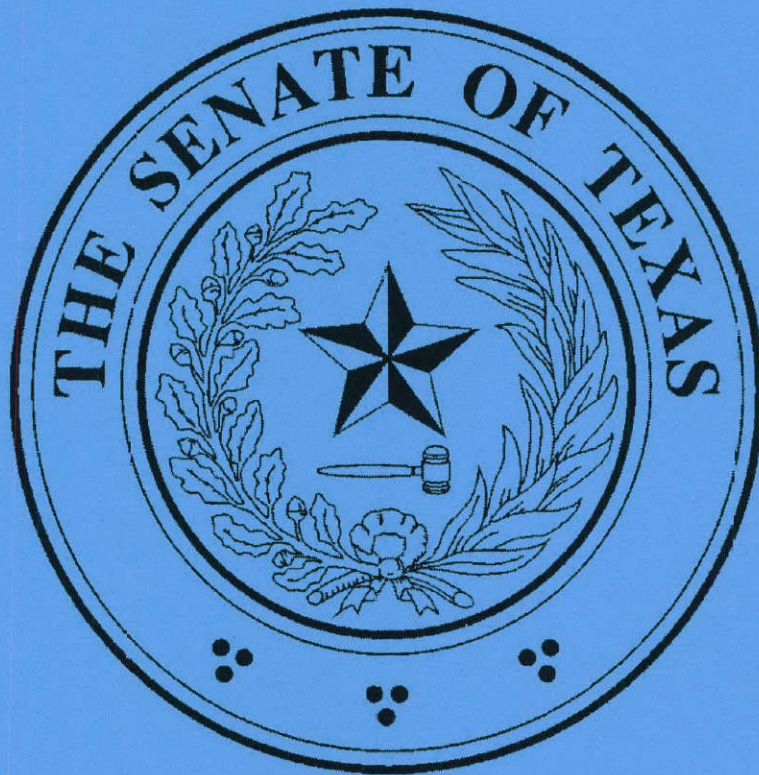


SENATE COMMITTEE ON CRIMINAL JUSTICE

Interim Report to the 85th Legislature



December 2016

Senator John WHITMIRE, Chair

Table of Contents

Executive Summary	9
Interim Charge One.	17
Interim Charge Two	35
Interim Charge Three.	53
Interim Charge Four	63
Interim Charge Five	73
Interim Charge Six	100
Interim Charge Seven.	125
Interim Charge Eight	136
Minutes and Witness Lists	172



SENATE CRIMINAL JUSTICE COMMITTEE

SENATOR JOHN WHITMIRE
Chairman
SENATOR JOAN HUFFMAN
Vice Chairman

MEMBERS:
SENATOR JUAN "CHUY" HINOJOSA
SENATOR CHARLES PERRY
SENATOR KONNI BURTON
SENATOR JOSE MENENDEZ

November 14, 2016

The Honorable Dan Patrick
Lieutenant Governor of the State of Texas
Capitol Building, 2nd Floor

Dear Governor Patrick:

The Senate Committee on Criminal Justice submits its Interim Report in agreement with the Interim Charges that were issued this past year. The Criminal Justice Committee has gathered information on all charges and created a report. In compliance with your request, a copy of this report will be circulated to all senators and other interested parties.

As you are aware, the charges that you issued to the Committee were very comprehensive and challenging. We have worked hard to respond to this challenge by developing broad recommendations that will benefit all Texans in the years to come. We anticipate that the Committee's recommendations will provide a guide for fiscal and operational improvement in the Texas Criminal Justice System. We thank you for your leadership and support.

Respectfully submitted,

Handwritten signature of John Whitmire
Senator John Whitmire
Chair

Senator Joan Huffman
Vice-Chair

Handwritten signature of Charles Perry
Senator Charles Perry

Handwritten signature of Konni Burton
Senator Konni Burton

Handwritten signature of Juan "Chuy" Hinojosa
Senator Juan "Chuy" Hinojosa

Handwritten signature of Brandon Creighton
Senator Brandon Creighton

Handwritten signature of Jose Menendez
Senator Jose Menendez



CHARLES PERRY
TEXAS STATE SENATOR
DISTRICT 28

November 10, 2016

John Whitmire
Chairman
Senate Committee on Criminal Justice
Sam Houston Building 470
209 West 14th Street
Austin, Texas 78701

Dear Chairman Whitmire:

I want to congratulate you on your hard work in constructing a productive and insightful interim report.

This report was crafted and hearings were held while law enforcement and communities across the nation were under enormous strain. Your preparation and direction of discussion at your committee hearings show us how we can come together, sit at a table, and talk. These discussions grew into a foundation upon which we can work together to develop concrete solutions.

I write separately to restate my three primary concerns that I voiced previously during our hearings, which are outlined below.

First, I agree with the recommendations on mental health in the second charge, but I am apprehensive about the possibility of costly unfunded mandates to the counties. Our freedom and way of life relies on the rule of law, and our criminal justice system must treat our most vulnerable citizens with the utmost care. However, I would like to see the Senate explore additional possibilities before engaging in high-cost measures.

The fourth recommendation would require county jails to continue pharmaceutical care prescribed by the Department of State Health Services (DSHS). DSHS often prescribes top-of-the-line or expensive pharmaceuticals. This recommendation makes me wary because if the legislature chooses not to fund this initiative, it could add expenses for counties beyond their available budget.

I agree we need more capacity for mental health needs. Many solutions promise excellent and economical results. Some examples include: expanding outpatient competency restoration,

COMMITTEES: AGRICULTURE, WATER & RURAL AFFAIRS, CHAIR
CRIMINAL JUSTICE • HEALTH & HUMAN SERVICES • HIGHER EDUCATION

P.O. Box 12068 • AUSTIN, TEXAS 78711

Letter to Chairman Whitmire
Page 2

allowing counties to utilize current jail competency restoration programs, and growing TelePsychiatry and TeleMedicine. Also, over my strong objections, the federal government has been looking to close federal prisons across the state--these facilities can be repurposed and jobs restored to address the growing mental health needs at a lower cost than building new facilities.

My second concern circulates around the asset forfeiture process. Specifically, the recommendation to require counties to provide indigent representation for asset forfeiture cases. Our counties already bear a heavy burden of paying for indigent defense in criminal and child protective cases. Additional costs without state funding could impose unreasonable expenses.

I would also encourage a measured approach to any changes being made to asset forfeiture. The report's recommendations discussed in the seventh charge could take away tools from law enforcement. I understand that we must be vigilant against bad actors that could seize property simply for financial gain, but by setting such high burdens of proof, I am worried we could unwittingly punish good actors as well.

My final statement is not a concern with the recommendation itself, but only with the proposed venue. I support education for ninth graders on how to interact with peace officers. I am hesitant to add such a program to our schools on top of all that we already ask of them.

Thank you again for your leadership of this committee. I am enthusiastic about continuing discussions on these issues throughout the upcoming legislative session.

Respectfully,



Charles Perry

KONNI BURTON
STATE SENATOR • DISTRICT 10

November 14, 2016

The Honorable John Whitmire
Chair, Senate Committee on Criminal Justice
P.O. Box 12068
Austin, Texas 78711

2068 Dear Chairman

Whitmire,

First, let me thank you for your leadership as Chairman of the Senate Committee on Criminal Justice. Your knowledge and passion are invaluable assets in setting the course for the Texas Senate on these important issues. I am extremely supportive of the work the Committee has put forth on our interim charges; however, I would like to add two brief statements to the official report clarifying my position as we head into the next legislative session.

The Committee's findings on the second interim charge, dealing with the critical issue of mental health and safety in our system of criminal justice, are smart reforms that offer a great step forward. I recognize that many of the recommendations impose new mandates and would incur new costs, and while I am traditionally weary of these types of measures, I believe that the state has a responsibility to improve our current system. I look forward to the discussion on these particular matters as they arise next session and will look to ensure that they are implemented wisely, while respecting the fiscal responsibilities of the state.

The Committee's recommendation on interim charge six, which deals with the important topic of familial contact and relationships with incarcerated persons, that TDCJ add video visitation as an option in all prisons, is extremely well intended.

However, I am concerned about the cost and efficacy of this option. The state already does much to ensure whatever family resources a prisoner has are reasonably available to them. I would prefer that the state continue to build on these types of options.

Thank you again for your service as Chairman. Despite these concerns, I fully support the work represented in this report and look forward to discussing these issues in greater specificity in the next legislative session.

Sincerely,

A handwritten signature in black ink that reads "Konni Burton". The signature is written in a cursive, slightly slanted style.

Konni Burton
State Senator
District 10

Executive Summary

Interim Charge 1 Conclusion and Recommendations

The Committee recognizes the public hearing held on October 4, 2016 was only the first of a series of ongoing discussions required to continue addressing law enforcement and community engagement. Future discussions must continue to include representatives from law enforcement, communities, community leaders, and elected officials among others. A number of legislative solutions will be proposed in the upcoming session. The committee recommends the following:

1. Development of a public education course for the ninth grade that contains discussion of the role of law enforcement and their duties in the community, the right of individuals during interactions with police, suggested proper conduct during encounters by law enforcement and citizens, laws pertaining to questioning or detention (such as requirements to produce identity), the consequences of noncompliance with these laws, and the process for filing a complaint and where to file the complaint.
2. Work with the task force that has been established to revise, update, and implement changes to the DPS driver's handbook.
3. Continue to review the issue of adding complaint process to citations issued by law enforcement and if needed amend state law to require the additional information on citations.
4. Revisit current law on body and dashboard cameras and ensure that transparency is enhanced by modification of when they must be activated, retentions policy, and call for the release of this material in the shortest possible time frame. Also, create fairness in the process by allowing the citizen seeking to file a complaint the same rights as an officer to see it before completion of the filing process. This should resolve many possible complaints and prevent unnecessary intrusions in the life of the citizen and the officer
5. The committee encourages all legislators to participate in discussion groups formed within their districts and bring back to the legislature other identified changes.

Interim Charge 2 Conclusion and Recommendations

1. Detainees with mental health issues recommendations:

- Require publication of mental health prescription formularies of all criminal justice and mental health entities.

Justification: Often, inmates/clients are prescribed medications that are not on receiving entity's formulary. If entities are aware of each other's formulary, medication stabilization may be better achieved.

- State appropriations for jail case managers with all 39 LMHAs (Example-Bluebonnet Trails Model-Williamson County LMHA)

Justification: The Bluebonnet Trails Jail Division Specialist coordinates the mental health care of jail inmates. This individual provides collaboration and guidance from intake through release intended to coordinate an effective plan between the criminal justice system, court system, and mental health care. These individuals provide vital information to prosecutors, defense attorneys, and the courts in the proper placement and adjudication of special needs offenders. Supporting the courts and justice system in this way enables timely consideration of appropriateness of diversion; offers immediate access to counseling and case management; and engages key persons determining conditions for release and upon release.

2. Pre-arrest diversion/mental health recommendations:

- Grant program for expansion of Harker Heights' Healthy Homes Program to other areas of the state.

Justification: Harker Heights Police Department created the Healthy Homes program, which employs a caseworker to respond to families in need. The police chief recognized that his law enforcement officers were in frequent contact with individuals who had not committed a crime, but were clearly in need of assistance.

The Healthy Homes Program's purpose is to link area social service organizations and community resources with those families who would benefit from them. Once identified, the Harker Heights Police Department refers those in need to an already existing resource, thereby helping to short circuit the dysfunctional trend in that home before a crime occurs. The Healthy Homes Program is geared toward early and timely intervention to break violent or dysfunctional cycles in homes and provide options for those in need.

- Require Crisis Intervention Training (CIT) or Mental Health First Aid to all first responders every two years

Justification: First responders, including fire, EMS, and all sworn personnel should have a basic understanding of handling persons with mental illness.

3. Post-arrest diversion recommendations:

- Mandate a greater use of pretrial risk assessment and PR bonds for non-violent offenders aimed at reducing county jail populations.

Justification: The system should reflect the presumption of innocence with least restrictive conditions based on risk factors specific to the defendant.

- Amend state law that to allow “rocket dockets” for retail theft, criminal trespassing, minor traffic offenses, and minor drug possession offenses. Establish time frame for the disposition of the selected cases.

Justification: These types of low-level crimes disproportionately affect individuals with mental illness. In Illinois, legislation was passed requiring inmates with no history of violence to be released from jail if their cases were disposed of within 30 days of assignment to a judge.

4. Jail operations recommendations:

- Continuity of Medication: Require jails to accept/provide pharmacy-certified medications/prescriptions from inmates/family until a physician can formally review medications. Provide release of liability to jails if the pharmacy, family, or inmate provides inaccurate or counterfeit prescriptions.

Justification: Many inmates go without medications because they did not have them on hand at the time of the arrest. Many jails already accept medications from family, but legislation would make the mandate statewide.

- Require the Texas Uniform Health Status Update (TUHS) form be shared between county jails, prisons, and state hospitals.

Justification: The form is currently utilized between county jails and prisons; however, many inmates are arriving at state hospitals with severe medical needs that the hospital was not prepared for.

- Require sending entity to provide 72 hour minimum notice to receiving entity of a special needs inmate/client, including severe medical issues.

Justification: TCJS was notified that county jails were sending inmates to TDCJ and state hospitals with severe medical and mental health issues without notifying the receiving entity. This requirement would be reciprocal among all entities.

5. Concerning State Hospital operated maximum security mental health beds recommendations:

- Increase of maximum security mental health beds at state hospitals.

Justification- Currently, there is a 4-6 month wait for defendants who have been found incompetent to stand trial to be transferred to a maximum security mental health bed for competency restoration. This delay in transfer is harmful to the defendant, stresses jail resources, and delays justice in cases in which there is a victim.

6. Texas Commission on Jail Standards recommendations:

- Strengthen the resources and capability of TCJS to conduct inspections of county jails and their ability to investigate complaints, about a specific jail.

Justification-current staffing is not sufficient to review and or investigate 160 individual complaints or allegation concerning a specific jail per month. When problems are detected during an annual inspection the commission must follow up and the ability to conduct random unannounced inspection would enhance public safety and confidence in jail operations.

- Municipal Jail -amend state law to require cities that operate municipal jails, holdover or any style of detention facility to report statistical information to the Texas Commission on Jail Standards.

Justification-Currently no state agency is tasked with obtaining information on municipal lockups and they are not required to report information to any state agency.

Interim Charge 3 Conclusion and Recommendations

Since the major criminal justice reforms of 2007 with the strengthening of diversion, probation supervision and in-prison and street treatment programs, our incarcerated population has dropped from over 155,000 inmates and detainees (State Jails) to our lowest number since 2012, to 146,000 inmates and detainees. Overall the system has reached a point of stability that capacity is no longer a major concern and it is projected by the Legislative Budget Board (LBB) that the numbers will remain stable till 2021. These 2016 projections also estimate that we will continue to operate our institution over 5000 beds below our operating capacity which is 96% of our total physical capacity.

Now is the time for the legislature to double down on the successes of the reform movement. TDCJ should be directed to select and close at least one facility, and that saving should be redirected into the following treatment programs:

- \$15.4 million to expand the In-Prison Therapeutic Community program by an additional 500 treatment slots.

- \$2.9 million for 30 additional Reentry Transitional Coordinators who would be assigned to state jail facilities.
- \$1.5 million to provide releasing offenders with a 30 day supply of their medications. Releasing offenders currently receive a 10 day supply.

TDCJ should use the remainder of the savings to strengthen probation treatment and parole treatment programs. During the coming session the legislature should review and identify other criminal justice reforms that will lessen the pressure on incarceration capacity. By implementing reforms within the prison system and in the sentencing process it should provide the legislature comfort in the LBB projections.

Interim Charge 4 Conclusion and Recommendations

The Committee received oral and written testimony which indicates pretrial intervention programs across the state are successful and producing desired results. The growth of these programs indicates prosecutors and judges are pleased with the success they are seeing. Specialty courts have increased from 33 to 194 during the last few years. **The flexibility of current law allows for prosecutors and local official to create unique solutions to the specific needs of their communities.**

Of particular interest to the Committee is the current statutory process for using jails to house mentally impaired offenders. As previously noted, many communities have successfully implemented pretrial intervention programs to divert mentally ill individuals from jail, but many jails, magistrates, judges, and local criminal justice systems are not following through with these offenders. In part, this lack of follow through is due to inadequate mental health resources in all communities. However, many communities have yet to make necessary policy changes to divert mentally impaired offenders from jail to the appropriate mental health services, where they exist.

The Committee recommends:

1. Task the Office of Court Administration (OCA) to gather data on pretrial intervention programs. Including but not limited to a description of the program, a list of eligible offenses, the number of successful participants, and number of unsuccessful participants each state fiscal year

Interim Charge 5 Conclusion and Recommendations

The Committee's review of dissemination of criminal records revealed that some progress has been made in reporting to DPS by counties, and the counties that are disseminating information are tracking who they disseminate to and how often the information is updated. These are positive steps. The review also revealed that counties with the needed funding are moving to an electronic court data systems which allow them to grant limit access to outside entities and eliminates the need to disseminate information in bulk. Another inquiry made by the Committee illustrated that at least 44 counties has electronic court data system. 20 of the reported 44 did not reply to the request about dissemination of records, 18 counties that did not disseminate have online systems, and 6 counties that disseminate also had online data systems. This will be a trend to watch to see if growth in online systems decreases dissemination of bulk records.

Consideration needs to be given to the concept that as more counties update their technology they may decrease their bulk dissemination. This would make it even harder for entities collecting data for one stop shopping to have complete records, unless they simply have portals to all counties systems.

The following are the recommendations for interim charge 5

1. Require any party collecting bulk criminal records to publicly post where they have obtained their information from.
2. Amend Texas statute to create a uniform protocol for dissemination of public records that includes specifically what is released no matter what entity the data is collected from
3. Require all government agencies to provide a list on their website of all entities they release information to and on what basis.
4. Require all entities whether private or public to provide clear information on how to correct inaccurate information.

Interim Charge 6 Conclusion and Recommendations

Though the data provided on cost is limited it does provide some idea of what families and friends are spending on correspondence and visitation with incarcerated people. For county jails the cost mainly comes in paying for video visitation after the 2 initial visits, phone calls which have been regulated to some extent, and commissary. While each jail may have areas they can improve upon most policy issues seem to well established and excepted. The exception to this would be the use of video visitation. Testimony at session hearing on the issue and media coverage have demonstrated that video only may not be the best solution for

families/ friends and the incarcerated. Texas limited the number of facilities that could use video visitation only and stopped that trend at 22 facilities.

The costs associated with the state system appear to affect friends and family a little more. This could be attributed to the size of the system, the location of its facilities, and the amount of time people are sentenced to these facilities. Though the surveys conducted by the agency and the association only represent a small fraction of the people utilizing visitation and correspondence they do show significant use and expense. Many factors influence the amount a family spends to visit with an offender, travel to and from the location, gas prices, lodging, money spent at the facility. Most of these things are not controlled by the state or the agency and there is very little that can be done to change it. There is already consideration given to the location of an offenders family when they being placed, but continued review of the policy around placement could help. If other factors cause further placement then monitoring those factors for change could mean at a certain point the offender could be moved closer. The recent report by the agency does indicate that they are trying to make some improvements. TIFA also provides some areas of improvement in their testimony. They mainly focus on making sure the current policies are known and followed.

The follow are the recommendations for interim charge 6:

- 1) Require TDCJ to add video visitation to prisons as an option for visits.
- 2) Require TDCJ to implement a due process procedure for individuals that have been removed from visitation lists and a clear explanation of what behaviors will result in permanent or temporary removal.

Interim Charge 7 Conclusion and Recommendation

Evidence suggests that, while asset forfeiture provides a vital tool upon which law enforcement agencies rely to combat criminal activity through deprivation of contraband and the proceeds of illegal activity, abuse of asset forfeiture can easily ensue if local governments fail to provide appropriate funds to law enforcement agencies, forcing these agencies to rely on forfeiture proceeds to supplement budgetary needs.

When abuse of forfeiture does occur, the average individual cannot readily defend their property in court; attorney costs, low evidentiary standards, and the difficulty of asserting the innocent owner defense together place an undue burden on individuals attempting to defend their property.

The taking of private property demands the utmost scrutiny. Divorced from all financial incentives, agencies possess a duty to provide a direct tie to criminal activity for each occurrence of forfeiture, requiring an accompanying increase in evidentiary standard to 'clear and convincing' from

“preponderance of the evidence” a standard reserved for civil matters. While most agencies properly execute forfeitures, with many holding themselves to higher standards than current state law requires, there exists no current mechanism for distinguishing success from abuse, due to a lack of specified reporting.

It is the opinion of the committee that the aforementioned problems with the current forfeiture system merit a reexamination of the Chapter 59, and that it be modified to better protect innocent property owners and provide individuals with a viable opportunity to fight for the return of their property. Although such changes come with concern as to their financial impacts on law enforcement agencies, the current lack of specified reporting requirement prevents the creation of a reliable estimate of the potential impact. Moreover, it is, and has always been, the intention of the legislature that local governments not rely on forfeiture proceeds to supplant designated funds for law enforcement agencies.

The issuance of justice and protection of property rights must always be the primary focus of this legislative body, and reforms should be made to prevent every possible abuse. The committee recommends the following changes:

1. Require that criminal charges be filed against the defendant in all forfeiture cases for the offense in which the property seized is alleged to be an instrument of the crime or the criminal proceeds; provide exceptions for situations in which the state could not reasonably be expected to file charges against an individual, such as situations in which the person has fled, abandoned the property, is deceased, etc.
2. Require the immediate return of property upon a not guilty verdict or the dismissal of all related criminal charges.
3. Strengthen the innocent owner defense by placing the burden of proof on the state instead of the owner to prove that the owner had actual knowledge of the criminal activity in which their property was involved.
4. Raise the required standard of proof to clear and convincing evidence.
5. Require that, in all instances where a property owner is found indigent in the related criminal case, the appointed council also assist the individual in the forfeiture proceedings.
6. Limit the allowed use of the Department of Justice's equitable sharing program to property that is worth an established amount or more in cash.
7. Improve reporting requirements to include the final disposition of forfeited property and whether the owner was ever charged with or convicted of a crime related to the forfeiture;

enhance the Office of the Attorney General's power to enforce reporting requirements and establish penalties for all late or faulty reports.

Interim Charge 8 Conclusion and Recommendations

Though Harris County and Fort Bend County were the only two formal reports that were received by the committee or found online there was communication from other counties. The most consistent issue raised an inability to get students to court. This issue will be considered.

At the time this report was written the attendance report from TEA had not been completed. The Committee reviewed a preliminary report that indicated that court referrals on students were down and attendance levels varied from district to district to district. The changes in referrals for parent contributing also varied from district to district. Some districts saw an increase in attendance while other saw a decrease. Many districts commented that the lack of or the perception of a lack of consequences for skipping school was to blame for the increase in absences. As students and parents learn the new system and the new system is solidified the committee will be able to make better conclusions about the effectiveness of prevention and intervention plus civil action versus criminal penalties for truancy. At this time continued monitoring is the recommendation of the committee.

The other topics for charge 8 were simple reviews. There are no recommendations for those.

Interim Charge One

Review law enforcement efforts to engage community leaders and increase their involvement in communities. Assess dangers to law enforcement officers and the collection and distribution of threat assessment data. Make recommendations to reduce the number of injuries and deaths to or by law enforcement officers.

Introduction and Discussion

A recent *New York Times* poll suggested that the relationship between police and the minority communities they serve are as low as they were after the 1992 video of 4 Los Angeles police Officers beating Rodney King. After the trial and acquittal of the 4 Los Angeles police officers, Los Angeles erupted in a series of riots that caused over a \$1 billion in damages, 55 deaths, and were only ended after United States military intervention.

How did we get to this point?

Hundreds of news stories have detailed how relationships between the police and the minority communities they serve were negatively impacted. The following is a listing of notable officer-involved shootings and deaths of police in the line of duty in just the last two years. These events among countless others that did not receive national media attention demonstrate the deterioration of community and police relationships:

Notable Officer-Involved Shootings/Deaths In Custody

Eric Garner (43)

July 17, 2014

Staten Island New York City, New York

Died as a result of "compression of neck (choke hold), compression of chest, and prone positioning during physical restraint by police." (medical examiner's report)

Officer Daniel Pantaleo, NYPD

Michael Brown (18)

August 9, 2014

Ferguson, Missouri

Fatally shot by Officer Darren Wilson, Ferguson Police Department

Tamir Rice (12)

November 22, 2014

Cleveland, Ohio

Fatally shot by Deputy Timothy Loehmann, Cleveland Police Department

Walter Scott (50)

April 4, 2015

North Charleston, South Carolina

Fatally shot by Officer Michael Slager, North Charleston Police Department

Freddie Gray (25)

April 12, 2015

Baltimore, Maryland

Died in police custody as a result of spinal cord trauma while being transported in a police van.

Alton Sterling (37)

July 5, 2016

Baton Rouge, Louisiana

Fatally shot by Officers Howie Lake, Blane Salamoni, Baton Rouge Police Department

Philando Castille (32)

July 6, 2016

Falcon Heights (St. Paul), Minnesota

Fatally shot by Officer Jeronimo Yanez, St. Anthony Police Department

Terence Crutcher (40)

Tulsa, Oklahoma

Fatally shot by Officer Betty Shelby, Tulsa Police Department

Keith Lamont Scott (43)

September 20, 2016

Charlotte, North Carolina

Fatally shot by Officer Brentley Vinson, Charlotte-Mecklenburg Police Department

Notable Officer Deaths In The Line Of Duty

Officer Rafael Ramos (40), NYPD

Officer Wenjian Liu (32), NYPD

December 20, 2014

New York City (Brooklyn), New York

Fatally shot by Ismaaiyl Abdullah Brinsley (28) while sitting in police cruiser

Deputy Darren Goforth (47), Harris County Sheriff's Office

August 28, 2015

Houston, Texas

Fatally shot by Shannon Miles (30) while at gas station.

Officer Lorne Ahrens (48), Dallas Police Department

Officer Michael Krol (40), Dallas Police Department

Officer Michael Smith (55), Dallas Police Department

Officer Patricio Zamarripa (32), Dallas Police Department

Officer Brent Thompson (43), DART (Dallas Area Rapid Transit)

***9 other officers injured, 2 civilians**

July 7, 2016

Dallas, Texas

Fatally shot by Micah Xavier Johnson (25) amid Black Lives Matter protest in downtown Dallas.

Officer Brad Garafola (45), East Baton Rouge Sheriff's Office

Officer Matthew Gerald (41), Baton Rouge Police Department

Officer Montrell Jackson (32), Baton Rouge Police Department

***3 other officers injured**

July 17, 2016

Baton Rouge, LA

Fatally shot by Gavin Eugene Long (29).

TIMELINE: RECENT NOTABLE OFFICER SHOOTINGS/DEATHS

July 17, 2014	<i>Eric Garner (NYC)</i>
August 9, 2014	<i>Michael Brown (Ferguson)</i>
November 22, 2014	<i>Tamir Rice (Cleveland)</i>
December 20, 2014	<i>Officer Rafael Ramos (NYPD)</i> <i>Officer Wenjian Liu (NYPD)</i>
April 4, 2015	<i>Walter Scott (Charleston)</i>
April 12, 2015	<i>Freddie Gray (Baltimore)</i>
August 28, 2015	<i>Deputy Darren Goforth (Harris County Sheriff)</i>
July 5, 2016	<i>Alton Sterling (Baton Rouge)</i>
July 6, 2016	<i>Philando Castile (St. Paul)</i>

July 7, 2016

Officer Lorne Ahrens (Dallas PD)
Officer Michael Krol (Dallas PD)
Officer Michael Smith (Dallas PD)
Officer Patricio Zamarripa (Dallas PD)
Officer Brent Thompson (DART)
**9 other officers injured; 2 civilians*

July 17, 2016

.Officer Brad Garafola (East Baton Rouge Sheriff)
Officer Matthew Gerald (Baton Rouge PD)
Officer Montrell Jackson (Baton Rouge PD)
**3 other officers injured*

September 16, 2016

.Terence Crutcher (Tulsa)

September 20, 2016

.Keith Lamont Scott (Charlotte)

On September 28, 2016 the *Dallas Morning News* published an editorial which sums up the frustration currently demonstrated by the police and the public:

Dallas Morning News SEP 28 2016

Reform Is a Balancing Act

The recent fatal police shootings of two black men in Tulsa and Charlotte have prompted soul-searching across the nation and renewed calls for major police reforms in America. *Something* must be done to ease the escalating tension and mistrust between law enforcement and communities of color. Reform, however, is easy to demand and tough to deliver, especially when you're dealing with 15,400 local law enforcement agencies nationwide. And nothing will be effective until we get beyond the simplistic black-lives-vs.-blue lives impasse.

All of us, from civil rights protesters to police chiefs, want fewer officer involved shootings. We want residents to feel protected, not threatened, by officers, and for officers to be held accountable when things go wrong. We want be able to do their jobs, fraught with uncertainty and risk, without compromising their own safety. But how do we get there?

Fine-tuning police training and policies regarding use of deadly force are basic steps. Indeed, many cities have ramped up efforts on those fronts. But these initiatives, like so many other ideas, carry a lot of political freight that's difficult to unload.

One idea that has gained traction post-Ferguson is de-escalation training for officers. The goal is to reduce the number of fatal confrontations, but critics say it can reduce police safety. We

support policy experts who say it's possible to achieve one without risking the other. One key is finding the right balance.

Another is recognizing that even the best policies won't be 100 percent effective. For example, Betty Jo Shelby, the Tulsa officer charged with manslaughter in the Sept. 16 shooting of Terence Crutcher, had received de-escalation training. That doesn't mean the training isn't helpful.

We've seen the results in Dallas. Police Chief David Brown has said the Police Department's de-escalation training helped reduce excessive-force complaints against his officers from 147 in 2009 to 13 last year.

Body cameras and dash-cam videos also added a layer of transparency and accountability. Cities must take a skeptical look at efforts — including a new law that takes effect Saturday in North Carolina — to restrict the public's access to such footage. Still, it's a tall order to convince many law enforcement agencies, which have become increasingly militarized since the drug wars and SWAT innovations of the 1970s and '80s.

One example: Texas made a step in the right direction in 2015 when the Legislature passed a bill requiring all law enforcement agencies to report officer involved shootings. The law went into effect in September 2015, but some agencies are waiting months to report incidents. The data it tracks is limited, and there is no enforcement mechanism. Another missed opportunity.

We believe thoughtful, measured reforms that take into account the safety of officers and concerns of citizens are both necessary and achievable. The hard part will be cutting through the reflexive accusations on both sides of the debate in order to find common ground.

Public Hearing held on October 4, 2016

Clearinghouse, volume 13, number 21, published October 15, 2016, along with audio and video record and the committee file, provides the following:

Senator Whitmire called the meeting to order, all committee members were present, and in addition Senator West and Representative Miles were in attendance. He then called on members to present opening comments.

Members opening statements

Senator Whitmire began relating to the sensitive nature of the interim charge to be discussed and the town hall format he intended to utilize, focused on the need to foster a spirit of cooperation between the public and law enforcement. Also the training offered to law enforcement to de-escalate encounters between police and the public and his proposal for

educating young adults on how to properly handle encounters with police along with the complaint process that exists if they feel they are treated unfairly.

Senator West opening remarks called for the expanding of the use of dashboard and body cameras by police to increase the transparency for overzealous officers and to decrease frivolous complaints, to training programs for police and the public on proper behavior during a traffic stop. Also he supported initiatives to implement a public education programs for young adults on how to interact with police as part of Texas Essential knowledge and Skills (TEKS) curriculum. He also discussed benefits that result from quickly releasing body camera footage after a controversial encounter has taken place.

Invited Testimony

Senator Whitmire then called all seven invited presenters to the table including:

- Charley Wilkinson, Executive Director, Combined Law Enforcement Association of Texas (CLEAT)
- Steve McCraw, Director, Texas Department of Public Safety (DPS)
- Art Acevedo, Chief of Police, Austin Texas (APD)
- Ray Hunt, President, Houston Police Officer Union (HPOU)
- James Nash, Pastor, Greater St. Paul Missionary Baptist Church
- James Dixon, Bishop, Community Of Faith Church
- Dr James Douglas, President, National Association for the Advancement of Colored People (NAACP)

Senator Whitmire discussed the need to address the fear of law enforcement in certain communities across the state and asked what DPS could do to address that concern. Director McCraw responded with a discussion of the DPS mission to protect and to serve Texans and the need to work in cooperation with the community to achieve that goal. He discussed the use of the dashboard and body cameras to increase transparency during interactions between the police and public and that in light of recent events, DPS needs to ensure that every trooper is living up the standards of conduct that are expected when dealing with the public.

Senator Whitmire then asked about the process for a citizen to file a complaint against a DPS trooper and how the public is made aware of that complaint process. Director McCraw responded by explaining the complaint process, that the Office of Inspector General (OIG) can be contacted anonymously and he discussed the investigation and process for reviewing those complaints.

Senator Whitmire then asked whether additional training should be required for DPS officers on how to de-escalate encounters with the Public. Director McCraw discussed the training currently in place and his belief that improvements are possible. Senator Whitmire followed by asking if it was possible for DPS to increase its diversity among law enforcement officers. McCraw responded he believed that can be done, and then joined Senator Whitmire in a discussion of the need for DPS to work in coordination with community organizations to improve public relations.

Senator Menendez discussed law stop and frisk procedures and the need for police to demonstrate to the community that they are a part of the community and not an outside enforcement entity. He then discussed the National Night Out events and the potential it provides the public to positively engage law enforcement.

Senator Menendez then asked Chief Acevedo's opinion of the stop-and-frisk, who responded that he, believes that:

- It is important for teaching young adults to positively interact with police officers and to de-escalate with police when necessary.
- That most police officers work 25 to 30 years without shooting or injuring a member of the community that they serve.
- That concerning stop-and -frisk without reasonable suspicion that it is unconstitutional and subject to racial discrimination practices.

Senator West then discussed the need to educate citizens on the process for filing a complaint and about their constitutional rights. Senator West suggested that the complaint process be listed on the citation issued to the individual. He continued to discuss the need to ensure that individuals know what their rights are during an encounter with law enforcement and asked whether a minimum penalty should be mandated for inappropriate behavior or misconduct by police officers. He then discussed the possibility of mandating the release of dashboard camera footage to avoid a lack of transparency and what that process might entail. He then related an incident in Chicago where the Chicago Police Department did not release video from a body camera for a 14 month period after a complaint was filed and then the officer was indicted the day after the release of the video.

Senator Whitmire asked the panel to provide suggested content for an educational program for student drivers on how to interact with law enforcement during a traffic stop.

Dr Douglas stated his belief that there is an implicit race problem within law enforcement and minority communities and that this concern needs to be address. He discussed his personal experiences with implicit racism and the increased threat that law e officer often perceive from

minority citizen in certain neighborhoods. Senator Whitmire asked him for a possible solution to which Dr Douglas stated that ongoing; periodic training of police officers on recognizing where an officer might react based on implicit racism should be conducted.

HPOU President Hunt joined the discussion to relate his personal experiences as a police officer during traffic stops and the tendency of the public to perceive police officers who is on alert during such stops as rude. He then pointed out the nervousness that a police officer feels during traffic stops and the training received to remain alert in those situations. Senator West joined this discussion with Ray Hunt and they talked about the options that individuals have for filing a complaint against a police officer and how aware the public is of those options. They then talked about the need for a standardized process for making members of the community aware of their right to file a complaint, including describing the complaint process on the citation that is issued to the citizen.

Hunt then discussed the perception that there a "code of silence" among police officers resulting in complaints not being investigated. He provided that:

- 1,000 complaints were filed against Houston Police Officers in 2015.
- 200 came from individual citizen and 800 from fellow police officers.
- That every complaint is investigated and that those statistics need to be made public.

Hunt then discussed many routine inquiries that police officers engage in during a traffic stop that could be misconstrued as rude or as racial profiling by an individual citizen. Senator Menendez followed up on this subject describing personal events where he felt that he was a victim of racial profiling by Police. Senator Whitmire joined the conversation to discuss with him possible methods to address the public misinterpretations of standard police procedures through a young adult education course.

Director McCraw discussed the need for all law enforcement officers to treat individuals with respect and expressed his support for increasing public awareness of complaint processes. Senator West asked him if he thought legislation was needed to add the information to the citation issued to citizens. McCraw responded that he did not believe legislation was needed and that he would start the process to do so. Acevedo also stated he did not think legislation was needed and that he also would start the process to do so.

Senator Huffman discussed that the United States Supreme Court had found stop-and-frisk to be constitutional under the decision in Terry v. Ohio but pointed out that these terry stops need to be based on reasonable suspicion and cannot be racially motivated. She suggested that information on these types of stops and law is included in a proposed education program for young adults.

Senator West asked the panel if he is required to provide his name to a police officer when walking down the street. Chief Acevedo responded that a person driving a motor vehicle has to produce his identity to police, but a person walking down the street does not unless the police officer has reasonable suspicion that a crime has or is being committed. Senator Whitmire stated that if a person does not know their rights, it is more likely that such an encounter would turn confrontational. He continued by discussing the importance of educating the public on their rights and of getting law enforcement to facilitate that process as much as possible.

Bishop Dixon discussed his son's fear of law enforcement despite the fact that Dixon has repeatedly supported law enforcement officer in the community. He continued with:

- His personal experiences with law enforcement where he believes racial profiling played a role.
- He stated that video footage from an encounter with law enforcement should be made available to citizens just as it is made available to law enforcement.
- He discussed his plans for a comprehensive education campaign at high schools and colleges, taught by prominent citizens in the community and by professional educators. He suggested that a state wide campaign called "Safe Streets of Texas" that educated students on the collective responsibilities of the public and the police. He added that an atmosphere of respect is needed during encounters between a citizen and law enforcement.
- Dixon stated that the background check on police officers candidates should contact references of the candidate who are of another ethnicity to obtain their opinions relating to the candidate character and fitness.
- He discussed the need to have programs that allow teenagers to positively interact with law enforcement officers to dispel the fear that young African Americans have of law enforcement.

