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**Invited Testimony**  
House Committee on Criminal Jurisprudence  
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Dear Chair Collier and Members:

Thank you for allowing me this opportunity to provide information on policies that tackle the root causes of crime, safely decrease state jail and prison populations, save taxpayer dollars, and improve health in Texas communities. The Texas Criminal Justice Coalition is committed to advancing safe and rehabilitative alternatives to incarceration and expanding opportunities for people after justice system involvement.

### TOP PRIORITIES FOR THE 87<sup>TH</sup> LEGISLATIVE SESSION

#### **CLEAN SLATE**

Nearly one in three Texans has some type of criminal record,<sup>1</sup> which, for some, can create lifelong barriers to employment, housing, or other opportunities, even when the incident resulted in dismissal or placement on deferred adjudication. Nearly 90 percent of employers use a criminal background check in the hiring process; that check reveals all past involvement with the justice system, except for records that have been sealed (non-disclosure) or expunged, which is only available for arrests not leading to conviction. Orders of non-disclosure (OND), which are available for some who completed deferred adjudication or those with first-time misdemeanor offenses, can seal the record from all but some government agencies, law enforcement, and select employers, such as schools. The benefits to individuals, families, and communities of record sealing are enormous, helping people to obtain housing and better paying jobs. Unfortunately, the process of obtaining an OND can be arduous and costly.

Clean Slate legislation would automate the process of record sealing for those currently entitled to an OND. The process would simply entail an automated eligibility determination through the Department of Public Safety's Computerized Criminal History System and notification to district clerks. It will save valuable time and court resources, as well as prevent eligible people from having to pay fees and attorney costs. Ideally, Clean Slate legislation will also include a modest expansion of eligibility for ONDs, particularly for those who successfully completed probation.

#### *Clean Slate and COVID*

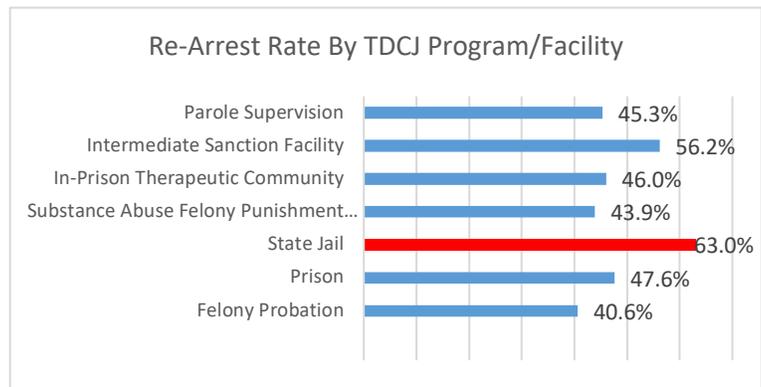
Clean Slate is timely and necessary. People with criminal records faced higher rates of unemployment before the COVID-19 pandemic.<sup>2</sup> The economic impacts of COVID-19 have compounded the impacts of criminal records, causing unemployment rates for those with records to soar. A group that faced homelessness at rates 10 times that for those with no criminal records are even more likely to experience housing insecurity during times of economic hardship.<sup>3</sup> Clean Slate legislation will contribute to the economic recovery and help families get back on their feet.

#### **STATE JAIL REFORM**

The Texas state jail system was created in 1994, intended to serve as an alternative to the state's prison system – emphasizing rehabilitative programming for low-level felonies, including drug and nonviolent property offenses, rather than lengthy incarceration. But the original intention of the system was never realized. Those sent to state jail have less access to necessary rehabilitative services and are released to the same circumstances they left. As a result, people released from state jail have the highest rearrest rate compared to all programs and state prison or probation programs/facilities (see chart on following page).<sup>4</sup>

The failure of this system is also a missed opportunity to better address the underlying needs of substance use disorder. According to the Texas Health and Human Services Commission, low-income people with substance use disorder must wait weeks for effective recovery supports.<sup>5</sup> State jail reforms create savings that could be directed toward services that prevent arrests.

### **Drug Penalty Reform**



There are 2,074 people serving time for possessing less than one gram of a controlled substance (the equivalent of a sugar packet).<sup>6</sup> This costs the state nearly \$40 million per year,<sup>7</sup> only to produce a 63% re-arrest rate. Drug arrests increase county jail populations, costing local taxpayers millions while doing little to rehabilitate individuals. Lowering the penalty for possessing less than one gram of a substance from a state jail felony to a misdemeanor would save money that can be re-directed to treatment alternatives to incarceration.

### **State Jail Elimination**

Another option is to eliminate the state jail system entirely, shifting to a 4<sup>th</sup> degree felony system where people are eligible for parole. This will ensure that people convicted of low-level drug and property offenses have access to the same programming as those in prison, and that they have the additional incentive of parole release to motivate treatment participation and good conduct.

### **Diligent Participation**

Texas’ 82nd Legislature provided an opportunity for individuals in state jails to earn “diligent participation” credit for taking part in educational, vocational, treatment, or work programs; the credits can result in a 20% sentence reduction.<sup>8</sup> Under the current system, judges must proactively authorize the credit, which results in lower utilization of the credit and missed opportunities to achieve savings and motivate treatment participation. A common-sense reform will shift the authority to grant the credit from courts to the Texas Department of Criminal Justice, which is able to monitor participation and determine whether the credit has been earned. During the 2019 session, the fiscal note for similar legislation – which passed the House and ran out of time in the Senate – indicated a nearly \$60 million biennial savings, simply by improving motivation for rehabilitation programming.<sup>9</sup>

<sup>1</sup> Center for American Progress, News You Can Use: Research Roundup for Re-Entry Advocates, April 5, 2018, <https://www.americanprogress.org/issues/poverty/reports/2018/04/05/448711/news-can-use-research-roundup-re-entry-advocates/>.

<sup>2</sup> Prison Policy Initiative, Out of Prison & Out of Work: Unemployment among formerly incarcerated people, July 2018, <https://www.prisonpolicy.org/reports/outofwork.html>.

<sup>3</sup> Prison Policy Initiative, Nowhere to Go: Homelessness among formerly incarcerated people, August 2018, <https://www.prisonpolicy.org/reports/housing.html>.

<sup>4</sup> Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, February 2021, [https://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/6293\\_CJDA\\_Recidivism-Revocation.pdf](https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/6293_CJDA_Recidivism-Revocation.pdf).

<sup>5</sup> Texas Health and Human Services Commission, Behavioral Health Services, Office of Decision Support, Data request and analysis prepared by Texas Criminal Justice Coalition, September 2017.

<sup>6</sup> Texas Department of Criminal Justice, High Value Data Set.

<sup>7</sup> Costs obtained by multiplying 2,074 (on hand state jail population of those serving time for POCS <1gram) by \$52.46, the cost per day for housing someone in a State Jail Facility (see Uniform Cost Report, LBB, [https://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/4911\\_Criminal\\_Juvenile\\_Uniform\\_Cost\\_Jan\\_2019.pdf](https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4911_Criminal_Juvenile_Uniform_Cost_Jan_2019.pdf)).

<sup>8</sup> House Research Organization, Bill Analysis, Tex. H.B. 2649, 82nd Leg., R.S. (2011).

<sup>9</sup> Legislative Budget Board, Fiscal Note, 86<sup>th</sup> Legislative Regular Session, April 17, 2019, <https://capitol.texas.gov/tlodocs/86R/fiscalnotes/pdf/HB045661.pdf#navpanes=0>.