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INTERIM TESTIMONY 2016

Joint Hearing of House Criminal Jurisprudence and Corrections

Dear Members of the Committee,

I want to thank you for this opportunity to testify on the effectiveness of probation fees and fines, particularly as they relate to probation revocations. A significant proportion of all individuals sent to state jail or prison each year violated the terms of their probation, so it is imperative that the state look more closely at the extent to which excessive out-of-pocket expenses related to community supervision inhibit probation placement or drive revocations.

PROBATION SUPERVISION HAS BECOME LESS ABOUT REHABILITATION AND MORE ABOUT DEBT COLLECTION

Court-ordered fines should serve two functions:

- (1) Provide restitution to crime victims, and**
- (2) Serve as a consequence to deter future offenses.**

However, when a judge sentences a defendant to probation in Texas, the sentence carries with it a host of financial obligations far in excess of the intended function of fines. Community Supervision and Corrections Departments (CSCDs) are then obligated to perform collection for the court, law enforcement agencies, and their own revenue. (See example at right.¹)

- **Court Costs:** Mandatory and discretionary court costs are assessed as a condition of probation, and many costs have become a primary source of funding for programs and services outside of the judicial branch; yet, the responsibility for collecting these court costs shifts to the CSCD once a payment arrangement has been made.²

DEPARTMENTAL COLLECTIONS					
The department collected \$3,184,450.08 in fees and fines in the fiscal year '15, representing a decrease of 1.28% from FY '14. Supervision fees increased .03%, Appointed Attorney fees increased 6.1%, Court Costs decreased 1.9%, Crime Stoppers decreased 8%, Fines increased 0.2% and Restitution decreased 1.5% from FY '14.					
The following table compares collections for fiscal years '11 through '15.					
Department Collections	FY'11	FY'12	FY'13	FY'14	FY'15
Court Appointed Attorney Fees	145,690.39	156,688.67	148,803.18	151,030.33	160,819.54
Supervision Fees	1,348,112.25	1,306,015.62	1,238,959.37	1,240,024.87	1,243,648.12
Court Costs	376,207.75	364,439.69	362,582.02	343,276.71	337,068.78
Crime Stoppers	10,527.99	10,657.25	9,698.75	9,399.99	8,650.47
Fines	682,809.26	659,993.98	629,652.56	613,662.34	614,570.16
CSRP Felony Bond	7,168.00	7,509.00	10,655.05	7,242.50	7,678.00
CSRP Misdemeanor Bond	3,472.00	8,012.00	6,059.00	3,831.00	4,662.90
DPS Lab Fee	16,112.80	16,321.50	13,644.00	14,360.50	12,199.50
Transaction Fee	44,093.43	43,268.06	42,344.03	45,216.02	44,393.16
Restitution	513,535.25	492,075.59	437,377.05	446,732.87	440,227.73
Alcohol Monitoring Fee	28,455.50	29,363.25	28,820.00	25,518.50	14,720.25
SoberLink				6,241.00	2,868.77
Chemical Dependence Ed.	7,385.28	10,469	8,277.91	6,272.00	799.00
Anger Management Program	3,000.00	3,540.00	3,519.00	4,305.00	4,691.00
Pre-Trail Diversion	99,259.50	125,527.00	135,644.65	138,557.98	120,077.31
Electronic/GPS Monitoring Fee	7,642.22	6,319.65	4,540.50	6,748.50	4,605.50
In-State Transfer Fee	16,316.00	17,606.23	15,415.00	16,729.00	16,172.30
Out-of-State Transfer Fee	2,748.00	3,664.00	3,900.00	3,040.00	3,506.00
Substance Abuse Counseling	90,742.12	69,901.58	67,653.37	58,247.00	53,011.87
Substance Abuse Workbooks	1,132.95	1,183.00	539.00	93.00	40.00
Overpayment	16,128.41	17,349.17	10,898.80	2,981.94	1,748.54
Rearrest Fee	5,930.50	5,922.75	5,773.29	5,860.97	6,275.18
Shelter Fee	680.00	1,782.00	1,622.95	1,780.55	1,061.00
Polygraph	19,074.53	16,221.85	18,419.25	26,359.75	27,042.58
Sexual Assault Program Fee	3,414.50	3,547.15	3,734.93	5,668.42	5,699.52
Sex Offender Counseling	24,405.39	24,352.25	25,758.75	27,367.40	26,951.92
Sex Offender Workbooks	171.58	74.30	101.45	137.70	377.35
Sexual Adjustment Inventory	160.00	210.00	190.00	210.00	220.00
Drug Test Fee	6,738.50	6,001.00	5,488.50	6,410.50	6,796.88
Drug Confirmation Fee	275.00	242.00	651.00	363.00	647.75
Drug Patch				778.00	1,059.00
Interlock Sticker	88.00	142.00	90.00	183.00	60.00
Occupational Driver License Fee		4,136.00	6,074.00	5,255.00	5,050.00
JP Bond			150.00	1,650.00	7,050.00
Total Collections	3,482,470.00	3,412,665.54	3,247,673.36	3,225,535.34	\$3,184,450.08

