



**WRITTEN TESTIMONY ON HOUSE CORRECTIONS COMMITTEE INTERIM CHARGE 1 (HB 650 AND HB 3227)
SUBMITTED BY CYNTHIA SIMONS, WOMEN'S JUSTICE FELLOW, TEXAS CRIMINAL JUSTICE COALITION**

Dear Chairman White and Committee Members:

Thank you for this opportunity to provide written testimony with respect to Interim Charge 1, related to HB 650 and HB 3227 [2019], which aim to improve the treatment of incarcerated women, especially incarcerated pregnant women, and their children. The bills also create a mechanism for evaluating the process by which the Texas Department of Criminal Justice (TDCJ) facilitates the educational, medical, and wellness needs of incarcerated women, incarcerated pregnant women, and unborn children.

The passage of this legislation, with the leadership and support of your Committee, was critical in the effort to improve women's dignity and the hope for a parent-child relationship, which can be the seed of generational positive reinforcement. The passage also acknowledges the need to holistically address the emotional and mental health needs of incarcerated women and their unborn or newborn children. Together, these bills recognize TDCJ's responsibility to ensure the adequate availability of and access to peer support services and programming, including education, vocational, substance use treatment, rehabilitation, life skills training, and pre-release programs.

The Texas Criminal Justice Coalition (TCJC) and the Texas Women's Justice Coalition, which TCJC co-founded in 2018, understand that there have likely been unprecedented challenges to implementing new programs and policies due to the COVID-19 pandemic. Furthermore, we acknowledge that we will not be able to fully comment on women's access to programming until the Department releases its required implementation report, due by December 31, 2020, per HB 3227. Instead, we will rely on reports from women who are currently incarcerated, as well as on our communications with TDCJ officials, in response to this interim charge.

Background on Legislation

The omnibus **HB 650** sought to improve conditions and rights for pregnant women and mothers who are involved in the justice system by requiring the following:

- A trauma history screening upon intake into prison to identify significant trauma and refer those women to the proper health care professional for treatment;
- Correctional officer training related to medical and mental health care for pregnant women;
- Pregnancy and parenting classes;
- Additional nutritional support for pregnant women;
- Limits on invasive searches of pregnant women;
- A prohibition of shackling of women while pregnant;
- A prohibition on the use of solitary confinement for pregnant women and those who gave birth within the previous month;
- A prohibition on beds for pregnant women that are higher than 3 feet above the floor;

- 72-hour post-delivery care, where an infant can remain with his or her mother (unless it would pose a health or safety risk to either), and the woman can receive nutritional or hygiene products necessary to care for the infant;
- A requirement that searches of rooms or areas in which women are not fully clothed be conducted only by female correctional officers;
- Up to 10 free feminine hygiene products per day on a woman's request, which must comply with applicable federal standards for comfort, effectiveness, and safety; and
- A study and report by TDCJ by December 31, 2020, on the effect that its current visitation policies have on the relationships between incarcerated individuals and their children, with a review of evidence-based visitation practices that enhance parental bonding and engagement, and age-appropriate visitation activities for children that enhance cognitive and motor skills.

The provisions of **HB 3227** require the state prison system to increase availability of certified peer support services, including by justice system-involved peers, and increase access to recovery and rehabilitation services for incarcerated women. More specifically:

- Recovery and rehabilitative services include educational, vocational, substance use treatment, rehabilitation, life skills training, and pre-release programs; and
- TDCJ must annually report to state leadership on any internal policies that were created, modified, or eliminated during the preceding year to meet these programming requirements, and it must list programs available to incarcerated women during that year.

Monitoring Implementation: Good News but More Transparency Needed

We are pleased to learn from preliminary, verbal TDCJ reports¹ and our correspondence with incarcerated women that pregnant women in TDCJ custody are no longer being shackled during labor and delivery, and that training is in place for correctional officers per HB 650. We also commend TDCJ for the step toward implementing the provisions of HB 3227 by establishing the STRIVE program, a trauma-informed, 12-week reentry support program that began in September 2019 with 31 women in its first class.² *[Note that we would hope for this program to extend to larger groups of women, given that nearly 9,000 are incarcerated, and that it would reach women in state jails.]* But still, these are some positive improvements and we are thankful to leadership for enacting these changes while balancing the demands of a public health crisis.

Yet, despite the bills' original intent to address multiple areas regarding women's rights and wellbeing, these have been some of the only positive changes reported. Again, TDCJ's report on women's access to programming may reveal more progress, but based on the letters we have received from incarcerated women, significant improvement is unlikely. For instance, many women have reported that they still suffer from a lack of basic hygiene products, and that there have been few accommodations for improved family visitation, even prior to the limitations caused by COVID-19. It is also clear that some changes fail to meet the standard necessary to be effective, such as the limited nature of the STRIVE program. All of this is paired with a continued lack of mental health support, even in the midst of a traumatic and dangerous public health crisis.

In addition to the challenges inherent in monitoring the implementation of new bill provisions via correspondence with incarcerated women – as well as through only limited communication with TDCJ personnel – the lack of ongoing, transparent public reporting further muddies our ability to determine whether these bills are being fully and effectively enacted.

Recommendation: Establish an Office of Independent Oversight

For 20 years, the Texas Criminal Justice Coalition has monitored conditions of confinement, programming, and the implementation of new legislation in Texas, and one issue has remained consistent: To ensure the effective implementation of reforms, TDCJ needs an Office of Independent Oversight.

Unlike the Texas Juvenile Justice Department, TDCJ is not subject to external oversight. Instead, it has *internal* mechanisms, including the offender grievance process, the Ombudsman office (which handles inquiries from the public), and the Office of the Inspector General (which conducts investigations and policy monitoring). However, those mechanisms do not and cannot serve the same role or offer the same benefits as external oversight, which promotes transparency, accountability, safety (both for people who work there and people who are housed there), and good government. Furthermore, external oversight reduces the likelihood of media scandals or expensive litigation against the agency for violations of individuals' rights or wellbeing, and it ensures that facilities are better equipped to help incarcerated individuals prepare for reintegration into our communities.

The funding for independent oversight can be sourced from commissary profits as a total of 0.1% of TDCJ's budget. The money is directly from incarcerated individuals' family expenditures to TDCJ, creating no unnecessary funding challenge during this difficult budget cycle.

With COVID-19 continuing to threaten the welfare of people in facilities – and given its impact on access to visitation, rehabilitative programming, recreation, and sufficient meals – it is especially timely and important for TDCJ to implement independent oversight. The dangerous lack of transparency impacts not only incarcerated individuals and their family members, but the Legislature, which is denied an independent monitor of prison operations and cannot make informed decisions regarding sentencing and correctional policies.

The Texas Women's Justice Coalition is comprised of approximately 60 formerly incarcerated women, advocates, and service providers who seek to stem the tide of women's incarceration, improve their conditions of confinement and expand their access to services, and help women safely and successfully return to their families and communities.

¹ Periodic phone calls with TDCJ officials since March 2020.

² Texas Tribune, *New Texas prison program aims to help women leave the system with jobs waiting for them*, September 25, 2019, <https://www.texastribune.org/2019/09/25/texas-prison-program-help-women-reenter-society-jobs-waiting-them/>.