

Fact Sheets and Testimony 2023

Learning from Our Past: Mandatory Minimum Sentences Do Not Deter Crime **Oppose HB 2**

Dear Chairman Birdwell and Members of the Committee,

Thank you for the opportunity to share testimony in opposition to HB 2. The Texas Center for Justice and Equity (TCJE) is a nonpartisan, nonprofit organization focused on ending mass incarceration, shifting funding towards community supports, and reducing racial inequities in the criminal punishment system. We are testifying in opposition to HB 2 because of their potential for extreme expansion of mass incarceration and the burden on border communities and youth in Texas.

While we acknowledge the bill's intent to deter human smuggling in Texas and to meet gaps created by our failed federal immigration system, this extreme expansion of criminalization misses the mark and, furthermore, will result in a dramatic expansion of incarceration, particularly for young Texans who are targeted to transport migrants seeking safety and refuge in the United States.¹

Categorically, TCJE opposes mandatory minimum sentences due to their cruelty, expense, and ineffective nature. According to Families Against Mandatory Minimums (FAMM): Deterrence assumes that people will:

- 1) research the criminal code;
- 2) find the relevant mandatory penalty; and
- 3) be discouraged from criminal activity because of the penalty.²

But in reality, “people are not aware of mandatory penalties when they commit a crime. Therefore, increasing the penalty or severity of a punishment is ineffective at deterring people from engaging in criminal activity.”³

Oppose HB 2 by Reps. Guillen, Raymond, Muñoz, Jr., Lozano, and Janie Lopez

- **Mandatory minimum sentences do not deter crime.** While intended to create a consistent deterrence for crime, mandatory minimums only remove discretion from judges and place it with prosecutors, all while individuals remain unaware of increased penalties.
- **Locking people up and throwing away the key is inhumane, costly, and ineffective.** Mandatory minimums are a primary driver of mass incarceration, which already costs Texas taxpayers billions of dollars each year, with no long-term public safety benefit.⁴

In the early 2000s, Texas took strides to reduce its overreliance on prison, in part through sentencing reforms that reduced the use of mandatory minimums. It would be a mistake to reverse this progress and put thousands of Texans at risk of extreme prison sentences.

Citations on reverse.

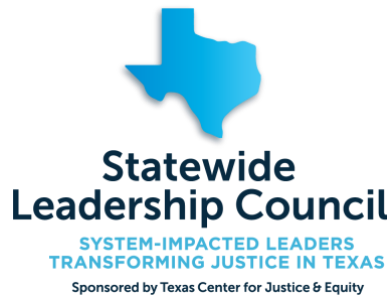
Citations

¹ Quinn Owen, “Images reveal social media recruitment tactics of suspected human smugglers,” *ABC News*, December 2022, <https://abcnews.go.com/US/images-reveal-social-media-recruitment-tactics-suspected-human/story?id=95672672>.

² FAMM, *The Case Against Mandatory Minimums*, <https://famm.org/wp-content/uploads/The-Case-against-Mandatory-Minimum-Sentences.pdf>.

³ Id. See also: National Institute of Justice, *Five Things About Deterrence*, U.S. Department of Justice – Office of Justice Programs, May 2016, <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.

⁴ Vera Institute of Justice, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, July 2017. https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.



HB 353: ‘Common-Sense Parole’ by Rep. Jarvis Johnson

Frequently Asked Questions

1. What is the overall intention of HB 353?

HB 353 seeks to improve Texas’ parole process by requiring faster information collection, earlier access to rehabilitative programs, reevaluations of rehabilitation based on programming completion, and more transparency around programming and parole denials – all without changing the Parole Board’s discretion in parole determinations.

2. How does HB 353 improve the current timeframe that the Texas Department of Criminal Justice (TDCJ) has to obtain information about an incarcerated person – including their court judgment, sentencing report, circumstances of their offense, and other pertinent information?

Currently, TDCJ must obtain all pertinent information relating to an incarcerated person ***within 120 days from when that person is admitted into TDCJ***. HB 353 changes that timeframe to ***no later than the 45th day from when the person is first admitted into TDCJ***. Additionally, HB 353 requires an evaluation of the incarcerated person’s educational, rehabilitative, and vocational needs, as well as the results from a risk and needs assessment, to be collected within that 45-day timeframe.

3. How does HB 353 help ensure that everyone inside TDCJ receives their Individual Treatment Plan (ITP) in a timely manner?

No language within the current statute defines when a person who first enters TDCJ will receive their ITP. HB 353 adds language stating that ***no later than the 60th day after TDCJ receives the incarcerated person’s initial information***, TDCJ will establish *and* provide an ITP to that person.