- **Supervision Fees:** Probation supervision fees of up to \$60 per month are an essential source of funding for every CSCD. The state pays \$1.63 per person per day for basic felony supervision,³ and only \$.70 per person per day for no more than six months of misdemeanor probation.⁴ In order to pay for probation officer salaries, department facilities, and other supervision expenses, CSCDs must collect supervision fees.
- **Fees Associated with Conditions of Supervision:** Courts frequently order defendants to address the issues that contributed to their criminal involvement, such as substance abuse. This may involve inpatient or outpatient treatment, aftercare, or classes, and probationers are generally expected to pay for at least a portion of these services. Some CSCDs obtain grants from the Community Justice Assistance Division of the Texas Department of Criminal Justice to establish treatment programs and specialized caseloads, which may mitigate out-of-pocket costs to the probationer; however, grant awards vary by CSCD, and some counties receive no additional funding.⁵ Separately, probationers are obligated to pay for regular drug screens and electronic monitoring.

For a sense of how much a probationer in Texas may expect to pay in order to avoid incarceration, please refer to the attachment, *Probation Fees, Fines, Court Costs, and Other Out-of-Pocket Expenses: Selected Offenses*.

FINANCIAL PRESSURE NEGATIVELY IMPACTS REHABILITATION AND CAN LEAD TO PROBATION FAILURE

The collection of fines, fees, court costs, supervision costs, and treatment expenses is at the heart of nearly every meeting with a probation officer. Following the principles of effective debt collection, officers must instill a sense of urgency to pay, often reminding probationers that willful failure to pay can result in revocation and incarceration.⁶ **In addition to the threat of revocation, the term of probation can be extended due to non-payment of the various costs.**⁷

Interviews with Probationers on Fees/Fines

“[My officer] suggested that I get a third job and threatened to lock me up.”

“I have to pay about \$260 every month. I don’t even have a high school diploma, so it is hard to get a job, have to do construction. I live on my own, have to pay bills. . . sometimes I don’t even have money to eat.”

“My probation officer said I will go to jail if I’m behind on payments. Once I was behind about \$400 and she threatened to send me to jail.”

“The most ridiculous thing about probation is the fees. Being on probation I live paycheck to paycheck.”

*From Probation Revocations and its Causes –
Bell County, Robina Institute*

In interviews with probation chiefs across the state, all of them acknowledged that fee collection was essential to maintain operations, attract and retain qualified staff, and meet audit requirements. **One CSCD offers incentives such as additional days off to officers who exceed collection targets.**

Most CSCDs acknowledge the financial pressure on probationers, especially in counties hardest hit by the slump in the oil and natural gas industry, and they work very hard to establish payment arrangements and obtain waivers of fees when available. One CSCD even allows for probationers to pay arrears on various fees by performing community service. However, it is still common for CSCDs to request extensions of the term of community supervision based solely on non-payment of fees, even when all other conditions have been met.

