

Greg Abbott's Securing Texans Plan

List of Recommendations

Comprehensive Care for Child Sex Trafficking Victims

Recommendation: To help children suffering from this horrific emotional and physical trauma, the state should bring service providers together to provide comprehensive, wrap-around care to child sex trafficking victims in Texas, supported by up to \$2 million in annual General Revenue funding.

Preventing Sex Crimes and Assisting Victims

Recommendation: Provide justice for victims of sexual assault and arrest sexual assault offenders by funding crime lab testing of sexual assault evidence.

Recommendation: To close gaps in the sex offender registry, require offenders to register before they are released into the public, and completely automate the system to improve information sharing between agencies.

Recommendation: Increase appropriations to OAG to increase by 100 the number of newly-certified Sexual Assault Nurse Examiners (SANEs) who are trained each year to provide an improved level of care and compassion for victims, along with careful evidence collection and the expertise needed for effective prosecution.

Protecting Children

Recommendation: Increase the penalty for kidnapping a child from a Third Degree Felony to a First Degree Felony to match the seriousness of the crime and to deter those who intend to do harm to any child.

Curbing Domestic Homicides

Recommendation: To provide more protection for victims of domestic abuse, create Domestic Violence High Risk Teams, which unite law enforcement, medical professionals and victim advocates at the local level to review cases of domestic violence and to identify, monitor, and contain the most dangerous perpetrators before they can inflict deadly harm.

Recommendation: Expand GPS monitoring to include domestic violence abusers who pose a severe threat to their victims, as determined by a judge at a hearing to set bail, so victims do not have to hide in shelters while the defendant is out on bail, awaiting trial, or subject to a protective order.

“Revenge” Porn

Recommendation: Create civil liability for perpetrators of “revenge porn,” who post illicit images online without consent.

Enhanced School Safety

Recommendation: Provide open-enrollment charter schools the authority to commission or appoint peace officers.

Recommendation: Provide Active Shooter Response training for free to school marshals, Texas ISD police, police departments at Texas institutions of higher education, and police at open-enrollment charter schools that may be authorized under future law.

Recommendation: Create a training program for OAG staff to educate faculty, staff, and administration on a school shooter scenario based on the “Saving Lives: When Seconds Count” video.

Border Security

Recommendation: To combat the threat of violence along the border, significantly enhance border security by doubling General Revenue appropriations for the Department of Public Safety to add manpower, technology, and tools for added surveillance.

Carrizo Cane Removal

Recommendation: To impede illegal border crossings, improve safety for law enforcement officers and facilitate apprehension of drug and human traffickers, eradicate invasive and non-native Carrizo cane along the Rio Grande river through a multi-jurisdictional effort and only with the consent of private landowners.

Organized and Transnational Crime

Recommendation: One of the most effective crime-fighting tools to confront the threat from international cartels across the border and from transnational gangs in our communities is closer collaboration and coordination between law enforcement agencies, all border states and the federal government through data sharing; another necessary tool is increasing funds for the Border Prosecution Unit to assist border county DAs overburdened and strained by the well-funded legal teams defending these criminal enterprises.

Expanding the Texas Anti-Gang Program

Recommendation: Directly challenge the threat posed by home-grown gangs by scaling the successful Texas Anti-Gang Task Force in Houston and replicating it in Dallas, Fort Worth, Austin, San Antonio, El Paso, Corpus Christi and Weslaco.

Disincentivizing Unlawful Presence

Recommendation: Enforce current law by requiring all state agencies to make use of E-Verify in order to ensure that only those eligible to work for state government are hired for public employment.

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Background of Recommendations

Comprehensive Care for Child Sex Trafficking Victims

Recommendation: To help children suffering from this horrific emotional and physical trauma, the state should bring service providers together to provide comprehensive, wrap-around care to child sex trafficking victims in Texas, supported by up to \$2 million in annual General Revenue funding.

