

INTERIM REPORT *to the 86th Texas Legislature*



**HOUSE COMMITTEE ON
CORRECTIONS**

November 2018

**HOUSE COMMITTEE ON CORRECTIONS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2018**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
86TH TEXAS LEGISLATURE**

**JAMES WHITE
CHAIRMAN**

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Committee On
Corrections

November 16, 2018

James White
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P.O. Box 2910
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The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Corrections of the Eighty-fifth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-fifth Legislature.

Respectfully submitted,

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Alma Allen

Ramon Romero, Jr.

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Matt Schaefer

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Members: Sarah Davis, Ramon Romero, Jr., Scott Sanford, Matt Schaefer, and Tony Tinderholt

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Preface and Introductory Comments

At the beginning of the 85th Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Corrections. The committee membership included the following: James White, Chairman; Alma A. Allen, Vice Chair; Sarah Davis, Ramon Romero, Jr., Scott Sanford, Matt Schaefer, and Tony Tinderholt.

The Committee was given jurisdiction over all matters pertaining to:

- The incarceration and rehabilitation of convicted felons;
- The establishment and maintenance of programs that provide alternatives to incarceration; and
- The following state agencies: the Texas Department of Criminal Justice, the Special Prosecution Unit, the Board of Pardons and Paroles, the Texas Civil Commitment Office, and the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The Committee appreciates the time, effort, and input of all who testified before the Committee - state agency officers and personnel, representatives from non-profit organizations, service providers, stakeholders, and individual members of the public. The thoughts, resource materials, and suggestions brought to the Committee contributed greatly to the preparation of this report.

Many factors contribute to the behaviors of individuals which may one day result in their involvement with the criminal justice system. We have become aware of an array of preventive measures that fall outside the jurisdiction of this Committee that can help lower the incidence of violent and non-violent crimes and improve the lives of those who may struggle with the effects of abuse, lack of opportunities, neglect, and poverty. To that end, we commend the study and implementation of some of the following measures by other committees, non-governmental entities and non-profit entities that would include:

- Promotion of strong families;
- Implementation of family leave accommodations not coerced by government;
- Advancement of strong, pro-growth economic policies that will lead to more employment opportunities, increased wages, and economic liberty;
- Creation of opportunities for high quality child care accommodations not coerced by government with better collaboration between private sector childcare-development-centers and local education agencies;
- Implementation of robustly funded Early Childhood Intervention (ECI) programs;
- Formation of thoughtful school-based discipline response without over-reliance on court proceedings;

-
- Facilitation of strong early childhood education (Pre-K and Kindergarten);
 - Continuation of juvenile mental health efforts that focus on preventing and mitigating adverse childhood experiences (ACE's);
 - Utilization of thoughtful responses to prevent and overcome the effects on children who are trapped in the cycle of human trafficking;
 - Formulation of thoughtful bail and pre-trial procedures that comply with existing constitutional and statutory requirements;
 - Consideration of careful cite-and-release discretion that local jurisdictions already possess in regards to lower-level, non-violent offenses; and
 - Provision and reformation of the indigent defense system in order to meet constitutional standards.

Over time, intense and persistent collaborative efforts to implement these measures would lower the incidence of criminogenic behaviors and first-time criminal offenses. As a result, these efforts would contribute greatly to stronger communities and fewer persons separated from their families by long-term incarceration. While the outcomes might not be evident right away, positive effects will grow so that more people never encounter the criminal justice system and those who do will have better opportunities for self-improvement and release to return successfully to their families, the workforce, and self-responsible citizenry.

Overview of Texas Corrections System

The Texas prison system presently maintains 95 prison units spread across six regions of the state, in addition to 10 private prison units operated by Management and Training Corporation (MTC) under contract with the Texas Department of Corrections. Of these, 87 are facilities for males, and 13 are facilities for females, and 3 co-gender units. There are 14 state jail facilities and 3 private state jail facilities, 3 psychiatric units, 2 medical units, and 5 substance abuse felony punishment facilities (SAFPF).

Demographic Highlights – August 31, 2017 TDCJ On Hand					
		Prison	State Jail	SAFP	Total On Hand
Total		133,600	7,867	3,874	145,341
Gender	Male	124,369	5,951	2,841	133,161
	Female	9,231	1,916	1,033	12,180
Race	Black	45,153	2,230	753	48,136
	White	42,528	3,358	1,879	47,765
	Hispanic	45,179	2,229	1,217	48,625
	Other and Unknown Race	740	50	25	815
Average Age (Years)		39.4	35.8	34.7	39.1
Offense	Violent Offense	80,397	97	921	81,415
	Property Offense	15,035	3,794	759	19,588
	Drug Offense	19,014	3,150	1,467	23,631
	Other Offense	19,154	826	727	20,707
Average IQ		90.47	91.22	92.00	90.52
Average Educational Achievement Score		8.45	7.86	8.15	8.41
Custody	Administrative Segregation (1A – 3A)	3,964	N/A	N/A	3,964
	State Jail Segregation (SR)	N/A	91	N/A	91
	Safekeeping (P1 – 7)	1,550	6	N/A	1,556
	G/J4	9,614	248	N/A	9,862
	G/J1 – 3 and OT	106,059	6,800	N/A	112,859
	G/J5	5,464	60	N/A	5,524
	Other Custody	6,949	662	3,874	11,485
Average Sentence Length (Years)		19.4	1.1	N/A	18.4

Demographic Highlights – FY 2017 TDCJ Releases					
		Prison	State Jail	SAFP	Total Releases
Total		40,835	18,442	6,462	65,739
Gender	Male	35,931	13,981	4,836	54,748
	Female	4,904	4,461	1,626	10,991
Race	Black	12,160	5,706	1,326	19,192
	White	13,935	7,513	3,145	24,593
	Hispanic	14,527	5,123	1,952	21,602
	Other Race	213	100	39	352
Average Age (Years)		37.5	35.7	34.8	36.7
Offense	Violent Offense	13,778	233	1,558	15,569
	Property Offense	7,532	8,689	1,347	17,568
	Drug Offense	9,477	7,697	2,498	19,672
	Other Offense	10,048	1,823	1,059	12,930
Average IQ		90.65	91.15	92.27	90.86
Average Educational Achievement Score		8.47	7.87	8.41	8.30
HS Diploma / GED		8,815	1,058	2,493	12,366
Custody	Administrative Segregation (1A – 3A)	8	N/A	N/A	8
	State Jail Segregation (SR)	N/A	0	N/A	-
	Safekeeping (P1 – 7)	207	16.0	N/A	223
	G/J4	1,542	939	N/A	2,481
	G/J1 – 3 and OT	34,700	16,584	N/A	51,284
	G/J5	915	365	N/A	1,280
	Other Custody	3,463	538	6,462	10,463
Average Sentence Length (Years)		7.4	0.9	N/A	5.3
Average Time Served (Years)		4.3	0.8	N/A	3.2
Percent of Sentence Served		61.1%	99.5%	N/A	

By state law, those who are released return to the county of conviction (the one that correlates with the offense of record), absent exceptional reasons. For example, a populous county such as Harris County that sentences a large number of offenders, will in correlation receive a large number of those who return to Harris County upon release.

Interim Study Charges

1. Evaluate the Texas Department of Criminal Justice response to Hurricane Harvey. Recommend any changes that could improve the operational stability of state criminal justice institutions following a natural disaster and changes that would allow for a more effective response.
2. Examine the use of social workers and peer support specialists in the Texas criminal justice system to assist individuals on probation, on parole, or who have been discharged, in order to reduce recidivism and improve outcomes. Identify best practices and make recommendations for legislative action.
3. Examine the current Texas criminal justice system policies and practices regarding 17- to 25-year-olds, specific to probation, parole, state jail confinement, and discharge from the Texas Department of Criminal Justice or county jail. Review any gaps in services that may be causing this population to recidivate. Make recommendations to improve the state's response to the needs of this population in order to lower revocation, re-arrest, and re-incarceration rates.
4. Examine treatment options, services, and programs available to women in institutional settings, on community supervision, on parole, and in community-based programs. Make recommendations for best strategies to address the needs of women in the Texas criminal justice system.
5. Review the Texas state jail system. Examine its original intent, sentencing guidelines, effectiveness, and recidivism rates. Make recommendations for changes in the state jail system. *(Joint charge with the House Committee on Criminal Jurisprudence)*
6. Study policies and protocols within the Texas Department of Criminal Justice to prevent the spread of infectious diseases. Examine when protocols are implemented and their efficacy in protecting the health and safety of inmates and state employees.
7. Review assessments used by the Board of Pardons and Paroles and parole panels to determine an inmate's risk of recidivism for purposes of granting parole and the use of GPS technology to monitor offenders.
8. Monitor Texas prison system heat-related litigation currently making its way through the courts. Monitor Prison Rape Elimination Act (PREA) compliance within Texas state and county criminal justice facilities.
9. Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature.

Interim Charge #1: Evaluate the Texas Department of Criminal Justice response to Hurricane Harvey. Recommend any changes that could improve the operational stability of state criminal justice institutions following a natural disaster and changes that would allow for a more effective response.

The Committee met on May 1, 2018 to consider Charge #1. Invited testimony included:

Bryan Collier, Executive Director, Texas Department of Criminal Justice

Response to Hurricane Harvey

Late August 2017, the Texas Gulf Coast experienced the greatest natural disaster in American history. Hurricane Harvey brought destructive winds and a deluge, which resulted in record levels of flooding. As the storm approached Texas, the Texas Department of Criminal Justice (TDCJ) prepared for Hurricane Harvey.

TDCJ staged buses for inmates and staff in the Beeville area in case of a need for an evacuation. In addition, TDCJ pre-positioned food, fuel for generators, water, and other necessities at units that Hurricane Harvey would potentially impact. TDCJ evacuated a total of 5,842 incarcerated justice-involved persons and 1,098 parolees and probationers. The location of the evacuated correctional facilities were primarily in Beaumont, Houston, Richmond, and Rosharon. TDCJ evacuated the justice-involved individuals to other correctional facilities in south and east Texas.¹

After Hurricane Harvey hit land, thirty prison units were without electrical power between the dates of August 26 - August 30, 2017. With most of the impacted facilities, TDCJ was able to shelter in place. In areas where services were down, TDCJ deployed back up generators and water tankers and delivered bottled water.²

The Texas Division of Emergency Management requested assistance with operations for the first responders and the public. Military units and the Texas Department of Public Safety used TDCJ facilities in Beeville as staging areas for their rescue operations. The TDCJ Office of Inspector General assisted local police departments with law enforcement duties.

According to live testimony from Jaclyn Parsonage (who spoke on behalf of AFSCME Texas Corrections Local 3114), many TDCJ employees went above and beyond at considerable personal sacrifice and out-of-pocket-costs. In her testimony, she claimed that these public servants provided food, cleaning supplies, and water, in addition to personal protective equipment that TDCJ did not have available. TDCJ public servants also experienced safety issues getting to their work sites. According to her testimony, TDCJ employees she interviewed felt that they did not know the associated health risks with cleaning flooded areas, such as exposure to contaminants, and would like the TDCJ leadership to educate them for future reference. In addition, she cited the need to add more correctional staff so that TDCJ would exhibit better preparation to meet major unexpected events of this sort.³

Recovery

Prisoners have returned to evacuated units. Hurricane Harvey caused minimal damage to the units infrastructure. However, this storm's primary damage impacted roads and fencing around the facilities. There was some equipment damage to agricultural and transportation equipment, transformers, and water heaters. Hurricane Harvey caused the loss of approximately 2,600 acres of cotton and corn crops being cultivated at prison units.⁴

Expenditures

Most of TDCJ's expenditures came from labor costs associated with the evacuating and repopulating of facilities. According to TDCJ's report, the expenditures as of April 5, 2018 totaled \$3.5 million.⁵ This amount includes labor costs (overtime only) as well as equipment used, fuel, rentals, and other related expenses. Of the current expenditures, TDCJ expects approximately \$2.9 million to be covered by FEMA.⁶

Under the 2018 - 2019 General Appropriations Act (GAA), Article IX, Section 14.04: Disaster Related Transfer Authority, the Legislative Budget Board (LBB) and the Governor approved the transfer on January 24, 2018, of \$38.6 million from the Department of Criminal Justice FY 2019 appropriations to the General Land Office for FY 2018 recovery and rebuilding efforts. The General Land Office also had transferred \$12.0 million from its FY 2019 agency funds to FY 2018.⁷

As of January 30, 2018, the LBB projected total statewide hurricane recovery costs in All Funds of \$5,341.2 million for FY 2018. Out of projected costs for several agencies, including the Department of Criminal Justice, federal funds accounted for \$4,607.5 million and \$436.6 million were General Revenue Funds. Estimated costs projected by TDCJ were \$5.0 million.⁸

Preparation

To prepare for future storms, TDCJ is preparing to conduct a simulated exercise of a direct strike from a hurricane in the coming weeks (as indicated at the time of this testimony).⁹

Recommendations

- 1. TDCJ regularly conducts simulated exercises and plans for future contingencies. Immediately, the Department should ensure that its planning operations include appropriate levels of personal protection equipment, along with the deployment of this equipment.**
- 2. The Legislature should consider ensuring an adequate supply of personal protection equipment, such as face masks and first-aid kits, for TDCJ employees to prepare for potential natural disasters and other contingencies.**
- 3. TDCJ should consider streamlining policies and procedures to ensure the physical, medical, and mental health of our correctional public servants before and during a natural disaster.**
- 4. The Legislature and the Office of the Governor should assist and ensure the timely FEMA reimbursement due to TDCJ and that the Department's budget is reconciled.**

Interim Charge #2: Examine the use of social workers and peer support specialists in the Texas criminal justice system to assist individuals on probation, on parole, or who have been discharged, in order to reduce recidivism and improve outcomes. Identify best practices and make recommendations for legislative action.

The Committee met on May 1, 2018 to consider Charge #2. Invited testimony included:

April Zamora, Director of Reentry and Integration Division, TCOOMMI
Trina Ita, Deputy Associate Commissioner for Behavioral Health Services, HHSC
Dr. Courtney Harvey, State Forensic Director, HHSC
Rebecca DePew, Judge, Bell County Court at Law #3
Katherine Martin, Veterans Court Coordinator, Bell County
Will Francis, LMSW - Government Relations Director, National Association of Social Workers - Texas Chapter
Greg Hansch, Public Policy Director, National Alliance on Mental Illness - Texas Chapter
Reggie Smith, Policy Analyst, Texas Criminal Justice Coalition
Kerrie Judice, Policy Associate, Texas Criminal Justice Coalition
Annette Price, Intake Specialist, Texas Fair Defense Project
Samantha Schaffer, Budget Analyst, Legislative Budget Board

Social Workers and Peer Support Specialists

Texas has identified a severe shortage in the number of psychiatrists, psychologists, and other mental health professionals to help diagnose and serve those who may have behavioral or mental conditions that lead them to encounter law enforcement officials and systems.¹⁰ "Ensuring access to adequate mental health and substance use treatment and services requires a robust and diverse mental health workforce."¹¹ In an effort to learn how licensed social workers and certified peer support specialists might assist Texans involved in the criminal justice system (or divert them from it), and help coordinate service needs and delivery by mental health entities, law enforcement entities, and the medical community, the Committee heard invited and public testimony on this subject.

Texas is not alone in facing local shortages of resources to serve individuals with mental illnesses appropriately and effectively. This often impacts local jails which are not designed for mental health treatment. Other states such as California, Minnesota, New Hampshire, New Mexico, Ohio, Virginia, and Wisconsin face similar issues. According to the National Association of Counties,

"U.S. jail admissions reach 11 million annually, and the number of people in county jails is now at four times the size of the 1970 jail population. Much of this growth has been driven by small and mid-sized counties, which now make up more than 75 percent of the U.S. jail population. Jails across the nation serve an estimated 2 million people with serious mental illnesses each year -- almost three-quarters of whom also have substance use disorders. The prevalence of people with serious mental illnesses in jails is three to six times higher than for the general population. Once incarcerated, these individuals tend to stay longer in jail and upon release are at a higher risk of returning than those without these illnesses."¹²

Texas is one of a minority of states that has passed laws allowing for a suspension of Medicaid benefits rather than a termination for detained or incarcerated justice-involved individuals. This is helpful upon reentry since correctional personnel can take steps to keep individuals enrolled or set up presumptive eligibility to equip them with their Medicaid ID before release.¹³

Significant mental health issues such as schizophrenia, depression, post-traumatic stress disorder as well as those with substance use disorders and neuro-developmental issues heavily burden law enforcement, probation and parole. The training required for a law enforcement officer or probation officer to become proficient in addressing individuals with these types of special needs is time consuming. Far too often, the criminal justice system's response to an individual's crisis is incarceration. However, there are law enforcement and probation departments in this state who have found a way to safely divert individuals in crisis from incarceration and the method they are utilizing is with the assistance of trained social workers, who are on staff within their respective departments.

For example, the Bell County Probation Department employs social workers who assist probationers' access to beneficial resources which in turn assists them in complying with the terms of their probation. They also play a critical role with crisis intervention, or if the probationer is overwhelmed, they can provide basic counseling and goal development.

