



American Civil Liberties Union of Texas

Black Lives Matter Austin

Disability Rights Texas

Grassroots Leadership

Greenstream International

Mental Health America of Texas

National Association of Social Workers – Texas Chapter

National Alliance on Mental Illness

Texas Defender Service

Texas Fair Defense Project

Texas Inmate Family Association

Texas Jail Project

September 14, 2015

Texas Decision-Makers

RE: Strategies for a Safer, Smarter Texas Criminal Justice System

Dear Sir or Madam,

The arrest, detention, and death in custody of Sandra Bland have brought to light a disturbing lack of trust between law enforcement and the communities they serve. A full and transparent investigation of what happened to Ms. Bland, ending in accountability for anyone who acted inappropriately, is only the first step toward restoring that trust. In this letter, we outline the additional steps that we believe are necessary.

We respectfully request a comprehensive review of current law-enforcement and correctional practices within all Texas jurisdictions. Our suggestions involve new approaches to policing, jail diversion, pretrial reforms, and improved training. The tragedy of Ms. Bland’s death is a wake-up call. We urge Texas leaders to take a leadership role in restoring public faith in law enforcement by enacting these recommendations.

Strategy One: Ensure Use of Force Is the Last Resort

The video of Sandra Bland’s arrest is shocking because no one expects to be dragged from her car during a routine traffic stop. De-escalation should be the goal of every law enforcement encounter with the public; use of force should be the last resort. The National Institute of Justice advises that use of force is generally appropriate only when self-defense or defense of another is necessary. Any time an officer uses force outside of this context, the law enforcement agency should provide additional training on more effective tactics. Officers should be encouraged to delay decisions to use aggressive tactics if possible and wait for supervisors to arrive. Officers who engage in excessive force should be disciplined.

Strategy Two: End Racial Profiling

Biased policing also undermines public trust. It is old news that our criminal justice system disproportionately affects people of color, but we have made little progress toward fairness and equity. According to the Prison Policy Initiative, although African Americans make up 12% of the population

in Texas, they make up 32% of our incarcerated population.¹ Unconscious bias shapes encounters between police and the public. Research indicates that nearly 71% of drivers whom officers deem to be “suspicious” are racial minorities.² Officers commonly interpret nervousness on the part of the driver as reason for suspicion; yet police practices increase the sense of anxiety many racial minorities feel when they encounter police. This mutual mistrust increases the likelihood of hostile encounters and use of force incidents. The Department of Public Safety and other law enforcement agencies in Texas should consider intensive training to counteract bias in policing. Law enforcement agencies should review enforcement priorities to ensure police operations do not target minority communities or drivers for disproportionate traffic stops.

Strategy Three: Implement Pre-Booking Diversion

Texas counties should implement pre-booking diversion programs for low-level offenses, as many counties in Texas have done. Pre-booking diversion programs are gaining popularity because they are highly effective. Instead of jailing people who pose no threat to public safety, diversion programs address low-level offenses through referral to community services. Diversion programs may decrease the incidence of criminal behavior in the future by addressing root causes.

Programs like the Law Enforcement Assisted Diversion (LEAD) Program in Seattle have actually decreased re-offense rates among participants while improving police-community relations.³ The programs also save money. Harris County implemented its First Chance Intervention Program in late 2014, and in the first six months the program diverted over 1000 first-time offenders charged with Class B misdemeanor marijuana possession. These individuals were spared the consequences of a criminal record, and the county has saved hundreds of thousands of dollars associated with booking, incarcerating, and prosecuting these cases without sacrificing public safety. We encourage Texas leaders to work with law-enforcement partners to implement similar policies.

Strategy Four: End Arrests for Non-Jailable Offenses

Arresting people for petty offenses like minor traffic violations provides no public safety benefit, but does carry tremendous social costs. The arrested individual not only gets a record, but must also post bond or remain in county jail until the case is resolved. Indigent defendants unable to post bond may lose stable employment and housing, which undermines their ability to care for their families and increases the likelihood they will become a burden on their communities. The adjudication process can take months, leaving taxpayers to foot the bill for incarceration at an average price of \$59 per day.⁴ As the U.S. Supreme

¹ Prison Policy Initiative, “Blacks are Overrepresented in Texas Prisons and Jails” (graph), http://www.prisonpolicy.org/graphs/2010percent/TX_Blacks_2010.html. Calculated by the Prison Policy Initiative from U.S. Census 2010 Summary File 1. Incarcerated populations are all types of correctional facilities in a state, including federal and state prisons, local jails, halfway houses, etc.

² National Institute of Justice, “Police Use of Force,” <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/pages/welcome.aspx>.

³ Becket, Katherine, “Seattle’s Law Enforcement Assisted Diversion Program: Lessons Learned from the First Two Years,” University of Washington, Law, Societies & Justice Program and Department of Sociology, March 21, 2014, p. 7, <http://static1.1.sqspcdn.com/static/f/1185392/24777541/1398287318543/2014-Lead-Process-Evaluation.pdf?token=mfSTbqU4kVzh5F5zMJklnNIPrec%3D>.

