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Senate Committee on Government Organization

Examine state agencies' mandated reporting practices, the necessity and utility of these reports, and reporting processes to the legislature and to the public. Make recommendations on eliminating unnecessary and duplicative reports, reducing state costs through the use of technology, and improving transparency to the legislature and citizens.

Dear Members of the Committee,

My name is Jorge Renaud and I am a Policy Analyst for the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on the availability, accessibility, and timeliness of reports issued by Texas criminal justice agencies, along with the information made available to the general public by those same agencies on their websites.

IMPORTANCE OF VALID CRIMINAL JUSTICE INFORMATION TO PUBLIC SAFETY

TCJC promotes smart policy practices that safely reduce Texas' over-reliance on incarceration. An "incarceration-only" response to criminalized behavior drains the state treasury at the expense of educational innovation, health programs, family assistance, and other measures that would ultimately contribute to stronger families and safer communities.

TCJC works closely with state legislators and agencies, other non-profit organizations, and local stakeholders to formulate statutes and policies that ensure our juvenile and adult criminal justice systems are fair, humane, effective, and responsive to the concerns of all Texans. However, criminal justice issues are complex and not easily addressed through simplistic, politically driven approaches that fail to take into account the following factors:

- **Recidivism**, which is the likelihood that once-incarcerated individuals return to prison. Recidivism is affected by the availability and quality of in-prison education; by pre-release counseling and access to up-to-date community resources; by a true continuity of medical care between prison and community providers; and by many other factors whose influence can be studied, measured, and adjusted, with the cost to Texas taxpayers hugely lessened.
- **Juvenile justice programs**, which are the result of community decisions to prioritize rehabilitation over punishment. Those decisions are influenced by available resources.
- **Probation rates and revocations**, which, respectively, are the frequency with which people charged with crimes are placed on community supervision, or are sent to prison for a violation of a probation term. These are lowered or raised by local attitudes toward possession of drugs; by the availability of county funds needed to provide in- and out-patient care for substance abuse; and based on whether or not to prosecute low-level crimes such as graffiti, theft, and prostitution as misdemeanors or felonies.

- **The decision to prosecute an offense as a felony or misdemeanor**, which has tremendous implications on the shift of financial burden from counties to the state, along with life-long consequences for those convicted of felonies.
- **Parole rates and revocations**, which, respectively, are the frequency with which those in prison are released to community supervision, or are returned to prison for a violation of a parole term. These are inflated or reduced by the availability of transitional homes for parolees; by the scarcity of beds in pre-release units designated for substance abuse treatment; by the adherence to legislatively mandated release guidelines by parole board members; and by the discretion allowed parole officers to apply graduated sanctions for technical violations.

Each factor listed above has multiple components, all of which can be explained, understood, influenced, or somehow changed by the application of numbers – dollar amounts, staff-to-client or student-to-teacher ratio, numbers of beds, drug weight, previous convictions, etc. Access to those numbers is crucial for TCJC and other policy-makers in order to make effective recommendations based on fact, not speculation.

PROBLEMS SURROUNDING MANDATED REPORTS IN CRIMINAL JUSTICE

Each agency-issued report accessed by organizations making recommendations on criminal justice must have certain characteristics.

It must be accurate. The Texas Department of Criminal Justice released approximately 77,000 people in 2012 and received almost 75,000.¹ Any recommendation concerning cost-effective prison management would necessarily involve hundreds of millions of dollars, which means inaccurate numbers would result in miscalculations of enormous magnitude.

It must be timely. The Texas Commission on Jail Standards, on June 12, 2014, listed five county jails as being non-compliant with Texas Minimum Jail Standards as codified in the Texas Administrative Code, Title 37, Part 9.² Any subsequent inspection that resulted in this status being lifted would need to be reported as quickly as possible, or it is assumed by a researcher that the counties listed, as of the moment of reading, are in non-compliance.

It must be easily accessible. The Texas Department of Criminal Justice was required by the 81st Legislature to issue a report no later than September 1 of every even-numbered year determining if the comprehensive reentry and reintegration mandated by HB 1711 affected rates of recidivism.³ A link on the TDCJ Executive Administrative Services site referring to the agency's statutory reporting requirements also referred to the report.⁴ However, a search of the Department's website turned up the 2010 report but not one for 2012. A call to the division director resulted in the explanation that the report was not issued because recidivism rates are only calculated every three years, making it impossible to report on recidivism in the time allotted.⁵ A member of a group without the knowledge of either the Department's Executive Services or the Reentry and Integration Division would assume the report was not issued, leaving the Department in non-compliance with legislative mandates.

