

TEXAS CRIMINAL JUSTICE COALITION

2011 LEGISLATIVE WRAP-UP

LETTER FROM THE EXECUTIVE DIRECTOR

Throughout this recent 82nd State Legislative Session, the state faced an historic budget deficit, forcing leadership to make difficult cuts to address the state's pressing needs.

The Texas Criminal Justice Coalition was vocal that policy-makers and other stakeholders keep in mind long-term ramifications, including increased recidivism or other threats to public safety, so costs and consequences are not merely shifted to Texans down the line. We pushed for comprehensive, cost-saving strategies that the state and counties could employ to address the immediate financial deficit, implement a rational, responsible, fiscally sound budgetary approach, and preserve public safety throughout our communities in the future.

Although this has been one of the most challenging sessions we have encountered, **several critical smart-on-crime policies have become law**, including in areas of sentencing and efficiency, diversions, probation, parole, re-entry, indigent defense and innocence, and juvenile justice. Furthermore, **the Legislature chose for the first time in Texas history to close an adult prison** – an accomplishment symbolizing the dramatic shift in pursuit of smarter policies that save taxpayer dollars while increasing public safety.

Additionally, although not all smart-on-crime policies made it through the legislative process, they progressed further this year than they had in previous sessions, which increases their likelihood of becoming law next session. We hope that these are strategies that policy-makers will take back to their respective communities for consideration during the legislative interim.

We must thank the Representatives, Senators, their hard working staff, juvenile and criminal justice practitioners, and fellow advocates for their determination and dedication to furthering policies that will benefit all facets of society.

We must also thank you for supporting our efforts and the efforts of other advocates during the last few months.



Sincerely,

Ana Yáñez-Correa, Ph.D.
Executive Director

THANK YOU TO STAFF AND BOARD

We would like to extend our greatest appreciation to the members of the **Policy Research Team** at the Texas Criminal Justice Coalition for their tireless efforts during this past legislative session.

We must also note that TCJC's work could not be done without the support of our Board members.

SMART SENTENCING, PROBATION & PAROLE REFORMS

DURING THE 82ND LEGISLATIVE SESSION, LAWMAKERS CONTINUED

their efforts to improve Texas' justice system and reverse years of irresponsible and costly policies related to sentencing, diversions, probation, and parole. Recognizing that the most effective method for increasing public safety is to adopt a proactive, smart-on-crime approach, the Texas Legislature has advanced various initiatives that encourage accountability and self-responsibility while promoting rehabilitative programs that target criminogenic behavior rather than simply punishing individuals. Ultimately, their efforts will reduce the cost to the state, protect taxpayers from having to shoulder the financial burden of unnecessary and avoidable incarcerations, increase public safety, and strengthen Texas communities.



Brandon Dudley & Judge John Creuzot

SENTENCING AND EFFICIENCY

- **H.B. 2649 (REPRESENTATIVE ALLEN AND SENATOR ELLIS):** *This bill allows diligent participation credits for state jail felons. H.B. 2649 will have a positive fiscal impact of roughly \$49 million on the state budget through August 2013.* Unlike individuals in state prisons and county jails, those in state jail are ineligible for good time credits and must serve their sentence day for day. Under H.B. 2649, state jail felons will have the opportunity to earn time off of their sentences through self-improvement programming, work programs, and vocational achievement. This will encourage personal responsibility, provide wardens a free tool for inmate management, and reduce costs by decreasing recidivism. This bill will also ease the burden on county jails that are currently housing state jail felons seeking to take advantage of available good time credits that are not offered in state jail facilities. *Signed by the Governor!*

- **H.B. 3384 (REPRESENTATIVE MADDEN AND SENATOR WHITMIRE):** *This bill, one of the most start-on-crime policies passed this session, prohibits enhanced sentences in certain instances.* Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with shorter probation terms and shorter terms of confinement in county jails or prison. H.B. 3384 prevents previous convictions for a state jail felony offense to be used for enhancement purposes in most cases. Punishment for a state jail felony offense may be enhanced to a third degree felony only if the individual has previously been twice convicted of a state jail felony. This will decrease demands on county- and state-level correctional resources through the elimination of automatically enhanced sentences that have proven ineffective in increasing public safety. Note: TCJC extends our appreciation to the Texas Municipal Police Association, Texas Conference of Urban Counties, and The Texas Criminal Defense Lawyers Association for their efforts on this policy. *Signed by the Governor!*

For all their efforts and hard work, TCJC would like to thank the Senators and Representatives who made these bills possible, as well as their tireless staff. We would also like to recognize Judge John Creuzot, Sandra Grace Martinez, and many probation professionals throughout Texas, including Todd Jermstad, Dr. Michael Noyes, Dr. Teresa Williams, Rodney Thompson, and others. In addition, we would like to thank the Bexar and Tarrant County Commissioners Courts, the Texas Conference of Urban Counties, the Texas Association of Counties, the ACLU of Texas, NAACP of Texas, the Texas Association of Drug Court Professionals, TPPF's Center for Effective Justice, law enforcement professionals, ministers throughout Texas, the Texas Baptist Christian Life Commission, Texas Catholic Conference, Restorative Justice Ministries Network, Austin Diocese, Texas Impact, and many others who played a key role in educating stakeholders about the importance of these reforms.

