



TEXAS CRIMINAL
JUSTICE COALITION

WRITTEN TESTIMONY

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**REGARDING COUNTY JAIL STANDARDS & INTERACTIONS BETWEEN THE
PUBLIC AND PEACE OFFICERS**

THE HOUSE COMMITTEE ON COUNTY AFFAIRS

JULY 30, 2015

Dear Members of the Committee,

My name is Doug Smith. I am a Policy Analyst with the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to testify on potential strategies to improve county jail standards and interactions between the public and peace officers. The incident that served as an impetus for this hearing offers an opportunity to address issues on a systemic level to prevent similar tragedies as well as to improve the standards of law enforcement and corrections in the state. We hope to provide smart-justice solutions that address racial disparities in the criminal justice system, and to offer evidence-based strategies that lead to safer communities while decreasing the costly use of incarceration.

STRATEGY ONE: RETHINK & REVAMP CURRENT POLICING PRACTICES

De-Escalation

Change begins with a common understanding of what constitutes good policing. De-escalation is not merely a tactic police officers learn in training, but the very goal of law enforcement encounters with the public. Whenever encounters descend to the point of force or arrest, a failure of good policing occurs. This is especially true when the reason for the encounter did not involve an alleged criminal action that could have resulted in incarceration.

De-escalation is not merely a tactic police officers learn in training, but the very goal of law enforcement encounters with the public.

The National Institute of Justice indicates that use of force is generally appropriate only in incidents wherein self-defense or defense of another person or group is necessary.¹

- **Recommendation:** Every use of force incident should be evaluated to determine if the situation warranted the use of force and whether de-escalation techniques were used properly.
- **Recommendation:** Officers should be encouraged to delay decisions to use aggressive tactics whenever appropriate and wait for supervisors to arrive.
- **Recommendation:** Use of force incidents that clearly involve an officer straying from the protocols that were instilled during training should result in disciplinary action.

Reducing Racial Disparity in Reasonable Suspicion Stops

In looking at what constitutes good policing, it is also important to honestly assess the impact that intensive policing practices have, particularly on racially diverse communities. **Reasonable suspicion stops and other intensive tactics that are based on officer discretion have a disparate racial impact, engendering distrust between police and members of the community. Research indicates that nearly 71 percent of drivers whom officers deem to be “suspicious” are racial minorities.²** Officers commonly interpret nervousness on the part of the driver as a basis for their suspicion, despite the fact that intensive policing practices increase the sense of anxiety many racial minorities feel when they encounter police. **Perpetuating these practices guarantees increasing numbers of hostile encounters, which lead to greater numbers of use-of-force incidents.**

- **Recommendation:** Law enforcement agencies should evaluate data for patterns of racially disproportionate traffic stops to identify officers in need of training.

- **Recommendation:** Require law enforcement agencies to do more than simply report racial profiling data and require them to report on their efforts to address patterns of racially-disparate policing revealed in those reports.

STRATEGY TWO: IMPLEMENT PRE-BOOKING DIVERSION

Pre-booking diversion programs address low-level violations through referrals to community services instead of arresting individuals for crimes that do not threaten public safety. These programs are gaining popularity because these programs require a shift away from the concepts of policing that have dominated modern law enforcement practices. Programs like the Law Enforcement Assisted Diversion (LEAD) Program in Seattle have been shown to actually decrease crime rates while healing relationships between the police and the community.³

The principles of pre-booking diversion apply to a host of nonviolent offenses. For example, Harris County implemented its First Chance Intervention Program in late 2014, and **in the first six months the program diverted over 1000 people** charged with first-time Class B misdemeanor marijuana possession. Along with the individuals spared the consequences of a criminal record, **the county has saved hundreds of thousands of dollars associated with booking, incarcerating, and prosecuting these cases with no harm to public safety.** We encourage you to work with law enforcement partners to implement similar policies.

- **Recommendation:** Require greater use of pre-booking diversion across the state, particularly those suspected of committing nonviolent misdemeanors. Emphasize diversion for non-violent individuals with mental illness and those with substance abuse issues. Early interactions with police that lead to service linkage instead of jail reduce the likelihood of future arrest.

