



# INTERIM REPORT

*to the 85<sup>th</sup> Texas Legislature*



HOUSE COMMITTEE ON  
COUNTY AFFAIRS



JANUARY 2017

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**HOUSE COMMITTEE ON COUNTY AFFAIRS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2016**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
85TH TEXAS LEGISLATURE**

**GARNET F. COLEMAN  
CHAIRMAN**

**COMMITTEE CLERK  
KELSEY BERNSTEIN**

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Committee On  
County Affairs

January 4, 2017

Garnet F. Coleman  
Chairman

P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable Joe Straus  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on County Affairs of the Eighty-fourth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-fifth Legislature.

Respectfully submitted,



Garnet F. Coleman, Chair



Gene Wu

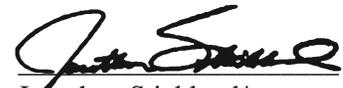


Stuart Spitzer

\_\_\_\_\_  
Tony Tinderholt



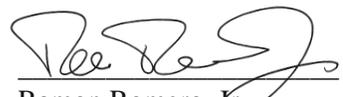
Leighton Schubert



Jonathan Stickland\*



Dustin Burrows



Ramon Romero, Jr.

\_\_\_\_\_  
John Lujan

\*- I am signing this Interim report with an asterisk, because I do not agree with all of the Committee's proposed solutions. I support many of the recommendations of the committee, and respect the hard work put in by my colleagues.



P.O. Box 2910  
Austin, Texas 78768-2910

STATE OF TEXAS  
HOUSE OF REPRESENTATIVES

512-463-0542  
Fax: 512-463-0671

**DUSTIN BURROWS**  
*District 83*

January 10, 2017

Texas House County Affairs Committee  
P.O. Box 2910  
Austin, Texas 78768

**Re: House County Affairs Committee Interim Report**

To the Members of the House County Affairs Committee,

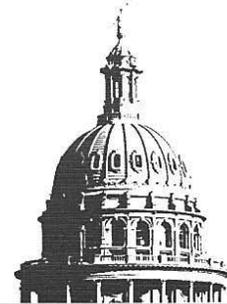
I appreciate Chairman Coleman's leadership on the Committee and the countless hours invested by the Committee to tackle some of the most important issues facing this State. While I generally support the recommendations of the Committee to varying degrees, I feel it prudent to supplement a few of my thoughts on specific recommendations:

**Charge 1, Recommendation 4:** While I support the idea of having necessary, accurate, and up-to-date databases for the state of Texas within GIS (Geographical Information Systems), I believe the Legislature would be wise to ensure that individual privacy concerns are considered and respected.

**Charge 1, Recommendation 5:** While I recognize that granting authority to Counties in this area may have some positive impact in addressing this issue, I have concerns about the economic impact on rural areas. Many people chose to live in unincorporated areas of Counties to enjoy being free from municipal ordinances. They also chose to locate their business in these areas to avoid costs associated with the same. I am concerned that broadly granting authority could have a negative impact on important industry. For example, it would be cost prohibitive to retrofit (or construct) many agriculture buildings with fire suppression systems.

**Charge 2:** I agree that we need to take this matter seriously. I also appreciate the notation regarding unfunded mandates and the availability of grants to go along with this requirement. I would simply further emphasize that before setting new requirements, the Legislature should fully study the cost and dedicate funds to offset the new costs for County budgets.

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**DUSTIN BURROWS**  
*District 83*

**Charge 8, Issue 3:** The testimony from DPS and others regarding racial profiling was that DPS does not profile; DPS takes serious any allegations of profiling; and, DPS has appropriate policies and procedures in place to address profiling. It is my impression that Director McCraw is a very thoughtful and capable Director of DPS. I did not find evidence that DPS (or other) policies or oversight are lacking; and, would not suggest any legislative intervention at this time.

In the conclusion of the report, the list of overall recommendations contains a paragraph addressing the use of consent searches. I believe the current standards utilized by Texas law enforcement officers when performing stops and searches safeguards the legal rights of the individuals being stopped or questioned by the police. It is also clear to me the lawful use of consent searches enables law enforcement personnel to properly investigate potential criminal activity.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin Burrows", with a long horizontal flourish extending to the right.

Dustin Burrows

EMAIL: [DUSTIN.BURROWS@HOUSE.STATE.TX.US](mailto:DUSTIN.BURROWS@HOUSE.STATE.TX.US)





TEXAS HOUSE OF REPRESENTATIVES  
**STUART SPITZER, M.D.**  
DISTRICT 4

January 9, 2017

Texas House Members,

I have reviewed the House Committee on County Affairs Interim Report and Executive Summary. I was honored to work on the County Affairs Committee and work with other committees to provide this interim report. The House Committee on County Affairs Interim Report and Executive Summary is an accurate reflection of the work performed.

The conclusions and recommendations do not necessarily represent my views of all the recommendations. It is my sincere hope that the document will serve as a blueprint to the Legislature to improve the lives of all Texans at the county level where the "rubber meets the road."

As always, I remain your fellow Texan,

A handwritten signature in cursive script, appearing to read "Stuart Spitzer".

Stuart Spitzer MD



STATE OF TEXAS  
HOUSE OF REPRESENTATIVES

**LEIGHTON SCHUBERT**

*District 13*

January 11, 2017

Texas House Members:

I have reviewed the House Committee on County Affairs Interim Report and Executive Summary and it is an accurate reflection of the work performed.

The conclusions and recommendations in this report do not necessarily represent my views of all the recommendations. It has been an honor to serve on the Committee on County Affairs and to work with my colleagues to address very important issues facing the state of Texas. It is my sincere hope that this document will serve the Texas Legislature to improve the lives of all Texans.

Sincerely,

A handwritten signature in black ink that reads "Leigh Schubert".

Leighton Schubert  
State Representative



## REPRESENTATIVE TONY TINDERHOLT

— DISTRICT 94 · TARRANT COUNTY —

Re: House Committee on County Affairs Interim Report

To Chairman Garnet Coleman and fellow Members of the House Committee on County Affairs:

As you know, during the Interim, numerous meetings were held to discuss a variety of charges that are important to the continued success of the State of Texas. I cherish the relationships that have continued to form between each of us. Further, I am very thankful for the hard work of Chairman Coleman and each member of this Committee through the Interim.

Though I will not be officially signing this report, I feel a brief explanation is warranted. I remain supportive of the vast majority of the recommendations compiled by the Committee and believe issues affecting our counties across the state continue to be of unique importance. Below, I have listed my brief stance on some of the charges set before the Committee.

A few great recommendations are those outlining pretrial assessments and reform, increasing the number of Jail Inspectors, and reforming Child Protective Services, among others. However, I depart from the report when it comes to the final issue of the last charge that deals with law enforcement.

Though well intentioned, I did not support the interrogation of our Department of Public Safety officials. It was concluded in testimony that our officers are not involved in institutional racism, despite the actions that occurred in the Sandra Bland tragedy. Thus, I disagree with many of the recommendations laid out in Charge 8, Issue 3 and believe implementing many of them would actually be a step backward.

Again, I am grateful to serve alongside each of you on this Committee. If anyone would like to discuss my stance on any recommendation, I am more than willing to talk. I look forward to continuing our work in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Tinderholt".

Tony Tinderholt

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## **INTRODUCTION**

At the beginning of the 84th Legislative Session, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on County Affairs: Garnet F. Coleman, Chair; Dustin Burrows; John Lujan; Ramon Romero, Jr.; Leighton Schubert; Stuart Spitzer; Jonathan Stickland; Tony Tinderholt; and Gene Wu

The House Rules adopted by the 84th Legislature gives the House Committee on County Affairs its jurisdiction. Rule 3, Section 6 reads as follows:

The committee shall have nine members, with jurisdiction over all matters pertaining to:

- (1) counties, including their organization, creation, boundaries, government, and finance and the compensation and duties of their officers and employees;
- (2) establishing districts for the election of governing bodies of counties;
- (3) regional councils of governments;
- (4) multicounty boards or commissions;
- (5) relationships or contracts between counties;
- (6) other units of local government not otherwise assigned by these rules to other standing committees; and
- (7) the following state agency: the Commission on Jail Standards.

During the interim, the Speaker assigned charges to the Committee.

The Committee on County Affairs held the following hearings:

- July 30, 2015, Capitol Room E1.026 Austin, Texas
- September 15, 2015, Capitol Room E2.016, Austin, Texas
- May 16, 2016, John H. Reagan Building 120, Austin, Texas
- June 10, 2016, Texas Tech University School of Law Hunt Court Room (LANR 156), Lubbock, Texas
- July 7, 2016, Harris County Commissioners Court Courtroom, Houston, Texas
- July 21, 2016, Blinn College, Brenham, Texas
- August 4, 2016, Tarrant County College Trinity River Campus Auditorium, Fort Worth, Texas
- August 29, 2016, Texas A&M- San Antonio Auditorium, San Antonio, Texas
- September 20, 2016, Capitol Room E2.016, Austin, Texas
- September 21, 2016, John H. Reagan Building 140, Austin, Texas
- November 16, 2016, Capitol Room E2.016, Austin, Texas

The Committee thanks each of the agencies, associations, and individuals who contributed their time, testimony, and information to this report. Furthermore, the Committee appreciates the attentiveness to those issues most pressing to the State of Texas. The Chairman appreciates that each and every committee member opened their heart and mind when discussing changes to Child Protective Services and Criminal Justice reform in order for all Texans to be treated fairly, regardless of their differences.

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The Committee on County Affairs has completed its hearings and has adopted the following report.

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## EXECUTIVE SUMMARY

The recommendations included in this report include recommendations committee members submitted based on the information obtained throughout the interim hearing process. To be clear, the fact that a recommendation is listed herein does not indicate that each committee member ratifies or supports each individual recommendation without modification. They are set forth in this report to provide a representative set of recommendations for potential study, analysis or future legislative consideration. Many of the recommendations included in this report could serve as a catalyst for future study or action, both during the 85th legislative session and beyond.

County governments serve as the crossroads for innumerable public policies. In the committee's 11 interim hearings across the state of Texas, it became clear that the needs and resources of each county are as diverse as the landscape. It is evident that within the variant populations and locations, each county needs both tools and resources to provide effective services to their constituents while pursuing the most efficient use of taxpayer dollars.

The committee studied eight charges relating to seemingly disparate issues. However, when taken as a whole, they illustrate the complex nature in which policies overlap. The Texas Constitution imbues counties with the responsibility of caring for indigent, ill, and poor residents. Counties also have the implicit responsibility to ensure that taxpayer dollars are spent in an efficient and accountable manner. As policy mandates from state and federal government intersect with real world applications and implementation, it is clear that the rubber meets the road at the county level.

Streamlining and strengthening county indigent care services and urban and rural delivery models provide better services for clients that are low-income, or have physical challenges or mental illness. Doing so diminishes the unfortunate pipeline that transports many individuals with mental illnesses along the path to prison and county jails. Effective and accountable pretrial release and diversion programs can ensure that certain nonviolent offenders are brought to justice while reducing their population in county jails. Both can reduce spending and ensure human success for Texans.

All of these issues ultimately guarantee that taxpayers receive more services for their money and achieve cost savings. While it is the government's duty to ensure that those dollars are used in the most efficient manner possible, it is also important to ensure that the government operates transparently with those dollars and manages local government debt effectively.

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**CHARGE #1: Study the effectiveness and efficiency of current programs in Texas as well as best practices to determine how to decrease the risk and mitigate the impact of wildfires, floods, and other natural hazards in the wildland-urban interface. Examine the duties, performance, and jurisdictions of water districts, municipalities, Emergency Services Districts, other similar districts, and state offices like the Fire Marshal and Extension Services. Evaluate current regulations and identify best practices. Recommend approaches for hazard mitigation and response to natural disasters. This is a joint charge with the House Committee on Urban Affairs.**

Due to its immense size and geographical diversity, Texas is especially vulnerable to disaster situations. Texas leads the nation in natural disasters and has suffered damage from tornadoes, hurricanes, flooding, drought and extreme temperatures. Increasingly, the focal point of this vulnerability is in the Wildland-Urban Interface (WUI), the areas where urban growth abuts undeveloped wildlands. In addition to natural disasters, the state has had its share of public health threats of both the Zika and Ebola viruses. Lastly, Texas has seen a number of man-made disasters such as the West fertilizer plant explosion. Response to these emergency situations requires coordination between a number of federal, state, and local agencies.

**RECOMMENDATIONS:**

- 1. The Texas Legislature should develop a formal process for local entities to apply for state disaster recovery funds, including a revolving state disaster recovery fund.**
- 2. The Texas Legislature should continue to support local responders as the most appropriate first line of defense when responding to an emergency.**
- 3. The Texas Legislature should ensure that current resources are adequately funded and maintained.**
- 4. The Texas Legislature should assist in building a comprehensive network of accurate and up-to-date Geographical Information System (GIS) tracking and visualization databases for the state.**
- 5. The Texas Legislature should clarify county authority to set minimum standards for wildfire mitigation in both platted subdivisions and other unincorporated areas.**

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**CHARGE #2: Identify and address potential gaps in counties' cybersecurity policies and ensure that personal information held by counties and other local governmental entities is secure.**

Counties have become more reliant on technology as a key method of providing efficient cost-effective services to citizens. At the same time, the number of attackers targeting the information networks and the technology infrastructure of Texas counties of all sizes is on the rise. The types of attackers include foreign governments, cyber terrorists, as well as cyber-thieves. Counties are searching for methods to cope with these threats, however the delivery mechanisms are becoming more sophisticated by the day, and the threat landscape is constantly evolving.

Counties are a tempting target for cybersecurity attacks because of the breadth and widespread amount of information and financial assets that counties hold. The type of information that counties hold includes, but is not limited to, personal information like Social Security numbers, health records, addresses, and motor vehicle information.

In order to thwart these kinds of attacks Texas counties have attempted to improve both preventive cybersecurity measures, as well as recovery and response procedures. While all counties would like to protect all assets at the highest possible level, counties must choose carefully about what needs to be protected and at what level that protection should be provided. The reason for this is that though all Texas counties face the similar challenges, creating an effective cybersecurity infrastructure and recovery of cybersecurity attacks comes at a cost, and the 254 counties of Texas have strikingly varied capacities to bear these costs. A major example of the cost of cybersecurity for counties include finding and retaining qualified professionals in an employment field where counties have to compete with lucrative private sector salaries. Other costs include software and hardware costs which must be updated regularly in order to meet the shifting threat landscape.

There are also costs associated with recovery from cybersecurity attacks. These costs are particularly challenging for counties because it is impossible to predict how much recovery, and therefore counties can't properly budget for them. To mitigate some of these unknown costs counties are beginning to invest in "cyber-risk coverage." Cyber-risk coverage is a recently developed type of insurance coverage that covers three main areas, liability; remediation; and regulatory penalties. Liability cyber-risk coverage covers a county for defense and settlement costs arising out of losing private data. Remediation cyber-risk coverage covers response costs following a data breach. Regulatory penalties cyber-risk coverage covers the costs of defending, investigating and settling penalties that may be assessed by a regulator on a county.

**RECOMMENDATION:**

- 1. The Texas Legislature should require all counties to install and maintain appropriate levels of cybersecurity.**

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**CHARGE #3: Evaluate the Texas Commission on Jail Standards to determine if the Commission has the resources and structure to provide sufficient oversight, regulation, and enforcement over Texas county jails.**

The Texas Commission on Jail Standards (TCJS) conducts annual on-site inspections of county jails to verify compliance with minimum jail standards in Texas. Currently there are 245 jails that fall under the jurisdiction of TCJS. The policy-making body consists of nine Commission members appointed by the Governor. The Commission operates with 16 full time employees, four of which are jail inspectors, with an annual budget of \$910,000. TCJS requires administration of inmate population reports from jails, and it investigates and resolves inmate grievances. The Commission meets quarterly to discuss any issue that needs to be addressed concerning the various county jail issues under their purview. It is the duty of the Commission to establish written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for:

- (1) the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;
- (2) the custody, care and treatment of inmates;
- (3) programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

As part of the statewide standards established by the Commission, TCJS requires each county jail or facility under their purview establish a Health Services plan submitted and approved in writing. The Health Services Plan must provide inmate medical, dental and mental health services. According to the Texas Administrative Code, each plan shall:

- (1) provide procedures for regularly scheduled sick calls;
- (2) provide procedures for referral for medical, mental, and dental services;
- (3) provide procedures for efficient and prompt care for acute and emergency situations;
- (4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;
- (5) provide procedures for medical, mental, nutritional requirements, special housing, appropriate work assignments, and the documented use of restraints during labor, delivery and recovery for known pregnant inmates;
- (6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;
- (7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;
- (8) provide procedures for the control, distribution, and secured storage of the over-the-counter medications;
- (9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);
- (10) provide procedures for all examinations, treatments, and other procedures to

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be performed in a reasonable and dignified manner and place; and (11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times.

## **RECOMMENDATIONS:**

- 1. The Texas Legislature should consider increasing the number of full time Jail Inspectors.**

**CHARGE #4: Review pretrial service and bonding practices throughout the state. Examine factors considered in bail and pre-trial confinement decisions, including the use of risk assessments; assess the effectiveness and efficiency of different systems in terms of cost to local governments and taxpayers, community safety, pretrial absconding rates and rights of the accused. This is a joint charge with the House Committee on Criminal Jurisprudence.**

The right to bail is guaranteed in both the Texas Constitution and the Texas Code of Criminal Procedure, except in capital cases, as a way to keep those who have been accused of a crime, but not yet convicted, from languishing in jail until their trial. Elsewhere in Texas statute, lawmakers laid out the rules for fixing the amount of bail, which specify that bail must be high enough to be taken seriously by a defendant, must not be used to oppress the defendant, that the nature of and circumstances surrounding the offense must be considered, as well as ability to make bail and safety of the victim and community must be considered.

Despite these guarantees and instructions, the number of people held in Texas jails pre-trial has steadily increased in the last 25 years, from roughly 32 percent of the jailed population in 1994 to nearly 75 percent of those in jail now, excluding individuals who violated parole as well as federal contract inmates.

The purpose of bail is for the accused to provide a sort of guarantee to the court that they will show up to a court hearing to answer for the charge against them. The bail amount is provided in exchange for release from custody pending a trial or other disposition of a case.

There are three types of bail:

- **Bail bond:** Known as a surety bond, the defendant pays a surety company a percentage of the bail, and the total bail. The company pays the full amount of bail to the court if the defendant fails to show up for court.
- **Cash bond:** The defendant pays the full amount of the bond. The funds are returned to the defendant if he or she complies with conditions of the bond.
- **Personal bond:** The defendant is released on their own recognizance, with a promise to show up to court. Each person released on personal bond is required to pay either \$20, or three percent of the amount of the bail fixed for the accused, whichever is greater.

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Bail amounts are set by magistrates, who can be any type of judge, and must be set no later than 48 hours after an arrest. Bail can only be withheld in a certain number of circumstances, such as for a capital offense, if the accused has two felony convictions, was previously convicted of felony where they used a deadly weapon, if the accused was charged with a violent sexual offense while on probation for a felony, or if the accused violated a family violence protective order.

Typically, a magistrate only has the charge for the arrested offense and the name of the defendant when making a pretrial decision. Depending on the jurisdiction, however, magistrates might have additional information, such as criminal history of the defendant, risk assessment information, employment information, or previous failure to appear information. In some jurisdictions, magistrates utilize set bail schedules to make bail decisions, using a one-size-fits-all approach that takes into account no other information than the charge. After the magistrate sets a bail amount, if the defendant cannot pay that amount, or the portion necessary to secure a surety bond, they have to remain in jail until their trial.

Those arguing for reforming the bail and pretrial system express that unnecessary pretrial detention can damage an individual's ability to maintain employment, support dependent children, and can increase the likelihood of recidivism. Research shows that when low-risk defendants are held for just 2 to 3 days, they are 40% more likely to commit a new crime before trial than those held no more than 24 hours. That's partly because the less time a person spends behind bars pretrial, the more likely they are to be able to keep their job and/or take care of their children.

The increasing number of individuals behind bars pre-trial also has placed a financial strain on county jails. Housing these individuals costs an average of \$60.12 per person per day. In comparison, it costs roughly \$3.25 per person per day to supervise someone released pretrial. Research has also shown that defendants who remain in jail because they cannot afford to post bond tend to receive more severe sentences and are offered less attractive plea deals. Additionally, in misdemeanor cases, pretrial detention may push a defendant to plead guilty merely for a chance to go home, even though that person might be innocent.

These apparent ramifications have pushed the issue of bail and pretrial reform to the forefront of the criminal justice discussion, with many arguing that a large portion of those individuals being held pretrial would show up to court as their supposed to if just given the chance. Instead, the ability to make bail depends on a person's financial means, whereas even individuals who pose a great risk will be released if they have the means.

The following is a look as some of the landscape of the state's bail and pretrial system, as well as a discussion on how it might be improved.

## **RECOMMENDATIONS:**

- 1. The Texas Legislature should consider requiring the use of a risk assessment when determining bail.**

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2. **The Texas Legislature should require an indigency screening as part of the risk assessment decisions makers understand the individual's ability to pay when setting bond.**
  3. **The Texas Legislature should explore regionally-based options for pretrial service departments in counties with small populations.**
  4. **The Texas Legislature should consider amending the Texas Constitution, putting in provisions for judges, who determine an individual poses a significant flight and/or high risk to community safety, to hold an individual in jail without bail.**
  5. **The Texas Legislature should require pretrial service divisions to collect data on pretrial release decisions, absconding rates, and court appearances for further review.**

**CHARGE #5: Study the implications and effects on law enforcement agencies and individuals that stem from the publication, republication, or other dissemination for public internet access of mug shots and other criminal history information regarding involvement of an individual in the criminal justice system.**

In the United States, more than 6.5 million adults have some form of criminal history. Texas is no different, with approximately 4.7 million adults possessing a criminal record. Of the 4.7 million, 1.7 million adults are living with a felony conviction. The remaining two-thirds are living with misdemeanor convictions or no conviction at all. These numbers are continuing to increase as law enforcement increases enforcement of laws across the nation and continues to arrest individuals. In Texas, law enforcement officers make more than 1 million new arrests each year.

The stigma associated with having a criminal record, regardless of whether the individual was convicted of a misdemeanor, felony, or not at all, can and often does result in lifelong ramifications. The increasing publication of such information is becoming more readily available to employers, housing entities, and other programs such as education or public assistance, which use this information as a means to screen candidates.

**RECOMMENDATION:**

**The Committee makes no formal recommendation.**

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**CHARGE #6: Study statutorily mandated services provided by sheriffs and constables, and determine whether fee schedules allow cost recovery without placing undue burdens on recipients of those services.**

*Office of the Constable*

The office of the constable is a constitutionally created office, found in Article V, Section 18 of the Texas Constitution. Each constable is an authorized peace officer and chief process server for the justice court, with statewide jurisdiction to execute any criminal process and countywide jurisdiction to execute any civil process, serving four year terms. Additionally, the constable has the authority to execute process issued by some state agencies. The number of constables in each county is determined by the population according to the most recent census.<sup>i</sup>

*Types of Warrants*

Serving warrants can be an extremely dangerous job for law enforcement officers when considering the differing types of warrants issued and delivered by law enforcement. Although many warrants issued are the result of a criminal offense, many are failure to appear in court or failure to comply with court orders. However, these warrants play a key role in providing public safety for the citizens of Texas.<sup>ii</sup>

Arrest warrant

An arrest warrant is a judge's order to law enforcement to arrest and bring to jail a person charged with a crime. The warrant is issued upon a sworn declaration by the district attorney, a police officer, or an alleged victim that the accused person committed a crime.<sup>iii</sup>

Types of offenses receiving warrants:

- Felony
- Class A, B, and C Misdemeanors

Capias Warrants

Capias warrants are commonly issued when an individual fails to appear before a court in a criminal case. In many capias warrant cases, the defendant has bonded out and fails to appear at their scheduled court date. In these instances, the law enforcement officer is directed by the court to take the individual into custody and deliver them to the court. Many capias warrants are issued in non-criminal cases such as an individual failing to pay a traffic fine or even child support.<sup>iv</sup>

Capias Pro Fine Warrants

Capias pro fine warrants occur when defendants fail to comply with judgments issued during court proceedings. For example, if an individual is ordered to pay restitution and fails to do so, a capias pro fine warrant would be issued for law enforcement to bring the individual before the court and compel them to explain the reason for failure to comply with court rendered judgments. This type of warrant does not automatically result in the individual serving time.

*Legislative History of Warrant Fees*

For at least 30 years, it has been the Legislature's policy that the cost of serving warrants ought to be recovered, at least partially, from defendants by law enforcement agencies. This policy

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reflects two competing values:

- a) These fees are assessed upon defendants *only after conviction (or a no contest plea)*, which means they have had the opportunity to assert their innocence in the criminal justice system. And in the case of *capias* warrants, the fee is charged only after the defendant has failed to appear for a court hearing in their case;
- b) Many defendants do not have the means to pay the costs that can accrue in a criminal court case, including fines, court costs and fees. Law enforcement organizations must therefore depend in part on taxpayer support of the critical role they play in the criminal justice system.

In 1987, the fee for serving an arrest warrant, *capias* warrant, or *capias pro fine* warrant was set at \$20.<sup>v</sup> In 1989, that fee was increased to \$35.<sup>vi</sup> In 1991, the Legislature clarified that the law enforcement agency that actually executed the warrant was entitled to the fee upon request.<sup>vii</sup> And in 1999, the Legislature raised the fee from \$35 to \$50.<sup>viii</sup>

Legislation to increase the warrant fee was filed in 2009,<sup>ix</sup> 2011,<sup>x</sup> 2013,<sup>xi</sup> and 2015.<sup>xii</sup> However, those attempts were unsuccessful.

