee,

My name is John Kreager. I am an attorney with the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony in favor of CSSB 106. Successful reform of Texas' broken truancy system requires two big-picture elements: (1) decriminalization of the Class C misdemeanor called "failure to attend school"; and (2) requiring increased interventions by schools before they can refer a student to court for missing class. CSSB 106 contains both of these elements, and by decriminalizing truancy and shifting the responsibility to schools the bill will alleviate court dockets, reduce the burden on families, and help youth access the behavioral services they need to address the underlying causes of their absences.

TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called "failure to attend school" (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students' needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student's control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

WHILE TEXAS LAW PROHIBITS PLACING TRUANT STUDENTS IN SECURE FACILITIES, SEVERAL CONTEMPT OF COURT EXCEPTIONS SUBVERT THAT LAW AND ALLOW STUDENTS TO BE PUT IN CONFINEMENT

In 1974, the U.S. Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP), a federal law that prohibits the secure confinement of truants and other status offenders.⁸ In Texas, students who have a certain number of unexcused absences are susceptible to two different offenses: (1) "Failure to Attend School" (FTAS), a Class C misdemeanor that carries up to a \$500 fine in adult criminal court;⁹ and (2) "Truancy," a conduct in need of supervision (CINS) offense in the juvenile justice

system.¹⁰ In compliance with the JJDP, Texas law does not allow a student to be punished with a period of confinement in a secure facility for either offense.

However, in 1980, the JJDP was amended to add the “Valid Court Order” (VCO) Exception, which allows courts to punish status offenders who violate a court order related to a status offense with a term of secure confinement.¹¹ Texas law has recognized this exception through two different contempt of court mechanisms, one for each of the two truancy offenses. For FTAS, the exception is a delinquent conduct offense called “Contempt of Magistrate.”¹² For Truancy, Texas has its own version of the VCO Exception.¹³ Under either of these exceptions, a student who violates a court order related to a truancy offense—which could be something as simple as “stop missing school”—could be given a contempt offense and punished with a term of secure confinement.

Research demonstrates that the practice of locking truants up for contempt is counterproductive. Not only does it interrupt youths’ education by forcing them to miss even more days of school, it also stigmatizes youth and keeps them away from the home- and community-based solutions that have been shown to be more effective.¹⁴ Research also indicates that when truant youth are confined with youth who have committed much more serious offenses, truant youth can learn criminal behaviors that make it more likely they will commit unlawful acts in the future.¹⁵

KEY FINDINGS

- “Failure to Attend School” is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.¹⁶ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.¹⁷ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁸
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹⁹
- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.²⁰
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.²¹
- Confining truant students for violating court orders related to the truancy—which can be as basic as “do not miss any more school days”—is against best practice. Nationally, 20% of status offenders put into facilities through these exceptions are placed in units with youth who have committed murder or manslaughter.²² **Placement of truants in these facilities jeopardizes youths’ safety and increases the likelihood of future delinquency though learned criminal behavior.**²³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSSB 106 BY SENATOR WHITMIRE

- **CSSB 106 repeals “failure to attend school” as an adult criminal offense, as well as the juvenile truancy offense, and creates a new civil truancy offense with original jurisdiction in Justice of the Peace and Municipal Courts.** Under this civil offense, CSSB 106 provides students with new procedural protections that are inherent to civil cases, such as the right to a jury trial, advising them of their rights, and the right to appeal. Critically, CSSB 106 will allow students to be represented by an attorney, and will allow the court to appoint a guardian ad litem if the student does not have a parent or other adult looking out for their best interests. This fixes a huge problem with the current system, where students are in adult criminal courts on “failure to attend school” charges but cannot be represented by an attorney to help them in their defense.
- **CSSB 106 removes the \$500 fine for truancy offenses that is unfairly burdening the low-income families overwhelmingly affected by these cases.** Instead of fining students, CSSB 106 allows courts to refer them to various community-based programs and other services to meet their needs. The court may also sentence the child to complete up to 50 hours of community service.
- **CSSB 106 requires schools to employ truancy intervention procedures that are designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. CSSB 106 accomplishes this by requiring schools to implement truancy prevention measures before they can refer a student to court. These interventions include a behavior improvement plan, referral to counseling, or school- or community-based services to address the students’ needs. These measures will be implemented by a truancy prevention facilitator, who can be an existing school district employee. Importantly, CSSB 106 takes the great step of requiring the Texas Education Agency (TEA) to develop minimum standards and best practices for truancy prevention measures, and it gives TEA the authority to sanction schools that fail to comply with those standards. Implementing interventions before sending students to court will substantially reduce the burden that “failure to attend school” cases currently place on the court system by handling more of these cases in schools.
- **CSSB 106 provides for the automatic expunction of truancy records, and removes the fee requirement for filing for an expunction.** Like any publicly available criminal history, a “failure to attend school” record can make it difficult for students to move on with their lives and successfully apply to college, find employment, or secure housing. While these records can be expunged under existing law, that process is cumbersome, limited, and requires a fee. Many youth do not go through these procedures, and others simply cannot meet the requirements or afford the fee. Automatic expunction corrects these problems and prevents a truancy record from unfairly disadvantaging students as they apply to college or for jobs, or try to obtain housing in the future.
- **CSSB 106 strictly prohibits truant students from being punished in secure correctional facilities through contempt of court exceptions.** CSSB 106 effectively eliminates application of either Contempt of Magistrate or the VCO Exception to sentence youth to post-adjudication secure confinement in truancy cases. This is in line with best practice, as it removes the dangers that youth with low-level offenses like truancy face when put in secure facilities with more delinquent youth. While some may argue that confinement is appropriate given that contempt of court is a separate offense from truancy, it bears remembering that a youth would not be involved with the court at all but for the original truancy offense. These contempt exceptions are already sparingly used, and CSSB 106 gets it right by removing the possibility that the exceptions come back into common use.

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ 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.

⁷ Ibid.

⁸ A status offender, as defined by Tex. Family Code § 51.02(15), is “a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult.” These offenses include truancy, as well as running away from home and violation of curfew.

⁹ Tex. Educ. Code § 25.094.

¹⁰ Tex. Family Code § 51.03(b)(3).

¹¹ Ibid.

¹² Tex. Family Code § 51.03(a)(2).

¹³ Tex. Family Code § 54.04(n).

¹⁴ National Juvenile Justice and Delinquency Prevention Coalition, *Promoting Safe Communities: Recommendations for the 113th Congress*, (2013), 6.

¹⁵ Ibid.

¹⁶ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

¹⁷ Tex. Educ. Code § 25.0915.

¹⁸ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹⁹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

²⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

²¹ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.

²² Nancy Gannon Hornberger, *Improving Outcomes for Status Offenders in the JJDP A Reauthorization. Juvenile and Family Justice Today* (2010), citing Sedlak, A. J., & McPherson, K. S., *Conditions of confinement: Findings from the Survey of Youth in Residential Placement*. Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (May 2010).

²³ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses*, (2013), 10, http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf.

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of CSSB 578, which will ensure that incarcerated individuals are provided with accurate reentry resource information prior to release. This will connect individuals with employment, housing, health, education, veteran, and mental health services that will help them successfully reintegrate back into the community.

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

- **The transition from prison back to the community is unexpectedly difficult for most people leaving prison. They leave with \$100, the clothes on their back, a 10-day supply of medication, and a bus ticket home.¹**
- **Formerly incarcerated individuals are more likely to successfully transition from prison to the community when they have a solid plan prior to release.**
- Many private, non-profit, and faith-based organizations have already compiled locale-specific resource lists that could be made available to incarcerated individuals preparing for their return to society. Moreover, Reentry Case Managers have their own database of resources. **Expanding incarcerated individuals' access to this information would greatly help them formulate successful reentry plans.**
- There are only 1,880 state-run halfway house beds available to the nearly 75,000 people released each year.² **Access to accurate and up-to date information about privately run halfway houses reduces the number of people who need limited state resources.** It also speeds release for paroled individuals who remain in state custody awaiting halfway house beds, ultimately **saving the state money.**

KEY FINDINGS

- Texas statute mandates that the Texas Department of Criminal Justice (TDCJ) develop a comprehensive reentry plan that includes "programs that address the assessed needs of offenders..."³ **Providing exiting inmates with already-compiled information about available community-based service providers and other relevant organizations will assist TDCJ in this effort.**
- Recently released individuals who experience difficulty accessing clothing, food, shelter, medical care, or transportation are at **exceptionally high risk of returning to crime** as a means to provide for basic needs.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSSB 578 BY SENATORS HINOJOSA AND RODRÍGUEZ

- **CSSB 578 will provide critical information to incarcerated individuals, preparing them for a successful return to their communities.** This bill stipulates that TDCJ compile comprehensive, locale-specific resource lists containing basic, easily accessible, and accurate contact information, and make that information available to all incarcerated individuals prior to release.
- **CSSB 578 will provide incarcerated individuals who are within six months of release with their own community-specific resource list,** enabling them to readily access information in the event they must change their plans.

¹ Texas Department of Criminal Justice Parole Division, *Policy and Operating Procedure #PD/POP-3.1.2: Release Payment* ("Gate Money"), December 6, 2012, https://www.tdcj.state.tx.us/documents/parole/03.01.02_parole_policy.pdf.

² Texas Department of Criminal Justice, *Legislative Appropriations Request for Fiscal Years 2016 and 2017*, August 25, 2014, 175, <http://docs.lbb.state.tx.us/display.aspx?DocType=LAR&Year=201>.

³ TEX. GOV. CODE § 501.092(b)(2)-(5)

⁴ Urban Institute Justice Policy Center, *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups*, Research Report, September, 2008, 6-23, http://www.urban.org/UploadedPDF/411767_successful_reentry.pdf.

Ban the Use of Tasers and Stun Guns In Texas Schools

TASERS IN THE SCHOOL SETTING: AN UNNECESSARY TOOL THAT HAS RESULTED IN SEVERE INJURY

In 1978, only one percent of Texas schools reported having a police presence on campus. Today, most Texas schools report police presence from a local law enforcement agency or from the school district's own police department.¹ According to the Texas Association of School Resource Officers, these police officers fulfill three equal roles: (1) Law Enforcement Officer, maintaining a safe and secure learning environment; (2) Informal Counselor, serving as a confidential source of counseling for students and parents; and (3) Law-Related Presenter, promoting awareness of the law to students.²

In practice, police officers in schools primarily focus on the first role – that of a law enforcement officer – to the detriment of the other two. Challenges that officers face in schools are far different than the challenges they face on the streets, and different tactics are required to meet them. While all law enforcement officers receive training on use of force, that training does not include methods for working effectively with youth in an educational environment. It should come as no surprise, then, that **officers equipped only with training regarding adult offenders are overreacting in response to typical student misbehavior, treating students no differently than they would any other “perp.”**

Consider the case of Noe Niño de Rivera, a student at Cedar Creek High School in Bastrop, Texas. In November 2013, Rivera was Tased by a deputy with the Bastrop County Sheriff's Office for attempting to break up a fight between two of his classmates. Upon being Tased, Rivera fell to the floor and hit his head, which resulted in Rivera sustaining a severe brain injury and being placed in a 52-day medically induced coma.³

According to the deputies involved, the level of force used was necessary, as Rivera was “interfering with their duties.”⁴ However, a video of the incident – obtained by the *Austin American-Statesman* – shows differently. In the video, Rivera appears to be complying with the officer's request to step away from the fight and is seen walking away. Despite his compliance and lack of aggression, Rivera was still Tased.⁵ This incident is a clear illustration, not only of excessive use of force, but of an officer's overreaction to what many would deem typical student behavior.

The fight that Rivera attempted to stop involved his girlfriend and another female student,⁶ and while the context of the fight is unknown, one thing is undeniable: relationship drama among adolescents is normal. However, instead of separating the two girls and resolving the conflict at hand, officers chose to handle the situation in an extreme manner by enforcing their authority through a demonstration of force.

THE PHYSIOLOGICAL AND PSYCHOLOGICAL RISKS OF USING TASERS AND STUN GUNS ON STUDENTS

Tasers are equipped with two barbs (or electrodes) designed to pierce the skin; they carry 50,000 volts of electricity and are intended to “physically debilitate a target...until the target is in the fetal position on the ground...regardless of pain tolerance and mental focus.”⁷ Stun guns, which can only be used in close proximity to an individual – as they do not have detachable electrodes, like Tasers do – work by creating an electric circuit between the gun (usually powered by batteries) and the individual being stunned.⁸

Continued on the following pages.

The use of these tools on youth (as well as on the elderly) has been highly criticized.⁹ According to the American Heart Association, being at the end of an electrical shock – as transmitted by a stun gun or Taser – can result in “irregular heart rhythm or cardiac arrest,” especially for those individuals who have heart complications.¹⁰ Because students do not and cannot legally be required to wear an indicator of their heart complications, there is no knowing whether a student who is Tased is at a greater risk of a near lethal side effect.

Researchers have also called attention to the negative effects that Tasers can have on an individual’s brain. A recent study found that, when Tased, individuals experience an electric jolt to the brain that can cause mild cognitive impairment to full-blown dementia.¹¹ Because childhood and adolescence are a period of ongoing neurological development, this finding warrants serious consideration when determining whether Tasers and stun guns should be used on students.

Separately, psychological experts have cautioned against the use of such tools in a school setting, stating, “kids respond to different situations in different ways.”¹² Though seeing another student get Tased or stunned might not resonate as a traumatic event for some, others who normally experience violence in their community or home could have those traumatic experiences exacerbated and be “set off” by the event.¹³

USING “LESS THAN LETHAL” TOOLS ON STUDENTS: A PRACTICE THAT CONTRADICTS THE PREMISE OF “COMMUNITY POLICING”

As discussed above, the second and third roles that a school officer fulfills, simultaneously with law enforcement, are (1) an informal counselor, and (2) a law-related presenter who promotes awareness of the law to students.¹⁴ Each of these roles help officers implement a larger strategy more commonly known as “community policing.” In order to effectively apply a community policing strategy, law enforcement should focus on “community partnerships, problem-solving, and organizational transformation.”¹⁵

Unfortunately, the use of “less than lethal” tools, such as Tasers and stun guns, to “subdue” students does not accomplish the goals put forth by the Texas Association of School Resource Officers and the Department of Justice. Instead, use of such tools contradicts those efforts by instilling fear and mistrust in the students and families served by police in schools. Best practice indicates that methods such as de-escalation, conflict resolution, and building rapport better serve law enforcement officers in reaching those goals.¹⁶

KEY FINDINGS

- **Over the past decade, police in schools have been using tools and tactics more commonly reserved for encounters with hostile citizens on the street.**
 - » From 2012 to present, Pasadena, Texas, school police have **used force 129 times, drawing and pointing their firearms 24 times, using pepper spray twice, and using nightsticks 4 times.**¹⁷
 - » From 2006 to 2009, Austin ISD, which keeps fairly complete police records relative to the rest of the state, reported that its campus police **drew guns on students eight times, used pepper spray 26 times, used Tasers four times, and used police dogs once.** They used **batons or physical force 258 times.**¹⁸
 - » From 2006-2009, El Paso ISD reported that its campus police **used a baton once, pepper spray once, and physical force 34 times** to control students.¹⁹

- Using police tactics against unarmed students has resulted in serious injury and, in some cases, death²⁰, as well as a decline in parent confidence in Texas schools to educate and monitor students in a safe and appropriate manner.
- According to the American Heart Association, being at the end of an electrical shock – as transmitted by a stun gun or Taser – can result in “irregular heart rhythm or cardiac arrest,” especially for those individuals who have heart complications.²¹
- Psychological experts have cautioned against the use of Tasers and stun guns in a school setting, stating, “kids respond to different situations in different ways.”²² Though seeing another student get Tased or stunned might not resonate as a traumatic event for some, others who normally experience violence in their community or home could have **those traumatic experiences exacerbated and be “set off” by the event.**²³
- The use of Tasers and stun guns is a practice that contradicts the overall goal of community policing. **Best practice indicates that methods such as de-escalation, conflict resolution, and building rapport better serve law enforcement officers in reaching community-policing goals.**²⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT CSSB 625 BY SENATOR HINOJOSA

CSSB 625 will prohibit law enforcement officers who work in a school setting from using Tasers and stun guns on students. In order to ensure that no student faces the near lethal consequences associated with Tasers and stun guns, CSSB 625 prohibits their use by officers while on a school campus. Given that there are more effective alternatives that can be used to de-escalate youth misbehavior (e.g., rapport building, conflict resolution, and active listening), this ban on Tasers and stun guns is a legislative safeguard that protects students and families from harm, while reducing the risk that school districts and local law enforcement will face civil litigation.

Citations

- ¹ Texas Appleseed, "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools" (2010): 3.
- ² Texas Association of School Resource Officers (TASRO), "Triad Approach" (accessed April 2, 2014), <http://tasro.org/page-621155>.
- ³ CNN, "Texas Student Tased by Police Exits Coma, Enters Rehabilitation, Attorney Says," (February 2014), <http://www.cnn.com/2014/01/31/us/texas-taser-high-school-student-coma/>.
- ⁴ KXAN, "Police Group Defends Tasing of Bastrop Student," (January 2014), <http://kxan.com/2014/01/27/police-group-defends-tasing-of-bastrop-student/>.
- ⁵ Austin American Statesman, "Video, Documents Raise New Questions in High School Student Taser Case," (January 2014), <http://www.statesman.com/news/news/local/video-documents-raise-new-questions-in-high-school/nc5h4/>.
- ⁶ CNN, "Texas Student Tased by Police Exits Coma, Enters Rehabilitation, Attorney Says," (February 2014), <http://www.cnn.com/2014/01/31/us/texas-taser-high-school-student-coma/>.
- ⁷ The Progressive, "The Trouble with Tasers," (May 2005), http://www.progressive.org/mag_amctaser.
- ⁸ Slate Magazine, "How Do Tasers Work?: Heavy On the Volts, Light on the Amps," (November 2006), http://www.slate.com/articles/news_and_politics/explainer/2006/11/how_do_tasers_work.html.
- ⁹ The Progressive, "The Trouble with Tasers," (May 2005), http://www.progressive.org/mag_amctaser.
- ¹⁰ Douglas P. Zipes, "Sudden Cardiac Arrest and Death Associated with Application Shocks from a TASER Electronic Control Device," American Heart Association (February 2012), <http://circ.ahajournals.org/content/early/2012/04/20/CIRCULATIONAHA.112.097584.abstract>.
- ¹¹ Live Science, "Taser's 50,000-Volt Jolt Can Mess Up Your Brain," (October 2014), <http://www.livescience.com/48241-taser-shock-affects-cognition.html>.
- ¹² The Huffington Post, "All Over the Country, Kids are Getting Shocked With Tasers and Sprayed with Chemicals in Schools," (April 2015), http://www.huffingtonpost.com/2015/04/03/taser-pepper-spray-in-school_n_6882920.html.
- ¹³ Ibid.
- ¹⁴ Texas Association of School Resource Officers (TASRO), "Triad Approach" (accessed April 2, 2014), <http://tasro.org/page-621155>.
- ¹⁵ U.S. Department of Justice, Community Oriented Policing Strategies (COPS), "About" (accessed February 29, 2015), <http://www.cops.usdoj.gov/Default.asp?Item=35>.
- ¹⁶ Richard James, Joan Logan, and Scott Davis, "Including School Resource Officers in School-Based Crisis Intervention: Strengthening Student Support," School Psychology International (April 2011) 32, 2, 210-224.
- ¹⁷ Houston Chronicle, "Pasadena family accuses school officer of 'brutal and excessive' beating: Parents claim excessive force used against son by school officer," (February 2015), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Pasadena-family-accuses-school-officer-of-brutal-6064567.php#0>.
- ¹⁸ Texas Tribune, "Texas Schools Rarely Track Force against Students," <http://www.texastribune.org/2009/11/25/schools-rarely-track-force-against-students/>.
- ¹⁹ Ibid.
- ²⁰ Derek Lopez was shot and killed by Officer Daniel Alvarado of the Northside Independent School District Police Department in San Antonio, Lopez was unarmed. My SA, "Officer Who Shot Student Had History of Not Following Orders: 12 Warnings, 4 Suspensions. Why was the NISD Cop Who Killed an Unarmed 14-year-old On the Job," (May 2011), <http://www.mysanantonio.com/news/article/Still-on-patrol-1388322.php>.
- ²¹ Douglas P. Zipes, "Sudden Cardiac Arrest and Death Associated with Application Shocks from a TASER Electronic Control Device," American Heart Association (February 2012), <http://circ.ahajournals.org/content/early/2012/04/20/CIRCULATIONAHA.112.097584.abstract>.
- ²² The Huffington Post, "All Over the Country, Kids are Getting Shocked With Tasers and Sprayed with Chemicals in Schools," (April 2015), http://www.huffingtonpost.com/2015/04/03/taser-pepper-spray-in-school_n_6882920.html.
- ²³ Ibid.
- ²⁴ Richard James, Joan Logan, and Scott Davis, "Including School Resource Officers in School-Based Crisis Intervention: Strengthening Student Support," School Psychology International (April 2011) 32, 2, 210-224.

Reduce the Burden on Jails and Taxpayers from Invalid License Arrests

'Driver Responsibility' surcharge filling jails with unlicensed drivers, at great county expense

TEXAS SHOULD REDUCE PENALTIES FOR ALL CHARGES OF DRIVING WITH AN INVALID LICENSE

For many years, driving with an invalid license (DWLI) in Texas was a Class B misdemeanor on the first offense, meaning individuals faced a maximum of six months jail time and a \$2,000 fine for a first infraction. Then, in 2003, the Texas Legislature enacted the Driver Responsibility Program – which assesses a sizable civil “surcharge” to people convicted of DWI, multiple moving violations, driving with an invalid license, or failure to maintain liability insurance – in addition to traditional criminal penalties. **An eye-popping 60 percent of surcharges go unpaid,¹ and those who cannot afford the surcharge have their licenses revoked.** Over time, the number of unlicensed drivers skyrocketed, and county jails began to fill up with unlicensed drivers. In Bexar County alone, one in three new misdemeanor cases was for DWLI.²

In response, the 2007 Texas Legislature reduced the penalty for DWLI on the first offense to a Class C misdemeanor, punishable by a fine and, typically, issuance of a citation rather than an arrest. DWLI remained a Class B misdemeanor on subsequent offenses, however, and now the same cycle is repeating. The Driver Responsibility surcharge has continued to boost the number of unlicensed Texas drivers to never-before seen levels. **More than two million Texans have lost their licenses for surcharge nonpayment, with an outstanding 1.3 million whose revoked license was never reinstated.**³ Certainly, many people continue to drive because they must work, shop for groceries, and take their kids to school while public transit in Texas remains spotty, at best. But whenever they are stopped henceforth, they risk being arrested and jailed for driving with an invalid license, now a second-time Class B misdemeanor offense.

KEY FINDINGS

- Tens of thousands of Texans are arrested and jailed each year for driving with an invalid license, most of them because they could not afford expensive civil “surcharges,” helping fill local jails with low-risk non-violent individuals.

In fiscal year 2014 alone, nearly 30,000 Class B DWLI cases were added to Texas court dockets.⁴

And during that year, **more than 11,000 individuals were sentenced to local jail on a DWLI offense.**⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION

- **Make driving with an invalid license (DWLI) a Class C misdemeanor for all offenses.** This will divert many nonviolent individuals from county jails, reducing incarceration and court costs as well as keeping law enforcement officers on the street to perform more important duties.

Citations on reverse.

Citations

¹ Craig Adair, “Wrong Way for Texas: The Driver Responsibility Program: A Texas Sized Failure,” Texas Criminal Justice Coalition, February 2013.

² Testimony by Shannon Edmonds of the Texas District and County Attorneys Association to the House County Affairs Committee, May 5, 2014.

³ “Wrong Way for Texas.”

⁴ Office of Court Administration. See: OCA, “Statutory County Courts 2014 Activity Detail,” last accessed online 1/20/15 at: <http://www.txcourts.gov/media/696423/3-SCC-Activity-Detail-fy-2014-pdf.pdf>, and “Constitutional County Courts 2014 Activity Detail,” accessed the same day at: <http://www.txcourts.gov/media/701752/3-CCC-Activity-Detail-2014.pdf>.

⁵ Ibid. See “Sentencing Information: Local Jail.”

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 justice to victims.

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 48 inmates serving life sentences.**¹ Many more inmates serving lengthy sentences have also been exonerated. **Together, nearly 2,000 years have been taken from innocent Texans for crimes they did not commit.**²
- **Several jurisdictions in Texas recognize that the review of wrongful convictions is imperative to preventing future mistakes.** Dallas County established its Conviction Integrity Unit in 2007,³ Harris County established its Conviction Review Section in 2009,⁴ and Tarrant County's new District Attorney Sharen Wilson plans to create a conviction integrity unit this year.⁵ However, a statewide commission is needed to ensure that Texas has a uniform approach to identifying solutions that benefit every jurisdiction and prevent the future loss of innocent lives.
- **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 2010.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 48 BY REPRESENTATIVE MCCLENDON

HB 48 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.

The Commission will produce publicly available annual reports that record the identified weaknesses in the state's criminal justice process, as well as the Commission's proposed solutions regarding the prevention of wrongful convictions or executions.

Citations on reverse.

Citations

¹ Data obtained from the National Registry of Exonerations using the “Browse Cases: Detailed View” tool on January 22, 2015, and may be found at <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

² *Ibid.* The number of years served by exonerated is 1,862 and was calculated by subtracting the year exonerees were sentenced from the year they were exonerated. Those who were exonerated the same year they were sentenced were not included. 17 of the 187 exonerated individuals served probation sentences.

³ Center for Prosecutor Integrity, “Conviction Integrity Units: Vanguard of Criminal Justice Reform,” (2014): 2, accessed on January 22, 2015, available at <http://www.prosecutorintegrity.org/wp-content/uploads/2014/12/Conviction-Integrity-Units.pdf>.

⁴ *Ibid.*

⁵ Bud Kennedy, “Innocence Project Lawyer About to be a Tarrant Prosecutor Again, but Smarter,” *Fort Worth Star-Telegram*, November 20, 2014, accessed January 22, 2015, available at <http://www.star-telegram.com/opinion/opn-columns-blogs/bud-kennedy/article4119384.html>.

⁶ Innocence Project, “Timothy Cole,” accessed January 22, 2015, available at http://www.innocenceproject.org/Content/Timothy_Cole.php.

RAISING THE AGE OF JUVENILE JURISDICTION WILL PROTECT YOUTH, ALLEVIATE SUBSTANTIAL COSTS TO COUNTIES, AND PROTECT SHERIFFS

Texas Teens Can Be Treated as Adults When They Break the Law: In Texas, the age of adulthood is typically 18 years of age; at that age, juveniles are able to vote, join the military, and buy a lottery ticket. Yet despite this seeming consensus that adulthood begins at 18, juveniles may be charged as an adult for a criminal offense the day they turn 17. Not only is this practice inconsistent with our societal consensus for “maturity,” it is also inconsistent with common sense—“what every parent knows”—and what neurological research has confirmed: **youth are inherently less likely to consider the potential outcomes of their actions, are prone to risky behavior, and are more vulnerable or susceptible to negative influences and outside pressures.** Because of these distinctive attributes of youth, which they thankfully outgrow with time, there is less justifications for treating them as adults and subjecting them to adult punishment.

Adult Correctional Facilities are No Place for Kids: The majority of system-involved youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record or adult prison. **(See graphic at right for the number of arrests among 17-year-olds in 2013.¹)** The adult prison system exposes youth to isolation and detention within a jail setting, or incarceration within a prison setting – settings that pose a severe danger to the mental and physical health of youth. Various studies have confirmed that adult correctional facilities are a breeding ground for violence and abuse.²

Texas has a Financial Incentive to Keep Kids Out of Adult Facilities: In specific response to fears about the prevalence of rape in correctional settings, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA).³ PREA is a federal statute aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Among other things, it requires all offenders under 18 to be housed separately from adults in correctional facilities.⁴

This *Youthful Inmate Standard* (examined more fully below) has greatly impacted adult county jails, forcing them to expend extra costs to comply, and leaving many counties unable to comply due to architectural constraints. For example, **Dallas County spends approximately \$79,850 per week to separate 17-year-olds from adults.**⁵ Harris County has had to evacuate entire floors to move one or two 17-year-olds to the shower.⁶ Smaller counties are logistically unable to provide “sight and sound” separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.⁷ Simply put, **Texas county jails cannot continue housing 17-year-olds with adult inmates or in isolation cells without financial cost and/or liability risk.**

Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to keep these youth safe, and it would obviate the costs of doing sight and sound separation. The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, **many Sheriffs have chosen to support “raising the age” of juvenile jurisdiction.**⁸



KEY FINDINGS

- **There is no justifiable basis for distinguishing between 17-year-olds and 16-year-olds.** These two groups of teens commit largely the same types of offenses. The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws and public drunkenness, possession of marijuana and larceny theft.⁹
- **The majority of 17 year-olds are arrested for nonviolent and misdemeanor offenses.** 96% of 17 year-olds who were arrested in 2013 were arrested for nonviolent and misdemeanor offenses.¹⁰
- **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.¹¹
- **Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system** (see graphic at right). According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal justice system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crimes.¹²
- **Studies have shown that raising the age of juvenile jurisdiction to 18 will ultimately save Texas \$88.9 million for every cohort of 17-year-olds moved into the juvenile system.**¹³
- **Research has shown that adult correctional facilities are a breeding ground for violence and abuse.** Youth are over eight times as likely to have a substantiated incident of sexual violence while in state prisons than adults in these same facilities (see graphic below).¹⁴



DANGERS OF HOUSING YOUTH IN ADULT FACILITIES



KEY FINDINGS (CONTINUED)

- **17-year-olds housed in adult correctional facilities are forced into isolation.** Youth who are held in adult correctional facilities are subject to isolation, which poses a severe danger to their mental and physical health.¹⁵ Because PREA defines a “youthful inmate” as anyone under the age 18, 17-year-olds MUST be kept “sight and sound” separated from the rest of the adult population. Unfortunately, county jails (where the majority of youth are held) are not equipped to segregate 17-year-olds without isolating them.¹⁶
- **Keeping 17-year-olds in the adult criminal justice system comes at significant expense to counties.** The *Youthful Inmate Standard* is extremely difficult for county jails to comply with. Some counties, such as Dallas, spend nearly \$80,000 per week keeping youth separated by sight and sound from the general population.¹⁷ The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, the Sheriffs’ Association of Texas has chosen to support “raising the age” of juvenile jurisdiction.¹⁸ Yet another county concern is lawsuits: PREA exposes counties to increased civil liability,¹⁹ with the potential for substantial litigation costs.
- **Texas facilities have high reported incidents of sexual assaults.** During its initial investigation into allegations of prison rape, the Bureau of Justice Statistics found that five Texas prison facilities were among those nationally with the highest prevalence of sexual assault.²⁰ An astounding 15.7% of inmates surveyed indicated that they were sexually assaulted by another inmate or staff.²¹

Table 4. Prison facilities with the highest prevalence of sexual assault, by another inmate or staff and by level of force and injury, National Inmate Survey, 2007

| Facility name | Total prevalence ^a | Inmate-on-inmate sexual assault | | | Staff-on-inmate sexual assault | | | |
|--|-------------------------------|---------------------------------|-----------|----------------------|--------------------------------|-----------|---------------------|----------------------|
| | | Physically forced | Pressured | Injured ^b | Physically forced | Pressured | Reported as willing | Injured ^b |
| U.S. total | 4.5% | 1.3% | 1.7% | 0.5% | 0.9% | 1.5% | 1.7% | 0.3% |
| Estelle Unit, TX | 15.7 | 5.1 | 7.9 | 2.0 | 0.9 | 4.4 | 5.2 | 0.4 |
| Clements Unit, TX | 13.9 | 1.7 | 3.3 | 1.0 | 4.1 | 6.8 | 5.6 | 3.1 |
| Tecumseh State Corr. Inst., NE | 13.4 | 0.0 | 1.2 | 0.0 | 7.5 | 11.8 | 5.9 | 3.9 |
| Charlotte Corr. Inst., FL | 12.1 | 0.6 | 1.1 | 0.0 | 2.6 | 6.1 | 5.7 | 0.0 |
| Great Meadow Corr. Fac., NY | 11.3 | 1.0 | 2.8 | 0.0 | 6.0 | 6.3 | 2.8 | 2.0 |
| Rockville Corr. Fac., IN ^c | 10.8 | 6.5 | 7.5 | 3.7 | 0.5 | 1.1 | 0.9 | 0.6 |
| Valley State Prison for Women, CA ^c | 10.3 | 4.7 | 5.9 | 1.5 | 1.5 | 3.3 | 3.3 | 0.9 |
| Allred Unit, TX | 9.9 | 3.6 | 3.2 | 3.3 | 2.8 | 3.2 | 2.3 | 0.9 |
| Mountain View Unit, TX ^c | 9.5 | 7.5 | 6.8 | 2.7 | 0.7 | 3.0 | 1.4 | 2.1 |
| Coffield Unit, TX | 9.3 | 2.1 | 3.9 | 0.0 | 0.4 | 1.4 | 4.3 | 0.0 |

Note: Detail may add to more than totals because victims may report more than one type of victimization, injury, and type of force.

^aPercent of inmates reporting one or more incidents of sexual victimization involving another inmate or facility staff in the past 12 months or since admission to the facility, if shorter. (See *Methodology* for definitions.) Weights were applied so that inmates who responded accurately reflected the entire population of each facility on selected characteristics, including age, gender, race, time served, and sentence length. (See *Methodology* for nonresponse and post-stratification weighting procedures.)

^bInjuries included knife or stab wounds, broken bones, anal or rectal tearing, teeth chipped or knocked out, internal injuries, knocked unconscious, bruises, black eyes, sprains, cuts, scratches, swelling, or welts.

^cFemale facility.

WHAT IS PREA, AND HOW IS IT RELATED TO THE AGE OF JUVENILE JURISDICTION?

In passing PREA, Congress “established a National Prison Rape Elimination Commission (NPREC) to ‘carry out a comprehensive legal and factual study of the penological [sic], physical, mental, medical, social, and economic impacts of prison rape in the United States’ and to recommend to the Attorney General ‘national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.’”²² “The statute defines ‘prison’ as ‘any confinement facility,’ including jails, police lockups, and juvenile facilities, and defines ‘rape’ to include a broad range of unwanted sexual activity.”²³

PREA has four primary goals:

- Data Collection: Section four of PREA requires the Bureau of Justice Statistics to collect statistics on the incidence of prison sexual violence in state, local, and federal custodial facilities.²⁴
- Training and Technical Assistance: Under Section five of PREA, the National Institute of Corrections received funding to administer a national clearinghouse on sexual violence in custody and to provide training and technical assistance to the field.²⁵
- Grants to the States: PREA authorizes a grant program to help states meet the PREA requirements.²⁶ To date, the total federal amount given in grants to states and local departments of corrections from 2004-2013 is \$54,376,459.²⁷ **The most heavily funded state from these grants was Texas, which has received \$3,576,598.**²⁸
- Development of National Standards: On June 20, 2012, the Department of Justice adopted a series of national standards aimed to prevent, detect, and respond to prison rape. “A State whose Governor does not certify full compliance with the standards is subject to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years.”²⁹ “The final rule specifies that the Governor’s certification applies to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.”³⁰ There is no penalty to the state for facilities outside the state’s operational control; however, as discussed more fully below, counties may still be vulnerable to private litigation for noncompliance.

The PREA “standards are generally not outcome-based, but rather focus on policies and procedures.”³¹ Many of these procedures are straightforward and non-controversial. One of those standards relates to the confinement of youth, defined as individuals under the age of 18. The Youthful Inmate Standard (§115.14) requires that:

- No youth under 18 years of age can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain “sight and sound separation”—i.e., preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Of the 112 counties who responded to an information request filed by the Texas Criminal Justice Coalition, nearly 65% of Texas counties with adult correctional facilities already comply or are attempting to comply with PREA requirements.³² But complying becomes expensive for jails that house 17-year-olds. As the Sheriffs’ Association of Texas states, “To ensure the safety of 17-year-olds in our care, best practice tells us 17-year-olds should be separated from older offenders in correctional facilities. This means increased staff and building units on to or jails to house these youth. Many counties will soon need to retrofit their jails to comply with safety standards for 17-year-olds – costing tax payers millions of dollars.”³³

POTENTIAL LIABILITY FOR FAILING TO COMPLY WITH PREA

“PREA does not require State and local facilities to comply with the Department [of Justice]’s standards, nor does it enact a mechanism for the Department to enforce such compliance; instead the statute provides certain incentives for such confinement facilities to implement the standards.”³⁴ These incentives include grants to help local facilities come into compliance. **Several Texas counties have already received PREA-related grants: Dallas County Juvenile Department (\$88,942), Travis County Juvenile Probation Department (\$100,000), Atascosa County Juvenile Probation Department (\$300,000), Harris County, Texas (\$237,693), and Webb County, Texas (\$250,000).**³⁵

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”³⁶ **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United State Supreme Court set forth the standard for determining if prison conditions violated the Eighth Amendment.³⁷ The two-part test adopted by the Supreme Court required the plaintiff to prove (1) that the conditions were cruel and (2) that the government was deliberately indifferent to the conditions facing the inmate. Prior to PREA, this second prong—deliberate indifference—narrowed the class of claims that litigants were able to bring, because it is extremely difficult to prove that a government entity was deliberately indifferent to the conditions facing inmates.

PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates. Thus, failure to follow these PREA standards could be seen as *prima facie* evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.³⁸

COST ESTIMATES PER SIDE OF LITIGATION FOR TYPICAL AUTOMOBILE TORT CASE

| Litigation Stage | Amount expended on attorney’s fees alone for <u>lowest 25%</u> | Amount expended on attorney’s fees alone for <u>highest 75%</u> |
|--|--|---|
| Case Initiation | \$1000 | \$7,350 |
| Between Discovery through Formal Negotiations or ADR | \$5,000 | \$36,000 |
| Trial | \$18,000 | \$109,000 |

This cost model suggests that litigation costs alone may substantially increase for facilities that fail to comply with PREA. It is too early to predict what the costs might be if a plaintiff is successful. One ex-inmate of Travis County has sued, alleging that county and sheriffs’ officials displayed deliberate indifference to his safety by failing to comply with PREA; he is seeking \$2 million in damages as compensation for the rape he sustained while in the Travis County jail.³⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION

Raise the age of maximum juvenile jurisdiction from 17 to 18 years. The Texas Criminal Justice Coalition recommends that Texas raise the age of juvenile jurisdiction for both misdemeanors and felonies from 17 to 18. This expansion of juvenile jurisdiction is consistent with federal constitutional law and promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.

This change will reduce confusion and jurisdictional questions that arise when 17-year-olds are arrested. Moreover, raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to comply with PREA standards, and it would obviate the costs of doing sight and sound separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.

Citations

¹ Texas Department of Public Safety, Crime Records (2013).

² Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-55, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf>; see also Michele Deitch, Anna Lipton Galbraith, and Jordon Pollock, "Conditions for Certified Juveniles in Texas County Jails," (May 2012): 25.

³ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

⁴ Ibid.

⁵ Sheriffs Adrian Garcia, Christopher Kirk, and Lupe Valdez, "Sending 17-Year-Olds to Adult Jails Costly to Teens and Taxpayers," *Dallas Morning News*, May 19, 2014, <http://www.dallasnews.com/opinion/latest-columns/20140519-sending-17-year-olds-to-adult-jails-costly-to-teens-and-taxpayers.ece>.

⁶ Deitch, et al., "Conditions for Certified Juveniles," 25.

⁷ Ibid.

⁸ Adrian Garcia, Christopher Kirk, and Guadalupe Valdez, "Raise Age of Juvenile Jurisdiction," *Houston Chronicle*, May 30, 2014, <http://www.chron.com/opinion/outlook/article/Raise-age-of-juvenile-jurisdiction-5517953.php>.

⁹ Texas Department of Public Safety, Crime Records (2013).

¹⁰ Ibid.

¹¹ J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *Annals of the New York Academy of Sciences*, Vol. 1021 (2004).

¹² Centers 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: A Report on Recommendations of the Task Force on Community Preventive Services," *MMWR* 56, No. RR-9 (2007), <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

¹³ Michele Deitch, Rebecca Breeden, and Ross Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law*, 40 (2012): 1-67, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

¹⁴ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37128 (Jun.20, 2012) (amending 28 C.F.R. pt II5). Other studies have found that youth in adult facilities are five times more likely to report sexual assaults than youth in juvenile facilities. Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-54, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf> (Youth in adult prisons are "five times more likely to report being sexually assaulted by other inmates than in a juvenile commitment facility.").

¹⁵ Deitch, et al., "Conditions for Certified Juveniles," 25-26.

¹⁶ Ibid.

¹⁷ Adrian Garcia et. al, "Raise Age of Juvenile Jurisdiction."

¹⁸ Ibid.

¹⁹ Deitch, et al., "Conditions for Certified Juveniles," 25-26.

-
- ²⁰ Allen J. Beck and Paige M. Harrison, "Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007," Bureau of Justice Statistics, Dec. 2007, <http://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.
- ²¹ Ibid.
- ²² U.S. Department of Justice, "National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary," May 16, 2012, 1 (citing 42 U.S.C. 15606(d)(1), (e)(1)).
- ²³ Ibid. (citing 42 U.S.C. 15609(7) & (9)).
- ²⁴ PREA § 15603.
- ²⁵ PREA § 15604(a).
- ²⁶ See PREA § 15605(a) (stating that the purpose of the grants is to ensure that "budgetary circumstances . . . do not compromise efforts to protect inmates" and "to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape").
- ²⁷ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- ²⁸ Ibid.
- ²⁹ U.S. Department of Justice, "National Standards to Respond to Prison Rape," 2 (citing 42 U.S.C. 15607(c)).
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Texas Criminal Justice Coalition's analysis of data obtained from 112 counties with adult correctional facilities.
- ³³ "Sheriffs Say Yes to Raising the Age of Juvenile Jurisdiction," Sheriffs' Association of Texas.
- ³⁴ U.S. Department of Justice, "National Standards to Respond to Prison Rape," 10 (emphasis added); see also Webinar: "PREA Readiness – Arlington County Detention Facility," @ 56:00, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/827/webinar-prea-readiness-arlington-county-detention-fac>.
- ³⁵ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- ³⁶ Ibid, 2.
- ³⁷ 511 U.S. 825 (1994).
- ³⁸ Paula Hannaford-Agor and Nicole L. Waters, "Estimating the Cost of Civil Litigation," January 2013, 5, http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx.
- ³⁹ Farzad Mashhood, "Ex-Inmate Sues Over Travis County Jail Rape Claim," *Austin American-Statesman*, March 14, 2014.

Reduce Penalties for User-Level Drug Possession

A small modification will save nearly \$100 million by incarcerating fewer nonviolent individuals

A simple way to save nearly \$100 million in the state budget over the next biennium¹ is to reduce penalties for possession of less than a gram of a controlled substance from a state jail felony to a Class A misdemeanor.

A state jail felony in Texas is punishable by up to two years in confinement and a fine of \$10,000. Probation and treatment work better than incarceration to reduce addiction and drug crime, which is why the Legislature in 2003 mandated probation on the first offense for individuals convicted of possessing less than a gram of a controlled substance. Even so, many individuals who suffer from substance abuse are ultimately incarcerated. In the 2011-2012 biennium, 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.³

Personal-use level possession of drugs should be dealt with at the local, misdemeanor level, utilizing strong probation methods instead of continuously cycling individuals through brief state jail terms without post-release supervision. To that end, HB 254 would reduce the penalty category for possession of less than a gram of a controlled substance from a state jail felony to a Class A misdemeanor. Savings from reduced incarceration costs should be used to subsidize more probation officers and programming for counties to supervise the additional misdemeanor caseload.

KEY FINDINGS

- **One gram equals one packet of Sweet’N Low.**
- Texas pays millions to incarcerate drug addicts for possession of these miniscule amounts instead of treating them, tagging thousands with a felony record that will follow them into the workplace and beyond throughout life.

In fact, **incarcerating a person in state jail totals nearly \$16,000 per year.**⁴ This excludes costs associated with arrest, prosecution, and public defense.

- Low-level addicts benefit more from strong community supervision than brief incarceration stints in dysfunctional Texas state jails.

And local probation departments are in the best position of anyone in the criminal justice system to confront addiction, but they require greater resources which could be freed up by this measure.

- Michael McSpadden, a Republican and longtime district court judge in Harris County, believes these penalties should be reduced. Judge McSpadden and 11 fellow Harris County judges wrote in 2013, “the public has realized that draconian punishment of minor drug offenses as state jail felonies is not working, and **as judges, we hear countless complaints from trial juries and grand juries who do not believe these cases should be tried as felonies.**”⁵

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 254 BY REPRESENTATIVE THOMPSON

- **HB 254 reduces the penalty for up to 1 gram of a controlled substance from a state jail felony to a Class A misdemeanor.** Drug sentences should better match the severity of the crimes and maximize taxpayers' bang for their buck.
- **HB 254 will reduce incarceration and save money.** Texas leads the nation in the number of people incarcerated, spending around \$3 billion per year to confine people. This bill helps reverse that trend and would save \$100 million in the coming biennium.
- **HB 254 will facilitate the treatment of addiction and will enhance liberty.** Community supervision, overseen closely by a local judge with access to resources for programming, is a better choice than prison to treat addiction.
- **HB 254 will continue to hold people accountable.** Class A misdemeanors are still punishable by up to one year in jail and a \$4,000 fine if individuals cannot comply with probation conditions or a judge or jury believes a particular case merits jail time.

Citations

¹ Fiscal note for HB 1417 by Thompson, 83rd Texas Legislature, March 26, 2013, last accessed online 1/22/15 at: <http://www.capitol.state.tx.us/tlodocs/83R/fiscalnotes/html/HB01417I.htm>, estimating "a positive impact of \$97,873,833 through the biennium ending August 31, 2015." Five year savings would run roughly to \$285 million.