Pastor Nash stated that although he agrees that stop-and-frisk is technically constitutional, it however has the danger that the police officers are often racial motivated. He posed the question that training and education are beneficial, but how do you train the heart. He discussed his personal conversation with prosecutors and the significant of African Americans he believes are wrongly prosecuted. He related his efforts in Houston to convince certain district attorneys to change their practices of using gang injunctions that have particularly harmed young black males who have been charged with minor offenses.

Senator Whitmire asked what can be done to get communities members and law enforcement officers to respect each other. Nash discussed the need to conduct smaller community meetings that are less likely to become confrontational and unproductive. Senator Whitmire

then discussed the perception that law enforcement has difficulties understanding the African American community's fear of police. He then posed the question of what can be done to change this and get both groups to establish mutual respect.

Charlie Wilkison (CLEAT) responded by discussing that both the public and the police officer are in vulnerable positions during a traffic stop. That training designed to facilitate an understanding of the other party's position would be helpful. Wilkison stated that since Texas became a state, 2,000 law enforcement officers have been killed in the line of duty. He said that Texas leads the nation in the number of law enforcement officers killed in the line of duty, and that this number alone has a negative effect on the mind-set of police officers. He then went on to discuss the gains in the diversity of police officers demonstrated in the state.

Bishop Dixon follow-up on this by discussing the need to decrease the level of provocation in police encounters. He explained the calming effect that occurs when a police officer advises and individual of the reasons for why the citizen is being questioned by police. He stated that this could alleviate and apprehension during the encounter

Senator Perry joined this discussion and provides from his own experiences his personal nervousness and agitation that can arise during an encounter with law enforcement. He continued by discussing the responsibility of the media to fairly report both sides of a police event rather than only reporting one side of the story. He stated that there is a need to use public education system to foster understanding between law enforcement and the communities they serve. He also stated his support for tracking encounters between police and public, but in some cases events are going to escalate regardless of any training provided.

Senator Huffman discussed the role that the public education has to play in providing better opportunities to minorities and the need to provide those children with educational options.

Dr Douglas pointed out that a high level of indictments of young African Americans for minor marijuana possession in Houston that he believes that if police officers patrol primarily in African American neighborhoods, a disproportionate number of them are going to be arrested. Ray Hunt added that police are reactive to policing needs. Then Dr Douglas discussed the importance of police providing a reason for a stop to dispel the possibility of racial motivation. He then discussed some of his personal feeling during traffic stops.

Senator Burton discussed the need to communicate the experience being expressed by the panel members to local law enforcement agencies. She discussed her support for placing the complaint process information on a citation that is issued, she provide that her belief that addressing individual "bad apples" in law enforcement might require legislation. Senator

Burton then expressed that citizens understanding their rights in these encounters is important but using public education to instruct private citizens on the proper responses maybe beyond legislative purview and could burden public schools.

Senator Whitmire noted that the tone and attitude of law enforcement officer is often a catalyst for escalating an encounter with citizens. He then discussed his belief that the attitude is acquired during the training and policing that officers engage in over time. Chief Acevedo responded saying that he advises his officers to be firm but respectful during encounters with the public and the difficulties of trying to teach officers that skill.

Senator Whitmire then discussed his belief, based on the testimony presented to the committee, that officers are not conducting themselves in that manner and asked for the best way to ensure that they do son in the future. Hunt responded that accelerating the release of body camera footage might assist in changing the attitude among law enforcement officers.

Senator West asked whether there has been a reduction in excessive force complaints after the implementation of the body camera program. McCraw stated that he cannot comment on that at this time due to the fact DPS does not have a significant number of cameras in use. Acevedo commented that APD also does not have enough cameras deployed but that he has noted that the cameras in use have benefited both citizens and officers and speeds up the resolution of complaints. Ray Hunt agreed saying Houston also does not have enough deployed but he has noted that statistic shows that these cameras makes an improvement in the areas they are deployed.

Senator West stated that an officer is allowed to revue to footage prior they are required to provide a statement in an event to prevent false statements. He added he believes that citizens who file a complaint should be afforded the same opportunity, also to prevent false complaints. Bishop Dixon stated that random audits of body camera footage should be used as a means of ensuring respectful interactions with the public.

Pastor Nash stated his belief that establishing relationships between the community and law enforcement officers is the most important first step toward improving the existing atmosphere. Senator Menendez added that currently both sides of an encounter between police and public have fear due to neither side knows how the other party will react.

Senator Whitmire provided a personal experience he had with a friend who was a Houston police officer and the negative change in attitude he personally winess3ed as a result of his friend on the job training and experience. He then asked what can be done to correct the tendency of officer's training that leads to these changes. McCraw responded that agencies

need to recruit individuals with acceptable core values and upbringings. Senator Whitmire then asked if police officers receive ongoing training relating to interactions with the public. McCraw replied that DPS provides at the beginning of an encounter with the public, the trooper provides his/her name and the reason for being stopped or reasons for being questioned. He added if either party is rude, the reaction from the other party becomes increasingly negative. They then discussed the issue of police stopping individuals for minor traffic infraction as an excuse to pull individuals over, resulting in negative encounter and how to ensure these stops are not racially motivated.

Ray Hunt joined in this discussion by relating his experience as a police officer performing traffic stops and said that he rarely knows the race or ethnicity of the driver until he approached the driver's window. He then added that:

- Need to train officers on how to interact with the public.
- Need for officers to provide the citizen the reason for the stop.
- His belief that additional training in those areas could make a significant difference.

Senator Whitmire and Dr Douglas then engaged in a conversation of how a law enforcement officer can typically find a reason to pull an individual over for a traffic stop, because most drivers unknowingly break a traffic law fairly regularly.

Senator Huffman provided her belief that fear of law enforcement encounters is not just an issue with minority citizens. She stated that law enforcement performs an invaluable service for the public and the disproportionate media coverage of negative law enforcement encounters with the public. Senator Whitmire pointed out that it is important to hold police officers accountable for misconduct to show young adults that those officers constitute a minority of police officers.

Senator Huffman and Senator West engaged in a conversation of future body camera legislation, concerning if additional legislative guidance is needed relating to the release, retention, and availability of body camera footage. Senator Whitmire expressed that additional guidance from the state may be necessary to require all law enforcement to participate in camera programs. Senator Huffman cautioned the committee on creating unfunded mandates. Then Senator West and Ray Hunt pointed out incorrect perceptions of previous legislation and the need for clarification of those.

Senator West and Ray Hunt discussed the rights of a driver, when law enforcement is required to pull over on a desolate rural road and the steps they can take to avoid repercussion for waiting till they arrive at a safe area.

Senator West and Senator Whitmire discussed a task force that Senator West has initiated to design and revise the content of driver manuals and to develop and education programs in public schools.

Senator Menendez discussed possibilities for alternative funding for the proposed young adult education programs to avoid unfunded mandates on public schools. He also stated his support for questioning applicants about whether they have friends of other ethnicities and what the friends would say about an applicant's character, as part of the screening process.

Chief Acevedo discussed solutions to many of the concerns brought out during the hearing:

- Limiting arrests for minor infractions
- Psychological testing of officers on a proactive and ongoing basis
- Increasing the 180 day time limit on officer disciplinary action to 1 year
- Changing law enforcement recruitment policies so the agency reflect the ethnic composition of the community
- Encouraging law enforcement and the community to avoid making generalizations about one another

Bishop Dixon discussed his belief that certain issues could be addressed by providing statewide standards for young adult education programs in public schools and by providing those education materials on the internet. He stated the need for increased transparency through standardizing procedures for the release of body and dashboard camera footage. He stated that these suggestions would decrease community protests and foster a better working relationship between the public and police.

Senator Hinojosa discussed past efforts in the legislature to address some of the issues regarding the training and screening of law enforcement officers. He added that:

- He believes that training in certain areas is insufficient
- Process to weed out officers who are not fit for duty and who are regularly the subject of complaints
- Need for law enforcement agencies to access other agencies officer's personnel files so that they can make informed hiring decision concerning incoming officer application.

Pastor Nash stated that community input and citizen involvement is essential to good public relations with the community and the need for law enforcement to view its role as a protector of the public rather than an enforcer

Senator West asked the panel if they are aware of any successful civilian police review panels in the United States that have subpoena power. Dr. Douglas stated that he was not aware of any. Ray Hunt stated that if they had, officers would simply take the protection under the Fifth Amendment rather than incriminate themselves until they appear before a grand jury. After a brief discussion of the random grand jury selection process, Senator Whitmire called for closing remarks for the panel members and suggested solutions.

Ray Hunt recommended engagement, communication and interaction between law enforcement officer and community activist and is essential to changing the current environment. Senator Whitmire agreed.

Pastor Nash agreed with that comment and added that additional outreach by law enforcement is also essential to promote change.

Acevedo stated that it is the mutual responsibility of the public and law enforcement to address the concerns expressed during this hearing and that he supports the release of body and dashboard camera footages as quickly as possible to increase transparency.

McCraw stated that the OIG complaint process should be laced on all DPS issued citations starting immediately. That he also supports the release of body and dashboard camera footage be released quickly to increase transparency.

Dr. Douglas stated that officers should be required to turn on dashboard and body cameras immediately so that the entire encounter is recorded. He suggested new recruits about implicit racism. McCraw added that DPS currently requires a trooper to activate cameras as soon as he turns on his overhead patrol car lights to stop a vehicle and that they have penalties if not done. Senator West added that he intends to obtain the policies concerning the activation of body cameras and dashboard cameras. Ray Hunt provided that not all agencies have a policy on this issue.

Chief Acevedo stressed the need to purchase equipment that comes on automatically when an officer exits the patrol car to protect the officer and public. That APD has a policy that if there is an officer involved shooting and they did not turn on body camera, the officer is fired.

Bishop Dixon stated that a statewide task force should be appointed to gather input from law enforcement agencies and the public to develop statewide standards.

Wilkison stated that law enforcement officers should be included as instructors in the young adult education program developed in public schools. He and Senator Whitmire discussed the possible components of and players in developing the education program.

Representative Miles stated that:

- It is the duty of law enforcement officers to behave respectfully toward individual in the community
- To acquire proper training
- To endure proper communication with the public
- The need for community based policing practices
- He discussed prior legislation he has authored to give civilian review boards subpoena power and increase for use of excessive force
- That Texas is second to California in civilians killed by police

Senator Creighton stated that:

- recognize the important services that law enforcement officer are providing to the community
- discussed a recent robbery and the death of one of the robbers in Montgomery County and speculated that a traffic stop of those robbers based on reasonable suspicion might have saved a life
- Parents should be involved in developing an education course for young adults are taught not to overact or become aggressive when interacting with law enforcement

Senator West discussed the July 7, 2016 shooting in Dallas and the five police officers killed in that incident. He provided that a change in policing practices has led to a corresponding reduction on complaints filed by the public. He then discussed to need to remember the important role that law enforcement plays on a daily basis.

Public Testimony

Senator Whitmire opened public testimony.

Corey Wilson, Bishop, Christian Faith Missionary Baptist Church, discussed his experience as a community activist in Houston. He discussed the importance of developing trust between community and law enforcement leadership and the need to hold "bad actors" accountable.

Yannis Banks, Legislative Liaison, Texas NAACP, discussed his belief that legislation may be required to ensure uniform reporting go officer misconduct by law enforcement entities and:

- That a community develops a distrust of law enforcement when an officer who engages in repeated instances of misconduct is not punished.

- He discussed certain training programs that he believed would result in improved relations between law enforcement and their communities.
- He and Senator Creighton discussed these independent web based programs.

Everett Penn, Director, Teen and Police Service Academy (TAPS) provided information on the history and the operations of the 11 week course and that they have already developed many of the elements that have been previously discussed for an educational program for young adult and how to interact with law enforcement.

Michael Cargill, Executive Director, Texas for Accountable government, testified in support of law enforcement and their use of force and cited the low number of officers convicted as a result of officer involved shootings.

Christine Mills, representing herself, discussed her belief that many young adults are no longer willing to tolerate police misconduct and stated that those who encounter police misconduct may experience a form of post-traumatic stress disorder

Conclusions and Recommendations

The Committee recognizes the public hearing held on October 4, 2016 was only the first of a series of ongoing discussions required to continue addressing law enforcement and community engagement. Future discussions must continue to include representatives from law enforcement, communities, community leaders, and elected officials among others. A number of legislative solutions will be proposed in the upcoming session. The committee recommends the following:

1. Development of a public education course for the ninth grade that contains discussion of the role of law enforcement and their duties in the community, the right of individuals during interactions with police, suggested proper conduct during encounters by law enforcement and citizens, laws pertaining to questioning or detention (such as requirements to produce identity), the consequences of noncompliance with these laws, and the process for filing a complaint and where to file the complaint.
2. Work with the task force that has been established to revise, update, and implement changes to the DPS driver's handbook.
3. Continue to review the issue of adding complaint process to citations issued by law enforcement and if needed amend state law to require the additional information on citations.

4 Revisit current law on body and dashboard cameras and ensure that transparency is enhanced by modification of when they must be activated, retentions policy, and call for the release of this material in the shortest possible time frame. Also, create fairness in the process by allowing the citizen seeking to file a complaint the same rights as an officer to see it before completion of the filing process. This should resolve many possible complaints and prevent unnecessary intrusions in the life of the citizen and the officer

5. The committee encourages all legislators to participate in discussion groups formed within their districts and bring back to the legislature other identified changes.

Interim Charge Two

Evaluate the current guidelines and practices in county and municipal jails relating to the health, welfare, and safety of those in custody. Review law enforcement and correctional officer training, with emphasis on mental health and de-escalation. Study the effectiveness of existing oversight mechanisms to enforce jail standards; making recommendations for policies and procedures if needed. Examine the current mental health and substance use treatment services and medical resources offered in county, municipal, and state correctional facilities.

Introduction

On August 18, 2015 Texas Lieutenant Governor Dan Patrick along with Senator John Whitmire held a news conference announcing an interim study on jail safety standards in Texas.

“I have called on Criminal Justice Committee Chair Sen. Whitmire to conduct an interim study on our jail safety practices,” said Patrick.

“Our criminal justice system assumes a great responsibility for the people in our custody. In many instances, individuals have unresolved issues in their lives, particularly a mental illness, which has resulted in their arrest. It is our responsibility to make certain we have the necessary tools and resources to meet the health, welfare and safety needs of every individual in our custody,” stated Sen. Whitmire.

“I applaud Lt. Gov. Patrick for ensuring we will conduct an in-depth examination of our current practices, identify and address where our system is failing, and how the state can be more supportive to all involved,” concluded Sen. Whitmire.

State Oversight of County Operated Jail

Fact Sheet on Texas Jail regulations through the State Jail Standards Commission

1. Texas provides regulation, standards and enforcement of these in county jails through the Texas Commission on Jail Standards (TCJS). For a county jail to be occupied it must meet minimum standards, pass inspections, and maintain that certification.

- 17 full-time employees, including 5 inspectors, with an annual operating budget of \$983,000.00/year
- Conducts 244 annual inspections (236 County Jails and 8 private providers).
- Conducts 75 special inspections based on problems reported or observed. Receives 150 complaints/month from citizens concerning inmate welfare.

- 514 deaths have occurred in Texas jails since 2010 (when Texas began tracking jail deaths). 143 deaths (28%) have been suicides.
- Jail inmates are three times more likely to commit suicide than the free world population. Roughly half (74/159) of all jail suicides happen within the first seven days of jailing, with more than half of those (41/74) within the first 24 hours of arrest. Death by hanging is the most common.
- Recent incidents include Sandra Bland's death in the Waller County Jail on July 13, 2015, Hung Do's death in the Houston City Jail on July 23, 2015, and Francisco Vasquez Jr.'s death in the Williamson County Jail on August 8, 2015.

2. Mental health intake screenings are another important issue which must be addressed. What assessment tool is used, who administers the assessment, and what services are provided after are among some of the processes and policies which must be reviewed and improved statewide.

- Terry Goodwin was booked in the Harris County Jail in 2013. He was not given any mental health screening or assessment and was placed in solitary confinement for over a month without routine guard inspections. He was found living in squalid conditions before being determined to be incompetent and sent to Rusk State Hospital.

3. Texas does not regulate municipal jails, despite interim studies in 1985 and 2010 recommending they be subject to statistical reporting requirements under the Texas Commission on Jail Standards. Without state oversight, it is difficult to determine even the number of municipal jails are currently operating in Texas or what those jail's operating policies and procedures are.

4. There are approximately 67,000 inmates detained in county jails today. Sixty percent of these inmates are being held pre-trial and have not been convicted of any crime.

- The conviction rate of individuals released on bond is roughly fifty percent (50%).
- The conviction rate of individuals kept in county jail without bond is ninety-two percent (92%), many accepting plea bargains.

Examples of Pre-Trial Services in Texas

Travis County:

- Division of the Community Supervision and Corrections Department (adult probation).
- Releases the most defendants pre-trial (19,000/year).

- Approximately sixty-three percent (63%) of defendants recommended for personal recognizance (PR) bonds are granted one.
- Officials and most judges view pre-trial release as the norm; unless it is determined the individual poses a danger to the community.
- PR bonds are actively used to manage jail population. Lowest capacity of jail beds when compared to other large counties (3095 beds).
- Fifty-eight percent (58%) of jail population consists of pre-trial defendants. However, judges will often reduce bail or grant PR bonds after an attorney or public defender submits to the judge rationale for pre-trial release.

Bexar County:

- Releases 2nd most defendants pre-trial (14,000 PR bonds/year).
- PR bonds are actively used to manage jail population. 2nd lowest % of pre-trial defendants (45%) as of March 2016.
- Independent agency under the Judicial Services County Administrator Total jail capacity is 4596 beds.
- Officials are aggressive and appear to have support of most judges.

Tarrant County:

- 3rd most active with a higher percentage of releases on PR bond (~4,000/year) than Harris County which has a higher total but less frequent use.
- Lowest percentage (31%) of pretrial defendants as of March 2016. Total jail capacity is 5015 beds.
- Actively use of PR bonds to manage jail population.
- County department which appears well-funded with locations in all major jails, both county and city.

Harris County:

- Is an independent county department, well-structured and funded, but underutilized by judges. Anecdotally, it appears that district judges have directed magistrates who do probable cause hearings to not issue PR bonds. Current law mandates that this is to be at the total discretion of the magistrate and direction from district judges to magistrates is contrary to the law. Current law also requires that the defendant's ability to pay a bond be considered and Harris County does not appear to be considering this prior to setting bond from an approved county bail schedule.
- 8,841 county jail population with total jail capacity of 10,162. Over sixty percent (60%) of jail population are pretrial defendants.
- Around fifty-seven percent (57%) of releases are through surety bonds.

Dallas County:

- As of March 2016, sixty-four percent (64%) of county jail population were pretrial defendants. Total jail capacity of 8,746 beds. Lowest percentage of PR bond releases of large counties (4,000/year).

As of March 2016, fifty-two percent (52%) of statewide total county jail population are pre-trial defendants. Eighty-two percent (82%) are felony offenses.

Committee Discussion - September 22, 2015 Hearing

Opening remarks of committee members at the public hearing conducted on September 22, 2015 provides insight into the complexities of operating safe jails (as published by the Secretary of the Senate and the Senate Research Center in the Capitol Clearinghouse newsletter):

Senator Whitmire opened the hearing, discussing the charge from Lieutenant Governor Patrick and recent suicides in Texas jails. He stated that the committee needs to look at other issues, such as the release of persons with mental illness from jail without continuing care. He noted that often such persons are rearrested, repeatedly moving in and out of the criminal justice system for nonviolent low-level offenses. He stated that the committee needs to examine the process regarding when a person is brought before a magistrate, that if that person is given a risk assessment and mental health screening early in the process, he or she could be returned to his or her family and job, rather than waiting in jail. He mentioned the importance of in-person visitation to persons with mental health issues and that creating new forms and protocols will not solve the issue if there is no change in attitude and culture in the criminal justice system. He added that there is a need to look at diversion and other solutions for low-level offenders.

Senator Hinojosa added that many persons with mental illness are nonviolent and jailed for minor offenses and should be screened for their mental health issues upon his or her initial contact with the criminal justice system.

Senator Perry stated that existing protocol was not followed in the Sandra Bland case. He said that a large number of jail suicides are due to not following existing protocols and that more rules may not be the solution. He noted that many institutions for the mentally ill have been closed and that there are far fewer mental health facilities. He said that there is a difference between mental illness and addiction and that many homeless persons suffer from addiction and refuse assistance. He closed with the need for communities to take part in the discussion.

Senator Whitmire responded that some jurisdictions are doing a very good job in dealing with mentally ill persons. He stated that over a million persons go through Texas jails each year and

since 2010 there have been 514 deaths and 143 suicides in county jails. He stated that this is relatively better record than in other states, but that Texas needs zero tolerance. He stated that city jails are not regulated by the state and that there needs to be discussion regarding whether there should be state oversight. He noted that the Texas Commission on Jail Standards has been kept small because the Legislature is reluctant to intrude into local matters, but added that the Legislature needs to provide more oversight and assistance.

Senator Menendez said that overcrowding in the Bexar County Jail has been addressed in part through diversion programs for mental illness and substance abuse and invited members and agencies to visit these programs to see how they work. He stated that under their system many low-level offenders are not taken to jail. He explained that police officers are trained regarding mental health issues and that there is a detox center where offenders can be taken for evaluation. He stated that this helps keep those who do not need to be incarcerated out of jail, and that the program saves Bexar County \$15 million a year

Senator Huffman stated that there is a need to work very closely with Health and Human Services. She noted that when many mental health hospitals closed, there were no corresponding community services to fill the gap, resulting in many mentally ill persons being detained in jails. She said that there are 200 mentally ill persons in the Harris County Jail (mental health diversion project) of whom 88 are homeless and 162 have substance abuse issues. She said that there is no housing for these persons. She added that many young persons are diagnosed as mentally ill, and their families cannot get help for them. She referred to a case in which a parent tried to jail his daughter to keep her off drugs and daughter committed suicide in jail.

Senator Whitmire shared a conversation that he had with a Harris County pilot diversion program counselor who told him a man who received help for his mental illness for the first time, but who will have no place to go when he is released. He stated that there is a need to help such people return to society, if not society will pay later when these persons commit crimes. He ended by stating that this is a very complex issue and that there is a need to talk to mental health providers.

Invited Testimony - September 22, 2015 Hearing

Dr. Tony Fabelo, Director, Research Division, Justice Center, Council of State Governments, was called first and provided an overview of the statutory authority and the framework that Texas has adopted to bridge mental health and criminal justice issues, he stated that:

- Texas has a well thought out framework and has developed resources; however implementation has fallen short in many areas.
- In 1987, the state created the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) whose role is to develop forms to assist in screening persons entering the criminal justice system for mental illness and plans for continuity of care between the two systems.
- Pre-1991, Health and Safety Code, Chapter 513 was adopted allowing emergency detention by peace officers of mentally ill persons in danger to themselves or others.
- In 1993, Article 16.22, Code of Criminal Procedure, was enacted requiring a sheriff to notify a magistrate if mental illness is suspected during jail intake.
- Also in 1993, Article 17.302, Code of Criminal Procedure, was enacted that allows at the discretion of the magistrate to release a defendant on personal bond and require treatment as a condition of bond (Mental Health PR Bond).
- In 1995, Health and Safety Code Section 614.017 was adopted to allow the exchange of information between law enforcement and health and human services agencies to promote continuity of care.
- In 2000, the Texas Commission on Jail Standards (TCJS) adopted suicide screening forms as part of the jail intake process.
- In 2005, the state created the Continuity of Care Query (CCQ) to identify criminal justice involved mentally ill persons. This is part of the Department of Public Safety (DPS) criminal history system which connects to mental health records to flag those individuals who have received publicly funded mental health services in the past.
- In 2009, Occupations Code Chapter 573 was adopted requiring the Texas Commission on Law Enforcement (TCOLE) to require training in the "de-escalation and crisis intervention techniques to facilitate interactions with persons with mental impairments."
- In 2013, Article 46B.073, Code of Criminal Procedure was enacted allowing jail based competency restoration treatment for up to 60 days in a county jail that is participating in the pilot program. **(Note: system has never been implemented).**
- In 2013, the Legislature created and funded (\$10M biennium) a pilot program in Harris County which aimed to reduce the recidivism and frequency of arrests and incarceration of persons with mental illness in the Harris County Jail.

Dr Fabelo then shifted the focus of his presentation to the funding of mental health for the justice system which began in 2001.

- In 2000-2001, TCOOMMI was initially funded at \$1 million, and in 2016-2017 had increased to \$50 million.

- The 84th Legislature increased overall appropriations to the Department of State Health Services (DSHS) by \$105,216,246.00 for mental health programs to a new total of \$2,729,688,937.00 for fiscal years 2016-2017
- Also, the Legislature has promoted use of specialized mental health public defenders through appropriation to the Texas Indigent Defense Commission of approximately \$11.4 million.
- A major barrier for providing mental health services in Texas jails is that 81% of our rural jails are in areas designated as mental health professional shortage areas.
- Legislation was filed during the 84th Legislature to provide training and licensure for peer specialists in underserved areas of the state.

Dr Fabelo discussed two projects in Bexar County and Dallas County to create a seamless system for identifying individuals with mental health issues supported by and in cooperation with the Justice Center of The Council of State Governments. He then recommended that the Legislature:

- Train judges regarding the requirements of Article 16.23 and Article 17.032 of the Code of Criminal Procedure designed to remove individuals with mental health issues from jails.
- Direct a state agency to designate standards and monitor for compliance with these processes.
- Clarify requirements for mental health screening.
- Require local jurisdictions to create transparent local court rules regarding mental health PR bonds.
- Shorten the time frames for when a mental health assessment is required after a person has been identified during the screening process.
- Create a statewide uniform clinical assessment tool for conducting jail related mental health services.
- Address the shortage of mental health resources and beds.

Next David Gutierrez, Chair of the Texas Board of Pardons and Paroles, former Sheriff in Lubbock County and former board member of the TCOOMMI was called. He discussed his observation as a former sheriff who developed an aggressive model to identify and divert individuals with mental health issue from the jail to treatment. His model included the creation of crises intervention teams of police officers and the addition of clinical staff within the jail. Mr Gutierrez stressed the need for a county sheriff to engage and work with all community stakeholders, including judges, district attorneys, hospital district, TCJS, and TCOOMMI on protocols to deal with individuals who have been identified with mental health issues and remove them from jails.

Prior to calling to testify Charles McClelland, Chief of Police, Houston Police Department Senator Whitmire noted that city jails are not regulated by the state. Chief McClelland stated:

- Over 75,000 individuals were processed through the city jail in 2014, 55,000 being class B or above. The stay at their jail is for no more than 24 hours and all are provided mental health and medical screenings. If an individual is in crisis they are transferred to the Harris County Jail or a hospital. If not in crisis they are monitored at the jail. He noted that from 2007 to 2015 six (6) suicides have occurred in the city jail.
- HPD has created a Mental Health Division at the same level as the patrol division that includes the Homeless Outreach Team, Crisis Intervention Response Team and the Chronic Consumer Stabilization Initiative Team. HPD has also established a sober center for public intoxication cases where individuals are issued more citations for minor offenses rather than being jailed.

Next was Brandon Woods, Executive Director of the Texas Commission on Jail Standards (TCJS). Most of his testimony is included in a previous section but responses to committee members included:

- *What is TCJS role in assuring that magistrates are contacted and a release on personal bond is done?* TCJS role is to only see if a magistrate was contacted.
- *What can TCJS do if a jail is found to be out of compliance with jail standards?* TCJS can issue a Notice of Noncompliance and require the county to issue a Corrective Plan of Action. If a jail continues to be found in noncompliance, TCJS can refer matter to the Attorney General or close all or part of the jail.
- *Were the issues surrounding the death of Sandra Bland problems with process, procedure, or personnel?* All of the above. Discussion then centered on the failure of staff to do their job and to follow jail rules.
- The suicide screening form was discussed. Mr Wood responded that it was currently under review in cooperation with the University of Texas Medical Branch (UTMB) and a new form with less ambiguity and clear guidance regarding what steps need to be taken should be implemented shortly.

Next, Kim Vickers, Executive Director, Texas Commission on Law Enforcement (TCOLE) was called. Mr Vickers clarified training requirements for county jailers and peace officers on mental health issues:

- County jailers must have 96 hours of training, including 2 hours on suicide detection and prevention and 3 hours on identifying and interacting with persons with mental illness.
- Peace officers must have 643 hours of training, including 16 hours of crisis intervention training (conducted in person).

- Both may attend an additional 40 hours of mental health training to obtain a proficiency certificate as a mental health officer
- Senator Whitmire engaged Mr Vickers in a discussion about developing an educational course for the public on how to interact with police officers.
- Mr Vickers added that there has been a gradual shift in police culture to a warrior mentality and it needs to return to a guardian mentality.

Next to testify was Lauren Lacefield Lewis, Assistant Commissioner, Mental Health and Substance Abuse, Texas Department of State Health Services (DSHS). She provided:

- It is the responsibility of jails to provide mental health services to their detainees and that some jails contract with their local mental health authorities (LMHA) to do so. These contracts must contain a jail diversion plan and require LMHA or contracted providers are contacted 24 hours before release to establish follow up interviews within seven days of release. She noted that thirty percent (30%) or roughly 20,000 individuals in jail have a mental illness. All counties are located within an LMHA which can provide access to some level of out-patient services, in-patient care, and crisis services; however the services vary greatly among communities.

Kent Richardson, Assistant Attorney General, Office of the Attorney General (OAG) provided the committee with the OAG role in collection of custodial deaths reports, which must be done within 30 days of the death.

Sheriff Kelly Rowe, Lubbock County, testified on behalf of the Sheriff's Association of Texas (SAT) stating:

- Many small rural county jails have problems accessing resources and services for mentally ill detainees which makes it difficult to maintain TCJS compliance. Due to lack of available services, individuals with mental health issues stay in jail up to seven times longer than those without mental health issues.
- The wait time for a competency restoration bed at a state hospital is also a major problem that contributes to longer lengths of stay for individuals with mental health issues.
- Discussing pre-trial release, Sheriff Rowe stated jails have no incentive to keep individuals in jail, but that these issues depend on the courts.

Public Testimony - September 22, 2015 Hearing

Sandra Thompson, representing herself, spoke on issues with the current bail system and pre-trial release issues. Ms. Thompson stated these issues are not based on risk, but on the ability to pay a bond for release, which keeps many low-income individuals in jail unnecessarily.

John Gray, representing himself, spoke on the death of his daughter by suicide while in the Brazoria County Jail stating that every part of the system failed in his daughter's death.

Diana Claitor, Director, Texas Jail Project stated that sixty percent (60%) of persons in jail are being detained pre-trial and often for great lengths of time. Many jails have issues regarding the lack of medication, unsupported substance withdrawal, and ministrations of detainees. She added all jails need to have a mental health professional on staff.

Gloria White, representing herself, spoke about her son, who has mental health issues and the difficulties he has had continuing his medication while in jail.

Michelle Deitch, representing herself, provided that Texas needs to implement best practices in suicide prevention and for more robust jail standards, noting that intoxicated detainees cannot participate with the suicide screening properly, isolation for persons with mental illness is a problem, and jail standards are silent on use of force and sexual assault.

Laura Gann, Montgomery Jail Advocates, spoke about her son and his continuing mental health problems and his poor treatment and suicide attempts in the Montgomery County Jail. She complained that her son almost died in jail, but that TCJS could not investigate it because he survived.

Maria Esparza, Texas Jail Project, spoke about her son's difficulties being jailed and held in pre-trial detention for almost four years. Her son's competency was restored to stand trial, but his condition deteriorated after returning to jail because he could not receive necessary medications.

DiVeda Brown, representing herself, stated that Senator Whitmire's suggestion of establishing an education program on how citizens should conduct themselves with police was a good idea and that a school curriculum should be developed involving professionals and stakeholders.

Invited Testimony - March 30, 2016 Hearing

Senator Whitmire opened the hearing stating that this was a continuation of the Committee's review of county jail conditions, specifically the handling of mental health issues and the prevention of suicides.

Brandon Wood, Executive Director, Texas Commission on Jail Standards (TCJS) was called first and reported on the new suicide screening form, which was issued on November 1, 2015 to be implemented on December 1, 2016. He stated that during the time period from November 15, 2015 to March 23, 2016, no suicides were reported in county jails. A suicide was reported the week before the hearing, without suicidal indicators on screening form and no violations of jail standards.

Others issues discussed were:

- On the issue of getting magistrates to work more closely with jails, Wood responded that most sheriffs agree, but are frustrated that mentally ill individuals are placed in jail in the first place. The screening form can provide magistrates information, but no authority to force a magistrate to hold more or earlier hearings exists.
- A discussion was conducted on preventive measures such as removing items often used in jail suicides, suicide resistant gowns, and checking on individual every 15 minutes, but even these measures can be defeated by a determined individual intent on committing suicide.
- Wood explained that the unknown indicator on the custody death reports is a place holder until the coroner's report is final.
- The conversation shifted to the protocols for providing prescription drugs, including insulin, to detainees who require medications. Each county jail is required to develop and submit to TCJS a health service plan, usually dependent on the size of the jail and the ability to provide resources and medical staff. Jails use different formularies varying greatly across the state. Some counties may allow a family to present drugs to jail staff, who verifies prescription and need. Others will only administer the medication via the jail doctor, who assumes care and control over them while detained in the jail, and may concur and continue the course of treatment, modify the treatment, or substitute medications. As part of the intake process, all jails collect health history and note chronic illnesses. No mandate is currently in place for a magistrate to consider their chronic illnesses, but may be considered at the magistrate's discretion.

Next Greg Hansch, Public Policy Director, National Alliance on Mental Illness (NAMI) continued the discussion on medical and prescription drugs in jails. He noted:

- The absence of a uniform state formulary for jails is a major concern. Persons in jail not receiving the medication they had previously been prescribed can have serious consequences. He added that most jail formularies vary greatly from those used in state

health agencies, community centers, or state hospitals. He continued with discussion of recent jail deaths of detainees denied certain medicines, such as Xanax.

- Concerning the issue of competency restoration, a major problem is created when an individual is returned to jail from a state hospital and their trial is delayed beyond the 76 days in which continuing medication is available from the state, and the detainee's condition deteriorates until incompetent again.

The committee members continued the discussion of families providing medication to a jail and requirements that needed to be in place to ensure prescription contents are certified as accurate.

Sheriff Ron Hickman, Harris County, was called to testify. Sheriff Hickman introduced key members of his staff: Major Mike Smith, Marcus Guice, Interim Medical Director, and Robert Simon, Mental Health Administrator. Hickman stated that due to the size of their detainee population (9,000+) it would be too costly and time consuming to accept medicines from families. Guice added they had a medical doctor at jails 24 hours a day, and an extensive formulary. In response to a question concerning provision of Xanax, Guice stated that a detainee would not be given Xanax but it would be substituted, and the detainee would be placed on Xanax withdrawal protocol. Addressing other areas Hickman or staff provided:

- Harris County Jail does not use the TCJS revised suicide screening form as they have mental health professionals evaluating detainees at intake.
- On a given day, the Harris County Jail has as many as 2,200 detainees who have been diagnosed with mental health issues and were on psychotropic drugs, with as many as 80 individuals in acute crisis care.
- Harris County spends \$22 million/year on mental health costs and \$40 million/year on health care costs.
- Harris County Jail holds on average between 600 to 700 nonviolent misdemeanor offenders per day, because they cannot pay for bail. In response to why not release them on PR bond, Hickman responded that rest of the judicial system has a duty to help with that. As sheriff, he has no authority to release offenders only to house them and provide programs and services. Judges would have to make the decision to grant pre-trial, personal, or lower bonds.
- Concerning suicides in the Harris County Jail, Major Smith stated that although the jail uses anti-suicide smocks and surveillance to reduce suicides, detainees will find inventive ways to try to commit suicides, such as throwing themselves off their bunks.
- Shifting to the increasing problems associated with maintaining detainees who have been found incompetent to stand trial; on the day of the hearing (March 30, 2016), 72 detainees were awaiting transfer to a state hospital for competency restoration treatment, many waiting for over 140 days.

- A discussion concerning how to recoup prescription costs, either from a public assistance program or from a private insurer, along with Harris County's dialogues regarding bail bond practices in Harris County, concluded their testimony.

Sheriff A. J. Louderback, Jackson County on behalf of the Sheriff's Association of Texas (SAT) noted that eighty-five percent (85%) of the jails in Texas have 100 beds or less. Most do not have access to resources that large county jails (Harris, Bexar, Dallas, and Travis) have available. He continued:

- Jackson County has a nurse from the hospital district one day a week for medical roll call, but no mental health professionals on staff. If the jail screening form indicates a mental health service or a detainee in crisis, they have to call for assistance from the local mental health authority (LMHA) and if they have no funding available, services cannot be provided. Sheriff Louderback stated that the LMHA has advised him they have no funds for assisting detainees especially those not in crisis. Funds for the LMHA are a critical financial need.
- Sheriff Louderback added that the lack of state forensic beds for competency restoration is backing these offenders into long waits for transfer to a state hospital. The backlog for competency restoration beds in addition to the new screening suicide form is creating more calls to the LMHA, straining their resources.
- Senator Perry noted that the Legislature had added significant funds for LMHA and this needs to be looked at and hold them responsible for those funds. He has also been advised that agency regulations concerning licensing have also contributed to fewer beds available. He continued that Sheriffs are using the LMHA as planned, but that the LMHAs are falling short on processing procedures, tying up law enforcement resources.
- The discussion returned to the issue of releasing nonviolent offenders. As Senator Menendez noted, a diversion program in Bexar County saves the county \$15 million/year. Sheriff Louderback replied that sheriffs are attempting to release or divert as many of these offenders as possible, but must work under the current bond statutes.