DIVERSIONS

- **H.B. 1771 (REPRESENTATIVE MADDEN AND SENATOR HARRIS):** *This bill establishes a Specialty Courts Advisory Council in the Governor's Criminal Justice Division to assist with the review and prioritization of grant applications from specialty courts. No significant fiscal implication to the State is anticipated.* Over the last decade, the number of drug courts in Texas has grown from under 10 to more than 100, and the Governor's Criminal Justice Division (CJD) began supplementing the allocated funding for these specialty courts with other state and federal grant funds. Now, in light of proposed reductions in state grant funds and potential reductions in federal grant funds, the state must ensure that funds are distributed in a manner necessary to maintain support in all areas of Texas. H.B. 1771 requires the Governor to establish a 7-member Specialty Courts Advisory Council within the CJD to evaluate specialty courts' applications for grant funding and make funding recommendations to the CJD. *Signed by the Governor!*

- **H.B. 1994 (REPRESENTATIVE WEBER AND SENATOR VAN DE PUTTE):** *This bill enables the commissioners court of a county or governing body of a municipality to create a first offender prostitution prevention program, establish the guidelines and restrictions of this program, and develop the procedural mechanisms to implement such a program. H.B. 1994 will have a positive fiscal impact on a county or a municipality that chooses to create such a prevention program for the collection of the victim services fee, but the amount would vary depending on the number of participants and the amount of the program fee.* H.B. 1994 authorizes the creation of a first offender prostitution prevention program. Development of the program is completely voluntary, as is a defendant's participation in such a program. A program created under this initiative will provide, among other things, classroom instruction, counseling, education, and treatment with respect to prostitution prevention, sex addiction, sexually transmitted diseases, mental health, and substance abuse. The strict guidelines and requirements for successful completion of this program will encourage self-responsibility and accountability. Furthermore, this approach will reduce the likelihood that an individual will recidivate, which will increase public safety. H.B. 1994 will provide a meaningful diversion program that will target criminogenic behavior, focusing on rehabilitation rather than punishment. *Signed by the Governor!*

PROBATION

- **H.B. 1205 (REPRESENTATIVES TURNER, ALLEN, ALISEDA, EDDIE RODRIGUEZ, AND GALLEGOS; SENATOR ELLIS):** *This bill creates incentives for probationers to participate in self-improvement programming. Local governments may experience a positive fiscal impact due to the increased collection of court costs and fines and a decreased workload when the length of defendants' community supervision is reduced.* H.B. 1205 encourages positive behavioral changes and personal betterment for probationers through the use of time credit incentives for the completion of treatment and programming (e.g., education, vocation, life skills courses). Receipt of credit toward each probationer's sentence will also be contingent upon the full satisfaction of victim restitution and judicial consent. Encouraging treatment programming and skills training will reduce recidivism by incentivizing positive life changes while on probation and discouraging criminal behavior. *Signed by the Governor!*



- **H.B. 2624 (REPRESENTATIVE SHEFFIELD AND SENATOR VAN DE PUTTE):** *This bill requires pre-sentence investigation reports to include information on defendants' current or former military status, specifically to determine if defendants were deployed to a combat zone and suffer from related mental disorders. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with reduced incarceration costs.* The obstacles faced by returning service members are numerous and difficult. Reconnecting with family, adjusting to civilian life, and finding stable employment each present unique challenges. An added burden on returning service members is the emotional and mental strain that accompanies combat and long periods of sustained stress, namely post-traumatic stress disorder (PTSD) and other mental health disorders. H.B. 2624 requires pre-sentence investigation reports to include information about whether a defendant is a current or former member of the state military forces or U.S. armed forces, to determine if the defendant was deployed to a combat zone and whether s/he suffers from PTSD or a traumatic brain injury. This bill will ensure that judges have all information necessary to consider mitigating factors when sentencing veterans suffering from combat-related mental health disorders. Note: TCJC extends our appreciation to the Central Texas Family Violence Task Force for its efforts on this policy. *Signed by the Governor!*

- **H.B. 3691 (REPRESENTATIVE GALLEGOS AND SENATOR CARONA):** *This bill requires the Texas Department of Criminal Justice to create rules to allow probation departments to contract with departments in other judicial districts in lieu of creating their own. This bill also contains the provisions of S.B. 1055 (see below). Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with reduced recidivism and increased public safety.* Under H.B. 3691, judicial districts that choose not to create their own department will have the opportunity to contract with other departments for the use of their facilities and services. This will allow cooperation between judicial districts for shared services, and facilitate the provision of services in judicial districts that do not have the resources to support them, or whose needs do not necessitate the creation of their own department. *Signed by the Governor!*

- **S.B. 1055 (SENATOR CARONA; REPRESENTATIVES MADDEN AND WHITE):** *This bill requires community justice plan submissions during even-numbered years, and creates an incentive-based funding program in which counties could voluntarily participate by setting goals to reduce the number of nonviolent prison commitments. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved over time through savings associated with commitment reductions in participating counties, as well as lowered recidivism rates.* Probation departments must develop biennial community justice plans for submission to the Community Justice Assistance Division. S.B. 1055 changes the filing deadline, requiring submission of the plans during even-numbered years, so that the needs of community justice divisions can be accounted for in the budget-making process. In addition, this bill creates a permissive state/local incentive funding program, under which counties may set target reduction goals to reduce the number of commitments to incarceration. Participation is completely voluntary, and counties may choose to partner with other counties to set and achieve their desired targets. Departments will not be penalized for not participating, and no money will be taken from any county to fulfill an obligation that this program might create. Under S.B. 1055, participating counties will receive an up-front, lump sum of the savings from commitment reductions to establish the programs necessary to meet their reduction goals. Funds will then be apportioned to participating counties based on their continued performance and ability to achieve their desired goals. Arizona adopted this initiative and recorded a 12.8% drop in recidivism during the first year of the program in 2009. *Signed by the Governor!*

LEARN MORE AT OUR PUBLIC POLICY CENTER

For more detailed analyses of these policies, please visit our Public Policy Center at www.criminaljusticecoalition.org/public_policy_center/2011-legislation.