## **RECOMMENDATIONS:**

- 1. The Texas Legislature should look to increase Warrant Fee (a minimum of \$25) - from \$50 to \$75, in CCP - Chapter 102 to reflect average CPI-U index percent difference, and review CPI-U index and other cost statistical data every 4 years to analyze cost recovery.**
- 2. The Texas Legislature should look to develop a graduated scale for fee recovery on different offense levels from Misdemeanor to Felony to reflect resources and infrastructure recovery to locate and apprehend fugitives; such as \$ 75 for Misdemeanor offenses and \$ 150 for Fugitive offenses.**

**Charge #7 - Study the effect of Proposition 5 (SJR 17 (84R)) on the quality of private roadways in counties with a population of less than 7,500. Make recommendations to ensure the amendment does not result in undue competition between counties and private industry, and whether additional counties could benefit from a similar authorization.**

The Texas Constitution was amended over 25 years ago to allow counties with a population of 5,000 or less to contract with private citizens and maintain private roads. In rural counties, contractors often refuse to maintain private roads for multiple reasons including location of road, work volume, and ability to obtain higher paying contracts elsewhere. Private contractors' refusal to maintain the roads resulted in poor road conditions creating a public safety hazard for citizens and emergency services.

Texas' Constitutional amendment created a provision to allow counties to construct and maintain

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private roadways with both the consent and at the expense of the private landowner. Should the landowner not consent or not agree on a rate with the county, they have the option to opt-out of the maintenance program.

During the 1980's, when the original amendment passed, Texas had 51 counties with a population of under 5,000. Currently there are 47. Since this time, populations in such counties have increased, pushing counties out of the population bracket to utilize this service. By increasing the population cap to 7,500, counties with the increased jail population can resume contracting with private citizens to maintain private roads. As a result of the population increase, Texas now allows a total of 72 counties to contract and provide this service.

Rates for maintenance of private road by the county is determined by the Commissioner's Court based on what cost would be incurred by contracting with a private company.

#### **RECOMMENDATIONS:**

- 1. The Texas Legislature should leave the intact current ability for counties to contract with private citizens to maintain private roadways.**
- 2. The Texas Legislature should consider increasing the population cap to allow other counties to contract directly with citizens for maintenance and repairs of private roadways.**

**Charge #8 - Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:**

- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;**
- b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;**
- c. determine whether an agency is operating in a transparent and efficient manner;**
- and**
- d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.**

#### **Issue 1: 1115 Transformation Waiver**

Texas was approved for a five-year demonstration waiver to take place from 2011-2016. The goal of the waiver is to allow for the expansion of managed care while protecting hospital supplemental payments under a new payment methodology at the same time incentivizing the delivery system improvements to enhance access and coordination of services and providers. The waiver divided Texas into 20 regions known as Regional Healthcare Partnerships (RHP's) to

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partner together, pool funds, and provide coordinated services to their area. Each RHP has a designated entity, known as the anchor, which coordinates services and funding throughout the RHP. Under the waiver, previous Upper Payment Limit (UPL) funds and new funds are distributed to hospitals and other providers through two new funding pools: Uncompensated Care (UC) Pool and Delivery System Reform Incentive Payments (DSRIP) Pool.

## **RECOMMENDATION:**

- 1. The Texas Legislature should support renewal of the 1115 Transformation Waiver.**

### **Issue 2: Child Protective Services and The Texas Department of Family and Protective Services**

Over the years, the Legislature has tried to address the agency at various junctures whenever the agency has experienced crisis. However, such measures have never fully addressed the underlying cause of the crisis. Consequently, Child Protective Services problems have gotten worse. In December 2015, a federal district court ruled the state is violating the constitutional rights of our foster children by subjecting them to an unreasonable risk of harm, and appointed two special masters who recently released comprehensive reform recommendations.

Furthermore, April 12, 2016, Speaker of the House Joe Straus issued a press release stating child protection would be a top priority in the 85th Legislative Session. "All of us have a responsibility to end the suffering that far too many Texas children are experiencing" Speaker Straus said in his statement.<sup>xiii</sup> The call to action came quickly after multiple news outlets began reporting serious problems the Texas Department of Family and Protective Services (DFPS) was experiencing, specifically in Child Protective Services (CPS).

#### *Counties Role in Child Protective Services Cases*

CPS cases involve a number of statutorily-required hearings, which occur multiple times throughout the year, until the child exits the foster care system. These cases are complex, making families reliant upon attorneys to guide them through the system. It is for this reason collaboration among caseworkers, attorneys, and other professionals is vital to producing the best outcome for the child.

Courts operate under strict laws regarding the timing of hearings and of the disposition of cases. For that reason, CPS cases are sometimes a priority on a court's docket. Often these court proceedings are emotional, commonly involving substance abuse, family violence, poverty, and mental and physical illnesses.

Although Child Protective Services is a state agency with a state responsibility, counties play an important – and expensive – role in the delivery of those services. CPS cases are civil proceedings tried in local courts, either district or county courts-at-law. Although district judges are paid by the state (and often supplemented by the county), county court-at-law judges, association judges, and the rest of the court's functions – such as staff attorneys, clerks, bailiffs, interpreters and so on – are paid by county taxpayers. Additionally, the local Sheriff's Office

and Constables provide security detail for the Courthouse and service of documents. CPS cases are a particular worry because of their emotional nature.

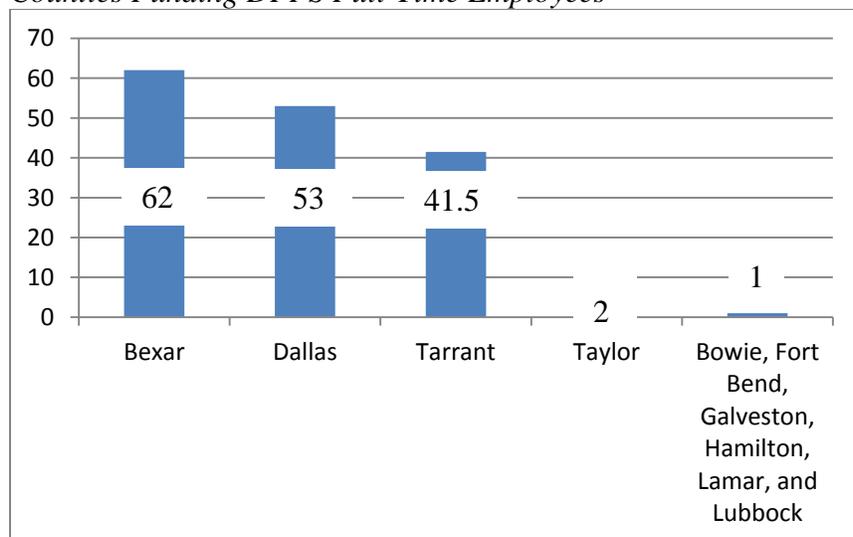
Depending on the county, either the District Attorney or the County Attorney represent the State in CPS cases. Although a District Attorney's salary is paid by the state (and often supplemented by the county), county attorneys are wholly funded by local taxpayers. In addition, the salaries for assistant district attorneys, assistant county attorneys when they handle CPS cases, paralegals, investigators and other personnel, as well as their overhead expenses, are paid by county taxpayers.

State law requires attorneys ad litem be appointed for every child and every indigent parent involved in CPS cases. County taxpayers pay the full cost of all those appointments. For instance, in Travis County an estimated 99% of parents on the CPS docket are found to be indigent and qualify for appointed counsel with an associated cost for FY 2015 of over \$3.5 million.

As Judges Sage and Rucker from the Supreme Court Children's Commission recently wrote: Each year, the State of Texas spends more than \$1.3 billion on child protective services. In fiscal year 2015, Texas spent over \$402 million on foster care payments alone, averaging out to over \$13,000 per child in care. But these dollars do not include the cost of legal representation of children and parents or the cost to the state and counties for the prosecution of CPS cases. Counties alone bear the costs associated with providing statutorily mandated legal representation for parents and children, and in many cases, for the employment of assistant county or district attorney to represent the Department of Family and Protective Services.

Many counties fund full-time employees (FTE's) to handle CPS cases in their courts. The chart below details which counties provide this funding as well as how many FTE's they fund.

*Counties Funding DFPS Full-Time Employees*



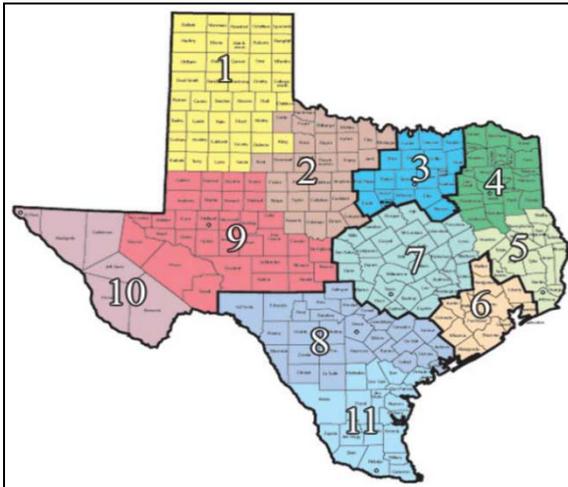
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### *Caseload Oversight*

Currently, in Texas, there is no mandated statewide standards regarding the number of caseloads assigned to attorneys. As are most things across the state, counties vary drastically when it comes to standards regarding representation in CPS cases. According to the Supreme Court of Texas Permanent Judicial Commission for Children, Youth, and Families, "Texas courts employ various methods, including rotation or random selection from a list of individual attorneys for each case, employment of individual attorneys or law firms under contract with the jurisdiction, or use of salaried attorneys in county-run offices such as a Public Defender."

### *CPS Regions in Texas*

Child Protective Services is divided into 11 different regions throughout the state. Regions are broken out based on community collaborations. Each region is analyzed to understand which areas of the state are experiencing higher turnover rates, higher rates of kinship placements, higher volumes of children with special needs, and other basic information that can help address large issues plaguing the agency. Below is a map of the 11 regions in Texas. The House Committee on County Affairs visited Region 1, Region 6, Region 7, Region 3, and Region 8 during the months of May through August of 2016.



While regions in Texas experience differences when it comes to available resources, consistently regions experience large numbers of caseworker turnover, low salaries for CPS workers, complaints regarding on the job safety and difficulty placing children in appropriate settings.

### **RECOMMENDATIONS:**

- 1. The Texas Legislature should encourage counties to develop specialty courts, like the Travis County Family Drug Treatment Court, to intervene with families within the CPS Court system to assist parents with substance abuse.**
- 2. The Texas Legislature should allocate resources from The Health and Human Services Commission to parents whose children are in the foster care system.**
- 3. The Texas Legislature should create a plan that would utilize money granted by the "21st Century Cures Act" to prevent and treat opioid and heroin addiction in families whose children are in CPS custody.**

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4. **The Texas Legislature should review circumstances where removal was not necessary for the physical safety of the child, and consider policy changes regarding circumstances that warrant removal.**
  5. **The Legislature should strongly consider recommendations made by the House Select Committee on Mental Health addressing mental and behavioral health services and treatments for children.**
  6. **The Texas Legislature should consider across the board pay raises to all employees at Child Protective Services.**
  7. **The Texas Legislature should further study the timeliness and adequacy of payments and determine if legislative action is needed.**
  8. **The Texas Legislature should increase the number of full-time frontline employees at Child Protective Services to reduce the number of caseloads per employee to ensure better outcomes for children.**
  9. **The Texas Legislature should require The Texas Department of Family and Protective Services to put measures in place to increase employee morale within the agency.**
  10. **The Texas Legislature should increase incentives and payments to attract new and keep current foster families.**
  11. **The Texas Legislature should reduce burdensome requirements for approval to become a foster family.**
  12. **The Texas Legislature should provide adequate funding for redesign efforts in other regions of the state.**

### **Issue 3: Texas Department of Public Safety and Criminal Justice Reform**

In July of 2015, Trooper Brian Encinia pulled over Sandra Bland for failure to signal when changing lanes. The encounter escalated unnecessarily, leading to Ms. Bland's arrest and being taken to the Waller County Jail. Ms. Bland remained in the jail for three days where she later committed suicide in her jail cell. Her story made national headlines and sparked the Texas House Committee on County Affairs to launch an investigation into the systemic practices that lead to Ms. Bland's tragic death.

#### ***Improving Law Enforcement***

Sandra Bland's death prompted Chairman Coleman to begin working on improvements to the criminal justice system in Texas. By understanding all factors that led to Ms. Bland's death, the Chairman and Committee could identify specific issues needing to be addressed in order to improve policing practices and community relations. The initial Sandra Bland hearing, held in July of 2015, provided an avenue for the public to air their grievances about law enforcement

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and testify about their own personal experiences with multiple police agencies, in an effort to paint a picture of what people live through in the midst of law enforcement encounters.

It became clear that police agencies, the criminal justice system, and county jails need significant reforms in order to better the treatment of the public and better the outcomes for individuals who enter the criminal justice system. This system is so intertwined that one fix, in one agency, will not provide the overall reforms needed. Change is necessary within all aspects of this system to stop the systematic profiling of certain races and reduce unnecessary escalating encounters with law enforcement due to a lack of respect among all parties.

The Committee's investigation was conducted over a year and a half, heard testimony from multiple entities and experts in criminal justice, and identified specific reforms needed for improvement to the following:

- Texas Department of Public Safety
- Increasing minimum county jail standards
- Mental Health Treatment and Diversion
- Police/Community relations
- Complete removal of consent searches

Increased training in de-escalation techniques

#### **RECOMMENDATIONS:**

- 1. The Texas Legislature should require the Texas Department of Public Safety to accurately record race for individuals who receive warnings, tickets, arrests, and searches.**
- 2. The Texas Legislature should increase de-escalation training for law all enforcement officers and increase ramifications in situation where de-escalation should be used but is not.**
- 3. The Texas Legislature should increase Crisis Intervention Training (CIT) for all law enforcement officers from 16 to 40 hours in the certification requirement.**
- 4. The Legislature should consider requiring all county jails to install an electronic monitoring system.**
- 5. The Texas Legislature should increase number of required training hours for mental health awareness for county jail staff.**
- 6. The Legislature should assist counties with implementing diversion before booking programs.**
- 7. The Legislature should assist counties in areas with medical provider shortages to use telemedicine to assess and treat individuals in their jail.**
- 8. The Texas Legislature should require that medical benefits such as Medicaid, Supplemental Security Income, and Social Security Disability Insurance benefits are**

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suspended when an individual enters a county jail instead of terminated.

9. The Texas Legislature should require law enforcement agencies to adopt similar policies and those recommended in a revised racial and ethnic profiling law.
10. The Texas Legislature should create policies that appropriately encourage and increase the use of personal recognizance bonds such as requiring magistrates to perform risk assessments, indigence screenings, and reason for setting a commercial bond.
11. The Texas Legislature should prohibit the use of consent searches, and increase the standard of both stops based on 'reasonable suspicion' and searches based on 'probable cause' to a 'preponderance of the evidence'.
12. The Texas Legislature should strengthen the language and enforcement of Texas' racial/ethnic profiling laws.
13. The Texas legislature should prohibit the arresting of individuals for non-jailable offenses.
14. The Texas Legislature should require local law enforcement agencies to adopt similar policies to improve the criminal justice system as those recommended in this Texas House Committee on County Affairs report to the 85th Legislature.

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**CHARGE I** - Study the effectiveness and efficiency of current programs in Texas as well as best practices to determine how to decrease the risk and mitigate the impact of wildfires, floods, and other natural hazards in the wildland-urban interface. Examine the duties, performance, and jurisdictions of water districts, municipalities, Emergency Services Districts, other similar districts, and state offices like the Fire Marshal and Extension Services. Evaluate current regulations and identify best practices. Recommend approaches for hazard mitigation and response to natural disasters. *(Joint charge with the House Committee on Urban Affairs)*

### **SCOPE OF THE CHARGE**

As Texas continues to grow, the wildlife-urban interface continues to face significant challenges. More and more, cities are growing in to the less populated areas of the county; many of these areas are unequipped with adequate emergency services to accommodate the growing population. This charge examines the current jurisdiction of special purpose districts, county and municipal authority in these areas, and state-run programs to determine what services are available and what services are necessary. Additionally, the charge explores best practices on prevention and mitigation of natural disasters and provides recommendations on how to best address each circumstance.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

May 16, 2016, John H. Reagan Building, Austin, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

#### Witnesses

May 16, 2016, John H. Reagan Building, Austin, Texas

##### Panel #1

- Nim Kidd (Texas Division of Emergency Management, Department of Public Safety)
- Pete Phillips (Texas General Land Office)
- Michael Lyttle (Texas Department of Housing and Community Affairs)

##### Panel #2

- John Carlton (Texas State Association of Fire and Emergency Districts)
- Chris Connealy (Texas Dept of Insurance - State Fire Marshal's Office)
- Scott Morgan (Texas State Association of Fire and Emergency Districts)
- Mike Wisko (Texas Fire Chiefs Association)

##### Panel #3

- Rick Flanagan (City of Houston)
- Doug Bass (Self; Dallas County)

##### Panel #4

- Tom Oney (Lower Colorado River Authority (LCRA))
- Bill Fry (Self; Association of WaterBoard Directors - Texas)
- Mike Howe (Texas Section AWWA)

##### Panel #5

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- Walter Peacock (Self)
  - Tom Boggus (Texas A&M Forest Service)
  - Tom Nuckols (Travis County)
  - Gordon Wells (The University of Texas at Austin)

Panel #6

- John Henneberger (Self; Texas Low Income Housing Information Service)
- Brenda O'Connor (Insurance Institute for Business & Home Safety)
- Ned Munoz (Texas Association of Builders)
- Paul Hanna (Lubbock County Constable 1)

Registering, but not testifying:

- Heather Lagrone (Texas General Land Office)
- Tyler Payne (Texas General Land Office)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Ed Emmett (Harris County D.E.M.)
- Mike Montgomery (Self; Harris County Fire Marshal's Office)

## **BACKGROUND**

Due to its immense size and geographical diversity, Texas is especially vulnerable to disaster situations. Texas leads the nation in natural disasters and has suffered damage from tornadoes, hurricanes, flooding, drought and extreme temperatures. Increasingly, the focal point of this vulnerability is in the Wildland-Urban Interface (WUI), the areas where urban growth abuts undeveloped wildlands. In addition to natural disasters, the state has had its share of public health threats of both the Zika and Ebola viruses. Lastly, Texas has seen a number of man-made disasters such as the West fertilizer plant explosion. Response to these emergency situations requires coordination between a number of federal, state, and local agencies.

## **FINDINGS**

A Presidential Declaration is required in order to declare a federal disaster. The threshold for this type of declaration in Texas is based upon its population; hence at least \$35.4M in uninsured property damage has to occur. Unless a disaster meets this loss threshold, an entity does not receive federal aid; oftentimes, this threshold is not met despite large property losses.

The Governor may, through executive order or proclamation, declare a state of disaster when an event has occurred or is imminent. In the event of a state declared disaster, resources are made available to assist in preparedness or for response services.

County judges and mayors may issue a local disaster declaration effective for up to seven days; a disaster declaration beyond that requires action by a commissioner's court or city council. Local entities must use their own resources to respond to these disasters. Local entities may apply for state aid if they do not have necessary resources to adequately respond to a disaster.

The state funds disaster recovery through General Revenue Funds, supplemental appropriations,

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Federal Funds, and Other Funds. The Governor may also provide disaster grant funds to local and state agencies, once appropriated funds have been depleted.

#### *Emergency Response State Agencies*

Several state agencies are tasked with disaster preparation, response, and relief efforts. Agencies including the division of the Texas Department of Public Safety dedicated to disasters - the Division of Emergency Management (TDEM), Texas A&M Forest Service (Forest Service) and Texas A&M Engineering Extension Service (TEEX) receive direct appropriations in support of these efforts. Other agencies such as the Texas General Land Office, Texas State Fire Marshal's Office, and the Texas Department of Housing and Community Affairs provide resources and assistance in times of man-made and natural disasters.

TDEM is the primary agency within the state that assists with the mobilization and deployment of state resources. Through the State Operations Center, TDEM has State Coordinators assigned to each DPS region within the state that oversee a team of district coordinators. These district coordinators help local officials through emergency planning and training of local response teams.

The Texas Emergency Management Council is a larger collection of state agencies and aid relief organizations that advise and assist the Governor in disaster mitigation, emergency preparedness, disaster response and recovery. During a time of need, they coordinate and deploy state resources to local entities that have requested assistance.

#### *Fire Response Services*

As growth moves out into the rural areas across the state, responders are seeing more wildfires in the Wildland-Urban Interface (WUI). Historically, city and volunteer forces provided fire protection services in these areas, but increasingly, Emergency Service Districts are filling the gaps. Local entities bear the cost burden of providing firefighting services, which includes salaries, training, and equipment.

There are various resources in the state that offer support and funding to local first responders:

- The State Fire Marshal's Office is the chief investigative agency in charge of arson incidents in the state. Their staff is located throughout the state and conduct fire investigations, inspections, and licensing investigations. They are also responsible for educating the public regarding fire prevention and safety.
- The Texas Forest Service Grant Program provides ESDs grant funding to purchase equipment that they would not otherwise be able to afford through the Texas Intrastate Fire Mutual Aid System Grant Assistance Program.
- Texas Task Force 1 (TX-TF1) is an urban search and rescue equipment cache that provides resources across the state during an event or disaster. TX-TF1 is not responsible for the actual act of fighting fires.

#### *City and County Response Services*

Emergency services in the state of Texas are provided through a patchwork of volunteer and professional first responders. Emergency Service Districts (ESDs) are political subdivisions of

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the state that are funded by ad valorem taxes and in some cases sales tax. ESDs are governed by a board of five commissioners that, in most cases, are appointed by a commissioner's court. There are 320 ESDs in the state providing fire protection, emergency medical response or both.

City and County responders must be prepared to respond to a wide variety of both natural and man-made disasters. For example, Travis County faces both wildfires and flooding within its geographical boundaries, which requires response teams trained to deal with either situation. City and County responders often work in partnership with area Councils of Governments and state agencies to devise regional preparedness planning and training in order to better respond to the unique challenges of their community.

#### *Water Response Services*

Associations and agencies have been key players in the efforts of statewide emergency preparedness, disaster response and mitigation, and mutual aid assistance for public and private water and wastewater utilities.

In 2005, following Hurricanes Katrina and Rita, the American Water Works Association developed a voluntary utility-to-utility mutual aid program to support and promote disaster preparedness for public and private water and wastewater utilities. The program, TxWARN, is partially funded by the Texas Commission on Environmental Quality, and is the first resource contacted when aid is needed. TxWARN helps to coordinate the mobilization of resources needed during an emergency. For example, during the Bastrop fires, TxWARN helped coordinate with the City of Austin to bring backup generators to Bastrop so that they could continue to provide water services to the area.

The Association of Water Board Directors is comprised of all the utility districts in the state. They meet twice a year to educate boards of directors of local water utility districts on best practices for daily operations and maintenance in addition to emergency management planning.

The Lower Colorado River Authority manages the water supply system in the Lower Colorado River basin. They help to mitigate the impact and hazards of flooding within the region through river management and providing local officials with real-time data collection alerting them to the conditions that may contribute to a natural disaster.

#### *Mitigation and Recovery*

More attention should be paid to reducing risks before disasters strike by creating more resiliencies within communities. Mitigation recovery planning currently exists within a silo and frequently is not incorporated into general comprehensive planning measures undertaken by a community. Hazard mitigation planning should be one aspect of overall comprehensive planning.

Major urban areas and the WUI surrounding those areas are especially vulnerable to natural disasters and losses due to the increasing pressures brought on by population growth and development. These areas are often low in resources and do not have the capacity for normal planning, mitigation and recovery.

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The limited authority of counties in regulating new development is the largest barrier to helping communities increase their resiliency to emergencies. Counties currently have subdivision authority to require mitigation for new development within a platted subdivision, but it does not extend to growth outside of a subdivision. Currently new subdivisions can be required to improve wildfire preparedness by requiring dual access to facilitate homeowner evacuation and an adequate water supply to provide first responders with the necessary resource to fight fires. County authority is unclear whether they can require new homes to be built with wildfire-resistant materials that are less flammable or set standards for landscape and vegetation management. Unfortunately, much of the growth in counties is happening in unincorporated areas where counties do not have authority to put in place reasonable wildfire mitigation ordinances. The ability to modify development before a disaster event will, if nothing else helps reduce the severity when an event occurs.

### *Building and Insurance*

It is important to balance reasonable building mandates that help reduce the loss of life with the goal of providing safe and affordable housing. While Texas does not have a statewide building code, cities are mandated to follow the International Residential Code (IRC); counties have permissive authority to mandate that homes be built to code. Were the state to adopt a uniform statewide building code, attention would need to be paid to streamlining and integrating it with existing statewide codes to prevent conflicting standards. Building standards and specialized certifications should be tailored to the conditions of the geographical location and its particular known hazards; a statewide code would need to allow for such flexibility.

In the event of a disaster, advance planning is imperative to ensure that the least amount of damage and loss is incurred by a community. In the case of disaster rebuilding, the first priority should be to get people back into their homes quickly and, secondly, to get the most number of people recovering financially in the quickest amount of time at the lowest cost. There are front-end measures that can help communities recover more quickly, maintain the local tax base, and reduce post-disaster recovery aid. While the state has very robust programs for emergency recovery, there is very little that has been done to establish long-term rebuilding programs. Local jurisdictions should have the ability to preclear and get approval for rebuilding efforts before a disaster occurs. State agencies that partner in these efforts also need clear directives when supporting and aiding in such plans.

## **RECOMMENDATIONS**

**The Texas Legislature should develop a formal process for local entities to apply for state disaster recovery funds, including a revolving state disaster recovery fund.**

The state funds disaster recovery through General Revenue Funds, supplemental appropriations, Federal Funds, and Other Funds. State and Local entities can also apply directly to FEMA, but unless they reach the \$35M federally-required, uninsured loss threshold, they cannot receive funding. Additionally, local entities must pay a non-federal match to draw down these funds. Reimbursements can take up to years to receive, which is especially difficult when local communities experience economic loss as a result of a disaster. While local entities have a mechanism to apply for the federal disaster recovery funds, there is no comparable state process.

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**The Texas Legislature should continue to support local responders as the most appropriate first line of defense when responding to an emergency.**

Like most states, Texas relies on a ground level response that moves upward through state and federal relief as needed. Due to Texas' diverse geographical and climatic regions, first responders are best situated to respond to their region. As members of the communities in which they are serving, they are attuned to the needs of the situation. While coordination with state and federal agencies is crucial to successful emergency response, decisions and action should first be taken at a local level if possible, rather than by a central authority.

