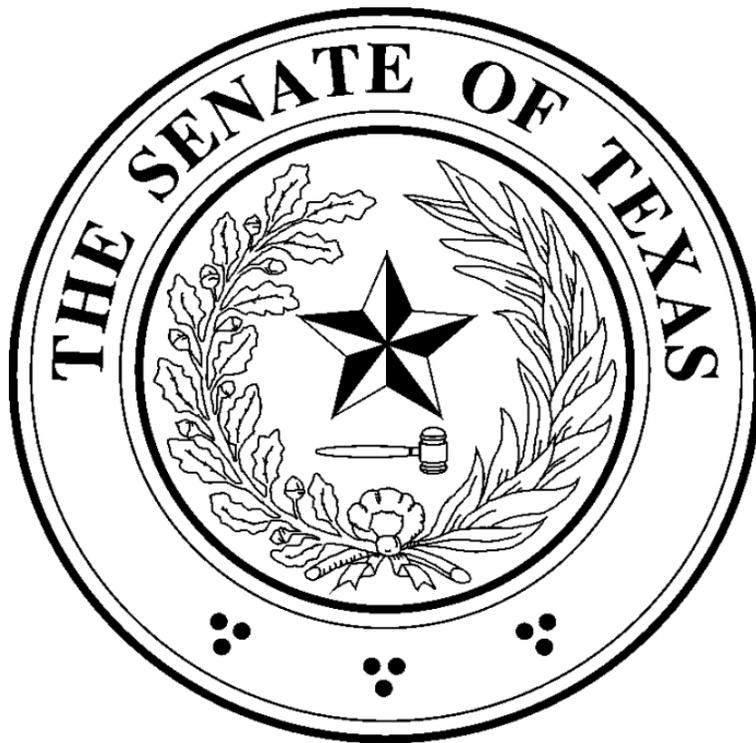


SENATE COMMITTEE ON CRIMINAL JUSTICE

Interim Report to the 84th Legislature



December 2014
Senator John WHITMIRE, Chair

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January 20, 2015

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

Dear Governor Patrick:

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

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

Respectfully submitted,

Senator John Whitmire
Chair

Senator Joan Huffman
Vice-Chair

Senator John Carona

Senator Juan "Chuy" Hinojosa

Senator Jose Rodriguez

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JOSÉ RODRÍGUEZ
STATE SENATOR
SENATE DISTRICT 29

EL PASO, CULBERSON, HUDSPETH, PRESIDIO & JEFF DAVIS COUNTIES

December 16, 2014

The Honorable John Whitmire
P.O. Box 12068
Austin, Texas 78711

Dear Chairman Whitmire:

Thank you for your leadership as Chair of the Senate Committee on Criminal Justice. It's been a privilege and a pleasure to serve with you and our other colleagues during the 83rd Legislature and subsequent interim.

I commend you and your staff for your superb work on the interim charges, as is reflected by the comprehensive nature of the committee's interim report to the 84th Legislature. The report includes many recommendations that will improve the criminal justice system while ensuring the state's resources are used wisely.

I submit this letter to address one item not included in the section relating to interim charge five, which relates to the sentencing of youth under 18 accused of committing serious crimes. The report does a fine job of detailing the issues surrounding the "raising the age" of a juvenile from 17 to 18 years. However, the report does not include the issue of sentencing of juveniles accused of capital offenses.

As I'm sure you recall, S.B. 2 from the Second Called Session eliminated the sentence of life without the possibility of parole for 17-year old defendants and replaced it with a sentence of life with the possibility of parole after 40 years. During the Senate's consideration of the legislation, I expressed concerns that a minimum sentence of 40 years was in essence a life sentence. The United States Sentencing Commission defines a life sentence as 470 months (or just over 39 years), based on average life expectancy of those serving prison sentences. Hence, the practical reality is that a sentencing option of life with parole eligibility after 40 years is a life without parole sentence.

When the Senate Committee on Criminal Justice considered this legislation during the Regular Session and the First Called Special Session, I expressed serious concerns that the proposed legislation did not fully comport with the requirements of the U.S. Supreme Court's decision in *Miller v. Alabama*. In *Miller*, the Supreme Court struck down mandatory sentences of life

COMMITTEES

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The Honorable John Whitmire
December 16, 2014
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without the possibility of parole for homicide crimes for individuals who were under the age of 18 years at the time of the offense. The decision found mandatory life without the possibility of parole for youthful offenders to violate the 8th Amendment prohibition against cruel and unusual punishment.

It is still my belief that S.B. 2, which is now state law, does not meet the intent or spirit of Miller and will subject the state to further litigation by continuing a policy of extreme sentences for youthful offenders. To better comply with the requirements of Miller, judges and juries should be allowed to impose individualized sentences that take into consideration the unique characteristics of youthful offenders, including the defendant's age, family and home environment, the circumstances of the homicide offense, including familial and peer pressure, and other factors. In addition to these mitigating factors, a judge or a jury should also be able to weigh the greater likelihood of a young person to be rehabilitated.

However, state law does not allow for consideration of any of these factors. As a consequence, I believe it is in contravention of the Supreme Court's opinion in *Miller* and will likely be held unconstitutional. Instead, in furtherance of the best policies for juveniles in the criminal justice system, the Texas Legislature should establish a meaningful sentencing range and specific guidance for individualized sentencing of youthful offenders.

Once again, thank you for your leadership on these important issues and for the opportunity to share my comments. I look forward to continuing to work with you during the 84th Legislature.

Sincerely,



José Rodríguez

Executive Summary

Interim Charge One Conclusion and Recommendations

Historically Texas Criminal Law has provided wide ranges of punitive sentences from which a judge or jury may select the most appropriate finding which meets the individual elements of a specific offense. Texas, unlike many states and the federal statutes, has rejected sentencing guidelines which dictate mandatory sentencing. Recently, legislation aimed at the prevention and prosecution of Human Trafficking cases has significantly extended the number of offenses for which a judge cannot grant probation (Code of Criminal Procedure, Article 42.12 Section 3g) and a jury cannot grant probation, (Code of Criminal Procedure, Article 42.12 Section 4). Despite recent media attention to two cases, adding intoxicated manslaughter to the list that cannot be granted probation is not necessary at this time.

Due to the recent actions by the legislature to align Stop and Render Aid cases that result in a death to that of Intoxicated manslaughter, and the development of enhanced charges for prior DWI offenders who commit an intoxicated manslaughter offense, it is recommended that this Committee should continue to monitor their implementation and their impact on sentencing of Intoxicated Manslaughter convictions.

Interim Charge Two Conclusion and Recommendations

The development of the process to identify incoming offenders who have previous mental health treatment has improved and appears to be meeting the goals of its design. The challenge now is identifying how to best meet the needs of those identified and provide treatment that will stabilize the individual and allow the individual to function in a free society without endangering the public. The Legislature should continue to encourage the development of the reentry programs provided by TDCJ to develop a continuity of care which includes appropriate housing for those released.

Additionally, the Legislature should continue to encourage the development of diversion programs for mentally ill offenders in order to prevent their entry into the prison system and ensure available treatment in the community.

Interim Charge Three Conclusion and Recommendations

With the launching of the pilot project on August 21, 2014, no substantial analysis can be provided at this time. It is recommended that the legislature revisit the issue as an interim charge in 2016 to ascertain the progress of the pilot project, with final analysis and recommendations awaiting the final report from the Commissioner of the Department of State Health Services on December 1, 2016.

Interim Charge Four Conclusion and Recommendations

Evaluation of the efficacy, an analysis of recidivism rates, along with cost effectiveness in the identified juvenile specialty court is not available or practical at this time, due to the short length of time that they have been in existence. Identifying gaps in service is also not practical at this time, as these courts are not mandated by law, and are the product of interested parties and stakeholders within specific geographical areas who have identified populations they feel can benefit from them.

Due to the fact that juvenile specialty courts are a product of local government and interested parties within those jurisdictions, if the Legislature determines that greater data and tracking of these courts is warranted it should assign that responsibility to a specific state agency. The Governors Criminal Justice Division, the Office of Court Administration or the Texas Juvenile Justice Department all have a role in these courts but one should be assigned the responsibility to compile an inventory of them, collect data from them and oversee the evaluation of them.

Interim Charge Five Conclusion and Recommendations

Texas has developed a comprehensive model for addressing juvenile crime. The data shows that the majority of juvenile crime is handled by the counties through probation and deferred prosecution. The next largest segment of youth are receiving indeterminate sentencing for mostly property crimes, minor assaults, and a few aggravated charges. Almost all of the determinate sentences are for very serious violent offenses, often against another person. Most youths certified as adults have also committed very serious and violent crimes. In order to fully understand the differences between who is given what type of sentence an in-depth evaluation of each specific occurrence would need to be done.

Interim Charge Six Conclusion and Recommendations

Inflation is a reality. To maintain the orderly and meaningful sentencing system that Texas has developed and relied on, inflation, and its impact on theft and property loss offenses should be considered and acted upon periodically. Twenty two years have passed since the Texas theft and property loss value ladder was last reviewed. To put this time period into context: the Sunset Advisory Commission, as its benchmark for review of state agencies, uses a 12 year review cycle. The Legislature should:

1. Design a value ladder that takes into account the inflation rates since 1993, adjusting the threshold upward for the dividing amounts among the current misdemeanors and felonies.
2. Create this standard value ladder in the Penal Code in a separate section from theft, so that in the future it may be reviewed and adjusted in that single section.
3. Amend all sections of the Penal Code, and any other Texas statute that deals with theft and/or property loss to reference the value ladder for classification of offense and available punishment(s).

Interim Charge Seven Conclusion and Recommendations

The evaluation of the 1,500 (the actual number is at least 1,700) non-traditional criminal offenses that can be found outside the Penal Code reveals that many are redundant to those found in the Penal Code.

Several deal with intoxicated driving offenses and intoxicated boating offenses. An even greater number deal with issues of theft and fraud, without correlation to the standard theft/property loss ladder. A significant amount of these non-traditional offenses are punishable only by fines or specific monetary punishments usually associated with civil, not criminal, penalties. It is worth mentioning that a number of the codes result in few, if any, violations, with exception to the arrests produced by the offenses within the Health and Human Service Code (Controlled Substances Act) which rivals the arrest numbers of offenses within the Penal Code.

It is recommended that the legislature support the enactment of a Texas Punishment and Sentencing Commission to thoroughly examine the non-traditional criminal offenses, consolidating those that meet the required elements for a criminal act into the Penal Code, while altering those that do not meet the elements to be considered a crime, to that of an administrative action or civil penalty.

Interim Charge One

Review cases involving the imposition of probation rather than imprisonment or commitment for adult and juvenile intoxication manslaughter offenders. Make recommendations to ensure that intoxication manslaughter sentences include appropriate punishment levels, maintain public safety, and serve to deter driving under the influence.

Introduction

During the 83rd regular session the issue of the penalty range for Failure to Stop and Render Aid was a major topic and was addressed by the passage of Senate Bill 275 (83R). Proponents argued that the penalty range for this offense was the same for a serious bodily injury and a death, both third degree felonies, punishable by 2 to 10 years sentences and a fine not to exceed \$10,000. The realignment of these distinct results was debated, that justice would be better served if serious bodily injury was joined with the penalty range for intoxicated assault and for a death, enhanced to that of intoxicated manslaughter, which is a second degree felony with a punishment range of a 2 to 20 year sentence and a fine not to exceed \$10,000. The removal of a perceived incentive to not remain on the scene of an accident, where alcohol was involved, was removed; the assumption then supported was that lives would be saved by the summoning of emergency medical personnel by the driver staying at the site. Senate Bill 275 did this and now the penalty for Failure to Stop and Render Aid that results in a death is a 2nd degree felony.

Under both the previous law and the current law, community supervision (probation) is available if the person qualifies by having no prior felony convictions. If the State allows an application, deferred adjudication may be negotiated. The law also requires a judge to grant probation if and when the jury recommends that as a sentence. Up to 180 days jail confinement is allowable under the conditions of probation. A judge is not authorized to grant probation if there is a finding of the use of a deadly weapon. Neither the judge nor the jury may grant probation in any felony if the sentence is established at more than 10 years.

Comparison of Texas Law with 15 most populous States

To ascertain how Texas law compares to the 15 most populous states in similar offenses which are comparable to our intoxication manslaughter, the Texas Legislative Council Research Division conducted a survey and provided a memorandum dated March 7, 2014 which stated the following:

This memorandum is in response to your request for information regarding laws in the 15 most populous states governing offenses that contain elements similar to intoxication manslaughter as defined by Texas law and the punishment for those offenses, including whether probation is available to a person convicted of the offense. This memorandum contains a summary of each state's relevant statutes and includes hyperlinked statute citations, the names and elements of the applicable offenses, a description of the punishment (specifically terms of imprisonment), and information regarding the availability of probation. We excluded punishment information on fines unless that information implied

the availability of probation. Additionally, we have attached a table that includes, for each state, the name of each relevant offense and whether probation is available.

Arizona

Arizona Revised Statutes [13-1102](#), [13-1103](#), and [13-702](#)

Our research into Arizona's statutes did not yield an offense that is equivalent to intoxication manslaughter as defined by Texas law. However, a person in Arizona who recklessly or with criminal negligence causes the death of another person may be subject to **manslaughter** or **negligent homicide** charges, which are Class 2 and Class 4 felonies, respectively. For a first time felony offender, the punishment for a Class 2 felony ranges from 3 to 12.5 years imprisonment and the punishment for a Class 4 felony ranges from 1 to 3.75 years imprisonment. Probation is not prohibited for either offense in the statutes that constitute our findings.

California

California Penal Code, Sections [191.5](#) and [1203](#)

In California, **gross vehicular manslaughter while intoxicated** is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving constituted a certain driving under the influence offense and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence. **Vehicular manslaughter while intoxicated** is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving constituted a certain driving under the influence offense and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence. The former offense is punishable by imprisonment in the state prison for 4, 6, or 10 years; the latter by imprisonment in a county jail for not more than one year or, alternatively, for 16 months or two or four years. Probation is not prohibited for either offense in the statutes that constitute our findings.

Florida

Sections [316.193](#), [775.082](#), and [948.01](#), Florida Statutes

In Florida, a person commits the second degree felony offense of **DUI manslaughter** if the person commits a driving under the influence (DUI) offense, operates a vehicle, and, by reason of such operation, causes or contributes to causing the death of any human being or unborn quick child. The punishment for this offense includes a maximum 15-year term of imprisonment. The penalty is enhanced to a first degree felony if, at the time of the crash, the person knew or should have known that the crash occurred, and the person failed to give information and render aid.

The enhanced penalty is punishable by a maximum 30-year term of imprisonment. Probation is not prohibited for either offense in the statutes that constitute our findings.

Georgia

Sections [40-6-393](#), [17-10-1](#), and [40-5-58](#), *Official Code of Georgia*¹

In Georgia, a person commits the first degree felony offense of **homicide by vehicle** if the person, without malice aforethought, causes the death of another person by committing a driving under the influence offense. Punishment for this offense ranges from 3 to 15 years imprisonment. Probation is not prohibited for homicide by vehicle, but may be limited for a habitual violator of certain motor vehicle laws, including a driving under the influence offense, who causes the death of another person.

Illinois

[625 Illinois Compiled Statutes 5/11-501](#)

In Illinois, a person commits the Class 2 felony offense of **aggravated driving under the influence** of alcohol, drugs, or intoxicating compounds if the person, in committing a driving under the influence offense, was involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that resulted in the death of another person and the offense was a proximate cause of the death. Punishment for this offense ranges from 3 to 14 years imprisonment if the violation resulted in the death of one person or from 6 to 28 years imprisonment if the violation resulted in the deaths of two or more persons, unless a court determines that extraordinary circumstances exist and require probation.

Massachusetts

[Section 24G, Chapter 90, Massachusetts General Laws](#)

In Massachusetts, a person who operates a motor vehicle under the influence of an intoxicating substance and in a reckless or negligent manner that may endanger the lives or safety of the public and who by that operation causes the death of another person is guilty of **homicide by a motor vehicle while under the influence of an intoxicating substance**. Punishment for this offense ranges from 2.5 to 15 years imprisonment in the state prison or from 1 to 2.5 years imprisonment in a jail or house of correction. The sentence imposed may not be reduced to less than one year, nor suspended, and any person convicted is not eligible for probation, parole, or furlough or cannot receive any deduction from the sentence until the person has served at least one year of the sentence.

¹A direct link to the applicable statutes is not available for states that provide public access to statutes through a platform maintained by LexisNexis. In these cases, a link to the state's LexisNexis home page is provided, and the statute can be found by accepting the terms of use and browsing the table of contents.

A person who operates a motor vehicle under the influence of an intoxicating substance or who operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered and by any such operation causes the death of another person is guilty of **homicide by a motor vehicle**. This offense is punishable by imprisonment in a jail or house of correction for a term ranging from 30 days to 2.5 years, a fine, or both.

Michigan

Sections [257.625](#) and [771.1](#), *Michigan Compiled Laws*

In Michigan, a person who **operates a motor vehicle while intoxicated and causes the death of another person** is guilty of a felony punishable by a maximum 15-year term of imprisonment. The punishment is enhanced to a maximum 20-year term of imprisonment under certain circumstances that result in the death of emergency response personnel. Probation is not prohibited for either offense in the statutes that constitute our findings.

New Jersey

Sections [2C:11-5](#) and [2C:43-6](#), *New Jersey Statutes*

In New Jersey, criminal homicide constitutes the second degree crime of **vehicular homicide** when it is caused by driving a vehicle or vessel recklessly, and proof that the defendant was driving while intoxicated or operating a vessel under the influence of alcohol or drugs gives rise to an inference that the defendant was driving recklessly. Punishment for this offense is a minimum term of imprisonment fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, during which the defendant is ineligible for parole. General punishment for a crime of the second degree ranges from 5 to 10 years imprisonment. The penalty is enhanced to a first degree crime, punishable by imprisonment for a term ranging from 10 to 20 years, if the crime occurred on certain school property or at a school crossing.

New York

New York Penal Law, Sections [125.12](#), [125.13](#), [125.14](#), [60.05](#), [65.00](#), and [70.00](#)

In New York, a person commits the class D felony offense of **vehicular manslaughter** in the second degree if the person operates a motor vehicle or vessel while intoxicated in a manner that causes the death of another person. A person commits the class C felony offense of vehicular manslaughter in the first degree if the person commits second degree vehicular manslaughter and has a blood alcohol content level above the prescribed maximum; knows or has reason to know that the person's driver's license is suspended or revoked for reasons relating to a DUI offense; causes the death of more than one person; is carrying a child passenger in the vehicle and causes the death of the child; or has previously been convicted of a certain DUI or assaultive or homicide-related offense involving the operation of a motor vehicle. A person commits the class B felony offense of **aggravated vehicular homicide** if the person engages in reckless driving and commits first degree vehicular manslaughter.

Punishment for a class D felony ranges from 1 to 7 years imprisonment; punishment for a class C felony ranges from 1 to 15 years imprisonment; punishment for a class B felony ranges from 1 to 25 years imprisonment. Probation is not prohibited for either vehicular manslaughter offense in the statutes that constitute our findings, but any person convicted of a class B felony must be sentenced to a minimum one-year term of imprisonment.

North Carolina

North Carolina General Statutes [20-141.4](#) and [15A-1340.17](#)

In North Carolina, a person commits **felony death by vehicle** if the person unintentionally causes the death of another person, the person was engaged in the offense of impaired driving, and the commission of impaired driving is the proximate cause of the death. A person commits **aggravated felony death by vehicle** if those same circumstances exist and the person has a previous conviction involving impaired driving within seven years of the date of the offense. Both offenses are Class D felonies punishable by imprisonment ranging from 38 to 160 months depending on the person's criminal history and if the sentence of imprisonment is aggravated, presumptive, or mitigated. Active punishment, defined as a sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended, is the only punishment authorized for a general Class D felony; however, intermediate punishment, defined as a sentence in a criminal case that places an offender on supervised probation, is authorized for a felony death by vehicle defendant who is a Prior Record Level I offender.