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; *data available upon request*.

⁴ Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, Submitted to the 83rd Texas Legislature, January 2013, p. 8;

www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf. Texas spends \$42.90 per person per day to incarcerate one individual in a state jail, for an annual total of \$15,658.50.

⁵ Letter from Judge Michael McSpadden of the 209th District Court to State Senator John Whitmire, January 3, 2013; <http://www.scribd.com/doc/139764249/Letter-from-Judge-Michael-McSpadden-of-the-209th-District-Court-to-State-Senator-John-Whitmire>.

Increase Opportunities for Hard-Working Individuals with Criminal Records By Providing Orders of Nondisclosure for Certain Offenses and Judgements

ACCESS TO ORDERS OF NONDISCLOSURE

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 difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Despite the fact that current policies regulating orders of nondisclosure take many steps in the right direction, these forms of relief do not extend far enough to offer a genuine second chance to those trying to live as responsible and safe residents of Texas.

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » In order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.²
 - » An individual must also wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors.³
 - » Only some types of offenses are eligible for nondisclosure; certain violent and sex-related offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶
- **Few orders of nondisclosure are issued compared to the number of eligible offenses.**
 - » According to the Office of Court Administration's Court Activity Reporting and Directory System, a total of 170,587 cases were dismissed in district criminal courts over a four-year period (September 2010 through August 2014). Over 18 percent, or 30,924 of these, were for drug possession alone.⁷ Another 3,366 dismissals were for misdemeanors.⁸ Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.
 - » The Texas Department of Public Safety reported in May 2014 that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).⁹

- **Even when issued, orders of nondisclosure are not always effective in limiting access to criminal records, potentially resulting in the ongoing dissemination of restricted or inaccurate information.**
 - » While the Texas Department of Public Safety (DPS) is statutorily mandated to certify to the court that issued the order of nondisclosure that the relevant records in its possession have been sealed, the statute does not require DPS to certify to the court that it has notified all the private commercial businesses it sold the records to of the order of nondisclosure or expunction. This means that, although DPS is accountable to the courts to comply with orders of nondisclosure, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure has been issued.
 - » Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure from their records or websites. Please note, however, that DPS indicates on its website that it “provides a file that contains the nondisclosure records that are no longer public” and that “customers have 30 business days from the posting of the file to remove any records.”¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 268 BY REPRESENTATIVES MILES AND COLLIER

HB 268 will allow eligible defendants who complete deferred adjudication for a nonviolent misdemeanor offense to receive a signed order of nondisclosure at the same time their case is dismissed. With no additional burden to counties, individuals who demonstrate rehabilitation by completing deferred adjudication community supervision may have their relevant criminal record information sealed from the public immediately after completing punishment. This bill offers a fair chance to thousands of Texans who have overcome their past mistakes, enabling them to access safe housing, become gainfully employed, and contribute to Texas communities in positive ways.

Citations

¹ [Tex. Gov't. Code, § 411.081.](#)

² [Tex. Gov't Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).

⁷ Data was obtained from the Office of Court Administration Court Activity Reporting and Directory System using the Ad-Hoc Search feature on October 1, 2014. Public court activity data may be found at <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

⁸ *Ibid*.

⁹ Texas Department of Public Safety (DPS), Letter to the Lieutenant Governor and Speaker of the House dated May 30, 2014, reporting the number of petitions and orders for nondisclosure received by the Department in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.

¹⁰ Texas Department of Public Safety, “Conviction Database Customers,” accessed on October 3, 2014, available at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 271

Dear Members of the Committee,

Thank you for this opportunity to testify in favor of HB 271 by Representative Miles. HB 271 will restore automatic mandatory supervision to people sentenced to the Texas Department of Criminal Justice (TDCJ) for a nonviolent drug offense. This bill will save money and improve efficiency without negatively impacting violent crime rates in Texas.

UNDERSTANDING MANDATORY SUPERVISION

- “Mandatory supervision” is a form of parole release. When a person’s time served, combined with good time and work time credits, equals 100 percent of the sentence, he or she may be released on mandatory supervision.¹
- Individuals in TDCJ are eligible for parole when 25 percent of their sentence served, when factoring actual time served plus good time and work time credits.² Therefore, incarcerated individuals are reviewed for parole at least once, and possibly multiple times, prior to reaching their mandatory supervision release date.
- No individual convicted of a violent offense listed in §508.149(a) of the Texas Government Code is eligible for release on mandatory supervision.³
- Until 1995, release on mandatory supervision was **automatic** for most incarcerated individuals. However, the Legislature made release on mandatory supervision “discretionary” for anyone convicted after September 1, 1996.⁴

THE EFFECTS OF MAKING MANDATORY SUPERVISION “DISCRETIONARY”

- The result of making mandatory supervision “discretionary,” along with other measures to reduce parole approval rates, was a nearly 15 percent increase in Texas’ prison population in less than five years.⁵ The population exceeded 150,000 as of 2000, and it reached more than 160,000 in the decade to come. The current population is holding steady at approximately 150,000 incarcerated individuals.⁶
- Texas’ prison population remains high for two reasons:
 - (1) People continue to be sentenced to prison under “tough on crime” measures that apply to both violent and nonviolent individuals.
 - (2) The percentage of individuals released on parole or mandatory supervision has decreased – again, due to policies applicable to both violent and nonviolent individuals.
- To put this in perspective, this means that, if TDCJ were to place every individual it held in custody in one location, that location would be more populous than the 18th largest city in Texas.⁷ Texas incarcerates more people than any other state.⁸ The only state that comes remotely close to the number of people incarcerated in Texas is California, and California’s overall population is 12 million greater than Texas.
- Texas pays an enormous price for “tough on crime” policies. The total revenue allocated to TDCJ exceeds \$3.2 billion per year,⁹ nearly \$2.9 billion of which is from General Revenue – which is approximately six percent of the general revenue available for all state needs, from transportation to education.

Continued on reverse.

KEY FINDINGS

- According to TDCJ's most recent statistical report, 18,973 individuals were in prison for a drug offense as of August 2014.¹⁰ At an average cost of \$50.91 per person per day,¹¹ taxpayers were spending \$965,915 per day to house these individuals – some of whom may now be eligible for release on mandatory supervision.
- Removing the costly step of mandatory supervision review for individuals with nonviolent drug offenses will save the state more than \$13 million during the next fiscal year alone.¹²

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 271 BY REPRESENTATIVE MILES

HB 271 restores automatic mandatory supervision for those convicted of nonviolent drug offenses.

- » This bill will **NOT** apply to anyone convicted of a violent or sexual offense.
- » This bill does **NOT** remove the Board of Pardons and Parole's authority to perform parole reviews; it simply removes the additional step of Discretionary Mandatory Supervision review. This will free up Parole Board time and resources, which can be better spent reviewing parole eligibility for those incarcerated for violent crimes.
- » Under this bill, the Board of Pardons and Paroles **MAY** still require those convicted of drug offenses to attend treatment programming prior to release, as all those eligible for mandatory supervision will still be reviewed for parole at least once before reaching mandatory supervision eligibility.

Citations

¹ Texas Board of Pardons and Paroles, "Parole/Mandatory Supervision Information," http://www.tdcj.state.tx.us/bpp/what_is_parole/parole.htm.

² Ibid.

³ Ibid.

⁴ Texas Department of Criminal Justice, Parole Division, *Types of Releases*, https://www.tdcj.state.tx.us/divisions/parole/parole_release_types.html.

⁵ Criminal Justice Policy Council, "Texas Correctional Population Changes in Historical Perspective: Long-Term Planning Issues to Consider," February 27, 2001, 7-16, http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Reports/CorrectionalPop.pdf.

⁶ Legislative Budget Board, "Monthly Tracking of Adult Correctional Population Indicators (March, 2015),"

http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/812_MonthlyReport_FY2015.pdf

⁷ Wikipedia, "List of Texas Cities by Texas Population," http://en.wikipedia.org/wiki/List_of_cities_in_Texas_by_population

⁸ The Sentencing Project, "Prison Population by State," <http://www.sentencingproject.org/map/map.cfm#map>.

⁹ Legislative Budget Board, Texas Department of Criminal Justice Operating Budget, 2014," <http://docs.lbb.state.tx.us/display.aspx?DocType=OB>.

¹⁰ Texas Department of Criminal Justice, Statistical Report: Fiscal Year 2014, 1, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

¹¹ Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report, Fiscal Years 2013 and 2014*, Submitted to the 84th Texas Legislature, February 2015, 4, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. The \$50.91 per person per day figure is an average of 3 FY 2014 costs: Pre-1987 Facilities, 1,000 Bed Prototype Facilities, and 2,250 Bed Prototype Facilities.

¹² Legislative Budget Board, Fiscal Note, 84th Legislative Regular Session, April 8, 2015, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB00271I.pdf#navpanes=0>



Sarah D. Pahl, Policy Attorney

Work: (512) 441-8123, ext. 106

Cell: (817) 229-7868

spahl@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 329

Update the System for Sealing Criminal Records by Providing Orders of Nondisclosure For Fine-Only Misdemeanors to Eligible Individuals

ACCESS TO ORDERS OF NONDISCLOSURE

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 difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. **Even those with only fine-only misdemeanors on their record may face challenges in securing housing or employment.** Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Our current system provides for orders of nondisclosure for certain crimes committed at both the misdemeanor and felony levels, but somehow leaves out relief for those with fine-only misdemeanors—the lowest-level offense in our state. **It is time to update our system to provide relief for these lowest-level offenses.**

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » Currently, in order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.² **HB 329 would also make eligible those individuals who have been convicted of or who have received a dismissal after deferred disposition for a fine-only misdemeanor.**
 - » Under current law, an individual must wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors—before being eligible for an order of nondisclosure.³ **Under HB 329, individuals would be subject to a one-year waiting period for fine-only misdemeanors.**
 - » Only some types of offenses are currently eligible for nondisclosure; certain violent, sex-related, and family violence offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶ **HB 329 would also allow a judge to impose conditions, including community service and payment of fees, before granting an order of nondisclosure to someone who was convicted of a fine-only misdemeanor, as if the person had been placed on deferred disposition.**

- **Currently, individuals with fine-only misdemeanors that have been dismissed after deferred disposition are eligible to petition for an expunction of all records associated with the offense.** The lesser form of relief – nondisclosure – should not be restricted from those who already qualify for complete destruction of their records. (See attached, *Guide to the Differences Between Nondisclosure and Expunction in Texas*)

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 329 BY REPRESENTATIVE WU

HB 329 will allow eligible defendants who have been convicted of or granted deferred disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, to petition for an order of nondisclosure. The funds received from the petition fees for this class of offenses will be credited to the general fund of the municipality or county that received the fee.

Under HB 329, judges should be required to inform all defendants who are granted deferred disposition for a fine-only misdemeanor of their eligibility for both expunction and nondisclosure, as well as the practical implications of both forms of relief.

Citations

¹ [Tex. Gov't. Code, § 411.081.](#)

² [Tex. Gov't Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 333, which will provide incentives for individuals charged with state jail felonies to complete probation and avoid the collateral consequences that come with a felony conviction by allowing the court to reduce convictions to Class A misdemeanors.

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 pose a higher risk to public safety.¹

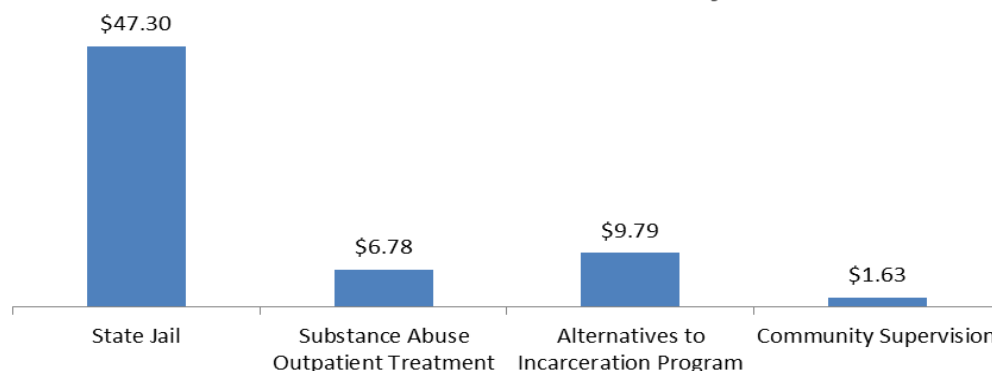
However, tens of thousands of Texans, primarily with low-level drug or property offenses, are sentenced directly to state jail with little access to treatment, and almost always without post-release community supervision or support. **In many cases, community supervision provides a better, less expensive opportunity to access meaningful services and resources that address substance abuse issues, mental health issues, employment problems, etc.; these, in turn, enable people to live productive, self-sufficient lives in our communities.**

House Bill (HB) 333 will incentivize community supervision by allowing certain individuals who meet specific criteria the opportunity to have a state jail conviction reduced by one offense level. Current law already permits a state jail offense to be punished and prosecuted as a Class A misdemeanor, but HB 333 will provide a more effective incentive for community supervision because it will apply only ***after*** successful completion of a term of probation, as opposed to before. By encouraging more community supervision placements, HB 333 will ensure that individuals have access to important community-based programs and services that will increase the chances of success in the community and decrease the likelihood of reoffending.

KEY FINDINGS

- **STATE JAIL TERMS ARE EXPENSIVE**: State jails are dramatically more costly (averaging approximately \$47 per day per person) than alternatives to incarceration such as community supervision (only \$1.63 per day per person) or community-based treatment (less than \$10 per day per person).²

Cost Per Person Per Day



- **INDIVIDUALS RELEASED FROM STATE JAILS HAVE HIGH RATES OF RE-OFFENDING:** The creation of state jail felony offenses was intended to carve out a population of individuals more amenable to rehabilitative services and treatment programs, yet persons convicted of state jail felony offenses have higher rates of re-arrest and re-incarceration than individuals exiting prisons and those on community supervision.

More specifically, **30.7%** of individuals released from a state jail in FY 2011 (measured through FY 2013) were re-incarcerated. To compare, **21.4%** of individuals released from prison in FY 2011 (measured through FY 2013) were re-incarcerated and an average of 15% of individuals on direct felony supervision were revoked from their probation from FY 2009 through FY 2014.³

This trend may be due to the lack of rehabilitative programming provided at state jail facilities, the relatively short terms of incarceration (on average, six months) that prohibit engagement in effective treatment programs, or the lack of post-release supervision.

- **STATE JAILS ARE VIEWED AS LESS RIGOROUS THAN PROBATION:** Many defendants actually elect to serve their sentence in a state jail rather than take advantage of the support and resources offered by community supervision. This is primarily due to the fact that community supervision terms are generally longer than state jail terms and require a higher level of personal accountability and self-responsibility.

For instance, probation conditions – which vary by judge and offense – typically require regular reporting to a probation officer, fee payments throughout the course of the probation term, full payment of court costs and fees, community service, meeting all mandated class or program obligations (e.g., class or program attendance, drug testing, etc.), school or employment attendance, abiding by restrictive conditions (e.g., curfews, drug and alcohol abstinence, avoidance of negatively influential peers or locations), and remaining law-abiding during the course of the probation term; depending on the offense, probation conditions may also require victim restitution. It is incumbent upon each probationer to ensure all conditions are met, making this a highly rigorous and regulated period under supervision.

- **A STATE JAIL SENTENCE CREATES LIFELONG CONSEQUENCES:** Unfortunately, a state jail conviction creates collateral barriers associated with a felony conviction, including difficulties accessing housing, employment, and other assistance once released. This increases the likelihood of re-offending and returning to confinement.
- **STATE JAILS ARE NOT SERVING THEIR LEGISLATIVELY INTENDED PURPOSE:** The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.⁴ However, the High Value Data Set available on TDCJ's website indicates otherwise, showing that in May 2014, **23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years**⁵ (the maximum sentence for state jail felonies is two years). Further, state jail facilities intermingle those serving time for state jail felonies with the general prison population. While it is common knowledge that TDCJ regularly utilizes state jail facilities to hold individuals convicted of higher-level crimes for periods of time less than two years, this practice is entirely improper and contrary to the purpose for which state jails were created.

TDCJ may save money by housing individuals with longer sentences in state jails (given that some prison facilities cost as much as \$53.87 per person per day, compared to the \$47.30 price tag of state jails).⁶ However, depriving individuals with longer sentences of the services and programs they should receive in prison facilities is a blatant misuse of the resources designated for this population.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 333 BY REPRESENTATIVE LONGORIA

- **HB 333 will encourage individuals with certain state jail felony convictions to serve their sentence on community supervision by allowing a court to reduce the conviction one offense level after all conditions of probation are satisfied.** Before a defendant requests a modification for an offense reduction under HB 333, he or she must first successfully fulfill all conditions of community supervision and pay any required fees, restitution, or fines.
- **HB 333 will not modify a state jail level offense for all offenses, and various restrictions will limit its applicability.** HB 333 only applies to limited state jail offenses and it excludes any offenses under Title 5 of the Penal Code (such as homicide, kidnapping, and assault). Moreover, before a judge can grant a modification, he or she must provide notice to the attorney representing the state, who in turn may request a hearing before any modification is issued. The modification can only be issued if no party requests a hearing or, if a hearing is requested, the judge makes a finding that a modification of the record of conviction is in the best interest of justice.
- **HB 333 will save taxpayer dollars, enhance public safety through lower recidivism, increase self-responsibility, and strengthen communities.** Community supervision requires more diligence, self-responsibility, and accountability than state jail facilities. Moreover, with access to resources and services, community supervision has a significant impact on reducing recidivism. While increasing public safety is paramount, diverting a person from state jail to community supervision also saves taxpayers a significant amount of money that would be spent on state jail incarceration.
- **HB 333 will help individuals charged with a state jail felony offense avoid a felony conviction and, accordingly, avoid the collateral consequences that accompany a felony record.** It is undisputed that individuals with a felony record face significant challenges in finding housing and employment. Allowing individuals to request a modification for an offense reduction under HB 333 gives individuals charged with state jail felonies a greater opportunity to obtain employment, contribute to Texas' economy, and provide for themselves and their families.

Citations

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

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4, 6; http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities. Substance abuse outpatient treatment costs the state \$6.78 per day, while the Treatment Alternatives to Incarceration Program costs the state \$9.79 per day.

³ Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, February 2015, pp. 3, 7, 8, 16; http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2; http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf. The report indicates that 10,524 individuals were on hand in state jails, while 22,272 individuals were received into state jail facilities. The total number of individuals in TDCJ was 150,361.

⁵ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.

⁶ LBB, "Criminal Justice Uniform Cost Report," 4.



Elizabeth Henneke, Policy Attorney

Work: (512) 441-8123, ext. 105

Cell: (512) 810-8392

ehenneke@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 431

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 431, which will allow Texas to study and suggest revisions to state laws intended to keep juvenile records confidential. Texas has demonstrated a strong commitment to keeping youth records confidential; in a national study of juvenile records, **Texas ranked above average because it “provides strong confidentiality protections to all records and has robust notification requirements for sealing and expungement.”**¹ Despite existing safeguards, many juvenile records are still widely accessible, which creates serious burdens for youth who have gotten their lives back on track. HB 431 provides a forum for key stakeholders to comprehensively address these provisions and give the greatest protection to youth.

STATE LAWS RESTRICTING ACCESS TO JUVENILE RECORDS ARE CUMBERSOME

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.² 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.³ **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.”**⁴

Stakeholders and practitioners have found the law surrounding juvenile records to be cumbersome and difficult to enforce. Thus, a broad coalition of stakeholders, including prosecutors, defense attorneys, juvenile probation officers, and advocates recommend an advisory panel to comprehensively examine those statutory provisions that address these records.

KEY FINDINGS

- **Most juvenile records are fully open to employers, landlords, and schools because they are not on “restricted access.”** As of 2013, the Department of Public Safety maintained records on 604,818 people who were arrested when they were younger than 17 years old. Only 40 percent of those records were on restricted access.⁵
- **There are indisputable barriers to success for youth with criminal records.** Depending on the crime, a youth convicted of an offense in Texas will have difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 431 BY REPRESENTATIVES JAMES WHITE & MILES

HB 431 requires the Texas Juvenile Justice Department to convene an advisory panel to review and recommend revisions to state laws related to juvenile records; this panel will include prosecutors, law enforcement, probation officers, and others, thus ensuring broad stakeholder input. Ultimately, the panel can propose policy changes that will give youth a second chance, enabling them to access critical tools for personal responsibility.

Citations on reverse.

Citations

¹ Juvenile Law Center, *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, November 2014, <http://jlc.org/blog/new-study-reveals-majority-us-states-fail-protect-juvenile-records>.

² See, e.g., T. Moffitt, “Life-course-persistent versus adolescence-limited antisocial behavior” (2006).

³ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, February 2015.

⁴ Texas Family Code § 51.01(2)(B).

⁵ Texas Department of Public Safety response to open records request (January 2013).



Elizabeth A. Henneke, Policy Attorney

Work: (512) 441-8123, ext. 105

Cell: (512) 810-8392

ehenneke@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 452

Improve Efficiency in Our Courts and Reduce Unnecessary Pretrial Incarceration

PRETRIAL HEARINGS 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. Furthermore, in instances where pretrial hearings *are* scheduled, there is not always sufficient time for the parties to prepare their cases for trial, greatly limiting the effectiveness of both prosecutors and defense counsel in adequately preparing their cases.

House Bill 452 improves the judicial process and saves the state money by mandating a judge to set a pretrial hearing if the defendant requests it at least 60 days prior to trial and ensuring that hearings are held in a timely manner, giving both parties at least 30 days to prepare for trial. 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 March 2014 and February 2015, Texas’ county jails housed an average of over 9,000 people charged or convicted of a misdemeanor, accounting for 14% of the state’s total county jail population.¹ At a cost of \$59 per person per day,² this population costs taxpayers nearly \$550,000 per day.
- As of February 1, 2015, pretrial detainees made up over 60% of Texas’ county jail population.³ HB 452 will help reduce the time and money spent keeping such individuals in pretrial detention by increasing efficiency in the pretrial process, and addressing evidentiary issues early in the process.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 452 BY REPRESENTATIVE ALONZO

- **HB 452 will ensure that only reliable evidence is admissible in a trial court.** HB 452 amends Article 28.01, Code of Criminal Procedure, by mandating a court to set a pretrial hearing in any criminal case if the 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.
- **HB 452 will enhance judicial economy by requiring the judge to conduct a pretrial hearing in a timely manner upon request by 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 Texas Commission on Jail Standards, *Texas County Jail Population*, February 1, 2015, <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed an average of 6,400 pretrial misdemeanants and 2,934 convicted misdemeanants from March 2014 to February 2015, for a total of 9,334 individuals. The average population in county jails since March 2014 amounts to 66,503 people.

² Brandon Wood, Assistant Director of the Texas Commission on Jail Standards (TCJS), e-mail messages to Travis Leete, Texas Criminal Justice Coalition (TCJC), April 4, 12, 13, and 16, 2012; Brandon Wood, Assistant Director of TCJS, telephone conversation with Travis Leete, TCJC, April 12, 2012.

³ Texas Commission on Jail Standards, *Texas County Jail Population*, February 1, 2015, <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed 39,063 pretrial detainees and a total population of 64,210 individuals as of February 1, 2015.



John Kreager, Policy Fellow
Work: (512) 441-8123, ext. 104
Cell: (310) 850-2881
jkreager@TexasCJC.org
www.TexasCJC.org

TESTIMONY 2015

HB 474

Dear Members of the Committee,

My name is John Kreager. I am an attorney with the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on HB 474. This bill will equip Texas' frontline law enforcement officers with body-worn cameras, if funds are available. By providing an unbiased account of what happened in police-citizen interactions, body-worn camera footage will shield officers from false accusations of misconduct while also holding them accountable to the public when they do misbehave. Conceptually, body-worn cameras are a win-win policy that increases government transparency while balancing the privacy concerns of citizens and officers alike.

THE LACK OF ACCOUNTABILITY MEASURES FOR POLICE-CITIZEN INTERACTIONS PUTS OFFICERS AND THE PUBLIC AT RISK

In the wake of the August 9, 2014, shooting of Michael Brown by Officer Darren Wilson in Ferguson, Missouri, there has been national call for increased use of body-worn cameras (BWCs) by police officers.¹ Wilson killed Brown during the course of an arrest for alleged robbery under highly disputed circumstances. Wilson was not indicted for his actions, yet the incident demonstrated the tremendous difficulties of determining crucial facts relating to uses of force by police against members of the public.²

Every year, hundreds of Texas officers are accused of police misconduct that allegedly occurred during on-the-job interactions with citizens.³ The lack of accountability measures for both sides of these incidents leads directly to officers' inability to completely justify righteous uses of force in the realm of public perception, as well as to difficulty holding officers accountable if force is misused.

Equipping police officers with BWCs is a dramatic step towards resolving these problems. BWCs are an accountability incentive: Harnessing the power of a substantial body of research that demonstrates that individuals alter their behavior in positive ways when they know they are being watched,⁴ BWCs have been shown to reduce use of force incidents and allegations of police misconduct.⁵

KEY FINDINGS

- **Police misconduct allegations and public distrust of police are pervasive.**
 - » There were at least 391 allegations of police misconduct filed against Texas officers in 2010, the most recent year for which statistics are available.⁶ According to the Cato Institute, the law enforcement agencies of Fort Worth, Dallas, and Galveston boasted some of the highest reported misconduct rates in the nation during that year.⁷

- » According to Gallup polling conducted between 2011 and 2014, 44% of adults do not have “a great deal” of confidence in police.⁸
- **To address these problems, there is strong national support—from law enforcement and the public—for body-worn cameras (BWCs).**
 - » The Michael Brown shooting in Ferguson, Missouri, has been a catalyst for increased accountability measures for police-citizen interactions. In December, the Task Force on 21st Century Policing recommended increased use of BWCs nationally as one of their top priorities.⁹
 - » Support for BWCs is bipartisan. According to December 2014 polling by the Pew Research Center, 79% of Republicans, 90% of Democrats, and 88% of Independents support more BWCs on police officers.¹⁰
- **BWCs are effective at improving both officer and citizen behavior.**
 - » There have been five empirical studies of the effects of implementing a BWC program to date. A summary of the results of these five studies can be found in the chart below, which organizes their findings across four domains: (1) crime rate; (2) complaints against officers; (3) assaults against officers; and (4) use of force incidents.

Effect of Body-Worn Cameras in Five Jurisdictions

| Study | Crime Rate | Complaints Against Officers | Assaults Against Officers | Use of Force Incidents |
|--|----------------------------------|------------------------------------|----------------------------------|-------------------------------|
| Plymouth, England (2007) ¹¹ | 5% decrease (violent crime only) | 14% decrease | n/a | n/a |
| Renfrewshire/Aberdeen, Scotland (2011) ¹² | 26% decrease | n/a | 78% decrease | N/a |
| Rialto, California (2013) ¹³ | n/a | 88% decrease | n/a | 60% decrease |
| Mesa, Arizona (2013) ¹⁴ | n/a | 48% decrease | n/a | 75% decrease |
| Phoenix, Arizona (2013) ¹⁵ | n/a | 44% decrease | n/a | n/a |

- » Preliminary results from San Diego, California—where 600 officers were equipped with BWCs in January 2014—indicate that complaints against officers decreased 40% and use of force incidents decreased by 46% one year after BWC implementation.¹⁶

- **Texas law enforcement agencies have already implemented successful pilot programs for BWCs.**
 - » The Fort Worth Police Department began using BWCs in 2012, and it has steadily expanded the program to include use of more than 600 BWCs today.¹⁷
 - » Satisfied with a pilot program of 100 BWCs, the Houston Police Department plans to equip all 3,500 officers with BWCs over the next three years.¹⁸
- **While there will be costs associated with equipping officers with body cameras, as well as storing materials and reviewing footage, the research suggests that those costs could be outweighed by long-term cost-savings in the form of decreased officer liability.**
 - » Each body camera costs between \$200 and \$1000,¹⁹ and it is estimated that it would cost between \$50 and \$70 million to equip all Texas frontline officers with BWCs.
 - » However, the city of Dallas alone has paid out in excess of \$6 million in settlements related to alleged police misconduct since 2011. By substantially reducing allegations against officers, and exonerating them when allegations are made, body cameras could result in future cost savings through decreased liability exposure.²⁰

* * *

Thank you again for allowing me the opportunity to provide testimony to this Committee on the effectiveness of police body cameras. We expect that implementing body-worn cameras statewide will reduce use of force incidents and allegations of police misconduct while increasing transparency and public confidence in law enforcement.

While HB 474 does not address some of the specific details necessary for rolling out body cameras statewide—such as privacy of citizens captured on the footage, confidentiality of certain recordings not related to an investigation, and how agencies would obtain money to purchase cameras and store data—it provides a solid base that could be crafted into an effective piece of legislation. The gaps could be filled in by looking at the body camera bills in the Senate, which has done extensive work with stakeholders to examine these issues.

Citations on next page.

CITATIONS

- ¹ Justin Sink, "Obama to Provide Funding for 50,000 Police Body Cameras," *The Hill* (December 12, 2014), <http://thehill.com/homenews/administration/225583-obama-to-provide-funding-for-50000-police-body-cameras>.
- ² Emanuella Grinberg, "Ferguson Decision: What Witnesses Told the Grand Jury," *CNN* (November 26, 2014), <http://www.cnn.com/2014/11/25/justice/ferguson-decision-michael-brown-witness-testimony/>.
- ³ David Packman, "2010 Police Misconduct Statistical Report," *The Cato Institute* (April 5, 2011), <http://www.policemisconduct.net/2010-npmsrp-police-misconduct-statistical-report/>.
- ⁴ Tony Farrar, "Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force," *Police Foundation* (March 2013), <http://www.policefoundation.org/content/body-worn-camera>;
- ⁵ Police Executive Research Forum, "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," *U.S. Department of Justice, Community Oriented Policing Services* (2014).
- ⁶ Packman, "2010 Police Misconduct Statistical Report."
- ⁷ Ibid.
- ⁸ Frank Newport, "Gallup Review: Black and White Attitudes Toward Police," *Gallup* (2014) <http://www.gallup.com/poll/175088/gallup-review-black-white-attitudes-toward-police.aspx>.
- ⁹ Payton Guion, "Body Cameras Recommended for US Police by President Obama's Task Force," *The Independent* (March 2, 2015), <http://www.independent.co.uk/news/world/americas/body-cameras-recommended-for-us-police-by-president-obamas-task-force-10080847.html>.
- ¹⁰ "Bipartisan Support for More Body Cameras on Police Officers," *Pew Research Center* (December 8, 2014), <http://www.people-press.org/2014/12/08/sharp-racial-divisions-in-reactions-to-brown-garner-decisions/bipartisan/>.
- ¹¹ Sarah Hopkinds, "Police, Camera, Action...Head Cameras," *Plymouth, England* (August 2007), http://www.plymouth.gov.uk/storyboard_head_cameras.pdf.
- ¹² Andrew Fyfe, "Body Worn Video Projects in Paisley and Aberdeen," *ODS Consulting* (July 2011), <http://www.bwvsg.com/wp-content/uploads/2013/07/BWV-Scottish-Report.pdf>.
- ¹³ Farrar, "Self-Awareness to Being Watched."
- ¹⁴ Allison Roy, "On-Officer Video Cameras: Examining the Effects of Police Department Policy and Assignment on Camera Use and Activation," *Arizona State University* (April 2014): 11, <http://urbanillinois.us/sites/default/files/attachments/officer-video-cameras-roy.pdf>.
- ¹⁵ "Police Body Worn Cameras (BWCs): Background, Issues and Funding Options," *City of Wichita* (November 26, 2014): 2, <https://lntvksnw.files.wordpress.com/2014/12/police-body-worn-camera-report.pdf>.
- ¹⁶ Tony Perry, "San Diego Police Body Camera Report: Fewer Complaints, Less Use of Force," *Los Angeles Times* (March 18, 2015), <http://www.latimes.com/local/lanow/la-me-ln-body-cameras-20150318-story.html>.
- ¹⁷ Deanna Boyd and Lee Williams, "Fort Worth Police Out in Front in Use of Body Cameras," *Fort Worth Star-Telegram* (December 2, 2014), <http://www.star-telegram.com/news/local/community/fort-worth/article4364327.html>.
- ¹⁸ Emily DePrang, "The Eyes of Texas: Are Police Body Cameras Inevitable?" *Texas Observer* (January 16, 2015), <http://www.texasobserver.org/eyes-texas-police-body-cameras-inevitable/>.
- ¹⁹ Jon Herskovitz, "U.S. Border Patrol Testing Body Cameras on Agents," *Reuters* (February 20, 2015), <http://www.reuters.com/article/2015/02/20/us-usa-border-cameras-idUSKBN0LO2BD20150220>.
- ²⁰ Tristan Hallman, "Lawsuits Against Dallas Police Costing City Millions," *Dallas Morning News* (May 10, 2014), <http://www.dallasnews.com/news/crime/headlines/20140510-lawsuits-against-dallas-police-costing-city-millions.ece>.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 476 Dutton

Deam Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 476, which will prohibit the denial of housing, employment, or a professional licensure to a qualified individual based on completion of deferred adjudication community supervision by a defendant. These individuals have successfully fulfilled all of the requirements of community supervision, and were not convicted of the crimes for which they were charged. They have satisfied the court that they are law-abiding citizens, able to vote and contribute to the well-being of the community.

CRIMINAL ARREST RECORDS AND UNINTENDED CONSEQUENCES

- In the electronic age, where criminal backgrounds are easily accessible by potential employers, licensing authorities, and landlords, having any sort of criminal arrest or conviction on one's record can have enduring consequences.
- **A 2012 study by the Society for Human Resource Management found that 69 percent of surveyed organizations conducted background checks on all applicants, with another 18 percent running checks on selected candidates.¹** The impact of these checks, and of a criminal history, are undeniable. **One study showed that employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.²**
- **In a survey of landlords and property managers, 66 percent indicated that they would not approve an application from an individual with a criminal history.³**
- **In Texas, there are 171 occupations for which state authorities may deny, suspend, or revoke a license based on information obtained from a criminal background record, including arrests and deferred adjudications.⁴**

KEY FINDINGS

- **The likelihood of recidivism is progressively reduced by half every 10-months following the arrest so long as the individual continues a crime-free lifestyle.⁵**
- **Nearly 74 percent of individuals placed on deferred adjudication did not recidivate after three years compared with only 63% of those who were placed on probation.⁶**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 476 BY CHAIRMAN DUTTON

HB 476 protects those who have completed a term of community supervision on deferred adjudication from collateral consequences in employment, housing, and occupational licensing. It recognizes the determination these individuals have shown to fulfill all court requirements and to put criminal justice-system involvement behind them.

Citations on reverse.

Citations

¹ Society for Human Resources Management. "Background Checking – The Use of Background Checks in Hiring Decisions." (2012.) at 2. Available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

² Pager, D. (2003). As cited in "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action." January 2015, p. 2. Maurice Emsellem and Michelle Natividad Rodriguez, *National Employment Law Project*. Available at <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

³ Helen Gaebler, *Criminal Records in the Digital Age*, The University of Texas School of Law, 2013, 6, <http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords.pdf>.

⁴ Brown, Beth. "Hard Time for Ex-Cons Searching for Work." *San Antonio Express-News*. June 24, 2012. http://www.mysanantonio.com/news/local_news/article/Hard-time-for-ex-cons-searching-for-work-3658386.php#ixzz2FQZxiNxF.

⁵ Bushway, Shawn & Sweeten, Gary. "ABOLISH LIFETIME BANS FOR EX-FELONS" Reentry After Car. Volume 6, Number 4 2007. <http://www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf>.

⁶ Criminal Justice Planning Council, *Recidivism of Offenders in Community Corrections: The Record So Far*. ii, http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Reports/RecidOffend.pdf

Enhance Employment Opportunities for Individuals Returning to Texas Communities

Emphasizing Current Qualifications Results in More Working Texans And a Deeper Employee Pool for Texas Employers

DELAYING BACKGROUND CHECKS ALLOWS INDIVIDUALS TO STRESS PERSONAL RESPONSIBILITY AND JOB READINESS

The path to the American dream has always rested on an individual's willingness to seek and find employment and climb the ladder to success. However, technological advancements that allow for instantaneous background checks, combined with employers' reluctance to shoulder perceived liability if hiring people with criminal records, have resulted in dwindling employment opportunities for people with criminal histories. In Texas, this means the **11.8 million people with criminal history records** in 2012¹ would ALL have potentially been denied the chance to be interviewed for positions with Texas employers.

The use of background checks as a pre-employment screening tool is almost universal. A 2012 study by the Society for Human Resource Management found that 69 percent of surveyed organizations conducted background checks on all applicants, with another 18 percent running checks on selected candidates.² The impact of these checks, and of a criminal history, are undeniable. One study showed that employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.³

At least 110 areas throughout the U.S. – 13 states, 20, counties, and 77 cities or municipalities – have enacted Fair Chance policies that allow job applicants to be initially judged on their qualifications for employment and not on their criminal histories. The most recent states to institute Fair Chance policies were traditionally "red" Nebraska, as well as New Jersey, with legislation signed by Governor Chris Christie, a Republican.⁴

FAIR CHANCE LEGISLATION: WHAT IT WILL AND WILL NOT DO

It **WILL INCREASE** the employment opportunities of people with criminal records by delaying questions about criminal history until the applicant has been offered an interview or conditional employment.

It **WILL ENSURE** that government employers have access to the largest pool of qualified applicants.

It **WILL ENHANCE** employment opportunities for work-ready individuals with criminal histories, thus reducing the chances they will commit further crimes.

It **WILL NOT PREVENT** or prohibit any government employer from performing background checks; it merely delays such checks until an applicant has been offered an interview or conditional offer of employment.

It **WILL NOT PROHIBIT** any government employer from asking on an application for information about specific history that is required by law.

Continued on reverse.

KEY FINDINGS

- The single most negative determining factor contributing to recidivism is a lack of employment.⁵
- The economic consequences of denying employment to individuals with criminal histories can be devastating. A study by the Center for Economic and Policy Research estimated that the Gross Domestic Product shrunk by \$57-\$65 billion per year as a result of lowered employment among formerly incarcerated individuals.⁶ These figures do not take into account individuals with criminal histories who are not working but have not been incarcerated; thus, the actual impact may be much higher.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: HB 548 BY REPRESENTATIVE JOHNSON:

- **HB 548 will delay background checks for government agency applicants until those applicants are promised an interview or extended a conditional position, thus allowing job-seeking individuals to present their relevant qualifications for employment without fear of automatic denial.** Employers will benefit from having a larger pool of qualified applicants for available positions, while retaining the choice to run criminal history checks. Combined with HB 1188 by Representative Senfronia Thompson, which in 2013 extended protection to employers hiring people with criminal records, this legislation will greatly increase employment opportunities for individuals with criminal histories, thus leading to more stable families and safer communities.
- **HB 548 will increase the employment opportunities available for work-ready Texans, lessening the amount of public assistance debt that would otherwise be borne by taxpayers.** A study of women released from Texas prisons showed that 18 percent were still on public assistance almost a year after release.⁷

Citations

¹ Dennis A. DeBacco & Owen M. Greenspan, "Survey of State Criminal History Information Systems, 2012," (Bureau of Justice Statistics, U.S. Department of Justice, 2014): Table 2, accessed on September 10, 2014, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

² Society for Human Resources Management. "Background Checking – The Use of Background Checks in Hiring Decisions." (2012.) at 2. Available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

³ Pager, D. (2003). As cited in "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities,. Counties, & States Pave the Way for Presidential Action." January 2015, p. 2. Maurice Emsellem and Michelle Natividad Rodriguez, *National Employment Law Project*. Available at <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

⁴ Emsellem, M. & Rodriguez, N. (2015). "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities,. Counties, & States Pave the Way for Presidential Action." *National Employment Law Project*. p. 5. Available at <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

⁵ Berg, M. & Huebner, B. (2011). "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism." *Justice Quarterly* (28). P. 382-410. Available at <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.

⁶ Schmitt, J. & Warner, K. (2012). "Ex-offenders and the Labor Market." Center for Economic and Policy Research. p. 14. Available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁷ Brooks, L et al. (2009). "Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas." Research Report, Urban Institute. Justice Policy Center. Available at http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf.

Encourage In-Person Visitation in Texas Jails and Prisons

Video-only Visitation Policies Negatively Impact Families, Jail Conditions, Public Safety, Taxpayers

AS VIDEO-ONLY VISITATION EXPANDS, COUNTIES FACE SAFETY CONCERNS AND POTENTIAL LAWSUITS

At least 11 Texas counties – including Bastrop, Brazos, Ellis, Fort Bend, Galveston, Hays, McLennan, Midland, Smith, Tom Green, and Travis – have eliminated face-to-face visitation between individuals incarcerated in their jails and their families. As of January 1, 2015, these county jails housed nearly 7,300 individuals,¹ representing almost 12 percent of Texas' total county jail population; these individuals, many of whom have not yet been convicted of any crimes, are not allowed face-to-face visits with their loved ones.

The number of individuals denied face-to-face visitation is sure to rise. Bexar County has plans to do away with in-contact visitation this year, bringing the total number of individuals denied in-person visits to almost 12,000, or just under 20 percent of Texas' county jail population.

The move to prohibit face-to-face visitation and provide only video visitation in Texas jails is predicated on various claims: some argue it is a best practice, that it will allow staff to be allocated in a more cost-efficient manner, and that it will result in safer jails. While the second claim may have some validity, the others are refuted by various studies and, in one case, by a comparison of disciplinary incidents in the Travis County Jail that occurred while in-person visits were allowed and since such visits were eliminated, showing violence and contraband increasing after video-only visitation was implemented.

Also alarmingly, there is evidence that jail officials are providing recordings of privileged communications between attorneys and their incarcerated clients to prosecutors.² If true, this is a clear 4th Amendment violation and can lead to significant county expenses in the form of litigation costs and settlements.

KEY FINDINGS

- ***In-Person Visitation Decreases Recidivism:*** One study looked at over 16,000 incarcerated individuals and examined in-person visitation over their entire sentences, finding that just one visit reduced recidivism by 13 percent for new crimes and by 25 percent for technical violations.³
- ***Video-Only Visitation May Be Costly to Counties:*** A lawsuit by the Texas Civil Rights Project, the Prison Justice League, and various defense lawyers against Travis County elected officials and Securus Technologies, the provider of video services for the jail, was allowed to go forward by U.S. Magistrate Judge Mark Lane recently, raising the specter of payouts to affected individuals by Travis County.⁴
- ***Video-Only Visitation May Worsen Jail Safety:*** A study based on a response to Open Records Requests of visitation history in the Travis County Jail found that, compared to the year previous to eliminating in-person visitation, inmate-on-inmate assaults, inmate-on-staff assaults, possession of contraband, and overall disciplinary infractions increased the year following the implementation of video-only visits.⁵

Along those lines, prison and jail administrators have long used visitation eligibility as a way to manage jail populations; corrections officials can use the threat of losing visits as an incentive for good behavior. Eliminating that tool “may not provide as strong a disincentive to disciplinary infractions in the prison, thereby decreasing rather than increasing security in correctional facilities.”⁶

KEY FINDINGS (CONTINUED)

- ***In-Person Visitation Preserves the Parent-Child Bond:*** Family support is crucial to maintaining the relationships between those incarcerated and those who love them, especially as it pertains to developing and maintaining bonds between parents and children. Visitation, as one paper points out, “substantially decreases the negative impacts of incarceration by preserving the child’s relationship with the parent.”⁷ Maximizing visitation opportunities is especially critical when the incarcerated parent was active in the child’s life prior to incarceration.⁸
- ***Video Technology is Not User-Friendly and Impedes Meaningful Communication:*** Using video visitation technology requires computer literacy, which becomes a barrier for many desiring to use the service. Even those with a firm grasp of computer technology report frustration dealing with the many glitches and interruptions of service. Further, these technologies often make eye-to-eye communication impossible, exacerbating the sense of confusion and isolation endured by families when a loved one is incarcerated.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 549 BY REPRESENTATIVE JOHNSON

- **HB 549 will require all Texas county jails to provide in-person visitation, thereby strengthening families, improving jail conditions, and lowering recidivism.** Face-to-face visitation improves the family bond, provides a corrections management tool, results in lowered rates of re-offending, and can provide other benefits to incarcerated individuals, those who work in corrections facilities, and local taxpayers.
- **HB 549 will not prevent county jails from using video visitation but will ensure that the opportunity for in-person visitation is provided by all jails.** Video visitation can be a beneficial supplement to in-person visitation, especially for those who live far from an incarcerated loved one, but it is crucial that family members have the opportunity to take advantage of policies that enhance family support and contribute to public safety through lowered recidivism rates.

Citations

¹ Texas Commission on Jail Standards, *Abbreviated Population Reports for 1/1/2015*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>.

² *Austin American-Statesman*, “Lawsuit: Travis County inmates’ calls to defense lawyers were recorded, shared with prosecutors, April 28, 2014, <http://www.mystatesman.com/news/news/crime-law/lawsuit-travis-county-inmates-calls-to-defense-law/nfktr/>.

³ Minnesota Department of Corrections, *The effects of prison visitation on offender recidivism*, 2011, <http://www.doc.state.mn.us/PAGES/files/large-files/Publications/11-11MNPPrisonVisitationStudy.pdf>.

⁴ *Texas Lawyer*, “Lawyers score win in recorded jail calls lawsuit,” February 10, 2015, <http://www.texaslawyer.com/id=1202717562467/Lawyers-Score-Win-in-Recorded-Jail-Calls-Lawsuit>.

⁵ Grassroots Leadership and Texas Criminal Justice Coalition, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price*, October 2014, 4.

⁶ C. Boudin, A. Littman & T. Stutz, *Prison visitation policies: A fifty-state survey*, Social Science Research Network, 2014, 31, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=217141210.

⁷ University of New Mexico, *Child Protection Best Practices Bulletin: Connecting Children with Incarcerated Parents*, 2011, <http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20%282011%29.pdf>.