**The Texas Legislature should ensure that current resources are adequately funded and maintained.**

Providing fire and emergency services is a costly, yet necessary service. The gear for one responder can cost upwards of \$8,000. Trucks and equipment can range from \$500,000 – 800,000. Resources must be available in advance of their need and require ongoing maintenance and repair. Additionally, they need to be strategically placed and positioned for easy deployment across the state. Ensuring that communities have the needed resource for both local use and statewide mutual use should be a priority.

**The Texas Legislature should assist in building a comprehensive network of accurate and up-to-date Geographical Information System (GIS) tracking and visualization databases for the state.**

Most mitigation planning relies on incomplete or out-of-date data. For local communities to create comprehensive mitigation plans for emergency preparedness, it is important that the foundation of these plans be based on the most accurate information available. Funding should be made available to local communities that cannot afford to perform current and accurate GIS tracking on their own.

**The Texas Legislature should clarify county authority to set minimum standards for wildfire mitigation in both platted subdivisions and other unincorporated areas.**

Counties currently have subdivision authority to require limited mitigation regulations for new development that occurs within a platted subdivision. However, counties do not have this authority for development that falls outside of subdivisions, which is the source for much of the growth in counties. Due to the lack of authority, there is a lack of uniformity about the safety of structures going up across the state. Increased authority would allow for universal mitigation efforts for new development in the unincorporated areas of the county.

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**CHARGE II** - Identify and address potential gaps in counties' cybersecurity policies and ensure that personal information held by counties and other local governmental entities is secure.

### **SCOPE OF THE CHARGE**

The Committee heard from county information technology departments in various areas of the state to determine the perceived importance of cybersecurity among county governments. Additionally, the Committee explored what information should be secured and best practices for counties at varying levels.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

August 29, 2016, Texas A&M - San Antonio Auditorium, San Antonio Texas

#### Witnesses

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- Phillip Alexander (UMC Health System)
- Mark Johnston (Lubbock County IT)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Bruce High (Harris County, Central Technology Services)
- Jeffrey Vinson (Harris Health System)

July 21, 2016, Blinn College, Brenham, Texas

- John Brieden (Washington County)
- Robert Van Dresar (Self; Burleson County)

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

- Darren May (Tarrant County IT/Security)

August 29, 2016, Texas A&M - San Antonio Auditorium, San Antonio Texas

- R. Sean McCleskey (Center for Identity - University of Texas/Austin)
- Susan Pamerleau (Bexar County Sheriff's Office)

### **BACKGROUND**

Counties have become more reliant on technology as a key method of providing efficient cost-effective services to citizens. At the same time, the number of attackers targeting the information networks and the technology infrastructure of Texas counties of all sizes is on the rise. The types of attackers include foreign governments, cyber terrorists, as well as cyber-thieves. Counties are searching for methods to cope with these threats, however the delivery mechanisms are becoming more sophisticated by the day, and the threat landscape is constantly evolving.

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Counties are a tempting target for cybersecurity attacks because of the breadth and widespread amount of information and financial assets that counties hold. The type of information that counties hold includes, but is not limited to, personal information like Social Security numbers, health records, addresses, and motor vehicle information.

As shown in the chart below, cybersecurity attacks can threaten any area of the county courthouse from elections systems to the county treasury.

<b><u>Location</u></b>	<b><u>Date</u></b>	<b><u>Attack</u></b>
Rutherford County, TN (pop. 262,000)	Jan. 12, 2012	Election Commission and Sheriff's Department hacked by Turkish hackers
Salem County, NJ (pop. 66,000)	Jan. 22, 2012	Entered county bank account holding \$13 million and wired out \$19,000
Jefferson County, WI (pop. 262,000)	April 24, 2013	Website defaced and data deleted from an Italian web address
Harris County, TX (pop. 4.2 million)	July 12, 2013	Personal info – social security numbers, dates of birth and other info found for 16 thousand employees in Vietnam
Miami-Dade County, FL (pop. 2.5 million)	Aug. 14, 2012	Election system - 2,500 "phantom requests" for absentee ballots from web address in Ireland, England, India, etc.
Gregg County, TX	November 2010	\$200,000 in local tax payments meant for schools and cities was stolen using Trojan horse software
Bell County, TX (pop. 323,000)	Nov. 30, 2013 – Dec. 2, 2013 and Dec. 13, 2013	4 digit phone extension password hacked in the Road and Bridge Department, routed \$27,000 in international charges to Grenada
Illinois	August 2016	Theft of data from 200,000 voter records, Russian origin
Arizona	August 2016	Unsuccessful attack that caused online voter registration to be taken offline for nine days, Russian origin
Tarrant County, TX	August 2016	Malicious ransomware attack that locked one employee's files and demanded ransom to open them

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In order to thwart these kinds of attacks Texas counties have attempted to improve both preventive cybersecurity measures, as well as recovery and response procedures. One key emphasis has been on training county officials and employees on ways to spot and prevent cybersecurity attacks. Counties must also inventory their systems and equipment and identify threats and weaknesses in order to build a successful cybersecurity infrastructure.

While all counties would like to protect all assets at the highest possible level, counties must choose carefully what needs to be protected and at what level that protection should be provided. The reason for this is that though all Texas counties face similar challenges, creating an effective cybersecurity infrastructure comes at a cost, and the 254 counties of Texas have strikingly varied capacities to bear these costs. A major example of the cost of cybersecurity for counties include finding and retaining qualified professionals in an employment field where counties have to compete with lucrative private sector salaries. Other costs include software and hardware costs which must be updated regularly in order to meet the shifting threat landscape.

There are also costs associated with recovery from cybersecurity attacks. These costs are particularly challenging for counties because it is impossible to predict how much recovery, and therefore counties can't properly budget for them. To mitigate some of these unknown costs counties are beginning to invest in "cyber-risk coverage." Cyber-risk coverage is a recently developed type of insurance coverage that covers three main areas, liability; remediation; and regulatory penalties. Liability cyber-risk coverage covers a county for defense and settlement costs arising out of losing private data. Remediation cyber-risk coverage covers response costs following a data breach. Regulatory penalties cyber-risk coverage covers the costs of defending, investigating and settling penalties that may be assessed by a regulator on a county.

## FINDINGS

Like many other things in Texas, county IT departments vary across the state. Many urban counties have extremely high-tech cybersecurity infrastructure in place to combat cyber-terrorism while many rural counties have no infrastructure in place at all. Many experts testified, stating perceived value of information is situational. For example, keeping data on water usage may not be perceived as valuable information. However, if someone is suspected of stealing water, that information suddenly becomes important.

Throughout the interim, the Committee traveled across the State, hearing testimony from differing counties on the following:

- their perception on cybersecurity;
- what type of infrastructure they had in place;
- what type of attacks counties are experiencing;
- and, what information is necessary to protect.

The Committee heard from hospital districts, county information technology departments, and cybersecurity experts on best practices currently implemented and recommendations on what should be.

### *Perception on Cybersecurity*

Opinions on cybersecurity vary drastically across the state. Large to mid-size counties have

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instituted county information technology departments to ensure protection against cyber-attacks. Cyber protection, however, differs drastically in rural counties in Texas, which are of the opinion that cybersecurity in their county is unnecessary due to their small size. Further, since they are small, they believe they are not a target for hackers.

However, it's not always information that hackers are after. The latest cyberattacks have installed ransomware into computer systems. This ransomware holds all files on the server ransom. Until the amount demanded is paid, the hackers allow zero access to the county's files. As a result, counties have to hire experts to remove the ransomware, which can be costly.

Currently, urban counties take precaution to prevent attacks themselves. However, rural counties have little, if any, protections in place to protect against hackers. In many counties, no IT infrastructure exists at all. Small counties have a significant sense of community. Therefore, in many rural counties, they hire their brother, cousin, neighbor, or whomever they perceive as being knowledgeable about computers to serve as their IT expert. While this sense of community is admired, it can prove to be harmful when it comes to providing appropriate cyber protection.

#### *Why Counties Need to be Protected*

Counties house a breadth of important information such as social security numbers, health records, inmate records, and court documents to name a few examples. This information can be of interest depending on who is trying to obtain the information.

In order to maintain compliance with the Health Insurance Portability and Accountability Act (HIPAA), county hospital districts have installed significant cybersecurity measures to protect patient information. The Committee heard from Lubbock, Harris, Tarrant, Bexar, and Washington Counties regarding their cybersecurity infrastructure. With the exception of Washington County, which does not operate a hospital district, all counties who testified presented robust cybersecurity programs and ongoing in-house testing of such programs to ensure adequate protections are in place.

All counties, including Washington County, testified regarding the importance of education regarding cybersecurity. Each county echoed the same sentiment, stating employee education about what is legitimate versus what is a tool someone is using to hack into your computer is important. Many employees will click on an item without much regard for the origin of the email, pop-up, website, etc. By educating employees on how to identify items that may be potential cyber-hackers trying to access information or hold files hostage, it will provide significant protection to counties.

Additionally, while the Committee only heard testimony on cybersecurity from one rural county, all counties who testified stated the importance of investment in adequate protections. It is important to note that many IT experts did not share specifics regarding their program. It is important to maintain secrecy regarding how information is protected to prevent cyberbullies from infiltrating their systems.

#### *Scorecards*

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Sean McCleskey with the University of Texas at Austin, Center for Identity, provided information about how the University of Texas can assist counties in identifying where they are lacking in cybersecurity, what level of security they need to ensure adequate protection, and assistance in education on cybersecurity matters.<sup>xiv</sup> While this assistance is provided at a cost, counties should explore this as an option. The alternative of no protection can be extremely costly.

Other resources:

NACo Cybersecurity Guidebook

<https://msisac.cisecurity.org/resources/documents/cyber-guidebook-for-counties.pdf>

Texas Department of Information Resources Cybersecurity Framework

[The Texas Cybersecurity Framework and Information Security Plans - August 2014](#)

State-by-State Cybersecurity Policies

<https://msisac.cisecurity.org/state/>

## RECOMMENDATION

**The Texas Legislature should require all counties to install and maintain appropriate levels of cybersecurity.**

Counties are becoming increasingly vulnerable to cyber-attacks. While this committee is always cognizant of unfunded mandates to counties, the cost to ensure protection could prove to be less expensive than the cost to reverse ransomware or other cyber-attacks. Many grant options for funding currently exist to assist with implementation and assistance for cybersecurity. Counties should understand what level of protection is necessary for them and research funding options currently available.

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**CHARGE III** - Evaluate the Texas Commission on Jail Standards to determine if the Commission has the resources and structure to provide sufficient oversight, regulation, and enforcement over Texas county jails.

### **SCOPE OF THE CHARGE**

This interim charge examines the Texas Commission on Jail Standards to determine whether the state provides adequate funding for sufficient oversight, regulation, and enforcement of the minimum standards. The committee heard testimony from Texas Sheriffs regarding annual jail checks, training provided by the Commission, and other assistance provided to the jails to maintain compliance.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

#### Witnesses

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- Larry Gilbreath (Terry Co. Sheriff's Office)
- Bernard Kraft (Law Enforcement Agency Head)
- Carla Mickle (Self)
- Bryan Boffitt (Self)
- Kelly Rowe (Sheriff's Association of Texas)
- Brandon Wood (TX Commission on Jail Standards)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Brian Hawthorne (Self; Sheriff's Association of Texas)
- Tyrone Obasoki (Self)
- Mike Smith (Harris County Sheriff's Office)

July 21, 2016, Blinn College, Brenham, Texas

- Jerry Green (Washington County S.O. - Jail)
- Otto Hanak (Washington County Sheriff's Office)
- Micah Harmon (Self; Sheriff's Association of Texas)
- Donald Sowell (Self; Sheriff's Association of Texas)
- Brandon Wood (Commission on Jail Standards)

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

- Rebecca Bernhardt (Texas Fair Defense Project)
- Lupe Valdez (Dallas County Sheriff Dept.)

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## BACKGROUND

The Texas Commission on Jail Standards (TCJS) conducts annual on-site inspections of county jails to verify compliance with minimum jail standards in Texas. Currently there are 245 jails that fall under the jurisdiction of TCJS. The policy-making body consists of nine Commission members appointed by the Governor. The Commission operates with 16 full time employees, four of which are jail inspectors, with an annual budget of \$910,000. TCJS requires administration of inmate population reports from jails, and it investigates and resolves inmate grievances. The Commission meets quarterly to discuss any issue that needs to be addressed concerning the various county jail issues under their purview. It is the duty of the Commission to establish written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for:

1. the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;
2. the custody, care and treatment of inmates;
3. programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

As part of the statewide standards established by the Commission, TCJS requires each county jail or facility under their purview establish a Health Services plan submitted and approved in writing. The Health Services Plan must provide inmate medical, dental and mental health services. According to the Texas Administrative Code, each plan shall:

- (1) provide procedures for regularly scheduled sick calls;
- (2) provide procedures for referral for medical, mental, and dental services;
- (3) provide procedures for efficient and prompt care for acute and emergency situations;
- (4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;
- (5) provide procedures for medical, mental, nutritional requirements, special housing, appropriate work assignments, and the documented use of restraints during labor, delivery and recovery for known pregnant inmates;
- (6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;
- (7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;
- (8) provide procedures for the control, distribution, and secured storage of the over-the-counter medications;
- (9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);
- (10) provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place; and
- (11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times.<sup>xv</sup>

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## FINDINGS

### *Overall Ability to Enforce Minimum Standards Statewide*

Throughout the interim hearing process, numerous individuals gave testimony stating the Texas Commission on Jail Standards does a good job overall enforcing the minimum standards. Additionally, the Commission was praised for their interest in working with county jails to accommodate their needs to bring jails into compliance.

Kelly Rowe, Sheriff for Lubbock County, stated in verbal testimony that the Texas Commission on Jail Standards does currently uphold their mission to enforce minimum jail standards across the state. Overall, this sentiment was felt throughout public testimony.

### *Suicide Detection and Prevention*

In July of 2015, the tragic suicide of Sandra Bland in the Waller County Jail initiated a significant response to improving the screening process for individuals entering the jail system with mental illness. After Ms. Bland's death, it was discovered that the current inmate intake screening form could be improved upon, with the goal of preventing suicides in county jails moving forward.

Kelly Rowe, Sheriff for Lubbock County, provided verbal testimony to the Committee, stating the revised inmate intake screening form had significantly decreased inmate suicides since its implementation. However, one problem recognized with the new form was what to do with an individual once they have been identified as having a mental illness. Furthermore, once an individual has been screened by the mental health provider and determined not to be a risk to themselves or others, removing the individual from suicide watch has proven problematic for jails.

### *Increased Inspections for County Jails*

The Texas Commission on Jail Standards (TCJS) conducts annual on-site inspections of county jails to verify compliance with minimum jail standards in Texas. Overall, those that testified expressed that the number of inspectors should be increased and an increase number of inspections annually could prove to be helpful.

Brian Hawthorn, Sheriff of Chambers County and member of the Sheriff's Association of Texas, provided verbal testimony to the Committee in which he stated that every Sheriff would welcome the Commission to inspect more often than annually. He expressed that each inspection offers greater insight on how to manage a jail better and allows for the Commission to find more solutions to problems the jails are facing. Sheriff Hawthorn explained that these inspectors do a good job, but believe that more resources would allow them to improve their performance.

Mike Smith, Harris County Sheriff's Department stated that their facility relies on the Commission's recommendations based on the annual inspection. He explained that inspectors are paid what a second year detention officer is paid. In order to incentivize inspectors to stay and recruit better talent an increase in salary would be beneficial.

Brandon Wood, Executive Director of Texas Commission on Jail Standards provided information regarding an additional three full time Inspectors and one Administrative Tech with two mandated jail inspections annually. The breakdown of the cost is below:

Inspector annual cost

	Annual costs
Base Salary	47,476.00
Payroll related 2%	950.00
supplies (paper/ink cart.)	200.00
equipment (tablet/cover)	1,050.00
equipment (printer)	250.00
fluke meter	100.00
cell phone	600.00
software for tablet	204.00
travel	20,000.00

70,830.00 per inspector  
 3.00 three new inspectors  
 212,490.00

Admin. Tech annual cost

	Annual costs
Base salary	31,000.00
payroll related 2%	620.00
supplies	200.00
MS software	204.00
computer	499.36

32,523.36 one FTE

Total annual cost           **\$ 245,013.36**  
 biennium cost               **\$ 490,026.72**

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*Increased Training for County Jails*

The Commission on Jail Standards is a considerably small agency. However, they do more with less and are very effective. Multiple testimonies from Sheriffs across Texas concluded that they need the ability to promote and provide additional training to jails. Texas county jails are incredibly diverse. Given the differing dynamics across the state, the Commission has done a good job of crafting and enforcing minimum standards without placing undue burden on counties.

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Multiple individuals including Mike Smith (Harris County Sheriff's Department), Brian Hawthorne (Sheriff's Association of Texas), and Otto Hanak (Washington County Sheriff's Office) provided verbal testimony demonstrating that increased training for County Jails would provide significant benefit to the safety and security of the jails.

## **RECOMMENDATION**

**The Texas Legislature should consider increasing the number of full time Jail Inspectors.** Numerous individuals and organizations gave testimony to the Committee, stating the Texas Commission on Jail Standards does a good job of enforcing the minimum standards. However, it was expressed that more than one annual inspection would be preferred. Those that testified believe more inspections would provide greater information to jail administrators and provide a safer environment for employees and inmates.

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**CHARGE IV** - Review pretrial service and bonding practices throughout the state. Examine factors considered in bail and pre-trial confinement decisions, including the use of risk assessments; assess the effectiveness and efficiency of different systems in terms of cost to local governments and taxpayers, community safety, pretrial absconding rates and rights of the accused. *(Joint charge with the House Committee on Criminal Jurisprudence)*

### **SCOPE OF THE CHARGE**

The committee was charged with reviewing pretrial service and bonding practices throughout the state. The committee was also instructed to examine factors considered in bail and pre-trial confinement decisions, including the use of risk assessments; assess the effectiveness and efficiency of different systems in terms of cost to local governments and taxpayers, community safety, pretrial absconding rates and rights of the accused. The committee heard invited and public testimony that focused on the current landscape regarding bonding practices throughout Texas, what information magistrates use to set bond, and how the system can be improved.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

September 21, 2016, State Capitol, John H. Reagan Building, Room 140, Austin, Texas

#### Witnesses

September 21, 2016 - State Capitol, John H. Reagan Building, Room 140, Austin, Texas

- Matthew Alsdorf (Laura and John Arnold Foundation)
- Tara Blair (Kentucky Administrative Office of the Courts, Department of Pretrial Services)
- John Brieden (Self; Washington County)
- John Burns (Self)
- Jeff Clayton (American Bail Coalition)
- Leon Evans (Bexar County Mental Health Authority Center for Health Care Services)
- Nathan Fennell (Texas Fair Defense Project)
- Ken Good (Self; Professional Bondsmen of Texas)
- Bill Gravell (Justice of the Peace and Constables Association of Texas)
- Irma Guerrero (Travis Co. Pretrial Services)
- Micah Harmon (Sheriffs Association of Texas)
- Nathan Hecht (Texas Judicial Council)
- Lindsey Linder (Texas Criminal Justice Coalition)
- Carlos Lopez (Self; Justices of the Peace and Constables Association of Texas)
- Mike Lozito (Bexar County)
- John McCluskey (Self; Professional Bondsmen of Texas)
- Susan Pamerleau (Bexar County Sheriff's Office)
- Jessica Rio (Travis County Planning and Budget Office)
- Gerald Rodriguez (Texas Association of Pretrial Services)
- William Shull (Nueces County CSCD)
- David Slayton (Office of Court Administration, Texas Judicial Council)

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- Sandra Thompson (Self)

## **BACKGROUND**

The right to bail is guaranteed in both the Texas Constitution and the Texas Code of Criminal Procedure, except in capital cases, as a way to keep those who have been accused of a crime, but not yet convicted, from languishing in jail until their trial. Elsewhere in Texas statute, lawmakers laid out the rules for fixing the amount of bail, which specify that bail must be high enough to be taken seriously by a defendant, must not be used to oppress the defendant, that the nature of and circumstances surrounding the offense must be considered, as well as ability to make bail and safety of the victim and community must be considered.

Despite these guarantees and instructions, the number of people held in Texas jails pre-trial has steadily increased in the last 25 years, from roughly 32 percent of the jailed population in 1994 to nearly 75 percent of those in jail now, excluding individuals who violated parole as well as federal contract inmates.

The purpose of bail is for the accused to provide a sort of guarantee to the court that they will show up to a court hearing to answer for the charge against them. The bail amount is provided in exchange for release from custody pending a trial or other disposition of a case.

There are three types of bail:

- Bail bond: Known as a surety bond, the defendant pays a surety company a percentage of the bail, and the total bail. The company pays the full amount of bail to the court if the defendant fails to show up for court.
- Cash bond: The defendant pays the full amount of the bond. The funds are returned to the defendant if he or she complies with conditions of the bond.
- Personal bond: The defendant is released on their own recognizance, with a promise to show up to court. Each person released on personal bond is required to pay either \$20, or three percent of the amount of the bail fixed for the accused, whichever is greater.

Bail amounts are set by magistrates, who can be any type of judge, and must be set no later than 48 hours after an arrest. Bail can only be withheld in a certain number of circumstances, such as for a capital offense, if the accused has two felony convictions, was previously convicted of felony where they used a deadly weapon, if the accused was charged with a violent sexual offense while on probation for a felony, or if the accused violated a family violence protective order.

Typically, a magistrate only has the charge for the arrested offense and the name of the defendant when making a pretrial decision. Depending on the jurisdiction, however, magistrates might have additional information, such as criminal history of the defendant, risk assessment information, employment information, or previous failure to appear information. In some jurisdictions, magistrates utilize set bail schedules to make bail decisions, using a one-size-fits-all approach that takes into account no other information than the charge. After the magistrate

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sets a bail amount, if the defendant cannot pay that amount, or the portion necessary to secure a surety bond, they have to remain in jail until their trial.

Those arguing for reforming the bail and pretrial system express that unnecessary pretrial detention can damage an individual's ability to maintain employment, support dependent children, and can increase the likelihood of recidivism. Research shows that when low-risk defendants are held for just 2 to 3 days, they are 40% more likely to commit a new crime before trial than those held no more than 24 hours. That's partly because the less time a person spends behind bars pretrial, the more likely they are to be able to keep their job and/or take care of their children.

The increasing number of individuals behind bars pre-trial also has placed a financial strain on county jails. Housing these individuals costs an average of \$60.12 per person per day. In comparison, it costs roughly \$3.25 per person per day to supervise someone released pretrial. Research has also shown that defendants who remain in jail because they cannot afford to post bond tend to receive more severe sentences and are offered less attractive plea deals. Additionally, in misdemeanor cases, pretrial detention may push a defendant to plead guilty merely for a chance to go home, even though that person might be innocent.

These apparent ramifications have pushed the issue of bail and pretrial reform to the forefront of the criminal justice discussion, with many arguing that a large portion of those individuals being held pretrial would show up to court as their supposed to if just given the chance. Instead, the ability to make bail depends on a person's financial means, whereas even individuals who pose a great risk will be released if they have the means.

The following is a look as some of the landscape of the state's bail and pretrial system, as well as a discussion on how it might be improved.

## **FINDINGS**

### *Pretrial Services*

In jurisdictions where magistrates have additional information – such as risk assessment information and previous failure to appear information – to make a pretrial decision, that information is typically provided by local pretrial services. Because Texas' community supervision system is county based, rules vary by jurisdiction and there is little uniformity throughout the 254 counties when it comes to pretrial services. Currently, Texas statute provides little framework for pretrial services. Consequently, counties can develop their own programs causing the number and scope of these programs to vary by jurisdiction.

Texas law allows for counties, or multi-county district courts, to establish personal bond offices to help monitor compliance with non-monetary conditions of bond, such interlock devices and GPS monitoring as well as reminding defendants of court dates. Since personal bond offices are funded solely by counties, requiring approval by counties to be established in the first place, few of these offices exist throughout Texas. Instead, most pretrial services are handled through

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county probation offices.

Whether working for a personal bond office or a county probation office, pretrial officials generally gather information about the accused that might have a bearing on whether they are more or less likely to comply with conditions of a personal bond and report these findings to the court. The information gathered is used differently by jurisdiction, with some magistrates using the information to help bail decisions in general and others only using the information when deciding to release a person on a personal bond.

Funding for pretrial services varies throughout jurisdictions as well. Some are funded by the county, while others are self-sustaining dependent on supervision fees to operate. In 2011, the Texas Department of Criminal Justice Community Justice Assistance Division, which oversees community supervision and correction departments across the state, limited local community supervision departments' ability to use state funds for pretrial services to 10% for one full-time employee. This limitation applies equally to all jurisdictions, regardless of size. Community supervision department directors have said that this limitation hinders their ability to properly serve individuals released on bond.

Pretrial officials have also said that their work can be limited by local rules, which differ depending on jurisdiction, that exclude certain individuals from qualifying for a personal bond because of specific criminal history. For example, someone with a similar background who might be released with a no money bail in one jurisdiction might not have the same outcome for the same offense in a different jurisdiction, depending on local practices.

Proponents of reforming the bail system argue that strengthening and providing more funding for pretrial services would help reduce jail overcrowding by helping to ensure that these individuals attend programs, satisfy bond requirements, and are reminded to show up to court.

### *Risk Assessments*

Research has shown that most low-risk defendants held pretrial would likely show up to a court appearance if released and do not pose a significant risk to public safety. On the other hand, some with financial means are released despite possible flight risk or threat to public safety. Advocates say this is the result of a system that generally fails to provide magistrates with enough information to make an informed bail decisions, resulting in the release of defendants who may pose a risk to the community merely because they have the means to post bond.

To help ensure a more just system, some pretrial service departments utilize risk assessments to help make informed bail amount recommendations to courts. These assessments are empirically-derived tools that have shown, through research, able to predict likelihood of appearing in court. The tools are used to help make decisions on release or detention pretrial and assignment of appropriate release conditions.