Child sex trafficking is the commercial sexual exploitation of children through buying, selling, or trading their sexual services. On average, 45 youth were referred to Texas' juvenile probation departments each year between 2006 and 2012 for prostitution related offenses.¹ The average age of a child targeted for prostitution in the United States is between 11 and 14 years old.² Underage girls comprise the bulk of commercial sex market victims and are compelled to engage in pornography, stripping, escort services, and prostitution.³ Often, traffickers will use violence and psychological manipulation to control victims. In the words of one survivor, "I think I knew what he was, but I needed what I felt was being offered to me, which was protection, someone to care for me, someone that cared if I got hurt or if anything happened to me, which of course was all lies. I just wanted someone to care."⁴

Child sex trafficking victims are like no other victims. Child sex trafficking victims are forced to engage in sexual activity and sell their bodies over and over to the next buyer. Because of this intense trauma, comprehensive services for sexually exploited children are critical. Some victims may need immediate medical care at a local hospital. Some victims need police protection to keep them safe from their pimps. Some victims simply need a clean place to rest and a warm meal. With no guide in place to detail instruction on quality victim care, Texas must establish a standardized outline of best practices for protecting trafficked children.⁵

A statewide initiative in the Georgia Governor's Office for Children and Families, the Georgia Care Connection (GCCO), is a comprehensive care model developed to assist commercially sexually exploited children. It is the only known statewide program in the nation that specifically addresses this unique victim population. Texas should implement its own program to provide comprehensive care for child sex trafficking victims. Adopting the GCCO model will enable the State to provide sexually exploited children with a one-stop-shop for victim services, encouragement, and assistance with family reunification.

¹ Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," Report to the 82nd Legislature, January 2011. <http://www.tjpd.texas.gov/publications/reports/RPTOTH201103.pdf>

² Joint statement Before the Senate Committee on Homeland Security and Governmental Affairs, Joseph F. Campbell and Anne C. Gannon, September 23, 2013. <http://www.bi.gov/news/testimony/combating-human-trafficking>

³ "DEMAND: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, The Netherlands, and the United States," Shared Hope International, July 2007. www.sharedhope.org.

⁴ Kristy Childs, Domestic Minor Sex Trafficking - Prostituted Children in the United States: Identifying and Responding to America's Trafficked Youth, Shared Hope International training video, 2008.

⁵ The Texas Human Trafficking Prevention Task Force Report 2012. https://www.texasattorneygeneral.gov/AG_Publications/pdfs/20121912_htr_fin_3.pdf

In 2009, the Georgia Care Connection office (GCCO) was launched as the nation's first unified system-wide approach to protecting children involved in sex trafficking. No other state has launched a model utilizing the comprehensive wrap-around approach to identify these high-risk youth and provide them with the services they need for recovery. The term "wrap-around approach" refers to a common practice in the victim services community where services are "wrapped around" the victim. Under a wrap-around approach, the victim is the priority, and the services are designed to meet the victim's needs. The result is that service providers work together as a unit, keeping the child victim as the center of focus. Since its inception, the GCCO has assisted 545 potential child sex trafficking victims with an average age of 15 years old. The average age of the victims at the time they entered the commercial sex industry was 13 years old. Currently, the GCCO serves 100 active clients. Most GCCO referrals come from the court system, juvenile justice, child protective services (CPS), school counselors, and law enforcement agencies.

Establishing a GCCO model in Texas would provide a service to DMST victims that is severely lacking in the current local and statewide victim assistance system. Providing law enforcement, CPS, juvenile justice personnel, and victim service providers with a single point of contact upon the discovery of a sexually exploited child is invaluable. One of the biggest obstacles to providing services to these children is the fact that the individuals who initially identify the victim oftentimes don't know how to ensure they receive the appropriate services. The GCCO model addresses this problem by providing one number to call, at which point a caseworker would immediately be assigned to start working with known service providers in the victim's area in order to create a customized package of services to fit the victim's immediate and longer-term needs.

Due to the geographical size of the state, a Texas model, organized under the Office of the Attorney General, would consist of one central point of contact and referral office in Austin – with a single toll-free number anyone in Texas could call and be connected with a local intervention specialist to conduct the initial screening – as well as regional screening and intervention offices around the state.

The state office should consist of a program manager, referral specialist(s), and case managers. Regional offices would house at least one intervention specialist and a family support representative.