⁴ Texas Criminal Justice Coalition, Basic Facts, <http://www.texascjc.org/basic-facts-1>.

Court observed in *Atwater v. City of Lago Vista*: “it is in the best interest of the police to limit petty-offense arrests, which carry costs that are simply too great to incur without good reason.”⁵

We therefore urge the support of legislation to prohibit arrests for non-jailable offenses. During the 77th Texas Legislature, lawmakers passed a bill inspired by *Atwater* that would have required mandatory issuance of a written notice to appear and prohibited arrests for fine-only, non-jailable offenses.⁶ The bill was vetoed by then-Governor Perry,⁷ and police in Texas remain free to handcuff and arrest people for petty offenses.

We also urge law enforcement agencies to institute a requirement that, absent probable cause, drivers must consent to a vehicle search in writing. This policy ensures that motorists know their rights and gives prosecutors and law enforcement clear proof that any search was legal. The 79th Legislature passed a bill that would have required all jurisdictions to institute this policy, but it was vetoed by then Governor Perry. In his veto statement, Gov. Perry acknowledges that counties and municipalities already have the authority to implement this policy independently. We ask for the immediate implementation of such a requirement for all officers and for widespread advocacy for this policy on the local and state levels.

Strategy Five: Reform Bail System and Provide Sufficient Public Defense

Texas counties must also reconsider the scheme by which bond is set. Texas law requires flexibility in determining bail amounts or issuing personal recognizance bonds.⁸ Making bail or bond decisions based on an assessment of risk rather than on ability to pay is not only fairer, but would also save counties money. As a state, Texas incarcerates an extremely high number of people who have yet to be sentenced—that population constitutes more than 60% of those incarcerated as of June 2015.⁹

Texas counties should provide pretrial supervision, which it can do at a much lower cost for both taxpayers and the individual charged with a crime. Pretrial supervision achieves better outcomes by allowing people to await adjudication of low-level crimes in the community rather than in jail. Studies show that, when counties expand the use of personal recognizance bonds based on a validated assessment of risk conducted by qualified personnel, they achieve improved public safety outcomes and save money on jail expenditures. If Sandra Bland had been given this opportunity, she would likely still be alive.

Ultimately, the best way to ensure individualized consideration in a bond hearing is to provide defense counsel at magistration. Few defendants confer with an attorney before they are brought before a magistrate; those who cannot afford an attorney are usually not appointed counsel until their first appearance in the court of record.¹⁰ Creating and maintaining a public defender office, with the guidance

⁵ *Atwater v. City of Lago Vista*, 532 U.S. 318, 352 (2000).

⁶ Texas Legislature’s 77th Session, SB 730 Enrolled Bill Analysis, <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=77R&Bill=SB730>.

⁷ Texas Legislature’s 77th Session, Governor’s Veto Proclamation, <http://www.lrl.state.tx.us/scanned/vetoes/77/sb730.pdf#navpanes=0>.

⁸ Texas Code of Criminal Procedure Art. 17.15.

⁹ Texas Commission on Jail Standards - Abbreviated Population Report for 6/1/2015. Retrieved from <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>, July 27, 2015.

¹⁰ Bunin and Marsh, “Proposal for Counsel at TEX. CODE CRIM. PRO. Art. 17.15 Hearings,” Voice for the Defense Online (Jan. 2014) at 18-19.

and support of the Texas Indigent Defense Commission, would allow all counties to save much-needed funds, and permit those who are not a threat to public safety to await trial in the community, where they can continue providing for themselves and their families.

Strategy Six: Improve Mental Health Training for Law Enforcement and Jail Personnel

Suicide Prevention in County Jails

We urge the improvement of training for intake, screening, and supervising individuals with mental health issues, including those who are potentially suicidal. People with a history of suicide attempts are at exceptionally high risk of suicide following arrest.¹¹ Suicide is the second most common cause of death in county jails, occurring at a higher rate inside jail than in the general population.¹² The smaller the county jail, the higher the suicide rate.¹³ These statistics are of particular concern in Texas, where most county jails house fewer than 100 individuals in custody and may lack the suicide risk-assessment training and counseling services available in some larger jails. Further, most suicide deaths in county jails occur in single cells, which points to inadequate staffing or supervision standards, including the lack of surveillance equipment.¹⁴

Using funds saved by increased use of personal recognizance bonds, Texas counties could better address mental health and suicide prevention standards. At a minimum, the counties must improve training for staff members responsible for screening for suicide, medical, and mental impairments. When someone in custody is identified as high risk for suicide, it is imperative that a mental-health professional be consulted for further evaluation and treatment. All Texas jurisdictions should prohibit the practice of segregating those at risk of suicide from the general population. When staff members stray from these policies, they must be held accountable. Adherence to these standards will save lives.