4. How does HB 353 help ensure that an incarcerated individual receives their updated or revised ITP?

HB 353 adds language stating that if TDCJ revises or updates a person’s ITP, ***TDCJ must provide that person with their updated or revised ITP as soon as practicable***.

5. How does HB 353 address individuals’ access to programming as it relates to TDCJ?

Under current law, TDCJ is to make reasonable efforts to provide an incarcerated person with the opportunity to complete any classes or programs listed in their ITP, ***other than classes or programs that are to be completed immediately before the person’s release on parole***, in a timely manner. HB 353 makes this

process more efficient by requiring TDCJ to provide an incarcerated person with the opportunity to complete *any* classes or programs in their ITP ***before the person's parole eligibility date.***

6. How does HB 353 address individuals' access to programming as it relates to the Board of Pardons and Paroles?

Currently, the Parole Board must conduct its initial review of an incarcerated individual ***no later than the 180th day after that person has been admitted into TDCJ.*** Additionally, the Board must identify any classes or programs it intends to require that person to complete ***before releasing the person on parole.***

HB 353 states that, instead of the Board conducting its initial review within 180 days of a person's admittance into TDCJ, the initial review must be done ***no later than the 90th day after a person is admitted.*** Additionally, HB 353 requires the Board to identify any classes or programs it intends the person to complete ***before the inmate's parole eligibility date,*** and it ***requires TDCJ to make those classes available to the person before that parole eligibility date.***

7. How does HB 353 affect parole determinations?

Currently, when a parole panel denies someone's parole, the panel is only required, in its written statement to the person, to explain the decision and the reasons for the decision. The notification will state that the person has been denied parole and that the denial reason is (for example) 2D - Nature of Offense, or any combination of the listed denial reasons.

HB 353 requires the parole panel to complete this same written statement but also provide ***specific actions that the person must take*** to address the factors contributing to their denial of parole.

8. How does HB 353 improve transparency around parole determinations?

As part of the existing annual report produced by the Parole Board, HB 353 would require the report to explain how the Board ***accounts for a person's progress on their ITP, as well as how the parole guidelines were used to make an individualized determination when approving or denying parole, and provide an analysis of parole denials.***

9. How will HB 353 allow for a more accurate picture of a person's progress while in TDCJ?

HB 353 will better account for a person's rehabilitative progress in TDCJ by allowing the Parole Board to adjust its parole guidelines in light of that person's progress on their ITP. Additionally, HB 353 will create a requirement that ***within one year of a person's parole eligibility date,*** TDCJ must evaluate the person using a risk and needs assessment and revise the person's risk and needs score to reflect the completion of programming listed in their ITP.

10. Does HB 353 mandate release on parole or remove any powers related to the Parole Board and parole determinations?

No. HB 353 does not mandate release or remove the Parole Board's discretion to make its parole determinations.

Help Incarcerated Women Return Successfully to Our Communities

Program Accessibility and Expansion Will Give More Women an Equitable Shot on Reentry

Texas' 86th Legislature took strong first steps to expand in-prison programming for women. Specifically, HB 3227 required the Texas Department of Criminal Justice (TDCJ) to develop and implement policies that would increase and promote women's access to educational, vocational, substance use treatment, rehabilitation, life skills training, and pre-release programs.¹

Now, the Legislature must take the next step and ensure that programming is fully accessible, including in state jails. Women report a limited number of spaces in newer programs; for instance, the EWOP (Empowering Women Out of Prison) and STRIVE (Strength Through Restoration, Independence, Vision and Empowerment) programs are critical for women's successful reentry, but they are only offered at two women's units and have limited spaces. Furthermore, women are still restricted from obtaining master's degree-level education courses, which are available to men in TDCJ. Women must be able to get training for and access to jobs that are in demand and for which they are competitive applicants.

IN SHORT

HB 967 will help more women access in-prison rehabilitative programs and give them the same opportunities as men to take master's level education courses. This will ensure that women are strong workforce candidates on reentry, which will help them support their families and will reduce the likelihood of re-offending.

Success on reentry is built on stability, with education and job skills being a crucial component. We must equip women with the tools to live safe, productive, self-sustaining lives in the community. Doing so will stop the cycle of re-offending and re-incarceration that comes at great expense to taxpayers, families, and communities.

