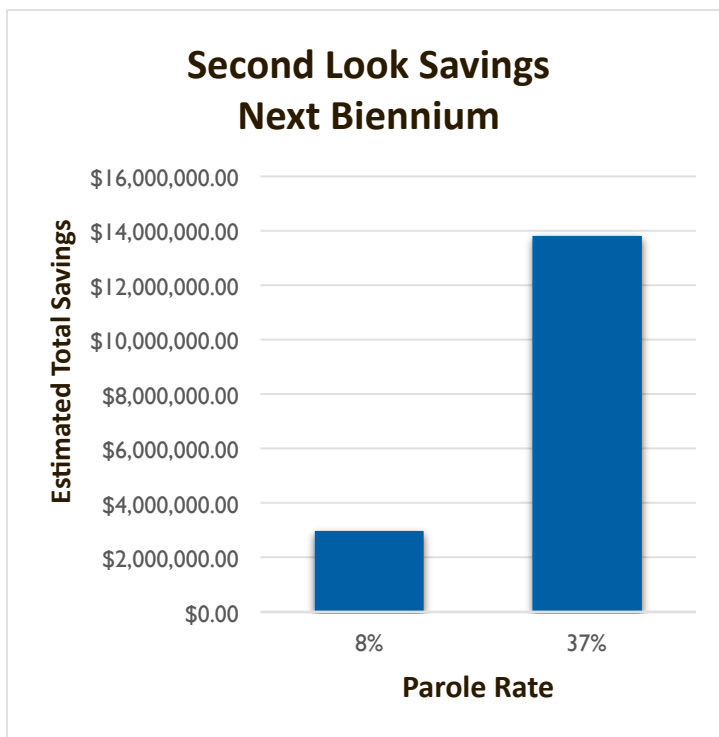


Fact Sheets and Testimony 2017

Second Look Savings

HB 1274 could save millions in taxpayer dollars

- If HB 1274 passes, hundreds of inmates will have an opportunity to demonstrate to the Board of Pardons and Paroles whether they have sufficiently grown and become rehabilitated.
- By increasing the number of individuals who have an opportunity for parole, some percentage of additional inmates will be approved.
- Depending on the percentage of approvals, **Texas will save between approximately \$3 million and \$14 million in the coming biennium.**



- The average parole grant rate in Texas for capital murder over the last 15 years is 8%. Based on an 8% parole approval rate, HB 1274 would save Texas approximately \$2,984,354 over the next biennium.
- As of March 2017, 37% of initial parole considerations were approved. Based on a 37% approval rate, HB 1274 would save Texas approximately \$13,802,639 over the next biennium.

Notes

- Numbers are based on current TDCJ prison population with an offense committed at 17 years old.
- Second Look-eligible offenders are incarcerated by TDCJ for first degree offenses or capital murder committed at age 17 or under.
- To isolate savings in the next biennium, this study only considered offenders first eligible for parole after 9/1/2017 that would be eligible for parole under Second Look prior to 9/1/2019.
- This assumes \$18,537 annual costs for incarceration and \$3,909 annual costs for parole over the next biennium.

Methodology

For Second Look-eligible offenders:

- (1) Calculate their new parole eligibility date by halving the time between their sentence date and original first parole eligibility date
- (2) Count the days between their original and new first parole eligibility – if the original parole eligibility falls outside of the next biennium, use 9/1/2019 to isolate savings during the next biennium
- (3) Calculate costs saved if the person was released when first eligible by multiplying the difference in days by daily incarceration cost estimate ~ \$50.79
- (4) Calculate costs incurred if the person was released by multiplying the difference in days by daily parole cost estimate ~ \$10.71
- (5) Subtract costs from savings and multiply that value by assumed parole rate (e.g. 8% and 37%)

Reduce Barriers to Economic Opportunity for Rehabilitated Individuals
CSHB 1426 will allow Texans to become self-sufficient, taxpaying members of the workforce through Certificates of Relief.

LIMITS ON OCCUPATIONAL LICENSES

Approximately 4.7 million adults in Texas have a criminal record,¹ all of whom may face difficulty getting an interview for a position with a Texas employer. In fact, more than 25 percent of occupations in Texas require state licensure, and a criminal history serves as an automatic bar for most licenses.²

Such prohibitive licensing policies limit opportunities for people who have fully served their time and who want to become contributing members of society. This has significant consequences: Previously incarcerated individuals who are unemployed are more likely to re-offend than those who are employed,³ creating more instability for returning individuals and their families, as well as for the Texas workforce.

IN SHORT

CSHB 1426 will expand Texans' ability to get occupational licenses and contribute to the workforce.

KEY FINDINGS

- Licensing authorities frequently see any criminal background or arrest record as being "directly related" to the duties and responsibilities of the licensed occupation, and therefore deny a license to a person who is otherwise qualified.⁴
- Over one-third of working-age men are unemployed because of their criminal background.⁵ Using \$53,707 as the state's per-capita GDP,⁶ Texas loses over \$3 billion in GDP annually due to employment.⁷

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 1426 BY REPRESENTATIVES ALLEN AND WHITE

Texas should establish Certificates of Relief to help individuals who have completed community supervision become responsible, contributing members of the community. Specifically, such Certificates should provide applicants with a restoration of the rights and abilities related to employment that were forfeited as a result of their criminal conviction.

A person's arrest history should not be the exclusive trigger for denying a professional license. Under CSHB 1426, individuals who want to be on a productive path will have the opportunity to contribute to the Texas workforce.

CSHB 1426 will open the door to safe, stable employment, thereby reducing recidivism and further strengthening the Texas economy.

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, <https://law.utexas.edu/wp-content/uploads/sites/32/2016/08/criminalrecords-1.pdf>.
- ² National Employment Law Project, “The Consideration of Criminal Records in Occupational Licensing,” <http://www.nelp.org/content/uploads/TheConsiderationofCriminalRecordsinOccupationalLicensing.pdf>.
- ³ Mark Berg and Beth Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* 28, no. 2 (2011): 397, <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.
- ⁴ Section 53.021(a), Texas Occupations Code.
- ⁵ Kaiser Family Foundation/New York Times/CBS News, “Non-Employed Poll,” <http://kff.org/other/poll-finding/kaiser-family-foundationnew-york-timescbs-news-non-employed-poll/>.
- ⁶ Department of Numbers, “Texas GDP,” <http://www.deptofnumbers.com/gdp/texas/>.
- ⁷ Bureau of Labor Statistics, “Employment Status of the Civilian Noninstitutional Population by Sex, Race, Hispanic or Latino Ethnicity, Marital Status, and Detailed Age, 2015 Annual Averages,” <https://www.bls.gov/lau/table14full15.pdf>.

Victim-Offender Mediation Holds Individuals Accountable, Increases Restitution to Victims, Reduces Jail Crowding and Re-Offending, And Facilitates Meaningful Case Resolution

VICTIM-OFFENDER MEDIATION WILL LOWER RATES OF REOFFENDING, AND EMPOWER AND RESTORE VICTIMS

Victim-offender mediation has produced successful results in many states.¹ Participants are required to take responsibility for their conduct and are given the chance to understand how their actions directly impact others – **reducing the likelihood that they will commit another crime.**

HB 72 will allow individuals who have been charged with a first-time property offense to be eligible to participate in pretrial mediation. Rather than burdening jails and courts, **defendants are required to apologize, compensate the victim, and perform community service.** The program allows victims to choose to be involved in the process of correction and rehabilitation, where they discuss the impact of the crime and specify what is needed to make them whole.

HB 72 also requires the prosecutor to first obtain the victim's consent, and defendants who do not complete the terms of the mediation agreement will be returned to normal court proceedings.

IN SHORT

- HB 72 will reduce recidivism while increasing restitution to victims.
- HB 72 will save taxpayer dollars by reducing jail overcrowding.

MEDIATION IS A COST-EFFECTIVE SOLUTION THAT REDUCES RECIDIVISM

- It costs, on average, more than \$59 per day to house someone in county jail in Texas.² With a daily census of 6,000 misdemeanor pretrial detainees in county jail,³ it costs Texas counties more than \$400,000 per day to hold these individuals in custody. **Pretrial diversion programs – like victim-offender mediation – can save counties millions of dollars that could be used to address more serious problems.**
- **Victim-offender mediation reduces recidivism.**⁴ One study of 9,172 juveniles in 21 cities, found that victim-offender mediation achieved a 34% reduction in recidivism.⁵
- Another study found that 79% of **victims who participated in victim-offender mediation programs were satisfied**, compared with only 57% of victims who went through the traditional court system.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 72 BY REPRESENTATIVE KEOUGH

HB 72 allows certain pretrial defendants charged with first-time property offenses to enter victim-offender mediation, in which the charged individual must successfully complete terms of the mediation agreement, with input from the victim, including compensation and/or community service. Upon successful completion, the prosecutor may recommend the charges to be dismissed. One year after successful completion, the defendant may obtain an order of non-disclosure, thus improving access to employment and housing that can be limited by a criminal conviction.⁷

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,” *The New York Times*, January 4, 2013, 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 11/17/2016, <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf>

The average cost per day was calculated using the Immigration Detainer Report, which requires county jails to estimate the cost of incarceration for holding individuals in county jail on immigration detainees. The total costs reported by all counties was \$5,278,664.66 for 89,353 inmate days in county jail.

³ Texas Commission on Jail Standards, Abbreviated Population Report for 11/1/2016, <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 Bradshaw, Roseborough & Umbreit, *The Effect of Victim Offender Mediation on Juvenile Offender Recidivism: A Meta-Analysis*, 2006.

⁶ Umbreit, M., with R. Coates and B. Kalanj. “Victim Meets Offender: The Impact of Restorative Justice and Mediation. Monsey,” N.Y.: Criminal Justice Press, 1994.

⁷ 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.



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TESTIMONY 2017

HB 122

Dear Members of the Committee,

My name is Lindsey Linder. I am a Policy Attorney for Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony regarding the age of juvenile jurisdiction. **TCJC urges this Committee to raise the age of juvenile jurisdiction from 17 to 18 years old to better reflect the societal consensus for maturity and to enable adult facilities, which currently house the majority of system-involved 17-year-olds, to better comply with the Prison Rape Elimination Act.**

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 any 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 justification 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.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.**

