

2021 BILL ANALYSIS GUIDE

A detailed analysis of positive justice legislation
passed in Texas' 2021 regular legislative session



Texas Center for Justice and Equity

Welcome to the 2021 Bill Analysis Guide from the Texas Center for Justice and Equity (TCJE)!

The goal of this guide is to make new justice-related legislation as accessible and transparent as possible for those whose lives it may impact.

Throughout this guide, you'll find an in-depth analysis of nearly 40 bills that passed into law during Texas' 87th Regular Session. These new laws affect both the youth and adult criminal legal systems; they cover policing and arrest through reentry and family reunification, as well as school-based practices that aim to prevent the school-to-prison pipeline, plus community-based supports that address substance use and behavioral health issues.

TCJE works to end mass incarceration and build safe, healthy, thriving Texas communities. We are proud of the hard-fought wins that we and our partners secured in the midst of a challenging session, and we know the fight continues. To learn more about our work, visit www.TexasCJE.org.

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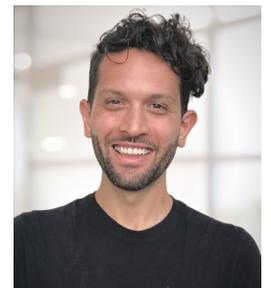
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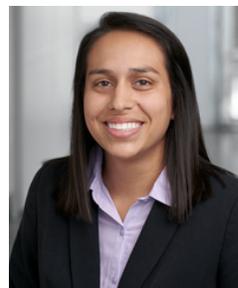
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We also extend thanks to Vanessa Akins, Devin Driver, and Doug Smith, who served as Legislative Analyst, Policy Analyst, and Senior Policy Analyst, respectively, during the 2021 legislative session.

Youth Justice Bills

EDUCATION-RELATED REFORMS

HB 785, HB 1525, HB 2287, HB 3165, SB 179, SB 462

The school-to-prison pipeline disproportionately impacts students of color and students with special needs. It is critical to implement policies and practices that will create supportive school climates, reduce unnecessary student discipline, provide more transparency around school discipline, and help more students achieve academic success.

- **HB 785 (Authors: Allen, Reynolds, Jarvis Johnson | Sponsor: Zaffirini)**, *Relating to behavior improvement plans and behavioral intervention plans for certain public school students and notification and documentation requirements regarding certain behavior management techniques.* This bill addresses students enrolled in special education services. Beginning with the 2021-2022 school year, Behavioral Intervention or Behavior Improvement Plans (BIPs) for such students must be reviewed at least annually by an admission, review and dismissal (ARD) committee. The review must address changes in a student’s life that may impact their behavior (e.g., placement in a different educational setting, an increase or persistence in disciplinary actions taken for similar types of incidents, a pattern of unexcused absences, an unauthorized and unsupervised departure from the classroom), or the safety of the student and others.

A school district must provide written notification to a student’s parent or caretaker for any restraint used on the student. The notification must include: the name of the person who administered the restraint; the date, duration, location, and nature of the restraint; the activity the student was engaged in immediately before the restraint was used, and the behavior that prompted the restraint; and any efforts made to de-escalate the situation, as well as any alternatives to

restraint that were attempted. If the student has a BIP, the notification must address whether the plan needs revision. If the student does not have a BIP, the notification must include information on the process to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student. Additionally, the school district must document each use of time-out for any student with a BIP.

If any disciplinary action results in a more restrictive placement of a student (e.g., in a Disciplinary Alternative Education Program, in a Juvenile Justice Alternative Education Program, or expulsion), the district has 10 school days after the change of placement to: (1) seek consent from the student’s parent or caretaker to conduct a functional behavioral assessment of the student, if one has never been conducted or if the most recent one was more than a year ago, and review any previously conducted assessment and any BIP based on that assessment, and (2) as necessary, develop a BIP if the student does not have one, or revise the existing BIP. **Effective on 6/4/2021**

- **HB 1525 (Authors: Huberty, VanDeaver, Ken King, Dutton, Mary González | Sponsor: Taylor)**, *Relating to the public school finance system and public education.* While this comprehensive bill addresses a range of school- and student-related issues, it importantly ensures that annual funds allocated to school districts under the School Safety Allotment must address the prevention, identification, and management of emergencies and threats, using evidence-based, effective prevention practices and including: (1) providing licensed counselors, social workers, and individuals trained in restorative discipline and justice practices; and (2) developing and implementing programs focused on restorative justice practices,

culturally relevant instruction, and providing mental health support. The Commissioner of Education must annually publish a report regarding the programs, personnel, and resources purchased by districts using the funds and other purposes for which the funds were used. *Effective on 9/1/2021*

- **HB 2287 (Authors: Senfronia Thompson, Hunter, Dutton, Allen, Coleman | Sponsor: Powell)**, *Relating to data collection and receipt of certain reports by and consultation with the Collaborative Task Force on Public School Mental Health Services.* The Collaborative Task Force on Public School Mental Health Services must gather data on the number of students who were placed in a Disciplinary Alternative Education Program or out-of-school suspension or who were expelled, as well as the number of threat assessments conducted, and also collect data on the race, ethnicity, gender, special education status, educationally disadvantaged status, and geographic location of these students. Furthermore, the Task Force must gather data on mental health services and training provided annually by school districts at the both campus and district level, as well as the number of reports made from each school district by a district/school employee or school resource officer to the Department of Family and Protective Services regarding an alleged incident of abuse or neglect. All data requested by the Task Force must protect students' medical and educational information.