Key Findings

- As of January 2023, nearly 9,600 women were incarcerated in TDCJ.²
- Women face unique challenges when they are released from prison. Like all women, they are more likely to be providers and caregivers, whether to children, parents, or other family. In Texas, 81% of women in prison are mothers (versus 62% nationally).³
- In a survey by the Texas Center for Justice and Equity of incarcerated women in Texas, 65% had not graduated from high school or obtained a GED, with 35% completing less than 12th grade before entering TDCJ, and 11% not completing higher than 8th grade.⁴
- The EWOP program launched in fall 2019. It combines a strong educational curriculum with a proven reentry strategy – providing a certificate of entrepreneurship from the Wolff Center for Entrepreneurship at the University of Houston upon completion.⁵

The STRIVE program also launched in 2019. It provides gender-responsive, trauma-informed programming, career readiness skills, employment referrals, post-release supervision, and community support. But this class is just 12 weeks long.⁶

Continued on reverse.

Support HB 967 by Representative Allen

HB 967 increases access to and expands programming to meet the needs of incarcerated women. Specifically, it requires the Texas Department of Criminal Justice to:

- Develop and implement policies that require each facility to make certain programs – including parenting classes, as well as educational, vocational, substance use treatment, rehabilitation, life skills training, and prerelease programs – available and accessible to incarcerated women within 45 days of arriving at the facility.
- Ensure incarcerated women have access to the equitable program opportunities, including master's level education courses, that are available to incarcerated men.

The expansion of programs to *all* units, including state jails, will create an equal playing field of success upon reentry – better equipping women to support their families, while reducing the likelihood of re-offending and lowering costs associated with repeated involvement in the criminal punishment system.

Citations

¹ House Bill 3227 (Reps. Howard, Jarvis Johnson, Allen, White; sponsor: Sen. Huffman), *Relating to the availability of and access to certain programs and services for persons in the custody of the Texas Department of Criminal Justice*, 86th Texas Legislature, <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=86R&Bill=HB3227>.

² Texas Department of Criminal Justice, *High Value Data Sets*, accessible here: https://www.tdcj.texas.gov/kss_inside.html.

³ Texas Center for Justice and Equity (TCJE), *Data on Women in Texas' Justice System*, <https://www.texascjc.org/data-women-texas-justice-system#:~:text=Women%20in%20TDCJ%20are%20far,68%25%20of%20men>.

⁴ TCJE, *An Unsupported Population: The Treatment of Women in Texas' Criminal Justice System*, April 2018, 6, <https://www.texascjc.org/system/files/publications/TCJC%20Womens%20Report%20Part%202.pdf>.

⁵ Empowering Women Out of Prison, *Our Program*, <https://www.ewoptx.org/our-program.html>.

⁶ Jolie McCullough, "New Texas prison program aims to help women leave the system with jobs waiting for them," *Texas Tribune*, September 25, 2019, <https://www.texastribune.org/2019/09/25/texas-prison-program-help-women-reenter-society-jobs-waiting-them/>.



"The officers, right before the storm hit, advised them to write their goodbye letters to their families. The warden told the inmates to get right with their higher power, because **she didn't know if the prison would be there the next morning.**"

-Brittany, sharing her mother's experience being incarcerated during a hurricane

Better Preparation for Disasters: Emergency Management in Texas Prisons

The Texas Department of Criminal Justice (TDCJ) operates not only the largest prison system in any state, but also one of the largest in the world. Preparing such a large system for an emergency requires adequate planning mechanisms – but those are not in place. Texas must ensure that TDCJ has a proper emergency management plan in place before another disaster strikes.

How recent disasters have impacted people incarcerated in Texas prisons

2021

During Winter Storm Uri, 33 of Texas' prisons lose power, and 20 facilities have water shortages. Some staff work 16 hour days.

Hurricane Harvey floods prisons with contaminated water and leaves incarcerated people without food for days.

2017

When the COVID-19 pandemic hits, Texas prisons do not have a plan for medical isolation. Hundreds of incarcerated people and staff die over three years.

2020

HB 1446 would create an advisory board of subject matter experts, correctional staff, and system-impacted people. This group would inform new TDCJ policies that protect incarcerated people against issues like insufficient hygiene supplies and protective equipment, extended lockdowns, and gaps in proper healthcare.

It is critical that incarcerated people have the support and supplies needed to make it through declared disasters without experiencing inadequate or dangerous conditions.

There was a plan for the farm animals, and we were just left to fend for ourselves. And the officers suffered with us."

-Maggie, who was in a Texas prison during Hurricane Harvey



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HB 1446: ‘Emergency Planning’ by Rep. Philip Cortez Frequently Asked Question

1. What is the overall intention of HB 1446?

People incarcerated in and working at Texas prison facilities should have the support and supplies needed to make it through declared disasters without experiencing inadequate or dangerous conditions. Yet the Texas Department of Criminal Justice (TDCJ) does not have a proper plan in place to address people’s safety and well-being when an emergency disaster strikes. HB 1446 would begin to address this serious issue by creating an advisory board that would help inform the creation of an emergency response plan to be used by TDCJ.