Ohio

Sections [2903.04](#), [2903.06](#), [2929.14](#), and [2929.142](#), Ohio Revised Code

In Ohio, a person commits **involuntary manslaughter** if the person causes the death of another or the unlawful termination of another's pregnancy as a proximate result of the person's commission or attempt to commit a misdemeanor or felony operating a vehicle under the influence offense. If the death is the result of a felony, the involuntary manslaughter offense is a first degree felony; if the death is the result of a misdemeanor, the involuntary manslaughter offense is a third degree felony.

A person commits the second degree felony offense of **aggravated vehicular homicide** if the person, while operating or participating in the operation of a motor vehicle or certain other vessels, causes the death of another or the unlawful termination of another's pregnancy as the proximate result of committing an operating a vehicle under the influence offense. The penalty is enhanced to a first degree felony if the person was driving without an active or valid license or if the person has certain prior convictions.

Punishment for these offenses includes a mandatory term of imprisonment within the following ranges: for the first degree felonies, 3 to 11 years; for third degree felony involuntary manslaughter, 9 to 36

months; and for second degree felony aggravated vehicular homicide, 2 to 8 years. The punishment for aggravated vehicular homicide is enhanced to a mandatory 10- to 15-year term of imprisonment if the offender has been previously convicted of or pleaded guilty to multiple violations of certain offenses relating to driving or operating a vessel under the influence, aggravated vehicular homicide, aggravated vehicular assault, or involuntary manslaughter.

Pennsylvania

75 Pennsylvania Consolidated Statutes, Sections [3735](#) and [3802](#)

In Pennsylvania, a person commits the second degree felony offense of **homicide by vehicle while driving under the influence** if the person unintentionally causes the death of another person as the result of committing a DUI offense, the person is convicted of the DUI offense, and the commission of the DUI offense is the cause of death. The punishment for homicide by vehicle while driving under the influence is a minimum term of imprisonment of three years and a consecutive three-year term for each victim whose death is the result of the DUI offense.

Texas

Sections [49.08](#), [49.09](#), [12.32](#), and [12.33](#), Penal Code

[Section 3g, Article 42.12](#), Code of Criminal Procedure

In Texas, a person commits the second degree felony offense of **intoxication manslaughter** if the person operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride, is intoxicated, and by reason of that intoxication causes the death of another by accident or mistake. The penalty for this offense is enhanced to a first degree felony if the person caused the death of a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty. A second degree felony is punishable by a term of imprisonment in the Texas Department of Criminal Justice ranging from 2 to 20 years and a first degree felony is punishable by imprisonment for life or for any term ranging from 5 to 99 years. A judge is not prohibited under Texas law from ordering community supervision for a person adjudged guilty of intoxication manslaughter.

Virginia

Code of Virginia Sections [18.2-36](#), [18.2-36.1](#), and [18.2-10](#)

In Virginia, any person who, as a result of driving under the influence of alcohol or drugs, unintentionally causes the death of another person is guilty of **involuntary manslaughter**, a Class 5 felony, punishable by a term of imprisonment ranging from 1 to 10 years, or in the discretion of the jury or the court trying the case without a jury, either confinement in jail for not more than 12 months, a fine, or both. If, in addition to committing involuntary manslaughter, the defendant's conduct was so gross, wanton, and culpable as to show a reckless disregard for human life, the defendant is guilty of **aggravated**

involuntary manslaughter, a felony punishable by a term of imprisonment ranging from 1 to 20 years, one year of which is a mandatory minimum term.

Washington

Sections [46.61.520](#) and [9A.20.021](#), Revised Code of Washington

In Washington, when the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of **vehicular homicide** if the driver was operating a motor vehicle while under the influence of intoxicating liquor or any drug. Vehicular homicide is a class A felony, the maximum punishment for which may include confinement in a state correctional institution for life. If a person convicted of vehicular homicide has prior convictions of driving under the influence or having physical control of a vehicle under the influence, an additional two years will be added to the sentence for each prior offense. Probation is not prohibited for this offense in the statutes that constitute our findings.

Multistate Survey on Availability of Probation for Certain Offenses

State	Offense	Is Probation Available?
Arizona	Negligent Homicide	Yes
	Manslaughter	Yes
California	Vehicular Manslaughter While Intoxicated	Yes
	Gross Vehicular Manslaughter While Intoxicated	Yes
Florida	DUI Manslaughter	Yes
Georgia	Homicide By Vehicle	Yes
Illinois	Aggravated Driving Under the Influence	Yes, if a court determines that extraordinary circumstances exist and require probation.
Massachusetts	Homicide By Motor Vehicle	Yes
	Homicide By Motor Vehicle While Under the Influence of an Intoxicating Substance	Yes, but not until the person has served at least one year of the sentence imposed.
Michigan	Operating a Motor Vehicle While Intoxicated and Causing Death of Another Person	Yes
New Jersey	Vehicular Homicide	No
New York	Vehicular Manslaughter	Yes
	Aggravated Vehicular Homicide	No
North Carolina	Felony Death By Vehicle	Yes, but only for a defendant who is a Prior Record Level I offender.
	Aggravated Felony Death By Vehicle	No
Ohio	Involuntary Manslaughter	No
	Aggravated Vehicular Homicide	No
Pennsylvania	Homicide By Vehicle While Driving Under	No

Texas	Intoxication Manslaughter	Yes
Virginia	Involuntary Manslaughter	Yes
	Aggravated Involuntary Manslaughter	No
Washington	Vehicular Homicide	Yes

Texas Sentencing Trends

To provide an indication as to how convictions for Intoxication Manslaughter are being sentenced, the Texas Department of Criminal Justice was requested to provide numbers based on the current population for these offenders on hand at a specific date. This provides us with a "snap shot" of offenders with direct commitments to prison, versus those that are granted a probation sentence.

The number of offenders as of June 30, 2014, who were in prison, on active parole supervision, or on probation for intoxication manslaughter is listed in the table below. For offenders in prison and on parole, the number reflects those whose offense of record was a conviction of intoxication manslaughter. For those in prison (there were none in State Jail or SAJP), show their last receive type.

Receive Type	Total
New Court Commitment	877
Parole Revocation	10
Parole Revocation (New offense of intoxication manslaughter)	42
Probation Revocation	40
Total	969

Active Parole 247,

Active Probation 465

The above chart indicates that approximately 66% of recent convictions for Intoxication Manslaughter receive a direct sentence to prison, while approximately 34% are granted a probated sentence. The lead prosecutor in a case where the jury returned a sentence of 10 years probations stated to the Houston Chronicle that "for a first offender with no prior criminal history and one person killed, juries typically give 10 years' probation".

This is not the case, however, when there is a history of at least two misdemeanor DWIs. Beginning in 2002, prosecutors began to see these as felony murder, in which the offender was more than aware of the danger and was committing a felony DWI at the time the accident and death occurred. Since then juries have agreed and returned lengthy prison sentences, up to and including life sentences. In 2009

the Texas Association of District and County Attorneys added to its education program the strategies to enhance and prosecute Intoxicated Manslaughter as a Felony Murder. Appeals courts have upheld these sentences and as reported in the San Antonio Express News, the Bexar County District Attorney's Office has utilized this change in law in 8 cases since 2013.

Conclusion and Recommendations

Historically Texas Criminal Law has provided wide ranges of punitive sentences from which a judge or jury may select the most appropriate finding which meets the individual elements of a specific offense. Texas, unlike many states and the federal statutes, has rejected sentencing guidelines which dictate mandatory sentencing. Recently, legislation aimed at the prevention and prosecution of Human Trafficking cases has significantly extended the number of offenses for which a judge cannot grant probation (Code of Criminal Procedure, Article 42.12 Section 3g) and a jury cannot grant probation, (Code of Criminal Procedure, Article 42.12 Section 4). Despite recent media attention to two cases, adding intoxicated manslaughter to the list that cannot be granted probation is not necessary at this time.

Due to the recent actions by the legislature to align Stop and Render Aid cases that result in a death to that of Intoxicated manslaughter, and the development of enhanced charges for prior DWI offenders who commit an intoxicated manslaughter offense, it is recommended that this Committee should continue to monitor their implementation and their impact on sentencing of Intoxicated Manslaughter convictions.

Interim Charge Two

Study the operations of the Texas prison system with respect to the medical and mental health care treatment. Study potential cost savings associated with identifying offenders with dual diagnoses and routing these individuals into appropriate services before, during, and after involvement with the criminal justice system. Study the way in which geriatric parole cases are currently evaluated and identify opportunities for reducing costs associated with the geriatric inmate population without compromising public safety.

Discussion

The Texas Legislature already requires the production of a report on the identification of former mental health patients entering the criminal justice system. The following report, as required by the 2014-2015 General Appropriations Act, Senate Bill 1, 83rd Legislature, 2013 (Article II, Department of State Health Services Rider 43) was produced by the Department of State Health Services in September 2014:

Executive Summary

[The Texas Health and Safety Code §614.013 and §614.017](#) mandate that the Department of State Health Services (DSHS) establish a Memorandum of Understanding (MOU) in collaboration with community centers, the Department of Public Safety (DPS), the Texas Department of Criminal Justice (TDCJ), and community supervision and corrections departments. The purpose of the MOU is to establish a process by which offenders with mental illness in the criminal justice system will be identified. [The 2014-2015 General Appropriations Act, Senate Bill 1, 83rd Regular Session Legislature, 2013 \(Article II, DSHS Rider 43\)](#) requires DSHS to collect and report data on the prevalence of offenders with mental illness to the Legislative Budget Board each fiscal year.

In fiscal year 2014, there were a total of 463,152 match requests for adults that resulted in 76,561 exact matches and 386,591 probable matches. There were 7,587 match requests for adolescents that resulted in 725 exact matches and 6,862 probably matches.

Introduction

The 2014-2015 General Appropriations Act, S. B. 1, 83rd Legislature, 2013 (Article II, DSHS Rider 43) states that pursuant to Health and Safety Code §614.013 and §614.017, DSHS and community centers, as defined in the Texas Health and Safety Code §534.001(b), shall, through a memorandum of understanding, identify offenders with mental impairments in the criminal justice system, collect and report prevalence data, and accept and disclose information relating to a special needs offender if the disclosure serves the purpose of Chapter 614, Health and Safety Code.

DSHS shall report to the Legislative Budget Board each fiscal year its efforts to facilitate the exchange of information between agencies pursuant to Health and Safety Code §614.017. The report shall include, but is not limited to: the manner in which information is exchanged between agencies, the frequency with which information is exchanged, the type of information most frequently exchanged, and the agencies most frequently involved in the exchange of information.

Background

Chapter 614 of the Texas Health and Safety Code, specifically, sections §614.013 – 614.017 mandates that an MOU be established between the Texas Department of Criminal Justice (TDCJ), DSHS, the Texas Department of Public Safety, representatives of Local Mental Health Authorities (LMHAs) appointed by the commissioner of DSHS, and community supervision and corrections departments for the purpose of instituting a continuity of care and services program for offenders with mental illness in the criminal justice system. The MOU must establish methods for Identifying offenders with mental illness in the criminal justice system and collecting and reporting prevalence rate data to Texas Correctional Office on Offenders with Medical or Mental Illness (TCOOMMI):

- Developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental illness by local and state criminal justice agencies, DSHS, LMHAs, the Commission on Jail Standards, and local jails;
- Identifying the services needed by offenders with mental illness to reenter the community successfully; and
- Establishing a process to report implementation activities to TCOOMMI.

Texas Law Enforcement Telecommunications System (TLETS)

DPS is responsible for the operation of the TLETS system. TLETS is a real-time identification and data exchange system for special needs offenders that replaced the previous 72-hour manual data exchange process. The revision to the data exchange process was an effort to ensure more expedient data to support continuity of care for individuals with mental illness who are involved with the criminal justice system, and to supplement local post-booking jail diversion activities. Through the use of the TLETS system, every inmate booked into a county jail has a continuity of care query (CCQ) initiated. The inmate's personal information (i.e., date of birth, social security number, first and last name, ethnicity, and gender) is matched against the Clinical Management for Behavioral Health Services (CMBHS) database managed by DSHS. CMBHS is a web-based integrated electronic clinical management system for state-funded mental health and substance use services providers. CMBHS serves as the primary system of record for state-funded mental health and substance use services. Inmates who have received services via the LMHAs, NorthSTAR, or state mental health facilities are identified through the CCQ process.

The Matching Process

When a CCQ is initiated, DSHS uses the following match algorithm to identify offenders with a history of mental illness:

- Exact match - the data inquiry matches on last name, first name, date of birth, gender, social security number, and ethnicity; or
- Probable match - the data matches one of the criteria below:
 - Last name, first initial, date of birth, and gender; or
 - Last name, first initial, birth year, gender, and social security number; or
 - The first 3 letters of the last name, first initial, the year and month of birth, gender or social security number; or
 - Last name matches to any others found, first initial matches to any others found, age is within 5 years, gender, and social security number matches to any others found.

Once CMBHS receives the TLETS inquiry and searches for matching information, it prepares a return report for the county jail. The selection of data for the return report is completed in accordance with the following selection criteria:

- The match is on an individual who is a registered client with a presenting problem of mental health; or
- The registered client has a state hospitalization, mental health community service encounter, authorization, or assessment since fiscal year 2011.

The Continuity of Care Response

Once the county jail receives the CMBHS return report, jail staff contacts the LMHA or NorthSTAR, and supplies them with a copy of the match report. The LMHA or NorthSTAR providers are statutorily and contractually required to conduct an assessment of these individuals to screen for eligibility for continued services provided through their agencies.

Fiscal Year 2014 Data

For the adult population, 234 counties initiated CCQs, for a total of 463,152 match requests in fiscal year 2014. A total of 76,561 inquiries resulted in exact matches. A total of 386,591 inquiries resulted in a probable match. For the adolescent population, 198 counties initiated CCQs, for a total of 7,587 match requests. A total of 725 inquiries resulted in exact matches, while 6,862 resulted in a probable match.

Through interagency collaborations, DSHS continues to identify offenders with behavioral health issues, in an attempt to reorient these individuals to services that are available through the community mental health system.

Current numbers of Identified Mentally Ill and Dually Diagnosed Offenders

The Texas Department of Criminal Justice furnished the following information:

About 17 percent of the incarcerated population (approximately 25,000 inmates) have some form of mental illness and are on an inpatient or outpatient caseload. The majority of the mentally inmates (67 percent) has also been identified with a chemical dependency problem. Note the majority of the inmate population has also been identified with a chemical dependency problem.

CARE Match Statistics

During the intake and assessment process, incoming TDCJ offenders are cross referenced with the Department of State Health Services Client Access and Registry (CARE) database. This data matching provides information regarding their history with the public mental health system. CARE match statistics as of April 30, 2014 are provided below.

**Texas Department of Criminal Justice
CARE Match Statistics for April 2014**

	Total Population	CARE Match Count	% of Population	Target Group Count	% of Population
Total Parole	86,706	24,902	28.72%	8,367	9.65%
Total Probation	400,113	59,529	14.88%	22,796	5.70%
Total ISF	2,462	842	34.20%	374	15.19%
<i>Prison</i>	<i>136,287</i>	<i>46,903</i>	<i>34.41%</i>	<i>15,486</i>	<i>11.36%</i>
<i>State Jail</i>	<i>10,616</i>	<i>4,338</i>	<i>40.86%</i>	<i>1,738</i>	<i>16.37%</i>
<i>SAFP</i>	<i>3,394</i>	<i>1,069</i>	<i>31.50%</i>	<i>549</i>	<i>16.18%</i>
Total Incarceration	150,297	52,310	34.80%	17,773	11.83%
GRAND TOTAL		137,583		49,310	

Of the nearly 640,000 offenders on probation, parole or incarcerated, approximately 22 percent, or about one in five, had a previous contact with the public mental health system. For those incarcerated, roughly one in three had a prior contact.

Administrative Segregation and Mental Health issues

The Texas Department of Criminal Justice furnished the following report:

The Texas Department of Criminal Justice continues to review the utilization of administrative segregation in order to accomplish two objectives: reduce the number of offenders housed in administrative segregation; and provide pre-release programming to those who must remain in maximum-security housing for the safety and security of both staff and offenders. The agency has made considerable progress toward achieving both objectives, and TDCJ anticipate continued success in the future. The administrative segregation population has dropped from 9,542 in fiscal year 2006 to 6,564 at the end of fiscal year 2014 (a 31.2% reduction). It is expected that a continued reduction given the new programs TDCJ has initiated.

This document will provide updates regarding current trends and recent agency initiatives relating to administrative segregation, and also provides responses to some frequently asked questions.

In order to enhance staff and offender safety, the Texas Department of Criminal Justice (TDCJ) utilizes Administrative Segregation (Ad Seg) to separate high risk offenders from the general inmate population and provide greater security precautions for staff.

The agency is also employing several strategies designed to reduce the Ad Seg population consistent with the priority placed on safety and security. A common element in every strategy is the use of various treatment modalities to prepare offenders for a successful transition from Ad Seg into the general offender population and the community.

A description of the strategies being used to decrease the Ad Seg population is provided below, followed by some frequently requested information regarding administrative segregation.

Prepare offenders for a successful transition from Administrative Segregation to the general offender population through innovative programming.

The TDCJ has targeted programs, one longstanding and the other new, intended to prepare offenders for a successful transition to the general offender population. In addition to reducing the number of offenders housed in administrative segregation, these programs have contributed to a corresponding

The **Gang Renouncement and Disassociation (GRAD) - (180 Beds)** is designed to give a security threat group (STG) member the ability to disassociate from their current affiliation and return to the general offender population.

FY2014 program completers -551

- The program lasts for nine months with the participants spending the last three months in the general offender population.
- The curriculum provides cognitive intervention, anger management, substance abuse education, and programming addressing criminal addictive behavior. The program utilizes a classroom setting for programming and allows group recreation.
- The program capacity has been adjusted multiple times based on need. The disassociation monitoring period was reduced from 24 to 12 months in August 2012, expediting entry into the program.

The **Administrative Segregation Transition Program (ASTP) - (260 Beds)** was implemented in March 2014 and assists offenders in the transition from Ad Seg to the general Offender population.

FY2014 program completed -25

This four month program addresses dysfunctional thinking patterns, life and coping skills, problem solving, and building, maintaining appropriate and healthy relationships.

- The program focuses on managing stress, emotions and aggressiveness and emphasizes group interactions and pro-social peer support.
- The program utilizes a classroom setting for programming and allows group recreation.

Prepare offenders for a successful transition from Administrative Segregation to the community through innovative programming.

The TDCJ has targeted programs, one longstanding and the other relatively recent, intended to prepare offenders for a successful transition from incarceration to life in the community. Although the agency anticipates continued success in reducing the Ad Seg population, there will remain an ongoing need for programs serving those offenders whose behavior necessitates continued housing in a maximum-security setting.

The **Ad Seg Pre-Release Program (ASPP) – (204 Beds)** was implemented in July 2012 and targets Ad Seg offenders prior to release into the community in order to better prepare them for a successful transition.

FY2014 program completers –476

- This three month program offers interventions which begin to build awareness about the thinking and attitudes that have impacted their choices and how different choices could affect them in the future.
- The program curriculum incorporates the use of technology to deliver portions of the materials. Eligible offenders are allowed group recreation.
- The curriculum utilizes cognitive behavioral interventions to address attitudes, thought processes and enhance coping skills, and addresses reentry planning and opportunities. Topics include treatment preparation and self-discovery, functioning thinking, understanding your feelings, stress management, family reintegration and more.
- The ASPP program was expanded in 2013 and 2014.