By January 31 of each year, the Health and Human Services Commission must submit a report to the Task Force on outcomes for school districts and students resulting from services provided by non-physician mental health professionals. By March 1 of even-numbered years, each Regional Education Service Center must provide the Task Force with a copy of its report submitted to the Texas Education Agency (TEA) on student mental health resources available to schools in that region. Biannually, the TEA must also provide the Task Force with the list of statewide resources available to school districts to address students' mental health needs. These reporting provisions expire December 1, 2025. *Effective on 9/1/2021*

- **HB 3165 (Author: Meyer | Sponsor: Whitmire)**, *Relating to an affirmative defense to an allegation of truant conduct.* This bill establishes an affirmative defense to an allegation of truant conduct if the student can show by a preponderance of the evidence that one or more of their absences was due to mental, emotional, physical, or sexual abuse. This defense is available beginning with the 2021-2022 school year. *Effective on 6/4/2021*

- **SB 179 (Author: Lucio | Sponsors: Huberty, Mary González)**, *Relating to the use of public school counselors' work time.* Beginning with the 2021-2022 school year, school counselors must spend at least 80 percent of their work time on duties that are components of the Comprehensive School Counseling Program, which includes: (1) helping students develop their full educational potential, including their interests and career objectives; (2) intervening on behalf of any student whose immediate personal concerns or problems put their continued educational, career, personal, or social development at risk; (3) guiding students as they plan, monitor, and manage that development; and (4) supporting teachers, staff, parents, and other community members in promoting that development. Time spent administering assessment instruments, except interpreting data from such instruments, is not considered time spent on counseling.

If, due to staffing needs, a counselor must spend less than 80 percent of their time on Counseling Program components, the school district's policy must list the duties the counselor is expected to perform. Each school district must annually assess its compliance with this policy. *Effective on 9/1/2021*

- **SB 462 (Author: Lucio | Sponsor: Allen)**, *Relating to funding under the transportation allotment for transporting meals and instructional materials to students during a declared disaster.* School districts may use funds from the Transportation Allotment to deliver meals or instructional materials to students' residences or other pick-up locations during a declared disaster. Additionally, a school district located in an area that is the subject of a disaster declaration can be

reimbursed on a per-mile basis for the cost of transporting those meals or instructional materials for the duration of the disaster. *Effective on 6/14/2021*

SUPPORTS FOR YOUNG PEOPLE IN FOSTER CARE OR EXPERIENCING HOMELESSNESS

HB 80, SB 2054

Young people in foster care or with a history of foster care placement face challenges related to stable employment and housing. The State can help them by eliminating fees they may be unable to afford, while still holding them accountable in the event of minor violations.

- HB 80 (Authors: Jarvis Johnson, Collier, Meza | Sponsor: Whitmire)**, *Relating to the use of public school counselors' work time.* A judge may not require a young person in foster care to pay any amount of the fines or court costs owed to the state upon a conviction. In lieu of requiring payment, the judge may require the young person to perform community service. *Effective on 9/1/2021*
- SB 2054 (Author: Menéndez | Sponsors: White, Guillen, Jarvis Johnson, Noble)**, *Relating to the payment of fees and costs associated with driver education and safety courses and driver's license examinations for foster children or youth, former foster children or youth, and youth experiencing homelessness.* The Texas Workforce Commission (TWC) must, on request, pay driver and traffic safety education fees for a person who is: (1) eligible for a driver's license fee exemption as a foster child or youth, or as a child or youth experiencing homelessness, or (2) younger than 26 and either in foster care prior to their 18th birthday or a homeless child or youth. The TWC must establish a process whereby such individuals can apply for payment of those fees. *Effective on 9/1/2021*

REFORMS RELATED TO COURT PROCEEDINGS AND JUVENILE RECORDS

HB 454, HB 1401, HB 2107

When a child comes in contact with the youth justice system, it is crucial that they have a supportive, stable home environment while they navigate their court case, as well as have the easiest opportunity for juvenile record-clearing after their proceeding is dismissed. Also importantly, children with a mental illness or intellectual disability should be treated or served outside the justice system whenever possible.

- HB 454 (Author: Metcalf | Sponsor: Creighton)**, *Relating to the creation of a specialty treatment court for certain individuals residing with a child who is the subject of a juvenile court case.* A county commissioners court can establish a juvenile family drug court program for individuals who are suspected by the Department of Family and Protective Services or the court of having a substance abuse problem and who reside in the home of a child who is the subject of a juvenile court case. Among other things, such a program should: integrate substance abuse treatment services in the processing of juvenile court cases and proceedings; use a comprehensive case management approach involving court-appointed case managers and special advocates to rehabilitate participants; enable early identification and prompt placement of eligible individuals who volunteer to participate in the program; conduct a comprehensive substance abuse needs assessment and make referrals to appropriate substance abuse treatment agencies; utilize a progressive treatment approach with specific requirements for participants to meet for successful program completion; monitor abstinence through periodic drug and alcohol screening; and involve ongoing judicial interaction with participants.

A drug court program may require a participant to pay the cost of all treatment and services received, *based on the participant's ability to pay.* A county with such a

program must explore the possibility of using court improvement project money – as well as available federal and state matching money – to finance the program. *Effective on 9/1/2021*

- **HB 1401 (Authors: Ann Johnson, White, Wu, Guillen | Sponsor: Huffman)**, *Relating to methods to send applications and orders for sealing juvenile records.* In regard to a juvenile’s record, specific to a young person in the juvenile court served by the juvenile probation department, an application for record sealing can be sent to the juvenile court by any reasonable method, now including secure electronic means. Similarly, on entry of the order sealing the record, after all adjudications have been vacated and the proceedings are dismissed, the court clerk can send copies of the order by secure electronic means to relevant entities. *Effective on 9/1/2021*

- **HB 2107 (Author: Wu | Sponsor: Menéndez)**, *Relating to services for children who are unfit or lack responsibility to proceed in juvenile court proceedings as a result of intellectual disabilities.* If a juvenile court or jury determines that a child is unfit to proceed with juvenile court proceedings for delinquent conduct, due to the child’s mental illness or intellectual disability, and the court further determines that the child may be adequately treated or served in an alternative setting, the court must order the child to receive treatment or services on an outpatient basis for 90 days. However, before issuing that order, the court must consult with the probation department and local providers to determine the appropriate treatment or services. A similar process must be filed if a court or jury finds that a child who has engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for that conduct due to mental illness or intellectual disability. *Effective on 9/1/2021*

REFORMS RELATED TO
KIDS IN CONFINEMENT

HB 30, HB 1664, HB 4544

Young people who enter the criminal legal system should have meaningful, tailored opportunities for education. Furthermore, children in the youth justice system should have access to covered medical assistance, as well as supports on release that will help them access employment, housing, and needed services and benefits.