2. What particular emergency situation does HB 1446 address related to disasters in TDCJ?

HB 1446 applies only to emergency situations that are declared a disaster by the Governor under Chapter 418, or by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if any part of the state is named in the federally declared disaster area.

3. What are the duties and powers of the advisory board established under HB 1446?

HB 1446 establishes an advisory board to provide recommendations for the emergency response plan required under this bill. The advisory board will consider all strategies to plan for emergency situations, including plans to prevent the interruption of educational and rehabilitative programming. The advisory board can also access any facility operated by or under contract with TDCJ and will have access to all relevant information necessary to make its recommendations.

4. Who would make up the advisory board?

The advisory board is composed of TDCJ’s Executive Director or a designee, the Commissioner of Public Health of the Department of State Health Services or a designee, and the following Governor appointees:

- At least two correctional officers employed by TDCJ;
- At least two people who have been previously incarcerated;
- Two people who have a family member that is currently incarcerated;
- One person who has a background in emergency planning; and
- One person with a background in public health.

5. When must the advisory board develop its initial recommendations for the emergency response plan for TDCJ?

No later than March 1, 2024, the advisory board must develop its initial recommendations and submit those recommendations to TDCJ.

6. Is the advisory board required to update those recommendations?

Yes. By March 1st of each year, the advisory board must update its recommendations and submit any updated recommendations to TDCJ.

7. What happens if TDCJ's response is inconsistent with the advisory board's recommendations?

If it is found that TDCJ did not follow the advisory board's recommendations during a declared disaster, the advisory board can obtain any relevant data and reports and may conduct interviews with incarcerated individuals and other relevant people to identify any consequences of TDCJ's failure to respond pursuant to the board's recommendations.

8. What must the emergency response plan specify?

The emergency plan must specify the operating procedures that TDCJ must follow during a declared disaster, including evacuation procedures for incarcerated people and employees, guidelines for employees to ensure their safety and well-being, and provisions to: prevent or minimize extended lockdowns or periods of segregation; ensure that an incarcerated person can continue to participate in any Parole Board-required classes or programs during any extended period of a declared disaster; ensure that incarcerated people are still able to access the commissary at regular intervals during extended disaster periods; ensure that TDCJ has sufficient quantities of protective equipment for incarcerated people and employees; ensure that incarcerated people are not denied access to medical care, medication, or personal hygiene items; and prohibit the suspension of in-person visitation during any extended period of a declared disaster (though TDCJ can temporarily institute video visitation).

9. Does HB 1446 require TDCJ to develop an emergency response plan?

Yes.

10. When does TDCJ have to develop the emergency response plan required under HB 1446?

TDCJ must develop the emergency response plan no later than the 180th day after the date the advisory board submits its recommendations to TDCJ.

Support Diligent Participation Credits for People Confined in State Jails

A Smart Way to Promote Post-Release Stability

Thousands of people are annually sent to Texas' state jail system,¹ which predominantly houses those convicted of nonviolent property or drug offenses, like possession of less than a gram of a controlled substance. Unfortunately, state jails have the highest recidivism rate of all correctional programs.²

In part, this high rate of re-offending may be attributable to the fact that state jails have fewer rehabilitative services available to people housed in them, and that people sentenced to state jail are not eligible for parole – meaning they must serve each day of their sentence.³ This can reduce people's motivation to engage in the services that are available.

To partially remedy this problem, Texas statute allows judges, on sentencing a person to state jail, to determine if they are "presumptively entitled" to diligent participation credits; then, using information provided by the Texas Department of Criminal Justice (TDCJ), judges can authorize a 20 percent time credit to a person who participates in any available educational, vocational, treatment, or work programs while incarcerated in a state jail. Incarcerated people who have not received a presumptive finding of eligibility must serve nearly 80% of their sentence before becoming eligible for credit. This process slows the awarding of credits, leaving people to fall through bureaucratic gaps; in both scenarios, TDCJ collects the programming information and is capable of determining diligent participation.

Key Findings

- Expediting release of people from state jails could save Texas \$6 million over the biennium (with more than \$30 million in each successive year),⁴ while programming participation will give more people the tools to be successful in the community.

Support HB 1705 by Representative Alma Allen

HB 953 simply requires TDCJ (versus judges) to grant credit to people who participate in rehabilitative programming in state jails, and it eliminates the provision that requires a judge to find a person presumptively eligible for credit.

This creates a seamless process for people to get released from state jail at an appropriate time, resolving communication issues between judges and TDCJ that keep people unnecessarily incarcerated at taxpayer expense.

Citations on reverse.

