



FOR IMMEDIATE RELEASE
October 16, 2018

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A Failure in the Fourth Degree: Reforming the State Jail Felony System in Texas

AUSTIN, TX – The Texas Criminal Justice Coalition (TCJC), a nonpartisan advocacy organization focused on building coalitions and advancing solutions to end mass incarceration in Texas, released the second report in its “One Size FAILS All” report series. The report, ***A Failure in the Fourth Degree: Reforming the State Jail Felony System in Texas***, demonstrates through data and personal interviews with 140 incarcerated individuals the defective nature of Texas’ state jail system, and it puts forth actionable policy recommendations for consideration by the 2019 Texas Legislature.

Texas’ state jail system, which went into effect in 1994, was originally intended to serve as an alternative to the state’s prison system – emphasizing rehabilitative programming for low-level felonies, including drug and nonviolent property offenses, rather than lengthy incarceration. The vision was never realized, and instead Texas sends nearly 17,000 people to state jail facilities each year for offenses as minor as possession of less than a gram of a controlled substance (the equivalent of a sugar packet). They receive little programming and are released to the exact same circumstance from which they came, resulting in the highest re-arrest rate of any population leaving Texas’ correctional institutions.

“We’ve talked to district attorneys, judges, probation officers, and formerly incarcerated people, and there is a universal agreement that it’s time to reform the jail system in Texas,” said Doug Smith, TCJC Senior Policy Analyst and the report’s author. “The most important thing we can do is divert people charged with low-level offenses from jail and connect them with recovery supports as soon as possible instead of having them cycle in and out of the system.”

People in state jails typically have high rates of substance use and mental illness, and low education and employment levels; in fact, with an average seventh-grade education level, people in state jails are the most poorly educated of any population in the state’s corrections system.

Previous legislative efforts have sought to improve Texas’ state jail system, including time credits to incentivize participation in the limited programming available, and mandatory probation for first-time drug offenses. But stronger steps must be taken.

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TCJC is calling on legislators and local leaders to support:

- A public health response to behavioral health issues that are too often driving people into the justice system, specifically through *pre-arrest* diversion that helps people access treatment in the community;
- Changes in pretrial practices to prevent lengthy terms of detention that can lead to harsher terms, and to eliminate racial disparities in justice system involvement;
- Improvements in the state's probation system that will reduce revocations and accommodate people with prior offenses;
- Funding for a legislatively approved pilot program intended to improve employment prospects among people leaving state jails; and
- Strengthened pre- and post-release reentry supports for people reentering the community.

These recommendations will help address the myriad challenges facing people who continue to cycle through state jails, at great expense to families, communities, and taxpayers.

"I spent over ten years collectively behind bars, nearly always for state jail felonies like drug offenses, and always while I was being sexually trafficked," said Allison Franklin, TCJC Peer Policy Fellow. "Not once did someone identify the danger I was in. The correlation between trauma and substance abuse cannot and must not be ignored. Nor must that of mental health and substance dependence."

Other key findings from "A Failure in the Fourth Degree":

- Texas has the third-lowest ratio of substance use disorder providers in the country. Low-income people must wait more than two weeks for intensive residential treatment, four weeks for outpatient treatment, and almost five weeks for Medication-Assisted Treatment. Not surprisingly, people with drug use problems are far more likely to be arrested than receive treatment in Texas. Over the past five years, nearly every category of serious and violent offense has declined significantly, whereas drug possession cases have increased nearly 25 percent.
- There were 45,016 arrests in Texas for possession of a controlled substance (less than one gram, Penalty Groups 1 and 2) between May 2017 and April 2018.
- 63 percent of people released from state jail are rearrested within three years of release, compared to 46 percent of people released from prison.
- In TCJC's interviews of people in state jails, 43 percent of males and 50 percent of females had been previously diagnosed with mental illness, and 43 percent of males and 53 percent of females had been previously diagnosed with a substance use disorder.
- Of the women interviewed by TCJC, 55 percent were incarcerated in state jail as a result of a probation violation, with many pointing to the burdensome costs of probation.
- After one year, Harris County's *Responsive Interventions for Change* (RIC) court docket sent 600 fewer people to state jail and dismissed 1,412 more drug possession cases in 2017 than in 2016.

For a copy of the report, visit www.TexasCJC.org/one-size-fails-all.

To learn more about the Texas Criminal Justice Coalition, visit www.TexasCJC.org.