



# Texas Criminal Justice Coalition

*Priority Smart-on-Crime Policies During Texas' 2015 Legislative Session*

---

CONTACT: Dr. Ana Yáñez-Correa, Executive Director | [acorrea@TexasCJC.org](mailto:acorrea@TexasCJC.org)  
(work) 512-441-8123, ext. 109 | (cell) 512-587-7010

---

Since 2000, TCJC has worked with peers, policy-makers, practitioners, and community members to identify and promote smart justice policies that safely reduce Texas' costly over-reliance on incarceration – creating stronger families, less taxpayer waste, and safer communities.

As we enter the final months of the 84<sup>th</sup> Legislative Session, it is especially incumbent upon state leadership to support the following 3 frameworks (prongs) and corresponding policy solutions:

- **Prong 1: End the over-criminalization of Texas youth, and reduce their exposure to confinement in both the adult and youth systems.** Texas should stop making it a crime for students to skip school, run away, or break curfew. Texas should also raise the age of juvenile court jurisdiction from 17 to 18, and stop incarcerating children under the age of 13 in facilities across Texas.
- **Prong 2: Right-size the Texas criminal justice system by changing overly punitive sentencing practices, incentivizing probation over incarceration, and strengthening treatment programs.** Texas should change and update the penalties for some crimes – crimes such as driving with an invalid license, low-level marijuana possession, prostitution, and property crimes – as well as reclassify certain misdemeanor and felony offenses.
- **Prong 3: Improve transparency and accountability throughout Texas corrections systems, which will improve in-prison safety, the treatment of incarcerated individuals, and the likelihood of success upon reentry.** Texas should improve facility safety by passing bills that would allow Ombudsman programs to visit youth in county facilities and establish an independent Ombudsman program for the adult system. Texas should also improve treatment for people who are incarcerated by providing more reentry resources and giving people in state jails credit for participating in programming.

**NOTE:** *This document offers a snapshot of the policies that TCJC is supporting in 2015. We have supported – and will continue to support – many additional policies, including in other issue areas. Please contact TCJC if you have any questions about the information below.*

## PRONG 1

*End the over-criminalization of Texas youth,  
and reduce their exposure to confinement in both the adult and youth systems.*

### (1) Improve Oversight of Youth in All Facilities in Which They are Held

- » **Background:** The Texas Legislature created the Office of the Independent Ombudsman (OIO) for the juvenile justice system in 2007, following the revelations of widespread sexual and physical abuse at Texas state secure juvenile facilities. The OIO was tasked with protecting the safety and rights of incarcerated youth at these facilities.

In 2011, Texas expanded the responsibilities of the OIO to include the review of county data on abuse, neglect, and exploitation. However, OIO staff does not currently have the legislative authority to speak with youth in Texas' 97 county facilities, leaving a vulnerable gap in the state's protection of confined youth.

We support legislation that would allow OIO staff to visit with youth in county juvenile facilities, and to provide Prison Rape Elimination Act (PREA) audits to counties at no additional charge. That will bridge the current gap in protections for youth in secure custody and help counties achieve full PREA compliance.

- » **Priority Bill:** HB 3277 (Dutton), *Relating to the authority of the office of independent ombudsman with the Texas Juvenile Justice Department in regard to juveniles in custody in certain facilities not operated solely for children committed to the department.*
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** In 2013, alone, 3,419 referrals of youth resulted in secure placement at the county level, and 2,730 youth were alternatively placed in a non-secure residential treatment centers at the county level. HB 3277 would provide an advocate for each of these youth placements, ensuring that they are safe and secure.

### (2) Return Children Under the Age of 18 to the State's Juvenile Justice System, and Limit the Use of Secure Confinement for Children Under the Age of 13

- » **Background:** In Texas, a teen may be charged as an adult for a criminal offense at only 17 years of age. Holding 17-year-olds criminally responsible is inconsistent with our societal consensus for "maturity," as well as with neurological research that has confirmed various findings: youth are inherently less likely to consider the potential outcomes of their actions; they are prone to risky behavior; and they are more vulnerable or susceptible to negative influences and outside pressures.

Separately, children as young as 10 can be confined to both county and state secure juvenile facilities in Texas.

We support legislation that would extend the age of juvenile jurisdiction from 17 to 18 years, a common sense approach that would also remove youth from dangerous mental and physical conditions inside adult facilities. We further support legislation that would increase

the age at which youth are permitted to remain in the juvenile system so they may have sufficient time to obtain critical rehabilitative programming.

We also support legislation that would raise the age of confinement to all secure juvenile facilities from 10 to 13 years of age. Elementary and middle school kids should be kept out of Texas facilities and served in the community, where they can continue to have the support of their loved ones while receiving rehabilitative services.

- » **Priority Bills:** **HB 1205** (Dutton, McClendon, Wu), *Relating to the age of criminal responsibility and to certain substantive and procedural matters related to that age*; **HB 2931** (Wu), *Relating to the secure confinement of certain children*; **SB 104** (Hinojosa), *Relating to the age of criminal responsibility and to certain substantive and procedural matters related to that age*; **SB 1333** (Rodríguez), *Relating to the secure confinement of certain children*;
- » **Financial Impact:** The estimated two-year net impact to general revenue related funds for HB 1205 is a negative impact of \$76,256,018 through the biennium ending August 31, 2017. *[Official fiscal note]*
- » **Potential Population Impact:** Approximately 26,000 17-year-olds were arrested in Texas in 2013. As it pertains to 10- to 13-year-olds, we do not have the disaggregated data to determine how many will be impacted by this legislation at the *local* level; however, as of August 2014, there were 88 youth in this age range being held in *state* secure facilities.