According to the testimony of Katherine Martin, probation officers and social workers both agree that working along side each other creates a positive dynamic as "the probation officer often sees the client in a black and white manner; whereas, the social worker incorporates the grey to fill the gaps."¹⁴

Value of Social Workers

Once a justice-involved person leaves a correctional facility, they are faced with a host of barriers when it comes to getting settled back into the outside world. Trained professionals providing valuable assistance can make that transition a little easier. According to the testimony provided by the Texas Criminal Justice Coalition (TCJC), social workers have been employed in the criminal justice system since the profession's inception in 1904. In training, pedagogy includes field work and theory, which equips social work practitioners with the ability to think critically and assess needs, the capacity to address physical and psychosocial needs, communication skills, in addition to having knowledge of service providers. All of these skills combined allow for social workers to serve as force multipliers in the criminal justice field.¹⁵

Academically, social workers learn how to identify risk factors and barriers properly. This allows them to understand what the client is going through and the reasoning behind their actions. "Hiring and retaining social workers in criminal justice probation settings could reduce the number of revocations due to technical violations, decreasing the cost for subsequent incarceration."¹⁶ In many cases, the incarceration does not provide the best environment to address substance abuse challenges. Social workers possess a skill set to recognize the signs of substance use disorder when this information is provided to them.¹⁷

Benefits to the State

There is a large number of adults that are sent to TDCJ because of probation violations. With the deployment of social workers in the probation field, Texas has the opportunity to achieve the positive outcomes designed by reforms several years ago. "Funding incentives in the 79th and 80th Texas Legislatures sought to enhance community supervision by reducing probation officers' caseloads to make them more manageable, increasing community-based program capacity to divert more adults into treatments instead of incarceration, and implementing progressive sanctions models to reduce revocation rates."¹⁸

Social workers can provide the expertise to reverse the trend of revocation resulting in incarceration due to substance abuse and mental health issues.¹⁹

What is Peer Support?

Through peer support programs, justice-involved individuals can have someone mentor them and walk hand-in-hand as they go through their journey with someone who is familiar with their experiences.

According to Reggie Smith from TCJC, peer support involves specially-trained peers with personal life experience, histories of substance use, mental health conditions and criminal justice involvement. They are certified and have achieved a degree of stability in their lives and are able to help those who share similar histories. Local governing entities and nonprofit agencies employ peer navigators to provide support to others in the criminal justice system. This provides organizations with legitimacy as they employ individuals who have criminal justice experience. Use of peer support programs has the potential to improve outcomes for those in the criminal justice system who suffer with mental health needs and substance use disorders.²⁰

How Peer Support can Improve Criminal Justice System Outcomes

Peer navigators work one on one with individuals who are referred to them from mental health and drug courts to provide ongoing support that consumers may need to avoid re-incarceration. Some peer navigators work with individuals inside jails and prisons to help them develop reentry plans, while others work with community-based reentry programs to provide encouragement and assistance.²¹

"Peer support could also play a key role in promoting reintegration of people returning to community supervision from Substance Abuse Felony Punishment (SAFP) programs, in-prison therapeutic communities to which certain defendants are placed as a condition of probation or parole. The SAFP program results in a 17.39 percent lower recidivism rate compared to those with similar needs who are not sent to programming;²² however, this is only for those who actually complete the aftercare portion of SAFP. The problem is that many people leave these programs, return to the community, often to the same temptations and stressors that they left behind, and relapse. Because of this, the rearrest rate for people leaving SAFP remains above 40 percent.²³ Again, pairing individuals leaving SAFP programs with peer support will greatly improve program outcomes and decrease arrests."²⁴

Peer Education

TDCJ offers an Offender Peer Education Program that provides education training for the justice-involved. TDCJ offers this training within 30 days of arrival into a facility. The program is a 9-hour course that is for both men and women.²⁵

In addition, there is a 3-hour TDCJ course on sexual assault awareness that focuses on the prevention of sexual abuse. There are additional TDCJ Offender Peer Education Programs that relate to PREA (Prison Rape Elimination Act) and health services such as HIV, hepatitis, and other communicable diseases.

Peer Recovery Coaching Texas Recovery Initiative

TDCJ staff are certified trainers in Peer Recovery Coaching offered by the Department of State Health Services. Recovery coaching is a support system for people with an active addiction or are in recovery from any addictive behavior. During their period of incarceration, TDCJ provides the justice-involved training and opportunities to serve as peer educators during the remainder of their incarceration. Completion of the program can lead to state-approved certification.

Texas Correctional Office on Offenders with Medical or Mental Impairments

There are additional programs such as the Texas Correctional Office on Offenders with Medical Impairments (TCOOMI) that provides another way to offer peer support to offenders. "TDCJ - TCOOMMI contracted programs have the ability to offer, refer and utilize peer services for TCOOMI enrolled clients. The most common peer services include peer group classes. Some examples of this are Family Partner Specialist, Military Veteran Peer Network, and Recovery Peer Support."²⁶

Social Work Factors Facilitating Positive Change in Offenders

In order for behavior to get better, there needs to be a facilitation of positive change. According to Will Francis of the National Association of Social Workers, there are factors when it comes to seeing a positive change in offenders;²⁷

- **Role Clarification:** This involves frequent and open discussions about roles, purposes and expectations as well as the use of authority, and negotiable and non-negotiable aspects of intervention and confidentiality;
- **Pro-social modeling and reinforcement:** This involves the identification, reward, and modeling of behaviors to be promoted and the identification, discouragement, and confrontation of behaviors to be changed;
- **Problem solving:** Involves the surveying, ranking, and exploration of problems, goal setting and contracting, the development of strategies, and ongoing monitoring; and
- **Relationship:** Involving the working being open and honest, empathic, able to challenge and not minimize rationalizations, non-blaming, optimistic, able to articulate the client's and family members' feelings and problems, using appropriate self-disclosure, and humor.

The Second Chance Act Grant Program

The Second Chance Act (SCA) Grant Program provides states with the resources to help the justice-involved who are reentering society. Social workers can be a big part in what makes an inmate successful in the reentry process.

The Second Chance Act supports state, local, and tribal governments and non-profit organizations in their work to reduce recidivism and improve outcomes for people returning from state and federal prisons, local jails, and juvenile facilities.²⁸ This act was passed with bipartisan support and signed into law on April 9, 2008 by President George W. Bush. SCA legislation authorizes federal grants for vital programs and systems reform aimed at improving the reentry process.

Stakeholder Proposals for Utilization of Social Workers

Legislative guidance should encourage and incentivize the hiring and deployment of social workers in parole and probation departments across Texas as members of an integrated team focusing on reentry, release and diversion²⁹

- DFPS uses federal IV-E funding to provide tuition reimbursement for CPS caseworkers
- Probation and parole departments have access to a wide array of grants available for innovation. Social workers are skilled at writing grants, and as part of their job description can seek out sources of funding and help write grants to create and/or expand programs

Schools of Social Work can provide interns to probation departments (but the departments must have social workers on staff or memorandums of understanding with social workers in the community to supervise). Probation and parole departments should develop relationships with local schools of social work in order to use these students as additional support staff.

Recommendations

- 1. With existing FTEs, immediately, TDCJ and all probation departments should widen recruitment from social work field.**
- 2. TDCJ should consider pairing individuals leaving Substance Abuse Felony Punishment (SAFP) programs with peer-support specialists that will improve program outcomes and decrease arrests.**
- 3. The Legislature should consider providing TDCJ, Division of Reentry and Reintegration Services, with additional funding to properly train, certify, and employ certified peer specialists for utilization in facilities, parole, and probation.**
- 4. Facilitate training and certification collaboration between TDCJ and the entities that already train and certify peer providers.**
- 5. Ease TDCJ hiring policies that uniformly bar hiring of people who have had felony convictions within or past ten years.**
- 6. The Legislature should consider modifying the probation funding formula to increase time available to high-risk cases, incentivize moving successful lower-risk cases off probation sooner, and create fiscal flexibility to hire social workers.**
- 7. The Legislature should consider changing the reporting requirements for low-risk individuals on probation.**
- 8. For several sessions, the Legislature and various stakeholder groups have grappled**

with behavioral and mental health provider scope of practice of issues and the shortage of providers. In the interest of public safety and as a pilot project, the Legislature should consider engaging stakeholders and explore allowing licensure flexibility and relief among mid-level providers in correctional, parole, and probation settings.

Interim Charge #3: Examine the current Texas criminal justice system policies and practices regarding 17- to 25-year-olds, specific to probation, parole, state jail confinement, and discharge from the Texas Department of Criminal Justice or county jail. Review any gaps in services that may be causing this population to recidivate. Make recommendations to improve the state's response to the needs of this population in order to lower revocation, re-arrest, and re-incarceration rates.

The committee met on August 29, 2018 to consider Charge #3. Invited testimony included:

Carey Green, Director, TDCJ Community Justice Assistance Division

Lorie Davis, Director, TDCJ Correctional Institutions Division

Pamela Thielke, Director, TDCJ Parole Division

Haley Holik, Policy Analyst, Texas Public Policy Foundation

Lindsey Linder, Policy Attorney, Texas Criminal Justice Coalition

Alycia Welch, Director of Policy & Planning, Lone Star Justice Alliance

17 to 25 Year-olds

In the last several years, science has allowed policy makers in the criminal justice arena to establish innovative programs to address recidivism and improve outcomes. The opportunity to examine methods to reduce the recidivism rates and prevent arrests within the age group of 17 to 25 presents Texas with an exciting challenge and a positive direction with which to further its criminal justice reforms.

Young adults between the ages of 17 to 25 are a distinct population within the criminal justice system, and typically arrests and recidivism tend to escalate within this age group.³⁰ The prevalence of criminal behavior within this age range may be tied to known factors in human brain development which can manifest through higher levels of impulsive and risk taking behaviors. Most young adults in this age group also have aged out of school and no longer have access to services received as a youth.³¹

In order to reduce recidivism and arrests, several states and cities throughout the country have created a variety of targeted programs for this age group. A few of the programs include, and are not limited to the creation of “young adult courts, prosecutorial/judicial choice between criminal and juvenile law, immaturity as a factor in sentencing, specialized young adult probation caseloads, young adult correction facilities, young adult mentoring, confidentiality of young adult offenses, improved transition protocols between systems and services as well as data-driven young adult programs.”³² In Texas, the Dallas District Attorney's Office and City Attorney's Office collaborated in January 2016 to establish a two-year court program for young adults in South Dallas, called the South Dallas Second Chance Community Improvement Program Court.³³ The court is specifically focused on allowing participants to obtain their H.S.E. diploma and obtain access to counseling, employment, and quality-of-life services.

Juvenile Age of Jurisdiction and Transfer to Adult Court Laws in Texas

In general, the effect of current Texas laws on a youthful offender age 17 and older is to subject them to prosecution as an adult in a court of appropriate jurisdiction. By definition, such a person is no longer a "child" for purposes of criminal charges for an offense committed after reaching the age of 17, and the case would not be under the jurisdiction of a juvenile court. Prosecution of a youth for an applicable felony offense committed while age 14 or under the age of 17 would be handled in juvenile court, unless the court waives jurisdiction and certifies the youth to stand trial as an adult.

Section 51.02, Family Code, defines "child" under the Juvenile Justice Code as a person who is 10 years of age or older and under 17 years of age or a person who is 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Section 8.07(b), Penal Code, prohibits the prosecution and conviction of a person of any offense committed before reaching 17 years of age unless the juvenile court waives jurisdiction and

certifies the individual for criminal prosecution or the juvenile court has previously done so. The prohibition does not apply to the following offenses:

- perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;
- a violation of a penal statute cognizable under statutory provisions relating to the operation of a motor vehicle by a minor, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;
- a violation of a motor vehicle traffic ordinance of an incorporated city or town in Texas;
- a misdemeanor punishable by fine only; or
- a violation of a penal ordinance of a political subdivision.

Section 54.02, Family Code, authorizes a juvenile court to waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if the child is alleged to have committed an applicable type of felony, no adjudication hearing has been conducted concerning that offense, and, after a full investigation and a hearing, the court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings. The applicable types of felonies are:

- a capital felony, an aggravated controlled substance felony, or a first degree felony, if the child was 14 years of age or older at the time the child is alleged to have committed the offense; or
- a first or second degree felony or a state jail felony, if the child was 15 years of age or older at the time the child is alleged to have committed the offense.

Chairman Harold Dutton introduced House Bill 122 during the regular session of the 85th Legislature. This legislation sought to raise the age of criminal responsibility in Texas to 18 years of age.³⁴ Proponents of the legislation, known informally as the "Raise the Age" bill, argued that the rehabilitation needs of 17 year-olds mirror those of younger teens in the juvenile justice system and that the change would help put Texas in compliance with the Federal Prison Rape Elimination Act, which prohibits all 17 year-old inmates from being within sight and sound of older prisoners.³⁵ The bill passed in the House.³⁶

Juvenile Age of Jurisdiction and Transfer to Adult Court Laws in the United States³⁷

Texas remains in a small minority of states that continue to retain laws that treat a 17 year old offender as an adult for prosecution. Advocates for raising the age point out that a 17 year-old is still of high school age and otherwise not considered an adult for purposes of voting, serving on a jury, buying alcohol, tobacco, or lottery tickets.³⁸

According to the National Conference of State Legislatures (NCSL), 45 states set the maximum age of juvenile court jurisdiction at 17 as of April 2017. At that time, Georgia, Michigan,

Missouri, Texas, and Wisconsin drew the juvenile/adult distinction at age 16. However, Missouri recently passed legislation that would raise that age to 17 effective January 1, 2021.^{39,40}

All states have adopted transfer laws that require or allow the prosecution of juvenile offenders as adults for severe offenses. NCSL defines these forms of transfer laws and identifies the law in each state as follows:

- **Statutory Exclusion:** State law excludes some classes of cases involving juvenile age offenders from juvenile court, granting adult criminal court exclusive jurisdiction over some types of offenses. Murder and serious violent felony cases are most commonly "excluded" from juvenile court.
- **Judicially Controlled Transfer:** All cases against juveniles begin in juvenile court and must literally be transferred by the juvenile court to the adult court.
- **Prosecutorial Discretion Transfer:** Some categories of cases have both juvenile and criminal jurisdiction, so prosecutors may choose to file in either the juvenile or adult court. The choice is considered to be within the prosecutor's executive discretion.
- **"Once an adult, always an adult" Transfer:** The law requires prosecution in the adult court of any juvenile who has been criminally prosecuted in the past, usually regardless of the seriousness of the current offense.

Transfer Law	States (as of April 2017)
Statutory Exclusion	AK, AL, DE, IA, ID, IL, IN, MA, MD, MN, MS, NM, NV, OR, PA, SC, SD, UT, WA, WI
Judicially Controlled Transfer	CT, HI, KS, KY, ME, MO, NC, ND, NE, NH, NJ, OH, RI, TN, TX, WV
Prosecutorial Discretion Transfer	DC, CO, MI, NY, VA, WY
Statutory Exclusion and Prosecutorial Discretion	AR, AZ, CA, FL, GA, LA, MT, OK, VT
"Once an adult, always an adult"	AL, AZ, CA, DC, DE, FL, HI, IA, ID, IL, IN, KS, ME, MI, MN, MO, NC, ND, NH, NV, OH, OK, OR, PA, RI, SD, TN, TX, UT, WA, WI, VA

Criminal-Justice Involved Individuals Who Have Been in the Conservatorship of Child Protective Services⁴¹

Section 501.023, Government Code, requires TDCJ to determine whether an incoming justice-involved convicted felon has previously been in the conservatorship of a state agency that provides child protective services and to report the number of those inmates.

TDCJ reported 3,288 such inmates received during Fiscal Year 2017, which amounts to approximately 5 percent of all inmates received during that fiscal year.⁴² TDCJ reported the following statistical information regarding these offenders' age and race, at the time TDCJ received them, the offense of record, and county of conviction.

Race	Male	Female	Total
Black	790	193	983
Hispanic	643	191	834
White	976	487	1,463
Other and Unknown	6	2	8
Total	2,415	873	3,288

Age at Time of Receive	Male	Female	Total
14-16	2	1	3
17-18	77	4	81
19-20	212	19	231
21-24	507	134	641
25-29	595	239	834
30-39	671	322	993
40-49	231	117	348
50-59	96	35	131
60+	24	2	26
Total	2,415	873	3,288

Offense of Record	Prison	SAFP⁴³	State Jail	Total
Homicide	42	0	0	42
Kidnapping	8	4	0	12
Sexual Assault	14	0	0	14
Sexual Assault Against a Child	51	0	0	51
Indecency with a Child	37	0	0	37
Other Violent Sexual Offenses	5	0	0	5
Robbery	211	21	0	232
Assault/Terroristic Threat/Trafficking	378	51	20	449
Arson	12	2	2	16
Burglary	247	43	78	368

Larceny	41	15	244	300
Stolen Vehicle	12	0	64	76
Forgery	14	6	47	67
Fraud	35	6	63	104
Stolen/Damaged Property	3	2	14	19
Drug-Delivery	141	24	24	189
Drug-Possession	265	96	392	753
Failure to Register as a Sex Offender	45	0	19	64
Family Offense	12	6	29	47
Commercialized/Sex Offense	21	2	18	41
Obstruction/Public Order	72	9	14	95
Escape	104	5	27	136
Weapons Offenses	71	4	3	78
DWI	49	10	13	72
Other	17	2	2	21
Total	1,907	308	1,073	3,288

County of Conviction	Prison	SAFP	State Jail	Total
Harris	282	15	231	528
Bexar	159	17	80	256
Dallas	141	45	59	245
Tarrant	112	7	69	188
Travis	78	6	58	142
Montgomery	51	1	22	74
McLennan	47	7	17	71
Bell	38	5	24	67
Potter	28	5	17	50
Galveston	33	3	12	48
Nueces	30	12	6	48
El Paso	36	1	10	47
Grayson	20	6	17	43
Lubbock	34	1	7	42
Randall	19	7	12	38
Johnson	18	9	10	37
Wichita	18	2	17	37
Hidalgo	24	4	8	36
Brazoria	23	3	9	35
Denton	25	0	8	33
Ector	16	3	14	33
Jefferson	16	7	10	33
Brazos	22	4	6	32

Collin	19	2	11	32
Smith	25	2	5	32
Taylor	17	4	11	32
Williamson	11	3	18	32
Cameron	19	3	9	31
Brown	18	4	5	27
Tom Green	9	4	14	27
Midland	18	1	4	23
Gregg	7	3	11	21
Henderson	16	2	3	21
Bowie	7	8	5	20
Counties with Less than 20	471	102	254	827
Total	1,907	308	1,073	3,288

Programs and Services Offered in TDCJ⁴⁴

According to the TDCJ Offender Orientation Handbook, the Department offers numerous programs and services to the justice-involved during their incarceration. Programs offering educational opportunities, recreational activities, and medical and rehabilitation services are available to eligible offenders.