⁸ Susan D. Phillips, *Video Visits for Children Whose Parents are Incarcerated*, The Sentencing Project, 2012, 5, http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf.

Enhance Employment Opportunities for Individuals Who Have or Are Seeking Occupational and Professional Licenses

OFFERING HEARINGS TO INDIVIDUALS BEFORE DENYING OR REVOKING LICENSES INCREASES FAIRNESS, CONSISTENCY

Many individuals who enter prison or jail practiced a trade before becoming involved in the criminal justice system. Others learn a trade while incarcerated through available vocational programs. However, once released from incarceration, individuals with felony or certain misdemeanor convictions are restricted from obtaining or maintaining an occupational license in certain fields and under particular circumstances,¹ denying them the opportunity to practice their given trade and support themselves and their families.

The Texas Occupations Code, Section 53, extends to licensing agencies the authority to suspend or revoke a person's license, disqualify a person from receiving a license, or deny a person the opportunity to take a license examination **only** upon a conviction.² In all instances defined by Section 53, an extensive appeals process is spelled out, allowing license holders the chance to point out that time has elapsed since the crime was committed;³ encouraging them to show evidence of their rehabilitation;⁴ and giving them the right to provide letters of recommendation, especially from law enforcement officials.⁵

However, Chapter 1702 of the Occupations Code subverts this process by allowing licensing agencies the authority to deny individuals the right to apply for a license or suspending an already-granted license merely upon being **charged** with a crime (not indicted for or convicted of the crime). For example, the Texas Department of Public Safety – which regulates locksmiths, alarm installers, and private security, armored car, and courier firms, among others – has the power to summarily deny an individual's application for a license or suspend an already granted license **merely upon notification of pending charges** which, if proven, would render the applicant ineligible for licensure.⁶

In all instances – whether a person has been charged with or convicted of a crime – individuals should be provided the right to appeal before a license is denied or suspended, giving them the opportunity to work at their profession until a final determination is issued.

While we acknowledge that some restrictions on licensing 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 they forever stigmatize individuals who become involved in the criminal justice system. This practice diminishes the positive affirmation that comes from practicing a trade for which an individual has been trained. It also prevents individuals from supporting their families by denying them the chance to apply for a license or by revoking a license **before** they have had a chance to present all mitigating factors to a panel.

KEY FINDINGS

- Occupation 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.
- Previously incarcerated individuals who are employed are at least three times less likely to re-offend than those who are employed,⁷ reaffirming the importance of work during the critical reentry transition.

Continued on reverse.

KEY FINDINGS (CONTINUED)

- After five years of a clean record, individuals have a very low chance of re-offending.⁸
- Under current practice, an individual applying for any license under Chapter 1702 of the Occupations Code is disqualified from license eligibility for having a Dishonorable Discharge from the U.S. Military, or merely for having been discharged from the military “under other conditions determined by the board to be prohibitive,”⁹ regardless of what that discharge was for – despite what we know about the effects of Post-Traumatic Stress Syndrome on service members, and without recourse to appeal. In other words, certain military discharges are the equivalent of a conviction for licensing purposes.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 551 BY REPRESENTATIVE JOHNSON

- **HB 551 will provide individuals the opportunity to attend a hearing to present arguments and evidence in favor of their licensure before an application for a license is denied or a license is revoked.** This will improve the likelihood that work-ready Texans are licensed in their chosen trade, allowing them to support their families and contribute to the welfare of their communities, and reaffirming the value of education and employment.
- **HB 551 provides consistency and fairness across the Texas Occupations Code.** Section 53 of the Texas Occupations Code only allows denial or revocation of a license upon a conviction, while Chapter 1702 does so merely upon impending charges. This legislation does away with inconsistency. Furthermore, current restrictions against license applications due to military discharges deny the impact of trauma and combat on veterans who otherwise may have excellent qualifications; this policy change will better address their individual circumstances.

Citations

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

² Sec. 53.021. (a), Texas Occupations Code.

³ Sec. 53.023. (a)(3), Texas Occupations Code.

⁴ Sec. 53.023. (a)(5), Texas Occupations Code.

⁵ Sec. 53.023. (a)(6)(A)(B), Texas Occupations Code.

⁶ Sec. 1702.364. (a)(1), Texas Occupations Code.

⁷ Goodwill Industries of Central Texas, *Annual Report 2007*, <http://www.austingoodwill.org/media/literature/Annual%20Report%202007%20Web.pdf>.

⁸ 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>.

⁹ Sec. 1702.113. (a)(3), Texas Occupations Code.

Making Accurate Reentry Resource Information More Accessible to Incarcerated Individuals Prior to Release Will Decrease Recidivism and Save Money

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

The transition from prison back to the community is unexpectedly difficult for most people leaving prison. They leave with \$100, the clothes on their back, a 10-day supply of medication, and a bus ticket home.¹ Oftentimes, they leave on cold winter days without a coat to wear. Even when basic needs are met, however, there remains the extraordinary challenge of finding a job and housing when most of those doors are closed to them.

Ideally, reentry planning begins upon initial intake into a corrections facility, where practitioners identify factors that have led to a person's incarceration and, based on those factors, develop an individualized treatment plan – always with a vision of post-release outcomes in mind.² For instance, incarcerated individuals whose route to prison included substance abuse problems are less likely to recidivate when provided treatment in prison and aftercare following release. Ultimately, planning for a successful reentry entails a “hand off” between the prison system and community supports based on individual need.

Texas has Gaps in its Reentry System

The reentry system in Texas falls significantly short of this ideal. The Texas Department of Criminal Justice (TDCJ) is appropriated only enough funds to employ 139 Reentry Case Managers to help more than 75,000 incarcerated individuals who leave prison each year.³ These Case Managers seldom have enough time to do more than order social security cards and birth certificates for exiting individuals, focusing most of their efforts on the most at-risk people leaving prison.⁴

As such, incarcerated individuals must do their own planning. They must locate and apply for continuing education in the community. Veterans who received supports prior to incarceration must contact providers to restore services post-release. Some individuals are being released to overcrowded state-run halfway houses, and they must get on the waiting list for safer, more stable housing as soon as possible. Improved access to this information before one is released increases the likelihood of success post-release.

Inaccessible Reentry Resource Information Comes at a High Cost to the State

Inaccurate, outdated, or inaccessible resource information carries additional costs to the state. When individuals do not have family members willing to take them in upon release, they must quickly locate private halfway house options or risk waiting in custody for additional months beyond their projected release dates for one of only 1,880 state-run halfway house beds available to the nearly 75,000 people released each year.⁵ **Outdated halfway house information slows the process and costs the state additional funds, keeping people in custody long past projected release dates.**

Continued on reverse.

Local Reentry Resource Information is Already Available

Many private, non-profit, and faith-based organizations have already compiled locale-specific resource lists that could be made available to incarcerated individuals preparing for their return to society. For instance, a team of community leaders in Travis County compiled a resource guide for those returning to the Austin area that contains nearly 50 pages of resources, including 27 housing resources available to recently released individuals.⁶ Moreover, Reentry Case Managers have their own database of resources that they utilize for the limited number of people they are able to help. Expanding incarcerated individuals' access to this information would greatly help them formulate successful reentry plans.

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 of...existing local programs and transitional services; and other providers of services as necessary to adequately assess and address the needs of each offender.”⁷ **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.**
- Recently released individuals who experience difficulty accessing clothing, food, shelter, medical care, or transportation are at **exceptionally high risk of returning to crime** as a means to provide for basic needs.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 569 BY REPRESENTATIVE ALLEN

- **HB 569 will provide critical information to incarcerated individuals, preparing them for a 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 prior to release.
- **HB 569 will provide incarcerated individuals who are within six months of release with their own community-specific resource list,** enabling them to readily access information in the event they must change their plans.

Citations

¹ Texas Department of Criminal Justice Parole Division, *Policy and Operating Procedure #PD/POP-3.1.2: Release Payment* (“Gate Money”), December 6, 2012, https://www.tdcj.state.tx.us/documents/parole/03.01.02_parole_policy.pdf.

² Urban Institute Justice Policy Center, *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups*, Research Report, September, 2008, 6-23, http://www.urban.org/UploadedPDF/411767_successful_reentry.pdf.

³ Texas Department of Criminal Justice, *Biennial Report of the Reentry and Integration Division*, September 1, 2014, 11, http://tdcj.state.tx.us/documents/rid/RID_Reentry_Biennial_Report_8_28_14.pdf.

⁴ Ibid, 11.

⁵ Texas Department of Criminal Justice, *Legislative Appropriations Request for Fiscal Years 2016 and 2017*, August 25, 2014, 175, <http://docs.lbb.state.tx.us/display.aspx?DocType=LAR&Year=201>.

⁶ Travis County Justice and Public Safety Division, *Travis County Reentry Success Guide: A Guide to Travis County Area Resources for People Leaving Jail or Prison*, Revised May 2012, <http://www.reentryroundtable.net/wp-content/uploads/2012/06/Resource-Guide-May-2012.pdf>.

⁷ TEX. GOV. CODE § 501.092(b)(2)-(5)

⁸ Urban Institute, *Release Planning*, 2.

**Monetary Donations to Charitable Veterans' Organizations
in Lieu of Court-Ordered Community Service Help Texas Veterans**
Contributions to Veterans' Organizations Provide Stability for Veterans

**MONETARY DONATIONS TO CHARITABLE VETERANS' ORGANIZATIONS HAVE A POSITIVE ECONOMIC IMPACT ON TEXAS
VETERANS AND THEIR FAMILIES, HELPING VETERANS AFTER DISCHARGE**

Texas has the second-largest veteran population in the United States with approximately 1.7 million¹ non-active-duty military veterans, in addition to active-duty personnel stationed at military bases across the state. Veterans in the United States can face economic and other hardships after military discharge and during their return to civilian life.

Despite being lauded as "heroes," many veterans face poverty and unemployment² and may lack the finances, resources, and tools to complete a successful transition at home. In Texas, 19,000 veterans, or 8.7 percent, were out of work in 2014, up from 8.3 percent in 2012 and much higher than the 2013 average unemployment rate of 6.3 percent for all Texans.³ One in nine veterans is living at or below the poverty line, and 13 percent of homeless people in the US have been in the military.⁴

Overcoming these issues may require public resources and assistance. Court-ordered monetary donations to charitable veterans' organizations can provide financial assistance for medical bills, home and car modifications, housing and employment assistance, food, and other help, enabling a positive return to the community.

**MONETARY DONATIONS TO CHARITABLE VETERANS' ORGANIZATIONS HELP DISABLED VETERANS AND THEIR CAREGIVERS
ACCESS SPECIALIZED REHABILITATION AND COUNSELING ASSISTANCE**

Many veterans return home with physical disabilities and mental health disorders such as traumatic brain injury, post-traumatic stress disorder, and military sexual trauma. Court-ordered monetary donations to charitable veterans' organizations will provide veterans with greater access to rehabilitative treatment and counseling services outside of U.S. Department of Veterans Administration hospitals. Such services help veterans heal and improve their lives, promoting family stability.

MONETARY DONATIONS TO CHARITABLE VETERANS' ORGANIZATIONS ASSIST CHILDREN OF VETERANS

The military lifestyle can present challenges for veterans' children and families, including frequent relocation, school transitions, separation from extended family, increased responsibility coupled with a sense of loss when a parent deploys, and the physical and psychological stress faced when a parent returns.⁵ Schools and community agencies have begun to focus on the effect of this stress on the children of veterans, finding them at risk for physical, psychological, and family-functioning difficulties, and negatively affected by deployment-related issues.⁶ Court-ordered monetary donations to charitable veterans' organizations can support educational institutions and after-school mentoring programs that serve children of military families.

Continued on reverse.

KEY FINDINGS

- From 2001 through 2014, Texas spent \$786.4 million on veterans of the Iraq and Afghanistan wars.⁷
- Approximately 27 percent, or 430,988, of Texas veterans, reported a disability in 2010.⁸
- Budget cuts at federal, state, and local levels have led to public-sector job losses, and because of the high concentration of veterans in public-sector employment, veterans are likely to be disproportionately affected by current and future budget cuts.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 583 BY REPRESENTATIVE LARSON

- **HB 583 provides financial aid for charitable veterans' organizations through court-ordered monetary donations, allowing such organizations to better provide veterans with needed resources and assistance as they transition to civilian life.** Court-ordered monetary donations to charitable veterans' organizations will enable greater assistance to veterans and their families during economic hardship, helping them avoid homelessness and providing improved linkage to treatment, counseling, and other resources.
- **HB 583 saves Texas money.** Court-ordered monetary donations to charitable veterans' organizations will allow more veterans to access non-government resources and services, thereby reducing state expenditures on veterans.

Citations

¹ United States Department of Veterans Affairs, *Veteran Population*, November 7, 2014, http://www.va.gov/vetdata/veteran_population.asp.

² John Rowe, "US veterans face economic and physical hardship," *World Socialist Website*, December 28, 2013, <http://www.wsws.org/en/articles/2013/12/28/vets-d28.html>.

³ Sheryl Jean, "Veterans unemployment rises in Texas, falls nationally," *The Dallas Morning News*, March 20, 2014, <http://www.dallasnews.com/business/headlines/20140320-veterans-unemployment-rises-in-texas-falls-nationally.ece>.

⁴ John Rowe, "US veterans face economic and physical hardship," *World Socialist Website*, December 28, 2013, <http://www.wsws.org/en/articles/2013/12/28/vets-d28.html>.

⁵ Big Brothers Big Sisters of San Diego County, *Operation BIGS - Military Mentoring*, http://www.sdbigs.org/site/c.8hKPI5MGihI0E/b.6466745/k.47EB/Operation_Bigs_Military_Mentoring.htm.

⁶ Joy R. Pemberton, Teresa L. Kramer, Joaquin Borrego, Jr., Richard R. Owen, "Kids at the VA? A call for evidence-based parenting interventions for returning veterans," *Psychological Services*, 10(2), May (2013), 194–202, <http://www.ncbi.nlm.nih.gov/pubmed/23088402>.

⁷ Brian Smith, "Cost of Iraq and Afghanistan Veterans' Care to Texas," Boston University, January 3, 2015, <http://www.costsofwar.org/sites/default/files/articles/52/attachments/Smith%20FIN%20.pdf>.

⁸ Texas Workforce Investment Council, *Veterans in Texas: A Demographic Study*, December 2012, http://gov.texas.gov/files/twic/Veterans_in_Texas.pdf.

⁹ Joint Economic Committee, United States Congress, *Building Job Opportunities for Returning Veterans*, May 2013, http://www.jec.senate.gov/public/?a=Files.Serve&File_id=368731bc-cc81-48ea-915d-abd605064b51.

Allow a Summons Instead of Incarceration for Employed and Stable Parolees

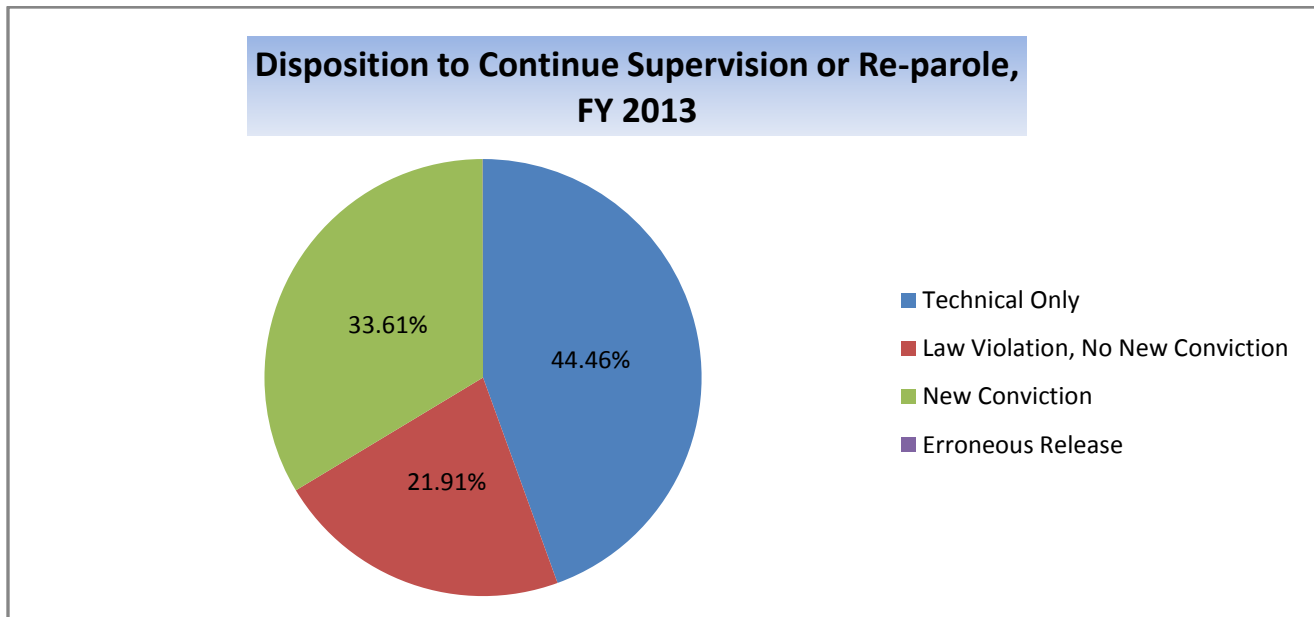
The Process that Requires Incarceration Pending a Hearing Is Costly to Texas Counties and Communities

INCARCERATING PAROLEES ACCUSED OF CERTAIN MISDEMEANORS UNNECESSARILY BURDENS COUNTIES

In fiscal year 2013, the 10 most populous Texas county jails together paid almost **\$98,000 per day** to house individuals who were incarcerated as the result of warrants issued by the Parole Division of the Texas Department of Criminal Justice (TDCJ). Known as “blue warrants,” these orders are issued by TDCJ for individuals under supervision (parole or mandatory supervision) who are accused of violating their terms of release or committing a new crime. These individuals are then incarcerated in a county jail, without access to bond or bail, until they are provided a hearing by the Board of Pardons and Paroles that will decide whether to revoke their release or reinstate the conditions of their release, with or without new conditions.

Blue warrants can be issued for an arrest ranging from capital murder to the lowest level of misdemeanor, which would not normally constitute a jail-able offense but may be a violation of release conditions. Blue warrants can be lifted in preliminary hearings but many proceed to revocation hearings, where hearing officers listen to evidence and recommend an outcome to the Board, which then renders the final decision.

In fiscal year 2013, the Board of Pardons and Paroles held 20,662 hearings¹ to decide whether to return individuals to supervision or revoke their supervision. Ultimately, the Board reinstated the supervision or re-paroled more than half, or 10,777, of those individuals,² which means the Board did not deem them a threat to society. And yet, each one of these individuals spent, on average, 34 days in the county jail.



Source: Texas Board of Pardons and Paroles Annual Statistical Report, FY 2013

Continued on reverse.

The Board of Pardons and Paroles does not provide information as to whether those who were released from jail were charged with new misdemeanors or felonies, but it is likely that the overwhelming number of these were for low-level misdemeanors. This means that many of the 10,777 individuals kept in the county jail during 2013 were held at significant county expense, potentially losing whatever employment they had, and endangering the stability of their families for crimes that normally would not have merited incarceration; likewise, they otherwise would have been eligible for bond and bail – if not for the requirement by TDCJ that all individuals for whom blue warrants are issued **MUST** be held until they waive their hearing or that hearing is conducted.

KEY FINDINGS

- The 10 Texas county jails with the largest populations on November 1, 2014, housed 1,585 individuals who were being held on blue warrants for new charges.³ At an average aggregate daily cost of \$97,808, these ten counties spent approximately \$36 million in fiscal year 2013 to house individuals on blue warrants for new charges, half of whom were ultimately released back into their communities.
- Individuals with criminal records who are seeking employment are offered half as many positions as job seekers with identical qualifications but no record.⁴ When individuals with records find stable employment, it is crucial that they face as few obstacles as possible to keeping that employment, or risk recidivating.
- Formerly incarcerated individuals have a much more difficult time finding housing than individuals without a record; an estimated four out of five landlords employ background checks to help them screen out prospective tenants with criminal records.⁵ Again, challenges to keeping stable housing should be kept at a minimum to prevent re-offending.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 710 BY CHAIRMAN TURNER

- **HB 710 will allow the Parole Division of the Texas Department of Criminal Justice to issue a summons, rather than a blue warrant, for certain individuals accused of violating their terms of release or committing a new crime.** More specifically, this will apply to individuals who have been charged with certain misdemeanors and who can show a record of stability and employment.
- **HB 710 will save counties millions of dollars, allowing them to devote funds to other local endeavors that will increase community prosperity and contribute to public safety.** County jails are obligated to house individuals charged with blue warrants, even though these individuals otherwise qualify for and are able to pay for release on bond or bail. This drains county coffers of funds that could be used to address other, more immediate issues that could have a huge impact on local communities.
- **HB 710 will allow individuals who have committed minor crimes but demonstrated long-term stability to keep their housing and employment while they await the decision of the Board of Pardons and Paroles.** The data demonstrates the undeniable barriers that formerly incarcerated individuals face when seeking housing and employment. This points to the necessity of ensuring that individuals be allowed to keep working and paying their bills instead of sitting uselessly in jail if they have only been charged with minor violations of the law.

Citations

¹ Texas Board of Pardons and Paroles, *Annual Statistical Report, Fiscal Year 2013*, 18, <http://www.tdcj.state.tx.us/bpp/publications/BPP%20StatisticalReport%20FY%202014.pdf>.

² Ibid., 22.

³ Texas Commission on Jail Standards, *Abbreviated Population Report for 11/1/2014*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf> (To arrive at cost per day, access “Immigration Detainer Report,” <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf> and divide total cost to county by number of inmate days).

⁴ Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010, 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pca_assets/2010/CollateralCosts1pdf.pdf.

⁵ Rebecca Vallas and Sharon Dietrich, “One strike and you’re out: How we can eliminate barriers to economic security and mobility for people with criminal records.” *Center for American Progress*, 19, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 840

Reduce Administrative Costs, and Promote Family and Employment Stability *Allow Texas to Develop its Own Reentry Policies with Federal Food Assistance Funds*

TEXAS REMAINS UNNECESSARILY COMPLIANT WITH FEDERAL REGULATIONS, MISSING OPPORTUNITIES TO PREVENT RECIDIVISM

Missed Opportunities Leave Texas Lagging Behind Other States

The Supplemental Nutrition Assistance Program (SNAP) is a federal program, administered by each state, that provides assistance to qualifying recipients so they can buy food while participating in structured job search and training programs. **Federal funds cover nearly all of the costs associated with food benefits, administration, and Employment and Training (E&T) programs.**¹

According to Section 115 of the Personal Responsibility and Work Opportunity Act of 1996, those convicted of felony drug offenses are not eligible for these benefits “unless the state passes legislation to extend benefits to these individuals.”² Already, 41 states have elected to develop their own policies when it comes to SNAP eligibility, yet **Texas remains among a handful of states that has continued to abide by federal law.**³

This is a surprising lack of action given the state’s history of taking the lead in public-policy innovations. Texas was one of the first states to pass its own work-centered public assistance policies, at least a year before the federal government took action.⁴ The result is that **the state continues to miss a major opportunity to promote employment stability and reintegration** for a large number of formerly incarcerated individuals, as well as those convicted of certain felony offenses.

Already, 21 states have changed statute to eliminate the felony drug offense bar on SNAP benefits, and another 20 have modified law to allow SNAP benefits for this population after meeting certain requirements.

Source:
Congressional Research Service

SNAP Promotes Employment Stability

Once an individual qualifies for SNAP benefits, he or she is required to report to a local workforce development center for job-search assistance, training, or other employment-related activities authorized by the state.⁵ Unless disabled or elderly, **a head of household who is not working must participate in these programs at least 30 hours weekly or they risk losing food benefits.**

These programs are an important part of the overall strategy to promote employment stability among individuals with a past felony conviction. Many of the local E&T programs refer participants to specialized programs aimed at providing quick and intensive vocational training to speed the path toward financial stability. The SNAP food benefits provide some degree of stability to the individual’s family while the E&T participant completes job search and training programs.

Given that nearly 30 percent of all individuals received by the Texas Department of Criminal Justice were referred for drug-related offenses, Texas’ lack of action on SNAP eligibility removes an important tool to promote successful reintegration for a significant portion this population.

Continued on reverse.

Texas' Inaction Harms Children

Promoting employment stability among those with felony offenses is essential for restoring stability in the lives of their children. Of those arrested and/or incarcerated for felony offenses, **nearly two-thirds of females and 40 percent of males were the primary caregivers of children.**⁶ Parental felony arrest is traumatic to children, and the related consequences can create upheaval in their lives. These children experience emotional problems, housing dislocation, and undernourishment due to changes in financial stability. The effects of these experiences can have long-term effects if stability and security are not restored to their lives.⁷

SNAP benefits and related E&T programs help parents become self-reliant and provide financial stability in the lives of their children. It is critically important that Texas use every tool at its disposal to promote financial and employment stability for the parents of children affected by felony arrest.

KEY FINDINGS

- **Amending current restrictions relating to SNAP eligibility would actually 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 an “increase [in] both state and local sales tax revenue.”⁸**
- **Those convicted of felony drug offenses are often responsible for substantial probation or parole fees, court costs, and fines, which make it more difficult to afford food for their children.**⁹ Failure to pay these costs can result in harsh consequences, putting additional pressure on individuals trying to rebuild their lives post-conviction. Ineligibility for SNAP benefits adds to these difficulties, and harms successful reentry.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 840 BY REPRESENTATIVE NAISHTAT

- **HB 840 will amend eligibility requirements for Texans seeking SNAP benefits, enabling broader participation in work programs among those convicted of felony drug offenses.** This will help eligible individuals develop employment skills that reduce costly recidivism. It will also improve financial stability for children impacted by parental felony arrest.
- **HB 840 will reduce bureaucratic duties currently borne by Texas' 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.

Citations

¹ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011, 12, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

² U.S. Department of Agriculture, *Food and Nutrition Service, Reentry Myth Buster: A Product of the Federal Interagency Reentry Council*, http://www.fns.usda.gov/sites/default/files/SNAP_MythBusters.pdf.

³ Maggie McCarty, et. al, *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, (Congressional Research Service Publication R42394), 2013, <https://www.fas.org/sgp/crs/misc/R42394.pdf>.

⁴ Texas Workforce Commission, *History of Texas Welfare Reform*, 2011, <http://www.twc.state.tx.us/welref/wrhistory.html>.

⁵ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011,” 25, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

⁶ Urban Institute (2003), *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, (CPR03 0105), 4, www.urban.org/UploadedPDF/310882_families_left_behind.pdf.

⁷ Ibid, 3.

⁸ Legislative Budget Board, *Texas State Government Effectiveness and Efficiency Report*, January 2013, 166, <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.

⁹ Bannon, et. al., *Criminal Justice Debt: A Barrier to Reentry*, (Brennen Center for Justice, New York University School of Law, 2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

Documenting Veteran Status During the Intake Process Connects Incarcerated Veterans with Services and Benefits

UNIFORMLY TRACKING VETERAN STATUS WILL ENABLE LINKAGE TO KEY ASSISTANCE AND A MORE SUCCESSFUL REENTRY

Incarcerated veterans disproportionately suffer from post-traumatic stress disorder (PTSD), a condition triggered by exposure to a psychologically terrifying event, which can contribute to depression, substance abuse, and suicidal thoughts and actions. It is estimated that while only 3.6 percent of the general population exhibits PTSD symptoms,¹ 30 percent of veterans have PTSD.² **PTSD can be a driving force behind criminal behavior, and it is often exacerbated by incarceration.**³

Texas must address the specialized needs of veterans who are incarcerated in state or local corrections facilities. **It is essential that their veteran status be recorded and verified as soon as possible** by corrections personnel. Doing so will enable veterans to work with practitioners to apply for military benefits; to compile meaningful reentry plans that assist them as they transition back into society; and to coordinate with the U.S. Department of Veterans Affairs (VA) in its efforts to provide critical mental health counseling and assistance.

CURRENT MECHANISMS FOR TRACKING VETERAN STATUS ARE INADEQUATE

Until 2013, the Texas Department of Criminal Justice (TDCJ) relied on incarcerated individuals to self-identify as veterans. In 2013, HB 634 mandated TDCJ to use the Public Assistance Reporting Information System (PARIS) to identify inmates who had served in the military. However, PARIS only captures data quarterly. This prevents individuals entering state-level confinement from having speedy access to benefits and other assistance. It also prohibits county jails, with their transient population, from using PARIS. There is currently no uniform, formal system that tracks veteran data in Texas' county jails.

KEY FINDINGS

- As of 2013, Texas prisons held an estimated 10,742 veterans.⁴
- It is estimated that 1 in 10 criminal defendants and inmates have served in the U.S. military.⁵
- Veterans are at especially high risk for suicide; the VA estimates that 18 veterans commit suicide every day,⁶ and the risk is greatest upon release from confinement.⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 875 BY REPRESENTATIVE FARIAS

- **HB 875 requires the Texas Department of Criminal Justice (TDCJ) to record an individual's veteran status at intake and use the best available federal data to verify that status.** This policy will enable TDCJ to better connect veterans to counseling services, as well as employment and housing resources, which can help lower their recidivism rate.
- **HB 875 requires county sheriffs to track the status of jailed veterans.** By requiring county sheriffs to investigate and verify veteran status using the VA's Veterans Reentry Search Service or a similar service, veterans in local corrections facilities will also have greater opportunities to be connected with federal benefits and other assistance.

Citations

- ¹ RC Kessler, WT Chiu, O Demler, EE Walters, "Prevalence, severity, and comorbidity of twelve-month DSM-IV disorders in the National Comorbidity Survey Replication (NCS-R)," *Archives of General Psychiatry*, June 2005, 62(6):617-27.
- ² Terri Tanielian and Lisa Jaycox, *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 *Veteran Demographic Report on Incarcerated Veterans from 2006-2013*, Response to Open Records Request by Jorge Renaud.
- ⁵ Federal Interagency Reentry Council, *Justice-Involved Veterans*, June 2013, http://csgjusticecenter.org/wp-content/uploads/2013/06/SnapShot_Veterans.pdf.
- ⁶ 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.
- ⁷ 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.

Texas Must Adopt Effective Approaches For Reducing Graffiti

Diversion and Victim Restitution will Provide Relief to Property Owners, Save Money, And Beautify Communities

OVERLY PUNISHING GRAFFITI OFFENSES LEADS TO EXPENSIVE, INEFFICIENT OUTCOMES

Graffiti is defined as any marking, etching, or painting that defaces public or private property without the owner's permission. Despite the belief that graffiti is typically associated with gangs, it is found in all locales and jurisdictions, and in fact only a small portion of all graffiti is done by gang members.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 graffitiists 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 graffitiists, 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" 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 probationers serving as clean-up crews.⁷
- **Philadelphia has pioneered the diversion of adjudicated graffitiists into mural making**, allowing graffitiists 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.⁸ The report recommended more efforts like the Mural Arts Program (much of which is funded through private investments⁹), calling such programs "effective and cost-efficient ways of replacing eyesores with symbols of care."¹⁰

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 883 BY REPRESENTATIVE MOODY

- **HB 883 will allow a pretrial diversion program, requiring community service and victim restitution, for property owner relief, as well as 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.
- **HB 883 creates a new, minor offense level (a Class C misdemeanor) for graffiti that causes up to \$50 worth of damage.** Currently, all graffiti up to \$500 worth of damage is a Class B misdemeanor, which brings with it potential public defense expenses, county jail time, and the aforementioned collateral consequences. This new Class C offense level will make penalties for petty crime more proportional to the offenses committed and avoid wasting valuable resources on prosecution and incarceration.

Citations

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

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

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

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

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

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

⁷ Telephone conversations with Mikalajczk and Chavez, *noted directly above*.

⁸ *Commercial Corridors: A strategic investment framework for Philadelphia – Executive Summary*, March 2009, p. 7. Available at http://www.philadelphialisc.org/pdfs/Strategic_Investment_Framework_Econsult.pdf.

⁹ A. Markusen & A. Gadwa, *Creative Placemaking*, Executive Summary for the Mayor’s Institute on City Design, a leadership initiative of the National Endowment for the Arts in Partnership with the United States Conference of Mayors and American Architectural Foundation, 2010. Available at <http://www.arts.gov/pub/CreativePlacemaking-Paper.pdf>.

¹⁰ *Ibid.*, p. 9.

Dear Members of the Committee:

Thank you for allowing me this opportunity to present testimony in favor of HB 943, which will eliminate the automatic presumption of earned income in child support orders when the parent is incarcerated for more than 90 days. This will ensure that judges take into account the fact that parents are unable to earn income while incarcerated, reducing the excessively high child support debt owed by parents upon release. The bill will remove a significant barrier to successful reentry, promote family reunification, and create efficiency at the Office of Attorney Child Support division.

ASSUMPTION OF EARNED INCOME FOR CHILD SUPPORT IMPEDES REENTRY FOR FORMERLY INCARCERATED PARENTS

When attempting to establish appropriate child support payment amounts, judges will presume that an individual is working 40 hours per week at minimum wage if no evidence is submitted of the parent's resources. This will often occur when a parent does not appear for divorce or child support hearings. In these instances, judges are authorized to issue "default judgments," with the assumption of earned income. Specifically, the judge will assume that the parent is making \$14,500 per year. If that parent has two children, the court will require 25% of that income to be paid in child support.¹

One of the reasons that absent parents do not appear for a hearing, however, is that they are incarcerated. An automatic assumption of earned income will result in an incarcerated parent owing substantial amounts upon release, resulting in additional barriers to reentry. For instance, **if the parent was incarcerated for three years, he or she would owe \$10,875 in arrears for a period of time when no income was earned.** Yet the average amount of child support debt owed by formerly incarcerated parents is typically much higher than that.

Excessive child support debt owed by formerly incarcerated parents is a problem on multiple levels:

- **Challenges for formerly incarcerated parents:** Individuals attempting to reenter the community after a period of incarceration already face major barriers to employment and housing. They are often forced to accept low-wage jobs without benefits, making it more difficult to attain financial stability.
- **Challenges for the children of formerly incarcerated parents:** Children have already faced years of hardship due to parental incarceration: They have endured housing instability and other stressors that have been shown to negatively impact development.² Formerly incarcerated parents are under enormous pressure to restore stability in the lives of their children, putting increased strain on a recently released parent who is already facing monumental challenges of reintegration. The pressure to meet child support obligations – combined with debt-collection efforts for child support arrears – may lead the parent to consider methods to obtain quick cash. This dynamic is not conducive to successful family reintegration.

Continued on reverse.

- ***Inefficiencies for the Office of the Attorney General:*** Child support debt collection from formerly incarcerated parents causes additional expense and inefficiency on the state level. Much of the child support collection efforts are conducted by the Office of Attorney General (OAG), and a portion of collected payments goes toward recouping state expenditures on public assistance paid to the custodial parent or guardian. Studies have shown that state efforts to recoup unrealistic debt from formerly incarcerated parents is a major burden on the OAG's Child Support Division, draining resources that could be used to more effectively pursue realistic debt repayment.³

KEY FINDINGS

- Nearly 52 percent of incarcerated individuals in state prisons have at least one child under the age of 18.⁴
- 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 \$36,000.⁵ Other states report similarly high amounts of child support debt owed by formerly incarcerated parents upon release.⁶
- A full-time worker in the Child Support Division of the Texas Attorney General's Office handles, on average, 469 cases per year, and collects a mere \$1.1 million, which is then split between the state for public-assistance repayment, the custodial parent, and the federal government.⁷ Some of this inefficiency is related to docket congestion and efforts to recoup exceptionally high debt from formerly incarcerated parents.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 943 BY REPRESENTATIVE SENFRONIA THOMPSON

HB 943 will remove the automatic assumption of earned income when the absent parent in incarcerated for a period of 90 days or more. This bill will not force judges to set child support at \$0 just because the absent parent is incarcerated; judges must consider a range of factors, including available assets. The bill will simply remove the automatic assumption of earned income when a parent is incarcerated and unable to pursue paid employment. Child support orders can be revised once the parent is discharged or paroled. This bill will ensure that the parent is not released owing substantial amounts in arrears that cannot reasonably be paid.

Citations

¹ The Texas Office of the Attorney General (2014), "Child Support Information for Incarcerated Parents and Parents Returning to the Community," Available: <https://www.texasattorneygeneral.gov/files/cs/incarcerated.pdf>.

² National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 1. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

³ Source: Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter, p. 59-73).

⁴ National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 3. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

⁵ Information provided by Oscar Esquivel, NCP Program Specialist for the Texas Office of the Attorney General.

⁶ Administration for Children and Families, U.S. Department of Health and Human Services, Office of Child Support Enforcement (2012), "Realistic Child Support Orders for Incarcerated Parents," (Child Support Fact Sheet Series, Number 4), Available: http://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf

⁷ Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter), p. 61.

Allow the Texas Department of Criminal Justice to Document and Review Its Policies Regarding Confinement in Administrative Segregation

Documenting statistics regarding the mental health of incarcerated individuals, and conducting a review of the use of solitary confinement, will allow the Department to begin to reduce its use

Texas has the second-largest population of incarcerated individuals in solitary confinement (administrative segregation) in the country, housing more than 7,500 individuals.¹ According to the Texas Department of Criminal Justice (TDCJ), administrative segregation is intended to be used for individuals “who must be separated from the general population because they are dangerous...or they are in danger from other offenders.”² These criteria are very broad, allowing for all manner of individuals to be kept in solitary confinement, with an average length-of-stay of almost four years.³ **This is alarming: Keeping incarcerated individuals in solitary confinement is not only incredibly expensive, but it also can cause or exacerbate existing mental health disturbances.**⁴

More specifically, administrative segregation can add to mental health deterioration, including suicide, depression, paranoia, psychosis, and other antisocial behaviors, but it also breaks down a person’s ability to interact with other human beings, erodes their family relationships, and deprives them of educational, rehabilitative, and religious programming that would give them the tools to be successful upon release.⁵ According to research done by the University of Texas at Houston, formerly incarcerated individuals who have been diagnosed with a mental illness are 70 percent more likely to recidivate.⁶ Additionally, those who are released from solitary confinement are more likely to commit violent crimes.⁷

KEY FINDINGS

- TDCJ spends \$46 million a year housing inmates in administrative segregation, spending \$19.17 more on each person per day than it would spend housing a person in general population.⁸
- Altogether, TDCJ confines 4.4 percent of its prison population in administrative segregation. If TDCJ dropped its use of solitary confinement to 1.4 percent of its population, it could **save taxpayers \$31 million per year.**⁹
- On average, **a person incarcerated in Texas spends 3.7 years in solitary confinement.**¹⁰
- In 2013, TDCJ released 1,243 people directly from administrative segregation to the community. Those individuals lived for years with little human contact and had extremely limited access to education and rehabilitative programming.¹¹
- More than 60 percent of people released directly from solitary confinement were **rearrested within three years.**¹²

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1084 BY REPRESENTATIVES MÁRQUEZ, GUILLEN, AND JAMES WHITE

- **HB 1084 will require the Texas Department of Criminal Justice (TDCJ) to document the number of inmates in administrative segregation who were referred to mental health professionals, have attempted suicide, and were confined immediately before release, as well as document the recidivism rate among individuals who were confined immediately before release.** This critical data will shine a light on the mental health of individuals being placed in administrative segregation, and will ultimately allow TDCJ to formulate more effective strategies for the use of administrative segregation. Reducing the rate at which administrative segregation is used will save money, ensure greater access to programming options, and correspondingly reduce recidivism.
- **HB 1084 will require TDCJ to document the number of discharged individuals released directly from administrative segregation who have obtained regular employment within 180 days of release.** Research suggests that administrative segregation erodes the social skills required to maintain stable employment.¹³ Collecting data related to employment outcomes of those who were released directly from administrative segregation will help track the progress of this population post-release, and will provide a roadmap for developing effective in-prison programming to ensure that these individuals are better able to become productive members of their communities upon release.
- **HB 1084 will require TDCJ to review its policies regarding the use of administrative segregation and examine alternatives and methods to reduce the number of individuals housed in administrative segregation.** This data will help the Department examine its programs and initiate a plan to improve and reduce the use of administrative segregation. It is important to move toward a new institutional attitude that views solitary confinement as a rare practice to be used in exceptional circumstances and for short periods of time.¹⁴ This is a reform directly in line with the “smart on crime” approach favored by a majority of Texans.¹⁵

Citations

¹ *Solitary Confinement in Texas Prisons*, Texas Civil Rights Project, February 25, 2014, <http://solitarywatch.com/wp-content/uploads/2014/02/Texas-Civil-Rights-Project-Solitary-Confinement-in-Texas-Prisons.pdf>.

² *Offender Orientation Handbook*, Texas Department of Criminal Justice, January 2015, 6, http://www.tdcj.state.tx.us/documents/Offender_Orientation_Handbook_English.pdf.

³ Elisa Mosler, “Texas Lockdown: Solitary Confinement in the Lone Star State,” *Solitary Watch*, July 6, 2011.

⁴ Shelby Sementelli, “Advocates Urge Prison Officials to Reconsider Death Row Isolation,” *The Texas Tribune*, January 29, 2014, <http://www.kbtx.com/home/headlines/Advocates-Urge-Prison-Officials-to-Reconsider-Death-Row-Isolation-242676051.html>.

⁵ Butler, Burke, Arthur Liman, and Matthew Simpson, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, American Civil Liberties Union of Texas, February 2015, 6.

⁶ Hannah Rhodes, *UTHealth Research: Mental Health Care Lacking in State and Federal Prisons*, January 9, 2015, <https://www.uth.edu/media/story.htm?id=3a2b7eb8-093a-46bf-aa3a-629688c47022>.

⁷ Butler, Burke, Arthur Liman, and Matthew Simpson, *A Solitary Failure*.

⁸ *Ibid*, 9.

⁹ *Ibid*.

¹⁰ *Ibid*.

¹¹ *Ibid*, 2.

¹² *Ibid*, 8.

¹³ *Ibid*, 31.

¹⁴ *Ibid*, 11.

¹⁵ Nik Rajkovic, *Poll: Texans Support Criminal Justice Reform*, Texas Public Policy Foundation, March 12, 2015, http://www.texaspolicy.com/press_release/detail/poll-texans-support-criminal-justice-reform.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 1267

Promote Family and Employment Stability

Allow Texas to Develop its Own Reentry Policies with Federal Food Assistance Funds

TEXAS REMAINS UNNECESSARILY COMPLIANT WITH FEDERAL REGULATIONS, MISSING OPPORTUNITIES TO PREVENT RECIDIVISM

Missed Opportunities Leave Texas Lagging Behind Other States

The Supplemental Nutrition Assistance Program (SNAP) is a federal program, administered by each state, that provides assistance to qualifying recipients so they can buy food while participating in structured job search and training programs. **Federal funds cover nearly all of the costs associated with food benefits, administration, and Employment and Training (E&T) programs.**¹

According to Section 115 of the Personal Responsibility and Work Opportunity Act of 1996, those convicted of felony drug offenses are not eligible for these benefits “unless the state passes legislation to extend benefits to these individuals.”² Already, 41 states have elected to develop their own policies when it comes to SNAP eligibility, yet **Texas remains among a handful of states that has continued to abide by federal law.**³

This is a surprising lack of action given the state’s history of taking the lead in public-policy innovations. Texas was one of the first states to pass its own work-centered public assistance policies, at least a year before the federal government took action.⁴ The result is that **the state continues to miss a major opportunity to promote employment stability and reintegration** for a large number of formerly incarcerated individuals, as well as those convicted of certain felony offenses.

Already, 21 states have changed statute to eliminate the felony drug offense bar on SNAP benefits, and another 20 have modified law to allow SNAP benefits for this population after meeting certain requirements.

Source:
*Congressional
Research Service*

SNAP Promotes Employment Stability

Once an individual qualifies for SNAP benefits, he or she is required to report to a local workforce development center for job-search assistance, training, or other employment-related activities authorized by the state.⁵ Unless disabled or elderly, **a head of household who is not working must participate in these programs at least 30 hours weekly or they risk losing food benefits.**

These programs are an important part of the overall strategy to promote employment stability among individuals with a past felony conviction. Many of the local E&T programs refer participants to specialized programs aimed at providing quick and intensive vocational training to speed the path toward financial stability. The SNAP food benefits provide some degree of stability to the individual’s family while the E&T participant completes job search and training programs.

Given that nearly 30 percent of all individuals received by the Texas Department of Criminal Justice were referred for drug-related offenses, Texas’ lack of action on SNAP eligibility removes an important tool to promote successful reintegration for a significant portion this population.

Continued on reverse.

Texas' Inaction Harms Children

Promoting employment stability among those with felony offenses is essential for restoring stability in the lives of their children. Of those arrested and/or incarcerated for felony offenses, **nearly two-thirds of females and 40 percent of males were the primary caregivers of children.**⁶ Parental felony arrest is traumatic to children, and the related consequences can create upheaval in their lives. These children experience emotional problems, housing dislocation, and undernourishment due to changes in financial stability. The effects of these experiences can have long-term effects if stability and security are not restored to their lives.⁷

SNAP benefits and related E&T programs help parents become self-reliant and provide financial stability in the lives of their children. It is critically important that Texas use every tool at its disposal to promote financial and employment stability for the parents of children affected by felony arrest.

KEY FINDINGS

- **People convicted of felony drug offenses are often responsible for substantial probation or parole fees, court costs, and fines, which make it more difficult to afford food for their children.**⁸ Failure to pay these costs can result in harsh consequences, putting additional pressure on individuals trying to rebuild their lives post-conviction. Ineligibility for SNAP benefits adds to these difficulties, and harms successful reentry.
- **Amending current restrictions relating to SNAP eligibility would increase the flow of federal funds to low-income Texans, resulting in an “increase [in] both state and local sales tax revenue.”**⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1267 BY REPRESENTATIVE THOMPSON

- **HB 1267 will amend eligibility requirements for Texans seeking SNAP benefits, enabling broader participation in work programs among those convicted of felony drug offenses.** This will help eligible individuals develop employment skills that reduce costly recidivism. It will also improve financial stability for children impacted by parental felony arrest.