PAROLE

- H.B. 2735 (REPRESENTATIVE MADDEN AND SENATOR HINOJOSA):** *This bill creates bonding procedures for parolees charged with certain new offenses or administrative violations of parole conditions.* A county could experience a **positive fiscal impact** related to county jail expenses as a result of the ability to release a person who would otherwise be required to be held until a hearing. H.B. 2735 allows parolees who have committed a parole violation to post bond upon the issuance of a “blue warrant” for their revocation. Previously, a person revoked under a blue warrant was forced to await his or her revocation hearing in county jail. As such, county jails were becoming overburdened with parolees awaiting hearings, while parolees faced the possibility of losing their jobs, thereby putting their families and dependents through significant hardship prior to the determination. H.B. 2735 creates a procedure whereby blue warrant parolees in county jail can immediately post bond so that they may maintain their progress on parole while awaiting their hearings. *Signed by the Governor!*

RE-ENTRY STRATEGIES

ANNUALLY, OVER 70,000 PEOPLE LEAVE TEXAS PRISONS, AND various barriers prevent the successful re-entry of many of these people into our communities. Specifically, the lack of services and programs to help individuals participate in society in a fulfilling and productive way often jeopardizes their re-entry. The first policy below will help individuals maintain certain federal benefits.

A criminal record is another significant barrier to re-entry for individuals who have served their term of incarceration. Those unable to secure housing and employment struggle to remain law-abiding and provide for themselves and their families. When individuals seek to take personal responsibility for their past actions and do so successfully, their continued penalization by the state burdens the support networks that they rely on to succeed in their community. The remaining policies below will improve the ability of returning individuals to become contributing family and community members.

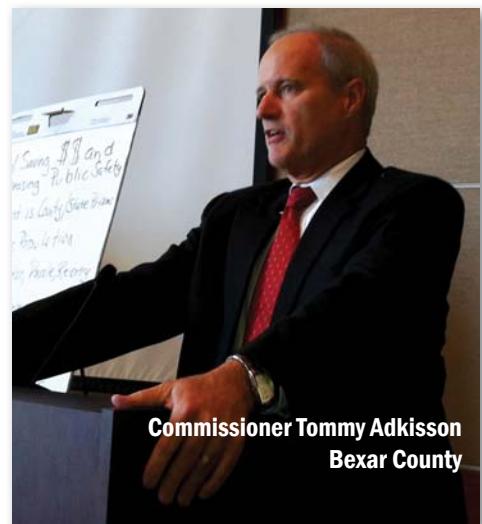
For their commitment to furthering key re-entry policies, TCJC would like to thank the Senators and Representatives who made the bills below possible, as well as their dedicated staff. We would also like to recognize the Bexar County and Austin/Travis County Reentry Roundtables, the ACLU of Texas, TPPF's Center for Effective Justice, Texans Care for Children, the Texas Baptist Christian Life Commission, and many others who played a key role in educating stakeholders about the importance of these reforms.

- H.B. 200 (REPRESENTATIVE PARKER AND SENATOR WHITMIRE):** *This bill requires notification of an inmate's release to the United States Social Security Administration. No significant fiscal implication to the State is anticipated.* H.B. 200 requires the Texas Department of Criminal Justice to electronically notify the U.S. Social Security Administration about the release or discharge of a prisoner from a state correctional facility, if s/he was receiving Supplemental Security Income or Social Security Disability Insurance immediately prior to confinement, but only if s/he was confined for less than 12 consecutive months. This notification will ensure a smoother transition for benefit retention, thus further easing the re-entry process. *Note:* TCJC extends our appreciation to the Texas Police Chiefs Association for its efforts on this policy. *Signed by the Governor!*
- H.B. 1106 (REPRESENTATIVE JOHNSON AND SENATOR WEST):** *This bill provides information about post-conviction consequences to criminal defendants before they are placed on deferred adjudication community supervision. No significant fiscal implication to the State is anticipated.* H.B. 1106 requires judges to disclose to criminal defendants, prior to being placed on deferred adjudication community supervision, their later right to petition the court for an order of nondisclosure. This notice will keep eligible criminal defendants informed of their rights, as well as how they can help protect themselves from the ramifications of a criminal penalty as they go on to lead law-abiding and productive lives. *Signed by the Governor!*

- **S.B. 144 (SENATOR WEST; REPRESENTATIVES THOMPSON, GALLEGOS, YVONNE DAVIS, AND ALISEDA):** This bill allows the Governor to grant reprieves and commutations of punishments and pardons, as well as to remit fines and forfeitures, after an individual completes a term of deferred adjudication community supervision. Although exact savings cannot be determined at this time, a **positive fiscal impact** could be achieved through savings associated with a more successful re-entry transition. Previously, under Article 48.01 of the Code of Criminal Procedure, the Governor retained the power to grant reprieves, pardons, and fee remittances only after “conviction”; this bill will expand the Governor’s power to apply to completion of deferred adjudication supervision as well. The remaining language in this provision will remain intact, as will the restrictions found therein. This will apply to all criminal cases, with limited exception, and it will require the written recommendation and advice of a majority of the Board of Pardons and Paroles. Not only will S.B. 144 create consistency in the justice system, it will help remove potential barriers to an individual’s successful integration into the community as a productive member of society. Importantly, this law will take effect January 1, 2012, provided the constitutional amendment proposed by the 82nd Legislature authorizing the Governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision is approved by the voters. *Signed by the Governor!*

- **S.B. 198 (SENATOR WEST; REPRESENTATIVES WEST AND TODD SMITH):** This bill exempts certain teenagers convicted of a certain sexual offense involving consensual sexual conduct with another teenager from the requirement of registering as a sex offender for life in Texas. No significant fiscal implication to the State is anticipated. The consequences of having to register as sex offender can be severe: registrants are often prohibited from being in the presence of younger siblings or family members; they are limited in where they may live; they cannot be employed at several types of jobs; and they may have difficulty getting certain jobs. Although judges may exempt eligible teenage defendants from having to register as a sex offender for life, S.B. 198 proactively exempts certain teenagers (19 years of age or younger) from the duty to register as a sex offender for certain consensual sexual acts if (a) their sexual partner was at least 15 years old, (b) the defendant was not more than four years older than the sexual partner, and (c) the defendant is not a threat public safety. This bill will also address concerns that monitoring and supervising these individuals wastes law enforcement resources, while distracting law enforcement from closer scrutiny of sex offenders who pose a legitimate threat to Texas’ children. Note: TCJC extends our appreciation to Texas Voices for its efforts on this policy. *Signed by the Governor! Effective on September 1, 2011.*