### **(3) Reform Policies that Subject Children to Criminal Penalties for Engaging in Conduct that Would Not Be Deemed Criminal if Engaged in by Adults (“Status Offenses”)**

- » **Background:** While many youth enter the juvenile justice system because of delinquency, youth are also subject to penalties for engaging in conduct that would not be deemed criminal if engaged in by adults. **Acts such as running away, being persistently absent from school, breaking curfew, and consuming or possessing alcohol or tobacco are a few of the offenses more commonly referred to as “status offenses.”**

Youth who engage in status offenses are often experiencing personal, familial, community, or systemic issues and should not be processed through the juvenile system in the same way that youth who engage in delinquent behavior are processed. In fact, research has found that treating status offenders similarly to delinquent offenders is more harmful than helpful. Unfortunately, Texas continues to confine status offenders, ultimately exacerbating their issues and subjecting them to a correctional environment with youth being held for engaging in serious and violent behavior.

Further complicating this process are the criminal penalties that youth are subject to if they fail to appear before a judge for a status offense – causing additional, unnecessary harm.

We support legislation that would reduce the number of youth who become juvenile justice system-involved via status offenses. More specifically, this includes a prohibition on the confinement of youth charged with a status offense or with contempt of court for failing to

- » **Priority Bills:** **HB 2793** (Huberty), *Relating to detention of juveniles accused only of running away from home*; **HB 3852** (Moody), *Relating to contempt of court committed by certain juvenile offenders and the detention of certain juvenile offenders*; **SB 943** (Rodríguez), *Relating to contempt of court committed by certain juvenile offenders and the detention of certain juvenile offenders*.
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** Nearly 1,100 status offenders were put in secure detention during 2013 for status offenses that originated in juvenile court. For status offenses that originate in Justice of the Peace and Municipal Courts, precise detention data is not available. However, 114,609 youth were referred to these courts in offense categories that could include status offenders. Some of these categories, such as Failure to Attend School (79,250) and Local Curfew (6,804), are all status offense cases. Others contain a mix of status offenders and non-status offenders, such as Non-Driving Alcoholic Beverage (13,981) where only youth under age 17 qualify. Applying the detention rate of status offenders in juvenile court (20%) to only the categories of offenses that contain 100% status offenders, it is a conservative estimate that about 17,000 of these youth were detained during 2013.

**(4) Eliminate the Offense of Failure to Attend School and Implement Appropriate Tools to Treat the Symptoms that Contribute to Truancy**

- » **Background:** In 1993, in an effort to alleviate juvenile court dockets of truancy cases, Texas lawmakers created a separate criminal school attendance offense, commonly known as “failure to attend school,” which is categorized as an **adult Class C misdemeanor** punishable under a municipal or justice of the peace court.

This policy change has resulted in a number of unintended consequences. Once issued a citation for failure to attend school, both students and parents are subject to a maximum fine (not including court costs) of \$500; this is a significant burden on indigent families, with ongoing legal and financial consequences for failure to pay all money owed. Another burden results from the requirement to appear in an adult court to resolve the citation, which may lead to students missing further school time and potentially having a permanent adult conviction on their record.

But a more significant problem with Texas’ current truancy system is its failure to address youths’ underlying needs. Truancy is often indicative of a larger problem. For instance, attending school likely seems trivial for youth who are the primary caregiver of younger siblings, cousins, or a disabled guardian; for youth who are homeless and without a dining room table on which to complete homework; for youth who are being abused at home or who fear that an abuser will find them at school; and for youth who are disabled and who constantly struggle with the hardships of that disability.

We support legislation that would decriminalize truancy and increase funding allocations for alternative methods (e.g., progressive sanctions) to effectively address the issues that impact youth attendance at school.

- » **Priority Bill: HB 1490** (Huberty, Deshotel), *Relating to public school interventions and procedures for truancy*; **HB 2632** (Dutton), *Relating to removing a criminal penalty and authorizing a civil penalty for truancy*; **SB 106** (Whitmire), *Relating to court jurisdiction and procedures relating to truancy; providing criminal penalties; imposing a court cost.*
- » **Financial Impact:** The estimated two-year net impact to general revenue related funds for HB 1490 is a negative impact of \$8,665,166 through the biennium ending August 31, 2017. *[Official fiscal note]*
- » **Potential Population Impact:** In 2014, there were 88,063 “failure to attend school” complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties; these and similar youth would positively benefit from these policies.

**(5) Equip School District Peace Officers and School Resource Officers with Adequate Training to Better Serve Texas Students**

- » **Background:** Towards the end of the 1990’s, local law enforcement began building up a police presence within K-12 public schools, largely in response to school shootings that had gained national attention (e.g., Columbine). These officers’ primary responsibilities were to protect the school from active shooters and external threats – two outliers when considering typical day-to-day happenings within the school setting.