Over decades of use and evaluation, pretrial assessments have identified a number of common

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factors among a defendant's likelihood to either show up to court appearances or whether they are a danger to the community, making these tools a useful part of the bail decision making process. These common factors include current charges, outstanding warrants, history of criminal convictions, history of failure to appear, history of violence, employment stability, community ties and history of substance abuse. As they are used, the tools are evaluated to ensure they are a true predictor of risk, and also identify any bias that would require adjustments.

These evidence-based risk assessments have been shown to identify low risk individuals and able to predict who will show up to court. A handful of jurisdictions already use validated risk assessments to assist in bail decisions, including Bexar and Travis counties. However, most counties do not currently use a pretrial risk assessment in determining bail. Both Bexar and Travis counties have reported that of those released on pretrial after being evaluated, 90% made their court appearances.

### *Cost to Local Governments and Taxpayers*

According to the Texas Commission on Jail Standards, on average, it costs the county approximately \$60.12 per day per inmate to hold an individual while incarcerated.<sup>xvii</sup> This cost does not account for additional medical and/or prescription costs the jail may incur based on the individual's needs. The 1973 *Estelle vs. Gamble* case profoundly impacted the way jails administered medical care to offenders. In the case, the court ruled that inadequate medical care provided to offenders constitutes a violation of their 8th Amendment rights, thus deeming lack of adequate medical is considered cruel and unusual punishment.<sup>xviii</sup>

In order to uphold their constitutional duty, jails provided medical and mental health services to those in their custody. As of June 1, 2016, there were approximately 41, 423 individuals incarcerated in county jails across Texas.<sup>xix</sup> At the minimum cost per day, local governments incur \$2,479,529. Assuming the pretrial population in county jails remain the same, it is estimated local governments will incur \$905,028,085 annually, with the potential of being higher due to costly medical needs.<sup>xx</sup> Additionally, the likelihood that someone will reoffend increases when a person is unable to bail out, further increasing the potential cost incurred by local governments.

Once an individual is released, local governments have potential to continue racking up additional costs for offenders who, for various reasons, fail to appear once bond has been posted. Many times, individuals cannot afford costly court fees, bond payments, or fines issued by the court. In situations like these, it is common for individuals not to adhere to parameters of bond determined by the court, resulting in an arrest warrant issued. County constables incur additional costs associated with research and manpower issuing warrants to individuals.

Constables throughout the State of Texas estimate that a typical warrant costs approximately \$85.47 to complete. This cost estimate includes roughly 15 minutes of clerical time and 1 hour of deputy time, at an average of three field attempts per warrant. Each year, there are about three million arrest warrants issued, resulting in an \$13.7 million in lost cost recovery due to the

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inability track down and serve many offenders who have absconded.<sup>xxi</sup>

### *Community Safety*

Currently, the default money bail system in place does not prevent many dangerous, often violent, individuals from being preventively detained. Those with the ability to bond out, regardless of the offense charge, will do so. Furthermore, those charged with relatively minor offenses, and pose no threat to the community's safety at large, often remain in jail due to their inability to post bond.

Texas A&M Public Policy Research Institute (PPRI) found indigent individuals remained in jail longer and received jail sentences nearly two times lengthier, than individuals with the monetary resources to bond out. PPRI conducted a study in Wichita County, comparing outcomes for offenders who received pretrial diversion to statistically similar offenders who remained in jail awaiting trial. Outcomes from the study indicate offenders released pretrial had a:

- 33% better chance of receiving deferred adjudication;
- 30% better chance of having the charges against them dismissed;
- 24% less chance of being found guilty; and
- 54% fewer jail days sentenced.

Moreover, multiple studies indicate pretrial incarceration of low-level offenders can actually increase the risk of re-offending in the future. The Arnold Foundation conducted a study of offenders in Kentucky, comparing individuals released pretrial to individual's incarcerated awaiting trial. The study found individuals who remained jailed awaiting trial were 40 percent more likely to commit additional crimes before their trial date than those released pretrial. Additionally, the study found a direct correlation between the length of time in the jail and the likelihood the offender would commit new crimes:

- Two to three days of pretrial detention increases the risk of recidivism by a low-risk person by 17%, as compared to a low-risk defendant who is released on bail within 24 hours;
- Four to seven days of pretrial detention increases risk of recidivism by 35%;
- Eight to fourteen days of pretrial detention increases risk of recidivism by 51%.<sup>xxii</sup>

Experts speculate this increased recidivism could likely be attributed to the disruption of life due to the initial arrest and jail time. Increased time spent incarcerated increases the possibility of job loss, inability to pay bills, family disruption, and various obstacles encountered due to trickle down effects of incarceration.<sup>xxiii</sup>

However, under the current system, judges have few options to detain someone they feel is a high risk individual.

**"Under Texas law, judges do not have the statutory authority to hold all dangerous people in jail"**

*-Sandra Guerra Thompson, Verbal  
Testimony, Sept. 21, 2016*

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With the inability of the judge to preventively detain an offender who they deem to be a threat to the community, currently the only course of action a judge has is to set a high money bail with the hopes the individual will not have access to the monetary amount required to bond out. The use of money as a means to keep offenders deemed dangerous is ineffective.

Decisions regarding release of an offender, without consideration of a risk assessment or their ability to post bond can pose a significant threat to public safety. Studies show 50 percent of offenders deemed "high risk" will be released under a money bond system. "The most recent national study showed that 90+% of all arrestees charge with rape, robbery, felony assault, or who had a prior felony had a money bail set in their cases, as well as 55% of all murder defendants."<sup>xxiv</sup>

### *The Bail Bondmen Perspective*

"In Texas, everyone has right to bail with sufficient sureties," stated Ken Good, with the Professional Bondsmen of Texas. There is a clear preference for private money bail in the current system. The Texas Judicial Council is exploring a recommendation in its upcoming report on pretrial issues in Texas, to amend the constitution to provide a presumption of pretrial release through personal bond.<sup>xxv</sup> However, according to the bondsmen, anyone who posts bond through a private company does so at no expense to the taxpayers or the county.

It is the opinion of the bondsmen that they have become an integrated part of the criminal justice system. For example, for each individual who posts bail through the private sector, that bondsmen pays a \$15 fee, which is collected into a fund to pay supplemental salaries to assistant district attorneys and assistant county attorneys across the state. Additionally, if there is an individual who fails to appear in court, the private bondsmen pay additional fines associated with the failure to appear that supplement judges and indigent defense funds. If the bondsmen are able to get the offender back before the court in a timely manner, the fine for failure to appear is assessed. If the bondsmen are unable to get the offender back, the bondsmen pay the amount of bail in full which is deposited to the general fund in the county. In the event the offender is arrested in a different county, the bondsmen reimburses the county for costs incurred for transporting the offender back to the original county in which the failure to appear occurred.<sup>xxvi</sup>

Bondsmen have the authority to track offenders down, an authority which the county does not possess if someone is released pretrial. If an offender is released pretrial, the county must wait for the individual to reoffend or issue a warrant before they have the ability to seek out an individual.

According to the bondsmen, it is common for offenders released on commercial bond to need consistent reminders about court dates and other conditions of release. Bondsmen, because of the monetary investment, have incentive to provide this service. County pretrial programs are limited in statutory authority to provide this service beyond mailing a reminder to offenders of their scheduled court date. Therefore, bondsmen consider their service more successful when it comes to lower absconding rates than pretrial services.

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Jeff Clayton stated verbally before the committee that bail is constitutional, "it is the procedures leading up to bail that may be unconstitutional."<sup>xxvii</sup> Bail schedules were originally created to allow for the release of individuals on nights and weekends when a magistrate or judge may be unavailable. However, the original intent of bail and bail schedules was to ensure individuals were not detained unnecessarily is no longer being upheld today.

In general, the commercial bondsmen in Texas believe the current system of money bail is sufficient. They argue the use of a risk assessment does not eradicate risk. The use of professional bondsmen, in their opinion, increases the likelihood that offenders will show up for court due to their ability to seek out individuals who fail to appear for court as well as the fact the offender has money invested with the bondsmen.

## RECOMMENDATIONS

### **The Texas Legislature should consider requiring the use of a risk assessment when determining bail.**

The use of a risk assessment provides judges and magistrates additional information which may provide insight into the public safety risk of the individual. This assessment can be used as means to determine whether an individual presents as a flight risk, public safety risk, or any other risk, and whether they should be released on a personal recognizance or commercial bond.

### **The Texas Legislature should require an indigency screening as part of the risk assessment decisions makers understand the individual's ability to pay when setting bond.**

The understanding of someone's ability to pay allows the judge to determine whether a personal recognizance or commercial bond should be set. Additionally, options such as community service could potentially be used more heavily in these cases.

### **The Texas Legislature should explore regionally-based options for pretrial service departments in counties with small populations.**

Counties with large populations, such as Travis County, have adequate resources to create and maintain a pretrial services division on their own. However, less populated counties do not have the monetary resources or the jail traffic to justify a pretrial services department. It is for this reason the Legislature should consider regionally-based pretrial services divisions to provide this service.

### **The Texas Legislature should consider amending the Texas Constitution, putting in provisions for judges, who determine an individual poses a significant flight and/or high risk to community safety, to hold an individual in jail without bail.**

The Texas Constitution currently provides no mechanism for judges, who determine an individual is a high safety risk to the community, to detain them in jail awaiting trial. Currently, their only avenue for possible detention is to set a high monetary bail. However, individuals who have the monetary means to post a high bail are still released regardless of the risk they pose to the community. By providing an avenue for judges to exercise certain statutes, they could significantly reduce possible safety risks by detaining the most dangerous individuals.

### **The Texas Legislature should require pretrial service divisions to collect data on pretrial**

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**release decisions, absconding rates, and court appearances for further review.**

Data on successful pretrial release programs and absconding rates significantly lacking, making decisions for lawmakers difficult. By collecting data on pretrial release, decision makers are able to understand whether pretrial release provides an appropriate bond avenue for non-violent, low-level offenders.

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**CHARGE V**- Study the implications and effects on law enforcement agencies and individuals that stem from the publication, republication, or other dissemination for public internet access of mug shots and other criminal history information regarding involvement of an individual in the criminal justice system.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

#### Witnesses

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- Kelly Rowe (Sheriff's Association of Texas)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Brian Hawthorne (Self; Sheriff's Association of Texas)
- Tyrone Obasoki (Self)
- Ryan Sullivan (Harris County Sheriff's Office)

July 21, 2016, Blinn College, Brenham, Texas

- Otto Hanak (Washington County Sheriff's Office)
- Micah Harmon (Self; Sheriff's Association of Texas)
- Donald Sowell (Sheriff's Association of Texas)

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

- Michael Lesko (Texas DPS)

### **BACKGROUND**

In the United States, more than 6.5 million adults have some form of criminal history. Texas is no different, with approximately 4.7 million adults possessing a criminal record. Of the 4.7 million, 1.7 million adults are living with a felony conviction. The remaining two-thirds are living with misdemeanor convictions or no conviction at all. These numbers are continuing to increase as law enforcement increases enforcement of laws across the nation and continues to arrest individuals. In Texas, law enforcement officers make more than 1 million new arrests each year.

The stigma associated with having a criminal record, regardless of whether the individual was convicted of a misdemeanor, felony, or not at all, can and often does result in lifelong ramifications. The increasing publication of such information is becoming more readily available to employers, housing entities, and other programs such as education or public assistance, which use this information as a means to screen candidates.

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## FINDINGS

As a result of the digital age, criminal mug shots are becoming increasingly difficult to remove once released to any form of online database. The release of such information can be detrimental to individuals long-term. Ramifications of mug shot and criminal charges can result in the following:

- Easy access to records means that most employers and landlords routinely request criminal history information when screening applicants.
- A criminal record severely restricts most employment opportunities and can entirely eliminate the opportunity to work in hundreds of licensed professions.
- A criminal record makes it significantly harder to find housing, whether with private landlords or in publicly subsidized housing, with some offenses requiring lifetime bans.
- Government benefits, including cash assistance, food stamps, and student loans, may be denied or restricted because of a criminal history.<sup>xxviii</sup>

### *Long-term Ramifications for Individuals*

The ability for individuals to becoming contributing members of society again, once they have established a criminal history, can be extremely difficult. Studies indicate housing, employment, educational benefits, and federal benefits are the four areas most significantly affected by criminal records.<sup>xxix</sup> Additionally, individuals of color are affected at largely disproportionate rates.

### *Employment*

Currently, both public and private employers impose job restrictions based on criminal histories. Typically, the type of jobs available to individuals with a criminal history are low-level, low-paying positions, consistently found well below the federal poverty level.<sup>xxx</sup>

### *Housing*

Both public and private housing use criminal histories as a means to screen candidates to determine risk associated with renting housing to individuals. Although criminal histories are not the sole determinant in the decision on eligibility, it can and often does significantly impact the overall outcome of whether the individual is approved for housing.

The combination of low-paying positions with increasing costs of living make finding affordable housing more difficult for those with criminal records. Additionally, many individuals are already deemed ineligible for public assistance simply due to their arrest record. Currently, the US Department of Housing and Urban Development mandates exclusions of eligibility for two categories: 1.) criminal conviction of tenants or household members for drug-related crimes involving production or manufacturing of methamphetamine on the premises of federally subsidized public housing, and 2.) tenants or household members who are subject to lifetime sex offender registration.<sup>xxxi</sup> Beyond these two requirements, housing entities are allowed to create and implement their own policies regarding eligibility requirements for housing.

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### *Educational Benefits*

College applications require individuals to report criminal histories, which can directly impact admission regardless of criminal offense, campus safety, or overall educational achievement. Additionally, if students receive a criminal conviction of felony drug offenses while receiving financial aid, both federal and/or from Texas, it results in automatic loss of the aid. These policies impact students of color more than any other population due to their disproportionately high involvement with the criminal justice system.<sup>xxxii</sup>

### *Federal Benefits*

Federal government regulations permanently deny cash/public assistance or food stamps for individuals with a felony drug conviction. As the 1996 Welfare Ban stands, states have the option to fully implement the ban, or allow for individuals to complete steps required by the state in order to receive assistance. Texas is one of seven states to completely deny eligibility.

The ripple effect from public dissemination of mug shots and criminal histories can, and has proven, to have long-lasting effects. Currently, little to no oversight of this information currently exists. Once a mug shot or criminal charge has been released to the media or private company for publication, there is no requirement for removal or updating of information.<sup>xxxiii</sup> Often, when an individual's charges are dismissed, the internet will not reflect the dismissal of said charges. This largely comes due to the lack of requirements to maintain up-to-date records.

However, the ability for a potential employer or landlord to google someone and find a mug shot and/or evidence of a criminal charge allows for false judgments to be made against the individual. These judgments are based upon incomplete and/or inaccurate information regarding the arrest of an individual which an continue to

## **RECOMMENDATION**

### **The Committee makes no formal recommendation.**

Testimony obtained by the committee did not provide enough evidence to warrant legislative changes. However, if it is the will of the Legislature to remove information from public access, such as mug shots and criminal histories, the Legislature should consider revisions to the Public Information Act.

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**CHARGE VI** - Study statutorily mandated services provided by sheriffs and constables, and determine whether fee schedules allow cost recovery without placing undue burdens on recipients of those services.

### **SCOPE OF THE CHARGE**

State law allows sheriffs and constables to recover some costs for services they provide to the criminal justice system. The cost of those services has increased significantly, while legislative fees for cost recovery have not. Examine the current cost and fee structure and determine whether it needs to be updated.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

September 21, 2016, John H. Reagan Building, Room 140, Austin, Texas

#### Witnesses

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- Paul Hanna (Lubbock County Constable 1)
- Dwain Read (Chilcree Constables Office; Justice of the Peace and Constables Association of Texas)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Ron Benson (Harris County Pct. 4 Constable)

July 21, 2016, Blinn College, Brenham, Texas

- John Brieden (Washington County)
- Dennis Gaas (Justices of the Peace and Constables Association)
- Jeff Reeves (Jeff Reeves, elected official of Brazos County Pct. 1)

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

- Clint Burgess (JPCA Warrant Fee Adjustment)
- Dale Clark (Self; Justice of Peace and Constable Assn. of Texas, Region 6 Director)

September 21, 2016, John H. Reagan Building, Room 140, Austin, Texas

- John Brieden (Self; Washington County)
- Bill Gravell (Justice of the Peace and Constables Association of Texas)
- Carlos Lopez (Self; Justice of the Peace and Constables Association of Texas)
- Jessica Rio (Travis County Planning and Budget Office)

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## BACKGROUND

### *Office of the Constable*

The office of the constable is a constitutionally created office, found in Article V, Section 18 of the Texas Constitution. Each constable is an authorized peace officer and chief process server for the justice court, with statewide jurisdiction to execute any criminal process and countywide jurisdiction to execute any civil process, serving four year terms. Additionally, the constable has the authority to execute process issued by some state agencies. The number of constables in each county is determined by the population according to the most recent census.<sup>xxxiv</sup>

### *Types of Warrants*

Serving warrants can be an extremely dangerous job for law enforcement officers when considering the differing types of warrants issued and delivered by law enforcement. Although many warrants issued are the result of a criminal offense, many are failure to appear in court or failure to comply with court orders. However, these warrants play a key role in providing public safety for the citizens of Texas.<sup>xxxv</sup>

### Arrest warrant

An arrest warrant is a judge's order to law enforcement to arrest and bring to jail a person charged with a crime. The warrant is issued upon a sworn declaration by the district attorney, a police officer, or an alleged victim that the accused person committed a crime.<sup>xxxvi</sup>

Types of offenses receiving warrants:

- Felony
- Class A, B, and C Misdemeanors

### Capias Warrants

Capias warrants are commonly issued when an individual fails to appear before a court in a criminal case. In many capias warrant cases, the defendant has bonded out and fails to appear at their scheduled court date. In these instances, the law enforcement officer is directed by the court to take the individual into custody and deliver them to the court. Many capias warrants are issued in non-criminal cases such as an individual failing to pay a traffic fine or even child support.<sup>xxxvii</sup>

### Capias Pro Fine Warrants

Capias pro fine warrants occur when defendants fail to comply with judgments issued during court proceedings. For example, if an individual is ordered to pay restitution and fails to do so, a capias pro fine warrant would be issued for law enforcement to bring the individual before the court and compel them to explain the reason for failure to comply with court rendered judgments. This type of warrant does not automatically result in the individual serving time.

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### *Legislative History of Warrant Fees*

For at least 30 years, it has been the Legislature's policy that the cost of serving warrants ought to be recovered, at least partially, from defendants by law enforcement agencies. This policy reflects two competing values:

- c) These fees are assessed upon defendants *only after conviction (or a no contest plea)*, which means they have had the opportunity to assert their innocence in the criminal justice system. And in the case of *capias* warrants, the fee is charged only after the defendant has failed to appear for a court hearing in their case;
- d) Many defendants do not have the means to pay the costs that can accrue in a criminal court case, including fines, court costs and fees. Law enforcement organizations must therefore depend in part on taxpayer support of the critical role they play in the criminal justice system.

In 1987, the fee for serving an arrest warrant, *capias* warrant, or *capias pro fine* warrant was set at \$20.<sup>xxxviii</sup> In 1989, that fee was increased to \$35.<sup>xxxix</sup> In 1991, the Legislature clarified that the law enforcement agency that actually executed the warrant was entitled to the fee upon request.<sup>xl</sup> And in 1999, the Legislature raised the fee from \$35 to \$50.<sup>xli</sup>

Legislation to increase the warrant fee was filed in 2009,<sup>xlii</sup> 2011,<sup>xliii</sup> 2013,<sup>xliv</sup> and 2015.<sup>xlv</sup> However, those attempts were unsuccessful.

## **FINDINGS**

### *Costs for Executing Warrants*

In 1999, the Texas Legislature increased the warrant fee to maintain pace with rising costs associated with issuing such warrants. At that time, the warrant fee received a 45% increase from \$35 to \$50 per warrant. At the time of the fee increase, the price of gasoline was \$1.14 per gallon. Currently, the price of gasoline has risen to an average of \$2.11 per gallon, totaling an 85% increase in gasoline costs alone.

The United States Bureau of Labor Statistics (CPI-U) index indicates that the US City average has increased approximately 47% since 1999 so that a \$50 fee, using this measure alone would be \$73.41. Constables throughout the State of Texas estimate that a typical warrant takes approximately 15 minutes of clerical time and 1 hour of deputy time, which includes three field attempts per warrant. The cost of utilizing this time equates to a total cost of \$85.47 as compared to a total cost of \$35.62 in 1999.

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### *Impact to the Tax Payers*

Currently, local entities throughout the State of Texas are experiencing at least a \$13.7 million dollar impact as a result of collecting a fee that does not cover the cost of providing the service. This cost is covered by local taxpayers. These fees are meant to recover the cost of service and are assessed only upon conviction or upon a no contest plea. Defendants determined to be indigent do not pay these fees.

### *Warrant Fees by the Numbers*

**3 million** - Amount of arrest warrants and capiases pro fine issued by municipal and justice courts (2.5 million issued by municipal courts, 530,000 issued by justice courts).

**\$13.7 million** - This amount is lost per year in cost recovery for processing 550,000 criminal warrants and capiases pro fine due to the warrant fee not being raised by \$25 to \$75 from the current \$50 level. This cost is covered by local property taxpayers.

**\$335 million** - The amount collected for the State in criminal court costs by local governments.

**\$90** - Since 1999 when the warrant fee was set at \$50, personnel costs for deputy sheriffs, deputy constables and deputy clerks have increased by rates of 80% or more justifying a warrant fee increase of at least \$90.

**\$73.41** - Since 1999 when warrant fee set at \$50, to US City Average CPI-U index shows a 47% increase from March 1998 to March 2016. Applying this to the current \$50 warrant fee to pay for increased vehicle maintenance and fuel costs, computer costs, and vehicle insurance costs would justify a price increase of at least \$73.41.

### *Personnel Costs Associated with Serving Warrants*

- Salaries of deputies
- Salaries of support staff
- Deputy education and training
- Health and Insurance costs

Deputy Sheriff, Deputy Constable, Court Clerk -- These three positions have seen increases of 108%, 89%, and 80% respectively. Applying these rates of increase to the \$50 Warrant Fee yields potential revised fees ranging from \$89.81 to \$104.04.

### *Operation Costs Associated with Serving Warrants*

- Vehicle maintenance and replacement costs
- Vehicle insurance costs
- Radio infrastructure costs
- Computer hardware and software costs
- Vehicle fuel cost

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The US City Average CPI-U index shows a 47% increase from March 1998 to March 2016. When this increase is applied to the current \$50 Warrant Fee, the revised fee is \$73.41. The Dallas-Fort Worth area is the only Texas city represented in the Bureau of Labor Statistics CPI-U data. The Dallas-Fort Worth Average CPI-U index shows a 43% increase from March 1998 to March 2016. When this increase is applied to the current \$50 Warrant Fee, the revised fee is \$71.53.

Warrant Service Man-hours

Average Man-hours:

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 1 hour
- Field attempts per warrant: 3 attempts

Constables throughout the State of Texas estimate that a typical warrant takes approximately 15 minutes of clerical time and 1 hour of deputy time, which includes three field attempts per warrant. The cost of utilizing this time equates to a total cost of \$85.47 as compared to a total cost of \$35.62 in 1999. The time and number of attempts may be much higher than this average depending on complicating factors such as proximity to the border, whether the county lies on a major US highway, whether the county has a high amount of tourism or seasonal migration, and the type of warrant.

*Below are man-hours reported by individual offices:*

Collin County Constable Precinct 3 Sammy Knapp

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 1hr
- Field attempts per warrant: 3 attempts

Dallas County Constable Precinct 4 Roy Williams

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 1hr
- Field attempts per warrant: 3 attempts

Hidalgo County Constable Precinct 3 Larry Gallardo

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 1hr and 45 minutes
- Field attempts per warrant: 5 attempts

Hood County Constable Precinct 4 Chad Jordan

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 1hr
- Field attempts per warrant: 3 attempts

Travis County Constable Precinct 5 Carlos Lopez

- Warrant Service Clerical time: 15 minutes
- Warrant Service Deputy time: 45 minutes
- Field attempts per warrant: 2.75 attempts

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Example: Travis County

Travis County is working hard to maintain affordability in the state’s fastest-growing urban area. This year, the Travis County Commissioners Court reduced the County’s portion of the property tax bill for the average taxable homestead for the third consecutive year. The Commissioners Court also offers a 20% Homestead Exemption, which is the maximum allowed by law and, this year, increased the Optional 65 and Older/Disabled Homestead Exemption from \$75,000 to \$80,000.

Setting appropriate fees and costs for some county services, and monitoring compliance and collection levels for those items, have been an important part of the Commissioners Court’s strategy for holding down property tax increases. The Court has specifically looked at warrant fees and determined that they should be raised to reflect the increased cost of providing these services. They point out:

- In Fiscal Year 1999, the budgets of all five Travis County Constable Offices totaled \$4.7 million. That same year, those offices were budgeted to bring in \$2.0 million in associated revenue. This represented an approximate cost recovery of 43% in 1999.
- For Fiscal Year 2017, the budgets of all five Travis County Constable Offices will total \$15.1 million and revenue is budgeted to be \$4.5 million. This represents a dramatically smaller cost recovery of 30%.

<b>Fiscal Year</b>	<b>Budgeted Expenditures</b>	<b>Budgeted Revenues</b>	<b>Cost Recovery</b>
1999	\$ 4.7 million	\$ 2.0 million	43 %
2017	\$ 15.1 million	\$ 4.5 million	30 %

## **RECOMMENDATIONS**

**The Texas Legislature should look to increase Warrant Fee (a minimum of \$25) - from \$50 to \$75, in CCP - Chapter 102 to reflect average CPI-U index percent difference, and review CPI-U index and other cost statistical data every 4 years to analyze cost recovery.**

By increasing the cost of a warrant to \$75 per warrant served, this allows the county to recover some of the cost incurred by issuance and service of the warrant.

**The Texas Legislature should look to develop a graduated scale for fee recovery on different offense levels from Misdemeanor to Felony to reflect resources and infrastructure recovery to locate and apprehend fugitives; such as \$75 for Misdemeanor offenses and \$150 for Fugitive offenses.**

Developing a graduated scale for fee recovery based on the level of offense places emphasis on possible community safety risks associated with the offense. For example, if an offender has failed to appear in court for a violent crime, the cost of the warrant could be increased to reflect the seriousness of the offense. This would allow the county to recoup some of the costs associated with investigating and serving the warrant.