Financial Pressure Comes in Many Forms

In looking at fees, no single out-of-pocket cost is responsible for making probation so difficult; it is the totality of financial pressures. In addition to the costs described above, there are financial consequences associated with a criminal offense that threaten one's ability to make a living:

- **Loss and Reinstatement of Driver's License:**⁸ For certain offenses, such as Driving While Intoxicated or Possession of a Controlled Substance, the state requires the defendant to attend classes, pay liability insurance costs and Driver Responsibility Program surcharges, and pay license reinstatement fees. The costs can exceed \$1,000 per year, which must be paid on top of probation expenses if one expects to meet employment and family obligations.
- **Restrictions on Occupational Licensing, Housing, and Employment:** People with criminal and arrest records experience significant limitations in terms of employment and housing opportunities. Hundreds of professions include some form of licensing restriction based on criminal record, and many highly qualified professionals must relinquish their occupational licenses upon conviction.⁹ For probationers, these limitations produce employment and housing instability at the same time that additional financial obligations have been imposed. **About 42 percent of those on felony community supervision are unemployed.**¹⁰
- **Diminished Earning Capacity Related to Substance Abuse and Mental Health:** The financial obligations associated with probation begin to accumulate regardless of the need to address the issues that ultimately led to criminal involvement. When asked about the issues faced by people on community supervision in Texas, most probation chiefs list substance abuse, mental health, vocational and educational deficits, or co-occurring disorders. About three-quarters of those on community supervision have a risk and need level in the high to moderate range,¹¹ requiring more intensive supervision, treatment supports, aftercare, and classes while the range of fees, fines, and court costs remain unpaid.

"We're putting serious financial pressure on individuals and we need to think about how this debt is experienced...It's not just a \$500 fine. It's a \$500 fine on top of limitations on where you can work, what type of occupational license you can obtain..."

Professor Chris Uggen, University of Minnesota

Understanding the Felony Community Supervision Population

It is extremely important to understand the needs experienced by those placed on community supervision.

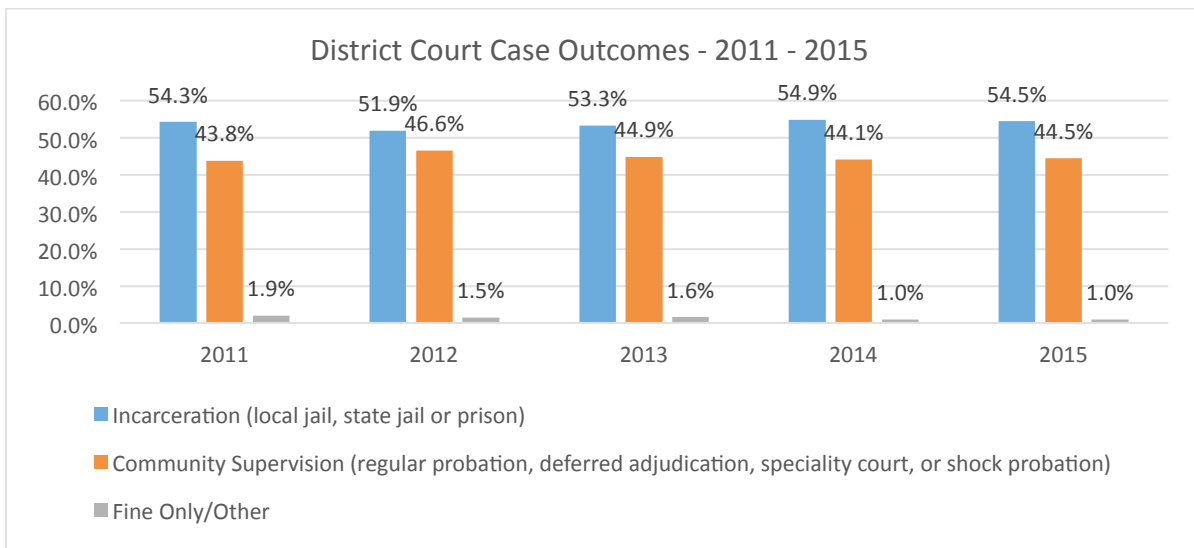
- » The vast majority of individuals begin the term of community supervision with high to moderate needs with respect to substance abuse and mental health.¹² **More than 22 percent rank very high in terms of risk and need, while another 52 percent are at moderate risk and need.**
- » About **45 percent of probationers have achieved less than a high school education or GED** at the time of probation placement.
- » Approximately **35 percent of those on felony probation are under the age of 25**, bringing a host of developmental challenges such as poor impulse control.