STRATEGY THREE: PROHIBIT ARRESTS FOR NON-JAILABLE OFFENSES

Prohibiting Arrests for Non-Jailable Offenses

Arresting people for nonviolent misdemeanor offenses for which the ultimate penalty would not have been jail or incarceration leads to negative consequences for communities. **The Supreme Court of the United States, in *Atwater v. City of Lago Vista*, recognized that a minor-offense limitation on arrests was a completely appropriate – and indeed, probably wise – policy that individual states could choose to enact.**⁴ The Court agreed with arguments in the case asserting that arrests for minor offenses actually contradict law enforcement interests. In its opinion, the Court asserts that, **“It is in the interest of the police to limit petty-offense arrests, which carry costs that are simply too great to incur without good reason.”**⁵

It costs county jails more than \$60 per day to hold someone in custody,⁶ and the adjudication process can take months. **The decision to incarcerate an individual before adjudication imposes a substantial cost on taxpayers, funds that could be used for drug treatment, probation, or other services that actually address the problems at the root of crime.** Not only does it pose substantial costs to incarcerate defendants who may pose no threat to public safety, but **it also has the potential to threaten defendants’ stable employment and housing, and hurt their ability to care for their families, increasing the likelihood they will become a burden on their communities.** Moreover, arresting people for minor offenses leads to damaged relationships between the police and members of the community.

During the Texas Legislature's 77th session, the Legislature passed SB 730, a bill requiring mandatory issuance of a written notice to appear, except under certain circumstances.⁷ This bill, which would have prohibited arrests for fine-only, non-jailable offenses, was vetoed by then-Governor Perry,⁸ allowing police to continue handcuffing and arresting people for fine-only, non-jailable offenses.

- **Recommendation:** The Legislature should enact legislation prohibiting arrests for nonviolent, non-jailable offenses, and law enforcement agencies should immediately exercise their discretion and implement this as policy.

Limit Consent Searches

Similarly, when police stop drivers and conduct warrantless searches based on unreasonable suspicion instead of evidence, they impair relationships with the community. **Because of a culture of aggressive policing practices, many people do not know that they have the right to refuse consent searches, especially when the reason for the traffic stop involved a minor traffic violation.** The 79th Legislature passed SB 1195 by Senator Hinojosa to require all jurisdictions to inform individuals of their right to refuse a consent search and obtain written or oral consent prior to conducting a consent search of a vehicle during a stop for an alleged violation of a traffic law. The bill was vetoed by then-Governor Perry. In the veto statement, Gov. Perry makes it clear that counties and municipalities may implement this policy their own.

- **Recommendation:** Require notice of the right to refuse a consent search and written or oral consent prior to searching a vehicle during a stop for an alleged violation of a traffic law, unless there is probable cause or other legal basis to perform the search.

STRATEGY FOUR: REFORM BAIL SYSTEM AND PROVIDE SUFFICIENT PUBLIC DEFENSE

Greater Use of Personal Recognizance (PR) Bonds

The state must reconsider the scheme by which bond is set in most counties. Texas statute requires flexibility in determining the bail amounts or whether to issue a personal recognizance (PR) bond.⁹ Making bond decisions based on an assessment of risk rather than ability to pay will lead to a more fair justice system and save counties thousands of precious dollars that could be used to prevent individuals from being jailed in the first place.

Pretrial Detention in Texas

As a state, Texas incarcerates an extremely high number of individuals who have yet to be sentenced—60.7% in June 2015.¹ However, some counties' pretrial incarceration rate greatly exceeds even that of the state average. For example, Waller County's jail population in June 2015 was made up of 74.2% pretrial detainees, a rate significantly higher than the state average.

Studies have indicated that, when counties expand the use of PR bonds based on a validated assessment of risk conducted by qualified personnel, it achieves improved public safety outcomes while saving substantial amounts on county jail expenditures.

- Across all pretrial risk categories, low to high, those who were released on a PR bond were less likely to commit a new crime during the pretrial period than those who received a secured bond.

- People released on PR bonds were as likely to show up for their court appearance as those who received a secured bond.
 - The use of PR bonds greatly reduces county jail costs, as nearly 30% more individuals post bond when PR bonds are available.
 - As of June 1, 2015, there were 39,866 people in county jails awaiting trial.¹⁰ At an average daily rate of \$60.24¹¹, **county jails in Texas could save nearly \$800,000 per day by implementing a PR bond system. These savings would more than cover the costs of implementing a pretrial system, including the costs associated with indigent defense, leaving additional funds to improve community supervisions departments and treatment services.**
 - Further, the economic benefit of instituting an unsecured bonds system is significant. Those released on PR bond are able to maintain employment and housing as well as engage in treatment services, thereby decreasing the likelihood of incarceration.
- **Recommendation:** Require all counties to expand the use of PR bonds using a validated assessment of risk rather than bail schedules. Utilize the savings from decreased jail population to fund pretrial supervision.