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**CHARGE VII** - Study the effect of Proposition 5 (SJR 17 (84R)) on the quality of private roadways in counties with a population of less than 7,500. Make recommendations to ensure the amendment does not result in undue competition between counties and private industry, and whether additional counties could benefit from a similar authorization.

### **SCOPE OF THE CHARGE**

This oversight explores the county's ability to contract directly with citizens to provide road maintenance services for private roadways and explores the benefits for all parties involved. Additionally, this charge examines whether this ability places undue competition between counties and private companies.

### **SUMMARY OF COMMITTEE ACTION**

#### Committee Hearings

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

#### Witnesses

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- John Lee Norman (Garza County)

### **BACKGROUND**

The Texas Constitution was amended over 25 years ago to allow counties with a population of 5,000 or less to contract with private citizens and maintain private roads. In rural counties, contractors often refuse to maintain private roads for multiple reasons including location of road, work volume, and ability to obtain higher paying contracts elsewhere. Private contractors' refusal to maintain the roads resulted in poor road conditions creating a public safety hazard for citizens and emergency services.

Texas' Constitutional amendment created a provision to allow counties to construct and maintain private roadways with both the consent and at the expense of the private landowner. Should the landowner not consent or not agree on a rate with the county, they have the option to opt-out of the maintenance program.

During the 1980's, when the original amendment passed, Texas had 51 counties with a population of under 5,000. Currently there are 47. Since this time, populations in such counties have increased, pushing counties out of the population bracket to utilize this service. By increasing the population cap to 7,500, counties with the increased jail population can resume contracting with private citizens to maintain private roads. As a result of the population increase, Texas now allows a total of 72 counties to contract and provide this service.

Rates for maintenance of private road by the county is determined by the Commissioner's Court based on what cost would be incurred by contracting with a private company.

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## FINDINGS

It is common that many of these privately owned roads are in poor condition. However, since this constitutional provision has been in place, many private citizens have utilized this maintenance program through the county. Although it is not the responsibility of the county, it has proven to be a valuable tool. Maintaining good roads in these counties allows safety vehicles such as ambulatory and emergency services to access individuals when necessary. Additionally, the ability to contract with the county allows the county to provide employment to citizens who might struggle to find consistent work close to home.

In recent years, areas in west Texas have experienced significant flooding which has sometimes resulted in damage to roadways. SJR 17 allows counties to provide assistance in repairing private roadways in spots where significant damage has occurred.

Additionally, private contractors are hesitant to provide this service in small counties due to the lack of resources, consistent work, and their ability to find higher paying contracts in more populous counties. Therefore, counties and citizens with populations of 7,500 people or less rely on this service to maintain roadways that would not otherwise receive maintenance.

This allows county commissioners and judges to provide adequate services in an area of Texas where this service is largely unavailable.

## RECOMMENDATIONS

**The Texas Legislature should leave the intact current ability for counties to contract with private citizens to maintain private roadways.**

Currently, there is no evidence to show that SJR 17 places undue competition on counties and private companies. All findings provide evidence that this practice is mutually beneficial to both citizens in the counties that fall within the population bracket and the counties.

**The Texas Legislature should consider increasing the population cap to allow other counties to contract directly with citizens for maintenance and repairs of private roadways.**

It would be beneficial to explore increasing the population cap to allow additional less populous counties to contract directly for services in areas where there is little incentive for private industry.

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**LEGISLATIVE OVERSIGHT** - Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:

- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
- b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
- c. determine whether an agency is operating in a transparent and efficient manner; and
- d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.

### **SCOPE OF THE CHARGE**

Under legislative oversight, the Committee discussed continuance of the 1115 Transformation Waiver, reforms to Child Protective Services, and overarching but necessary reforms to the Texas Department of Public Safety and the criminal justice system. Each topic is discussed below.

### **ISSUE 1:1115 TRANSFORMATION WAIVER**

#### **SUMMARY OF COMMITTEE ACTION**

##### Committee Hearings

May 16, 2016, State Capitol, John H. Reagan Building, Room 120, Austin, Texas

June 10, 2016, Texas Tech University School of Law, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Fort Worth, Texas

August 29, 2016, Texas A&M-San Antonio, San Antonio, Texas

##### Witnesses

May 16, 2016, State Capitol, John H. Reagan Building, Room 120, Austin, Texas

- Anne Dunkelberg (Center for Public Policy Priorities)
- Shannon Evans (Self; Harris County Health System)
- John Hawkins (Texas Hospital Association)
- Donald Lee (Texas Conference of Urban Counties)
- Don McBeath (Texas Organization of Rural and Community Hospitals)
- Maureen Milligan (Teaching Hospitals of Texas)
- Rick Thompson (Texas Association of Counties)
- Chris Traylor (The Health and Human Services Commission)

June 10, 2016, Texas Tech University School of Law, Lubbock, Texas

- Steve Beck (Covenant Health)
- Nickolas Arledge (Seminole Hospital District)
- Drue Farmer (StarCare)

- 
- Bobbye Hrcirik (University Medical Center)
  - Leonard Valderaz (StarCare – 1115 Transformation Waiver)
- July 7, 2016, Harris County Commissioners Court, Houston, Texas
- Cherry Beckworth (UTMB)
  - Christy Chukwu (Harris Health System)
  - Heather Chung (The Houston Methodist)
  - David Persse (City of Houston)
  - Susan Rushing (Burke – LMHA)
- July 21, 2016, Blinn College, Brenham, Texas
- John Brieden (Washington County)
  - Kevin Deramus (Washington County EMS)
  - Joy Fuchs (Washington County)
  - Shayna Spurlin (Texas A&M Health Science Center – 1115 Waiver)
- August 4, 2016, Tarrant County College, Fort Worth, Texas
- Daniel Deslatte (UT Health Science Center Tyler and The Northeast Texas Regional Healthcare Partnership (RHP1))
  - Susan Garnett (MHMR of Tarrant County)
  - Gina Prestidge (Paris, Lamar Co. Health District)
  - Kathleen Wakefield (Andrews Center)
  - Wayne Young (JPS Health Network)
- August 29, 2016, Texas A&M-San Antonio, San Antonio, Texas
- Anne Dunkleberg (Center for Public Policy Priorities)
  - Carol Huber (University Health System)
  - Andrew Smith (University Health System)

## **BACKGROUND**

### *Overview*

Texas was approved for a five-year demonstration waiver to take place from 2011-2016. The goal of the waiver is to allow for the expansion of managed care while protecting hospital supplemental payments under a new payment methodology at the same time incentivizing the delivery system improvements to enhance access and coordination of services and providers. The waiver divided Texas into 20 regions known as Regional Healthcare Partnerships (RHP's) to partner together, pool funds, and provide coordinated services to their area. Each RHP has a designated entity, known as the anchor that coordinates services and funding throughout the RHP. Under the waiver, previous Upper Payment Limit (UPL) funds and new funds are distributed to hospitals and other providers through two new funding pools: Uncompensated Care (UC) Pool and Delivery System Reform Incentive Payments (DSRIP) Pool.

### *Uncompensated Care (UC)*

The UC pool replaces the former UPL pool and reimburses hospitals for services provided to people with no third party insurance coverage. Under the waiver, the UC pool totals \$17.6 billion, all funds.

### *Delivery System Reform Incentive Payments (DSRIP)*

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DSRIP is a new program created under the waiver to financially support various projects designed and implemented by the RHP's to transform the way healthcare services are provided to the region. These programs must be innovative and transformative of services rendered while reducing costs of services through efficiencies and improvements. These programs are administered through coordination between hospitals, physician groups, community mental health centers and local health departments. Under the waiver, the DSRIP pool totals \$11.4 billion, all funds. DSRIP participants are eligible to earn \$4.66 billion, all funds, for the first three years of the 86 waiver. While the evaluations for the last two years are not final, DSRIP projections for those years are estimated to be valued at over \$5 billion total. For successful submission of the 20 regional plans in the first year of the waiver, RHP anchors and DSRIP providers received almost \$500 million. For project achievements in the second year of the waiver, DSRIP providers received about \$1.6 billion (as of January 2014).

*Delivery System Reform Incentive Payment Projects (DSRIP Projects)*

Across the 20 RHP's, there are a total of 309 performing providers:

- 232 hospitals (106 public and 126 private)
- 17 physician groups
- 39 community mental health centers
- 21 local health departments

## **FINDINGS**

*1115 Waiver Extension*

May 2, 2015, Texas received information from CMS that they had extended the 1115 Transformation Waiver, which was set to expire in September 2015. The extension is set to last until December of 2017. The Texas Health and Human Services Commission and CMS reached the agreement with the following terms:

- The uncompensated care and delivery system reform incentive program payments pools both will be funded at \$3.1 billion for 12 months (same amount as the current demonstration year 5);
- UC and DSRIP pool funding for months 13-15 will be prorated at an additional amount;
- No changes will be made to the managed care arrangement; and
- No changes will be made to current DSRIP projects..<sup>46</sup>

*Uncompensated Care Reductions*

Regardless of approval for continuance of the 1115 Waiver, CMS has stated Texas will receive a reduction in Uncompensated Care (UC) payments regardless. This will result in an annual loss of approximately \$1 billion in funding for care provided to uninsured patients. If Texas decides not to expand Medicaid, the loss of UC funding is placing significant financial pressure on safety net, rural hospitals, and local property tax rates..<sup>47</sup>

*Current DSRIP Project Samples*

Llano County – Blanco and Llano Counties have implemented trauma informed care services in order to incorporate community education on the impact of trauma through Mental Health First Aid training and Trauma Informed Care training. It provides trauma services through interventions such as Seeking Safety, Trust Based Relational Intervention and Cognitive

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Processing Therapy.

Lubbock County – Implementation of a pharmacist-provided medication management program to provide enhanced medication reconciliation, discharge medication counseling, individualized patient education, and post hospital follow-up to reduce medication errors and adverse drug events in adult diabetic patients. Targeted towards adult diabetic patients that have a high readmission rate.

Tarrant County – Expanding Behavioral Health serves 1,150 people needing behavioral health and psychiatric care. MHMR has expanded its number of community-based settings (clinics) by one and has extended clinic hours.

Washington County- In Washington County a community EMS project identified patients who called 911 and made frequent trips to the emergency room and did not have insurance. By sending paramedics to check on diabetic patients to see if they needed help getting to the pharmacy to pick up their medication and coordinating care with different providers, EMS has been able to save \$1.3 million over the three years of the program.<sup>48</sup>

## **RECOMMENDATION**

**The Texas Legislature should support renewal of the 1115 Transformation Waiver.**

Without renewal of the 1115 Waiver, Texas citizens will revert back to having less innovative, and fewer services available to them to treat their medical conditions. This reversion would result in additional financial burdens placed on hospitals and taxpayers for treating these individuals.

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**ISSUE 2: CHILD PROTECTIVE SERVICES AND THE TEXAS  
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

**SUMMARY OF COMMITTEE ACTION**

Committee Hearings

May 16, 2016, State Capitol, John H. Reagan Building, Room 120, Austin, Texas

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

July 7, 2016, Harris County Commissioners Court, Houston, Texas

July 21, 2016, Blinn College, Brenham, Texas

August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

August 29, 2016, Texas A&M - San Antonio, San Antonio, Texas

November 16, 2016, State Capitol, Room E2.016, Austin, Texas

Witnesses

May 16, 2016, State Capitol, John H. Reagan Building, Room 120, Austin, Texas

- Tina Amberboy (Supreme Court Children's Commission)
- Lynn Chamberlin (Harris County Attorney's Office)
- John Specia (Department of Family and Protective Services)

June 10, 2016, Texas Tech University Hunt Courtroom, Lubbock, Texas

- Neal Burt (Lubbock County Criminal District Attorney's Office and Matt Powell, District Attorney)
- Jennie Hill (CASA of South Plains)
- Deidre Ward (Lubbock County District Attorney)
- Pam Alexander (Lubbock county Child Welfare Board)
- Stu Childre (Self)
- Camille Gilliam (Dept. of Family and Protective Services)
- Robert Rogers (Self)

July 7, 2016, Harris County Commissioners Court, Houston, Texas

- Jim Black (Angel Eyes Over Texas)
- Lynn M. Chamberlin (Harris County Attorney's Office)
- Marcella Donaruma (Texas Children's Hospital)
- Charles Lambert (Self)
- Tyrone Obasoki (Foster Youth of America)
- Tiffany Reedy (The Harris County Attorney's Office)
- Kaysie Reinhardt (Department of Family and Protective Services)
- Vince Ryan (Harris County Attorney's Office)
- Aaron Sonnier (Self)
- Lawrence Thompson Jr. (The Harris County Children's Assessment Center)
- Ellen Yarrell (Self)

July 21, 2016, Blinn College, Brenham, Texas

- Kristene Blackstone (TX Dept. of Family and Protective Services)
- John Brieden (Washington County)
- Renee Mueller (Washington County Attorney Office)

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August 4, 2016, Tarrant County College, Trinity River Campus Auditorium, Fort Worth, Texas

- Chelsea Barlow (Family Rights Advocacy Organization)
- Kristene Blackstone (C.P.S./DFPS)
- Bruce Capehart (Tarrant County CPS Board)
- Wayne Carson (ACH Child & Family Services)
- Lindsey Dula (Alliance for Children)
- Timothy Lambert (Tx Home School Coalition)
- Cindy Williams (Tarrant County District Attorney's Office)

August 29, 2016, Texas A&M - San Antonio, San Antonio, Texas

- Susan Anthony (Abigail Wayne (Avida Care Services))
- Anais Biera Miracle (Texas Children's Center)
- Meredith Chacon (Bexar County District Attorney's Office)
- Richard Cooke (CASA)
- Joe Farias (Self)
- Camille Gilliam (Dept. of Family & Protective Services)
- Nico LaHood (Self)
- James Lukefahr (Self)

November 16, 2016, State Capitol, Room E2.016, Austin, Texas

- Vanessa Brown (Self; Texas Department of Family and Protective Services)
- Leinady Estrada (Self; Texas State Employees Union)
- Nora Garcia (Self; Texas State Employee Union)
- Liliana Gonzalez (Self; Texas State Employees Union)
- Stephanie Lopez (Self)
- Dimple Patel (TexProtects: The Texas Association for the Protection of Children)
- Kimberly Sanders (Texas State Employee Union)
- Maleeta Watson (Self; TSEU)
- Cynthia Asbury (Self)
- Shametta Benson (Self; TSEU)
- April Cumberbatch (Texas State Employees Union)
- Marily Drozd (Self)
- Michael Edwards (TSEU)
- Kristen Evens (Self)
- Will Francis (National Association of Social Workers - Texas Chapter)
- Tamela Griffin (Health and Human Services Commission)
- Sarah Guidry (Self; Earl Carl Institute at Texas Southern University)
- Bradford Irvin (Self)
- Aurora Jones (Travis County Civil District Courts)
- Lauren Lacefield Lewis (HHSC)
- Ann Margolin (TexProtects)
- Scott McCown (Self)
- Lisa Mendez (TSEU)
- Elena Perez (Self)
- Ellen Richards (Austin Travis County Integral Care)
- Mary Votaw (Self; Texas State Employees Union)

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- Hank Whitman (DFPS)
  - Toni Wyatt (Self)

## **BACKGROUND**

Over the years, the Legislature has tried to address the agency at various junctures whenever the agency has experienced crisis. However, such measures have never fully addressed the underlying cause of the crisis. Consequently, Child Protective Services problems have gotten worse. In December 2015, a federal district court ruled the state is violating the constitutional rights of our foster children by subjecting them to an unreasonable risk of harm, and appointed two special masters who recently released comprehensive reform recommendations.

Furthermore, April 12, 2016, Speaker of the House Joe Straus issued a press release stating child protection would be a top priority in the 85th Legislative Session. "All of us have a responsibility to end the suffering that far too many Texas children are experiencing" Speaker Straus said in his statement.<sup>49</sup> The call to action came quickly after multiple news outlets began reporting serious problems the Texas Department of Family and Protective Services (DFPS) was experiencing, specifically in Child Protective Services (CPS). Representative Jonathan Stickland's CPS report can be found in Appendix C.

### *Counties Role in Child Protective Services Cases*

CPS cases involve a number of statutorily-required hearings, which occur multiple times throughout the year, until the child exits the foster care system. These cases are complex, making families reliant upon attorneys to guide them through the system. It is for this reason collaboration among caseworkers, attorneys, and other professionals is vital to producing the best outcome for the child.

Courts operate under strict laws regarding the timing of hearings and of the disposition of cases. For that reason, CPS cases are sometimes a priority on a court's docket. Often these court proceedings are emotional, commonly involving substance abuse, family violence, poverty, and mental and physical illnesses.

Although Child Protective Services is a state agency with a state responsibility, counties play an important – and expensive – role in the delivery of those services. CPS cases are civil proceedings tried in local courts, either district or county courts-at-law. Although district judges are paid by the state (and often supplemented by the county), county court-at-law judges, association judges, and the rest of the court's functions – such as staff attorneys, clerks, bailiffs, interpreters and so on – are paid by county taxpayers. Additionally, the local Sheriff's Office and Constables provide security detail for the Courthouse and service of documents. CPS cases are a particular worry because of their emotional nature.

Depending on the county, either the District Attorney or the County Attorney represent the State in CPS cases. Although a District Attorney's salary is paid by the state (and often supplemented by the county), county attorneys are wholly funded by local taxpayers. In addition, the salaries for assistant district attorneys, assistant county attorneys when they handle CPS cases,

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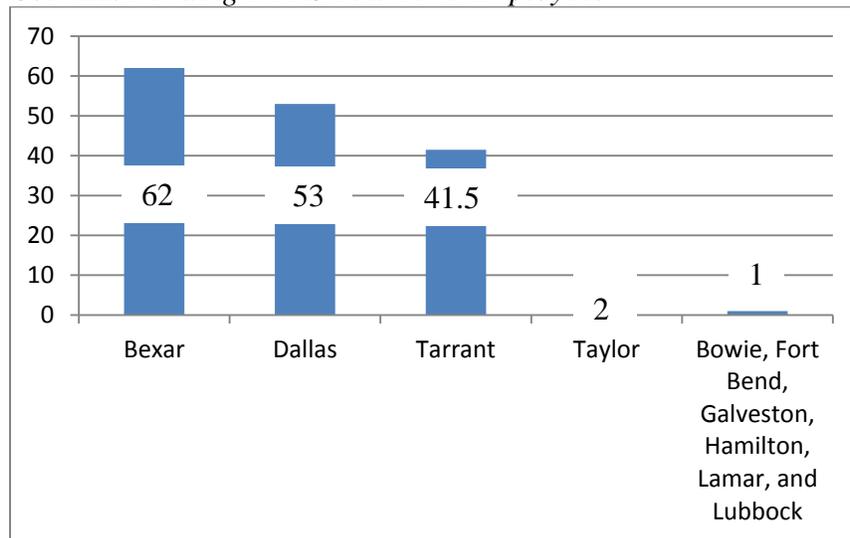
paralegals, investigators and other personnel, as well as their overhead expenses, are paid by county taxpayers.

State law requires attorneys ad litem be appointed for every child and every indigent parent involved in CPS cases. County taxpayers pay the full cost of all those appointments. For instance, in Travis County an estimated 99% of parents on the CPS docket are found to be indigent and qualify for appointed counsel with an associated cost for FY 2015 of over \$3.5 million.

As Judges Sage and Rucker from the Supreme Court Children’s Commission recently wrote: Each year, the State of Texas spends more than \$1.3 billion on child protective services. In fiscal year 2015, Texas spent over \$402 million on foster care payments alone, averaging out to over \$13,000 per child in care. But these dollars do not include the cost of legal representation of children and parents or the cost to the state and counties for the prosecution of CPS cases. Counties alone bear the costs associated with providing statutorily mandated legal representation for parents and children, and in many cases, for the employment of assistant county or district attorney to represent the Department of Family and Protective Services.

Many counties fund full-time employees (FTE's) to handle CPS cases in their courts. The chart below details which counties provide this funding as well as how many FTE's they fund.

*Counties Funding DFPS Full-Time Employees*



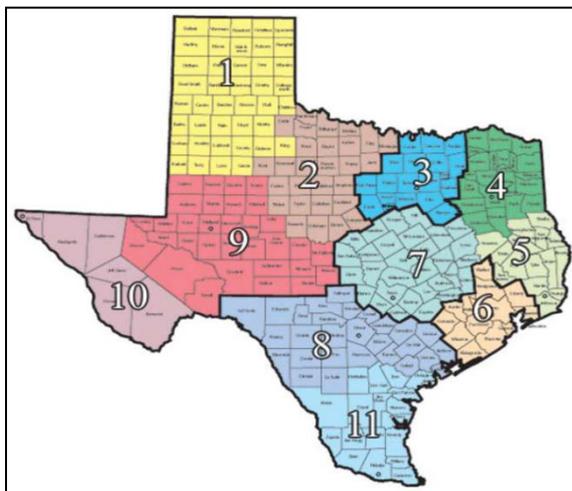
### *Caseload Oversight*

Currently, in Texas, there is no mandated statewide standards regarding the number of caseloads assigned to attorneys. As are most things across the state, counties vary drastically when it comes to standards regarding representation in CPS cases. According to the Supreme Court of Texas Permanent Judicial Commission for Children, Youth, and Families, "Texas courts employ various methods, including rotation or random selection from a list of individual attorneys for each case, employment of individual attorneys or law firms under contract with the jurisdiction, or use of salaried attorneys in county-run offices such as a Public Defender."

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### *CPS Regions in Texas*

Child Protective Services is divided into 11 different regions throughout the state. Regions are broken out based on community collaborations. Each region is analyzed to understand which areas of the state are experiencing higher turnover rates, higher rates of kinship placements, higher volumes of children with special needs, and other basic information that can help address large issues plaguing the agency. Below is a map of the 11 regions in Texas. The House Committee on County Affairs visited Region 1, Region 6, Region 7, Region 3, and Region 8 during the months of May through August of 2016.



While regions in Texas experience differences when it comes to available resources, regions consistently experience large numbers of caseworker turnover, low salaries for CPS workers, complaints regarding on the job safety and difficulty placing children in appropriate settings.

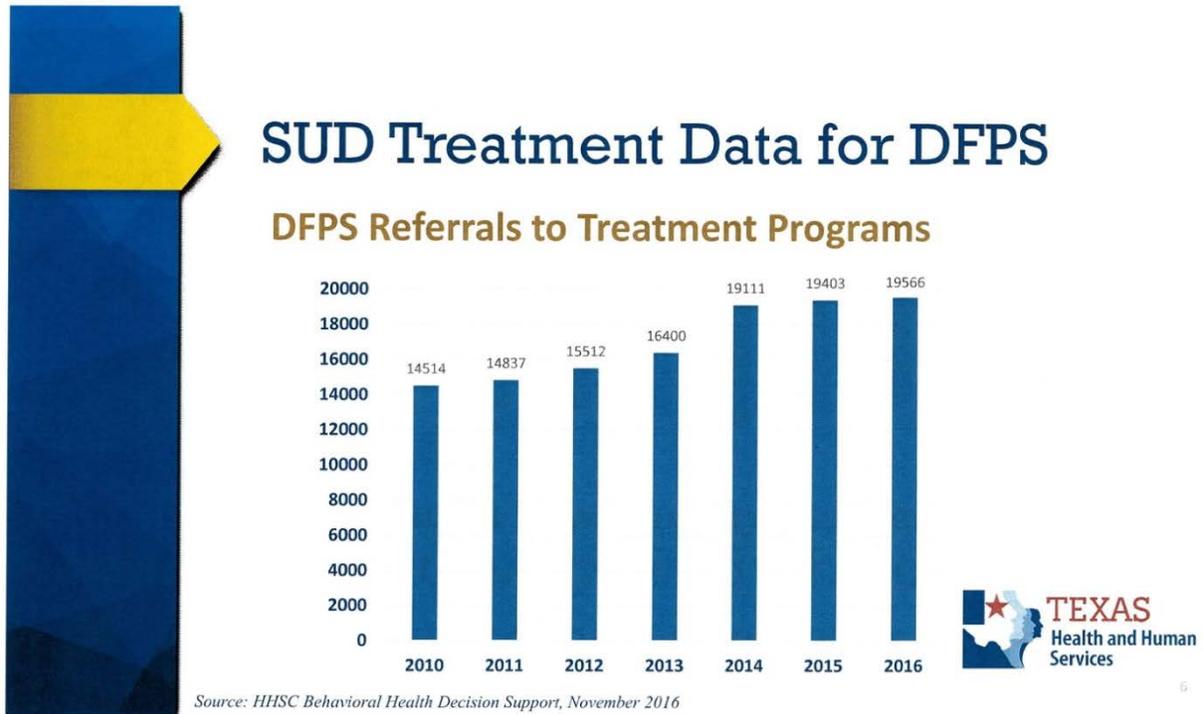
## **FINDINGS**

The House Committee on County Affairs held numerous hearings across the state to hear from local experts dealing with CPS cases.

### *Substance Abuse*

Substance abuse is the leading contributor to children entering the CPS system. Information requested by the Chairman from the Department of Family and Protective Services found that in 2016, out of the 18,940 children removed by their department, 12,353 of those parents and caretaker substance abuse was a contributing factor. That's over 65% of CPS cases involving parents and caretaker substance abuse. In order to keep families together, substance abuse treatment for parents and caretakers must be a priority. Ellen Richards, Chief Strategy Officer for Austin Travis County Integral testified regarding substance abuse disorder, stating it is a family inherited disease. Many children who come from families where parents are addicts are at a greater risk of becoming addicts themselves. CPS is experiencing high volumes of families entering the system due substance abuse. In October 2015, the Texas Health and Human Services Commission (HHSC) was awarded a planning grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) to develop certification and payment methodologies for integrated mental health and substance abuse community centers. This planning grant was the first of a 2-part SAMHSA initiative designed to assist states with planning, implementing and evaluating efforts to improve community health services.<sup>50</sup> Allocating resources from HHSC to

parents whose children are in the foster care system could provide the help these families need. According to Lauren Lacefield Lewis, Deputy Associate Commissioner of Behavioral Health Services for the Health and Human Services Commission, 19,566 individuals were referred to drug treatment through state services. This number is an increase from the 19,403 individuals referred to services in 2015. As seen in the chart below, the number of individuals referred to drug treatment has consistently increased since 2010.