Educational Opportunities

The Windham School District (WSD) offers educational programs to eligible offenders that emphasize skills for the justice-involved that potential employers demand, such as personal qualities, teamwork, decision making, cultural sensitivity/tolerance, and problem solving.

Several facilities offer Literacy, Career and Technical Education and Life Skills Programs, the goal of which is to prepare students for work both in prison industry and for jobs after release from TDCJ. Services such as counseling, special education, adult literacy, and GED preparation are offered.

A pre-release program called CHANGES (Changing Habits and Achieving New Goals to Empower Success) is available to the justice-involved who are within two years of release and includes topics such as personal development, healthy relationships, living responsibly, drug education, living well, putting together a new start, and going home.

A cognitive intervention program teaches students how to examine and change the thinking patterns that lead to criminal behavior. Instructors teach the students thinking skills with the goal of reducing anger and anxiety and increasing communication and problem solving abilities.

Career and technical education opportunities are also available through WSD. Some of the courses offered include automotive trades, construction trades, horticulture/landscape trades,

truck driving, culinary arts, welding and other metal trades, diesel mechanics, electrical trades, and computer related trades.

Recreational Activities

TDCJ allows eligible offenders to participate in various recreational activities such as:

- Games (chess, checkers, dominoes)
- Sports (basketball, volleyball, table tennis, handball, weightlifting)
- Leisure (TV viewing, in-cell art activities, craft shop)

Medical Services

TDCJ provides health care for offenders with medical, dental, psychiatric, and psychological problems:

- Medical (emergency care, sick call, chronic care, prenatal care)
- Dental (examinations, X-rays, cleanings, fillings, oral surgery)
- Pharmacy (prescriptions, over-the-counter medications, vitamins)
- Psychiatric and Psychological (mental health evaluations, diagnosis, treatment)
- Developmental Disabilities Program (case management, job training, counseling)

Rehabilitation Programs

The Rehabilitation Programs Division offers the following rehabilitative, pre-release, religious, and volunteer programs to eligible offenders within TDCJ:

- Individualized Treatment Plan (ITP)
- Administrative Segregation Pre-Release Program (ASPP)
- Gang Renouncement and Disassociation Process (GRAD)
- Serious and Violent Offender Reentry Initiative (SVORI)
- Administrative Segregation Transition Program
- Baby and Mother Bonding Initiative Program (BAMBI)
- Faith-Based Programs
- College Courses
- College Technical Courses
- Southwestern Baptist Theological Seminary (SWBTS):
- Religious Services
- Sex Offender Rehabilitation Programs and Evaluation
- Civil Commitment of Sexually Violent Predators
- Sex Offender Registration Program Information
- Orchiectomy
- Substance Abuse Treatment Programs
- Driving While Intoxicated Program

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- In-Prison Therapeutic Community
 - Pre-Release Substance Abuse Program (PRSAP)
 - Pre-Release Therapeutic Community (PRTC)
 - State Jail Substance Abuse Program (SJSAP)
 - Substance Abuse Felony Punishment Facility (SAFPF)
 - Support Groups
 - Volunteer Programs
 - Youthful Offender COURAGE Program

Recommendations

- 1. As proven throughout the state, local jurisdictions, which include law enforcement, district attorneys, judges, probation chiefs, and community partners, already have the discretion to implement innovative strategies to decrease the rate of recidivism among the 17-25 year-old-cohort. These local community stakeholders should exercise this discretion and tailor approaches congruent with their community's values, expectations for community safety, and result in decreasing the recidivism rates of justice-involved young adults. TDCJ already has grant funding and the discretion to develop incentives and rules to insure that state probation funding is targeted at decreasing the high levels of recidivism among youthful justice-involved adults, and thereby, improving community safety. TDCJ and local probation departments should immediately start addressing programming and outcomes for young justice-involved adults.**
- 2. The Legislature should consider increasing discretionary grant funding to support individualized, community-based rehabilitative programming for young adults on felony probation.**
- 3. The Legislature should consider reducing the reliance on probation fees from young adults on felony probation by allowing for participation in rehabilitative programming to satisfy financial obligations. Reducing the financial barriers that probation creates for young adults will generate cost savings through a reduction in revocations and an increase in young adults accepting a term of probation over incarceration.**
- 4. The Community Justice Assistance Division (CJAD) within TDCJ should consider prioritizing grant awards to assist young adults on felony probation, giving preference to models that incorporate community partnerships and implement developmentally appropriate practices. CJAD should also consider utilizing better evaluation methods and provide technical assistance to probation departments.**
- 5. Courts should consider reducing probation terms for low-risk defendants and emphasize early termination from probation for higher-risk defendants who successfully complete rehabilitative programming.**

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- 6. The Legislature should consider providing the necessary funding for educational and vocational pilot programs for state jail felony defendants that were created by HB 3130 during the 85th Legislative Session.**
 - 7. The Legislature should enact sweeping legislation, modeled after the bill conservative Republican then-Governor Mike Pence signed in 2013, that provides a cost-effective and certitude streamlined process for expungement/non-disclosure of criminal records.**
 - 8. The Legislature should continue strengthening the Child Protection Services System and the juvenile justice system in order to decrease the number of young Texans that age out of these systems and into the adult criminal justice system.**
 - 9. The Texas Constitution provides the Governor clemency powers. The Governor appoints Texans to the Board of Pardons and Paroles (BPP). The BPP receives, reviews, and either recommends favorable clemency from the Governor or denies clemency the applications from formerly justice-involved citizens. The Legislature should continue to encourage the Governor's constructive use of this constitutional clemency power with the appointment of thoughtful BPP members in order to enhance clemency opportunities for formerly justice-involved young adults who have experienced personal reformation, are contributing to community safety and our local prosperity, and are indispensable to their communities and families.**
 - 10. The Legislature should consider legislation that includes implementing with the criminal justice reinvestment initiative that features a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism among the youthful justice-involved.**

Interim Charge #4: Examine treatment options, services, and programs available to women in institutional settings, on community supervision, on parole, and in community-based programs. Make recommendations for best strategies to address the needs of women in the Texas criminal justice system.

The committee met on May 1, 2018 to consider Charge #4. Invited testimony included:

Carey Green, Director, TDCJ Community Justice Assistance Division
Lorie Davis, Director, TDCJ Correctional Institutions Division
Pamela Thielke, Director, TDCJ Parole Division
Robert O'Banion, CFO, Windham School District
Laurie Molina, Manager - Criminal Justice Data Analysis, Legislative Budget Board
John McGeady, Assistant Director, Legislative Budget Board
Trina Ita, Deputy Associate Commissioner for Behavioral Health Services, HHSC
Dr. Courtney Harvey, State Forensic Director, HHSC
Michael Barba, Associate Director of Public Policy, Texas Catholic Conference of Bishops
Lindsey Linder, Policy Attorney, Texas Criminal Justice Coalition
Claire Leonard, Policy Associate, Texas Criminal Justice Coalition
Lauren Johnson, Criminal Justice Outreach Coordinator, ACLU
Mary Mergler, Director - Criminal Justice Project, Texas Appleseed
Annette Price, Intake Specialist, Texas Fair Defense Project

Women in the Justice System

"The Hand That Rocks the Cradle Is the Hand That Rules the World"

William Ross Wallace poem, 1865

Lyricists have written many songs and many often have quoted the poem by William Ross Wallace: "The Hand that Rocks the Cradle is the Hand the Rules the World." What happens when the hand that was rocking the cradle goes away? If you were a woman in Texas involved in the criminal justice system, you might well be taken away from home and family and detained in a local jail, or incarcerated in a state jail facility for women (Texas has 3 of them) or in a prison operated for females by TDCJ (there are 10 of them). You might even be in a medical prison unit for women, preparing to give birth.⁴⁵ In Texas, the number of women in jails waiting for trial has increased 48 percent since 2011 (around 6,300), even though arrests have decreased 20 percent.⁴⁶

The effects of that detention or incarceration ripple broadly across the landscape for a woman alone or a woman with family: loss of income (and food, housing and transportation), a childcare and/or eldercare crisis, and a criminal background record that may impair chances for future employment and housing. While some would be quick to say to the woman that she should have made better choices, those who have been there would say, "Sometimes there are no good choices to make."

Data sets segregated by gender are difficult to find when seeking Texas statistics about women involved in the criminal justice system.⁴⁷ Some are provided in the annual TDCJ Statistical Report, although further in-depth information would do more to clarify what is going on with these women. Criminal justice statistics for local jails in Texas are even more scarce.

This prompted a survey leading to publication of a two-part study by TCJC (a non-profit entity based in Austin), seeking to set a more safe, stable, healthy path for Texas women.⁴⁸ Here is how they paint the picture:

"For the past 30 years, the number of women incarcerated in America has grown exponentially, increasing at nearly twice the rate of men's incarceration. With only five percent of the world's female population, the U.S. accounts for nearly 30 percent of the world's incarcerated women.

In Texas, the number of women in prison has grown substantially since 1980. According to the most recent U.S. Census Bureau data, Texas now incarcerates more women by sheer number than any other state in the country. A shocking 81 percent of women incarcerated in Texas prisons are mothers. Texas jails have seen an explosion in the number of women awaiting trial, even as arrests of females have declined."⁴⁹

Drivers of Female Incarceration and the Impact on Families

Several factors contribute to the growing rate of female incarceration such as poverty, unemployment, lack of education, stable housing, lack of treatment for mental illness, "tough on

crime prosecution" of drug crimes and many types of trauma such as physical, sexual and psychological experiences. More specifically,

"As of 2016, women in the Texas Department of Criminal Justice represented 8.5 percent of the total incarcerated population, up from 7.7 percent in 2009. Although this is a small portion of the prison population, their incarceration creates profound effects in their families and within their communities. In Texas, more than 10,000 women in TDCJ are mothers. Incarcerating them - even for short periods - removes them from their children and [spouses], can cause job loss and eviction, risks loss of custody to a child, and can make later access to employment, education, and housing all the more challenging, given a criminal record."⁵⁰

Additionally, 64 percent of women in Texas' state corrections system are incarcerated for a non-violent offense, mostly drug possession or delivery. Further, 26 percent of women incarcerated are black, although they only comprise approximately 6 percent of Texas' overall population.⁵¹

The rise in women's incarceration rates is not a new phenomenon. The women's population rose 908 percent from 1980 to 2016 vs. 396 percent for men over that same period.⁵² Currently, 241,000 individuals are on direct supervision (probation) and 67,000 of those are female.⁵³ The numbers of women on probation (direct supervision) have been steadily increasing from 17.8 percent in 2010 to 27.8 percent in 2016.⁵⁴ Of particular relevance to those assessing criminal justice reforms is the rise in system-involved women which has occurred as Texas has lowered its prison population. It is more than evident that the time is now to address the needs of women currently incarcerated, as well as to advance strategies to prevent their system involvement altogether. It is critical for the state to assess the availability, effectiveness, and access of in-prison treatment programs and supports, as well as community-based resources to allow women the tools and safety net they need to prevent future arrest and incarceration.

According to TDCJ, the state operates or contracts for the operation of 103 prison units, of which 13 house females, 5 are prison units, 3 are state jail facilities, 2 are transfer facilities, 1 is a Substance Abuse Felony Punishment Facility (SAFPF), 1 is private (MTC), and 1 is medical.⁵⁵ As of the end of May 2018, the total TDCJ population in Texas was 145,398, with a total on-line bed capacity of 152,488.⁵⁶ At that time, Community Supervision (Adult Probation) Populations showed these numbers for Offenders Under Direct Supervision: EOM April 2018: 153,388 (felonies) and 77,771 (misdemeanors), although the figures were not gender-specific. The same report showed an average of 154,737 felonies and 80,280 misdemeanors for the prior 12 months. The active Parole Supervision Population for April 2018 was 83,752.⁵⁷ TDCJ data as of FY 2016 showed there were 12,508 females in the state system.⁵⁸

Texas Risk Assessment System (TRAS)

As reported by TDCJ to the Committee during a public hearing on May 1, 2018, the Texas Risk Assessment System (TRAS) is a fourth-generation risk assessment tool designed to address offenders' risk to reoffend, while addressing offenders' criminogenic needs. The tool measures risk in seven criminogenic domains. The highest criminogenic domains for females are family

and social support, education, employment and financial situation, and substance abuse. As for gender, the TRAS validation was just as effective in categorizing males as it was females. The TRAS performed just slightly better for female offenders.⁵⁹

Females in Community Supervision Programs

TDCJ supports a variety of programs for all of its incarcerated individuals, and some are specific to women. In programs provided for all of the incarcerated justice-involved, TDCJ served 39,726 females in programs having:

- Specialized caseloads for substance abuse, mental health and other specific needs;
- Outpatient substance abuse treatment, mental health and other counseling;
- Residential treatment in Community Corrections Facilities and contract residential locations; and
- Specialty courts, educational programs, pretrial services, and other programs.⁶⁰

TDCJ develops an Individualized Treatment Plan (ITP) for every offender, which outlines basic programmatic activities and services, and prioritizes participation based on needs, program availability, and applicable parole/discharge date.⁶¹

Upon entry, TDCJ assesses the medical and mental health needs of each justice-involved female. Psychiatrists, psychologists, nurses, and other trained professionals are available to help with mental health issues.⁶²

Substance Abuse Programming occurs at a substance abuse felony punishment facility. There are In-Prison Therapeutic Community (IPTC) programs to address driving while intoxicated. Also, there are state jail substance abuse programs and Intermediate Sanction Facilities (ISF).⁶³

Volunteer Substance Abuse Programs include Alcoholics Anonymous (AA), Celebrate Recovery, Christians against Substance Abuse, Overcomers, and Narcotics Anonymous (NA).⁶⁴

The programs designed to serve women include 5 residential facilities, 3 prostitution courts, and 1 life-skills program, serving 1,470 females.⁶⁵ The three SAFPF units served 1,853 females, and in the State Contracted-Intermediate Sanction Facility (SC-ISF), TDCJ served 739 females. Education and Bonding Initiatives include: Love Me Tender, designed to provide a warm, caring environment for mothers to visit, feed, and bond with their babies, and the Baby and Mother Bonding Initiative (BAMBI) which allows mothers and their newborn time for forming a healthy attachment in a secure setting.⁶⁶

External TDCJ Programs and Support

Outside the prison facilities, the TDCJ Parole Division encompasses 5 regions statewide, operating 67 District Parole Offices, including 12 District Reentry Centers (DRC's). At the DRC's, all district parole offices provide client programming on site or referrals to community resources. The DRC's provide additional programs in 5 core program areas:

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- Cognitive intervention;
 - Anger management or domestic violence;
 - Substance abuse education;
 - Victim impact panels; and
 - Pre-employment skills.⁶⁷

Best for Baby is one of the services offered to women. This peer-education program focuses on childhood development, stages of pregnancy, and parenting skills. In addition, the class covers a variety of topics such as how pregnancy occurs, what changes the baby and the mother experience during pregnancy, and why prenatal care is so important. The session ends with stretches that can help ease discomforts associated with pregnancy that instructors discussed early in the class.⁶⁸

Non-governmental Efforts to Assist Women

Based on a survey conducted of incarcerated women in 2014, TCJC came up with a list in hopes to better serve Texas women.⁶⁹

- Invest in community-level supports that account for extensive trauma histories;
- Utilize diversion programs to hold women accountable while preventing them from escalating deeper into the justice system;
- Provide specialized treatments options for women on probation;
- Reform the bail system to stop punishing poverty; and
- More effectively address the needs of women with drug offenses

Additionally, the impact of having an incarcerated parent can be profound and can hinder a child's mental state. Michael Barba of the Texas Catholic Conference of Bishops says,

"Moreover, while losing a parent to incarceration can result in children developing mental, physical, and emotional issues, the negative effect can be mitigated if children are helped to understand what is happening, enabled to stay in contact with their incarcerated parent, and supported throughout the duration of the incarceration and reentry."⁷⁰

Recommendations

- 1. Again, our criminal justice community has the statutory discretion currently to develop techniques to respond to the unique challenges involving justice-involved women in order to improve outcomes and increase community safety. The Legislature provides TDCJ a current funding stream in the budget now for probation services and has the discretion now to develop incentives for our local probation departments to respond effectively to the increasing levels of justice-involved women.**
- 2. The Legislature should provide thoughtful guidance in the use of Blue Warrants**