It must be complete. TCJC, along with several entities that advocate for Texas counties, recently supported legislation that would limit the use of "blue warrants," which are warrants issued by the Board of Pardons and Paroles to incarcerate parolees in county jails while they await possible revocation hearings. Parolees can have their parole revoked for various reasons: technical violations, which are violations of their parole guidelines; new misdemeanor or felony charges without convictions; or new convictions. A majority of parolees going through

this process are not revoked, which means their time in the county jail is unnecessary and expensive, both to county taxpayers and to the parolees themselves, who often lose employment and housing due to their extended stays in jail. However, a report issued by the Board of Pardons and Paroles in 2012 does not detail which of the 2,813 parolees who were jailed but whose parole were not revoked in 2011 due to “Law Violation, No New Conviction” were initially held on blue warrants due to violations of misdemeanors or felonies.⁶ This information would be crucial in fashioning new legislation that may seek safe alternatives to costly, unnecessary county jail confinements for low-level, misdemeanor violations.

FREEDOM OF INFORMATION REQUESTS

Advocates are trained to make requests via the Freedom of Information Act (FOI). Many advocates, especially in criminal justice, serve an investigatory role. We are often seen as the last hope by system-involved individuals and their families for resolution of a concern; among other things, we seek detailed information about health care, disciplinary violations, and use of force incidents, along with the practical application of policy on institutional and unit-by-unit bases.

However, these requests are usually the last available avenue of information acquisition, short of interrogatory depositions used preparatory to legal actions. TCJC resorts to FOI requests only after due diligence and after scouring available reports for relevant data.

Therefore, these requests must be all-inclusive. Most Texas criminal justice agencies respond to FOI requests within the allotted time periods and provide as much information as they can. **What is telling with FOI requests is what is NOT provided because of claims that such information is not kept.**

For example, in March 2014, TCJC requested information from the Texas Department of Criminal Justice Parole Division, intended to assist us in compiling a comprehensive report on women involved in the criminal justice system. As such, the questions were gender-specific, and we sought information about the following:

- The number of parole officers assigned to women;
- The number of female parolees with children;
- The education levels of female parolees;
- The number of female parolees who, as a result of substance abuse history, were in treatment programs, broken down by in-patient and out-patient programming; and
- The numbers of female parolees in programs and services provided by the Parole Division.

The information requested above was not available. The Parole Division claimed it did not keep information on any of the above categories.⁷ This demonstrates the necessity of FOI requests. We are committed to seeking remedies to address the specialized needs of Texas women caught in the criminal justice system. As a result we, and other advocates, let the “Not available” responses by government agencies guides our future efforts to compel these agencies to collect information we believe is crucial to well-crafted policy.

INFORMATION AVAILABLE TO THE GENERAL PUBLIC

It is critical that criminal justice-related information intended for the general public is valid and easily accessible. Criminal justice agencies are the province of the despairing and the hopeless. Family members can spend hours simply seeking the whereabouts of their incarcerated loved one. The time and exhausting effort necessary to navigate the websites of Texas agencies can create confusion and helplessness in many people, leading to the following:

- Prison or jail visits being denied after individuals traveled hundreds of miles and undertook much expense, simply because a website did not define “inappropriate clothing”;
- Parole being denied because a website did not provide the correct contact information for parole board members;
- Decreased contact between incarcerated individuals and their children because a website did not update changes to its phone system; and
- Letters and packages to incarcerated individuals being rejected because information about newly updated policy was not made available to the general public.

These are not invalid or petty concerns. For example, a cursory tour on June 9, 2014, through the “Public Resources” page of the Texas Department of Criminal Justice website and the “General Information Guide for Families of Offenders” revealed that the majority of the links in the Guide did not work. These included the following:

- The link to Offender Orientation Handbook, necessary to finding information about the behavior expected from individuals incarcerated in Texas prisons;
- The link to the Unit Directory, which is necessary to determine the physical location of a given unit, along with the educational and volunteer-provided programs available on units; and
- The link to the Parole Division.