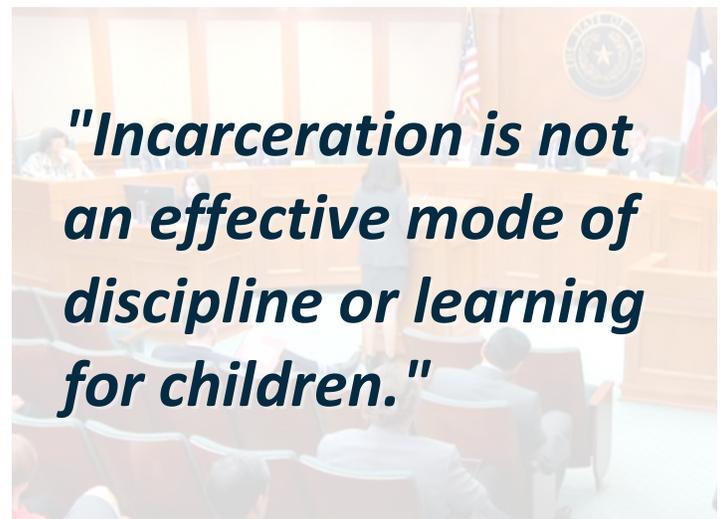
- **HB 30 (Authors: Talarico, Murr, White, Wu, Minjarez | Sponsor: Whitmire)**, *Relating to educational programs provided by the Windham School District in the Texas Department of Criminal Justice for certain inmates.* The Windham School District (WSD) must develop an educational program that includes the curriculum requirements for a high school diploma or a course of instruction that prepares a person for a G.E.D. WSD must provide that program to each person confined or imprisoned in the Texas Department of Criminal Justice who is not a high school graduate and is either younger than 18 or is younger than 22 and eligible to receive special education services. In developing each person’s educational program, WSD must consider the duration of their confinement or imprisonment, their current education level, their educational goals and preference, and, if applicable, recommendations of their admission, review, and dismissal (ARD) committee. *Effective on 9/1/2021*

- **HB 1664 (Authors: White, Guillen | Sponsor: Eckhardt)**, *Relating to the reinstatement of eligibility for medical assistance of certain children placed in juvenile facilities.* Under existing law, when a child is placed in a juvenile facility, the Health and Human Services Commission (HHSC) must suspend the child’s eligibility for medical assistance for the duration of the placement. Per this bill, HHSC must reinstate such child’s eligibility for medical assistance if they are hospitalized or become an inpatient in another type of medical facility. *Effective on 9/1/2021*

- **HB 4544 (Author: Swanson | Sponsor: Whitmire),** *Relating to providing children committed to the Texas Juvenile Justice Department with certain documents on discharge or release; authorizing a fee.* Before a child is released under supervision or discharged from the Texas Juvenile Justice Department (TJJD), the agency must determine whether the child has a valid driver’s license or personal identification certificate. If not, TJJD must submit a request to the Department of Public Safety for the issuance of a certificate – as soon as possible prior to the child’s release or discharge – so TJJD can provide the child with that certificate on release or discharge. TJJD can charge the child’s parent or guardian for the costs or \$5 fee for the certificate.

Similarly, before releasing or discharging a child, TJJD must determine whether the child has a certified copy of their birth certificate or their social security card. If not, TJJD must submit a request to the relevant entity for the document(s), as soon as possible, so it can provide the child with such material(s) on release or discharge.

This bill applies only to the release or discharge of a child occurring on or after December 1, 2021. No provisions of this bill apply to a child who is not legally present in the United States or was not a Texas resident prior to placement in TJJD custody. *Effective on 9/1/2021*



"Incarceration is not an effective mode of discipline or learning for children."

- Alycia Castillo
 Director of Policy and Advocacy
 Texas Center for Justice and Equity



"The fact that I am here expressing my thoughts and opinions and that you all are listening to me is empowering."

Representation matters."

- Giulia, high school student and former Youth Justice Policy Associate with the Texas Center for Justice and Equity, in her first-ever testimony at the legislature

Indigent Defense and Court-Related Bills

EXPANSION OF INDIGENT DEFENSE FUNDING

HB 295

Tens of thousands of people are trapped in Texas' local jails every year, many of whom are indigent. Public defender offices and court-appointed attorneys are critical for low-income defendants who cannot otherwise afford a criminal defense attorney and who are navigating the bail and pretrial systems.

- HB 295** (Authors: Murr, Collier, Smith, Moody, Ann Johnson | Sponsor: Zaffirini), *Relating to the provision of funding for indigent defense services.* The Texas Indigent Defense Commission must offer technical support to help counties improve their systems for providing indigent defense services, including indigent defense support services, as well as distribute grants to: entities that provide administrative services to counties under an interlocal contract entered into for the purpose of providing or improving indigent defense service provision, and nonprofit corporations that provide indigent defense services or support services.

Furthermore, during the tax year, counties can fund public defender's office operations as part of their indigent defense compensation expenditures, which previously had been reserved for the provision of appointed counsel for indigent individuals in criminal or civil proceedings. *Effective on 9/1/2021*

REFORMS RELATED TO COURT PROCEDURES

HB 4293, SB 49

The court process can be incredibly daunting and challenging to maneuver. People who may fail to appear for their court case can be arrested and incarcerated at taxpayer expense; a text reminder program for scheduled court hearings can improve appearance rates and reduce unnecessary policing and confinement costs. Separately, defendants with a mental illness or intellectual disability should have access to appropriate treatment or services, outside of the system whenever possible, and should similarly have access to supports and medications that will ensure they are stabilized and can resolve their case or discharge their sentence as quickly as possible.