Sheriff Dennis Wilson, Limestone County, also testified on behalf of the Sheriff's Association of Texas (SAT). Sheriff Wilson noted that it is critical for law enforcement officials and mental health providers work together to solve issues. He continued:

- Funding for local mental health providers in rural counties is critical due to the lack of resources.
- It is important to have mental health professionals working in jails alongside law enforcement officers on crisis intervention teams.
- In response to members' questions, Sheriff Wilson said in Limestone County he has an excellent relationship with his LMHA and that he has to transfer offenders who are ill to the local hospital, as he has no medical staff in his jail.
- Again the discussion shifted to diverting mental ill offenders from jails and the provision of continuity of care for them.

Lauren Lacefield Lewis, Assistant Commissioner, Department of State Health Services (DSHS) noted Texas currently has 247 maximum security beds at the Vernon Campus of North Texas State Hospital

and 398 maximum security beds at the Rusk State Hospital and that this is an insufficient number of beds for the purposes of competency restoration (Note: current backlog for maximum security beds is 283). Lewis stated individuals are brought into the state hospital in the order they are received and DSHS does their best to manage these and civil commitment population numbers. She continued:

- Efforts are underway to create a pilot program for competency restoration in jails (Note: the request for proposals has not been successful and no programs exist.)
- Strategic place of forensic beds was discussed.
- Last session, the Legislature funded 94 maximum security forensic beds which were not sufficient to meet the current needs. Licensing of these beds is a separate issue, but funding is the main barrier.

(Note: Health and Human Services Commission created a work group to design solutions for these issues. The work group's recently released report calls for the funding of 500 new beds and 50 additional beds each year thereafter to reach 1,800 new beds for current and future needs.)

Public Testimony March 30, 2016 Hearing

Pasty Gillham, Isensee Foundation for Safe Police Response, testified that the Bob Meadours Act, enacted by the Legislature in 2005, required de-escalation for law enforcement officers. She continued:

- In 2009, the mandate was completed and the Isensee Foundation is asking for the Legislature to re-authorize and include additional training.
- The Isensee Foundation also wants to mandate de-escalation and mental health intervention training as required continuing annual training.

Lance Lowery, American Federation of State, County, and Municipal Employees, Texas Correctional Employees, stated that county jail inmates, when transferred to TDCJ are not arriving with sufficient health information to ensure they are initially housed properly and safely. He continued:

- The lack of universal pharmaceutical protocols and medicines is contributing to the problem and creates a dangerous system. State jail standards do not require county jails to use the Texas Uniform Health Status Update forms and they are not receiving any updates on health changes while incarcerated in county jails.

Fiscal Year 2016 TCJS Suicide Report

FY 2016 Suicides Total	24
September 1, 2015-November 30, 2015	11
December 1, 2015-August 15, 2016 (new intake form)	13
# of jails with a suicide	17
# of suicides that resulted in notice of non-compliance	9
Most common Notice of non-compliance	Failure to conduct observation checks

Note: 45.8% of suicides occurred during the three months prior to implementation of revised suicide screening form.

Conclusions and Recommendations**1. Detainees with mental health issues recommendations:**

- Require publication of mental health prescription formularies of all criminal justice and mental health entities.

Justification: Often, inmates/clients are prescribed medications that are not on receiving entity's formulary. If entities are aware of each other's formulary, medication stabilization may be better achieved.

- State appropriations for jail case managers with all 39 LMHAs (Example-Bluebonnet Trails Model-Williamson County LMHA)

Justification: The Bluebonnet Trails Jail Division Specialist coordinates the mental health care of jail inmates. This individual provides collaboration and guidance from intake through release intended to coordinate an effective plan between the criminal justice system, court system, and mental health care. These individuals provide vital information to prosecutors, defense attorneys, and the courts in the proper placement and adjudication of special needs offenders. Supporting the courts and justice system in this way enables timely consideration of appropriateness of diversion; offers immediate access to counseling and case management; and engages key persons determining conditions for release and upon release.

2. Pre-arrest diversion/mental health recommendations:

- Grant program for expansion of Harker Heights' Healthy Homes Program to other areas of the state.

Justification: Harker Heights Police Department created the Healthy Homes program, which employs a caseworker to respond to families in need. The police chief recognized that his law enforcement officers were in frequent contact with individuals who had not committed a crime, but were clearly in need of assistance.

The Healthy Homes Program's purpose is to link area social service organizations and community resources with those families who would benefit from them. Once identified, the Harker Heights Police Department refers those in need to an already existing resource, thereby helping to short circuit the dysfunctional trend in that home before a crime occurs. The Healthy Homes Program is geared toward early and timely intervention to break violent or dysfunctional cycles in homes and provide options for those in need.

- Require Crisis Intervention Training (CIT) or Mental Health First Aid to all first responders every two years

Justification: First responders, including fire, EMS, and all sworn personnel should have a basic understanding of handling persons with mental illness.

3. Post-arrest diversion recommendations:

- Mandate a greater use of pretrial risk assessment and PR bonds for non-violent offenders aimed at reducing county jail populations.

Justification: The system should reflect the presumption of innocence with least restrictive conditions based on risk factors specific to the defendant.

- Amend state law that to allow "rocket dockets" for retail theft, criminal trespassing, minor traffic offenses, and minor drug possession offenses. Establish time frame for the disposition of the selected cases.

Justification: These types of low-level crimes disproportionately affect individuals with mental illness. In Illinois, legislation was passed requiring inmates with no history of violence to be released from jail if their cases were disposed of within 30 days of assignment to a judge.

4. Jail operations recommendations:

- Continuity of Medication: Require jails to accept/provide pharmacy-certified medications/prescriptions from inmates/family until a physician can formally review

medications. Provide release of liability to jails if the pharmacy, family, or inmate provides inaccurate or counterfeit prescriptions.

Justification: Many inmates go without medications because they did not have them on hand at the time of the arrest. Many jails already accept medications from family, but legislation would make the mandate statewide.

- Require the Texas Uniform Health Status Update (TUHS) form be shared between county jails, prisons, and state hospitals.

Justification: The form is currently utilized between county jails and prisons; however, many inmates are arriving at state hospitals with severe medical needs that the hospital was not prepared for.

- Require sending entity to provide 72 hour minimum notice to receiving entity of a special needs inmate/client, including severe medical issues.

Justification: TCJS was notified that county jails were sending inmates to TDCJ and state hospitals with severe medical and mental health issues without notifying the receiving entity. This requirement would be reciprocal among all entities.

5. Concerning State Hospital operated maximum security mental health beds recommendations:

- Increase of maximum security mental health beds at state hospitals.

Justification- Currently, there is a 4-6 month wait for defendants who have been found incompetent to stand trial to be transferred to a maximum security mental health bed for competency restoration. This delay in transfer is harmful to the defendant, stresses jail resources, and delays justice in cases in which there is a victim.

6. Texas Commission on Jail Standards recommendations:

- Strengthen the resources and capability of TCJS to conduct inspections of county jails and their ability to investigate complaints, about a specific jail.

Justification-current staffing is not sufficient to review and or investigate 160 individual complaints or allegation concerning a specific jail per month. When problems are detected during an annual inspection the commission must follow up and the ability to conduct random unannounced inspection would enhance public safety and confidence in jail operations.

- Municipal Jail -amend state law to require cities that operate municipal jails, holdover or any style of detention facility to report statistical information to the Texas Commission on Jail Standards.

Justification-Currently no state agency is tasked with obtaining information on municipal lockups and they are not required to report information to any state agency.

Interim Charge Three

Review current programs provided by the Texas Department of Criminal Justice (TDCJ) and the Windham School for incarcerated persons to prepare them for re-entry, including inmates in administrative segregation. Examine opportunities for incarcerated persons once they are released and make recommendations to expand successful programs to provide resources and support for released inmates. Assess the success of Certified Peer Support Services. Continue to monitor the Darrington Seminary Program. Study the continuity of care for individuals released from TDCJ, the Windham School, and county and municipal jails and make recommendations if needed.

Overview and Discussion of the Texas Department of Criminal Justice

Texas Department of Criminal Justice (TDCJ) is responsible for the incarceration of adult felony offenders sentenced to state prisons, state jails and Substance Abuse Felony Punishment (SAFP) facilities. Most offenders are incarcerated in facilities operated by the TDCJ, but some offenders are housed in privately-operated correctional facilities that contract with the agency. Responsibility for offender health care is shared with the university providers and the Correctional Managed Health Care Committee. TDCJ provides substance abuse treatment, sex offender treatment, faith-based programming, vocational training, reentry services, and other programs and services through a combination of agency employees, contract vendors, and volunteers. The Windham School District provides academic and vocational education as well as other programs such as cognitive intervention.

TDCJ also provides funding and certain oversight of community supervision (also known as adult probation). TDCJ does not directly supervise offenders on community supervision, but works with local Community Supervision and Corrections Departments (CSCD) which supervise probationers. In addition to funding and oversight, TDCJ provides training and technical assistance, and also promulgates standards. The agency receives advice on matters related to community supervision from the Judicial Advisory Council, a 12-member advisory body whose membership includes judges and public appointees.

The agency is also responsible for the supervision of offenders released from prison to parole or mandatory supervision. TDCJ does not make release or revocation decisions. The authority to approve or deny the release of an incarcerated offender, or to revoke the parole of an offender previously released, is the sole purview of the Texas Board of Pardons and Paroles.

TDCJ also provides services to crime victims, to include a Victim Notification System that provides registrants with notifications regarding an offender's status in the parole review process.

Substance Abuse Treatment Programs (9,235 total treatment slots)

In-Prison Therapeutic Community (IPTC)

- 6 – 9 month program with 12 month aftercare

Substance Abuse Felony Punishment Facility (SAFPF)

- 6 – 9 month program with 12 month aftercare

Pre-Release Therapeutic Community (PRTC)

- 6 month program

Pre-Release Substance Abuse Program (PRSAP)

- 6 month program

Driving While Intoxicated (DWI) Recovery Program

- 6 month program

State Jail Substance Abuse Program

- 60 – 120 day program

Sex Offender Rehabilitation Programs (1,488 total treatment slots)

Sex Offender Education Program (SOEP)

- 4 month program (low risk)

Sex Offender Treatment Program (SOTP)

- 9 month program (moderate risk)

Sex Offender Treatment Program (SOTP)

- 18 month program (high risk)

Additional Female Offender Programs

Baby and Mother Bonding Initiative (BAMBI)

- 12 month program providing services to new mothers and infants

Our Roadway to Freedom Prostitution Intervention Program

- Cognitive and substance abuse programming for offenders with current or past history of prostitution convictions.

College Level Programs

College level vocational and academic courses

- Partnerships with 10 colleges offering 26 vocational and 10 academic programs
- 321 degrees and 1,009 certificates issued during Fiscal Year 2015

Segregation-Based Diversion Programs

Gang Renunciation and Disassociation (GRAD)

- 9 month cognitive-based program for existing gang members
- Administrative Segregation Diversion Program
- 6 month cognitive-based program for gang members newly received into TDCJ
- Administrative Segregation Transition Program
- 4 month cognitive-based program
- Corrective Intervention Pre-Release Program
- 4 month pre-release program
- Serious and Violent Offender Reentry Initiative (SVORI)
- 7 month pre-release and reentry program
- Mental Health Therapeutic Diversion Program
- 6 month therapeutic program
- Note: Administrative segregation population has been reduced from 9,542 in 2006 to 4,610 as of April 30, 2016***

Southwestern Baptist Theological Seminary at the Darrington Unit

- Fully accredited 4-year biblical studies degree program started in 2011
 - Offenders selected for program are not eligible for parole consideration for at least 10 years from date of entry
 - Offenders selected for program can be from any or no faith group
 - Funded by donations through the Heart of Texas Foundation
 - Graduates are assigned as field ministers working with TDCJ chaplains
 - Ministries include:
 - Hospice, segregation, grief counseling, bible study, leading worship services
 - First class of 33 offenders graduated in 2015
 - Second class of 33 offenders graduated on May 9, 2016
 - Field ministers on 13 units
- *150 offenders currently enrolled in program.***

Certified Peer Recovery Support Specialist

TDCJ utilizes Certified Peer Recovery Support Specialist in the agency's substance abuse treatment programs. Thirty-six (36) TDCJ and contracted treatment staff have been trained and certified as Peer Recovery Support Specialists.

The agency provides peer support specialist training to offenders who then serve as peer educators during the remainder of their incarceration. An offender who has completed the 46 hour training may, subsequent to their release and after completing the 500-hour practicum required by the Texas Department of State Health Services (DSHS), apply for a Peer Recovery Support Specialist certification through the Texas Certification Board of Addiction Professionals. As of May 2016, 609 offenders had completed the DSHS approved curriculum prior to release.

Offenders who receive the peer support specialist training serve as recovery coaches. They do not provide traditional treatment for addiction, nor do they diagnose addiction. The recovery coach supports positive change, promotes relapse prevention, and assists in promoting goals not related to addiction, such as relationships, work, and education. They provide their peers with ways to abstain or reduce harmful behaviors associated with their addiction, and help in finding resources that support an addiction free lifestyle.

TDCJ partners with DSHS, Texas Certification Board of Addiction Professionals, and University of Texas in this endeavor. TDCJ is represented on the DSHS Texas Recovery Initiative and heads the Criminal Justice Subcommittee. TDCJ is also represented on Recovery Oriented Systems of Care in several Texas cities. TDCJ also works with numerous private treatment providers to assist offenders who have expressed interest in furthering their involvement with Peer Recovery Services.

Peer Educators

In addition to utilizing certified Peer Support Specialists in the agency's substance abuse treatment programs, TDCJ utilizes peer educators to provide education and training for offenders in preventing the spread of HIV, hepatitis, and other communicable diseases, and to provide education relating to the prevention of sexual abuse. The training is delivered within 30 days of an offender's arrival into TDCJ.

Peer education relating to HIV, hepatitis, and other communicable diseases is provided in cooperation with DSHS and in partnership with AIDS Foundation Houston, AIDS Arms of Dallas, and other community based organizations.

Mental Health Peer Support Reentry Pilot Program

DSHS has a variety of jail diversion initiatives that it implements with partners across the state of Texas. During the Senate Criminal Justice Hearing held on May 17, 2016, DSHS provided this written testimony on the following programs:

- Mental Health Peer Support Re-Entry Pilot (H. B. 1, 84th Legislature – Rider 73);
- Outpatient Competency Restoration (S. B. 867, 80th Legislature);
- Harris County Jail Diversion Program (S. B. 1185, 83rd Legislature, H. B. 1, 84th Legislature – Rider 66); and
- Jail-Based Competency Restoration (S. B. 1475, 83rd Legislature, H. B. 1, 84th Legislature – Rider 70).

Mental Health Peer Support Re-Entry Pilot

H. B. 1, 84th Legislature, Regular Session, 2015, appropriated funds to establish a mental health peer support re-entry pilot. The program focuses on training peers who have a mental health

condition and who have had experience in the criminal justice system. Peers provide services in county jails, attempting to engage persons with mental illness in community services.

DSHS convened with key stakeholders such as the Center for Public Policy Priority, TCOOMMI, the Hogg Foundation, and the Texas Association of County Sheriffs, along with other vested stakeholders in a workgroup focused on planning and implementation of the project. Via an informal solicitation process, three sites were selected to participate in the pilot: Harris County Center (Houston, TX), Tropical Texas Behavioral Health (Edinburg, TX), and MHMR of Tarrant County (Fort Worth, TX). Contracts were executed in April 2016. Total numbers served for this program since the contract execution is 36 individuals. While the total number served stands at 36 individuals, many complex process issues have been identified, worked through, and catalogued for a future implementation guide for similar programs.

Outpatient Competency Restoration

Senate Bill 867 of the 80th Legislature amended Chapter 46B of the Code of Criminal Procedure: Incompetency to Stand Trial. These amendments explicitly permitted the outpatient treatment of individuals found incompetent to stand trial, and determined not to be a danger to the community, for the purpose of competency restoration treatment (see Article 46B.072. a-1). DSHS was provided funding (\$4 million) to establish pilot sites for the implementation of Outpatient Competency Restoration (OCR) programs, through LMHAs, in collaboration with local judicial officials. Since 2008, there have been twelve OCR sites established.

Program goals:

- Reduce number waiting for inpatient competency restoration services.
- Reduce number of state hospital beds used by forensic patients.

Numbers Served: Approximately 324 clients served annually.

Harris County Jail Diversion Program

S. B. 1185, 83rd Legislature, Regular Session, 2013, appropriated funds to establish a community-based jail diversion program. The Department of State Health Services (DSHS) contracts with Harris County to establish a jail diversion pilot program that will operate for a period of three years and treatment must incorporate principles of Critical Time Intervention. As of August 3, 2016, 499 individuals have been enrolled in the program. Program goals include the following:

- provide a continuum of services and supports to reduce involvement in the criminal justice system and unwarranted admissions for emergency room services; and

- Increase enrollment in long-term mental health services.

Jail-Based Competency Restoration

The 2016-2017 General Appropriations Act, H. B. 1, 84th Legislature, Regular Session, 2015, (Article II, Department of State Health Services, Rider 70) DSHS to develop and implement a Jail-Based Competency Restoration (JBCR) Pilot Program established under Article 46B.090 of the Code of Criminal Procedure with \$1.743 million in appropriated funds. S. B. 1475, 83rd Legislature, Regular Session, 2013 amended Article 46B.090 of the Code of Criminal Procedure to establish a JBCR pilot program. Because the pilot program was not implemented in the 2014-2015 biennium, a majority of the \$3.05 million appropriation lapsed.

DSHS adopted final rules that incorporated stakeholder feedback in January 2016. DSHS distributed a revised Request for Proposals (RFP) that was aligned with the final adopted rules on January 13, 2016. During a vendor conference held on January 27, 2016, Local Mental Health Authorities and private organizations expressed interest in operating the pilot program. Interested entities submitted questions regarding the RFP and DSHS formally responded on February 26, 2016. Per the request of the interested entities, DSHS extended the deadline for the proposals by seven weeks. On March 4, 2016, DSHS entered into contract negotiations with the sole respondent. However, the RFP closed with no awardee identified.

DSHS is currently seeking direction regarding the possibility of pursuing a contract/partnership with governmental / semi-governmental entities for the provision of Jail-Based Competency Restoration services.

Public Hearing - May 17, 2016

The Senate Criminal Justice Committee conducted a public hearing on May 17, 2016 to gather testimony on this interim charge. Senator Whitmire called the meeting to order and discussed the importance of diversion programs (from prison) and rehabilitative programs. He charged the witnesses to discuss ways to implement these types of ideas.

Bryan Collier, Executive Director, Texas Department of Criminal Justice (TDCJ) was called first and asked to discuss reentry program for inmates being released from TDCJ and how these services can be enhanced. Mr. Collier responded:

- Some of the foundational steps have been implemented, such as the overall risk assessment instrument now used throughout their system, and the state identification card system for those released.

- TDCJ no longer releases inmates directly from Administrative Segregation; they now complete a pre-release program prior to release.
- With funding provided by the Legislature, they have increased the number of reentry case managers assigned in the community and for special needs.
- He highlighted employment as a critical need for those being released and additional case managers recruit employers and connect them with the individual being released. In the future, employers will be able to look online for potential employees among those being released.
- One important aspect of reentry is to conduct an individual assessment and develop a realistic, individualized reentry plan.

In response to member's questions, Mr. Collier agreed that TDCJ does not offer the same level of services for female offenders that it does for male offenders. TDCJ is adding new programming for females and are developing an intermediate program that will fill the gap between the intensive substance abuse program and the low level cognitive program.

Following this, an exchange between committee members and Mr. Collier occurred concerning the importance of locating halfway house beds in communities that send a large number of inmates to TDCJ. Bexar County, which has no halfway house, was singled out and Chairman Whitmire suggested to Collier that they concentrate efforts to correct that.

Clint Carpenter, Superintendent, Windham School District (WISD), which provides literacy, K-12 education levels, and vocational courses within TDCJ, provided that they now offer a summer school program at 45 locations, serving approximately 7,000 additional offenders. He added that they offer course work in entrepreneurship, financial literacy, parenting skills, and some skilled trades. He continued:

- Data from the last 3 years reveals that offenders in academic classes gain 2 years of education for every 220 days of instruction.
- WISD is engaged in bringing more resources and experts in adult education to the district, due to the differences in teaching adults versus children.
- The average reading level for those attending WISD is between the 5th and 6th grade level.
- WISD serves the offenders with the highest needs, and with additional resources they could serve more offenders.

Members encouraged Mr. Carpenter to document WISD needs and to advise the Legislature prior to next session.

April Zamora, Director, Reentry and Integration Division (Division), TDCJ, provided that there are currently 136 case managers in TDCJ units throughout the state and 10 special needs case managers that work directly to assist inmates with medical or mental impairments in completing Social Security applications, and to ensure that health benefits will be in place upon

release. The Reentry and Integration Division also works to ensure continuity of care before the inmate is released and establish nursing home or group home placement, when necessary. The Division's goal is to have these items in place before the offender is release.

In response to a question from Senator Whitmire concerning any restrictions regarding parolees having contact with each other, Ms. Zamora stated that there are none and that mentorship and peer support can be useful to offenders transitioning from prison into the community. She continued:

- Many mental health facilities and other community services provide peer support and mentorship within their programming.
- Structuring of the reentry process begins when the offender first becomes eligible for parole and a more in-depth process begins once parole has been granted, matching resources to the offenders needs.

Ms. Zamora continued her testimony, responding to member's questions:

- Case managers on unit work with inmates to get them prepared for employment and community case managers work with employers to hire ex-offenders.
- Inmates are assisted with obtaining a state identification card that they can take to DPS and apply for their DL under certain conditions.
- *Are inmates eligible to reinstate federal health and disability benefits upon release?* If they are incarcerated less than a year, yes. However, if they are in prison longer than a year, benefits are automatically discontinued. TCOOMMI has 38 contracts across the state to assist offenders with their continuity of care issues.
- On the issue of employers being reluctant to hire ex-offenders due to liability and lack of job experience: this is a concern, and TDCJ has contracts with the Texas Workforce Commission to assist in employment issues.
- Undocumented individuals are not eligible to receive state identification card or any federal benefits. If they have severe mental health issues the Division works to ensure continuity of care upon release.
- Brain Collier added TDCJ works with Immigration and Custom Enforcement (ICE) to identify undocumented individuals as they enter the prison system. There are approximately 9,100 TDCJ offenders who have been issued an ICE detainer, and will be released to ICE. The Division only works with legal citizens or those that cannot be deported.

Senator Whitmire added that TDCJ holds over 12,000 foreign offenders, some are low level nonviolent offenders who are parole eligible but are not released due to ICE detainers costing the state \$30 million/year to house them.

Trina Ita, Director of Program Services, Section II, Mental Health and Substance Abuse Division, Department of State Health Services (DSHS), stated DSHS operates reentry pilot programs in three areas in the state: Harris county, Tarrant County, and the Tropical Texas facility in Edinburg. Peer Support Specialists are provided with a two day certification training program in how to provide reentry support for individuals in county jails. Their goal is to reduce recidivism in county jails. They provide outreach efforts through discussions with inmates and attempt to connect them to community support that will assist the inmates transition from jail back to the community. Their primary goal is to teach the inmates skills they will need to transition back to the community and not return to jail again. They also assist in locating housing and employment.

In response to questions from members, Ms. Ita stated DSHS Outpatient Competency Restoration Programs (OCR) for individuals found incompetent to stand trial that are not dangerous, has served 324 individuals a year and restored many of them to competency. There are 12 areas in the state that have OCR in both rural and urban locations. Participants in these programs receive robust services in the community or residential facilities.

Katharine Ligon, Mental Health Policy Analyst, Center for Public Policy Priorities, discussed a program in Pennsylvania that provides peer support specialist in county jails. They provide services similar to those previously discussed in Texas. They have case loads of 12 to 15 individuals.

Members conducted a discussion of the lack of and need for transitional housing for individuals being released from jails and mental health facilities. A discussion of Haven for Hope in Bexar County as a good example of a program filling in some of the gaps in this area.

Traci Berry, Goodwill Central Texas, and Texas Smart on Crime Coalitions discussed their role in assisting over 120,000 individuals a year, fifty percent (50%) of whom have criminal backgrounds. Recently they initiated a program to assist 17 to 50 year old individuals to earn their high school diploma in less than 2 years and are negotiating with TDCJ to introduce the program in their female facilities. Ms. Berry called for more treatment in state jails to lower their high recidivism rates.

Committee hearing files, written testimony, the video and audio recording of the hearing and the Secretary of the Senate Clearinghouse report were utilized as sources for this section.

Conclusions and Recommendations

Since the major criminal justice reforms of 2007 with the strengthening of diversion, probation supervision and in-prison and street treatment programs, our incarcerated population has dropped from over 155,000 inmates and detainees (State Jails) to our lowest number since 2012, to 146,000 inmates and detainees. Overall the system has reached a point of stability that capacity is no longer a major concern and it is projected by the Legislative Budget Board (LBB) that the numbers will remain stable till 2021. These 2016 projections also estimate that we will continue to operate our institution over 5000 beds below our operating capacity which is 96% of our total physical capacity.

Now is the time for the legislature to double down on the successes of the reform movement. TDCJ should be directed to select and close at least one facility, and that saving should be redirected into the following treatment programs:

- \$15.4 million to expand the In-Prison Therapeutic Community program by an additional 500 treatment slots.
- \$2.9 million for 30 additional Reentry Transitional Coordinators who would be assigned to state jail facilities.
- \$1.5 million to provide releasing offenders with a 30 day supply of their medications. Releasing offenders currently receive a 10 day supply.

TDCJ should use the remainder of the savings to strengthen probation treatment and parole treatment programs. During the coming session the legislature should review and identify other criminal justice reforms that will lessen the pressure on incarceration capacity. By implementing reforms within the prison system and in the sentencing process it should provide the legislature comfort in the LBB projections.

Interim Charge Four

Examine the success of current pretrial diversion and treatment programs in Texas and in other states. Make recommendations on best practices and how to implement and expand these programs in Texas to maximize effective use of resources and reduce populations in jails.

Introduction and Discussion

An individual charged with a criminal offense in Texas faces several conclusions of that case that range from dismissal (ex: lack of evidence), not guilty after trial, deferred adjudication, probation, or incarceration in a county jail or state prison. Pretrial intervention laws were first added to state statutes in 1983 and have been amended many times since. Prior to codification, prosecutors used their authority and discretion to handle an appropriate case through a process commonly called "pocket probation." In these cases, a prosecutor would enact an agreement with a defendant to set conditions that had to be complied with in a set amount of time. Upon completion of conditions under the set time agreement, the prosecutor would dismiss the case. In the case of noncompliance, the prosecutor would initiate prosecution in the appropriate court. Today, some county attorneys, still utilize this less formal method under names such as "deferred prosecution programs," which are still a "discussion between attorneys" and are not conducted in a transparent manner.

Most often and with growing preference, prosecutors in cooperation with judges and Community Supervision and Corrections Departments (CSCD) have created formal pretrial intervention programs. These programs vary across jurisdictions, and are initiated at different points during the arrest and booking process; some as pre-jail, pretrial, or as an element within a specialty court.

Prior to several amendments to deferred adjudication statutes, which negated any positive benefit for a defendant, deferred adjudication was often utilized for appropriate defendants to avoid a conviction record. Currently, deferred adjudication supervision is used more often than probation. However, both result in a conviction and are listed as such within the Department of Public Safety's (DPS) criminal records data and available to the public. The primary difference between probation and deferred adjudication is that a violation and revocation of probation is limited to the time probated, and in the later to the full range of punishment available for the category that the offense is assigned. Both subject the defendant to denial of state issued occupational licenses, harm the defendant's ability to obtain housing, and restrict future employment opportunities. In many instances, successful completion of pretrial intervention programs can result in dismissal and expungement of the original offense.

State agencies have a very limited role in the development or operations of pretrial intervention programs, except that the Legislature provided statutory authority (Government Code, Chapter 76.11) for them to be developed. These programs are developed at the county or judicial district level and are mostly funded through local funds and fees collected, as authorized by the state statute.

The Committee's first finding in this study is that no state agency is tasked with collecting overall information or data on these programs. Only the Criminal Justice Division (CJD) of the Office of the Governor which certifies specialty courts and provides grant funding, has a role, which only involves one segment of these programs. The Texas Criminal Justice Department Community Justice Assistance Division (TDCJ-CJAD) collects some information, but only on programs that deal with felony cases and are eligible for inclusion in their funding formulas. TDCJ-CJAD reported that five CSCD have reported operating pretrial bond supervision programs and 36 CSCD have reported operating felony level pretrial intervention programs.

An online search revealed that most jurisdictions have some form of pretrial intervention programs, most of which are for misdemeanor offenses and first-time and/or low risk offenders. An Attorney General's Opinion (GA-0114) from October 8, 2003, provides history of amendments to the original law and clarifies how pretrial intervention programs are funded. Below are Footnotes 6 and 7 of GA-0114 on the issue of which fees can be assessed and collected. The opinion has since been rendered moot for further amendments:

6. In 1983, the legislature enacted article 42.121, section 10(a) of the Code of Criminal Procedure, which provided that "[t]he district judge or judges may authorize district personnel to operate programs for the supervision and rehabilitation of persons in pretrial diversion programs. Persons in pretrial diversion programs may be supervised for a period not to exceed 12 months and may be assessed a supervisory fee or a program fee, or both, provided the maximum fees do not exceed a total of \$200.00." Act of May 26, 1983, 68th Leg., R. S., Ch. 762, § 1, 1983 Tex. Gen. Laws 4572, 4572. In 1989, the legislature repealed article 42.121 and enacted article 42.131. See Act of May 28, 1989, 71st Leg., R. S., Ch. 785, §§ 3.02, 3.10, 1989 Tex. Gen. Laws 3471, 3483-86, 3491. Section 11 of article 42.131 provided that "[p]ersons in pretrial intervention programs may be assessed a supervisory fee, a program fee, or both fees, provided that the total amount of the fees does not exceed \$500." *Id.* at 3486. In 1990, the legislature transferred the fee from article 42.131 to article 102.012 and amended the statutory language to authorize "a fee that equals the actual cost to a community supervision and corrections department, not to exceed \$500, for supervision of the defendant as part of the pretrial intervention program." Act of June 7, 1990, 71st Leg., 6th C. S., Ch. 25, § 20, 1990

Tex. Gen. Laws 108, 126. The legislature transferred the remainder of article 42.131 to chapter 76 of the Government Code in 1995. *See* Act of April 25, 1995, 74th Leg., R. S., Ch. 76, §§ 7.11-7.12, 1995 Tex. Gen. Laws 458, 580-584.

7. In 1995, the legislature added section 15 to article 42.131 of the Code of Criminal Procedure, to authorize a department in a county with a population of 2.8 million or more to "assess a reasonable administrative fee on an individual who participates in a department program or received department services and who is not paying a monthly fee under Section 19, Article 42.12." *See* Act of May 12, 1995, 74th Leg., R. S., Ch. 217, § 1, 1995 Tex. Gen. Laws 1959, 1959. In 1997, the legislature repealed that provision and adopted section 76.015 of the Government Code, which limited the fee to an amount between \$25 and \$40 and authorized all departments to assess the fee. *See* Act of May 26, 1997, 75th Leg., R. S., Ch. 983, § 1, 1997 Tex. Gen. Laws 3054, 3054.

These statutes were originally amended in 1975, and were further amended in 2005 and 2007. In combination, these amendments establish that a CSCD may assess and collect a supervision fee of not more than \$60 per month and a county or district attorney may assess and collect a fee of \$500 from each participant. Current law also authorizes the collection of cost for treatment from a defendant. Additional amendments in 2011 and 2013 authorized CSCD to supervise court order installation of deep-lung breath analysis, testing for controlled substances, and occupational driver's license. Additionally, the maximum length of a program was raised to two (2) years.

Public Testimony - May 17, 2016 Hearing

In conjunction with other interim charges, a public hearing was conducted on May 17, 2016.

Kathy Braddock, Assistant District Attorney, Harris County, stated that Harris County has recently created a pre-booking program for individuals stopped with less than two (2) ounces of marijuana. She provided:

- They are not charged with the offense if they have identification and no criminal history.
- They are provided with written instructions to report to pretrial services within 3 days.
- If they do not appear, a warrant is issued for their arrest and prosecution will resume.
- Currently, there are 510 active participants. Historically, 2,442 out of 3,620 successfully completed the program, and were never charged with an offense or booked into jail.

Ms. Braddock stated that Harris County has other post-charge programs for offenses of retail theft, prostitution, and driving while intoxicated (DWI). These cases are booked into jail and required to post a bond. A discussion then occurred concerning low level offenders that are denied diversion programs kept in jail because they cannot post a bond, as well as the high

bond amounts. Ms. Braddock pointed out that the authority to set bonds lies with judges, magistrates sometimes fail to hold timely hearings, and defense attorneys are absent at bond hearings. Harris County is currently developing a system for the Public Defender's Office to be present at these hearings, however better risk assessment instruments are needed. Committee members concluded the current bond system is broken and only offenders who present a threat should be detained. Those who do not represent a risk to public safety should be released, and should not have to plead guilty to a crime to gain their release.

Ms. Braddock added that Harris County has other misdemeanor and felony pretrial programs. Some programs are operated in conjunction with specialty courts, such as retail theft and prostitution courts. Participants are selected on case by case bases. She added:

- On Feb. 1, 2016, Harris County launched a pretrial diversion program for offenders with less than four (4) ounces of a controlled substance. Currently, there are 1,630 participants in this program.
- Any diversion program will fail if funding is not provided for probation officers to provide participant supervision. Access to and funding for residential treatment facilities is also critical to diversion program success.
- Harris County is contemplating the creation of other diversion programs, such as one for driving with license suspended. This offense has a high rate of recidivism due to the high fees that are imposed.

Committee members then discussed the Driver Responsibility Program (DRP) which has resulted in over 1 million individuals who have had their driver's license suspended for failure to pay fees. During this discussion, Ms. Braddock stated that the program is creating a financial class of criminals. Committee members agreed DRP has to be reformed or repealed.

Rick Magnis, Judge, 283rd District Court, Dallas County, testified that Dallas County has many special diversion courts that work well. The primary issue in Dallas County is the lack of pretrial release programs. Judge Magnis went on to explain what Dallas County needed to implement pretrial release programs and discussed further the issues with magistrates and preset bond schedules. A discussion between Judge Magnis and members occurred surrounding the need for resources and the counties' financial responsibility should be. Judge Magnis recommended a change in state law to direct counties to provide resources for pretrial release programs.

Tina Yoo Clinton, Judge, Dallas County Criminal Court No. 8 continued to discuss the problems in Dallas County pretrial release functions:

- Only 4% of Dallas County Jail population are granted pretrial bonds.

- 69% of Dallas County Jail population are awaiting adjudication of case.
- No central booking. Defendants wait 48 hours or more to see a magistrate or undergo indigent screening.
- Dallas County spends \$800,000/year on pretrial release (Travis County spends \$5 million/year).

Michael Lozito, Bexar County, Director of Judicial Services was called next.

Bexar County appears to have a well thought out and funded pretrial process and Director Lozito's written testimony is provided below:

I work for the Commissioners Court and the Office of the County Manager. As Director of Judicial Services I am responsible for the Medical Examiner's Office, Crime Investigation Lab, The Dispute Resolution Center, Court Collections, Central Magistration Program, Mental Health Department, Specialty Courts, Reentry Programs, Jail Population Impact Control Unit, Criminal Justice Data Unit, Pretrial Diversion Programs and the Pretrial Services Office.

The Bexar County Pretrial Services Office was created in 1976, authorized by the Commissioners Court under Article 17.42 Texas Code of Criminal Procedure (TCCP). I have 70 staff that supervises over 6,000 cases on a daily basis. The office provides supervision of individuals released on Personal Recognizance Bond, individuals released on Commercial bond with court ordered conditions of bond and indigent defense attorney appointments. I have staff at our Central Magistrate facility and the Adult Detention facility 24/7. I have supervision staff that provides the following:

2. Regular Supervision of PR Bond Cases
3. Alcohol Monitoring Unit- Ignition Interlock Cases
4. Domestic Violence Unit
5. Substance Abuse Testing
6. Substance Abuse Caseload
7. Special Needs/Mental Health Caseload
8. Global Positioning Satellite (GPS) Unit

When an individual arrested meets qualification of local judges orders for PR Bond, Intake officers at the Central Magistrate Facility will interview the individual, conduct a background

investigation (family, employment, ties to the community, criminal records check and conduct a risk assessment. The risk assessment was developed in 210 by Dr James Austin. Dr Austin has developed risk assessments throughout the United States to include Harris County, the State of Florida and various State Parole Boards to include Texas. The Bexar County Risk Assessment was validated for local use in 2013 by Dr Tony Fabelo; Council of State Governments in FY 2015/2016, our office conducted the following:

- 20,317 Indigent Attorney Appointment Requests
- 11,598 PR Bond Investigations were presented to Magistrates/Judges
- 5,721 PR Bond cases approved by Magistrates/Judges
- 11,656 Cases were Closed
- 90% Successful Court Appearance Rate
- 17% Rearrests for new offense while under PR Bond

I mentioned our Central Magistrate (CMAG) Facility, which is very unique in Texas, it is a Co-located facility owned by the City of San Antonio. All individuals arrested (27 arresting authorities in Bexar County) where there is a decision to arrest are taken to CMAG. CMAG is a 24/7 facility with City Detention Officers, County Magistrates recommended by the District Courts approved by the Commissioners Court, Assistant District Attorney and Pretrial Services. In 2015, over 26,206 individuals were released from CMAG on Commercial or PR Bond. 31,089 individuals were booked into the Bexar County Adult Detention Center

Why is it important for individuals in the pretrial process to not go to a County Jail? The Laura and Jesse Arnold Foundation released a study on individuals that are placed in jail while in pretrial status found that:

- For individuals with no prior criminal record in jail for two or three days, become a 40% recidivist
- Individuals that remained in jail during the pretrial phase were more likely to plead guilty and to serve time.