Ironically, even if the link to the Offender Orientation Handbook *did* work, the handbook itself was last updated in November 2004, and much of the information therein is out of date and simply wrong. Some of the wrong information includes the following:

- The amount of co-pay required from individuals incarcerated to obtain medical services, which is listed in the handbook as \$3, when it is now \$100;
- The claim that individuals in state jails are not eligible for good time; they are, since 2011, eligible for time off their sentences for diligent participation in rehabilitation programming; and
- The amount of funds that can be spent by an incarcerated individual, which has increased substantially.

Similarly, there is no reference whatsoever in the Offender Orientation Handbook to the availability of telephone communication, nor the procedure necessary to qualify for phone calls, nor the fee or how to pay it. Furthermore, Project RIO (Re-Integration of Offenders) is touted as a program that helps incarcerated individuals find employment upon release, when actually Project RIO was defunded and ceased to exist in 2011.

TEXAS JUVENILE JUSTICE DEPARTMENT REPORTING

In 2011, the State Legislature combined the functions of the Texas Juvenile Probation Commission and the Texas Youth Commission to create the Texas Juvenile Justice Department (TJJD).⁸ The passage of TJJD’s enabling legislation – Senate Bill 653, 82nd (R) Legislative Session – has made any reference in law to the “Texas Juvenile Probation Commission” or the “Texas Youth Commission” to mean the “department,” making all reporting requirements of the Commissions still valid.⁹

In 2001, the 77th Legislature codified a requirement of the Texas Juvenile Probation Commission (TJPC) to provide an annual report on “statistical information relating to juvenile referrals.”¹⁰ Per the Texas Family Code, the information required to be reported includes the following:¹¹

- (1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and
- (2) the ages, races, and counties of residence of the children committed to the Texas Youth Commission, placed on probation, or discharged without any disposition.

The first of these TJPC reports was published in August 2001 (using year-2000 data) and titled, *Annual Report to Legislature Regarding Juvenile Referrals to Texas Juvenile Probation System*. This specific report seems to only be available for the years of 2000, 2001, and 2002.¹² It appears that a similar report, *Texas Juvenile Probation Commission Statistical Report*, was used to meet the legislative reporting mandate from 2003 forward.

Presently, TJJD is asking for this reporting requirement to be repealed due to its redundancy.¹³ According to the Department, “the *TJJD Annual Report* contains the same statistical information required by the *Children Referred to Juvenile Court* report [the above-mentioned TJPC report], additionally much of the data included in the annual report is also reported to the Legislative Budget Board (LBB) annually in the December 1st report.”¹⁴ There is however, no record of a “TJJD Annual Report,” other than one required to be delivered to both the Governor and the Legislative Budget Board on December 1st.

Since TJJD’s inception, there have been two reports published that may be construed as a “TJJD Annual Report.” These reports have been titled, *Texas Juvenile Justice Department Annual Report to the Governor and Legislative Budget Board: Community Juvenile Justice Appropriations, Riders and Special Diversion Programs*.

Per the Texas Human Resource Code, the juvenile department’s annual report is required to include the following:¹⁵

- (A) an evaluation of the effectiveness of the community-based programs operated under Section 54.0401, Family Code; and
- (B) information comparing the cost of a child participating in a program described by Paragraph (A) with the cost of committing the child to the department.

As you can see, this annual report and the report required of TJPC (above) do not require similar information. In fact, the only information in this report that touches on the data in the TJPC report is an aggregate overview of juvenile referrals, dispositions, and make-up at the county level. However, the previous TJPC reports provided disaggregated, county-specific information on referrals, placements, and dispositions by county. This information is invaluable.

Without county-specific information, community stakeholders will be forced to use aggregate data to make decisions about how to address juvenile activity within their community. Given that demographics and resources vary greatly throughout Texas, utilizing aggregate information can hinder attempts to reduce delinquent activity.

In November 2013, TJJD released a report entitled *The State of Juvenile Probation Activity in Texas: Statistical and Other Data on the Juvenile Justice System in Texas for Calendar Years 2011*. This report mirrors the *Texas Juvenile Probation Commission Statistical Report* and contains disaggregated information on referrals, placements, and dispositions by counties. Unfortunately, it is a year and three months late; the information for 2012 is non-existent. If TJJD does not release a report to reflect 2012 and 2013 data by August 15, 2014, it will officially be two years behind.