In addition, the strong network of Children's Advocacy Centers (CAC) across the state could play an integral role in the success of this program. The 66 CACs in Texas provide a safe, child-friendly environment where law enforcement, child protective services, prosecution, and medical and mental health professionals can share information and develop coordinated strategies sensitive to the needs of abused children on a case-by-case basis. Local centers provide an array of child-focused services including forensic interviewing, medical and mental health assessments and treatment, case reviews, and comprehensive advocacy services all within a child-friendly facility.⁶ CACs could assist the program in identifying appropriate services in a victim's area and provide a safe place for forensic interviews and medical assessments.

⁶ Children's Advocacy Centers of Texas 2012 Annual Report. http://www.cactx.org/public/upload/files/resource-library/OV_CACTX_2012_Annual_Report_email.pdf

Basic program training and development can be solicited from the GCCO. Representatives from the GCCO have expressed their willingness to travel to Texas if necessary to facilitate the OAG's efforts to replicate the model here. Georgia spends approximately \$1 million annually administering the GCCO; replicating Georgia's success in Texas is expected to cost up to \$2 million annually in general revenue. This funding would support a central office, located in Austin, as well as two regional offices in Dallas and Houston. Each office would likely require five to seven employees; three additional employees would run the administration of the program from the Austin office.⁷

⁷ The OAG spends \$2.2 million per year to operate the Dallas Medicaid fraud office (30 FTEs) and \$1.2 million per year administering the McAllen office with its 17 FTEs. Based on these annual operating budgets, we estimate the cost of providing comprehensive care to domestic minor sex trafficking victims will cost \$500,000 to \$600,000 per office, with the Austin office budget running slightly higher, due to the central offices administrative staff.

Preventing Sex Crimes and Assisting Victims

Recommendation: Provide justice for victims of sexual assault and arrest sexual assault offenders by funding crime lab testing of sexual assault evidence.

DPS Funding

One of the most critical rights afforded to the victims of reported sexual assault is the right to a forensic medical examination within 96 hours from the time of the crime.⁸ For survivors of sexual assault who are not ready to involve the police within the 96-hour window, Texas law requires forensic medical exams for victims of non-reported cases.

Sexual assault evidence collection kits provide investigators with a critical tool for identifying and prosecuting sexual assault offenders. DNA evidence from kits also plays a valuable role in preventing future assaults and sparing potential victims by bringing perpetrators to justice before they can assault again.⁹ Even where a victim has not decided whether to report the assault to law enforcement, receiving a forensic medical exam greatly improves the odds of police being able to access and test critical evidence.¹⁰

In January 2013, law enforcement reported the existence of approximately 20,000 untested sexual assault evidence collection kits in evidence rooms around the state.¹¹ Characterizing these kits as a “backlog” is not entirely accurate. The vast majority of untested kits were never submitted for testing due to investigative determinations by law enforcement and prosecutors that a particular kit provided no probative value to that specific case. The issue in question in the majority of these cases was the alleged consent of the victim, rather than the identity of the suspect. Others were associated with closed cases—many of which have been prosecuted without needing the evidence tested. Nonetheless, in recent years, compelling arguments have been offered to support the need for testing all kits.

One of the most commonly cited obstacles to analyzing all sexual assault evidence collected in Texas is the cost associated with testing. The cost of analyzing sexual assault forensic evidence runs between \$1,000 and \$1,500 per kit.¹² The Texas Department of Public Safety estimated that testing the existing 20,000 untested sexual assault evidence kits housed in crime laboratories around the state would cost approximately \$26.9 million. Furthermore, DPS estimated that it would receive roughly half of the untested kits, or about 10,000. DPS estimated it would cost \$13 million to outsource 10,000 kits, or approximately \$10 million to test the kits in-house.

⁸ Tex. Code of Crim. Proc. Arts. 56.06 & 56.065

⁹ “CBS News Investigates Rape-Kit Backlog,” RAINN. <https://www.rainn.org/news-room/news/rape-kit-backlog>

¹⁰ “Preserving and Collecting Forensic Evidence,” RAINN. <http://www.rainn.org/get-information/aftermath-of-sexual-assault/preserving-and-collecting-forensic-evidence>

¹¹ “Clearing Texas Rape Kit Backlog Brings Hefty Price Tag,” Brandi Grissom, Texas Tribune, January 4, 2013. <http://www.texastribune.org/2013/01/04/clearing-texas-rape-kit-backlog-brings-hefty-price/>