THE RESULT OF EXCESSIVE COSTS AND COMMUNITY SUPERVISION CONDITIONS

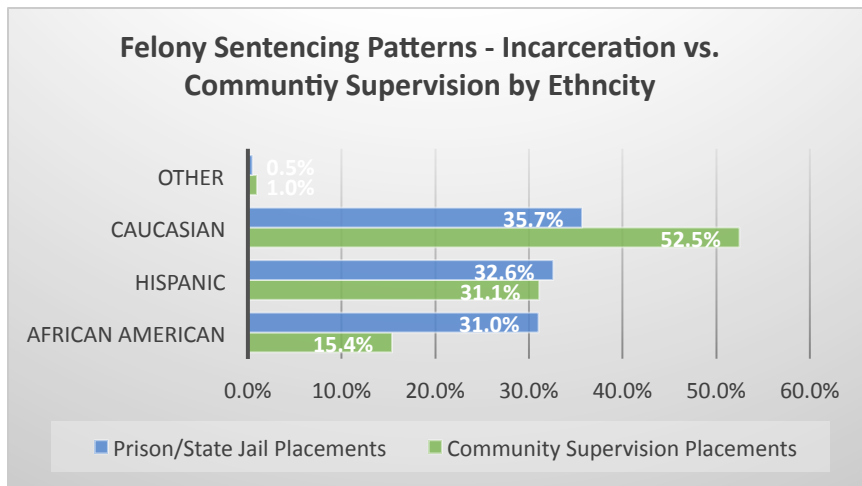
Shifting the burden of probation fees, court costs, and various law-enforcement fees to this high-risk/high-need population has a two-fold effect.

(1) Stagnant Probation Placements

Of the cases adjudicated in district court over the past five years, there has been no change in the proportion of individuals sentenced to some form of community supervision versus those sentenced to incarceration. Since 2011, the proportion of felony defendants sentenced to jail, state jail, or prison has remained well above 50 percent, with a mere 44 percent sentenced to some form of community supervision, including a drug court, deferred adjudication, or regular probation.¹³



For many, the financial obligations and resulting stress are too much of a risk. Probation failure can lead to lengthier prison sentences, especially for those placed on deferred adjudication; moreover, probation revocation is one of the factors that can lead to denial of early parole release if one is sent to prison.¹⁴ Many people would rather take a plea agreement for jail, state jail, or prison time than risk revocation and extended criminal justice system involvement.



Disturbingly, the excessive costs on top of all of the other conditions of community supervision have the effect of diverting those with financial resources to probation, while increasing the likelihood of incarceration for those with fewer resources. This can have a disparate racial impact on sentencing. The graph at left provides a clear illustration of how community supervision favors particular groups based on race.

(2) High Revocation Rates

There were 22,980 felony probation revocations to the Texas Department of Criminal Justice (TDCJ) in 2015, a revocation rate only slightly lower than the year before while higher than five years ago.¹⁵ More than 53 percent of all revocations were for technical violations of the conditions of supervision rather than a new offense.¹⁶ Nearly one-third of all new receives to TDCJ were probation revocations.

To get a sense of perspective on this, the Texas Board of Pardons and Paroles (BPP) – which makes determination on early parole release, conditions of parole supervision, and possible revocation of parole for those who were released from prison – made a decision years ago to decrease parole revocations, especially for technical violations.