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- for pregnant women and primary caregivers with technical or non-violent parole or probation violations.
3. **The Legislature should consider legislation that addresses the shackling criteria for pregnant inmates.**
 4. **The Legislature should consider investing in community-based sentencing alternatives for pregnant women, mothers, and primary caregivers that would allow counties to establish a matching grant program.**
 5. **The Legislature should work with our local governing entities and look at expanding the minimum weekly visits for mothers in county jails, along with an increase in visitation hours for incarcerated mothers so that their children and their caretakers can communicate more frequently. Finally, urge TDCJ to create a special parent/child only visitation days on certain school holidays.**
 6. **The Texas Constitution provides the Governor clemency powers. The Governor appoints Texans to the Board of Pardons and Paroles (BPP). The BPP receives, reviews, and either recommends favorable clemency from the Governor or denies clemency the applications from formerly justice-involved citizens. The Legislature should continue to encourage the Governor’s constructive use of this constitutional clemency power with the appointment of thoughtful BPP members in order to enhance clemency opportunities for formerly justice-involved women who have experienced personal reformation, are contributing to community safety and our local prosperity, and are indispensable to their communities and families.**
 7. **The Legislature should enact sweeping legislation, modeled after the bill conservative Republican then-Governor Mike Pence signed in 2013, that provides a cost-effective and certitude streamlined process for expungement/non-disclosure of criminal records for deserving formerly justice-involved women.**
 8. **The Legislature should consider legislation that includes implementing with the criminal justice reinvestment initiative that features a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism among justice-involved women.**

Interim Charge #5: Review the Texas state jail system. Examine its original intent, sentencing guidelines, effectiveness, and recidivism rates. Make recommendations for changes in the state jail system. (Joint charge with the House Committee on Criminal Jurisprudence)

The Committee met jointly with the House Committee on Criminal Jurisprudence on August 29, 2018 to consider Charge #5. Invited testimony included:

John Creuzot, Judge, Harris County
Brock Thomas, Judge, Harris County
Dr. Teresa May, Director, Harris County Community Supervision & Corrections Department
Greg Dillion, Member, Texas Probation Association
Roxanne Marek, Member, Texas Probation Association
Bryan Collier, Executive Director, Texas Department of Criminal Justice
Laurie Molina, Manager - Criminal Justice Data Analysis, Legislative Budget Board
Allen Place, Representative, Texas Criminal Defense Lawyers Association
Shannon Edmonds, Staff Attorney and Government Relations, Texas District & County Attorneys Association
Doug Smith, Senior Policy Analyst, Texas Criminal Justice Coalition
Matt Simpson, Deputy Political Director, American Civil Liberties Union
Marc Levin, Vice President of Criminal Justice - Right on Crime, Texas Public Policy Foundation
Terra Tucker, Texas State Director, Alliance for Safety and Justice
B.J. Wagner, Senior Director of Smart Justice and Adult Policy, Meadows Mental Health Policy Institute
Tricia Forbes, Regional Training Manager, Crime Survivors for Safety and Justice

State Jail System

The state jail system in Texas is part of TDCJ. However, these justice-involved serve relatively short-term incarcerated sentences of no more than two years. TDCJ may house some temporarily awaiting transfer to a TDCJ prison unit. The Legislature created the state jail system in 1993 with the passage of Senate Bill 1067 and Senate Bill 532. These two pieces of legislation created a new classification of crimes of state jail felonies primarily consisting of low-level drug and property crimes. For the most part, original favorable expectations for the outcomes of that legislation have gone unrealized. In general, the justice-involved released from state jails have demonstrated a higher rate of recidivism than those released from prison or placed on community supervision, as explained below.

Original Intent

The Texas Legislature created the state jail division within TDCJ in 1993 for the purpose of confining the justice-involved convicted of offenses classified as state jail felonies. These offenses represent the least serious felony classification and are applicable to certain non-violent drug-related offenses and other low-level offenses.⁷¹ At the time, Texas intended to use the state jail system to divert non-violent drug offenders and other low-level offenders from overcrowded TDCJ facilities that housed more serious incarcerated felons and to provide the state jail justice-involved the opportunity to serve their sentence on community supervision in treatment and rehabilitation programs to reduce recidivism and reduce the state's incarcerated population.⁷² If state jail offenders did not comply with community supervision conditions, state jail facilities could serve as a back-up where the criminal justice system could impose short-term incarceration if necessary.⁷³

By the time Texas built the first state jail facility in 1995, there were several factors beginning to complicate fulfilling the intent of the state jail system. These factors include a change in public opinion regarding the state's approach to crime, problems with the availability of a justice-involved population eligible for state jail confinement, and the availability of state jail facilities in certain communities.⁷⁴ Though the construction of state jail facilities continued, Texas began using these facilities to initially confine felons convicted of more serious felony offenses and were on their way to prison.⁷⁵ Additionally, subsequent legislative changes, such as making mandatory placement on community supervision for certain state jail felons discretionary, continued to frustrate the diversionary and rehabilitative intent of the state jail system.⁷⁶

Currently, there are a total of 17 state jail facilities in Texas in which TDCJ confines approximately 21,500 of the justice-involved.⁷⁷ The average sentence length at a state jail facility is 9.6 months.⁷⁸

Table A. State Jail Facilities⁷⁹

Facility	City	County	Maximum Capacity*
<u>Bradshaw</u> **	Henderson	Rusk	1,980
<u>Cole</u>	Bonham	Fannin	900
<u>Dominguez</u>	San Antonio	Bexar	2,276
<u>Formby</u>	Plainview	Hale	1,100
<u>Gist</u>	Beaumont	Jefferson	2,276
<u>Henley</u>	Dayton	Liberty	576
<u>Hutchins</u>	Dallas	Dallas	2,276
<u>Lindsey</u> **	Jacksboro	Jack	1,031
<u>Lopez</u>	Edinburg	Hidalgo	1,100
<u>Lychner</u>	Humble	Harris	2,276
<u>Ney</u>	Hondo	Medina	576
<u>Plane</u>	Dayton	Liberty	2,276
<u>Sanchez</u>	El Paso	El Paso	1,100
<u>Travis County</u>	Austin	Travis	1,161
<u>Wheeler</u>	Plainview	Hale	576
<u>Willacy County</u> **	Raymondville	Willacy	1,069
<u>Woodman</u>	Gatesville	Coryell	900

* Data as of September 15, 2016

** Private facility

Sentencing Guidelines

In Texas, district courts have jurisdiction over all felonies and applicable Class A and Class B misdemeanors.⁸⁰ The punishment for a state jail felony ranges from 180 days to 2 years in a state jail with a maximum \$10,000 fine, though our judicial system may sentence a justice-involved person to community supervision in lieu of that confinement.⁸¹

Below are tables that detail the jurisdiction of Texas courts and statutory sentencing guidelines. The types of offenses that our statutes classify as state jail felonies are non-violent and low-level offenses such as drug-related offenses and property crimes. There are over 170 criminal offenses for which the penalty is a state jail felony.⁸²

Table A. Court Jurisdiction in Criminal Matters

Court	Offense
District court ⁸³	All felonies and applicable Class A and Class B misdemeanors
Constitutional county court ⁸⁴	Class A and Class B misdemeanors
Statutory county court ⁸⁵	Class A and Class B misdemeanors
Municipal court ⁸⁶	All misdemeanors that arise under applicable municipal ordinances and Class C misdemeanors (fine-only)
Justice court ⁸⁷	Class C misdemeanors (fine-only)

Table B. Sentencing Guidelines

Offense	Length of Confinement or Imprisonment	Fine	Other Conditions⁸⁸
Capital felony ⁸⁹	Life, life without parole, or death	N/A	N/A
First degree felony ⁹⁰	5 years to 99 years, or life	≤ \$10,000	Community supervision, deferred adjudication
Second degree felony ⁹¹	2 years to 20 years	≤ \$10,000	Community supervision, deferred adjudication
Third degree felony ⁹²	2 years to 10 years	≤ \$10,000	Community supervision, deferred adjudication
State jail felony ⁹³	180 days to 2 years	≤ \$10,000	Community supervision, deferred adjudication
Class A misdemeanor ⁹⁴	≤ 1 year	≤ \$4,000	Community supervision, deferred adjudication
Class B misdemeanor ⁹⁵	≤ 180 days	≤ \$2,000	Community supervision, deferred adjudication
Class C misdemeanor ⁹⁶	N/A	≤ \$500	N/A

The Numbers

The Legislative Budget Board (LBB) defines recidivism as a return to criminal or delinquent activity after previous criminal or delinquent involvement. The LBB uses the following indicators to measure recidivism within three years of release from incarceration or within three

years of the start of supervision: rearrest, adjudication, re-adjudication, conviction, re-conviction, incarceration, re-incarceration, and revocation.⁹⁷ Statistics show that offenders released from state jails encounter rearrest, re-conviction, and re-incarceration at higher rates than offenders released from prison or placed on community supervision. For example, for offenders released from a state jail in fiscal year 2013 (the most recent year for which the three-year calculation rate), the three-year rearrest rate was 62.7 percent, the three-year re-conviction rate was 54.3 percent, and the three-year re-incarceration rate was 32.2 percent.⁹⁸

In contrast, for the justice-involved released from prison in fiscal year 2013, the three-year rearrest rate was 46.4 percent, the three-year re-conviction rate was 36.1 percent, and the three-year re-incarceration rate was 21 percent.⁹⁹ For the justice-involved placed on felony community supervision in fiscal year 2013, the rearrest rate within three years of the start of supervision was 35.9 percent, the adjudication, re-adjudication, conviction, or re-conviction rate within that period was 23.6 percent, and the incarceration rate within that period was 25.8 percent.¹⁰⁰

Effectiveness

A factor that may explain the higher rate of recidivism among the state jail justice-involved compared to the rest of the incarcerated population is that, on release from confinement in state jail, we discharge the majority of the state jail felony population and have them re-enter society while only a fraction return to community supervision upon release.¹⁰¹ For example, in fiscal year 2016, we only released 0.4 percent of the total state jail population to community supervision while we discharged 99.6% of that population.¹⁰²

Proponents of community supervision have contended that the average state jail sentence is relatively short and "offers little opportunity for an individual to participate in meaningful rehabilitation or treatment."¹⁰³ Moreover, analyses of rehabilitation and diversion program funding for community supervision and corrections departments have pointed toward a positive correlation between diversion program funding and significantly lower recidivism rates, compared to departments without such funding.¹⁰⁴ This is likely attributed to the ability of diversion programs that provide education, job training, drug, alcohol, and mental health treatment, reduce the potential barriers to securing housing, employment and not recidivating. However, as the data suggests, few offenders confined in state jails get the opportunity to participate in community supervision or diversion programs currently.¹⁰⁵

The state jail population, as reported by TDCJ has decreased in recent years. Both the state jail on hand population, which indicates the population of state jail facilities at any given time, and the state jail number of receives, which is the total number of inmates received by state jail facilities in a fiscal year, has declined over time.¹⁰⁶ So while recidivism among state jail felons is relatively high compared to other incarcerated populations, the total number of felons entering and confined in state jail facilities is decreasing.

Figure A.

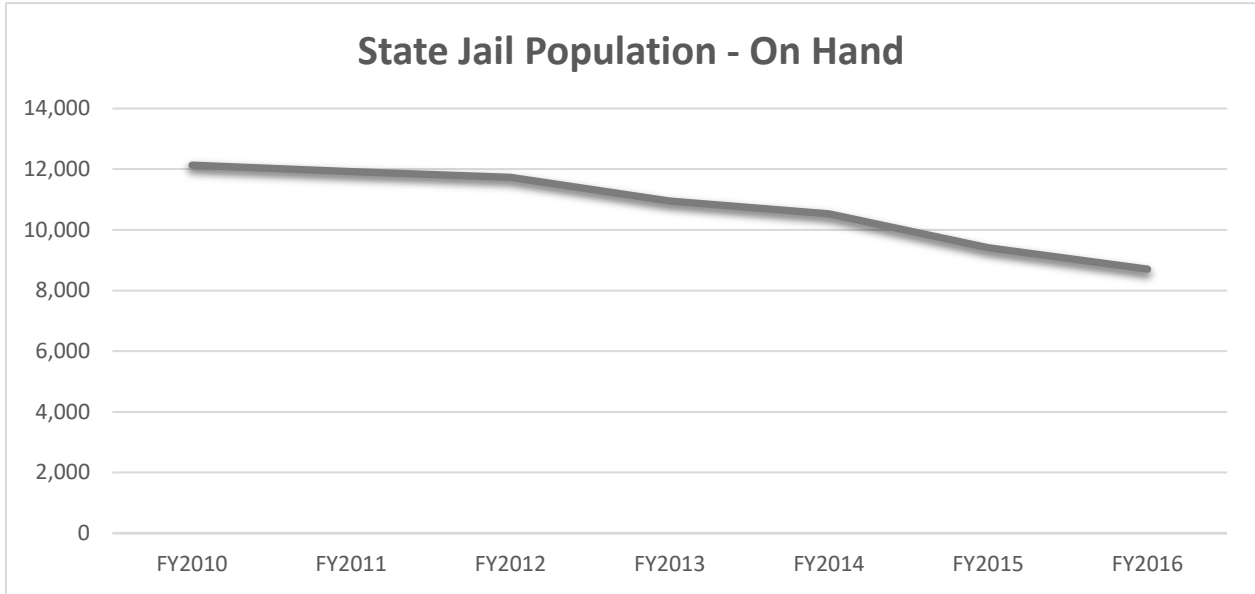
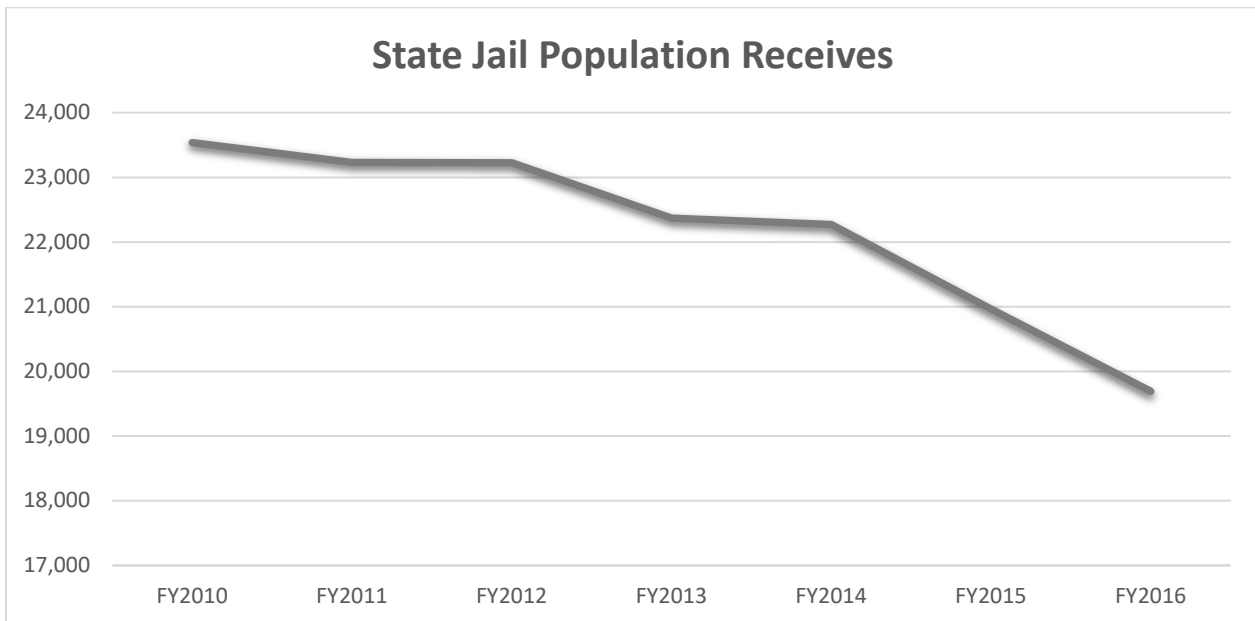


Figure B.



Recommendations

1. Below, we have recommendations for the Legislature to at least consider next session. However, notably, Harris County, and other local jurisdictions have implemented successful diversion programs that offer treatment and eventually the opportunity for at least a non-disclosure upon successful completion of the diversion programming. Therefore, this shows that local jurisdictions already possess the appropriate level discretion to create effective innovative strategies. Therefore, local criminal justice stakeholders should evaluate key tenets of existing pre-trial diversion programs and create one consistent with their communities expectations and values. Especially, for state jail felony drug possession offenses, pre-trial diversion programs allow for a better management of county jail population, which in turn can deliver saving to county property taxpayers. Pre-trial diversion programs mitigate the revolving door by championing treatment instead of incarceration. Most important, pre-trial programming provides criminal justice stakeholders with more effective and efficient tools to rejuvenate our fellow citizens lives.
2. The Legislature should consider repealing Penal Code § 12.44(a).
3. Local jurisdictions should consider consolidating their state jail felony cases into a single docket so that those cases are managed and resolved consistently, and so that the proper treatment and punishment may be sentenced.
4. Punishments for state jail felonies could emphasize early assessment and individualized treatment and rehabilitative services specific to the needs of the offender, and the opportunity to have a case dismissed if the terms of the pretrial intervention contract are met.
5. The Legislature should consider exploring different avenues of working with local governments to return any fiscal savings back into treatment, early education, and other evidence-based policies that reduce the recidivism rate.
6. The Legislature should encourage the Office of Court Administration, district attorneys, county attorneys, and judges to collaborate and develop more robust metrics on how they make decisions, which cases to move forward with, and any other essential decisions made during the pre-trial process.
7. The Texas Constitution provides the Governor clemency powers. The Governor appoints Texans to the Board of Pardons and Paroles (BPP). The BPP receives, reviews, and either recommends favorable clemency from the Governor or denies clemency the applications from formerly justice-involved citizens. The Legislature should continue to encourage the Governor's constructive use of this constitutional clemency power with the appointment of thoughtful BPP members in order to enhance clemency opportunities for the formerly state jail justice-involved felons

who have experienced personal reformation, are contributing to community safety and our local prosperity, and are indispensable to their communities and families.