The **Serious and Violent Offender Reentry Initiative (SVORI) – (63 Beds)** is a pre-release, street ready initiative as an in-cell program that utilizes PC-based equipment to deliver a variety of programming to help the offender's transition to the community successfully.

FY2014 program completers -89

- Program addresses anger management, thinking errors, cultural diversity, employment and substance abuse. Curriculum relating to life skills such as health maintenance, employment, legal issues and parenting is also provided within the seven months program last.
- Eligible offenders are allowed group recreation. Most of the participants are required to complete the program as a condition of release.
- Phase II of the program is delivered as post-release continuum of care.

Divert offenders from Administrative Segregation through newly created alternative programs

The agency has developed new initiatives that provide an alternative to administrative segregation for certain offenders. Both programs began serving offenders during the summer of 2014. Like the programs facilitating a successful transition to the general offender population, they will further reduce both the number of offenders housed in administrative segregation and the number of direct releases from administrative segregation. By providing an alternative to Ad Seg, these programs can have a more immediate impact on the offender population.

The **Administrative Segregation Diversion Program (ASDP) – (180 Beds)** Effective **July 14, 2014**, this **new** program began providing STG members who are returning to prison with the opportunity to immediately participate in a program similar to GRAD. **New program**

- Participating STG members are immediately assigned to the six month program after completing the intake process. The curriculum provides cognitive intervention, anger management and addresses criminal addictive behavior.
- The program provides programming in a classroom setting and allows group recreation.

The **Administrative Segregation Therapeutic Diversion Program (ASTDP) – (252 Beds)** During **August 2014**, this **new** program began providing an alternative to Ad Seg for certain mentally ill offenders who would otherwise be housed in the administrative segregation environment.

New program

- The program targets offenders with mental health issues such as adjustment disorders, mood (depressive and bipolar disorder), anxiety (panic disorder, PTSD and other anxiety disorders), and impulse control disorders (intermittent explosive disorder and other emotional and behavioral difficulties resulting in emotional liability and behavioral control).
- Participants receive both individual and group therapy designed to improve the offender's decision making, impulse control and quality of life. Life skills, medication management, coping skills, and anger management are among the targeted treatments for offenders participating in this program.
- The program involves a coordinated multidisciplinary approach that includes security, nursing and mental health staff. Treatment is provided by qualified mental health providers, and mental health case managers are responsible for coordinating evaluation and treatment. Individual treatment plans are prepared for each offender.

- The offender patients will be reviewed every six months by the multidisciplinary team for transition from the program into the general TDCJ offender population.

What is Ad Seg?

- Administrative Segregation is single cell housing for offenders which require maximum-security for the safety of staff and offenders and the security of the institution. Unlike some general population inmates who are single celled, Ad Seg inmates are confined to their cells for most of the day. Out of cell time involves recreation (typically one hour a day) and periodic movement for the purposes of visitation, medical appointments, legal proceedings or other intermittent activities. Out of cell recreation areas maintain physical separation through chain link fencing or other means, but permit visual and verbal interaction. Ad Seg inmates are secured by restraints and kept under constant and direct supervision while being moved for recreation or other purposes.
- Prior to implementing the Ad Seg plan during the mid-1980s, the number of inmate homicides reached as high as twenty-five or more annually. Despite an inmate population that is three times as large, there are now far fewer inmate homicides. There were four inmate homicides during 2013.

Who is housed in Ad Seg?

- Primarily confirmed members of the most organized and dangerous prison gangs, as well as offenders who are an escape risk and who committed assaults or multiple other serious disciplinary offenses while incarcerated. A few offenders are housed in Ad Seg for their own protection. Inmates are only assigned to Ad Seg after an extensive review process, and are periodically reviewed thereafter for reassignment to the general offender population (twice a year by central administration and at least monthly by unit personnel).
- **All** offenders placed in Ad Seg receive an initial hearing within seven days of placement at which time the reasons for placement and criteria for release are discussed. Any decision by the unit to continue Ad Seg housing is reviewed by central administration and subject to appeal through the offender grievance system. Subsequent reviews are conducted monthly by unit staff and twice a year by visiting staff (not assigned to the unit) as noted above. Offenders are notified in advance of the review by central administration and provided an opportunity to be present during the hearing (unless their behavior poses an immediate threat).

How many Ad Seg offenders are housed in TDCJ?

- As of August 31, 2014 there were 6,564 offenders housed in Administrative Segregation (4.4 percent of the inmate population). The number of offenders in Ad Seg has declined by over 31 percent since 2006.

How long do offenders remain in Ad Seg?

- There is not a predetermined length of stay for Ad Seg inmates. Length of stay in Ad Seg is governed by offender behavior. On the average, offenders releasing from Ad Seg during FY 2013 were in that custody an average of 3.7 years (the median was 2.2 years). However, it should be noted that offenders unwilling to change their behavior (renounce gang membership, discontinue assaultive behavior) remain in Ad Seg custody indefinitely, possibly for the remainder of their incarceration.

How many Ad Seg offenders are mentally ill?

- About 30 percent of the Ad Seg population has been identified as having some form of mental illness treatable through out-patient care. Mentally ill offenders initially assigned to Ad Seg are assessed by mental health staff the next working day and continue receiving out-patient care. All Ad Seg offenders are seen daily by a nurse who inquires about health concerns and observes the offenders appearance and behavior. All offenders assigned to Ad Seg for more than one month are assessed by a qualified mental health professional (and assessed periodically thereafter). Note mentally ill offenders requiring in-patient care are housed in psychiatric facilities.

How many offenders are released from Ad Seg?

- During FY 2013, there were 1,609 offenders released from Administrative Segregation into the general offender population. Another 1,243 offenders were released to the street, about 200 (fourteen percent) less than the previous year. In the future, most offenders releasing directly from Ad Seg will have participated in a pre-release program.

Public Hearing on Interim Charge Two

A public hearing was conducted on October 28, 2014 at 10:00 AM in the Capital Extension hearing room E2.012, with the following providing invited testimony:

1. Brad Livingston, Executive Director, Texas Department of Criminal Justice (TDCJ)
2. Lannette Linthicum, MD, CCHP-A, FACP, Director of Health Services Division (TDCJ)
3. Owen Murray, DO, MBA, Vice President Offender Care Services, University of Texas Medical Branch Galveston (UTMB)
4. Joseph Penn, MD, CCHP, FAPA, Director, Mental Health Services, UTMB
5. April Zamora, Director, Reentry and Integration Division, TDCJ

Additional information was provided beyond the previous written information furnished by TDCJ in the lengthy exchange between the witnesses and the Committee members. Notable among the verbal information developed was:

- Approximately 25,000 individuals are identified within the intake process entering the prison system who have mental health issues. Of these, 1,900 of the most severely mentally ill are

housed in 5 units that are specifically designated for the mentally ill and provided the highest level of care within the TDCJ system. The remaining roughly 23,000 are held in unit cells throughout the system's 109 units and are provided outpatient services.

- UTMB provides medical and mental health services at 85 prison units, 24 of which have 24-hour medical personnel coverage, primarily registered nurses. 16 units have extended 12-hour to 16-hour coverage again provided mainly by registered nurses. The remaining units have medical personnel coverage only 8 hours a day.
- A challenge for the prison system is that significant numbers of female offenders have histories of major drug use, sexual abuse, and other traumas. UTMB and TDCJ have responded with gender specific treatment and in-patient crisis management for female offenders but the severity of mental health issues require, upon release, additional inpatient treatment followed up by sheltered housing and step-down programs for those who cannot function independently.
- TDCJ along with UTMB currently operates 600 infirmary beds on various units, with over 360 beds filled by permanently assigned inmates who cannot function in general population mostly due to physical illness complicated by age. It was suggested that TDCJ seek community partnerships that would allow the release of these offenders to a nursing home or assisted living situation which would also transfer the medical cost from the state to these facilities within a community. A discussion of the Medically Recommended Intensive Supervision (MRIS) program followed, indicating that both the Board of Pardons and Parole and the Texas Council on Offenders and Medical and Mental Health should coordinate their efforts to ensure we maximize the benefits of this program.

Conclusion and Recommendations

The development of the process to identify incoming offenders who have previous mental health treatment has improved and appears to be meeting the goals of its design. The challenge now is identifying how to best meet the needs of those identified and provide treatment that will stabilize the individual and allow the individual to function in a free society without endangering the public. The Legislature should continue to encourage the development of the reentry programs provided by TDCJ to develop a continuity of care which includes appropriate housing for those released.

Additionally, the Legislature should continue to encourage the development of diversion programs for mentally ill offenders in order to prevent their entry into the prison system and ensure available treatment in the community.

Interim Charge Three

Study and make recommendations related to jail diversion, reduced recidivism rates, and access to services for those within the system who suffer from a mental illness. Monitor the progress and implementation of the jail diversion pilot program for the mentally ill in Harris County and determine the best practices to be applied statewide.

Introduction

The United States Surgeon General has reported in a study that almost 5% of adults in the United States have a serious mental illness that significantly interferes with some aspect of that individual's daily behavior. While the United States Department of Justice reports that approximately 16% of prisoners and jail detainees within the United States has a serious mental illness. The United States Substance Abuse and Mental Health Services Administration (SAMHSA) estimates that 800,000 individuals with serious mental illness (72% of these with substance abuse issues), are placed in jail each year across the United States, with law enforcement and jails becoming the de facto service providers to individuals with co-occurring disorders.

SAMHSA defines "jail diversion" as programs that divert individuals with serious mental illness away from jail and then provide follow up community based treatment, along with support services. The individual avoids arrest or spends significantly less time in jail, in some models a conviction, and is placed in programs that will stabilize and prevent future criminal episodes. The key activities of a jail diversion model are to:

1. Define and identify a target group for diversion,
2. Identify the individual as early as possible in their processing,
3. Negotiating community based treatment alternatives to incarceration, and
4. Implementing linkages to comprehensive systems of care and appropriate community supervision consistent with the disposition of the criminal justice contact

Two major categories of jail diversion programs are identified by SAMHSA: the first being the Pre-booking diversion, which involves law enforcement identifying the individual for diversion and taking them to a crisis intervention center instead of booking into jail. Usually this involves specialized trained police officers as part of a crisis intervention team (CIT) handing the individual off to a community based treatment center that can stabilize the individual. This method provides the greatest savings in jail and court cost. The second category is the most commonly utilized model: the post-booking diversion which identifies the individual for diversion after arrest and booking into a jail. This model is commonly associated with specialty courts such as a veteran's court, mental health court or a drug court. Pre-trial supervision and community supervision are often key elements, along with the appropriate treatment providers and transitional housing.

Notable Texas Jail Diversion Programs

During the last 30 years, jail diversion programs have been implemented across the United States and have gained popularity in Texas during the last decade. Although not commonly used in Texas, several counties have developed programs to meet the specific needs that county officials and practitioners have identified to divert specific populations from their county jails. Currently, no state agency is mandated with tracking these programs, but the Texas Commission on Jail Standards was able to provide limited information and an internal literature review was conducted.

The use of Pre-Booking Jail Diversion programs through the use of Crisis Intervention Teams, specially trained police officers (either city police and/or county deputy sheriff officers) to handle mental illness calls have been implemented in Bexar, Williamson, Brazos, Harris and Travis County. These units work with Mobile Crisis Outreach teams, which consist of licensed clinicians and nurses in mental illness situations in Bexar, Travis and Harris County. Additionally, Bexar County and Harris County have established sobriety centers - locations where police can drop off public intoxication offenders who are then diverted from the city or county jail.

The most prolific use of Post-Booking Jail Diversion programs is with the 154 specialty courts that have registered with the Governor's Criminal Justice Division. These include Mental Health Courts, Drug Courts, DWI Courts, Prostitution Courts, Co-Occurring Disorder Courts, Reentry Courts and Veterans Courts. These are found not only in the large urban areas but spread throughout Texas Counties.

Harris County Mental Health Jail Diversion Pilot Project

Senate Bill 1185 (83 R) was authored by Senator Huffman with Senators Whitmire and Schwertner as co-authors. SB 1185 passed the Senate unanimously, and under the sponsorship of Representative Thompson passed the House of Representatives. Senator Huffman's author's statement of intent states:

In 2012, Harris County identified 18,679 people with mental health service needs incarcerated in its criminal justice facilities. Additionally, at any given time in the jail, more than 2,100 people are receiving prescribed psychotropic medication. This group represents approximately one-quarter of the total jail population. However, the issue of increasing numbers of mentally ill inmates incarcerated within the criminal justice system does not exist solely in Harris County. Texas does not have an effective service model to treat people with mental health needs who frequently cycle through the county jails and the Texas Department of Criminal Justice. The criminal justice system is the most expensive and least effective way to treat mental illness and stop the repeated arrests of those with mental health diagnoses through evidence-based intervention strategies. Community-based mental health services are much less costly and more successful at treating the underlying symptoms that often are responsible for recurrent incarceration of the mentally ill.

Senate Bill 1185 creates a four-year jail diversion pilot program for the mentally ill in Harris County to develop effective methods to substantially reduce recidivism among this population of offenders with the hope that the model developed will be replicable in all Texas metropolitan and urban

areas. This bill uses a blending funded model that should incorporate state, local, and accessible federal funds.

Funded by \$5 million dollars in State funds and matched by \$5 million dollars in Harris County funds, it is a true joint venture to develop a model system that can be expanded to other Counties in Texas. The Senate Research Center bill analysis is included below as the bill has very specific mandates and requirements for the responsibility of implementing the pilot project. Harris County Judge Ed Emmett is the primary proponent of the project and will be tasked with a major role in its creation.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 7, Health and Safety Code, by adding Chapter 579, as follows:

CHAPTER 579. MENTAL HEALTH JAIL DIVERSION PILOT PROGRAM; HARRIS COUNTY

Sec. 579.001. DEFINITIONS. Defines "commissioner," "county judge," and "department" in this section.

Sec. 579.002. MENTAL HEALTH JAIL DIVERSION PILOT PROGRAM. Requires the Department of State Health Services (DSHS), in cooperation with the county judge of Harris County (county judge), to establish a pilot program in Harris County to be implemented by the county judge for the purpose of reducing recidivism and the frequency of arrests and incarceration among persons with mental illness in that county.

Sec. 579.003. CRIMINAL JUSTICE MENTAL HEALTH SERVICE MODEL. Requires the county judge to design and test through the pilot program a criminal justice mental health service model oriented toward reducing the recidivism and frequency of arrests and incarceration of persons with mental illness in the Harris County jail. Requires that the model initially apply the critical time intervention principle described by Section 579.004 and include the following elements:

- (1) low caseload management;
- (2) multilevel residential services; and
- (3) easy access to integrated health, mental health, and chemical dependency services; benefits acquisition services; and multiple rehabilitation services.

Sec. 579.004. CRITICAL TIME INTERVENTION. Requires that the pilot program, in applying the critical time intervention principle, give persons with mental illness access to available social, clinical, housing, and welfare services during the first weeks after the person's release from jail.

Sec. 579.005. LOCAL SERVICES COORDINATION. Requires the county judge in designing the criminal justice mental health service model to seek input from and coordinate the provision of services with the following local entities: the Harris County Sheriff's Office; the mental health division of the office of the district attorney of Harris County; the Harris County public defender; mental health courts; specially trained law enforcement crisis intervention teams and

crisis intervention response teams; providers of competency restoration services; providers of guardianship services; providers of forensic case management; providers of assertive community treatment; providers of crisis stabilization services; providers of intensive and general supportive housing; and providers of integrated mental health and substance abuse inpatient, outpatient, and rehabilitation services.

Sec. 579.006. PROGRAM CAPACITY. (a) Requires the county judge, in implementing the pilot program, to ensure the program has the resources to provide mental health jail diversion services to not fewer than 200 individuals.

(b) Requires the county judge to endeavor to serve each year the program operates not fewer than 500 or more than 600 individuals cumulatively.

(c) Requires DSHS and the county judge, before the county judge implements the pilot program, jointly to establish clear criteria for identifying a target population to be served by the program. Requires that the criteria prioritize serving a target population composed of members with the highest risks of recidivism and the most severe mental illnesses. Authorizes the county judge, in consultation with the appropriate entities listed in Section 579.005, to adjust the criteria established under this subsection during the operation of the program provided the adjusted criteria are clearly articulated.

Sec. 579.007. FINANCING THE PROGRAM. (a) Provides that the creation of the pilot program under this chapter is contingent on the continuing agreement of the Commissioners Court of Harris County to contribute to the program each year in which the program operates, services for persons with mental illness equivalent in value to funding provided by the state for the program.

(b) Provides that it is the intent of the legislature that appropriations made to fund the pilot program are made in addition to and will not reduce the amount of appropriations made in the regular funding of the Mental Health and Mental Retardation Authority of Harris County or the Harris County Psychiatric Center.

(c) Authorizes the Commissioners Court of Harris County to seek and receive gifts and grants from federal sources, foundations, individuals, and other sources for the benefit of the pilot program.

Sec. 579.008. INSPECTIONS. Authorizes DSHS to make inspections of the operation of and provision of mental health jail diversion services through the pilot program on behalf of the state to ensure state funds appropriated for the pilot program are used effectively.

Sec. 579.009. REPORT. (a) Requires the commissioner of DSHS (commissioner), not later than December 1, 2016, to submit a report concerning the effect of the pilot program in reducing recidivism and the frequency of arrests and incarceration among persons with mental illness in Harris County to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house

of representatives having primary jurisdiction over health and human services issues and over criminal justice issues.

(b) Requires that the report include a description of the features of the criminal justice mental health service model developed and tested under the pilot program and the commissioner's recommendation whether to expand use of the model statewide.

(c) Requires the commissioner, in conducting the evaluation required under Subsection (a), to compare the rate of recidivism in Harris County among persons in the target

population before the date the program is implemented in the community to the rate of recidivism among those persons two years after the date the program is implemented in the community and three years after the date the program is implemented in the community. Authorizes the commissioner to include in the evaluation measures of the effectiveness of the program related to the well-being of persons served under the program.

Sec. 579.010. CONCLUSION; EXPIRATION. Provides that the pilot program established under this chapter concludes and this chapter expires September 1, 2017.

SECTION 2. Effective date: upon passage or September 1, 2013.

The effective date of the bill was June 14, 2013; the day Governor Perry signed the bill. The final report and the analysis of the pilot project will not be complete till December 1, 2016.

Harris County Status Report on Implementation

Harris County Officials furnished the following status report:

In 2013, the Legislature passed SB 1185 (Huffman, Whitmire, Schwertner, S. Thompson) that established a mental health jail diversion pilot program in Harris County. The purpose of the pilot is to develop strategies to address a serious problem that exists in metropolitan areas in America, i.e. the increase in the number of people with mental illness who repeatedly cycle through the criminal justice system. This has become a costly issue for Texas counties and cities. The Harris County pilot project is intended to benefit the entire State of Texas.

The first year of the Harris County Mental Health Jail Diversion Program (MHJDP) involved a comprehensive planning process led by Harris County Judge Ed Emmett. This process began with individual meetings and small focus groups with key representatives from mental health, substance abuse, housing, primary care, social service, and the criminal justice systems. The program staff coordinated with the Harris County Sheriff's Office (HCSO), the Mental Health Mental Retardation Authority of Harris County, the Mental Health Division of the Harris County District Attorney's Office, the Harris County Public Defender, the mental health courts, and law enforcement crisis intervention teams and crisis intervention response teams. Three workgroups developed eligibility criteria, service packages, and metrics.