And yet, the law enforcement presence in schools has been expanding for more than a decade. However, many officers have not been given adequate training to manage a predominantly youth-filled setting. The training that peace officers are required to receive is largely geared towards protecting the public on the streets, where they are more likely to encounter law-breaking adults who are fully developed, both physically and neurologically. This disconnect in education has led to several incidents involving mismanaging youth and, in extreme instances, has resulted in youth suffering physical injury from officers.

We support legislation that would equip school district peace officers and school resource officers with the appropriate training to properly interact with youth. This training should include learning objectives in the following areas: child and adolescent development, positive behavioral interventions and supports, de-escalation techniques, the mental and behavioral needs of children with disabilities or special needs, mental health crisis interventions, and cultural competency.

- » **Priority Bills: HB 2684** (Giddings), *Relating to the creation of a model training curriculum and to the required training for school district peace officers and school resource officers.*
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** Texas’ public school student population totals more than 4 million students; each student can be positively impacted by this bill, while teachers and administrators can similarly benefit from safer school environments.

**(6) Support a Meaningful Opportunity for Release for Youth Sentenced to the Texas Department of Criminal Justice**

- » **Background:** In 2009, Texas eliminated juvenile life without parole (JLWOP) as a sentencing option for individuals convicted of a capital felony committed under the age of 17. In 2013, following the U.S. Supreme Court’s decision in *Miller v. Alabama*, Texas eliminated JLWOP for 17-year-olds convicted of a capital felony.

Instead, these individuals are subject to life sentences with the possibility of parole after 40 years. This mandatory minimum, in addition to the lack of consideration of mitigating factors during sentencing (e.g., the defendant’s maturity and background), prohibits Texas from giving a meaningful opportunity for review to those youth who demonstrate that they have been rehabilitated.

We support legislation that would provide a range of sentencing options to juries, requiring the incorporation of mitigating factors during sentencing, and making these changes retroactive to those currently serving JLWOP.

- » **Priority Bill: SB 1083** (Rodríguez), *Relating to the punishment for a capital felony committed by an individual younger than 18 years of age; changing parole eligibility.*
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** Currently, 495 people are serving sentences that would be eligible for resentencing under this legislation; the bill would also positively impact approximately 30 juveniles a year who are convicted of capital felonies.

**(7) Improve the Juvenile Record Sealing Process And Limit Access to Juvenile Records**

- » **Background:** Protecting the privacy of youth adjudicated in juvenile court is a critical component of each youth’s rehabilitation.

We support legislation that would create an advisory committee of experienced stakeholders to examine best practices surrounding the keeping of juvenile records, and develop amendments to Chapter 58 of the Family Code. Doing so will protect juveniles and adults against the damage stemming both from their juvenile delinquency records and from the unauthorized use or disclosure of confidential records and any potential stigma that would result from their disclosure.

- » **Priority Bills: HB 431** (James White, Miles), *Relating to the creation of an advisory committee to examine the retention of juvenile justice records;* **SB 645** (Rodríguez), *Relating to the creation of an advisory committee to examine and recommend revisions to any state laws pertaining to juvenile records;* **SB 1707** (Huffman), *Relating to the sealing of certain juvenile records.*
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** This bill would positively impact approximately 60,000 youth per year.

## PRONG 2

*Right-size the Texas criminal justice system by changing overly punitive sentencing practices, incentivizing probation over incarceration, and strengthening treatment programs.*

### (1) Limit the Long-Term Consequences of Driving-Related Offenses

#### Repeal Texas' Driver Responsibility Program and Identify Alternative Funding Sources for Trauma Hospitals

- » **Background:** The Texas Legislature created the Driver Responsibility Program (DRP) in 2003 to encourage more responsible driving and to generate revenue for the state. Under the program, the Texas Department of Public Safety levies annual, administrative surcharges on the drivers' licenses of people convicted of certain traffic offenses; some of the funds go towards repaying Texas trauma hospitals, which absorb hundreds of millions of dollars in uncompensated healthcare costs every year.

Despite its good intentions, the DRP has created more problems than it has solved: it has led to more unlicensed, uninsured motorists, with great costs to Texas arising from accidents among these drivers; it has failed to collect predicted surcharge fees; it has increased courts' caseload backlogs, while raising counties' court and jail costs; and it poses substantial and disproportionate financial hardship on low-income drivers and families.

We support legislation that would repeal Texas' Driver Responsibility Program and find alternative funding streams for Texas trauma hospitals.

Separately, we support legislation that would, at a minimum, increase eligibility for indigent status or reduce surcharge amounts.

- » **Priority Bill:** **HB 2671** (Thompson, Senfronia), *Relating to the suspension of a driver's license or denial of a driver's license renewal for failure to pay a debt owed to a governmental entity or failure to appear in court*; **SB 93** (Ellis), *Relating to the repeal of the driver responsibility program*.
- » **Financial Impact:** The fiscal note is not yet available
- » **Potential Population Impact:** Nearly 1.3 million drivers have invalid licenses because they were unable to pay DRP surcharges (on top of criminal penalties and court fines); each of these individuals would positively benefit from policies that repeal the DRP or reduce its financial burden, as would thousands of individuals annually who continue to be assessed DRP surcharges.

☑ **Modify Penalties for the Offense of Driving With an Invalid License**

- » **Background:** Currently, “Driving With an Invalid License” (e.g., suspended license) is a fine-only Class C misdemeanor unless it is a person’s second offense, in which case it becomes a Class B misdemeanor and warrants jail time.