- 8. The Legislature should enact sweeping legislation, modeled after the bill conservative Republican then-Governor Mike Pence signed in 2013, that provides a cost-effective and certitude streamlined process for expungement/non-disclosure of criminal records for deserving formerly incarcerated justice-involved state jail felons.**
- 9. The Legislature should consider legislation that includes implementing with the criminal justice reinvestment initiative that features a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism among formerly justice-involved state jail felons.**

Interim Charge #6: Study policies and protocols within the Texas Department of Criminal Justice to prevent the spread of infectious diseases. Examine when protocols are implemented and their efficacy in protecting the health and safety of inmates and state employees.

The committee met on August 29, 2018 to consider Charge #6. Invited testimony included:

Dr. Lannette Linthicum, Director, TDCJ Health Services Division
Lance Mondragon, Representative, AFSCME Texas Corrections

Infectious Diseases

The Legislature should periodically examine how TDCJ implements current protocols and their efficacy in protecting the health and safety of inmates, state employees, and the public from infectious diseases. Although preventive vaccines exist for mumps and TDCJ has a managed correctional healthcare protocol for administering vaccines, some outbreaks of mumps at various units were reported during 2017 and 2018, requiring temporary cancellation of visitation at the affected sites.

Under Chapter 501 of the Government Code regarding Inmate Welfare, the state has a responsibility to provide education about AIDS and HIV, which the statutes require for the incarcerated justice-involved and the TDCJ employees. State statutes require TDCJ to adopt a policy for handling persons with AIDS or HIV infection who are in the custody of the department or under the department's supervision which is substantially similar to Texas Health Code provisions of Subchapter G, Chapter 85. Testing is available under certain conditions and requirements. Additionally, TDCJ must report to the Legislature in odd-numbered years about implementation and participation of the education programs, which state statutes mandate to include information and training related to procedures for infection control.¹⁰⁷

Also, TDCJ must provide disease management services for diseases or other chronic health conditions.¹⁰⁸ The correctional managed healthcare plan must provide "disease management services," to assist an individual in managing a "disease or other chronic health conditions, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the committee identifies populations requiring disease management."¹⁰⁹

Background

The correctional health care system represents a collaboration between TDCJ, the University of Texas Medical Branch at Galveston, and the Texas Tech University Health Sciences Center. They operate under the guidance and direction of the Correctional Managed Health Care (CMHC) Committee. Subchapter E, Chapter 501, Government Code governs the CMHC Committee.

The mission of the CMHC committee is to develop a statewide managed health care plan that provides TDCJ offenders with timely access to quality health care while also controlling costs. The Office of Public Health section in the Health Services Division of TDCJ is responsible for coordination of the statewide Infection Control Committee.

The Office of Public Health staff provides education, orientation, and training programs to Correctional Institution Division nurses (i.e., public health) statewide. This staff establishes, maintains, and monitors statewide offender databases for HIV/AIDS, TB, hepatitis, syphilis, and sexually transmitted infections. It serves as the central point of contact for reporting purposes to the Texas Department of State Health Services (DSHS) and other applicable state and federal agencies.¹¹⁰ The Office of Public Health is responsible for monitoring and reporting on the incidence of justice-involved infectious diseases, such as HIV, TB, sexually transmitted diseases,

hepatitis, and other communicable diseases contracted by the incarcerated justice-involved.¹¹¹
Correctional Managed Health Care Infection Control Policy Manual¹¹²

The Correctional Managed Health Care (CMHC) Infection Control Policy Manual contains TDCJ's infection prevention policies and disease-specific protocols. The policy of the infection control program, as provided in the manual, is that "[TDCJ] provides testing, treatment, monitoring and reporting of all communicable diseases that fall within state and federal guidelines as specified in the CMHC Infection Control Manual."

As part of its procedure, the manual requires each facility to maintain a current copy of the CMHC Infection Control Manual. It is the responsibility of the CMHC Chief Public Health Officer to ensure an annual review of the manual.

At a minimum, the manual contains information on the Infection Control Committee, surveillance procedures, immunization requirements, identification and treatment of the justice-involved with infectious diseases (i.e., tuberculosis, HIV, etc.), isolation procedures, decontamination of equipment, disposal of sharp and bio hazardous waste, universal precautions, and infection control in dental clinics and dental laboratories.¹¹³ Among other topics, the manual addresses tuberculosis, human immunodeficiency virus (HIV) infection, gastrointestinal illness, immunization, and employee TB testing.

Additionally, there is the broader Correctional Managed Health Care Policy Manual, which addresses issues such as health care services support and inmate care and treatment, including the receiving, transfer and continuity of care screening and the health appraisal of incoming offenders.

A good overview of TDCJ infection control policies is presented in the TDCJ Connections newsletter article "Infection prevention protocols keep illness at bay in TDCJ's correctional facilities"¹¹⁴ and a 2017 news article highlights recent mumps outbreaks in Texas prisons.¹¹⁵

Recommendations

- 1. Apparently, TDCJ already must adhere to robust legislative guidance. In response, CMHC, has developed a comprehensive protocol. It is important that TDCJ proactively, regularly, and thoroughly educate and train its employees on the responses and tools regarding infectious diseases. During testimony, we found out that some infectious disease responses that correctional officers request, such as gloves, are not effective. If this is the case supported by science, TDCJ must ensure that our correctional workforce is informed of all appropriate responses to expected infectious diseases. Our TDCJ workforce is our most valuable asset.**
- 2. The Legislature should periodically examine how current protocols are implemented and their efficacy in protecting the health and safety of inmates, state employees and the public from infectious diseases. Although preventive vaccines exist for mumps and TDCJ has a managed correctional healthcare protocol for administering vaccines, reported outbreaks of mumps at various during 2017 and**

2018, required temporary cancellation of visitation at the affected sites.

- 3. TDCJ should be sure all employees understand and adhere to current infectious disease protocols. Procedures should be put into place that ensures employees have the proper training and equipment at all times to comply with these procedures.**
- 4. TDCJ should examine their equipment distribution procedures to be sure every unit has the appropriate quality, quantity and sizes of PPE for staff. TDCJ should look specifically at disaster response plans to be sure when inmates and staff are relocated, PPE is also provided for the increased staff.**
- 5. TDCJ should work with employees to get feedback on the availability of equipment and potential improvements to the process and procedures.**
- 6. TDCJ should develop a communications structure that allows for employees to report issues up the chain of command at regular intervals to more quickly identify issues and develop solutions.**

Interim Charge #7: Review assessments used by the Board of Pardons and Paroles and parole panels to determine an inmate's risk of recidivism for purposes of granting parole and the use of GPS technology to monitor offenders.

The committee met on August 29, 2018 to consider Charge #7. Invited testimony included:

David Gutierrez, Chair, Texas Board of Pardons and Paroles
Haley Holik, Policy Analyst, Texas Public Policy Foundation

BPP & GPS Technology

The primary goal of this interim charge is to take a comprehensive look at common factors leading to incarceration and recidivism, and understand the socioeconomic factors better that contribute to initial incarceration and subsequent recidivism which may in turn influence parole policies. Socioeconomic factors include educational history, family history, medical history, and how adverse childhood experiences may influence the behavior of an individual, which may influence risk factors. Current TDCJ statistical reports include basic information about educational achievement and IQ, and it is important to study the policy implications of these factors further in depth to gain an understanding of how and to what extent these may influence incarceration and recidivism when making parole decisions. Collection of this data could facilitate collaboration between corrections stakeholders, community organizations, and other state agencies to help prevent individuals from offending and from being incarcerated again after release on parole.

History of Parole Guidelines in Texas¹¹⁶

Before 1983, parole decisions made by the Texas Board of Pardons and Paroles (BPP) incorporated Salient and Significant Factor Score sheets, which classified parole candidates by their likelihood to succeed under parole supervision.

In 1983, BPP adopted the PABLO Scale,¹¹⁷ which evaluated the risk of an offender's release by assessing numerous factors such as the offender's criminal and juvenile history, education, and history of substance abuse.

In 1985, the state legislature mandated that the board incorporate parole guidelines into the parole process. The BPP designed these guidelines to consider the likelihood of a favorable parole outcome and the severity of the offense.

In 1987, BPP formally adopted parole guidelines that incorporated a risk score reflecting factors such as offense severity level, the number of prior convictions and incarcerations, employment history, and the history of alcohol and drug dependence by the justice-involved person.

In 1996, the Criminal Justice Policy Council recommended the development of revised guidelines to improve the consistency with which the guidelines applied to all candidates for parole and to predict better those who are a risk to public safety.

In 1998, the National Institute of Corrections (NIC) suggested a "fundamental re-examination and redesign" of the parole guidelines after the board requested technical assistance in ensuring the guidelines employed consistency and validity in measuring risk factors.

BPP contracted with Security Response Technologies, Inc., in 1999 to review current board practices, as well as parole practices of other states, to do a validation test of existing guidelines and evaluate other factors used in risk assessment, and to implement training on the guidelines for board members, parole commissioners, and institutional parole officers. The new parole guidelines submitted by Security Response Technologies were adopted in 2001.

In 2009, BPP adopted a report by NIC consultant Dr. James Austin that modified and updated the parole guidelines.

In 2012, an initiative conducted by MGT of America, Inc., recommended updates to the parole guidelines, which led to the adoption of separate risk scales for male and female offenders.

In October 2014, the Bureau of Justice National Training and Technical Center awarded the board a grant for technical assistance regarding the board's parole guidelines. In December 2014, Dr. Austin began working with the board to evaluate and recommend revisions as appropriate to the board's parole guideline levels and estimated approval rates.

In 2015, after partnering with the Bureau of Justice Assistance, BPP made revisions to parole guideline levels and adopted a new range of recommended parole approval rates based on emerging data and practices not available when the initial range was established in 2001.

Parole Guidelines and Assessments

Parole panels in Texas have complete discretion in making parole decisions to carry out the duties imposed under the constitutional and statutory provisions relating to parole and mandatory supervision.¹¹⁸

BPP has adopted guidelines to assist parole panels in determining candidates for release on parole. Though not exclusive criteria, parole panels use these guidelines as a basis for release decisions.¹¹⁹

The parole guidelines consist of two components that interact to provide a single score: an offense severity scale and a risk assessment instrument.¹²⁰ The risk assessment instrument consists of two sets of components, static and dynamic factors.¹²¹

Static factors,¹²² which reflect the offender's previous criminal record and do not change over time,¹²³ include:

- age at first admission to a juvenile or adult correctional facility;
- history of supervisory release revocations for felony offenses;
- prior incarcerations;
- employment history; and
- the commitment offense.

Dynamic factors,¹²⁴ which reflect conduct and characteristics the parole candidate has demonstrated during incarceration and may fluctuate over time,¹²⁵ include:

- the offender's current age;
- whether the offender is a confirmed security threat group (gang) member;
- education, vocational, and certified on-the-job training programs completed during the present incarceration;

- prison disciplinary conduct; and
- current prison custody level.

Using the risk assessment instrument, the parole panel assigns the parole candidate a risk level based on the results of the risk assessment instrument. The parole panel also assigns an offense severity class for the candidate's most serious active offense. The board has assigned an offense severity ranking to each felony offense in statute ranging from "Low" for non-violent crimes to "Highest" for the most serious offenses, such as capital murder.¹²⁶

The parole panel then combines the offense severity and risk assessment components in a matrix that generates the parole candidate's parole guidelines score,¹²⁷ as seen below.

Parole Guidelines Score Matrix

Offense Severity Class	Male Risk Level				Female Risk Level		
	Highest (16)	High (9-15)	Moderate (4-8)	Low (3 or less)	High (10+)	Moderate (4-9)	Low (3 or Less)
Highest	1	2	2	3	2	2	3
High	2	3	4	4	3	4	4
Moderate	2	3	5	6	3	5	6
Low	3	4	6	7	4	6	7

A parole guidelines score ranges from one, which represents an individual with the lowest probability for success on release, to seven, which represents the highest probability of success on release without returning to prison.¹²⁸ BPP maintains a range of recommended parole approval rates for each category or score within the guidelines.¹²⁹

While used for research and reporting, the risk assessment instrument's components do not mandate either a favorable or unfavorable parole decision.¹³⁰

BPP may revise the parole guidelines as warranted,¹³¹ but the adoption and use of the parole guidelines does not imply the creation of any parole release formula or a right or expectation by the justice-involved to parole based upon the guidelines, which are meant to serve as an aid in the parole decision process. Furthermore, any parole decision is at the discretion of BPP and the voting parole panel.¹³²

Annually, the Criminal Justice Policy Council fulfills a requirement to report to the Legislative Criminal Justice Board, the Texas Board of Criminal Justice, and the Board of Pardons and Paroles on the use of the parole guidelines in making parole decisions.¹³³

Notification to Offender of Parole Panel Decision

After reaching a decision, the parole panel must notify the parole candidate of its decision in writing, along with the reasons for the decision to the extent those reasons relate specifically to

the person the BPP is evaluating for parole.¹³⁴ The reasons provided for a parole panel's decision include but are not limited to the following:¹³⁵

- criminal history;
- nature of offense;
- drug or alcohol involvement;
- institutional adjustment;
- adjustment during periods of supervision;
- participation in TDCJ-CID proposed or specialized programs;
- time served;
- felony offense committed while incarcerated;
- discretionary mandatory supervision; and
- gang affiliation.

Victim Notification¹³⁶

Before a parole panel considers the release of the justice-involved on parole, constitutional provisions and state statutes require the Pardons and Paroles Division is required to make a reasonable effort to notify the victim, or a guardian or relative of the victim, as applicable, if the victim:

- is a victim of sexual assault, kidnapping, aggravated robbery, or felony stalking, or
- has suffered bodily injury or death as the result of the criminal conduct of the offender.

Parole Demographics and Community Supervision Data

Demographic Highlights – August 31, 2017 Parole					
		Parole	DMS	MS	Total
Inactive Status	Pre-Revocation – Not in Custody	9,392	2,791	893	13,076
	Annual Report	277	0	0	277
	Early Release From Supervision	894	5	17	916
	Detainer/Deported	6,400	1,572	216	8,188
	Supervised Out of State	2,713	274	196	3,183
	Death Reported	203	24	16	243
	In Custody (Not in TDCJ custody)	593	125	20	738
Parole Residential Facility	Halfway House				1,268
	ISF				1,588
	SAFP				468

Demographic Highlights – FY 2017 Parole Placements and Removals					
		Parole	DMS	MS	Total
Placed on Parole Supervision	From Prison	21,617	12,524	358	34,499
	From PIA	134	101	5	240
	From TYC	52	N/A	N/A	52
	From Out of State	1,086	N/A	N/A	1,086
Removals from Parole Supervision	Discharge	17,377	9,927	534	27,838
	Revoke/Returned to TDCJ	5,634	1,497	572	7,703
	Return ICC to Sending State	976	N/A	N/A	976
	Sentence Reversed or Pardoned	9	2	0	11
	Death	824	133	67	1,024

The Legislative Budget Board has estimated that parole numbers will remain relatively the same for Fiscal Years 2018-2020 at about 84,500.¹³⁷ Parole numbers as of February 28, 2018, were 83,965, compared with the total incarcerated population of 145,399. As of that date, there were 153,338 individuals under Felony Direct Community Supervision.

Recommendation

- 1. The BPP deliberately should continue implementing its risk assessment tool in order to effectively evaluate parole revocation decisions.**
- 2. The Texas Constitution provides the Governor clemency powers. The Governor appoints Texans to the Board of Pardons and Paroles (BPP). The BPP receives, reviews, and either recommends favorable clemency from the Governor or denies clemency the applications from formerly justice-involved citizens. The Legislature should continue to encourage the Governor’s constructive use of this constitutional clemency power with the appointment of thoughtful BPP members in order to enhance clemency opportunities for formerly justice-involved citizens who have experienced personal reformation, are contributing to community safety and our local prosperity, and are indispensable to their communities and families.**

Interim Charge #8: Monitor Texas prison system heat-related litigation currently making its way through the courts. Monitor Prison Rape Elimination Act (PREA) compliance within Texas state and county criminal justice facilities.

The committee met on August 29, 2018 to consider Charge #8. Invited testimony included:

Bryan Collier, Executive Director, Texas Department of Criminal Justice
Brandon Wood, Executive Director, Texas Commission on Jail Standards
Erica Gammill, Prisoner Advocate, Texas Association Against Sexual Assault

Prison Heat

The after-effects of Hurricane Harvey have presented the state with an unexpected opportunity to undertake a broad-scope evaluation of the physical conditions of prison facilities operated by the state directly or through contract. This study would explore the options for TDCJ to develop and implement creative solutions to manage facility housing conditions under emergency and non-emergency situations, and mitigate indoor temperatures and humidity for medically heat-sensitive inmates at units that have no facility-wide air-conditioning HVAC system.