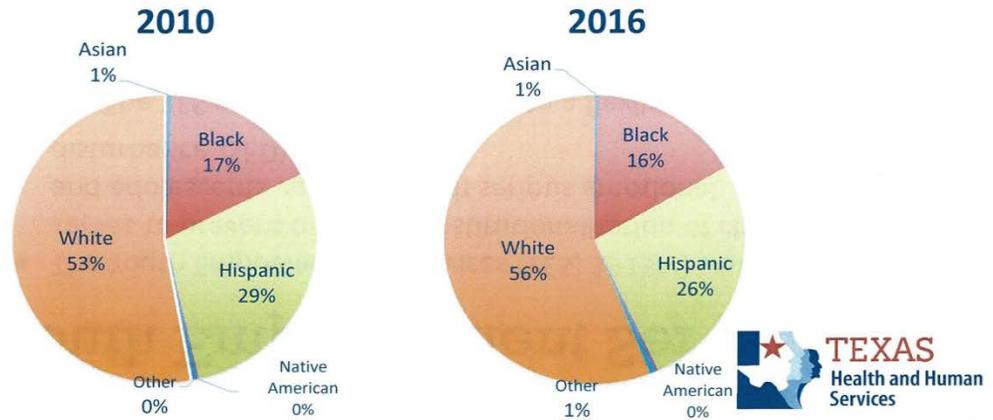


Moreover, evidence shows that there are significant differences in drug usage among race. In 2010, 53% of those who received treatment through state services were White. This number increased in 2016 to 56%. The chart below provides a complete breakdown by race for individuals who received treatment through state services.



## SUD Treatment Demographics

### Ethnicity Breakdown



Source: HHSC Behavioral Health Decision Support, November 2016

High numbers of drug use among Whites contributes significantly to the increase in children entering CPS. Due to the nature of the disease, children who come from homes where drug use is prevalent are more likely to use in their lifetime. This cycle only perpetuates the issue of increasing numbers of children entering the system repeatedly.

Travis County is combating relinquishment of the child by getting parents suffering from substance disorder issues the help that they need through intervention without removal of the child. The Honorable Aurora Martinez Jones, Associate Court Judge testified on behalf of the Parenting in Recovery/Family Drug Treatment Court. She discussed the Parenting in Recovery/Family Drug Treatment Court program (PIR/FDTC) which was first established in 2005 when several individuals came together to discuss the possibility of forming a drug court to serve families involved in the CPS system. By 2010 numerous community collaborators signed a charter. The mission of the PIR/FDTC is "to provide a spectrum of court and community-based supports for parents involved in the child welfare system that promotes recovery from alcohol and drug addiction and encourage healthy lifestyle choices". Furthermore, "almost all participating parents (97%) have other co-occurring mental health disorders, 75% have a history of trauma and 90% have a criminal history. Despite the overwhelming challenges that this underserved population faces, 55% graduate successfully from a rigorous program of accountability, drug testing, and inpatient substance use treatment, parenting training and intensive therapy. And of that 55%, almost all (95%) are able to safely and effectively parent their children when the CPS case is closed"<sup>51</sup>. Additionally, Ellen Richards provided information to the Committee that Integral Care's total budget for substance use treatment and recovery supports is \$5.09 million.<sup>52</sup> Around half the funding is provided through state and federal grants. The results of PIR/FDTC as of September 2016 is that the program has assisted 213

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parents and 308 children with achieving safe, healthy, and sober lifestyles."<sup>53</sup>

On December 13, 2016 President Obama signed the "21st Century Cures Act" into law. The Cures Act invests \$1 billion dollars through grants to combat the heroin and prescription opioid epidemic, as the President called for in his budget. Other sections of the bill, based on legislation introduced by Sen. John Cornyn, R-Texas, give communities more flexibility in how they use federal grants. For example, communities could use community policing grants to train law enforcement officers to deal with patients in the midst of a psychiatric crisis. The Cures Act will help "those suffering from mental illness in the criminal justice system be able to begin to recover and get the help they need instead of just getting sicker and sicker," Cornyn explains. "This bill also encourages the creation of crisis intervention teams, so that our law enforcement officers and first responders can know how to de-escalate dangerous confrontations. This is about finding ways to help the mentally ill individual get help while keeping the community safe at the same time."<sup>54</sup> Receiving funding through grants from the Cures Act would ensure that Texas families could receive the help they need.

#### *House Select Committee on Mental Health*

The Honorable Joe Straus, Speaker of the Texas House of Representatives appointed the Select Committee on Mental Health in November 2015. Speaker Straus, via a Proclamation, instructed the Select Committee to holistically study and make recommendations on virtually every aspect of mental health in Texas, including co-occurring substance abuse issues often referred to as behavioral health including children. The recommendations from the Committee Report from the House Select Committee on Mental Health include; consider requiring all foster care children to receive a mental assessment within 72 hours of being placed in foster care and then require that the children receive the necessary treatment as indicated by the mental health assessment. Provide a mental health medical home during permanency planning for foster care children that have mental health issues. Ensure that there is an integrated care for physical and mental health care. The model is the Rees-Jones Center for Foster Care Excellence at Dallas Children's Hospital. Require that CPS coordinate with the child's mental health care givers regarding all aspects of placement, transition planning, and permanency. Consider revising policy to include participation by a child's actively treating medical team and mental/behavioral health treatment team in Primary Medical Needs staffing calls. Provide for a continuum of mental care when the child ages out of the foster system via mental health care at LMHAs or Health Science Centers.<sup>55</sup>

#### *Caseworker Turnover*

In 2015, a total of 1,435 CPS caseworkers left the agency, costing the state approximately \$77.5 million dollars. Since 2010, Texas has experienced consistent rates of turnover near 25%, with the highest turnover in the first year of work.<sup>56</sup>

Leading causes of caseworker turnover include:

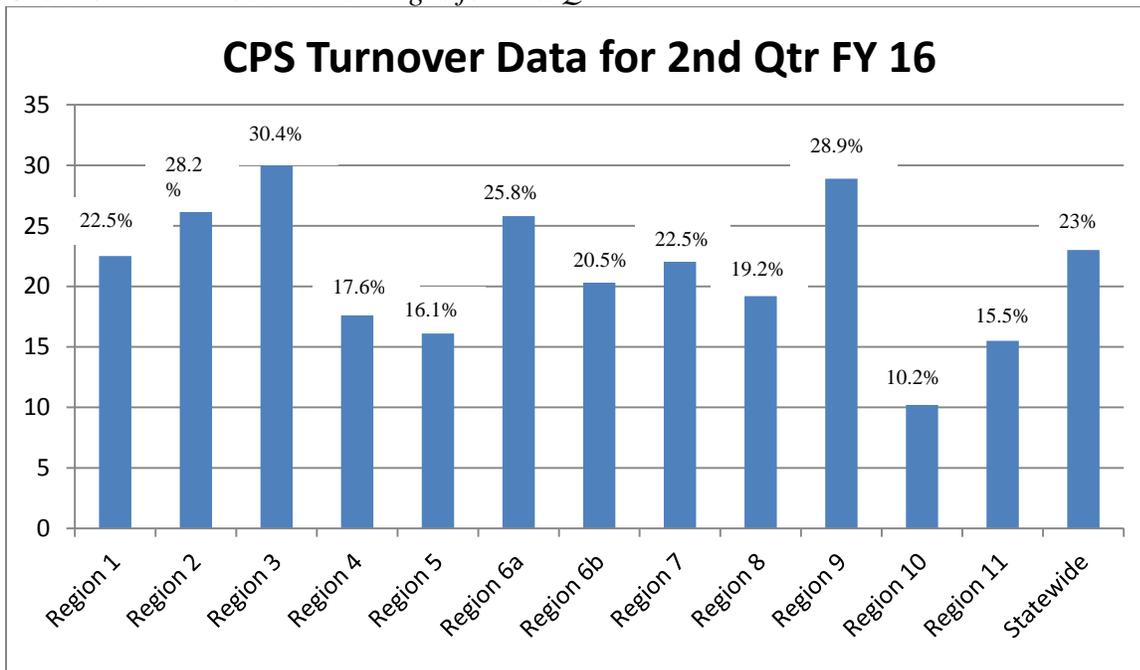
1. Concerns about a safe working environment
2. Better pay and benefits
3. Issues with supervisors and/or people supervised<sup>57</sup>

DFPS Commissioner John Specia stated before the committee at the initial CPS hearing on May 16, 2016, that turnover rates are higher in metropolitan parts of the state than in rural areas. This

may be attributed to higher costs of living in areas, and suggested the agency look at locality pay as a way to reduce the turnover in those areas.

Due to the oil boom in recent years, Midland-Odessa experienced significant difficulty in trying to hire caseworkers in the region. The agency could not compete with the competitive salaries of the oil industry. Additionally, because of the boom, the cost of living skyrocketed, making it impossible for caseworkers to make ends meet in such low salaries. Therefore, in 2013, Department of Family and Protective Services began offering a stipend of an additional \$1,200 per month to reduce turnover and increase retention in that region. From 2013-2016, the increase in locality pay reduced turnover in the Midland-Odessa region from 47.2% to 17.2% as a result.<sup>58</sup>

*Caseworker Turnover Percentages for 2nd Quarter FY 2016*

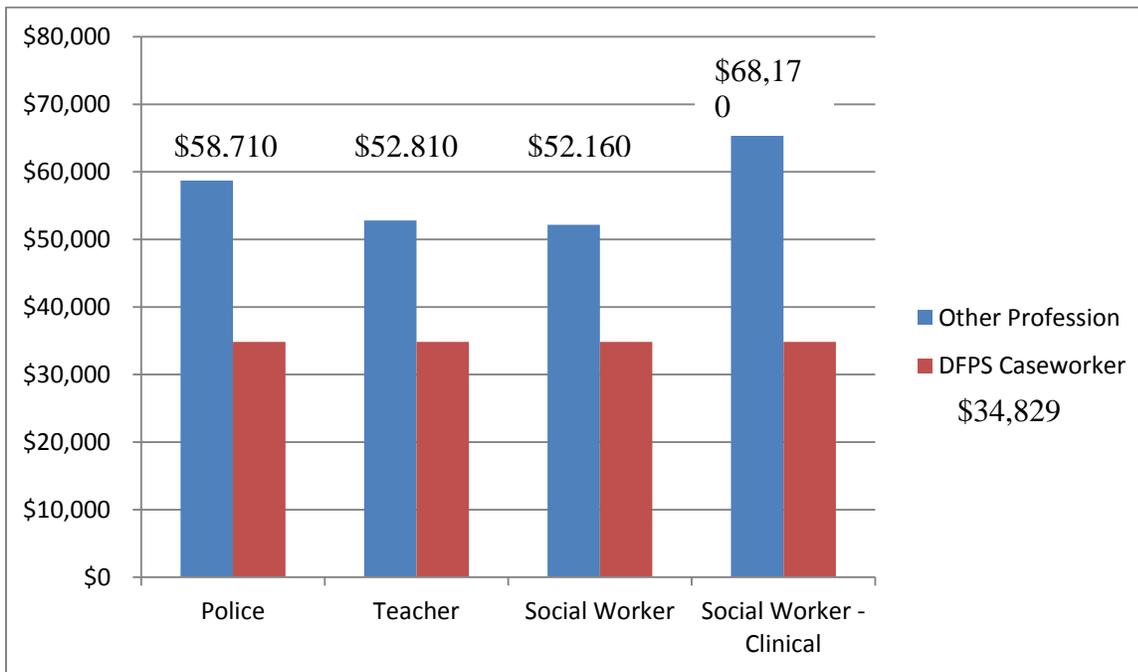


*Caseworker Salaries*

In Texas, the average starting salary for a caseworker in 2015 was \$34,829 per year. However, 87% of caseworkers reported leaving for higher paying positions during the SAO exit survey in 2016. Additionally, caseworkers reported they were leaving for similar positions in the private sector that offered more competitive wages such as education, law enforcement, and non-profit organizations.<sup>59</sup> On average, CPS salaries were found to be 27% below market rate for other positions. The table below shows the average entry level salaries for competing professions.

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2015 Average Caseworker Salaries vs Other Professions in Texas<sup>60</sup>



The SAO exit survey also found 76% of respondents felt the pay was insufficient for the work required in the position, and approximately 52% believed increasing salary could increase retention at the agency.<sup>61</sup>

#### *Caseworker Retention*

Some argue, though, that because caseworkers say they leave primarily because of poor working conditions, instead of paying more, we should merely improve working conditions. Such an approach is wrong for two reasons.<sup>62</sup>

Consistently throughout the legislative hearings held over the 2016 summer months, witnesses stated CPS caseworker salaries need to be increased to a livable wage. Across the state, the average salary for CPS caseworkers is the same, regardless of the variations in cost of living, workload, or job market. For this reason, turnover rates vary from region to region. Lynn Chamberlin, with the Harris County Attorney's Office stated at the July 7th hearing, she believed \$50,000 would be a livable salary in Houston.

#### *Caseloads*

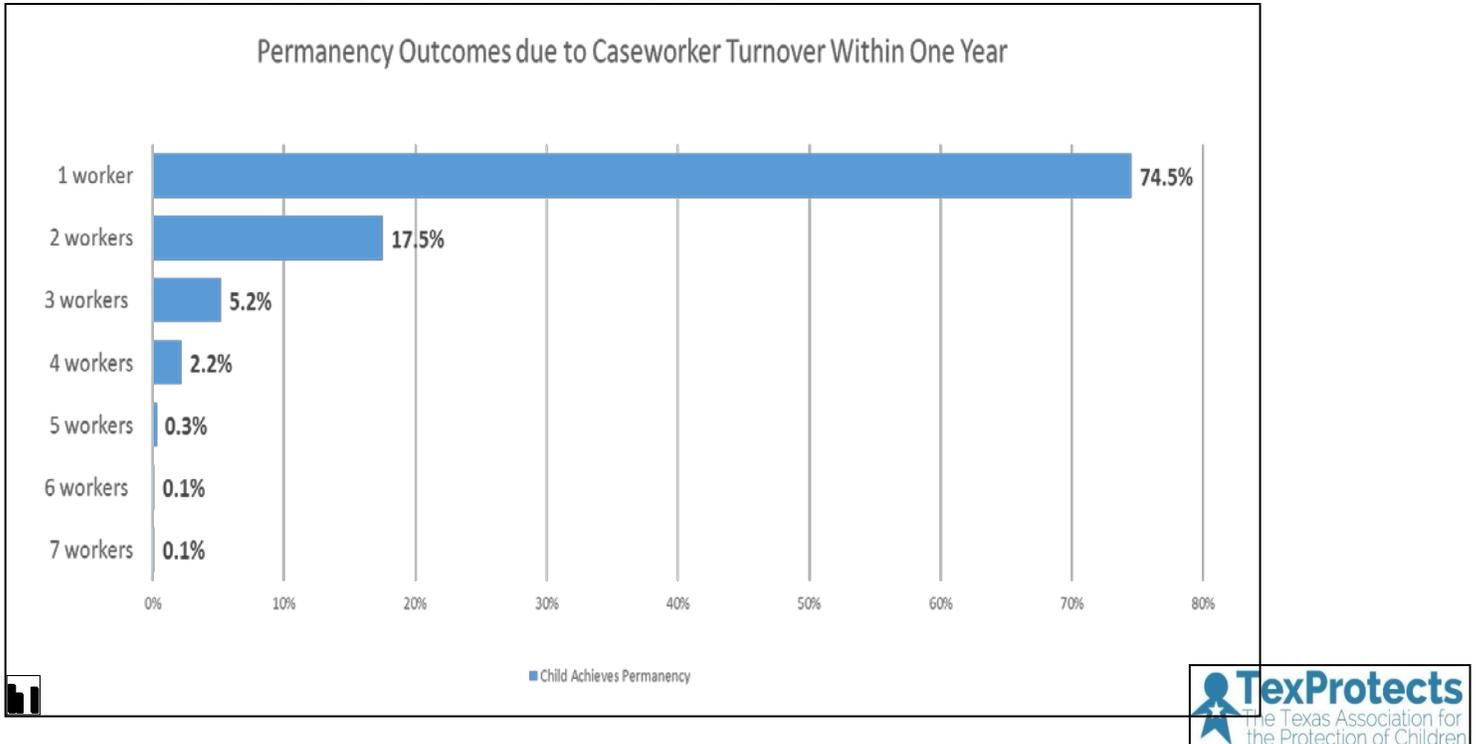
The federal district court found that CPS caseworkers are responsible for too many children to ensure their safety. The court found that one worker for 20 children is about as high as a system can safely go. In Texas, though, about a third of workers have caseloads of 21 to 30 children. About a tenth of workers have caseloads of 31 to 36 children — and some even have caseloads of 36 or more children. To reduce caseloads, the state must hire more caseworkers and keep them on the job.<sup>63</sup>

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### *Turnover's Impact on Children*

As caseworkers continue to leave the agency for varying regions, the impact this turnover has on children is lasting. The impact of only one caseworker produces significantly more positive outcomes for children in the system. Evidence shows even with only one caseworker, only 74.5% of children were able to obtain a permanent placement. Permanency outcomes decrease to 17.5% when the child experiences two caseworkers. These numbers continue to decrease as turnover continues. The following chart demonstrates the impact caseworker turnover can have in child outcomes.

Caseworker Turnover and Outcomes for Children



### *Kinship Care*

Kinship care is an alternative option to foster care when a relative or fictive kin is able and willing to care for a child, whom the courts have given DFPS conservatorship to. In Texas, more than 40% of children and youth in DFPS conservatorship are in kinship placements. According to Texas Family Code, a relative caregiver and/or fictive kin caregiver are determined to be the following:

- A Relative Caregiver is defined as a person who is related to the child by blood or adoption or marriage.
- A Fictive Kin Caregiver is an individual who has a longstanding and significant relationship with a child or with the child's family.<sup>64</sup>

As of July 2016, Texas had 5,709 of the 12,186 children in kinship care placed with grandparents. Additionally, in FY 2016, 7,515 exited kinship care either through adoption or permanent managing conservatorship.<sup>65</sup>

Judge John Specia, Commissioner for Texas Department of Family and Protective Services,

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stated verbally before the committee kinship care is the preferred method of placement for children in the system. Not only does placing children in kinship care produce better outcomes for the child overall, it bridges the link between ethnic and cultural norms. This means, the child will be in home placements with some continuity of basic things such as beliefs, cultural experiences and views, as well as simple daily life items such as getting dressed, getting hair done, and attending school.

Kinship care placements minimize the development of certain outcomes:

- Minimizes child pain and trauma;
- Decreases attachment, behavior, and mental health disorders;
- Decreases school changes and increases academic achievement;
- Maximizes continuity in services, decreases caregiver stress, lowers program costs; and
- Increases the likelihood of establishing and enduring a positive relationship with an adult;
- Children are "happy" to "very happy" (70% in kinship versus 59% in foster care).
- Children say that they have "always felt loved" (94% kinship care versus 82% in foster care).<sup>66</sup>

Furthermore, Judge Specia stated with the ability to place children in kinship care, this is significantly changing the demographics of those entering into foster care. DFPS is seeing kids with higher acuity needs entering foster care at higher rates than previously, with the belief that kinship placements are driving this shift.<sup>67</sup>

#### *Foster Care Placement Shortages*

In cases where a child can no longer live at home safely, does not have an appropriate non-custodial parent, relative, guardian, or close family friend able to care for them, the court can designate conservatorship of the child to CPS, which results in the child placed in a foster care setting. Foster care settings include:

- Foster family homes
- Foster group homes
- Residential group care facilities
- Facilities overseen by another state agency.<sup>68</sup>

The ins and outs of day-to-day life are changing for our population, largely contributing to the decreasing availability of foster care placement options. These factors include but are not limited to:

- Children have greater needs today, making fostering more demanding.
- We ask more of foster parents in terms of standards, training, and tasks.
- Both parents must work outside the home to make ends meet.
- Urban traffic makes it harder to get kids to school, extracurricular activities, doctor's appointments, and court.
- Baby-boomer foster parents are retiring and recruiting younger cohorts has been difficult.
- Unlike in yesteryear, foster parents are urged to adopt, which is great for kids, but means we must constantly add foster homes.<sup>69</sup>

Additionally, experts speculate a changing foster care population, with higher acuity needs

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children entering the system more than before, is making recruitment of additional foster placement options difficult. Some children come into care as high need kids, but our capacity shortage turns other children into high needs kids. Even when kids are placed in inappropriate placements; the placements break down; we move them; and then we start the cycle over, turning them into high needs kids.

The foster system is seeing increased numbers of children needing additional services such as:

- Behavioral health services
- Primary medical services
- Intellectual or developmental disabilities
- Other special needs such as autism, bipolar disorder, diabetes and serious behavioral issues.<sup>70</sup>

In 2015, at the direction of the Health and Human Services Commission (HHSC) and DFPS, The Stephen Group (TSG) conducted a study of the policies and procedures between CPS and Child Placing Agencies, outside of the foster care redesign areas, to determine these practices provided adequate services to high acuity needs children in the child welfare system.

According to the study, TSG found there is approximately 5,900 high acuity needs children in conservatorship. This number represents children with varying levels of need, not only children in crisis but includes children with potential to experience high levels of care.<sup>71</sup>

#### *Foster Care Redesign*

ACH Child and Family Services is a community-based non-profit in North Texas focused on child welfare and protecting families. Over the years, ACH has grown to include multiple campuses, offering up to 19 different programs to their community, including:

- Prevention services,
- Temporary supportive housing for families,
- An emergency youth shelter,
- Residential care,
- Foster care,
- Adoption,
- Supervised independent living for young adults aging out of foster care.<sup>72</sup>

Under foster care redesign, ACH has contracted directly with the state as the Single Source Continuum Contractor (SSCC) to serve CPS Region 3b, a total of seven counties (Tarrant, Palo Pinto, Parker, Johnson, Hood, Somervell, and Erath County).

In 2013, the Texas Department of Family and Protective Services contracted with ACH to begin the process of redesign. During their six-month start-up period, ACH recruited a team of qualified professionals to ensure the redesign process would run smoothly. In 2014, ACH began the process of transferring children from the local foster care system into ACH, taking on the responsibility of finding placement and managing care for all children removed from their homes in the region.

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The redesign in Region 3b has been extremely successful. Since the initial transfer of children into ACH, the practice of children sleeping in offices and hotels has ended. Additionally, local placement capacity is growing through recruitment efforts, allowing children to be placed at much higher rates. Overall reporting within the region has improved as well, with ACH's improvements in reporting and operations. However, one of the most significant outcomes is the increased time caseworkers now have to spend with children.

Overall outcomes during the first year of operation:

- Safety
  - 99.9% of children did not experience abuse or neglect while in care
- Placement Stability
  - 94% of new admissions (and 97% of those transferred from the local system) have been stable in placement with no more than one move
- Placement Proximity/Maintaining Connections
  - 83% of children placed were kept within 50 miles driving distance from removal location
- Least Restrictive Placement
  - 79% of Region 3b children were living in a family setting on the last day of the contract year, compared to 76% previously
- Youth Fully Prepared for Adulthood
  - 58% of youth age 16 or older have a driver's license or state ID
  - 35% of youth age 16 or older have a regular job
  - 76% of youth who turn 18 have completed Preparation for Adult Living (PAL) Life Skills Training
- Children and Youth Participate in Decisions that Impact Their Lives
  - 88% of child age 10 or older participated in developing the service plan
  - 49% participated in at least one discussion regarding placement options
  - 30% of children age 10 or older attending their court hearings.<sup>73</sup>

Although this model has been extremely successful in Region 3b, it will be difficult to replicate in other areas. ACH maintains its focus on only serving children in their area because it is important to them to ensure resources are used locally. It is ACH's stance they understand the needs locally and therefore are able to better serve this population. However, when looking for private entities to partner with, the state did not provide adequate funding to meet the service needs in the region. Therefore, ACH entered into the contract with the state and brought over one million dollars of their own funding in order to provide this service.

Resources are not consistent across the state. Many areas are suffering from a much larger shortage of medical and mental health providers than other areas. Urban counties, even with the available resources, still fall short of providing adequate care due to the volume of need. Rural counties have less volume but also have fewer resources.

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## RECOMMENDATIONS

**The Texas Legislature should encourage counties to develop specialty courts, like the Travis County Family Drug Treatment Court, to intervene with families within the CPS Court system to assist parents with substance abuse.**

Combating relinquishment of the child is a high priority emphasized throughout our committee's discussions. The Travis County Parenting in Recover/Family Drug Treatment Court provides a model for counties to help families the most in need without relinquishing the child. PIC/FDTC has proven to be a success in keeping families together and helping families get the help and resources they need to combat substance abuse.

**The Texas Legislature should allocate resources from The Health and Human Services Commission to parents whose children are in the foster care system.**

Allocating resource to treat substance use disorder in parents whose children are in the foster care system will significantly help the families the most in need. The evidence provided during the interim hearings concluded that if these parents were to go into treatment, then the likelihood of the children developing substance use disorder greatly decreases.

**The Texas Legislature should create a plan that would utilize money granted by the "21st Century Cures Act" to prevent and treat opioid and heroin addiction in families whose children are in CPS custody.**

The Cures Act invests \$1 billion dollars through grants to combat the substance abuse epidemic. Receiving funding through grants from the Cures Act would ensure that Texas families could receive the help they need.

**The Texas Legislature should review circumstances where removal was not necessary for the physical safety of the child, and consider policy changes regarding circumstances that warrant removal.**

The Committee heard testimony regarding the trauma of removal on children; and, instances where the child was put into a situation worse than the one he or she was removed from.

**The Texas Legislature should strongly consider recommendations made by the House Select Committee on Mental Health addressing mental and behavioral health services and treatments for children.**

The recommendations from the House Select Committee on Mental Health provide treatment to children most at risk including those in the foster care system.

**The Texas Legislature should consider across the board pay raises to all employees at Child Protective Services.**

In order to maintain a positive work environment, it is important for the Legislature to recognize that employees beyond frontline workers are contributing to CPS outcomes. Therefore, it is important for Texas to consider increasing overall pay to CPS employees.