We support legislation that would cap the penalty for Driving With an Invalid License at a Class C misdemeanor, to reserve costly jail beds for those who pose a threat to public safety.

- » **Priority Bill: HB 1567** (Turner, Sylvester), *Relating to the offense of driving while license invalid.*
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** Tens of thousands of Texans are arrested and jailed each year for driving with an invalid license, most of them because they could not afford expensive civil “surcharges.” In fiscal year 2014, nearly 30,000 Class B “DWLI” cases were added to Texas court dockets, and during that year, more than 11,000 individuals were sentenced to local jail on a DWLI offense.

**(2) Improve Texas’ State Jail System: Incentivize Individuals with Certain Nonviolent State Jail Felony Offenses to Complete Probation**

- » **Background:** Texas’ state jail system, created in 1993, was originally intended to divert individuals with nonviolent offenses from crowded prisons and provide them rehabilitative assistance. However, individuals sentenced to state jail facilities have extremely limited access to treatment and programming options, and typically have no post-release supervision. As a result, state jail releasees have the highest rates of re-arrest and re-incarceration among returning populations.

We support legislation that would permit a judge – with the consent of the district attorney – to reduce a person’s state jail felony offense to a Class A misdemeanor *after* he or she successfully completes all probation supervision and treatment requirements, provided the offense was not violent or sexually based. This would better incentivize a probation term (which costs 31 times less per day than a state jail term), for significant cost savings and longer-term recidivism reductions, while keeping critical safeguards in place.

- » **Priority Bill: HB 333** (Longoria), *Relating to certain procedures for defendants who successfully complete a period of state jail felony community supervision.*
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** Approximately 11,000 people are in a state jail at any given time, although many serve 6-month sentences so as many as 22,000 individuals may cycle through a state jail in a given year.

### (3) Reclassify Certain Nonviolent Misdemeanor and Felony Offenses

- » **Background:** We support legislation that would reclassify certain nonviolent misdemeanor and felony offenses, which will increase the likelihood that individuals are placed on probation (rather than being incarcerated). This will enable more individuals to access community-based services while holding them accountable for meeting strict requirements (including victim restitution). This rigorous supervision will help to lower recidivism rates, and the penalty reclassification can eliminate the barriers to employment and housing that generally accompany a felony conviction.
- » **Priority Bill:** **HB 3326** (Thompson, Senfronia), *Relating to decreasing the punishment for certain misdemeanor and felony offenses.*
- » **Financial Impact:** The estimated two-year net impact to general revenue related funds for HB 3326 is a positive impact of **\$163,843,697** through the biennium ending August 31, 2017. *[Official fiscal note]*
- » **Potential Population Impact:** The ramifications of this massive de-incarceration bill are impossible to calculate. The bill lowers penalties for marijuana, Penalty Group 1 substances, criminal mischief, graffiti, burglary (other than of a habitation), theft, theft of service, forgery, credit card or debit card abuse, identity theft, prostitution. We are expecting tens of thousands of people to be impacted.

### (4) Reduce Low-Level Marijuana Possession to a Class C Misdemeanor or Civil Penalty

- » **Background:** Currently in Texas, possession of up to two ounces of marijuana is a Class B misdemeanor, punishable by up to six months in jail and a \$2,000 fine. Possession of between two and four ounces is a Class A misdemeanor, punishable by up to a year in jail and a \$4,000 fine.

Texas' overly punitive marijuana laws have become a distraction for law enforcement and an ongoing source of red ink for county budgets due to jail and indigent defense costs. More than 70,000 people are arrested for low-level marijuana possession each year, accounting for the great majority of all drug arrests in Texas. All of these individuals are booked into jail, and those who cannot make bail may stay there until their case is resolved. And because the sentence for a Class B misdemeanor includes possible jail time, counties must hire lawyers to represent defendants who are indigent.

On the other hand, counties are not required to pay for counsel on Class C offenses, for which the maximum penalty is only a fine. Polls say a majority of Texans endorse eliminating penalties for low-level marijuana possession entirely, especially for medicinal purposes.

We support legislation that would reduce penalties for low-level marijuana possession to a Class C misdemeanor. We support legislation that would make marijuana possession a civil violation, as some other states have done, eliminating criminal penalties altogether for small amounts while still holding people accountable.

Either approach would relieve counties of unnecessary jail and indigent defense costs. It would also keep more police officers on the beat instead of forcing them to spend time – sometimes hours – arresting and booking pot smokers into jail.

- » **Priority Bill:** HB 507 (Moody, Lucio III, Dutton), *Relating to a civil penalty for possession of certain small amounts of marihuana and an exception to prosecution for possession of associated drug paraphernalia*
- » **Financial Impact:** The estimated two-year net impact to general revenue related funds for HB 507 is a positive impact of **\$1,925,326** through the biennium ending August 31, 2017. *[Official fiscal note]*
- » **Potential Population Impact:** As noted above, more than 70,000 people are arrested for low-level marijuana possession each year, accounting for the great majority of all drug arrests in Texas.

#### **(5) Limit Penalties for Prostitution Offenses and Reduce Barriers to Rehabilitation**

- » **Background:** Texas punishes repeat prostitution offenses with a felony conviction. Many of the individuals who resort to prostitution have been traumatized by sexual abuse and may have been victims of human trafficking. An overly punitive approach to prostitution increases the costs for policing, prosecuting, and incarcerating those charged with prostitution; it also creates huge and lasting collateral consequences for individuals convicted of prostitution, as well as for the communities where prostitution occurs.