Program Eligibility

A person who has been booked into the Harris County Jail three or more times in the past two years is eligible for the MHJDP if he or she meets any of the following criteria:

- Serious Mental illness (Schizophrenia, Bipolar Disorder, Major Depression, or Post Traumatic Stress Disorder) with or without substance abuse/use;
- Current treatment in HCSO's Mental Health Unit; or
- History of recurring psychotropic medication in HCSO.

Priority consideration will be given for persons aged 18 to 35 years. The inclusion of persons with Post Traumatic Stress Disorder will expand access to care for veterans who do not qualify for federal Veterans Assistance.

The following are exclusionary criteria for participation:

- Inability/unwillingness to consent to participate.
- Cognitive impairment, i.e. incapacity; or
- History of certain offenses (Homicide, current sex offense, registered sex offender, current felony DWI, arson, or the manufacturing/delivery of methamphetamine).

Program Model and Service Packages

The MHJDP provides a continuum of services and supports to a targeted population with serious mental illness to reduce involvement in the criminal justice system. A trained and caring community of providers work together to help program participants' access needed mental

health, substance abuse/use treatment, permanent and temporary housing, peer support, assistance with basic needs, rehabilitation, transportation, vocational/education, care coordination and health services. Mental Health Mental Retardation Authority of Harris County (MHMRA) is the primary provider, and Healthcare for the Homeless Houston is the subcontractor.

Community providers and law enforcement entities may refer potential participants to the MHJDP. The current referring agencies include law enforcement, mental health providers, probation, the Harris County specialty courts (Mental Health Courts, Drug Court, and Veterans Court), the misdemeanor courts, Houston Sobering Center, and other community providers. The program has 4 service components:

Jail-based team

- Eligibility and screening;
- Assessment and engagement; and
- Substance use disorder and cognitive behavioral intervention therapies.

Community/Clinic-based team

- Eligibility and Screening;

- Assessment and engagement;
- Intensive case management;
- Substance use disorder and cognitive behavioral interventions;
- Peer support; and
- Psychiatric support.

Critical Time Intervention (CTI) (Evidenced-based practice for clients leaving psychiatric hospitals and the criminal justice system who are homeless and have a severe mental illness/substance use disorder.)

- Intensive case management;
- Substance use disorder and cognitive behavioral interventions;
- Peer support; and
- Psychiatric support.

Permanent Supportive Housing (PSH) (Evidenced-based practice that incorporates housing and supportive services for people with serious mental illnesses who need support to live stably in their communities.)

- Integrated primary and behavioral healthcare;
- Clinical case management;
- Substance use disorder and cognitive behavioral interventions; and
- Peer support through community health workers.

Timeline of Harris County Mental Health Jail Diversion Program's Ramp-up	
June 2013	Began program development and Department of State Health Services (DSHS) contract negotiations.
July 2013	Community stakeholder meeting.
September 2013	Began meeting with key stakeholders and potential providers and small focus groups from stakeholder organizations.
November 2013	Executive Search for Program Director.
December 2013	Program Director hired.
December 2013	DSHS contract signed.
January 2014	Three Workgroups established to develop program eligibility criteria, service packages, and metrics.
January 2014	Community stakeholder meeting.
January 31, 2014	SB 1185 Initial Work Plan submitted to DSHS.

March 2014	Revised Work Plan submitted to DSHS.
June 2014	Program eligibility criteria on time frame of jail bookings finalized.
June 2014	DSHS approves final Work Plan & contract.
June 2014	Began hiring key staff.
July 2014	Staff Training on Risk Assessment.
August 5, 2014	Contract signed with Mental Health Mental Retardation Authority of Harris County (MHMRA).
August 20, 2014	Program begins to serve clients.
August 21, 2014	Harris County Mental Health Jail Diversion Program launch event and stakeholder training.
August 27, 2014	MHMRA signs agreement with subcontractor.

Challenges and Hurdles

The MHJDP encountered common hurdles that a program might face in its first year. These included the following:

- IT integration and programming;
- Time required for contract development and approval;
- Identification and engagement of essential key stakeholders;
- Diverse organizational cultures with distinct bureaucracies and regulations; and
- Identification of local matching funds.

The providers' IT infrastructures create hurdles in identifying potential participants. The IT systems of the providers and Harris County are not integrated. Giving one organization access to another's IT system and databases requires separate contracts and programming.

Parties do not track the same data elements. For example, the Coordinated Access system for homeless services did not track diagnostic criteria for a person with mental illness and was unable to determine if a person met the MHJDP's eligibility criteria. To address this issue, Coordinated Access reprogrammed their system and began to capture this data element.

Providers are also subject to different federal and state privacy laws. For example, mental health records have different protections than substance abuse treatment records. Navigating the privacy

laws to protect patients' rights and facilitate information sharing between the providers has been challenging.

To qualify for a federal permanent housing voucher, a person must meet the U.S. Department of Housing and Urban Development's (HUD) narrow definition of "chronically homeless." HUD requires documentation, and the eligibility process takes time. The strict federal definition of "chronically homeless" limits the type of emergency housing that can be provided and the length of stay.

Local Match

The MHJDP received \$5 million in state funding for FY14 and FY15. Harris County must provide local match. Sources of local matching funds include:

- Harris County Judge's staff;
- Harris County Housing Authority vouchers;
- City of Houston Housing Authority vouchers;
- Harris County Jail space and equipment; and MHMRA
- Patient Assistance Program (medications);
- Program evaluation support; and
- Crisis Residential services.

Clients Served

For the month of August 2014, MHMRA, the Office of Criminal Justice Coordination, and Coordinated Access (Homeless Coalition of Houston/Harris County) identified and referred 103 potential participants who met the program's criteria. Of those referred, 68% were male, 44% were in the jail, 12% were homeless, and 71% met diagnostic criteria.

From August 20th to 31st, the MHJDP determined that of those referred, 30 individuals were ineligible. MHJDP screened a total of six clients. Four individuals met all program requirements and consented to participate in the diversion program. The remaining 67 individuals are in the pipeline to be screened.

As of September 19, 2014, 10 clients are enrolled in the diversion program. The Office of Criminal Justice Coordination identified 2,905 persons who appear to meet the MHJDP's eligibility criteria; 381 are in the Harris County Jail; and 130 appear to meet the HUD definition of chronically homeless.

Conclusion and Recommendations

With the launching of the pilot project on August 21, 2014, no substantial analysis can be provided at this time. It is recommended that the legislature revisit the issue as an interim charge in 2016 to ascertain the progress of the pilot project, with final analysis and recommendations awaiting the final report from the Commissioner of the Department of State Health Services on December 1, 2016.

Interim Charge Four

Compile an inventory of all the juvenile specialty courts in the state, the juvenile population served, and the courts' program guidelines and practices. Identify gaps in services, geographically, by issue area, and juvenile population. Study the efficacy of each court through an analysis of recidivism rates and cost effectiveness and make recommendations regarding the best practices of juvenile specialty courts.

Introduction

Juvenile specialty courts developed following the establishment of the first adult drug court in Miami Florida in 1989, with the first juvenile drug court being implemented in Texas in 1999. Currently, Texas has 154 specialty courts registered with the Criminal Justice Division (CJD) of the Governor's Office. 20 of these are identified as juvenile courts, while most are labeled drug courts or co-occurring disorder courts. One court is listed as a prostitution court and one as a tribal court. Only those specialty courts, either adult or juvenile, that receive funding assistance from CJD are mandated to register with the CJD, others may do so voluntarily. Neither the Texas Juvenile Justice Department (TJJD) nor the Texas Office of Court Administration (OCA) maintains a roster of juvenile specialty courts. An inquiry sent to individual juvenile probation departments revealed the presence of other juvenile specialty courts. Specialty courts, which are mostly specific dockets within existing courts, are a product of local practitioners who have identified a need for a specific population that they believe extra attention and the use local of resources will be of assistance. Approximately 70% of juvenile funding is derived from county government.

Harris County Juvenile Specialty Courts

Harris County has developed an innovative array of juvenile specialty courts and has provided the following descriptive information and comments concerning the effectiveness of these courts:

Harris County Juvenile SOAR Drug Court

Sobriety Over Addiction And Relapse

Approximately 66% of juveniles screened at the Harris County Juvenile Detention Center qualify for a substance abuse or dependence diagnosis. For some of these youth, a serious substance abuse problem is the underlying cause of their delinquent behavior. Too often, traditional models of substance abuse treatment prove inadequate in addressing the complex needs of these youth and their families. The Harris County SOAR Drug Court, presided over by Judge Michael Schneider and Associate Judge Angela Ellis of the 315th District Court, was created to provide the individualized wraparound approach necessary for a full recovery.

Mission Statement

The mission of the Harris County Juvenile Drug Court is to effectively treat substance abusing and dependent juvenile offenders via utilization of community based providers. Employment of intensive outpatient programming allows for a multi-systemic oriented treatment involving the family and numerous other community-based services. The increased supervision and treatment requirements of

the drug court emphasize personal accountability of the offender and their family while ensuring community safety.

Court Components

- Intensive Judicial oversight
- Intensive supervision and monitoring
- Comprehensive substance abuse treatment
- Frequent drug testing
- Regular review hearings
- Open court model
- Multidisciplinary Team
- Wraparound services

Participant Profile

Inclusionary Criteria

- 10 – 17 years post adjudicated youth
- Substance abuse charge or related offense
- Substance abuse or dependence diagnosis
- Juvenile and family willingness to participate in SOAR Drug Court

Exclusionary Criteria

- Significant gang involvement
- Severe, chronic, or untreated mental illness
- Developmental Disabilities
- Violent offences
- Sexually based offense

Statistics and Outcome Measures

The Drug Court program is one year, and youth agree to participate in lieu of residential placement.

Total Number of Participants since Inception (2010): 53

Successful Completion: 75%

Recidivism: 3.2% of youths who successfully complete the program are re-referred for a new offense after one year of program completion. As a point of comparison, the recidivism rate for all youths that complete probation is 34.2%. The recidivism rate for youth who complete the HC residential drug program is 38%

Harris County GIRLS Court

Growing Independence Restoring Lives

The GIRLS Court was created in the summer of 2011, and it utilizes a strength-based approach to work with girls who are actively engaged in prostitution and victims of human trafficking. GIRLS Court employs a clinically driven multi-disciplinary team to effectively address the underlying trauma associated with the participants' trafficking experience and prior abuse history. The path to recovery

can be long and arduous for many of the girls. The GIRLS Court program works to assist in the process by providing and coordinating services to meet the youth's individual needs. These services include psychiatric and psychological treatment educational assistance, drug rehabilitation, casework services, youth advocacy, and job opportunities. Ultimately the GIRLS Court provides successful graduates with the opportunity to seal their juvenile records and develop skills necessary to change the trajectory of their lives.

Mission

The Harris County GIRLS Court utilizes a comprehensive strength based approach in working with girls who are actively engaged in or at risk of becoming involved in human trafficking. The Court employs a multi-disciplinary team to effectively address the underlying trauma associated with the participants' at-risk behaviors and related delinquent conduct.

Court Components

- Intensive Judicial oversight
- Intensive supervision and monitoring
- Comprehensive substance abuse treatment
- Frequent drug testing
- Regular review hearings
- Multidisciplinary Team
- Wraparound services

Participant Profile

Inclusionary Criteria

- 10 – 17 years post adjudicated females
- History of human trafficking

Exclusionary Criteria

- Significant gang involvement
- Significant, untreated mental illness
- Developmental Disabilities
- Violent offense

Statistics and Outcome Measures

The GIRLS court program does not have a specified duration, but most girls take a year to successfully complete the program.

Total Number of Participants since Inception (2011): 36

Successful Completion: 80%

Recidivism: 10.5% of youths who successfully complete the program are re-referred for a new offense after one year of program completion. As a point of comparison, the recidivism rate for all youths that complete probation is 34.2%. The recidivism rate for adjudicated girls is 23%.

Harris County Mental Health Court

Nationally, the prevalence of mental illness among youths in the community is approximately 20 percent; however, for youth in the juvenile justice system, mental illness estimates range from 50-80 percent. A lack of accessible community mental health services forces families to resort to the juvenile justice system as they struggle to manage their child's escalating behavioral and emotional problems. In Harris County, 60% of our juvenile offenders in detention have some form of mental illness. Placement in a punitive environment often exacerbates mental illness and leads to an escalation in symptoms and behavior.

Mission Statement

The Juvenile Mental Health Court of Harris County strives to enhance public safety by embracing a therapeutic approach to juvenile offenders whose delinquent conduct is significantly impacted by their mental illness. By addressing the underlying problems in the youth's and families functioning, the Court's ultimate goal is to decrease recidivism by facilitating mental health interventions and treatment.

Inception:

The Court started the summer of 2011 in the 315th District Court

Court Components

- Intensive Judicial oversight
- Individualized clinical approach
- Intensive supervision and monitoring
- Regular review hearings
- Multidisciplinary Team
- Wraparound services

Participant Profile

Inclusionary Criteria

- 10 – 17 year-old youth
- Charges of misdemeanors and non-violent felonies
- Diagnosed with a mental health disorder other than mental retardation
- Strong parental involvement

Exclusionary Criteria

- Significant gang involvement
- Significant, untreated drug abuse
- Mental retardation
- Offense involving a firearm or other dangerous weapon
- Violent offense
- Sexually based offense

Statistics and Outcome Measures

The Mental Health Court is a minimum of 6 months, and it is primarily a diversionary program. Successful graduates have their offenses dismissed.

Total Number of Participants since Inception (2009): 132

Maximum number of participants: 40 per year

Successful Completion: 85%

Recidivism: 6.9% of youths who successfully complete the program are re-referred for a new offense after one year of program completion. As a point of comparison, the recidivism rate for all youths that complete probation is 34.2%. The recidivism rate for youths that **successfully** complete the mental health fields program (TCOOMMI) is 25%.

Harris County Gang Court

Gang Recidivism Intervention Program (GRIP)

Problem

Houston is now home to more gang members than anywhere else in Texas. Law enforcement reports 225 documented gangs with over 10,000 active members. The GRIP program is a unique collaboration that started in 2011 between the Court, its two judges, the office of the District Attorney, members of the defense bar, a gang resource specialist, a gang court clinician and educational specialist, a parent partner, a faith based initiative, the Major's Anti-Gang Task Force, and the specialized gang supervision unit of the Harris County Juvenile Probation Department. Youth who are enmeshed in gang life often present a host of confounding problems, some related to their gang involvement, others related to drug and/or alcohol issues, mental health issues, as well as generational and familial ties to gangs and gang life. The Gang Court team works to develop specific case plans designed to address the need of these youth in all these domains while providing the youth with alternatives to the gang related activities.

Mission

The goal of the Gang Court is to reduce recidivism of gang involved youth by providing services that help these identified youth reduce gang contact by redirecting them towards healthy alternatives to gang activity.

Court Components

- Intensive Judicial oversight
- Intensive supervision and monitoring
- Regular review hearings
- Multidisciplinary Team
- Wraparound services

Participant Profile

Inclusionary Criteria

- 10 – 17 years post adjudicated youth

- History of gang involvement
- Parental involvement

Exclusionary Criteria

- Significant, untreated mental illness
- Serious drug dependency
- Developmental Disabilities

Statistics and Outcome Measures

The GRIP program does not have a specific duration, but it generally takes 6-12 months to complete.

Total Number of Participants since Inception (2011): 50

Successful Completion: 50% of the youth who participate in Gang Court successfully complete their probation.

Recidivism: 16.7% of youths who successfully complete the program are re-referred for a new offense after one year of program completion. As a point of comparison, the recidivism rate for youth on probation is 34.2%.

Montgomery County Juvenile specialty court

Montgomery County Juvenile Probation Department provided the following information:

Power Recovery Court (Juvenile Drug Court): A therapeutic, team approach that involves the substance abusing or substance dependent juveniles in an intensive outpatient treatment program with extensive family involvement and strict supervision of the probation officer. Juveniles participate in bi-weekly drug education classes, independently run groups, weekly process groups, individual and family therapy. Parents are expected to attend support group biweekly. Parents and juveniles are drug tested randomly. Juveniles are encouraged to become responsible for their actions, learn multiple coping skills, learn about the hazards and consequences of their drug use, and learn relapse prevention skills. Juveniles and parents complete multiple reading and writing assignments. Juveniles and parents experience sanctions and incentives based on compliance and progress.

Target population: Juveniles between the ages 10-17

GOAL: To reduce substance abuse and crime among high-risk youth of Montgomery County. To treat substance abusing youth enabling a reduction in relapse and recidivism.

Identify gaps in services: Funding, transportation, family history, large county so proximity of services available, Socioeconomic status, limited support systems (single parent home / supervision/ gas \$), language barriers, lack of pro-social activities, lack of health insurance resulting in deprivation of MH /physical / dental / vision care for families

El Paso County Juvenile Specialty Courts

El Paso County Juvenile Probation Department provided the following information on its two courts:

Juvenile Drug Court:

The objective of this evaluation is to examine how the El Paso Juvenile Probation Department's Drug Court program operates, the nature of individuals who are in Drug Court, and their success after completing the program. The Juvenile Drug Court was created in 2004 in order to effectively rehabilitate non-violent juvenile offenders with substance abuse problems. The Drug Court team uses a strength-based approach to reduce recidivism and substance abuse and to strengthen relationships between juveniles and their families.

All juveniles who were enrolled in the program between June 2004 and March 2010 are included in this report. The evaluation finds that Drug Court has been successful in reducing recidivism and substance abuse among juveniles enrolled. The main findings were as follows:

Methodology

- Data from 70 juveniles who completed drug court were included in this report. Archival data was collected for these juveniles using probation files and case management files, as well as computer databases such as Caseworker 5.0 and Latch Key.
- Twenty-three of the 70 juveniles were also interviewed in 2011 to assess their current substance abuse and their satisfaction with Drug Court.

Characteristics of Juveniles

- The typical juvenile in Drug Court is a Hispanic male, approximately 16 years old, who committed a drug offense prior to being admitted to the program.
- All juveniles reported prior drug use and a majority reported prior alcohol use. All also reported using marijuana and a majority reported cocaine/crack use.
- Juveniles were carefully monitored for drug use while in Drug Court. Many drug screenings were conducted during each phase of the program and only about 2% of the total number of drug screenings was positive.

Recidivism

- The majority of juveniles continued to be successful after completion of Drug Court, with only one third (34%) receiving a referral and/or arrest one year after Drug Court. Only 7% were serious offenders, committing a felony offense one year after Drug Court.
- Compared to juveniles enrolled in other programs during the same time period, juveniles in Drug Court received fewer referrals and adult arrests one year after completion of probation programs.
- The best predictors of recidivism were being diagnosed as having "Substance Dependence" on the SASSI, having more probation violations prior to Drug Court, and having more referrals prior to Drug Court.

- Juveniles who had more home visits and more hours of individual counseling were less likely to recidivate, indicating that home visits and individual counseling are protective factors.

Results of Interview Data

- Based on interview data, current drug use is very low, with a reported median of only two days of alcohol use in the past 30 days. Alcohol and cannabis were the most used drugs throughout the lifetime, with a reported use of 6.0 and 5.5 years, respectively.
- Juveniles were least satisfied with orientation and explanation of the program, family counseling, and relapse prevention. They were most satisfied with individual counseling, counselors, and referrals to other services.
- Juveniles rated the following components of Drug Court as needing the most improvement: collaboration with schools, family counseling, and job placement. Juveniles also thought the program could be more interesting.