The City of San Antonio and Bexar County have aggressively looked at "Best Practices" to divert individuals at the point of arrest and at CMAG. Since 2004, law Enforcement and the local Mental Health Authority, The Center for Health Care Services have developed

policies and programs to divert individuals that have violated Class B and C misdemeanors. They have trained over 95% of all Law Enforcement officers in 40 hours Crisis Intervention Training and yearly recertification programs. They have created the Restoration Center to divert. In April, 2014 the Commissioners Court assigned the CMAG Mental Health Program to Judicial Services/Mental Health Department to further screen individuals for mental health issues at the CMAG. A 2013 study the "Pretrial Assessment and Improvement Project" was funded by Commissioners and the Bureau of Justice Assistance. The County contracted with Dr. Fabelo and the Council of State Governments to conduct the study. The finding determined Bexar County could safely and logically reduce jail population by developing "Evidence Based-Protocols" at CMAG to better screen individuals for Mental Health, Substance Abuse and Domestic Violence issues. By identifying risk, behavioral issues, providing treatment and pretrial supervision of these individuals at the front end of the system rather than at adjudication, the County safely impact overall jail population and community safety. These initiatives are called the Smart Justice Initiatives, sponsored by the National Association of Counties, Council of State Governments and the American Psychiatric Association.

In 2014, Commissioners Court funded Phase 2 of the "Pretrial Assessment and Improvement Project," to implement key initiatives at improving the Bexar Pretrial System by teaming with the Council of State Governments and the Meadows Mental Health Institute. Numerous stakeholders were engaged to include the County Judge, District Attorney, Sheriff, Police Chief, District and County Court Judges, City Detention and Municipal Courts. The CMAG Mental Health Program was expanded to include Pretrial Assessment Officers, Mental Health Clinicians and the Mental Health Public Defender. Since April 2014, we have placed over 489 (target is over 900 per year) individuals in the program our outcomes are outstanding:

- 94% Successful Court Appearance Rate
- 4% Rearrests (Recidivism) Rate while in the program

Besides the CMAG Program, Bexar County has the Jail Population Impact Unit, 4 extremely seasoned staff required to review individuals who were not released at CMAG and qualify for PR Bond, investigate and present to County and District Judges for their approval. They assist Court Coordinators in developing dockets for Misdemeanor Jail Court, TDCJ Coordinators in preparation of Pen Packets, track Parole Violation warrants, Awaiting Psychological, Awaiting Treatment Probation Beds, Satellite Booking and assist with individuals in jail with serious health issues. We have added a Special Needs Officer that

works with individuals that have substance abuse issues and are homeless. The officer coordinates with the assigned attorney and courts to place individuals to inpatient programs while individuals are pretrial status. The County and University Health Systems contracts with Haven for Hope Homeless campus for 30 facility beds to place individuals in the program to divert Wellness Recovery, Substance Abuse Recovery or the Transitional living program.

BARRIERS&RECOMMENDATIONS:

Local Restrictions to State Law for PR Bond:

- Local Restrictions by Criminal District and County Courts limit access to PR Bond which violates access to Liberty.
- Numerous individuals that are low risk and non-violent are eliminated for application for PR Bond
- TCCP Article 17.03 and 17.032 (Mental Health Bond) clearly set parameters, no need for further restrictions- Bell County and Collin County examples of no restrictions.

Setting of Bond and Independent Bonding Decisions

- Eliminate Bond Schedules; bond should be constitutionally set to the ability of the individual to pay.
- Magistrates should be independent of oversight by the District and County Court Judges.

Gerald Rodriguez, President of the Texas Association of Pretrial Services stated that his organization is comprised of practitioners and they support a study to identify which approaches are the most effective.

Michael Young, Chief Public Defender, Bexar County stated that pursuant to a grant they received Bexar County is now providing bail hearings to individuals with mental health issues. He continued:

- Prohibit any local rule which limits magistrate discretion in bail hearings, bail schedules, or limitations on who can receive a PR bond.
- Add the presumption that a magistrate will release an individual on PR bond unless it is determined the individual poses a threat to the community or there is concern the individual will not appear in court as instructed.

- Appoint representation to the indigent individuals at bail hearings.
- Pretrial incarceration can be incentive to plead guilty even if the person is innocent.

Shannon Edmonds, Staff Attorney, Governmental Relations, Texas District and County Attorney Association stated the law on pretrial intervention allows individual prosecutors and local officials to tailor programs to meet the needs of that community.

B. J. Wagner, Director, Smart Justice, Meadows Mental Health Policy Institute provided information on programs designed to keep mentally impaired individuals out of jails. Ms. Wagner went on to describe other state's programs, which included interdisciplinary rapid response teams and law enforcement assisted diversion programs.

Conclusions and Recommendations

The Committee received oral and written testimony which indicates pretrial intervention programs across the state are successful and producing desired results. The growth of these programs indicates prosecutors and judges are pleased with the success they are seeing. Specialty courts have increased from 33 to 194 during the last few years. **The flexibility of current law allows for prosecutors and local official to create unique solutions to the specific needs of their communities.**

Of particular interest to the Committee is the current statutory process for using jails to house mentally impaired offenders. As previously noted, many communities have successfully implemented pretrial intervention programs to divert mentally ill individuals from jail, but many jails, magistrates, judges, and local criminal justice systems are not following through with these offenders. In part, this lack of follow through is due to inadequate mental health resources in all communities. However, many communities have yet to make necessary policy changes to divert mentally impaired offenders from jail to the appropriate mental health services, where they exist.

The Committee recommends:

1. Task the Office of Court Administration (OCA) to gather data on pretrial intervention programs. Including but not limited to a description of the program, a list of eligible offenses,

the number of successful participants, and number of unsuccessful participants each state fiscal year

Note: Much of the testimony received by the committee concerns the subject of pretrial supervision including the magistrate hearings, diversions of mentally impaired detainees from jail, release on PR bonds, and reform of the bail bond system. Committee recommendations on these issues are addressed in Interim Charge Two.

Interim Charge Five

Study how bulk criminal records are disseminated. Review the list of entities with access to and their current use of criminal records. Make recommendations to streamline the dissemination of records through bulk requests to ensure accuracy and limit inappropriate use of records.

Introduction

On May 17, 2016 the Senate Criminal Justice Committee heard invited and public testimony on bulk criminal record dissemination. There was both verbal testimony and written testimony provided. The written testimony, which is include below, provides a good overview of the issues with dissemination of bulk criminal records. The Committee also reviewed past studies on the issue some as recent as last interim. This report will serve mostly as an update specifically to the House Committee on Criminal Jurisprudence Interim Charge 3 Report from January 2015. Sections of this report will be included below as the information has not changed. The main source of updated information will be from local District and County Clerk offices. An email request for information was send to all county and district clerk offices by the Senate Committee on Criminal Justice. There are 254 counties in Texas. 65 of the Texas counties have a combined district and county clerk's office. Therefore there was an expected response from 443 offices. 120 counties, 27%, had responded to the request for information at the time this report was written.

House Committee report excerpt

The main sources for buying records in bulk are the Department of Public Safety, which serves as a repository for criminal records, and local District and County Clerk offices. It's unclear how much money clerks make from these sales, other than recouping costs associated with satisfying open records requests.

After the records are bought from DPS or another agency, some companies then turn around and sell that information. There is currently no way for the state to track who the records are sold to. This is where the main problem occurs since it's difficult to find all places that have inaccurate information, especially if a case is expunged or a person is issued an order of non-disclosure.

Most of these records are obtained through open records requests. Some county and district clerk's offices are more equipped for such large requests than others. Clerks in jurisdictions without funds for the latest technology have complained that pulling the records together takes up large amounts of staff work time.

DPS's data is kept in the Computerized Criminal History System. Local entities send criminal histories, including arrests and dispositions, to the state agency because it is the statewide repository for such information.

Discussion

Erroneous or incomplete criminal information in the public domain can have detrimental effects on a person's ability to find a job, secure housing or apply for college. Unfortunately, with the advent of the Internet, such information has become commonplace in today's society, affecting people as they attempt to move past an incident where they came into contact with the criminal justice system. That means that in some cases a person who has obtained an expunction or non-disclosure, who by law can leave out their involvement in the justice system on an application, is accused of lying after an employer runs a background check and finds a criminal charge on a website. Stakeholders argued that action should be taken to ensure that only the most accurate information is released when information is sold in bulk. Otherwise, people's lives will continue to be affected by incorrect information in the public domain.

Where does the information come from

Criminal history is housed by various governmental entities, including police departments, county clerks, district clerks and the Department of Public Safety. These entities are required by law to provide public portions of criminal histories through open records requests. The records can be asked for individually or in bulk. The Department, which typically collects criminal information for Class B misdemeanors and above, only makes public cases with a disposition.

Serving as a state depository for this information, the Department has roughly 8.5 million criminal records and about 4.5 million of those records DPS does not release arrest information without a disposition, a fact that separates it from most other government entities.

County and district clerk offices do, however, release information that does not include a disposition in order to comply with an open records request. That is, if the entities receive a request for all of their criminal history information, they provide what they have. And the information they have might include cases that have not been disposed.

Individuals can also walk into a courthouse and ask for an individual's records in accordance with public information laws. Such information is typically also available online through county and district clerk websites and from DPS's website.

The Department of Public Safety maintains a list of which entities the agency sells data to in bulk. The agency lists 22 entities that purchase data in bulk, and 17 of them are regular customers. Entities that buy the data in bulk range from Texas Department of Licensing and Regulation, the news media and background companies. Criminal information can also come from police departments, courthouses and other entities. One company that collects criminal histories and sells access to the information on the Internet reported that it taps more than 10,000 entities for information.

Dissemination of criminal history

Because the indexes sold can contain millions of files, information released in bulk is typically provided through a File Transfer Protocol, or FTP, which is a standard network used to distribute large amounts

of information over the Internet. The Department of Public Safety provides information on a weekly basis to companies that have an agreement with the agency for regular updates. Information not sold in bulk is readily available through local and state government websites, or by walking into a local courthouse.

Some of the entities that buy the data turn around and sell the data to paid subscribers. While state government entities are only allowed to recoup costs for the information, the reselling of such information has become a multi-million dollar industry nationwide. Companies that resell the data say that they are merely making available information that is already available to the public, and that the general public should have easy access to all data the government collects on its citizens. In their view, these companies are providing a public service by providing easy access to public information. But this is where the main issue regarding the data comes into play, since it's difficult to track where the information ends up.

Similarly, county and district clerk offices sell data in bulk. But to comply with open records laws, these entities provide the information they have at the time, which might include cases that have yet to be disposed. Typically, counties receive \$2 to \$25 for a copy of a disk with the bulk data. Complying with such large requests can take up hours of work time in offices with a small staff.

Complications with data

Since data sold in bulk can come from multiple sources and in multiple levels of completeness, keeping track of where the information ends up can be an arduous task. And because there are so many companies that sell this information online, it would be nearly impossible for a regular person with an error in their criminal record to track down every entity that has that record and have it corrected or removed. Various stakeholders equated this phenomenon to a genie being released from a bottle and not being able to put him back in or water sprayed all over a yard and not knowing where it truly ends up. Whatever the metaphor, the Internet is making the information much easier to spread and harder to reel back in when needed.

Once information enters into the public domain, it is generally up to an individual to correct erroneous information. And while the Department of Public Safety notifies those who buy information from them of changes in the records, those companies are under no obligation to inform secondary purchasers of changes.

Some stakeholders explained that eliminating the bulk sale of criminal histories altogether would push companies to buy individual records instead, thereby also forcing them to verify accuracy on a record-by-record basis. However, this approach could find resistance among those who argue that all information collected on citizens should be public.

Expunctions and non-disclosures

There is currently no way to follow the dissemination trail of data after the first point of sale, which makes it difficult for anyone attempting to correct erroneous information. This is particularly bad for a job applicant accused of lying for not disclosing an expunged offense, even though they have received

an order of non-disclosure or order of expunction. The situation has led some attorneys to advise their clients not to even seek relief under the statutes or encourage clients who have received relief to disclose an offense anyway to avoid the risk.

DPS includes any changes regarding cases involving orders of non-disclosures and expunction with the information purchased by companies with subscriptions. It also sends expunction orders to the companies in case the companies bought information from an entity other than DPS and the information might contain incomplete information.

Even though courts and government agencies try to get the message out that an expunction or order of non-disclosure has been issued, they can only inform those who they know have the information. For an agency like DPS, that means only the company that bought the information from them is contacted. Past that, it's unclear whether anyone else gets the message and the information remains in the public domain.

Another complication specifically relating to expunctions stems from the fact that local jurisdictions destroy records within 60 days to a year after an expunction order is written. Say someone who received an expungement order writes on a job application that they do not have a criminal record, and then the potential employer finds an arrest and criminal charge online. If government agencies have already destroyed their records, that person would have a difficult time proving that they are not lying because it no longer exists, but it does exist in certain databases that have been sold.

SB 1289

Senate Bill 1289 was meant to help make sure published criminal history information is accurate and that if there is a mistake that individuals are not charged to correct the information. Information is considered accurate as long as the record was obtained directly from the Department of Public Safety within 60 days. Once a company receives an inquiry from a citizen, it has 45 days to conduct an investigation and if a change needs to be made, the company has five more days to do so on its website. For each charge that needs to be updated and is not, the company is liable for a civil penalty of \$500 per charge per day to the state and to the individual. While stakeholders praised the bill for its effort, it was difficult to evaluate the impact of the new law in protecting citizens.

While the new law provides for a civil penalty for non-compliance, as of mid-October the Texas Office of the Attorney General had not filed any lawsuits relating to violations of the new law since it was enacted. And while numerous private lawsuits against companies that sell criminal information have been filed around the country, none had been filed in Texas as of the writing of this report. The Texas Office of Court Administration also reported that it was unaware of any civil penalties assessed for violations of the new law's provisions.

Also, stakeholders have said that the fact that it's unclear who has the information makes this law difficult to enforce. That's partly because the onus is on the individual with a criminal history to find the information online and try to correct it. Also, the law only applies to companies that charge a fee for removing or correcting data, leaving other companies a loophole by being able to say that they do not charge for correcting data but also will not correct it. One company with this policy instead directs an

individual with a criminal record to the entity that dispersed the information and works with them to correct it.

Update

It was reported by the House Committee that DPS provides records to 22 entities which were listed on their website. The current list has 27 entities on it.

Customer	Last Purchased
Allied Resident/Employee Screening Service, Inc. 4230 LBJ Frwy Ste 400 Dallas TX 75244 972 404-0808	09/12/2016
Automation Research, Inc. (CBC) 1651 N.W. Professional Plaza Columbus OH 43220-3866 614 538-1507	10/03/2016
Bifrost Solutions 102 Oakmont Roanoke TX 76262-5470 940 395-1130	07/11/2016
Confi-check Investigations 1915 21st street Sacramento CA 95811 916 733-6125	09/06/2010
CoreLogic SafeRent 40 Pacifica Irvine CA 92618-0000 949 214-1372	08/22/2016
Dallas Computer Service, Inc. (DCS) 500 North Central Expressway Suite 280 Dallas TX 75074 972 422-3600	09/26/2016
Data Diver Technologies 7135 S. Harl Ave Tempe AZ 85283 877 601-3282	10/03/2016
Data Driven Safety 209 Delburg Street Suite 205 Davidson NC 28036 865 773-5773	09/19/2016
Dealer Alert Network, LLC 2005 N Bell Blvd Cedar Park TX 78613 512 261-8987	09/14/2016
Drivers History Information 1 Keystone Ave, Suite 700 Cherry Hill NJ 08003 856 528-3092	07/04/2016
Experian 475 Anton Blvd. Bldg D Floor 3 Costa Mesa CA 92626 714 830-7994	10/03/2016
FC Background 8350 N. Central Expy, Suite 300 Dallas, TX 75206 Dallas TX 75206 214 306-8199	08/08/2016

Foundation IT Service 8806 N. Navarro St. Ste 600, #189 Victoria TX 77904 361 894-4792	06/06/2016
Genuine Data Services 12770 Coit Road Suite 1150 Dallas TX 75251 866 991-9196x5022	09/26/2016
GroupOne Services 300 Decker Drive Irving TX 75062 469 648-5052	02/16/2015
HDR, Inc. 307 South Friendswood Drive, Suite F Friendswood TX 77546 281 996-5509	09/19/2016
Innovative Enterprises, Inc 11824 Fishing Point DR. Suite B Newport News VA 23606 757 263-4319x384	09/19/2016
Jerico Pictures, Inc 1801 NW 126th Way Coral Springs FL 33071 561 251-1959	07/25/2016
Jordan Health Services 14295 Midway Road Addison TX 75001 972 404-5771	08/01/2016
Legal Holdings, LLC 103 East 5th Street Austin TX 78701 979 824-3178	07/28/2016
PreCheck, Inc. 3453 Las Palomas Rd Alamogordo NM 88310 866 459-3187	10/03/2016
QuestMark Information Management, Inc. 9440 Kirby Dr Houston TX 77054 713 662-9022	09/12/2016
RapidCourt, LLC 9710 Northcross Center Court Suite 105 Huntersville NC 28078 704 990-0101	10/03/2016
Shadowsoft, Inc. 7750 MacArthur Blvd Suite 120-290 Irving TX 75063 972 869-2471	09/12/2016
Tenant Tracker, Inc. 1550 Bray Central Drive McKinney TX 75069 800 658-9369	09/12/2016
Texas Department of Licensing and Regulation 920 Colorado St Austin TX 78701 512 463-6085	10/03/2016
Wesearch Data Systems 902 West Castlewood Friendswood TX 77546 832 457-1809	09/12/2016

This list was reviewed a month prior to the list provided above. 17 of the companies had updated their information within the month. If the companies on this list updated prior to August 3 their data would not be considered accurate. There are 7 companies whose data would be considered inaccurate. One company had not updated since 2015 and all the remaining companies had updated at least in June of 2016. It appears as though most companies are following the law with regard to updating their information.

It still remains difficult to track what the 27 entities are doing with the information. The companies include credit reporting agencies, state agencies, residential and employee screening agencies, the media, and more. Some provide subscriptions to the data they have aggregated, others provide reports on people run through their systems. Some sell the information again. This is currently where the state loses track of who is buying information and possibly selling it again.

The Senate Committee on Criminal Justice also attempted to follow what happens to records disseminated from clerk's office. The email sent to clerks asked if they were selling bulk records and if so who they were selling them too. Of the 120 responses 11 counties replied that they do disseminate bulk records. This consisted of 1 combination clerk's office, 1 county where both district and county clerk responded yes, and 9 counties where either the district clerk or the county clerk responded. All 11 counties included the list of entities they disseminated to. The following is a total list of recipients.

Experian	Court Ventures/Experian	Court Guru
Genuine Data Services	Hassan, Anita	AmRent (CBC Companies)
Innovative Enterprises	Tavakol, Daniel	Pratti-Estrada
Assurance	Kassim, Yousef	Victor Salas
Central Appraisal	Rose, Evan	Navidomskis Law Firm
Central Texas Title	Smiles, Sadie	Asurint
Data Tree	Dolcefino, Wayne	Cesar Lozano
Texas E-Record	Rogalski, Jeremy	First Advantage SafeRent /Corelogic
CBR	Manilow, Maya	Corelogic
Asurint	Love, Kim (LexisNexis)	Turner & Turner
Shadowsoft	Know the Facts	WeSearch/Hugo R. Mieth
Rapid Court	Victoria Advocate	

Many of these entities requested information from multiple counties. The credit reporting agencies and the data mining agencies showed up in almost every county that would release information through bulk dissemination or direct access through their county website. Some counties, the ones that can afford it, are moving to electronic databases that can be accessed by the public. The percentage of individual people requesting information was much greater at the county level than it was at the state level. Mostly because at the county level the information includes new cases. The majority of these individual requestors were attorneys using the information to try and get business. It is unclear whether they in return sold the information again. All the reporting counties did indicate that they either sent updates to the information weekly or monthly and in one case daily.

The majority of the reporting counties stated they did not disseminate bulk criminal records. Some were just not equipped to provide this service while others were oppose to the process. Some clerks actually provide brief statements explaining why they disagreed with the practice of bulk dissemination. Below are some of the statements;

"NO, when non-disclosure or expunction is filed no way to retrieve information."

"No my office does not disseminate Criminal Records in bulk data, too much sensitive information that could cause a lot of damage to the defendant."

"It is my opinion that the dissemination of bulk court records to for profit companies presents the potential for many problems. First, criminal records are sometimes expunged – sometimes years after the records could have been bought in bulk. I don't believe that the intent of the statutes governing expunctions can be met if data is sold and resold in bulk. Old family cases have personal data throughout the files. The methods of how court files are kept has changed dramatically from the time that the statutes that govern record keeping were adopted. Technology has surpassed the original thinking that allowed the custodian to truly protect the integrity of their records. 20 years ago it wasn't possible for an unscrupulous person to sit at a databank in another country looking specifically for social security number and birth dates to compromise identities– but it certainly is a possibility now if the court records are sold in bulk. The public should always have a right to see the case files and to purchase copies from the custodian of the records. But anyone that purchases data from any other source than the actual records custodian may not be getting a copy of exactly what's on file. For these reasons I believe that court records sold in bulk are a very bad idea."

"No, protected info is contained in those records."

"No, I do not provide Criminal Records in bulk. I am a County Clerk having concurrent jurisdiction with the district clerk with few exceptions. I believe it is a horrible idea to consider allowing bulk records to be sold. Companies have been established that rob the public by overcharging for copies and information. These companies mislead the public by indicating they are the only source for records. Some have a disclaimer in small print attached to their websites."

"Yes, but index only with case disposition and status – No images of documents filed."

"NO there is no way to assure this information is not resold or is updated when there is a new status. i.e. conviction suspended to deferred probation, complete requirements for deferred, could qualify and apply for DISMISSAL, NON DISCLOSURE, records moved to area where there would be no release of the criminal history information."

"I do not provide bulk criminal records to anyone. My understanding is that judicial records are not subject to the Freedom of Information Act (or whatever they call it now). Besides, I am not going to take responsibility for some typo to get some guy in trouble. If they want the records, they can just come and search for themselves."

It is very clear that there are strong opinions across the state about the dissemination of bulk criminal records.

There are actually several other places collectors of bulk criminal records get their information. Various public agencies including The Texas Department of Criminal Justice through their information technology department and some law enforcement agencies sell or release bulk records. The state agencies that respond to open records request can produce lists of the entities they provide data to, though they do not post them online. One witness testified that there are over 2,500 agencies in Texas that process criminal records. It is unclear how many of these companies release bulk information to third parties. One way to address the concern about knowing who is buying or obtaining data and from where is to require the collectors of the information to publicly post where they have obtained information from.

Public hearing written testimony

The following is the written testimony that was provided at the hearing. There were both proponents of DPS being the centralized data source for criminal records and opponents. The main concern with this solution to controlling dissemination is that they still do not receive all of the data, though it is better as the auditor's report demonstrates. There is some concern that if DPS do not have all the data there is an unfair disadvantage to some individuals based solely on if they live in a county that reports or not. This concern would be true of any entity that was selected if collection of data was not consistent across the state.

Senate Criminal Justice Committee
Interim Charge #5:
Bulk Criminal Record Dissemination

David Slayton

Administrative Director, Texas Office of Court Administration

Executive Director, Texas Judicial Council

OFFICE *of* COURT ADMINISTRATION



Right to Access Criminal Records

- 8 million criminal cases filed in 2015
 - 3.8 million convictions
 - More than 90% of those were fine-only misdemeanors
 - More than 70% were traffic violations.
- Public has a right to access records in criminal court cases under common law.¹
- Clerks are the record holders for criminal case records
 - 463 District Clerks, District/County Combination Clerks, County Clerks
 - 807 Justice Courts/Clerks
 - 928 Municipal Courts/Clerks

¹ Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978); Op. Tex. Att’y Gen. No. DM-166 (1992).



Defining Criminal Data

- Criminal records maintained by clerks include:
 - Data (i.e. case number, defendant name, victim names, charge, offense date, sentence, assessed court costs, etc)
 - Records (i.e. charging documents, motions filed, pre-sentence information, judgment, etc)

- Clerks must report information on dispositions to DPS' Computerized Criminal History System (CCH)
 - Only on Class B or above offenses
 - Does not include Class C fine-only and traffic misdemeanors

²Chapter 60, Code of Criminal Procedure

OFFICE *of* COURT ADMINISTRATION



Releasing Criminal Records

- Many courts/clerks moving to fully electronic criminal data and records.
- Online data and record systems are expanding.
- Very little state oversight over data and records placed online.
 - Rule 21c, Texas Rules of Civil Procedure prohibits certain “sensitive data” from being placed online.
- Clerks may and frequently do release bulk data to requestors.
 - Examples: traffic safety course providers, attorneys, online criminal history providers
- Judiciary providing remote public access system this year that will be case-specific, not bulk



Defining Criminal Data

- Criminal records maintained by clerks include:
 - Data (i.e. case number, defendant name, victim names, charge, offense date, sentence, assessed court costs, etc)
 - Records (i.e. charging documents, motions filed, pre-sentence information, judgment, etc)
- Clerks must report information on dispositions to DPS' Computerized Criminal History System (CCH)
 - Only on Class B or above offenses
 - Does not include Class C fine-only and traffic misdemeanors

²Chapter 60, Code of Criminal Procedure



The Texas State Auditor's Office has released the following report which may be of interest to you. The report is available on our Web site.

An Audit Report on the Criminal Justice Information System at the Department of Public Safety and the Texas Department of Criminal Justice, SAO Report No. 16-025

<http://www.sao.texas.gov/reports/report.aspx?reportnumber=16-025>

Overall Conclusion

The completeness and timeliness of some data in the Criminal Justice Information System (CJIS) has improved since the previous State Auditor's Office's September 2011 audit of CJIS. However, additional improvements are necessary to ensure the completeness, accuracy, and timeliness of all criminal history records in CJIS.

CJIS consist of two independent systems managed by two separate state agencies. The Department of Public Safety (DPS) manages the Computerized Criminal History System, which is the system used to provide criminal background check services. The Department of Criminal Justice (TDCJ) manages the Corrections Tracking System, which it uses to manage information on offenders who are currently sentenced to prison, jail, parole, and probation.

Since the 2011 audit, both DPS and TDCJ have made improvements in the completeness and timeliness of some data in CJIS. Specifically:

As of January 2015, prosecutor offices and courts had submitted disposition records to the Computerized Criminal History System for 80.21 percent of arrests made in calendar year 2013, an improvement from the 73.68 percent submission rate reported in 2011.

In fiscal year 2015, 0.57 percent of probation records in TDCJ's Corrections Tracking System did not include the state identification number and 1.35 percent did not include the incident number. That is an improvement from the 3.09 percent of probation records that did not include the state identification number and 7.02 percent that did not include an incident number in 2011.

In fiscal year 2015, 91.64 percent of arrest records were submitted within 7 days as required by statute, an improvement from the 84.25 percent submission rate reported in 2011.

In fiscal year 2015, 74.14 percent of prosecutor records were submitted within 30 days as required by statute, an improvement from the 63.61 percent submission rate reported in 2011.

As of November 2015, auditors observed that DPS staff were entering criminal records submitted within the last 24 hours and no longer had a backlog as reported in 2011.

In addition, DPS has adequate controls in place to ensure that the Computerized Criminal History System data is sufficiently reliable. However, TDCJ should improve its controls to ensure that Corrections Tracking System data is complete and accurate.

DPS's Computerized Criminal History System The completeness and timeliness of the Computerized Criminal History System data has improved; however, the 80.21 completion rate indicates that users may not always receive complete criminal history background check results. Some cases take one or more years to proceed through the legal system; therefore, it may not be possible for all of the arrest charges to have a corresponding disposition within a year.

DPS should strengthen controls to ensure that only authorized users can access and modify records in the Computerized Criminal History System. In addition, DPS should perform a full backup and recovery test and verify that it can recover data from its local and remote virtual tape libraries to provide for the continued operation of the Computerized Criminal History System in the event of an emergency.

TDCJ's Corrections Tracking System

TDCJ has improved the completeness of its probation records. However, 19.56 percent of records tested in the Corrections Tracking System for offenders admitted to jail, prison, or placed on parole during

February 2015 did not contain incident numbers. Auditors also identified inaccuracies, such as incorrect state identification numbers, incident numbers, incident number suffixes, and offense codes.

TDCJ implemented a process to monitor local probation departments' access to arrest records associated with flash notices, which identify offenders on probation who have been arrested. However, that process is not sufficient to ensure that local probation departments adequately monitor flash notices for probationers under their supervision. Specifically, local probation departments did not access flash notices for 50 (19.69 percent) of the 254 counties in Texas between March 2015 and October 2015. TDCJ also should strengthen controls to ensure that only authorized users can access and modify records in the Corrections Tracking System and the system used by TDCJ's Community Justice Assistance Division to monitor probationers.

Implementation Status of Prior State Auditor's Office Recommendations Auditors followed up on 20 of 22 recommendations in An Audit Report on the Criminal Justice Information System at the Department of Public Safety and the Texas Department of Criminal Justice (State Auditor's Office Report No. 12-022, September 2011). Six recommendations were fully implemented, 13 recommendations were in various stages of implementation, and 1 recommendation was not implemented.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.) Auditors communicated other, less significant issues regarding policies and procedures and hardware support to DPS and TDCJ management separately in writing. In addition, to minimize the risks associated with public disclosure, auditors also communicated additional details about information technology findings separately to DPS and TDCJ management.



Elizabeth A. Henneke, Policy Attorney Work:
(512) 441-8123, ext.105
ehenneke@TexasCJC.org

INTERIM TESTIMONY 2016
Senate Committee on Criminal
Justice

TEXAS CRIMINAL JUSTICE COALITION
www.TexasCJC.org

Dear Members of the Committee,

My name is Elizabeth A. Henneke. I am a Policy Attorney for Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on Charge #5: "Study how bulk criminal records are disseminated. Review the list of entities with access to and their current use of criminal records. Make recommendations to streamline the dissemination of records through bulk requests to ensure accuracy and limit inappropriate use of records.

WIDESPREAD DISSEMINATION OF CRIMINAL RECORDS HARMS THE WORKFORCE AND TEXAS FAMILIES

Open access to criminal records through government repositories and commercial vendors, combined with the rise of the Internet and the emergence of electronic databases, has enabled more than 40 million criminal background checks to be performed annually for non-criminal justice purposes.¹

As a result of this online expansion, individuals across Texas are frequently denied employment and housing based on criminal records that have been sold and published online—some of which *never* resulted in a conviction, and some of which are *completely inaccurate* and unfairly punish those who never committed a crime. Not only do these individuals suffer as a result of inadequate policies that regulate the storage and dissemination of criminal records, but our workforce and families suffer as well.

The widespread commercial publication of criminal records before a disposition is entered, as well as the long-lasting nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing. **In order to allow individuals to give back to their communities and families in ways that enhance public safety, Texas must reform its laws related to the dissemination of criminal records.**

KEY FINDINGS

- **In Texas, nearly 12 million individuals are included in the state criminal history records.**² These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, those who have completed their sentences, those who have shown stability and established themselves in their communities, and those who are desperately trying to support themselves and their families while facing the many obstacles that automatically accompany any kind of criminal record.

- **Employers and housing providers often rely on inaccurate or incomplete criminal records.** The Texas Department of Public Safety reported in January 2016 that only 78% of Texas adult arrests in 2014 had a reported disposition.³ In other words, **approximately 1 in 5 of all Texas criminal records do not include final dispositions.** The inaccuracies that can result from disseminating records without final dispositions have allowed individuals to be denied employment and housing even without a criminal conviction. Additionally, even if certain records are ordered sealed or expunged, there is no guarantee that third-party commercial vendors will purge the information from their systems or that the event will be erased from media archives,⁴ creating additional challenges for system-involved individuals seeking employment and housing.
- **Multiple public agencies across Texas jurisdictions participate in disseminating criminal records to private entities in response to public information requests.** These include, but may not be limited to:
 - » County and district clerks, and clerks in justice or municipal courts
 - » Law enforcement agencies
 - » Texas Department of Public Safety (DPS)
 - » Community Justice Assistance Division, a division of the Texas Department of Criminal Justice (TDCJ)
- **The dissemination of outdated and incorrect information results from an inadequate update process.** The above agencies release criminal records to private entities in response to public information requests. While county and district clerks must submit updates on orders of nondisclosure and expunctions to DPS, DPS generally is the *only* agency that provides updates to the private entities to which it releases records. Consequently, private entities that request criminal records from any agency other than DPS—whether from county and district courts, TDCJ, or elsewhere—are not routinely notified of updates reflecting orders of nondisclosure, expunction, or even final dispositions. **Countless individuals are adversely affected by this practice that encourages the widespread dissemination of outdated and incorrect criminal records.**

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Give jurisdictions the option to either (1) redirect to the Department of Public Safety (DPS) all requests for bulk criminal records concerning Class A and B misdemeanor and felony offenses for which a final disposition has been rendered, or (2) adopt rules to ensure that updates are provided within 30 days of any change for records that are released in bulk.** Currently, multiple agencies and jurisdictions disseminate criminal records to private entities. However, there are no standardized systems or procedures for releasing or providing updates to criminal records. In order to better steward the sensitive information that impacts millions of lives, Texas should require that DPS be the sole agency that can disseminate criminal records in bulk for all disposed

offenses except Class C misdemeanors, or require that local jurisdictions implement the same rules that DPS follows to ensure long-term accuracy of criminal records released in bulk.

- **By giving jurisdictions the option to redirect requests for bulk criminal records to DPS, the State may save counties and municipalities the substantial time and money required to sufficiently respond to requests for bulk criminal records, while not incurring any additional cost to the state.** Because DPS currently has a system in place to respond to requests for bulk criminal records and to provide updates to criminal records to all requestors on a monthly basis, it is fiscally and socially responsible to redirect requests for bulk criminal records to DPS. **Alternatively, for those jurisdictions that choose to continue releasing criminal records in bulk, such records will be updated in a manner similar to that already required by DPS.**
- **Increase transparency in the dissemination process** by requiring clerks and criminal justice agencies that grant bulk records requests for Class C disposed offenses and pending cases to maintain a record of the name and contact information of the requestor and the most recent date the bulk records were provided. This information should be published on the clerk's or agency's website or prominently displayed in a public area of the clerk's or agency's place of business.

Citations

¹Helen Gaebler, "Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas," (William Wayne Justice Center for Public Interest Law, The University of Texas School of Law, 2013): 2.

² Dennis A. DeBacco & Owen M. Greenspan, "Survey of State Criminal History Information Systems, 2012," (Bureau of Justice

Statistics, U.S. Department of Justice, 2014): Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. The number of individual offenders in the state criminal history file was 11,824,200.

³ Texas Department of Public Safety, "Fourteenth Report Examining Reporting Compliance to the Texas Computerized

Criminal History System," (January 2016): 3, https://www.dps.texas.gov/administration/crime_records/pages/complianceRpt14.pdf.

⁴ SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2010): 83,

<http://www.sea rch.org/files/pdf/RNTFCSCJ.RI.pdf>



I am Mike Coffey. I'm president of Imperative Information Group, a Texas-licensed private investigations company based in Fort Worth. Our firm specializes in background investigations for employers across the country.

For the last several legislative sessions, there have been proposals to solve the problem of inaccurate criminal history information in background checks used for employment, housing, and other consumer purposes.

The inaccuracies are created when criminal records are collected by databrokers from myriad sources: county and district clerks, Texas DPS, the Texas Department of Criminal Justice, and similar sources from all over the country.

These databrokers then shoehorn that information from all over the country into a single database for use in background checks.

Accuracy problems arise because, as soon as criminal records are obtained from the original source, they are out of date.

Changes in disposition, expunctions, and even changes in defendant identification that may be made after the records have been included in these databases are often not reflected or are reflected as a second instance of the criminal case.

It has been suggested that for Texas records, DPS' criminal history database should be the sole source of records.

The Department's criminal records repository is missing one-third of the conviction and deferred adjudication records that my firm finds in county courthouses across the state. DPS' records are also missing active and recently-concluded cases.

Also, because DPS' database is just that - a database - they have the same issue with accuracy and currency as private databases.

Additionally, because the privately-maintained criminal record databases contain records from jurisdictions outside of Texas, focusing only on the accuracy of records originating in Texas does nothing to improve the accuracy of the records from the forty-nine states.

So far, legislators have been presented with only two choices. Continue with the status quo or limit bulk dissemination of criminal records to DPS' database.

A better solution exists. Simply require that background screening companies (consumer reporting agencies under the Texas Business and Commerce Code) take steps to VERIFY the records before reporting them to the end user.