Citations

¹ Texas Department of Criminal Justice, [Statistical Report: Fiscal Year 2021](#) (6,935 receives into state jail); [Statistical Report 2020](#) (8,686 receives into state jail); [2019 Statistical Report](#) (15,362 receives into state jail).

² Legislative Budget Boards, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January 2021, 4, https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/6293_CJDA_Recidivism-Revocation.pdf

³ Texas Center for Justice and Equity, *A Failure in the Fourth Degree: Reforming the State Jail Felony System in Texas*, October 2018, <https://www.texascjc.org/system/files/publications/A%20Failure%20in%20the%20Fourth%20Degree%20Report.pdf>.

⁴ Legislative Budget Board, [Fiscal Note for HB 953](#) (Allen), 87th Legislative Regular Session, April 6, 2021.

Racial Profiling Doesn't Make Us Safer **Oppose SB 2**

Dear Chairman Birdwell and Members of the Committee:

My name is Sarah Reyes; I am a Policy Analyst for the Texas Center for Justice and Equity (TCJE). TCJE is a nonprofit organization that engages in state and local policy advocacy throughout Texas to advance safe decarceration practices and promote overall community wellbeing. We are submitting testimony in **opposition** to SB 2.

SB 2 is an inherently racist and feelings-based piece of legislation. The response to the humanitarian crisis along our southern border has been nothing short of inhumane and unnecessarily cruel. The incarceration of individuals who are seeking a new home only causes harm, expanding our already-bloated prison system while doing nothing to address people's underlying needs.

Incarceration is not only an ineffective solution to the humanitarian emergency, but it is a costly one as well. Per the bill's fiscal note, the anticipated costs to Texas taxpayers "cannot be determined due to the lack of data to estimate the prevalence of conduct outlined in the bill's provisions that would be subject to criminal penalties." In other words, Texas lawmakers cannot know the full impact of this bill but will simply be passing on costs to Texas families for a policy rooted in hate – rather than using taxpayer dollars to invest in a humanitarian infrastructure that is evidence-based, that would benefit affected regions, and that would allow migrants to be welcomed by state and federal officials with dignity.

Instead, we will see an increase in racial profiling in these communities. This bill would essentially allow any state officer to arrest a person they think fits the "profile" of an unlawful immigrant, which will predominately affect people of color and lead to an increase in unnecessary arrests and rights violations among migrants and resident Texans as well.

Incarceration has not proven to be the answer to the humanitarian crisis at the border, nor will it ever be. SB 2 is an ineffective way to address the underlying reasons that people seek shelter in Texas. We must begin to treat people in need with compassion and dignity, not cages.

Learning from Our Past: Mandatory Minimum Sentences Do Not Deter Crime **Oppose SB 5**

Dear Chairman Birdwell and Members of the Committee,

Thank you for the opportunity to share testimony in opposition to SB 5. The Texas Center for Justice and Equity (TCJE) is a nonpartisan, nonprofit organization focused on ending mass incarceration, shifting funding towards community supports, and reducing racial inequities in the criminal punishment system. We are testifying in opposition to SB 5 because of their potential for extreme expansion of mass incarceration and the burden on border communities and youth in Texas.

While we acknowledge the bill's intent to deter human smuggling in Texas and to meet gaps created by our failed federal immigration system, this extreme expansion of criminalization misses the mark and, furthermore, will result in a dramatic expansion of incarceration, particularly for young Texans who are targeted to transport migrants seeking safety and refuge in the United States.¹

Categorically, TCJE opposes mandatory minimum sentences due to their cruelty, expense, and ineffective nature. According to Families Against Mandatory Minimums (FAMM): Deterrence assumes that people will:

- 1) research the criminal code;
- 2) find the relevant mandatory penalty; and
- 3) be discouraged from criminal activity because of the penalty.²

But in reality, “people are not aware of mandatory penalties when they commit a crime. Therefore, increasing the penalty or severity of a punishment is ineffective at deterring people from engaging in criminal activity.”³

Oppose SB 5 by Senator Flores

- **Mandatory minimum sentences do not deter crime.** While intended to create a consistent deterrence for crime, mandatory minimums only remove discretion from judges and place it with prosecutors, all while individuals remain unaware of increased penalties.
- **Locking people up and throwing away the key is inhumane, costly, and ineffective.** Mandatory minimums are a primary driver of mass incarceration, which already costs Texas taxpayers billions of dollars each year, with no long-term public safety benefit.⁴

In the early 2000s, Texas took strides to reduce its overreliance on prison, in part through sentencing reforms that reduced the use of mandatory minimums. It would be a mistake to reverse this progress and put thousands of Texans at risk of extreme prison sentences.