- HB 4293** (Authors: Hinojosa, Krause, Moody, Leach, Jessica González | Sponsor: Zaffirini), *Relating to the creation of a court reminder program for criminal defendants.* By September 1, 2022, the Office of Court Administration (OCA) must develop a court reminder program with legislatively appropriated funds that will enable each county to send a text message to notify defendants of scheduled criminal court appearances. Among other things, the program must be available to each county at no cost, provide reminders for each court appearance for people with technological capability who have provided their phone number, document each occurrence of a defendant receiving a reminder, document the number of defendants who fail to appear at scheduled court appearances after being sent one or more reminders, and include the technological capability, at the discretion of the local administrative judge, to provide additional information to defendants concerning scheduled court appearances (e.g., the location of the court appearance, available transportation options, and procedures for defendants who are unable to attend court appearances). The program must also identify defendants who lack access to devices with technological capability to receive reminders, and provide one or more publicly available

Internet websites through which defendants may request reminders.

Justices of justice courts – as well as judges of county, statutory county, and district courts with jurisdiction over criminal cases – can join the state’s court reminder program or develop a county program that meets the state program’s requirements.

The OCA and judges can partner with municipalities and local law enforcement agencies to allow individuals to receive reminders of scheduled court appearances if a peace officer issues a citation and releases them, as well as allow defendants in municipal court to receive reminders of scheduled court appearances. Any partnering municipality must pay all costs of sending reminders to municipal defendants.

Effective on 9/1/2021

- **SB 49 (Author: Zaffirini | Sponsor: Murr)**, *Relating to procedures regarding defendants who are or may be persons with a mental illness or intellectual disability. This bill revises pretrial and hearing procedures and certain programs relating to individuals with a mental illness or intellectual disability.*

Under current law, within 12 hours of a sheriff or municipal jailer taking custody of a person reasonably believed to have a mental illness or intellectual disability, the sheriff or jailer must notify the magistrate, who must in turn order a service provider or qualified expert to interview the person, collect information, and provide a written report to the magistrate. Per this bill, the magistrate is not required to order the interview and information collection if the person is no longer in custody. Also per this bill, if a written report is generated, it must include a description of the procedures used in the interview and information collection, as well as the expert’s findings pertaining to whether the person has a mental illness or intellectual disability, whether the person may be incompetent to stand trial and should undergo a complete competency examination, and any recommended treatment or service. Further, this report must be provided to the sheriff or other person responsible for the person’s medical records while they are jailed, as well as to any personal bond office in that county or to the director of the office or department

responsible for supervising the person while they are released on bail and receiving treatment or services as a condition of bail.

Additionally, in regard to release on a personal bond, an individual is not required to make the standard oath – pertaining to appearing at court or paying a financial sum for failing to appear – if the court determines that they have a mental illness or intellectual disability, if they were released per statute permitting personal bond for defendants with a mental illness or intellectual disability, or if they were found incompetent to stand trial.

For individuals who are deemed incompetent to stand trial and either released on bail or not released subject to an initial competency restoration period, that period must begin on: (1) the date that person is ordered to participate in an outpatient competency restoration program or committed to a mental health facility, residential care facility, or jail-based competency restoration program; or (2) the date competency restoration services actually begin – whichever date is later. On the request of a facility or program provider, the court can enter an order extending the initial restoration period for an additional 60 days, to begin on the date the court enters the order or the date that services actually begin – whichever date is later.

Separately, this bill requires the Health and Human Services Commission (HHSC) – rather than the Department of State Health Services – to implement a jail-based competency restoration pilot program, through which HHSC must contract with a provider of jail-based competency restoration services. Such a provider must be a local mental health authority or local behavioral health authority in good standing with HHSC and must contract with a county or counties to develop and implement the jail-based program. The program must provide competency restoration services through licensed or qualified mental health professionals, operate in the jail in a designated space separate from the general population, ensure coordination of general health care, provide mental health treatment and substance use disorder treatment as necessary, and supply clinically appropriate psychoactive medications.

For either a jail-based competency restoration pilot

program or established program, the provider’s psychiatrist or psychologist must evaluate the person’s competency and report to the court at least 15 days before the initial restoration period is set to end. If the psychiatrist or psychologist determines that a person’s competency has not been restored within 60 days, the jail-based competency restoration program must continue to provide services unless it receives notice that space at a facility or outpatient competency restoration program appropriate for the person is available, and: (1) for a person charged with a felony, at least 45 days are remaining in the initial restoration period, or (2) for a person charged with a felony or a misdemeanor, an extension has been ordered and at least 45 days are remaining under the extension order. On receipt of such a notice, the person must be transferred to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the restoration period, including any extension if one had not previously been ordered. If the person is not transferred, and if the psychiatrist or psychologist determines that the person has not been restored to competency by the end of the period, the person must be returned to the court for further proceedings. For a person charged with a misdemeanor, the court can proceed with a civil commitment hearing, release the person on bail, or dismiss the charges. The court retains the authority to order a person’s transfer to an outpatient competency restoration program if the person is not a danger to others and may be safely treated on an outpatient basis with the objective of attaining competency to stand trial.

Regarding a person who has been transferred from a maximum-security unit to any other facility following a civil commitment placement: the person, the facility where the person is committed, or the prosecuting attorney can request that the court modify the order for inpatient treatment or residential care and instead order the person to participate in an outpatient treatment program. If the facility makes the request, the court must hold a hearing within 14 days to determine if the order should be modified; if the person or prosecuting attorney make the request, the court has 14 days to grant or deny the request, or hold a hearing to determine if the order should be modified.

A court is not required to hold any hearing unless the request and any supporting materials provide a basis for believing that modification of the order may be appropriate. When a court does receive a request to modify an order, it must require the local mental health authority or local behavioral health authority to submit a statement, prior to any hearing, regarding whether treatment and supervision can be safely and effectively provided on an outpatient basis, and whether appropriate outpatient mental health services are available to the person. Furthermore, if the facility where the person is committed believes that the person has a mental illness and meets the criteria for court-ordered outpatient mental health services, the facility must provide the court, before any hearing, with a certificate of medical examination for mental illness stating that the person meets the criteria for court-ordered outpatient mental health services. The court must rule on a request for order modification as soon as practicable after a hearing, but within 14 days of the request at the latest. An outpatient treatment program cannot refuse to accept a court-ordered placement on the grounds that criminal charges against the person are pending.