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**The Texas Legislature should further study the timeliness and adequacy of payments and determine if legislative action is needed.**

The Committee heard testimony that insurance payments for wrap-around services (therapy, etc.) were not being made timely or were being reduced such that providers were no longer treating children. This may be leading to a shortage of services in certain regions.

**The Texas Legislature should increase the number of full-time frontline employees at Child Protective Services to reduce the number of caseloads per employee to ensure better outcomes for children.**

Evidence shows the number of caseloads for each frontline worker is significantly too high, contributing to poor outcomes for children and high turnover within CPS. By increasing the number of full-time frontline employees, Texas can ensure investigations are taking place promptly and the number of cases assigned to each worker is reduced.

**The Texas Legislature should require The Texas Department of Family and Protective Services to put measures in place to increase employee morale within the agency.**

The committee received testimony regarding the overall culture within the agency. In order to eliminate this as a reason for leaving, the agency should take appropriate action to rectify this and reduce turnover.

**The Texas Legislature should increase incentives and payments to attract new and keep current foster families.**

The current number of foster families is decreasing for reasons beyond the agency's control. Texas should consider increasing incentives to attract new foster families and maintain current families.

**The Texas Legislature should reduce burdensome requirements for approval to become a foster family.**

**The Texas Legislature should provide adequate funding for redesign efforts in other regions of the state.**

CPS transformation in Fort Worth is working great. However, the provider is contributing large amounts of personal funds to administer services due to the State significantly underfunding the program. If the Department of Family and Protective Services intends to replicate this program in other parts of the state, it should provide adequate funding.

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**ISSUE: 3 TEXAS DEPARTMENT OF PUBLIC SAFETY AND CRIMINAL  
JUSTICE REFORM**

**SUMMARY OF COMMITTEE ACTION**

Committee Hearings

July 30, 2015, State Capitol, Room E2.026, Austin, Texas

September 15, 2015, State Capitol, Room E2.016, Austin, Texas

November 18, 2015, State Capitol, Room E2.016, Austin, Texas

September 20, 2016, State Capitol, Room E2.016, Austin, Texas

November 16, 2016, State Capitol, Room E2.016, Austin, Texas

Witnesses

July 30, 2015, State Capitol, Room E2.026, Austin, Texas

- Dominique Alexander (Next Generation Action Network)
- Janet Baker (Self)
- Yannis Banks (Texas NAACP)
- Cynthia Cole (Self; AFSCME 1550)
- Michele Deitch (Self)
- Durrel Douglas (Self; Houston Justice Coalition)
- Barbara Frandsen (League of Women Voters of Texas)
- Greg Hansch (National Alliance on Mental Illness (NAMI) Texas)
- Vincent Harding (Self)
- Merily Keller (Self; Mental Health America of Texas & Texas Suicide Prevention Council)
- Katharine Ligon (Center for Public Policy Priorities)
- Sherman Livingston (Self)
- Brandon Mack (Self)
- Steven McCraw (Texas Department of Public Safety)
- Kathy Mitchell (Self)
- Lelani Russell (Next Generation Action Network)
- Teri Saunders (Self)
- Matt Simpson (ACLU of Texas)
- Douglas Smith (Texas Criminal Justice Coalition)
- Kathy Swilley (Self; Cops Holdin Cops Accountable)
- Fran Watson (Self)
- Michael Webb (Self)
- Doris Williams (Self)
- Dennis D. Wilson (Sheriff's Association of Texas)
- Brandon Wood (Texas Commission on Jail Standards)

September 15, 2015, State Capitol, Room E2.016, Austin, Texas

- Lee Johnson (Texas Council of Community Centers)
- Christopher Kirk (Sheriff's Association of Texas)

- 
- Lauren Lacefield Lewis (Department of State Health Services)
  - Kelly Rowe (Sheriff's Association of Texas)
  - Brandon Wood (Texas Commission on Jail Standards)

November 18, 2015, State Capitol, Room E2.016, Austin, Texas

- Fidel Acevedo (Self; Lulac District XII)
- Frank Baumgartner (The University of North Carolina at Chapel Hill)
- Steven McCraw (Texas Department of Public Safety)
- Elia Mendoza (League of United Latin American Citizens)
- David Gibson (Self)
- Lauren Lacefield Lewis (Department of State Health Services)
- Michael Laughlin (Dallas County Criminal Justice)
- Donald Lee (Texas Conference of Urban Counties)
- Brandon Wood (Texas Commission on Jail Standards)

September 20, 2016, State Capitol, Room E2.016

- Phillip Adkins (DPS)
- Frank Baumgartner (Self)
- Rhonda Fleming (Texas Department of Public Safety)
- Gilbert Gonzales (Bexar County)
- Luis Gonzalez (Texas DPS)
- Mike Lozito (Bexar County Judicial Services)
- Fatima Mann (Self; Austin justice coalition)
- Dwight Mathis (Texas Department of Public Safety)
- Steve McCraw (DPS)
- Kathy Mitchell (Texas Criminal Justice Coalition)
- Tom Rhodes (Self)
- Philip Steen (Texas Department of Public Safety)
- Sandra Thompson (Self)
- Trisha Trigilio (ACLU of Texas)

November 16, 2016, State Capitol, Room E2.016, Austin, Texas

- Craig Pardue (Self)
- Michele Deitch (Self)
- Tony Fabelo (Council of State Governments, Justice Center)
- Amanda Gnaedinger (Texas Criminal Justice Coalition)
- Gregory Hansch (National Alliance on Mental Illness (NAMI) Texas)
- Steve McCraw (Texas Department of Public Safety)
- Ranjana Natarajan (Self)
- Alex Stamm (UT School of Law Civil Rights Clinic)
- Craig Washington A. (Self)
- Ashton Woods (Black Lives Matter Houston)

## **BACKGROUND**

In July of 2015, Trooper Brian Encinia pulled over Sandra Bland for failure to signal when changing lanes. The encounter escalated unnecessarily, leading to Ms. Bland's arrest and being

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taken to the Waller County Jail. Ms. Bland remained in the jail for three days where she later committed suicide in her jail cell. Her story made national headlines and sparked the Texas House Committee on County Affairs to launch an investigation into the systemic practices that led to Ms. Bland's tragic death.

### *Improving Law Enforcement*

Sandra Bland's death prompted Chairman Coleman to begin working on improvements to the criminal justice system in Texas. By understanding all factors that led to Ms. Bland's death, the Chairman and Committee could identify specific issues needing to be addressed in order to improve policing practices and community relations. The initial Sandra Bland hearing, held in July of 2015, provided an avenue for the public to air their grievances about law enforcement and testify about their own personal experiences with multiple police agencies, in an effort to paint a picture of what people live through in the midst of law enforcement encounters.

It became clear that police agencies, the criminal justice system, and county jails need significant reforms in order to better the treatment of the public and better the outcomes for individuals who enter the criminal justice system. This system is so intertwined that one fix, in one agency, will not provide the overall reforms needed. Change is necessary within all aspects of this system to stop the systematic profiling of certain races and reduce the unnecessary escalation of encounters with law enforcement due to a lack of respect among all parties.

The Committee's investigation was conducted over a year and a half. The Committee heard testimony from multiple entities and experts in criminal justice, and identified specific reforms needed for improvement to the following:

- Texas Department of Public Safety
- Increasing minimum county jail standards
- Mental health treatment and diversion
- Police/Community relations
- Complete removal of consent searches
- Increased training in de-escalation techniques

## **FINDINGS**

### *Texas Department of Public Safety*

Sandra Bland's death raised many questions regarding DPS' practices and policies regarding traffic stops, consent searches, command voice and command stance, and de-escalation. In order to determine whether racial disparities were in fact occurring by DPS Troopers, Chairman Coleman issued a public information request and obtained data on traffic stops, traffic tickets, consent searches, arrests, and more to determine if there were clear biases based on race. The Chairman released the information to Dr. Frank Baumgartner, Professor at the University of North Carolina at Chapel Hill, who conducted a statistical analysis of the data. Dr. Baumgartner found there is statistical evidence to support that minority races are being pulled over, searched, and ticketed at significantly higher rates than Whites.

Specifically, "controlling for everything that we can...based on data made available by the Texas DPS, Black male drivers are 59 percent more likely to be searched, and Black females are 15

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percent more likely to be searched than their White counterparts.”<sup>74</sup> When trying to determine the rate of stops and searches conducted for Hispanics, it became clear that better reporting needs to be done. Until 2010, when applying for a Texas Driver’s License, there was no box marked “Hispanic” to check in order to identify as this race. Officers use what the individual has marked on their driver’s license to code race during law enforcement encounters. Unless the individual wrote on the driver’s license application Hispanic, the majority of these people checked “Other.” While statistic information cannot specifically say Hispanics are more often ticketed and searched than Whites, we can say individuals who identified as “other” are more likely than Whites to be ticketed and searched.<sup>75</sup>

Additional issues arise when trying to research potential racial disparity practices for consent searches. Currently, the consent searches require no form of written approval or information provided to the citizen of their right to refuse. According to DPS, whenever a trooper initiates a traffic stop, the camera installed in their vehicle automatically begins to record. Steve McCraw, Director of Texas Department of Public Safety, testified verbally before the committee, stating whenever a trooper turns on their lights in pursuit of an individual, their camera automatically records from the moment the lights are turned on. This recording allows DPS to investigate any potential wrongdoing of troopers in incidents involving escalation.<sup>76</sup>

Although Director McCraw testified at multiple hearings that DPS is trained and implements de-escalation techniques for all of their troopers, more could be done to improve the use of this training. In the case of Sandra Bland, the trooper could have used de-escalation during this encounter and prevented her death. Cell phone evidence shows law enforcement continuing to ignore de-escalation training, exacerbating increased tensions between the public and law enforcement. While testimony from the Director stated a review of trooper video in cases where escalation occurred, there is a clear need for increased training on de-escalation and ramifications for when it is ignored.

#### *Increasing the Minimum County Jail Standards*

Sandra Bland’s death could have possibly been prevented by better screening methods in place during her initial intake at the Waller County Jail. It is important to mention that Waller County was not responsible for Ms. Bland ending up in their custody. However, they were responsible for her well-being while in their custody.

During the initial investigatory hearings conducted after Ms. Bland’s death, Chairman Coleman initiated the revision of the initial inmate intake screening form (see Appendix A). This revision came as a result of testimony stating the intake screening form lacked ability to accurately screen and identify individuals who may be suffering from mental illness. The Texas Commission on Jail Standards worked with forensic and criminal justice policy experts to create a revised form. However, while the questions included in the new form provide more opportunity to identify an individual with mental health issues and suicidal ideations, an inmate can still mask their intentions.

The main difference between the old form, used to screen Sandra Bland, and the new form (see Appendix B) implemented after her death is the requirement to notify the mental health service

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provider contracted with the jail. As a result of the new form, local mental health authorities and magistrates are seeing an increase in the number of inmates being screened as possibly suffering from mental health issues.<sup>77</sup> This increase in individuals being flagged as possibly suffering from mental illness has decreased the number of suicides in Texas jails since its implementation.

Advocates, while happy with the intake screening form revision, provided testimony regarding the Texas Commission on Jail Standards overall minimum standard enforcement authority. Currently, the Texas Commission on Jail Standards (TCJS) is only enforcing the minimum standards required by federal law and has oversight over the following:

1. the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;
2. the custody, care and treatment of inmates;
3. programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.<sup>78</sup>

In order to enforce the minimum standards, TCJS currently conducts one unannounced inspection of each jail under its jurisdiction annually. By increasing funding for TCJS, the agency could increase the number of surprise visits and better protect offenders in their custody.

Additionally, there are many standards TCJS is silent on. Michele Deitch, J.D., M.Sc., Senior Lecturer at the Lyndon B. Johnson School of Public Affairs and the School of Law at The University of Texas at Austin, provided the following suggested changes for increased ability to enforce additional standards:

- Increase funding for the Texas Commission on Jail Standards to hire additional jail inspectors and provide additional technical assistance on suicide prevention.
- Direct TCJS to develop standards on use of force, sexual assault, and detoxification.
- Direct TCJS to ensure that the PREA standards are incorporated into its own standards and that TCJS staff are certified as PREA auditors.
- Direct TCJS to develop more detailed standards on what a jail's plans for medical care, mental health care, and suicide prevention should include.
- Require TCJS to collect from jails around the state all serious incident reports and to prepare publicly-available aggregated statistical reports about the nature of these incidents.<sup>79</sup>

#### *Waller County Lawsuit*

After the death of Ms. Bland, her family issued Waller County a wrongful death lawsuit. During investigation into Ms. Bland's death, it was discovered the jail had falsified jail cell checks in their records. This falsification of cell checks was a practice taught to the jailers upon obtaining employment. The settlement agreed to by both parties included changes to the jail intended to prevent falsification of jail checks moving forward by requiring the jail to install an automated electronic sensor system. This system decreases the ability to falsify logs by requiring the jailer to swipe their key-card in front of the sensor located outside each jail cell to ensure eyes-on supervision.

Additionally, Waller County was required to employ a 24 hour a day on-duty nurse or EMT.

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Other requirements of the settlement include:

- The Waller County Judge pledges to actively seek passage of state legislation providing for more funding for jail intake, booking, screening training and other jail support like telemedicine access for Texas county jails.
- The Waller County Sheriff's Office shall provide additional jailer training (including ongoing continuing education) on booking and intake screening.<sup>80</sup>

It is important to note that Sandra Bland was originally arrested for a non-jailable offense. Currently in Texas, individuals can be arrested and taken to jail for non-jailable offenses. With additional tools, law enforcement can avoid bringing low-level defendants to jail and instead focus arrests on more serious offenders.<sup>vii</sup>

### *Mental Health Treatment and Diversion*

People who commit a crime while in the midst of a mental health crisis should not end up with an arrest record. These individuals need treatment instead of incarceration. Bexar County employs a diversion before booking program where they immediately divert individuals they screen and identify as suffering from mental health issues straight into treatment instead of booking them before diverting them.

Most jurisdictions, if they have a diversion program in place, they divert post booking. This results in the individual having an arrest record as a result of their illness. Once the individual has received treatment and is ready to return to normalcy, this arrest record can prevent them from obtaining employment, housing, and other vital things necessary to live a productive life. Bexar County's diversion before booking is a great model to be replicated in other jurisdictions. If diversion is not an option for communities due to lack of available options to divert individuals to, telemedicine is an option that could be used to address this problem. The use of telemedicine to assess and treat individuals who suffer from mental health issues is a viable, cost-efficient way to address the provider shortage in rural areas.

Statistics show that a large percentage of persons entering county jails have a diagnosed mental illness, with a large number of those persons living in poverty and receiving federal aid such as Medicaid, Supplemental Security Income, or Social Security Disability Insurance benefits. When this population is arrested and enters a county jail their benefits are terminated, even before they are found guilty. After being released either on bond or because the charges are dismissed the individual must reapply for their benefits. Due to the application process there is a lag time where it can take up to a month for individuals to get back their benefits. As a result they are unable to continue their treatment and sometimes end back in jail or in the ER room because of this break in benefits.<sup>81</sup>

Last session the Texas Legislature passed H.B. 839 by Representative Naishtat that changed the law to suspend the medical benefits juveniles were receiving when they entered a juvenile justice detention center instead of terminating their benefits. This new law allows the juveniles' benefits to be reinstated once they are released - eliminating any disruptions in their treatment. The same concept should be applied to all individuals who enter jail to ensure no one's treatment is unnecessarily disrupted.

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### *Police/Community Relations*

Law enforcement's obligation is not only to reduce crime but also to do so fairly while protecting the rights of citizens. Any prevention strategy that unintentionally violates civil rights, compromises police legitimacy, or undermines trust is counterproductive from both ethical and cost-benefit perspectives. Ignoring these considerations can have both financial costs (e.g., lawsuits) and social costs (e.g., loss of public support).

It must also be stressed that the absence of crime is not the final goal of law enforcement. Rather, it is the promotion and protection of public safety while respecting the dignity and rights of all. And public safety and well-being cannot be attained without the community's belief that their well-being is at the heart of all law enforcement activities.<sup>82</sup>

### *Complete Removal of Consent Searches/Racial and Ethnic Profiling*

Based on detailed analysis conducted by the Austin American Statesman from data provided by DPS, we know that searches are being conducted at disproportionate rates of African-Americans than they are of Whites. Yet, the data reflects officers are only half as likely to find illegal contraband in the possession of minority drivers. There is strong evidence that ethnic and racial profiling is happening amongst law enforcement. However, there is little to no action taken against troopers for profiling. According to the Austin American Statesman's Article "Not So Black and White:"

- 35 percent of the 1,138 troopers included in the analysis searched Black and Hispanic motorists at least twice as often as White drivers.
- 231 of the officers who searched Black and Hispanic motorists at two times or more the rate at which they searched white drivers were less likely to find contraband while searching the minority drivers.
- 65 DPS officers searched minority drivers at least three times more often than the white motorists they stopped yet found contraband less often.
- 16 officers searched minority motorists more than four times as often as Anglos, with lower contraband hit rates.<sup>83</sup>

What many people may not know is many have the right to refuse a consent search. In order to ensure people understand their right to refuse, Texas should consider doing away with consent searches entirely. Elimination of consent searches would ensure no violation of people's rights occurs.

Consent searches rarely result in the discovery of contraband or other wrongdoing. As such, the practice of conducting consent searches diminishes public safety by diverting critical resources (officer time and energy) away from more productive crime-fighting tasks.<sup>84</sup> In addition, probable cause searches also have a low rate of discovery of contraband or other wrongdoing. Therefore, raising the standard of searches from probable cause to preponderance of the evidence better protects individual's rights while maintaining the ability of law enforcement to properly investigate potential criminal activity.

### *Eliminating Pre-textual Stops*

Despite Department of Public Safety policy that prohibits troopers from performing pre-textual stops (sometimes referred to as investigatory stops) detailed analysis conducted by Professor

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Frank Baumgartner from data provided by DPS, shows a strong indication that pre-textual stops do happen and that they are more likely to happen to African-Americans than they are of Whites. Professor Baumgartner's analysis of DPS stops showed that an "out-of-state Black male pulled over for speeding while going 68 MPH in a 65 MPH zone would have an extremely high likelihood of [being] searched".<sup>85</sup>

Pre-textual stops are hard to prove in an individual situation because, law enforcement officers have a low-burden of proof to meet when showing justification for a stop or search. Officers are legally allowed to stop a vehicle based on reasonable suspicion that a crime is being committed, and able to either receive consent or have probable cause that a crime is being committed to search the entire vehicle in most circumstances.

#### *Increased Training in De-escalation Techniques*

Director Steve McCraw, Texas Department of Public Safety, testified at numerous hearings, stating that state troopers do receive de-escalation training. While this may be the case, increased evidence of escalation instead of de-escalation begs the question of what type of training officers are receiving as well as how much de-escalation is emphasized within the agency.

In the case of Sandra Bland, video evidence exists to show that the escalated actions which lead to her ultimate arrest could have been avoided had the officer implemented some of his de-escalation training. Furthermore, Director McCraw agreed with Chairman Coleman in the November 16, 2016 County Affairs Legislative hearing that law enforcement officer should be held to a higher standard due to the nature of their service. This standard should include the ability to remove emotion from the situation, think logically about the dangers in the situation, and de-escalate when no danger is present.

Therefore, while de-escalation training may be provided, it should be a tool actively used by officers in the line of duty.

Crisis Intervention Training (CIT) is a specific type of de-escalation training that trains officers how to properly handle a situation where an individual is suffering from a mental health crisis. Unique de-escalation training is needed to handle mental health crisis because, to an untrained officer it can be difficult to distinguish between a person who is in crisis and one who is being aggressive. During the 79th Legislature, Senate Bill 1473, sponsored by Chairman Garnet F. Coleman, requires individuals licensed as peace officers for more than two years to complete a Commission developed training program on "de-escalation and crisis intervention techniques." Additionally, this requirement is included for any peace officer seeking an intermediate proficiency certificate.<sup>86</sup> By increasing this training from the current 16 hours to the national standard of 40 hours, officers can better identify a mental health crisis and resolve the situation in a peaceful manner.

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## RECOMMENDATIONS

**The Texas Legislature should require the Texas Department of Public Safety to accurately record race for individuals who receive warnings, tickets, arrests, and searches.**

Correctly recording races for individuals experiencing encounters with DPS will accurately reflect racial profiling practices within the agency and help Texas address said profiling through whatever action deemed appropriate.

**The Texas Legislature should increase de-escalation training for law all enforcement officers and increase ramifications in situation where de-escalation should be used but is not.**

With increasing tension between the public and law enforcement, it is important to work on de-escalating situations. Law enforcement should be able to determine when de-escalation is appropriate while maintaining the appropriate level of command to ensure safety. Officers should be able to read each situation on an individual basis and determine the appropriate response.

**The Texas Legislature should increase Crisis Intervention Training (CIT) for all law enforcement officers from 16 to 40 hours in the certification requirement.**

During the 79th Legislature Chairman Coleman sponsored Senate Bill 1473 which requires Commission developed training program on “de-escalation and crisis intervention techniques” during the intermediate proficiency certification to become a peace officer. The current requirement for this training is 16 hours. Increasing the number of required hours law enforcement officers receive to the national standard will help better train officers at properly identifying and peacefully resolving a situation where an individual is suffering from a mental health crisis.

**The Texas Legislature should consider requiring all county jails to install an electronic monitoring system.**

To prevent falsified jail checks and logs, the Legislature should require all county jails to install an electronic system. This system would decrease the ability to falsify cell checks and ensure that individuals are getting the proper eyes-on supervision required.

**The Texas Legislature should increase the number of required training hours for mental health awareness for county jail staff.**

As a result of the Sandra Bland settlement, Waller County Jail staff will now undergo continuing education on mental illness. This continuing education requirement should be replicated for all county jails in Texas to prevent future tragedies.

**The Texas Legislature should assist counties with implementing diversion before booking programs.**

Bexar County has created a diversion before booking program, where individuals are immediately diverted into treatment at a restoration center instead of taken to the county jail. While the Committee recognizes that many counties do not have the same resources as Bexar County, counties that do have these resources should implement a similar diversion policy.

**The Texas Legislature should assist counties in areas with medical provider shortages to use**

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**telemedicine to assess and treat individuals in their jail.**

The use of telemedicine is a cost-efficient, technology savvy way to address provider shortages in Texas while still providing adequate medical services to those in need.

**The Texas Legislature should require that medical benefits such as Medicaid, Supplemental Security Income, and Social Security Disability Insurance benefits are suspended when an individual enters a county jail instead of terminated.**

Suspending individuals medical benefits such as Medicaid, Supplemental Security Income, and Social Security Disability Insurance benefits instead of terminating them when they enter county jail will allow them to be reinstated upon release. This will eliminate disruptions in treatment caused by the need to reapply for their benefits after being released from jail.

**The Texas Legislature should require law enforcement agencies to adopt similar policies and those recommended in a revised racial and ethnic profiling law.**

Searches are being conducted at disproportionate rates of African-Americans than they are of Whites. Yet, the data reflects officers are only half as likely to find illegal contraband in the possession of minority drivers. Even more troubling are the rates at which this is happening among law enforcement, with little to no action taken against troopers for blatant profiling. What many people may not know is that they have the right to refuse a consent search. In order to ensure people understand their right to refuse, Texas should consider doing away with consent searches entirely. Elimination of consent searches would ensure no violation of people's rights occurs. Lastly, the current racial profiling statute does not include those problems found in our findings. In order to include all of the mentioned disparity problems, the Texas Legislature must change the statute of the Racial and Ethnic Profiling Law.

**The Texas Legislature should create policies that appropriately encourage and increase the use of personal recognizance bonds such as requiring magistrates to perform risk assessments, indigence screenings, and reason for setting a commercial bond.**

The understanding of someone's risk to public safety and ability to pay allows the judge to better determine whether a personal recognizance or commercial bond should be set. Additionally, requiring reasoning for the setting of a commercial bond will ensure that individuals are not unnecessarily detained before proven guilty.

**The Texas Legislature should prohibit the use of consent searches, and increase the standard of both stops based on 'reasonable suspicion' and searches based on 'probable cause' to a 'preponderance of the evidence'.**

Increasing the standard of both stops and searches will help prevent and detour the use of pre-textual stops. This standard ensures that rights are protected while still ensuring that law enforcement officers are able to catch criminals.

**The Texas Legislature should strengthen the language and enforcement of Texas' racial/ethnic profiling laws.**

There is strong evidence that ethnic and racial profiling is happening amongst law enforcement. However, there is little to no action taken against troopers for profiling.