Citations on reverse.

Citations

¹ Quinn Owen, “Images reveal social media recruitment tactics of suspected human smugglers,” *ABC News*, December 2022, <https://abcnews.go.com/US/images-reveal-social-media-recruitment-tactics-suspected-human/story?id=95672672>.

² FAMM, *The Case Against Mandatory Minimums*, <https://famm.org/wp-content/uploads/The-Case-against-Mandatory-Minimum-Sentences.pdf>.

³ Id. See also: National Institute of Justice, *Five Things About Deterrence*, U.S. Department of Justice – Office of Justice Programs, May 2016, <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.

⁴ Vera Institute of Justice, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, July 2017. https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.



**Texas Center for
Justice & Equity**
SOLUTIONS FOR SAFE, HEALTHY
JUST COMMUNITIES



Joint Testimony in Opposition to Senate Bill 9

Submitted by

IDRA

Texas Center for Justice and Equity

Texas Appleseed

Against

SB 9

House Public Education Committee

May 9, 2023

Dear Chair Buckley and Honorable Members of the House Public Education Committee,

Thank you for this opportunity to provide information and recommendations that seek to create meaningful and long-lasting solutions for supporting students and educators in our state's public schools. Through our combined decades of research and advocacy to improve outcomes for Texans – especially as they relate to the safety, success, and wellbeing of children and their communities – we have been able to coalesce around several issues that matter most to our organizations and bases. We respectfully submit this written testimony in opposition to SB 9.

We urge the committee to eliminate Section 16 of SB 9, which authorizes the removal of students from the classroom any time a student “interferes” with teacher communication or student learning, engages in a single instance of “unruly, disruptive or abusive behavior,” or engages in bullying. This is a significant expansion of current law, which allows removal when a student “is so unruly, disruptive or abusive that it *seriously interferes with*” the learning environment (Tex. Educ. Code 37.0832). Section 16 further prohibits the student's return to class until an educator has given “written consent” and until a “return to class plan” has been prepared for that student.

We respect teachers and vocally support policies that increase their pay, offer training and technical assistance on creating safe and culturally-sustaining schools, and invest in professional support staff, including counselors and behavioral health specialists, who can support educators in managing challenging student behaviors.

However, we do not believe that resorting to zero tolerance exclusionary discipline policies against children is an appropriate or effective response to student misbehavior – especially behavior that is subjectively labeled as “unruly” or “disruptive.”

“Zero tolerance” policies were originally adopted in response to calls for more robust drug enforcement in schools. But these policies and practices grew to encompass a constellation of punitive and exclusionary consequences for student infractions, regardless of severity or circumstances. While zero tolerance practices vary, the general approach is the same: removing students who are seen as disruptive to the learning environment. The use of punitive and exclusionary discipline does not lead to positive educational or social outcomes. Instead, these practices have negative consequences for students, including lower academic achievement, higher dropout rates, and increased risk of becoming justice-involved.¹

Section 16 of SB 9 will also almost certainly have a disproportionate impact on Black students, other students of color, and students with disabilities who are more likely to be labeled as “disruptive” because of implicit bias.² For example, in 2018-19, Black students represented 13% of public school enrollment in Texas but 26% of students receiving in school suspensions. In comparison, white students represented

¹ Bishop, S., Craven, M., Galer, D., Wilson, T., & Duggins-Clay, P.. (September 2022). Literature Review - School Discipline. IDRA. <https://www.idra.org/wp-content/uploads/2022/11/Literature-Review-%E2%80%93-School-Discipline-IDRA-2022.pdf>; Castillo, A., Abalogu, J., & Linder, L. (2020). Reversing the Pipeline to Prison in Texas: How to Ensure Safe Schools and Safe Students. Texas Criminal Justice Coalition. <https://texascje.org/system/files/publications/Reversing%20the%20Pipeline%20Report%202020.pdf>

² Sabol T.J., Kessler, C.L., Rogers, L.O., Petittclerc, A., Silver, J., Briggs-Gowan, M., & Wakschlag, L.S. (September 23, 2021). A window into racial and socioeconomic status disparities in preschool disciplinary action using developmental methodology. Annals of the New York Academy of Sciences. <https://pubmed.ncbi.nlm.nih.gov/34554578/>

27% of enrollment but 22% of students receiving in-school suspensions. Similarly, on average, 26% of Black students are suspended compared to 8% of white students.³ This body cannot ignore the grossly disparate impact of these policies on Black and other historically-marginalized children.

Young Texans should be given ample opportunities to succeed in their classroom environments, and legislators should prioritize investments in evidence-based strategies that address the root causes of problematic student behavior, proactively build positive school climates, and support educators.