¹² “1000s of untested rape kits deny many justice,” CBS News, March 18, 2012. http://www.cbsnews.com/8301-201_162-57399619/1000s-of-untested-rape-kits-deny-many-justice/

In the 83rd regular legislative session, lawmakers approved a nearly \$11 million appropriation to Texas DPS in the FY 2014-2015 budget for the purpose of outsourcing untested kits at DPS.¹³ This amount was \$2 million short of what DPS had estimated it would cost to outsource 10,000 kits. DPS estimated that, based on historical data, about half of the untested kits will yield traces of DNA.¹⁴ The effect that collecting and processing the kits will have on violent crime in general cannot be overstated: oftentimes unsolved murder cases, including sexual assaults that culminate in murder, involved unidentified DNA that likely belongs to the perpetrator; the link between processing sexual assault kits and entering the results into the DNA database and solving other crimes is vital. The more profiles entered into the system, the more crime law enforcement will be able to solve.

Although the passage, and subsequent funding, of legislation requiring testing for all sexual assault evidence collected in Texas is a laudable accomplishment, there is still more that can be done to eliminate the backlog of untested forensic evidence. During the 83rd Legislative Session, Texas lawmakers appropriated \$11 million to DPS for outsourcing approximately 10,000 kits; this amount is \$2 million less than DPS had requested, and nearly \$17 million less than the estimated cost of outsourcing all 20,000 kits in DPS and law enforcement custody. DPS estimated that the total cost to outsource all 20,000 untested kits would amount to \$26,900,000. Statewide, the minimum estimated cost to complete testing on 20,000 kits through in-house testing would be \$13,267,512. Accordingly, while lawmakers last session elected to outsource 10,000 untested kits at DPS, in the future, in-house testing should be the preferred means of preventing future backlogs.

Although outsourcing alleviates DPS's caseload considerably, internal resources at DPS are still needed to track cases and conduct quality reviews.¹⁵ As custodians of the State affiliate of the FBI's DNA Database, CODIS, DPS employees are responsible for recording DNA data and maintaining a computerized database to serve as the state's central depository for DNA records; the depository is used by federal, state, and local law enforcement agencies in the investigation and prosecution of sexual assault cases.¹⁶ For example, in a sexual assault case, DNA analysts develop a DNA profile for the suspected perpetrator that is then searched against the state's database of convicted offenders.¹⁷ If there is a match, the laboratory will initiate procedures to confirm the match and, if confirmed, will obtain the identity of the suspected perpetrator.¹⁸ The convicted offender database in Texas was initiated in 1996 and only contains DNA profiles of individuals who have been convicted of Sexual Assault, Murder, Aggravated Assault, Burglary of a Habitation—or any other offense that requires registration as a registered sex offender. DNA samples can also be required in new probations cases as well as from individuals on deferred adjudication. Individuals currently on probation can have their conditions amended to include required submission of a sample.¹⁹

¹³ John Barton, Communications Officer, Legislative Budget Board, phone call, October 11, 2013.

¹⁴ "Budget Plan for DPS Includes Pay Raises for Troopers," Julián Aguilar, Texas Tribune, June 6, 2013. <http://www.texastribune.org/2013/06/06/dps-budget-includes-pay-raises-money-test-rape-kit/>

¹⁵ "Eliminating the Rape Kit Backlog: A Roundtable to Explore a Victim-Centered Approach," May 11-12, 2010. <http://www.ovw.usdoj.gov/docs/rape-kit-roundtable-summary-10262010.pdf>