Challenges/Recommendations

- Several challenges were encountered while conducting the evaluation. First, we were unable to gather data on family counseling and school performance; therefore, we were unable to evaluate two of the four goals of Drug Court.
- One area of concern has been treatment and counseling of juveniles with co-occurring disorders (i.e., substance abuse and mental health problems). In 2011, a counselor with a mental health background was hired as a team member and is currently collaborating with all other team members in order to develop a successful treatment plan for juveniles who have co-occurring disorders.
- It may be beneficial to include a major focus on family counseling, in addition to individual and group counseling, in the program. Data indicate juveniles are experiencing many issues within the home, including lack of supervision, domestic violence, and CPS involvement. Family counseling would take strides to improve relationships between juveniles and parents/guardians and make Drug Court more effective in rehabilitation.

El Paso Juvenile Mental Health Court - Project Hope

- Project Hope is designed as a 4-6 month, 4 phased program to address the needs of the priority mental health population (bi-polar, mood disorders, major depression, schizophrenia, intermittent explosive disorder, and other priority mental health disorders) involved in the juvenile justice system. The program provides intensive in-home services to post-adjudicated juveniles between the ages of 10-17 and their families.

Program Phase Descriptions – Phase 1

- During the first phase of the program (30 days), the focus will be on program orientation, needs assessments, treatment planning, and stabilization of the juvenile.

Phase 2

- The second phase of the program (months 2-4) will focus on intensive therapeutic services provided by an LPC or LMSW focusing on symptom management, family dynamics, and all other

pertinent issues related to the juvenile's diagnosis and outlined individualized treatment goals and objectives.

Phase 3

- The third phase of the program (months 5-6) will focus on transition planning. Intensive in-home services will continue while the case management intensifies to provide community linkages for the juvenile and family to ensure that they are well connected with community based providers that will continue to address the juvenile's needs into adulthood.

Phase 4 - Aftercare

- The fourth phase (months 7-9) begins once the juvenile has successfully completed Project Hope. The goal of this phase is for the probation officers to assure that all probation related issues are taken care of and for the case manager to monitor the internalization of the services provided to the juvenile and family while in the program prior to the successful termination of probation.

FY 13 Statistics

- FY 13 Enrollment: 43 juveniles and their families
- FY 13 Completion Rate: 86%
- FY13 to FY 14 carryovers: 13 cases
- Placement rate: .6%
- FY 13 recidivism rate: 9%

Grayson County Juvenile Specialty Courts

Grayson County Department of Juvenile Services provided the following on its two courts:

PARENT ACTION COURT (PAC)

Assistance and Enforcement

Operating under the auspice of the Texas Family Code, section 61.057 "Punishment for Contempt", the Juvenile Board of Grayson County has directed the Department of Juvenile Services to increase the accountability of parent(s)/guardian(s) of juveniles on court ordered probation by driving for higher standards of accountability concerning the juvenile court's Orders Affecting Parents, Guardians and Others. The Orders Affecting Parents, Guardians, and Others require the juvenile's guardian(s) to actively participate in the components of supervision of their juvenile by this department. The implications of this policy change are expected to be far reaching in regards to assisting in the successful completion of juvenile supervision with the department.

As notifications of policy changes have been distributed to the parents/guardians of juveniles under court ordered supervision by this department, notable changes have occurred. Within two weeks, the department has seen an increase in parental concern regarding their child's supervision as well as greater participation in therapeutic components of their child's probation. In addition, there has been a

notable increase in payments of fees and restitution to the department. Finally, the department has seen an overall increase in communication with the department and expressed concern of compliance with orders.

Unfortunately, there are a small percentage of parents/guardians that have become non-compliant with their Orders Affecting Parents, Guardians, and Others to the detriment of their child. As such, the Texas Family Code (61.057(e)) affords the department the capacity to assign a Juvenile Probation Officer to parents that are out of compliance to assist them in complying with court orders. An initial PAC (Parent Action Court) hearing will take place to determine resolutions to the violations of the Orders Affecting Parents, Guardians, and Others. The parent/guardian will then have thirty days to comply with court orders before further enforcement is pursued.

The current change in policy not only means enforcement for parents with children on court ordered probation with the department, but also recognition and encouragement when successfully complying with court orders and actively participating in their child's supervision. The role of the parent-assigned juvenile probation officer will be to form meaningful partnerships with parents to provide better and more effective services to their child. It is the desire of this department to not merely properly supervise juveniles on court-ordered probation, but to contribute to their success at home, school, and in life by creating avenues and opportunities to develop lasting change.

TEAM COURT

The Grayson County Juvenile Board and Grayson County Juvenile Services have announced the creation of a new juvenile court in Grayson County. Citing the success of STAR Recovery Court and Family Drug Court, Judge Brian Gary of the 397th District Court, on behalf of the Grayson County Juvenile Board, unveiled the creation of T. E. A. M. Court. “**T**ransition, **E**ducation, **A**lter and **M**entor, or T. E. A. M., Court will combine successful elements of drug courts, mental health courts and, unique to Texas, problem solving courts,” stated Judge Gary. The new court will target juveniles that are high risk felony offenders, have multiple violations of court orders, have a family history of criminal activity, as well as those with a history of substance abuse.

As part of its continuing overhaul of the Texas Youth Commission, the 81st Texas Legislature challenged each county in Texas to reduce commitments to the Texas Youth Commission. Grayson County averages nine commitments a year and was targeted to commit only five for 2010. “Our first priority is safety of our community; however, the Grayson County Juvenile Board believes we can meet the legislative directive through our T. E. A. M. Court,” reports Rim Nall, Juvenile Board Chairman. Funding for the Juvenile Board's new effort comes from the Texas Juvenile Probation Commission.

T. E. A. M. Court will boost the enforcement, treatment and educational strategies each child and family receives as they are coordinated by the 397th District Court. The T. E. A. M. Court's Review Committee will include law enforcement, educators, the district attorney's office, an attorney representing the juvenile, the Department of Juvenile Services, chemical dependency counselors, licensed professional counselors and representative members from the community.

Even though only being on the bench since September 2009, Judge Gary has witnessed firsthand the need for early family intervention. “We continue to see many families with children in the juvenile

justice system that have younger children growing up and following the footsteps of older siblings with delinquency issues. T. E. A. M. Court has been developed to stop repeat patterns of delinquency by involving the entire family either cooperatively or, if necessary, by court order.”

Tarrant County Juvenile Specialty Court

The Tarrant County Juvenile Probation Department provided the following:

Tarrant County Juvenile Drug Court

The mission of the Tarrant County Juvenile Drug Court is to help at-risk youth and their families become successful in leading drug-free, law-abiding, productive lives. The program accepts as a premise that juveniles involved in drug use often have other issues in their lives leading to the use of drugs. The Drug Court Program seeks to address both the issues that lead to drug use and the drug use itself.

The Drug Court team consists of two intake officers, four field officers, supervisor, those conducting the assessment, treatment/counseling providers, prosecutors, defense attorneys, judges, and the families involved.

The target population of the program is juveniles referred for first time nonviolent felony or misdemeanor drug possession offenses. Youth typically participate in the Drug Court Program for a six month period.

The requirements to successfully complete the program include:

- Maintaining a substantial period of sobriety;
- Scheduled and unscheduled drug testing;
- To attend and fully participate in substance abuse treatment, counseling, and/or education as directed;
- Not to place oneself in situations where there is exposure to illegal use of substances;
- Not to associate with persons on parole or probation or to associate or participate in any gang-related activity. Not to place oneself in the company of anyone who might negatively influence one’s behavior, and to remove oneself from situations where others are not engaging in law-abiding behavior.
- To avoid law violations.
- To attend school each day it is in session and abide by the student code of conduct;
- To meet with the probation officer as frequently as directed by the officer. The probation officer holds scheduled and unscheduled visits at the home, school, place of employment, or at the juvenile department.
- To abide by curfew as set by the court.
- If 14 years of age or older to complete a minimum of 30 hours of community service.

Successful Completions:

- The judge orders the denial of the delinquency petition and the record ordered sealed for the successful graduate during the final Judicial Review.
- The automatic sealing of records has been a major incentive for youth to participate in and complete the program.

Unsuccessful Completions:

- Youth is automatically adjudicated delinquent and presented before a Judge for a Disposition Hearing.

- Youth are typically ordered to a term of traditional probation with driving privileges suspended along with other specific orders of the court which may include additional substance abuse treatment.

Tarrant County Juvenile Drug Court (August 2014).

Variable	Attribute	Frequency (%)	
		2012	2013
Program Discharge Status	Completed	94 (85.5%)	117 (84.8%)
	Failure to Comply	16 (14.5%)	21 (15.2%)
	Total	110	138
Successful Participants Education Status	Enrolled in school/HS Diploma	94 (100.0%)	117 (100.0%)
Successful Participants Employment Status	Employed	15 (16.0%)	22 (18.8%)

The Drug Court Program enjoys a relatively high completion rate, with approximately 85% of youth discharged successfully. In both reported years, 100% of those completing the program were either enrolled in school or had received a high school diploma upon program discharge.

Recidivism of the youth who participate in the Drug Court Program cannot be tracked due to the sealing of records for youth who successfully complete the program.

To date, the cost efficiency of this program has not been analyzed. This information is unavailable for this overview.

Travis County Specialty Juvenile Court

Travis County Juvenile Probation Department provided the following

Specialty Court Name - Drug Court

Implementation Date: May 2001

Judicial Circuit 98th District Court

Stakeholders: Judge; Juvenile Public Defender; District Attorney's Office; Southwest Key; Providence; Youth Advocacy; Phoenix House; Austin Travis County Integral Care; Austin Independent School District; Clean Investments; Travis County Juvenile Probation Department.

Target Population: Juveniles with Substance Abuse as an Indication of Need, Post-Adjudicated Juveniles 13 -17 years of age. Estimated Length of Stay 365 days Misdemeanor or Felony Offenders (violent offenders and sex offenders not eligible)

All juveniles receive a Substance Use Survey (SUS) screening at intake. Juveniles may also receive a Comprehensive Adolescent Severity Inventory (CASI). Juveniles will then be assigned to an appropriate level of treatment based on individual need by a clinical review of the juveniles' assessments. Juveniles

may be assigned to Intensive Outpatient Treatment (IOP), Day Enrichment Program (DEP) or Residential Treatment. The Drug Court Screening team reviews the substance abuse and mental health assessments, substance abuse history, referral history in order to determine if a juvenile is appropriate for the program. All clients are required to adhere to the program policies and procedures that are developed by the drug court team. The Drug Court program consists of three levels. In level I of the program, the juvenile is required to submit 3 drug screenings each week, attend weekly drug court reviews, attend treatment and school as instructed, participate in family counseling and case management services as instructed, and remain clean for 30 consecutive days in order to advance level II of the program. Upon completion of level I, clients move to level II of the program. In level II of the program, the juvenile is required to submit 2 drug screenings each week, attend drug court reviews bi-weekly, attend treatment and school as instructed, participate in family counseling and case management services as instructed, and remain clean for 60 consecutive days in order to advance level III of the program. Upon completion of level II, clients move to level III of the program. In level III of the program, the juvenile is required to submit drug screenings each week, attend drug court reviews once a month, attend treatment and school as instructed, participate in family counseling and case management services as instructed, and remain clean for 90 consecutive days in order to advance level III of the program. Successful completion of the program is based on 120 consecutive days of sobriety and completion of all of the conditions of probation.

Drug Court serves post-adjudicated youth with co-occurring disorders and substance abuse issues with multiple offenses and numerous violations. The strength-based program utilizes weekly court reviews, intensive supervision, and immediate linkage to substance abuse treatment services, education, and compliance with conditions of probation to promote accountability.

Williamson County Specialized Juvenile Court

Judge Bill Gravell Jr.'s office provided the following:

We are now offering a new juvenile substance abuse court serving young offenders ages 13-21 of Williamson County called "The Wright Track Court". Our mission is to assist young people who have prior substance abuse offenses to get the support they need to get clean and stay clean. This will be accomplished through the efforts of the participants and collaboration of the Judge, non-judicial personnel, law enforcement agencies, treatment providers, educators and community service agencies. As a Court, we want the participants to be in compliance with the law, but also to know that each one of them has hope for their future and that future can't include drugs or alcohol.

The "Wright Track Court" Program is a voluntary program that consists of 4 phases and is six months in length. The juvenile's progress determines the success of each phase and whether or not they are promoted to the next phase and then eventual graduation from the program. The program offers supervision instead of jail, often resulting in a dismissal of charges upon graduation. It also offers a second chance to move forward in life with a bright outlook and new coping skills. Juveniles will also

learn how to make healthy lifestyle changes such as eating right, reducing stress, finishing school, rebuilding relationships and becoming a productive member of the community.

The only cost in dollars is around \$5 per drug test per week during the first phase. That changes to every other week the second phase and then every third week during the third phase. Phase one and two are two months long with phases 3 and 4 being one month each. There is individual, group and family counseling that can also have a fee, but should insurance not cover it, our provider does not charge. We are purposefully trying to make this as accommodating as possible so as to not be a hardship on families.

We don't have successful completion rates/unsuccessful completion rates yet as we are just seeing our first cases next week. Our hope is to be intentional with each young person that comes before our court and see that they get the Recovery Treatment Plan specific to their set of circumstances. Will we get it right all of the time? No, but we will strive to see that every person who comes through our program leaves feeling confident in themselves and their future and will live with purpose.

Dallas County Specialized Juvenile Court

The Dallas County Juvenile Probation Department furnished the following:

The Dallas County Juvenile Department Drug Court Diversionary Program began in 2002 through a federal grant. The Drug Court Diversionary Program is a juvenile court that focuses on juvenile delinquency matters and status offenses that involve substance abusing juveniles. The Drug Court Diversionary program aims to eliminate a youth's substance abusing behavior and avoid future involvement with the justice system. Youth and their families receive the tools and support needed to develop and maintain a sober lifestyle. When a youth is referred to the Drug Court Diversionary Program, the level of a youth's involvement with alcohol and/or other drugs is assessed and necessary referrals are given to the youth's parent/guardian. The case management staff of the Drug Court Diversionary Program provides intensive supervision, advocacy and support to the youth and his/her family.

The Drug Court Diversionary Program's mission is to provide intervention services to youth referred to the Juvenile Department for a misdemeanor drug offense by introducing skills that will aid them in leading productive, substance-free lives, by encouraging academic success, by supporting the youth in resisting further involvement in delinquent behavior and thereby assisting the youth in avoiding formal adjudication and disposition. The target population of the Drug Court Diversionary Program is made up of both male and female youth between the ages of 12 and 17. These youth are first offenders who have been arrested for possession of a misdemeanor alcohol or drug offense.

All youth participating in the Drug Court Diversionary Program are expected to remain in the program for at least three months and no more than six months. The Program is comprised of three separate phases which require specific tasks to be completed in order for the youth to move to the next phase. In order to successfully graduate from the program, each youth is required to have negative urinalysis

results, complete a total of fifteen hours of community service restitution, appear for scheduled court dates as ordered by the Judge, participate in drug intervention services as needed, have no new law violations and complete all assignments ordered by the Court. At the time of graduation, the youth's record will be ordered sealed. Once sealed, the youth's offense will no longer be on record.

Conclusion and Recommendations

Evaluation of the efficacy, an analysis of recidivism rates, along with cost effectiveness in the identified juvenile specialty court is not available or practical at this time, due to the short length of time that they have been in existence. Identifying gaps in service is also not practical at this time, as these courts are not mandated by law, and are the product of interested parties and stakeholders within specific geographical areas who have identified populations they feel can benefit from them.

Due to the fact that juvenile specialty courts are a product of local government and interested parties within those jurisdictions, if the Legislature determines that greater data and tracking of these courts is warranted it should assign that responsibility to a specific state agency. The Governor's Criminal Justice Division, the Office of Court Administration or the Texas Juvenile Justice Department all have a role in these courts but one should be assigned the responsibility to compile an inventory of them, collect data from them and oversee the evaluation of them.

Interim Charge Five

Study and make recommendations regarding sentencing of youth under 18 accused of committing serious crimes.

Introduction

When a youth under the age of 17 commits a serious crime in Texas there are 3 main options. They may be given an indeterminate sentence, a determinate sentence, or they may be certified as an adult. A youth who engages in delinquent conduct or commits a CINS (child in need of supervision) violation, which is defined by the Texas Family Code and covers certain non-criminal or status offenses and less serious law violations, including (1) three or more fineable misdemeanor offenses or ordinance violations, (2) truancy, (3) runaway, (4) the first or second DWI, and (5) violation of any city ordinance or state law prohibiting inhalant abuse, may be referred to juvenile court.

If the county decides to charge the juvenile with delinquent conduct, the juvenile is afforded the same legal rights as an adult charged with a crime. In certain circumstances, the county may request to have a youth certified as an adult. If such is granted, the person is considered an adult for criminal purposes and will no longer be in the juvenile justice system. If the juvenile is "adjudicated" for delinquent conduct, there are several possible disposition options, or outcomes, as follows:

1. The juvenile may be placed on probation; or
2. The juvenile may be sent to the Texas Juvenile Justice Department with an indeterminate sentence (felony offenses only); or
3. The juvenile may be sent to the Texas Juvenile Justice Department with a determinate sentence (only certain offenses which are listed on the next page).

A juvenile who is placed **on probation**, and not sent to TJJD, must be discharged from the probation by the time he or she turns 18.

A juvenile sent to TJJD with an **indeterminate sentence** must be discharged by the time he or she turns 19.

A juvenile sent to TJJD with a **determinate sentence** may be transferred to adult prison depending on his/her behavior and progress in TJJD programs.

The Texas Juvenile Justice Department has provided a description of the options and the system for Texas youth. "Determinate sentencing" for juvenile offenders was approved by the Texas legislature in 1987 as an alternative approach to lowering the age at which a juvenile may be certified to stand trial as an adult.

The original law provided that juveniles adjudicated for certain serious, violent offenses may receive a determinate sentence of as long as 30 years. The legislature cautiously selected only those Penal Code offenses against persons that would constitute capital or first degree felony offenses.

As the law originally was written, the first portion of the sentence was to be served in a Texas Juvenile Justice Department (TJJD) facility. Prior to the youth's 18th birthday, a hearing would be held before the committing court to determine what would happen next for the youth.

There were three options. The first option was to be released on parole and continue under TJJD's custody until age 21. The second option was for the youth to be discharged from TJJD's jurisdiction. The third option was transfer of the individual to the Institutional Division of the Texas Department of Criminal Justice (TDCJ) for the remaining balance of the sentence.

In 1995, the legislature added 11 offenses, or categories of offenses, eligible for a determinate sentence. Other amendments also specified that sentences could now range from a maximum of 10 years for third-degree felonies to a maximum of 40 years for capital and first-degree felonies. Court hearings were eliminated for sentenced offenders unless TJJD asked for one of the following:

- Transfer of a youth to prison (between age 16 and 21); or
- Release on parole before completion of the minimum length of confinement (which is ten years for a capital felony, three years for a first-degree felony, two years for a second-degree felony, and one year for a third-degree felony).

In 2001, two other offenses were added to those eligible for a determinate sentence. The list of offenses currently includes:

- Murder
- Attempted murder
- Capital murder
- Attempted capital murder
- Manslaughter
- Intoxication manslaughter
- Aggravated kidnapping
- Attempted aggravated kidnapping
- Aggravated sexual assault
- Sexual assault

- Attempted sexual assault
- Aggravated assault
- Aggravated robbery
- Attempted aggravated robbery
- Felony injury to a child, elderly, or disabled person
- Felony deadly conduct
- Aggravated or first-degree controlled substance felony
- Criminal solicitation of a capital or first-degree felony
- Second-degree felony indecency with a child
- Criminal solicitation of a minor
- First degree felony arson
- Habitual felony conduct (three consecutive felony adjudications)

These offenses are provided in Chapter 53 Section 045 of the Family Code.