We support legislation that would cap prostitution penalties at the misdemeanor level, which will keep individuals from having felony records, reduce expenditures on felony prosecutions, and reduce state expenditures on state jails or prisons. More importantly, reducing the penalties for prostitution will limit the barriers individuals face to entering an alternative workforce and finding sustainable housing.

- » **Priority Bills:** HB 1363 (Johnson), *Relating to the prosecution of the offense of prostitution*; SB 377 (Rodriguez), *Relating to the prosecution of the offense of prostitution*.
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** We anticipate this impacting a relatively low number of individuals (likely less than 1,000 per year).

#### **(6) More Effectively Address Property Offenses**

##### **Update Property Penalties in Light of Inflation**

- » **Background:** Property-related offenses include criminal mischief, graffiti, and theft. The penalty for committing a property offense corresponds to the dollar amount lost or damaged. For instance, a Class A misdemeanor involves property worth \$500 or more but less than \$1,500; if the property value is \$1,500, the offense becomes a state jail felony.

These monetary “thresholds” (ranges of dollar amounts) have not been changed since 1993 and therefore fail to reflect more than two decades of inflation. Consumer goods with a value of \$1,500 today were worth only \$911 in 1993. In other words, people are receiving state jail felonies today for offenses considered to be a Class A misdemeanor in 1993 – a de facto “criminal inflation.” Adjusting these penalties would not only be a common sense reform in the interests of fairness, but more closely conform punishments to what was intended by the authors of the 1993 legislation.

We support legislation that would update the antiquated value thresholds upon which property offenses are based. This will make penalties more proportional to the offenses committed and avoid wasting valuable resources on prosecution and incarceration for petty crime.

- » **Priority Bills:** **HB 1530** (Peña, James White, Moody), *Relating to the punishment for certain offenses against property or against public administration*; **SB 393** (Burton, Rodríguez), *Relating to the punishment for certain offenses against property or against public administration*.
- » **Financial Impact:** The probable fiscal impact of implementing the bill is expected to be positive but it is indeterminate due to the unavailability of reliable data or information related to the exact amount of pecuniary loss for certain offenses against property or public administration. Depending upon the number of convictions that could be affected by the shifting punishment categories, there could also be an indeterminate revenue impact to the state. *[Official fiscal note]*
- » **Potential Population Impact:** Approximately 100,000 people in Texas were arrested for larceny/theft in 2013, all of whom would be candidates for lowered penalties or decriminalization based on the amount of property stolen. This number does not include criminal mischief or graffiti offenses.

**Provide Property Owners Relief from Graffiti Through Cost-Effective Programming with Cleanup Services, and Reduce Graffiti Penalties to Lower Local Expenses**

- » **Background:** Despite the belief that graffiti is typically associated with gangs, only a small portion of all graffiti is done by gang members. Most graffiti is caused by the common “tagger,” someone who marks easily accessible locations, sometimes repeatedly.

Graffiti costs some Texas cities millions of dollars in cleanup costs each year. While the reaction to ongoing graffiti in the community may be to penalize graffitiists more harshly, many Texas cities are seemingly seeing no decrease in graffiti from such an approach. What’s worse, punitive approaches to graffiti come with high price tags, draining city budgets and saddling graffitiists with criminal convictions that pose lifelong obstacles, including limited employment and housing opportunities.

We support legislation that would allow for participation in a pretrial diversion program, where individuals – with the consent of the district attorney – would complete

community service, including graffiti removal where possible, and potentially engage in other community-based programming, including outreach education focused on graffiti prevention and eradication, mentoring in art programs, mural painting, or other available opportunities. Ideally, successful completion of the program could result in dismissal of the charges.

We also support legislation that would create a new, minor offense level (a Class C misdemeanor) for graffiti that causes up to \$200 worth of damage; under current law, all graffiti up to \$500 worth of damage is a Class B misdemeanor, which brings with it potential public defense expenses, county jail time, and associated collateral consequences. Separately, we support a modification of damage amounts for Class A and B misdemeanors in light of inflation.

- » **Priority Bill: HB 883** (Moody), *Relating to the punishment for the offense of graffiti and the creation of a graffiti pretrial diversion program; authorizing a fee.*
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** We have found it challenging to obtain data on graffiti offenses, many of which are committed by juveniles. Having said that, we anticipate this impacting a relatively low number of individuals (likely less than 1,000 per year).

#### **(7) Require the Issuance of a Summons for Certain Individuals Accused of Parole Violations**

- » **Background:** Under current law, the Parole Division of the Texas Department of Criminal Justice may order an individual under mandatory supervision or parole who is charged with a new offense or with violating a condition of parole to be detained pending a revocation hearing. While the Division is required to issue a summons to certain individuals who have committed administrative violations of release, a summons is not allowed for releasees who are charged with a new crime; instead, they must be detained pending their hearing.

However, new charges do not always equate to a revocation to prison. In Fiscal Year 2013, the Board of Pardons and Paroles held 20,662 hearings to decide whether to return individuals to supervision or revoke their supervision. Ultimately, the Board reinstated the supervision or re-paroled more than half, or 10,777, of those individuals, which means the Board did not deem them a threat to society. And yet, each one of these individuals spent time in the county jail.