Instead of acknowledging the immense disruption of the COVID-19 pandemic, the unprecedented impact of the youth mental health crisis, and the lack of investment in support personnel and resources for educators, Section 16 of SB 9 accelerates children's referral to the school-to-prison pipeline by allowing educators to remove children from the classroom for minimal and first-time disruptions. This is not consistent with research-based strategies designed to create positive and supportive learning environments that effectively address challenging behavior.

As organizations with former educators among our staff, we appreciate the intention to provide relief for overburdened and underpaid school teachers; however, that should not come at the price of students' futures. Instead, meaningful support and resources can help teachers better manage classroom behaviors and help students learn from misbehavior, rather than be pushed out of school through suspensions or into disciplinary alternative education programs (DAEPs) or juvenile justice alternative educational placements (JJAEPs) that do not offer high-quality education opportunities or provide the critical school-based behavioral support resources students need.

We acknowledge that there are times when a student may need to be temporarily removed from the classroom for the safety of themselves, their classmates and their educators. But temporary and limited removals from the classroom are not the same as removals from the school environment altogether. While the former is designed to ensure safety and identify meaningful supports in the event of serious and severe misbehavior, the latter harms student learning and may exacerbate real challenges that young people experience. Removals must be temporary, be implemented in conjunction with appropriate supports, and include a plan to transition back into the learning environment once the student and family have received appropriate interventions and educators have received appropriate support.

For all of these reasons, we urge this committee to remove Section 16 from SB 9. At a minimum, the committee should amend Section 16 to (1) restore current law permitting classroom removals only for a student's "repeated" interference with classroom instruction and peer learning (Texas Education Code 37.002(a)(1)); (2) add language requiring administrators to consider school-based settings for most classroom removals; and (3) ensure that return-to-class plans are completed and implemented as expeditiously as possible (but no longer than three days) in order to minimize disruptions to a student's learning.

Long term, we advise the Texas Legislature to pass legislation that will provide meaningful support to teachers and enable school officials to nimbly employ evidence-based practices to address behavioral

³ IDRA. IDRA. (July 7, 2022). Zero Tolerance Policies Likely Contribute to High Attrition Rates of Black Students and Hispanic Students. https://www.idra.org/research_articles/zero-tolerance-policies-texas-push-black-students-hispanic-students-away-school/; Johnson, R. (October 2016). Zero Tolerance Policies Likely Contribute to High Attrition Rates of Black Students and Hispanic Students. Texas Public School Attrition Study, 2015-16. <http://www.idra.org/wpcontent/uploads/2016/11/IDRA-Discipline-Article-2016.pdf>

concerns on their campuses, as well as ramp up investments in the mental health supports that are proven to foster supportive school environments.

Thank you for your time and attention to the children of Texas.

Sincerely,

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Joint Testimony in Opposition to SB 245

**Submitted by
Intercultural Development Research Association (IDRA)
Texas Appleseed
Texas Center for Justice and Equity**

Against

**SB 245
Senate Education Committee
April 12, 2023**

Dear Chair Creighton and Honorable Members of the Senate Education Committee,

Thank you for this opportunity to provide information and recommendations that seek to provide meaningful and long-lasting solutions for supporting students and educators in our state's public schools. Through our combined decades of research and advocacy to improve outcomes for Texans, especially as they relate to the safety and wellbeing of children and their communities, we have been able to coalesce around several issues that matter most to our organizations and bases.

Today, we come together to oppose the harmful and dangerous proposals within SB 245 and urge you to vote in opposition to this unnecessary step backward on progress in protecting youth.

We respect teachers and vocally support policies that increase their pay, offer training and technical assistance on creating safe and culturally sustaining schools, and invest in professional support staff, including counselors and behavioral health specialists, who can support educators in managing challenging student behaviors. However, we do not believe that resorting to zero tolerance exclusionary discipline policies against children is an appropriate or effective response to student misbehavior – especially behavior that is subjectively labeled as “disruptive.”

Young Texans should be given ample opportunities to succeed in their classroom environments, and legislators should prioritize investments in evidence-based strategies that address the root causes of problematic student behavior, proactively build positive school climates, and support educators.

Instead of acknowledging the immense disruption of the coronavirus pandemic, the unprecedented impact of the youth mental health crisis, and the lack of investment in support personnel and resources for educators, SB 245 accelerates children's referral to the school-to-prison pipeline by allowing educators to remove children from the classroom for minimal disruptions and lowers the standards for students to be placed in a Disciplinary Alternative Education Program (DAEP) or expelled.