Note: HB 1267 will prohibit SNAP eligibility for the first two years following a person's felony drug conviction.

Citations

¹ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011, 12, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

² U.S. Department of Agriculture, Food and Nutrition Service, *Reentry Myth Buster: A Product of the Federal Interagency Reentry Council*, http://www.fns.usda.gov/sites/default/files/SNAP_MythBusters.pdf.

³ Maggie McCarty, et. al, *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, (Congressional Research Service Publication R42394), 2013, <https://www.fas.org/sgp/crs/misc/R42394.pdf>.

⁴ Texas Workforce Commission, *History of Texas Welfare Reform*, 2011, <http://www.twc.state.tx.us/welref/wrhistory.html>.

⁵ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011,” 25, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

⁶ Urban Institute (2003), *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, (CPR03 0105), 4, www.urban.org/UploadedPDF/310882_families_left_behind.pdf.

⁷ Ibid, 3.

⁸ Bannon, et. al., *Criminal Justice Debt: A Barrier to Reentry*, (Brennen Center for Justice, New York University School of Law, 2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

⁹ Legislative Budget Board, *Texas State Government Effectiveness and Efficiency Report*, January 2013, 166, <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 1267

Promote Family and Employment Stability

Allow Texas to Develop its Own Reentry Policies with Federal Food Assistance Funds

TEXAS REMAINS UNNECESSARILY COMPLIANT WITH FEDERAL REGULATIONS, MISSING OPPORTUNITIES TO PREVENT RECIDIVISM

Missed Opportunities Leave Texas Lagging Behind Other States

The Supplemental Nutrition Assistance Program (SNAP) is a federal program, administered by each state, that provides assistance to qualifying recipients so they can buy food while participating in structured job search and training programs. **Federal funds cover nearly all of the costs associated with food benefits, administration, and Employment and Training (E&T) programs.**¹

According to Section 115 of the Personal Responsibility and Work Opportunity Act of 1996, those convicted of felony drug offenses are not eligible for these benefits “unless the state passes legislation to extend benefits to these individuals.”² Already, 41 states have elected to develop their own policies when it comes to SNAP eligibility, yet **Texas remains among a handful of states that has continued to abide by federal law.**³

This is a surprising lack of action given the state’s history of taking the lead in public-policy innovations. Texas was one of the first states to pass its own work-centered public assistance policies, at least a year before the federal government took action.⁴ The result is that **the state continues to miss a major opportunity to promote employment stability and reintegration** for a large number of formerly incarcerated individuals, as well as those convicted of certain felony offenses.

Already, 21 states have changed statute to eliminate the felony drug offense bar on SNAP benefits, and another 20 have modified law to allow SNAP benefits for this population after meeting certain requirements.

Source:
*Congressional
Research Service*

SNAP Promotes Employment Stability

Once an individual qualifies for SNAP benefits, he or she is required to report to a local workforce development center for job-search assistance, training, or other employment-related activities authorized by the state.⁵ Unless disabled or elderly, **a head of household who is not working must participate in these programs at least 30 hours weekly or they risk losing food benefits.**

These programs are an important part of the overall strategy to promote employment stability among individuals with a past felony conviction. Many of the local E&T programs refer participants to specialized programs aimed at providing quick and intensive vocational training to speed the path toward financial stability. The SNAP food benefits provide some degree of stability to the individual’s family while the E&T participant completes job search and training programs.

Given that nearly 30 percent of all individuals received by the Texas Department of Criminal Justice were referred for drug-related offenses, Texas’ lack of action on SNAP eligibility removes an important tool to promote successful reintegration for a significant portion this population.

Continued on reverse.

Texas' Inaction Harms Children

Promoting employment stability among those with felony offenses is essential for restoring stability in the lives of their children. Of those arrested and/or incarcerated for felony offenses, **nearly two-thirds of females and 40 percent of males were the primary caregivers of children.**⁶ Parental felony arrest is traumatic to children, and the related consequences can create upheaval in their lives. These children experience emotional problems, housing dislocation, and undernourishment due to changes in financial stability. The effects of these experiences can have long-term effects if stability and security are not restored to their lives.⁷

SNAP benefits and related E&T programs help parents become self-reliant and provide financial stability in the lives of their children. It is critically important that Texas use every tool at its disposal to promote financial and employment stability for the parents of children affected by felony arrest.

KEY FINDINGS

- **People convicted of felony drug offenses are often responsible for substantial probation or parole fees, court costs, and fines, which make it more difficult to afford food for their children.**⁸ Failure to pay these costs can result in harsh consequences, putting additional pressure on individuals trying to rebuild their lives post-conviction. Ineligibility for SNAP benefits adds to these difficulties, and harms successful reentry.
- **Amending current restrictions relating to SNAP eligibility would increase the flow of federal funds to low-income Texans, resulting in an “increase [in] both state and local sales tax revenue.”**⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1267 BY REPRESENTATIVE THOMPSON

- **HB 1267 will amend eligibility requirements for Texans seeking SNAP benefits, enabling broader participation in work programs among those convicted of felony drug offenses.** This will help eligible individuals develop employment skills that reduce costly recidivism. It will also improve financial stability for children impacted by parental felony arrest.

Note: HB 1267 will prohibit SNAP eligibility for the first two years following a person's felony drug conviction.

Citations

¹ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011, 12, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

² U.S. Department of Agriculture, Food and Nutrition Service, *Reentry Myth Buster: A Product of the Federal Interagency Reentry Council*, http://www.fns.usda.gov/sites/default/files/SNAP_MythBusters.pdf.

³ Maggie McCarty, et. al, *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, (Congressional Research Service Publication R42394), 2013, <https://www.fas.org/sgp/crs/misc/R42394.pdf>.

⁴ Texas Workforce Commission, *History of Texas Welfare Reform*, 2011, <http://www.twc.state.tx.us/welref/wrhistory.html>.

⁵ Texas Workforce Commission, *Supplemental Nutrition Assistance Program Employment and Training Guide*, 2011,” 25, <http://www.twc.state.tx.us/files/partners/snap-et-guide-twc.pdf>.

⁶ Urban Institute (2003), *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, (CPR03 0105), 4, www.urban.org/UploadedPDF/310882_families_left_behind.pdf.

⁷ Ibid, 3.

⁸ Bannon, et. al., *Criminal Justice Debt: A Barrier to Reentry*, (Brennan Center for Justice, New York University School of Law, 2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

⁹ Legislative Budget Board, *Texas State Government Effectiveness and Efficiency Report*, January 2013, 166, <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 1363, which will provide greater opportunities for recovery and rehabilitation for those engaged in prostitution.

REMOVING FELONY CONVICTION FOR PROSTITUTION RECOGNIZES HUMAN TRAFFICKING ROOTS IN SEXUAL EXPLOITATION

While not all human trafficking is done for the purpose of sexual exploitation – and not all prostitution is the result of trafficking – the two are inextricably entwined. In 2009, Texas created the Texas Human Trafficking Prevention Task Force (THTPTF), which was meant to spotlight and provide recommendations to address the dehumanizing and destructive results of trafficking. According to data provided by the Task Force in its 2014 report, **Texas saw 737 human trafficking incidences and 210 human trafficking-related arrests between January 1, 2007, and December 14, 2014, with 85 convictions.**¹ In addition, the Texas Department of Criminal Justice (TDCJ) reported that, as of August of 2014, there were 98 individuals serving sentences for human trafficking-related offenses or compelling prostitution.²

Separate from those reported figures, the *Austin American-Statesman* estimated that during the summer of 2012, **TDCJ had 350 individuals serving sentences for prostitution convictions without one person having been convicted for solicitation of prostitution services.**³ This amplifies a comment in the Task Force's 2012 report, that human trafficking is "largely driven by the principles of supply and demand."⁴ The terrible truth is that it is the supply part of the equation at issue here – when trafficking of humans is done for sexual exploitation, it is the prostitutes, the victims, who are convicted and punished, not those who pay for their services.

Almost all prostitutes share many common characteristics, among them substance abuse, mental illness, homelessness, and above all, a history of sexual abuse and profound trauma. Over and over, studies demonstrate that the women and children who are trafficked and forced to turn to prostitution, along with the disenfranchised youth who exchange sex for favors and get trapped in that lifestyle, are victims of sexual abuse who feel they have no other choice. According to one study of youth prostitution, "There is no curriculum that can provide an abused and frightened fourteen-year-old with the cognitive ability and refusal skills to outthink a 26-year-old offering love, money, and to take care of them."⁵

The 2001 legislation (HB 460) that made prostitution a felony offense in Texas has not helped to keep the public safe, which is the philosophical foundation of our criminal laws, nor has it addressed victimization. **In fact, keeping prostitution a felony has only served to drive those who are trapped in prostitution further into the shadows while allowing those who solicit prostitution to go unpunished.** It is a clear example of a policy driven by public opinion rather than systematic analysis. The collateral consequences of a criminal conviction – decreased opportunities for legitimate employment, denial of adequate housing, limited access to medical and mental health services – make leaving a life of prostitution exponentially more difficult when that conviction is a felony. In addition, the overwhelming majority of arrests for prostitution-related offenses are of women, making this particular felony one that further marginalizes females.

KEY FINDINGS

- It costs an average of \$15,000 to \$18,500 annually to house an individual in a state jail or prison in Texas, 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.**⁶

Continued on reverse.

KEY FINDINGS, CONTINUED

- 65 percent to 95 percent of those in prostitution were sexually assaulted as children.⁷
- A nine-country study of prostitution found that 68 percent of the prostitutes studied exhibited Post-Traumatic Stress Syndrome (PTSD) symptoms in the same range as treatment-seeking combat veterans, battered women seeking shelter, and refugees from state-sponsored torture.⁸
- Laws against prostitution criminalize both men and women engaging in prostitution, but they clearly discriminate against women. A Boston study showed that 92 percent of prostitution-related arrests were of women; a similar study in Chicago showed that 89 percent of all arrests for prostitution were of women.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1363 BY REPRESENTATIVE JOHNSON

- **HB 1363 will encourage those arrested for prostitution to receive treatment for addiction issues and their history of trauma.** In 2013, the Legislature passed SB 484, authorizing the creation of county-level programs that would offer an array of counseling to individuals charged with prostitution. While contingent upon funding, these programs offer an innovative and necessary component of any statewide effort to create a new approach to prostitution.
- **HB 1363 will serve to help fulfill the recommendations set forth by the Texas Human Trafficking Prevention Task Force.** The Task Force recommends that the Texas Legislature recognize that “human trafficking victims – through force, fraud, or coercion – sometimes commit illegal acts during their victimization.”¹⁰ These acts are considered criminal and occur most often in the context of sex trafficking. HB 1363 will recognize that difficulty and will not further victimize individuals, overwhelmingly women, instead allowing them to continue their lives without the added burden of a felony conviction.

Citations

¹ The Human Trafficking Prevention Task Force Report, 2014. Presented to the Texas Legislature, Dec. 2014. p. 3. Available at https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf

² Ibid, p. 3.

³ Ward, M. “Texas rethinks law making repeat prostitution a felony.” Austin American-Statesman, Aug. 26, 2012. Available at <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>

⁴ The Human Trafficking Prevention Task Force Report, 2012. Presented to the Texas Legislature, Dec. 2012. p. 7. Available at https://www.texasattorneygeneral.gov/files/agency/20121912_htr_fin_3.pdf

⁵ Boyer, D. (2008). “Who pays the price? Assessment of youth involvement in prostitution in Seattle.” Report by the City of Seattle, Human Services Department. p. 8. Available at <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>

⁶ Ward, M. “Texas rethinks law.”

⁷ Farley, M. (2004). “Prostitution is sexual violence.” *Psychiatric Times*. Available at <http://www.psychiatrictimes.com/sexual-offenses/prostitution-sexual-violence>

⁸ Alvares, Cotton, Farly, et al. (2003). “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder.” *Journal of Trauma Practice*. Available at <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

⁹ Hughes, D. (2005). “Combating Sex Trafficking: Advancing Freedom for Women and Girls.” *Keynote Address, Northeast Women’s Studies Association Annual Conference*. Available at http://www.prostitutionresearch.com/Hughes%20combating_sex_trafficking.pdf

¹⁰ The Human Trafficking Prevention Task Force Report, 2014.

Texas Should Not Re-Victimize Individuals Convicted of Prostitution *Felony Convictions Further Traumatize Many Who Are Victims Of Human Trafficking*

REMOVING FELONY CONVICTION FOR PROSTITUTION RECOGNIZES HUMAN TRAFFICKING ROOTS IN SEXUAL EXPLOITATION

While not all human trafficking is done for the purpose of sexual exploitation – and not all prostitution is the result of trafficking – the two are inextricably entwined. In 2009, Texas created the Texas Human Trafficking Prevention Task Force (THTPTF), which was meant to spotlight and provide recommendations to address the dehumanizing and destructive results of trafficking. According to data provided by the Task Force in its 2014 report, **Texas saw 737 human trafficking incidences and and 210 human trafficking-related arrests between January 1, 2007, and December 14, 2014, with 85 convictions.**¹ In addition, the Texas Department of Criminal Justice (TDCJ) reported that, as of August of 2014, there were 98 individuals serving sentences for human trafficking-related offenses or compelling prostitution.²

Separate from those reported figures, the *Austin American-Statesman* estimated that during the summer of 2012, **TDCJ had 350 individuals serving sentences for prostitution convictions without one person having been convicted for solicitation of prostitution services.**³ This amplifies a comment in the Task Force's 2012 report, that human trafficking is "largely driven by the principles of supply and demand."⁴ The terrible truth is that it is the supply part of the equation at issue here – when trafficking of humans is done for sexual exploitation, it is the prostitutes, the victims, who are convicted and punished, not those who pay for their services.

Almost all prostitutes share many common characteristics, among them substance abuse, mental illness, homelessness, and above all, a history of sexual abuse and profound trauma. Over and over, studies demonstrate that the women and children who are trafficked and forced to turn to prostitution, along with the disenfranchised youth who exchange sex for favors and get trapped in that lifestyle, are victims of sexual abuse who feel they have no other choice. According to one study of youth prostitution, "There is no curriculum that can provide an abused and frightened fourteen-year-old with the cognitive ability and refusal skills to outthink a 26-year-old offering love, money, and to take care of them."⁵

The 2001 legislation (HB 460) that made prostitution a felony offense in Texas has not helped to keep the public safe, which is the philosophical foundation of our criminal laws, nor has it addressed victimization. **In fact, keeping prostitution a felony has only served to drive those who are trapped in prostitution further into the shadows while allowing those who solicit prostitution to go unpunished.** It is a clear example of a policy driven by public opinion rather than systematic analysis. The collateral consequences of a criminal conviction – decreased opportunities for legitimate employment, denial of adequate housing, limited access to medical and mental health services – make leaving a life of prostitution exponentially more difficult when that conviction is a felony. In addition, the overwhelming majority of arrests for prostitution-related offenses are of women, making this particular felony one that further marginalizes females.

KEY FINDINGS

- It costs an average of \$15,000 to \$18,500 annually to house an individual in a state jail or prison in Texas, 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.**⁶

Continued on reverse.

KEY FINDINGS, CONTINUED

- 65 percent to 95 percent of those in prostitution were sexually assaulted as children.⁷
- A nine-country study of prostitution found that 68 percent of the prostitutes studied exhibited Post-Traumatic Stress Syndrome (PTSD) symptoms in the same range as treatment-seeking combat veterans, battered women seeking shelter, and refugees from state-sponsored torture.⁸
- Laws against prostitution criminalize both men and women engaging in prostitution, but they clearly discriminate against women. A Boston study showed that 92 percent of prostitution-related arrests were of women; a similar study in Chicago showed that 89 percent of all arrests for prostitution were of women.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1363 BY REPRESENTATIVES JOHNSON, SENFRONIA THOMPSON, RIDDLE, HARLESS, MOODY, AND VILLALBA

- **HB 1363 will encourage those arrested for prostitution to receive treatment for addiction issues and their history of trauma.** In 2013, the Legislature passed SB 484, authorizing the creation of county-level programs that would offer an array of counseling to individuals charged with prostitution. These programs offer an innovative and necessary component of any statewide effort to create a new approach to prostitution. Under HB 1363, programs may be used as a pretrial diversion program, which would result in the dismissal of the offense.
- **HB 1363 will serve to help fulfill the recommendations set forth by the Texas Human Trafficking Prevention Task Force.** The Task Force recommends that the Texas Legislature recognize that “human trafficking victims – through force, fraud, or coercion – sometimes commit illegal acts during their victimization.”¹⁰ These acts are considered criminal and occur most often in the context of sex trafficking. HB 1363 recognizes that difficulty by clearly distinguishing between those who offer or sell sexual services and those who solicit or pay for sexual services. HB 1363 will not further victimize individuals, overwhelmingly women, instead allowing them to continue their lives without the added burden of a felony conviction, while continuing to hold those accused of soliciting and paying a fee for sexual services accountable for their actions.

Citations

¹ The Human Trafficking Prevention Task Force Report, 2014. Presented to the Texas Legislature, Dec. 2014. p. 3. Available at https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf

² Ibid, p. 3.

³ Ward, M. “Texas rethinks law making repeat prostitution a felony.” Austin American-Statesman, Aug. 26, 2012. Available at <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>

⁴ The Human Trafficking Prevention Task Force Report, 2012. Presented to the Texas Legislature, Dec. 2012. p. 7. Available at https://www.texasattorneygeneral.gov/files/agency/20121912_htr_fin_3.pdf

⁵ Boyer, D. (2008). “Who pays the price? Assessment of youth involvement in prostitution in Seattle.” Report by the City of Seattle, Human Services Department. p. 8. Available at <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>

⁶ Ward, M. “Texas rethinks law.”

⁷ Farley, M. (2004). “Prostitution is sexual violence.” *Psychiatric Times*. Available at <http://www.psychiatrictimes.com/sexual-offenses/prostitution-sexual-violence>

⁸ Alvares, Cotton, Farly, et al. (2003). “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder.” *Journal of Trauma Practice*. Available at <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

⁹ Hughes, D. (2005). “Combating Sex Trafficking: Advancing Freedom for Women and Girls.” *Keynote Address, Northeast Women’s Studies Association Annual Conference*. Available at http://www.prostitutionresearch.com/Hughes%20combating_sex_trafficking.pdf

¹⁰ The Human Trafficking Prevention Task Force Report, 2014.

Stop Treating Truancy as an Adult Criminal Offense

Decriminalizing Truancy and Shifting the Responsibility to Schools Will Alleviate Court Dockets, Reduce the Burden on Families, and Help Youth Access Behavioral Services

TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called “failure to attend school” (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students’ needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student’s control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

KEY FINDINGS

- Failure to Attend School is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.⁸ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.⁹ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁰
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹¹

Continued on reverse.

KEY FINDINGS (CONTINUED)

- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.¹²
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1490 BY REPRESENTATIVES HUBERTY AND DESHOTEL

- **HB 1490 repeals “failure to attend school” as a criminal offense, meaning truancy cases can only be heard as a Child in Need of Supervision (CINS) offense in juvenile court.** Under CINS, students and their families will have access to remedial services designed to address their underlying needs, which are simply not available for adult Class C misdemeanors. While there is some concern that juvenile courts could not handle an influx of truancy cases, requiring schools to be more accountable for their students’ unexcused absences through progressive truancy interventions should drastically reduce the number of students referred to court. HB 1490 will remove the trappings of criminality from student behavior and get students and families the services they need.
- **HB 1490 requires schools to employ a progressive truancy intervention system that must meet certain statutory minimums for school attendance violations, and that is designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. HB 1490 accomplishes this by requiring schools to implement a progressive truancy intervention system. The system must have at least three tiers, with the first tier triggered at three absences and requiring a conference with the student and parent that results in an attendance contract. The remaining tiers are left more to the discretion of the school to develop, with the only requirement that at least one of the tiers include an individualized assessment of the student. Thus this system strikes a balance: it is specific enough to provide sufficient guidance to schools that have struggled with truancy interventions in the past, but leaves enough discretion so schools can continue programs that have been effective. This would substantially reduce the burden that “failure to attend school” cases currently place on the court system by handling more of these cases in schools.

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ 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.

⁷ *Ibid.*

⁸ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

⁹ Tex. Educ. Code § 25.0915.

¹⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹¹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

¹² LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

¹³ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.

Stop Treating Truancy as an Adult Criminal Offense

*Decriminalizing Truancy and Shifting the Responsibility to Schools Will Alleviate Court Dockets,
Reduce the Burden on Families, and Help Youth Access Behavioral Services*

TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called “failure to attend school” (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students’ needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student’s control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

KEY FINDINGS

- Failure to Attend School is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.⁸ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.⁹ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁰
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹¹

Continued on reverse.

KEY FINDINGS (CONTINUED)

- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.¹²
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1490 BY REPRESENTATIVES HUBERTY AND DESHOTEL

- **HB 1490 repeals “failure to attend school” as a criminal offense, meaning truancy cases can only be heard as a Child in Need of Supervision (CINS) offense in juvenile court.** Under CINS, students and their families will have access to remedial services designed to address their underlying needs, which are simply not available for adult Class C misdemeanors. While there is some concern that juvenile courts could not handle an influx of truancy cases, requiring schools to be more accountable for their students’ unexcused absences through progressive truancy interventions should drastically reduce the number of students referred to court. HB 1490 will remove the trappings of criminality from student behavior and get students and families the services they need.
- **HB 1490 requires schools to employ a progressive truancy intervention system that must meet certain statutory minimums for school attendance violations, and that is designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. HB 1490 accomplishes this by requiring schools to implement a progressive truancy intervention system. The system must have at least three tiers, with the first tier triggered at three absences and requiring a conference with the student and parent that results in an attendance contract. The remaining tiers are left more to the discretion of the school to develop, with the only requirement that at least one of the tiers include an individualized assessment of the student. Thus this system strikes a balance: it is specific enough to provide sufficient guidance to schools that have struggled with truancy interventions in the past, but leaves enough discretion so schools can continue programs that have been effective. This would substantially reduce the burden that “failure to attend school” cases currently place on the court system by handling more of these cases in schools.

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ 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.

⁷ *Ibid.*

⁸ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

⁹ Tex. Educ. Code § 25.0915.

¹⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹¹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

¹² LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

¹³ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 1510

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

Approximately 4.7 million adults in Texas have a criminal record for offenses ranging from misdemeanors to felony offenses.¹ In the electronic age, where criminal backgrounds are easily accessible by potential employers and landlords, having any sort of criminal arrest or conviction on one's record can have enduring consequences. At a glance, landlords reviewing leasing applications can deny housing to families based on criminal justice system involvement of any type. Studies have shown that four out of five landlords employ criminal background checks to screen out rental property applicants who have questionable items in their background.² **In a survey of landlords and property managers, 66 percent indicated that they would not approve an application from an individual with a criminal history.**³

While many public housing providers are prohibited by law from renting to people with certain convictions, most public housing authorities exceed federal requirements in this regard and often deny housing to entire families when any member of the household has a criminal background.⁴ As a result, the number of housing options available to someone with a criminal record is reduced significantly. Many find that their only option is the private rental market; yet most 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. In a *Fort Worth Star-Telegram* article, John Mitchell, Executive Director of the Apartment Association of Tarrant County, confirmed that **property owners will become more willing to rent to those with criminal backgrounds only when risks of lawsuits are reduced.**⁵

The actual risks are largely overblown. Studies have shown that reducing discrimination in housing minimizes criminal justice system involvement and mitigates risk for re-incarceration.⁶ **Therefore, leasing property to someone with a criminal history who meets the application criteria actually serves to decrease the risk that he or she will commit a new offense.** Moreover, there are many factors that further mitigate risk for property owners. Individuals without a re-arrest or new conviction for a period of seven years are no more likely to commit a crime than those who have no history of criminal justice system involvement.⁷ Other factors may include successful completion of substance abuse treatment, a history of stable employment, and/or a network of stable and law-abiding friends who can attest to the applicant's character. Landlords who do not rely solely on criminal background checks, but take the time to meet applicants to discuss these factors, deserve the assurance that renting to someone with a criminal background will not expose them to risks of litigation.

KEY FINDINGS

- **Housing stability has been identified as one of the most critical factors in preventing recidivism and parole violation.**⁸ Every time a formerly incarcerated person moves following release from prison increases the likelihood of re-arrest by 25 percent.⁹

Continued on reverse.

- **Increasing housing options for formerly incarcerated individuals can help alleviate Texas' large homeless populations.** A 2012 study by the National Alliance to End Homelessness reported that Texas had five urban areas ranked in the top 60 in the nation 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.¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1510 BY REPRESENTATIVE THOMPSON

- **HB 1510 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 not precluded 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.

- **HB 1510 will improve public safety. Increasing the number of housing options available to people with criminal backgrounds will help them remain stable and law-abiding.** This policy will decrease housing relocation and the threat of homelessness for a large proportion of the nearly 4.7 million Texans impacted by housing discrimination based on their criminal history.

Citations

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas*, The University of Texas School of Law, 2013, 2,

<http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords.pdf>.

² Rebecca Vallas and Sharon Dietrich, *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, Center for American Progress, 2014,

<https://www.americanprogress.org/issues/poverty/report/2014/12/02/102308/one-strike-and-youre-out/>.

³ Helen Gaebler, *Criminal Records in the Digital Age*, 6.

⁴ Tran-Leung, Marie Claire, "When Discretion Means Denial for People with Criminal Records in Federally Subsidized Housing," *The Shriver Brief*, 2011, <http://www.theshriverbrief.org/2011/09/articles/community-justice/when-discretion-means-denial-for-people-with-criminal-records-in-federally-subsidized-housing/>.

⁵ Mitch Mitchell, "Ex-offenders say housing, jobs are tough to find," *Fort Worth Star-Telegram*, May 28, 2012, <http://www.mcclatchydc.com/2012/05/29/150348/ex-offenders-says-housing-jobs.html>.

⁶ S. Metraux and D. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release," *Criminology & Pub* 3 (2004): 139-160.

⁷ Tran-Leung, Marie Claire, "Beyond Fear and Myth: Using the Disparate Impact Theory Under Fair Housing Act to Challenge Housing Barriers Against People with Criminal Records," *Journal of Poverty Law and Policy*, Vol. 45, Numbers 1-2 (2011): 9, <http://povertylaw.org/sites/default/files/webfiles/tran-leung.pdf>.

⁸ Helen Gaebler, *Criminal Records in the Digital Age*, 6.

⁹ Jamie Watson, et al., *A Portrait of Prisoner Reentry in Texas*, The Urban Institute, 2004, <http://www.urban.org/publications/410972.html>.

¹⁰ National Alliance to End Homelessness, *The State of Homelessness in America 2012*, 46-47, http://b3cdn.net/naeh/9892745b6de8a5ef59_q2m6yc53b.pdf.

Amend Property Offense Thresholds

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

BACKGROUND

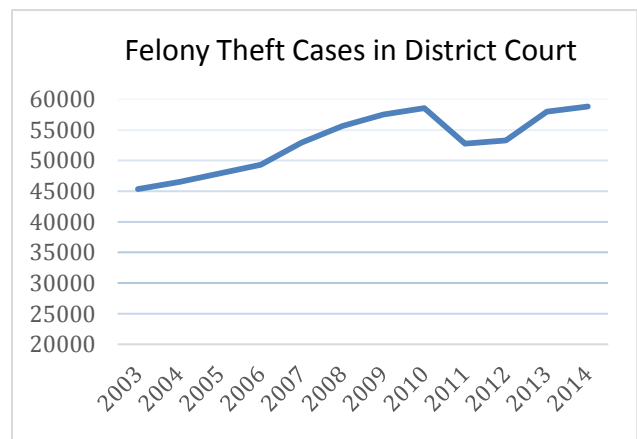
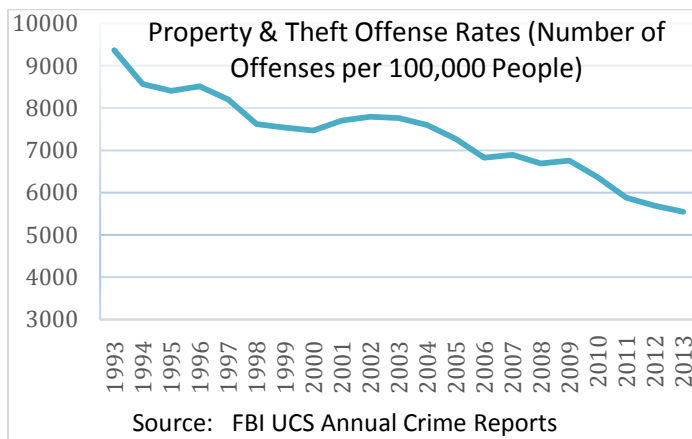
Property-related offenses include criminal mischief, graffiti, and theft.¹ The penalty for committing a property offense corresponds to the dollar amount lost or damaged. For instance, a Class A misdemeanor involves property worth \$500 or more but less than \$1,500; if the property value is \$1,500, the offense becomes a state jail felony.

These monetary “thresholds” (ranges of dollar amounts) have not been changed since 1993 and therefore fail to reflect more than two decades of inflation. 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” that was not intended by the authors of the 1993 legislation.**

FAILURE TO ADJUST PENALTY THRESHOLDS GRADUALLY SHIFTS THE FINANCIAL BURDEN TO THE STATE

Property crime rates in Texas have steadily fallen for the past 20 years.³ Not only have these rates fallen in relation to the growing population, the actual number of property crimes reported between 1993 and 2013 has dropped more than 13 percent.⁴

One would expect that this decline in property crimes would translate into fewer felony convictions and fewer placements in state jails or prison. In fact, the opposite is true, especially as it pertains to theft cases. As inflation increases each year, more and more theft cases are being shifted to district courts, resulting in a steady increase in felony theft incarcerations. Despite the steady decline in thefts statewide, felony theft cases referred to district courts have increased nearly 30 percent.⁵



Continued on reverse.

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

This outdated penalty scheme creates excessive costs for Texas taxpayers. Convictions based on 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.⁶ 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 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

- In 2013, larceny theft⁷ alone accounted for more than 10% of the 936,358 arrests made in Texas that year.⁸
- Property-related crimes comprise over 50% of the population in state jail facilities.⁹ As of August 2014, there were nearly 11,000 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.¹⁰ Those individuals alone cost taxpayers more than \$175,000 per day to incarcerate and \$64 million annually.¹¹
- As of August 2014, more than 14,000 individuals were incarcerated in prison for a larceny or burglary offense.¹² Those individuals cost the state as much as \$774,000 each day.¹³
- 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.¹⁴ 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 \$20,000 per day.¹⁵
- As of August 2014, nearly 58,000 individuals were on direct community supervision (probation) for either a misdemeanor or felony property offense.¹⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1530 BY REPRESENTATIVES PEÑA, JAMES WHITE, MOODY, AND LUCIO III

HB 1530 will 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. It will also more closely conform punishments to what was intended by the authors of the 1993 legislation.

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 \$81.22 today, and goods valued at \$20,000 in 1993 are now worth \$32,487.47. See United States Department of Labor: Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject*, CPI Inflator Calculator, website last accessed April 19, 2015, http://www.bls.gov/data/inflation_calculator.htm.

³ DisasterCenter.com, *Texas Crime Rates 1960 - 2013*, from the FBI UCS Annual Crime Reports, <http://www.disastercenter.com/crime/txcrime.htm>

⁴ Ibid.

⁵ Office of Court Administration, Annual Statistical Reports, 2003 – 2014, <http://www.txcourts.gov/statistics/annual-statistical-reports.aspx>.

⁶ According to the Legislative Budget Board (LBB), per-day prison costs are as much as \$53.87 per person, while per-day state jail costs average \$47.30 per person; from LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, 4, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. 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.

⁷ Larceny theft is distinguishable (i.e., it is a separate offense) from burglary, robbery, and motor vehicle theft.

⁸ Texas Department of Public Safety, *Texas Arrest Data: 2013*, <http://www.txdps.state.tx.us/crimereports/13/citCh9.pdf>.

⁹ Texas Department of Criminal Justice (TDCJ), *Statistical Report: Fiscal Year 2014*, 1, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

¹⁰ Ibid, 11.

¹¹ LBB, *Criminal and Juvenile Justice Uniform Cost Report*, *supra* note 6, at 4.

¹² TDCJ, *Statistical Report*, 10.

¹³ LBB, *Criminal and Juvenile Justice Uniform Cost Report*, 4. This figure does not include costs of investigation, arrest, detention, or trial.

¹⁴ TDCJ, information received via Freedom of Information Request, January 10, 2013. Information available upon request.

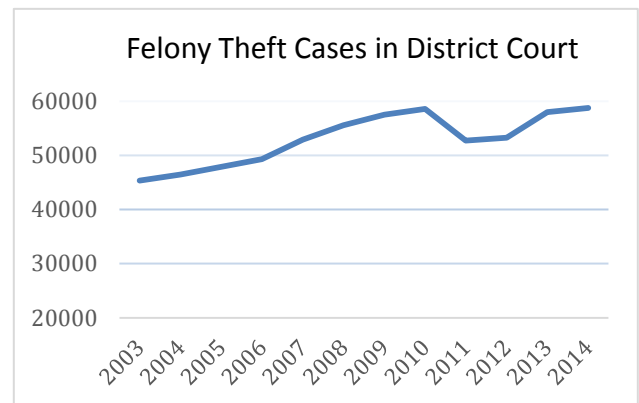
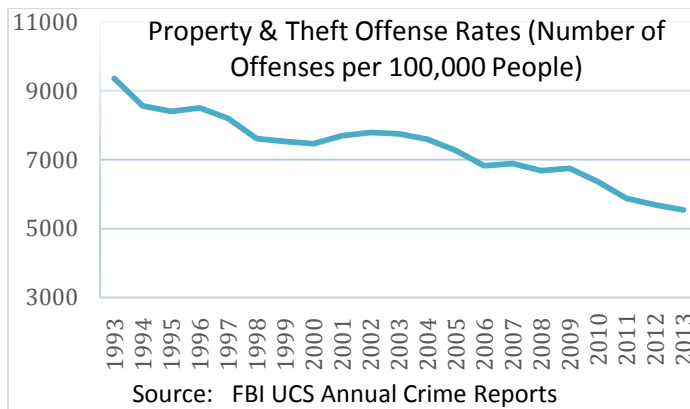
¹⁵ LBB, *Criminal and Juvenile Justice Uniform Cost Report*, 4. This figure does not include costs of investigation, arrest, detention, or trial.

¹⁶ TDCJ, *Statistical Report*, 6. The cost is significantly less to place a person on probation; community supervision amounts to a fraction of the costs of incarceration, at only \$1.63 per person per day. See LBB, *Criminal and Juvenile Justice Uniform Cost Report*, 6.

Dear Members of the Committee,

Thank you for the opportunity to testify in support of HB 1530, which will adjust monetary thresholds for property offenses to account for more than 22 years of inflation. This bill will ensure that penalties for property offenses coincide with the intention of the legislature.

- The penalty for committing a property offense corresponds to the dollar amount lost or damaged. For instance, a Class A misdemeanor involves property worth \$500 or more but less than \$1,500; if the property value is \$1,500, the offense becomes a state jail felony. Consumer goods with a value of \$1,500 today were worth less than \$1,000 in 1993.¹ Consequently, **what amounted to a Class A misdemeanor 20 years ago may now constitute a state jail felony—a de facto “criminal inflation” that was not intended by the authors of the 1993 legislation.**
- **Property crime rates in Texas have steadily fallen for the past 20 years.**² Not only have these rates fallen in relation to the growing population, but **the actual number of property crimes reported between 1993 and 2013 has dropped more than 13 percent.**³ Yet, **felony theft caseloads in district court have increased nearly 30 percent,**⁴ largely because of the increase in the general level of prices for the same goods and services.



- **Convictions based on 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.**⁵ More than 35 percent of state jail inmates were serving time for larceny or burglary, as of August 2014.⁶ **Those individuals alone cost taxpayers more than \$175,000 per day to incarcerate and almost \$64 million annually.**⁷
- **Incarcerating individuals for petty property offenses is costly to taxpayers, depletes resources that can be directed toward individuals who pose a high risk to public safety, and further burdens jails and prisons.**
- **HB 1530 will 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. It will also more closely conform punishments to what was intended by the authors of the 1993 legislation.

Citations on reverse.

Citations

¹ Based on the United States Department of Labor's Consumer Price Index (CPI), goods that were valued at \$50 in 1993 are worth \$81.22 today, and goods valued at \$20,000 in 1993 are now worth \$32,487.47. See United States Department of Labor: Bureau of Labor Statistics, "Databases, Tables & Calculators by Subject," CPI Inflator Calculator, website last accessed April 19, 2015, http://www.bls.gov/data/inflation_calculator.htm.

² DisasterCenter.com, *Texas Crime Rates 1960 - 2013*, from the FBI UCS Annual Crime Reports, <http://www.disastercenter.com/crime/txcrime.htm>

³ Ibid.

⁴ Office of Court Administration, Annual Statistical Reports, 2003 – 2014, <http://www.txcourts.gov/statistics/annual-statistical-reports.aspx>

⁵ According to the Legislative Budget Board (LBB), per-day prison costs are as much as \$53.87 per person, while per-day state jail costs average \$47.30 per person; from LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, 4, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. 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.

⁶ Texas Department of Criminal Justice (TDCJ), *Statistical Report: Fiscal Year 2014*, 11, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

⁷ LBB, *Uniform Cost Report*, *supra* note 5, at 4.

Streamline the Process to Grant Diligent Participation Credit in State Jails

DILIGENT PARTICIPATION CREDITS ARE NOT GRANTED IN A UNIFORM MANNER, LIMITING THE INCENTIVE TO PARTICIPATE IN REHABILITATIVE PROGRAMS AND LEAVING MANY TO SERVE LONGER SENTENCES

Individuals serving time in state jails do not have the opportunity to earn “good time” credit like the general prison population, nor have they historically had an opportunity for early release or parole. Instead, they are required to serve every day of their sentence behind bars. However, Texas’ 82nd Legislature (2011) provided a unique opportunity for individuals in state jails to earn time towards early release, allowing them to receive diligent participation credit for every day they participate in educational, vocational, treatment, or work programs; ultimately, participants may reduce their sentences by no more than 20%.¹

Under that 2011 legislation, the Texas Department of Criminal Justice (TDCJ) records participation, sends a report to the judge of the sentencing court, and waits for the judge to issue an order for early release. **The effectiveness this program has been limited at best**, as the responsibilities split between TDCJ and judges are confusing and inefficient, and because judges are not currently required to grant diligent participation credits or order early release for individuals who qualify.

In order to truly incentivize the participation of individuals serving time in state jails, and to save taxpayer dollars by allowing the early release of those who participate in beneficial programs, the process to grant diligent participation credit in state jails should be streamlined. **HB 1546 will give authority to grant diligent participation credits to TDCJ, rather than consume state and judicial resources by reporting to the sentencing court and waiting for judges to order early release.** HB 1546 will also allow TDCJ to grant credit at any time prior to the termination of the original sentence rather than waiting until 30 days before the date on which the individuals would have served 80% of the sentence.

KEY FINDINGS

- **The average cost per day per person in a state jail facility is approximately \$47.**² The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.³ *However, the High Value Data Set available on TDCJ’s website indicates otherwise, showing that in May 2014, 23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years*⁴ (the maximum sentence for state jail felonies is two years). The High Value Data Set does not distinguish individuals serving state jail sentences and individuals serving prison sentences while housed in state jails.
- Since the beginning of the diligent participation program in 2011, **judges who were sent electronic notices of diligent participation eligibility responded at a rate of 44%.** Of those judges who responded, 73% awarded some level of diligent participation credit. On average, sentences were reduced by 38 days for those individuals who were awarded diligent participation credit by a judge.⁵
- Based on a one-year sentence, the maximum diligent participation credit that may be earned is 73 days. At \$47 per person per day, the state could save up to \$3,431 for each individual serving time in a state jail. In fact, **the Legislative Budget Board estimates cost savings over \$81 million for the 2016-17 biennium.**⁶

Continued on following page.

- The Legislative Budget Board reports that, as of August 31 2012, 99% of people in state jails (11,729 men and women) were incarcerated for a **nonviolent, non-sexually based offense**.⁷ In Fiscal Year 2012, over 80% of those sent to state jail were sentenced to one year or less of incarceration; 37% of these were admitted for a drug- or alcohol-related offense, while another 25% were admitted for larceny offenses.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1546 BY REPRESENTATIVE ALLEN

- **HB 1546 will streamline the process involved in awarding diligent participation credits to those participating in educational, vocational, treatment, or work programs in state jails.** By placing the authority to grant credit in the hands of the Texas Department of Criminal Justice (TDCJ), rather than requiring judges to handle credit awards for each participating individual, the credit will be applied as soon as it is earned, and the state will conserve judicial resources. 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.
- **HB 1546 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 the 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, HB 1546 allows TDCJ to grant credit at any point prior to the end of the original sentence.

Citations

¹ House Research Organization, Bill Analysis, Tex. H.B. 2649, 82nd Leg., R.S. (2011).

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4;

http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities.

³ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2;

http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.

⁵ Bryan Collier, Deputy Executive Director, Texas Department of Criminal Justice, e-mail message to Sushma Smith, Chief of Staff, Office of Senator Jose Rodriguez, March 18, 2015.

⁶ Legislative Budget Board, Fiscal Note, 84th Legislative Regular Session, In Re HB 1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail facility.), As Introduced, March 20, 2015, p. 1;

<http://www.legis.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01546I.pdf#navpanes=0>.

⁷ LBB, "Who Is In State Jail? Select Data for Those On-Hand as of August 31, 2012," (February 2013): 1, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/541_Who_is_in_StateJail12.pdf

⁸ LBB, "Who Entered State Jail? Select Data for Fiscal Year 2012 Admissions," (February 2013): 1,2, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/540_Admissions_StateJail12.pdf.

Reduce the Burden on Jails and Taxpayers from Invalid License Arrests

'Driver Responsibility' surcharge is filling jails with unlicensed drivers, at great county expense

TEXAS SHOULD REDUCE PENALTIES FOR CHARGES OF DRIVING WITH AN INVALID LICENSE

For many years, driving with an invalid license (DWLI) in Texas was a Class B misdemeanor on the first offense, meaning individuals faced a maximum of six months jail time and a \$2,000 fine for a first infraction. Then, in 2003, the Texas Legislature enacted the Driver Responsibility Program – which assesses a sizable civil “surcharge” to people convicted of DWI, multiple moving violations, driving with an invalid license, or failure to maintain liability insurance – in addition to traditional criminal penalties. **An eye-popping 60 percent of surcharges go unpaid,¹ and those who cannot afford the surcharge have their licenses revoked.** Over time, the number of unlicensed drivers skyrocketed, and county jails began to fill up with unlicensed drivers. In Bexar County alone, one in three new misdemeanor cases was for DWLI.²

In response, the 2007 Texas Legislature reduced the penalty for DWLI on the first offense to a Class C misdemeanor, punishable by a fine and, typically, issuance of a citation rather than an arrest. DWLI remained a Class B misdemeanor on subsequent offenses, however, and now the same cycle is repeating. The Driver Responsibility surcharge has continued to boost the number of unlicensed Texas drivers to never-before seen levels. **More than two million Texans have lost their licenses for surcharge nonpayment, with an outstanding 1.3 million whose revoked license was never reinstated.**³ Certainly, many people continue to drive because they must work, shop for groceries, and take their kids to school while public transit in Texas remains spotty, at best. But whenever they are stopped henceforth, they risk being arrested and jailed for driving with an invalid license, now a second-time Class B misdemeanor offense.

KEY FINDINGS

- Tens of thousands of Texans are arrested and jailed each year for driving with an invalid license, most of them because they could not afford expensive civil “surcharges,” helping fill local jails with low-risk non-violent individuals.

In fiscal year 2014 alone, nearly 30,000 Class B DWLI cases were added to Texas court dockets.⁴

And during that year, **more than 11,000 individuals were sentenced to local jail on a DWLI offense.**⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1567 BY REPRESENTATIVE SYLVESTER TURNER

HB 1567 will make driving with an invalid license (DWLI) a Class C misdemeanor for most offenses, unless a person has a previous license suspension related to a Driving While Intoxicated offense. This bill will divert many nonviolent individuals from county jails, reducing incarceration and court costs as well as keeping law enforcement officers on the street to perform more important duties.

Citations on reverse.

Citations

¹ Craig Adair, “Wrong Way for Texas: The Driver Responsibility Program: A Texas Sized Failure,” Texas Criminal Justice Coalition, February 2013.

² Testimony by Shannon Edmonds of the Texas District and County Attorneys Association to the House County Affairs Committee, May 5, 2014.

³ “Wrong Way for Texas.”

⁴ Office of Court Administration. See: OCA, “Statutory County Courts 2014 Activity Detail,” last accessed online 1/20/15 at: <http://www.txcourts.gov/media/696423/3-SCC-Activity-Detail-fy-2014-pdf.pdf>, and “Constitutional County Courts 2014 Activity Detail,” accessed the same day at: <http://www.txcourts.gov/media/701752/3-CCC-Activity-Detail-2014.pdf>.

⁵ Ibid. See “Sentencing Information: Local Jail.”

EXPAND CRITICAL MENTAL HEALTH SERVICES FOR INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM

Expanding eligibility for pre- and post-release continuity of care services for people with mental impairments will decrease recidivism, save money, and improve public safety

Under current law, the Texas Department of Criminal Justice (TDCJ) is required to work with the Department of State Health Services and local mental health authorities to operate continuity of care programs for individuals with mental impairments. TDCJ has a designated sub-unit, the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), that coordinates the continuity of care and transitional case management for eligible participants who are released on probation or parole.