In recent years, there has been considerable media and public attention devoted to the heat conditions in the cell blocks of most of the TDCJ prison units. TDCJ has taken some precautionary measures to prevent heat-related deaths. For instance, TDCJ made respite areas available to the justice-involved on request. This allows them to go to a cooler area where they are provided some relief from heat in the cell blocks. TDCJ uses a Medical Heat Restriction List to help TDCJ personnel monitor the justice-involved who have a heat-sensitive medical history. The unit staff perform wellness checks, along with normal security checks. TDCJ trains its officers to recognize signs of heat-related illness and treatment needs, and each employee carries a ready-reference card to evaluate these signs. The justice-involved have frequent access to cool showers. In some units, depending on access to an electrical outlet, TDCJ provides at least one fan at no cost to the inmate.

Still, an ongoing risk remains considering that Texas opened some of the TDCJ units as early as 1883. Most of the state operated and state-contracted facilities do not have unit-wide cooling systems. Interestingly, many of these facilities were the result of a significant prison expansion program, which occurred in the late eighties and early nineties. Federal litigation and public concern about violent crime at that time led the Texas Legislature to increase the number correctional facilities substantially. Even though Texas always experiences long hot summers, state correctional and political leadership did not ensure that these facilities had the means to control the indoor climate. Therefore, it is worth noting that today's TDCJ executive team and the current state leadership did not make the initial decision to build so many facilities without the appropriate indoor climate control tools throughout every facility. Every TDCJ correction unit has some form of climate control in at least the administrative office areas, the unit medical clinic, the chaplaincy, and the educational and library sections. However, every unit does not have climate control tools in the justice-involved living areas.

Currently, TDCJ procedures direct the Correctional Managed Healthcare staff to assist with safe and healthful work conditions and prevent heat-related injuries.¹³⁸

"Heat stress is best prevented by acclimatizing staff and offenders to working under hot and humid climate conditions, assuring adequate fluid intake and, to a lesser extent, assuring adequate salt intake. Proper treatment of heat stress should begin at the work site, but severe heat stress is a medical emergency which must be treated in a medical facility."¹³⁹

Departmental procedures required for Correctional Managed Healthcare manage heat-related health conditions. Policy guidelines address such issues as acclimatization, fluid intake, work-

rest cycle, newly-assigned workers, the justice-involved on medications, and reporting requirements.¹⁴⁰ For use by the Warden or designee, Policy D-27.2 provides a Heat and Humidity Index to determine safe/hot weather working conditions whenever the temperature is 85° F or higher.¹⁴¹ "Prior to exposing workers to extremely hot working conditions, the Warden or designee should consult with medical staff to evaluate the hazard of the effective temperature."¹⁴² Facility medical staff must complete the "Heat-Related Illness Reporting Form"¹⁴³ and report each case of heat cramps, heat exhaustion, heat stroke or neuroleptic malignant syndrome.¹⁴⁴

However, litigation against TDCJ filed on June 18, 2014, by Plaintiffs from the Wallace Pack Unit in Navasota caused TDCJ to review these heat-relief procedures carefully and at length.¹⁴⁵ The Pack Unit is a Type-I Geriatric prison, meaning that it is a single-level facility having wheelchair accommodations.¹⁴⁶ The U.S. District Court of the Southern District of Texas (Houston division) determined in Cole v. Collier that although TDCJ had put heat-mitigation measures in place, those measures exhibited an insufficiency in protecting against a substantial risk of serious illness or death, and were by and large ineffective at reducing the heat stress placed on Plaintiffs' bodies.¹⁴⁷

Although not the only heat-related litigation filed on behalf of persons incarcerated at TDCJ units, the parties ultimately settled Cole v. Collier after a preliminary injunction order issued by Judge Keith Elliston, Southern District of Texas on July 19, 2017.¹⁴⁸ As stated in the order:

"The immediate issue is whether a preliminary injunction should be entered to redress conditions that are alleged to create an unconstitutional risk of heat-related illnesses at the Wallace Pack Unit, a prison operated by the Texas Department of Criminal Justice ("TDCJ"). Although no heat-related deaths have been reported at the Pack Unit, at least 23 men have died because of heat at TDCJ facilities from 1998 to today. For reasons that will be set forth, the Court does find that a preliminary injunction should issue to ensure that prisoners at the Pack Unit are not deprived of their Eighth Amendment right to be free of cruel and unusual punishment."¹⁴⁹

According to evidence cited in the transcript, the Court summarized: "TDCJ currently has over 150,000 beds in its 109 facilities across the state. Of those beds, 32,434 are air conditioned. Hearing Tr. 6 at 24; Defs.' Ex. 109 at 3. Twenty-eight facilities have air conditioning in all of the housing areas, 53 facilities have air conditioning in some of the housing areas, and 23 facilities have no air conditioning at all in the housing areas. Defs.' Ex. 109 at 3. . . . Of the air conditioned beds throughout TDCJ facilities, 3,745 are segregation cells, and 11,616 are treatment [footnote omitted] beds, leaving 17,073 air conditioned general population beds."¹⁵⁰

The 2018 settlement reached in this litigation addressed the heat conditions at the Pack Unit.¹⁵¹ As a result of the settlement, TDCJ relocated many men housed at the Pack Unit because of their personal heat-sensitive medical conditions such as high blood pressure, along with their age and other factors. The settlement directed TDCJ to transfer those men to units with air conditioning where medical staff could identify patients taking heat-sensitive drugs and offer other treatment to address their heat-sensitivity.

While heat-mitigation measures are helpful, TDCJ and state legislative and executive branch leadership need to chart a constructive course for the future. That is not to say that this course of action could be carried out fully in a year or a two-year Legislative Session; a thoughtful plan should be developed, adopted and implemented over a reasonable time frame. Based on the medical information known about human health and heat-related health risks, TDCJ cannot rely only on mitigation factors to assure the well-being of inmates and corrections personnel.¹⁵² The state has a responsibility to assure the best interest of corrections personnel in terms of their health and occupational safety, as well as the health of inmates in confinement.¹⁵³ As elected officials, it is our responsibility today to meet our constitutional mandate that we have sworn to uphold.

Recommendation

- 1. Develop a reasonable and thoughtful course of action based on realistic budget estimates to address heat-related conditions in Texas prison buildings and stage a strategic and limited time-frame within which to construct the changes or install the equipment or fixtures needed.**

Prison Rape Elimination Act

Now is a good time to do a comprehensive review of the implementation of the federal Prison Rape Elimination Act (PREA) in the Texas prison system.¹⁵⁴ In keeping with the statutory scheme of Chapter 501 of the Texas Government Code to guard inmate welfare, Texas enacted a zero-tolerance policy in 2007 concerning the detection, prevention, and punishment of sexual abuse, including consensual sexual contact of inmates in the custody of TDCJ.¹⁵⁵ In addition, data collection, reporting standards, and complaint reporting procedures are required.¹⁵⁶ If an assault is committed by an employee on an inmate housed in a facility operated by or under contract with TDCJ, a criminal complaint must be filed in the county of the offense.¹⁵⁷

Congress enacted PREA (Public Law 108-79) to address the issue of sexual violence in prisons.¹⁵⁸ The purpose of the act was to “provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.”¹⁵⁹ President George W. Bush signed the bill on September 4, 2003, authorizing the Congressional creation of a bipartisan panel, the National Prison Rape Elimination Commission (NPREC), and the Review Panel on Prison Rape.¹⁶⁰

The NPREC studied federal, state, and local government policies and practices relating to the prevention, detection, response, and monitoring of sexual abuse occurring in correction and detention facilities across the country, and issued its report in June 2009 to the President, Congress, U.S. Attorney General, and other federal and state officials.¹⁶¹ The Bureau of Justice Statistics (BJS) conducted a National Inmate Survey (NIS) in the spring of 2007, collecting reports of sexual violence directly from the inmates using a computer-assisted questionnaire. Participating prisons included 15 Texas facilities among the total of 146 state and federal prisons.¹⁶²

The State of Texas established the Office of the Prison Rape Elimination Act (PREA) Ombudsman with the enactment of House Bill 1944, effective June 15, 2007.¹⁶³ The Board of Criminal Justice (TBCJ) appoints the Ombudsman, which is an office external to the reporting process of TDCJ. The Ombudsman reports directly to the Board.¹⁶⁴ "The PREA Ombudsman was created to provide offenders, and the public, with an independent office to report sexual assaults. The PREA ombudsman provides a confidential avenue for offenders to report sexual abuse and sexual harassment, as well as investigating and responding to PREA complaints and inquiries received from elected officials, the public, and offenders."¹⁶⁵

The federal Review Panel conducted site visits and hearings in Texas and other locations. In the spring of 2008, the Panel conducted a hearing in Houston, which included a visit to a local prison and testimony offered by TDCJ administrators and employees.¹⁶⁶ The Allred Unit in Iowa Park, Texas was chosen to participate in the Standards Implementation Needs Assessment (SINA) Project in June 2008.¹⁶⁷

"On May 16, 2012, the Department of Justice (DOJ) released its final rule adopting national standards to prevent, detect, and respond to sexual abuse in confinement facilities, pursuant to the Prison Rape Elimination Act of 2003."¹⁶⁸ Implementation of the PREA standards required state governors to certify full compliance with the standard or face financial penalties. Specifically, without that certification, a state would be "subject to the loss of 5% of any DOJ grant funds that would otherwise be received for prison purposes, unless the governor submits an assurance that such 5 percent will be used only for the purpose of enabling the state to achieve and certify full compliance with the standards in the future."¹⁶⁹ The deadline set to certify compliance was May 15, 2015.¹⁷⁰ In 2014, Governor Rick Perry notified U.S. Attorney General Eric Holder that he would not certify that Texas would be in full compliance with PREA by the May 15th deadline.¹⁷¹

In its 2014 Report published in January 2015, the House Committee on County Affairs studied PREA compliance in county-run facilities, which were reporting higher incident rates (3.22 per 1,000 inmate population) in locally and privately run facilities.¹⁷² According to testimony received at the County Affairs hearing on May 5, 2014, the average number of incidents in those facilities exceeded the average of 1.22 incidents per 1,000 inmate population in the state prison systems.¹⁷³

In August 2014, TDCJ moved forward to achieve compliance with the PREA standards for all facilities. In CY 2014 a total of 17 facilities were audited, 33 facilities were audited in CY 2015, and 49 facilities were audited in CY 2016. All facilities met compliance with the PREA Standards.¹⁷⁴

In a policy shift, Governor Greg Abbott wrote to U.S. Attorney General Loretta Lynch in May 2015 that while Texas was not yet in full compliance with PREA, Texas was conducting audits and would comply with the DOJ PREA standards.¹⁷⁵ "I cannot yet certify that the state is in full compliance with Prison Rape Elimination Act ('PREA'), because our PREA audits are still ongoing,' Abbott wrote. 'But every facility that has completed the PREA audit process has been

certified as fully compliant. And I can assure you that we will fully implement DOJ's PREA standards wherever feasible."¹⁷⁶

In September 2015, the Safe Prisons/PREA Program Management Office was awarded a DOJ PREA Program Grant for a Demonstration Project to Establish "Zero Tolerance" Cultures for Sexual Assault in Correctional Facilities.¹⁷⁷ The grant application titled, "Safe Prisons Information Tracking System," sought funding for a Safe Prisons/PREA informational data system to enhance the preventative infrastructure and technology for each TDCJ state operated and contract facility. The grant of \$875,326 (\$437,663 federal / \$437,663 in-kind match) was awarded for a two year period beginning October 1, 2015 through September 30, 2017.¹⁷⁸

Since that time, the remaining units have been audited and the three-year audit cycle has begun again.¹⁷⁹ Approximately one-third of the TDCJ facilities will be reviewed each year utilizing the approved PREA audit instrument. Pursuant to PREA, audits of secure confinement facilities operated by or under contract with TDCJ are performed by auditors certified through the U.S. Department of Justice. The audit findings for each facility are posted on the agency website.¹⁸⁰ Although progress has been noted, the named purpose of the Act - to eliminate the incidence of prison rape - has yet to be accomplished.

"During CY 2017, there were a total of 758 allegations of staff-on-offender alleged sexual abuse and sexual harassment incidents reported to the PREA Ombudsman by TDCJ. Of the 758 staff-on-offender allegations, 556 were considered sexual abuse, 45 involved sexual harassment, and 157 were categorized as voyeurism. Of the 556 sexual abuse allegations, 96 (17.2%) were identified by the Office of the Inspector General (OIG) as meeting the elements of the Texas Penal Code for Sexual Assault, Aggravated Sexual Assault, or Improper Sexual Activity with a Person in Custody."¹⁸¹ Regarding these CY 2017 staff-on-offender sexual assault and improper sexual activity with persons in custody, the OIG documented 53 alleged incidents of sexual assault and 43 alleged incidents of Improper Sexual Activity with Persons in Custody.¹⁸²

Of the 53 staff-on-offender cases reported in 2017, 42 were identified as sexual assault and 11 as aggravated sexual assault. At the time of the report, 12 of the investigations were ongoing, 27 were unsubstantiated, 9 were unfounded, and 5 was substantiated.¹⁸³ Reports of improper sexual activity with a person in custody numbered 43, of which 14 were substantiated. An investigation was ongoing in 9 cases at the time of the report, 17 were unsubstantiated, and 3 were unfounded.¹⁸⁴

In contrast, there were 657 allegations of *offender-on-offender* alleged sexual abuse incidents reported to the PREA Ombudsman in CY 2017 by TDCJ.¹⁸⁵ Of the 657 offender-on-offender allegations, 288 were identified by the OIG as meeting the elements of the Texas Penal Code for Sexual Assault or Aggravated Sexual Assault, and subsequently categorized as *Nonconsensual Sexual Act*. The remaining 369 offender-on-offender allegations were categorized as the *Abusive Sexual Contact* of one offender by another.¹⁸⁶

Regarding statistics on offender-on-offender alleged nonconsensual sexual acts, statistics showed for the total of reports there were 288 alleged victims and 263 alleged assailants, 5 or more allegations were reported to have occurred at 20 correctional facilities, accounting for 37.7

percent of the allegations reported. Of the cases reviewed, 7 cases were substantiated, 49 cases were unfounded and 232 cases were unsubstantiated.¹⁸⁷ In addition, the PREA Ombudsman reviewed 369 administrative investigations deemed as abusive sexual contact. Of these cases, 17 were substantiated, 46 cases were unfounded and 306 cases were unsubstantiated.¹⁸⁸

Recommendations

- 1. Review internal reporting procedures to determine better and more timely means and documentation for substantiating complaints reported in offender-on-offender cases.**
- 2. Continue to seek Department of Justice PREA Program Grants and publish the results of the “Safe Prisons Information Tracking System” grant.**

Interim Charge #9: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature.

The committee met on August 29, 2018 to consider Charge #9. Invited testimony included:

Bryan Collier, Executive Director, Texas Department of Criminal Justice
David Gutierrez, Executive Director, Texas Board of Pardons and Paroles
Dr. Clint Carpenter, Superintendent, Windham School District

Legislation

During the 85th Regular Legislative Session, the House Committee on Corrections heard numerous bills. These are the bills that passed to enactment, as summarized by the Texas Legislative Council, along with commentary about the status of their implementation during the interim.

House Bill 104, Effective: 9-1-17

House Author: White; **Senate Sponsor:** Nichols

House Bill 104 amends the Code of Criminal Procedure and Government Code to require an attorney representing the state in certain criminal proceedings to notify an officer of the Texas Department of Criminal Justice (TDCJ) of the offense charged in the indictment if the defendant, in connection with a previous conviction for such an offense, received a sentence that included imprisonment at a TDCJ facility and resulted in a subsequent discharge or release. The bill requires TDCJ, on receipt of the notification, to provide notice of the offense charged in the indictment to each victim of such a previous offense and requires TDCJ to adopt a procedure by which the victim may request to receive notice of the defendant's subsequent offenses.¹⁸⁹

This notification for crime victims requires collaboration between the TDCJ Victim Services Division (VSD) and district attorneys' offices, and TDCJ has adopted procedures by which a victim may opt-in to request notice of subsequent offenses. To help district attorneys comply with this new legislation, the TDCJ VSD developed a form, the "Subsequent Indictment on Article 42A.054 (a) Offense and/or Finding of a Deadly Weapon Notification." More details about the notification process are posted at <https://www.tdcj.state.tx.us/divisions/vs/hb104.html>. The program is fully implemented and TDCJ has notified elected prosecutors and Victim Assistance Coordinators (VAC) of the new procedures by email and U.S. mail. The agency has also revised their Texas Assistance Victim's Training Academy curriculum and announced the new notification procedures through articles in the Victim Informer, TDCAA (Texas District & County Attorneys Association) newsletter, and VAC bulletins.

House Bill 238, Effective: 9-1-17

House Author: Hernandez et al.; **Senate Sponsor:** Perry

House Bill 238 amends the Government Code to require a person convicted of prostitution based on the payment of a fee to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.¹⁹⁰

Since the effective date on September 1st, there have been no practical issues reported with implementation thus far. There may be continued need, though, to examine further offenses which upon final conviction might warrant inclusion into the Combined DNA Index System (CODIS).

House Bill 239, Effective: 9-1-17

House Author: Hernandez et al.; **Senate Sponsor:** Whitmire et al.

House Bill 239 requires the Texas Department of Criminal Justice (TDCJ) to prepare a report on the confinement of pregnant inmates in facilities operated by or under contract with TDCJ.¹⁹¹

The report required under House Bill 239 will not be due until December 1, 2018, and the reporting period it covers will not conclude until September 1, 2018. No implementation issues have been flagged by responsible agencies. At this time, it is uncertain what follow-up measures may be necessary until TDCJ produces the report.

House Bill 553, Effective: 9-1-17

House Author: White et al.; **Senate Sponsor:** Miles et al.