By December 1, 2021, the Texas Commission on Jail Standards must adopt rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of confined individuals. The rules and procedures must require that a person with a mental illness be provided with each prescription medication that a qualified medical or mental health professional determines is necessary for their care, treatment, or stabilization. *Effective on 9/1/2021*

Bills Related to Decarceration, Sentencing Reform & Community-Based Supports

PROBATION REFORM

HB 385

Given that probation has become a costly driver of mass incarceration in Texas, with nearly one-third of people entering state confinement due to a probation revocation, it is imperative to reduce unnecessary probation conditions and related fees, provide appropriate treatment supports so people can stabilize, and offer more opportunities to shorten or end people's probation terms.

- **HB 385 (Authors: Pacheco, White, Campos, Button, Krause | Sponsor: Hughes)**, *Relating to conditions of community supervision and procedures applicable to the reduction or termination of a defendant's period of community supervision.* A judge can authorize a person's probation officer to modify their probation conditions to prioritize court-ordered conditions based on the person's progress under supervision. Furthermore, probation conditions can no longer require a person to avoid people or places of "disreputable or harmful character."

Either the Department of State Health Services or the probation department supervising a person must develop a continuum of care treatment plan for that person if they are sentenced to a term in a substance abuse felony punishment facility as a condition of probation.

A judge must consider whether a person has the resources or income to pay probation- and programming-related fees, fines, and costs; the judge must do so: (1) before or immediately after placing the person on probation, including deferred adjudication community supervision, as well as (2) during the probation period, specifically before or immediately after ordering or requiring the probationer to make

payments. This does not apply to consideration of a person's ability to pay restitution. Further, the court must reconsider whether the person has sufficient resources or income to make payments at probation violation hearings. However, a probationer can file a written statement with the court requesting a reconsideration of their ability to make payments and requesting that a payment be satisfied by an alternative method – including all or a portion of the payment being paid at a later date or by payment plan, complete or partial waiver of the payment, discharge of the payment through community service, or any combination of these methods. The probationer can file this statement once every six months, unless they show a substantial and compelling reason for making an additional request during that period. The judge must review the probationer's statement and consider whether their ability to make a previously ordered payment is substantially hindered; if so, the judge must determine whether an alternative method is acceptable, then notify the probationer and the prosecuting attorney of their decision. Complete or partial waiver of a monthly reimbursement fee is only permitted if, after waiving all other necessary fines and fees, the judge determines that the probationer still does not have sufficient resources or income to make the payment.

Separately, after a person completes half of their original probation period or two years of probation, whichever is more, the judge must review their record and consider whether to reduce or terminate the probation period. For probationers who, during that review, were delinquent in paying restitution or had not completed court-ordered counseling or treatment, their probation officer must notify the judge when those activities have been completed and the probationer is in compliance with all probation conditions. At that point, the judge must review the person's record and consider whether or not to reduce or terminate the probation period. In making the determination, the judge can consider any relevant

quarterly to collaborate on planning and implementing regional strategies to reduce: incarceration of people with mental illness in local county jails, local hospital emergency room visits by people with mental illness, transportation of people served by the LMHA to local mental health facilities, and costs to local governments of providing services to people experiencing a mental health crisis.

The HHSC, in coordination with each LMHA group, must annually update the mental health services development plan, to include a description of actions taken by the group to implement regional strategies in the plan, and any new regional strategies identified by the group, as well as the estimated number of outpatient and inpatient beds necessary to meet the goals of each group’s regional strategy.

By December 1 of each year, beginning in 2022, the HHSC must produce and publish a report containing the most recent version of each mental health services development plan. *Effective on 6/4/2021*

- **SB 1921 (Author: Lucio | Sponsor: Guillen)**, *Relating to Medicaid reimbursement for the provision of certain behavioral health and physical health services.* The Health and Human Services Commission must provide Medicaid reimbursement to a behavioral health services provider, using a fee-for-service delivery model, prior to an individual’s enrollment with and receipt of such services through a managed care organization. *Note: “Behavioral health services” means mental health and substance abuse disorder services, and it includes targeted case management and psychiatric rehabilitation services. Effective on 9/1/2022*

DRUG- AND RECOVERY-RELATED REFORMS

HB 707, HB 1694, SB 181, SCR 1

The cycle of substance use, arrest, and incarceration has long continued in Texas – perpetuating the drug

crisis and squandering resources that could be used to truly prevent crime. To break this cycle, it is crucial to provide life-saving treatment and recovery supports in the community, as well as to reduce the harsh consequences of a drug conviction so people can maintain employment and other obligations.

- **HB 707 (Authors: Moody, Murr | Sponsor: Blanco)**, *Relating to a study on expanding recovery housing in this state.* The Health and Human Services Commission (HHSC) must conduct a study to evaluate the current status of – and opportunities, challenges, and needs to expand – recovery housing, which specifically refers to a shared living environment that promotes sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connects residents to supports and services promoting recovery, that is centered on peer support, and that is free from alcohol and drug use.

Specifically, HHSC must: (1) identify and evaluate state and federal regulatory deficiencies and potential impacts on recovery housing, including the impacts on local government resources and interests of the surrounding community; (2) create focus groups with community stakeholders interested in recovery housing; (3) interview stakeholders and experts in recovery housing that represent both rural and urban areas in Texas; (4) conduct site visits to recovery houses, including those demonstrating different models of recovery housing in both rural and urban areas; and (5) review scholarly research on recovery housing.

By December 1, 2022, HHSC must submit a written report to the legislature that contains the study results and any recommendations for legislative or other action. *Effective on 9/1/2021*

- **HB 1694 (Authors: Raney, Guillen, Leach, Guerra, Jarvis Johnson | Sponsor: Schwertner)**, *Relating to a defense to prosecution for certain offenses involving possession of small amounts of controlled substances, marijuana, dangerous drugs, or abusable volatile chemicals, or possession of drug paraphernalia for*

defendants seeking assistance for a suspected overdose. This bill, also called the Jessica Sosa Act, is “Good Samaritan” legislation.