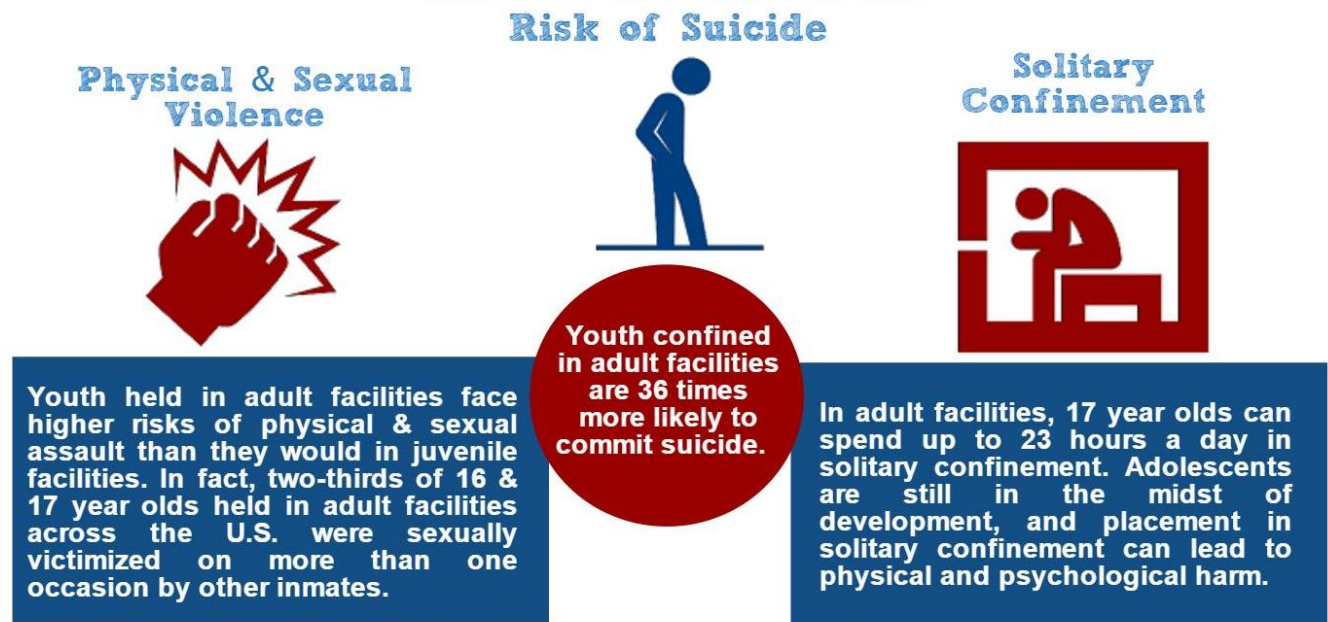
Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to keep these youth safe, and it would obviate the costs of doing sight and sound separation. The continuing costs of housing 17-year-olds are too much for counties to endure. For this reason,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

KEY FINDINGS

- **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.**⁹
- **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, possession of marijuana, and larceny.¹⁰
- **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.¹¹
- **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.**¹²
- **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.¹³
- **Research has shown that adult correctional facilities are a breeding ground for violence and abuse.** Youth are over eight times more likely to have a substantiated incident of sexual violence while in state prisons than adults in these same facilities (see graphic next page).¹⁴



DANGERS OF HOUSING YOUTH IN ADULT FACILITIES



- **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. Yet another county concern is lawsuits: PREA exposes counties to increased civil liability,¹⁸ 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.¹⁹ An astounding 15.7% of inmates surveyed indicated that they were sexually assaulted by another inmate or staff.²⁰

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.’”²¹ “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.”²²

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.²³
- 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.²⁴
- Grants to the States: PREA authorizes a grant program to help states meet the PREA requirements.²⁵ The total federal amount given in grants to states and local departments of corrections from 2004-2013 was \$54,376,459.²⁶ **The most heavily funded state from these grants was Texas, which received \$3,576,598.**²⁷
- 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.”²⁸ “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.”²⁹ 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.”³⁰ 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.

POTENTIAL LIABILITY FOR FAILING TO COMPLY WITH PREA

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”³¹ **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United States Supreme Court set forth the standard for determining if prison conditions violated the Eighth Amendment.³² 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.

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.

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- ¹¹ Ibid.
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- ¹³ 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>.
- 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 Deitch, et al., "Conditions for Certified Juveniles," 25-26.
- ¹⁹ 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>.
- ²⁰ Ibid.
- ²¹ 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)).
- ²² Ibid. (citing 42 U.S.C. 15609(7) & (9)).
- ²³ PREA § 15603.
- ²⁴ PREA § 15604(a).
- ²⁵ 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").
- ²⁶ OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- ²⁷ Ibid.
- ²⁸ U.S. Department of Justice, "National Standards to Respond to Prison Rape," 2 (citing 42 U.S.C. 15607(c)).
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- ³⁰ Ibid.
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- ³² 511 U.S. 825 (1994).

Raise the Age: Keep Kids Out of Adult Jails and Prisons

Currently: Texas is 1 of only 6 states that sends all 17-year-olds accused of a crime to the adult criminal justice system, making Texas out of step with best practices.

- When 17-year-olds are arrested in Texas, they are treated as adults and no one is required to inform their parents of the arrest.
- An adult criminal record creates barriers to getting an education, gaining employment, securing housing, and joining the military.
- In the adult system, 17-year-olds face a higher risk of sexual assault and are 36 times more likely to commit suicide than those in juvenile facilities.
- Sending 17-year-olds to adult jails is costly and subjects sheriffs to liability. Keeping as many kids as possible out of adult jails will prevent Texas sheriffs from having to retrofit their facilities at tremendous expense or face liability for noncompliance with the Prison Rape Elimination Act (PREA).
- Due to “sight and sound separation” requirements under PREA, kids in adult facilities can spend up to 23 hours per day in solitary confinement, which can lead to physical and psychological harm.

SUPPORTERS:

Texas Criminal Justice Coalition

Texas Public Policy Foundation

Texas Association of Business

Texas Appleaseed

Texans Care for Children

Christian Life Commission

Goodwill Central Texas

Prison Fellowship

R Street Institute

ACLU of Texas

Vote YES on HB 122: Raising the age of criminal responsibility would start kids off in the juvenile system, but allow judges to transfer those with the most violent offenses to the adult system if appropriate.

- After the age of juvenile jurisdiction was raised in other states, taxpayer costs were kept in check and crime rates continued to fall.
- Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than those transferred into the adult system.
- This expansion of juvenile jurisdiction promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.

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. According to data provided by the Institute on Domestic Violence and Sexual Assault, **over 300,000 victims of human trafficking were living in Texas in 2016, including more than 78,000 child victims of sex trafficking.**¹

Studies repeatedly 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. **Almost all sex workers share many common characteristics, such as substance abuse, mental illness, and a history of sexual abuse and profound trauma.**²

IN SHORT

HB 269 will afford relief to victims of human trafficking arrested for prostitution offenses by allowing them to petition for the discharge of their arrest.

KEY FINDINGS

- **In 2016, Texas convicted and sent 249 people to state jail on a felony prostitution charge, ultimately spending approximately \$3.4 million on incarceration.**³ Conversely, participation in a community-based rehabilitation program is significantly less expensive, costing approximately \$2,000 per individual per year⁴ (which, if applied to 249 people, would have totaled just over \$500,000).
- 65 percent to 95 percent of individuals involved in prostitution were sexually assaulted as children.⁵
- A nine-country study of prostitution found that 68 percent of individuals 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.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 269 BY CHAIR SENFRONIA THOMPSON AND REPRESENTATIVE MORGAN MEYER

- **HB 269 will allow those who have engaged in prostitution as a result of human trafficking to be treated like victims instead of offenders.** Under HB 269, victims of human trafficking will have the opportunity to petition for the discharge of their arrest based on evidence that they were coerced into prostitution.
- **HB 269 will help fulfill the long-overdue 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.”⁷ These acts are considered criminal and occur most often in the context of sex trafficking. HB 269 will not further victimize individuals, overwhelmingly women, and instead allow them to continue their lives without the added burden of a felony conviction, which limits access to housing, employment, and other tools for personal responsibility.

Citations

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² 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. <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>

³ 249 individuals spent an average of 116 days in county jail at \$60.73 per day per inmate, and 130 days in state jail at \$52.88 per day per inmate. Sources: Texas Commission on Jail Standards, *Immigration Detainer Report*, 2017. Texas Department of Criminal Justice Data Request, 2016. Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report* for Fiscal Years 2015 and 2016.

⁴ Community supervision for 249 individuals at \$3.42 per day for one year, and substance abuse treatment for 249 individuals at \$8.61 per day for 90 days. Source: Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report* for Fiscal Years 2015 and 2016.

⁵ Farley, M. (2004). "Prostitution is sexual violence." *Psychiatric Times*. <http://www.psychiatrictimes.com/sexual-offenses/prostitution-sexual-violence>

⁶ Alvares, Cotton, Farly, et al. (2003). "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder." *Journal of Trauma Practice*. <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

⁷ The Human Trafficking Prevention Task Force Report, 2014.



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FACT SHEET 2017

HB 575

It's Time for Texas to More Effectively Address Minor Drug Offenses

CHASING TRACES: AN INEFFECTIVE AND COSTLY RESPONSE LOWEST-LEVEL DRUG POSSESSION

Possession of less than a gram of a controlled substance—the equivalent of a sugar packet—is a state jail felony in Texas. Individuals found in possession of even residue or trace amounts of a controlled substance (less than .02 grams) can be convicted and sent to state jail at a cost of \$17,264 per person per year.¹ Drug sentences should better match the severity of the crimes and maximize taxpayers' bang for their buck. HB 575 is an effective approach that would establish .02 grams of a controlled substance in Penalty Group 1 as the minimum weight necessary to constitute a state jail felony.

Controlled substances of less than .02 grams cannot be tested twice by a crime lab and therefore cannot be prosecuted if both the State and defense request testing. **Establishing .02 grams of a controlled substance as the minimum state jail felony weight will protect due process by allowing such crime lab testing.**

Furthermore, this approach may reduce unnecessary, costly confinement. Texas incarcerates high numbers of individuals for low-level drug possession. During the one-year period from July 2015 through June 2016, 17,585 individuals were adjudicated for possessing controlled substances in amounts consistent with personal use, mostly less than one gram.² Of those, **more than 7,000 (or 42%) served time in a state jail,³ costing the state nearly \$70 million.⁴**

KEY FINDINGS

- .02 grams is the minimum weight necessary for both the prosecution and defense to test a controlled substance in a crime lab, thus protecting individuals' due process rights.
- Under the administration of former Harris County District Attorney Pat Lykos, trace amounts of controlled substances were prosecuted as Class C misdemeanors instead of state jail felonies.⁵ This policy safely decreased incarceration, saved money, and freed up time in the Houston Police Department Crime Lab and local courts.⁶ **Notably, the crime rate steadily dropped during Lykos's tenure.⁷**
- **Other jurisdictions in Texas utilize prosecutorial discretion and do not prosecute trace amounts of drugs.** In Collin, El Paso, Tarrant, and Travis counties, most cases involving .02 grams or less are either not pursued or the defendant is charged with the lesser offense of possession of drug paraphernalia.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 575 BY REPRESENTATIVE SENFRONIA THOMPSON

HB 575 will establish .02 grams as the minimum weight necessary to constitute a state jail felony. This is a proactive, common sense approach to minor drug crimes that will safely reduce incarceration, protect due process, and prevent individuals from being burdened with the lifelong consequences of a felony conviction. It will also **relieve crowded felony court dockets and save Texas millions in state prison spending, a percentage of which could be reinvested in county programs to address substance abuse.**

Citations on reverse.

Citations

¹ Legislative Budget Board (LBB), *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, Submitted to the 84th Legislature, February 2015, 4; cost reflects a costs per day in a state jail in 2014 (\$47.30 per day).

² Texas Department of Criminal Justice; data received via open records request submitted by TCJC in 2016.

³ Ibid.

⁴ Cost analysis of impacted population performed by TCJC, using LBB's *Criminal and Juvenile Justice Uniform Cost Report*.

⁵ Emily DePrang, "Houston's New DA Brings Back 'Trace' Felonies, the Eighties," *Texas Observer*, February 15, 2013.

⁶ Ibid.

⁷ Rebecca Bernhardt, J.D., *Harris County Communities: A Call For True Collaboration*, January 2013, 9.

⁸ Sarah R. Guidry, *et al.*, *Blueprint for Criminal Justice Policy Solutions in Harris County*, March 2015.