This can be completed by making a simple edit to the Texas Business and Commerce Code:

Subchapter C, Chapter 20, Business and Commerce Code is amended by adding Section 20.08 to read as follows:

Sec. 20.08. PUBLIC RECORD INFORMATION FOR EMPLOYMENT PURPOSES A consumer reporting agency which furnishes a consumer report and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment or housing **shall maintain strict procedures designed to ensure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date.** For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Section 20.09, Subchapter D, Chapter 20, Business and Commerce Code, is amended to read as follows:

Sec. 20.09. CIVIL LIABILITY (a) A consumer reporting agency that wilfully violates this chapter is liable to the consumer against whom the violation occurs for the greater of three times the amount of actual damages to the consumer or \$1,000 \$2,500, reasonable attorney fees, and court or arbitration costs.

This solution will ensure that criminal records databases remain available for legitimate purposes while placing the burden of accuracy on the businesses collecting the information and providing it to employers and landlords.

Thank you.

Mike Coffey President
Imperative Information Group, Inc. Office 817-921-5286

Policy Perspective



Accuracy in Criminal Records

by Dianna Muldrow
Policy Analyst

A Criminal Record Closes Doors

Over two-thirds of employers conduct criminal background checks on potential employees ([Society for Human Resource Management](#), 2). Landlords routinely check for a criminal background when reviewing applications for housing and are actually required to conduct criminal background checks in some municipalities (Utah Housing Coalition, 3; [Illinois Association of Realtors](#), 2-3).

Many professions bar licensure to individuals with certain criminal convictions, such as electricians with felony convictions in Connecticut, barbers in Texas, or physical therapists in California ([Coppolo; Dexheimer; Physical Therapy Board of California](#)). In Georgia, by statute, any state-issued license is subject to potential revocation or denial based on any felony committed by the applicant (Georgia Code). Other rights and privileges are also impeded through criminal conviction, such as gun ownership and the ability to join the armed services (18 U.S.C. 922(g); [Department of Justice](#) 2006).

These restrictions are imposed for a variety of reasons, such as general public safety or maintaining the integrity of professional reputations. There are clear reasons for this, as no one would want, for example, a child molester teaching a classroom full of children. Still, these restrictions are serious and could limit an individual in obtaining gainful employment or reputable housing even-in some cases-when the record is inaccurate or out of date.

How are Criminal Records Created and Disseminated?

Final convictions are not the only information provided in a criminal record. These histories also include a record of an individual's interactions with law enforcement and the court system, including arrests and sometimes outstanding warrants ([Equal Employment Opportunity Commission](#)). Some criminal background checks will include information about driving records and past drug test records as well (Sahadi).

Officially, a criminal record is not one comprehensive document. Instead, to obtain a complete picture of someone's criminal background from the state, an individual would have to obtain information from several sources. For example, police departments have information about arrests and warrants. Courts, on the other hand, have the records for convictions and sentencing. If an incident is a federal offense instead of a state offense, then the respective federal agencies would need to be canvassed as well. Any one person could have records in multiple districts or in completely different states. The resources required to check all potential locations for a criminal record is much higher than the average individual or even business is able to afford regularly. This is why many people and businesses contract with private companies that often obtain this information in bulk and provide a searching service to find the desired information.

There are many companies that provide this service. These companies obtain their information either directly from the state agencies or purchase the information from other companies. This is usually performed "in bulk"; meaning that an entire database may be downloaded by the requester. Once this information has been aggregated from numerous sources, these companies can then offer individuals or businesses the opportunity to search through the service for a fee, or offer the information to companies trying to create their own database. This saves employers and individuals from using massive resources checking every original database themselves.

Key Points

- Criminal records can impede finding employment, finding housing, serving in the military, or owning a gun.
- There are many inaccuracies in current criminal records—both government and private—that create complications for innocent citizens.
- Reforms to update records continuously and to restrict the release of arrest information without further action can benefit both individuals and employers affected by criminal records.

Once these databases have been created, many companies continue to update and supplement their information. However, they are receiving this information from many different sources, because there are so many state and federal locations that could hold new information, making it difficult to regularly update each entry. Currently, most criminal background database companies are members of the National Association of Professional Background Screeners. This association created an accreditation program that intended to certify compliance with accuracy standards; however, only 36 of their 300-plus members have become certified (Smith; Human Resource Employment Screening).

When the System Goes Wrong

Daniel Johnson, a retired police officer who spent 25 years serving the public, found himself having to fight to have his record cleared after it was reported that he had been convicted of an offense in years past (Michels). The correction was issued, but not until after he lost a job as a security guard. This mistake was due to confusion between names; Daniel Johnson is a common name, and he was confused with another individual who did in fact have a criminal record. Johnson is not alone, as there have been several such stories of mistaken identity surfacing in the news.

Another incident shows a different route to a similar end. Russ F. was a port worker in Philadelphia for 33 years with no complaints, until newly mandated criminal background checks turned up an arrest from almost 40 years before (Neighly). The case file was incomplete, requiring him to get a correction in the record showing that he was never charged or prosecuted before he could return to work. Helen Stokes had a similar story, but with a key difference (Palazzolo). Stokes had two arrests on her record—both in relation to domestic disputes with her now-estranged husband—but no convictions, and after several years she obtained a lawyer and had her record expunged. However, when she applied for space at two different nursing homes, she was denied entrance upon examination of her record. The company who was performing the check had not updated their records since the expungement.

Criminal records impose serious limitations on an individual, which is why accuracy is important in the dissemination of criminal records (Laird). As the examples cited demonstrate, there is room for error in the criminal records system today. A thorough study to determine how many records today are inaccurate has not been conducted, unfortunately. However, as the anecdotal stories indicate, there are areas in the field that show potential for records to be inaccurate or out of date. There are several ways in which this could happen.

First, and perhaps most well documented, is the possibility that the official record is out of date or incomplete. The U.S. attorney general released a report that states that only 50 percent of the records in the FBI's criminal records database have final dispositions included. This could mean simply that the case is undergoing appeal and the final information is not yet avail-

able, but there are other possibilities that could lead to unfortunate results as those shown above. Out-of-date records may not have a final disposition when one is available, revealing the individual's innocence. These partially complete records may not show that an arrest occurred, but did not result in prosecution at all. These are possible results from available incomplete official records.

Another possible way in which incomplete or out-of-date records can be spread is through background companies that download records from various official databases. These records (as stated in the previous paragraph) can be incomplete or out of date even when immediately taken from the official database. Once acquired, even if regularly updated, they are not immediately updated, leaving the possibility that these records can be less regularly updated than the official record.

Further, while incomplete and out of date records are concerning, there is still a possibility that the record is completely inaccurate. As Daniel Johnson discovered, name-based criminal records databases run the risk of confusing individuals with the same or similar names. It is difficult to tell if errors in public or private criminal records are a widespread or systemic issue, because there has been little thorough research of the subject. What has been identified is the potential for error and anecdotal cases of dated or inaccurate records. For example, cases in which either someone with no criminal record is being attributed one, someone who came into tangential contact with the criminal justice system is being haunted by it later in life, or someone who was actually convicted of a crime and then petitioned the court for a change to the record is then followed by the remnants of it in other databases.

Recommendations

Federal agencies should consider mimicking reforms that have occurred in several states, such as Indiana, which recently passed legislation allowing a petition to the court once a year had passed since an arrest without prosecution or conviction, in order to seal the record and prevent it from being disseminated to private companies or publicized.

Further, employers should be aware that when they look into a potential employee's background, things may not be as they seem. Errors in a background check can remove potentially valuable employees from their consideration. Using a database that is not solely name-based or one that has highly rated accuracy is a good practice for ensuring that all valuable applications are considered.

Conclusion

Background screening provides a valuable service. State and federal agencies should provide the most accurate information as possible to screening companies. In turn, those companies should seek to provide accurate information to their consumers, and employers should be aware of the best, most accurate, information when they consider new additions to their companies.*

July 2016
Criminal Records

Accuracy in

References

15 U.S.C. § 1681(b).

18 U.S.C. § 922(g).

Ahearn, Thomas. 2015. "Government Oversight and Enforcement of Accuracy in Background Check Industry to Increase in 2016" ERS Check.

Coppolo, George, Chris Reinhart, and Jennifer Nelson. 2005. Consequences of a Felony Conviction Regarding Employment. Accessed March 30, 2016.

Department of Justice. 2006. The Attorney General's Report on Criminal History Background Checks. Department of Justice.

Department of Justice. 2000. Federal Statutes Imposing Collateral Consequences upon Conviction. Department of Justice. Accessed March 30, 2016.

Dexheimer, Eric. 2011. "Texas Ex-Offenders Are Denied Job Licenses". Austin American-Statesman, April 11. Accessed March 30, 2016.

Equal Employment Opportunity Commission. "Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964". April 25, 2012.

Georgia Code, Title 43, Chapter 1, §43.1.19(a)(3).

Human Resource Employment Screening. "The NAPBS - National Association of Professional Background Screening". Accessed March 30, 2016.

Illinois Association of Realtors. 2013. A Guide to Property Management and Residential Rentals. Illinois Association of Realtors. Accessed March 30, 2016.

Laird, Lorelai. 2013. "Ex-Offenders Face Tens of Thousands of Legal Restrictions, Bias, and Limits on Their Rights". ABA Journal,

June 1. Michels, Scott. 2008. "Advocates Complain of Background Check Errors". ABC News, October 13.

Military.com "An Arrest Record Could Keep You From Enlisting". Accessed March 30, 2016. Neighly, Madeline. 2013. "The Faulty FBI Files That Can Ruin Your Life". CNN.com. September 2.

Palazzolo, Joe, and Gary Fields. 2015. "Fight Grows to Stop Expunged Criminal Records Living On In Background Checks". Wall Street Journal, May 7.

Parker, Lisa. 2012. "When the Only Crime Is Having a Common Name". NBC Chicago, April 18.

Perkins, Olivera. 2012. "Errors in Background Checks Cost Job Seekers". Cleveland.com, December 15. Physical Therapy Board of California. "Applicants with Criminal History". Accessed March 30, 2016.

Robertson, Jordan. 2011. "AP Impact: When Your Criminal Past Isn't Yours". Deseret News, December 16.

Sahadi, Jeanne. 2015. "Background Check: What Your Employers Can Find Out About You". CNN Money, January 5. Smith, Ernie. 2013. "Employers: Avoid the Pitfalls of Background Checks". Associations Now, May 9.

Society for Human Resource Management. 2012. The Use of Criminal Background Checks in Hiring Decisions. Society for Human Resource Management. Accessed March 30, 2016.

Utah Housing Coalition. 2011. "What Is the Good Landlord Program".

Center for Community Alternatives. 2010. The Use of Criminal Records in College Applications: Reconsidered. Center for Community Alternatives. Accessed March 30, 2016.

Yu, Persis S., and Sharon M. Dietrich. 2012. Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses. National Consumer Law Center.

Conclusion and Recommendations

The Committee's review of dissemination of criminal records revealed that some progress has been made in reporting to DPS by counties, and the counties that are disseminating information are tracking who they disseminate to and how often the information is updated. These are positive steps. The review also revealed that counties with the needed funding are moving to an electronic court data systems which allow them to grant limit access to outside entities and eliminates the need to disseminate information in bulk. Another inquiry made by the Committee illustrated that at least 44 counties has electronic court data system. 20 of the reported 44 did not reply to the request about dissemination of records, 18 counties that did not disseminate have online systems, and 6 counties that disseminate also had online data systems. This will be a trend to watch to see if growth in online systems decreases dissemination of bulk records.

Consideration needs to be given to the concept that as more counties update their technology they may decrease their bulk dissemination. This would make it even harder for entities collecting data for one stop shopping to have complete records, unless they simply have portals to all counties systems.

The following are the recommendations for interim charge 5

5. Require any party collecting bulk criminal records to publicly post where they have obtained their information from.
6. Amend Texas statute to create a uniform protocol for dissemination of public records that includes specifically what is released no matter what entity the data is collected from
7. Require all government agencies to provide a list on their website of all entities they release information to and on what basis.
8. Require all entities whether private or public to provide clear information on how to correct inaccurate information.

Interim Charge Six

Review costs family members incur to maintain contact with an incarcerated family member
Make recommendations to promote familial contact and relationships for incarcerated individuals. Review visitation practices across the state in determining effective and appropriate methods of maintaining familial contact for incarcerated individuals.

Introduction

The Senate Criminal Justice Committee was charged with reviewing the above charge. Over the course of the interim the committee collected information from different entities through email and held a public hearing. The review of costs family members incur to maintain contact with an incarcerated family member, and the review of visitation practices across the state in determining effective and appropriate methods of maintaining familial contact for incarcerated individuals started with a review of statute related to visitation. There is very little statute on visitation in Texas code. There is a small section for the two different criminal justice incarcerating systems in Texas; one for the state prison system and one for the county jail system. Both the county jail system and the state system will be reviewed under this charge.

For the county jails there is Government Code Chapter 511 section 20 which directs the Commission on Jail Standards to develop rules and procedures for visitation and provides a minimum in person noncontact requirement of 2 visits at least 20 minutes per week. This statute was only added in the 84th legislative session with HB 549 which limited the use of video visitation only.

For the state prison system Texas Government Code 501.010 Visitors mandates that the Texas Department of Criminal Justice Institutional Division have a uniform visitation policy. The next section in statute mandates that each unit have a family liaison officer to help facilitate continued ties between family and offenders.

501.099 mandates that the Texas Department of Criminal Justice is to develop policies that encourage family unity. It also directs the department to consider the impact of department telephone, mail and visitation policies on the ability of an offender's child to maintain ongoing contact with the offender. The next part directs the department to consider the family when assigning offenders to housing and to try and keep offenders with close to their home county.

The state prison systems and the county jail system both provide 3 options for families to maintain contact with incarcerated individuals. Individuals may write a letter or email, speak on the phone, and or visit whether by video or in person. Each of these options has a cost associated with them though there is no reference in state law as to what this cost should be. The policies developed by the Jail Standards Commission and the Department of Criminal Justice both make

no reference to cost minimums or maximums. Federal Communications Commission has however taken recent action on the cost of phone calls. Below is a press release that details the new rules.



Media Contact:

Mark Wigfield; (202) 418-0253

mark.wigfield@fcc.gov

For Immediate Release

FCC ADOPTS SUSTAINABLE, AFFORDABLE

INMATE CALLING RATES

WASHINGTON, August 4, 2016 – The Federal Communications Commission today took additional steps to ensure that inmate calling service rates are just, reasonable and fair for inmates and their families, and that jails, prisons and providers are fairly compensated for the costs of providing the service.

The Order adopted by the Commission builds on its landmark inmate calling service reforms of 2013 and 2015 by responding to issues raised in the record of the proceeding since then. The FCC's careful review showed that a modest increase in the rate caps set in 2015 is warranted. By covering the legitimate costs of jails and prisons, this adjustment will ensure continued availability and development of inmate calling services, while still resulting in significant savings for inmates and their families.

The rate caps adopted today are, on average, significantly lower than the 2013 interim rate cap of 21 cents a minute that currently applies to interstate long-distance calls. The new caps will govern both in-state and interstate calling, reducing the price for most inmates of an average 15-minute call by nearly 35 percent. The FCC's inmate calling rate cap functions as a ceiling, not a floor, and so does not prevent states where calling costs are lower from reducing rates further.

The Order adjusts the FCC's 2015 rate caps, which were blocked by a court stay pending appeal. Recognizing higher costs in small institutions, the new rates for debit/prepaid calls are as follows (2015 rate caps in parentheses):

- State or federal prisons: 13 cents/minute (11 cents/minute)
- Jails with 1,000 or more inmates: 19 cents/minute (14 cents/minute)
- Jails with 350-999 inmates: 21 cents/minute (16 cents/minute)

- Jails of up to 349 inmates: 31 cents/minute (22 cents/minute)

Rates for collect calls are slightly higher in the first year and will be phased down to these caps after a two-year transition period. Approximately 71 percent of inmates reside in state or federal prisons, and approximately 85 percent of inmates reside in institutions with populations exceeding 1,000.

Action by the Commission August 4, 2016 by Order on Reconsideration (FCC 16-102). Chairman Wheeler, Commissioners Clyburn and Rosenworcel approving. Commissioners Pai and O’Rielly dissenting. Chairman Wheeler, Commissioners Clyburn, Rosenworcel, Pai and O’Rielly issuing separate statements.

WC Docket No. 12-375

###

Office of Media Relations: (202) 418-0500

TTY: (888) 835-5322

Twitter: @FCC

www.fcc.gov/office-media-relations

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

An email request for information to county jails by the Senate Criminal Justice Committee in May of 2016 illustrated that county jails were already enacting new phone contracts to incorporate the federal changes. Though the response to the email was very low, 6 jails out of 254, 100% of the responses indicated early compliance with the FCC ruling. In all but one case the shift in prices resulted in a savings to offender families for phone calls. Online reviews indicate that more than just the 6 responding jails have adjusted phone contracts to reflect the federal ruling.

The state prison system is currently in compliance with the \$.21 per minute prepaid cost for out of state. The collect call rate is \$.25 per min. The in state cost is \$.234 per minute for offender prepaid calls, and \$.26 per minute for friend/family prepaid calls and collect calls. The chart below illustrates the change in the price of calls.

	Prior to	Subsequent to
Offender Prepaid	\$ 0.387	\$ 0.210
Friends/Family Prepaid	\$ 0.387	\$ 0.210
Collect	\$ 0.43	\$ 0.250

Texas Department of Criminal Justice Out of State Offender Telephone Rates Per Minute Prior to and Subsequent to FCC ruling

If the federal rules are fully adopted this cost could drop to \$.13 per minute for collect calls and \$.11 per minute for prepaid calls. For a 20 minute call this would be a 42% decrease in cost for calls for the family and friends. Data received from the Texas Department of Criminal Justice

shows that for 2015 the monthly average of offenders completing calls was 46,300, and there was a monthly average of 1,104,931 calls made. These calls were made by 46,300 offenders. This was an increase in users and calls from the 2 previous years. The average increase for monthly call totals was 135,600.5 and the monthly average of users increased by 3,060. The rate decrease could have factored into this increase in usage.

The second form of communication between family/friends and offenders discussed in this charge is written correspondence. There was no information gathered from county jails on their written correspondence, but for traditional letters standard postal fees apply. There is no limit to the amount of written correspondence an offender can receive. The only limitation on an offenders ability to send letters would be the cost of the stamps, paper, and pens. There is a minimum amount provided to indigent offenders upon request as dictated by the Texas Administrative Code Title 37 Part 9, Chapter, Rule §291.2 (D), if requested, indigent inmates shall be furnished a reasonable amount of paper, pencils, envelopes, and stamps to correspond with their attorney(s) and the courts. Additionally, indigent inmates shall be furnished paper, pencils, envelopes, and stamps to post at least three letters a week for all other correspondence. A negative balance may be maintained on the inmate's commissary account for indigent postage and correspondence supplies. In addition to traditional letters and mail so county facilities have an email system. Travis County Jail is an example of a county facility that offers this option. The family or friend can send an email through the same system phone calls are made. They send up to a 2 page email for \$.60, it is then reviewed and printed at the jail and delivered to the offender. The offender can then write out a response and it is scanned and sent back. The emails have to be scanned because there is no access for offenders to computers in most cases. Unfortunately The Committee did not collect information on how many counties have an email system or how frequently this option is used. In some cases it is indicated on their jail websites if they provide this service.

The Committee collected information on all types of interactions at the state level. Their email system works the same way as the county system but their price is \$.47 per email, which is the same cost as a stamp. For 2013 there was a monthly average of 184,914. There was an increase for 2014 and 2015. 2014 monthly average was 192,420 emails, and the 2015 monthly average was 210,011 emails. There was a monthly average of 2,041,995 traditional letters to the state prison system for 2015. This is the most utilized form of communication for offenders. The state provides indigent offenders writing materials and stamps to promote communication.

Another form of visitation for incarcerated individuals is video visitation. This form of visitation is currently only being utilized by the county system here in Texas. There are three ways to video visit. The first is to travel to the jail to use kiosks they have in a visitation area or the lobby. The visiting person then connects through video to communicate with the offender who is in another

part of the jail a different kiosk. The second option is to connect from a home commuter to the offender. The third is to go to a designated location that is not the jail to connect through video.

As stated previously, Texas recently passed legislation governing the use of video visitation. However this law did not mention cost. Cost of video visitation varies from county to county. Some counties charge nothing for video visitation. The most common fee schedule is a promotional cost of \$5 for 20 minutes for remote visits, then \$10 for 20 minutes after the promotion. Some jails offer free video visitation at the jail for free. Some offer the first 2 video visits at the jail for free and charge for additional visits. Of the facilities that charge for additional video visits they often charge a higher rate at the jail than from home to act as a deterrent from visiting the jail. This is usually the practice at small jails that have limited space. An example of the price difference would be \$4 for 10 minutes or \$10 for 25 minutes for the remote video compared to \$12 for 25 minutes using the kiosk at the jail, again this is only charged after a person has received two 25 minutes visits using the jail kiosk. This particular jail had 26,842 from May of 2015

May of 2016, which was an increase of 33% prior to the implementation of the video visits. Please note that this facility also expanded visitation hours. While there has not been any regulation on video visitation costs there has been speculation that the FCC will eventually regulate that as well. While there has been a lot of debate about video visitation it has all been about only using video visitation. As long as it is used as an additional option to regular and free visitation it is an additional tool.

In person visitation is yet another form of interaction between offenders and family and friends. In person can mean contact or noncontact, through glass, visits. Most county facilities only offer noncontact visits with the exception of counties that have special programs for parents to visit with their children. For these visits the family and friend travel to the jail to visit with the offender. Like with the video visitation these visits range from 15-30 minute visits and are offered twice a week for an offender. Some facilities grant special visits for people traveling long distances to visit with offenders. The rules and criteria vary from jail to jail. The definition of special also varies. In some cases it is an extended visit, in some cases it is the ability to visit more times in a week or have more people visit. In all cases it is requested that special visits be scheduled and approved in advance. Most normal visits do not need prescheduling.

The state system works in a similar way. One main difference is they offer both contact and noncontact visits in the state prison system. At the state level contact vs noncontact is determined by relationship to the offender, custody of the offender, and behavior of the offender. The length of visit is also different. The regular visit for the state is 2 hour duration. Another main difference is the distance individuals travel to visit a state facility. Many of these facilities are in remote locations in Texas. This is one area where significant costs to offender families may occur. Data provided by the Texas Department of Criminal Justice showed a monthly

average for visits across the system for 2015 was 60,355. 105,876 individual offenders received at least one visit for the year. This included 57,408 regular visits or visits where the family and friend travels less than 250 miles, and 2,947 special visits. There was a decrease in the monthly average for total visits from 2013 to 2014, as the special visit average increased. From 2014 to 2015 there was an increase in average month total visits almost back to the 2013 levels. Again there was an increase in special visits. According to a report The Texas Department of Criminal Justice put out in 2014 on visitation, the agency changed its special visit policy to allow special extended visits to people traveling more than 250 miles one way without prescheduling. This change could partially explain the increase in special visits. Below are some charts taken from the agencies report on visitation.

Distance Traveled and Duration / Frequency of Visits

<i>How many miles do you travel (one way) to the unit?</i>	<i>Frequency</i>	<i>Percent</i>
Less than 150 miles	1,267	42.3%
More than 150 miles but less than 200 miles	628	21.0%
More than 200 miles but less than 250 miles	309	10.3%
More than 250 miles but less than 300 miles	290	9.7%
More than 300 miles	503	16.8%
Total	2,997	100.0%

<i>If you travel at least 300 miles one-way, does the unit allow you to schedule an extended visit?</i>	<i>Frequency</i>	<i>Percent</i>
No	61	12.1%
Yes	407	80.9%
No Response	35	7.0%
Total	503	100.0%

<i>How many years have you been visiting offenders assigned to TDCJ facilities?</i>	<i>Frequency</i>	<i>Percent</i>
Less than (1) one year	1,048	35.0%
1-5 years	1,252	41.8%
6-10 years	333	11.1%
More than 10 years	364	12.1%
Total	2,997	100.0%

<i>How frequent do you visit?</i>	<i>Frequency</i>	<i>Percent</i>
Every weekend	608	20.3%
More than twice per month	730	24.4%
Once per month	676	22.6%
When I am able to, but not on a consistent basis	983	32.8%
Total	2,997	100.0%

<i>Do you communicate with the offender by letter or phone to let him / her know to expect you?</i>	<i>Frequency</i>	<i>Percent</i>
Always	2,263	75.5%

Sometimes	620	20.7%
Never	114	3.8%
Total	2,997	100.0%

Charts from the 2014 TDCJ report on visitation

There is only a small portion of the visiting population represented in this survey. However, the data in the chart at least provides a snapshot of visitation. The agency survey coupled with the testimony and survey results from The Texas Inmate Families Association (TIFA) provides some information on what Texas families experience and spend on maintaining contact with incarcerated loved ones. Below is the documentation provided by TIFA.



Texas Inmate Families Association
 Strengthening families through support, education and advocacy

May 17, 2016

Dear Members of the Committee,

Thank you for this opportunity to testify about visitation with our family members in the Texas Department of Criminal Justice (TDCJ), the financial impact of incarceration and keeping families together. My name is Jennifer Erschabek and I am the Executive Director of the Texas Inmate Families Association¹.

When someone is incarcerated most families experience financial losses as a result of the incarceration. However, the financial burden is greatest for those families who try to maintain a relationship with someone who is incarcerated.

In recent years there has been improvement in the efforts of the TDCJ and the Texas Legislature to help families stay connected but with that blessing comes the financial burden. TIFA conducted a survey to find out exactly what that financial burden is for families. In 2013, TIFA wanted to investigate how the cost of supporting someone during incarceration through visits, phone calls, money for commissary, etc. was affecting families. Part of the information below comes from that 2013 survey and a more recent short survey done during the week of May 2nd. Other information was gathered through open records requests.

In 2013 families who were surveyed spent on average between \$350 and \$450 a month supporting a family member who is incarcerated.

Family Expenses Because of Incarceration in 2013			
	Direct Support Expenses*	Other Expenses Accumulated Because of Incarceration**	Yearly Expenses
Mean of Total expenses	467	676	8112
Median of Total expenses	385	431	5169

*direct support to an incarcerated family member

**indirect expenses such as assuming loans, attorney fees, child care/support, etc because of incarceration

The TDCJ Commissary and Trust Fund

In addition to supporting the commissary and trust fund operations that includes about 425 TDCJ employees, income from commissary sales is used to fund or supplement other offender programs. These include recreational activities, sports and fitness equipment, television equipment located in common viewing areas, library books and supplies, and The Echo newspaper for offenders.

¹ TIFA.org P.O. Box 300220 Austin TX 78703, (512) 371-0900, tifa@tifa.org



Texas Inmate Families Association
 Strengthening families through support, education and advocacy

TDCJ Commissary and Trust Fund*			
FY	# of Deposits	Total rec'd and Processed	Sales
2012	> 1.8 million	\$116.1 million	\$102 million
2013	> 1.9 million	\$117.9 million	> \$100 million
2014	> 1.9 million	\$121.6 million	> \$107 million

*information taken from TDCJ Annual Reports

How much each family deposited monthly into trust fund accounts in 2013	
\$0	8%
< \$50	24%
\$51-\$100	26%
\$101-\$150	20%
\$151-\$200	11%
> \$200	12%

The Offender Telephone System (OTS)

Families are currently charged \$.21 - \$.26 per minute and calls are limited to 20 minutes with phone calls costing around \$5.20 plus additional fees. And now someone who is incarcerated may call as often as they like. The Texas Department of Criminal Justice (TDCJ) currently collects a **40% commission** on all calls. The first \$10 million of the amount collected by TDCJ goes to the Victim of Crimes fund and the remaining amount is split between the Victims of Crimes fund and the State General Revenue Fund.

Funds Collected by the OTS*	
FY 11	\$15,142,605
FY 12	\$18,085,698
FY 13	\$32,784,998
FY 14	\$36,765,944

*information obtained through an open records request

Eighty percent of the families surveyed in 2013 accepted TDCJ phone calls from their loved ones.

Average Monthly Family Phone Bill	
\$0-\$100	65%
\$101-\$200	25%
\$201-\$450	11%



Texas Inmate Families Association
Strengthening families through support, education and advocacy

Visitation

The two greatest barriers to visitation are distance and/or cost or age and health. With the recent changes to the visitation policies some families are allowed to visit every weekend while those traveling long distances must sometimes give up part of their special/extended visits². Also there seems to still be confusion around the definitions of extended visit or special visits by both TDCJ personnel and families.

Visit Frequency		
Every weekend	118	24%
More than twice per month	88	18%
Once per month	120	25%
When I am able to	157	33%

Mileage Traveled One Way to Unit		
< 150 miles	181	37%
150-200 miles	93	19%
200-250 miles	61	13%
More than 250 miles	148	31%

Cost of Visit				
	#	2013	#	2016
< \$25	4	2%	67	14%
\$26-\$50	31	19%	81	17%
\$51-\$75	29	18%	80	17%
\$76-\$100	23	14%	68	14%
\$101-\$150	18	11%	47	10%
\$151-\$200	16	9%	45	9%
More than \$200	44	27%	95	20%

Has there ever been confusion from TDCJ when you requested a special visit or an extended visit when you are traveling over 250 miles?		
Yes	89	18%
No	121	25%
NA	273	57%

Has your special visit ever been cut short?		
Yes	57	12%
No	159	33%
NA	262	55%

² Special visits may be granted for a total of eight hours visiting with a maximum of four hours per day on two consecutive days, for visitors traveling over 250 miles one way. A special visit must be requested and approved prior to the visit. Permission for extended visits for a maximum of four hours on one day may be requested upon arrival at the unit for visitors traveling over 250 miles one way, from the offender's unit of assignment.



Texas Inmate Families Association
Strengthening families through support, education and advocacy

Have you ever been turned away once you have arrived for a visit?		
Yes	112	23%
No	371	77%

At one time or another, 37% have been denied a visit

Reason for Denied Visit		
Attire	33	18%
Didn't have proper identification	10	6%
Not on visitor list	7	4%
Offender already received visit	10	6%
Offender not eligible due to security status	21	12%
Lockdown/cancelled for medical reason	20	11%
Offender not at the unit	13	7%
Visitation is full	32	18%
Other	35	19%

Visitation Policies Consistent Between Different Units		
Yes	74	15%
No	218	45%
Have only visited one unit.	191	40%

If you have asked to see the Family Liaison Officer, the Warden or other officer, have those requests always been fulfilled?		
Yes	132	27%
No	123	25%
Did not ask	228	47%

As all these costs and fees add up it becomes clear that something has to be done to help families. The costs of the phone calls must decrease and this can be done by eliminating commissions and demanding the phone companies to decrease their rates. Incarcerated people should also be housed as close as possible to their families. But even if these critical reforms are made, the separation of people from their families will have adverse impacts and can be avoided by keeping families together through alternatives to prison such as diversion programs or minimized by releasing family members at their first eligibility of parole.

But even after release, housing, employment and education barriers and policies will continue to produce financial burdens and challenges for returning people and their families unless we as communities learn that people can turn their lives around and we truly give everyone a second chance.



*Texas Inmate Families Association
Strengthening families through support, education and advocacy*

Suggestions for helping visitation would include:

1. Assigning people to units closest to their families. 31% travel more than 250 miles and are eligible for special visits.
2. Expanding visitation hours on Saturdays and Sundays so that people will no longer be turned away.
3. Provide more training on visitation rules for TDCJ personnel
4. Have the same staff working visitation who are familiar with the rules and know the family members
5. Make sure the family liaison is available to family members when they request a meeting.

TIFA would like to thank TDCJ for the recent efforts to improve visitation for families and we look forward to continuing to work with them on these issues.



Texas Inmate Families Association
Strengthening families through support, education and advocacy

May 16, 2016

One Family's Story – Their first visit with their son at the Neal Unit in Amarillo

There son was transferred from the Luther Unit in Navasota, 32 miles from their home in Magnolia, Tx to Amarillo because he was playing around during work and someone received a minor injury. If he needs to be transferred, why not to a unit in the Huntsville area that is much closer to his family?

Good Morning,

We had a great visit with Mike. It was indeed a very long drive but worth it just to see his face and to talk with him. It's been rough but he is hanging in there. His mom and dad are trying to stay positive, too.

Here is information about our visit:

Total mileage: 1,267 miles round trip (including our driving around the Amarillo area after our visit)

Our actual mileage to prison: **572 one way** (very close to Google maps at 563)

Driving times: Friday 8am to 5:30 pm (**9 1/2 hours**)
Sunday 11:30 am to 8:30 pm (**9 hours**)

Gas Receipts: \$115.42

Hotel: (2nights) including senior discount \$310.50

Food: \$150

Dog Kennel:\$96

Grand Total: \$671.92 plus wear and tear on car, and wear and tear on two 61 year old parents

Seeing our son: **PRICELESS**

Below are additional testimonials that were a part of the TIFA survey.

Briscoe Unit

- 1) I come from Alaska when I can. It costs me (if visiting alone) approximately \$2700 to visit with transportation, car rental, food, motel, etc. this weekend (Mother's Day) my oldest son and I flew down, almost doubling my expenses. We were approved 2 day 4 hour visits. Upon arrival, the guard said the Major changed it to only 2 hour visits. It didn't matter that there were many open tables with no line to get in, both days. At 2 hours we were told to leave. I could understand if there had been many moms waiting to see their sons but there weren't. My oldest son hasn't seen my incarcerated son for 3 1/2 years. I won't be able to come back for at least 6 months. My disappointment is great. Some common sense should have prevailed here.

I travel from Alaska, 6000 miles 1 way. I come as often as I can but it costs me \$2000 in airfare, \$200 car rental, \$50 gas, \$300 motels, \$50 in quarters and \$100 food for a 2 day visit. Total \$2700 each visit. The unit he used to be at I could get confirmation of approval for special visit on Tuesday, now it is Friday afternoon, when I'm in the air. It would be nice, and a money maker for units if they at least had something hot to eat, bbq sandwiches or something would be easy. Or at least sandwiches in the vending machine. Briscoe only has chips, candy, soda and pastries, all of which are horrible! I have only visited Briscoe once, am flying down for a visit this weekend so some of this survey may change according to this weekend's visit.

Michael Unit

- 1) For those who live far away, like us, over 2,000 miles, visitation costs us around \$1,500-2,000 due to airfare, car rental, hotels, food, etc. Would like to know procedure to have inmate moved to where family resides as we are elderly. How can we be helped.
- 2) I try to visit once a month. My trip is about 12 hrs since I suffer from Fibromyalgia I have to stop and rest a while several times. I have to stay another night which is Sunday so I can drive back home Monday. I spend about \$300 to \$500 lodging, food, snacks.

Joe Ney Unit

- 1) Our average cost per visit is sat least \$500.00. Survey would not allow this amount to be entered.

Ramsey Unit

- 1) The old unit only gave special visits to the first 20 called on Monday morning 8am before visit. As a disabled visitor from the UK I only get when I can as every trip costs me \$2000.00 with

hotels and flights etc. The staff are somewhat helpful but not always and there manners need to be checked.

Wynne Unit

- 1) Most of this survey is answered in regards to visiting at the Wynne Unit in Huntsville since my son just transferred to Powledge and we have only been there once. We spend in excess of \$1000 when we visit as we fly in, rent a car, stay in a hotel and purchase meals. We are fortunate to be able to do this twice a year, however, it is an expensive weekend. The policy I find most frustrating is that we have to call to arrange the visit the week of the visit. Since we are purchasing airline tickets and making hotel reservations, these plans/purchases are not made by us at the last minute. Also, we don't get to have pictures very often as usually they are not being taken the weekend we are visiting. We have two pictures for the 8 years my son has served. This is heartbreaking. And finally, I would like some healthy options in the machines instead of the sugary items offered. We buy it because that is all that is offered. Granola bars, apples, bananas would be wonderful! One more thing--at Powledge I was told over the phone by the warden's office that we could choose to have an outside visit depending on weather, yet when we arrived and I inquired about an outdoor visit, I was told "oh no, we don't offer that (even though they have picnic type tables outside) because we would have to staff outside and inside with officers." What a disappointment. .it would have been refreshing to sit outside.

The next insert is more testimony from the hearing.

HOSPITALITY HOUSE - DEBRA MCCAMMON, EXECUTIVE DIRECTOR

Please allow me to introduce myself. Im Debra McCammon the director of the Hospitality House in Huntsville for the last 7 years and Id like to share two stories with you of the families who stay at the Hospitality House.

Don, father of a young man incarcerated in Huntsville, spends his weekends traveling by Greyhound bus several hours each way to visit his son. He can't afford a hotel, although for many years he practiced as a physician here in Texas, the cost of cancer treatments has drained him both financially and physically.

When his son was imprisoned in Amarillo, he would spend days traveling on the bus and the local police department allowed him to sleep in a cell rather than sleeping on the streets overnight before visiting his son. After several years of incarceration there, his son was transferred to Huntsville. Don contacted the local police department to try and make the same arrangements, but was told no, so, once again, he slept on the streets in doorways and sometimes in the parks trying to stay out of sight.

Until one weekend, meeting a kind Texas Department of Criminal Justice officer who was on duty when he arrived at the security check, everything changed. The officer commented on how tired Don looked, so he explained how he travels by bus (he can't drive any longer) and sleeps out in the park. The officer immediately asked him why he hadn't called the Hospitality House for a room and shared with him how we provide lodging and food.

Don called the following week, told me his story and asked what the process was for staying here. He now comes every weekend to see his son, sleeping warm and safe, eating evening meals and sharing conversations with the other guests. He is the first one up each morning at Sam and always sitting in the living room awaiting the coffee. He greets everyone cheerfully as they arrive for breakfast, eats and then sits on the front porch rocking until his taxi comes to take him to visit his son.