Data

In 2007, the law was changed again and sentenced offenders must be discharged from TJJJ supervision by their 19th birthday. If they have not completed their sentence prior to their 19th birthday or have not been transferred to TDCJ-ID by their 19th birthday, they are transferred to adult parole supervision to complete the remainder of their sentence.

The increase in the number of offenses for which youth can receive a determinate sentence resulted in an increase in the number of sentenced offenders that are committed to the Texas Juvenile Justice Department. Approximately seven percent of all youth committed to TJJJ have received a determinate sentence.

Their sentences are usually longer than those of youth with indeterminate sentences. These sentenced offenders occupy approximately 20% of the agency's beds in high restriction facilities.

The Texas Department of Public Safety provided this committee with numbers of arrests in 2013 for 16 and 17 year olds. There were 28,772 sixteen year olds arrested for 68,882 crimes. The same year there were 48,361 seventeen year olds arrested for 122,253 crimes. For both sixteen and seventeen year olds the majority of the arrests are for assault, some form of evading arrest, drugs, some form of criminal trespassing, theft or burglary.

TJJD provided the committee with the following data. The age of the youth included in the charts below include 10-17 year olds.

CY of Disposition	2009	CY of Disposition	2010
Row Labels	Count of Disposition Category	Row Labels	Count of Disposition Category
Cert Adult	197	Cert Adult	200
14	1	14	1
15	21	15	21
16	87	16	100
17	88	17	78
TJJD Det	144	TJJD Det	92
13	1	14	6
14	9	15	12
15	31	16	43
16	68	17	31
17	35	TJJD Indet	1053
TJJD Indet	1285	11	1
11	3	12	5
12	5	13	20
13	55	14	90
14	147	15	238
15	283	16	454
16	558	17	245
17	234	Grand Total	1345
Grand Total	1626		

CY of Disposition	2011	CY of Disposition	2012
Row Labels	Count of Disposition Category	Row Labels	Count of Disposition Category
Cert Adult	135	Cert Adult	135
14	1	15	13
15	10	16	56
16	58	17	66
17	66	TJJD Det	97
TJJD Det	119	11	1
13	2	13	2
14	13	14	9
15	16	15	19
16	53	16	42
17	35	17	24

TJJD Indet	839	TJJD Indet	737
11	5	12	3
12	2	13	21
13	22	14	73
14	71	15	173
15	175	16	299
16	370	17	168
17	194	Grand Total	969
Grand Total	1093		

CY of Disposition	2013	CY of Disposition	2014
Row Labels	Count of Disposition Category	Row Labels	Count of Disposition Category
Cert Adult	157	Cert Adult	77
15	16	15	2
16	59	16	30
17	82	17	45
TJJD Det	89	TJJD Det	44
10	1	12	1
11	1	13	1
12	1	14	2
13	1	15	10
14	8	16	13
15	16	17	17
16	35	TJJD Indet	545
17	26	12	3
TJJD Indet	786	13	19
11	2	14	54
12	4	15	119
13	28	16	235
14	72	17	115
15	167	Grand Total	666
16	344		
17	169		
Grand Total	1032		

The charts above show a decrease in dispositions from 2009 to 2012. In 2013 there was a slight increase in the number of youth certified and the number of youth receiving indeterminate sentences.

The next two charts were provided by the Texas Department of Criminal Justice. The first shows the

number of youth under 18 that entered the adult system in 2013 and for what offenses.

Offense of Record	Prison	State Jail	SAFP	Total
Homicide	64	1	1	66
Kidnapping	2	1	2	5
Sexual Assault	17	0	0	17
Sexual Assault Against a Child	75	0	0	75
Indecency with a Child	45	1	0	46
Violent Sexual Offenses	2	0	0	2
Robbery	376	0	46	422
Assault/Terroristic Threat/Trafficking	284	6	33	323
Arson	13	1	1	15
Burglary	587	134	98	819
Larceny	16	103	14	133
Stolen Vehicle	0	55	5	60
Forgery	1	16	2	19
Fraud	5	26	4	35
Stolen/Damaged Property	2	20	6	28
Drug-Delivery	56	20	7	83
Drug-Possession	132	93	48	273
Drug-Other	3	0	1	4
Failure to Register as a Sex Offender	0	3	0	3
Family Offense	3	5	0	8
Commercialized/Sex Offense	2	0	0	2
Obstruction/Public Order	53	9	16	78
Escape	28	28	7	63
Weapons Offenses	31	0	2	33
DWI	0	1	1	2
Other	14	1	5	20
Total	1,811	524	299	2,634

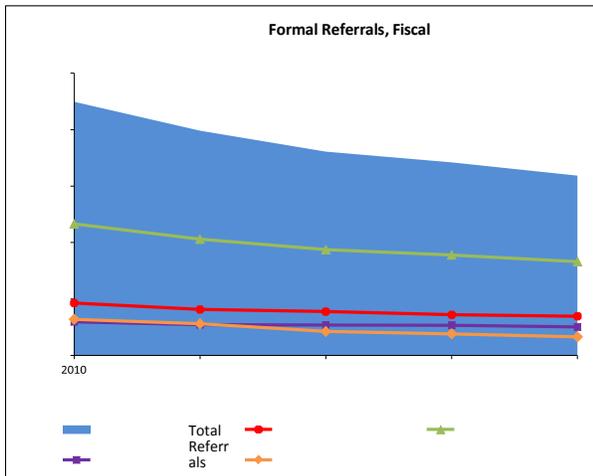
The state jail offender convicted of homicide was convicted of criminally negligent homicide. The offender convicted of indecency with a child was convicted of exposure.

The second chart provided by TDCJ is a snap shot of the number of youth under 18 in custody as of July 31, 2014.

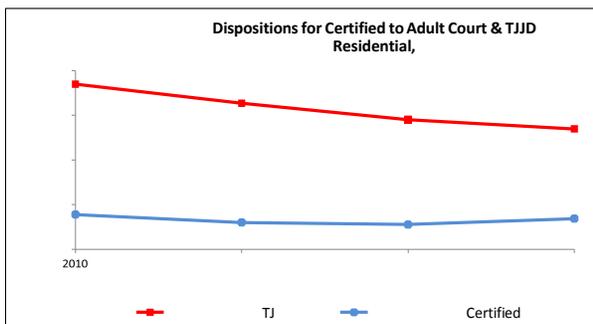
Offense of Record	Prison	State Jail	Total
Homicide	7	0	7
Kidnapping	1	0	1
Sexual Assault	1	0	1
Sexual Assault Against a Child	1	0	1
Indecency with a Child	2	0	2

Robbery	20	0	20
Assault/Terroristic Threat/Trafficking	13	1	14
Burglary	11	2	13
Larceny	0	4	4
Stolen Vehicle	0	1	1
Forgery	0	1	1
Drug-Possession	5	1	6
Obstruction/Public Order	1	1	2
Escape	1	2	3
Weapons Offenses	1	0	1
Total	64	13	77

The charts below were created by the LBB. The first illustrates the total number of juvenile referrals going back to 2010. The felony line has been consistent since 2010. While the total referrals has gone down. Since the 2007 shift to remove all misdemeanors from the state residential program the number of felony commitments has remained stable.



The second chart illustrates a steady decline in residential placements in TJJ from 2010 to 2014. The certification numbers have stayed mostly consistent.



Conclusion and Recommendations

Texas has developed a comprehensive model for addressing juvenile crime. The data shows that the majority of juvenile crime is handled by the counties through probation and deferred prosecution. The next largest segment of youth are receiving indeterminate sentencing for mostly property crimes, minor assaults, and a few aggravated charges. Almost all of the determinate sentences are for very serious violent offenses, often against another person. Most youths certified as adults have also committed very serious and violent crimes. In order to fully understand the differences between who is given what type of sentence an in-depth evaluation of each specific occurrence would need to be done.

Interim Charge Six

Study the value ladder of charges for theft and related offenses within the Texas Penal Code and recommend any necessary updates and proposed legislative reforms.

Introduction

The value ladder for charges for theft were last reviewed in 1991 during the term of the Texas Punishment Standards Commission that was established to study the sentencing practices of criminal courts and ongoing prison and jail overcrowding. Their work resulted in Senate Bill 1067 containing a rewrite of the Texas Penal Code during the 73rd Legislature in 1993, which contained the value ladder for theft charges in use today. Proponents for increasing these values have suggested they should be adjusted for inflation because the current values are causing cases to be tried in a higher court than was originally intended by the values set in 1993. The value ladder created by Senate Bill 1067 (73R) is as follows:

1. Value Ladder, Theft

PENALTY RANGE	PENAL CODE	RANGE OF VALUE
C Misdemeanor	31.03(e)(1)	A. less than \$50 B. less than \$20 if by check (see 31.06)
B Misdemeanor	31.03(e)(2)	A. i. \$50 or more, but less than \$500 ii. \$20 or more, but less than \$500 if by check (see 31.06) B. i. less than \$50 if prior theft conviction ii. less than \$20 if by check (see 31.06) C. stolen driver's license, commercial driver's license, or personal identification issued by a state
A Misdemeanor	31.03(e)(3)	\$500 or more but less than \$1,500
State Jail Felony	31.03(e)(4)	A. \$1,500 or more but less than \$20,000; (less than 10 sheep, swine, or goats or any part thereof under the value of \$20,000 B. stolen from person of another, a human corpse or a grave, including property that is a military grave marker C. a firearm (see 46.01) D. less than \$1,500 and two or more prior theft convictions E. official ballot or carrier envelope for election F. less than \$20,000 and property stolen is insulated or non-insulated tubing, rods, water gate stems, wire or cable that is at least 50%: i. aluminum

		<ul style="list-style-type: none"> ii. bronze or iii. copper
Third Degree Felony	31.03(e)(5)	\$20,000 or more but less than \$100,000; cattle, horses, exotic livestock or exotic fowl stolen during a single transaction and aggregate value less than \$100,000; 10 or more, aggregate value less than \$100,000, sheep, swine or goats stolen during a single transaction
Second Degree Felony	31.03(e)(6)	\$100,000 or more but less than \$200,000
First Degree Felony	31.03(e)(7)	\$200,000 or more

2. Value Ladder, Criminal Mischief

PENALTY RANGE	PENAL CODE	RANGE OF VALUE
C Misdemeanor	28.03(b)(1)	(1)(A) less than \$50; or (1)(B) causes substantial inconvenience to others except as provided in subdivision (3)(A) or (3)(B).
B Misdemeanor	28.03(b)(2)	\$50 or more, but less than \$500
A Misdemeanor	28.03(b)(3)	(A)(i) \$500 or more but less than \$1,500 (A)(ii) causing impairment or interruption to utilities or communications (B) any impairment, interruption or diversion of public water supply, regardless of amount
State Jail Felony	28.03(b)(4)	(A) \$1,500 or more but less than \$20,000 (B) less than \$1,500 if property is habitation and damage or destruction is by firearm or explosives (C) less than \$1,500 if property was a fence used to contain cattle, exotic poultry or game animals. Tex. Parks & Wildlife Code 63.001 or (D) less than \$20,000 causing impairment or interruption to utilities or communications
Third Degree Felony	28.03(b)(5)	\$20,000 or more but less than \$100,000
Second Degree Felony	28.03(b)(6)	\$100,000 or more but less than \$200,000
First Degree Felony	28.03(b)(7)	\$200,000 or more

Since 1993, inflation has increased the dollar's value by 64.9%. The chart below shows the amounts of the value ladder adjusted for inflation from 1993 to 2014:

<u>1993 High end value</u>	<u>2014 High end value</u>	<u>Offense classification</u>
\$ 50	\$ 82.47	Class C Misd.
\$ 500	\$ 824.72	Class B Misd.
\$ 1,500	\$ 2,474.15	Class A Misd.
\$ 20,000	\$ 32,988.65	State Jail Felony
\$ 100,000	\$164,943.25	Third degree Felony
\$ 200,000	\$329,886.51	Second degree Felony

In the current ladder any amount of theft over \$200,000.00 is a First degree Felony.

The 1993 Penal Code rewrite created the consolidated offense of Theft in Chapter 31, titled THEFT, superseding the separate offenses previously known as theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property and receiving or concealing stolen property.

During the last two decades, the legislature has added specific types of property theft, as new technology has provided new methods for criminals to obtain services or property by stealing the item. The value ladder used in the construction of these new statutes is the current value ladder, not adjusted for inflation. Among the new offenses are: Criminal mischief, reckless damage or destruction, interference with railroad property, graffiti, organized retail theft, fraud, trademark counterfeiting, false statement to obtain property or the provision of other service, hindering secured creditors, fraudulent transfer of a motor vehicle, credit card transaction record laundering, illegal recruitment of an athlete, misapplication of fiduciary property or property of financial institute, securing execution of document by deception, computer crimes-breach of computer security, unauthorized use of telecommunication services, theft of telecommunication service, money laundering, Insurance fraud, Medicaid fraud, and abuse of official capacity.

History of Misdemeanor and Felony Theft Cases in Texas

The Texas Office of Court Administration furnished the following charts and graphs which provide a history of misdemeanor and felony theft since 1987.

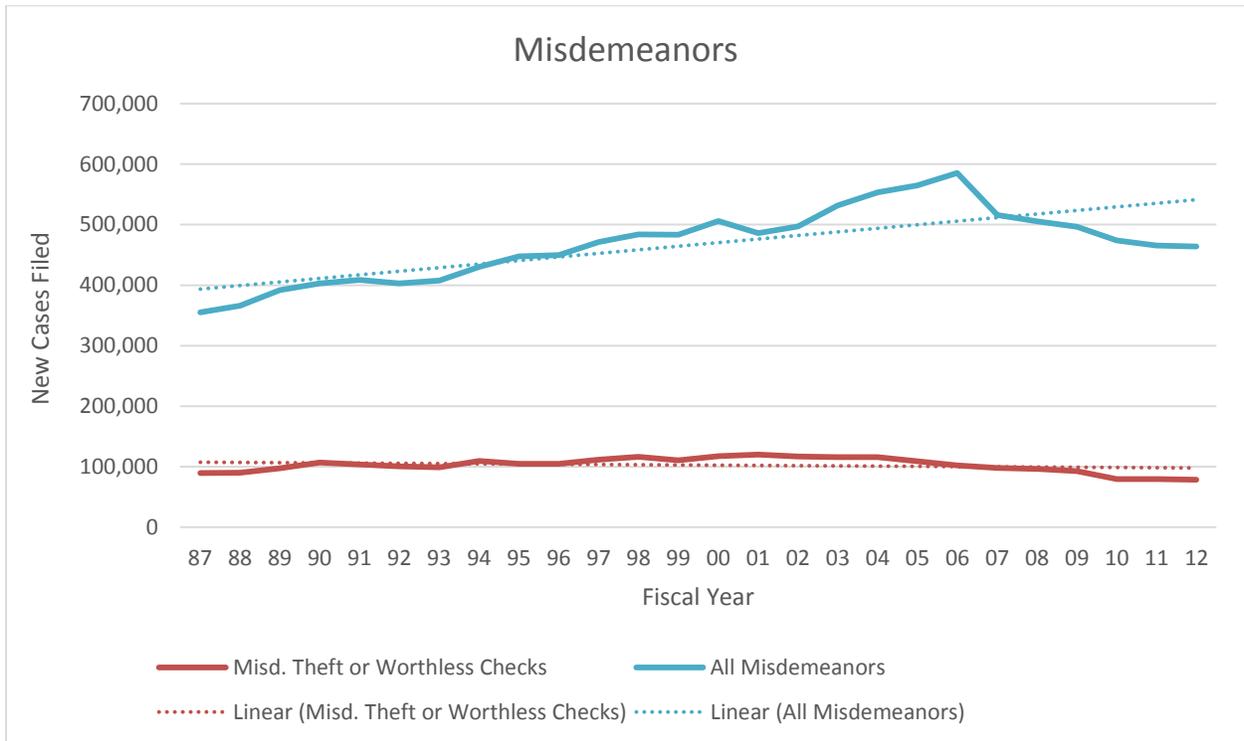
Fiscal Year	Misd. Theft or Worthless Checks	Change from Previous Year	All Misdemeanors	Change from Previous Year
87	93,279		372,679	
88	89,733	-3.8%		-4.7%

			355,295	
89	90,306	0.6%	366,423	3.1%
90	97,578	8.1%	391,663	6.9%
91	107,017	9.7%	403,139	2.9%
92	103,585	-3.2%	408,784	1.4%
93	100,401	-3.1%	403,133	-1.4%
94	99,060	-1.3%	407,500	1.1%
95	109,381	10.4%	430,339	5.6%
96	104,938	-4.1%	447,504	4.0%
97	104,931	0.0%	449,680	0.5%
98	111,583	6.3%	471,470	4.8%
99	116,583	4.5%	483,960	2.6%
00	110,824	-4.9%	483,249	-0.1%
01	117,360	5.9%	506,026	4.7%
02	120,037	2.3%	486,032	-4.0%
03	117,154	-2.4%	497,107	2.3%
04	115,711	-1.2%	531,815	7.0%
05	115,659	0.0%	553,600	4.1%
06	109,261	-5.5%	564,780	2.0%
07	102,041	-6.6%	585,499	3.7%
08	98,253	-3.7%	516,001	-11.9%
09	96,457	-1.8%	505,289	-2.1%
10	92,630	-4.0%		-1.7%