SUPPORT A MEANINGFUL OPPORTUNITY FOR RELEASE FOR YOUTH SENTENCED TO ADULT FACILITIES

Youth are routinely sent to Texas adult prisons either because they are (1) 17 years old at the time of the commitment offense and therefore adults under Texas law, (2) certified to stand trial as adults, or (3) completing their determinate sentences after aging out of the juvenile justice system. However, **tremendous growth and maturity often occur in one's late teens through mid-20s**. Research has shown that certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20's.¹ The U.S. Supreme Court stated in its 2005 *Roper v. Simmons* decision, "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."²

Moreover, the fact that young adults are still developing means that they are uniquely situated for personal growth and rehabilitation. In 2012, the U.S. Supreme Court held unconstitutional mandatory life without parole sentences for people under the age of 18, and required courts to consider the youthfulness of defendants facing that sentence.³ This decision, coupled with the *Roper* decision, recognize that **it is wrong to deny someone who commits a crime under the age of 18 the opportunity to demonstrate rehabilitation**.

However, Texas sentencing laws ignore recent scientific evidence on adolescent development and neuroscience, and the state's current parole system provides no viable mechanism for reviewing a case after a young person has grown up and matured. **Texas law should motivate young people to focus on rehabilitation and provide a path to redemption for those who can prove they merit a second chance.**

KEY FINDINGS

- It costs approximately \$2.5 million to incarcerate juveniles for life, whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.⁴ **Early release for those individuals who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per person.**⁵ Furthermore, a youth incarcerated at age 16 who is paroled after serving 20 years could potentially contribute up to \$164,010 in tax revenue by working until age 66.⁶
- Research proves that the brain's frontal lobe is not fully developed until a person is in his or her mid-20's, so teenagers often struggle with shortsighted decision-making and poor impulse control.⁷ **Choices at this age are often the result of poor judgment and susceptibility to peer pressure rather than deficiencies of character.**⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1274 BY REPRESENTATIVE MOODY

Texas should consider joining with other states that have provided a "second look" at the sentences of individuals who were convicted for crimes committed prior to their 18th birthday. Texas could provide a single early parole hearing focused on the extent to which the person has demonstrated that he or she has successfully rehabilitated and matured. Such an early parole consideration will not only save taxpayer dollars, it will do so without compromising public safety.

Citations on reverse.

Citations

¹ See generally, S. Johnson, R. Blum, and J. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Health Policy*, Journal of Adolescent Health, Vol. 45(3), (Sept. 2009).

² *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

³ *Miller v. Alabama*, 132 S.Ct. (2012).

⁴ ACLU, *At America's Expense: The Mass Incarceration of the Elderly*, 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)).

⁵ Ibid. Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).

⁶ Ibid.

⁷ Steinberg, Laurence, "A Social Neuroscience Perspective on Adolescent Risk Taking," Dev. Rev., Steinberg and Scott, 2008, 1,009.

⁸ Steinberg and Scott, 1,009.

Increase Opportunities for Hard-Working Individuals with Criminal Records By Providing Orders of Nondisclosure for First-Time Misdemeanor Offenses

ACCESS TO ORDERS OF NONDISCLOSURE

There are indisputable barriers to success for people with criminal records. Even people convicted of misdemeanor offenses 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.

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure needlessly lock out individuals who satisfied their obligations through fine-only sentences.**
- **Further, people who have been convicted in the past and satisfied their obligations may not be eligible for nondisclosure solely because they were convicted prior to specific modifications to the Order of Nondisclosure statute in September 2015.**
 - » Only some types of offenses are currently eligible for nondisclosure; certain violent and sex-related offenses are ineligible.²
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by his or her criminal history — including any record of certain violent or sex-related offenses — or a conviction or placement on deferred adjudication during the waiting period prior to eligibility (does not include traffic tickets).³
- **Few orders of nondisclosure are issued compared to the number of eligible offenses.**
 - » The Texas Department of Public Safety reported that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).⁴

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1404 BY REPRESENTATIVE ALLEN

- HB 1404 will provide a second chance for those who are convicted of a misdemeanor for the very first time **so long as they have completed their sentence and met the required waiting periods.**
- HB 1404 would also make eligible those individuals who have been convicted of certain first-time misdemeanors, regardless of sentence type (deferred adjudication, regular probation, incarceration, or fine-only).
- HB 1404 would make this eligibility for orders of nondisclosure retroactive to help more people access stable housing and contribute to the Texas workforce.

Citations

¹ [Tex. Gov't. Code, § 411.081](#).

² *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.

³ *Ibid*.

⁴ 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 DPS in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.



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FACT SHEET 2017

HB 1421

Oversight of Texas' Corrections System Is Critical for Transparency, Efficiency, and Accountability

HB 1421 will create an independent, external ombudsman's office to identify systematic issues before they lead to crisis, and protect the safety and rights of incarcerated individuals and staff.

BENEFITS OF INDEPENDENT, EXTERNAL OVERSIGHT

The philosophy of the Texas Department of Criminal Justice (TDCJ) states "the Department will be open, ethical, and accountable to our fellow citizens and work cooperatively with other public and private entities."¹ The establishment of an independent, external ombudsman's office will complement TDCJ's philosophy by increasing systematic accountability and cooperation.

External oversight is not only about protecting those most at risk; it is also a proven mechanism for identifying and addressing issues before they lead to expensive litigation, media scandals, or other human and fiscal costs.² Ultimately, independent oversight allows state agencies to develop public trust and transparency.

IN SHORT

- HB 1421 will create an independent, external ombudsman's office for TDCJ.
- HB 1421 will increase public trust and transparency while preventing perilous incidents and costly litigation.

An independent, external ombudsman's office for TDCJ will provide oversight that:³

- focuses on how and where improvements can be made — not on finding fault;
- acknowledges demonstrated model practices and policies;
- is preventive rather than reactive;
- works cooperatively and collaboratively with state agencies;
- conducts routine monitoring of prisons; and
- includes full access to prisons, correctional data, staff, and incarcerated individuals.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1421 BY REPRESENTATIVE JARVIS JOHNSON

Texas should establish an independent, external ombudsman's office over TDCJ to systematically improve safety in facilities and reduce expensive litigation. Specifically, the ombudsman's office will investigate, evaluate, and secure the rights of inmates and prison staff.

A 2012 study found that 56 percent of Texas corrections officers found their overall work environment to be unsafe; 46 percent did not think safety concerns were addressed adequately; 45 percent did not find current safety policies and procedures to be effective; and 79 percent believed that TDCJ's current programs should be improved.⁴

Additionally, 91 percent of incarcerated individuals and 95.3 percent of their families identified the need for an independent corrections ombudsman as a highly important issue.⁵

Overall, the best argument for independent, external oversight is that it has been shown to work better than any known alternative — for individuals incarcerated in state prisons, for staff at correctional facilities, and for society at large.

Citations

¹ Texas Department of Criminal Justice, “Annual Review,” (2015).

² Michele Deitch, “The Need for Independent Prison Oversight in a Post-PLRA World,” *Federal Sentencing Reporter* 24, no. 4 (2012): 236–244.

³ Michele Deitch, “Distinguishing the Various Functions of Effective Prison Oversight,” *Pace Law Review* 30, no. 5 (2009–2010): 1438–1445.

⁴ Texas Criminal Justice Coalition, “Perceptions of Texas Criminal Justice and Corrections Agencies: Incarcerated Individuals and Their Loved Ones,” Survey Findings: 2012. See also: Texas Criminal Justice Coalition, “Perceptions of the Texas Department of Criminal Justice: Correctional Officers,” Survey Findings: 2012.

⁵ Ibid

Reduce Barriers to Economic Opportunity for Rehabilitated Individuals

HB 1426 will allow Texans to become self-sufficient, taxpaying members of the workforce through Certificates of Relief.

LIMITS ON OCCUPATIONAL LICENSES

Approximately 4.7 million adults in Texas have a criminal record,¹ all of whom may face difficulty getting an interview for a position with a Texas employer. In fact, more than 25 percent of occupations in Texas require state licensure, and a criminal history serves as an automatic bar for most licenses.²

Overly prohibitive licensing policies limit opportunities for people who have fully served their time and who want to become contributing members of society. This has significant consequences: Previously incarcerated individuals who are unemployed are more likely to re-offend than those who are employed,³ creating more instability for returning individuals and their families, as well as for the Texas workforce.

LIMITED ACCESS TO ORDERS OF NONDISCLOSURE

In recognizing the barriers to success for people with criminal records, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.⁴ **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.**

However, the eligibility criteria to petition for an order of nondisclosure are strict and inaccessible to many. To be eligible, an individual must have successfully completed deferred adjudication community supervision, resulting in dismissal and discharge of the case.⁵ 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.⁶

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1426 BY REPRESENTATIVE ALLEN

Texas should establish Certificates of Relief to help individuals who have fully served their sentence become responsible, contributing members of the community. Specifically, such Certificates should provide applicants with a restoration of the rights and abilities that were forfeited as a result of their criminal conviction, including:

- (1) **The ability to apply for occupational licenses that would otherwise have been prohibited due to one's conviction.** Over one-third of working-age men are unemployed because of their criminal background.⁷ Using \$53,707 as the per-capita GDP,⁸ Texas loses over \$3 billion in GDP annually.⁹ A person's criminal history should not be the exclusive trigger for denying a professional license. Under HB 1426, individuals who want to be on a productive path will have the opportunity to contribute to the Texas workforce.
- (2) **The right to apply for an order of nondisclosure.** Those granted a Certificate should be immediately eligible to petition the court for an order of nondisclosure of their criminal history record as it relates to the offense. HB 1426 will open the door to safe, stable employment, thereby reducing recidivism and further strengthening the economy.

IN SHORT

- HB 1426 will expand Texans' ability to get occupational licenses and contribute to the workforce.
- HB 1426 will create a pathway to an order of nondisclosure for Texans who have demonstrated rehabilitation.

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, <https://law.utexas.edu/wp-content/uploads/sites/32/2016/08/criminalrecords-1.pdf>.
- ² National Employment Law Project, “The Consideration of Criminal Records in Occupational Licensing,” <http://www.nelp.org/content/uploads/TheConsiderationofCriminalRecordsinOccupationalLicensing.pdf>.
- ³ Mark Berg and Beth Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* 28, no. 2 (2011): 397, <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>.
- ⁴ [Tex. Gov’t. Code, § 411.081](#).
- ⁵ [Tex. Gov’t Code, § 411.081\(d\)](#).
- ⁶ *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)).
- ⁷ Kaiser Family Foundation/New York Times/CBS News, “Non-Employed Poll,” <http://kff.org/other/poll-finding/kaiser-family-foundationnew-york-timescbs-news-non-employed-poll/>.
- ⁸ Department of Numbers, “Texas GDP,” <http://www.deptofnumbers.com/gdp/texas/>.
- ⁹ Bureau of Labor Statistics, “Employment Status of the Civilian Noninstitutional Population by Sex, Race, Hispanic or Latino Ethnicity, Marital Status, and Detailed Age, 2015 Annual Averages,” <https://www.bls.gov/lau/table14full15.pdf>.



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FACT SHEET 2017

HB 1504

HB 1504 Ensures that Probationers Can Better Meet Their Probation Conditions And Remain Productive at Work, While Protecting Employers' Time

This bill will reduce technical revocations, thus saving taxpayer dollars, and strengthen the Texas workforce.

COMMUNITY SUPERVISION REQUIREMENTS AND SCHEDULING

Sentencing courts often require people on community supervision (probation) to complete various programs and adhere to numerous stipulations, including holding a steady job, attending school, performing community service, and participating in treatment programs. **Additionally, a person on community supervision is required to regularly meet with a probation officer.**

Probationers who are employed can have difficulty reporting to their probation officers because they often work minimum wage or hourly jobs with little flexibility.