Now gaunt and ill he struggles for energy. but he continues to love and encourage his son by his presence at the prison visitation.

Six year old Tuck was quiet. His polite ways, big eyes and timid smile captured our hearts. Tuck and his mom, Naomi, came to stay at the HH after spending a hot July week camped in a nearby park. They were waiting for the release of Tuck's brother from prison.

'Something smells GOOD, Naomi said as she rounded the corner to the kitchen. "You're just in time for supper. said the volunteer. "Tuck, let me fix your plate. What would you like?" 'Everything looks good to me. I'm hungry!' Tuck said. Later we learned, Tuck had not eaten all day. He and his mom were living out of a dilapidated car. .homeless. That night, you've never seen a 6 year old so excited to take a bath and sleep in a REAL bed.

Before he left, Tuck picked out a new backpack filled with school supplies to start the first grade.

For the last 30 years Hospitality House has been helping hurting families just like Tuck's and Don's. Offering 17 bedrooms we can house 64 people and are open 7 days a week to meet the needs of the families. Due to the large numbers of men incarcerated in the Huntsville area we stay full every weekend with waiting lists of 10-12 families each night.

Built in 24 hours by 270 volunteers, the Hospitality House was the first non-profit facility of this kind in Texas and volunteers are still the heart of the ministry that keep it going each week. Hospitality House is a vital link between TDCJ Offenders and their loved ones. In 2015 we received the Governor's Volunteer Service Award for Community Service which recognizes the roll we play in helping families stay connected. Family visitation is critical to helping lower the recidivism rate and strengthening families.

1. In 2015 we housed and fed 3,289 people from 23 states, 5 countries and 755 zip codes.

2. Services we provide:

- I. Safe lodging -private rooms for each family
- II. Hot meals
- III. Snacks and soft drinks
- IV. Food pantry - moms fill bags to take home providing the children with meals
- V. Backpacks filled with school supplies - so they are not singled out by other children at school
- VI. Santa Shop - where moms can fill a bag full of toys for their children for Christmas
- VII. Kid's Shop - where the children may choose gifts for their moms/grandmothers and wrap them
- VIII. "Birthday Party in a Bag" and gifts for each child during the month of their birthday
- IX. Art Against the Odds –our therapeutic art program which helps the children deal with their anger confusion and bitterness of having a father or brother in prison. This is directed by an art professor from Sam Houston State University.

3. Families come for a variety of reasons:

- I. Executions
- II. Weekend visitation
- III. Death Row visits
- IV. Funerals
- V. GRAD Programs
- VI. Hospice Care
- VII. Marriage Seminars
- VIII. Offender Release or Parole

4. Over the years we've realized that families suffer a variety of hardships when they have a loved one in prison:

- I. Loss of income – most of the women who stay at HHouse tell us they work 2-3 jobs just to pay the bills and keep the family intact
- II. Cost of travel:
 - i. Average hotel cost in Huntsville is \$75 per night

- ii. Meals while traveling for a family are very expensive
 - iii. Distance they have to travel greatly affects the gasoline costs which can be upwards of \$80-\$100 since the majority of our guests drive from South Texas and North Texas
 - iv. Cars that are not up to long distance travel so some have to rent a car or carpool with other families
 - v. Cost of bus trip and taxi to go to the prisons – varies according to distance traveling
 - vi. Loss of income while traveling to visit - since the majority of our families are minimum wage earners at \$7.25 per hour and then miss work for 2-3 days due to the distance of the prison from their homes
- III. Ostracized by society: although 1 out of 5 families in Texas have a loved one in prison
- i. Singled out at jobs and schools
 - ii. Many of the women have lost their jobs due to the media attention the crime attracted
 - iii. Some have changed their names and moved out of state
 - iv. Children are bullied at school
- IV. Children at risk:
- i. 63% of children of the incarcerated are more likely to commit suicide
 - ii. 70% of children according to TDCJ statistics will go to prison themselves
- V. According to our recent 68 guests surveyed:
- i. Many of the visiting families come from low income or single parent households
 - ii. 65% of women are the head of the household
 - iii. 54% would not have been able to visit their loved ones if not for Hospitality House
 - iv. Of the other 46% - 10% would have slept in their cars
 - iv. 58% of surveyed guests make less than \$15K annually and 42% make less than \$10K
 - v. We help eliminate the financial constraints the families face when coming to visit their loved one by providing the basic necessities to help get them

through this tough time

It is vitally important that families have every opportunity and availability to visit their incarcerated loved ones.

Thank you for allowing me to come and share just a little about the hardships and the needs of the families of the incarcerated.



Jay Jenkins
 Harris County Project Attorney
 (515) 229-6928
 jjenkins@TexasCJC.org
 www.TexasCJC.org

INTERIM TESTIMONY 2016
Senate Committee on Criminal Justice

Dear Members of the Committee,

My name is Jay Jenkins. I am a Project Attorney for the Texas Criminal Justice Coalition (TCJC); I am based in Harris County. Thank you for allowing me this opportunity to present testimony on Charge #6: "Review costs family members incur to maintain contact with an incarcerated family member. Make recommendations to promote familial contact and relationships for incarcerated individuals. Review visitation practices across the state in determining effective and appropriate methods of maintaining familial contact for incarcerated individuals."

THE COSTS OF VISITATION

Supporting a family member or loved one when he or she is incarcerated is an emotionally draining experience. The emotional exertion also comes with a significant financial cost that can exacerbate the damage that incarceration does to an individual by weakening the scant support that family members can offer.

Texas has more than 100 prison facilities spread across five regions, yet the Texas Department of Criminal Justice routinely assigns men and women to facilities that are six to eight hours away from their closest relatives or home communities. Elderly family members or those with disabilities must get notes from their physicians to appeal for their sons and daughters to be moved to units closer to home; and even these hardship transfer requests can be denied if the family member is within a four-hour drive of the facility.¹

For families with children, the lengthy trip can be costly and overwhelming. Further, the visitation room can be loud, confusing, and intimidating for small children. Units do not have child-friendly visitation areas with games and toys as other states have developed.²

KEY FINDINGS

- To document the full extent of the costs that families incur when a family member or loved one is incarcerated, the Ella Baker Center for Human Rights, Forward Together, and Research Action Design collaborated on a national report that made the following findings:³
 - » **Many families lose income when a family member is removed from household wage earning, and they struggle to meet basic needs while paying fees, supporting their loved ones financially, and bearing the costs of keeping in touch.**
 - Nearly 2 in 3 families (65%) with an incarcerated member were unable to meet their family's basic needs. Forty-nine percent struggled with meeting basic food needs and 48% had trouble meeting basic housing needs because of the financial costs of having an incarcerated loved one.
 - » **Women bear the brunt of the financial and emotional costs of a loved one's incarceration.**
 - In 63% of cases, family members on the outside were primarily responsible for court-related costs associated with conviction. Of the family members primarily responsible for these costs, 83% were women.

- » **Families incur large sums of debt due to their experience with incarceration.**
 - Across respondents of all income brackets, the average debt incurred for court-related fines and fees alone was \$13,607.
- » **Incarceration damages familial relationships and stability by separating people from their support systems, disrupting continuity of families, and causing lifelong health impacts.**
 - The high cost of maintaining contact with incarcerated family members led more than one in three families (34%) into debt to pay for phone calls and visits alone.
- » **The stigma, isolation, and trauma associated with incarceration have direct impacts across families and communities.**
 - Supportive families can help reduce recidivism rates, but they often lack the necessary resources to help incarcerated individuals serve out their sentences and reenter society successfully.
- **The benefits of in-person visitation policies are numerous:**
 - » The separation of child and parent due to incarceration has many negative consequences,⁴ and studies have shown that visitation "substantially decreases the negative impacts of incarceration by preserving the child's relationship with the parent."⁵
 - » In-person visitation can help lower recidivism rates: A study of over 16,000 incarcerated individuals in Minnesota showed that even one visit reduced recidivism by 13% for new crimes and 25% for technical violations.⁶
- **Video-only visitation in Travis County resulted in increased disciplinary infractions:**
 - » In the year after institution of a video-only visitation policy in Travis County, disciplinary infractions climbed over 100 infractions per month, with cases for possession of contraband increasing 54% and inmate-on-inmate assaults increasing 20%.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS TO IMPROVE CONTACT WITH INCARCERATED FAMILY MEMBERS

- **Require the Texas Department of Criminal Justice to make every effort to place incarcerated individuals in the units that are most appropriate to their classification level and that are as close as possible to their nearest family members or home communities.** When security concerns require placement in facilities hours from home, the Department should be required to move incarcerated individuals to the facilities closest to nearest relatives or their home community as soon as the custody or security level has been downgraded because of good behavior. This will serve as an additional incentive for incarcerated individuals to avoid disciplinary troubles and focus on rehabilitative programming.
- **Require the Texas Department of Criminal Justice to develop child-friendly visitation days or areas.** These areas can be equipped with toys and games from the faith community and volunteer groups. The Department could make child-friendly visitation a privilege for incarcerated individuals who have good disciplinary records and who are making progress toward rehabilitation.
- **Support in-person visitation at all Texas correctional facilities, and offer video visitation only as a supplementary tool for those who cannot afford to make in-person visits.** Again, face-to-face visitation in the corrections setting positively impacts family unification, increasing the likelihood of a successful reentry.

Family support is crucial to maintaining the relationships between those incarcerated and those who love them, especially as it pertains to developing and maintaining bonds between parents and children.

- **Increase pretrial diversion programs to reduce the need for visitation and alleviate space concerns.** According to a study on the impact of pretrial detention on sentencing, "Compared to defendants released at some point pending trial, defendants detained for the entire pretrial period are more likely to be sentenced to jail or prison – and for longer periods of time."⁸ It is critical to determine which individuals can be safely released prior to trial, enabling them to maintain their employment and housing, or to participate in needed programming to address the root causes of their criminal behavior. This can help alleviate the massive allocation of resources required to operate county jails, while also reducing recidivism rates and the likelihood that an individual will eventually be incarcerated in the Texas Department of Criminal Justice.

Citations

¹ Texas Department of Criminal Justice, General Information Guide for Families of Offenders, Executive Services, December, 2012, p.15-16, http://www.tdcj.state.tx.us/documents/General_Information_Guide_for_Families_of_Offenders.pdf.

² Boudin, Chessa, Stutz, Trevor, and Littman, Aaron, "Prison Visitation Policies: A Fifty State Survey," November, 2012, p. 14,

³ Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. Who Pays? The True Cost of Incarceration on Families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015.

⁴ Grassroots Leadership and the Texas Criminal Justice Coalition, "Video Visitation: how private companies push for visits by video and families pay the price," October 2014.

⁵ Connecting children with incarcerated parents. Child Protection Best Practices Bulletin. (2011).

⁶ The effects of prison visitation on offender recidivism. Minnesota Department of Corrections. (2011), cited in "Video Visitation," supra.

⁷ Video Visitation, supra.

⁸ Laura and John Arnold Foundation, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, November 2013.



Re: Charge to
Family Costs

**Criminal Justice Interim Hearing
May 17, 2016**

My name is Kathryn Freeman and I am the Director of Public Policy for the Christian Life Commission. The Christian Life Commission (CLC) is the ethics and justice ministry of the Baptist General Convention of Texas, which is comprised of 5400 churches from across state. The CLC speaks to and with Texas Baptists churches on today's important cultural and ethical issues. We serve on the Executive Committee of Smart on Crime Texas.

Family is one of life's greatest blessings and one of the most important institutions within Christianity and church life. We believe that God created us with a need for fellowship or communication with other persons. It is written in Genesis that it is not good for man (or woman) to be alone and this applies whether one is in or out of prison.

Beyond our faith teachings, over 40 years of research has shown that maintaining familial bonds during incarceration reduces recidivism and improves the chances of successful re-entry once an inmate is released.

Despite the research, we know there exists numerous barriers for families attempting to maintain contact with their incarcerated loved ones.

According to a survey conducted by the Ella Baker Center for Human Rights, the most frequent barriers to maintaining contact with a family member are the costs of phone calls, distance to prison, and visitation related costs.

One of the biggest barriers is the financial cost of maintaining contact. According to the Annie E. Casey Foundation, a recent study found that 65 percent of families with a member in prison could not meet their basic needs. The Ella Baker Center for Human Rights also found that 34 percent of the families reported going into debt to pay for phone calls or visitation. The majority of people bearing the costs of incarceration are the poor and minority women and children. When struggling to meet your families' basic needs, the additional financial costs of phone calls and visits often prohibit regular family contact with an incarcerated loved one.

The distance between their home community and their loved ones prison placement is another barrier to maintaining family relationships. Helping to reducing the costs associated with travel to remote prison locations such as gas, food and hotel stays makes family visiting more accessible and affordable. While video visitation is important especially when your family member is placed a great distance from home and can alleviate some travel costs, it cannot be a replacement for in person visits. You cannot hug your parents or children through a video screen. Video visitation should be a supplement and not a substitute. It should be one of many ways to encourage and facilitate regular family contact.

kathryn.freeman@texasbaptists.org
812 San Antonio, Suite 410 | Austin, TX 78701
TEL 512.473.2288 | FAX 512.473.2707

texasbaptists.org/clc f facebook.com/TexasCLC t @txclcpolicy

★ TEXAS
BAPTISTS.
ARTIST GENERAL CONVENTION OF 1



Given the financial circumstances of most of the families of those incarcerated, the state should look for ways to reduce the costs of phone calls and video visitation for families. We believe TCDJ officials should give more consideration to the distance between a prison and the inmate's home community when making placement decisions and where possible always opt to place inmates closer to home.

Maintaining a strong bond between families is critical to a former inmate's success once they are released. Data has shown a positive relationship between regular family visits and phone calls and the well-being and successful reentry of incarcerated persons. People who commit crimes should be punished for the wrongdoing, but that punishment need not include isolation from their loved ones especially considering when we weaken family bonds we increase the likelihood that the person will re-offend. Rather than weakening bonds, we should be looking for ways to strengthen them by making visitation easier and more frequent for families.

kathryn.freeman@texasbaptists.org
812 San Antonio, Suite 410 | Austin, TX 78701
TEL 512.473.2288 | FAX 512.473.2707

texasbaptists.org/clc  facebook.com/TexasCLC  @txclcpolicy



★ TEXAS
BAPTISTS.
BAPTIST GENERAL CONVENTION • 2015

Conclusion and Recommendations

Though the data provided on cost is limited it does provide some idea of what families and friends are spending on correspondence and visitation with incarcerated people. For county jails the cost mainly comes in paying for video visitation after the 2 initial visits, phone calls which have been regulated to some extent, and commissary. While each jail may have areas they can improve upon most policy issues seem to well established and excepted. The exception to this would be the use of video visitation. Testimony at session hearing on the issue and media coverage have demonstrated that video only may not be the best solution for families/ friends and the incarcerated. Texas limited the number of facilities that could use video visitation only and stopped that trend at 22 facilities.

The costs associated with the state system appear to affect friends and family a little more. This could be attributed to the size of the system, the location of its facilities, and the amount of time people are sentenced to these facilities. Though the surveys conducted by the agency and the association only represent a small fraction of the people utilizing visitation and correspondence they do show significant use and expense. Many factors influence the amount a family spends to visit with an offender, travel to and from the location, gas prices, lodging, money spent at the facility. Most of these things are not controlled by the state or the agency and there is very little that can be done to change it. There is already consideration given to the location of an offenders family when they being placed, but continued review of the policy around placement could help. If other factors cause further placement then monitoring those factors for change could mean at a certain point the offender could be moved closer. The recent report by the agency does indicate that they are trying to make some improvements. TIFA also provides some areas of improvement in their testimony. They mainly focus on making sure the current policies are known and followed.

The follow are the recommendations for interim charge 6:

- 3) Require TDCJ to add video visitation to prisons as an option for visits.
- 4) Require TDCJ to implement a due process procedure for individuals that have been removed from visitation lists and a clear explanation of what behaviors will result in permanent or temporary removal.

Interim Charge Seven

Conduct a study of civil asset forfeiture laws in Texas and compare them to similar laws in other states. Determine best practices to protect public safety and the private property rights of citizens. Examine the reporting requirements and recommend legislative changes if needed to ensure transparency.

Introduction and Background

Civil asset forfeiture allows law enforcement to seize and assume permanent ownership of property believed or found to be involved in illegal activity. The state seizes the property and places it on trial through a civil process where the state must show that the property was either used in the commission of a crime or the proceeds of that crime. This practice originally began in early America as a tool to enforce maritime law, allowing the government to carry out customs and piracy regulations when the owner of the cargo or vessel had absconded or was outside the court's jurisdiction. Law enforcement occasionally used civil asset forfeiture to enforce taxation and prohibition, but it was not until the 1970's and 1980's that it became a regular practice of law enforcement in America. Amendments in 1978 and 1984 to the Comprehensive Drug Abuse Prevention Act of 1970 allowed agencies to seize and forfeit the proceeds from a drug crime or any property used to facilitate the commission of that crime. Congress created the Asset Forfeiture Fund in 1984 to collect the net forfeiture proceeds for federal agencies to utilize. Congress addressed forfeiture again in 2000 with the Civil Asset Forfeiture Reform Act which increased the standard of evidence to a "preponderance of the evidence" and created an innocent owner defense. The act also provided counsel for indigent property owners in cases where the owner is already represented by appointed counsel in the underlying criminal case and the property in question is real property being used as the person's primary residence.

Texas law originally limited forfeiture to a short list of crimes. State records reveal the legislature expanded civil asset forfeiture in 1989 to allow the seizure and forfeiture of property used or intended to be used in the commission of any felony under the Penal Code, Controlled Substances Act, Dangerous Drugs Act, or Securities Act. H.B. 65 also permitted forfeiture of the proceeds of these crimes. The bill prohibited forfeiture if the owner or owner's spouse (in situations concerning community property) had not authorized the conveyance of the property or did not know of the crime or that it might occur. Bonds worth double the amount of the property could be posted and the property released to its owner with the understanding that it would be returned to the state on the day of the forfeiture hearing. The state had the initial burden of proving the property was subject to forfeiture. Although a conviction for the underlying felony was not a prerequisite for forfeiture, the owner or interest holder could present evidence of a dismissal or acquittal in the civil proceeding. The bill permitted law enforcement agencies to keep proceeds from these forfeitures and required the agencies to come to memorandums of understanding with their district attorneys regarding the division of property. H.B. 65 included broad outlines guiding the permitted uses of these proceeds. The legislature prohibited any local government from offsetting or decreasing money already designated for law enforcement agencies due to forfeiture revenue.

The legislature has altered Chapter 59 in several ways since 1989, such as including more specific definitions, elaborations on hearing requirements and the innocent owner defense, and many more

qualifying offenses. In 2011, the Texas legislature responded to allegations of abuse with S.B. 316. The bill prohibited a prosecutor from obtaining a waiver of the individual's rights to the property during or immediately after a traffic stop. It also established a list of appropriate expenditures of forfeited assets, as well as a list of prohibited expenditures, in response to several reports of misused funds for expenses such as alcoholic beverages, travel payments, and campaign donations. The bill also created accountability procedures and audits to ensure transparency and the proper use of forfeited assets.

In 2013, S.B. 1451 introduced the forfeiture of substitute property to address the problem of money laundering in situations where the actual proceeds of criminal activity have been transferred or have disappeared. In the 84th legislative session, the legislature permitted the use of forfeiture proceeds for the children of fallen peace officers' college scholarships with H.B. 530. The bill also required that the attorney general develop a report detailing the total amount of funds forfeited each year and that the information be published online.

Chapter 59 now contains a long list of offenses subject to forfeiture. Texas law does not require a criminal conviction for any of these offenses as a prerequisite to the forfeiture of property. The state must initially show the property's involvement in the commission of a crime by a preponderance of the evidence, however, the burden of proof lies with the individual in instances where a third party claims to be an innocent owner with no knowledge of the misuse of their property. In contested cases, law enforcement agencies can retain up to 100% of the forfeiture proceeds. In default judgment cases, agencies may retain up to 70% of the proceeds. Texas law enforcement agencies frequently participate in the Department of Justice's equitable sharing program, in which state and federal agents form a joint task force to complete a forfeiture. According to a thirteen year overview by the Institute for Justice, Texas averages almost \$25 million in DOJ equitable sharing proceeds per year. Chapter 59 requires agencies who engage in asset forfeiture to report summaries of the value of the forfeiture and the general categories in which those proceeds were used. The attorney general must also publish a report summary online. This year's annual report states that Texas agencies totaled \$53,155,235 in forfeitures for fiscal year 2015.

Nationwide Trends

The civil asset forfeiture process has received national scrutiny from both media and activists. According to research from The Heritage Foundation, several states moved towards varying degrees of reform in response to this national conversation. This report presents a brief overview of reforms made nationwide in the last three years.

California, S.B. 443

Prior to the passage of S.B. 443, California required a conviction in most cases before a civil forfeiture may take place, and civil proceedings required an evidentiary standard of beyond a reasonable doubt. Drug cases with cash amounts over \$25,000 required a standard of clear and convincing evidence. The law required the state to prove the property owner had knowledge of the illegal activity for which the property was used. In August of 2016, California passed S.B. 443 which banned state agencies from receiving funds from equitable sharing task forces unless the defendant received a conviction for the underlying criminal offense. The bill also raised the cash threshold for convictions to \$40,000 from the previous \$25,000 and

established exceptions to the conviction requirement, including situations where the property is unclaimed or the individual absconds. Finally, S.B. 443 required the attorney general to publish a report detailing the number of forfeiture cases in the state, the amount of corresponding criminal cases, the conclusion of those cases, and the disposition of the forfeiture assets.

Florida, S.B. 1044

In 2016, Florida passed S.B. 1044, requiring the state to prove its case beyond a reasonable doubt and show that the owner had "actual knowledge" of the criminal action. The bill did not require a criminal conviction prior to the forfeiture of property, however, it does state an arrest must be made before property can be seized and includes exemptions for owners who have absconded or passed away, and for cash seizures. The bill required that the seizing agency pay a \$1,000 filing fee with a \$1,500 bond payable to the property owner if the state fails to win the case.

Georgia, H.B. 233

In 2015, Georgia passed H.B. 233 which created a standardized reporting system.

Maryland, S.B. 528; H.B. 336

In 2016, Maryland adopted two separate reforms which raised the standard of proof from "preponderance of the evidence" to "clear and convincing" and moved the burden of proof from the individual to the state to prove knowledge of criminal activity. The bills prohibited cash seizures for mere drug possession and confined seizures to the sale or manufacturing of controlled substances. Maryland also increased its reporting demands, requiring detailed documentation on the spending of any forfeiture funds. The bills restricted the use of equitable sharing by local agencies, however, they required that the property owner consent to the transfer. Maryland law directs all forfeiture proceeds to the state's general fund.

Michigan

In 2015, Michigan passed seven separate bills changing its forfeiture laws. The bills demanded more stringent reporting requirements, including the final disposition of the forfeitures, the offense tied to the forfeiture, and whether the state obtained a conviction. The bills also raised the standard of proof to clear and convincing.

Mississippi, H.B. 1410

In 2016, Mississippi passed H.B. 1410 which created an asset forfeiture transparency task force to review the state's current laws and make recommendations on ways to protect innocent property owners, increase transparency, and provide greater due process to forfeiture proceedings. Its findings will be made available to the public on December 31, 2016.

Minnesota, S.F. 874

In 2014, Minnesota passed S.F. 874, which required a criminal conviction as a prerequisite to forfeiture. After the property owner is convicted, the state must then prove by clear and convincing evidence that the property seized accurately represents the proceeds of the offense for which a conviction was obtained.

Montana, H.B. 463

In 2015, Montana passed H.B. 463 which set up a two part process for asset forfeitures. The property owner must be convicted of a crime, however, a proceeding in conjunction with the criminal proceeding must be held for the forfeiture of the property. The state must prove by clear and convincing evidence that the property was either an instrument to or the proceeds of the underlying offense. Property cannot be forfeited if the court finds it likely that the final judgment in the criminal proceeding will result in an order for the return of the property. The bill also shifts the burden of proof to the state in innocent owner cases.

Nebraska, L.B. 1106

In 2016, Nebraska passed a bill requiring a criminal conviction for forfeitures related to child pornography, illegal gambling, and drug charges; the state must then demonstrate by clear and convincing evidence the property's connection to the criminal offense or an intended offense. The bill provided specific guidelines under which a local agency may transfer property to the federal government through equitable sharing. Nebraska allows 50% of its forfeiture revenues to remain with law enforcement while the other half is dedicated to the public education fund.

New Hampshire, S.B. 522

In June of this year, New Hampshire passed S.B. 522, making New Hampshire the 11th state to require a criminal conviction as a prerequisite for most cases of forfeiture. The bill raised the standard of proof to clear and convincing evidence and shifted the burden of proof onto the state to prove the property owner consented to or participated in the crime. S.B. 522 also redirected all forfeiture proceeds to the state's general revenue fund.

New Mexico, H.B. 560

In 2015, New Mexico abolished civil forfeiture and replaced it with criminal forfeiture, requiring that prosecutors obtain a criminal conviction before transferring the title of the property to the state. The bill raised the standard of proof to clear and convincing evidence and required the state to show the property owner possessed actual knowledge of the criminal activity in question. The state's general fund receives all proceeds derived from criminal forfeiture, removing what opponents of the practice consider to be an incentive for law enforcement to overuse forfeiture as a budgetary supplement. The bill also restricted local agencies' ability to use the equitable sharing program.

Virginia, H.B. 771

In March of this year, Virginia passed H.B. 771 which required the Department of Criminal Justice Services to issue a yearly report listing "the amount of all cash, negotiable instruments, and proceeds from sales" in

forfeiture cases. The report must also include details concerning the amount distributed to all federal, state, and local agencies, as well as any proceeds received from the practice of equitable sharing. The bill also prohibited requesting a waiver of an individual's rights to property until an information is filed.

Washington D.C. Bill 20-48

In 2014, Washington D.C. passed Bill 20-48, which shifted the burden of proof to the state to prove knowledge of illegal activity or willful blindness to the activity and raised the standard of proof to clear and convincing for cases involving vehicles or real property. It required a conviction in cases involving the owner's primary residence. The city's general revenue fund now receives all forfeiture proceeds, including proceeds from equitable sharing. The bill prohibited cash seizures below \$1,000.

Several other states, including Wisconsin, Missouri, Indiana, North Carolina, and Maine implemented varying degrees of reform to their forfeiture procedures prior to 2014.

Public Hearing

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, October 28, 2014, in the Capitol Extension, Room E1.012, at Austin, Texas, with the following providing invited testimony:

- Derek Cohen, Deputy Director, Texas Public Policy Foundation
- Nicole Czajkoski, Chief Prosecutor, Major Offenders Division, Montgomery County District Attorney's Office

Additional information was provided beyond the previous testimony and written information in the exchange between the committee and those who provided public testimony:

- Jim Smith, sergeant, San Antonio Police Department (SAPD)
- A.J. Louderback, sheriff, Jackson County
- Steven Jumes
- Kathy Mitchell, Texas Criminal Justice Coalition (TCJC)
- Adrian Moore

The following summary has been informed by the Volume 13 No. 19 Clearinghouse Update.

The Chair, Senator Whitmire, first called Deputy Director of the Center for Effective Justice at the Texas Public Policy Foundation, Derek Cohen, to testify.

Cohen stated that civil asset forfeiture in Texas targets minority and poor communities. He said that the process was intended to be a civil proceeding done in tandem with a criminal proceeding, and that in Texas, that civil standard is a preponderance of the evidence. Cohen noted that some other states require higher standards of evidence, and that the current Texas process encourages bad incentives.

As an example, Cohen pointed to a report completed by the Office of Court Administration on DPS initiated forfeitures which found the average financial benefit to a given agency per case to be \$15,000. Cohen testified that 50 percent of these proceeds are used by agencies to fund pay raises that go unapproved by

the county commissioners. He then stated that agencies' use of the federal equitable sharing program, where a state or local agency joins forces with a federal task force to assist in a forfeiture, is overly extensive. Cohen testified that agencies often use this process as a path of least resistance to complete a forfeiture because it allows local agencies to skirt any changes to state law. He did note that there are appropriate uses of this practice, but that law enforcement over-utilizes this program, which harms public safety by taking officers off the street and placing them in airports.

Cohen testified that requiring a criminal conviction as a prerequisite for the forfeiture would be the most impactful change to prevent abuse in civil asset forfeiture. He clarified that requiring this conviction would not prevent law enforcement from seizing property, it would only prevent the transfer of title to the state without a conviction. Cohen then mentioned other ways to disincentivize these forfeitures, such as removing financial incentives by directing forfeiture proceeds to the state general revenue fund instead of allowing the local agencies to retain the proceeds directly.

Senator Hinojosa stated that these expenditures, such as the raises mentioned by Cohen, should be the responsibility of the local officials, and that police departments should not be permitted to use forfeiture proceeds for these purposes. He stated that he supports raising the standard of proof to clear and convincing or requiring a conviction before assets are forfeited. The senator also pointed out that law enforcement and district attorneys push back each time the legislature attempts to reform the forfeiture process.

Cohen resumed, stating that, although the law requires the Office of the Attorney General to collect information on asset forfeiture proceedings, the information lacks crucial details and makes it impossible to determine how the proceeds are spent and how many of these cases are tied to a criminal conviction. The Chair responded that if the reporting requirements are too broad, the legislature should address it.

Cohen responded to Senator Hinojosa's statements concerning the burden of proof, stating without limits to the use of equitable sharing, changing the burden of proof can increase the use of federal joint task forces as it has in other states. He then reiterated that the simplest reform would be to require a criminal conviction as a prerequisite to forfeiture. The Chair inquired as to what amount of money collected from forfeitures would be reduced as a result of this reform. Cohen replied that a lack of reporting requirements makes this information impossible to obtain.

Senator Whitmire said that the senate is serious about fixing this issue, but that there will be large amounts of pushback if it does not discuss how to replace lost revenue. Senator Hinojosa noted that the ends do not justify the means, and the Chair responded that he believes that, although the process is being abused, the proceeds sometimes fund worthy purposes. Senator Hinojosa repeated that it should be the responsibility of the local elected officials to fund their own departments and that they should not be supplanting funding with forfeiture proceeds. He mentioned past abuses and the ways the legislature attempted to address those issues in the past.

The Chair then called Nicole Czajkoski, the assistant district attorney for Montgomery County, to testify.

Czajkoski said that many misconceptions exist about the practice of civil asset forfeiture, and that her testimony would include real-world examples of this process. She explained her first-hand experience, stating that she was the Chief of the White Collar Division in Montgomery County in 2011, which included the civil asset forfeiture division at the time.

Czajkoski elaborated on the practice of equitable sharing, saying that federal agencies often reach out to local authorities to request assistance. She clarified that, although the media has made this a hot issue, it does not report actual instances of abuse, and when there was abuse previously, the legislature immediately addressed it. She stated that, in spite of these reforms, the media continues to use the same examples of abuse without providing any more recent examples.

Senator Whitmire interjected that there are instances where an individual is found not guilty, yet still loses his property in the civil proceedings. He stated that a finding of not guilty should result in the termination of the civil proceeding to forfeit the property. Czajkoski disagreed, saying that she is unaware of any instances where this actually happened, stating there is a statutory presumption that if the criminal case finishes first without an acquittal, the property is not considered contraband. She said that only contraband or property intended to be used in the commission of specific felonies and misdemeanors can be forfeited.

Senator Hinojosa stated his experience with a very different process from what Czajkoski described, and that the committee has heard first-hand testimony to the contrary. Czajkoski replied that these are instances are misreported by the media and that rogue officers, not asset forfeiture as a process, pose the real problem. Senator Perry stated that these problems do not occur in his district, and that his district attorneys do not improperly keep assets. Senator Burton reiterated her concern with protecting people's personal property rights, and that she does not understand the pushback against her proposed legislation if no agencies are inappropriately using this process.

Czajkoski stated that safeguards against these abuses already exist, and that people are just hearing buzzwords that do not reflect reality. She offered to give a real example of asset forfeiture from her county. She stated that a person convicted three times for driving under the influence (DUI) will be arrested on the fourth offense and that the person's vehicle can be forfeited for public safety reasons. The Chair interjected that a person convicted a fourth time for DUI will be imprisoned, and that it does not make sense to punish the individual's family by taking away the family car when the guilty person already lost the ability to use it by going to prison. Czajkoski replied that it is for future deterrence when the individual gets out of prison.

Senator Whitmire echoed Senator Burton's previous question, asking why there is so much concern with her legislation if everything is already being done in a proper manner. Czajkoski expressed concern with the conviction requirement, giving examples of cartel money being transported by an individual possessing no knowledge of the money or its associations, and stated that prosecutors should not be forced to give money back to the cartel just because they could not prosecute a low-level mule. Senator Burton asked if adding an exception for abandoned property would address this concern, but Czajkoski replied that she did not understand how an abandoned property exception would operate in this situation.

Senator Hinojosa repeated that he feels local agencies should not be able to keep property seized from an individual without a conviction. He said that the real concerns are standards of evidence that are too low and innocent people losing their property without proof of criminal activity. Czajkoski said that she would be happy to look into any of the examples that Senator Hinojosa and Senator Burton can provide, but that she had not seen any instances of actual abuse. She stated that she would like to know of any actual wrongdoing, not just hypothetical situations. Senator Burton challenged this idea of hypothetical situations, saying that regardless, it is the government's job above all to protect people's property rights from potential abuse. Czajkoski replied that she, too, shares concern with that protection, however, she does not believe that district attorneys are keeping property from innocent owners.

In response, Senator Hinojosa referred to a 2012 article stating that a man in Montgomery County was acquitted of all charges, but still had his property forfeited. Czajkoski, the head of the asset forfeiture division at the time, responded that she had no knowledge of this case and reminded the committee that the news does not always properly report these stories.

Senator Whitmire asked Czajkoski whether she believes the process is broken. Czajkoski replied that she does not think that it is perfect, but that prosecutors are self-policing and that safeguards are already in place to protect against these abuses.

Senator Whitmire asked how Montgomery County uses the proceeds from forfeitures. Czajkoski replied that it can be used for many things, such as the purchase of body cameras. Senator Whitmire inquired why the district attorney's office is purchasing body cameras instead of the police departments, stating that forfeited money is being used to pay for things that should be provided by another agency. He stated that abuse can ensue whenever agencies are incentivized to take money to pay for items that are not being paid for by their local agencies or governments. As an example, he pointed to the emphasis on seizing money going south, as opposed to seizing the drugs coming north, from the border. Senator Whitmire stated that innocent people may be losing their property because of agencies' emphasis on forfeiture to pay for unfunded, but good, programs like body cameras and training. To the senator's question, Czajkoski replied that she believes it is as much the responsibility of the district attorney's office to protect the public as the legislature's.

Senator Whitmire asked how proceeds are divvied up when an agency participates in the federal equitable sharing program. Czajkoski replied that the federal government decides how to divide the proceeds. Senator Perry asked if we run the risk of losing more control of asset forfeiture to the federal government if we move forward with certain reforms. Czajkoski responded that the federal government does not have the same standard of evidence and that the burden lies with the property owner, unlike Texas law. Senator Hinojosa interjected that the burden of proof lies with the property owner in Texas as well. Czajkoski disagreed, and Senator Hinojosa repeated his previous statement.

The Chair then called Sergeant Jim Smith with the San Antonio Police Department (SAPD) to testify.

Smith testified that most agencies in Texas err on the side of protecting the innocent property owner, and that SAPD only files for forfeiture in one-quarter of the cases presented. He stated that the current asset

forfeiture process works properly and that suspects receive better due process under Texas laws than under federal law.

The Chair then called Sheriff A.J. Louderback from Jackson County to testify.

Sheriff Louderback stated he was testifying on behalf of the Sheriffs' Association of Texas that asset forfeiture is one of the most effective crime-fighting tools available to law enforcement. He said that the second-most-used highway for drug and human trafficking runs through his county, and that sheriffs rely heavily on forfeiture to fight these issues. He also stated that sheriffs rely on their district attorneys, many of which have set even higher standards for asset forfeiture than necessitated by law, and that property is returned frequently. Louderback testified that the sheriffs do not want any reforms that would weaken their ability to fight crime, but that they are always open to work with Senator Burton and her office to find ways to address her concerns without impeding law enforcement's ability to protect the public. Senator Burton responded that her office was open to them as well.

Senator Whitmire called Steven Jumes to testify.

Jumes stated that he is currently an attorney in private practice but was formerly a United States Attorney who specialized in asset forfeiture. Jumes stated that his concern with any institution that relies on the honor of one side, and that without typical safeguards for property owners, such as the appointment of an attorney or an in lieu probable cause hearing, the average individual does not have the capacity to fight the forfeiture of their property. Jumes gave the example of a spouse whose husband sold ten grams of drugs, potentially worth \$500 on the street, who has the family car forfeited as a result. Jumes stated that the process to retrieve this property is so costly that the only financially reasonable thing to do in many cases is to negotiate with the government to try and buy the property back all for amounts of drugs that would come nowhere near the value of a car. He testified that asserting the innocent ownership defense costs significant attorney time and the loss of property. Jumes said that the state must only prove its case by a preponderance of the evidence, which is circumstantial evidence at best, causing serious concern that hyper suspicion, not actual evidence, drives the system.

Jumes clarified that he does not believe district attorneys actively look for ways to deprive innocent people of their property, but the economic reality is that his clients cannot afford to battle these cases. He stated that the fact that 85% of cases result in default judgments is not only because some of these people are criminals, but also because innocent people are financially and intellectually priced out of the system. He said that there must be some level of proof that an active criminal prosecution associated with the forfeiture case is ongoing, and that there must be an intermediate probable cause hearing to combat these issues.