- **S.B. 462 (SENATOR WEST; REPRESENTATIVES VEASEY AND GALLEGOS):** This bill expands opportunities for an expunction of one’s criminal record. Although exact savings cannot be determined at this time, a **positive fiscal impact** could be achieved through savings associated with a more successful re-entry transition. S.B. 462 amends the conditional requirements for an expunction and provides for expunctions in the event that the individual has been acquitted at trial, or the individual has been released and there have been no charges filed, no pending charges, no final conviction, and no period of community supervision. The bill also allows for an expunction in the event of a conviction for a Class C misdemeanor, and requires that there be no felony charge arising out of the same transaction for which the person had been arrested. Additionally, the bill requires that specific amounts of time elapse prior to expunction for Class C misdemeanors, Class A and B misdemeanors, and felony offenses, respectively. S.B. 462 also allows for prosecutorial certification that none of the records or files associated with the individual’s case will be necessary for further investigation. Even if an individual has not been convicted, or has received a pardon, the bureaucracy of state government creates the possibility that a criminal record from an arrest or indictment will exist in perpetuity, with deleterious effects on that person’s ability to function in law-abiding society. Additional procedural avenues for expunction will help facilitate clearing a person’s record so that they can thrive. *Signed by the Governor!*



Commissioner Tommy Adkisson
Bexar County

EFFECTIVE INDIGENT DEFENSE AND INNOCENCE PRACTICES

ONE OF THE HIGHLIGHTS OF THE 82ND LEGISLATURE

was the opportunity for policy-makers and members of the public to hear exonerees tell their stories during witness testimony. These courageous men emblemized not only the problems within the Texas criminal justice system, but also the potential for meaningful and lasting reform. With inspiration taken from their powerful words and brave presence during the 2011 Legislative Session, several important bills passed to impart more fairness, procedural safeguards, and efficiency for both criminal defendants and the wrongfully imprisoned. This effort also resulted in legislation to bolster the administration of defense counsel for indigent defendants, all toward the goal of creating a state criminal justice system predicated upon fair and swift processes and outcomes.

For their hard work and dedication to these issues, TCJC would like to thank the Senators and Representatives who made the bills below possible, as well as their invaluable staff. We would also like to recognize the Texas Task Force on Indigent Defense (now called the Texas Indigent Defense Commission), county advocates, the Innocence Project of Texas, the Texas Fair Defense Project, the Texas Criminal Defense Lawyers Association, the ACLU of Texas, and many others who played a key role in educating stakeholders about the importance of these reforms.

- **H.B. 27 (REPRESENTATIVE GUILLEN AND SENATOR ELLIS):** *This bill creates payment plans for misdemeanants unable to pay fines or court costs. Although exact savings cannot be determined at this time, a positive fiscal impact at the county level could be achieved through savings associated with reduced incarceration costs, and may also be achieved through greater likelihood of fine/cost payments.* Indigency/hardship programs can save taxpayer dollars otherwise spent to incarcerate indigent individuals, and they can increase personal responsibility through full fine payments. H.B. 27 requires a court to direct misdemeanor defendants who are deemed unable to pay assessed fines or court costs to be put on a payment plan. *Signed by the Governor!*
- **H.B. 215 (REPRESENTATIVES GALLEGOS, HARTNETT, GIDDINGS, CARTER, AND BRANCH; SENATOR ELLIS):** *This bill will reduce incidences of wrongful conviction by improving identification procedures in criminal cases. Although exact savings cannot be determined at this time, a positive fiscal impact at the state level could be achieved through savings associated with reduced incarceration costs and decreased appeals costs.* H.B. 215 addresses wrongful convictions, a prevalent problem in Texas that destroys public trust and confidence in the justice system. For every wrongful conviction, an innocent person is punished and guilty culprits remain free, thereby threatening communities and preventing justice for victims. Over 80% of the DNA exonerations in Texas have included mistaken witness identifications, yet no statutory standards in Texas had existed for conducting a photograph or live identification lineup. H.B. 215 provides a legislative mandate for the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT) to create a model for photograph and live eyewitness identification lineups. The bill also requires Texas law enforcement agencies to either create a model for photo and eyewitness identification, or adopt the LEMIT model. *Signed by the Governor!*
- **H.B. 417 (REPRESENTATIVES ANCHIA AND JIM JACKSON; SENATOR ELLIS):** *This bill requires the Texas Department of Criminal Justice (TDJC) to provide wrongfully convicted individuals with information about how to obtain compensation for wrongful imprisonment; it also prohibits excessive attorney fees for assistance in claim filings.* The fiscal impact of this bill cannot be determined at this time. According to various reports, many attorneys hired by wrongfully convicted individuals to assist in collecting compensation for wrongful imprisonment have charged excessive fees. The form through which to request compensation for wrongful imprisonment does not require the assistance of counsel, and various nonprofit organizations provide free assistance in filing claims with the state. H.B. 417 requires TDJC to notify wrongfully incarcerated individuals, upon their release from confinement or being granted a pardon, about how to obtain compensation. It also requires TDJC to provide contact information

for organizations that offer assistance in filing claims. Additionally, H.B. 417 prohibits individuals (e.g., attorneys) from charging excessive fees for their services in these matters, and it requires such persons to submit a fee report to the Comptroller for review. Finally, H.B. 417 provides that a wrongfully incarcerated individual may be eligible to obtain group health benefit plan coverage through TDCJ as if the person were an employee of the Department.