For individuals enrolled in the TDCJ-TCOOMMI case management initiative for 12 or more consecutive months, the three-year reincarceration rate is 11.2%; this is remarkable, given that the overall reincarceration rate for individuals released from prison is 22.6%.¹

While the law does not identify specific diagnoses that trigger eligibility for services facilitated by TCOOMMI, access is typically limited to those with schizophrenia, bipolar disorder, or clinically severe depression diagnoses. These current eligibility restrictions prevent many individuals from benefiting from TCOOMMI services, even though the statute provides none of the limitations currently in use. **Without adequate supports and treatment services, previously incarcerated individuals with mental illness are more likely to experience deteriorating health conditions and frequent emergency room use.² They are also at a greater risk of experiencing homelessness, unemployment, and a lack of financial and emotional support from family members, all of which are risk factors for recidivism.**

CONTINUITY OF CARE & VETERANS WITH PTSD

Incarcerated veterans disproportionately suffer from post-traumatic stress disorder (PTSD), a condition triggered by exposure to a psychologically terrifying event. PTSD can contribute to depression, substance abuse, and suicidal thoughts and actions. It is estimated that while only 3.6 percent of the general population exhibits PTSD symptoms,³ 30 percent of veterans have PTSD.⁴ **PTSD can be a driving force behind criminal behavior, and it is often exacerbated by incarceration.⁵**

Additionally, veterans are at especially high risk for suicide; **the Department of Veterans Affairs estimates that 18 veterans commit suicide every day,⁶ and the risk is greatest upon release from confinement.⁷**

Expanding continuity of care services to include individuals without a target diagnosis of major depression, bipolar disorder, or schizophrenia will allow TCOOMMI to provide pre- and post-release services to individuals with PTSD as they transition back to the community.

Continued on reverse.

KEY FINDINGS

- Given the significant lack of empirical research that would help to establish which mental disorders are linked to criminal behavior, **it would be more effective to treat all system-involved individuals with mental illnesses**, rather than limit it to those with a diagnosis of major depression, bipolar disorder, or schizophrenia.⁸
- Studies have shown that individuals who receive mental health treatment are **50% less likely to recidivate with violent offenses**.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1908 BY REPRESENTATIVE NAISHTAT

- **HB 1908 requires all incarcerated individuals with mental impairments in the Texas Department of Criminal Justice to be identified and qualified for the continuity of care system.** The eligibility for this program will be related to the risk of recidivism and the presence of a mental impairment, and would no longer be limited only to those with three target mental health diagnoses. This, in turn, will improve safety within corrections facilities for staff and inmates, lower recidivism rates, decrease the risk of violent crimes, reduce emergency room visits, and lower all associated taxpayer costs. It will also allow individuals receiving treatment to maintain employment and housing, which strengthens the economy and promotes safety in Texas communities.
- **HB 1908 expands access to treatment programs for individuals with a wide range of mental health disorders.** Using the DSM-5 criteria, HB 1908 includes psychotic disorder, anxiety disorder, delusional disorder, and any other severe or persistent mental illnesses among those that qualify an individual for the continuity of care system.

Citations

¹ Texas Department of Criminal Justice, Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments, Fiscal Years 2013 and 2014, February, 2015, 4, http://www.tdcj.state.tx.us/documents/rid/TCOOMMI_Biennial_Report_2015.pdf.

² Joseph W Frank , Christina M Andrews, Traci C Green, Aaron M Samuels, T Tony Trinh, Peter D Friedman, "Emergency department utilization among recently released prisoners: a retrospective cohort study," BioMed Central Emergency Medicine (2013), <http://www.biomedcentral.com/content/pdf/1471-227X-13-16.pdf>.

³ RC Kessler, WT Chiu, O Demler, EE Walters, "Prevalence, severity, and comorbidity of twelve-month DSM-IV disorders in the National Comorbidity Survey Replication (NCS-R)," *Archives of General Psychiatry*, June 2005, 62(6):617-27.

⁴ Terri Tanielian and Lisa Jaycox, *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>.

⁵ 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.

⁶ *Veteran Demographic Report on Incarcerated Veterans from 2006-2013*, Response to Open Records Request by Jorge Renaud.

⁷ Federal Interagency Reentry Council, *Justice-Involved Veterans*, June 2013, http://csgjusticecenter.org/wp-content/uploads/2013/06/SnapShot_Veterans.pdf.

⁸ 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.

⁹ 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.

Veteran Treatment Courts Should Allow Participation by Veterans Diagnosed with Non-Combat-Related Mental Illnesses

Veterans May Be Diagnosed with Mental Health Disorders Without Having Served in a Combat Zone

EXPANDING VETERAN TREATMENT COURTS WILL HELP NON-COMBAT VETERANS WITH A MENTAL HEALTH DISORDER

In 2009, SB 1940¹ established specialty veteran treatment courts (VTCs) with the goal of addressing the growing number of offenses being committed by veterans. As an alternative to incarceration, VTCs offer treatment through counseling and peer-to-peer mentoring. Currently, eligibility is extended to veterans or current members of the armed forces who are diagnosed with post-traumatic stress disorder (PTSD), traumatic brain injury, mental illness, or other mental disorders suffered while in combat.

Expanding eligibility to include veterans diagnosed with mental illness suffered during military service, but not while serving in a combat zone or other similar hazardous-duty area, will allow more veterans to receive critical treatment and peer-to-peer counseling needed to address the ongoing issues that may have contributed to involvement in the justice system.

VETERAN TREATMENT COURTS PROVIDE TAILORED TREATMENT TO JUSTICE SYSTEM-INVOLVED TEXAS VETERANS

Texas specialty courts are tailored to serve specialized caseloads, including veterans, individuals with mental illnesses or mental disorders, individuals with DWI offenses, and individuals reentering the community following a period of incarceration.² VTCs specifically aim to provide veterans with treatment and court supervision in place of conviction and/or jail time. This alternative punishment option provides treatment and counseling for six months or more and is permitted at the discretion of the presiding judge. Serving veterans through VTCs provides this vulnerable population with the opportunity to receive individualized treatment plans and supervision.

VETERAN TREATMENT COURTS MAY HELP REDUCE THE VETERAN INCARCERATION AND RECIDIVISM RATE

National research demonstrates that specialty courts are effective in increasing public safety, preventing recidivism, and treating chemical dependency. Justice-involved veterans who struggle with mental health issues or addiction need treatment and support to help them become and remain law-abiding citizens.³ According to the National Association of Drug Court Professionals, approximately 70 percent of defendants who participate in VTCs finish the programs, and 75 percent are not rearrested for at least two years.⁴

KEY FINDINGS

- Nationally, of the veterans who experience PTSD, 40 percent have committed a crime after discharge from the service.⁵
- Approximately 80 percent of veterans who become justice system-involved left the military with honorable or general under honorable discharges.⁶

Continued on reverse.

- As of 2014, almost 11,000 incarcerated veterans were incarcerated in the Texas Department of Criminal Justice.⁷
- Military Sexual Trauma (MST) is one of the most common non-combat forms of PTSD.⁸
- Veterans who witness a fellow veteran commit suicide may be diagnosed with non-combat PTSD.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1958 BY REPRESENTATIVE CANALES

- **HB 1958 will allow non-combat veterans to participate in Veteran Treatment Courts (VTCs), helping reduce costly rates of incarceration and re-offending.** This bill will ensure that more veterans receive treatment to address underlying causes of justice system involvement, thus improving public safety and family stability.
- **HB 1958 will connect more veterans to needed resources.** Veterans who participate in VTCs are connected to resources such as housing, employment, and benefits, which can help them become self-sufficient and independent and reduce their reliance on public assistance.

Citations

¹ SB 1940, 81st Legislative Session, effective June 2009, www.legis.state.tx.us/tlodocs/81R/billtext/html/SB01940F.htm.

² Office of the Governor, Criminal Justice Division, *Criminal Justice Advisory Council Report: Recommendations for Texas Specialty Courts*, January 2013, https://egrants.governor.state.tx.us/FileDirectory/CJAC_Report_January_2013.pdf.

³ Ibid.

⁴ William H. McMichael, "Special Court Helps Vets Regain Discipline, Camaraderie by Turning to Mentors Who've Served," *The Military Times*, February 14, 2011, <http://www.nadcp.org/MilitaryTimes%20-Veterans-Treatment-Courts>.

⁵ Texas Civil Rights Project, *Justice for Veterans Campaign*, <http://www.texascivilrightsproject.org/programs-and-services/veterans/>.

⁶ Veterans Health Administration. *VA Programs for Justice-Involved Veterans*, June 2, 2011, <http://www.nj.gov/parole/docs/veterans/DVAProgramsforJustice-InvolvedVeterans.pdf>.

⁷ Oliver Bell, "TDCJ supports our veterans," *Criminal Justice Connections*, May/June 2014, http://www.tdcj.state.tx.us/connections/MayJune2014/bulletin_vol21no5.html.

⁸ Jon Correa, "4 Examples of Non-Combat PTSD," *Veteran Disability Blog.com*, October 9, 2014, <http://veterandisabilityblog.com/blog/4-examples-of-non-combat-ptsd/>.

⁹ Ibid.

Action is Needed to Reform the Ineffective and Expensive State Jail System

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

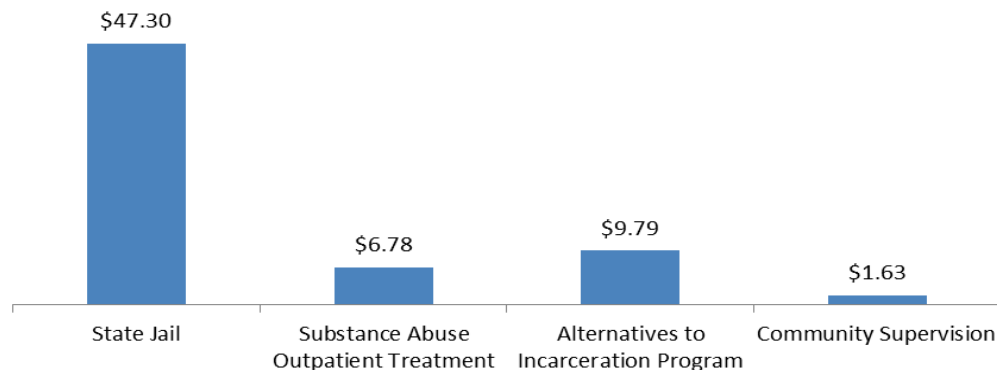
The state jail system was originally designed to improve the state criminal justice and corrections systems by redirecting individuals with low-level offenses out of overcrowded prisons, providing them the opportunity to serve their sentence on community supervision. Special prisons, called state jails, were reserved to provide short-term intensive rehabilitative services in a secure setting to those who pose a higher risk to public safety.¹

However, the rehabilitative piece of the state jail programming scheme was never adequately funded and, 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 typically without post-release community supervision or support.

KEY FINDINGS

- **STATE JAIL TERMS ARE EXPENSIVE:** State jails are dramatically more costly (averaging approximately \$47 per day per person) than alternatives to incarceration such as community supervision (only \$1.63 per day per person) or community-based treatment (less than \$10 per day per person).²

Cost Per Person Per Day



- **INDIVIDUALS RELEASED FROM STATE JAILS HAVE HIGH RATES OF RE-OFFENDING:** The creation of state jail felony offenses was intended to carve out a population of individuals more amenable to rehabilitative services and treatment programs, yet persons convicted of state jail felony offenses have higher rates of re-arrest and re-incarceration than individuals exiting prisons and those on community supervision.

More specifically, **30.7%** of individuals released from a state jail in FY 2011 (measured through FY 2013) were re-incarcerated. To compare, **21.4%** of individuals released from prison in FY 2011 (measured through FY 2013) were re-incarcerated and an average of 15% of individuals on direct felony supervision were revoked from their probation from FY 2009 through FY 2014.³

Continued on reverse.

This trend may be due to the lack of rehabilitative programming provided at state jail facilities, the relatively short terms of incarceration (on average, six months) that prohibit engagement in effective treatment programs, or the lack of post-release supervision.

- **STATE JAILS ARE NOT SERVING THEIR LEGISLATIVELY INTENDED PURPOSE:** The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.⁴ However, the High Value Data Set available on TDCJ's website indicates otherwise, showing that in May 2014, **23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years**⁵ (the maximum sentence for state jail felonies is two years). Further, state jail facilities intermingle those serving time for state jail felonies with the general prison population. While it is common knowledge that TDCJ regularly utilizes state jail facilities to hold individuals convicted of higher-level crimes for periods of time less than two years, this practice is entirely improper and contrary to the purpose for which state jails were created.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 2448 BY REPRESENTATIVE JAMES WHITE

- **HB 2448 creates an advisory committee to examine the state jail system and make recommendations for its improvement.** The Texas Department of Criminal Justice (TDCJ) will be required to convene an advisory committee to study the problems facing the state jail system, and recommend how Texas can minimize recidivism rates and better provide opportunities for holistic rehabilitation to those with low-level offenses. The advisory panel will be comprised of legislators, probation chiefs, prosecutors, defense attorneys, advocates, criminal law experts, and individuals formerly involved in the state jail system.
- **HB 2448 charges the advisory committee with acquiring information and making recommendations that will equip both TDCJ and policy-makers with critical information to make decisions that will improve the state jail system.** An advisory committee with diverse membership will bring comprehensive information regarding the state jail system to decision-makers, who may then make well-informed improvements in Texas' response to those with low-level offenses.

Citations

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

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4, 6;

http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities. Substance abuse outpatient treatment costs the state \$6.78 per day, while the Treatment Alternatives to Incarceration Program costs the state \$9.79 per day.

³ Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, February 2015, pp. 3, 7, 8, 16; http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2; http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf. The report indicates that 10,524 individuals were on hand in state jails, while 22,272 individuals were received into state jail facilities. The total number of individuals in TDCJ was 150,361.

⁵ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.



Jennifer Carreon, Policy Researcher
John Kreager, Policy Fellow
Work: (512) 441-8123, ext. 103
Cell: (512) 900-0114
jcarreon@TexasCJC.org
www.TexasCJC.org

FACT SHEET 2015

HB 2684

Equip Officers Working in School Settings with the Necessary Training To Properly Interact with Adolescents

OFFICERS WORKING IN SCHOOL ENVIRONMENTS SHOULD RECEIVE SPECIALIZED TRAINING

School district peace officers and school resource officers face far different challenges than officers who protect our streets. And while all law enforcement officers receive training on subjects such as interacting with suspects, use of force, and firearms, officers do not receive specialized training on how to work effectively with kids in an educational environment. A lack of specialized training for these officers is likely contributing to the over-criminalization of children's misbehavior in school. Officers equipped only with training regarding adult offenders are likely to overreact in response to typical student misbehavior, and these negative interactions between students and school officers can push students away from school, which in turn is driving a dropout crisis in Texas.

As school engagement is a strong predictor of delinquent behavior,¹ it is imperative that policy-makers ensure that measures are in place to address every factor that influences a youth's involvement in school. This includes requiring school officers – not educated in interacting with youth – to undergo trainings in relevant subject matters that provide a framework for implementing best practices (e.g., adolescent development, positive behavioral interventions and supports, and cultural competency).

Furthermore, because the primary purpose for police presence on school campuses is to protect students and staff from external threats, it is likewise imperative to ensure that their presence is not counterproductive to students achieving success.

KEY FINDINGS

- **The increasing use of officers to respond to misbehavior in schools – and the lack of specialized training for these officers – corresponded with a dramatic rise in misdemeanor citations issued to kids in Texas schools.** In 1978, only one percent of Texas schools reported having a police presence on campus. Today, most Texas schools report police presence from a local law enforcement agency or from the school district's own police department. With the increase in police presence, the use of Class C misdemeanor tickets in Texas schools increased dramatically.² While SB 393 (West, passed during the 83rd Session) has resulted in a reduction in the number of tickets issued in Texas schools, the over-criminalization of student misbehavior continues and has been noted as a likely contributor to the dropout crisis in Texas.³
- **Over the past decade, police in schools have been using tools and tactics more commonly reserved for encounters with hostile citizens on the street.**
 - » From 2012 to present, Pasadena, Texas, school police have **used force 129 times, drawing and pointing their firearms 24 times, using pepper spray twice, and using nightsticks 4 times.**⁴

- » From 2006 to 2009, Austin ISD, which keeps fairly complete police records relative to the rest of the state, reported that its campus police **drew guns on students eight times**, used **pepper spray 26 times**, used **Tasers four times**, and used **police dogs once**. They used **batons or other physical force 258 times**.⁵
- » From 2006-2009, El Paso ISD reported that its campus police **used a baton once**, **pepper spray once**, and **physical force 34 times** to control students.⁶
- Despite the concerning frequency of school officers using force against students, **“neither the Texas Education Agency nor the Texas Commission on Law Enforcement Officer Standards and Education require Texas’ 160 school district police departments to keep statistics on when they use force against students.”**⁷
- **Using police tactics against unarmed students has resulted in serious injury and, in some cases, death, as well as a decline in parent confidence in Texas schools to educate and monitor students in a safe and appropriate manner.** Several of these incidents were recorded by students and school security cameras and have gained national attention. Below are some incidents of excessive police violence in Texas caught on tape and shared widely in the news and on social media:
 - » Noe Nino de Rivera was **Tased** by Officer Randy McMillan at Cedar Creek High School in Bastrop, which **caused him to fall and hit his head**, resulting in a **52-day medically induced coma**. He spent **almost three months in intensive care**.⁸
 - » Cesar Suquet was **beaten with a metal nightstick** by campus officer Michael Y'Barbo at South Houston High School. He was **struck 18 times, including nine blows while he was on the ground**.⁹
 - » An anonymous young girl was **held down and punched in the face** by an officer at Jefferson High School in San Antonio.¹⁰
 - » Ixel Perez was **tackled and held down by three officers for cellphone use** at Sam Houston High School in Houston.¹¹
 - » Officer Steve Rivers **held down and broke the arm** of an unknown student at West Brook High School.¹²
 - » Jacob Herrera was **slammed face-first onto the ground** at Sam Houston Middle School in Houston for refusing to remove his rosary beads, which he claimed held sentimental value.¹³
 - » Officer George Bermudez of Georgetown ISD was recorded **tripping, grabbing, and shoving students after a soccer game**.¹⁴
 - » Derek Lopez was **shot and killed** by Officer Daniel Alvarado of the Northside Independent School District Police Department in San Antonio. Lopez **was unarmed**.¹⁵
 - » **Six Dallas High School students** were **hospitalized after being exposed to pepper spray** that officers used to break up a fight. The spray **leaked through the school’s ventilation system** and led to a full evacuation of the campus.¹⁶
 - » **12 Manor High School students** were **treated for pepper spray exposure** after cops used the spray to break up a fight.¹⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT HB 2684 BY REPRESENTATIVE GIDDINGS

- **HB 2684 will improve school safety through more effective campus policing.** Under this bill, the training curriculum for school district peace officers will include such areas as youth development, special needs, conflict resolution, de-escalation techniques, and cultural competency. Undergoing this supplementary training will enable school district peace officers to more appropriately respond to student behavior by taking into account the developmental and physical differences between youth and adults. This will allow school officers to match their tactics to the unique environment and vulnerable population with whom they interact, as well as mete out appropriate penalties for on-campus offenses. This specialized training is critical in defining officers' appropriate role in the educational environment.
- **HB 2684 can save school districts valuable security funds.** At a time when school districts are facing significant budget constraints, they are also spending an increasing share of their budgets on school-based law enforcement. Better-trained peace officers will enhance the quality of school-based policing, allowing savings to be redirected to other education priorities, such as teacher retention.
- **HB 2684 does not place an extra financial burden on school districts.** This bill's specialized training requirement would not present extra costs to school districts, as peace officers are already required to complete training hours to maintain their licensure. The requirements of HB 2684 fit within existing training as required for licensed officers.

Citations

¹ Li Yibing et al., "The Role of School Engagement in Preventing Adolescent Delinquency and Substance Abuse: A Survival Analysis," *Journal of Adolescence* 6, 34 (2011): 1181-1192.

² Texas Appleseed "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools" (2010).

³ Council of State Governments "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement" (2011).

⁴ Houston Chronicle, "Pasadena family accuses school officer of 'brutal and excessive' beating: Parents claim excessive force used against son by school officer," (Feb. 2015), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Pasadena-family-accuses-school-officer-of-brutal-6064567.php#0>.

⁵ Texas Tribune "Texas Schools Rarely Track Force against Students" (2009), <http://www.texastribune.org/2009/11/25/tx-schools-rarely-track-force-against-students/>.

⁶ Ibid.

⁷ Ibid.

⁸ Austin American-Statesman, "Tased student 'totally dependent on me,' Bastrop mother says," (Feb. 2014), <http://www.statesman.com/news/news/local/tased-student-totally-dependent-on-me-bastrop-moth/ndBZF/>.

⁹ Houston Chronicle, "Pasadena family."

¹⁰ My SA, "SAISD Investigating Officer After Struggle with Teenage Girl," (Feb. 2014), <http://www.mysanantonio.com/news/local/article/SAISD-investigating-officer-after-struggle-with-5275016.php>.

¹¹ Huffington Post: Crime, "Ixel Perez, Student, Accuses School Resources Officer of Excessive Force By Tackling Her," (Sep. 2014), http://www.huffingtonpost.com/2014/09/04/ixel-perez-student-tackled_n_5766324.html.

¹² New York Daily News, "Texas Cop Breaks Teen's Arm While Trying to Stop School Fight," (April 2014), <http://www.nydailynews.com/news/national/breaks-teen-arm-stop-fight-video-article-1.1756576>.

¹³ CBS Houston, "Student Arrested for Refusal to Remove 'Gang Related' Rosary," (November 2014), <http://houston.cbslocal.com/2014/11/03/student-arrested-for-refusal-to-remove-gang-related-rosary/>.

¹⁴ Austin American Statesman, "Georgetown Officer Suspended 40 Days after Tripping Incident," (June 2014), <http://www.statesman.com/news/news/local/georgetown-officer-suspended-40-days-after-trippin/ngD3F/>.

¹⁵ My SA, "Officer Who Shot Student Had History of Not Following Orders: 12 Warnings, 4 Suspensions. Why was the NISD Coop Who Killed an Unarmed 14-year-old On the Job," (May 2011), <http://www.mysanantonio.com/news/article/Still-on-patrol-1388322.php>.

¹⁶ Texas Tribune "Texas Schools Rarely Track Force against Students" (November 2009).

¹⁷ Ibid.



Sarah D. Pahl, Policy Attorney

Work: (512) 441-8123, ext. 106

Cell: (817) 229-7868

spahl@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 2700

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 2700, which will ensure the long-term accuracy of bulk criminal record information while providing transparency and accountability to the process by which bulk criminal records are released.

WIDESPREAD DISSEMINATION OF CRIMINAL RECORDS HARMS THE WORKFORCE AND TEXAS FAMILIES

Open access to criminal records through government repositories and commercial vendors, combined with the rise of the Internet and the emergence of electronic databases, has enabled more than 40 million criminal background checks to be performed annually for non-criminal justice purposes.¹

As a result of this online expansion, individuals across our state are frequently denied employment and housing based on criminal records that have been sold and published online—some of which *never* resulted in a conviction, and some of which are **completely inaccurate** and unfairly punish those who never committed a crime. Not only do these individuals suffer as a result of inadequate policies that regulate the storage and dissemination of criminal records, but our workforce and families suffer as well.

The widespread commercial publication of criminal records before a disposition is entered, as well as the long-lasting nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing. **In order to allow individuals to give back to their communities and families in ways that enhance public safety, Texas must reform its laws related to the dissemination of criminal records.**

KEY FINDINGS

- **In Texas, nearly 12 million individuals are included in the state criminal history records.**² These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, those who have completed their sentences, those who have shown stability and established themselves in their communities, and those who are desperately trying to support themselves and their families while facing the many obstacles that automatically accompany any kind of criminal record.
- **Employers and housing providers often rely on inaccurate or incomplete criminal records.** The Texas Department of Public Safety reported in January 2013 that only 81% of Texas adult arrests in 2011 had a reported disposition.³ In other words, **nearly 1 in 5 of all Texas criminal records do not include final dispositions.** The inaccuracies that can result from disseminating records without final dispositions have allowed individuals to be denied employment and housing even without a criminal conviction. Additionally, even if certain records are ordered sealed or expunged, there is no guarantee that third-party commercial vendors will purge the information from their systems or that the event will be erased from media archives,⁴ creating additional challenges for system-involved individuals seeking employment and housing.
- **Multiple public agencies across Texas jurisdictions participate in disseminating criminal records to private entities in response to public information requests.** These include, but may not be limited to:
 - » County and district clerks, and clerks in justice or municipal courts
 - » Law enforcement agencies
 - » Texas Department of Public Safety (DPS)
 - » Community Justice Assistance Division (CJAD), a division of the Texas Department of Criminal Justice (TDCJ)

Continued on reverse.

- **The dissemination of outdated and incorrect information results from an inadequate update process.** The above agencies release criminal records to private entities in response to public information requests. While county and district clerks must submit updates on orders of nondisclosure and expunctions to DPS, DPS is the **only** agency that provides updates to the private entities to which it releases records. Consequently, private entities that request criminal records from any agency other than DPS—whether from county and district courts, TDCJ, or elsewhere—are not routinely notified of updates reflecting orders of nondisclosure, expunction, or even final dispositions. **Countless individuals are adversely affected by this practice that encourages the widespread dissemination of outdated and incorrect criminal records.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 2700 BY REPRESENTATIVE SENFRONIA THOMPSON

- **HB 2700 requires clerks and criminal justice agencies to redirect to the Department of Public Safety (DPS) all requests for bulk criminal records concerning Class A and B misdemeanor and felony offenses for which a final disposition has been rendered.** Currently, multiple agencies and jurisdictions disseminate criminal records to private entities. However, there are no standardized systems or procedures for releasing or providing updates to criminal records. In order to better steward the sensitive information that impacts millions of lives, Texas should authorize DPS to be the sole agency that can disseminate criminal records in bulk for all disposed offenses except Class C misdemeanors. *(Note: Disposed Class C offenses and all pending cases are exempted from this requirement because those records are not available to the public through DPS.)*
- **By redirecting requests for bulk criminal records to DPS, HB 2700 will save counties and municipalities the substantial time and money required to sufficiently respond to requests for bulk criminal records, while not incurring any additional cost to the state.** Because DPS currently has a system in place to respond to requests for bulk criminal records and to provide updates to criminal records to all requestors on a monthly basis, it is fiscally and socially responsible to redirect requests for bulk criminal records to DPS.
- **HB 2700 will also increase transparency in the dissemination process** by requiring clerks and criminal justice agencies that grant bulk records requests for Class C disposed offenses and pending cases to maintain a record of the name and contact information of the requestor and the most recent date the bulk records were provided. This information must be published on the clerk's or agency's website or prominently displayed in a public area of the clerk's or agency's place of business.

Citations

¹ Helen Gaebler, "Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas," (William Wayne Justice Center for Public Interest Law, The University of Texas School of Law, 2013): 2. Tex. Bus. and Comm. Code, § 109.002(2).

² Dennis A. DeBacco & Owen M. Greenspan, "Survey of State Criminal History Information Systems, 2012," (Bureau of Justice Statistics, U.S. Department of Justice, 2014): Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. The number of individual offenders in the state criminal history file was 11,824,200.

³ Texas Department of Public Safety, "Eleventh Report Examining Reporting Compliance to the Texas Computerized Criminal History System," (January 2013): 3, http://www.txdps.state.tx.us/administration/crime_records/pages/complianceRpt11.pdf.

⁴ SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2010): 83, <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.



Jennifer Carreon, Policy Researcher

John Kreager, Policy Fellow

Work: (512) 441-8123, ext. 103

Cell: (512) 900-0114

jcarreon@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 2793

Prohibit the Secure Detention of Youth Referred to a Local Juvenile Probation Department Solely for Running Away

RUNNING FOR SAFETY AND GETTING LOCKED DOWN

When children run away from home—no matter the reason—they are liable for the offense of “runaway” in the juvenile justice system.¹ Because this statute is written so broadly, it is no surprise that runaway cases are so pervasive. Between 2001 and 2013, local juvenile probation departments received approximately 86,000 formal referrals for youth who ran away from home;² in 2013 alone, there were 3,185 referrals.³ But youth who run away from home are not “offenders,” they are victims who are often escaping a hazardous home life.

According to the National Conference of State Legislatures, **46% of runaway and homeless youth report being physically abused, 38% report being emotionally abused, and 17% report being forced into unwanted sexual activity by a family or household member.**⁴ When these youth arrive at their local juvenile probation department, they are traumatized and scared; all they want and need is a safe space, a warm bed, and a caring heart. Unfortunately, they are greeted by a uniformed intake officer and put in an 8 x 10 cell with concrete walls, a steel toilet, and a cold steel bed.

Currently, Texas law prohibits punishing youth who run away from home with a term of confinement in a secure facility, correctly recognizing that a locked facility is no place for this extremely vulnerable population.⁵ **However—despite this prohibition—Texas law allows youth who run away to be detained in a secure facility as part of the intake process and while they await an adjudication hearing.** Pre-adjudication secure detention is allowed for up to 24 hours, and can be extended to 10 days or beyond in particular statutory circumstances.⁶ Fortunately, the vast majority (86%) of youth referred for running away never saw the inside of a secure detention facility.⁷ Others were not so lucky. Of the 12,437 runaway referrals detained by local juvenile probation departments between 2001 and 2013, 3,915 (31%) were exposed to the dangers of secure detention.

SECURE DETENTION IS AN INAPPROPRIATE APPROACH TO YOUTH WHO RUN AWAY, PUTTING THEM AT RISK WHILE INCREASING STATE COSTS

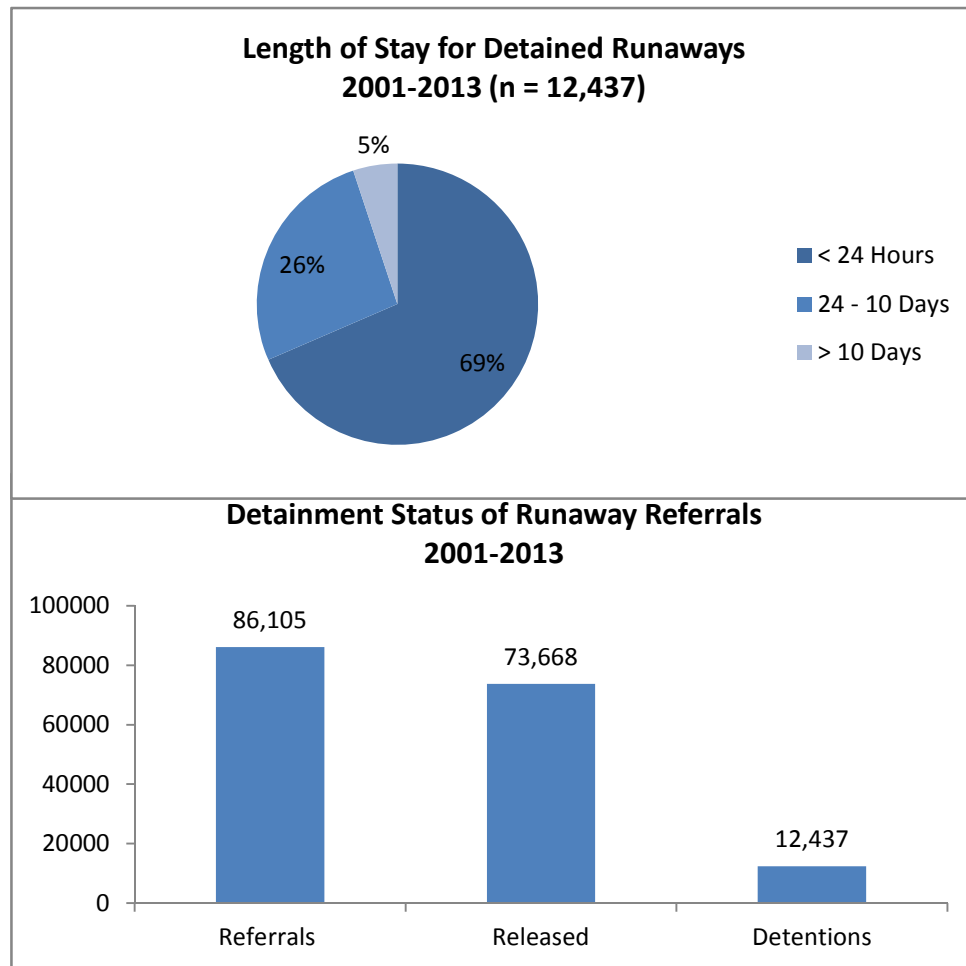
Unfortunately, **research demonstrates that even brief periods of time in a secure facility are counterproductive and dangerous for youth who run away.** These youth have “underlying personal, familial, community and systemic issues, as well as other unmet and unaddressed needs.”⁸ Secure detention makes it difficult to meet runaway youths’ needs, as it interrupts their education and keeps them away from the community-based solutions that have been shown to be more effective.⁹

Further, a substantial body of research demonstrates that **secure detention of this population “may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.”**¹⁰ When runaway youth are confined with youth who have committed much more serious offenses, they can learn criminal behaviors that make it more likely they will commit unlawful acts in the future.¹¹ In fact, a recent study found that **almost 20% of detained non-delinquent youth are placed in the same quarters with youth who have committed murder or manslaughter, and another 25% are placed with youth who have committed felonious sexual acts.**¹²

Aside from posing dangers to youth, secure detention is more expensive than the alternatives. These youth would be better served in non-secure facilities or community alternatives that address their needs while being more cost-effective for the State.¹³

KEY FINDINGS

- Between 2001 and 2013, approximately **86,000 formal referrals were made to Texas juvenile probation departments for youth who ran away from home**. Of these referrals, 12,437 resulted in detention:
 - » 8,523 (69%) of these detentions lasted less than 24 hours;
 - » **3,279 (26%)** of these detentions lasted **longer than 24 hours** but fewer than 10 days; and
 - » **636 (5%)** of these detentions lasted for a **period exceeding 10 days**.



- » It is a poor standard that we as a State allow even one of these young people in serious need to spend time in a secure facility.
- **Youth who run away from home are often running from a hazardous home.**¹⁴ According to the National Runaway Safeline:¹⁵
 - » **47%** of runaway youth **reported conflict between them and a parent/guardian** in the home;
 - » **50%** of runaway youth reported that **their parents told them to leave or knew they were leaving but did not care**;
 - » **34%** of runaway youth reported **sexual abuse before leaving home**; and
 - » **43%** of runaway youth reported **physical abuse before leaving home**.

- Research demonstrates that secure confinement is not an evidence-based practice for treating the underlying causes of child “offenses” such as running away, curfew violations, or truancy.¹⁶
- More than half (53.4%) of youth who were arrested for running away between 2001 and 2013 were female.¹⁷ Researchers have found that adolescent females who run away report sexual onset within a year of running away, which exposes them to poor sexual health practices, sexually transmitted disease, and sexual victimization.¹⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 2793 BY REPRESENTATIVE HUBERTY

HB 2793 will prohibit the secure detainment of youth who are referred to a juvenile probation department solely for running away from home. Instead of secure detention, this bill provides that runaway youth may be detained in the juvenile processing offices and places of non-secure custody for up to 6 hours, and in non-secure correctional facilities for up to 24 hours. All of these non-secure facilities exist under current Texas law, and the bill does not alter the exceptions that allow for longer periods of detention in certain, narrow circumstances. This bill will encourage local juvenile probation departments to utilize community-based alternatives to meet the needs of these youth, as opposed to exacerbating through secure detention the underlying factors that contributed to them running away from home in the first place. Policy-makers should continue to invest in these effective, community-based alternatives.

Citations

¹ TEX. FAM. CODE § 51.03(b)(3).

² Texas Juvenile Probation Commission (TJPC), “Statistical Reports, 2001-2010,” and Texas Juvenile Justice Department (TJJD), “Statewide Statistical Reports 2011-2013.”

³ TJJD, “Statewide Statistical Report 2013.”

⁴ National Conference of State Legislatures (NCSL), “Homeless and Runaway Youth,” (October 1, 2010), <http://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx>.

⁵ TEX. FAM. CODE § 54.04(o)(2).

⁶ TEX. FAM. CODE § 54.011.

⁷ TJPC, “Statistical Reports, 2001-2010,” and TJJD, “Statewide Statistical Reports 2011-2013.”

⁸ Coalition for Juvenile Justice, “National Standards for the Care of Youth Charged with Status Offenses,” (2013): 1, http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf.

⁹ “Promoting Safe Communities: Recommendations for the 113th Congress,” *National Juvenile Justice and Delinquency Prevention Coalition*, (2013): 6.

¹⁰ Barry Holdman & Jason Ziedenberg, “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,” *Justice Policy Institute* (2011): 2-3, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_ji.pdf.

¹¹ Ibid.

¹² Andrea J. Sedlak & Karla S. McPherson, “Conditions of Confinement: Findings from the Survey of Youth in Residential Placement,” *Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin* (May 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

¹³ Holdman and Ziedenberg, “The Dangers of Detention,” 10-11.

¹⁴ Adrienne L. Fernandes-Alcantara, “Runaway and Homeless Youth: Demographics and Programs,” *Congressional Research Service* (January 2013), http://www.nchcw.org/uploads/7/5/3/3/7533556/crs_2013_rhya_history_and_lit_review.pdf.

¹⁵ “The Truth About Runaway Teens,” *Polly Klaas Foundation* (February 2013), <http://www.pollyklaas.org/enews-archive/2013-enews/article-web-pages/the-truth-about-runaways.html>.

¹⁶ Douglas W. Nelson, “A Road Map for Juvenile Justice Reform,” *Annie E. Casey Foundation* (2008): 9, http://datacenter.kidscount.org/db_08pdf/2008_essay_summary.pdf.

¹⁷ Texas Department of Public Safety, *Crime Reports 2001-2013*.

¹⁸ Lisa Thrane and Xiaojin Chen, “Impact of Running Away on Girls’ Sexual Onset,” *Journal of Adolescent Health* 46, 1 (2009): 32-36.



Jennifer Carreon, Policy Researcher
John Kreager, Policy Fellow
Work: (512) 441-8123, ext. 103
Cell: (512) 900-0114
jcarreon@TexasCJC.org
www.TexasCJC.org

FACT SHEET 2015
HB 2885

Schools Should Collect and Report Data Each Time a School Police Officer Uses Force Against a Student

OFFICERS IN SCHOOLS ARE COMBATING TYPICAL STUDENT MISBEHAVIOR WITH NIGHTSTICKS, PEPPER SPRAY, AND TASERS

In 1978, only one percent of Texas schools reported having a police presence on campus. Today, most Texas schools report police presence from a local law enforcement agency or from the school district's own police department.¹ According to the Texas Association of School Resource Officers, these police officers fulfill three equal roles: (1) Law Enforcement Officer, maintaining a safe and secure learning environment; (2) Informal Counselor, serving as a confidential source of counseling for students and parents; and (3) Law-Related Presenter, promoting awareness of the law to students.²

But in practice, police officers in schools focus on the first role—that of a law enforcement officer—to the detriment of the other two. This is a natural consequence of the reality that all law enforcement officers receive training on subjects such as interacting with suspects, use of force, and firearms, yet do not receive specialized training on how to work effectively with kids in an educational environment. It should come as no surprise, then, that **officers equipped only with training regarding adult offenders are overreacting in response to typical student misbehavior, treating students no differently than they would any other “perp.”**

Consider the case of Cesar Suquet, a former student at South Houston High School. The then 16-year-old student had an oral argument with on-campus police officer Michael Y'Barbo over the return of Suquet's cell phone, which had been taken away during the school day. **In response to Suquet's use of an expletive, the officer hit Suquet 18 times with a metal baton, including nine blows after the student was on the ground.**³ Suquet sustained deep red bruises on his arms and back, and Pasadena Independent School District is currently facing a lawsuit based on Suquet's injuries.⁴

Sadly, Suquet's case is only one poignant example of the over-criminalization of students happening across the state. As the number of on-campus officers has increased over the last decade, so have the use of Class C misdemeanor tickets in schools,⁵ as well as uses of physical force against students in the form of batons, pepper spray, or Tasers. And recently, at least 10 Texas school districts applied for and received military-grade equipment—including armored plating, military vehicles, and 4,500 rounds of ammunition—through a federal initiative.⁶

Despite the concerning frequency of school officers using force against students, **“neither the Texas Education Agency nor the Texas Commission on Law Enforcement Officer Standards and Education require Texas' 160 school district police departments to keep statistics on when they use force against students.”**⁷ It is therefore imperative that adequate data is collected regarding the ways that on-campus police officers are policing Texas students to ensure that their presence is not counterproductive to students achieving success.

Continued on reverse.

KEY FINDINGS

- **The increasing use of officers to respond to school misbehavior – and the lack of specialized training for these officers – has corresponded with a dramatic rise in misdemeanor citations issued to Texas students.⁸**
- **Over the past decade, police in schools have been using tools and tactics more commonly reserved for encounters with hostile citizens on the street.**
 - » From 2012 to present, Pasadena, Texas, school police have **used force 129 times, drawing and pointing their firearms 24 times, using pepper spray twice, and using nightsticks 4 times.**⁹
 - » From 2006 to 2009, Austin ISD, which keeps fairly complete police records relative to the rest of the state, reported that its campus police **drew guns on students eight times, used pepper spray 26 times, used Tasers four times, and used police dogs once.** They used **batons or physical force 258 times.**¹⁰
 - » From 2006-2009, El Paso ISD reported that its campus police **used a baton once, pepper spray once, and physical force 34 times** to control students.¹¹
- **Using police tactics against unarmed students has resulted in serious injury and, in some cases, death, as well as a decline in parent confidence in Texas schools to educate and monitor students in a safe and appropriate manner.** Several of these incidents were recorded by students and school security cameras and have gained national attention. Below are some incidents of excessive police violence in Texas caught on tape and shared widely in the news and on social media:
 - » Noe Nino de Rivera was **Tased** by Officer Randy McMillan at Cedar Creek High School in Bastrop, which **caused him to fall and hit his head**, resulting in a **52-day medically induced coma.** He spent **almost three months in intensive care.**¹²
 - » An anonymous young girl was **held down and punched in the face** by an officer at Jefferson High School in San Antonio.¹³
 - » Ixel Perez was **tackled and held down by three officers for cellphone use** at Sam Houston High School in Houston.¹⁴
 - » Officer Steve Rivers **held down and broke the arm** of an unknown student at West Brook High School.¹⁵
 - » Jacob Herrera was **slammed face-first onto the ground** at Sam Houston Middle School in Houston for refusing to remove his rosary beads, which he claimed held sentimental value.¹⁶
 - » Officer George Bermudez of Georgetown ISD was recorded **tripping, grabbing, and shoving students after a soccer game.**¹⁷
 - » Derek Lopez was **shot and killed** by Officer Daniel Alvarado of the Northside Independent School District Police Department in San Antonio. Lopez **was unarmed.**¹⁸
 - » **Six Dallas High School students** were **hospitalized after being exposed to pepper spray** that officers used to break up a fight. The spray **leaked through the school's ventilation system** and led to a full evacuation of the campus.¹⁹
 - » **12 Manor High School students** were **treated for pepper spray exposure** after cops used the spray to break up a fight.²⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT HB 2885 BY REPRESENTATIVE GIDDINGS

- **HB 2885 will require school districts to report incident-based data describing each time a school police officer uses force against a student.** School districts will report, for each campus, the number of incidents where a physical restraint was administered, a citation issued, or an arrest made of a student. The report must also include information about the individual student, including his or her age, gender, race, and whether the student is eligible for special education services. Importantly, the school district will not be allowed to report personally-identifiable information regarding a student, or reveal the name of an officer involved in an incident. Because this data is currently not gathered, there is a serious gap in transparency and accountability, especially in light of the documented abuses of students by school officers using unnecessary physical force.
- **HB 2885 will equip policy-makers with the data they need to evaluate the appropriateness of school police using tools of physical restraint against Texas students,** and also help restore waning parent confidence in Texas schools as safe environments for their children.

Citations

-
- ¹ Texas Appleseed, "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools" (2010): 3.
 - ² Texas Association of School Resource Officers (TASRO), "Triad Approach" (accessed April 2, 2014), <http://tasro.org/page-621155>.
 - ³ Jennifer Bauer, "Family Files Lawsuit Against Pasadena ISD, Says Campus Police Officer Beat Student," *Houston Chronicle* (February 4, 2015), <http://www.click2houston.com/news/family-files-lawsuit-against-pasadena-isd-says-campus-police-officer-beat-student/31104244>.
 - ⁴ Ibid.
 - ⁵ Texas Appleseed, "School-to-Prison Pipeline."
 - ⁶ Morgan Smith, "Texas Schools Get Military Gear Through Federal Program," *The Texas Tribune* (September 15, 2014), <http://www.texastribune.org/2014/09/15/texas-schools-get-military-gear-through-federal-pr/>.
 - ⁷ Texas Tribune, "Texas Schools Rarely Track Force Against Students" (2009), <http://www.texastribune.org/2009/11/25/tx-schools-rarely-track-force-against-students/>.
 - ⁸ Council of State Governments "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement" (2011).
 - ⁹ Houston Chronicle, "Pasadena family accuses school officer of 'brutal and excessive' beating: Parents claim excessive force used against son by school officer," (Feb. 2015), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Pasadena-family-accuses-school-officer-of-brutal-6064567.php#0>.
 - ¹⁰ Texas Tribune, "Texas Schools Rarely Track Force against Students."
 - ¹¹ Ibid.
 - ¹² Austin American-Statesman, "Tased student 'totally dependent on me,' Bastrop mother says," (Feb. 2014), <http://www.statesman.com/news/news/local/tased-student-totally-dependent-on-me-bastrop-moth/ndBZF/>.
 - ¹³ My SA, "SAISD Investigating Officer After Struggle with Teenage Girl," (Feb. 2014), <http://www.mysanantonio.com/news/local/article/SAISD-investigating-officer-after-struggle-with-5275016.php>.
 - ¹⁴ Huffington Post: Crime, "Ixel Perez, Student, Accuses School Resources Officer of Excessive Force By Tackling Her," (Sep. 2014), http://www.huffingtonpost.com/2014/09/04/ixel-perez-student-tackled_n_5766324.html.
 - ¹⁵ New York Daily News, "Texas Cop Breaks Teen's Arm While Trying to Stop School Fight," (April 2014), <http://www.nydailynews.com/news/national/breaks-teen-arm-stop-fight-video-article-1.1756576>.
 - ¹⁶ CBS Houston, "Student Arrested for Refusal to Remove 'Gang Related' Rosary," (November 2014), <http://houston.cbslocal.com/2014/11/03/student-arrested-for-refusal-to-remove-gang-related-rosary/>.
 - ¹⁷ Austin American Statesman, "Georgetown Officer Suspended 40 Days after Tripping Incident," (June 2014), <http://www.statesman.com/news/news/local/georgetown-officer-suspended-40-days-after-trippin/ngD3F/>.
 - ¹⁸ My SA, "Officer Who Shot Student Had History of Not Following Orders: 12 Warnings, 4 Suspensions. Why was the NISD Cop Who Killed an Unarmed 14-year-old On the Job," (May 2011), <http://www.mysanantonio.com/news/article/Still-on-patrol-1388322.php>.
 - ¹⁹ Texas Tribune "Texas Schools Rarely Track Force against Students" (November 2009).
 - ²⁰ Ibid.