**The Texas legislature should prohibit the arresting of individuals for non-jailable offenses.**

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With additional tools, law enforcement can avoid bringing low-level defendants to jail and instead focus arrests on more serious offenders

**The Texas Legislature should require local law enforcement agencies to adopt similar policies to improve the criminal justice system as those recommended in this Texas House Committee on County Affairs report to the 85th Legislature.**

# APPENDIX A

\_\_\_\_\_ County  
**Screening Form for Suicide and Medical and Mental Impairments**  
*Per Jail Standard §273.5(b): ALL Questions SHALL be Completed in Full Immediately Upon Admission of Inmate*

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 State I.D. Number (if known) \_\_\_\_\_ S.O. # \_\_\_\_\_  
 Date/Time: \_\_\_\_\_ Completed By: \_\_\_\_\_

Does arresting officer or any other person believe that the inmate is at risk due to medical condition, mental illness, mental retardation, or suicide concern? (Circle one or more if applicable)      Nothing Applies

Comments: \_\_\_\_\_

**SELF-REPORT QUESTIONS (please elaborate as needed):**

Any current medical problems, recent hospitalizations or serious injuries or concerns about withdrawal?      Yes  No  \_\_\_\_\_

If female, are you pregnant?      Yes  No  Not Sure

Taking Medications?      Yes  No  \_\_\_\_\_

Have you ever received services for mental health or mental retardation?      Yes  No  \_\_\_\_\_

Do you receive a social security check?      Yes  No  \_\_\_\_\_

Have you ever been in special education?      Yes  No  \_\_\_\_\_

Do you have any previous military service?      Yes  No  \_\_\_\_\_

Do you hear any noises or voices that other people don't seem to hear?      Yes  No  \_\_\_\_\_

Have you ever been very depressed?      Yes  No  \_\_\_\_\_

Do you feel this way now?      Yes  No  \_\_\_\_\_

Have you had thoughts of killing yourself in the last year?      Yes  No  \_\_\_\_\_

Are you thinking about killing yourself today?      Yes  No  \_\_\_\_\_

Have you ever attempted suicide?      Yes  No  When? \_\_\_\_\_ Why? \_\_\_\_\_ How? \_\_\_\_\_

Have you experienced a recent loss?      Yes  No  \_\_\_\_\_

**STAFF OBSERVATIONS (please elaborate as needed):**

Does the individual seem (circle all that apply): confused, pre-occupied, hopeless, sad, paranoid, in an unusually good mood, or believes he/she is someone else?      N/A

Is this person's speech (circle all that apply): rapid, hard to understand, hesitant, or childlike?      N/A

Observed to be under the influence of:      Alcohol?  Drugs?  Withdrawals?  N/A

Observed to have visible signs of self harm (i.e., cuts on arms, etc.):      Yes  No

Does the screener suspect mental illness/mental retardation?      Yes  No

If yes, when was a magistrate notified?      Date/Time: \_\_\_\_\_      How? **Written / Electronic** (circle)

Additional Comments: \_\_\_\_\_

This Form is NOT a substitute for a Separate Health Screening Record required under § 273.4      Revised 9/10/2014

## APPENDIX B

### Screening Form for Suicide and Medical/Mental/Developmental Impairments

County:	Date and Time:	Name of Screening Officer:	
Inmate's Name:	Gender:	DOB:	If female, pregnant? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/>
Serious injury/hospitalization in last 90 days? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Currently taking any prescription medications? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, what:			
Any disability/chronic illness (diabetes, hypertension, etc.) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Does inmate appear to be under the influence of alcohol or drugs? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Do you have a history of drug/alcohol abuse? If yes, note substance and when last used			
*Do you think you will have withdrawal symptoms from stopping the use of medications or other substances (including alcohol or drugs) while you are in jail? If yes, describe			
*Have you ever had a traumatic brain injury, concussion, or loss of consciousness? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
<b>*If yes, Notify Medical or Supervisor Immediately</b>			
<b><i>Place inmate on suicide watch if Yes to 1a-1d or at any time jailer/supervisor believe it is warranted</i></b>			
	YES	NO	<b>"Yes" Requires Comments</b>
<b><i>IF YES TO 1a, 1b, 1c, or 1d BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</i></b>			
Is the inmate unable to answer questions? If yes, note why, notify supervisor and place on suicide watch until form completed.			
1a. Does the arresting/transporting officer believe or has the officer received information that inmate may be at risk of suicide?			
1b. Are you thinking of killing or injuring yourself today? If so, how?			
1c. Have you ever attempted suicide? If so, when and how?			
1d. Are you feeling hopeless or have nothing to look forward to?			
<b><i>IF YES TO 2-12 BELOW, NOTIFY SUPERVISOR AND MAGISTRATE. Notify Mental Health when warranted</i></b>			
2. Do you hear any noises or voices other people don't seem to hear?			
3. Do you currently believe that someone can control your mind or that other people can know your thoughts or read your mind?			
4. Prior to arrest, did you feel down, depressed, or have little interest or pleasure in doing things?			
5. Do you have nightmares, flashbacks or repeated thoughts or feelings related to PTSD or something terrible from your past?			
6. Are you worried someone might hurt or kill you? If female, ask if they fear someone close to them.			
7. Are you extremely worried you will lose your job, position, spouse, significant other, custody of your children due to arrest?			
8. Have you ever received services for emotional or mental health problems?			
9. Have you been in a hospital for emotional/mental health in the last year?			
10. If yes to 8 or 9, do you know your diagnosis? If no, put "Does not know" in comments.			
11. In school, were you ever told by teachers that you had difficulty learning?			
12. Have you lost / gained a lot of weight in the last few weeks without trying (at least 5lbs.)?			
<b><i>IF YES TO 13-16 BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</i></b>			
13. Does inmate show signs of depression (sadness, irritability, emotional flatness)?			
14. Does inmate display any unusual behavior, or act or talk strange (cannot focus attention, hearing or seeing things that are not there)?			
15. Is the inmate incoherent, disoriented or showing signs of mental illness?			
16. Inmate has visible signs of recent self-harm (cuts or ligature marks)?			
Additional Comments (Note CCQ Match here):			
Magistrate Notification Date and Time: Electronic or Written (Circle)	Mental Health Notification Date and Time:	Medical Notification Date and Time:	
Supervisor Signature, Date and Time:			

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# APPENDIX C

## More Than Reform: The Current State of Child Protective Services

The Honorable Representative Stickland

November 2016

I will soon be sworn into my third term as State Representative serving Texas House District 92. During my first two terms, I have been on the County Affairs committee where Child Protective Services (CPS) has been addressed in many different areas. About six months ago when high profile CPS cases started breaking in the news, I felt compelled to dive deep into the issues facing this area of government and offer conservative solutions, all while protecting liberty and some of the most vulnerable in our state—our children. It is my hope that we can be heavily involved in the process of CPS reform to ensure that life, liberty, and the future of our state (our children), receive the best protection and service we can offer. Since beginning this quest, my staff and I performed approximately 50 interviews with stakeholders, conducted hundreds of hours of research, and attended hearings across the state. These efforts have culminated in the following report. This report has been highly condensed and does not cover all the shortcomings of CPS, but pinpoints some key issues that will help turn CPS around.

### Leadership

#### Problems:

- No Execution of Vision and Goals
- Lack of Accountability
- No Trust in Leadership

#### Solutions:

- Improve Communication
- H.R. Department
- Cultivate Positive Culture

Throughout CPS, there is a lack of communication for both vision and goals, as well as a lack of unity. These goals are set by the leadership, but never make it down to the caseworker. This causes extensive problems, because what is actually happening throughout the department does not reflect the vision, goals, and policies of the department. Just last month, the media reported on the incredible number of high priority children not being seen, even though it is the policy of the department to see these children within 24 hours. The lack of accountability has been ongoing and needs to be taken seriously. The great divide comes between the caseworkers and management. Surveys show the lack of trust caseworkers have in their supervisors and even how supervisors often resorted to threats to try and improve their performance.<sup>1</sup>

CPS needs to create a human resources department that communicates how expectations, policy changes, and new rulings affect their work. DFPS needs a department that seeks to repair relationships and ensure a positive work environment for all. The culture within CPS is toxic, and the retention rates

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reflect that. Now, CPS will never be a stress-free environment due to the nature of the job, but there are improvements that can be made to the culture of CPS. The private sector has seen the effects of a positive work environment on the work being performed; look at Google, Airbnb, Amazon, etc. They all have created lower stress environments for their workers and, as a result, have seen an increase in productivity. Those changes start from the top.

### Technology & Infrastructure

#### Problems:

- Missing Key Features
- Insufficient Vendor Options
- Out Dated Technology

#### Solutions:

- Require Resource Saving Features
- Lower Restrictions for Vendors
- Complete Overhaul/Replace System
- Copy Nationwide Best Practices

In this day and age, technology can be an incredible tool to help increase efficiency, but if the technology is not up to date it can create more work and bureaucracy. CPS's current database, known as IMPACT, was introduced in 1998 and updated in 2003. Nearly two decades later, this is the same system used today. IMPACT has been updated and morphed to try and meet the needs of the department. Yet all the changes have made it increasingly more complicated, causing some to describe it as a "Frankenstein system." The current system is riddled with problems and confusion for the caseworkers, making it a chore rather than a tool. There is no auto-fill feature for forms. IMPACT requires repetitive filing for the same document. The program has a maze of folders to traverse just to find what you are looking for. IMPACT has no way to geographically track the children or the beds available for them. Caseworkers end up calling offices to try and find a placement. This leads to 60% of children to be placed outside of their county, and 20% to be placed outside of their DFPS region.<sup>2</sup> When asked how much CPS spends on transportation, CPS replied that it is impossible to know how much they spend each year on transportation of the caseworkers and the children. This is unacceptable and must change. When the scope is narrowed to only travel reimbursements for caseworkers, it was found that taxpayers spend an unnecessary \$46 million each year to transport children away from their homes.<sup>3</sup> This could be solved with geographical tracking of children and beds. In addition, the lack of detailed information about the case is greatly hurting the children and their outcomes. Often children's notes are generic and out of date. Simply checking a box might help the CPS output, but not the child's well-being.

The IMPACT Modernization Project was set up into two phases. The first phase was scheduled to finish in the summer of 2016.<sup>4</sup> However, the first phase has been poorly handled by the vendor, caused more frustration than progress, and is still incomplete. Phase one addresses issues with intake. It aims to create electronic reporting, and access for Court Appointed Special Advocates (CASA) and other guardian ad litem, as well as improve submission processes for background checks for certain providers.<sup>4</sup> Additionally, a Reporting and Data Management (RDM) project will create a way to analyze case complexity and give supervisors a dashboard of caseworkers and cases. Phase two will continue to build on system improvements and ease of use, but does not add geo-tracking. DFPS has spent \$1.5 million on this system that still doesn't work for our caseworkers.<sup>2</sup> Even after modernization, IMPACT will still be missing key components.

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Many of the issues with the modernization project come from the vendor. Phase one was executed poorly and behind schedule. Phase two is going to begin soon, but DFPS only considered three bids, which includes a bid from the same company who was in charge of phase one. As we see in the free market, competition drives down the price while increasing quality. It is hard to get true quality for a good price with only three options. When we met with DFPS, they mentioned there were restrictions from Data Information Resource (DIR) that limited the field significantly on who could be a vendor with CPS. Yet after speaking to DIR, it became clear that DFPS and CPS set their own policies and requirements on who can contract with the agency. The IMPACT Modernization Project was set up for failure before it even started by DFPS' restrictive policies. DFPS must lower restrictions to ensure qualified vendors can apply for the contract. If that means losing federal funding, it should be considered for the sake of our children. Every state has a database. Time should be spent looking at all the options and finding best practices. With the amount of money we have poured into this system with so little return, we need to start looking for a new system that will truly serve the caseworkers, which in turn better serves the children of Texas.

#### Caseworkers

##### Problems:

- Caseloads
- Retention
- Structure
- Morale
- Security

##### Solutions:

- Lower Intake & Removal Numbers
- Salary Increases & Incentives
- Career Ladder
- Improve Training & Interagency Relationships
- Allow Self-Defense Options

Caseworkers easily have one of the most important roles, as they carry the weight of CPS. The industry standard for caseloads is about 12 cases at a time. This was not true for Leilana Wright's caseworker. At the age of 4, Leilana was bound, abused, and ultimately beaten to death by her mother's boyfriend.<sup>5</sup> The grandparents had made numerous calls to CPS. Leilana's caseworker had 70 active cases when she was murdered. She died because there was no investigation performed by CPS.

It is simple, large workloads do not create a happy, careful, and efficient worker. Yet with CPS's atrocious retention rates, it is impossible to continue to function without transferring the cases onto others while training a new caseworker to take their place. We must look at the intake and number of removals to cut down on the number of cases for workers as well. There was a CPS investigation into a mother who hosted a "chickenpox party" even though they are "not considered dangerous" and "they're not illegal."<sup>6</sup> Another mother had her child taken away because "she refused to give her child formula preferring organic milk instead because she was concerned about the chemicals used."<sup>7</sup> These stories are not the only ones. A simple internet search shows the merit of medical kidnapping based on the sheer number of accusations. Texas laws do not help when there are statutes requiring medical personnel to apply an eye ointment, to protect against sexually transmitted diseases, on newborns with a class B misdemeanor as a penalty for defiance.<sup>8</sup> When parents refuse this treatment, medical personnel often call CPS to protect themselves. The problem is these investigations are taking place while the children who are truly in need

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of help, like Leilana Wright, are forgotten. A shocking 69% of children taken by CPS were because of neglectful supervision.<sup>2</sup> Justice Jack called out Texas DFPS by saying, "CPS is taking way too many kids that would be better off at home."<sup>9</sup> Joseph Doyle, Jr. of MIT studied the effects of foster care on children. He found that delinquency rates, teen motherhood, and unemployment rates were all higher for children that were put into the foster care system than for the children who faced the same abuse, but were left in their homes.<sup>10</sup> When neglectful supervision is the case, we are better off teaching the parents than ruining a family by taking their children. FAIR, a program in Delaware, utilizes a private contractor that offers prevention and family-based safety services before they are ever entered into the state system. The numbers show incredible success with only 2% getting a repeat CPS call.<sup>11</sup> There are clear best practices from around the U.S. that Texas should model to help reduce caseloads.

CPS does employee surveys to try and gain insight into the department. Survey respondents are clear about how they feel, saying things like, "There are many times surveys like this happen, but the only thing that happens is to make the job harder, not smarter."<sup>12</sup> A study is being done by the University of Texas on the new training program, called CPS Professional Development (CPD). It shows the new program is an improvement and caseworkers are better prepared for their job, but we are still losing 46% of the new hires leave before 12 months.<sup>12</sup> It costs an estimated \$54,000 to train a new employee at CPS. Training employees that leave costs the taxpayers \$35.2 million each year.<sup>12</sup> Texas simply cannot afford this. When looking at the reasons for leaving, the largest percentage left because of insufficient salaries, followed by unrealistic job expectations.<sup>12,13</sup>

As a whole, the salaries of caseworkers have been untouched by CPS, except for a minor increase for inflation over a decade ago. The State Auditor's Office did a Turnover Report that shows "pay and benefits had the greatest influence on state employees' decision to leave."<sup>14</sup> Additionally, CPS salaries are 27% behind market rate.<sup>15</sup> There was an experiment in Odessa under the Rider 35 program. They increased the wages to account for the cost of living in the Odessa/Midland area. Turnover rates improved from 47.6% in 2013 down to 28.8% in 2015.<sup>16</sup> If we want to keep quality employees, it will require the state to pay them more. The entry-level starting range needs to be \$40,000 up to \$42,000 for CPS social workers. The Senate Finance Committee work group recently approved an extremely generous raise that exceeds this recommendation. With that said, this must be a package deal with safeguards to ensure better outcomes for the children in care. Will Francis of National Association of Social Workers said, "You cannot throw money at the problem and expect CPS to fix its policy problems." Money alone cannot fix the unrealistic job expectations that are put onto the caseworkers.

Caseworkers are the workhorses of the system, and if we want them to succeed and do their jobs well, we need to lighten their load. Research shows that caseworkers who have just come out of training are not ready for a full caseload or complex cases.<sup>1</sup> The mentorship program is helpful, but it has proven to not be sustainable, due to a large increase in work and responsibilities with little incentive.<sup>1</sup> In order to keep workers and alleviate large workloads, CPS needs a staggered system with different levels of employment, like the private sector, creating a career ladder for caseworkers. For example, entry-level would start with training and then they become an "assistant caseworker." After they have shown competency and ability to accomplish the required tasks, they can become a "caseworker." The more experienced caseworkers are assigned the more complex cases, while the new caseworkers are assigned simpler cases. Once a caseworker has tenure experience, and has proven to be a good worker, they can become a "mentor" or "master caseworker" where they don't have any cases of their own, but support and

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manage caseworkers below them. The system continues up the ladder to supervisor, etc. With the staggered system, the entry level would get paid the least, with gradual stair steps up the longer they stay and the more they grow. This would both increase salary and decrease the unrealistic expectations, all while supporting the caseworkers.

Right now, there are some incentives in place, but they do not motivate positive work habits. The \$5,000 'sign on bonus' for investigators after 120 days of employment was originally meant to be a retention bonus, but there hasn't been any research on whether that has actually increased retention.<sup>2</sup> After that, there are very few incentives to stay with CPS or to work hard. An employee who receives a merit-based bonus becomes ineligible for another bonus for months. Good work needs to be rewarded, not dished out equally like an entitlement. Currently, there is the lure of loan forgiveness. To increase interest and performance, it should be eliminated and replaced with a cash bonus to be used at their own discretion, because loan forgiveness distorts the market.

CPS has a new program to try and increase caseworker safety, the Safe Signal Program. It is an application with a cord that plugs into your phone. When the cord is pulled out, it will alert the supervisor that there is a problem. This seems like a good idea, but more often than not, supervisors are busy and unable to help. Further, caseworkers are not close with their supervisors considering "fear [and] threats" was the most common response to what a supervisor did to improve their performance.<sup>1</sup> A supervisor is not going to be a person a caseworker wants to rely on in an emergency. If you look at the DFPS injury data from 2011-2015, there were only 17 assaults against caseworkers while they were on their way to or at a home visit. Realistically, 17 assaults in 5 years are statistically insignificant when compared to the number of home visits CPS does in a single year, much less 5 years. With that said, it is understandable for a caseworker to feel at risk, but DFPS policies do not allow a caseworker to conceal carry a firearm if they are a license holder. Employees that have their conceal carry handgun licenses should be allowed to conceal carry if they feel compelled to do so. In a true emergency, waiting for a supervisor to respond would be useless for caseworkers, dialing 911 would be faster, but self-defense would be the fastest. For two years, the Safe Signal Program is going to cost the taxpayers \$611,000.<sup>17</sup> All the advocacy groups my office spoke with said the program was unnecessary and caseworkers were not asking for it. Allowing CHL holding caseworkers to conceal carry would be free to the taxpayers and offer a better solution to personal safety.

Overall, the caseworkers' problems are very fixable with proper guidance and accountability. The legislature needs to ensure proper salaries for caseworkers and create a career ladder for social workers. Part of that is applying the Rider 35 program statewide. Leadership within DFPS needs to ensure caseworkers are supported by their supervisors and have the support staff needed to keep caseloads at the industry standard. Caseworkers are our ambassadors to these children in need. We must ensure we have the best ambassadors possible.

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## Foster Care/Kinship Care

### Problems:

- Lack of Quality Foster Care Families
- Poor Focus on Kinship Care
- Kids Aging Out of the System

### Solutions:

- Lower Certification Requirements
- Increase Kinship Funding
- Streamline Adoption Process

Reunification is the preferred option for both CPS and the child. Next would be kinship, and lastly foster care. However, the majority of CPS kids end up in foster care. DFPS projected foster care payments to foster families are going to cost the taxpayers \$428,579,741 in fiscal year 2016.<sup>2</sup> However, there is still a shortage of quality foster families. Right now, there are 336 Child Placing Agencies (CPAs). Each CPA has their own application, policies, and structures. Texas needs to unify and consolidate the process to apply to be a foster parent by setting up a single application on one website where each CPA can add supplements (similar to [www.applytexas.org](http://www.applytexas.org)).

Kinship is the next best thing to reunification because it has proven to be the optimum scenario for the child where they experience less trauma. Studies show that "post-traumatic stress disorder among children exiting foster care is double that for Iraq War Veterans."<sup>18</sup> Kinship Care currently makes up roughly 40% of all formal placements. However, increasing requirements for kinship placement hurt placement numbers, as Judge Specia warned.<sup>18</sup> Numbers from January 2015 to January 2016, show relative care placements "fell by 56%, while CPS removals spiked by 37%."<sup>18</sup> It is easier to place kids in a foster home that has already been approved, rather than making sure the kinship placement meets all the requirements. In order to make it easier to have kinship placements and to ensure we have enough foster families, we must lower the requirements. Many people are worried that bad families will be certified, but the larger the pool of families, the more options and better the opportunity for a child to find the right home. Every Child a Priority Program (ECAP) is a child placing database that looks at the characteristics and capabilities of a foster family and matches it with the child's background and needs. Unfortunately, it is only used in one region. The DFPS Legislative Appropriation Request for 2017-2018 has asked for more funding to expand the use of ECAP.<sup>17</sup> This would ensure the new foster families are paired with the right child.

Many times, families want to take care of their kin, but cannot afford it. Kinship Care currently receives a one-time payment of \$1,000 and \$495 for each additional child.<sup>2</sup> After the initial payment, they receive \$500 on their anniversary.<sup>19</sup> This amount has not seen a raise in over a decade when it was first introduced.<sup>19</sup> A program needs to be created to allow kinship care families to apply for additional funding where they can receive up to equal the amount that foster parents receive. This is especially important for single grandparents who are on a fixed income. Paying more for a stranger to take a child than the child's own family raises questions regarding the system. Critics will say you shouldn't pay a family to take care of their own, but people will always try and take advantage of the system. That cannot stop us from doing what is best for the children.

We must streamline the adoption process for children in CPS care. We should lower requirements for foster families to adopt and have them prequalify to be adoptive parents, so we can flood the market with options and match each child with a family that is the best fit. In addition, we should reduce or waive

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adoption fees for foster parents and parents who want to adopt kids in CPS care. This would simplify the process and encourage families to adopt children out of the CPS system and into loving homes.

### Individual Rights

Problem:

- Uninformed Families
- Retaliation Against Families
- Medical Decisions without Consent

Solution:

- CPS 'Miranda Rights'.
- Actively Protect Rights
- Parental Influence & Consent

My office has always been an advocate of personal liberty and individual rights. Rights are not only for the people who follow the rules, but more importantly to ensure due process for those who are being accused of wrongdoing. The constitution is often forgotten when a 'bad guy' is in the crosshairs. Many parents are uneducated on their rights and are uninformed on how to exercise them. Countless families fear that if they push back against CPS, they are in danger of being implicated as guilty, or CPS will take their children for not cooperating. My office has listened to many parents who fear what CPS might do if they complain, but are desperate for help. The state is threatening to take children, and parents regularly give in because they fear the consequences if they don't.

CPS does not inform the parents of what their rights are when they come to a home visit when they start an investigation, or when they take a child from the home. The handouts that they give the parents even use threatening language like "the law requires CPS," "cooperate with your caseworker," and they "are authorized by law."<sup>20</sup> They don't mention laws and procedures, like asking CPS to get a warrant before entering your home for an investigation. Just as police officers read each person their Miranda Rights, CPS should be required to tell families up front their rights and that exercising those rights cannot be held against them. The Cummings family knew and exercised their rights and paid dearly for it. The family asked for their caseworker to disclose the allegations against the family, which is required by law, but the caseworker refused multiple times, lied to the court, and used homeschooling as a reason to investigate.<sup>21</sup> The Cummings' caseworker repeatedly broke the law and tried to make the family pay when she was called out.<sup>21</sup> There was clear retaliation against the family simply for knowing and exercising their rights, and the children were the ones who suffered. Justice Jack encouraged the courts to hold strong in protecting individuals against the government when she wrote, "Courts nevertheless must not shrink from their obligation to enforce the constitutional rights of all persons [... ] because a remedy would involve intrusion of the realm of [government] administration."<sup>22</sup> An intrusion of government administration might be just what we need. Right now, there is an outrage against the abuse of power and the crushing of individual rights by some in law enforcement. There should be a similar outrage about the way CPS handles the same issues. CPS caseworkers all too often circumvent the law and families do not know any better. The legislature needs to require caseworkers to inform families of their rights, and allow families to give feedback to ensure caseworkers respect the law. Caseworkers who infringe on the rights of the people should not be tolerated.

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Parental consent is something that needs to be respected in this system. Foster parents are allowed to make medical decisions when they have a child in their care, which is perfectly logical for emergency situations. Yet too often in temporary care, non-emergency medical decisions are made that affect a child permanently, like immunizations. Many families are deciding to not vaccinate their children for both medical and religious reasons. If reunification is the goal, that temporary guardian should not be making permanent medical decisions. Even non-permanent decisions should have input from the biological parents. As children are evaluated by CPS, they often receive diagnoses and are put on medication, many times against the will and wishes of the parents. Whenever reunification is possible, parents must be a part of the decision-making process for their children.

### **Conclusion**

Through the recent changes in DFPS and CPS, there has not been any stripping down of the old and useless, but rather increasing and building on a broken base. As we move forward, it is imperative that we take great care in what we do, as to not further the damage inflicted upon innocent children taken from their homes. For the future of our great state, this is one area in which we cannot mess up. It is clear that a monetary increase to DFPS funding is required. With that said, throwing money at it has not solved any problems, as the Texas legislature has given more money every time they could. There must be requirements placed on the funds to ensure outcomes, not just outputs.

The Texas Legislature must put in place safeguards to ensure the leadership will guide the department in the right direction to protect the children rather than punish the family. Establish an H.R. department to start to heal the traumatized system CPS has become. An increase in wages and incentives for social workers is necessary to grow a qualified pool of workers paired with increased accountability of the caseworkers and their supervisors to ensure the preservation of the family unit. Kinship care requirements should be decreased and a program to help the families who cannot afford it should be created. The legislature should take note and increase funding for data proven programs like the Prevention Early Intervention (PEIs) programs and Family-Based Safety Services (FBSS) that have a track record of preventing abuse and neglect. Above all, policy needs to be created and instilled throughout the entire department regarding individual rights to guarantee they are respected.

If positive changes are not implemented, the system will continue down the path it has been on for decades. We cannot allow inexperienced and untested ideas to shape a system when there is so much research and data showing proven best practices. CPS is on the path to destruction; it is our job to turn the wagon around.

### **Acknowledgements**

We would like to acknowledge some great work being done by our state's leaders. Governor Abbott has led the charge by appointing new leadership to the department and taking a great interest to ensure change for Texas children. Lt. Governor Dan Patrick has called out to Texas' faith-based communities for help, which is key to helping find foster children good homes. Speaker Straus has made this issue a priority for the house in the 85th session, and has joined together with Gov. Abbott and Lt. Gov. Dan Patrick to call out DFPS and demand action to fix timeliness of visits. Commissioner Whitman

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has seen the value in Prevention and Early Intervention (PEI) programs and has made a commitment to increase them in his 10-point plan. Without their initiative and support, this would not be a priority in Texas today.

### *Sources & Research*

My staff and I have held numerous meetings with Texas CASA, TexProtects, National Association of Social Workers, DFPS and other stakeholders, as well as journalists who have investigated the issue. We also attended CPS stakeholder meetings, Legislative briefings by advocates, Kinship Care Roundtables, County Affairs hearings, Legislative Budget Hearings for HHSC & DFPS, HHSC committee hearings across the state. My office has been researching CPS for months. Listed below are the sources that have helped in our research.

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