Detaining parolees in county jails pending revocation hearings places an enormous financial drain on those counties, and it may result in the loss of employment, housing, and family support for those individuals.

We support legislation that would allow the Parole Division to issue a summons to releasees who fit certain criteria instead of ordering them to be detained in jail pending a revocation hearing. Specifically, the Division should be allowed to issue a summons to individuals who have been charged with certain misdemeanors and can show a record of stability and employment.

- » **Priority Bills: HB 710** (Turner, Sylvester), *Relating to procedures for certain persons charged with a violation of a condition of release from the Texas Department of Criminal Justice on parole or to mandatory supervision*; **SB 380** (Rodríguez, Burton, Hinojosa, Perry), *Relating to procedures for certain persons charged with a violation of a condition of release from the Texas Department of Criminal Justice on parole or to mandatory supervision*
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** As noted above, the Board of Pardons and Paroles held 20,662 hearings in FY 2013 to decide whether to return individuals to supervision or revoke their supervision, and it ultimately reinstated the supervision or re-paroled 10,777 of those individuals – all of whom would have benefitted from this legislation.

### PRONG 3

*Improve transparency and accountability throughout Texas corrections systems, which will improve in-prison safety, the treatment of incarcerated individuals, and the likelihood of success upon reentry.*

**(1) Allow the Texas Department of Criminal Justice to Provide the Timely Award of Credits for Participation in Self-Improvement Programming in State Jails, to Relieve the Current Burden on Judges**

- » **Background:** Texas’ state jail system, created in 1993, was originally intended to divert individuals with nonviolent offenses from crowded prisons and provide them rehabilitative assistance. However, individuals sentenced to state jail facilities have extremely limited access to treatment and programming options.

Recognizing that individuals in a state jail facility would benefit significantly from rehabilitative and self-improvement programs, Texas’ 2011 Legislature ratified HB 2649, which allows individuals to receive limited “diligent participation” credits for successful participation in available state jail programs. However, the implementation of this incentive scheme has been impeded by confusion among practitioners in the court and jail system with regard to who is authorized to grant credits to a state jail inmate, leaving judges unwilling to grant credits when appropriate

We support legislation that would require Texas Department of Criminal Justice to grant credits to programming participants in state jails. Fully implementing the legislative plan to grant credit to individuals who choose to improve their lives through programming is a practical and responsible measure that will help ease the strain of costly state jail stays while improving public safety and strengthening communities.

- » **Priority Bills: HB 1546** (Allen), *Relating to the award of diligent participation credit to defendants confined in a state jail felony facility*; **SB 589** (Rodríguez, Hinojosa), *Relating to the award of diligent participation credit to defendants confined in a state jail felony facility*.

- » **Financial Impact:** The estimated two-year net impact to the general revenue related funds for HB 1546 (SB 589) is a positive impact of **\$81,345,273** through the biennium ending August 31, 2017. *[Official fiscal note]*
- » **Potential Population Impact:** Approximately 11,000 people are in a state jail at any given time, although many serve 6-month sentences so as many as 22,000 individuals may cycle through a state jail in a given year. However, credits are dependent on available programming, which varies by facility.

**(2) Promote Successful Reentry by Limiting the Lifelong Consequences of a Criminal Record**

**Relieve Court Clerks of the Responsibility of Responding to Requests for Bulk Criminal Records and Instead Redirect Individuals and Entities to the Texas Department of Public Safety (DPS) to Fulfill All Requests for Bulk Criminal Records**

- » **Background:** After certain local, state, and federal agencies make criminal histories public, private entities profit from the sale and posting of mug shots and other criminal history information online. 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.

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. Not only do these individuals suffer as a result of current 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-term nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing.

We support legislation that would create a standardized system for disseminating and providing updates to criminal records by authorizing DPS to be the sole agency that can disseminate bulk criminal records, and by requiring DPS to proactively ensure that private entities comply with updates to criminal records.

**Note:** This recommendation does not restrict access to public information; any person or entity may request information that is considered public, including criminal records.

- » **Priority Bills:** **HB 2700** (Thompson, Senfronia), *Relating to the release of bulk criminal history record information by certain individuals and agencies*; **SB 1960** (Hinojosa), *Relating to the release of bulk criminal history record information by certain individuals and agencies*.
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*

- » **Potential Population Impact:** In Texas, nearly 12 million individuals are included in the state criminal history records. These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, and those who have completed their sentences.

☑ **Expand Eligibility Criteria for Orders of Nondisclosure, and Clean Up Certain Provisions Related to the Relief Granted through an Order of Nondisclosure**

- » **Background:** When granted and executed, an order of nondisclosure will seal a defendant's record, preventing criminal justice agencies (like courts and police departments) from disclosing to private entities or individuals any criminal history record information related to the offense.

In order to be eligible to petition for an order of nondisclosure, an individual must have successfully completed deferred adjudication and waited a designated period of time, during which he or she may not commit any additional crimes. However, individuals who receive convictions, rather than deferred adjudication, may not petition for nondisclosure, thus reducing their incentive to remain law-abiding after they complete a term of probation.

We support legislation that would expand eligibility criteria to petition for orders of nondisclosure to include first-time convictions for certain offenses.

Separately, as it pertains to all eligible offenses, we support legislation that would reduce the waiting times required prior to petitioning for an order of nondisclosure in order to provide real relief for people attempting to make a new start.