Mediation Holds Individuals Accountable and Facilitates Meaningful Resolution

VICTIM-OFFENDER MEDIATION WILL LOWER RATES OF REOFFENDING 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).

HB 3184 would allow individuals with no serious criminal history who have been charged with a misdemeanor or state jail 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.

HB 3184 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

County Jail Population Figures

- It costs, on average, more than \$61 per day to house someone in county jail in Texas.² As of March 1, 2015, there were more than 5,600 individuals in county jail awaiting trial or indictment for misdemeanor offenses and more than 5,900 for state jail felonies.³ While the average jail population may vary, counties spent more than \$700,000 on that day to hold these individuals in custody awaiting trial or indictment. **Pretrial diversion can save counties millions of dollars that could be used to address more serious problems.**

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.⁴ **One meta-analysis that examined 27 victim-offender mediation programs in North America found that 72% of the programs lowered recidivism.**⁵
- 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.⁶

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3184 BY REPRESENTATIVES MCCLENDON & KEOUGH

- **HB 3184 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 to 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.

- **HB 3184 provides a meaningful response to low-level property crime that reduces recidivism, improves victim satisfaction, and reduces jail overcrowding.** This 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, which can foster a behavioral change in a defendant that can prevent continued criminal actions.

CONCLUSION

HB 3184 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 Texas Commission on Jail Standards, Immigration Detainer Report 3/1/2015, <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf>

³ Texas Commission on Jail Standards, Abbreviated Population Report for 3/1/2015, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>

⁴ Marc Levin, "Restorative Justice In Texas: *Past Present & Future*," Texas Public Policy Foundation, 2005, p. 13.

⁵ Latimer, Dowden & Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 2000.

⁶ 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.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

HB 3184 by McClendon & Keough

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 3184, which 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 RECIDIVISM 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.**
- HB 3184 will allow individuals with no serious criminal history who have been charged with a misdemeanor or state jail felony property offense under Title 7 of the Penal Code to be eligible to participate in pretrial mediation. Rather than be convicted and potentially 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.

KEY FINDINGS

- It costs, on average, more than \$61 per day to house someone in county jail in Texas.² As of March 1, 2015, there were more than 5,600 individuals in county jail awaiting trial or indictment for misdemeanor offenses and more than 5,900 for state jail felonies.³ While the average jail population may vary, counties spent more than \$700,000 on that day to hold these individuals in custody awaiting trial or indictment. **Pretrial diversion can save counties millions of dollars that could be used to address more serious problems.**
- **A widely studied practice, victim-offender mediation reduces recidivism and is cost-effective.** One study examining 27 victim-offender mediation programs in North America found that 72% lowered recidivism.⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3184 BY MCCLENDON & KEOUGH

- **HB 3184 creates an opportunity for pretrial defendants charged with nonviolent 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.** This is a meaningful response to low-level property crime that improves victim satisfaction, lowers recidivism, and reduces jail overcrowding.
- **HB 3184 allows victims to be a part of the process of developing treatment recommendations,** including chemical dependency treatment and anger management.
- **HB 3184 provides additional incentives for successful fulfillment of mediation agreements.** One year after a person successfully completes the terms of the agreement, the defendant may motion the court to obtain an order of non-disclosure regarding the offense for which he or she entered into mediation.

Citations on reverse.

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 Texas Commission on Jail Standards, Immigration Detainer Report 3/1/2015, <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf>

³ Texas Commission on Jail Standards, Abbreviated Population Report for 3/1/2015, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>

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

Dear Memberse of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 3326, which will update the penalties for certain nonviolent offenses so they are punished to a degree consistent with the crime.

NEEDLESSLY HIGH PENALTIES HARM BOTH INDIVIDUALS AND THEIR COMMUNITIES

Texas spends billions of dollars every year incarcerating individuals for offenses that are punished more harshly than necessary. Individuals can receive up to two-year sentences for possessing less than a gram of a controlled substance, repeated prostitution offenses, and property crimes involving outdated monetary thresholds.

Drug Offenses: In the 2011-2012 biennium, 16,262 individuals were sentenced to state jail for a drug conviction¹—of these, 88% were convicted of possession less than a gram of a controlled substance without the intent to deal or distribute.² **Personal-use level possession of drugs should be dealt with at the local, misdemeanor level, utilizing strong probation methods instead of continuously cycling individuals through brief state jail terms without post-release supervision.**

Property Crimes: The monetary ranges of dollar amounts that apply to property offenses, including criminal mischief, graffiti, and theft, have not been changed since 1993 and therefore fail to reflect more than two decades of inflation. What amounted to a Class A misdemeanor 20 years ago may now constitute a state jail felony—a de facto “criminal inflation” that was not intended by the authors of the 1993 legislation. **Individuals serving sentences that are disproportionate to the value of the property damaged is costly to taxpayers, depletes public safety resources that can be directed towards individuals who pose a high risk to public safety, and further burdens jails and prisons.**

Prostitution: Almost all individuals convicted of prostitution share many common characteristics, among them substance abuse, mental illness, homelessness, and, above all, a history of sexual abuse and profound trauma. The 2001 legislation (HB 460) that made prostitution a felony offense in Texas has not helped to keep the public safe, which is the philosophical foundation of our criminal laws, nor has it addressed victimization. In fact, **keeping prostitution a felony has only served to drive those who are trapped in prostitution further into the shadows** while allowing those who solicit prostitution to go unpunished.

KEY FINDINGS

- Probation is far less expensive than incarceration in county jail or state jail, costing the state only \$1.63 per person per day.³ And it is often more effective at addressing addiction and mental illness than incarceration: individuals on probation frequently 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.⁴
- Michael McSpadden, a Republican and longtime district court judge in Harris County, believes that harsh drug possession penalties should be reduced. McSpadden and 11 fellow Harris County judges sent a letter to the chairman of the Senate Criminal Justice Committee saying that “the public has realized that draconian punishment of minor drug offenses as state jail felonies is not working, and as judges, we hear countless complaints from trial juries and grand juries who do not believe these cases should be tried as felonies.”⁵

Continued on reverse.

- Property-related crimes comprise nearly 13% of the population in prison and 50% of the population in state jail facilities, with burglary and larceny representing the top property offenses (84% of all property offenses in prison and 70% of all property offenses in state jail facilities).⁶ Individuals in prison who have been convicted of property crimes cost taxpayers more than \$918,000 per day to incarcerate and more than \$335 million annually, while individuals in state jails who have been convicted of property crimes cost taxpayers nearly \$250,000 per day to incarcerate and almost \$91 million annually.⁷
- According to data provided by the Texas Human Trafficking Prevention Task Force in its 2014 report, Texas saw 737 human trafficking incidences and 210 human trafficking-related arrests between January 1, 2007, and December 14, 2014, with 85 convictions.⁸ In addition, the Texas Department of Criminal Justice (TDCJ) reported that, as of August of 2014, there were 98 individuals serving sentences for human trafficking-related offenses or compelling prostitution.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3326 BY REPRESENTATIVE SENFRONIA THOMPSON

In an effort to ensure that offenses are punished at a level consistent with the crime committed, HB 3326 will update the following offenses by either decreasing the penalty by one degree or updating the monetary thresholds: possession of less than an ounce of marijuana; possession of less than a gram of a controlled substance in Penalty Group 1; criminal mischief; graffiti; burglary of a building other than a habitation; theft; theft of service; forgery; credit card or debit card abuse; fraudulent use or possession of identifying information; and prostitution.

Citations

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

² Open Records Request, Texas Department of Criminal Justice; *data available upon request*.

³ Legislative Budget Board (LBB), *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, 4, 6, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. In FY 2014 Texas spent as much as \$53.87 per person per day to incarcerate one individual in prison and as much as \$47.30 to incarcerate one individual in state jail.

⁴ 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, 13, 23 (individuals completing residential programs have significantly lower two-year arrest rates and incarceration rates than those who do not complete their program).

⁵ Letter from Judge Michael McSpadden of the 209th District Court to State Senator John Whitmire, January 3, 2013, <http://www.scribd.com/doc/139764249/Letter-from-Judge-Michael-McSpadden-of-the-209th-District-Court-to-StateSenator-John-Whitmire>.

⁶ Texas Department of Criminal Justice, *Statistical Report: Fiscal Year 2014*, 1, 10-11, http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf. TDCJ reported a total of 17,053 individuals on hand in prisons and a total of 5,267 individuals on hand in state jails for property offenses.

⁷ *Supra*, note 3.

⁸ The Human Trafficking Prevention Task Force Report, 2014. Presented to the Texas Legislature, Dec. 2014, 3, https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf.

⁹ *Ibid*, 3.

Offenses and Penalties Addressed by HB 3326

| Offense | Current Offense Level | Proposed Offense Level |
|---|---|---|
| Possession of less than an ounce of marijuana | <i>HB 3326, Section 1</i> § 481.121, Health and Safety Code | |
| | Class B misdemeanor | Class C misdemeanor |
| Possession of less than a gram of a controlled substance in Penalty Group 1 | <i>HB 3326, Sections 2 and 3</i> § 15(a)(1), Art. 42.12, Code of Criminal Procedure § 481.115(b), Health and Safety Code | |
| | State jail felony | Class A misdemeanor |
| Criminal Mischief | <i>HB 3326, Section 4</i> § 28.03 (b), Penal Code | |
| | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$50</u> - Class B misdemeanor: <u>\$50</u> or more but less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u>; less than <u>\$1,500</u> if damage is caused by a firearm or explosive weapon or if the property was fence to contain livestock or game animals | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$500</u> - Class B misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u> - Class A misdemeanor: <u>\$1,500</u> or more, but less than <u>\$20,000</u> - State jail felony: less than <u>\$20,000</u> if damage is caused by a firearm or explosive weapon or if the property was fence to contain livestock or game animals |
| Graffiti | <i>HB 3326, Section 5</i> § 28.08(b), (d), Penal Code | |
| | <ul style="list-style-type: none"> - Class B misdemeanor: less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u> - State jail felony: marking is made on a school, institution of higher education, place of worship or human burial, public monument, or community center that provides medical, social, or education programs and the damage is less than <u>\$20,000</u> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u> - 1st degree felony: <u>\$200,000</u> or more | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$100</u> - Class B misdemeanor: <u>\$100</u> or more but less than <u>\$750</u> - Class A misdemeanor: <u>\$750</u> or more but less than <u>\$2,500</u> - State jail felony: <u>\$2,500</u> or more but less than <u>\$30,000</u> - State jail felony: marking is made on a school, institution of higher education, place of worship or human burial, public monument, or community center that provides medical, social, or education programs and the damage is <u>\$750</u> or more but less than <u>\$30,000</u> - 3rd degree felony: <u>\$30,000</u> or more but less than <u>\$150,000</u> - 2nd degree felony: <u>\$150,000</u> or more but less than <u>\$300,000</u> - 1st degree felony: <u>\$300,000</u> or more |
| Burglary of a building other than a habitation | <i>HB 3326, Section 6</i> § 30.02(c), Penal Code | |
| | State jail felony | Class A misdemeanor |

Offenses and Penalties Addressed by HB 3326

| HB 3326, Section 7 § 31.03(e), Penal Code | | |
|--|---|---|
| Theft | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$50</u>, or less than <u>\$20</u> and the defendant obtained the property by issuing a bad check - Class B misdemeanor: <u>\$50</u> or more but less than <u>\$500</u>, or <u>\$20</u> or more but less than <u>\$500</u> and the defendant obtained the property by issuing a bad check; less than <u>\$50</u> and the defendant has previously been convicted of any grade of theft, or less than <u>\$20</u> and the defendant has previously been convicted of any grade of theft and the theft was by bad check; a driver's license, commercial driver's license, or personal identification certificate - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u>; or the property is less 10 head of sheep, swine, or goats or any part thereof under the value of <u>\$20,000</u>; property stolen from a human corpse or grave; property is a firearm; less than <u>\$1,500</u> and the defendant has been previously convicted two or more times of any grade of theft; property is an official ballot or official carrier envelope for an election; less than <u>\$20,000</u> and the property is aluminum, bronze, copper, or brass - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u>, or the property is cattle, horses, or exotic livestock, exotic fowl, 10 or more head of sheep, swine or goats stolen during a single transaction and having an aggregate value of less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u>, or less than <u>\$200,000</u> and the property stolen is an ATM or the contents or components of an ATM - 1st degree felony: <u>\$200,000</u> or more | <ul style="list-style-type: none"> - Class C misdemeanor: less than <u>\$500</u> - Class B misdemeanor: <u>\$500</u> or more but less than <u>\$1,500</u>; less than <u>\$500</u> and the defendant has previously been convicted of any grade of theft; a driver's license, commercial driver's license, or personal identification certificate - Class A misdemeanor: <u>\$1,500</u> or more, but less than <u>\$20,000</u> - State jail felony: the property is less 10 head of sheep, swine, or goats or any part thereof under the value of <u>\$20,000</u>; property stolen from a human corpse or grave; property is a firearm; less than <u>\$20,000</u> and the defendant has been previously convicted two or more times of any grade of theft; property is an official ballot or official carrier envelope for an election; less than <u>\$20,000</u> and the property is aluminum, bronze, copper, or brass - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u>, or the property is cattle, horses, or exotic livestock, exotic fowl, 10 or more head of sheep, swine or goats stolen during a single transaction and having an aggregate value of less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u>, or less than <u>\$200,000</u> and the property stolen is an ATM or the contents or components of an ATM - 1st degree felony: <u>\$200,000</u> or more |

Offenses and Penalties Addressed by HB 3326

| | | |
|---|---|---|
| | HB 3326, Section 8 § 31.04, Penal Code | |
| | <ul style="list-style-type: none"> - Intent to avoid payment is presumed if the actor failed to return property held under a rental agreement within 5 days after receiving notice demanding return if the property is valued at less than <u>\$1,500</u>, or within 3 days after receiving notice demanding return if the property is valued at <u>\$1,500</u> or more - Class C misdemeanor: less than <u>\$20</u> - Class B misdemeanor: <u>\$20</u> or more but less than <u>\$500</u> - Class A misdemeanor: <u>\$500</u> or more, but less than <u>\$1,500</u> - State jail felony: <u>\$1,500</u> or more but less than <u>\$20,000</u> - 3rd degree felony: <u>\$20,000</u> or more but less than <u>\$100,000</u> - 2nd degree felony: <u>\$100,000</u> or more but less than <u>\$200,000</u> - 1st degree felony: <u>\$200,000</u> or more | <ul style="list-style-type: none"> - Intent to avoid payment is presumed if the actor failed to return property held under a rental agreement within 5 days after receiving notice demanding return if the property is valued at less than <u>\$2,500</u>, or within 3 days after receiving notice demanding return if the property is valued at <u>\$2,500</u> or more - Class C misdemeanor: less than <u>\$100</u> - Class B misdemeanor: <u>\$100</u> or more but less than <u>\$750</u> - Class A misdemeanor: <u>\$750</u> or more, but less than <u>\$2,500</u> - State jail felony: <u>\$2,500</u> or more but less than <u>\$30,000</u> - 3rd degree felony: <u>\$30,000</u> or more but less than <u>\$150,000</u> - 2nd degree felony: <u>\$150,000</u> or more but less than <u>\$300,000</u> - 1st degree felony: <u>\$300,000</u> or more |
| Theft of service | | |
| | | |
| Forgery | HB 3326, Sections 9 and 14 § 32.21, Penal Code | |
| | State jail felony | Class A misdemeanor |
| Credit card or debit card abuse | HB 3326, Sections 10 and 13 § 32.31, Penal Code | |
| | State jail felony | Class A misdemeanor |
| Fraudulent use or possession of identifying information | HB 3326, Section 11 § 32.51, Penal Code | |
| | <ul style="list-style-type: none"> - State jail felony: less than 5 items - 3rd degree felony: 5 or more but less than 10 items - 2nd degree felony: 10 or more but less than 50 items - 1st degree felony: 50 or more items | <ul style="list-style-type: none"> - Class A misdemeanor: less than 5 items - State jail felony: 5 or more but less than 10 items - 3rd degree felony: 10 or more but less than 50 items - 2nd degree felony: 50 or more items |
| Prostitution | HB 3326, Section 12 § 43.02, Penal Code | |
| | <ul style="list-style-type: none"> - Class B misdemeanor: first conviction - Class A misdemeanor: previously convicted one or two times - State jail felony: previously convicted three or more times - 2nd degree felony: person solicited is younger than 18 years | <ul style="list-style-type: none"> - Class B misdemeanor: first conviction - Class A misdemeanor: previously convicted one or more times - 2nd degree felony: person solicited is younger than 18 years |

Increase Opportunities for Hard-Working Individuals with Criminal Records By Providing Orders of Nondisclosure for Certain Offenses and Judgements

ACCESS TO ORDERS OF NONDISCLOSURE

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 difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Despite the fact that current policies regulating orders of nondisclosure take many steps in the right direction, these forms of relief do not extend far enough to offer a genuine second chance to those trying to live as responsible and safe residents of Texas.

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » In order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.² **HB 3936 would also make eligible those individuals who have been convicted of certain misdemeanors for the very first time.**
 - » Under current law, an individual must wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors – before being eligible for an order of nondisclosure.³ **Under HB 3936, individuals with misdemeanor convictions would be required to wait two years if they were incarcerated for the offense, or may petition immediately if they completed probation.** Individuals who completed probation for crimes against persons will be subject to a two-year waiting period.
 - » Only some types of offenses are currently eligible for nondisclosure; certain violent and sex-related offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶ **HB 3936 would create an expedited process for those whose offenses were dismissed following deferred adjudication for misdemeanors not against persons.**

- **Few orders of nondisclosure are issued compared to the number of eligible offenses.**
 - » According to the Office of Court Administration's Court Activity Reporting and Directory System, a total of 170,587 cases were dismissed in district criminal courts over a four-year period (September 2010 through August 2014). Over 18 percent, or 30,924 of these, were for drug possession alone.⁷ Another 3,366 dismissals were for misdemeanors.⁸ Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.
 - » The Texas Department of Public Safety reported in May 2014 that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).⁹
- **Even when issued, orders of nondisclosure are not always effective in limiting access to criminal records, potentially resulting in the ongoing dissemination of restricted or inaccurate information.**
 - » While the Texas Department of Public Safety (DPS) is statutorily mandated to certify to the court that issued the order of nondisclosure that the relevant records in its possession have been sealed, the statute does not require DPS to certify to the court that it has notified all the private commercial businesses it sold the records to of the order of nondisclosure or expunction. This means that, although DPS is accountable to the courts to comply with orders of nondisclosure, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure has been issued.
 - » Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure from their records or websites. Please note, however, that DPS indicates on its website that it "provides a file that contains the nondisclosure records that are no longer public" and that "customers have 30 business days from the posting of the file to remove any records."¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3936 BY REPRESENTATIVES HERRERO, SENFRONIA THOMPSON, MURPHY, AND VILLALBA

This bill will give a fair chance to thousands of Texans who have overcome their past mistakes, enabling them to access safe housing, become gainfully employed, and contribute to Texas communities in positive ways.

- **HB 3936 will provide a second chance for those who are convicted of a misdemeanor for the very first time.** Individuals who have ever been convicted of or received deferred adjudication for any other crime will not be eligible to receive an order of nondisclosure for the conviction.
- **HB 3936 will also reduce barriers to obtaining an order of nondisclosure for individuals whose cases were dismissed following deferred adjudication for a nonviolent misdemeanor** by entitling them to receive an order of nondisclosure upon dismissal without the following needing to occur: filing a petition, providing notice to the prosecutor, or paying civil petition fees. Defendants will still be required to pay the \$28 nondisclosure fee to be remitted to the Department of Public Safety. This expedited process will conserve county resources and make orders of nondisclosure more accessible for those who have served their punishment.

Citations on following page.

Citations

¹ [Tex. Gov't. Code, § 411.081.](#)

² [Tex. Gov't Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).

⁷ Data was obtained from the Office of Court Administration Court Activity Reporting and Directory System using the Ad-Hoc Search feature on October 1, 2014. Public court activity data may be found at <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

⁸ *Ibid*.

⁹ Texas Department of Public Safety (DPS), Letter to the Lieutenant Governor and Speaker of the House dated May 30, 2014, reporting the number of petitions and orders for nondisclosure received by the Department in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.

¹⁰ Texas Department of Public Safety, "Conviction Database Customers," accessed on October 3, 2014, available at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>.



John Kreager, Policy Fellow
Work: (512) 441-8123, ext. 104
Executive Director's Cell: (512) 587-7010
jkreager@TexasCJC.org
www.TexasCJC.org

The Independent Ombudsman Should be Able to Talk with Youth in County Facilities and Oversee PREA Audits

THE OFFICE OF THE INDEPENDENT OMBUDSMAN HAS BEEN VERY EFFECTIVE BUT DOES NOT HAVE ACCESS TO COUNTY 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.

TEXAS MUST ENSURE THAT PREA AUDITS ARE CONDUCTED ACCORDING TO NATIONAL STANDARDS

Congress passed the Prison Rape Elimination Act (PREA) unanimously in September 2003.¹ The goal of this statute is to prevent sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Over the course of 10 years, experts around the country developed what have become the PREA standards in an effort to substantially reduce the occurrences of prison rape in adult and juvenile facilities.

PREA audits are a critical component of the PREA standards.² As codified, these PREA audit standards require all facilities covered by PREA to be audited at least once every three years, with one-third of each facility type audited each year. These audits must be conducted by an auditor certified by the Department of Justice (DOJ). To be certified—among other requirements—the auditor must be independent of the agency or other government body that operates the facilities to be audited. However, to date, Texas has taken no action to ensure that these audits are being conducted, and conducted properly.

KEY FINDINGS

- **The OIO plays a crucial role in protecting the safety and rights of youth in Texas state juvenile facilities.**
 - » The OIO made 216 facility site visits in Fiscal Year 2014, interviewing 1,354 youth.³ 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.⁴
- **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."⁵
 - » 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."⁶ There were 379 attempted suicides in Texas county juvenile facilities in 2013.⁷

- **The current lack of a coordinated approach to PREA audits puts Texas facilities at risk of financial penalties and civil litigation.**
 - » While a few facilities to date have conducted their own PREA audits, there has been no coordinated state action to ensure that every covered facility is audited, and that those audits are conducted by independent, DOJ certified auditors.⁸
 - » PREA standards are mandatory, and state and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds.⁹ Additionally, states and localities that are not in compliance with the standards may be vulnerable to litigation. Private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting their constitutional obligations.
- **The OIO is ideally positioned to oversee PREA audits and provide technical assistance at a statewide level in compliance with the PREA standards.**
 - » As an independent oversight body tasked with monitoring youth in Texas secure facilities, the OIO already possesses the necessary independence to apply for DOJ certification.¹⁰ Further, the OIO has extensive experience entering and investigating secure facilities that will prove invaluable support to the PREA auditor.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **We support legislation that would allow OIO staff to visit with youth in county secure facilities.** This 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 facilities, and it is equally important to protect them from the risk of abuse, neglect, or exploitation.
- **We support legislation that would give the OIO the ability to oversee PREA audits.** This will address a critical need—a coordinated state response to PREA audits—using an existing office. The OIO already has the relevant experience to oversee these audits. Given the expansion of the OIO’s authority to visit youth in county facilities, the OIO will already be entering the secure facilities that need to be audited under PREA. Giving the OIO this authority is a matter of efficiency and common sense.

References

¹ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

² Prison Rape Elimination Act National Standards, 28 C.F.R. §§ 115.401-405 (2012).

³ Independent Ombudsman for the Texas Juvenile Justice Department, “Fourth Quarter Report FY 14” (August 31, 2014), available at <http://www.tjjd.texas.gov/ombudsman/reports/IO%20Fourth%20Quarter%202014.pdf>.

⁴ See, e.g., Independent Ombudsman for the Texas Juvenile Justice Department, “Giddings State School Site Visit Report OIO-SV-12-145” (April 13, 2012).

⁵ Texas Juvenile Detention Association, “Resolution concerning TAC 343 and related standards” (March 28, 2012).

⁶ *Fort Worth Star-Telegram*, “Cleburne boy fatally injured at Granbury detention center” (October 18, 2011).

⁷ Texas Juvenile Justice Department, “2013 Facility Registry” (2013).

⁸ See, e.g., PREA Audit: Auditor’s Summary, Evins Regional Justice Center (October 23, 2014), available at http://www.tjjd.texas.gov/programs/prea/Evins_Regional_Juvenile_Center_Final_PREA_Audit_Report.pdf.

⁹ The Project on Addressing Prison Rape, “Fifty State Survey: Federal PREA Support and Potential Funding Loss,” (May 2014), available at https://www.wcl.american.edu/endsilence/documents/50StateSurvey_FederalPREAGrantsPotentialFederalFundingLoss-UPDATE5-29-14DOJStateList.pdf.

¹⁰ TEX. HUM. RES. CODE § 261.003.

Repeal Texas' Driver Responsibility Program And Identify Alternative Funding Sources for Trauma Hospitals

Despite its good intentions, the program has created more problems than it has solved, increasing unlicensed motorists, harming low-income drivers and families, and burdening courts.

ORIGIN OF PROGRAM AND UNSUCCESSFUL OUTCOMES

Texas' Driver Responsibility Program (DRP) was created in 2003 to pay for then-Governor Rick Perry's Trans-Texas Corridor program. That initiative died but the funding mechanism passed, with half of the revenue designated to pay for uncompensated care at Texas trauma hospitals and the other half going into the state's general revenue fund.

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 three years; in some instances, individuals are required to pay the surcharge for three 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**, with under 40% of the assessed surcharges collected assessed since the program's inception.³ This is despite changes made to the program during the 2009 and 2011 legislative sessions to induce more Texans to pay overdue surcharges.⁴

Not only has the DRP generated less than half of the revenue anticipated, it only partly fulfills its promise to pay for uncompensated care at trauma hospitals: Instead of spending surcharge money as originally intended, the Legislature has withheld tens of millions from hospitals to certify the budget.⁵

- **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**. From 2003 to 2013, the percentage of fatal automobile crashes in Texas that involve alcohol increased from 26.3% to 32%.⁶
- **More unlicensed and uninsured drivers on Texas roads.** The DRP has not only failed to diminish the proportion of unlicensed and uninsured drivers on the road, it dramatically increased their number. 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

Continued on reverse.

- **Greater case backlogs and undue county costs.** In Fiscal Year 2014 alone, nearly 30,000 Class B misdemeanor cases were added to Texas court dockets for Driving with an Invalid License⁹ – meaning the DRP is likely **creating a new class of “criminals” and clogging court dockets.**¹⁰ The DRP also increases counties’ jail costs: Because most drivers continue to drive despite defaulting on their surcharges, many of those drivers can wind up in county jails due to accumulated, unpaid traffic tickets and/or for driving with a suspended license.¹¹ This puts more pressure on jails and, again, needlessly fills court dockets with petty cases, in turn increasing the financial burden on counties.
- **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.¹² 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.¹³ 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 SB 93 BY SENATOR ELLIS

- **SB 93 repeals Texas’ Driver Responsibility Program.** This program has created an untenable economic situation for hundreds of thousands of Texans. 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.¹⁴
- » 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).¹⁵
- » Expand the hours or days during which alcohol may be sold in Texas.
- » Levy an approximate 1% tax on carbonated soft drinks.¹⁶

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, <http://www.chron.com/disp/story.mpl/metropolitan/6922979.html>.

³ “Reform sought in Texas ticket surcharge program,” *El Paso Times*, September 22, 2013. “Since its inception in 2003, the Driver Responsibility Program has collected only \$1.14 billion of the \$2.85 billion of the charges it levied.”

⁴ Texas Department of Public Safety, email to State Rep. Sylvester Turner. *Data available upon request.*

The Legislature ordered the Texas Department of Public Safety to create an Amnesty program; instead, the agency implemented just one Amnesty period (in 2011) and failed to adequately publicize it, relying on unpaid publicity from the mainstream media that was spotty and unfocused. Even so, about 14 percent of eligible drivers – nearly 100,000 out of 700,000 – took advantage of the lower payments to clear their records and regain their driver’s licenses.

⁵ “Interactive: Billions of dedicated funds unspent,” *The Texas Tribune*, December 6, 2012, <http://www.texastribune.org/library/data/dedicated-revenue-funds-list/>.

⁶ Texas Department of Transportation, *Total and DUI (Alcohol) Fatal and Injury Crashes Comparison*, 2003, 3, http://ftp.dot.state.tx.us/pub/txdot-info/trf/crash_statistics/2003_update/33_2003.pdf. Also see *Total and DUI (Alcohol) Fatal and Injury Crashes Comparison*, 2013, 3, http://ftp.dot.state.tx.us/pub/txdot-info/trf/crash_statistics/2013/37-2013.pdf.

⁷ Texas Department of Public Safety (DPS), email to State Rep. Sylvester Turner. *Data available upon request.* More than 2 million people have lost their drivers licenses as a result of unpaid surcharges, with around 1.3 million licenses suspended for lack of payment.

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. [See *The Economic Impact of Motor Vehicle Crashes 2000*, prepared by the National Highway Traffic Safety Administration, 2002, <http://www-nrd.nhtsa.dot.gov/Pubs/809446.PDF>.] Adjusting for inflation, that’s 19,166 in 2015 dollars. Multiplying that figure by the number of estimated crashes with surcharge-owing drivers in Texas (approximately 16,000, given national accident rates), the DRP could be costing Texans \$306 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 Office of Court Administration, *Statutory County Courts: Activity Detail from September 1, 2013 to August 31, 2014*, 3, <http://www.txcourts.gov/media/696423/3-SCC-Activity-Detail-fy-2014-pdf.pdf> [25,774 New Cases Filed]. Also see *Constitutional County Courts, Activity Detail from September 1, 2013 to August 31, 2014*, 1, <http://www.txcourts.gov/media/701752/3-CCC-Activity-Detail-2014.pdf> [4,029 New Cases Filed].

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, <http://www.dallasnews.com/news/politics/texas-legislature/headlines/20100427-Texas-steep-surcharges-for-driving-8326.ece>.

¹¹ Brandi Grissom, “Many Texans lose licenses in driver points program,” *El Paso Times*, August 19, 2007.

¹² The New Jersey Motor Vehicles Affordability and Fairness Task Force published a report in 2006 on their surcharge program, after which Texas’ Driver Responsibility surcharge was modeled. (See http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.) They found that, of persons with suspended licenses whose annual income was under \$30,000: (1) 64% were unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% of persons whose license was suspended within this income bracket indicated that they were unable to pay costs that were related to their suspended driving privileges. In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.

¹³ John Henry, “Texas drunken driving surcharges meet economic reality,” *Fort Worth Star Telegram*, December 6, 2010, <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, <http://www.texastribune.org/texas-local-news/driver-responsibility-program/rep-berman-files-bill-to-end-dps-surcharges/>

¹⁴ Figure estimated based on the fiscal note for HB 1810 (2011), <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.

¹⁵ "Taxing Sin," Center for Public Policy Priorities, January 14, 2009, <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.*

¹⁶ 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, http://www.upi.com/Business_News/2012/04/02/Soda-consumption-down-again-revenues-up/UPI-3270133344089/.

RAISING THE AGE OF JUVENILE JURISDICTION WILL PROTECT YOUTH, ALLEVIATE SUBSTANTIAL COSTS TO COUNTIES, AND PROTECT SHERIFFS

Texas Teens Can Be Treated as Adults When They Break the Law: In Texas, the age of adulthood is typically 18 years of age; at that age, juveniles are able to vote, join the military, and buy a lottery ticket. Yet despite this seeming consensus that adulthood begins at 18, juveniles may be charged as an adult for a criminal offense the day they turn 17. Not only is this practice inconsistent with our societal consensus for “maturity,” it is also inconsistent with common sense—“what every parent knows”—and what neurological research has confirmed: **youth are inherently less likely to consider the potential outcomes of their actions, are prone to risky behavior, and are more vulnerable or susceptible to negative influences and outside pressures.** Because of these distinctive attributes of youth, which they thankfully outgrow with time, there is less justifications for treating them as adults and subjecting them to adult punishment.

Adult Correctional Facilities are No Place for Kids: The majority of system-involved youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record or adult prison. ***(See graphic at right for the number of arrests among 17-year-olds in 2013.¹)*** The adult prison system exposes youth to isolation and detention within a jail setting, or incarceration within a prison setting – settings that pose a severe danger to the mental and physical health of youth. Various studies have confirmed that adult correctional facilities are a breeding ground for violence and abuse.²

Texas has a Financial Incentive to Keep Kids Out of Adult Facilities: In specific response to fears about the prevalence of rape in correctional settings, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA).³ PREA is a federal statute aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Among other things, it requires all offenders under 18 to be housed separately from adults in correctional facilities.⁴

This *Youthful Inmate Standard* (examined more fully below) has greatly impacted adult county jails, forcing them to expend extra costs to comply, and leaving many counties unable to comply due to architectural constraints. For example, **Dallas County spends approximately \$79,850 per week to separate 17-year-olds from adults.**⁵ Harris County has had to evacuate entire floors to move one or two 17-year-olds to the shower.⁶ Smaller counties are logistically unable to provide “sight and sound” separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.⁷ Simply put, **Texas county jails cannot continue housing 17-year-olds with adult inmates or in isolation cells without financial cost and/or liability risk.**

Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to keep these youth safe, and it would obviate the costs of doing sight and sound separation. The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, **many Sheriffs have chosen to support “raising the age” of juvenile jurisdiction.**⁸



KEY FINDINGS

- **There is no justifiable basis for distinguishing between 17-year-olds and 16-year-olds.** These two groups of teens commit largely the same types of offenses. The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws and public drunkenness, possession of marijuana and larceny theft.⁹
- **The majority of 17 year-olds are arrested for nonviolent and misdemeanor offenses.** 96% of 17 year-olds who were arrested in 2013 were arrested for nonviolent and misdemeanor offenses.¹⁰
- **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.¹¹
- **Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system** (see graphic at right). According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal justice system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crimes.¹²
- **Studies have shown that raising the age of juvenile jurisdiction to 18 will ultimately save Texas \$88.9 million for every cohort of 17-year-olds moved into the juvenile system.**¹³
- **Research has shown that adult correctional facilities are a breeding ground for violence and abuse.** Youth are over eight times as likely to have a substantiated incident of sexual violence while in state prisons than adults in these same facilities (see graphic below).¹⁴



DANGERS OF HOUSING YOUTH IN ADULT FACILITIES



KEY FINDINGS (CONTINUED)

- **17-year-olds housed in adult correctional facilities are forced into isolation.** Youth who are held in adult correctional facilities are subject to isolation, which poses a severe danger to their mental and physical health.¹⁵ Because PREA defines a “youthful inmate” as anyone under the age 18, 17-year-olds MUST be kept “sight and sound” separated from the rest of the adult population. Unfortunately, county jails (where the majority of youth are held) are not equipped to segregate 17-year-olds without isolating them.¹⁶
- **Keeping 17-year-olds in the adult criminal justice system comes at significant expense to counties.** The *Youthful Inmate Standard* is extremely difficult for county jails to comply with. Some counties, such as Dallas, spend nearly \$80,000 per week keeping youth separated by sight and sound from the general population.¹⁷ The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason, the Sheriffs’ Association of Texas has chosen to support “raising the age” of juvenile jurisdiction.¹⁸ Yet another county concern is lawsuits: PREA exposes counties to increased civil liability,¹⁹ with the potential for substantial litigation costs.
- **Texas facilities have high reported incidents of sexual assaults.** During its initial investigation into allegations of prison rape, the Bureau of Justice Statistics found that five Texas prison facilities were among those nationally with the highest prevalence of sexual assault.²⁰ An astounding 15.7% of inmates surveyed indicated that they were sexually assaulted by another inmate or staff.²¹

Table 4. Prison facilities with the highest prevalence of sexual assault, by another inmate or staff and by level of force and injury, National Inmate Survey, 2007

| Facility name | Total prevalence ^a | Inmate-on-inmate sexual assault | | | Staff-on-inmate sexual assault | | | |
|--|-------------------------------|---------------------------------|-----------|----------------------|--------------------------------|-----------|---------------------|----------------------|
| | | Physically forced | Pressured | Injured ^b | Physically forced | Pressured | Reported as willing | Injured ^b |
| U.S. total | 4.5% | 1.3% | 1.7% | 0.5% | 0.9% | 1.5% | 1.7% | 0.3% |
| Estelle Unit, TX | 15.7 | 5.1 | 7.9 | 2.0 | 0.9 | 4.4 | 5.2 | 0.4 |
| Clements Unit, TX | 13.9 | 1.7 | 3.3 | 1.0 | 4.1 | 6.8 | 5.6 | 3.1 |
| Tecumseh State Corr. Inst., NE | 13.4 | 0.0 | 1.2 | 0.0 | 7.5 | 11.8 | 5.9 | 3.9 |
| Charlotte Corr. Inst., FL | 12.1 | 0.6 | 1.1 | 0.0 | 2.6 | 6.1 | 5.7 | 0.0 |
| Great Meadow Corr. Fac., NY | 11.3 | 1.0 | 2.8 | 0.0 | 6.0 | 6.3 | 2.8 | 2.0 |
| Rockville Corr. Fac., IN ^c | 10.8 | 6.5 | 7.5 | 3.7 | 0.5 | 1.1 | 0.9 | 0.6 |
| Valley State Prison for Women, CA ^c | 10.3 | 4.7 | 5.9 | 1.5 | 1.5 | 3.3 | 3.3 | 0.9 |
| Allred Unit, TX | 9.9 | 3.6 | 3.2 | 3.3 | 2.8 | 3.2 | 2.3 | 0.9 |
| Mountain View Unit, TX ^c | 9.5 | 7.5 | 6.8 | 2.7 | 0.7 | 3.0 | 1.4 | 2.1 |
| Coffield Unit, TX | 9.3 | 2.1 | 3.9 | 0.0 | 0.4 | 1.4 | 4.3 | 0.0 |

Note: Detail may add to more than totals because victims may report more than one type of victimization, injury, and type of force.

^aPercent of inmates reporting one or more incidents of sexual victimization involving another inmate or facility staff in the past 12 months or since admission to the facility, if shorter. (See *Methodology* for definitions.) Weights were applied so that inmates who responded accurately reflected the entire population of each facility on selected characteristics, including age, gender, race, time served, and sentence length. (See *Methodology* for nonresponse and post-stratification weighting procedures.)

^bInjuries included knife or stab wounds, broken bones, anal or rectal tearing, teeth chipped or knocked out, internal injuries, knocked unconscious, bruises, black eyes, sprains, cuts, scratches, swelling, or welts.

^cFemale facility.

WHAT IS PREA, AND HOW IS IT RELATED TO THE AGE OF JUVENILE JURISDICTION?

In passing PREA, Congress “established a National Prison Rape Elimination Commission (NPREC) to ‘carry out a comprehensive legal and factual study of the penological [sic], physical, mental, medical, social, and economic impacts of prison rape in the United States’ and to recommend to the Attorney General ‘national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.’”²² “The statute defines ‘prison’ as ‘any confinement facility,’ including jails, police lockups, and juvenile facilities, and defines ‘rape’ to include a broad range of unwanted sexual activity.”²³

PREA has four primary goals:

- Data Collection: Section four of PREA requires the Bureau of Justice Statistics to collect statistics on the incidence of prison sexual violence in state, local, and federal custodial facilities.²⁴
- Training and Technical Assistance: Under Section five of PREA, the National Institute of Corrections received funding to administer a national clearinghouse on sexual violence in custody and to provide training and technical assistance to the field.²⁵
- Grants to the States: PREA authorizes a grant program to help states meet the PREA requirements.²⁶ To date, the total federal amount given in grants to states and local departments of corrections from 2004-2013 is \$54,376,459.²⁷ **The most heavily funded state from these grants was Texas, which has received \$3,576,598.**²⁸
- Development of National Standards: On June 20, 2012, the Department of Justice adopted a series of national standards aimed to prevent, detect, and respond to prison rape. “A State whose Governor does not certify full compliance with the standards is subject to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years.”²⁹ “The final rule specifies that the Governor’s certification applies to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.”³⁰ There is no penalty to the state for facilities outside the state’s operational control; however, as discussed more fully below, counties may still be vulnerable to private litigation for noncompliance.

The PREA “standards are generally not outcome-based, but rather focus on policies and procedures.”³¹ Many of these procedures are straightforward and non-controversial. One of those standards relates to the confinement of youth, defined as individuals under the age of 18. The Youthful Inmate Standard (§115.14) requires that:

- No youth under 18 years of age can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain “sight and sound separation”—i.e., preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Of the 112 counties who responded to an information request filed by the Texas Criminal Justice Coalition, nearly 65% of Texas counties with adult correctional facilities already comply or are attempting to comply with PREA requirements.³² But complying becomes expensive for jails that house 17-year-olds. As the Sheriffs’ Association of Texas states, “To ensure the safety of 17-year-olds in our care, best practice tells us 17-year-olds should be separated from older offenders in correctional facilities. This means increased staff and building units on to or jails to house these youth. Many counties will soon need to retrofit their jails to comply with safety standards for 17-year-olds – costing tax payers millions of dollars.”³³

POTENTIAL LIABILITY FOR FAILING TO COMPLY WITH PREA

“PREA does not require State and local facilities to comply with the Department [of Justice]’s standards, nor does it enact a mechanism for the Department to enforce such compliance; instead the statute provides certain incentives for such confinement facilities to implement the standards.”³⁴ These incentives include grants to help local facilities come into compliance. **Several Texas counties have already received PREA-related grants: Dallas County Juvenile Department (\$88,942), Travis County Juvenile Probation Department (\$100,000), Atascosa County Juvenile Probation Department (\$300,000), Harris County, Texas (\$237,693), and Webb County, Texas (\$250,000).**³⁵

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”³⁶ **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United State Supreme Court set forth the standard for determining if prison conditions violated the Eighth Amendment.³⁷ The two-part test adopted by the Supreme Court required the plaintiff to prove (1) that the conditions were cruel and (2) that the government was deliberately indifferent to the conditions facing the inmate. Prior to PREA, this second prong—deliberate indifference—narrowed the class of claims that litigants were able to bring, because it is extremely difficult to prove that a government entity was deliberately indifferent to the conditions facing inmates.

PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates. Thus, failure to follow these PREA standards could be seen as *prima facie* evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.³⁸

COST ESTIMATES PER SIDE OF LITIGATION FOR TYPICAL AUTOMOBILE TORT CASE

| Litigation Stage | Amount expended on attorney’s fees alone for <u>lowest 25%</u> | Amount expended on attorney’s fees alone for <u>highest 75%</u> |
|--|--|---|
| Case Initiation | \$1000 | \$7,350 |
| Between Discovery through Formal Negotiations or ADR | \$5,000 | \$36,000 |
| Trial | \$18,000 | \$109,000 |

This cost model suggests that litigation costs alone may substantially increase for facilities that fail to comply with PREA. It is too early to predict what the costs might be if a plaintiff is successful. One ex-inmate of Travis County has sued, alleging that county and sheriffs’ officials displayed deliberate indifference to his safety by failing to comply with PREA; he is seeking \$2 million in damages as compensation for the rape he sustained while in the Travis County jail.³⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 104 BY SENATOR HINOJOSA

SB 104 will raise the age of maximum juvenile jurisdiction from 17 to 18 years. The Texas Criminal Justice Coalition recommends that Texas raise the age of juvenile jurisdiction for both misdemeanors and felonies from 17 to 18. This expansion of juvenile jurisdiction is consistent with federal constitutional law and promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.

This change will reduce confusion and jurisdictional questions that arise when 17-year-olds are arrested. Moreover, raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to comply with PREA standards, and it would obviate the costs of doing sight and sound separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.

Citations

¹ Texas Department of Public Safety, Crime Records (2013).

² Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-55, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf>; see also Michele Deitch, Anna Lipton Galbraith, and Jordon Pollock, "Conditions for Certified Juveniles in Texas County Jails," (May 2012): 25.

³ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

⁴ Ibid.

⁵ Sheriffs Adrian Garcia, Christopher Kirk, and Lupe Valdez, "Sending 17-Year-Olds to Adult Jails Costly to Teens and Taxpayers," *Dallas Morning News*, May 19, 2014, <http://www.dallasnews.com/opinion/latest-columns/20140519-sending-17-year-olds-to-adult-jails-costly-to-teens-and-taxpayers.ece>.

⁶ Deitch, et al., "Conditions for Certified Juveniles," 25.

⁷ Ibid.

⁸ Adrian Garcia, Christopher Kirk, and Guadalupe Valdez, "Raise Age of Juvenile Jurisdiction," *Houston Chronicle*, May 30, 2014, <http://www.chron.com/opinion/outlook/article/Raise-age-of-jvenile-jurisdiction-5517953.php>.