Signed by the Governor!

- **H.B. 1754 (REPRESENTATIVE GALLEGOS; SENATORS WENTWORTH AND ELLIS):** *This bill reorganizes the powers and duties among state entities that help to provide counsel to indigent defendants in criminal cases, and revises funding sources for indigent defense. No significant fiscal implication to the State is anticipated.* H.B. 1754 creates the Texas Indigent Defense Commission, an expanded and permanent body to develop standards and policies for indigent defendants at the trial, appeal, and post-conviction stages. The Sixth Amendment to the U.S. Constitution enshrines the right to counsel for indigent criminal defendants facing potential incarceration. Under Texas law, Class A and Class B misdemeanor offenses carry potential penalties that include jail time. Few jurisdictions in Texas, however, have maintained a public defender office, instead relying on appointments under the oversight of the previous Task Force on Indigent Defense. H.B. 1754 creates a structure to more effectively ensure that indigent defendants receive adequate counsel. In lieu of a public defender office, H.B. 1754 will also provide counties the ability to establish and maintain a managed assigned counsel program. By providing more options to meet the needs of indigent defendants, H.B. 1754 creates a system that can be tailored to each county's needs. As such, H.B. 1754 will equip the state with a variety of tools necessary to preserve and protect Texans' right to counsel. *Signed by the Governor!*
- **S.B. 122 (SENATOR ELLIS; REPRESENTATIVES GALLEGOS, HARTNETT, YVONNE DAVIS, ZEDLER, AND EDDIE RODRIGUEZ):** *This bill clarifies Texas' post-conviction DNA statute to ensure greater testing availability and more opportunities to identify those who have been wrongfully convicted. Although exact savings cannot be determined at this time, a positive fiscal impact at the state level could be achieved through savings associated with shortened prison term lengths.* S.B. 122 requires a motion for post-conviction DNA testing to be granted if the biological evidence was not previously tested, or if it was previously tested but can be subjected to newer testing techniques with more accurate and probative results. S.B. 122 also requires that upon completion of DNA testing, the convicting court shall order any unidentified DNA profile to be compared with the DNA profiles in the CODIS DNA database established by the Federal Bureau of Investigation and the DNA database maintained by Texas' Department of Public Safety. Such comparisons can be used to identify an actual perpetrator and exonerate a wrongfully convicted individual. *Signed by the Governor!*
- **S.B. 1681 (SENATOR ELLIS; REPRESENTATIVES THOMPSON, GALLEGOS, AND ALONZO):** *This bill clarifies that various Fair Defense Act provisions apply to appeals in criminal cases and to probation revocation hearings. No significant fiscal implication to the State is anticipated.* S.B. 1681 makes three important clarifications to ensure that indigent defendants are guaranteed their right to appointed counsel. One clarifies that appointment requirements do apply during probation revocation hearings and on appeal. The second requires trial counsel to (a) advise a defendant of his or her right to file a motion for new trial or motion for appeal, and (b) help the defendant request appointment of replacement counsel if the defendant wishes to pursue either remedy, before being permitted by the court to withdraw representation. The third clarification provides magistrates clear authority to give required warnings to persons arrested on Motions to Revoke Probation. *Signed by the Governor!*



JUVENILE JUSTICE REFORMS

THE 82ND LEGISLATIVE SESSION MADE FUNDAMENTAL

changes to Texas' juvenile justice system, including the creation of a new agency and the passage of multiple reform bills. Progress was made towards ensuring more rehabilitative and age-appropriate services for youth impacted by the justice system.

- S.B. 653 (SENATORS WHITMIRE, HEGAR, AND HINOJOSA; REPRESENTATIVES MADDEN, BONNEN, MCCLENDON, AND COOK):** *This is the Sunset Bill for the abolition and merger of powers and duties of the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC). Signed by the Governor!*

For their tireless work and dedication to these issues, TCJC would like to thank the Senators and Representatives who made these bills possible, as well as their committed staff. We would also like to recognize Texans Care for Children, Texas Appleseed, Disability Rights Texas, ACLU of Texas, the Texas Juvenile Justice Roundtable, TPPF's Center for Effective Justice, Michele Deitch, Judge Jeanne Meurer, a group of foundations led by the MacArthur Foundation, and many others who played a key role in educating stakeholders about the importance of these reforms.

Throughout 2010, due to the drastic budget shortfall facing Texas, policy-makers and other stakeholders began advocating for the consolidation of TYC and TJPC into a new umbrella juvenile justice agency. Independently of this restructuring, Senate and House budgets called for a reduction in juvenile institutional capacity, which would ultimately redirect currently incarcerated youth to the juvenile probation system or to remaining lock-ups.

By the conclusion of the legislative session in 2011, the Governor signed legislation that would abolish and combine the powers and duties of TYC and TJPC, in effect creating the new **Texas Juvenile Justice Department**. Separately, the state budget calls for the shuttering of three correctional facilities and the consolidation of two facilities.

S.B. 653: MAJOR LOGISTICAL AND STRUCTURAL REFORMS

- The new Texas Juvenile Justice Department will take effect December 1, 2011, though agency merger activities will continue beyond the start date.
- The merger will be overseen by a 7-member transition team, composed of agency representatives, executive/legislative representatives, a representative on behalf of youth/family/victim interests, and a representative with experience in organizational mergers. The team will work through March 1, 2012.
 - The transition team will have the following powers and duties:
 - ◆ Coordinating and overseeing the transition of services and facilities from TJPC and TYC to the new Department (September 2, 2011 – November 30, 2011).
 - ◆ Assisting the Department and advising its Board in the implementation of the transition of services and facilities (December 1, 2011 – February 29, 2012).
 - ◆ Preparing a transition plan that will include short-term, medium-term, and long-term transition goals for the Department, and which may include benchmarks and timelines as appropriate (December 1, 2011 – February 29, 2012).
- The Governor will appoint a 13-member Department Board by December 1, 2011, composed of judges, a juvenile court prosecutor, chief juvenile probation officers, an adolescent mental health treatment professional, an educator, and members of the general public.