The BPP was given additional treatment options prior to parole placement, and additional resources to divert parole violators to treatment or Intermediate Sanction Facilities, resources that are available for probation violation. The result was a 55 percent reduction in parole revocations over the past 10 years, and a 47 percent reduction in technical violations.¹⁷ Conversely, the probation revocation rate has increased over the same period, and technical violations are at an historic high.

Probation vs. Parole Revocation Rates	
Probation: Community Supervision to Avoid Prison/Jail	Parole: Community Supervision Post Release from Prison
Revocation rate higher in 2015 than five years ago	Revocations down 50 percent over past 10 years and 20 percent over past five years
Nearly 53 percent of all revocations for technical reasons	Only 10 percent of revocations for technical reasons
\$25 - \$60 monthly fee in addition court costs, co-pays, fines, restitution, etc.	\$18 monthly fee

What is keeping probation in Texas from achieving a similar outcome? **Parole is fully funded by the state, and does not rely on fees from parolees. The modest \$18/month parole fee is returned to General Revenue.** Conversely, probation departments must make fee collection their highest priority, sometimes higher than addressing the underlying needs that led to criminal involvement. It is important to compare outcomes from these two forms of community supervision and address the disparity in revocations.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS TO IMPROVE SUCCESS ON SUPERVISION

(1) Decrease the Reliance on Fees for Department Operating Costs: Individuals on probation must focus on paying restitution and related fines, but they should not be expected to fund half the budgets of Community Supervision and Corrections Departments (CSCDs). They should also not be expected to fund judicial, law-enforcement, and non-judicial costs, the burden of which has been shifted to those least able to pay. High-risk probationers are not a stable source of funding for any governmental function.

Finding replacement funding can be achieved in various ways:

(a) Provide the same level of funding to CSCDs, but front-load the funding during the early term of supervision, when supervision levels are highest, and provide an additional financial incentive for early termination. This will allow CSCDs to provide necessary services and decrease caseload size without a substantial increase in funding. The cost of this will be offset by greater prison diversion and decreased revocations to TDCJ.

(b) Shift to a model where people charged with minor Class B misdemeanors, such as Possession of Marijuana, must complete a class or perform community service rather than complete the full term of probation. This will provide CSCDs with level funding with a smaller caseload size.

(2) Maximize Pretrial Supervision: It is critical to provide funding for pretrial programs to address the substance abuse, mental health, educational, and vocational needs of those awaiting trial. This will allow counties to reduce pretrial incarceration costs while addressing the needs that might otherwise lead to later criminal involvement. **Individuals who are released from jail while awaiting trial and who are offered the opportunity to engage in programming are far less likely to serve time in state jail or prison, and will have a far lower risk and need level when they are placed on community supervision.**

ATTACHMENT

Probation Fees, Fines, Court Costs, and Other Out-of-Pocket Expenses: Selected Offenses