⁹ Texas Department of Public Safety, Crime Records (2013).

¹⁰ Ibid.

¹¹ J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *Annals of the New York Academy of Sciences*, Vol. 1021 (2004).

¹² Centers 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: A Report on Recommendations of the Task Force on Community Preventive Services," *MMWR* 56, No. RR-9 (2007), <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

¹³ Michele Deitch, Rebecca Breeden, and Ross Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law*, 40 (2012): 1-67, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

¹⁴ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37128 (Jun.20, 2012) (amending 28 C.F.R. pt II5). Other studies have found that youth in adult facilities are five times more likely to report sexual assaults than youth in juvenile facilities. Lacey Levitt, "The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons," *International Journal of Forensic Mental Health* 9 (2010): 44-54, <http://www.prearesourcecenter.org/sites/default/files/library/riskofjuvenilemistreatment.pdf> (Youth in adult prisons are "five times more likely to report being sexually assaulted by other inmates than in a juvenile commitment facility.").

¹⁵ Deitch, et al., "Conditions for Certified Juveniles," 25-26.

¹⁶ Ibid.

¹⁷ Adrian Garcia et. al, "Raise Age of Juvenile Jurisdiction."

¹⁸ Ibid.

¹⁹ Deitch, et al., "Conditions for Certified Juveniles," 25-26.

²⁰ Allen J. Beck and Paige M. Harrison, “Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007,” Bureau of Justice Statistics, Dec. 2007, <http://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.

²¹ Ibid.

²² U.S. Department of Justice, “National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary,” May 16, 2012, 1 (citing 42 U.S.C. 15606(d)(1), (e)(1)).

²³ Ibid. (citing 42 U.S.C. 15609(7) & (9)).

²⁴ PREA § 15603.

²⁵ PREA § 15604(a).

²⁶ See PREA § 15605(a) (stating that the purpose of the grants is to ensure that “budgetary circumstances . . . do not compromise efforts to protect inmates” and “to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape”).

²⁷ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.

²⁸ Ibid.

²⁹ U.S. Department of Justice, “National Standards to Respond to Prison Rape,” 2 (citing 42 U.S.C. 15607(c)).

³⁰ Ibid.

³¹ Ibid.

³² Texas Criminal Justice Coalition’s analysis of data obtained from 112 counties with adult correctional facilities.

³³ “Sheriffs Say Yes to Raising the Age of Juvenile Jurisdiction,” Sheriffs’ Association of Texas.

³⁴ U.S. Department of Justice, “National Standards to Respond to Prison Rape,” 10 (emphasis added); see also Webinar: “PREA Readiness – Arlington County Detention Facility,” @ 56:00, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/827/webinar-prea-readiness-arlington-county-detention-fac>.

³⁵ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.

³⁶ Ibid, 2.

³⁷ 511 U.S. 825 (1994).

³⁸ Paula Hannaford-Agor and Nicole L. Waters, “Estimating the Cost of Civil Litigation,” January 2013, 5, http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx.

³⁹ Farzad Mashhood, “Ex-Inmate Sues Over Travis County Jail Rape Claim,” *Austin American-Statesman*, March 14, 2014.

Increase Opportunities for Hard-Working Individuals with Criminal Records By Providing Orders of Nondisclosure for Certain Offenses and Judgements

ACCESS TO ORDERS OF NONDISCLOSURE

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 difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Despite the fact that current policies regulating orders of nondisclosure take many steps in the right direction, these forms of relief do not extend far enough to offer a genuine second chance to those trying to live as responsible and safe residents of Texas.

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » In order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.²
 - » An individual must also wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors.³
 - » Only some types of offenses are eligible for nondisclosure; certain violent and sex-related offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶
- **Few orders of nondisclosure are issued compared to the number of eligible offenses.**
 - » According to the Office of Court Administration's Court Activity Reporting and Directory System, a total of 170,587 cases were dismissed in district criminal courts over a four-year period (September 2010 through August 2014). Over 18 percent, or 30,924 of these, were for drug possession alone.⁷ Another 3,366 dismissals were for misdemeanors.⁸ Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.
 - » The Texas Department of Public Safety reported in May 2014 that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).⁹

Continued on reverse.

- **Even when issued, orders of nondisclosure are not always effective in limiting access to criminal records, potentially resulting in the ongoing dissemination of restricted or inaccurate information.**
 - » While the Texas Department of Public Safety (DPS) is statutorily mandated to certify to the court that issued the order of nondisclosure that the relevant records in its possession have been sealed, the statute does not require DPS to certify to the court that it has notified all the private commercial businesses it sold the records to of the order of nondisclosure or expunction. This means that, although DPS is accountable to the courts to comply with orders of nondisclosure, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure has been issued.
 - » Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure. Please note, however, that DPS indicates on its website that it “provides a file that contains the nondisclosure records that are no longer public” and that “customers have 30 business days from the posting of the file to remove any records.”¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 130 BY SENATOR WEST

SB 130 will close a current gap in Texas law, allowing defendants whose convictions have been “set aside” to be eligible for an order of nondisclosure, and thus be fully released from penalties and disabilities resulting from their conviction being publicly available. Individuals with a misdemeanor conviction are eligible for an order of nondisclosure immediately after the conviction is set aside, while individuals with a felony offense must wait five years after the set-aside.

SB 130 aligns with the policy goal of Section 20(a), Article 42.12, Code of Criminal Procedure, which states that a defendant whose conviction was set aside should be “released from all penalties and disabilities resulting from the offense or crime.” Unless a criminal record is sealed by an order of nondisclosure, the person with the record will continue to face innumerable barriers and challenges resulting from the offense or crime. This bill will give a fair chance to thousands of Texans who have overcome their past mistakes, enabling them to access safe housing, become gainfully employed, and contribute to Texas communities in positive ways.

Citations

¹ [Tex. Gov’t. Code, § 411.081.](#)

² [Tex. Gov’t Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).

⁷ Data was obtained from the Office of Court Administration Court Activity Reporting and Directory System using the Ad-Hoc Search feature on October 1, 2014. Public court activity data may be found at <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

⁸ *Ibid*.

⁹ Texas Department of Public Safety (DPS), Letter to the Lieutenant Governor and Speaker of the House dated May 30, 2014, reporting the number of petitions and orders for nondisclosure received by the Department in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.

¹⁰ Texas Department of Public Safety, “Conviction Database Customers,” accessed on October 3, 2014, available at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>.

Remove the Automatic Assumption of Earned Income for Incarcerated Parents Considering Unemployment Due to Incarceration Will Improve Reentry, Restore Stability for Children, and Improve Efficiency in the Attorney General's Child Support Division

ASSUMPTION OF EARNED INCOME FOR CHILD SUPPORT IMPEDES REENTRY OF FORMERLY INCARCERATED PARENTS

When attempting to establish appropriate child support payment amounts, judges will presume that an individual is working 40 hours per week at minimum wage if no evidence is submitted of the parent's resources. This will often occur when a parent does not appear for divorce or child support hearings. In these instances, judges are authorized to issue "default judgments," with the assumption of earned income. Specifically, the judge will assume that the parent is making \$14,500 per year. If that parent has two children, the court will require 25% of that income to be paid in child support.¹

One of the reasons that absent parents do not appear for a hearing, however, is that they are incarcerated. An automatic assumption of earned income will result in an incarcerated parent owing substantial amounts upon release, resulting in additional barriers to reentry. For instance, **if the parent was incarcerated for three years, he or she would owe \$10,875 in arrears for a period of time when no income was earned.** Yet the average amount of child support debt owed by formerly incarcerated parents is typically much higher than that.

Excessive child support debt owed by formerly incarcerated parents is a problem on multiple levels:

- **Challenges for formerly incarcerated parents:** Individuals attempting to reenter the community after a period of incarceration already face major barriers to employment and housing. They are often forced to accept low-wage jobs without benefits, making it more difficult to attain financial stability.
- **Challenges for the children of formerly incarcerated parents:** Children have already faced years of hardship due to parental incarceration: They have endured housing instability and other stressors that have been shown to negatively impact development.² Formerly incarcerated parents are under enormous pressure to restore stability in the lives of their children, putting increased strain on a recently released parent who is already facing monumental challenges of reintegration. The pressure to meet child support obligations – combined with debt-collection efforts for child support arrears – may lead the parent to consider methods to obtain quick cash. This dynamic is not conducive to successful family reintegration.
- **Inefficiencies for the Office of the Attorney General:** Child support debt collection from formerly incarcerated parents causes additional expense and inefficiency on the state level. Much of the child support collection efforts are conducted by the Office of Attorney General (OAG), and a portion of collected payments goes toward recouping state expenditures on public assistance paid to the custodial parent or guardian. Studies have shown that state efforts to recoup unrealistic debt from formerly incarcerated parents is a major burden on the OAG's Child Support Division, draining resources that could be used to more effectively pursue realistic debt repayment.³

Continued on reverse.

KEY FINDINGS

- Nearly 52 percent of incarcerated individuals in state prisons have at least one child under the age of 18.⁴
- 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 \$36,000.⁵ Other states report similarly high amounts of child support debt owed by formerly incarcerated parents upon release.⁶
- A full-time worker in the Child Support Division of the Texas Attorney General's Office handles, on average, 469 cases per year, and collects a mere \$1.1 million, which is then split between the state for public-assistance repayment, the custodial parent, and the federal government.⁷ Some of this inefficiency is related to docket congestion and efforts to recoup exceptionally high debt from formerly incarcerated parents.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 375 BY SENATOR JOSÉ RODRÍGUEZ

This bill will remove the automatic assumption of earned income when the absent parent is incarcerated for a period of 90 days or more. This bill will not force judges to set child support at \$0 just because the absent parent is incarcerated; judges must consider a range of factors, including available assets. The bill will simply remove the automatic assumption of earned income when a parent is incarcerated and unable to pursue paid employment. Child support orders can be revised once the parent is discharged or paroled. This bill will ensure that the parent is not released owing substantial amounts in arrears that cannot reasonably be paid.

Citations

¹ The Texas Office of the Attorney General (2014), "Child Support Information for Incarcerated Parents and Parents Returning to the Community," Available: <https://www.texasattorneygeneral.gov/files/cs/incarcerated.pdf>.

² National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 1. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

³ Source: Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter, p. 59-73).

⁴ National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 3. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

⁵ Information provided by Oscar Esquivel, NCP Program Specialist for the Texas Office of the Attorney General.

⁶ Administration for Children and Families, U.S. Department of Health and Human Services, Office of Child Support Enforcement (2012), "Realistic Child Support Orders for Incarcerated Parents," (Child Support Fact Sheet Series, Number 4), Available: http://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf

⁷ Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter), p. 61.

Enhance Employment Opportunities for Individuals Returning to Texas Communities

Emphasizing Current Qualifications Results in More Working Texans And a Deeper Employee Pool for Texas Employers

DELAYING BACKGROUND CHECKS ALLOWS INDIVIDUALS TO STRESS PERSONAL RESPONSIBILITY AND JOB READINESS

The path to the American dream has always rested on an individual's willingness to seek and find employment and climb the ladder to success. However, technological advancements that allow for instantaneous background checks, combined with employers' reluctance to shoulder perceived liability if hiring people with criminal records, have resulted in dwindling employment opportunities for people with criminal histories. In Texas, this means the **11.8 million people with criminal history records** in 2012¹ would ALL have potentially been denied the chance to be interviewed for positions with Texas employers.

The use of background checks as a pre-employment screening tool is almost universal. A 2012 study by the Society for Human Resource Management found that 69 percent of surveyed organizations conducted background checks on all applicants, with another 18 percent running checks on selected candidates.² The impact of these checks, and of a criminal history, are undeniable. One study showed that employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.³

At least 110 areas throughout the U.S. – 13 states, 20, counties, and 77 cities or municipalities – have enacted Fair Chance policies that allow job applicants to be initially judged on their qualifications for employment and not on their criminal histories. The most recent states to institute Fair Chance policies were traditionally "red" Nebraska, as well as New Jersey, with legislation signed by Governor Chris Christie, a Republican.⁴

FAIR CHANCE LEGISLATION: WHAT IT WILL AND WILL NOT DO

It **WILL INCREASE** the employment opportunities of people with criminal records by delaying questions about criminal history until the applicant has been offered an interview or conditional employment.

It **WILL ENSURE** that business owners and employers have access to the largest pool of qualified applicants for their businesses.

It **WILL ENHANCE** employment opportunities for work-ready individuals with criminal histories, thus reducing the chances they will commit further crimes.

It **WILL NOT PREVENT** or prohibit any business or employer from performing background checks; it merely delays such checks until an applicant has been offered an interview or conditional offer of employment.

It **WILL NOT PROHIBIT** any business owner or employer from asking on an application for information about specific history that is required by law.

Continued on reverse.

KEY FINDINGS

- The single most negative determining factor contributing to recidivism is a lack of employment.⁵
- The economic consequences of denying employment to individuals with criminal histories can be devastating. A study by the Center for Economic and Policy Research estimated that the Gross Domestic Product shrunk by \$57-\$65 billion per year as a result of lowered employment among formerly incarcerated individuals.⁶ These figures do not take into account individuals with criminal histories who are not working but have not been incarcerated; thus, the actual impact may be much higher.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SB 376 BY SENATOR RODRIGUEZ

- **SB 376 will delay background checks until applicants are promised an interview or extended a conditional position, thus allowing job-seeking individuals to present their relevant qualifications for employment without fear of automatic denial.** Employers will benefit from having a larger pool of qualified applicants for available positions, while retaining the choice to run criminal history checks. Combined with HB 1188 by Representative Senfronia Thompson, which in 2013 extended protection to employers hiring people with criminal records, this legislation will greatly increase the employment opportunities for individuals with criminal histories, thus leading to more stable families and safer communities.
- **SB 376 will increase the employment opportunities available for work-ready Texans, lessening the amount of public assistance debt that would otherwise be borne by taxpayers.** A study of women released from Texas prisons showed that 18 percent were still on public assistance almost a year after release.⁷

Citations

¹ Dennis A. DeBacco & Owen M. Greenspan, "Survey of State Criminal History Information Systems, 2012," (Bureau of Justice Statistics, U.S. Department of Justice, 2014): Table 2, accessed on September 10, 2014, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

² Society for Human Resources Management. "Background Checking – The Use of Background Checks in Hiring Decisions." (2012.) at 2. Available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

³ Pager, D. (2003). As cited in "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities,. Counties, & States Pave the Way for Presidential Action." January 2015, p. 2. Maurice Emsellem and Michelle Natividad Rodriguez, *National Employment Law Project*. Available at <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

⁴ Emsellem, M. & Rodriguez, N. (2015). "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities,. Counties, & States Pave the Way for Presidential Action." *National Employment Law Project*. p. 5. Available at <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.

⁵ Berg, M. & Huebner, B. (2011). "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism." *Justice Quarterly* (28). P. 382-410. Available at <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.

⁶ Schmitt, J. & Warner, K. (2012). "Ex-offenders and the Labor Market." Center for Economic and Policy Research. p. 14. Available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁷ Brooks, L et al. (2009). "Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas." Research Report, Urban Institute. Justice Policy Center. Available at http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf.

Texas Should Not Re-Victimize Individuals Convicted of Prostitution

Felony Convictions Further Traumatize Many Who Are Victims Of Human Trafficking

REMOVING FELONY CONVICTION FOR PROSTITUTION RECOGNIZES HUMAN TRAFFICKING ROOTS IN SEXUAL EXPLOITATION

While not all human trafficking is done for the purpose of sexual exploitation – and not all prostitution is the result of trafficking – the two are inextricably entwined. In 2009, Texas created the Texas Human Trafficking Prevention Task Force (THTPTF), which was meant to spotlight and provide recommendations to address the dehumanizing and destructive results of trafficking. According to data provided by the Task Force in its 2014 report, **Texas saw 737 human trafficking incidences and and 210 human trafficking-related arrests between January 1, 2007, and December 14, 2014, with 85 convictions.**¹ In addition, the Texas Department of Criminal Justice (TDCJ) reported that, as of August of 2014, there were 98 individuals serving sentences for human trafficking-related offenses or compelling prostitution.²

Separate from those reported figures, the *Austin American-Statesman* estimated that during the summer of 2012, **TDCJ had 350 individuals serving sentences for prostitution convictions without one person having been convicted for solicitation of prostitution services.**³ This amplifies a comment in the Task Force's 2012 report, that human trafficking is "largely driven by the principles of supply and demand."⁴ The terrible truth is that it is the supply part of the equation at issue here – when trafficking of humans is done for sexual exploitation, it is the prostitutes, the victims, who are convicted and punished, not those who pay for their services.

Almost all prostitutes share many common characteristics, among them substance abuse, mental illness, homelessness, and above all, a history of sexual abuse and profound trauma. Over and over, studies demonstrate that the women and children who are trafficked and forced to turn to prostitution, along with the disenfranchised youth who exchange sex for favors and get trapped in that lifestyle, are victims of sexual abuse who feel they have no other choice. According to one study of youth prostitution, "There is no curriculum that can provide an abused and frightened fourteen-year-old with the cognitive ability and refusal skills to outthink a 26-year-old offering love, money, and to take care of them."⁵

The 2001 legislation (HB 460) that made prostitution a felony offense in Texas has not helped to keep the public safe, which is the philosophical foundation of our criminal laws, nor has it addressed victimization. **In fact, keeping prostitution a felony has only served to drive those who are trapped in prostitution further into the shadows while allowing those who solicit prostitution to go unpunished.** It is a clear example of a policy driven by public opinion rather than systematic analysis. The collateral consequences of a criminal conviction – decreased opportunities for legitimate employment, denial of adequate housing, limited access to medical and mental health services – make leaving a life of prostitution exponentially more difficult when that conviction is a felony. In addition, the overwhelming majority of arrests for prostitution-related offenses are of women, making this particular felony one that further marginalizes females.

KEY FINDINGS

- It costs an average of \$15,000 to \$18,500 annually to house an individual in a state jail or prison in Texas, 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.**⁶

Continued on reverse.

KEY FINDINGS, CONTINUED

- 65 percent to 95 percent of those in prostitution were sexually assaulted as children.⁷
- A nine-country study of prostitution found that 68 percent of the prostitutes studied exhibited Post-Traumatic Stress Syndrome (PTSD) symptoms in the same range as treatment-seeking combat veterans, battered women seeking shelter, and refugees from state-sponsored torture.⁸
- Laws against prostitution criminalize both men and women engaging in prostitution, but they clearly discriminate against women. A Boston study showed that 92 percent of prostitution-related arrests were of women; a similar study in Chicago showed that 89 percent of all arrests for prostitution were of women.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 377 BY SENATOR RODRÍGUEZ

- **SB 377 will do away with felony convictions for prostitution offenses, instead encouraging more people to receive treatment for addiction issues and their history of trauma.** In 2013, the Legislature passed SB 484, authorizing the creation of county-level programs that would offer an array of counseling to individuals charged with prostitution. While contingent upon funding, these programs offer an innovative and necessary component of any statewide effort to create a new approach to prostitution.
- **SB 377 will serve to help fulfill the recommendations set forth by the Texas Human Trafficking Prevention Task Force.** The Task Force recommends that the Texas Legislature recognize that “human trafficking victims – through force, fraud, or coercion – sometimes commit illegal acts during their victimization.”¹⁰ These acts are considered criminal and occur most often in the context of sex trafficking. SB 377 will recognize that difficulty and will not further victimize individuals, overwhelmingly women, instead allowing them to continue their lives without the added burden of a felony conviction.

Citations

¹ The Human Trafficking Prevention Task Force Report, 2014. Presented to the Texas Legislature, Dec. 2014. p. 3. Available at https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf

² Ibid, p. 3.

³ Ward, M. “Texas rethinks law making repeat prostitution a felony.” Austin American-Statesman, Aug. 26, 2012. Available at <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>

⁴ The Human Trafficking Prevention Task Force Report, 2012. Presented to the Texas Legislature, Dec. 2012. p. 7. Available at https://www.texasattorneygeneral.gov/files/agency/20121912_htr_fin_3.pdf

⁵ Boyer, D. (2008). “Who pays the price? Assessment of youth involvement in prostitution in Seattle.” Report by the City of Seattle, Human Services Department. p. 8. Available at <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>

⁶ Ward, M. “Texas rethinks law.”

⁷ Farley, M. (2004). “Prostitution is sexual violence.” *Psychiatric Times*. Available at <http://www.psychiatrictimes.com/sexual-offenses/prostitution-sexual-violence>

⁸ Alvares, Cotton, Farly, et al. (2003). “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder.” *Journal of Trauma Practice*. Available at <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

⁹ Hughes, D. (2005). “Combating Sex Trafficking: Advancing Freedom for Women and Girls.” *Keynote Address, Northeast Women’s Studies Association Annual Conference*. Available at http://www.prostitutionresearch.com/Hughes%20combating_sex_trafficking.pdf

¹⁰ The Human Trafficking Prevention Task Force Report, 2014.

Allow a Summons Instead of Incarceration for Employed and Stable Parolees

The Process that Requires Incarceration Pending a Hearing Is Costly to Texas Counties and Communities

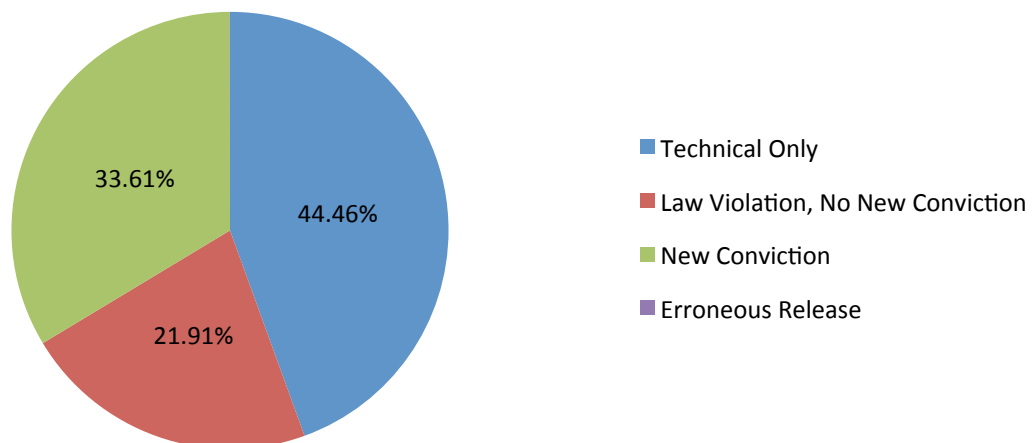
INCARCERATING PAROLEES ACCUSED OF CERTAIN MISDEMEANORS UNNECESSARILY BURDENS COUNTIES

In fiscal year 2013, the 10 most populous Texas county jails together paid almost **\$98,000 per day** to house individuals who were incarcerated as the result of warrants issued by the Parole Division of the Texas Department of Criminal Justice (TDCJ). Known as “blue warrants,” these orders are issued by TDCJ for individuals under supervision (parole or mandatory supervision) who are accused of violating their terms of release or committing a new crime. These individuals are then incarcerated in a county jail, without access to bond or bail, until they are provided a hearing by the Board of Pardons and Paroles that will decide whether to revoke their release or reinstate the conditions of their release, with or without new conditions.

Blue warrants can be issued for an arrest ranging from capital murder to the lowest level of misdemeanor, which would not normally constitute a jail-able offense but may be a violation of release conditions. Blue warrants can be lifted in preliminary hearings but many proceed to revocation hearings, where hearing officers listen to evidence and recommend an outcome to the Board, which then renders the final decision.

In fiscal year 2013, the Board of Pardons and Paroles held 20,662 hearings¹ to decide whether to return individuals to supervision or revoke their supervision. Ultimately, the Board reinstated the supervision or re-paroled more than half, or 10,777, of those individuals,² which means the Board did not deem them a threat to society. And yet, each one of these individuals spent, on average, 34 days in the county jail.

Disposition to Continue Supervision or Re-parole, FY 2013



Source: Texas Board of Pardons and Paroles Annual Statistical Report, FY 2013

Continued on reverse.

The Board of Pardons and Paroles does not provide information as to whether those who were released from jail were charged with new misdemeanors or felonies, but it is likely that the overwhelming number of these were for low-level misdemeanors. This means that many of the 10,777 individuals kept in the county jail during 2013 were held at significant county expense, potentially losing whatever employment they had, and endangering the stability of their families for crimes that normally would not have merited incarceration; likewise, they otherwise would have been eligible for bond and bail – if not for the requirement by TDCJ that all individuals for whom blue warrants are issued **MUST** be held until they waive their hearing or that hearing is conducted.

KEY FINDINGS

- The 10 Texas county jails with the largest populations on November 1, 2014, housed 1,585 individuals who were being held on blue warrants for new charges.³ At an average aggregate daily cost of \$97,808, these ten counties spent approximately \$36 million in fiscal year 2013 to house individuals on blue warrants for new charges, half of whom were ultimately released back into their communities.
- Individuals with criminal records who are seeking employment are offered half as many positions as job seekers with identical qualifications but no record.⁴ When individuals with records find stable employment, it is crucial that they face as few obstacles as possible to keeping that employment, or risk recidivating.
- Formerly incarcerated individuals have a much more difficult time finding housing than individuals without a record; an estimated four out of five landlords employ background checks to help them screen out prospective tenants with criminal records.⁵ Again, challenges to keeping stable housing should be kept at a minimum to prevent re-offending.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 380 BY SENATOR RODRIGUEZ

- **SB 380 will allow the Parole Division of the Texas Department of Criminal Justice to issue a summons, rather than a blue warrant, for certain individuals accused of violating their terms of release or committing a new crime.** More specifically, this will apply to individuals who have been charged with certain misdemeanors and who can show a record of stability and employment.
- **SB 380 will save counties millions of dollars, allowing them to devote funds to other local endeavors that will increase community prosperity and contribute to public safety.** County jails are obligated to house individuals charged with blue warrants, even though these individuals otherwise qualify for and are able to pay for release on bond or bail. This drains county coffers of funds that could be used to address other, more immediate issues that could have a huge impact on local communities.
- **SB 380 will allow individuals who have committed minor crimes but demonstrated long-term stability to keep their housing and employment while they await the decision of the Board of Pardons and Paroles.** The data demonstrates the undeniable barriers that formerly incarcerated individuals face when seeking housing and employment. This points to the necessity of ensuring that individuals be allowed to keep working and paying their bills instead of sitting uselessly in jail if they have only been charged with minor violations of the law.

Citations

¹ Texas Board of Pardons and Paroles, *Annual Statistical Report, Fiscal Year 2013*, 18, <http://www.tdcj.state.tx.us/bpp/publications/BPP%20StatisticalReport%20FY%202014.pdf>.

² Ibid., 22.

³ Texas Commission on Jail Standards, *Abbreviated Population Report for 11/1/2014*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf> (To arrive at cost per day, access “Immigration Detainer Report,” <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf> and divide total cost to county by number of inmate days).

⁴ Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010, 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf.

⁵ Rebecca Vallas and Sharon Dietrich, “One strike and you’re out: How we can eliminate barriers to economic security and mobility for people with criminal records.” *Center for American Progress*, 19, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.



Douglas Smith, MSSW, Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 960-0534

dsmith@TexasCJC.org

www.TexasCJC.org

TESTIMONY 2015

SB 380 by Rodríguez, Burton, Hinojosa & Perry

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of SB 380, which will allow the Texas Department of Criminal Justice (TDCJ) to issue a summons rather than a warrant to individuals with certain minor parole violations. Most low-level violations, including nonviolent Class C or B misdemeanors, are handled through a modification of parole conditions rather than revocation to prison. Issuing a summons allows those who are suspected of violating parole conditions to remain in the community, keeping their jobs and rental housing, while the Board of Pardons and Paroles determines the appropriate response. This will promote stability and prevent recidivism, while relieving the costly strain on county resources.

INCARCERATING PAROLEES ACCUSED OF CERTAIN MISDEMEANORS UNNECESSARILY BURDENS COUNTIES

- In FY 2013, the 10 most populous Texas county jails together paid almost **\$98,000 per day** to house individuals who were incarcerated as the result of warrants issued by the Parole Division of TDCJ.
- In FY 2013, the Board of Pardons and Paroles held 20,662 parole violation hearings.¹ **Ultimately, the Board kept half, or 10,777, of those individuals in the community,² yet each one of these individuals spent, on average, 34 days in the county jail.**
- The 10 Texas county jails with the largest populations on November 1, 2014, housed 1,585 individuals who were being held on blue warrants for new charges.³ **At an average aggregate daily cost of \$97,808, these 10 counties spent approximately \$36 million in fiscal year 2013 to house individuals on blue warrants for new charges, half of whom were ultimately released back into their communities.**

UTILIZING A SUMMONS INSTEAD OF WARRANT PROMOTES STABILITY AND PREVENTS RECIDIVISM

- Individuals with criminal records who are seeking employment are offered half as many positions as job seekers with identical qualifications but no record.⁴ When individuals with records find stable employment, it is crucial that they face as few obstacles as possible to keeping that employment, or risk recidivating.
- It is exceptionally difficult for paroled individuals to find rental housing; an estimated four out of five landlords employ background checks to help them screen out prospective tenants with criminal records.⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 380

- **SB 380 will allow the TDCJ Parole Division to issue a summons, rather than a blue warrant, for certain individuals accused of violating their terms of release or committing a new crime.**
- SB 380 will **save counties millions of dollars**, allowing them to devote funds to other local endeavors that will increase community prosperity and contribute to public safety.
- SB 380 will allow individuals who have committed minor crimes but have demonstrated long-term stability to **keep their housing and employment** while they await the decision of the Board of Pardons and Paroles.

Citations on reverse.

Citations

¹ Texas Board of Pardons and Paroles, *Annual Statistical Report, Fiscal Year 2013*, 18, <http://www.tdcj.state.tx.us/bpp/publications/BPP%20StatisticalReport%20FY%202014.pdf>.

² Ibid., 22.

³ Texas Commission on Jail Standards, *Abbreviated Population Report for 11/1/2014*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf> (To arrive at cost per day, access “Immigration Detainer Report,” <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf> and divide total cost to county by number of inmate days).

⁴ Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010, 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf.

⁵ Rebecca Vallas and Sharon Dietrich, “One strike and you’re out: How we can eliminate barriers to economic security and mobility for people with criminal records,” *Center for American Progress*, 19, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

Monetary Thresholds and Penalties Related to Property Offenses

Property offenses include theft, criminal mischief, and graffiti. The penalty for committing a property offense corresponds to the dollar amount lost or damaged. **These ranges of dollar amounts are also referred to as monetary “thresholds.”**

The definitions of theft, criminal mischief, and graffiti, along with three tables providing the monetary thresholds and penalties for these property offenses, are included below. The last table represents the suggested amendments to the monetary thresholds.

PROPERTY-RELATED OFFENSES THAT RELY ON OUTDATED MONETARY THRESHOLDS (DOLLAR RANGES)

- ❖ **Theft:** Theft refers to the unlawful appropriation of property with the intent to deprive the owner of property; this includes theft by check.¹ Theft of service occurs when a person intentionally avoids paying for a service that is provided for compensation.² Like other property-related crimes, theft offenses follow a monetary threshold that is congruent to the damage amounts and penalties set forth in Figure 2 below. There are, however, a few additions, including specific amounts corresponding to theft of service and theft by check. Figure 1 provides the monetary thresholds and penalties for theft offenses; the italicized amounts indicate congruency with the threshold amounts described in Figure 2:

| Figure 1: Current Monetary Thresholds and Penalties³ | | |
|--|--|---------------------------------------|
| THEFT | | |
| OFFENSE | MONETARY THRESHOLD (DOLLAR RANGE OF PROPERTY LOST OR DAMAGED) | PENALTY |
| Class C Misdemeanor | <i>Less than \$50</i> | Up to \$500 fine |
| Class C Misdemeanor (Theft by Check) | Less than \$20 | Up to \$500 fine |
| Class C Misdemeanor (Theft of Service) | Less than \$20 | Up to \$500 fine |
| Class B Misdemeanor | <i>\$50 or more but less than \$500</i> Less than \$50 if prior theft conviction | 30 days-180 days jail; \$2,000 fine |
| Class B Misdemeanor (Theft by Check) | \$20 or more but less than \$500 Less than \$20 if prior theft conviction | 30 days-180 days jail; \$2,000 fine |
| Class B Misdemeanor (Theft of Service) | \$20 or more but less than \$500 | 30 days-180 days jail; \$2,000 fine |
| Class A Misdemeanor | <i>\$500 or more but less than \$1,500</i> | 90 days-1 year jail; \$4,000 fine |
| State Jail Felony | <i>\$1,500 or more but less than \$20,000</i> Less than \$1,500 if 2 or more prior thefts Less than \$20,000 and the property is aluminum, bronze, copper, or brass | 180 days-2 years jail; \$10,000 fine |
| Third Degree Felony | <i>\$20,000 or more but less than \$100,000</i> | 2-10 years prison; \$10,000 fine |
| Second Degree Felony | <i>\$100,000 or more but less than \$200,000</i> Less than \$200,000 and property is an automated teller machine | 2-20 years prison; \$10,000 fine |
| First Degree Felony | <i>\$200,000 or more</i> | 5 years-life in prison; \$10,000 fine |

- ❖ **Criminal Mischief and Graffiti:** Criminal mischief refers to conduct in which the actor intentionally or knowingly damages, destroys, tampers with, or marks on—including with inscriptions, slogans, drawings, or paintings—another’s property without the owner’s consent.⁴ The Penal Code section governing graffiti contains nearly identical language, but it adds a description of the tools that can be used to mark on another’s property, providing that it is an offense to make “markings on the tangible property of the owner with: (1) paint; an indelible marker; or an etching or engraving device.”⁵ Figure 2 lists the current monetary thresholds for criminal mischief and graffiti, with associated penalties.

| Figure 2: Current Monetary Thresholds and Penalties CRIMINAL MISCHIEF AND GRAFFITI ⁶ | | |
|--|--|---------------------------------------|
| OFFENSE | MONETARY THRESHOLD (DOLLAR RANGE OF PROPERTY LOST OR DAMAGED) | PENALTY |
| Class C Misdemeanor* | Less than \$50 | Up to \$500 fine |
| Class B Misdemeanor* | \$50 or more but less than \$500 | 30 days-180 days jail; \$2,000 fine |
| Class A Misdemeanor | \$500 or more but less than \$1,500 | 90 days-1 year jail; \$4,000 fine |
| State Jail Felony | \$1,500 or more but less than \$20,000 | 180 days-2 years jail; \$10,000 fine |
| 3 rd Degree Felony | \$20,000 or more but less than \$100,000 | 2-10 years prison; \$10,000 fine |
| 2 nd Degree Felony | \$100,000 or more but less than \$200,000 | 2-20 years prison; \$10,000 fine |
| 1 st Degree Felony | \$200,000 or more | 5 years-life in prison; \$10,000 fine |

***NOTE:** Graffiti penalties start at a Class B misdemeanor for anything less than \$500; there is no Class C offense.

PROPOSED MODIFICATIONS TO THE MONETARY THRESHOLDS (DOLLAR RANGES) RELATED TO PROPERTY OFFENSES

Bringing monetary thresholds for property offenses in line with current dollar values will save taxpayer dollars and conserve valuable resources. Furthermore, the proposed changes will make penalties more appropriate and proportional to the offense committed, creating more fairness throughout the system. Figure 3 offers new monetary thresholds that policy-makers should apply to property-related offenses.

| Figure 3: Suggested Monetary Thresholds (Penalties Remain Unchanged) | | |
|---|--|---------------------------------------|
| OFFENSE | MONETARY THRESHOLD (DOLLAR RANGE OF PROPERTY LOST OR DAMAGED) | PENALTY |
| Class C Misdemeanor | Less than \$100 | Up to \$500 fine |
| Class B Misdemeanor | \$100 or more but less than \$750 | 30 days-180 days jail; \$2,000 fine |
| Class A Misdemeanor | \$750 or more but less than \$2,500 | 90 days-1 year jail; \$4,000 fine |
| State Jail Felony | \$2,500 or more but less than \$30,000 | 180 days-2 years jail; \$10,000 fine |
| 3 rd Degree Felony | \$30,000 or more but less than \$150,000 | 2-10 years prison; \$10,000 fine |
| 2 nd Degree Felony | \$150,000 or more but less than \$300,000 | 2-20 years prison; \$10,000 fine |
| 1 st Degree Felony | \$300,000 or more | 5 years-life in prison; \$10,000 fine |

Citations

¹ TEX. PENAL CODE § 31.03, <http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.31.htm>.

² *Id.* § 31.04, <http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.31.htm>.

³ Attorney General’s Office (AGO), “Penal Code Offenses by Punishment Range including Updates from the 82nd Legislative Session,” Revised July 2012, https://www.oag.state.tx.us/AG_Publications/pdfs/penalcode.pdf.

⁴ TEX. PENAL CODE § 28.03, <http://www.statutes.legis.state.tx.us/SOTWDocs/PE/htm/PE.28.htm>.

⁵ *Id.* § 28.08, <http://www.statutes.legis.state.tx.us/SOTWDocs/PE/htm/PE.28.htm>.

⁶ Attorney General’s Office (AGO), “Penal Code Offenses by Punishment Range including Updates from the 82nd Legislative Session,” Revised July 2012, https://www.oag.state.tx.us/AG_Publications/pdfs/penalcode.pdf.

Amend Property Offense Thresholds

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

BACKGROUND

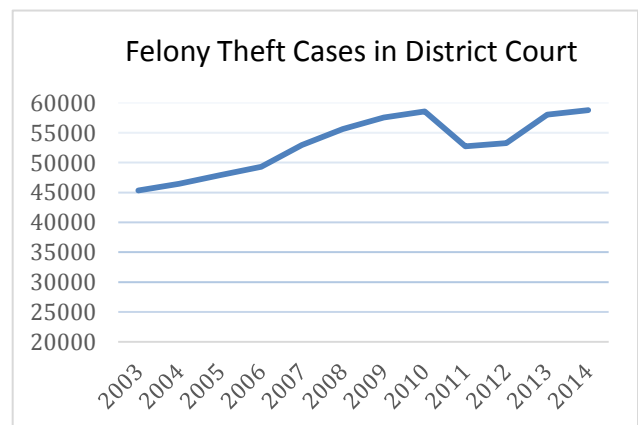
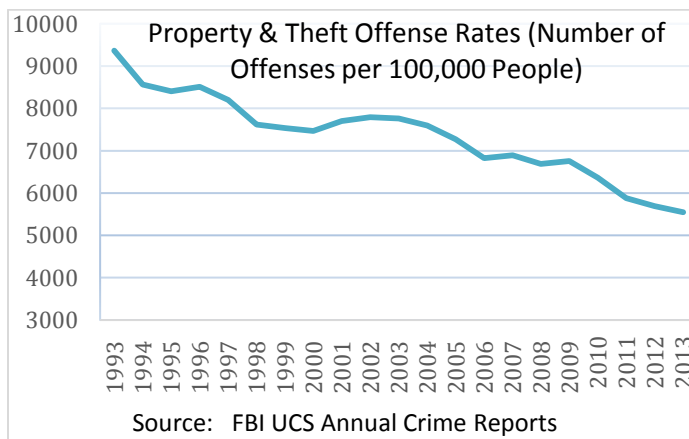
Property-related offenses include criminal mischief, graffiti, and theft.¹ The penalty for committing a property offense corresponds to the dollar amount lost or damaged. For instance, a Class A misdemeanor involves property worth \$500 or more but less than \$1,500; if the property value is \$1,500, the offense becomes a state jail felony.

These monetary “thresholds” (ranges of dollar amounts) have not been changed since 1993 and therefore fail to reflect more than two decades of inflation. 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” that was not intended by the authors of the 1993 legislation.**

FAILURE TO ADJUST PENALTY THRESHOLDS GRADUALLY SHIFTS THE FINANCIAL BURDEN TO THE STATE

Property crime rates in Texas have steadily fallen for the past 20 years.³ Not only have these rates fallen in relation to the growing population, the actual number of property crimes reported between 1993 and 2013 has dropped more than 13 percent.⁴

One would expect that this decline in property crimes would translate into fewer felony convictions and fewer placements in state jails or prison. In fact, the opposite is true, especially as it pertains to theft cases. As inflation increases each year, more and more theft cases are being shifted to district courts, resulting in a steady increase in felony theft incarcerations. Despite the steady decline in thefts statewide, felony theft cases referred to district courts have increased nearly 30 percent.⁵



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

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.⁶ 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 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

- In 2013, larceny theft⁷ alone accounted for slightly more than 10% of the 936,358 arrests made in Texas that year.⁸
- Property-related crimes comprise over 50% of the population in state jail facilities.⁹ As of August 2013, there were nearly 11,000 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.¹⁰ Those individuals alone cost taxpayers nearly \$170,000 per day to incarcerate and almost \$62 million annually.¹¹
- As of August 2013, nearly 15,000 individuals were incarcerated in prison for a larceny or burglary offense.¹² Those individuals cost the state approximately \$717,000 each day.¹³
- 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.¹⁴ 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.¹⁵
- As of August 2013, over 60,000 individuals were on direct community supervision (probation) for either a misdemeanor or felony property offense.¹⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS: SUPPORT SB 393 BY SENATORS BURTON AND RODRIGUEZ

SB 393 will 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. It will also more closely conform punishments to what was intended by the authors of the 1993 legislation.

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 DisasterCenter.com, Texas Crime Rates 1960 - 2013, From the FBI UCS Annual Crime Reports, <http://www.disastercenter.com/crime/txcrime.htm>

⁴ Ibid.

⁵ Office of Court Administration, Annual Statistical Reports, 2003 – 2014, <http://www.txcourts.gov/statistics/annual-statistical-reports.aspx>

⁶ According to the Legislative Budget Board (LBB), per-day prison costs are as much as \$48.84 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.

⁷ Larceny theft is distinguishable (i.e., it is a separate offense) from burglary, robbery, and motor vehicle theft.

⁸ Texas Department of Public Safety, "Texas Arrest Data: 2013," available at <http://www.txdps.state.tx.us/crimereports/13/citCh9.pdf>

⁹ Texas Department of Criminal Justice (TDCJ), "Fiscal Year 2013: Statistical Report," p. 1, available at http://tdcj.state.tx.us/documents/Statistical_Report_FY2013.pdf

¹⁰ Ibid, p. 11.

¹¹ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8.

¹² TDCJ, *Statistical Report*, *supra* note 6, at 10.

¹³ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8. This figure does not include costs of investigation, arrest, detention, or trial.

¹⁴ TDCJ, information received via Freedom of Information Request, January 10, 2013. Information available upon request.

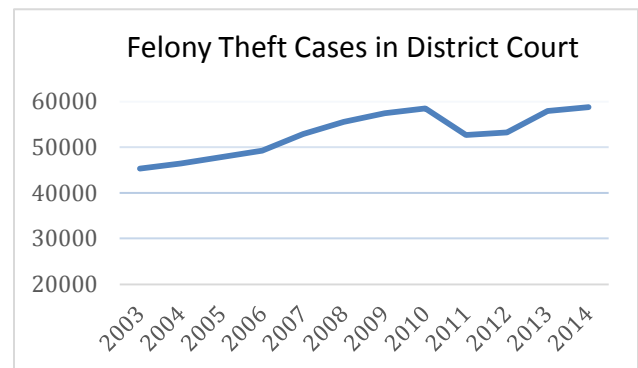
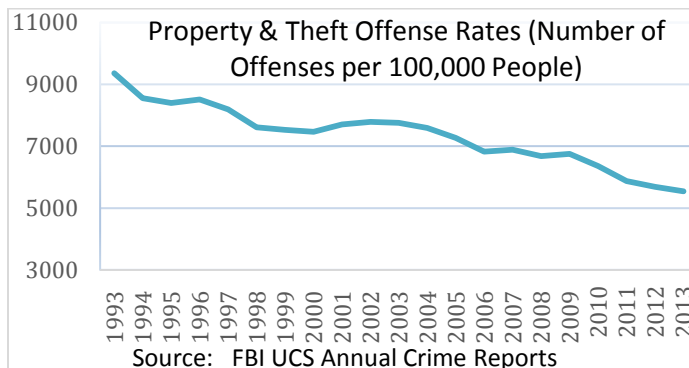
¹⁵ LBB, *Uniform Cost Report*, January 2011, p. 6. This figure does not include costs of investigation, arrest, detention, or trial.

¹⁶ 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.

Dear Members of the Committee,

Thank you for the opportunity to testify in support of SB 393, which would adjust the property offense penalty thresholds to account for more than 22 years of inflation. This bill will ensure that penalties for property offenses coincide with the intention of the legislature.

- Consumer goods with a value of \$1,500 today were worth less than \$1,000 in 1993.¹ 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” that was not intended by the authors of the 1993 legislation.**
- **Property crime rates in Texas have steadily fallen for the past 20 years.**² Not only have these rates fallen in relation to the growing population, but **the actual number of property crimes reported between 1993 and 2013 has dropped more than 13 percent.**³ Yet, **felony theft caseloads in district court have increased nearly 30 percent,**⁴ largely because of the increase in the general level of prices for the same goods and services.



- **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.**⁵ More than 35 percent of state jail inmates were serving time for larceny or burglary.⁶ **Those individuals alone cost taxpayers nearly \$170,000 per day to incarcerate and almost \$62 million annually.**⁷
- **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 jails and prisons.**
- **SB 393 will 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. It will also more closely conform punishments to what was intended by the authors of the 1993 legislation.

Citations on reverse.

Citations

¹ 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.

² DisasterCenter.com, Texas Crime Rates 1960 - 2013, From the FBI UCS Annual Crime Reports, <http://www.disastercenter.com/crime/txcrime.htm>

³ Ibid.

⁴ Office of Court Administration, Annual Statistical Reports, 2003 – 2014, <http://www.txcourts.gov/statistics/annual-statistical-reports.aspx>

⁵ According to the Legislative Budget Board (LBB), per-day prison costs are as much as \$48.84 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.