Failing to regularly report to a probation officer can result in a person's revocation to jail or prison. In 2016, there were almost 23,000 revocations of people on felony probation, and 12,000 of those were due to *technical* violations¹ – like missing a probation meeting (not committing a new offense). Typically after a revocation, a person is sent to state jail or prison, which is much more costly than community supervision. In 2016, it cost the state \$61.63 per person per day to house someone in prison, compared to only \$1.78 per person per day to place someone on community supervision.²

IN SHORT

- HB 1504 will require probation departments to adopt a policy to take into consideration a person's work schedule when planning meetings with probation officers.
- HB 1504 will reduce technical revocations, thus reducing recidivism rates and saving taxpayer dollars.
- HB 1504 will keep more people at work, strengthening Texas' workforce.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1504 BY REPRESENTATIVE ALMA ALLEN

- **HB 1504 requires community supervision departments to adopt a policy regarding the scheduling of meetings for people on community supervision.** This policy requires community supervision officers to take into consideration the person's work, treatment, or community supervision schedule when scheduling meetings.
- **This bill will hold people accountable while on community supervision.** Reducing scheduling conflicts will allow individuals to maintain steady employment (which is typically a required probation condition) and still meet regularly with their community supervision officer.
- **Individuals who are successful on community supervision have lower rates of re-offending than those who are revoked.** People on community supervision are less likely to recidivate than people leaving state jails. The rearrest rate three years after release for those in state jails is 62.7%, compared to only 35.9% for people on felony community supervision.³
- **HB 1504 will strengthen Texas' workforce by ensuring that probationers can remain productive at work without requiring regular time off to meet with their community supervision officer.** Employers will be able to count on their employees' attendance, thus incentivizing the hiring of probationers.

Citations

¹ Texas Department of Criminal Justice, Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds (December 1, 2016).

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2015 and 2016 (January 2017), 4, 6, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3137_UniformCosts_2017.pdf.

³ Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates (January 2017), http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf

Excessive and Duplicative Conditions of Community Supervision Prevent Rehabilitation & Increase Probation Officers' Workloads

Basing Probation Conditions on a Validated and Individualized Risk and Needs Assessment Helps Probation Officers Address the Factors that Increase the Risk of Criminal Activity

Last year, there were more than 22,000 probation revocations to prison or state jail, and more than 54 percent were due to the probationer's inability to abide by the conditions of supervision.¹ People on probation must abide by a host of conditions that are often unrealistic and not based on a validated risk and needs assessment of each individual.

Excessive or unrealistic conditions have two effects.² First, they increase the amount of work a probation officer must complete. In many departments, one officer must supervise up to 120 probationers.³ Second, onerous conditions increase the likelihood and number of probation violations, leading to revocations and incarceration. Texas spends approximately \$70 million annually incarcerating people just for *technical* violations of probation.⁴

Validated risk and needs assessments identify and address the specific factors that may lead to a return to criminal activity. However, there is strong evidence that risk and needs assessments are being utilized to merely categorize probationers according to risk, and they are used less often to actually set the conditions to promote rehabilitation.⁵

HB 2883 by Rep. Allen

- Decreases costly probation revocations by utilizing validated risk and needs assessments to set probation conditions.
- Ensures that conditions are minimal and non-duplicative to achieve rehabilitation and successful completion of probation.
- Ensures proper use of state resources by basing placement in state-funded treatment programs on a validated assessment.

KEY FINDINGS

- The majority of placements onto probation are for drug-related offenses,⁶ yet the conditions of community supervision often place unrealistic demands on people who are battling addiction and mental illness. It is not surprising, therefore, that the majority of individuals revoked to state jail or prison are those convicted of drug possession.⁷
- Evidence-based probation practices include: (1) utilizing validated risk and needs assessments to identify factors that increase the risk of crime, (2) individualizing probation conditions to target rehabilitative resources to those with the highest need, and (3) tailoring interventions based on an individual's ability to meet those conditions. Those departments that utilize these approaches decrease probation revocations by up to 18 percent.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 2883 BY REPRESENTATIVE ALLEN

- Conditions of community supervision should be based on an individualized assessment of risk and needs, and should be intended to address the factors that lead to criminal involvement.
- Conditions should be minimal and non-duplicative to achieve rehabilitation, with consideration given to the probationer's ability to satisfy set conditions while meeting work, education, community service, and financial obligations.
- Before placing someone in a costly and intensive substance abuse treatment facility, the court should review the findings of a validated assessment to determine the right type and level of treatment.

Citations on reverse.

Citations

¹ Texas Department of Criminal Justice, Community Justice Assistance Division, *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2016,

https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf.

² Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, Columbia University Press, New York, 2015, e-book location 4154.

³ Information from Texas Criminal Justice Coalition's personal communications with Carey Welebob, Director of the Criminal Justice Assistance Division of the Texas Department of Public Safety, and Arnold Patrick, Executive Director of the Hidalgo County Community Supervision and Corrections Department.

⁴ Revocations for technical violations total 12,207 people per year. Subtracting the number of people who absconded leaves 6,640 people sent to TDCJ each year on purely technical reasons. Presuming that 15 percent had a prior criminal record with violent or sexual offenses (the typical average), we can further reduce the number to 5,644. According to the Legislative Budget Board, 54% of revoked individuals (3,047 people) went to prison; we conservatively estimate they served 335 days at an average cost of \$51.72 per day (using the transfer facility rate), or \$52 million total. Another 40% (2,257 people) went to state jail; we estimate they served 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), or \$18 million total. As such, the combined estimated cost to the state for technical revocations is approximately \$70 million.

⁵ Kelly, *Crossroads*, e-book location 4267.

⁶ TDCJ, Community Justice Assistance Division, FY14 Placements Offender Profile, data request received by Texas Criminal Justice Coalition, January 2016.

⁷ Texas Department of Criminal Justice, Community Justice Assistance Division, 2016 Parole Terminations, Provided by TDJC in February 2017.

⁸ Kelly, *Crossroads*, e-book location 4307.

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Citations on reverse.

Citations

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https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf.

² Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, Columbia University Press, New York, 2015, e-book location 4154.

³ Information from Texas Criminal Justice Coalition's personal communications with Carey Welebob, Director of the Criminal Justice Assistance Division of the Texas Department of Public Safety, and Arnold Patrick, Executive Director of the Hidalgo County Community Supervision and Corrections Department.

⁴ Revocations for technical violations total 12,207 people per year. Subtracting the number of people who absconded leaves 6,640 people sent to TDCJ each year on purely technical reasons. Presuming that 15 percent had a prior criminal record with violent or sexual offenses (the typical average), we can further reduce the number to 5,644. According to the Legislative Budget Board, 54% of revoked individuals (3,047 people) went to prison; we conservatively estimate they served 335 days at an average cost of \$51.72 per day (using the transfer facility rate), or \$52 million total. Another 40% (2,257 people) went to state jail; we estimate they served 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), or \$18 million total. As such, the combined estimated cost to the state for technical revocations is approximately \$70 million.

⁵ Kelly, *Crossroads*, e-book location 4267.

⁶ TDCJ, Community Justice Assistance Division, FY14 Placements Offender Profile, data request received by Texas Criminal Justice Coalition, January 2016.

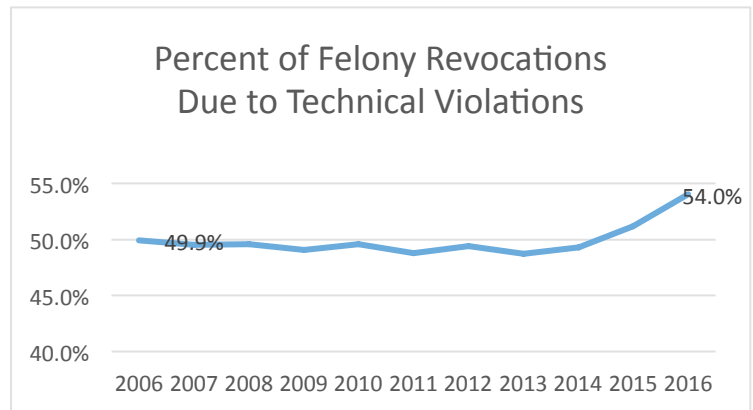
⁷ Texas Department of Criminal Justice, Community Justice Assistance Division, 2016 Parole Terminations, Provided by TDJC in February 2017.

⁸ Kelly, *Crossroads*, e-book location 4307.

Preventing Technical Violations of Probation Saves Costs and Improves Public Safety *HB 3289 by Rep. James White will Safely Limit Time Served for Technical Violations*

HIGH PROBATION REVOCATION RATES HARM COMMUNITIES AND SQUANDER LIMITED RESOURCES

- In 2016, there were 22,606 felony probation revocations, with more than 95 percent of these individuals sent to prison or state jail.¹
- 12,207 of probation revocations (totaling 54 percent of all revocations) were for technical violations of the conditions of supervision, such as not paying probation fees, or showing up late to an appointment – not for new offenses.²



- Revocations for technical violations of community supervision cost the state nearly \$70 million last year alone,³ not counting the costs to families and communities, which ultimately pay the price of incarceration.
- Despite years of progress in other areas of criminal justice, probation revocation rates remain largely unchanged, representing nearly *one-third* of all new receives into the Texas Department of Criminal Justice (TDCJ) each year.⁴

KEY FACTS

- By way of comparison, TDCJ's Parole Division and Parole Board implemented policies in 2007 to reduce revocations, especially for technical violations.
- They instituted progressive sanctions, administer them quickly, and utilize diversion options that limit incarceration time for repeated violations.
- The result is a 50 percent reduction in parole revocations, and *only 10 percent* of parole revocations were for technical reasons in FY 2016.⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3289 BY REPRESENTATIVE JAMES WHITE

- HB 3289 will limit time served on technical violations to 90 days and return people to community supervision after they serve that term of incarceration.
- This will save the state more than \$46 million that could be used to further strengthen community supervision, decrease probation revocations, improve public safety, and save taxpayer dollars.

Citations

¹ Texas Department of Criminal Justice (TDCJ), *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2016,

https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf.

² Ibid.

³ Revocations for technical violations total 12,207 people per year. Subtracting the number of people who absconded leaves 6,640 people sent to TDCJ each year on purely technical reasons. Presuming that 15 percent had a prior criminal record with violent or sexual offenses (the typical average), we can further reduce the number to 5,644. According to the Legislative Budget Board, 54% of revoked individuals (3,047 people) went to prison; we conservatively estimate they served 335 days at an average cost of \$51.72 per day (using the transfer facility rate), or \$52 million total. Another 40% (2,257 people) went to state jail; we estimate they served 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), or \$18 million total. As such, the combined estimated cost to the state for technical revocations is approximately \$70 million. **Therefore, by instituting best practices and limiting time on technical revocations to 90 days, the state could save approximately \$46 million.**

⁴ The TDCJ Report to the Governor and Legislative Budget Board provides data on revocations for the past six years. In each year, revocations exceeded 10% of the felony direct and indirect populations, which were at least 33% of the nearly 70,000 people received by TDCJ each year according to the TDCJ Statistical Report for each of these years.

⁵ Board of Pardons and Paroles, *Board Administrators Report*, January, 2016.

Additional Oversight of Texas' County Jails is Critical for Transparency, Efficiency, and Accountability

HB 3844 and SB 2236 will help identify systemic issues before they lead to crisis and protect the safety and rights of incarcerated individuals and staff.

BENEFITS OF INDEPENDENT, EXTERNAL OVERSIGHT

The Texas Commission on Jail Standards (TCJS) plays a crucial role in enforcing minimum standards in county jails. However, there are several important subjects on which the standards are silent or where the provisions are either outdated or lacking in detail. For instance, there are no protocols on detoxification from drugs or alcohol, limited standards on sexual assault procedures, and no independent investigations of deaths in county jail custody.