- The Board will appoint a 13-member Advisory Council, comprised largely of chief juvenile probation officers, which will assist the Board in identifying the needs and problems of counties. Council members will conduct long-range strategic plans, review and propose revisions to newly proposed standards, analyze potential cost impacts of those standards, and advise the Board in other matters, as necessary.
- The Office of Independent Ombudsman (OIO) will be maintained as an independent agency to oversee the rights of youth committed to state facilities, and it will be authorized to review local probation department data on complaints. The Office of Inspector General (OIG) will also be maintained to oversee crimes in state-run facilities. All reports will be made directly to the Department's Board. Finally, criminal investigations related to probation will be referred to local departments.



OTHER KEY COMPONENTS OF S.B. 653

- **Prioritizes the use of community- and/or family-based programs over the commitment of youths to secure facilities.**
- Encourages the Department to create a juvenile justice system that produces positive outcomes for juveniles, their families, and communities by:
 - ◆ Operating state facilities to effectively house and rehabilitate youth who cannot otherwise be safely served in an alternative environment.
 - ◆ Promoting the use of programs and service designs proven to be most effective.
 - ◆ Assuring accountability, quality, and transparency through effective monitoring and the use of statewide performance measures.
 - ◆ Protecting and enhancing the cooperative agreements between state and local county governments.
- Encourages – rather than requires – the Department to seek accreditation for each of its facilities from the American Correctional Association.
- Requires the Department to create a toll-free number and to share any complaints received at the number with both the OIG and OIO.
- Adds specialized treatment to intake planning and adds histories of medical, sex offense, and violent offense to the current examinations.
- Maintains an ongoing zero-tolerance policy on sexual abuse.
- Requires the Department to encourage compliance with educational service standards and maintains continuity of educational services to youth, including special education services.
- Requires the Department to provide prevention and intervention services for at-risk youth ages 6-17 who are subject to compulsory school attendance or under juvenile court jurisdiction.
- Clarifies individualized re-entry plans for each youth to ensure s/he receives continuity of care, including, as applicable, housing assistance, step-down programs, family counseling, academic and vocational mentoring, trauma counseling for any youth who is a victim of abuse while in the Department's custody, and/or other specialized treatment services.

In addition to Sunset legislation, policy-makers passed other important juvenile legislation addressing needed diversions, the school-to-prison pipeline, youths' rehabilitative needs, and re-entry.

- **H.B. 350 (REPRESENTATIVE WALLE AND SENATOR VAN DE PUTTE):** *This bill gives judges the authority to order tutoring, when appropriate, in response to juvenile Class C misdemeanors issued to public school students younger than 17 years of age. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with fewer youth entering the juvenile or adult criminal justice systems.* The vast majority of the approximately 300,000 Class C misdemeanor citations issued to Texas juveniles at school each year are based on low-level, nonviolent behavior, such as truancy. Because a juvenile must appear in court to resolve a misdemeanor, s/he often is required to miss significant class time. Tutoring can restore this missed class time, bring students back onto a stable learning path, and address the underlying behavior. Currently, Texas judges are authorized to offer community service to juveniles in lieu of Class C misdemeanor fines, and H.B. 350 extends this authority to order court-monitored tutoring as well. This front-end investment can reduce dropout rates and minimize involvement in the costly school-to-prison pipeline. *Signed by the Governor!*
- **H.B. 961 (REPRESENTATIVE TURNER AND SENATOR HINOJOSA):** *This bill reduces the minimum age at which a person with a juvenile felony conviction may be entitled to have his or her record sealed, while also reducing the minimum age at which a person may be eligible for automatic restriction of access to his or her juvenile records. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with a more successful re-entry transition among youth and young adults.* Previously, juveniles with a felony conviction could only petition to have their record sealed when they turned 21. H.B. 961 lowers that age: individuals with juvenile felony convictions will be permitted to petition the court to have their record sealed when they turn 19. Separately, H.B. 961 lowers the age for automatic restricted access from 21 to 17 for conduct that was neither violent nor involved habitual felonies; this is a form of sealing records that denies employers and educational institutions access to records for criminal background purposes. Both of these policy changes will better assist youth with their reintegration into the community, helping them more easily secure housing, employment, or higher education, as well as access other services (including military service) that require applicant background checks. *Signed by the Governor!*
- **H.B. 2015 (REPRESENTATIVE THOMPSON AND SENATOR JIM JACKSON):** *To protect exploited youth, this bill changes a charge against a youth for prostitution from "delinquent conduct," which is a misdemeanor, to "conduct indicating a need for supervision," which connects the youth to support services through probation. The bill also seals the juvenile records for these children. No significant fiscal implication to the State is anticipated.* The average age at which a youth first becomes a victim of prostitution is 13. The majority of these victims are runaways from homes where they have been abused. Although these children are victims of domestic minor sex trafficking, Texas law has previously categorized a child engaged in prostitution as misdemeanor "delinquent conduct." H.B. 2015 corrects this problem, re-categorizing a child's engagement in prostitution as "conduct indicating a need for supervision," a designation that places the child in supporting probation programs and possibly places the child in a suitable foster home or other residential setting. Note: TCJC extends our appreciation to the Bexar County District Attorney's Office for its efforts on this policy. *Signed by the Governor!*
- **S.B. 1208 (SENATOR WHITMIRE AND REPRESENTATIVE MADDEN):** *This bill extends the age of determinate sentence probation jurisdiction until 19. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved over time through savings associated with lowered recidivism rates.* Previously, the Texas Youth Commission's jurisdiction over a youth extended until the youth's 19th birthday. S.B. 1208 ensures that youth who are sentenced to a determinate juvenile probation term also have the option of being supervised by the juvenile judge until they turn 19 years of age. This allows the court more time to work with the youth on rehabilitative efforts. *Signed by the Governor!*