It is a defense to prosecution for certain drug possession offenses that the actor: (1) was the first person to request emergency medical assistance for another person experiencing a possible drug overdose, provided the actor made the request during the ongoing emergency, remained on the scene until medical assistance arrived, and cooperated with medical assistance or law enforcement personnel; or (2) was themselves the victim of the overdose for which assistance was requested.

The defense applies to drug possession offenses of up to four ounces of marijuana, as well as small amounts of drugs listed in Texas’ statutory penalty groups, ranging from Class B misdemeanor possession levels to state jail felony possession levels. Additionally, the defense applies to Class B misdemeanor-level possession of controlled substances listed in a schedule but not in a penalty group, use or possession of drug paraphernalia, possession of a dangerous drug without a prescription, and use or possession of abusable volatile chemicals.

The defense is not applicable if:

- at the time the request for emergency medical assistance was made, a peace officer was arresting the individual or executing a search warrant describing them or their location, or the individual was committing another crime, other than certain drug possession offenses;
- the individual had been previously convicted of or placed on deferred adjudication community supervision for an offense related to dangerous drugs or abusable volatile chemicals;
- the individual was acquitted in a previous proceeding by using the Good Samaritan defense; or
- in the past 18 months, the individual requested emergency medical assistance in response to a possible overdose of another person or themselves.

Effective on 9/1/2021

- **SB 181 (Author: Johnson | Sponsor: White)**, *Relating to suspension of a driver’s license for persons convicted of certain offenses and the educational program required for reinstatement of a license following certain convictions; authorizing a fine.* Under previous law, a conviction for any drug offense resulted in an automatic, minimum 180-day license suspension. Per this bill, the license suspension is reduced to a minimum of 90 days, and a judge can waive the suspension for people with misdemeanor drug convictions who have not had a drug conviction within the past 36 months. That suspension can only be upheld if the court makes a written determination that it is in the interest of public safety.

Additionally, this bill allows individuals with a suspended license to complete the required 15-hour drug course online or in person.

Lastly, a person convicted of a misdemeanor drug offense whose driver’s license is not suspended must pay a fine of \$100, regardless of whether they were granted community supervision in the case. **Effective on 9/1/2021**

SCR 1 (Author: Johnson | Sponsor: White), *Expressing opposition to the enactment or enforcement in Texas of a law, under a federal mandate, that automatically suspends the driver’s license of an individual who is convicted of certain offenses. This resolution supports SB 181.*

Women's Justice Bills

FAMILY REUNIFICATION REFORM

HB 2926

A parent's incarceration can have a devastating impact on their family; their parental rights can be terminated and their children can be placed in the custody of the state. When a formerly incarcerated parent returns to the community and has taken steps to create a safe, stable home, it is important to provide them a pathway to reinstate their parental rights and reunite with their children.

- HB 2926 (Authors: Parker, Krause, Minjarez, Talarico | Sponsor: Buckingham)**, *Relating to the reinstatement of the parent-child relationship with respect to a person whose parental rights have been involuntarily terminated and to certain requirements in relation to the termination of the parent-child relationship or placement of a child in substitute care.* This bill creates a path for formerly incarcerated parents to regain the rights to their children. More specifically, people whose parental rights were involuntarily terminated – including due to imprisonment and inability to care for their children – can file a petition requesting the court to reinstate their rights. That petition is only permitted if: the termination of rights resulted from a suit filed by the Department of Family and Protective Services (DFPS), two years have passed since the rights were terminated, the child has not been adopted and is not the subject of an adoption placement agreement, and the petitioner has notified DFPS of their intent to file the petition at least 45 days in advance of filing it.

The petition for reinstatement of rights must include, among other things: (1) a summary statement of the facts and evidence that the petitioner believes demonstrate that the former parent has the capacity and willingness to perform parental duties established by law, including steps the former parent has taken

toward personal rehabilitation since the order terminating parental rights (e.g., mental health and substance abuse treatment, employment, or other personal history that demonstrates rehabilitation); and (2) a statement of the intent or willingness of the child to consent to the reinstatement of parental rights, if the child is 12 or older.

A reinstatement hearing must be held within 60 days of the petition's filing date. The petitioner has the burden of proof in the hearing, and each party can call witnesses. The court can grant the petition and order the reinstatement of parental rights only if the court finds by a preponderance of the evidence that reinstatement of rights is in the child's best interests, and that the former parent has remedied the conditions that were grounds for the order.

If the child is 12 years or older, they must consent to the reinstatement and desire to reside with the parent for reinstatement to occur. If the child is 11 or younger, the court must consider the child's age, maturity, and ability to express a preference, and it can consider the child's preference regarding the reinstatement as one factor (considered along with all other relevant factors) in making the determination.

Following a hearing, the court may grant or deny the petition, or defer the decision and issue a temporary order that will expire in 6 months, during which DFPS will remain the child's managing conservator and the former parent will be the possessory conservator. In this case, DFPS must monitor the possessory conservatorship during the temporary order and, when it expires, the court must hold a hearing to determine whether to grant or deny the petition for reinstatement. If, following the hearing, the court denies the petition for reinstatement of parental rights, it must issue a written order that includes its findings and prohibit the filing of a subsequent petition for at least one year.

Note: Immediately after a court orders termination of the parent-child relationship in a suit filed by DFPS, DFPS must notify certain relatives of the child about the termination, and give those individuals 90 days to file an original suit or a suit for modification requesting managing conservatorship of the child. In making a placement decision for a child, DFPS must give preference to persons in the following order: (1) a person related to the child by blood, marriage, or adoption; (2) a person with whom the child has a long-standing and significant relationship; (3) a foster home; and (4) a general residential operation. *Effective on 9/1/2021*



REFORM RELATED TO PREGNANCY WHILE INCARCERATED

HB 1307

When a pregnant woman is in state or county custody, it is vital that she has access to needed medical care, especially if she has experienced a miscarriage or assault.