Law Enforcement Crisis Intervention Teams

We also encourage the implementation of Crisis Intervention Teams (CIT) within both local and statewide jurisdictions, and to partner with other law enforcement agencies to do the same. CIT programs have been recognized nationally as providing law enforcement with comprehensive mental health training that allows them to better identify individuals who should be diverted to mental health settings instead of jail.¹⁵ Officers who receive CIT training are less likely to have stigma and prejudice toward individuals with mental illness and are more likely to divert them to mental health settings.¹⁶ CIT programs also facilitate community collaboration between mental health providers and law enforcement.¹⁷

¹¹ Suicide Prevention Resource Center, "The Role of Correctional Officers in Preventing Suicide," March, 2014.

¹² Dillon, Daniel, "A Portrait of Suicides in Texas Jails: Who is at Risk and How Do We Stop It?" LBJ Journal of Public Affairs, Fall, 2013, P. 52, http://www.lbjjournal.com/sites/default/files/files/Dillon_A%20portrait%20of%20suicides%20in%20Texas%20Jails.pdf.

¹³ Ibid, p. 56.

¹⁴ Ibid, p. 57.

¹⁵ The University of Memphis, *Overview of CIT*, <http://www.cit.memphis.edu/overview.php>.

¹⁶ National Alliance on Mental Illness, *CIT Toolkit CIT Facts*, 2, <http://www2.nami.org/Template.cfm?Section=CIT&Template=/ContentManagement/ContentDisplay.cfm&ContentID=56149>.

¹⁷ Ibid, 1.

Strategy Seven: Ensure the Texas Commission on Jail Standards Can Do Its Job

We urge the advocacy for improved county jail oversight as well as enforcement of jail standards. Although the Texas Commission on Jail Standards (TCJS) evaluates each county jail for compliance every year (and performs monthly inspections for those jails that are deemed non-compliant),¹⁸ the agency lacks the power to enforce standards. Giving TCJS the power it needs will take legislative action and requires the support of county sheriffs. With adequate resources, TCJS can ensure that problems related to inmate safety are addressed proactively, resulting in fewer deaths inside county jails.

In closing, we urge the timely implementation of the solutions listed above where you have the authority to do so. We also urge you to advocate for systemic change with your local jurisdiction, state legislators, and law enforcement professionals. We believe that these solutions will reduce the number of deaths in custody, save the county money, and promote positive relationships with the communities you serve.

Respectfully,

Texas Criminal Justice Coalition

Contact: Dr. Ana Yáñez-Correa, Executive Director
Email: acorrea@texascjc.org // Phone: (512) 587-7010

American Civil Liberties Union of Texas

Contact: Vic Cornell, Statewide Advocacy Manager
Email: vcornell@aclutx.org // Phone: (512) 478-7300, ext. 100

Black Lives Matter Austin

Contact: Margaret Haule
Email: Margaret_haule@yahoo.com

Disability Rights Texas

Contact: Mary Faithfull, Executive Director
Email: mfaithfull@drtx.org // Phone: (512) 454-4816

Grassroots Leadership

Contact: Kymberlie Quong Charles, Director, Criminal Justice Programs
Email: kquongcharles@grassrootsleadership.org // Phone: (512) 499-8111

Greenstream International

Contact: Jennifer Gooding, Corporate Representative
Email: jgooding@prime-techpr.com // Phone: (512) 477-7373

¹⁸ Texas Commission on Jail Standards, *2014 Annual Report*, January 31, 2015. Retrieved from <http://www.tcjs.state.tx.us/docs/2014AnnualJailReport.pdf>, July 27, 2015.

Mental Health America of Texas

Contact: Gyl Switzer, Public Policy Director
Email: gyl@mhatexas.org // Phone: (512) 903-4186

National Association of Social Workers – Texas Chapter

Contact: Miriam Nisenbaum, Executive Director
Email: mnisenbaum@naswtx.org // Phone: (512) 474-1454

National Alliance on Mental Illness

Contact: Greg Hansch, Public Policy Director
Email: ghansch@gmail.com // Phone: (512) 693-2000

Texas Defender Service

Contact: Kathryn M. Kase, Executive Director
Email: KMKase@texasdefender.org // Phone: (713) 222-7788

Texas Fair Defense Project

Contact: Rebecca Bernhardt, Executive Director
Email: rbernhardt@fairdefense.org // Phone: (512) 637-5222

Texas Inmate Family Association

Contact: Jennifer Erschabek, Executive Director
Email: tifa@tifa.org // Phone: (512) 636-5341

Texas Jail Project

Contact: Diana Claitor, Executive Director
Email: diana@texasjailproject.org // Phone: (512) 469-7665

Ranjana Natarajan

Clinical Professor and Director, Civil Rights Clinic
University of Texas School of Law (for identification purposes only)
Email: rnatarajan@law.utexas.edu // Phone: (512) 232-7222

Trisha Trigilio

Instructor, Civil Rights Clinic
University of Texas School of Law (for identification purposes only)
Email: ttrigilio@law.utexas.edu // Phone: (512) 232-7222