- S.B. 1209 (SENATOR WHITMIRE; REPRESENTATIVES MARQUEZ, MADDEN, ALLEN, PERRY, AND WORKMAN):** *This bill allows, as a local option, a juvenile certified as an adult to be held in a juvenile detention center as opposed to an adult jail. No fiscal impact on the state or counties is anticipated.* Previously, upon certification of a juvenile for prosecution as an adult in a criminal court, the youth was treated as an adult and transferred to the adult county jail for incarceration, pending the completion of his or her adult proceeding and trial. In most cases, due to the requirements of separation of sight and sound, the juvenile was housed in conditions that are not conducive to his or her rehabilitation and which may be harmful to the juvenile's mental health. Indeed, the adult prison system and the adult model of criminal justice are inappropriate responses to juveniles' unique need for age-appropriate services, specifically in regard to treatment and rehabilitation. Furthermore, studies have proven that confinement in adult facilities exposes youth to physical and sexual victimization, and increases the risk of suicide. S.B. 1209 allows a juvenile board to establish a policy specifying that youth under 17 years of age who are certified to stand trial as adults may be detained in juvenile facilities pending trial. *Signed by the Governor!*
- S.B. 1489 (SENATOR WHITMIRE AND REPRESENTATIVE MADDEN):** *This bill changes the minimum age at which a child can be charged for truancy (a Class C misdemeanor) from 6 to 12 years of age, recognizing that children at a very young age are not solely responsible for their absences. Although exact savings cannot be determined at this time, a positive fiscal impact could be achieved through savings associated with fewer youth entering the juvenile justice system unnecessarily.* Previously, a child as young as 6 years old in Texas could be prosecuted for a Class C misdemeanor for truancy (meaning the child has ten or more unexcused absences within a six-month period, or three or more unexcused absences within a four-week period). This exposure to criminal courts at such a young age is not only damaging, it has not been shown to deter truancy. S.B. 1489 prioritizes truancy prevention, which will likely lead to cost savings for school districts. S.B. 1489 also requires truancy convictions to be expunged from a juvenile's record once a high school diploma or equivalent is obtained. *Signed by the Governor!*

HARMFUL CRIMINAL JUSTICE POLICIES DEFEATED DURING THE 2011 LEGISLATIVE SESSION

THE 82ND LEGISLATIVE SESSION WAS RIFE WITH POLICY INITIATIVES THAT WOULD HAVE UNDERMINED previous legislative victories, wasted taxpayer dollars, and threatened public safety. Blocking a significant amount of this legislation prevented a negative budgetary impact and kept the state from making costly mistakes that would place even more people in an overcrowded correctional system without addressing the causes of criminal behavior. Stopping new criminal penalties and enhancements, failed jail practices, the imposition of new re-entry obstacles, ineffective and unjust immigration policies, and privatization efforts were legislative victories in their own right.

COSTLY PENALTY ENHANCEMENTS

- **H.B. 99:** *Relating to the punishment for certain intoxication-related offenses; creating the offense of aggravated driving while intoxicated.* This bill would have created an aggravated drunk driving offense with a mandatory term of incarceration. Texas has some of the most severe drunk driving penalties in the nation, and yet the problem has not dissipated. Implementing new penalties and enhancements creates a limited deterrent effect and does not address the underlying substance abuse issues contributing to criminal behavior. Blocked in House Calendars Committee.
- **H.B. 221:** *Relating to the punishment prescribed for burglary of a vehicle and to grants of community supervision to persons who commit that offense.* This bill would have enhanced penalties for the crime of burglary of a vehicle. The Legislature, however, wisely understood that the price tag for an enhancement of dubious deterrent value would not have been prudent in this fiscal climate, and would have contributed to overcrowding within the state's correctional system. Left pending in House Criminal Jurisprudence Committee.
- **H.B. 1243:** *Relating to the creation of the criminal offense of ingesting a controlled substance while pregnant or introducing a controlled substance into the body of a person who is pregnant and the consequences of the commission of that offense in a suit affecting the parent-child relationship.* This controversial bill would have created a new crime that would have potentially dissuaded women from seeking treatment or other medical attention out of fear of criminal liability. Left pending in House Criminal Jurisprudence Committee.
- **S.B. 1695 (CRIMINAL JUSTICE SECTION OF S.B. 9):** *Relating to penalties for engaging in organized criminal activity.* This was a stand-alone bill replicating a gang crimes penalty enhancement provision included in S.B. 9 (see below). This bill provided for steep mandatory minimum sentences for gang crimes that would have affected a significant number of nonviolent individuals who would better benefit from diversion and/or treatment. Ultimately, mandatory minimums would have been a costly and ineffective criminal justice policy in this fiscal climate. Returned to House Local and Consent committee.

INEFFECTIVE COUNTY JAIL PRACTICES

The Texas Commission on Jail Standards (Commission) is key in protecting counties from costly lawsuits and helping county jails maintain safety and order by monitoring and regulating such facilities, and providing technical assistance and training to local officials and jail staff to improve the overall conditions of confinement. Along with the Texas Jail Project, the ACLU of Texas, and sheriffs throughout Texas, we fought efforts to shutter the entire agency, which would have rolled back progress that Texas had succeeded in making since the mid-1970's. Ultimately, by defeating measures that would have merged three state agencies (including the Commission) into one – thereby weakening the Commission's role – we were instrumental in stopping the abolishment of this crucial agency.