	Class A Misdemeanor Theft	DWI – First Offense Class B	DWI – Second Offense	SJF – Possession of a Controlled Substance (<1 Gram)
Fines ¹⁸	Class A Not to exceed \$4,000	Class B Not to exceed \$2,000	Class A Not to exceed \$4,000	State Jail Felony Up to \$10,000
Court Costs ¹⁹	<ul style="list-style-type: none"> \$178 (mandatory) \$216 (Judge’s Discretion) 	<ul style="list-style-type: none"> \$338.10 (mandatory) \$231 (Judge’s Discretion) 	<ul style="list-style-type: none"> \$338.10 (mandatory) \$231 (Judge’s Discretion) 	<ul style="list-style-type: none"> \$275 (mandatory) \$225 (Judge’s Discretion)
Supervision Fee ²⁰	\$25 - \$60/month	\$25 - \$60/month	\$25 - \$60/month	\$25 - \$60/month
Driver Responsibility Program Expenses ²¹	N/A	\$1,000/year (three years)	\$1,500/year (three years)	N/A
Required Classes (probationer out-of-pocket expense)	\$40 - \$640 ²²	\$40 - \$640 ²³	\$40 - \$640 ²⁴	\$40 - \$640 ²⁵
Drug Education Program (to renew Driver’s License) ²⁶	N/A	N/A	N/A	\$100
DWI Classes (to renew Driver’s License)	N/A	\$70 - \$100 (price depends on provider)	\$250 (price depends on provider)	N/A
Driver’s License Reinstatement ²⁷	N/A	\$125 - \$325	\$125 - \$325	\$125 - \$325
Inpatient or Outpatient Treatment Costs (probationer out-of-pocket expense)	Varies based on availability of services, insurance coverage, etc.	Varies based on availability of services, insurance coverage, etc.	Varies based on availability of services, insurance coverage, etc.	Varies based on availability of services, insurance coverage, etc.
Aftercare ²⁸	\$160	\$160	\$160	\$160
Drug Screen/Urinalysis ²⁹	\$10 - \$25/week – month, depending on CSCD and supervision level	\$10 - \$25/week – month, depending on CSCD and supervision level	\$10 - \$25/week – month, depending on CSCD and supervision level	\$10 - \$25/week – month, depending on CSCD and supervision level
Interlock Device ³⁰	N/A	<ul style="list-style-type: none"> \$70 - \$150 (Installation) \$60 - \$80/month for monitoring and calibration 	<ul style="list-style-type: none"> \$70 - \$150 (Installation) \$60 - \$80/month for monitoring and calibration 	N/A
Victims of Crime Fund (when restitution is not ordered) ³¹	\$50	\$50	\$50	\$100
Restitution ³²	No limit (See Notes below)	Only if accident	Only if accident	No damage
Crime Stoppers ³³	\$50	\$50	\$50	\$50
Attorney Fees	See Notes below	See Notes below	See Notes below	See Notes below

Attachment Notes

Fines: Judge can choose to assess a fine. If a fine is assessed and a person cannot pay it, the judge can authorize a payment plan.

Court Costs:³⁴

- » For a full list of mandatory and discretionary court costs, please refer to Office of Court Administration publications, available at <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs.aspx>
- » Probationers may obtain a payment plan to handle court costs, but they cannot complete community service in lieu of court costs. These costs are ultimately used to fund specific state, local, and non-governmental programs unrelated to probation or court functions. Further, the Office of Court Administration will audit Community Supervision and Corrections Departments to ensure that court costs are being collected, and the Court can direct departments to issue Motions to Revoke Probation when court costs remain unpaid.
- » **In order to obtain a waiver of court costs due to inability to pay, probationers must default first.**
- » A defendant can run court costs concurrent with jail time, and nearly all defendants will have at least one day of jail time, which is the equivalent of \$100 per day.
- » When a new fee is opposed, the Office of Court Administration must do a fiscal analysis. **If it is an assessed court cost, the assumption is that 65 percent will be collected on a Class C Misdemeanor. On offenses higher than a Class C, the collection rate is 40 percent, which is equivalent to a 60 percent default rate.**

Attorney Fees:³⁵ Law only allows for a court to order a defendant to pay appointed attorney costs when there is a determination that the defendant is able to pay some or all of the costs associated with a public defender.

Restitution: This can include the amount of monetary loss to property associated with the offense, but also losses incurred by the victim in excess of the amount stolen, such as business losses. The amount must be objectively verified. If the defendant is on a payment plan for restitution, he or she must pay a \$12 payment plan fee, and nonpayment of restitution can lead to revocation of probation. Further, the judge can order some form of “service” as compensation to an estate that has suffered a loss.

Probation Fees: For more information, see page 112 of 155 in this publication (*Study of the Necessity of Certain Court Costs and Fees in Texas*) by the Office of Court Administration: <http://www.txcourts.gov/media/495634/SB1908-Report-FINAL.pdf>.