As experts on the history and current operation of the school-to-prison pipeline, we feel confident in sharing our belief that the framework created by SB 245 would push even more Black and Brown young Texans, LGBTQ young people, and kids with disabilities out of their classrooms. SB 245 will almost certainly have a disproportionate impact on Black students, other students of color, and students with disabilities, who are more likely to be labeled as “disruptive” because of implicit bias. For example, in 2018-19, Black students represented 13% of public school enrollment in Texas but 26% of students receiving in-school suspensions. In comparison, white students represented 27% of enrollment but 22% of students receiving in-school suspensions. Similarly, on average, 26% of Black students are suspended compared to 8% of white students.¹ This body cannot ignore the grossly disparate impact of these policies on Black and other historically marginalized children.

As some former educators ourselves, we appreciate the intention to provide relief for overburdened and underpaid school teachers; however, that should not come at the price of students' futures. Instead, **meaningful support and resources can help teachers better manage classroom behaviors and help students learn from misbehavior, rather than be pushed out of school** and into DAEPs or Juvenile Justice Alternative Education Programs (JJAEPs), which do not offer high-quality educational opportunities or provide the critical school-based behavioral support resources students need.

We are particularly concerned about the following sections of the bill:

Section 2:

In this section of the bill, the standard for removal of a student from the classroom is far too low. We fear that this will result in mass removals of students, and potential chaos for an already substandard DAEP system that is not equipped to meet students' educational, mental, and behavioral health needs.²

Section 4:

Increasing the length of time a student may be removed from school from 3 days to 5 days will be harmful to the child, their family, and their ability to quickly get back on track and succeed once they are in the classroom again.³

Section 5:

Disorderly conduct is an extremely subjective offense that disproportionately impacts students with learning disabilities, and students of color.⁴ As such, required removal from the classroom for such conduct will have significant implications. Furthermore, current law already affords districts the option to refer students to a DAEP for violations of criminal law.

Section 9:

This section poses a threat to students' civil rights and liberties because it allows students to be referred to a DAEP for a single instance of relatively minor misbehavior that may not violate a school's code of conduct. Current law (TEC 37.019) already authorizes a principal to remove a student on an emergency basis.

Section 10:

This section appears to create immunity for school districts from financial and other sanctions relating to school discipline decisions. It is unclear how the provision will operate in practice. For example, the bill does not explain how districts must report students referred to exclusionary and alternative discipline placements for attendance purposes under this provision. Similarly, the broad prohibition on a "penalty" for the number of students in exclusionary settings is overbroad, may limit state and federal authorities from taking appropriate corrective actions to address discriminatory and disparate outcomes in school discipline actions, and conflicts with federal law, which authorizes the Department of Education to revoke federal funding for non-compliance with federal civil rights laws, including discriminatory discipline practices.

We acknowledge that there are times when a child may need to be temporarily removed from the classroom for the safety of themselves, their classmates, and their educators. But temporary and limited removals from the classroom are not the same as removals from the school environment altogether. While the former is designed to ensure safety and identify meaningful supports, the latter harms student learning and may exacerbate real challenges that young people experience. **Removals must be temporary, be implemented in conjunction with appropriate supports, and include a plan to transition back into the learning environment once the student and family have received appropriate interventions and educators have received appropriate support.**

In conclusion, we urge the Senate Education Committee to vote against SB 245 in its current form. Long term, we advise the Texas Legislature to pass legislation that will provide meaningful support to teachers and allow school officials to nimbly employ evidence-based practices to address behavioral

concerns on their campuses, as well as ramp up investments in the mental health supports that are proven to foster supportive school environments.

Thank you for your time and attention to the children of Texas.

Sincerely,

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¹ IDRA. Zero Tolerance Policies in Texas Push Black Students and Latino Students Away from School. 2023. https://www.idra.org/research_articles/zero-tolerance-policies-texas-push-black-students-hispanic-students-away-school/.

² Ramon, Ana. Why Disciplinary Alternative Education Programs Do More Harm Than Good. IDRA. 2020. <https://www.idra.org/resource-center/why-disciplinary-alternative-education-programs-do-more-harm-than-good/>.

³ American Institutes for Research. An Empirical Examination of the Effects of Suspension and Suspension Severity on Behavioral and Academic Outcomes. 2021. <https://www.air.org/sites/default/files/2021-08/NYC-Suspension-Effects-Behavioral-Academic-Outcomes-August-2021.pdf>.

⁴ Blad, Evie. Law Against 'Disorderly Conduct' in Schools Led to Unfair Student Arrests, Judge Rules. 2021. Ed Week. <https://www.edweek.org/leadership/law-against-disorderly-conduct-in-schools-led-to-unfair-student-arrests-judge-rules/2021/10>.