House Bill 553 amends the Education Code to create the task force on academic credit and industry recognition to identify opportunities for the award of academic credit or industry recognition to persons confined or imprisoned in the Texas Department of Criminal Justice.¹⁹²

House Bill 553 had a delayed start due to the appointments that needed designation by the various agencies involved (The Office of the Governor, the Texas Department of Criminal Justice, the Windham School District, the Higher Education Coordinating Board, and the Texas Workforce Commission). The Governor named the Chair and five of the appointees. Governor Greg Abbott appointed Mike Bell of Henderson as the presiding officer of the task force. Bell is the vice president of Correction at Management & Training Corporation, and a former Captain of the Texas Department of Criminal Justice. He is a member of American Correctional Association and the Texas Correctional Association. Bell received a Bachelor of Science in administration of criminal justice from the University of Charleston. The task force will meet and provide a report on their findings to the Governor and the Legislature no later than September 1st, 2021.

House Bill 2888, Effective: 9-1-17

House Author: Romero, Jr. et al.; **Senate Sponsor:** Whitmire

House Bill 2888 amends the Government Code to require the Board of Pardons and Paroles to identify any classes or programs that the board intends to require the justice-involved to complete before BPP releases on parole. The bill requires the Texas Department of Criminal Justice to provide the justice-involved the opportunity to complete those classes or programs so there is no delayed parole release.¹⁹³

In response to House Bill 2888, the Board of Pardons and Paroles modified its Board Rule Sec. 145.7 to indicate that classes or programs listed in the Individual Treatment Plan (ITP) are the programs that the board intends to require an offender to complete. The provisions of Sec. 145.7 under Title 37, Part 5, Chapter 145 of the Texas Administrative Code were adopted to be effective November 12, 2017, 42 Tex. Reg. 6187. The Rule states:

"(a) The Board shall conduct an initial review of an offender, who is eligible to be released on parole, not later than the 180th day of the offender's admission to the TDCJ CID.

(b) The Board shall identify the classes or programs listed in the Individual Treatment Plans as the classes or programs that the Board intends to require the offender to complete before releasing the offender on parole. TDCJ shall provide the offender with a copy of the Individual Treatment Plan which includes a list of classes or programs.

(c) Before the offender is approved for release on parole, the offender must agree to participate in the classes or programs described by the Individual Treatment Plan. Refusal to participate in the classes or programs described by the Individual Treatment Plan shall be considered by the Board when reviewing the offender for parole.

(d) The identification of any classes or programs under subsection (b) shall have no effect on any discretionary decision made by the Board regarding any offender and does not imply a right or expectation by an offender to parole based upon the completion of the classes or programs."¹⁹⁴

Placement of the individual eligible to participate in the ITP classes or programs falls within TDCJ authority, and that Department bases the process upon the availability of space at the unit offering the class or program, and the process of transferring the individual to that unit, if needed.

House Bill 3130, Effective: 9-1-17

House Author: Parker et al.; **Senate Sponsor:** Huffman

House Bill 3130 amends the Code of Criminal Procedure and Government Code to require the Texas Department of Criminal Justice to establish a pilot program to provide educational and vocational training, employment, and reentry services to certain defendants placed on community supervision and required to serve a term of confinement in a state jail felony facility.¹⁹⁵

Although it took effect September 1, 2017, HB 3130 has a deferred implementation date. It requires TDCJ to establish the pilot program required by new Section 507.007, Government Code, not later than September 1, 2019. The legislation allows TDCJ to identify as many as four locations for the pilot program. The Department shall issue a request for proposals from public or private entities to provide services through the pilot program. House Bill 3130 also makes Article 42A.562, Code of Criminal Procedure, prospective to September 1, 2019 so that it applies only to a defendant who receives a sentence of confinement in a state jail on or after that date. A person is not eligible to participate in the pilot program if they are or have been previously convicted of an offense under Title 5, Penal Code (Chapters 19-22, Offenses Against the Person).

"In fiscal year 2016, 19,502 individuals were admitted to state jail. Under the provisions of the bill, individuals currently or previously convicted of an offense against a person (Title 5, Penal Code) would not be eligible to participate in the pilot program. After removing those individuals admitted to state jail for a Title 5 offense, 19,062 individuals remained. Individuals with previous Title 5 offense convictions were also

removed from the cohort leaving 12,653 eligible individuals."¹⁹⁶

TDCJ is in the preliminary stages of implementing House Bill 3130; current plans include developing a Request for Proposal (RFP) that is to be released in the fall of 2018. The locations where this program will be implemented have not yet been chosen. State Representative Tan Parker anticipates follow up legislation to House Bill 3130 in the upcoming legislative session, and is prepared to request that the House Appropriations Committee consider \$4 million for the biennium toward this program. TDCJ supports the program. According to the Engrossed Fiscal Note for House Bill 3130, a savings in revenue was anticipated from the pilot program in FY 2020 and each subsequent fiscal year.¹⁹⁷

Senate Bill 1576, Effective: 9-1-17

Senate Author: Perry; **House Sponsor:** King, Ken

Senate Bill 1576 amends the Civil Practice and Remedies Code, Code of Criminal Procedure, Government Code, Health and Safety Code, Penal Code, Tax Code, and Transportation Code to revise provisions relating to the civil commitment of sexually violent predators and the operation of the Texas Civil Commitment Office. The bill makes certain personal identifying information of an officer or employee of the office privileged from discovery by an individual who is civilly committed as a sexually violent predator and prohibits a magistrate from releasing on personal bond a defendant who at the time of the commission of the charged offense is civilly committed as a sexually violent predator. The bill revises the requirements of such a committed person who is subject to sex offender registration with regard to the frequency of reporting to the person's primary registration authority.¹⁹⁸

Senate Bill 1576 makes certain provisions relating to the disclosure of and access to criminal history record information that is the subject of an order of nondisclosure applicable to the Texas Civil Commitment Office and provides for the confidentiality of certain personal and financial information of current or former employees of the office. The bill provides for the transfer and the return of an individual who is civilly committed as a sexually violent predator, the release of such a person from housing operated by or under contract with the office, and the conditions under which an employee of the office may use mechanical or chemical restraints on such a committed person. The bill sets out requirements relating to the appearance of such a civilly committed person at certain hearings and relating to state-issued identification for such a person upon release. The bill provides penalty enhancements for the offenses of assault and harassment by persons in certain facilities and expands the conduct that constitutes the offense of unlawful carrying of a handgun by a handgun license holder to include intentionally, knowingly, or recklessly carrying a handgun on the premises of a civil commitment facility.¹⁹⁹

Changes directed by Senate Bill 1576 and implemented by the Texas Civil Commitment Office have enhanced safety for both staff and public at the Texas Civil Commitment Center. The Penal Code now prohibits the introduction of drugs, alcohol, and weapons into a civil commitment center. Since the effective date, the new enhanced penalties for assault of a Texas Civil Commitment Office staff member or contractor have been helpful in bringing felony-offense level charges against an offender, a step up from misdemeanor assault penalties. The new statutorily required confidentiality concerning security and monitoring of sexually violent

predators has begun the protection of sensitive information from release to the public in several instances. Ongoing cooperation between the Texas Legislature and the Texas Civil Commitment Office will help refine any improvements that may prove necessary.

Senate Bill 1584, Effective: 9-1-17

Senate Author: Garcia et al.; **House Sponsor:** Allen et al.

Under current law, a judge has discretion in determining the basic conditions of a defendant's placement on community supervision. Senate Bill 1584 amends the Code of Criminal Procedure to require a judge to make such a determination after considering the results of a validated risk and needs assessment, to prohibit such a condition from being duplicative of another condition, and to require the judge to consider the extent to which the conditions impact a defendant's ability to meet certain obligations. The bill requires a judge to consider the results of an evaluation regarding a defendant's alcohol or drug dependency before the judge may require the defendant to participate in a state-funded substance abuse treatment program.²⁰⁰

Initially, concerns were expressed among Community Supervision and Corrections Department (CSCD) Directors that Senate Bill 1584 would pose logistical hurdles. Historically, the risk assessment was conducted after a defendant had been placed on community supervision, and SB 1584 changed this to require the assessment prior to the setting of probation conditions. In order to meet these requirements, the CSCD's had to redeploy resources from those identified later in the process and move them forward to the pre-sentence investigation.

After many CSCD Directors expressed concerns that this would be costly and a waste of resources, State Senator Garcia sent a letter of intent to clarify that the courts could delay the risk assessment, so long as conditions of probation were then reviewed and modified once the assessment was completed. However, many courts decided to adhere to the letter of the law and required CSCD's to make the risk assessment part of the initial pre-trial investigation. Since that time, complaints have been few.

Letter from Representative Tony Tinderholt



REPRESENTATIVE TONY TINDERHOLT
- DISTRICT 94 · TARRANT COUNTY -

Re: House Committee on Corrections Interim Report

To Chairman James White and fellow Members of the House Committee on Corrections:

During my two terms in office, I have been grateful to serve on the Corrections Committee . Much of what I have learned is due, in part, to the leadership of Chairman White and my fellow members who sit on this Committee . Though I want to clarify my stance on one charge, I am pleased with this Report and have decided to sign it in its entirety.

Charge 8 asked us to monitor ongoing heat-related litigation. The recommendation of the Committee includes developing a course of action to address heat-related conditions and stage a time-frame to construct changes or install equipment (paraphrased).

I take no issue with ensuring air conditioning for inmates with mental or other health issues and agree the safety of our inmates is of utmost importance. However, I cannot in good conscience support a plan to spend millions of taxpayer dollars to air condition all state jails for a matter of comfort. Jail should always be safe, but it should not be comfortable.

I am grateful to serve alongside each of you on this Committee. I look forward to continuing our shared work in the future.

Sincerely,

A handwritten signature in cursive script that reads "Tony D. Tinderholt".

Tony Tinderholt

Endnotes

- ¹ Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ² Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ³ Live Testimony of Jaclyn Parsonage, on behalf of the AFSCME Texas Corrections Local 3114, May 1, 2018
- ⁴ Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ⁵ Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ⁶ Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ⁷ "Hurricane Harvey: Fiscal Analyses and Resources" at <http://www.lbb.state.tx.us/harvey.aspx>; see also "Updated Hurricane Harvey's Fiscal Impact on State Agencies," Legislative Budget Board ID 5168 (January, 2018), at Page 10.
- ⁸ "Updated Hurricane Harvey's Fiscal Impact on State Agencies," Legislative Budget Board ID 5168 (January, 2018), at Pages 6-7.
- ⁹ Bryan Collier on behalf of Texas Department of Criminal Justice, written testimony May 1, 2018
- ¹⁰ "The Mental Health Workforce: Continuing Challenges and Sensible Strategies," Hogg Foundation on Mental Health (July 2016), Pages 4-7 at http://hogg.utexas.edu/wp-content/uploads/2016/07/2016_policybrief_workforce.pdf.
- ¹¹ *Id.*, at Page 2.
- ¹² http://www.naco.org/sites/default/files/documents/Reducing%20Mental%20Illness%20in%20Rural%20Jails_FIN_AL.pdf
- ¹³ http://www.naco.org/sites/default/files/documents/Reducing%20Mental%20Illness%20in%20Rural%20Jails_FIN_AL.pdf
- ¹⁴ Written Testimony by Katherine Martin on behalf of Bell County Community Supervision, May 1, 2018
- ¹⁵ Albert Roberts and David Springer, *Social Work in Juvenile and Criminal Justice Settings* Springfield, IL: Charles C. Thomas, 2007
- ¹⁶ Testimony by Kerrie Judice on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ¹⁷ Testimony by Kerrie Judice on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ¹⁸ Testimony by Kerrie Judice on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ¹⁹ Texas Department of Criminal Justice, 2017 Report to the Governor and LBB on the Monitoring of Community Supervision Diversion Funds, https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2017_Report_To_Governor.pdf
- ²⁰ Written testimony by Reggie Smith on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ²¹ Written testimony by Reggie Smith on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ²² Texas Department of Criminal Justice, Evaluation of Offenders Released in Fiscal Year 2011 That Completed Rehabilitation Tier Programs, April, 2015, p. 2, <https://drive.google.com/file/d/0B6HJLeMEu3hlQ0NzcF81TzJ0cms/view>.
- ²³ Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, January, 2017, at Page 2, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf.
- ²⁴ Written testimony by Reggie Smith on behalf of Texas Criminal Justice Coalition, May 1, 2018
- ²⁵ Written testimony by April Zamora, Texas Department of Criminal Justice, written testimony on Peer Education and Peer Support Programming, May 1, 2018
- ²⁶ Written testimony by April Zamora on behalf of Texas Department of Criminal Justice, Peer Education and Peer Support Programming, May 1, 2018
- ²⁷ Testimony by Will Francis, Government Relations Director, on behalf of National Association of Social Workers, Presentation to the House Committee on Corrections, May 1, 2018
- ²⁸ Testimony by Will Francis, Government Relations Director, on behalf of National Association of Social Workers, Presentation to the House Committee on Corrections, May 1, 2018
- ²⁹ Testimony by Will Francis, Government Relations Director, on behalf of National Association of Social Workers, Presentation to the House Committee on Corrections, May 1, 2018
- ³⁰ "One Size Fails All: Young Adults and Community Supervision," TCJC, August 2018, at Page 3.
- ³¹ *Id.*
- ³² *Id.*
- ³³ T. Tsiaperas, "City, County receive \$200,000 Department of Justice grant for South Dallas community court," ([Dallas Morning News](#), April, 2016) accessible online at

<https://www.dallasnews.com/news/crime/2016/04/13/city-county-receive-200000-u-s-department-of-justice-grant-for-south-dallas-community-court>.

³⁴ House Bill 122, 85th Legislature, Regular Session, 2017.

³⁵ Johnathan Silver, "House passes bill to raise age of criminal responsibility from 17 to 18," *The Texas Tribune* (April 20, 2017), <https://www.texastribune.org/2017/04/20/raise-age/>

³⁶ Texas Legislature Online Bill history for House Bill 122, 85th Legislature, Regular Session, 2017.

<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=85R&Bill=HB122>

³⁷ Anne Teigen, "Juvenile Age of Jurisdiction and Transfer to Adult Court Laws," *National Conference of State Legislatures* (April 17, 2017), <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>

³⁸ House Research Organization Bill Analysis of H.B. 122 (C.S.H.B. 122), April 20, 2017, at Page 3.

³⁹ Senate Bill 793, 99th General Assembly, 2nd Regular Session (Missouri 2018).

⁴⁰ Brian Evans, "Passing 'raise the age' measure for juvenile offenders puts Missouri on right path" (May 28, 2018), <https://www.kansascity.com/opinion/readers-opinion/guest-commentary/article212034069.html>

⁴¹ *Offenders Received Who Have Been in the Conservatorship of Child Protective Services Fiscal Year 2017 Report*. (December 29, 2017). Texas Department of Criminal Justice.

⁴² *Offenders Received Who Have Been in the Conservatorship of Child Protective Services Fiscal Year 2017 Report*. (December 29, 2017). Texas Department of Criminal Justice.

⁴³ Substance Abuse Felony Punishment Facility

⁴⁴ Texas Department of Criminal Justice Offender Orientation Handbook (February 2017).

http://www.tdcj.state.tx.us/documents/Offender_Orientation_Handbook_English.pdf

⁴⁵ See http://www.tdcj.texas.gov/unit_directory/index.html

⁴⁶ "Women in Texas' Criminal Justice System" (Texas Criminal Justice Coalition, March 2018), at Page 2, accessible online at

<https://www.texascjc.org/system/files/publications/TCJC%20Womens%20Justice%20Quick%20Guide%20-%20Donate.pdf>.

⁴⁷ For instance, the Texas Legislature passed House Bill 239, effective 9-1-17. It requires the Texas Department of Criminal Justice (TDCJ) to prepare a report on the confinement of pregnant inmates in facilities operated by or under contract with TDCJ. However, the reporting period it covers will not conclude until September 1, 2018 and the report will not be due until December 1, 2018.

⁴⁸ "A Growing Population: The Surge of Women into Texas' Criminal Justice System," Texas Criminal Justice Coalition (March, 2018), posted at <https://texascjc.org/womens-justice>; and "An Unsupported Population: The Treatment of Women in Texas' Criminal Justice System," Texas Criminal Justice Coalition (April, 2018), posted at <https://texascjc.org/womens-justice>.

⁴⁹ Id., "Letter from the Executive Director," Leah Pinney, at Page i.

⁵⁰ "Women in Texas' Criminal Justice System" (Texas Criminal Justice Coalition, 2018)

⁵¹ "Women in Texas' Criminal Justice System," supra, at Page 1.

⁵² "An Unsupported Population" (Texas Criminal Justice Coalition, April, 2018), at Page 3.

⁵³ "A Growing Population: The Surge of Women into Texas' Criminal Justice System," Texas Criminal Justice Coalition (March, 2018), posted at <https://texascjc.org/womens-justice>, at Page 5

⁵⁴ "A Growing Population: The Surge of Women into Texas' Criminal Justice System," Texas Criminal Justice Coalition (March, 2018), posted at <https://texascjc.org/womens-justice>, at Page 6

⁵⁵ See http://www.tdcj.texas.gov/unit_directory/index.html.

⁵⁶ "Monthly Tracking of Adult Correctional Population Indicators" (Legislative Budget Board Report 812 for May 2018, pub. June 2018), shown online at

http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/812_MonthlyReport_June_2018.pdf, at Page 1.

⁵⁷ Id., at Page 2.