By complying with TJJD's request to repeal the reporting requirement set forth by the Family Code (TJPC's report), the Legislature will be responsible for creating an additional barrier for local stakeholders who dedicate their time to bettering the lives of youth within their community.

POLICY RECOMMENDATIONS

The Texas Criminal Justice Coalition recommends improvements in the following problem areas:

- **Missing reports** – Any Texas criminal justice agency that does not issue a legislatively mandated report should prominently display an explicit reason on its website as to why the report was not issued, and also state when the report, or another, will be completed and made available.
- **Incomplete data** – The reports issued by the Board of Pardons and Paroles, which include data on whether parole terms are revoked or reinstated for new charges, should also include whether the new charges were for misdemeanor or felony charges. This was not available, and unless this is a resource issue, should be collected and published.
- **Erroneous data** – The Texas Department of Criminal Justice makes admirable efforts to provide information to the public, and Department officials quickly reactivated the broken links on their “General Information Guide for Families of Offenders” webpage when alerted to the fact that they were not working. However, it is difficult to tell how long these links were broken; how many people were deprived of the information they were seeking; or if a procedure exists to regularly check information that is essential to researchers and the public. All criminal justice agencies – especially the Department, which is charged with the care of 160,000 individuals – should have its staff continually test and update all information it offers.
- **Out-of-date data** – The Offender Orientation Handbook provided by the Department was last updated in 2004. Much of the information included is erroneous. It is crucial that this information be updated; while incarcerated individuals often know which policies are updated, family members and friends do not. They depend on Department-provided information, and if that conflicts with what their incarcerated loved ones tell them, this can worsen relations between incarcerated individuals and their supporters.
- **Juvenile justice agency reporting** – Juvenile department reporting requirements that are currently codified in Section 58.112 of the Family Code should be incorporated into the reporting requirements set forth in Section 221.012 (a) of the Human Resource Code, thereby streamlining all reporting requirements that were created to provide critical county-level data. By doing so, the Legislature can address any concerns of “redundancy” expressed by the Texas Juvenile Justice Department, while still ensuring that county-specific information is available both to local stakeholders and the public.

Citations

- ¹ Texas Department of Criminal Justice, Fiscal Year 2012 Statistical Report, pg. 2-3. Available at http://tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf
- ² Texas Commission on Jail Standards, Non-Compliant Jails. Available at <http://www.tcjs.state.tx.us/index.php?linkID=340>
- ³ Tx. Gov. Code. § 501.092 (i). Available at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.501.htm#501.092>
- ⁴ Texas Department of Criminal Justice, "TDCJ Statutory reporting requirements, HB 326, 82nd Legislature, Regular Session." Pg. 5. Available at http://tdcj.state.tx.us/documents/HB_326_Requirements.pdf
- ⁵ April Zamora, Director, Reentry and Integration Division, Texas Department of Criminal Justice, personal conversation, June 12, 2014.
- ⁶ Texas Board of Pardons and Paroles, Annual Statistical Report, Fiscal Year 2012. Pgs. 22-24. Available at <http://www.tdcj.state.tx.us/bpp/publications/FY%202012%20BPP%20StatisticalReport.pdf>
- ⁷ Exhibit A
- ⁸ Senate Bill 653, 82nd (R) Legislative Session
- ⁹ Senate Bill 653, 82nd (R) Legislative Session, Sec. 201.001 (b)(1) and (b)(2)
- ¹⁰ Texas Juvenile Justice Department, TJJ Reports and Publications, Other Reports, *Annual Report to the Legislature Regarding Juvenile Referrals to Texas Juvenile Probation System*, <http://www.tjjd.texas.gov/publications/reports/RPTOTH200103.pdf>.
- ¹¹ Texas Family Code § 58.112
- ¹² Texas Juvenile Justice Department, TJJ Reports and Publications, Other Reports, <http://www.tjjd.texas.gov/publications/default.aspx>.
- ¹³ Texas State Library and Archives Commission, *Required Reports Prepared by State Agencies and Institutions of Higher Education* (Fiscal Year 2013), pg. 248, https://www.tsl.texas.gov/sites/default/files/public/tslac/landing/documents/state_reports2013-full.pdf.
- ¹⁴ *Ibid.*
- ¹⁵ Texas Human Resource Code § 221.012 (a).