- HB 1307** (Authors: Mary González, Allen, Guillen | Sponsor: Menéndez), *Relating to the care of pregnant women in county jail or in the custody of the Texas Department of Criminal Justice.* As soon as possible after the Texas Department of Criminal Justice (TDCJ) receives a report that a pregnant woman in its custody had a miscarriage or was physically or sexually assaulted, TDCJ must ensure that an obstetrician or gynecologist and a mental health professional promptly review the health care services provided to the woman and order additional health care services as appropriate, including obstetrical and gynecological services and mental health services. A sheriff must follow the same procedures for a pregnant woman in the custody of a county jail. *Effective on 9/1/2021*

"We can not grow weary of doing what's in the best interest of the child in reunifying these children with their parents."

- Cynthia Simons
Grant Me The Wisdom Foundation Women's Fellow
Texas Center for Justice and Equity

"You're a prisoner, a number. Not a human, not a pregnant woman. The guards think you're using your pregnancy as an excuse, and there is no compassion. When I went into labor, they didn't believe me. Sleeping is so much harder on those thin mats. Pregnancy is hard on your body, and they don't take care of those needs."

- Angelica, in and out of prison for 17 years
[Quote originally published in "An Unsupported Population" by the Texas Center for Justice and Equity, 2018]

Bills Related to Confinement in State or Local Corrections Facilities

STATE PRISON REFORMS

HB 3606, HB 4279

Approximately 60,000 people are released from Texas prisons each year. It is important to equip them with the skills necessary to hold stable, law-abiding employment, including by providing them access to vocational training programs prior to release.

- HB 3606** (Authors: Leach, Rodriguez, Guillen | Sponsor: Bettencourt), *Relating to the provision of vocational training to inmates confined in a Texas Department of Criminal Justice transfer facility. The Texas Department of Criminal Justice must adopt a policy allowing a public or private entity, including a college or university, to provide vocational training on a voluntary basis to individuals confined in a transfer facility. **Effective on 9/1/2021***

- HB 4279** (Author: Dominguez | Sponsor: Hinojosa), *Relating to the eligibility of the Windham School District to participate in the Jobs and Education for Texans (JET) Grant Program. The Texas Workforce Commission – which administers the Jobs and Education for Texans (JET) Grant Program to support career and technical education courses or programs at public colleges, technical institutes, and partnering school districts – can consider, in its grant awards, whether the course or program offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District. **Effective on 9/1/2021***

COUNTY JAIL REFORM

HB 2831

People with intellectual or developmental disabilities often experience significant and unique obstacles in the criminal legal system. It is necessary to identify people with such disabilities who are arrested and detained in county jails so they can be provided with appropriate services and care.

- HB 2831** (Author: White, Spiller | Sponsor: Miles), *Relating to the confinement in county jail of persons with intellectual or developmental disabilities. By January 1, 2022, the Texas Commission on Jail Standards (TCJS) must establish a 13-member advisory committee to gather and review data, as well as develop recommendations and guidelines for sheriffs and counties, on the incarceration of people with intellectual or developmental disabilities (IDD) in county jails. By December 1 of even-numbered years, beginning in 2022, the advisory committee must submit a report to the legislature with its recommendations for legislative or other action.*

Additionally, TCJS and the advisory committee must assess each county jail’s ability to properly identify people with IDD and assist jails in improving their intake processes. The advisory committee must also periodically update TCJS’s intake screening form to reflect the above-mentioned recommendations. By December 1, 2022, TCJS and the advisory committee must submit a report to the legislature and each sheriff on identified deficiencies in intake processes and recommendations for improvement.

Separately, TCJS and the Texas Commission on Law Enforcement – with the assistance of the advisory committee – must, by January 1, 2022, develop a

program for county jailers, with at least 4 hours of education and training on interacting with people with IDD in county jails, including assessment techniques.

Note: The advisory committee consists of one representative of the following agencies: TCJS, the Department of State Health Services, the Health and Human Services Commission (specifically a person with expertise in IDD), the Texas Commission on Law Enforcement, and the Texas Correctional Office on Offenders with Medical or Mental Impairments; one sheriff each of a large and small county; two representatives of statewide organizations that advocate for individuals with IDD; one mental health professional with a focus on trauma and IDD; one representative from a state supported living center; one person who has IDD or whose family member does; and one person who represents the public.

Effective on 9/1/2021



SPOTLIGHT:

How individuals with intellectual and developmental disabilities (I/DD) experience the Texas criminal legal system

49th Out of 50 states and Puerto Rico, Texas ranks 49th in providing I/DD services.

6x Facility costs in Texas are 6x the cost of community living for people in Texas.

500k There are 500,000 Texans diagnosed with I/DD, in a state population of 29 million.

55% Black youth and young adults with a disability have a 55 percent chance of being arrested compared to 37 percent for those without a disability.

"A lack of fully funded community-based services and a criminal legal system that does not consider accommodations for people with disabilities discriminates against individuals with I/DDs, driving people with disabilities into the criminal legal system in Texas and keeping them there."

- Texas Center for Justice and Equity and the Arc of Texas "One Size FAILS All: Misunderstood and Mistreated" report. Citations and additional data are available in the [report](#).

Reentry Bills

REFORMS THAT REDUCE REENTRY BARRIERS

HB 757, HB 2352

People who can quickly find employment after release from prison are likelier to be stable and successful. It is critical to improve access to vocational training and occupational licensure for people with a criminal history, which in turn will provide employers with a growing candidate pool and keep Texas' workforce and economy strong and vibrant.