⁵⁸ http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2016.pdf

⁵⁹ Testimony of Carey Green on behalf of Texas Department of Criminal Justice, written testimony for House Corrections Committee, May 1, 2018.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Testimony of April Zamora on behalf of Texas Department of Criminal Justice, House Committee on Corrections, May 1, 2018. See also <https://www.tdcj.state.tx.us/divisions/rpd/bambi.html>.

⁶⁹ Lindsey Linder, Women in Texas Criminal Justice System, two-part report series by the Texas Criminal Justice Coalition 2018, www.TexasCJC.org/womens-justice

⁷⁰ Testimony of Michael Barba, Associate Director of Public Policy, on behalf of Texas Catholic Conference of Bishops

⁷¹ The state jail system was created by Chapter 988 (S.B. 532), Acts of the 73rd Legislature, Regular Session, 1993, which became effective September 1, 1993. The state jail felony classification was created by Section 1.01, Chapter 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, the relevant parts of which became effective September 1, 1994.

⁷² House Committee on Corrections, *Interim Report to the 85th Legislature*, December 2016.

<http://www.house.state.tx.us/media/pdf/committees/reports/84interim/Corrections-Committee-Interim-Report-2016.pdf#page=48>.

See also House Research Organization, Bill Analysis, SB 532, 73rd Legislature, Regular Session, 1999, May 6, 1993. <https://lrl.texas.gov/scanned/hroBillAnalyses/73-0/SB532.pdf>;

"Time to revise state jail system," *San Antonio Express-News*, July 12, 2010.

<https://lrl.texas.gov/scanned/clips/2010/07/10071203.pdf>.

⁷³ Texas Criminal Justice Coalition, "Talking Points on Texas' State Jail System," December 2012.

<https://www.texascjc.org/system/files/publications/State%20Jail%20Talking%20Points.pdf>.

⁷⁴ House Committee on Corrections, *Interim Report to the 85th Legislature*, December 2016.

<http://www.house.state.tx.us/media/pdf/committees/reports/84interim/Corrections-Committee-Interim-Report-2016.pdf#page=48>.

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<https://lrl.texas.gov/scanned/clips/2010/07/10071203.pdf>.

See also "Lawmakers might scrap or revamp state jail system," *Austin American-Statesman*, July 7, 2010.

<https://lrl.texas.gov/scanned/clips/2010/07/10070701.pdf>.

⁷⁵ "Lawmakers might scrap or revamp state jail system," *Austin American-Statesman*, July 7, 2010.

<https://lrl.texas.gov/scanned/clips/2010/07/10070701.pdf>.

"State jails to house some violent felons," *Dallas Morning News*, February 6, 1995.

<https://lrl.texas.gov/currentIssues/clips/archiveview.cfm?clipID=01137586>

⁷⁶ Chapter 488 (S.B. 663), Acts of the 75th Legislature, Regular Session, 1997.

⁷⁷ Texas Tribune, Prison Units, "Texas Prison Inmates," <https://www.texastribune.org/library/data/texas-prisons/units/> (last accessed June 27, 2018).

⁷⁸ Texas Department of Criminal Justice, *Fiscal Year 2016 Statistical Report*.

https://www.tdcj.state.tx.us/documents/Statistical_Report_FY2016.pdf#page=11

⁷⁹ Texas Department of Criminal Justice, Unit Directory, September 15, 2016.

https://www.tdcj.state.tx.us/unit_directory/index.html

⁸⁰ Article 4.05, Code of Criminal Procedure. Applicable misdemeanors include all misdemeanors involving official misconduct, and Class A and Class B misdemeanors entered in a county court of a judge who is not a licensed attorney as provided by Article 4.17, Code of Criminal Procedure. For the definition of official misconduct, see Article 3.04, Code of Criminal Procedure.

⁸¹ For more information on state jail felony community supervision, see Subchapter L, Chapter 42A, Code of Criminal Procedure.

⁸² For an inventory of felony offenses in Texas statutes that can be sorted by category (i.e. state jail felony) see *Inventory of Texas Felony Offenses by Category*, Texas Legislative Council, April 2018,

https://tlc.texas.gov/docs/policy/Felony_Offenses.xlsx. For a list of criminal offenses under the Penal Code, see *Penal Code Offenses by Punishment Range*, Attorney General of Texas, March 2018.

<https://www.texasattorneygeneral.gov/files/cj/penalcode.pdf>.

⁸³ Article 4.05, Code of Criminal Procedure.

⁸⁴ Article 4.07, Code of Criminal Procedure.

⁸⁵ [Article 4.07](#), Code of Criminal Procedure.

⁸⁶ [Article 4.14](#), Code of Criminal Procedure.

⁸⁷ [Article 4.11](#), Code of Criminal Procedure.

⁸⁸ For more information on eligibility for community supervision in general, see [Article 42A.053](#), and [Article 42A.055](#), Code of Criminal Procedure. For more information on eligibility for deferred adjudication, see [Article 42A.102](#), Code of Criminal Procedure.

⁸⁹ [Section 12.31](#), Penal Code.

⁹⁰ [Section 12.32](#), Penal Code.

⁹¹ [Section 12.33](#), Penal Code.

⁹² [Section 12.34](#), Penal Code.

⁹³ [Section 12.35](#), Penal Code.

⁹⁴ [Section 12.21](#), Penal Code.

⁹⁵ [Section 12.22](#), Penal Code.

⁹⁶ [Section 12.23](#), Penal Code.

⁹⁷ 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#page=8

⁹⁸ 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#page=19

⁹⁹ 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#page=17

¹⁰⁰ Adjudication, readjudication, conviction, and reconviction are among the possible recidivism measures for offenders on felony community supervision in comparison to reconviction for offenders released from a state jail or prison, as provided by LBB. Likewise, the relevant recidivism measure for felony community supervision is incarceration because offenders are on community supervision and have not been incarcerated, as opposed to state jail and prison offenders who are returning to incarceration (*reincarceration*).

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#page=15

¹⁰¹ Texas Public Policy Foundation, "The True Cost of Inadequate Community Reintegration of State Jail Offenders in Texas," May 2015. <https://www.texaspolicy.com/library/doclib/PP-The-True-Cost-of-Inadequate-Community-Reintegration-of-State-Jail-Offenders-in-Texas.pdf>

¹⁰² Texas Department of Criminal Justice, *Fiscal Year 2016 Statistical Report*.

https://www.tdcj.state.tx.us/documents/Statistical_Report_FY2016.pdf#page=44

¹⁰³ Texas Criminal Justice Coalition, "Talking Points on Texas' State Jail System," December 2012.

<https://www.texascjc.org/system/files/publications/State%20Jail%20Talking%20Points.pdf>

¹⁰⁴ Legislative Budget Board, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January 2017.

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Texas Department of Criminal Justice, *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#page=23

¹⁰⁵ Texas Public Policy Foundation, "The True Cost of Inadequate Community Reintegration of State Jail Offenders in Texas," May 2015. <https://www.texaspolicy.com/library/doclib/PP-The-True-Cost-of-Inadequate-Community->

Reintegration-of-State-Jail-Offenders-in-Texas.pdf.

¹⁰⁶ Data taken from TDCJ's statistical report for each fiscal year, which can be accessed here:

<https://www.tdcj.state.tx.us/publications/index.html>

¹⁰⁷ TEX. GOVT. CODE, Sec. 501.054. AIDS AND HIV EDUCATION; TESTING.

¹⁰⁸ TEX. GOVT. CODE, Sec. 501.149. DISEASE MANAGEMENT SERVICES.

¹⁰⁹ TEX. GOVT. CODE, Sec. 501.149 (a).

¹¹⁰ Texas Correctional Managed Health Care Committee (last visited July 16, 2018, at

<http://www.tdcj.texas.gov/divisions/cmhc/index.html>).

¹¹¹ Office of Public Health, Health Services Division (last visited July 16, 2018, at

https://www.tdcj.state.tx.us/divisions/hsd/public_health.html).

¹¹² TDCJ Correctional Managed Health Care Infection Control Policy Manual (last visited July 16, 2018, at

https://www.tdcj.state.tx.us/divisions/cmhc/infection_control_policy_manual.html

¹¹³ Correctional Managed Health Care Policy Manual B-14.1, effective 08/08/2018 (last visited July 16, 2018, at

https://www.tdcj.state.tx.us/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B-14.01.pdf).

¹¹⁴ TDCJ Connections Newsletter (Nov/Dec 2017, Vol. 25 Issue 02) at

https://www.tdcj.state.tx.us/connections/2017NovDec/agency_vol25no2.html

¹¹⁵ "Mumps shuts down visiting at two Texas prisons" (Houston Chronicle, Nov. 17, 2017) at

<https://www.chron.com/news/houston-texas/article/Mumps-shuts-down-visiting-at-two-Texas-prisons-12363699.php>

¹¹⁶ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), pp 5-6. last visited July 16, 2018 at <http://www.tdcj.state.tx.us/bpp/publications/PG%20AR%202017.pdf>

¹¹⁷ The PABLO scale was named after Pablo Martinez, a 35- year-old doctoral student from Colombia who devised it while studying at Sam Houston State University in Huntsville. <https://www.nytimes.com/1983/12/11/us/texas-using-a-new-formula-to-guide-its-prison-releases.html>

¹¹⁸ 37 T.A.C. Section 145.2(a)

¹¹⁹ 37 T.A.C. Section 145.2(b)

¹²⁰ 37 T.A.C. Section 145.2(b)(1)

¹²¹ 37 T.A.C. Section 145.2(b)(2)

¹²² 37 T.A.C. Section 145.2(b)(2)(A)

¹²³ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), at Page 7.

¹²⁴ 37 T.A.C. Section 145.2(b)(2)(B)

¹²⁵ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), at Page 7.

¹²⁶ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), at Page 7.

¹²⁷ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), at Page 8.

¹²⁸ Texas Board of Pardons and Paroles, Parole Guidelines Annual Report FY 2017 (January 2018), at Page 8.

¹²⁹ Section 508.144(a)(4), Government Code

¹³⁰ 37 T.A.C. Section 145.2(c)

¹³¹ 37 T.A.C. Section 145.2(d)

¹³² 37 T.A.C. Section 145.2(c)

¹³³ Section 413.017, Government Code

¹³⁴ Section 508.1411, Government Code

¹³⁵ 37 T.A.C. Section 145.6(d)

¹³⁶ Section 508.117, Government Code

¹³⁷ Correctional Population Projections, ID: 4900 (Legislative Budget Board, June 2018) at Page 2.

¹³⁸ "Heat Stress," TDCJ Correctional Managed Health Care Policy Manual, Number D-27.2, eff. 07-08-15, Page 1.

¹³⁹ Id.

¹⁴⁰ Id., at Page 2 and Attachment A, eff. 5-39-18.

¹⁴¹ Id., at Page 2.

¹⁴² Id.

¹⁴³ Id. at Pages 5, 6.

¹⁴⁴ Id. at Page 3.

¹⁴⁵ Cole v. Collier, Civil Action No. 4:14-CV-1698, U.S.D.C., S.D.Tex. (Houston).

¹⁴⁶ Id., at Page 4.

¹⁴⁷ Id., at Page 85.

¹⁴⁸ See Appendix to Interim Charge 8 of this Report for a summary of the litigation matters filed regarding this issue.

¹⁴⁹ Cole v. Collier, Civil Action No. 4:14-CV-1698 Document 737, U.S.D.C. S.D.Tex. (Houston - filed July 29, 2017), at Page 3.

¹⁵⁰ Id., at Page 74.

¹⁵¹ See "Judge approves settlement mandating air conditioning at hot Texas prison," Texas Tribune (May 8, 2018), accessible online at <https://www.texastribune.org/2018/05/08/settlement-air-condition-hot-texas-prison-gets-final-judicial-approval/>.

¹⁵² The State Legislature does not fund air-conditioned tents for asylum seekers and others who present themselves at our border or ports of entry. The detention, processing, and disposition of these individuals is a constitutional federal function funded through federal income tax revenues by the United States Congress, not the Texas Legislature.

¹⁵³ See generally, TEX. GOVT. CODE, Chap. 501, Inmate Welfare.

¹⁵⁴ The definitions of the elements of the allegations for Sexual Assault can be found in Title 5 of the Texas Penal Code, Sec. 22.011 and Aggravated Sexual Assault in Texas Penal Code, Sec. 22.021. Elements of an offense of Improper Sexual Activity with a Person in Custody are defined in Title 8, Texas Penal Code Sec. 39.04 and can be charged as a Class A misdemeanor or state jail felony or second degree felony. These Penal Code allegations are evaluated by the Office of Inspector General.

¹⁵⁵ TEX. GOVT. CODE, Chap. 501, Inmate Welfare, Sec. 501.011 (S.B. 909, 2007).

¹⁵⁶ Id.

¹⁵⁷ TEX. GOVT. CODE, Chap. 501, Inmate Welfare, Sec. 501.002.

¹⁵⁸ A full text of P.L. 108-79 (108th Congress), 117 STAT. 972, is available online at <https://www.prearesourcecenter.org/sites/default/files/library/prea.pdf>. See also TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July, 2017), at Page 18, accessible online at http://www.tdcj.texas.gov/documents/PREA_SPP_Report_2016.pdf.

¹⁵⁹ https://www.tdcj.state.tx.us/divisions/arm/rev_stan_prea.html

¹⁶⁰ P.L. 108-79 (108th Congress), 117 STAT. 972.

¹⁶¹ Id.; TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July, 2017); and see <https://www.ncjrs.gov/pdffiles1/226680.pdf>. The 276-page NPREC report contains several anecdotal narratives of prison sexual assaults, for example one in a TDCJ unit, at pages 69-70.

¹⁶² TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July, 2017), at Page 18.

¹⁶³ TEX. GOVT. CODE, Chap. 501, Subch. F, Sec. 501.171 et seq.

¹⁶⁴ TEX. GOVT. CODE, Chap. 501, Subch. F, Sec. 501.172.

¹⁶⁵ TDCJ General Information Guide for Families of Offenders, accessible at https://www.tdcj.state.tx.us/documents/General_Information_Guide_for_Families_of_Offenders.pdf (published online April 2016), at Page 35.

¹⁶⁶ TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July 2017), at Page 19.

¹⁶⁷ Id., at page 18.

¹⁶⁸ Id., at Page 21.

¹⁶⁹ Id., at Page 22.

¹⁷⁰ "Reversing Rick Perry," The Marshall Project (May 21, 2015), accessible online at <https://www.themarshallproject.org/2015/05/21/reversing-rick-perry>.

¹⁷¹ "Perry: Federal Anti-Prison Rape Standards 'Impossible' to Achieve," Texas Tribune (March 31, 2014), accessible online <https://www.texastribune.org/2014/03/31/perry-anti-prison-rape-standards-impossible/>.

¹⁷² Interim Report, House Committee on County Affairs, at Pages 8 and 101 (Jan. 2015).

¹⁷³ Id.

¹⁷⁴ TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July 2017), at Page 7.

¹⁷⁵ <https://www.themarshallproject.org/2015/05/21/reversing-rick-perry>; "Abbott: Texas Will Work to Comply with Anti-Prison Rape Law," Texas Tribune (May 22, 2015), accessible online at <https://www.texastribune.org/2015/05/22/abbott-says-texas-will-follow-prison-rape-law/>.

¹⁷⁶ <https://www.texastribune.org/2015/05/22/abbott-says-texas-will-follow-prison-rape-law/>

¹⁷⁷ TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July, 2017), at Page 44.

¹⁷⁸ Id.

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- ¹⁷⁹ https://www.tdcj.state.tx.us/divisions/arrm/rev_stan_prea.html.
- ¹⁸⁰ Id.
- ¹⁸¹ TDCJ Safe Prisons / Prison Rape Elimination Act (PREA) Program, Calendar Year 2016 (July, 2017), at Page 25.
- ¹⁸² Id., at Page 31.
- ¹⁸³ Id., at Page 36.
- ¹⁸⁴ Id., at Page 37.
- ¹⁸⁵ Id., at Page 26.
- ¹⁸⁶ Id., at Pages 25-6.
- ¹⁸⁷ Id., at Page 26.
- ¹⁸⁸ Id., at Page 28.
- ¹⁸⁹ See Summary of Enactments 85th Legislature Regular Session and 1st Called Session (Texas Legislative Council, 2017); accessible online at <http://www.tlc.texas.gov/docs/sessions/85soe.pdf>, at page 42.
- ¹⁹⁰ Id., Summary of Enactments, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 42.
- ¹⁹¹ Id., Summary of Enactments, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 29.
- ¹⁹² Id., Summary of Enactments, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 29.
- ¹⁹³ Id., Summary of Enactments, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 30.
- ¹⁹⁴ BPP Rule Sec. 145.7 is posted online at [http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=5&ch=145&rl=7](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=5&ch=145&rl=7).
- ¹⁹⁵ Summary of Enactments, supra, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 30.
- ¹⁹⁶ Legislative Budget Board, Engrossed Fiscal Note, H.B. 3130 (May 8, 2017).
- ¹⁹⁷ Id. "Assuming all other sentencing and county jail time credit practices remain constant, the bill's provisions would result in net savings of \$1,215,342 in fiscal year 2020 and each subsequent fiscal year. This analysis assumes the bill's provision would reach full implementation in fiscal year 2020. The estimated net savings for fiscal year 2020 include incarceration savings of \$6,630,030 and are partially offset by felony community supervision costs of \$230,688 and employment training and support services costs of \$5,184,000."
- ¹⁹⁸ Summary of Enactments, supra, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at pages 30, 31.
- ¹⁹⁹ Id.
- ²⁰⁰ Id., Summary of Enactments, <http://www.tlc.texas.gov/docs/sessions/85soe.pdf> at page 31.