External oversight is not only about protecting those most at risk; it is also a proven mechanism for identifying and addressing issues before they lead to expensive litigation, media scandals, or other human and fiscal costs.¹ Ultimately, independent oversight allows entities to develop public trust and transparency.

An independent, external ombudsman's office for Texas county jails will provide oversight that:²

- focuses on how and where improvements can be made — not on finding fault;
- acknowledges demonstrated model practices and policies, including in service delivery and other procedures related to the treatment of incarcerated individuals;
- works cooperatively and collaboratively with county jail leadership and staff, as well as with TCJS; and
- conducts routine monitoring of county jails and creates quarterly reports for state leadership and TCJS with findings and recommendations.

IN SHORT

- HB 3844 & SB 2236 will expand the independent ombudsman's office for the juvenile system to include adult county jails.
- HB 3844 & SB 2236 will increase public trust and transparency while preventing perilous incidents and costly litigation.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3844 BY REPRESENTATIVE TONI ROSE & SB 2236 BY SENATOR JOSÉ MENÉNDEZ

HB 3844 and SB 2236 will expand the jurisdiction of the juvenile justice system's ombudsman to adult county jails to improve facility safety, reduce expensive litigation, and assist family members. Specifically, that Ombudsman's office will investigate, evaluate, and secure the rights of inmates and staff in county jails, and share information with the Texas Commission on Jail Standards.

In September 2003, the U.S. Congress unanimously passed the Prison Rape Elimination Act (PREA),³ aimed at preventing sexual assault and victimization in juvenile and adult corrections facilities. State and local facilities that do not comply with federal standards stand to lose federal funds. The proposed external ombudsman would be able to perform PREA audits, which is a necessary component of PREA compliance.

Overall, the best argument for external oversight is that it has been shown to work better than any known alternative — for incarcerated individuals, for staff at correctional facilities, and for society at large.

Citations

¹ Michele Deitch, “The Need for Independent Prison Oversight in a Post-PLRA World,” *Federal Sentencing Reporter* 24, no. 4 (2012): 236–244.

² Michele Deitch, “Distinguishing the Various Functions of Effective Prison Oversight,” *Pace Law Review* 30, no. 5 (2009–2010): 1438–1445.

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

Helping the Ones We

We want our loved ones to receive treatment that works.

- ♥ Research shows that relapse rates for substance use disorders are similar to those for people with diabetes or hypertension. Drug addiction should be approached like other chronic illnesses.¹
- ♥ Treatment instead of state jail incarceration lowers recidivism and the demand for drugs, and it increases public safety and taxpayer savings.²

We want our loved ones to get meaningful community support.

- ♥ Drug addiction should be treated locally – close to family, church, and people our loved ones look up to. People with strong community ties are less likely to recidivate.³
- ♥ Those with a criminal history and a history of substance abuse achieve the best outcomes when they maintain social ties and receive services in the community.⁴

We want our loved ones to help contribute to safe, healthy communities.

- ♥ The community is a safer place when people with a history of substance abuse receive effective treatment.⁵
- ♥ For each dollar invested in addiction treatment programs, there is a return of at least \$4 to \$7 through diminished rates of crime and lower criminal justice costs.⁶

We want our loved ones to be able to succeed.

- ♥ Rewards for positive behavior are more effective than penalties for negative behavior alone in creating long-term change.⁷
- ♥ People with a history of substance abuse who receive effective treatment and positive reinforcement can maintain employment, contributing to the economy and decreasing crime rates.⁸

¹ McLellan AT, Lewis DC, O'Brien CP, Kleber HD, "Drug dependence, a chronic medical illness: implications for treatment, insurance, and outcomes evaluation." *JAMA* 284(13):1689-1695, 2000.

² RTI International, "Study: Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Justice Costs," January 8, 2013.

³ Visher, C., La Vigne, N. G., & Travis, J., *Understanding the challenges of prisoner reentry, Maryland pilot study: Findings from Baltimore*, Washington, DC: The Urban Institute, 2003.

⁴ Marlowe, Douglas. "Integrating Substance Abuse Treatment and Criminal Justice Supervision." *Science & Practice Perspectives* 2, no. 1, 2003, 4-14.

⁵ "Is drug addiction treatment worth its cost?" National Institute on Drug Abuse.

⁶ Ibid.

⁷ "How can rewards and sanctions be used effectively with drug-involved offenders in treatment?" National Institute on Drug Abuse.

⁸ Mark Berg and Beth Huebner, "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism," *Justice Quarterly* 28, no. 2, 2011, 397.

THE TEXAS SMART-ON-CRIME COALITION
EXECUTIVE COMMITTEE





TEXAS CRIMINAL
JUSTICE COALITION

WRITTEN TESTIMONY

**SUBMITTED BY DOUGLAS SMITH, MSSW
TEXAS CRIMINAL JUSTICE COALITION**

To

HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

FEBRUARY 27, 2017

Dear Members of the Committee,

My name is Doug Smith; I work for the Texas Criminal Justice Coalition (TCJC). Our mission is to advance solutions that transform the adult and youth justice systems to strengthen families and foster safer communities. Thank you for allowing me this opportunity to present on policies and investments that safely decrease state jail and prison populations, save taxpayer dollars, and improve public safety, creating healthier communities in Texas.

TCJC has long been committed to identifying cost-effective policies that reduce crime and incarceration, while improving rehabilitation to ensure that people have opportunities to lead productive lives. The Legislature's commitment to these same principles has resulted in improved public safety and taxpayer savings. In 2007, as the number of people in Texas correctional institutions approached 156,000, the Legislative Budget Board projected an increase of up to 17,000 inmates in just five years. The Texas Department of Criminal Justice requested an additional \$523 million to build three new prisons. Instead, the Legislature invested in treatment, community supervision, and rehabilitation.

This strategy greatly expanded sentencing options for new offenses and sanctioning options for probation violators. At the same time, Texas began increasing its parole grant rate and shortened probation terms. The result is that Texas has been able to close four prisons since that time, saving the state hundreds of millions of dollars, and the prison population has declined to 147,000 people. Moreover, crime rates are at a level not seen since the 1960s.¹ Most importantly, these reforms are leading to improved public safety, with recidivism rates dropping 25 percent.²

Recent key reforms have continued the momentum in favor of smarter solutions. In 2015, the 84th Legislature revised the antiquated property offense penalty thresholds. Before that time, property crimes had been declining in Texas, yet felony convictions for property crimes had been rising. By adjusting the penalty thresholds to account for 22 years of inflation, state jail populations have dropped with no negative impact on property crime rates.

While Texas is moving in the right direction, there are still problems that continue to drive up costs without contributing to public safety. Below we offer two major issues to be addressed, with relevant recommendations.

PROBLEM 1: FELONY INCARCERATION DOES NOT PREVENT OR FIX SUBSTANCE ABUSE

While Texas crime rates have dropped to historic lows and overall prison placement has declined statewide, the number of people sentenced to state jail for minor drug possession offenses increased between 2011 and 2015.³ Texas spends nearly \$60 million annually to incarcerate people for possessing drugs in amounts less than a sugar packet.⁴

This staggering expenditure of tax dollars has neither reduced addiction nor improved public safety. People are being released to the community without supervision or services, and they face monumental barriers to employment and housing due to their felony conviction, in turn increasing their likelihood of relapse and re-arrest.⁵ In fact, the re-arrest rate for people convicted of low-level possession and sentenced to state jail is 67.7%.⁶

Texas Must Facilitate Treatment and Reduce Recidivism

The existence of a harsh punishment does not prevent people with a substance use disorder, including opiate addicts, from continued drug use.⁷ People with addiction leave incarceration “detoxed” but with their cravings for drugs intact, and the reduced tolerance can lead to overdose shortly after release.⁸

Further, studies have shown that the barriers to employment, housing, and occupational licensing – as well as the stigma and shame – that result from a felony conviction actually *increase* the likelihood of relapse and re-offense.⁹

People with a drug addiction, especially the growing number of people addicted to opioids (many of whom started with a legal prescription), need the following:

- » community-based drug treatment, including non-addictive medication to combat cravings,
- » family and community support to remove stigma and promote recovery, and
- » services that local probation supervision can provide.

Cost-Saving and Public Safety-Driven Solution: Recalibrate Certain Drug Possession Offenses from a State Jail Felony to a Class A Misdemeanor

Recalibrating minor drug possession offenses from a state jail felony to a Class A misdemeanor will facilitate the local provision of appropriate services to address the underlying addiction, reducing the likelihood of reoffending, as well as reducing opioid overdoses. The elimination of a felony conviction will also help people get jobs, rebuild their lives, and support their families.

Furthermore, Texas taxpayers can see significant savings, both in the short and long term. It costs \$52.88 per day to incarcerate someone in state jail, whereas, treatment and intensive supervision are collectively a fraction of that cost.¹⁰ Further, such investments have a far greater impact on later re-arrest. **According to the National Institute on Drug Abuse, “Treatment offers the best alternative for interrupting the drug abuse/criminal justice cycle.”¹¹**

The bottom line is that emphasizing treatment over state jail incarceration will decrease the demand for drugs, lower recidivism, save taxpayer dollars, and improve public safety.¹²

PROBLEM 2: HIGH PROBATION REVOCATION RATES HARM COMMUNITIES AND SQUANDER LIMITED RESOURCES

Another factor that continues to drive up costs in Texas without improving public safety relates to probation revocations.

- **In 2015, Texas courts revoked nearly 23,000 individuals on felony probation**, with more than ninety-five percent of these individuals sent to prison or state jail.¹³ **Probation revocations to the Texas Department of Criminal Justice (TDCJ) cost the state hundreds of millions of dollars,¹⁴** not counting the costs to families and communities, which ultimately pay the price of incarceration.
- *Technical* violations of the conditions of probation – such as not paying probation fees, or showing up late to an appointment – accounted for more than half of the adult felony probation revocations in 2015.¹⁵ When one looks at only technical violations (not absconding or new offenses), Texas spends nearly \$70 million per year to incarcerate people for not meeting probation requirements.
- Despite years of progress in other areas of criminal justice, **probation revocation rates remain largely unchanged, representing nearly *one-third* of all new receives into TDCJ each year.¹⁶**

If we dig into the numbers, we can see where Texas can save significant costs. According to TDCJ's Community Justice Assistance Division, there were 22,606 probation revocations to TDCJ (state jail or prison) in the last fiscal year; 53% were for technical violations.¹⁷ The number of people on probation is falling, so the percent of the probation population that is revoked to TDCJ is actually the same or *rising*. The probation revocation rate in 2011 was 14.5%, whereas it was 15.3% in 2016.

Revocations for technical violations totaled 11,981 people in the last fiscal year; reducing that figure by the number of people who absconded leaves 6,518 people sent to TDCJ on purely technical reasons. If we presume that 15% (the typical average) had a prior criminal record with violent or sexual offenses, we would reduce the number to 5,540.

- » 54% of those 5,540 people went to prison, that is 2992 individuals. If we estimate that they serve 335 days (a conservative estimate) at an average cost of \$51.72 per day (using the transfer facility rate), the cost totals \$51.8 million.
- » If 40% of those 5,540 people went to state jail, that is 2,216 individuals. If we estimate that they serve 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), the cost totals \$17.6 million.

So, the total estimated cost to the state for technical revocations would be approximately \$69.4 million (adding the above two costs together).

By instituting best practices and limiting time served for technical revocations to 90 days, the state could save approximately \$45 million.