We also support legislation that would prohibit the forfeiture of the right to nondisclosure in plea agreements, as well as prohibit third parties (e.g., potential employers or landlords) from asking individuals to request and make available their own records if subject to an order of nondisclosure.

- » **Priority Bills:** **HB 3936** (Herrero, Senfronia Thompson, Murphy, Villalba), *Relating to an order of nondisclosure of certain criminal history record information*; **SB 1902** (Perry), *Relating to an order of nondisclosure of certain criminal history record information*.
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** From September 2010 through August 2014, a total of 170,587 cases were dismissed in Texas district criminal courts. Over 18 percent, or 30,924 of these, were for drug possession alone. Another 3,366 dismissals were for misdemeanors. Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.

**(3) Improve Access to Employment Among Returning Individuals: Implement Policies that Would Facilitate Individual Consideration of a Potential Employee’s Application by Delaying Background Checks for People with Criminal Histories**

- » **Background:** Men and women reentering the community from the criminal justice system face significant challenges finding steady, stable employment. Several jurisdictions and national employers, however, have adopted policies that remove questions about a person’s criminal history from initial job applications and delay background checks until later in the hiring process. This gives work-ready individuals with a criminal history a chance to emphasize current qualifications rather than past mistakes when applying for a job, making it easier for them to find gainful employment, be economically successful, and remain crime-free. For employers, it widens the available candidate pool.

We support legislation that would require employment applications to limit the use of a pre-screening tool that indicates whether an applicant has been convicted of a felony. Agencies and private corporations should be permitted to request information about whether a job applicant has been convicted of a felony in either of the following circumstances:

- At a point later in the consideration process after an applicant has had an opportunity to be given individual consideration of their unique qualifications and background; or
- When a conviction would, by its very nature, exclude an applicant from consideration for a particular job (e.g., a felony conviction for theft that would exclude a person from consideration for a job as a cashier).

**Note:** This policy does not force employers to hire people with a criminal conviction; it only expands the candidate pool for employers at the initial application point.

- » **Priority Bills:** **HB 548** (Johnson), *Relating to the consideration of criminal history record information regarding applicants for public employment*; **SB 376** (Rodríguez), *Relating to the consideration of criminal history record information regarding applicants for employment*.
- » **Financial Impact:** The fiscal note is not yet available.
- » **Potential Population Impact:** In Texas, nearly 12 million individuals are included in the state criminal history records. These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, and those who have completed their sentences. All of these individuals may have their criminal records revealed by a background check during the employment application process.

**(4) Establish an Office of the Independent Ombudsman for the State Correctional System to Provide Oversight to the Grievance System and Ensure Compliance with the Prison Rape Elimination Act (PREA)**

- » **Background:** The Texas Department of Criminal Justice (TDCJ) has a variety of internal accountability mechanisms, including the offender grievance process, the Ombudsman office (which handles inquiries from the public), and the Office of the Inspector General (which conducts investigations and policy monitoring). However, those mechanisms do not

and cannot serve the same role or offer the same benefits as external oversight, which promotes transparency, accountability, and good government.

We support legislation that would hold TDCJ accountable through an Office of the Independent Ombudsman (OIO) that can provide external oversight to the various internal mechanisms that TDCJ currently has in place.

Specifically, the OIO should:

- Be modeled on the Juvenile OIO created by SB 103 of the 80<sup>th</sup> Legislative Session and described in the Texas Human Resources Code, Chapter 64.
  - Examine grievances that were not resolved on unit level, appealed to the Central Grievance Coordinator, and overturned. In 2011, individuals in TDCJ submitted 174,525 Step I grievances (unit level) and 43,323 Step II grievances (Central Grievance Office level), but no data exists as to the final resolution of those grievances, and that data could provide insight as to recurring problems within units and among regions.
  - Ensure that TDCJ is in compliance with the Prison Rape Elimination Act (PREA).
- » **Priority Bill: HB 3303** (Miles), *Relating to the creation of the Office of the Independent Oversight Ombudsman for the Texas Department of Criminal Justice.*

- » **Financial Impact:** The cost to establish the Office of the Independent Oversight Ombudsman of the Texas Department of Criminal Justice would be contingent upon the number of assistants the independent oversight ombudsman would hire to carry out the provisions of the bill. Due to the unavailability of information on the composition of the new agency's staff, the fiscal cost implications of the bill cannot be determined at this time, but could be significant. The cost implications could range between \$438,000 annually for a small oversight agency up to \$6,136,000 annually for a large oversight agency. *[Official fiscal note]*

**NOTE:** We identified \$4 million in TDCJ's budget that could be re-allocated to an OIO.

- » **Potential Population Impact:** TDCJ housed approximately 150,000 people as of August 2014, whose safety and security would be benefited by this bill; likewise, the families of incarcerated individuals will benefit by knowing that less harm may be done to their loved ones.

**(5) Require the Texas Department of Criminal Justice (TDCJ) to Provide Reentry Resources to Incarcerated Individuals**

- » **Background:** TDCJ is required to develop a comprehensive reentry plan to assist individuals leaving prison. It is difficult, if not impossible, for the 125 Reentry Coordinators in TDCJ to provide meaningful assistance to the approximately 70,000 individuals leaving Texas prisons each year, necessitating the use of volunteers and encouraging incarcerated individuals to participate in the creation of their own reentry plans.