⁶ Ibid, p. 11.

⁷ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8.

Making Accurate Reentry Resource Information More Accessible to Incarcerated Individuals Prior to Release Will Decrease Recidivism and Save Money

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

The transition from prison back to the community is unexpectedly difficult for most people leaving prison. They leave with \$100, the clothes on their back, a 10-day supply of medication, and a bus ticket home.¹ Oftentimes, they leave on cold winter days without a coat to wear. Even when basic needs are met, however, there remains the extraordinary challenge of finding a job and housing when most of those doors are closed to them.

Ideally, reentry planning begins upon initial intake into a corrections facility, where practitioners identify factors that have led to a person's incarceration and, based on those factors, develop an individualized treatment plan – always with a vision of post-release outcomes in mind.² For instance, incarcerated individuals whose route to prison included substance abuse problems are less likely to recidivate when provided treatment in prison and aftercare following release. Ultimately, planning for a successful reentry entails a “hand off” between the prison system and community supports based on individual need.

Texas has Gaps in its Reentry System

The reentry system in Texas falls significantly short of this ideal. The Texas Department of Criminal Justice (TDCJ) employs only 139 Reentry Case Managers to help more than 75,000 incarcerated individuals who leave prison each year.³ They seldom have enough time to do more than order social security cards and birth certificates for exiting individuals, often rushing to find a list of referrals for only the most at-risk individuals leaving prison.⁴

As such, incarcerated individuals must do their own planning. They must locate and apply for continuing education in the community. Veterans who received supports prior to incarceration must contact providers to restore services post release. Some individuals are being released to overcrowded state-run halfway houses, and they must get on the waiting list for safer, more stable housing as soon as possible. Most of the information about these services is unavailable to individuals while they are still incarcerated, or the information available to them is outdated or incorrect.

Inaccessible Reentry Resource Information Comes at a High Cost to the State

The 2013 Legislature passed Budget Rider 63 at no cost to TDCJ, requiring the agency to work with faith-based and nonprofit organizations to compile reentry-related community resource information, and to make that information available to those in TDCJ custody.⁵ Yet, there are continuing reports of individuals attempting to access resource information, particularly about housing, and finding that information outdated.

Inaccurate, outdated, or inadequate resource information carries additional costs to the state. When individuals do not have family members willing to take them in upon release, they must quickly locate private halfway house options or risk waiting in custody for additional months beyond their projected release dates for one of only 1,880 state-run halfway house beds available to the nearly 75,000 people released each year.⁶ **Outdated halfway house information slows the process and costs the state additional funds, keeping people in custody long past projected release dates.**

Continued on reverse.

Local Reentry Resource Information is Already Available

Many private, non-profit, and faith-based organizations have already compiled locale-specific resource lists that could be made available to incarcerated individuals preparing for their return to society. For instance, a team of community leaders in Travis County compiled a resource guide for those returning to the Austin area that contains nearly 50 pages of resources, including 27 housing resources available to recently released individuals.⁷ Moreover, Reentry Case Managers have their own database of resources that they utilize for the limited number of people they are able to help. Expanding incarcerated individuals' access to this information would greatly help them formulate successful reentry plans.

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 of...existing local programs and transitional services; and other providers of services as necessary to adequately assess and address the needs of each offender.”⁸ **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.**
- Recently released individuals who experience difficulty accessing clothing, food, shelter, medical care, or transportation are at **exceptionally high risk of returning to crime** as a means to provide for basic needs.⁹

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 578 BY SENATORS HINOJOSA AND RODRIGUEZ

- **SB 578 will provide critical information to incarcerated individuals, preparing them for a 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 prior to release.
- **SB 578 will provide every incarcerated individual who is within six months of release with their own community-specific resource list,** enabling them to readily access information in the event they must change their plans.

Citations

¹ Texas Department of Criminal Justice Parole Division, *Policy and Operating Procedure #PD/POP-3.1.2: Release Payment* (“Gate Money”), December 6, 2012, https://www.tdcj.state.tx.us/documents/parole/03.01.02_parole_policy.pdf.

² Urban Institute Justice Policy Center, *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups*, Research Report, September, 2008, 6-23, http://www.urban.org/UploadedPDF/411767_successful_reentry.pdf.

³ Texas Department of Criminal Justice, *Biennial Report of the Reentry and Integration Division*, September 1, 2014, 11, http://tdcj.state.tx.us/documents/rid/RID_Reentry_Biennial_Report_8_28_14.pdf.

⁴ Ibid, 11.

⁵ 83rd Texas Legislature, Rider 63, *General Appropriations Act for the 2014-2015 Biennium*, V-21.

⁶ Texas Department of Criminal Justice, *Legislative Appropriations Request for Fiscal Years 2016 and 2017*, August 25, 2014, 175, <http://docs.lbb.state.tx.us/display.aspx?DocType=LAR&Year=201>.

⁷ Travis County Justice and Public Safety Division, *Travis County Reentry Success Guide: A Guide to Travis County Area Resources for People Leaving Jail or Prison*, Revised May 2012, <http://www.reentryroundtable.net/wp-content/uploads/2012/06/Resource-Guide-May-2012.pdf>.

⁸ TEX. GOV. CODE § 501.092(b)(2)-(5)

⁹ Urban Institute, *Release Planning*, 2.

Streamline the Process to Grant Diligent Participation Credit in State Jails

DILIGENT PARTICIPATION CREDITS ARE NOT GRANTED IN A UNIFORM MANNER, LIMITING THE INCENTIVE TO PARTICIPATE IN REHABILITATIVE PROGRAMS AND LEAVING MANY TO SERVE LONGER SENTENCES

Individuals serving time in state jails do not have the opportunity to earn “good time” credit like the general prison population, nor have they historically had an opportunity for early release or parole. Instead, they are required to serve every day of their sentence behind bars. However, Texas’ 82nd Legislature (2011) provided a unique opportunity for individuals in state jails to earn time towards early release, allowing them to receive diligent participation credit for every day they participate in educational, vocational, treatment, or work programs; ultimately, participants may reduce their sentences by no more than 20%.¹

Under that 2011 legislation, the Texas Department of Criminal Justice (TDCJ) records participation, sends a report to the judge of the sentencing court, and waits for the judge to issue an order for early release. **The effectiveness this program has been limited at best**, as the responsibilities split between TDCJ and judges are confusing and inefficient, and because judges are not currently required to grant diligent participation credits or order early release for individuals who qualify.

In order to truly incentivize the participation of individuals serving time in state jails, and to save taxpayer dollars by allowing the early release of those who participate in beneficial programs, the process to grant diligent participation credit in state jails should be streamlined. **SB 589 will give authority to grant diligent participation credits to TDCJ, rather than consume state and judicial resources by reporting to the sentencing court and waiting for judges to order early release.** SB 589 will also allow TDCJ to grant credit at any time prior to the termination of the original sentence rather than waiting until 30 days before the date on which the individuals would have served 80% of the sentence.

KEY FINDINGS

- **The average cost per day per person in a state jail facility is approximately \$47.**² The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.³ *However, the High Value Data Set available on TDCJ’s website indicates otherwise, showing that in May 2014, 23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years*⁴ (the maximum sentence for state jail felonies is two years). The High Value Data Set does not distinguish individuals serving state jail sentences and individuals serving prison sentences while housed in state jails.
- Since the beginning of the diligent participation program in 2011, **judges who were sent electronic notices of diligent participation eligibility responded at a rate of 44%.** Of those judges who responded, 73% awarded some level of diligent participation credit. On average, sentences were reduced by 38 days for those individuals who were awarded diligent participation credit by a judge.⁵
- Based on a one-year sentence, the maximum diligent participation credit that may be earned is 73 days. At \$47 per person per day, the state could save up to \$3,431 for each individual serving time in a state jail. In fact, **the Legislative Budget Board estimates cost savings over \$81 million for the 2016-17 biennium.**⁶

Continued on following page.

- The Legislative Budget Board reports that, as of August 31 2012, 99% of people in state jails (11,729 men and women) were incarcerated for a **nonviolent, non-sexually based offense**.⁷ In Fiscal Year 2012, over 80% of those sent to state jail were sentenced to one year or less of incarceration; 37% of these were admitted for a drug- or alcohol-related offense, while another 25% were admitted for larceny offenses.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 589 BY SENATORS RODRÍGUEZ AND HINOJOSA

- **SB 589 will streamline the process involved in awarding diligent participation credits to those participating in educational, vocational, treatment, or work programs in state jails.** By placing the authority to grant credit in the hands of the Texas Department of Criminal Justice (TDCJ), rather than requiring judges to handle credit awards for each participating individual, the credit will be applied as soon as it is earned, and the state will conserve judicial resources. 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.
- **SB 589 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 the 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, SB 589 allows TDCJ to grant credit at any point prior to the end of the original sentence.

Citations

¹ House Research Organization, Bill Analysis, Tex. H.B. 2649, 82nd Leg., R.S. (2011).

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4;

http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities.

³ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2;

http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.

⁵ Bryan Collier, Deputy Executive Director, Texas Department of Criminal Justice, e-mail message to Sushma Smith, Chief of Staff, Office of Senator Jose Rodriguez, March 18, 2015.

⁶ Legislative Budget Board, Fiscal Note, 84th Legislative Regular Session, In Re SB 589 by Rodriguez (Relating to the award of diligent participation credit to defendants confined in a state jail facility.), As Introduced, March 17, 2015, p. 1;

<http://www.legis.state.tx.us/tlodocs/84R/fiscalnotes/pdf/SB00589I.pdf#navpanes=0>

⁷ LBB, "Who Is In State Jail? Select Data for Those On-Hand as of August 31, 2012," (February 2013): 1, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/541_Who_is_in_StateJail12.pdf

⁸ LBB, "Who Entered State Jail? Select Data for Fiscal Year 2012 Admissions," (February 2013): 1,2, accessed January 23, 2015, available at http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/540_Admissions_StateJail12.pdf.

Keep Status Offenders Out of Secure Facilities

Allowing These Youth to Be Held Only in Non-Secure Facilities Will Improve Outcomes, Increase Facility Safety, and Save Community Juvenile Justice Dollars

YOUTH ACCUSED OF STATUS OFFENSES ARE DETAINED IN SECURE FACILITIES

Texas law defines a “status offender” as “a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult.”¹ Thus, status offenses criminalize certain conduct for children when that same conduct is perfectly legal for adults. Examples of status offenses are missing too many days of school,² running away from home,³ or violating curfew.⁴

The Juvenile Justice and Delinquency Prevention Act (JJDPA), a federal law passed by Congress in 1974 and last reauthorized in 2002, tied federal grant money to state compliance with four core requirements all designed to reduce juvenile incarceration.⁵ The first of these requirements is the Deinstitutionalization of Status Offenders (DSO), which mandates states to find alternatives to the secure detention and confinement of these youth based on the research and recommendations of the President’s Commission on Law Enforcement and the Administration of Justice.⁶ In compliance with the DSO requirement, **Texas law prohibits status offenders from being punished with a term of confinement in a secure facility.**⁷ However—despite the prohibition on the post-adjudication secure confinement—**Texas law allows status offenders to be detained in a secure facility while they await an adjudication hearing.** Pre-adjudication secure detention is allowed for up to 24 hours, and can be extended to 10 days or beyond in particular statutory circumstances.⁸

THROUGH CONTEMPT OF COURT, STATUS OFFENDERS CAN BE DETAINED AND PUNISHED IN SECURE FACILITIES

In 1980, the JJDPA was amended to add the “Valid Court Order” (VCO) Exception, which allows courts to punish status offenders who violate a court order related to a status offense with a term of secure confinement.⁹ Texas law has recognized this exception through two different contempt of court mechanisms. For status offenses heard in Justice of the Peace and Municipal Courts, the exception is a delinquent conduct offense called “Contempt of Magistrate.”¹⁰ For status offenses heard in the juvenile court, Texas has its own version of the VCO Exception.¹¹ Under either of these exceptions, a status offender who violates a court order—which could be something as simple as “stop missing school”—can be accused of a contempt offense and securely detained for up to 72 hours (which can be extended to 10 days or more under certain circumstances).¹² Further, under the VCO exception, a status offender may be punished with a term of secure confinement;¹³ this is even though secure confinement is prohibited for Contempt of Magistrate.¹⁴

SECURE CONFINEMENT IS INAPPROPRIATE TO STATUS OFFENDERS’ NEEDS AND PUTS THEM AT RISK

Unfortunately, even brief periods of secure confinement are counterproductive and dangerous for status offenders. Status offenses are by definition non-criminal behaviors, and “[t]he actions associated with status offenses are seldom isolated incidents and instead are often manifestations of underlying personal, familial, community and systemic issues, as well as other unmet and unaddressed needs.”¹⁵ These needs persist in youth accused of contempt stemming from a status offense. Secure confinement makes it difficult to meet status offenders’ needs, as it interrupts their education and keeps them away from the home- and community-based

solutions that have been shown to be more effective.¹⁶ Further, a substantial body of research demonstrates that secure detention of this population “may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.”¹⁷ When status offenders are confined with youth who have committed much more serious offenses, they can learn criminal behaviors that make it more likely they will commit unlawful acts in the future.¹⁸ Finally, secure confinement is more expensive than the alternatives; these youth would be better served in non-secure facilities or community alternatives that address their needs while being more cost-effective for the State.¹⁹

KEY FINDINGS

- **Texas detains thousands of status offenders in secure facilities each year.**
 - » According to the Texas Juvenile Justice Department, 1,092 status offenders were put in secure detention during 2013 for status offenses that originated in the juvenile court. 166 of these were for accusations of contempt pursuant to the VCO Exception.²⁰
 - » For status offenses that originate in Justice of the Peace and Municipal Courts, precise detention data is not available. However, according to the Office of Court Administration, 114,609 youth were referred to these courts in offense categories that could include status offenders. Some of these categories, such as Failure to Attend School (79,250) and Local Curfew (6,804), are all status offense cases. Others contain a mix of status offenders and non-status offenders, such as Non-Driving Alcoholic Beverage (13,981) where only youth under age 17 qualify. Applying the detention rate of status offenders in juvenile court (20%) to only the categories of offenses that contain 100% status offenders, it is a conservative estimate that about 17,000 of these youth were detained during 2013.²¹
- **While most status offenders are detained for 24 hours or less, a substantial percentage is detained for longer than 24 hours.**
 - » Of the 1,092 status offenders securely detained during 2013, 31.5% (344) were held for longer than 24 hours. 69 youth were held for at least 10 days.²²
 - » Again, specific Justice of the Peace and Municipal Court numbers are unavailable. However, we can estimate that 5,355 status offenders were detained for longer than 24 hours here by applying the 24+ hour detention rate in juvenile court (31.5%) to the detention estimate of 17,000.
- **There is considerable momentum nationally and in Texas for preventing the secure confinement of status offenders through contempt exceptions.**
 - » As part of a reauthorization of the JJDP in Congress, Senator Chuck Grassley (R-Iowa) is pushing for repeal of the VCO Exception.²³
 - » Recent national polling indicates that 85% of registered voters agree that “Juveniles should never be placed in juvenile corrections facilities for status offenses like skipping school or running away, which would not be a crime if they were an adult.” 73% of those polled “Strongly Agreed.”²⁴
 - » Texas judges are naturally shifting away from using the VCO Exception. While in 2007, Texas was among the top three states with the highest rate of youth confinement through use of the VCO Exception—making up 60% of nationwide uses of the exception along with Kentucky and Washington—in 2013, according to the Texas Juvenile Justice Department, only one youth was put into secure confinement pursuant to the VCO Exception.²⁵
- **Research demonstrates that placing status offenders in secure facilities is against best practices.**
 - » Status offense behaviors are often caused by factors outside of a youth’s control, such as family dysfunction, problems in school, unmet mental health needs, or community problems.²⁶ Research has demonstrated that secure confinement is not an evidence-based practice for treating these underlying causes of status offenses.²⁷

KEY FINDINGS (CONTINUED)

- » Nationally, 20% of status offenders put into secure confinement are placed in units with youth who have committed murder or manslaughter.²⁸ Placement of status offenders in these facilities jeopardizes youths' safety and increases the likelihood of future delinquency through learned criminal behavior.²⁹
- **Placing status offenders in secure facilities is expensive.**
 - » According to the Legislative Budget Board, secure detention costs \$262.52 per youth per day and secure confinement costs \$207.61 per youth per day.³⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 943 BY SENATOR RODRÍGUEZ

SB 943 prevents status offenders from being held in secure facilities, either pre- or post-adjudication, to bring Texas up to date with the most recent research regarding best practices for these youth. SB 943 prohibits the pre-adjudication secure detention of all status offenders, including those accused of violating a court order imposed for a status offense. Instead of secure detention, SB 943 provides that status offenders may be detained in the juvenile processing offices and places of non-secure custody for up to 6 hours, and in non-secure correctional facilities for up to 24 hours. All of these non-secure facilities exist under current Texas law, and the bill does not alter the exceptions that allow for longer periods of detention in certain circumstances. Finally, SB 943 effectively eliminates application of the VCO Exception to sentence status offenders to post-adjudication secure confinement. While some may argue that confinement is appropriate given that contempt of court is a separate offense, it bears remembering that a youth would not be involved with the court at all but for the original status offense. This contempt exception has become sparingly used, and SB 943 gets it right by removing the possibility that the exceptions come back into common use. SB 943 is in line with best practice: it removes the dangers that status offenders face when put in secure facilities with more delinquent youth.

Citations on reverse

Citations

- ¹ Tex. Family Code § 51.02(15).
- ² Tex. Educ. Code § 25.094; Tex. Family Code § 51.03(b)(2).
- ³ Tex. Family Code § 51.03(b)(3).
- ⁴ Tex. Local Gov. Code § 351.903.
- ⁵ Shay Bilchik and Erika Pinheiro, “Representing Juvenile Status Offenders, Chapter One: What the JJDPa Means for Lawyers Representing Juvenile Status Offenders,” *American Bar Association* (2010): 4, http://www.americanbar.org/content/dam/aba/administrative/child_law/20100121_RJSO_Book.authcheckdam.pdf.
- ⁶ Claire Shubik and Jessica Kendall, “Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the JJDPa,” *Family Court Review* 45, No. 3 (2007): 385-86, http://juvjustice.org/sites/default/files/resource-files/resource_743_0.pdf.
- ⁷ Tex. Fam. Code § 54.04(o)(2).
- ⁸ Tex. Fam. Code § 54.011.
- ⁹ Marc Levin & Derek Cohen, “Kids Doing Time for What’s Not a Crime: The Over-Incarceration of Status Offenders,” *Texas Public Policy Foundation* (March 2014): 4, <http://www.modelsforchange.net/publications/521>.
- ¹⁰ Tex. Family Code § 51.03(a)(2).
- ¹¹ Tex. Family Code § 54.04(n).
- ¹² Tex. Fam. Code § 54.011.
- ¹³ Tex. Fam. Code § 54.04(n).
- ¹⁴ Tex. Fam. Code § 54.04(o)(3).
- ¹⁵ Coalition for Juvenile Justice, “National Standards for the Care of Youth Charged with Status Offenses,” (2013): 1, http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf.
- ¹⁶ National Juvenile Justice and Delinquency Prevention Coalition, “Promoting Safe Communities: Recommendations for the 113th Congress,” (2013): 6.
- ¹⁷ Barry Holdman and Jason Ziedenberg, “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,” *Justice Policy Institute* (2011): 2-3, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.
- ¹⁸ Ibid.
- ¹⁹ Holdman and Ziedenberg, “The Dangers of Detention,” 10-11.
- ²⁰ Texas Juvenile Justice Department, “Statewide Statistical Report: 2013.”
- ²¹ Office of Court Administration, “Trial Court Activity Database,” <http://www.txcourts.gov/statistics/trial-court-activity-database.aspx> (running “Juvenile and Minor Activity Report” in the Justice of the Peace and Municipals Courts from January 1, 2013 to December 31, 2013).
- ²² Texas Juvenile Justice Department, “Statewide Statistical Report: 2013.”
- ²³ The Editorial Board, *Kids and Jails, a Bad Combination*, New York Times (Dec. 28, 2014).
- ²⁴ *Public Opinion on Juvenile Justice in America*, The Pew Charitable Trusts (November 2014), http://www.pewtrusts.org/~media/Assets/2014/12/PSPP_juvenile_poll_web.pdf.
- ²⁵ Texas Juvenile Justice Department response to data request.
- ²⁶ Juvenile Justice and Delinquency Prevention Coalition, “Fact Sheet: Deinstitutionalization of Status Offenses Core Protection,” (August 2014), <http://www.act4jj.org/sites/default/files/ckfinder/files/Act4JJ%20Core%20Protection%20DSO%20August%202014%20FINAL.pdf>.
- ²⁷ Nelson, D. W. “A Road Map for Juvenile Justice Reform,” *Annie E. Casey Foundation* (2008): 9.
- ²⁸ Nancy Gannon Hornberger, “Improving Outcomes for Status Offenders in the JJDPa Reauthorization. Juvenile and Family Justice Today” (2010), citing Sedlak, A. J., & McPherson, K. S., “Conditions of Confinement: Findings from the Survey of Youth in Residential Placement,” *Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice* (May 2010).
- ²⁹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses*, (2013), 10, http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf.
- ³⁰ Legislative Budget Board (LBB), “Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014,” (February 2015): 11.



Elizabeth Henneke, Policy Attorney

Work: (512) 441-8123, ext. 105

Cell: (512) 810-8392

ehenneke@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

SB 1083

Alter the Procedure for Sentencing Juveniles to Give Greater Flexibility to Juries

PROVIDING INDIVIDUALIZED SENTENCING AND RETROACTIVITY OF JUVENILE SENTENCING REFORMS ALLOWS FOR FAIRER SENTENCING AND GIVES FINALITY TO VICTIMS

In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* that automatically sentencing minors to **life without parole** violated the Eighth Amendment.¹ In light of that decision, Texas passed Senate Bill 2 in 2013, eliminating life without parole ("LWOP") as a sentencing option for youth under the age of 18 convicted of a capital felony. Individuals convicted of a capital felony committed under the age of 18 in Texas are now subject to mandatory **life** sentences with the possibility of parole after 40 years. These mandatory sentences prevent juries from being able to take into account the unique circumstances that led to the youth's involvement with the criminal justice system.

While the Texas Criminal Justice Coalition applauds Texas for eliminating LWOP for juveniles prospectively, these reform efforts do not sufficiently protect Texas youth, some of whom will still die in prison. First, these reform efforts were **not made retroactive**, and at least 27 individuals did not receive the benefit of the law. Second, Texas does not permit juries to consider the **mitigating factors of youth** during sentencing or to make individualized determinations of sentences. The current sentencing scheme deprives Texas juries of exercising their discretion to choose a sentence that matches the facts of the crime and the defendant's level of culpability and potential for rehabilitation. Moreover, Texas risks **escalating litigation costs** as the U.S. Supreme Court and the Texas Court of Criminal Appeals continue to refine the jurisprudence on youth; it also subjects victims to continued uncertainty.

For these reasons, the Texas Criminal Justice Coalition urges the Legislature to adopt new policies to bring down costs, provide finality to victims, and give youthful offenders the opportunity to prove that they have sufficiently matured and rehabilitated to be given a second chance.

KEY FINDINGS

- The United States is the only country in the world to allow life without parole sentences for juveniles; the majority of the world (65%) either limits sentences to 20 years or less or reduces the degree of the crime for juveniles.²
- Children sentenced to life in prison without parole are often the most vulnerable members of our society. A national survey revealed that nearly 80% of juvenile lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods.³
- This national survey further reported that 77% of girls and 20% of all youth lifers said they have been sexually abused.⁴
- African American youth are sentenced to life without parole as children at a per capita rate that is 10 times that of white youth.⁵

Continued on reverse.

KEY FINDINGS (CONTINUED)

- The Eighth Amendment demands that states provide juvenile offenders a meaningful opportunity for release.⁶ Since *Miller v. Alabama*, several states have eliminated juvenile life without parole entirely, providing for parole eligibility after 10-35 years.⁷ Litigation in this area is rampant, depriving victims of the finality they deserve.
- It costs approximately \$2.5 million to incarcerate juveniles for life,⁸ whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.⁹ **Early release for those individuals who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per inmate.** That figure does not include the extra costs of litigation currently associated with life or functional life sentences, which are expected to substantially drive up those costs.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 1083 BY SENATOR RODRÍGUEZ

- **SB 1083 provides a range of sentencing options for juries considering crimes involving juveniles.** Allowing juries to provide a sentence ranging anywhere from 5 to 99 years or life allows juries to consider the facts and mitigating evidence of the crime and provide a sentence that is proportionate to the offense.
- **SB 1083 permits juries to consider the mitigating factors of youth when choosing between those sentencing options.** Individualized consideration of mitigating factors would allow juries to provide appropriate sentences for juveniles. Allowing juries to consider a juvenile's community and family background, mental health, substance abuse issues, school records, etc., will allow juries to understand the unique circumstances surrounding the juvenile's offense, and to make a sentencing decision accordingly.
- **SB 1083 reduces the time served prior to parole eligibility.** Reducing the time served to parole eligibility from 40 years to 25 years provides consideration of youths' ability to grow and their potential for rehabilitation. Early parole consideration recognizes this capacity for rehabilitation and gives these youth the opportunity to demonstrate their maturity to the parole board. Given the young age at which juveniles enter the criminal justice system, youth have greater potential to rehabilitate and become active, productive members of the community upon release. Reducing the time served prior to parole eligibility also provides youth with the hope and the drive necessary to make the most of rehabilitative programming provided to them in order to be ready for the parole board.
- **SB 1083 applies these changes retroactively so as to bring Texas into conformity with the constitutional dictates of *Miller v. Alabama*.** Today in Texas facilities, there are 27 individuals with LWOP sentences who were sentenced as juveniles. Although the Texas Criminal Court of Appeals has held that *Miller* can be applied retroactively, it is unclear what sentence is available to these youth upon resentencing.

Citations

¹ 132 S.Ct. 2455 (2012)

² Connie de la Vega, et al., *Cruel and Unusual: U.S. Sentencing Practices in a Global Context* (USF School of Law Center for Law and Global Justice 2012); see also Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983 (2008). Both are available at http://www.usfca.edu/law/jlwop/law_review/.

³ Ashley Nellis, Ph.D., *The Lives of Juvenile Lifers: Findings from a National Survey* (March 2012), http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf.

⁴ Ibid.

⁵ Ibid.

⁶ In a series of cases the Supreme Court of the United States has recognized that juveniles are different and provided strict restrictions upon juvenile sentencing. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that juveniles who had not committed a homicide could never be sentenced to life without parole. It also required states to give juvenile offenders a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Thus, the Supreme Court limited the length of sentences that states can impose upon juveniles at the time of sentencing, requiring a meaningful review process to occur at some “later” date. The Supreme Court did not provide any guidance on when states must allow that opportunity for release to occur, leaving it up to states to decide in the first instance. Two years later, the Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), held that mandatory life without parole violated the Eighth Amendment. After *Miller*, states must require sentencing courts to consider the distinctive mitigating features of youth prior to sentencing a juvenile to life without parole.

⁷ Research conducted by the Texas Criminal Justice Coalition available upon request. Please see the Appendix, *Memorandum re sentencing reform relating to Graham and Miller nationwide*, Civil Justice Clinic, Quinnipiac University School of Law (March 18, 2014).

⁸ *At America’s Expense: The Mass Incarceration of the Elderly*, ACLU (June 2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf. Calculation = ((Average cost per year per inmate to incarcerate before age 50 x 34) + (National estimate for annual cost for the care of an inmate after age 50 x 21)).

⁹ Ibid. Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).

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

Approximately 4.7 million adults in Texas have a criminal record for offenses ranging from misdemeanors to felony offenses.¹ In the electronic age, where criminal backgrounds are easily accessible by potential employers and landlords, having any sort of criminal arrest or conviction on one's record can have enduring consequences. At a glance, landlords reviewing leasing applications can deny housing to families based on criminal justice system involvement of any type. Studies have shown that four out of five landlords employ criminal background checks to screen out rental property applicants who have questionable items in their background.² **In a survey of landlords and property managers, 66 percent indicated that they would not approve an application from an individual with a criminal history.**³

While many public housing providers are prohibited by law from renting to people with certain convictions, most public housing authorities exceed federal requirements in this regard and often deny housing to entire families when any member of the household has a criminal background.⁴ As a result, the number of housing options available to someone with a criminal record is reduced significantly. Many find that their only option is the private rental market; yet most 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. In a *Fort Worth Star-Telegram* article, John Mitchell, Executive Director of the Apartment Association of Tarrant County, confirmed that **property owners will become more willing to rent to those with criminal backgrounds only when risks of lawsuits are reduced.**⁵

The actual risks are largely overblown. Studies have shown that reducing discrimination in housing minimizes criminal justice system involvement and mitigates risk for re-incarceration.⁶ **Therefore, leasing property to someone with a criminal history who meets the application criteria actually serves to decrease the risk that he or she will commit a new offense.** Moreover, there are many factors that further mitigate risk for property owners. Individuals without a re-arrest or new conviction for a period of seven years are no more likely to commit a crime than those who have no history of criminal justice system involvement.⁷ Other factors may include successful completion of substance abuse treatment, a history of stable employment, and/or a network of stable and law-abiding friends who can attest to the applicant's character. Landlords who do not rely solely on criminal background checks, but take the time to meet applicants to discuss these factors, deserve the assurance that renting to someone with a criminal background will not expose them to risks of litigation.

KEY FINDINGS

- **Housing stability has been identified as one of the most critical factors in preventing recidivism and parole violation.**⁸ Every time a formerly incarcerated person moves following release from prison increases the likelihood of re-arrest by 25 percent.⁹

Continued on reverse.

- **Increasing housing options for formerly incarcerated individuals can help alleviate Texas' large homeless populations.** A 2012 study by the National Alliance to End Homelessness reported that Texas had five urban areas ranked in the top 60 in the nation 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.¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 1473 BY SENATORS GARCIA AND WATSON

- **SB 1473 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 not precluded 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.

- **SB 1473 will improve public safety. Increasing the number of housing options available to people with criminal backgrounds will help them remain stable and law-abiding.** This policy will decrease housing relocation and the threat of homelessness for a large proportion of the nearly 4.7 million Texans impacted by housing discrimination based on their criminal history.

Citations

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas*, The University of Texas School of Law, 2013, 2,

<http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords.pdf>.

² Rebecca Vallas and Sharon Dietrich, *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, Center for American Progress, 2014,

<https://www.americanprogress.org/issues/poverty/report/2014/12/02/102308/one-strike-and-youre-out/>.

³ Helen Gaebler, *Criminal Records in the Digital Age*, 6.

⁴ Tran-Leung, Marie Claire, "When Discretion Means Denial for People with Criminal Records in Federally Subsidized Housing," *The Shriver Brief*, 2011, <http://www.theshriverbrief.org/2011/09/articles/community-justice/when-discretion-means-denial-for-people-with-criminal-records-in-federally-subsidized-housing/>.

⁵ Mitch Mitchell, "Ex-offenders say housing, jobs are tough to find," *Fort Worth Star-Telegram*, May 28, 2012, <http://www.mcclatchydc.com/2012/05/29/150348/ex-offenders-says-housing-jobs.html>.

⁶ S. Metraux and D. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release," *Criminology & Pub* 3 (2004): 139-160.

⁷ Tran-Leung, Marie Claire, "Beyond Fear and Myth: Using the Disparate Impact Theory Under Fair Housing Act to Challenge Housing Barriers Against People with Criminal Records," *Journal of Poverty Law and Policy*, Vol. 45, Numbers 1-2 (2011): 9, <http://povertylaw.org/sites/default/files/webfiles/tran-leung.pdf>.

⁸ Helen Gaebler, *Criminal Records in the Digital Age*, 6.

⁹ Jamie Watson, et al., *A Portrait of Prisoner Reentry in Texas*, The Urban Institute, 2004, <http://www.urban.org/publications/410972.html>.

¹⁰ National Alliance to End Homelessness, *The State of Homelessness in America 2012*, 46-47, http://b3cdn.net/naeh/9892745b6de8a5ef59_q2m6yc53b.pdf.

Increase Opportunities for Hard-Working Individuals with Criminal Records By Providing Orders of Nondisclosure for Certain Offenses and Judgements

ACCESS TO ORDERS OF NONDISCLOSURE

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 difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Despite the fact that current policies regulating orders of nondisclosure take many steps in the right direction, these forms of relief do not extend far enough to offer a genuine second chance to those trying to live as responsible and safe residents of Texas.

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » In order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.² **SB 1902 would also make eligible those individuals who have been convicted of certain misdemeanors for the very first time.**
 - » Under current law, an individual must wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors – before being eligible for an order of nondisclosure.³ **Under SB 1902, individuals with misdemeanor convictions would be required to wait two years if they were incarcerated for the offense, or may petition immediately if they completed probation.** Individuals who completed probation for crimes against persons will be subject to a two-year waiting period.
 - » Only some types of offenses are currently eligible for nondisclosure; certain violent and sex-related offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶ **SB 1902 would create an expedited process for those whose offenses were dismissed following deferred adjudication for misdemeanors not against persons.**

- **Few orders of nondisclosure are issued compared to the number of eligible offenses.**
 - » According to the Office of Court Administration's Court Activity Reporting and Directory System, a total of 170,587 cases were dismissed in district criminal courts over a four-year period (September 2010 through August 2014). Over 18 percent, or 30,924 of these, were for drug possession alone.⁷ Another 3,366 dismissals were for misdemeanors.⁸ Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.
 - » The Texas Department of Public Safety reported in May 2014 that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).⁹
- **Even when issued, orders of nondisclosure are not always effective in limiting access to criminal records, potentially resulting in the ongoing dissemination of restricted or inaccurate information.**
 - » While the Texas Department of Public Safety (DPS) is statutorily mandated to certify to the court that issued the order of nondisclosure that the relevant records in its possession have been sealed, the statute does not require DPS to certify to the court that it has notified all the private commercial businesses it sold the records to of the order of nondisclosure or expunction. This means that, although DPS is accountable to the courts to comply with orders of nondisclosure, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure has been issued.
 - » Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure from their records or websites. Please note, however, that DPS indicates on its website that it "provides a file that contains the nondisclosure records that are no longer public" and that "customers have 30 business days from the posting of the file to remove any records."¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 1902 BY SENATOR PERRY

This bill will give a fair chance to thousands of Texans who have overcome their past mistakes, enabling them to access safe housing, become gainfully employed, and contribute to Texas communities in positive ways.

- **SB 1902 will provide a second chance for those who are convicted of a misdemeanor for the very first time.** Individuals who have ever been convicted of or received deferred adjudication for any other crime will not be eligible to receive an order of nondisclosure for the conviction.
- **SB 1902 will also reduce barriers to obtaining an order of nondisclosure for individuals whose cases were dismissed following deferred adjudication for a nonviolent misdemeanor** by allowing them to receive an order of nondisclosure upon dismissal without the following needing to occur: filing a petition, providing notice to the prosecutor, or paying civil petition fees. The judge will continue to retain discretion whether to grant the order of nondisclosure based on whether such a grant is in the best interest of justice. Defendants will still be required to pay the \$28 nondisclosure fee to be remitted to the Department of Public Safety. This expedited process will conserve county resources and make orders of nondisclosure more accessible for those who have served their punishment.

Citations on following page.

Citations

¹ [Tex. Gov't. Code, § 411.081.](#)

² [Tex. Gov't Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).

⁷ Data was obtained from the Office of Court Administration Court Activity Reporting and Directory System using the Ad-Hoc Search feature on October 1, 2014. Public court activity data may be found at <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

⁸ *Ibid*.

⁹ Texas Department of Public Safety (DPS), Letter to the Lieutenant Governor and Speaker of the House dated May 30, 2014, reporting the number of petitions and orders for nondisclosure received by the Department in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.

¹⁰ Texas Department of Public Safety, "Conviction Database Customers," accessed on October 3, 2014, available at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>.

Travis County Commissioners Court – Public Hearing on Tax Rate

Budget Solutions to Restore in-Person Visitation in Travis County Jails & Improve Public Safety Outcomes

WHY RESTORE IN-PERSON VISITATION

- ***In-Person Visitation Decreases Re-Offending:*** One study looked at over 16,000 incarcerated individuals and examined in-person visitation over their entire sentences, finding that just one visit reduced re-offending by 13 percent for new crimes and by 25 percent for technical violations.¹
- ***In-Person Visitation Preserves the Parent-Child Bond:*** Family support is crucial to maintaining the relationships between those incarcerated and those who love them, especially as it pertains to developing and maintaining bonds between parents and children. Visitation, as one paper points out, “substantially decreases the negative impacts of incarceration by preserving the child’s relationship with the parent.”² Maximizing visitation opportunities is especially critical when the incarcerated parent was active in the child’s life prior to incarceration.³

BUDGET STRATEGIES TO RESTORE IN-PERSON VISITATION VIA COST-SAVINGS & IMPROVE PUBLIC SAFETY OUTCOMES

According to estimates provided by the Travis County Clerk’s Office, the equivalent of 16 FTE’s will be required to restore in-person visitation for all individuals in Travis County jail facilities.⁴ As a general principle, cost savings should not be achieved at the expense of programming or services that decrease re-offending and promote family reunification. Given the benefits of in-person visitation, the Texas Criminal Justice Coalition recommends shifting to budget strategies that achieve better public safety outcomes at a decreased cost. **The following recommendations will help Travis County free up dollars that it can devote to in-person visitation, while achieving additional smart-on-crime outcomes.**

Increased Use of Personal Recognizance (PR) Bonds

Studies have indicated that, when counties expand the use of PR bonds based on a validated assessment of risk conducted by qualified personnel, it achieves improved public safety outcomes while saving substantial amounts on county jail expenditures.

- » Across all pretrial risk categories, low to high, those who were released on an assessment-based PR bond were less likely to commit a new crime during the pretrial period than those who received a secured bond.
- » People released on assessment-based PR bonds were as likely to show up for their court appearance as those who received a secured bond.
- » Further, the economic benefit of instituting an unsecured bond system is significant. **Those released on PR bonds are able to maintain employment and housing as well as engage in treatment services, thereby decreasing the likelihood of incarceration.**

As of August 1, 2015, there were 1,913 people in Travis County Jails awaiting trial on felony, state jail felony, or misdemeanor charges.⁵ This represents 77 percent of the 2,499 individuals in Travis County custody on that day, which is far greater than the state average of 61 percent of individuals in county jails awaiting trial.⁶ If Travis County were to increase the use of PR bonds based on a risk assessment, it could achieve substantial savings through safe population reductions. Jail standards require one staff person for every 48 people in custody.

Merely bringing the percentage of pretrial defendants held in custody down to the state average through greater use of PR bonds would free eight FTE's and produce significant savings in food and other jail expenses; again, these savings could be put towards a restoration of in-person visitation for those who do remain incarcerated. Moreover, expanding the use of PR bonds would promote housing and employment stability among pretrial defendants, which would improve their likelihood of success on community supervision or in diversion courts, and prevent them from returning to the Travis County Jail.

Pre-Booking Diversion

Pre-booking diversion programs are intended to address low-level violations through referrals to community services, rather than through arrests. Programs like Law Enforcement Assisted Diversion (LEAD) in Seattle, through which specially trained officers divert targeted individuals into programs and services, have been shown to decrease crime rates while healing relationships between the police and the community.⁷

The principles of pre-booking diversion can apply to a host of nonviolent offenses. For example, Harris County implemented its First Chance Intervention Program in late 2014, and in the first six months the program diverted over 1,000 people charged with first-time Class B misdemeanor marijuana possession. Along with the individuals spared the consequences of a criminal record, the county has saved hundreds of thousands of dollars associated with booking, incarcerating, and prosecuting these cases.

The Texas Criminal Justice Coalition especially recommends pre-booking diversion for nonviolent individuals with mental illness, as well as those with substance abuse issues. Early interactions with police that lead to service linkage instead of jail reduce the likelihood of future arrest and costly incarceration in the Travis County Jail.

In July, there were 192 new drug possession cases and 1,133 on the Travis County District Court docket.⁸ A sizeable number of these cases were for low-level possession, sometimes for very low amounts of controlled substances. Developing partnerships between law enforcement and the judicial system to divert those suspected of low-level drug or nonviolent offenses to community organizations [before the booking process] could lead to decreased jail expenditures – with savings reinvested in in-person visitation for those who are incarcerated – while also reducing the financial and human costs associated with re-offending.

CONCLUSION

Travis County already achieves impressive criminal justice outcomes through its investments in diversion courts and other policies. The recommendations provided above are offered with great respect for various accomplishments by Travis County, the District Attorney, the City of Austin, and the Sheriff's Office. We thank you for considering additional recommendations to build on these accomplishments. We believe continued movement toward these policies will yield impressive savings and even better public-safety outcomes.

Citations

¹ Minnesota Department of Corrections, *The effects of prison visitation on offender recidivism*, 2011, <http://www.doc.state.mn.us/PAGES/files/large-files/Publications/11-11MNPPrisonVisitationStudy.pdf>.

² University of New Mexico, *Child Protection Best Practices Bulletin: Connecting Children with Incarcerated Parents*, 2011, <http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20%282011%29.pdf>.

³ Susan D. Phillips, *Video Visits for Children Whose Parents are Incarcerated*, The Sentencing Project, 2012, 5, http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf.

⁴ Dana Debeauvoir, Travis County Clerk, FY 2016 Budget Agenda Worksheet for Markup on September 9.

⁵ Texas Commission on Jail Standards, *Abbreviated Population Report for 8/1/2015*, <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>.

⁶ Ibid.

⁷ Becket, Katherine, "Seattle's Law Enforcement Assisted Diversion Program: Lessons Learned from the First Two Years," University of Washington, Law, Societies & Justice Program and Department of Sociology, March 21, 2014, 7, <http://static1.1.sqspcdn.com/static/f/1185392/24777541/1398287318543/2014-Lead-Process-Evaluation.pdf?token=mfSTbqU4kVzh5F5zMJkInNIPrec%3D>.

⁸ Office of Court Administration, Court Reporting and Directory Service.

Stop Treating Truancy as an Adult Criminal Offense

Decriminalizing Truancy and Shifting the Responsibility to Schools Will Alleviate Court Dockets, Reduce the Burden on Families, and Help Youth Access Behavioral Services

TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called “failure to attend school” (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students in Justice of the Peace and Municipal Courts.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students’ needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student’s control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

KEY FINDINGS

- Failure to Attend School is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.⁸ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.⁹ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁰
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹¹

Continued on reverse.

KEY FINDINGS (CONTINUED)

- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.¹²
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **We support legislation that repeals “failure to attend school” as a criminal offense, but allows Justice of the Peace and Municipal Courts to continue to hear truancy cases as Child in Need of Supervision (CINS) offenses.** Eliminating “failure to attend school” as an adult criminal offense would require all truancy cases to fall under the existing CINS offense in the juvenile justice system. Under CINS, students and their families would have access to remedial services designed to address their underlying needs, which are simply not available for Class C misdemeanors. Because juvenile courts are still unable to handle an influx of truancy cases, Justice of the Peace and Municipal Courts would sit as proxies of the juvenile court to hear these CINS offenses and order juvenile court programming. This solution would remove the trappings of criminality from student behavior, get students and families the services they need, and leave in place the few Justice of the Peace and Municipal Courts with exceptional truancy programs.
- **We support legislation that requires schools to employ a progressive sanctions model that must meet certain statutory minimums for school attendance violations, and that is designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. To meet this goal, schools should be required to implement a progressive sanctions model for truancy cases. These models, which must meet certain minimum requirements (e.g., implementation of a behavioral contract, school-based community service, home visits, and counseling), are designed to address students’ underlying causes of truant behavior and make court referral an option of last resort. This would substantially reduce the burden that “failure to attend school” cases currently place on the court system.

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ 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.

⁷ *Ibid.*

⁸ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

⁹ Tex. Educ. Code § 25.0915.

¹⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹¹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

¹² LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

¹³ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.



Jorge Renaud, Policy Analyst
Work: (512) 441-8123, ext. 102
Cell: (512) 825-6586
jrenaud@texascjc.org
www.TexasCJC.org

FACT SHEET 2015

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

Property-related offenses include criminal mischief, graffiti, and theft.¹ The penalty for committing a property offense corresponds to the dollar amount lost or damaged. For instance, a Class A misdemeanor involves property worth \$500 or more but less than \$1,500; if the property value is \$1,500, the offense becomes a state jail felony.

These monetary “thresholds” (ranges of dollar amounts) have not been changed since 1993 and therefore fail to reflect nearly two decades of inflation. 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” that was not intended by the authors of the 1993 legislation.**

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 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 2013, larceny theft⁴ alone accounted for slightly more than 10% of the 936,358 arrests made in Texas that year.⁵
- Property-related crimes comprise over 50% of the population in state jail facilities.⁶ As of August 2013, there were nearly 11,000 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 Those individuals alone cost taxpayers nearly \$170,000 per day to incarcerate and almost \$62 million annually.⁸
- As of August 2013, nearly 15,000 individuals were incarcerated in prison for a larceny or burglary offense.⁹ Those individuals cost the state approximately \$717,000 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 August 2013, over 60,000 individuals were on direct community supervision (probation) for either a misdemeanor or felony property offense.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **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. It will also more closely conform punishments to what was intended by the authors of the 1993 legislation.

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 Inflation 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 are as much as \$48.84 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, "Texas Arrest Data: 2013," available at <http://www.txdps.state.tx.us/crimereports/13/citCh9.pdf>

⁶ Texas Department of Criminal Justice (TDCJ), "Fiscal Year 2013: Statistical Report," p. 1, available at http://tdcj.state.tx.us/documents/Statistical_Report_FY2013.pdf

⁷ Ibid, p. 11.

⁸ Based on LBB, *Uniform Cost Report*, *supra* note 3, at 8.

⁹ TDCJ, *Statistical Report*, *supra* note 6, at 10.

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, *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.