The Goal of Probation Should be Rehabilitation in the Community – Diverting People from Costly Incarceration, Providing Programming, and Preventing Rearrests

Texas can have a substantial impact on probation success rates by ensuring that the demands placed on people on probation are aligned with the goal of rehabilitation.

Probation is the primary way in which the State prevents people from entering prison, and its primary goal is to prevent people from reentering the justice system upon successful completion. Policies that can improve probation placements and success rates include:

- » Establishing a sliding scale for probation fees to improve payment rates and help low-income people on probation focus on treatment, employment, and restitution.
- » Allowing those who cannot pay their probation fees to satisfy them through community service hours.
- » Allowing hours spent in educational, vocational, or treatment programs to count toward community service hours.
- » Requiring that probation conditions be based on the findings of a validated risk/needs assessment so that the requirements are aligned with rehabilitative goals.

Swift and Certain Sanctions Also Promote Success on Probation

It is not uncommon for people on probation with substance abuse issues to struggle; yet, probation departments are inconsistent in how they handle violations. **Overly harsh sanctions lead to absconding, while unduly lenient sanctions lead to relapse and expensive use of state-funded treatment.**¹⁸ Either approach contributes to low success rates for those with the most minor offenses.

Furthermore, when sanctions are not known or are administered inconsistently, defendants often *request* revocation rather than attempt to abide by conditions that seem impossible.

Swift and Certain Sanction Models

Probationers in departments that utilize evidence-based probation practices, such as “Swift and Certain Sanction Models” that promote adherence to treatment and court requirements, are:

- 55% less likely to be arrested,
- 72% less likely to use drugs,
- 61% less likely to miss appointments, and
- 53% less likely to have their probation revoked.

Source: National Institute of Justice, “Swift and Certain” Sanctions in Probation are Highly Effective.

Cost-Saving and Public Safety-Driven Solutions: Safely Limit Time Served for Technical Probation Revocations; Ensure Probation Practices are Aligned with Rehabilitative Goals; and Implement a Clear Sanctions Process

Texas should limit time served for technical probation violations to 90 days, and return people to probation after serving that term of incarceration. Doing so will hold people accountable while allowing them to access community-based resources and maintain jobs and housing that support their families.

The State should also ensure that probation policies collectively improve success rates, using a validated risk/needs assessment to determine probation conditions, helping low-income people meet those conditions and pay fees, and encouraging participation in programs that improve personal responsibility.

Additionally, Texas should require probation departments to institute a graduated sanction model and utilize a “swift and certain sanction model” to reduce revocations and further improve probation success rates.

Citations

¹ Disaster Center, *Texas Crime Rates 1960 – 2015*, <http://www.disastercenter.com/crime/txcrime.htm>.

² Legislative Budget Board (LBB), *Statewide Criminal Justice Recidivism and Revocation Rates*, January 2007, p. 5, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2007.pdf. Compared to: LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January 2017, p. 4,

http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf.

³ Office of Court Administration, *Annual Statistical Reports, 2011 – 2015*, <http://www.txcourts.gov/statistics/annual-statistical-reports/2015.aspx>.

⁴ LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, pp. 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.

[Note on Methodology: Using a dataset of Texas Department of Criminal Justice state jail admissions for the 12-month period of July 1, 2015, to June 30, 2016, there were a total of 7,373 people admitted to state jail for possession. (Data obtained through information request to Texas Department of Criminal Justice, June 2016). The current cost-per-day for state jail is based on the February 2015 Criminal and Juvenile Justice Uniform Cost Report. Incarceration savings are estimated at \$47.30 per person per day for state jail. The yearly cost was discounted to account for time served in county jail.]

⁵ LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February 2015, p. 2, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf.

⁶ LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February, 2017, p. 2, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf.

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⁸ Grimm JW, Hope BT, Wise RA, Shaham Y, "Neuroadaptation: incubation of cocaine craving after withdrawal," *Nature*, 2001, 412(6843): 141–142.

⁹ Chandler, Redonna, Fletcher, Bennet, Volkow, Nora, "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," *JAMA*, January 14, 2009, 301(2): 183–190, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/#R15>.

¹⁰ LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2015 and 2016*, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3137_UniformCosts_2017.pdf.

¹¹ National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations – A Research-Based Guide*, <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/introduction>.

¹² RTI International, "Study: Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Justice Costs," January 8, 2013, <https://www.rti.org/news/study-replacing-prison-terms-drug-abuse-treatment-could-save-billions-criminal-justice-costs>.

¹³ Texas Department of Criminal Justice (TDCJ), *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2015, p. 8, https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf.

¹⁴ The cost to the state was calculated by determining the percentage of revocations to TDCJ sent to prison versus state jail. According to TDCJ, over the past five years, 55% of individuals with probation revocations on average were sent to prison, and 41% were sent to state jail. The Texas Smart-On-Crime Coalition assumed that those sent to prison would spend at least one year at the transfer facility cost of \$45.63 per day; and those sent to state jail would spend 176 days (data obtained through information request to Texas Department of Criminal Justice, May 2016) at the state jail cost of \$47.63 per day (LBB, *Uniform Cost Report*, February, 2015). There were 22,980 revocations to TDCJ, so we calculated that 12,639 of them were sent to prison, and 9,422 were sent to state jail.

¹⁵ TDCJ, *Effectiveness of Diversion Funds Allocated by the Texas Legislature*, December 1, 2015, p. 8, https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf.

¹⁶ TDCJ's *Report to the Governor and Legislative Budget Board* provides data on revocations for the past six years. In each year, revocations exceeded 10% of the felony direct and indirect populations, which were at least 33% of the nearly 70,000 people received by TDCJ each year, according to the TDCJ Statistical Report for each of these years.

¹⁷ TDCJ, *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2016, https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf.

¹⁸ Hawken, Angela & Kleiman, Mark, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, December 2, 2009, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

Preventive Detention Should Be The Carefully Limited Exception, Not The Rule

Preventive detention involves holding a person in jail without bail prior to his or her trial. This practice should be an exceptional measure, and the application of preventive detention must be necessary and limited. According to a comprehensive 2016 report on bail reform, “There is no guarantee that authorizing judges to use preventive detention will reduce the number of individuals detained pretrial—and if the standards are open-ended enough, or define pretrial risk broadly enough, a toll intended to reform excessive jail populations could have the opposite effect.”¹ Keeping that in mind, **jurisdictions that consider using or expanding preventive detention in conjunction with a risk assessment should do so with extreme care.**

KEY FINDINGS

Currently in Texas, a person may be denied bail and preventively detained under each of the following circumstances:

- A defendant has been twice convicted of a felony and is now accused of a felony.²
- A defendant is accused of a felony less than a capital offense while on bail for a prior felony.³
- A defendant is accused of a felony less than a capital offense involving the use of a deadly weapon after being convicted of a prior felony.⁴
- A defendant is accused of a violent or sexual offense committed while under supervision for a prior felony.⁵
- A defendant violates an order for emergency protection issued after an arrest for an offense involving family violence, or violates an active protective order issued in a family violence case, or engages in conduct that constitutes an offense involving the violation of such an order.⁶
- A defendant commits an offense under section 25.07, Penal Code, related to a violation of a condition of bond set in a family violence case, and bail in the case is revoked for a violation of a condition of bond after a judge determines by a preponderance of the evidence that the person violated a condition of bond related to the safety of the victim or community.⁷
- A defendant commits an offense under section 25.07, Penal Code (violations of certain court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case), other than an offense related to a violation of a condition of bond set in a family violence case, and a judge determines by a preponderance of the evidence that the person committed the offense.⁸
- A defendant is charged with a felony under Penal Code chapters 21 (sexual offenses), 25.02 (prohibited sexual conduct), 43.25 (sexual performance by a child), or 20A.02 (trafficking of persons), committed against a child younger than 14, and subsequently has his or her case revoked for violating a condition of bond.⁹

RECOMMENDATIONS

Preventive detention under certain circumstances already exists in Texas, and any efforts to expand the circumstances under which a person can be detained prior to being convicted should be carefully considered, focusing on narrow parameters and procedural safeguards.

Continued on reverse.

Statutes in other states require the court to impose the *least onerous* or *least restrictive* conditions that will ensure the defendant's appearance at trial and protect public safety.¹⁰

In addition to recommending that Texas adhere to that practice, we also make the following recommendations:

- If an expansion of preventive detention must be considered, ensure it will be limited to only the most serious offenses. It is incredibly costly to detain a defendant prior to trial; detaining people accused of low-level offenses is especially inefficient – hurting taxpayers and potentially causing the defendant to lose employment and housing.
- Ensure that any defendant who is preventively detained has access to an automatic, expedited, and meaningful detention hearing within 72 hours of the denial of bond, with the assistance of counsel, where a judge must make an affirmative finding of fact in order to further detain the defendant. It must also be ensured that the defendant has the opportunity to appeal the decision, and the county must provide compensation for indigent defense.
- Similarly, require any expansion of preventive detention to include a provision that protects a defendant's constitutional right to a speedy trial.
- Adopt risk-assessment factors that are proven to be predictive and non-discriminatory.
- Strictly abide by both the United States Constitution and the Texas Constitution when drafting any additional preventive detention measures.

Citations

¹ Criminal Justice Policy Program at Harvard Law School, *Moving Beyond Money: A Primer on Bail Reform*, October 2016, 25, <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>.

² Texas Constitution, Art. 1, Sec. 11a, <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.1.htm>.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Texas Constitution, Art. 1, Sec. 11c, <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.1.htm>.

⁷ Texas Constitution, Art. 1, Sec. 11b, <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.1.htm>.

⁸ Texas Code of Criminal Procedure, Art. 17.152(b) <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.17.htm>.

⁹ Texas Code of Criminal Procedure, Art. 17.153(a) <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.17.htm>.

¹⁰ Shima Baradaran and Frank L. McIntyre, *Predicting Violence* (Vol. 90:497, 2012), American Bar Association, http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/Baradaran_predictingviolence.authcheckdam.pdf.

Juvenile Probation: Room to Spare for Raising the Age

Texas **automatically** sends 17-year-olds accused of a crime to the adult criminal justice system, regardless of the fact that **95% of them are arrested for nonviolent and misdemeanor offenses.**

- 17-year-olds in the adult system face higher rates of sexual assault and depression, and **are 36 times more likely to commit suicide.**
- An adult criminal record creates barriers to getting an education, gaining employment, securing housing, and joining the military. As Rep. Byron Cook phrased it on the House floor on April 20th, **this is “an economic death sentence.”**
- “Raising the age” would start 17-year-olds off in the juvenile system but give judges the discretion to transfer youth with the most serious offenses to the adult system on a case-by-case basis.
- **This expansion of juvenile jurisdiction promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.**

Counties Can Increase Capacity for “Raise the Age” by Implementing Best Practices

- **3,860 children age 10-13 were detained** in pre-adjudication facilities and **680 children age 10-13 were placed in post-adjudication** facilities in 2016 in Texas.
- Detaining so many younger children is out of step with best practices, and **counties should employ more appropriate alternatives to detaining such young children.**

Data Shows Raising the Age Will Not Flood Juvenile Probation

Arrest rates in Texas for both 16- and 17-year-olds have steadily declined since 2007 – by 26% for 16-year-olds and 17% for 17-year-olds. If the number of 17-year-olds arrested last year is added to the number of youth currently in the juvenile justice system, the total is still less than the number of youth in the juvenile system in 2007.

At the same time, funding has shifted away from state secure facilities to juvenile probation. A 2015 report by the Council of State Governments revealed that per capita funding for juvenile probation departments increased 68% between FY 2005 and FY 2012.

This has put juvenile probation in a position well-equipped to absorb 17-year-olds.