Citations

- ¹ Community Supervision and Corrections Department of Taylor, Callahan & Coleman Counties, Annual Report – Fiscal Year 2015, p. 14.
- ² Office of Court Administration, Criminal Court Costs, <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs.aspx>.
- ³ Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report – Fiscal Years 2013 – 2014, p. 6, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf.
- ⁴ Legislative Budget Board, Personal Communication
- ⁵ Texas Department of Criminal Justice – Community Justice Assistance Division, FY16-17 Diversion Program (DP) and Treatment Alternative to Incarceration Programs (TAIP) Grant Program Funding, https://www.tdcj.state.tx.us/documents/cjad/CJAD_FY2016-2017_Grant_Funding.pdf.
- ⁶ Brett Sivits, “The Collection Equation: Seven Tips for Effective Debt Collection”, <http://www.insidearm.com/opinion/the-collection-equation-seven-tips-for-effective-debt-collection/>.
- ⁷ Robina Institute of Criminal Law and Criminal Justice, University of Minnesota, Probation Revocation and Its Causes: Profiles of State and Local Jurisdictions – Wharton and Matagorda Counties, Texas, p. 9, <http://www.robinainstitute.org/publications/probation-revocation-causes-profiles-state-local-jurisdictions-wharton-matagorda-counties-texas/>.
- ⁸ Texas Department of Public Safety, Driver Responsibility Program, <http://www.txdps.state.tx.us/driverlicense/drp.htm>.
- ⁹ Gaebler, Helen, Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas, March, 2013, p. 2, <https://law.utexas.edu/publicinterest/research/criminalrecords.pdf>.
- ¹⁰ Texas Department of Criminal Justice – Community Justice Assistance Division, FY 2014 Offender Placements Profile, Data Request.
- ¹¹ Texas Department of Criminal Justice, FY 2014 Statistical Report, p. 5, https://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.
- ¹² Ibid
- ¹³ Office of Court Administration, Court Activity Reporting and Directory System, <http://card.txcourts.gov/AdHocSearchNew.aspx>.
- ¹⁴ Texas Board of Pardons and Paroles, Approval/Denial Reasons – “#5 - Adjustment During Periods of Supervision.” www.tdcj.state.tx.us/bpp/what_is_parole/reasons.htm.
- ¹⁵ Texas Department of Criminal Justice, Report to the Governor and the Legislative Budget Board on the Monitoring of Community Supervision and Diversion Funds, December 1, 2015, https://www.tdcj.texas.gov/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf.
- ¹⁶ Ibid, p. 9.
- ¹⁷ Texas Board of Pardons and Paroles, Chairman’s Report, January, 2016.
- ¹⁸ Texas Statutes, Penal Code
- ¹⁹ Office of Court Administration, Criminal Court Costs, <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs.aspx>.
- ²⁰ Section 19, Article 42.12, Code of Criminal Procedure
- ²¹ Texas Department of Public Safety, Driver Responsibility Program, <http://www.txdps.state.tx.us/driverlicense/drp.htm>.
- ²² Bell County Community Supervision and Corrections Department, Data Request.
- ²³ Ibid.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Texas Department of Public Safety, Drug and Controlled Substance Offenses, <https://www.txdps.state.tx.us/DriverLicense/DrugOffenses.htm>.
- ²⁷ Texas Department of Public Safety, Personal Communication
- ²⁸ Bell County Community Supervision and Corrections Department, Data Request.
- ²⁹ Todd Jermstad, Director of Bell County Community Supervision and Corrections Department, Personal Communication.
- ³⁰ Guardian Interlock, License Recovery, <https://guardianinterlock.com/state-laws/texas/>
- ³¹ Section 42a.301, Code of Criminal Procedure
- ³² Art. 42.037. RESTITUTION, Texas Code of Criminal Procedure
- ³³ Sec. 414.010, Government Code
- ³⁴ Ted Wood, Harris County Public Defender’s Office, Personal Communication.
- ³⁵ Ibid.