The Chair called Kathy Mitchell with the Texas Criminal Justice Coalition to testify.

Mitchell testified that TCJC conducted a case study which addressed many of the issues previously discussed in this hearing. She said that the study included 151 forfeiture cases in Travis County, six of which accounted for 48 percent of the total cash seized. Mitchell stated that 22 percent of these cases involved cash or property worth less than \$2,000. She stated that it is not true that these forfeiture cases

are part of large-scale narcotics investigations, and that some of the cases examined in her study resulted from traffic stops. She then told the story of one such individual, in which the district attorney tried to bring criminal charges but failed, and the grand jury "no billed" the case. The process took almost a full year, and the individual got his money back at the end of the process.

Mitchell stated that this study convinced TCJC that innocent people are wrongfully losing their property and cash, and that even if it is eventually returned, the process often costs the individual more money to fight the forfeiture than the value of the original property. She stated that is the practice of law enforcement to pull someone over and, if they have cash and a nexus of circumstance, to seize this cash. Mitchell also testified that it is difficult to tell how many of these cases are tied to criminal convictions because if the individual gets an attorney, these cases are often settled long before anyone discovers whether the individual is guilty of a crime.

Senator Whitmire called Adrian Moore to testify.

Moore stated, in response to an earlier question by the chair regarding how to use forfeited money, that the state should use this money to invest in school-based crime and delinquency prevention programs because there is currently no government funding for these issues.

Conclusion and Recommendations

Evidence suggests that, while asset forfeiture provides a vital tool upon which law enforcement agencies rely to combat criminal activity through deprivation of contraband and the proceeds of illegal activity, abuse of asset forfeiture can easily ensue if local governments fail to provide appropriate funds to law enforcement agencies, forcing these agencies to rely on forfeiture proceeds to supplement budgetary needs.

When abuse of forfeiture does occur, the average individual cannot readily defend their property in court; attorney costs, low evidentiary standards, and the difficulty of asserting the innocent owner defense together place an undue burden on individuals attempting to defend their property.

The taking of private property demands the utmost scrutiny. Divorced from all financial incentives, agencies possess a duty to provide a direct tie to criminal activity for each occurrence of forfeiture, requiring an accompanying increase in evidentiary standard to 'clear and convincing' from "preponderance of the evidence" a standard reserved for civil matters. While most agencies properly execute forfeitures, with many holding themselves to higher standards than current state law requires, there exists no current mechanism for distinguishing success from abuse, due to a lack of specified reporting.

It is the opinion of the committee that the aforementioned problems with the current forfeiture system merit a reexamination of the Chapter 59, and that it be modified to better protect innocent property owners and provide individuals with a viable opportunity to fight for the return of their property. Although such changes come with concern as to their financial impacts on law enforcement agencies, the current lack of specified reporting requirement prevents the creation of a reliable estimate of the potential impact.

Moreover, it is, and has always been, the intention of the legislature that local governments not rely on forfeiture proceeds to supplant designated funds for law enforcement agencies.

The issuance of justice and protection of property rights must always be the primary focus of this legislative body, and reforms should be made to prevent every possible abuse. The committee recommends the following changes:

8. Require that criminal charges be filed against the defendant in all forfeiture cases for the offense in which the property seized is alleged to be an instrument of the crime or the criminal proceeds; provide exceptions for situations in which the state could not reasonably be expected to file charges against an individual, such as situations in which the person has fled, abandoned the property, is deceased, etc.
9. Require the immediate return of property upon a not guilty verdict or the dismissal of all related criminal charges.
10. Strengthen the innocent owner defense by placing the burden of proof on the state instead of the owner to prove that the owner had actual knowledge of the criminal activity in which their property was involved.
11. Raise the required standard of proof to clear and convincing evidence.
12. Require that, in all instances where a property owner is found indigent in the related criminal case, the appointed council also assist the individual in the forfeiture proceedings.
13. Limit the allowed use of the Department of Justice's equitable sharing program to property that is worth an established amount or more in cash.
14. Improve reporting requirements to include the final disposition of forfeited property and whether the owner was ever charged with or convicted of a crime related to the forfeiture; enhance the Office of the Attorney General's power to enforce reporting requirements and establish penalties for all late or faulty reports.

Interim Charge Eight

Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following:

1. Decriminalization of school truancy and the response of school districts to take steps to address truancy before referring students to court;
2. Progress and success of the Governor's Office grant program for law enforcement body cameras;
3. Changes made to the operation of the Civil Commitment program in Texas;
4. Administration of Veterans Treatment Court Programs; and
5. Progress made by the Texas Juvenile Justice Department to plan for regionalization of the youth population, create specialized programs, and implement established sentencing schemes.

Decriminalization of Truancy

HB 2398 was passed during the 84th Legislative session. HB 2398 decriminalized truancy and required that school districts develop and implement truancy prevention and intervention measures to address truancy. This bill also directed courts to handle the issue in a civil manner rather than a criminal one.

The First Year

The Committee has monitored the implementation and progress of this legislation, though because there was very little time for courts and school districts to prepare a more in depth review should be done during the 2017-2018 interim. One reason for a delayed in depth review is HB 2398 required that the Texas Education Agency (TEA) adopt rules to create minimum standards for truancy prevention measures, establish a set of best practices, and provide for sanctions for a school district found to be not in compliance with the statute. At the time this report was written the rules were in the public comment phase of being approved. The proposed rules and sanction are include below.

Commissioner's Rules

Proposed New 19 TAC Chapter 129, Student Attendance, Subchapter BB, Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions

SUMMARY· The rule action presented in this item will be filed as proposed with the *Texas Register* under the commissioner's rulemaking authority. This item proposes new 19 TAC Chapter 129, Student Attendance, Subchapter BB, Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions. The proposed new rules would outline minimum standards, best practices, and sanctions related to truancy prevention measures in accordance with Texas Education Code (TEC), §25.0915, as amended by House Bill (HB) 2398, 84th Texas Legislature, 2015.

STATUTORY AUTHORITY· TEC, §25.0915, as amended by HB 2398, 84th Texas Legislature, 2015.

TEC, §25.0915, requires school districts to adopt truancy prevention measures to address student conduct related to truancy. TEC, §25.0915(f), requires the commissioner of education to adopt rules to create minimum standards for truancy prevention measures adopted by school districts and establish a set of best practices for truancy prevention measures. TEC, §25.0915(g), requires the commissioner to adopt rules to provide for sanctions for a district found to be not in compliance with truancy prevention measures.

EARLIEST POSSIBLE DATE OF ADOPTION: October 17, 2016.

PROPOSED EFFECTIVE DATE: November 27, 2016.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 2398, 84th Texas Legislature, 2015, amended the TEC, §25.0915, requiring school districts to adopt truancy prevention measures designed to address student conduct related to truancy in the school setting and minimize the need for referrals to truancy court.

Beginning with the 2015-2016 school year, the TEC, §25.0915, requires that if a student fails to attend school without excuse on three or more days or parts of days within a four-week period, the school district must initiate truancy prevention measures. In addition, schools are required to employ a truancy prevention facilitator or juvenile case manager or designate an existing district employee or juvenile case manager to implement the truancy prevention measures.

Finally, the TEC, §25.0915, requires that the Texas Education Agency (TEA) adopt rules to create minimum standards for truancy prevention measures, establish a set of best practices, and provide for sanctions for a school district found to be not in compliance with the statute.

Proposed new 19 TAC Chapter 129, Subchapter BB, would reflect the requirements in the TEC, §25.0915, as follows.

Section 129.1041, Definitions, would specify that, for the purposes of the subchapter, the definition of a school district includes an open-enrollment charter school. Although TEC, §25.0915, does not specifically reference charter schools, the entire statutory scheme of compulsory attendance enforcement is applicable to charter schools since they have their own attendance officers pursuant to either TEC, §25.088 or §25.090. All attendance officers are required under TEC, §25.091, to implement truancy prevention measures under TEC, §25.0915.

Section 129.1043, Minimum Standards, would identify the minimum standards for a district's truancy prevention measures.

Section 129.1045, Best Practices, would outline the TEA's suggested best practices for truancy prevention measures.

Section 129.1047, Sanctions, would specify which sanctions the commissioner could impose for districts found to be not in compliance with TEC, §25.0915, and proposed new Chapter 129, Subchapter BB.

FISCAL IMPACT: The TEA has determined that there are no additional costs to persons required to comply with the proposed new rules. No fiscal impact to state or local government is anticipated beyond what the statute requires.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC AND STUDENT BENEFIT: The proposed new rules would benefit the public and students by minimizing the need for referrals to truancy court and addressing student conduct related to truancy in the school setting.

PROCEDURAL AND REPORTING IMPLICATIONS: The proposed new rules would have no procedural or reporting implications.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed new rules would have no locally maintained paperwork requirements.

PUBLIC COMMENTS: The public comment period on the proposal begins September 16, 2016, and ends October 17, 2016.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 16, 2016.

Staff Members Responsible: A.J. Crabill, Deputy Commissioner
Governance

Candace Stoltz, Director
School Safety, Discipline and Emergency Management

Attachments: I. Statutory Citation
II. Text of Proposed New 19 TAC Chapter 129, Student Attendance, Subchapter BB,
Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions

ATTACHMENT II
Text of Proposed New 19 TAC

Chapter 129. Student Attendance

Subchapter BB. Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions

§129.1041. Definitions.

For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

§129.1043. Minimum Standards.

The minimum standards for the truancy prevention measure(s) implemented by a school district under Texas Education Code, §25.0915, include:

- (1) identifying the root cause of the student's unexcused absences and actions to address each cause;
- (2) maintaining ongoing communication with students and parents on the actions to be taken to improve attendance; and
- (3) establishing reasonable timelines for completion of the truancy prevention measure.

§129.1045. Best Practices.

(a) A school district shall consider the following best practices for truancy prevention measures:

- (1) develop an attendance policy that clearly outlines requirements related to truancy in accordance with Texas Education Code (TEC), Chapter 25, Subchapter C, and communicate this information to parents at the beginning of the school year;
- (2) create a culture of attendance that includes training staff to talk meaningfully with students and parents about the attendance policy and the root causes of unexcused absences;
- (3) create incentives for perfect attendance and improved attendance;
- (4) educate families on the positive impact of school attendance on performance;
- (5) provide opportunities for students and parents to address causes of absence and/or truancy with district staff and link families to relevant community programs and support;
- (6) develop collaborative partnerships between appropriate school staff, program-related liaisons, and external partners such as law enforcement, court representatives, and community organizations to assist students;
- (7) determine root causes of unexcused absences and review campus- and district-level data on unexcused absences to identify systemic issues that affect attendance; and
- (8) use existing school programs such as Communities In Schools, 21st Century Community Learning Centers, Restorative Discipline, and Positive Behavior Interventions and Supports (PBIS) to provide students and their parents with services.

(b) In determining services offered to students identified in TEC, §25.0915(a-3), a school district shall consider:

- (1) offering evening and online alternatives; and
- (2) working with businesses that employ students to help students coordinate job and school responsibilities.

§129.1047. Sanctions.

The commissioner of education may impose any sanction otherwise authorized under Texas Education Code (TEC), Chapter 39, and Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions) against a school district that is found to be not in compliance with TEC, §25.0915, or this subchapter.

The Committee did receive two Truancy Committee reports one from the Harris County Truancy Committee that outlined some technical concerns, and one from Fort Bend County Wide truancy Committee. The conclusion from the Fort Bend County report is included below. The full report may be found at,

http://agendalink.co.fort-bend.tx.us:8085/docs/2016/CCTR/20160322_2802/21558_Report%20of%20The%20County%20Wide%20Truancy%20Committee.pdf

The Harris County report is also included below.

Fort Bend County: County Wide Truancy Committee Report**CONCLUSION**

The Committee believes that at the school level, effective truancy reduction programs should involve personal interaction between school administrators, students and parents (i.e. parent and student conferences, behavior plans and home visits), be comprehensive in nature (addressing all four categories of truancy related risk factors, family, school, economic and student) and combine meaningful sanctions for truancy with meaningful incentives for attendance. The committee believes any indicators of chronic absenteeism in elementary school students should be addressed at the earliest opportunity to ensure the parents understand the attendance policies and the importance of regular attendance. The Committee further believes that habitual and chronic truancy issues can best be addressed by creating broad-based multidisciplinary partnerships between the agencies and organizations whose involvement impact truancy directly (i.e. schools, truancy courts, and law enforcement agencies).

The Committee members believe that the changes made in the truancy law as a result of the enactment of HB 2398, while well intended, fail to:

1. Provide a meaningful remedy to the Court to compel the appearance of students who ignore a court's summons to appear;
2. Provide meaningful sanctions for habitual and/or chronic truants who are found to have engaged in truant conduct and who fail to comply with the Truancy Court's

remedial order (i.e. sanctions for contempt of court limited to \$100 fine or referral to Department of Public Safety); and

3. Provide the Court with little flexibility to fashion a remedial order to the individual's needs and/or issues (i.e. Court is limited to those remedies specified in the statute rather than those to which the Court believes may be in the best interest of the child).

The Harris County Uniform Truancy Policy Committee Report

BACKGROUND

H.B. 2398 (84th Legislature) brought sweeping, and arguably much needed, reform to Texas truancy laws.

Prior to September 1, 2015, Texas was one of only two states to criminalize truancy. H.B. 2398 repealed the criminal offense of *failure to attend school*, removed these cases from the criminal justice system, and created a new truancy court to address truant conduct. All municipal and justice courts are deemed truancy courts under the new laws, resulting in a multitude of truancy courts in Harris County alone.

Under this reform, more effort in employing truancy prevention measures is required of schools prior to referring a child to truancy court as a last resort. Truancy courts are governed by Title 3A of the Family Code — which draws upon elements of criminal (Chapter 45 of the Code of Criminal Procedure), civil (Rules of Practice in Justice Courts), and juvenile (Title 3 of the Family Code) law, but creates a “simple” civil judicial procedure through which children are held accountable for excessive school absences. Toward the truancy court’s stated purpose to “encourage school attendance. the best interest of the child is the primary consideration in adjudicating truant conduct of the child.” TEX. FAM. CODE § 65.001.

Harris County area school districts and administrators are working to implement new and effective truancy prevention measures on their end. Harris County Protective Services and the TRIAD Prevention Program Justice Court Services Team are working to assist the schools in providing options for community programs and services that address the underlying causes of truant behavior. The Justice Court Liaisons collaborate with the schools, community organizations, and justice courts to provide intervention and assistance to families and children appearing before the truancy courts. But truant conduct is still a problem and concern. The justice and municipal courts in Harris County are working to implement the new procedures enacted under H.B. 2398, but are faced with lingering issues that hinder the court’s ability to fully effectuate the Legislature’s intent. Two issues — getting the child to court and getting the child to comply with the remedial order — could be addressed by the 85th Legislature with minimal

statutory amendments. The following proposed amendments will assist the courts in performing their role as the last resort effort to help correct truant conduct behavior and work with children to get them back into school, to graduate, and achieve their potential.

PURPOSE

One of the two biggest issues facing the courts under Title 3A is how to get the child and parent into court

so that the court can effectively and efficiently proceed to an adjudication hearing and enter a finding that the child either did or did not engage in truant conduct, and if appropriate, to enter a remedial order to attempt to correct the child's truant conduct. No finding can be entered without a hearing, and no hearing can be held without the child and, generally, the parent.

Under Title 3A, a summons from truancy court must be served on the child and the parent, by any suitable person under the direction of the court, either (1) personally or (2) by registered or certified mail. TEX. FAM. CODE § 65.058(a). If the child and parent do not answer the door, are not home during hours that officers would be available for service of process, or do not go to the post office to sign for the green card for a certified letter, service cannot be effectuated. Without service, the court's hands are tied, and the attempt by the school to use the court as a last resort is futile.

Under criminal law, a summons may be served by a peace officer by (1) delivering a copy to the defendant personally, (2) leaving a copy of the summons at the defendant's residence with some person of suitable age and discretion residing therein, or (3) mailing it to the defendant's last known address. TEX. CODE

CRIM. PRO. arts. 15.03(b), 23.03(c), 23.04.

Under civil law, a citation (essentially the counterpart to a summons) may be served by a peace officer, a certified process server, the court clerk by registered or certified mail, or any person at least 18 years of age and not a party to or interested in the outcome of the suit, and may be served by (1) delivering a copy to the defendant personally or (2) mailing a copy to the defendant by registered or certified mail. TEX. R. CIV. PRO. 501.2(a)-(b). Civil law also provides for alternative service of a citation if the above methods are insufficient to serve the defendant. Under alternative service, the plaintiff or the person attempting service may file a sworn statement with the court describing the methods attempted and stating the defendant's usual place of residence or other place where the defendant can probably be found. The court may then authorize alternative service by either (1) leaving a copy of the citation with a person at least 16 years of age who is found at the specified address and mailing a copy by first class mail to that same address, or (2) mailing a copy by first class mail to the defendant at the specified address and

serving the citation by any other method the court finds is reasonably likely to provide the defendant with notice of the suit. TEX. R. CIV. PRO. 501.2(e).

The proposed amendment to Section 65.058 would allow for the use of alternative service under Texas Rule of Civil Procedure 501.2(e) to be in line with what is allowed under both civil and criminal law, the goal being to get parties served quickly and efficiently to minimize the time the child is missing school and risking credit.

SECTION 1. Section 65.058, Family Code, is amended to read as follows:

Sec. 65.058. SERVICE OF SUMMONS. (a) If a person to be served with a summons is in this state and can be found, the summons shall be served on the person personally or by registered or certified mail, return receipt requested, at least five days before the date of the adjudication hearing.

9. Service of the summons may be made by any suitable person under the direction of the court.

10. If the methods under Subsection (a) are insufficient to serve a party, alternate service may be requested pursuant to Rule 501.2(e), Texas Rules of Civil Procedure.

The summons itself may include an order directing the person having the physical custody or control of the child to bring the child to the hearing. TEX. FAM. CODE § 65.057(c). However, absent the issuance of a writ of attachment for violating such an order, there is no penalty for ignoring an order to bring the child to the hearing. TEX. FAM. CODE § 65.254. A writ of attachment, which is a writ directing a peace officer to take

the body of the person attached and bring him before the court at a stated date and time, is not practical in a county the size of Harris.

As the intent with H.B. 2398 was to decriminalize truancy and reduce the exposure of Texas children to the criminal justice system, all agree there should be no criminal consequence on the child for truant conduct. However, once served with a summons, the parent or person having custody or control of the child is under a court order to bring the child to the adjudication hearing. Ignoring the court order should carry consequences. In criminal law, a parent's failure to appear at a court proceeding pursuant to a summons is a Class C misdemeanor TEX. CODE CRIM. PRO. art. 45.057(g). The proposed amendment to Section 65.057 would make this same offense applicable to a person's violation of an order to bring a child to the adjudication hearing in truancy court.

Section 65.057, Family Code, is amended to read as follows:

Sec. 65.057. SUMMONS. (a) After setting the date and time of an adjudication hearing, the truancy court shall direct the issuance of a summons to:

2. the child named in the petition;
 3. the child's parent, guardian, or custodian;
 4. the child's guardian ad litem, if any; and
 5. any other person who appears to the court to be a proper or necessary party to the proceeding.
- The summons must require the persons served to appear before the court at the place, date, and time of the adjudication hearing to answer the allegations of the petition. A copy of the petition must accompany the summons. If a person, other than the child, required to appear under this section fails to attend a hearing, the truancy court may proceed with the hearing.
 - The truancy court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. Failure to comply with such an order is an offense under Article 45.057(g), Code of Criminal Procedure.
 - A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Assuming the child and parent can be and have been served, the case proceeds to an adjudication hearing. Children in truancy court have the right to a jury trial. TEX. FAM. CODE § 65.007.

Although it is a waivable right, a child's rights in truancy court can only be waived if done in writing signed by both the child and the child's parent or guardian. TEX. FAM. CODE § 65.008.

While both the child and the child's parent or guardian are required to attend the adjudication hearing, there are some exceptions in which a court can proceed with the hearing with only the child being present. TEX. FAM. CODE § 65.062, 65.057(b). If this were to happen, the child would be unable to waive any right, including their right to a jury trial. This potentially would force a child to have a jury trial even when the child wishes to enter a plea of true and proceed to a remedial order

Truancy courts have the authority to appoint a guardian ad litem or an attorney for the child. TEX. FAM. CODE §§ 65.059, 65.061. Therefore, if a child who is represented by an attorney or guardian ad litem wishes to waive a right, including the right to a jury trial, that should be allowed without requiring the parent's signature if the parent or guardian is not present. The proposed amendment to Section 65.008 would require the parent or guardian to sign any waiver only if they are present and a guardian ad litem to sign if one is appointed.

Section 65.008, Family Code, is amended to read as follows:

Sec. 65.008. WAIVER OF RIGHTS. A right granted to a child by this chapter or by the constitution or laws of this state or the United States is waived in proceedings under this chapter if:

- the right is one that may be waived;
- the child and the child's parent or guardian are informed of the right, understand the right, understand the possible consequences of waiving the right, and understand that waiver of the right is not required;
- the child signs the waiver;

(4) the child's parent or guardian, if present, signs

the waiver; and

(5) the child's attorney or guardian ad litem signs the

waiver, if the child is represented by counsel or a guardian ad

litem has been appointed.

The actual adjudication hearing may not be recorded if the court is not a court of record. Proceedings in a truancy court that is a court of record must be recorded. TEX. FAM. CODE § 65.016. Some municipal courts, including the City of Houston, are courts of record, and are required to record all court proceedings. This is an expense, but is necessary for the appellate process as appeals from courts of record are based on the record from the previous trial. However, appeals from truancy court — and similarly appeals from courts of non-record (including all justice courts) — are de novo review at the appellate level, meaning a new trial as if the previous trial never occurred. TEX. FAM. CODE § 65.151(b). This de novo review makes any recording of the proceedings in a municipal court of record unnecessary. The proposed amendment to Section 65.016 would make the recording of truancy court proceedings in a municipal court of record discretionary as opposed to mandatory.

Section 65.016, Family Code, is amended to read as follows:

Sec. 65.016. RECORDING OF PROCEEDINGS. (a) The proceedings in a truancy court that is not a court of record may not be recorded.

(b) The proceedings in a truancy court that is a court of record must may be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.

The second main issue facing the truancy courts is the court's inability to effectively enforce a remedial order. Although truancy courts retain contempt power, it is limited to a fine (not effective or ideal) and a driver's license suspension (already provided for as a condition of the remedial order). Historically, the mere possibility of being referred to juvenile court has encouraged children to comply with a municipal or justice court's orders. Under criminal law, a child who fails to comply with a municipal or justice court's order can be held in contempt. As a consequence, the court could impose a fine and/or suspend the child's driver's license or privilege to drive. Alternatively, the court could refer the contempt matter to the juvenile court as delinquent conduct. TEX. CRIM. PRO. CODE art. 45.050. Under Title 3A, a child must have engaged in contemptuous behavior at least twice before the child can be referred up to juvenile court for contempt of a truancy court order TEX. FAM. CODE § 65.251(b). As notice must be sent prior to holding a child in contempt, it is imperative that the courts are appraised of the child's current address.

Under criminal law, a child and the child's parent have an obligation to provide the court in writing with the current address and residence of the child until the case is finally disposed. A violation to do so is a Class C misdemeanor TEX. CRIM. PRO. CODE art. 45.057(h). Without going so far as to criminalize the violation of the obligation to ensure the court has the child's current address, the proposed amendment to Section 65.103 would make this obligation a condition of any remedial order entered by the truancy court against the child.

Section 65.103, Family Code, is amended to read as follows:

Sec. 65.103. REMEDIAL ORDER. (a) A truancy court may enter a remedial order requiring a child who has been found to have engaged in truant conduct to:

- (1) attend school without unexcused absences;
- (2) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is unlikely to do well in a formal classroom environment due to the individual's age;
- (3) if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code, if that is in the best interest of the child;
- (4) attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:
 - (A) an alcohol and drug abuse program;
 - (B) a rehabilitation program;

- (C) a counseling program, including a self- improvement program;
 - (D) a program that provides training in self- esteem and leadership;
 - (E) a work and job skills training program;
 - (F) a program that provides training in parenting, including parental responsibility;
 - (G) a program that provides training in manners;
 - (H) a program that provides training in violence avoidance;
 - (I) a program that provides sensitivity training;
and
 - (J) a program that provides training in advocacy
and mentoring;
- (5) complete not more than 50 hours of community service on a project acceptable to the court;
and
- (6) participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends; and
- (7) notify the court in writing of any change in address
or residence of the child or parent on or before the seventh day
after the child or parent changes residence.
- (b) A truancy court may not order a child who has been found to have engaged in truant conduct to:
- (1) attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or
 - (2) perform more than 16 hours of community service per week under this section.
- (c) In addition to any other order authorized by this section, a truancy court may order the Department of Public Safety to suspend the driver's license or permit of a child who has been found to have engaged in truant conduct. If the child does not have a driver's license or permit, the court may order the Department of Public Safety to deny the issuance of a license or permit to the child. The period of the license or permit suspension or the order that the issuance of a

license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Section 65.104.

Any party — the child, the child’s parent or guardian, or the prosecutor — can appeal a finding of truant conduct from a truancy court to the juvenile court. TEX. FAM. CODE § 65.151(a)-(b). Juvenile courts generally have jurisdiction over cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a child. TEX. FAM. CODE § 51.04. Child is defined as a person who is at least 10 years of age and under 17 years of age. TEX. FAM. CODE § 51.01(2). A person may object to the jurisdiction of the court based on the person’s age. TEX. FAM. CODE § 51.042. Because an appeal from truancy court vacates the truancy court’s finding, if a person 17 or older were to appeal from truancy court and object to the juvenile court’s jurisdiction based on age, the entire proceeding at the truancy court level would be for nothing. TEX. FAM. CODE §§ 61.151(b), 65.153(c). This loophole can be closed by simply extending the juvenile court’s grant of jurisdiction in Title 3 that governs juvenile courts, instead of simply relying on Title 3A that governs truancy courts.

Chapter 51, Family Code, is amended by adding Section 51.0411 to read as follows:

Sec. 51.0411. JURISDICTION OVER APPEAL FROM TRUANCY COURT.

The court has and retains jurisdiction over an appeal from a truancy court under Subchapter D, Title 3A, without regard to the age of the appellant at the time of the truant conduct or the appeal.

Prior to the creation of truancy courts, justice and municipal courts maintained criminal, civil, and/or administrative records. The retention of these types of records was governed by the State Library and Archives Commission Schedule LC and local plans. Schedule LC does not expressly apply to truancy court records, and none of the records categories in Schedule LC adequately describe truancy court records.

Truancy courts are unclear as to how long records of the truancy court must be kept. While the statutes provide for destruction of records pertaining to referrals for which no petition is filed by the prosecutor, and for the sealing and subsequent destruction of records for cases in which a finding of truant conduct was entered and the child complied with the remedial order, there is no statewide guidance on how long to retain records that do not fall into one of these two specific categories. For example: how long must the court retain records relating to cases that are nonsuited by the State? That are dismissed upon a finding of mental illness? That are dismissed with prejudice following a finding that the child did not engage in truant conduct? That relate to

cases in which there was a finding of truant conduct but the child either did not apply for the records to be sealed or did not comply with the remedial order and therefore did not qualify for the records to be sealed?

Local jurisdictions are expected to submit their own records retention schedules, which Harris County has done, to address truancy court records. Ideally, however, there would be statewide uniformity, and in such, retention requirements would not overburden courts with limited storage space given the lack of utility in maintaining these case files after the case is disposed, resolved, or aged.

The proposed amendment to Section 65.201 simply clarifies the time at which the court may destroy records that have been sealed to be upon the child's 21st birthday and removes any requirement that the court ascertain whether the child has been convicted of a felony. An adjudication of having engaged in truant conduct is not a conviction of crime, does not impose any civil disability, and may not be used in any subsequent court proceedings. TEX. FAM. CODE § 65.009. Therefore, there is no utility in retaining these records past the age of 21.

Section 65.201, Family Code, is amended to read as follows:

Sec. 65.201. SEALING OF RECORDS. (a) A child who has been found to have engaged in truant conduct may apply, on or after the child's 18th birthday, to the truancy court that made the finding to seal the records relating to the allegation and finding of truant conduct held by:

- (1) the court;
- (2) the truant conduct prosecutor; and

(3) the school district.

(b) The application must include the following information or an explanation of why one or more of the following is not included:

- (1) the child's:
 - (A) full name;
 - (B) sex;
 - (C) race or ethnicity;
 - (D) date of birth;
 - (E) driver's license or identification card

number; and

(F) social security number;

- (2) the dates on which the truant conduct was alleged to have occurred; and
- (3) if known, the cause number assigned to the petition and the court and county in which the petition was filed.
- (c) The truancy court shall order that the records be sealed after determining the child complied with the remedies ordered by the court in the case.
- (d) All index references to the records of the truancy court that are ordered sealed shall be deleted not later than the 30th day after the date of the sealing order
- (e) A truancy court, clerk of the court, truant conduct prosecutor, or school district shall reply to a request for information concerning a child's sealed truant conduct case that no record exists with respect to the child.
- (f) Inspection of the sealed records may be permitted by an order of the truancy court on the petition of the person who is the subject of the records and only by those persons named in the order
- (g) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this chapter Any statement that the person has never been found to have engaged in truant conduct may not be held against the person in any criminal or civil proceeding.
- (h) On or after the fifth anniversary of a child's 16th 21st birthday, on the motion of the child or on the truancy court's own motion, the truancy court may shall order the destruction of the child's records that have been sealed under this section if the child has not been convicted of a felony.

The proposed amendment to Section 65.203 simply builds in retention periods for those categories of truancy court records for which no retention period exists. For comparison sake, juvenile court records are destroyed at age 18, 21, or 31 depending on if the most serious

allegation was conduct indicating a need for supervision, delinquent conduct of a misdemeanor offense grade, or delinquent conduct of a felony offense grade, respectively. As truant conduct is not criminal conduct, arguably records relating to truant conduct could be destroyed earlier than juvenile court records.

Section 65.203, Family Code, is amended to read as follows:

Sec. 65.203. DESTRUCTION OF CERTAIN RECORDS. (a) A truancy

court shall immediately order the destruction of records relating

to allegations of truant conduct that are held by the court or by the prosecutor if a prosecutor decides not to file a petition for an adjudication of truant conduct after a review of the referral under Section 65.053.

(b) A truancy court shall order the destruction of records

relating to allegations of truant conduct that are held by the

court or by the prosecutor for cases in which the court dismisses

a petition upon motion of the prosecutor, upon a finding that the

child did not engage in truant conduct, or for other lawful cause,

one year from the date of dismissal.

(c) A truancy court shall order the destruction of records

relating to allegations of truant conduct that are held by the

court or by the prosecutor for cases in which a child was found to

have engaged in truant conduct but did not apply or qualify for

the records to be sealed under Section 65.201 on or after the

child's 21st birthday.

The following three proposed amendments simply aim to clean up statutory law to facilitate the truancy reform enacted in H.B. 2398.

A truancy court shall dismiss a petition filed by a truancy prosecutor if the school district's referral does not contain required certifications regarding the application of truancy prevention measures and the student's eligibility for special education services, does not *satisfy* the elements required for truancy, is not timely filed, or is otherwise substantively defective. TEX. EDUC.

CODE § 25.0915(c). The use of the term “satisfy” is problematic because it implies that the court must examine the sufficiency of the evidence. The better term would be “allege” as that can be ascertained by a cursory review of the petition to be sure it contains some allegation of each of the elements required for truant conduct (i.e., 10 or more, unexcused, absences, in a six-month period, in the same school year). The proposed amendment to Section 25.0915

will make the language governing the court’s duty to dismiss a truant conduct petition parrot the language governing the court’s duty to dismiss a parent contributing to nonattendance complaint found in Section 25.0951(c) of the Education Code.

Section 25.0915, Education Code, is amended to read as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES. (a) A school

district shall adopt truancy prevention measures designed to:

- (1) address student conduct related to truancy in the school setting before the student engages in conduct described by Section 65.003(a), Family Code; and
- (2) minimize the need for referrals to truancy court for conduct described by Section 65.003(a), Family Code.

(a-1) As a truancy prevention measure under Subsection (a), a school district shall take one or more of the following actions:

(1) impose:

- (A) a behavior improvement plan on the student that must be signed by an employee of the school, that the school district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes:
 - (i) a specific description of the behavior that is required or prohibited for the student;
 - (ii) the period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or
 - (iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a truancy court; or

(B) school-based community service; or

(2) refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student’s truancy.

(a-2) A referral made under Subsection (a-1)(2) may include participation by the child's parent or guardian if necessary.

(a-3) A school district shall offer additional counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of:

- (1) pregnancy;
- (2) being in the state foster program;
- (3) homelessness; or
- (4) being the principal income earner for the student's

family.

(a-4) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Section 25.0951(a), the school district shall initiate truancy prevention measures under this section on the student.

- (b) Each referral to truancy court for conduct described by Section 65.003(a), Family Code, must:
- (1) be accompanied by a statement from the student's school certifying that:
 - (A) the school applied the truancy prevention measures adopted under Subsection (a) or (a-4) to the student; and
 - (B) the truancy prevention measures failed to meaningfully address the student's school attendance; and
 - (2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.
- (c) A truancy court shall dismiss a petition filed by a truant conduct prosecutor under Section 65.054, Family Code, if the court determines that the school district's referral:
- (1) does not comply with Subsection (b);
 - (2) does not satisfy allege the elements required for truant conduct;
 - (3) is not timely filed, unless the school district delayed the referral under Section 25.0951(d); or
 - (4) is otherwise substantively defective.

(d) Except as provided by Subsection (e), a school district shall employ a truancy prevention facilitator or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures

as determined by the school district or campus. At least annually, the truancy prevention facilitator shall meet to discuss effective truancy prevention measures with a case manager or other individual designated by a truancy court to provide services to students of the school district in truancy cases.

(e) Instead of employing a truancy prevention facilitator, a school district may designate an existing district employee or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures as determined by the school district or campus.

(f) The agency shall adopt rules:

1. creating minimum standards for truancy prevention measures adopted by a school district under this section; and
2. establishing a set of best practices for truancy prevention measures.

(g) The agency shall adopt rules to provide for sanctions for a school district found to be not in compliance with this section.

Section 65.051 of the Family Code provides that the truancy court shall forward a referral to the prosecutor if the court is not required to dismiss the *referral* under Section 25.0915. The court's duty to dismiss a defective petition under Section 25.0915 of the Education Code clearly states that the court shall dismiss a *petition*. There has been some confusion as to the court's authority or duty to dismiss a defective referral without the necessity to forward the school's referral to the truant conduct prosecutor. The proposed amendment to Section 65.051 clarifies the Legislature's intent to require prosecutorial review in truancy cases.

Section 65.051, Family Code, is amended to read as follows:

Sec. 65.051. INITIAL REFERRAL TO TRUANCY COURT When a

truancy court receives a referral under Section 25.0915, Education Code, and the court is not required to dismiss the referral under

that section, the court shall forward the referral to a truant

conduct prosecutor who serves the court.

The following proposed amendment to Section 25.092 simply clarifies that a student may be under the jurisdiction of a truancy court, not a criminal court, for a truancy matter

Section 25.092, Education Code, is amended to read as follows: Sec. 25.092. MINIMUM ATTENDANCE FOR CLASS CREDIT OR FINAL

GRADE. (a) Except as provided by this section, a student in any grade level from kindergarten through grade 12 may not be given credit or a final grade for a class unless the student is in attendance for at least 90 percent of the days the class is offered.

(a-1) A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit or a final grade for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. A student under the jurisdiction of a court in a criminal

truancy or juvenile justice proceeding may not receive credit or

a final grade under this subsection without the consent of the judge presiding over the student's case.

(a-2) Subsection (a) does not apply to a student who receives credit by examination for a class as provided by Section 28.023.

- (b) The board of trustees of each school district shall appoint one or more attendance committees to hear petitions for class credit or a final grade by students who are in attendance fewer than the number of days required under Subsection (a) and have not earned class credit or a final grade under Subsection (a- 1). Classroom teachers shall comprise a majority of the membership of the committee. A committee may give class credit or a final grade to a student because of extenuating circumstances. Each board of trustees shall establish guidelines to determine what constitutes extenuating circumstances and shall adopt policies establishing alternative ways for students to make up work or regain credit or a final grade lost because of absences. The alternative ways must include at least one option that does not require a student to pay a fee authorized under Section 11.158(a)(15). A certified public school employee may not be assigned additional instructional duties as a result of this section outside of the regular workday unless the employee is compensated for the duties at a reasonable rate of pay.
- (c) A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee.
- (d) If a student is denied credit or a final grade for a

class by an attendance committee, the student may appeal the decision to the board of trustees. The decision of the board may be appealed by trial de novo to the district court of the county in which the school district's central administrative office is located.

(e) This section does not affect the provision of Section 25.087(b) regarding a student's excused absence from school to observe religious holy days.

(f) The availability of the option developed under Subsection

(b) must be substantially the same as the availability of the educational program developed under Section 11.158(a)(15).

FISCAL ANALYSIS

At this time, there is no projected fiscal implication to Harris County.