Current Statewide Juvenile Facility Projections (Without Considering “Raise the Age”)

YEAR	POPULATION PROJECTION	UNDER CAPACITY BY	EMPTY BEDS PERCENT	SUPPORTABLE POPULATION INCREASE
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2019	1,386	621	30.90%	44.81%
2020	1,460	547	27.30%	37.47%
2021	1,518	489	24.40%	32.21%



Raise the Age: Keep Kids Out of Adult Jails and Prisons

When 17-year-olds are arrested in Texas, they are treated as adults and no one is required to inform their parents of the arrest. In Texas, the age of adulthood is typically 18; at that age, Texans are able to vote, join the military, and buy a lottery ticket. Yet, juveniles in Texas are charged as an adult for any criminal offense committed at age 17. At that point, their parents do not have a right to be involved in the court process.

The majority of 17-year-olds are arrested for nonviolent and misdemeanor offenses. 95% of 17-year-olds who were arrested in 2015 were arrested for nonviolent and misdemeanor offenses.¹

Sending 17-year-olds to adult jails is costly and subjects sheriffs to liability. To ensure the safety of young inmates in adult correctional facilities, the federal Prison Rape Elimination Act (PREA) requires 17-year-olds to be separated from adults.² Keeping as many kids as possible out of adult jails will prevent Texas sheriffs from having to retrofit their facilities at tremendous expense or face liability for noncompliance with PREA.³

Raising the age of criminal responsibility would start kids off in the juvenile system, but allow judges to transfer those with the most violent offenses to the adult system if appropriate. This change to law would leave in place the certification process by which prosecutors can charge kids (aged 14 and up) with adult crimes.

17-year-olds fare better in the juvenile justice system. According to the Centers for Disease Control and Prevention, kids who are transferred from the juvenile court system to the adult criminal justice system are approximately 34% more likely to be re-arrested for violent or other crimes than kids kept in the juvenile court system.⁴

After entering the adult system, 17-year-olds are subjected to a lifetime of collateral consequences. An adult criminal record creates barriers to getting an education, gaining employment, securing housing, and joining the military.

In the adult system, 17-year-olds are also subjected to dangerous conditions.

- **Physical & Sexual Violence:** Kids held in adult facilities face a high risk of sexual assault. A federal study found that, of juveniles who reported sexual victimization by other inmates, two-thirds were victimized more than once.⁵
- **Suicide Risk:** Kids in adult facilities are 36 times more likely to commit suicide than those in juvenile facilities.⁶
- **Solitary Confinement:** Due to “sight and sound separation” requirements under PREA, kids in adult facilities can spend up to 23 hours per day in solitary confinement, which can lead to physical and psychological harm.

“Raise the Age” works in other states. Texas is 1 of only 5 states to send all 17-year-olds accused of a crime to the adult criminal justice system, making Texas out of step with best practices. 45 other states benefit from rehabilitating kids, providing them with the opportunities they need to avoid further interactions with the justice system.

Continued on reverse.

“Raise the Age” would cost less than estimated by the Legislative Budget Board. According to a cost estimate by the Texas Public Policy Foundation, the total cost of raising the age of criminal responsibility in Texas would be \$33.3 million per year across all levels of government. An estimate by the Legislative Budget Board, which anticipates a \$63.8 million cost to the state and does not take into account the expected burden on local governments, is constrained to a uniform cost report that includes costs not germane to every policy proposal.⁷

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Citations

¹ Texas Department of Public Safety, *Texas Crime Report for 2015*, Chapter 9, p. 78, 80, <http://www.dps.texas.gov/crimereports/15/citCh9.pdf>.

² Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 115.14 (2003).

³ 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>.

⁴ 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>.

⁵ Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, 2013, p. 23, <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁶ The Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, 2007, p. 10, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

⁷ Texas Public Policy Foundation, *Cost Estimate for Raising the Age of Criminal Responsibility in Texas*, memo included and formal publication pending; exact cost to local governments would total \$33,342,216.60 per year.

Responses to Five Claims About Personal Bonds and Pretrial Reform

Pretrial release decisions are crucial in the safe and efficient operation of Texas jails. Unfortunately, a 2016 study found that “Texas’ resource-based bail system keeps low-risk individuals unnecessarily detained before trial and allows risky defendants to buy their freedom with limited oversight. **This practice undermines public safety, disproportionately harms low-income defendants, and costs counties millions of dollars every year.**”¹ Nonetheless, there are those who advocate against improvements to Texas’ broken bail system. Below are five commonly cited arguments against pretrial reform, along with TCJC’s rebuttals.

CLAIM 1: PERSONAL RECOGNIZANCE [“NO COST”] BONDS MAKE US LESS SAFE AND RESULT IN HIGHER FAILURE-TO-APPEAR RATES.

Opponents of pretrial reform characterize personal bonds as some kind of “get out of jail free” card, giving people no incentive to return for trial or remain law-abiding. This is untrue. Personal bonds still create an obligation to pay a monetary amount if a bond is forfeited for failing to appear at trial. The only difference between a personal bond and a monetary bond is that a personal bond does not require a person to pay a bondsman an upfront, non-refundable fee totaling 10% of the set bond. According to University of Houston Law Professor Sandra Guerra Thompson, “**whether a person is released through a bondsman or by means of a personal bond, the incentives for the person to appear in court are exactly the same: the forfeiture of the bond which subjects the person to the possibility of civil liability for the dollar amount of the bond and a warrant issued for the person’s arrest for failure to appear.**”² Professor Thompson goes on: “**Bondsmen talk about ‘free bonds’ to create an illusion that money bonds provide greater public safety. They don’t.**”³ Bondsmen argue that they “bring people in,” but bounty hunters are almost never employed. More likely, people show up to court on their own or are arrested by police on arrest warrants for failure to appear.⁴

Like bondsmen’s “free bond” argument, it is untrue that release on a no-cost bond increases one’s likelihood of re-offending prior to trial. **A number of real-world examples demonstrate that monetary bail alternatives do not negatively impact public safety.** Kentucky recently reformed its pretrial system to release more defendants on personal bond, and its public safety and appearance rates have remained stable at 92 and 89 percent, respectively.⁵ A study examining pretrial release alternatives in Colorado found that, on average, 85 percent of individuals granted unsecured bonds were not charged with a new crime during their pretrial release, compared to 76 percent of individuals released on secured bonds; further, there were no significant differences in failure-to-appear rates between individuals granted unsecured bonds and those granted secured bonds. The study also found that higher bonds led to increased incarceration, without better outcomes.⁶ **The idea that commercial bail bonds are safer than alternatives, like personal recognizance bonds, is not substantiated by empirical support, and many studies suggest that such alternatives are a safer option.**

Another major study on the effects of pretrial detention found that the frequency with which low-risk defendants committed new crimes in the future was correlated to the amount of time they were detained pretrial. Even short periods of pretrial detention increased the likelihood that a low-risk defendant would eventually commit a new crime.⁷ **Unnecessarily detaining low-risk defendants prior to trial is what truly compromises public safety.**

CLAIM 2: MOST PRETRIAL DEFENDANTS HAVE HOLDS OR DETAINERS THAT PREVENT THEM FROM BEING BAILABLE.

When faced with claims that too many people are being held pretrial, some opponents of pretrial reform argue that most defendants are being detained pretrial as a result of holds or detainers, rather than because they cannot afford to pay a monetary bond. However, data does not support this claim. **High numbers of defendants are being detained pretrial in counties across Texas, and both Harris County⁸ and the city of Santa Fe⁹ are currently embroiled in lawsuits that challenge the constitutionality of their modern-day debtor's prisons.**

In Travis County in 2015, only 18,225 defendants were granted personal bonds out of over 26,000 eligible bookings; more than 8,000 defendants who were otherwise eligible for personal bond were denied.¹⁰ During the prior year in Harris County, only 4,643 people were detained pretrial with a hold, compared to over 38,000 who were detained pretrial on bail/bond without any holds. **While many others were released on bail/bond, this population of nearly 40,000 people was detained because people simply could not pay their monetary bond.**¹¹

CLAIM 3: INCARCERATION IS NECESSARY TO DETER SUBSTANCE ABUSE AND ADDICTION.

While many people advocate for substance abuse to be treated as a public health issue, some argue that addiction should be criminalized, believing either that those who abuse drugs or alcohol should be punished, or that forcing a person into abstinence can somehow cure addiction. However, **incarceration alone does not tackle the root causes of addiction, and research has shown that addressing drug offenses with treatment is a more cost-effective way of dealing with substance-addicted individuals than incarceration.**¹²

But more importantly, pretrial defendants do not receive treatment while awaiting trial. Because a court will not order treatment until adjudication, requiring a defendant to stay in jail pretrial, simply because he or she cannot afford bail, will not help to address addiction. Furthermore, **the commercial bail system does not distinguish between those who need treatment and those who do not.** Rather, individuals will be released by a bondsman if they can afford their bail amount, and they will stay in jail if they cannot – regardless of their treatment needs.

CLAIM 4: BONDSMEN PROVIDE SERVICES THAT PRETRIAL SERVICES CANNOT PROVIDE.

Pretrial services' legitimate and important role in criminal justice cannot be filled by bondsmen. **Pretrial services provide the court with non-adversarial information on defendants, including background information and criminal history, for the court to use in making informed release or detention decisions.** Many pretrial services use locally validated risk assessments to recommend release or detention.

By contrast, when Texas surrenders its release power to private bondsmen, the primary criterion for a release consideration becomes a defendant's ability to post monetary bail – not suitability for release. Both the leniency of bail forfeiture enforcement and a bondsman's ability to demand collateral equal to the full bail amount decrease bondsmen concerns about failures to appear. **Public safety is enhanced by pretrial services presenting accurate information about a defendant to a judge, and taxpayer dollars are saved because fewer low-risk defendants are needlessly detained pretrial.**

CLAIM 5: ELIMINATION OF COMMERCIAL BAIL WOULD BE EXPENSIVE TO IMPLEMENT AND WOULD RESULT IN LOST REVENUE FOR THE STATE AND COUNTIES.

While proponents of commercial bail assert that taxpayer dollars are saved by the use of bondsmen, available evidence does not support this assertion. Rather, relying on commercial bail may contribute to unnecessary and expensive pretrial detention.¹³

Between January and December 2016, Texas' county jails housed an average of 6,100 pretrial detainees charged with a misdemeanor on any given day.¹⁴ **At an average cost of \$59 per person per day,¹⁵ this population costs taxpayers approximately \$362,000 per day—more than \$132 million per year.** As of December 1, 2016, pretrial detainees made up 62% of Texas' county jail population.¹⁶ **Pretrial reform will help reduce the time and money spent keeping lower-level individuals in pretrial detention by increasing efficiency in the pretrial process and focusing on risk, rather than financial means.**

Additionally, it will reduce the likelihood that low-risk individuals lose their employment or housing while awaiting trial, and correspondingly reduce any potential reliance on taxpayer-funded public welfare programs or other social services that could result.

THE TEXAS CRIMINAL JUSTICE COALITION SUPPORTS COST-SAVING, PUBLIC SAFETY-DRIVEN PRETRIAL SOLUTIONS

Without the use of a risk assessment prior to magistration, **a significant number of low-risk, nonviolent defendants spend weeks or months behind bars before trial, simply because they cannot afford the high cost of their monetary bond.** Not only is this a constitutional concern, potentially resulting in costly liability for Texas jurisdictions, but it squanders public resources that could be better used to address substance abuse, mental health, or other issues within the community.