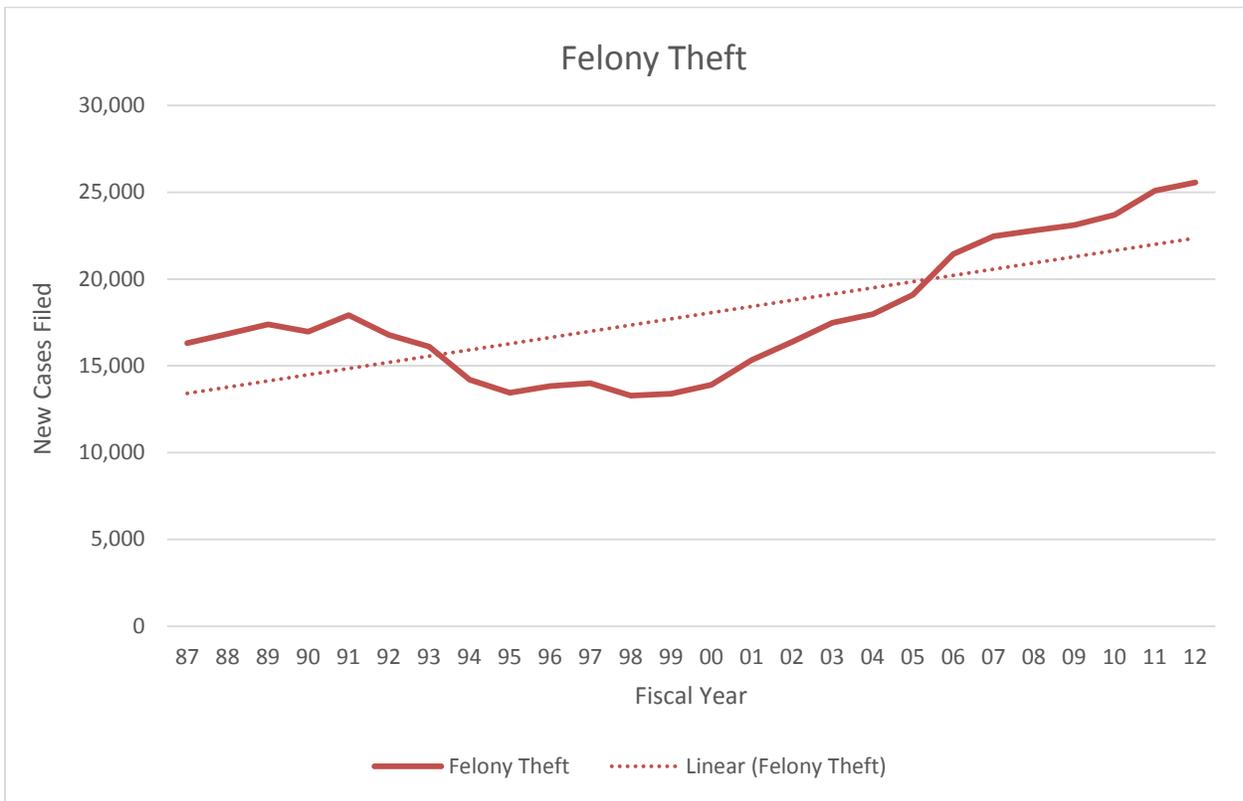
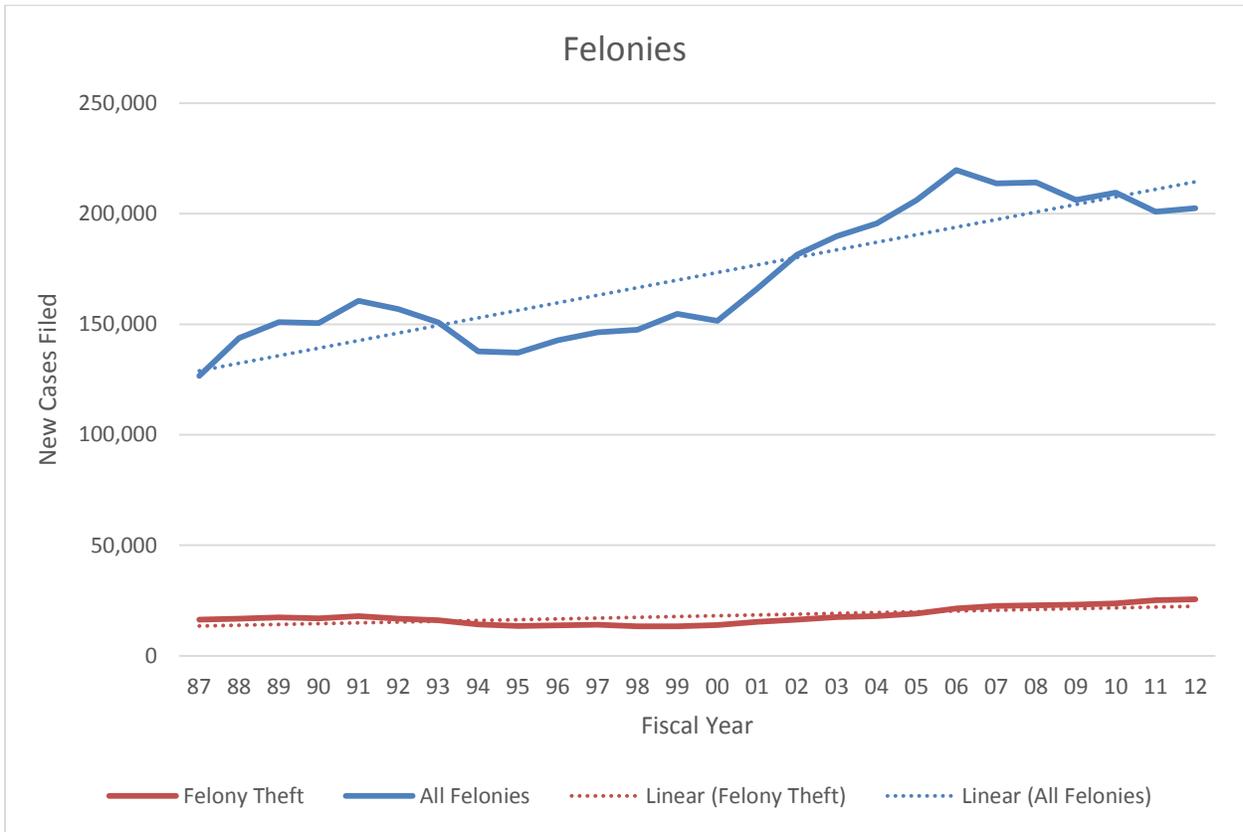
			496,784	
11	79,353	-14.3%	474,207	-4.5%
12	79,862	0.6%	465,685	-1.8%
13	78,288	-2.0%	463,705	-0.4%

Fiscal Year	Felony Theft	Change from Previous Year	All Felonies	Change from Previous Year
87	15,582		221,270	
88	16,301	4.6%	126,694	-42.7%
89	16,831	3.3%	143,736	13.5%
90	17,392	3.3%	150,919	5.0%
91	16,972	-2.4%	150,508	-0.3%
92	17,924	5.6%	160,594	6.7%
93	16,791	-6.3%	156,871	-2.3%
94	16,101	-4.1%	150,819	-3.9%
95	14,206	-11.8%	137,709	-8.7%
96	13,449	-5.3%	137,073	-0.5%
97	13,834	2.9%	142,756	4.1%
98	13,998	1.2%	146,322	2.5%
99	13,282	-5.1%	147,450	0.8%
00	13,401	0.9%	154,636	4.9%
01	13,912	3.8%	151,488	-2.0%
02	15,333	10.2%	166,113	9.7%
03	16,374	6.8%	181,417	9.2%
04	17,487	6.8%		4.6%

			189,768	
05	17,983	2.8%	195,524	3.0%
06	19,097	6.2%	206,164	5.4%
07	21,445	12.3%	219,759	6.6%
08	22,473	4.8%	213,746	-2.7%
09	22,790	1.4%	214,231	0.2%
10	23,105	1.4%	206,192	-3.8%
11	23,695	2.6%	209,623	1.7%
12	25,080	5.8%	200,975	-4.1%
13	25,561	1.9%	202,499	0.8%







Further analysis reveals that while overall misdemeanor filings have increased by 37.9%, misdemeanor theft filings have decreased by 16.1%. During the same time period, overall felony filings have increased by 60.2% and felony theft filings have also increased by 64%. Since the theft value ladder has not been adjusted for inflation since 1993, one could speculate that a natural shift of misdemeanor theft cases to the level of felony theft has occurred over the years due to inflation. It could be argued that the similar growth rates of overall felony filings and felony theft filings reflect a natural growth as both have increased by similar numbers. This explanation, however, fails to explain the significant decrease in misdemeanor theft filings while overall misdemeanor filings have increased.

House Bill 2849 (83R)

During the 83rd Legislative Session, Representative White authored House Bill 2849, which was passed out of the House Criminal Jurisprudence Committee and left pending in the House Calendar Committee. The House bill analysis states the purpose and intent of the bill:

Currently, penalties for offenses committed against property in the Penal Code are based on the amount of pecuniary loss resulting from the commission of the offense. Interested parties note that the dollar values used to set different penalty grades were established two decades ago and have not been adjusted to reflect inflation. Critics assert that these outdated monetary thresholds in laws assessing penalties for property offenses result in undue costs for Texas taxpayers. C.S.H.B. 2849 seeks to bring property offense penalties in line with current dollar values to more accurately reflect the value of property that has been damaged, lost, or otherwise negatively impacted due to commission of such an offense.

The theft value ladder was increase and utilized throughout all statutes which utilize the value ladder to set the level of misdemeanor and felony charge as:

- Class C misdemeanor at less than \$100.00
- Class B misdemeanor at more than \$100.00 but less than \$1500.00
- Class A misdemeanor at \$1500.00 or more but less than \$3,000.00
- State Jail Felony at \$3,000.00 or more but less than \$30,000.00
- Third degree Felony at \$30,000.00 or more but less than \$150,000.00
- Second degree Felony at \$150,000.00 or more but less than \$300,000.00
- First degree Felony at \$300,000.00 or more

Related Offense found outside the Penal Code

A review of the more than 1500 criminal, general and civil offenses located in other Texas Statutes outside of the Texas Penal Code revealed a number of penalties that are related to property loss which are not governed by the current value ladder. Examples of these are:

Agriculture Code - Fishing on aquaculture facility - Class A Misd. if value is under \$750.00 and third degree felony if value is over \$750.00.

Human Resources Code - Food stamp misuse - Class A Misd. if value is less than \$200.00 and third degree felony if value is over \$200.00.

Labor Code - Fraudulently obtaining or denying worker's compensation benefits - Class A Misd. if benefit is less than \$1,500.00 and State Jail Felony if more than \$1,500.00. Same applied to the offense of fraudulently obtaining worker's compensation coverage.

Occupations Code - Violating fireworks sales requirement or discharge of fireworks in prohibited area - Class C Misd. with property damage of less than \$200.00 and Class B Misd. if over \$200.00.

Parks and Wildlife Code - Committing fraud in a fishing tournament - Class A Misd. if prize's is worth less than \$10,000.00 and a third degree felony if worth more than \$10,000.00.

Property Code - Misapplying trust funds - Class A Misd. if trust fund is less than \$500.00 and third degree felony is worth more than \$500.00.

Transportation Code - Failure to stop at the scene of accident involving damage to vehicle - Class C Misd. if damage is less than \$200.00 and Class B Misd. if damage is more than \$200.00. Hitting unattended vehicle and leaving the scene - same as above. Hitting structure, fixture or highway landscaping and leaving the scene - same as above.

Vernon's Texas Civil Statutes, The Securities Act - Fraudulent sales of securities as an investment advisor - third degree felony if less than \$10,000.00, second degree felony if \$10,000.00 to \$100,000.00 and a first degree if \$100,000.00 or more.

Discussion

It is notable that the standard value ladder established in the Texas Penal Code is not used to govern property damage or loss throughout the various Texas statutes. It has been suggested by interested parties that the legislature should establish an agreed upon value ladder that is then utilized uniformly throughout the Texas statutes. Establishing values for specific offenses may lead to inconsistent prosecutions and may lead to inappropriate sentences such as in the offense for misuse of food stamps jumping to a third degree felony when the value exceeds \$200.00, compared to other losses under the standard value ladder which would be prosecuted as a Class B misdemeanor.

Interested law enforcement sources have expressed both support for and against adjusting the value ladder for inflation. Those for an increase in the levels say that the impact for Class C misdemeanors would allow them to issue a citation and provide a faster return to their patrol duties. For those in opposition an increase in the Class C misdemeanor amount would limit their ability to arrest those who fall within the increased level and would take away what little jail time they currently serve. They also add that for the Class B misdemeanors, Class A misdemeanors and state jail offenses, these cases are mostly plea bargained downward (not violent offenses), again limiting jail or state jail time they serve.

Judicial sources have stated that the greatest impact on the court system will be the movement of cases and workload downward from the district courts to the county courts at law, justice of the peace courts and municipal courts. However, currently we are in a downward trend in filings of criminal offenses, but data is not yet available to estimate accurately the impact of an adjustment, but it could be up to 5.5% of felony theft cases filed in the misdemeanor courts.

Proponents of adjusting the value ladder due for inflation believe that we would be following a trend observed in other states, which have either adjusted their value ladder upward or are in the process of doing so. Proponents believe that tremendous savings for the state could be achieved, as over 50% of the state jail inmates are there for property crimes.

Conclusion and Recommendations

Inflation is a reality. To maintain the orderly and meaningful sentencing system that Texas has developed and relied on, inflation, and its impact on theft and property loss offenses should be considered and acted upon periodically. Twenty two years have passed since the Texas theft and property loss value ladder was last reviewed. To put this time period into context: the Sunset Advisory Commission, as its benchmark for review of state agencies, uses a 12 year review cycle. The Legislature should:

1. Design a value ladder that takes into account the inflation rates since 1993, adjusting the threshold upward for the dividing amounts among the current misdemeanors and felonies.
2. Create this standard value ladder in the Penal Code in a separate section from theft, so that in the future it may be reviewed and adjusted in that single section.
3. Amend all sections of the Penal Code, and any other Texas statute that deals with theft and/or property loss to reference the value ladder for classification of offense and available punishment(s).

Interim Charge Seven

Evaluate the approximately 1,500 non-traditional criminal offenses that can be found outside of the Penal Code. Study the feasibility of streamlining these offenses and examine ambiguities in the law. Analyze whether and to what extent some of these non-traditional criminal offenses should be eliminated.

Introduction

The Department of Public Safety maintains, under their duty to collect criminal arrest records in Texas, over 2,030 criminal offense codes, ranging from class B misdemeanors to First Degree Felonies, such as Capital Murder. When the hundreds of Class C Misdemeanors and other general offenses are included, approximately 3,000 actions are labeled as crimes in Texas with penalties ranging from fine only, to jail terms, prison terms and death. Among these are not only traditional crimes (murder, sexual assault, theft) that are found in the Texas Penal Code but general offenses and regulatory offenses found throughout Texas Statutes that can also result in incarceration sentences. Approximately 1,700 of these offenses are found in the Agricultural Code, Alcoholic Beverage Code, Business and Commerce Code, Business Organization Code, Education Code, Election Code, Family Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Property Code, Tax Code, Utilities Code, Water Code and the miscellaneous Civil Codes. The Parks and Wildlife Code also contains a separate offense structure from that found in the Penal Code and labels these offenses as a Parks and Wildlife offense.

The most vocal advocate for changing this system has been the Effective Justice Center at the Texas Public Policy foundation and the Right on Crimes Organization, which have called these 1,700 offenses the "over-criminalization" of the regulatory process (for further analysis of their policy positions visit www.texaspolicy.com).

Impact on the Criminal Justice System

To determine the percentage of case filings as a result of the 1,700 non-Penal Code Offenses, the Committee requested recent case filing data from the Texas Office of Court Administration (OCA), who provided that 45% of felony cases filed in 2013 and 16% of misdemeanors were classified as Penal Code violations. The remaining 55% of felony cases and 84% of misdemeanors were classified as "Other", which indicates they are violations which are contained throughout the aforementioned codes. Due to OCA's limited data system, more details were not immediately available.

OCA also provided a detailed listing of Texas offense codes sorted by Code with the literal title for the offense, Code title, citation of statute and offense level, which fills 56 legal pages. The Department of Public Safety furnished a listing by offense of 2013 criminal arrests which, when printed, fills 20 legal pages. The Legislative Council Research Division published the Inventory of Texas Felony Offenses by

Category in August 2012, however this report does not include misdemeanor offenses. The District and County Attorney's Association's (TDCAA) publication (2013), Texas Crimes 2013 to 2015, by author Diane Beckham, provides details on offenses outside the Penal Code and can be purchased at books@tdcaa.com. An analysis of all of the above documents reveals the following general observations:

The Alcohol Beverage Code has 85 specific criminal offense codes listed in the OCA document, with 8 being felonies and 77 being misdemeanors. Texas Crimes lists 35 offenses including 4 felonies and 31 misdemeanors. The offense of sale of alcohol to a minor had the most arrests (552) indicated per the DPS document of arrests in 2013.

The Agriculture Code has 74 specific criminal offense codes in the OCA document, with 19 being felonies and 55 being misdemeanors. Texas Crimes lists 171 offenses including 11 felonies and 160 misdemeanors. Three of the above offenses are arrestable offenses: one for driving stock to market without a bill of sale, a misdemeanor, one for importing an animal into state with previous convictions, a class B misdemeanor and one for taking culture species from an aquaculture facility valued at between \$250.00 to \$750.00, a class A misdemeanor.

The Business and Commerce Code has 51 specific criminal offense codes in the OCA document, with 15 being felonies and 36 misdemeanors. Texas Crimes lists 60 offenses including 9 felonies and 51 misdemeanors. The DPS arrest document for 2013 revealed that most arrests were for the possession and/or sale of unlabeled recordings which resulted in 57 felony arrests.

The Code of Criminal Procedure has 13 specific criminal offense codes in the OCA document, with 5 being felonies and 8 being misdemeanors. Texas Crimes lists 27 total offenses including 2 felonies and 25 misdemeanors. Five of the OCA codes are felonies which deal with the duty of sex offenders to register for the sex offender registry and accounted for 1,724 felony arrests per the DPS record.

The Election Code has 91 specific criminal offense codes in the OCA document, with 26 being felonies and 65 being misdemeanors. Texas Crimes lists 95 offenses, including 17 felonies and 61 misdemeanors. 25 arrests were reported by DPS for these offenses: two 3rd degree felonies for illegal voting, one misdemeanor for coercion of a candidate, eighteen felonies for retaliation against a voter, one class A misdemeanor for misrepresenting the identity of a candidate, one class A misdemeanor for incomplete filing of contribution/expenditure report, one class A misdemeanor for failure to deliver voter application, one class B misdemeanor for refusing to accept voter, and one state jail felony for carrier envelope action by an assisting voter.

The Education Code has 17 specific criminal offense codes in the OCA document, with 2 being felonies and 15 misdemeanors. Texas Crimes lists 44 offenses including 3 felonies and 41 misdemeanors. 2013 DPS arrest records show one arrest for leasing school buses that do not meet safety standards, 2 arrests for class B misdemeanor, 37 arrests for class B misdemeanor for disruption of activities in either a public or private school, 4 arrests for class B misdemeanor failure to report hazing, 1 class B misdemeanor for

trafficking in teacher certificates and 57 third degree felony arrests for exhibiting firearm on campus or school bus.

The Estates Code was absent in the OCA document, which does have a number of unclassified by statute codes at the end of the document. Texas Crimes reveals 3 misdemeanor offenses with no activity noted in the DPS arrest records for 2013.

The Family Code has 26 specific criminal offense codes in the OCA document, with 10 being felonies and 16 being misdemeanors. Texas Crimes provides 38 offenses including 9 felonies and 29 misdemeanors. DPS arrest records for 2013 reveal a total of 16 arrests for these offenses: twelve state jail felonies for child abuse/neglect false report, one class B misdemeanor for attempt to interfere with an abuse/neglect investigation, two class B misdemeanor for interference with an abuse/neglect investigation and one state jail felony arrest for failure to report an abuse/neglect of a child.

The Finance Code has 17 specific criminal offense codes in the OCA document, with 7 being felonies and 10 being misdemeanors. Texas Crimes reveals 43 offenses including 11 felonies and 32 misdemeanors. DPS arrest records for 2013 reveal that 6 arrests were the results of these offenses; four were third degree felonies for currency exchange violations and one for class B misdemeanor acting as residential mortgage originator without a license.

The Government Code has 76 specific criminal offense codes in the OCA document, with 22 being felonies and 54 being misdemeanor. Texas Crimes reveals 117 offenses including 27 felonies and 89 misdemeanors; one felony (capital sabotage) carries the penalty of life in prison or death. DPS arrest records for 2013 reveal that arrests under these offenses included: one class A misdemeanor for unauthorized or misuse of DPS insignia or name, one second degree felony for influence the selection of lottery winner under \$10,000., two unclassified misdemeanors for contempt of legislative committee, 629 unclassified misdemeanor for contempt of court or failure to obey court order, one third degree felony for prohibited conflict of interest, one unclassified misdemeanor for interference with an audit by the State Auditor, one publishing information about low income housing a class A misdemeanor and one class B misdemeanor for failure to file financial statement by a candidate.

The Health and Safety Code has 287 specific criminal offense codes in the OCA document, with 128 being felonies and 159 being misdemeanors. Texas Crimes reveals 254 offenses including 54 felonies. Many of the offenses in this statute have ranges of penalties that begin as class B misdemeanor and go up to life depending on the amount of the illegal substance involved in the criminal act. As this statute contains the Controlled Substance Act and the penalties for the possession, distribution and manufacturing of these items prohibited substances, the offenses provided by this statute have a major impact on the criminal courts, jails and corrections system. Examples of significant arrest numbers in 2013 include: 78,838 arrests for possession of marijuana less than 2 oz., a class B misdemeanor; 10,399 arrests for possession of marijuana less than 2 oz. in a drug free zone, a class A misdemeanor; and 31,310 arrests for possession of less than one gram of a controlled substance.