HISTORICAL BACKGROUND

Undoubtedly, many counties, cities, and special interest groups will attempt to reform last session's truancy

reform bill. The Harris County Uniform Truancy Policy Committee, comprised of municipal and justice court judges and prosecutors, juvenile case managers, juvenile court representatives, school district representatives, and public members appointed by County Judge Ed Emmett and former Mayor Anise Parker, have attempted to limit any statutory amendment to those incremental changes that will help the courts to accomplish the original intent of Senator Whitmire and the Legislature. The foregoing proposals maintain the intent that truant conduct not be criminal, that schools rely on courts only as a last resort, that prosecutors be involved in the process from the point at which the court's jurisdiction is invoked, and that children are afforded due process even in the civil nature of these cases, all while balancing the needs of the truancy courts to be able to process these cases timely and effectively.

Conclusion

Though Harris County and Fort Bend County were the only two formal reports that were received by the committee or found online there was communication from other counties. The most consistent issue raised an inability to get students to court. This issue will be considered.

At the time this report was written the attendance report from TEA had not been completed. The Committee reviewed a preliminary report that indicated that court referrals on students were down and attendance levels varied from district to district. The changes in referrals for parent contributing also varied from district to district. Some districts saw an increase in attendance while other saw a decrease. Many districts commented that the lack of or the perception of a lack of consequences for skipping school was to blame for the increase in absences. As students and parents learn the new system and the new system is solidified the committee will be able to make better conclusions about the effectiveness of prevention and intervention plus civil action versus criminal penalties for truancy. At this time continued monitoring is the recommendation of the committee.

Texas Civil Commitment Office

Where We Were in 2015

In 2015, at the start of the 84th Legislative Session the Texas Civil Commitment Office, then called the Office of Violent Sex Offender Management was a small agency with a huge burden on its shoulders. Both of the office's primary housing vendors had provided notice that they would not renew their contracts upon expiration in August 2015, two RFPs had been issued for housing without success, and the office's administration had visited/spoken with/reviewed more than 130 options for housing. At the same time, the office faced legal challenges surrounding the sufficiency of the treatment provided and criticism from many that the program was broken or failing because no one had ever completed the program or been released. Finally, the office was under a new administration with a 100% turnover in senior staff following a scandal in 2014 and was working to rebuild public trust and correct numerous findings from a scathing SAO audit report.

Where we are now in 2016

The 84th Legislative Session brought about much needed change to the sexually violent predator (SVP) civil commitment program in the form of Senate Bill 746. SB 746 renamed the Office of Violent Sex Offender Management to the Texas Civil Commitment Office (TCCO) and increased the board from 3 to 5 members. SB 746 also changed the program from a solely outpatient program to a tiered program allowing movement along a continuum from a total confinement facility to less restrictive alternatives based on the individual's progress and behavior. Civil commitment trials are now moved from the 435th D. Ct. in Montgomery County to the individuals' last county of conviction for a sexually violent offense. Trials are now in the hands of the local district attorney rather than the Special Prosecutions Unit. SB 746 now allows the office to make decisions regarding a client's residence based on progress rather than requiring the permission of the court for every change of address. Specifically, it allows clients to be moved to a less restrictive alternative if it is in the client's best interest and conditions can be imposed to adequately protect the community but also permits TCCO to return a client to a more secure environment if the client has regressed and the transfer is necessary to further treatment and protect the community.

Just over a year after the signing of SB 746, TCCO has issued an RFP, contracted for, and opened the Texas Civil Commitment Center (TCCO) facility in Littlefield, Texas to house its SVP Clients. To move the SVPs to the TCCO required TCCO to take them all through a carefully orchestrated process of moving from their halfway house, to Houston for staging, then to Montgomery County for a due process hearing before finally being

transferred to TCCO. Throughout this process, TCCO staff worked nearly around the clock to shoulder the massive workload and TCCO also contracted with off-duty law enforcement officers for additional security during transportations and at the halfway houses. TCCO houses a tiered program for the treatment and supervision of clients in Tiers 1 through 4 in a continuum from a most restrictive Tier 1 housing through a less restrictive Advanced Group Environment or Honors Dorm of the highest Tier 4 clients. Tier 5 takes place on an outpatient basis when the client has progressed to the point that it is safe to return to the community. Clients at TCCO attend 6 hours of sex offender group treatment per week, a 100% increase over the previous program. Individual sessions are provided once per month and as needed. Clients also participate in therapeutic study hall, community meetings, structured recreation, life skills programming, AA/NA meetings, and education programming.

TCCO has begun the process of fully revising the agency's policy and procedure manual for the new tiered program and has prioritized policies in order of importance to be completed and implemented by staff. The TCCO Board Policies and Administrative Rules have also been reviewed and will be revised in late 2016. TCCO has also instituted a continuity of care program with TDCJ so that SVPs can begin sex offender treatment while still incarcerated and then continue that treatment at TCCO without having to start over in the treatment process.

In the past a common criticism of the program was that no one has ever been released, that is no longer the case. Six civilly committed sex offenders have been approved to live independently in the community in Tier 5. As of 08/31/16, there were 5 in Tier 5 with one having been returned to TCCO for more intensive treatment. Additionally, three civilly committed sex offenders that no longer had the behavioral abnormality that qualified them for commitment have been released by the court.

Where we're going in 2017

TCCO continues to implement SB 746 through a full revision of the agency's policy and procedure manual and continues completing due process hearings for SVPs that are currently incarcerated. The tiered program has reached its first birthday and TCCO continues to evaluate the program to make changes as necessary and to review programming in other states to ensure that we are utilizing the most effective treatment methodologies. Looking into the 85th Legislative Session and beyond, TCCO hopes to address: 1) challenges related to receiving appropriate mental health care for civilly committed sex offenders with severe mental illnesses that prevent them from effectively participating in the TCCO treatment program; 2) funding for the rising health care needs

and expenses for the aging SVP population; and 3) locating community transitional beds and resources for clients reaching Tier 5.

Texas Juvenile Justice Department Regionalization Plan

SB 1630 was passed during the 84th legislative session. It required the Texas Juvenile Justice Department (TJJD) to create and implement a regionalization plan that diverted appropriate youth from state institution to community based services. Below is the background and summary from the agencies report on the progress of this plan. The full report is available on the TJJD website.

https://www.tjjd.texas.gov/Docs/BoardAgenda/Handouts_080516.pdf

BACKGROUND AND SUMMARY

In 2015, the 84th Texas Legislature passed Senate Bill (SB) 1630, requiring the Texas Juvenile Justice Department (TJJD) to finalize a regionalization plan by August 31, 2016, that would keep more adjudicated youth within their home regions, by accessing available local post-adjudication facility capacity. The regionalization plan must include sufficient mechanisms to divert 30 juveniles from TJJD commitment in fiscal year 2016 and another 150 in fiscal year 2017. SB 1630 also requires TJJD to establish a new division to administer the regionalization plan and monitor program quality and accountability. Current regional associations, lines of communication and collaboration, and programmatic resources existed to facilitate this initiative; however, significant planning efforts utilizing the regional association started immediately after the bill was passed.

In August 2015, a Regionalization Task Force¹ was established as a mechanism to consult with juvenile probation departments and other stakeholders in the development of the plan. The Task Force includes representatives² from the seven Texas juvenile probation chiefs' associations, the Juvenile Justice Association of Texas and the Texas Probation Association, members of the Advisory Council on Juvenile Services, a juvenile prosecutor, a juvenile court judge, a representative of a coalition of youth advocacy groups, and a representative from the provider community. Additionally, internal TJJD subject matter experts support the Task Force.

The Regionalization Task Force, staff of the regionalization division, and others within TJJD together established the regionalization program details, which are outlined in this plan, including:

- (1) defining the target population and eligibility requirements;
- (2) identifying and profiling regions to utilize for regionalization;
- (3) establishing funding protocols for individual diversions and start-up funding establishment for expanding programing;

- (4) assessing current and future regionalization capacity, in terms of available resources and identifiable needs; and
- (5) outlining the individual diversion process.

TJJD has long-term goals for regionalization. These goals include:

- (1) selecting and implementing a single validated risk and needs assessment across the state to improve treatment plans and interventions;
- (2) modernizing the program registry;

1 All Task Force meeting dates, agendas and notes can be found at <http://www.tjjd.texas.gov/aboutus/regionalization.aspx>

2 Addendum A includes a list of all Regional Task Force Members developing and expanding opportunities to advance and support the integration of research into practice;

- (3) improving and expanding collaborations with other youth-serving agencies to promote positive youth outcomes and continuity of care; and
- (4) developing and sustaining a highly skilled and qualified juvenile justice workforce.

Regionalization Division at TJJD

In accordance with SB 1630, TJJD created a regionalization division to:

- (1) approve plans and related protocols to administer the developed regional model;
- (2) provide training on best practices for all local probation departments affected by the regionalization plan;
- (3) assist in research-based program development;
- (4) monitor contract and program measures for the regionalization plan;
- (5) analyze department data to provide clear guidance to local probation departments on outcome measures; and
- (6) report on performance of specific programs and placements to assist in implementing best practices and maximize the impact of state funds.

Within existing resources, TJJD created four new positions to support the regionalization division: three regional administrators assigned to support and carry out the mission of

the division and one regional planner to assist in monitoring contracts, tracking and processing regionalization diversion applications (Appendix E), and to provide general support services for the division.

Staff of the regionalization division reports to the senior director of probation and community services. The director of community mental health services and the research division provide additional support.

Status of Governor's Grant Program for Law Enforcement Body Cameras

The Governor's Criminal Justice Division (CJD) received 267 applications for these grants and all eligible departments received a grant. Almost all of the 10 million dollars available was distributed awarding \$9,997,696.00. CJD estimates that this will equip over 20% of all front-line officers in Texas. Included in the grants are funds for 1 camera with associated video storage (for one year) and accessories including chargers, cables, and software.

CJD Body Camera Program Allocations - Jan. 2016

Agency Name	Front Line Officers	Allocated Camera Packages	CJD Allocation
Abilene Police Department	124	124	\$99,200
Alamo Police Department	24	10	\$5,684
Alice Police Department	25	21	\$16,238
Allen Police Department	84	84	\$41,916
Alton Police Department	17	17	\$8,500
Alvarado Police Department	20	19	\$13,455
Angleton Police Department	27	27	\$18,550
Anthony Texas Police Department	12	12	\$11,240
Arlington Police Department	350	350	\$225,000
Arp Police Department	8	8	\$5,170
Atascosa County Sheriff's Office	24	24	\$17,250
Atlanta Police Department	19	19	\$11,329
Austin Police Department	1300	500	\$750,000
Balch Springs Police Department	27	27	\$16,200
Bandera County Sheriff's Office	25	25	\$15,694
Bartonville Police Department	4	3	\$1,596
Bastrop County Sheriff's Office	50	50	\$52,500
Bastrop Police Department	15	15	\$10,207
Baytown Police Department	110	110	\$161,375
Beaumont Police Department	140	140	\$192,500
Bell County Sheriff's Office	34	25	\$12,250
Bellville Police Department	10	10	\$7,500
Bexar County Sheriff's Office	266	266	\$392,338
Big Sandy Police Department	4	4	\$6,349
Boerne Police Department	26	26	\$38,349
Bonham Police Department	12	12	\$8,684
Bosque County Sheriff's Office	12	12	\$15,005
Bowie Police Department	8	8	\$3,920
Breckenridge Police Department	12	12	\$5,880
Brenham Police Department	25	10	\$22,000
Bridgeport Police Department	12	8	\$12,000
Bulverde Police Department	10	10	\$20,363
Burkburnett Police Department	20	20	\$13,500
Burton Police Department	1	1	\$490
Caldwell County Sheriff's Office	16	16	\$10,740
Calhoun County Sheriff's Office	25	25	\$12,250
Callahan County Sheriff's Office	6	6	\$2,940
Calvert Police Department	8	8	\$3,920
Center Police Department	11	11	\$6,463
Chambers County Sheriff's Office	32	32	\$34,286
Cibolo Police Department	29	29	\$57,035
Cisco Police Department	8	8	\$3,920
City of Farmersville Police Department	14	14	\$10,898
City of Groesbeck Police Department	10	10	\$12,100

	Agency Name	Front Line Officers	Allocated Camera Packages	CJD Allocation
	Coke County Sheriff's Office	4	4	\$3,075
	College Station Police Department	100	74	\$49,303
	Colorado City Police Department	9	9	\$6,197
	Comal County Sheriff's Office	72	72	\$72,000
	Crane County Sheriff's Office	5	5	\$3,570
	Cumby Police Department	7	7	\$4,762
	Dallas County Sheriff	530	182	\$527,800
	Dallas Marshal's Office	32	32	\$45,000
	Dallas Police Department	2200	50	\$78,850
	Del Rio Police Department	44	30	\$18,917
	DeSoto Police Department	50	50	\$45,000
	Dickinson Police Department	25	12	\$11,475
	Duval County Sheriff's Office	15	15	\$11,250
	Early Police Department	5	5	\$2,450
	Edinburg Police Department	91	91	\$75,332
	El Campo Police Department	18	18	\$19,310
	Elsa Police Department	12	12	\$8,000
	Encinal Police Department	4	4	\$1,960
	Eules Police Department	89	89	\$43,610
	Fairview Police Department	17	5	\$14,500
	Falls County Sheriff's Office	6	6	\$2,940
	Farmers Branch Police Department	60	60	\$29,400
	Fayette County Sheriff's Office	27	27	\$51,539
	Floresville Police Department	10	10	\$6,851
	Foard County Sheriff's Office	3	3	\$2,040
	Fort Bend County Sheriff's Office	197	197	\$155,605
	Franklin County Sheriff's Office	11	11	\$7,483
	Fredericksburg Police Department	22	22	\$26,062
	Friendswood Police Department	45	45	\$22,050
	Frisco Police Department	124	100	\$51,000
	Fulshear Police Department	11	11	\$11,000
	Galena Park Police Department	18	18	\$22,500
	Galveston Police Department	103	103	\$90,082
	Garza County Sheriff's Office	6	6	\$3,750
	Grand Prairie Police Department	185	185	\$223,356
	Greenville Police Department	46	46	\$43,109
	Gregg County Sheriff's Office	36	36	\$40,680
	Groveton Police Department	5	2	\$1,137
	Hale County Sheriff's Office	26	26	\$23,831
	Hardin County Sheriff's Office	16	16	\$31,632

Harker Heights Police Department	40	40	\$56,573
Harris County Sheriff's Office	1140	900	\$932,000
Harrison County Sheriff's Office	25	25	\$46,875
Haskell County Sheriff's Office	4	4	\$2,902
Hemphill Police Department	4	4	\$2,550
Henderson County Sheriff's Office	40	40	\$36,243

Agency Name	Front Line Officers	Allocated Camera Packages	CJD Allocation
Hickory Creek Police Department	8	8	\$6,029
Hill Country Village Police Department	12	12	\$12,000
Hood County Sheriff's Office	36	36	\$43,526
Houston County Sheriff's Office	22	22	\$32,291
Houston Police Department	3297	424	\$310,500
Huntsville Police Department	31	23	\$66,700
Hurst Police Department	56	56	\$78,400
Hutchinson County Sheriff's Office	13	13	\$11,087
Hutto Police Department	25	25	\$34,375
Idalou Police Department	6	6	\$4,757
Iowa Park Police Department	9	9	\$8,260
Irving Police Department	242	42	\$55,000
Italy Police Department	8	6	\$4,091
Jefferson County Sheriff's Office	70	70	\$34,300
Johnson County Sheriff's Office	70	70	\$63,724
Justin Police Department	7	7	\$6,500
Karnes County Sheriff's Office	32	32	\$26,532
Kenedy County Sheriff Office	10	10	\$4,900
Kermit Police Department	13	12	\$5,880
Kerrville Police Department	36	36	\$76,020
Kilgore Police Department	23	23	\$11,270
Kingsville Police Department	37	35	\$34,112
Kinney County Sheriff's Office	16	12	\$5,880
Knox County Sheriff's Office	3	3	\$3,000
Kountze Police Department	5	5	\$2,450
La Feria Police Department	13	13	\$8,850
La Joya Police Department	11	11	\$10,532
La Porte Police Department	50	50	\$38,990
La Villa Police Department	14	8	\$4,411
Lacy Lakeview Police Department	15	15	\$9,000
Lago Vista Police Department	13	13	\$9,075
Lake Jackson Police Department	40	40	\$47,660
Lakeside Police Department	7	7	\$8,261

Lampasas County Sheriff's Office	14	14	\$9,540
Laredo Police Department	344	344	\$325,664
LaSalle County Sheriff's Office	25	25	\$14,964
Lavon Police Department	17	10	\$7,500
Leon Co. Sheriff's Office	13	13	\$6,370
Levelland Police Department	20	20	\$11,400
Liberty Police Department	14	14	\$21,346
Limestone County Sheriff's Office	16	16	\$7,840
Little Elm Police Department	32	32	\$31,769
Littlefield Police Department	14	14	\$11,529
Longview Police Department	108	108	\$63,137
Lorena Police Department	5	5	\$3,287
Lubbock County Sheriff's Office	30	30	\$40,314

Agency Name	Front Line Officers	Allocated Camera Packages	CID Allocation
Lumberton Police Department	13	13	\$8,726
Lyford Police Department	4	4	\$1,960
Lynn County Sheriff's Office	9	9	\$5,827
Magnolia Police Department	17	13	\$11,510
Manor Police Department	20	20	\$32,002
Marble Falls Police Department	13	13	\$9,000
Marion County Sheriff's Office	11	11	\$15,000
Maverick County Sheriff's Office	20	12	\$14,114
McGregor Police Department	4	4	\$1,960
Meadows Place Police Department	11	11	\$10,500
Melissa Police Department	10	10	\$13,333
Mercedes Police Department	32	6	\$2,940
Midland Police Department	133	133	\$135,000
Midlothian Police Department	25	25	\$28,900
Milam County Sheriff's Office	14	13	\$17,005
Miles Police Department	3	3	\$1,686
Mills County Sheriff's Office	6	6	\$3,632
Mineola Police Department	10	10	\$6,070
Missouri City Police Department	75	75	\$52,705
Morris County Sheriff's Dept	9	9	\$7,466
Motley County Sheriff Office	4	4	\$1,960
Mount Pleasant Police Department	22	22	\$10,780
Mount Vernon Police Department	6	6	\$4,082
Nassau Bay Police Department	12	12	\$11,783
Navasota Police Department	14	14	\$20,140
Nederland Police Department	17	6	\$5,694

New Deal Police Department	1	1	\$500
North Richland Hills Police Department	74	74	\$75,817
Nueces County Sheriff's Office	54	54	\$26,460
Oakwood Police Department	3	2	\$980
O'Donnell Police Department	3	3	\$1,470
Orange Grove Police Department	6	6	\$4,500
Palacios Police Department	10	10	\$4,900
Palm Valley Police Department	12	10	\$5,500
Palmview Police Department	25	25	\$34,474
Pampa Police Department	20	20	\$9,800
Pantego Police Department	9	9	\$10,521
Paris Police Department	42	42	\$31,500
Pearland Police Department	111	70	\$110,250
Pecos County Sheriff's Office	22	22	\$15,065
Penitas Police Department	12	12	\$5,880
Petersburg Police Department	2	2	\$980
Pharr Police Department	80	80	\$68,350
Pilot Point Police Department	8	4	\$3,000
Pinehurst Police Department	10	10	\$5,620
Plainview Police Department	28	28	\$24,711

Agency Name	Front Line Officers	Allocated Camera Packages	CJD Allocation
Polk County Sheriff's Office	35	35	\$17,150
Port Arthur Police Department	77	77	\$178,771
Port Isabel Police Department	19	19	\$20,357
Port Neches Police Department	14	14	\$14,700
Poth Police Department	3	3	\$1,470
Potter County Sheriff's Office	30	30	\$89,600
Prairie View Police Department	6	6	\$5,600
Primera Police Department	8	4	\$2,590
Princeton Police Department	13	13	\$7,280
Rancho Viejo Police Department	8	8	\$3,920
Randall County Sheriff's Office	30	30	\$24,158
Ranger Police Department	6	5	\$4,500
Raymondville-Police Department	16	8	\$3,920
Red River County Sheriff's Office	9	9	\$7,002
Reno Police Department (Lamar County)	5	5	\$9,253
Reno Police Department (Parker/Tarrant County)	5	5	\$2,450
Richardson Police Department	120	120	\$137,256

Richmond Texas Police Department	20	20	\$10,596
Rio Grande City Police Department	24	20	\$13,650
Rising Star Police Department	2	2	\$980
River Oaks Police Department	12	12	\$5,880
Roanoke Police Department	22	6	\$8,250
Robstown Police Department	17	17	\$14,450
Rockwall County Sheriff's Office	21	10	\$22,500
Rockwall Police Department	59	48	\$28,800
Roma Police Department	19	19	\$9,310
Rosenberg Police Department	55	55	\$37,290
Round Rock Police Department	102	90	\$75,000
Sabinal Police Department	4	4	\$1,960
Sachse Police Department	21	21	\$28,896
Saginaw Police Department	26	26	\$21,151
San Angelo Police Department	99	99	\$141,075
San Jacinto County Sheriff's Office	27	27	\$35,317
San Marcos Police Department	75	75	\$50,914
Santa Rosa Police Department	7	7	\$4,958
Seagoville Police Department	19	19	\$13,274
Seagraves Police Department	7	7	\$4,699
Sealy Police Department	17	17	\$24,682
Seguin Police Department	40	40	\$24,615
Shavano Park Police Department	13	13	\$6,370
Shelby County Sheriff's Office	10	10	\$4,900
Sherman Police Department	40	40	\$35,455
Silsbee Police Department	12	12	\$13,170
Smith County Sheriff's Office	51	51	\$93,750

Agency Name	Front Line Officers	Allocated Camera Packages	CJD Allocation
Smithville Police Department	8	8	\$3,920
Sour Lake Police Department	5	3	\$2,175
Springtown Police Department	8	8	\$13,333
Stafford Police Department	37	37	\$62,745
Starr County Sheriff's Office	40	40	\$49,201
Stephenville Police Department	21	20	\$22,330
Sullivan City Police Department	12	12	\$8,082
Sulphur Springs Police Department	25	25	\$16,931
Sunray Police Department	3	3	\$7,500
Tahoka Police Department	9	9	\$5,827
Taylor County Sheriff's Office	30	20	\$11,250
Terrell County Sheriff's Office	6	6	\$5,143
The Harlingen Police Department	80	80	\$84,750
Tom Green County Sheriff's Office	35	35	\$65,812
Town of Combes Police Department	7	4	\$3,200
Travis County Sheriff's Office	260	50	\$128,123
Tye Police Department	5	5	\$2,450
Tyler County Sheriff's Office	20	20	\$20,299
Tyler Police Department	145	10	\$10,722
Van Zandt County Sheriff's Office	34	34	\$23,129
Venus Police Department	12	10	\$7,500
Vernon Police Department	13	13	\$12,654
Vidor Police Department	18	18	\$9,007
Waller County Sheriff's Office	27	27	\$13,230
Wallis Police Department	12	12	\$10,199
Washington County Sheriff's Office	17	17	\$11,086
Weatherford Police Department	33	33	\$35,818
Webb County Sheriff's Office	33	33	\$22,707
Webster Police Department	45	45	\$40,500
West Columbia Police Department	16	10	\$11,250
West Lake Hills Police Department	11	6	\$5,625
West Orange Police Department	9	9	\$10,125
Wharton Police Department	16	16	\$26,972
Whitney Police Department	6	6	\$6,857
Wills Point Police Department	15	15	\$10,125
Wilson County Sheriff's Office	21	21	\$10,290
Winnsboro Police Department	9	9	\$5,468
Wolfforth Police Department	9	9	\$7,433
Woodville Police Department	9	9	\$16,000
Woodway Police Department	21	21	\$20,090
Total	16,913	9,593	\$ 9,997,696

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, September 22, 2015

10:00 AM

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, September 22, 2015, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT

Senator John Whitmire, Chair
Senator Joan Huffman, Vice Chair
Senator Konni Burton
Senator Juan Hinojosa
Senator José Menéndez
Senator Charles Perry

MEMBERS ABSENT

Senator Brandon Creighton

The chair called the meeting to order at 10:01 AM. There being a quorum present, the following business was transacted:

The chair called invited testimony on the interim charge on jail safety standards.

The chair called public testimony was called and heard on the interim charge on jail safety standards in.

There being no further business, at 2:03 PM Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

September 22, 2015 10:00 AM

Jail Safety Standards

FOR:

Esparza, Maria Anna (Self), Spring Branch, TX

ON:

Brown, Veda (Self), Prairie View, TX

Claitor, Diana Director (Texas Jail Project), Austin, TX

Deitch, Michele Senior Lecturer (also providing written testimony) (Self), Austin, TX

Fabelo, Tony Dr. (also providing written testimony) (Council on State Governments, Justice Center), Austin, TX

Gann, Laura (also providing written testimony) (Montgomery County Jail Advocates), Humble, TX

Gray III, John F (Daughter Victoria Gray), Lake Jackson, TX

Gutierrez, David Chair (Board of Pardons and Parole), Gatesville, TX

Lacefield-Lewis, Lauren Assistant Commissioner for Mental health and Substance

abuse

(Department of State health Service), Austin, TX

McClelland, Charles Chief (Houston Police Department), Houston, TX

Richardson, Kent Assistant attorney General (also providing written testimony)

(Office of

the Attorney General), Austin, TX

Rowe, Kelly Sheriff (Sheriff's Association of Texas), Lubbock, TX

Thompson, Sandra Professor (also providing written testimony) (Self; U of H Law), Houston, TX

Vickers, Kim Executive Director (Texas Commission on Law Enforcement), Austin,

TX

White, Gloria (Self), Bay City, TX

Wood, Brandon Executive Director (Texas Commission on Jail Standards), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Wednesday, March 30, 2016

1:30 PM

Capitol Extension, Room E1.012

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Wednesday, March 30, 2016, in the Capitol Extension, Room E1.012, at Austin, Texas.

MEMBERS PRESENT

Senator John Whitmire, Chair
Senator Joan Huffman, Vice Chair
Senator Konni Burton
Senator Brandon Creighton
Senator Juan Hinojosa
Senator José Menéndez
Senator Charles Perry

MEMBERS ABSENT

None

The chair called the meeting to order at 1:36 PM. There being a quorum present, the following business was transacted:

The chair called invited testimony on interim charge 2, evaluate the current guidelines and practices in county and municipal jails relating to the health, welfare, and safety of those in custody. Review law enforcement and correctional officer training, with emphasis on mental health and de-escalation. Study the effectiveness of existing oversight mechanisms to enforce jail standards; making recommendations for policies and procedures if needed. Examine the current mental health and substance use treatment services and medical resources offered in county, municipal, and state correctional facilities.

The chair called public testimony on interim charge 2.

There being no further business, at 3:57 PM Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

March 30, 2016 1:30 PM

Interim Charge 2

FOR:

Gillham, Patsy Board Member (also providing written testimony) (Isensee Foundation
for Safe police Response), Cypress, TX

ON:

Guice, Marcus Interim Medical Director (Harris County Sheriff's office Health
Services),

Houston, TX

Hansch, Greg Public Policy Director (National Alliance on Mental Illness (NAMI)),

Austin, TX

Hickman, Ron Sheriff (also providing written testimony) (Harris County Sheriff's
Office),

Houston, TX

Lacefield Lewis, Lauren Assistant Commissioner (also providing written testimony)
(Department of State Health Services), Austin, TX

Louderback, AJ Sheriff (Sheriff's Association of Texas), Edna, TX

Lowry, Lance President (AFSCME Texas Correctional Employees), Huntsville, TX

Simon, Robert Mental Health Administrator (Harris County Sheriff's office and The
Harris Center for Mental Health and Intellectual Developmental Disability), Houston, TX

Smith, Mike Major (Harris County Sheriff's Office), Houston, TX

Groesback, Wilson, Dennis Sheriff of Limestone County (Sheriff's Association of Texas),

TX

Commission Wood, Brandon Executive Director (also providing written testimony) (Texas
on Jail Standards), Austin, TX

Registering, but not testifying:

ON:

Austin, Lopez, Chris Assistant General Counsel (Department of State Health Services),
TX

Woodall, Frank Assistant Director (Texas Department of Public Safety), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, May 17, 2016

1:30 PM

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, May 17, 2016, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT

Senator John Whitmire, Chair
Senator Joan Huffman, Vice Chair
Senator Konni Burton
Senator Juan Hinojosa
Senator José Menéndez
Senator Charles Perry

MEMBERS ABSENT

Senator Brandon Creighton

The chair called the meeting to order at 1:32 PM. There being a quorum present, the following business was transacted:

The chair called invited testimony on interim charge 3; review current programs provided by the Texas Department of Criminal Justice (TDCJ) and the Windham School for incarcerated persons to prepare them for re-entry, including inmates in administrative segregation. Examine opportunities for incarcerated persons once they are released and make recommendations to expand successful programs to provide resources and support for released inmates. Assess the success of Certified Peer Support Services. Continue to monitor the Darrington Seminary Program. Study the continuity of care for individuals released from TDCJ, the Windham School, and county and municipal jails and make recommendations if needed. The chair called invited testimony on interim charge 4; examine the success of current pretrial diversion and treatment programs in Texas and in other states. Make recommendations on best practices and how to implement and expand these programs in Texas to maximize effective use of resources and reduce populations in jails. The chair called invited testimony on interim charge 5; study how bulk criminal records are disseminated. Review

the list of entities with access to and their current use of criminal records. Make recommendations to streamline the dissemination of records through bulk requests to ensure accuracy and limit inappropriate use of records. The chair called invited testimony on interim charge 6; review costs family members incur to maintain contact with an incarcerated family member. Make recommendations to promote familial contact and relationships for incarcerated individuals. Review visitation practices across the state in determining effective and appropriate methods of maintaining familial contact for incarcerated individuals.

The chair called public testimony on all the heard charges.

There being no further business, at 4:33 PM Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

May 17, 2016 1:30 PM

Interim Charge 3

ON:

Berry, Traci Sr. VP Community Engagement and Education (Goodwill Central Texas),
Austin, TX

Carpenter, Dr. Clint Superintendent (Windham School District), Huntsville, TX

Collier, Bryan Deputy Executive Director (Texas Department of Criminal Justice),
Huntsville, TX

State
Ita, Trina Director of Program Services Section II MHSA Division (Department of
Health Services), Austin, TX

(Center
Ligon, Katharine Mental Health Policy Analyst (also providing written testimony)
For Public Policy Priorities), Austin, TX

Justice),
Zamora, April Director of Reentry and Integration (Texas Department of Criminal
Austin, TX

Providing written testimony:

ON:

Smith, Douglas Policy Analyst (Texas Criminal Justice Coalition), Austin, TX

Interim Charge 4

FOR:

Rodriguez, Gerald President (Texas Association of Pretrial Services), Austin, TX

ON:

Braddock, Kathy Chief of Staff (Harris County District Attorney), Houston, TX

Attorneys

Edmonds, Shannon Director of Government relations (Texas District and County Association), Austin, TX

Lozito, Michael Judicial Services Director (Bexar County), San Antonio, TX

Magnis, Rick Judge (Dallas County Felony Courts), Dallas, TX

Dallas, Wagner, B.J. Director of Smart Justice (Meadows Mental Health Policy Institute), TX

County Yoo, Tina Judge (Dallas County Criminal Case), Dallas, TX

Young, Michael Chief Public Defender (also providing written testimony) (Bexar Public Defender's Office), San Antonio, TX

Registering, but not testifying:

ON:

Gerrick, Emily Staff Attorney (Texas Fair Defense Project), Austin, TX

Providing written testimony:

ON:

Jenkins, Jay Project Attorney (Texas Criminal Justice Coalition), Austin, TX

Interim Charge 5

AGAINST

Bastie, Patricia (Self), Dallas, TX

Coffey, Michael President (Imperative Information Group), Ft. Worth, TX

ON:

Burton, John (Lexis Nexis), Atlanta, GA

Doggett, Robert Executive Director (Texas Family Council), Austin, TX

WITNESS LIST

Criminal Justice

May 17, 2016 1:30 PM

DC

Ellman, Eric Senior Vice President (Consumer data Industry Association), Washington,

Lemens, Chris General Counsel (General Information Services), Dallas, TX

Wouldfin, Sheri Tom Green County District Clerk (County and District Clerk's Association), San Angelo, TX

Providing written testimony:

ON:

Henneke, Elizabeth Policy Analyst (Texas Criminal Justice Coalition), Austin, TX

Interim Charge 6

ON:

Inmate

Erschabeck, Jennifer Executive Director (also providing written testimony) (Texas

Families Association), Austin, TX

Rowe, Kelly Sheriff (Sheriff, Lubbock County), Lubbock, TX

Providing written testimony:

ON:

Collier, Bryan Deputy Executive Director (Texas Department of Criminal Justice),
Huntsville, TX

Commission),

Freeman, Kathryn Director of Public Policy (Texas Baptist Christian Life

Austin, TX

Jenkins, Jay Project Attorney (Texas Criminal Justice Coalition), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, August 23, 2016

1:30 PM

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, August 23, 2016, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT

Senator John Whitmire, Chair
Senator Konni Burton
Senator Juan Hinojosa
Senator José Menéndez
Senator Charles Perry

MEMBERS ABSENT

Senator Joan Huffman, Vice Chair
Senator Brandon Creighton

The chair called the meeting to order at 1:37 PM. There being a quorum present, the following business was transacted:

The chair called and heard invited and public testimony on strategies to combat the pervasive bullying in Texas schools with a special emphasis on cyber bullying in the digital age.

The Chair then called and heard invited and public testimony on interim charge 7; conduct a study of civil asset forfeiture laws in Texas and compare them to similar laws in other states. Determine best practices to protect public safety and the private property rights of citizens. Examine the reporting requirements and recommend legislative changes if needed to ensure transparency.

There being no further business, at 5:18 PM Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

August 23, 2016 1:30 PM

Cyber bullying prevention

FOR:

Atkisson, M.D., Debra (Federation of Texas Psychiatry/ Texas Society of Child and Adolescent Psychiatry), TX
Brenner, Rebecca (Self), San Antonio, TX
Degeare, Denise (Self), San Antonio, TX
Martinez, Valerie (South Texas Counseling Association), Von Ormy, TX
Molak, Christopher (Self), San Antonio, TX
Molak, Clifton (Self), San Antonio, TX
Molak, Matt (Self), San Antonio, TX
Molak, Mautine (Self), San Antonio, TX
Moore, Adrian Ex Director (Council on At-Risk Youth), Austin, TX
Rose, Lauren Director of Youth Justice Policy (Texans Care for Children), Austin, TX
Ross, Caroline (Stop the meanness), TX
Vasquez, Leo (Self), Boerne, TX
Vasquez, Monica (Self), Fair Oaks Ranch, TX

ON:

Craven, Morgan Director of School to Prison Pipeline (Texas Appleseed), Austin, TX
Garcia, Mary Board Chair (East Side Promotoras de la Buena Salud), San Antonio, TX
Garcia, Vicente Executive Director (East Side Promotoras de la Buena Salud), San Antonio, TX
Loe, Lisa SpEd Advocate (Self; Special Needs Children in Public ISD's), San Marcos,

TX

Interim Charge on Asset Forfeiture

AGAINST

Mitchell, Kathy (Texas Criminal Justice Coalition), Austin, TX

Interim Charge on Civil Asset Forfeiture

FOR:

Louderback, A.J Jackson County Sheriff (Sheriff's Association of Texas), Edna, TX

Smith, James Sergeant (San Antonio Police Department), San Antonio, TX

ON:

Cohen, Derek Deputy Director (Texas Public Policy Foundation), Austin, TX

Czajkoski, Nicole Chief Prosecutor Major Crimes Division (Montgomery County

District

Attorney's Office), Conroe, TX

Jumes, Steven Attorney (Self), TX

Moore, Adrian (Self), Austin, TX

Providing written testimony:

ON:

Geary, Michael Director of Planning (Texas Conservative Coalition Research
Institute),

Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, October 4, 2016

10:00 AM

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, October 4, 2016, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT

- Senator John Whitmire, Chair
- Senator Joan Huffman, Vice Chair
- Senator Konni Burton
- Senator Brandon Creighton
- Senator Juan Hinojosa
- Senator José Menéndez
- Senator Charles Perry

MEMBERS ABSENT

None

The chair called the meeting to order at 10:12 AM. There being a quorum present, the following business was transacted:

The Chair welcomed Senator West and Representative Miles to the hearing.

The Chair called invited and public testimony on interim charge 1.

review law enforcement efforts to engage community leaders and increase their involvement in communities. Assess dangers to law enforcement officers and the collection and distribution of threat assessment data. Make recommendations to reduce the number of injuries and deaths to or by law enforcement officers.

There being no further business, at 1:13 PM Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

October 4, 2016 10:00 AM

Interim Charge 1

FOR:

Acevedo, Art Chief of Police (Austin Police Department), Austin, TX

Dixon, James Bishop (Self), Houston, TX

Hunt, Ray President (Houston Police Officers Union (HPOU)), Houston, TX

Mills, Christine (Self), Grand Prairie, TX

Nash, James Reverend (Self), Houston, TX

Penn, Everette (Teen and Police Service Academy), Houston, TX

ON:

Banks, Yannis Legislative Liaison (Texas NAACP), Austin, TX

Cargill, Michael Executive Director (Texas For Accountable Government), Austin, TX

Douglas, James President Houston Branch (National Association of Colored People),
Houston, TX

McCraw, Steve Director (Department of Public Safety), Austin, TX

Wilkison, Charley Executive Director (also providing written testimony) (Combined

Law

Enforcement Association), Austin, TX

Wilson, Corey Pastor (Thumbs up), Houston, TX

Registering, but not testifying:

ON:

Steen, Philip Regional Commander (Texas Department of Public Safety), Houston, TX