TCJC supports pretrial reform because it would give eligible individuals the opportunity to remain stable, productive members of their families and communities while awaiting trial. As former Texas District Judge Charlie Baird stated, **"It allows people who are presumptively innocent to get out and not just to continue to work, to provide for themselves and their families, and to help their lawyers to prepare a case, but it also saves the county millions a year."**¹⁷

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¹ Nathan Fennell and Meridith Prescott, *Risk, Not Resources: Improving the Pretrial Release Process in Texas*, LBJ School of Public Affairs, The University of Texas at Austin, June 2016, 1, <https://lbj.utexas.edu/sites/default/files/file/Risk,%20Not%20Resources-%20Improving%20the%20Pretrial%20Release%20Process%20in%20Texas--FINAL.pdf>.

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⁵ Pretrial Justice Institute, Kentucky Pretrial Services History Facts and Stats, November 2013, <http://www.pretrial.org/wpfb-file/kentucky-pretrial-services-history-facts-and-stats-pdf/>.

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⁷ Laura and John Arnold Foundation, *Pretrial Criminal Justice Research*, November 2013, 2-3, <https://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>. The study is based upon data gathered in Kentucky in 2009 and 2010 from over 153,000 defendants. The defendants were tracked for a period of two years after the disposition of their case to see if they committed any new crimes after release.

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¹⁶ Texas Commission on Jail Standards, *Texas County Jail Population*, December 1, 2016, <http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed 40,507 pretrial detainees and a total population of 65,242 individuals as of December 1, 2016.

Texas Counties: Room to Spare for Raising the Age

Texas **automatically** sends 17-year-olds accused of a crime to the adult criminal justice system, regardless of the fact that **95% of them are arrested for nonviolent and misdemeanor offenses**. “Raising the age” would start 17-year-olds off in the juvenile system but give judges the discretion to transfer youth with the most serious offenses to the adult system on a case-by-case basis. **This expansion of juvenile jurisdiction promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.**

Counties Can Increase Capacity for “Raise the Age” by Implementing Best Practices

3,860 children age 10-13 were detained in pre-adjudication facilities and **680 children age 10-13 were placed in post-adjudication** facilities in 2016 in Texas. Detaining so many younger children is out of step with best practices, and **counties should employ more appropriate alternatives to detaining such young children.**

High Detentions and Placements in the Panhandle Region Best Cured By Diversion, Not Opposing “Raise the Age”

While the Panhandle region is home to only 3.2% of Texas’ under-18 population, it was responsible for 8.1% of pre-adjudication detentions and post-adjudication placements of children 13 and under in 2015. **In 2016 alone, 388 children aged 13 and younger were detained pre-adjudication, and an additional 49 were placed in post-adjudication facilities.**

By implementing best practices to divert younger children away from detention, Texas counties can free up capacity for raising the age.

Data Shows Raising the Age Will Not Flood Juvenile Probation

Arrest rates in Texas for both 16- and 17-year-olds have steadily declined since 2007 – by 26% for 16-year-olds and 17% for 17-year-olds. If the number of 17-year-olds arrested last year is added to the number of youth currently in the juvenile justice system, the total is still less than the number of youth in the juvenile system in 2007.

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SUPPORT A MEANINGFUL OPPORTUNITY FOR RELEASE FOR YOUTH SENTENCED TO ADULT FACILITIES

Youth are routinely sent to Texas adult prisons either because they are (1) 17 years old at the time of the commitment offense and therefore adults under Texas law, (2) certified to stand trial as adults, or (3) completing their determinate sentences after aging out of the juvenile justice system. However, **tremendous growth and maturity often occur in one's late teens through mid-20s**. Research has shown that certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20's.¹ The U.S. Supreme Court stated in its 2005 *Roper v. Simmons* decision, "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."²

Moreover, the fact that young adults are still developing means that they are uniquely situated for personal growth and rehabilitation. In 2012, the U.S. Supreme Court held unconstitutional mandatory life without parole sentences for people under the age of 18, and required courts to consider the youthfulness of defendants facing that sentence.³ This decision, coupled with the *Roper* decision, recognize that **it is wrong to deny someone who commits a crime under the age of 18 the opportunity to demonstrate rehabilitation**.

However, Texas sentencing laws ignore recent scientific evidence on adolescent development and neuroscience, and the state's current parole system provides no viable mechanism for reviewing a case after a young person has grown up and matured. **Texas law should motivate young people to focus on rehabilitation and provide a path to redemption for those who can prove they merit a second chance.**

KEY FINDINGS

- It costs approximately \$2.5 million to incarcerate juveniles for life, whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.⁴ **Early release for those individuals who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per person.**⁵ Furthermore, a youth incarcerated at age 16 who is paroled after serving 20 years could potentially contribute up to \$164,010 in tax revenue by working until age 66.⁶
- Research proves that the brain's frontal lobe is not fully developed until a person is in his or her mid-20s, so teenagers often struggle with shortsighted decision-making and poor impulse control.⁷ **Choices at this age are often the result of poor judgment and susceptibility to peer pressure rather than deficiencies of character.**⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 556 BY SENATOR RODRIGUEZ

Texas should consider joining with other states that have provided a "second look" at the sentences of individuals who were convicted for crimes committed prior to their 18th birthday. Texas could provide a single early parole hearing focused on the extent to which the person has demonstrated that he or she has successfully rehabilitated and matured. Such an early parole consideration will not only save taxpayer dollars, it will do so without compromising public safety.

Citations on reverse.

Citations

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³ *Miller v. Alabama*, 132 S.Ct. (2012).

⁴ ACLU, *At America's Expense: The Mass Incarceration of the Elderly*, 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)).

⁵ Ibid. Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).

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⁸ Steinberg and Scott, 1,009.

Excessive and Duplicative Conditions of Community Supervision Prevent Rehabilitation & Increase Probation Officers' Workloads

Basing Probation Conditions on a Validated and Individualized Risk and Needs Assessment Helps Probation Officers Address the Factors that Increase the Risk of Criminal Activity

Last year, there were more than 22,000 probation revocations to prison or state jail, and more than 54 percent were due to the probationer's inability to abide by the conditions of supervision.¹ People on probation must abide by a host of conditions that are often unrealistic and not based on a validated risk and needs assessment of each individual.

Excessive or unrealistic conditions have two effects.² First, they increase the amount of work a probation officer must complete. In many departments, one officer must supervise up to 120 probationers.³ Second, onerous conditions increase the likelihood and number of probation violations, leading to revocations and incarceration. Texas spends approximately \$70 million annually incarcerating people just for *technical* violations of probation.⁴

Validated risk and needs assessments identify and address the specific factors that may lead to a return to criminal activity. However, there is strong evidence that risk and needs assessments are being utilized to merely categorize probationers according to risk, and they are used less often to actually set the conditions to promote rehabilitation.⁵

SB 1584 by Senator Garcia

- Decreases costly probation revocations by utilizing validated risk and needs assessments to set probation conditions.
- Ensures that conditions are minimal and non-duplicative to achieve rehabilitation and successful completion of probation.
- Ensures proper use of state resources by basing placement in state-funded treatment programs on a validated assessment.

KEY FINDINGS

- The majority of placements onto probation are for drug-related offenses,⁶ yet the conditions of community supervision often place unrealistic demands on people who are battling addiction and mental illness. It is not surprising, therefore, that the majority of individuals revoked to state jail or prison are those convicted of drug possession.⁷
- Evidence-based probation practices include: (1) utilizing validated risk and needs assessments to identify factors that increase the risk of crime, (2) individualizing probation conditions to target rehabilitative resources to those with the highest need, and (3) tailoring interventions based on an individual's ability to meet those conditions. Those departments that utilize these approaches decrease probation revocations by up to 18 percent.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 1584 BY SENATOR GARCIA

- Conditions of community supervision should be based on an individualized assessment of risk and needs, and should be intended to address the factors that lead to criminal involvement.
- Conditions should be minimal and non-duplicative to achieve rehabilitation, with consideration given to the probationer's ability to satisfy set conditions while meeting work, education, community service, and financial obligations.
- Before placing someone in a costly and intensive substance abuse treatment facility, the court should review the findings of a validated assessment to determine the right type and level of treatment.

Citations on reverse.

Citations

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https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf.

² Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, Columbia University Press, New York, 2015, e-book location 4154.

³ Information from Texas Criminal Justice Coalition's personal communications with Carey Welebob, Director of the Criminal Justice Assistance Division of the Texas Department of Public Safety, and Arnold Patrick, Executive Director of the Hidalgo County Community Supervision and Corrections Department.

⁴ Revocations for technical violations total 12,207 people per year. Subtracting the number of people who absconded leaves 6,640 people sent to TDCJ each year on purely technical reasons. Presuming that 15 percent had a prior criminal record with violent or sexual offenses (the typical average), we can further reduce the number to 5,644. According to the Legislative Budget Board, 54% of revoked individuals (3,047 people) went to prison; we conservatively estimate they served 335 days at an average cost of \$51.72 per day (using the transfer facility rate), or \$52 million total. Another 40% (2,257 people) went to state jail; we estimate they served 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), or \$18 million total. As such, the combined estimated cost to the state for technical revocations is approximately \$70 million.

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⁷ Texas Department of Criminal Justice, Community Justice Assistance Division, 2016 Parole Terminations, Provided by TDJC in February 2017.

⁸ Kelly, *Crossroads*, e-book location 4307.

Texas Counties: Room to Spare for Raising the Age

Texas **automatically** sends 17-year-olds accused of a crime to the adult criminal justice system, regardless of the fact that **95% of them are arrested for nonviolent and misdemeanor offenses**. “Raising the age” would start 17-year-olds off in the juvenile system but give judges the discretion to transfer youth with the most serious offenses to the adult system on a case-by-case basis. **This expansion of juvenile jurisdiction promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility.**

Counties Can Increase Capacity for “Raise the Age” by Implementing Best Practices

3,860 children age 10-13 were detained in pre-adjudication facilities and **680 children age 10-13 were placed in post-adjudication** facilities in 2016 in Texas. Detaining so many younger children is out of step with best practices, and **counties should employ more appropriate alternatives to detaining such young children.**

High Detentions and Placements in the Panhandle Region Best Cured By Diversion, Not Opposing “Raise the Age”

While the Panhandle region is home to only 3.2% of Texas’ under-18 population, it was responsible for 8.1% of pre-adjudication detentions and post-adjudication placements of children 13 and under in 2015. **In 2016 alone, 388 children aged 13 and younger were detained pre-adjudication, and an additional 49 were placed in post-adjudication facilities.**

By implementing best practices to divert younger children away from detention, Texas counties can free up capacity for raising the age.

Data Shows Raising the Age Will Not Flood Juvenile Probation

Arrest rates in Texas for both 16- and 17-year-olds have steadily declined since 2007 – by 26% for 16-year-olds and 17% for 17-year-olds. If the number of 17-year-olds arrested last year is added to the number of youth currently in the juvenile justice system, the total is still less than the number of youth in the juvenile system in 2007.

At the same time, funding has shifted away from state secure facilities to juvenile probation. A 2015 report by the Council of State Governments revealed that per capita funding for juvenile probation departments increased 68% between FY 2005 and FY 2012.

This has put juvenile probation in a position well-equipped to absorb 17-year-olds.

Current Statewide Juvenile Facility Projections (Without Considering “Raise the Age”)

YEAR	POPULATION PROJECTION	UNDER CAPACITY BY	EMPTY BEDS PERCENT	SUPPORTABLE POPULATION INCREASE
2016	1,345	662	33.00%	49.22%
2017	1,389	618	30.80%	44.49%
2018	1,403	604	30.10%	43.05%
2019	1,386	621	30.90%	44.81%
2020	1,460	547	27.30%	37.47%
2021	1,518	489	24.40%	32.21%