We support legislation that would require TDCJ to collaborate with organizations that provide meaningful information to incarcerated individuals about a wide range of topics – including geriatric, veterans, and gender-specific issues, reentry and community programs, and many others – and to make this information “always available” in libraries and in any areas that will increase access to this information.

Providing exiting inmates with already-compiled information about available community-based service providers and other relevant organizations will supplement the efforts of existing Reentry Coordinators, and it will have long-term public safety advantages with little cost.

- » **Priority Bills:** **HB 569** (Allen), *Relating to providing inmates of the Texas Department of Criminal Justice with information regarding reentry and reintegration resources*; **SB 578** (Hinojosa, Rodríguez), *Relating to providing inmates of the Texas Department of Criminal Justice with information regarding reentry and reintegration resources*.
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** As noted above, approximately 70,000 individuals leave Texas corrections facilities each year, who would positively impact from these bills.

**(6) Improve Access to Housing Among Returning Individuals by Protecting Landlords that Rent or Lease to Individuals with a Criminal History**

- » **Background:** While many public housing providers are prohibited by law from renting to people with certain convictions, private landlords retain discretion as to when and to whom to rent their properties. Some private landlords are hesitant to rent or lease property to individuals with a criminal record, citing the fear of being sued if that person commits a crime on their property. This leaves many individuals scrambling to find housing and risks costly re-offending.

We support legislation that would provide landlords with limited protection against liability solely for renting or leasing to someone with a criminal record, unless the landlord knew the conviction was for a violent or sexually violent offense. Studies have shown that reducing discrimination in housing minimizes criminal justice system involvement and mitigates risk for re-incarceration. This policy will help individuals with records stabilize their living situation, be better able to support their families, and live law-abiding lives in the community.

- » **Priority Bills:** **HB 1510** (Thompson, Senfronia), *Relating to liability of persons who lease dwellings to persons with criminal records*; **SB 1473** (Garcia, Watson), *Relating to liability of persons who lease dwellings to persons with criminal records*.
- » **Financial Impact:** No fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** In Texas, nearly 12 million individuals are included in the state criminal history records. These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, and those

who have completed their sentences. All of these individuals may have their criminal records revealed by a background check during the housing application process.

**(7) Exempt Eligible Parents Who Have Been Incarcerated for at Least 90 Days from Accumulating Child Support Debt**

- » **Background:** Approximately 85,000 people in Texas prisons are parents. The future welfare of their minor children largely depends on the ability of their parents to pay child support when they are released from prison. Currently, however, the state of Texas does not automatically modify child support orders while parents are incarcerated. This means that debt piles up, placing enormous and immediate burdens on non-custodial parents upon their release. Officials at the Texas Attorney General’s Office estimate that the average debt owed by an incarcerated non-custodial parent at the time of release is \$36,000.

Parents who are released from prison with child support debt must pay that debt or risk various penalties, including fines, being found in contempt of court, or re-incarceration. However, previously incarcerated individuals generally face hurdles finding employment due to low education levels, long gaps in work history, and the undeniable stigma of incarceration. As a result, many may turn to crime or to the underground economy to find ways to pay their child support, risking arrest and incarceration, and making it even less likely that the parent will be able to support his or her family.

Another consequence of this accrued debt is the disruption to families. Parents with crushing child support debt are less likely to become involved in their children’s lives. Children will not only miss out on the financial support they so desperately need; they will become deprived of a nurturing maternal or paternal relationship.

We support legislation that would exempt a parent who has been incarcerated for at least 90 days from accumulating child support debt while in confinement, but continue to require an incarcerated parent who has the means to pay child support to pay it.

- » **Priority Bills:** **HB 943** (Thompson, Senfronia), *Relating to the applicability of a wage and salary presumption to an incarcerated person for purposes of determining child support obligations*; **SB 375** (Rodríguez), *Relating to the applicability of a wage and salary presumption to an incarcerated person for purposes of determining child support obligations*.
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** As noted above, approximately 85,000 people in Texas prisons are parents; however, it is difficult to obtain data on the number of individuals with minor children.

**(8) Prohibit Texas Jails and Prisons from Eliminating Face-to-Face Visitation or Accepting Commissions from Video Visitation Contracts**

- » **Background:** Face-to-face visitation in the corrections setting positively impacts family unification, increases the likelihood of a successful reentry, and improves jail security. Despite these benefits, jails in Texas have begun to eliminate (or consider eliminating) face-to-face visitation in favor of video-only visits.

We support legislation that would prohibit the full elimination of face-to-face visitation in Texas jails and prisons. Video visitation should be permitted to supplement in-person visitation, providing an additional means of communicating with incarcerated loved ones.

We also support legislation that would prohibit Texas jails or prisons from accepting commissions from any increase in the utilization of video visitation within the facility.

- » **Priority Bills:** **HB 549** (Johnson), *Relating to certain duties of the Commission on Jail Standards regarding visitation periods for county jail prisoners*; **SB 231** (Whitmire), *Relating to certain duties of the Commission on Jail Standards regarding visitation periods for county jail prisoners*.
- » **Financial Impact:** No significant fiscal implication to the State is anticipated. *[Official fiscal note]*
- » **Potential Population Impact:** Most recent data shows that Texas county jails are housing more than 63,000 individuals. Facilities that are considering video-only visitation may impact any or all of these individuals.