The Human Resources Code has 25 specific criminal offense codes in the OCA document, with 12 being felonies and 13 being misdemeanors. Texas Crimes reveals 26 offenses with 4 being felonies. Examples of arrests for offenses in this statute include 45 arrests for food stamps use, altering or transfer, worth more than \$200.00 a third degree felony and 17 arrests for food stamps unauthorized possession greater than \$200.00 a third degree felony.

The Insurance Code has 30 specific criminal offense codes in the OCA document with 11 being felonies and 19 being misdemeanors. Texas Crimes reveals 59 specific offenses including 13 felonies and 46 misdemeanors. It should be noted that many of the felonies appear unrelated to those in the Penal Code as they state a range of incarceration and not a degree. Examples of 2013 arrests for offenses in this statute include three arrests for class B misdemeanor of throwing or placing lighted fireworks in a motor vehicle, one arrest for a class B misdemeanor of selling fire sprinkler system without a certificate and six 3rd degree felony arrest for prohibited unauthorized insurance.

The Labor Code has 17 specific criminal offense codes in the OCA document with 4 being felonies and 13 misdemeanors. Texas Crimes contains 46 offenses including 3 felonies and 43 misdemeanors. An example of a 2013 arrest for an offense contained in this statute includes one arrest for the use of insulting and or threatening or obscene language, a class B misdemeanor.

The Local Government Code has 22 specific criminal offense Codes in the OCA document with 3 being felonies and 19 being misdemeanors. Texas Crimes reveals 96 offenses with 5 reaching the felony level. It should be noted that many of the penalties established within this statute are monetary fines and could have been implemented as civil, rather than criminal, penalties. Examples from the 2013 arrest report include 14 unclassified misdemeanors for failure to appear by county civil service subpoena and one unclassified misdemeanor for failure to appear by sheriff civil subpoena.

The Natural Resources Code has 44 specific criminal offense codes in the OCA document with 23 being felonies and 21 misdemeanors. Texas Crimes reveals 54 offenses including 23 reaching the felony level and 31 misdemeanors. It should be noted that many of the penalties established within this statute are monetary fines and could have been implemented as civil, rather than criminal, penalties. Examples from the 2013 arrest report include two state felony arrests for harvesting standing timber worth more than \$500.00 but less than \$20,000.00 and one third degree felony arrest for harvesting standing timber worth more than \$20,000.00 but less than \$100,000.00.

The Occupations Code has 130 specific offense codes in the OCA document with 33 being felonies and 97 being misdemeanors. Texas Crimes reveals 156 offenses with 29 reaching the felony level and 127 misdemeanors. Examples from the DPS arrest report for 2013 include four 3rd degree felony arrests for practicing medicine in violation of subtitle and one 3rd degree felony arrest for violation of Dentistry act with a previous conviction.

The Property Code has 13 specific offense codes in the OCA document with one being a felony and 12 being misdemeanors. Texas Crimes reveals 17 offenses with one being a felony and 16 being misdemeanors. Examples from the DPS 2013 arrest record for offenses contained within this statute

include two class A misdemeanor arrests for failure to maintain construction accounts and one unclassified misdemeanor for violation of prohibited discrimination acts.

The Parks and Wildlife Code has 160 offenses as revealed by Texas Crimes but also creates its own penalty ranges outside those utilized in the Penal Code. These are known as Parks and Wildlife misdemeanors (classes C, B, A), Parks and Wildlife State Jail Felony (180 days to 2 years) and Parks and Wildlife Felony (2-10 years in prison). Although they are similar to those in the Penal Code, they differ that some are labeled fine-only for what would be aailable offense under the Penal Code schedule. 61 specific offense codes are provided for by the OCA document with 15 being felonies and 46 being misdemeanors. Examples from the 2013 arrest record include the offenses which are redundant in the Penal Code of two unclassified misdemeanors for operating a boat while intoxicated which compares with the Penal Code violation of boating while intoxicated that saw 56 class B misdemeanor arrests. Additionally, one unclassified felony arrest for operating a boat while intoxicated enhanced under the Parks and Wildlife Code with the four class A misdemeanors for boating while intoxicated 2nd under the Penal Code.

The Tax Code has 48 specific offense codes identified by the OCA document with 24 being felonies and 24 being misdemeanors. Texas Crimes contains 85 offenses with 24 being felonies and 61 being misdemeanors. Examples of arrests for offenses which are contained within these statutes include four arrests for the 3rd degree felony for violation of the motor fuel tax requirements and 23 for the 2nd degree felony for violation of the motor fuel tax requirements.

The Transportation Code has 80 specific offense codes identified by the OCA document with 18 being felonies and 62 misdemeanors. Texas Crimes reveals 249 offenses of which 11 can reach the felony level, and many of these offenses are fine-only offenses. Examples from the 2013 DPS arrest report for offenses within this statute includes 446 arrests for class B misdemeanor for displaying a fictitious license plate and 391 class B misdemeanor arrests for displaying a fictitious inspection sticker.

The Utilities Code has 11 specific offense codes identified by the OCA document with one being a felony and 10 being misdemeanors. Texas Crimes reveals 13 offenses with three reaching the felony level. Examination of arrests provided in the DPS 2013 arrest report for offenses from this statute failed to identify any arrests.

The Vernon's Civil Statutes has 49 specific offense codes identified by the OCA document with 24 being felonies and 25 being misdemeanors. Texas Crimes reveals 41 offenses with 24 reaching the felony level and 17 misdemeanors. Examples of arrests from the DPS 2013 arrest report for offenses contained within this statute includes four felony arrest for fraud selling securities worth more than \$500.00 and one felony arrest for selling securities worth more than \$100,00.00.

The Water Code has 61 specific offense codes identified by the OCA document with 17 being felonies and 44 being misdemeanors. Texas Crimes reveals 63 offenses with 26 reaching the felony level and 37 misdemeanors. Examples of arrests from the DPS 2013 arrest report for offenses contained within this

statute includes 20 class A misdemeanor arrests for outdoor burning of waste toxic material and one unclassified misdemeanor for hauling oil and gas waste without a permit.

New Criminal Offenses and Enhancement from 83rd Regular Session

An examination of the legislative process utilized during the 83rd Regular Session provides insight into how the mixture of criminal offenses among the various state statutes has occurred. The following charts have been used with the permission of the author (Source: chapter 2, Legislative Update 2013-2015, by Shannon Edmonds, Texas District and County Attorney's Association (copyrighted 2013), available at www.tdcaa.com/publications).

The first chart provides information on the new crimes that were passed during the 83rd Regular Session, with the second chart providing information on the new penalty enhancements passed during the 83rd Regular session. An analysis of these charts yields the following:

1. Of the 38 new crimes implemented, 6 were processed through the Criminal Justice Committee, 6 through the Agriculture, Rural Affairs and Homeland Security committee, 2 through the Business and Commerce Committee, 2 through the Education Committee, 2 through the State Affairs Committee, 1 through the Jurisprudence Committee, 11 through the Transportation Committee, 3 through the Health and Human Service Committee, 2 through Intergovernmental Relations, 1 through Natural Resources Committee and 2 through the Finance Committee.
2. Of the 25 penalty enhancements to existing offenses, 15 were processed through the Criminal Justice Committee, 2 through the Business and Commerce Committee, 3 through the Natural Resources Committee, 2 through the Education Committee and 3 through the Transportation Committee.
3. Of the 38 new crimes implemented during the 83rd Regular Session, only 1 was created in the Penal Code with processing through the Criminal Justice Committee.
4. Of the 38 new crimes enacted during the 83rd regular session, 12 were new crimes added to the Transportation Code, 10 by the Transportation Committee and 2 by the Criminal Justice Committee.
5. Of the 38 new crimes enacted during the 83rd Regular session, 2 were added to the Parks and Wildlife Code, 1 processed through the Natural Resources Committee and 1 through the Agricultural, Rural Affairs and Homeland Security Committee.
6. Subject matter appears to supersede the presence of a criminal violation being created or enhanced with regard to which committee it will be referred to for processing.
7. No common definition of what should constitute a criminal offense exists for each legislative committee, nor a check list of the necessary elements for an act to be a criminal offense, such as specific

intent to knowingly or intentionally committing an act that is illegal, along with a culpable mental state, the conscious desire to commit the illegal action.

8. The required criminal justice impact statement and fiscal note are not sufficient to provide a complete picture of the cost or the impact on criminal justice resources, such as prison space when each offense is viewed as a single consideration.

CHAPTER 2: TABLES & CHARTS

New Crimes in 2013

Code & Statute (bill)	Crime	Penalty
Agriculture Code §13.455 (HB 1494)	Performing device maintenance services without a license	Class B Class A for subsequent offense
Agriculture Code §13.456 (HB 1494)	Employing an unlicensed individual to perform device maintenance services	Class B Class A for subsequent offense
Business & Commerce Code §109.003 (HB 2539)	Failure to report child pornography by computer technician	Class B
Business & Commerce Code §326.002 (SB 529)	Unlawful sale, purchase, installation, transfer, use, or possession of automated sale suppression device or phantom-ware	State jail felony
Education Code §11.0641 (HB 343)	Failing to file financial disclosure statement by border-area school board trustee (eff. 1/1/14)	Class B
Education Code §39.039 (HB 5)	Making political contribution to or campaigning for State Board of Education candidate; serving as member of advisory committee for SBOE by person who develops or implements assessment instruments	Class B
Election Code §86.0052 (HB 148)	Compensating another for depositing ballot carrier envelope as part of performance-based scheme	30 days-1 year and \$0-4,000 State jail for 3rd or subsequent offense
Election Code §86.0105 (HB 148)	Accepting compensation for assisting voters	30 days-1 year and \$0-4,000 State jail for 3rd or subsequent offense
Family Code §107.05145 (SB 330)	Disclosing confidential information obtained from DFPS social study	Class A
Government Code §325.0195(e) (HB 1675)	Misuse of confidential information obtained by the Sunset Advisory Commission	(unspecified)
Government Code §423.003 (HB 912)	Illegal use of unmanned aircraft to capture image	Class C
Government Code §423.004 (HB 912)	Possession, display, disclosure, distribution or use of image captured by unmanned aircraft	Class C per image for possession Class B per image for disclosure, display, distribution or other use
Health & Safety Code §81.212 (HB 1690)	Evasion or resisting apprehension or transport by person subject to custody or temporary detention order for suspicion of carrying certain communicable diseases; aiding in evasion or resistance	Class A
Health & Safety Code §248A.206 (SB 492)	Establishing or operating prescribed pediatric care center without license	Class B per day
Health & Safety Code §552.162 (SB 33)	Hampering, obstructing, tampering with, or destroying electronic monitoring device, tape, or recording from resident's room at state-supported living center	Class B
Health & Safety Code §711.052(a)(5)-(6) (SB 661)	Making more than one interment in cemetery plot; unauthorized removal of remains from a plot	2nd degree
Health & Safety Code §785.003 (SB 1010)	Denying access to or discriminating against rescue dog and handler (see §785.002)	\$300-1,000
Local Gov't Code §234.138 (HB 1127 & HB 2123)	Operating a game room in violation of county regulations	Class A

New Crimes in 2013

Code & Statute (bill)	Crime	Penalty
Occupations Code §1702.3841 (HB 3433)	Failure to maintain certificate of sufficient insurance by private security company	Class A
Occupations Code §1956.204 (HB 555)	Violating metal recycling entity requirements	Class C
Occupations Code §2155.103 (HB 333)	Violating firearms policy notice requirements by hotel owner or keeper	\$0-100
Parks & Wildlife Code §31.074 (HB 1106)	Operating vessel without serviceable visual distress signal	Class C P&W (see §31.124)
Parks & Wildlife Code §66.024 (HB 3279)	Uprooting seagrass plants	Class C P&W
Penal Code §25.072 (SB 743)	Repeated violation of court order or condition of bond in family violence case	3rd degree
Tax Code §6.41(i) & (j) (HB 585)	Communicating with administrative district judge about appointment of appraisal review board member; talking with board member or administrative judge about ranking, scoring, or reporting of appraisal value by chief appraiser or employee of appraisal district	Class A
Tax Code §162.403(40) & (41) (HB 2148)	Delivering compressed natural gas or liquefied natural gas without a license; making tax-free delivery of compressed natural gas or liquefied natural gas	Class B
Transportation Code §37.110 (SB 1792)	Operating vehicle on toll road by habitual violator	Class C
Transportation Code §372.105 (SB 1792)	Nonpayment of tolls by out-of-state driver	\$0-250
Transportation Code §502.4755 (HB 2741)	Manufacture, sale, or possession of deceptively similar vehicle registration insignia	Class C for possession 3rd degree for manufacture or sale
Transportation Code §504.946(b) (SB 1757)	Purchasing or possessing license plate flipper	Class B
Transportation Code §504.946(c) (SB 1757)	Selling, offering to sell, or distributing license plate flipper	Class A
Transportation Code §504.946 (HB 2741)	Manufacture, sale, or possession of deceptively similar license plate	Class C for possession 3rd degree for manufacture or sale
Transportation Code §504.947 (HB 2741)	Use, purchase, possession, manufacture, sale, or distribution of license plate flipper	Class C Class B for subsequent offense
Transportation Code §504.948 (HB 2741)	General penalty: violating license plate provisions	\$5-200
Transportation Code §545.416(b)(2) (HB 3838)	Carrying passenger on motorcycle not equipped with footrests and handholds	\$1-200 (see §542.401)
Transportation Code §545.4252 (HB 347)	Using wireless communication device on school property	\$1-200 (see §542.401)
Transportation Code §547.617 (HB 3838)	Motorcycle designed to carry more than one person not equipped with footrests and handholds (eff. 1/1/15)	\$1-200 (see §542.401)
Transportation Code §662.006 (HB 3838)	Offering or conducting unlicensed motorcycle operation training	Class B Class A for subsequent offense

CHAPTER 2: TABLES & CHARTS

New Punishment Enhancements

Code & Statute (bill)	Crime	Penalty Increase
Code of Criminal Procedure Art. 62.102(d) (HB 2637)	Failure to comply with sex offender registration requirements	Increased one degree if person fraudulently used identifying information
Family Code §261.109(a-1) (HB 1205)	Failing to make required report of child abuse or neglect by professional or employee of state facility with intent to conceal abuse or neglect	State jail
Finance Code §119.202 (SB 1008)	Criminal slander or libel of savings bank	State jail
Insurance Code §4005.151 (HB 1305)	Acting as agent after license suspension or revocation	3rd degree
Natural Resources Code §117.053 (SB 900)	Violating pipeline transportation rules	\$0-2 million and/or 0-5 years
Natural Resources Code §117.054 (SB 900)	Injuring or destroying pipeline facilities	\$0-2 million and/or 0-5 years
Penal Code §12.42(c)(4) (HB 1302)	Repeat commission of sexually violent offense against children by defendant 18 or older	Life without parole
Penal Code §22.01(b)(5) (HB 705)	Assault of emergency room personnel (see (e)(1))	3rd degree
Penal Code §32.51(c-1)(2) (HB 2637)	Fraudulent use or possession of identifying information with intent to facilitate failure to comply with sex offender registration requirements	One degree higher (3rd degree-1st degree)
Penal Code §36.05 (SB 1360)	Tampering with a witness in a family violence case	3rd degree or most serious offense charged 2nd degree or most serious offense charged for subsequent FV offense
Penal Code §37.10(c)(2)(A) (SB 124)	Tampering with data reported for a school district or charter school to TEA	3rd degree
Penal Code §39.03(d) (SB 124)	Official oppression with intent to impair accuracy of data reported to TEA	3rd degree
Penal Code §42.06(b) (HB 1284)	False alarm or report at public or private institution of higher education	State jail
Penal Code §43.02(c)(2) (HB 8)	Prostitution if person solicited is younger than 18	2nd degree
Penal Code §43.03(b) (HB 8)	Promotion of prostitution	State jail for subsequent offense 2nd degree if prostitute was <18
Penal Code §43.04(b) (HB 8)	Aggravated promotion of prostitution	1st degree if prostitution enterprise uses one or more persons <18
Penal Code §43.23(h) (HB 8)	Obscenity: promoting, intending to promote, producing, presenting or directing an obscene performance by child <18	2nd degree
Penal Code §71.02(b) (SB 549)	Engaging in organized criminal activity	life without parole if the most serious offense is super-aggravated sexual assault of a child by defendant 18 or older life or 15-99 years if the most serious offense is any other first-degree felony

New Punishment Enhancements

Code & Statute (bill)	Crime	Penalty Increase
Penal Code §71.023 (SB 549)	Directing activities of criminal street gangs	1st degree punishable by life or 25–99 years
Transportation Code §504.943(e) (HB 625)	Operating a vehicle without license plates	\$0–200
Transportation Code §545.066(c) (HB 1174)	Illegally passing a school bus	\$500–1,250 for first offense \$1,000–2,000 for subsequent offense within 5 years
Transportation Code §545.412(b) (HB 1294)	Transporting child without appropriate child safety seat	\$25–250
Transportation Code §547.614(e) (HB 38)	Making, selling, or altering airbag or installing counterfeit airbag	1st degree if death results
Transportation Code §550.021(c)(1)(A) (SB 275)	Failure to stop and render aid resulting in death	2nd degree
Utilities Code §121.310 (SB 900)	Violating gas pipeline utility requirements	\$50–1,000 for violation not related to pipeline safety; \$0–2 million and 10 days to six months for violation related to pipeline safety

Conclusion and Recommendations

The evaluation of the 1,500 (the actual number is at least 1,700) non-traditional criminal offenses that can be found outside the Penal Code reveals that many are redundant to those found in the Penal Code. Several deal with intoxicated driving offenses and intoxicated boating offenses. An even greater number deal with issues of theft and fraud, without correlation to the standard theft/property loss ladder. A significant amount of these non-traditional offenses are punishable only by fines or specific monetary punishments usually associated with civil, not criminal, penalties. It is worth mentioning that a number of the codes result in few, if any, violations, with exception to the arrests produced by the offenses within the Health and Human Service Code (Controlled Substances Act) which rivals the arrest numbers of offenses within the Penal Code.

It is recommended that the legislature support the enactment of a Texas Punishment and Sentencing Commission to thoroughly examine the non-traditional criminal offenses, consolidating those that meet the required elements for a criminal act into the Penal Code, while altering those that do not meet the elements to be considered a crime, to that of an administrative action or civil penalty.

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, October 28, 2014

10:00 AM

Capitol Extension, Room E1.012

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

MEMBERS PRESENT:

Senator John Whitmire, Chair

Senator Juan Hinojosa

Senator José Rodríguez

Senator Charles Schwertner

MEMBERS ABSENT:

Senator Joan Huffman, Vice Chair

Senator John Carona

Senator Dan Patrick

The chair called the meeting to order at 10:00 AM. There being a quorum present, the following business was transacted:

Invited testimony on interim charge 2: study the operations of the Texas prison system with respect to the medical and mental health care treatment. Study potential cost savings associated with identifying offenders with dual diagnoses and routing these individuals into appropriate services before, during, and after involvement with the criminal justice system. Study the way in which geriatric parole cases are currently evaluated and identify opportunities for reducing costs associated with the geriatric inmate population without compromising public safety.

Public testimony was heard on interim charge 2.

Public testimony was closed.

There being no further business, at 12:12 PM Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Terra Tucker, Clerk

WITNESS LIST

Criminal Justice

October 28, 2014 10:00 AM

Interim Charge 2

ON:

Mental
Ita, Trina Director Program Services Section (Department of State health Services,
Health and Substance Abuse Services), Austin, TX

Criminal
Linthicum, Lannette Division Director of Health Services (Texas Department of
Justice), Huntsville, TX

Huntsville,
Livingston, Brad Executive Director (Texas Department of Criminal Justice),
TX

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