- **HB 757** (Author: Dutton | Sponsor: Miles), *Relating to the consequences of receiving a grant of deferred adjudication community supervision and successfully completing the period of supervision.* Following a person's successful completion of deferred adjudication community supervision – resulting in the dismissal of the proceedings and a discharge – the underlying offense may not be used as grounds for denying, suspending, or revoking a professional or occupational license or certificate. However, a licensing agency can consider the deferred adjudication community supervision in issuing, renewing, denying, or revoking such a license or certificate if: (1) the underlying offense involves various violent, trafficking, and/or sexual offenses, including sex offenses requiring registration and public indecency, or the offense relates to the licensed profession; (2) the license or certificate relates to a profession involving direct contact with children; or (3) the license or certificate relates to law enforcement and security. **Effective on 9/1/2021**

- **HB 2352** (Authors: Parker, White, Jarvis Johnson, Moody, Guillen | Sponsor: Huffman), *Relating to an educational and vocational training pilot program for*

certain state jail felony defendants and certain inmates released on parole; changing parole eligibility. This bill modifies the educational and vocational training pilot program initiated for state jail felony defendants in the 2017 Regular Session via [HB 3130](#). The pilot program is intended to provide educational and vocational training, employment, and reentry services.

A judge can directly sentence a person with a state jail felony to probation and placement into the pilot program, and can no longer impose a 90-day period of confinement in a state jail felony facility prior to probation placement. Furthermore, the pilot program is extended to certain individuals released on parole who are required to participate as a condition of parole. Specifically, paroled individuals who are eligible to participate include people: (1) who are serving third-degree felony drug offenses, (2) who have not previously been convicted of felonies for various violent, trafficking, and/or sexual offenses, public indecency, or organized crime, and (3) who are eligible for parole release when their calendar time and good conduct time equal one-fourth of the sentence imposed or 15 years. Such individuals may be released on parole 180 days early to begin immediate participation in the program. The Texas Department of Criminal Justice (TDCJ) must annually identify at least 100 people who may be suitable candidates for early release and program participation; TDCJ or the Parole Board must notify such individuals that they are being considered for release.

TDCJ must also determine at least two sites in which the pilot program will operate; those sites must be based on locations where the program will have the greatest likelihood of success, regardless of geographic region or population size. Separately, the Office of Court Administration must develop and annually provide a training program to educate and inform judges on the components of the program. **Effective on 9/1/2021**

Policing Bills

JAVIER AMBLER'S LAW

HB 54

Javier Ambler was killed in March 2019 when Williamson County sheriff's deputies – who were being filmed by the reality show Live PD – followed Mr. Ambler into Austin for failing to dim his headlights, then restrained and repeatedly Tased him while he claimed, "I can't breathe." After filming Mr. Ambler's death, Live PD deleted the footage, raising concerns about evidence tampering. Prohibiting the filming of police interactions for reality shows can prevent police pursuits and violence for the purpose of "entertaining television."

- **HB 54 (Authors: Talarico, White, Israel, Bucy, Patterson | Sponsor: Whitmire)**, *Relating to accompanying and filming peace officers of state and local law enforcement agencies for producing reality television programs.* A law enforcement agency is prohibited from authorizing a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a reality show. **Effective on 5/26/2021**

THE BOTHAM JEAN ACT

HB 929

In September 2018, Botham Jean was killed in his apartment by a Dallas police officer who claimed she mistakenly entered his apartment, believing it to be her own, and shot at the unarmed "intruder." After

police arrived on the scene and the officer was placed in a patrol car, the dashcam in that car was deactivated. It is important to ensure that officers with recording devices, specifically body-worn cameras, record the entirety of the investigation in which they are actively participating, both to capture pertinent information and to improve transparency around police actions.

- **HB 929 (Authors: Sherman, Sr.; Krause; Jetton; Rodriguez; Reynolds | Sponsor: West)**, *Relating to law enforcement policies and procedures regarding body worn cameras.* A law enforcement agency policy regarding body-worn cameras must include provisions relating to the collection of such a camera – along with the applicable video and audio recorded by the camera – as evidence. The policy must also require an officer equipped with such a camera and actively participating in an investigation to keep the camera on for the entirety of that active participation.

A peace officer can choose not to activate a body-worn camera or can discontinue a recording for any encounter with a person that is not related to an investigation. Per this bill, statute no longer specifies that the camera may be deactivated during an interview with a witness or victim. **Effective on 9/1/2021**

Bills Related to Other Justice Issues

REFORMS THAT ADDRESS COURT FINES AND FEES

HB 569, HB 1373

People who become entangled in the criminal legal system can have trouble escaping the fees and court costs assessed for certain violations. It is crucial to help reduce the burden of heavy fees and costs, including by offering credit for time served or designating them uncollectable.

- HB 569 (Authors: Sanford, Rose, Thierry, White, Crockett | Sponsor: West)**, *Relating to credit toward payment of a fine and costs for certain misdemeanants confined in jail or prison before sentencing.* Under current law, in regard to criminal convictions in cases before a justice of the peace or municipal court judge, the judgment and sentence require paying a fine and costs to the state – but a person must be credited for time spent in jail between their arrest and the sentence, with the credit applied to the fine and costs at a set rate. Per this bill: In addition to the above credit, when imposing a fine and costs in a case involving a fine-only misdemeanor, the person must be credited for time served in jail or prison for another offense if that confinement occurred after the commission of the fine-only misdemeanor. The credit must be applied at the rate of at least \$150 per day confined.

Additionally, a justice or judge cannot issue an arrest warrant for a person’s failure to appear at the initial court setting unless the justice or judge first provides notice to the person (by phone or mail) that the person may be entitled to a credit toward any fine or costs owed if they were confined in jail or prison after the commission of the offense for which the notice is given.

Effective on 9/1/2021

- SB 1373 (Author: Zaffirini | Sponsors: White, Jarvis Johnson)**, *Relating to the imposition and collection of fines, fees, and court costs in criminal cases.* During or immediately after imposing a sentence in a case where a person entered a plea in open court, the judge must inquire on record whether the person has sufficient resources or income to immediately pay all or part of the fine and costs. A cost includes a reimbursement fee.

Separately, an officer who is authorized to collect a fine, reimbursement fee, or other fee may ask the trial court to make a finding that the fine or fee is uncollectable if has been unpaid for at least 15 years. On a finding by the court that such is the case, the court can order the officer to designate it uncollectable in the fee record.

Effective on 9/1/2021