Other county jail-related bills that we defeated include the following:

- **H.B. 684: Relating to housing prisoners in a tent or other facility in lieu of a county jail.** This bill would have instituted tent facilities similar to those in Maricopa County, Arizona, where they are a failed jailing policy. Not only would they have created the potential in Texas for costly lawsuits, these facilities would have fallen under the Commission's purview, further draining its limited resources and undermining its efforts to promote statewide best practices regarding conditions of confinement. Blocked in House Calendars Committee.
- **H.B. 2348: Relating to certain standards applicable to certain prisoners confined in a county jail pending transfer to the Texas Department of Criminal Justice.** This bill would have removed paper-ready county jail inmates from the Commission's purview, leading to increased litigation and inefficient facility management for large jurisdictions. Blocked in House Calendars Committee.

RE-ENTRY BARRIERS

- **H.B. 230: Relating to the authority of a county or municipality to regulate the location of halfway houses; providing a penalty.** This bill would have given municipalities the authorization to regulate halfway houses, including their location in the community, with the potential for an outright ban. This would have severely limited re-entry resources for individuals who rely on halfway houses as they transition to the community. The bill would also have added to an existing parole backlog for individuals seeking housing, costing taxpayers millions in incarceration costs. Blocked in Senate.

DIVISIVE IMMIGRATION POLICIES

TCJC is continually concerned with the intersection of criminal justice, our economy/taxpayer dollars, and public safety. With regards to immigration specifically, we feel that criminalizing immigrants is counter-productive and unsustainable, and we know that implications of further anti-immigration reform could negatively impact Texas for years to come.

This past legislative session we saw the filing of 85 bills that would do the following:

- Criminalize individuals for failure to have lawful residency, specifically by utilizing local law enforcement resources such as screening programs, jail and prison beds, etc.
- Target immigrant youth, specifically by preventing undocumented high school graduates from attending college or paying in-state tuition, which is detrimental to immigrant integration and the Texas economy. We were particularly concerned with a policy that would require school districts to determine the residency and citizenship status of all public school students in Texas.
- Punish employers of immigrants, which would also damage Texas' economic well-being.
- Undermine public safety for all Texans, especially by disincentivizing victims from reporting crimes.

Through the tireless efforts of a broad coalition of groups and individuals – including RITA, MALDEF, the ACLU of Texas, others from the TRUST Coalition, social services agencies, members of affected communities, law enforcement leaders, business leaders, religious leaders, DREAM Act students, labor organizations, and TCJC – 81 bills were defeated. The following 3 bills were among the most harmful:

- **H.B. 12:** *Relating to the enforcement of state and federal laws governing immigration by certain governmental entities.* The Governor set this bill as an emergency item at the beginning of session. It proscribed the use of any prerogative on the part of a municipality to enforce federal immigration law. This policy would have wasted local law enforcement resources, undermined local control, worsened the already serious problem of jail overcrowding in urban counties, destroyed the relationship between peace officers and neighborhoods, and increased racial profiling. Blocked in Senate. Note: This bill was re-filed during Texas' special session, where it was again defeated.



- **H.B. 17:** *Relating to the creation of the offense of criminal trespass by an illegal alien and to certain procedures for arresting illegal aliens for committing that criminal offense.* This bill would have given state law enforcement agencies the ability to arrest anyone for whom they have probable cause to believe is in the state in violation of federal immigration law, for the crime of trespass. This would have discouraged victims from collaborating with law enforcement out of fear of deportation, while wasting valuable law enforcement resources and serving as an unfunded mandate to counties. Left pending in House Criminal Jurisprudence Committee.
- **S.B. 9:** *Relating to homeland security; providing penalties.* This controversial bill included provisions such as checking all individuals in the custody of law enforcement against the federal Secure Communities database, creating severe penalty enhancements for gang crimes, and increasing fees for drivers' licenses. This policy would have undermined local control, wasted local law enforcement resources and taxpayer dollars, worsened the already serious problem of jail overcrowding in urban counties, and created a negative ripple effect in Texas communities. Blocked in House Calendars Committee. Note: This bill was re-filed during Texas' special session, where it was again defeated.

HARMFUL FACILITY AND HEALTH CARE PRIVATIZATION MEASURES

During this legislative session, we worked ardently with other advocates to educate stakeholders about the harmful impact of privatizing either state-run correctional facilities or inmate medical care, each of which creates a perverse incentive to prioritize profits over public safety. In regard to facility privatization, it results in higher recidivism rates, generating long-term costs; often results in substandard conditions for employees and inmates, with safety ramifications; harms local economies through job loss and debt; and reduces accountability and transparency. In regard to privatization of medical care, other states have seen raised costs and litigation due to death, abuse, and neglect. We are glad that policy-makers chose to put Texans before private interests.

BECOME A VOLUNTEER WITH TCJC

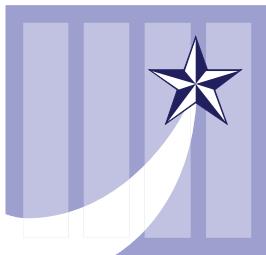
If you are interested in interning or volunteering with us in the coming months, please call **Leah Pinney** at **(512) 441-8123, ext. 114**, or email her at **lipinney@criminaljusticecoalition.org**.

HELP US CONTINUE OUR IMPORTANT WORK!

TCJC's work to find and advocate in favor of juvenile and criminal justice solutions is made possible by the financial support of caring individuals like you.

BE PART OF THE SOLUTION – DONATE TODAY!

Your tax-deductible donation will be well spent on our public education, outreach, and research efforts. Give today by clicking on the DONATE NOW buttons found throughout www.criminaljusticecoalition.org, or by sending a check or money order to:



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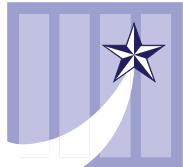
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