Pretrial Defense at Bail Hearings

Judges are currently required to consider a defendant’s ability to pay before establishing bail amounts, which should protect defendants from having unreachable bonds. Unfortunately, most county magistrates do not adhere to this statute, but instead rely on bail schedules tied to the offense for which the defendant was charged. This is a violation of federal constitutional law, which requires “individualized determination” in establishing bail. Ultimately, the best way to ensure that individuals receive individualized consideration in a bail hearing is to provide defense counsel at magistration. Few individuals 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.¹²

Providing an attorney to individuals at magistration increases the use of PR bonds and low bail amounts, which will ultimately save much-needed funds and allow those who are not a threat to public safety to continue providing for themselves and their families. Creating and maintaining a public defender office, with the guidance and support of the Texas Indigent Defense Commission, would allow counties to best meet the needs of their indigent defendants who cannot afford an attorney or the high bail assigned without the representation of counsel.

- **Recommendation:** Require counties to provide defense counsel at magistration.
- **Recommendation:** Enforce constitutional right to individualized determination in establishing bail amounts, and prohibit the use of bail schedules.

STRATEGY FIVE: ADVOCATE FOR IMPROVEMENTS TO MENTAL HEALTH TRAINING FOR LAW ENFORCEMENT AND JAIL PERSONNEL

Suicide Prevention in County Jails

People with a history of suicide attempts are at exceptionally high risk of suicide following arrest.¹³ Suicide is the second most common cause of death inside county jails, occurring at a higher rate inside jail than in the general population.¹⁴ The smaller the county jail, the higher the suicide rate.¹⁵ This is of

particular concern in Texas, where most county jails house fewer than 100 individuals in custody. **This points to the lack of suicide risk-assessment training and counseling services that may be available in larger jails.** Further, most suicide deaths in county jails occur in single cells, which also points to inadequate staffing or supervising standards including the lack of surveillance equipment.¹⁶

- **Recommendation:** Ensure that the screening for suicide, medical, and mental impairments is conducted by a qualified mental health professional or correctional staff member with specialized training.
- **Recommendation:** Ensure that those identified as being at higher risk for suicide are referred to a mental health professional for further evaluation and treatment.
- **Recommendation:** Require increased use of PR bonds, decreasing pretrial jail populations, so that even small county jails have the resources to ensure that qualified mental health professionals and well-trained staff are available.
- **Recommendation:** Give the Texas Commission on Jail Standards (TCJC) the authority to require mandatory training sessions on suicide prevention.
- **Recommendations:** Prohibit jails from detaining individuals at risk for suicide in isolated areas or single cells.

Law Enforcement Crisis Intervention Teams

Crisis Intervention Team (CIT) programs have been recognized nationally as providing law enforcement with comprehensive mental health training that allows them to better identify individuals with mental illness that should be diverted to mental health settings instead of jail.¹⁷

Officers who receive CIT training are less likely to have stigma and prejudice toward individuals with mental illness and are more likely to divert individuals with mental illness to mental health settings instead of jail.¹⁸ CIT programs not only provide specialized training but also facilitate community collaboration between mental health providers and law enforcement, which better ensures that individuals with mental illness are transferred safely to the mental health system.¹⁹

- **Recommendation:** Expand the use of Crisis Intervention Teams across the state, even in smaller counties.

STRATEGY SIX: ADVOCATE TO PROVIDE SUFFICIENT POWER AND RESOURCES TO THE TEXAS COMMISSION ON 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),²⁰ **its power to enforce jail standards is dubious at best.** The agency must go beyond merely setting standards and identifying county jails that fall outside those standards. The agency must have the ability to enforce those standards. **With adequate resources, TCJS can ensure that problems related to inmate safety are addressed proactively, resulting in fewer deaths inside county jails. Unfortunately, the agency does not currently have adequate funding to enforce standards. For the 2016 – 2017 biennium, TCJS has budgeted less than \$1 million, which will cover the salaries of 17 full-time staff members to attempt to enforce standards in 254 counties.**²¹

- **Recommendation:** Provide the Texas Commission on Jail Standards with the resources and authority to enforce jail standards across the state.

Thank you for allowing me the opportunity to provide testimony to the Committee on this important topic. We hope that the strategies and recommendations provide a blueprint for improving law enforcement and county jail standards throughout the state.

CITATIONS

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- ⁴ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2000).
- ⁵ *Ibid*, p. 352.
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- ⁷ Texas Legislature's 77th Session, SB 730 Enrolled Bill Analysis, <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=77R&Bill=SB730>.
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