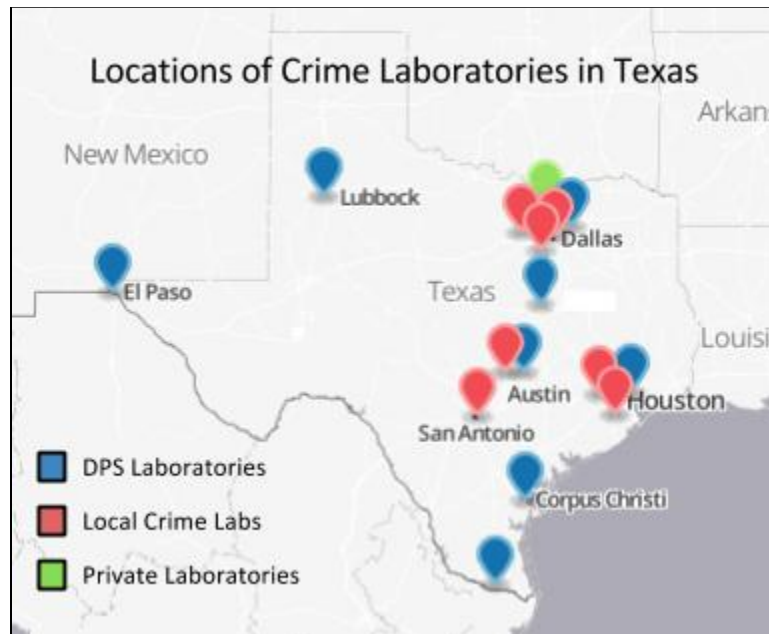
¹⁶ <http://www.txdps.state.tx.us/CrimeLaboratory/CODIS/index.htm>

¹⁷ <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet>

¹⁸ *Id.*

¹⁹ <http://www.txdps.state.tx.us/CrimeLaboratory/CODIS/codisfaq.htm>

The state CODIS laboratory in Austin is responsible for receiving, analyzing, and verifying the acceptability of subject samples; entering and storing DNA types into the database; and monitoring and enabling database access.²⁰ Any DNA laboratory in the state of Texas that is maintained by a criminal justice agency may apply to become a “CODIS User Laboratory” regulated by the Director of DPS.²¹



Training and retaining qualified criminalists and DNA analysts is a critical factor to ensuring all sexual assault evidence in Texas gets tested. The DPS Crime Laboratory consists of approximately 279 forensic scientists and 83 support personnel. Forensic scientists assist crime scene investigators, offer training seminars for peace officers, analyze physical evidence, and present test results and findings in courtroom testimony. New employees undergo intensive training before they are approved to examine evidence.²² Administrators at forensic laboratories report high turnover rates for analysts, particularly in rural areas.²³ State labs have a difficult time competing with private institutions in terms of salary. Crime laboratories need increased funding to support personnel, and the Texas Department of Public Safety must develop incentives and retention policies to keep DNA analysts employed at the agency that trained them.²⁴ A temporary tuition reimbursement program for science majors at criminology programs, such as the one at Sam Houston State University, offers a fiscally responsible way to incentivize recent graduates to work for DPS as analysts. Under the program, the state would offset a student’s tuition for a certain number of years in exchange for the student agreeing, upon graduation, to accept an analyst position at DPS for a corresponding period of time.

²⁰ *Id.*

²¹ Tex. Admin. Code Title 37, Chapter 28, Subchapter F

²² Crime Laboratory Service Overview, DPS. <http://www.dps.texas.gov/CrimeLaboratory/index.htm>

²³ “Eliminating the Rape Kit Backlog: A Roundtable to Explore a Victim-Centered Approach,” Office of Violence Against Women, May 11-12, 2010. <http://www.ovw.usdoj.gov/docs/rape-kit-roundtable-summary-10262010.pdf>

²⁴ *Id.*

The general appropriations bills passed during the 83rd Legislative Session included funding for 12 additional full-time positions; however, DPS's authority to hire additional personnel was made contingent on the receipt of federal funds, designated for DNA analyses or DNA backlog elimination, in an amount sufficient to cover the related costs.²⁵ Rather than making DPS's ability to hire additional FTEs contingent on securing federal funding, as the 2014-2015 biennium budget provides, Texas should address human resource shortages with state funds. DPS estimated that testing 10,000 sexual assault evidence kits in-house would require 25 additional personnel and new equipment. The department estimated testing would take 3 years to complete, with costs amounting to \$9,967,512. In light of these estimates, the legislature should appropriate \$6,394,887 (the two-year cost of the program) to DPS for ongoing analysis of sexual assault evidence, with future appropriations to be allocated based on the number of new kits submitted for testing each year. This option will be more cost-efficient than outsourcing and will ensure that all sexual assault forensic evidence in the state is tested, as required by law, without unduly burdening DPS.

Local Crime Lab Funding

The City of Houston has recently garnered praise for addressing its backlog of 6,600 untested kits.²⁶ The City has used \$4.4 million in federal and city funding to send its sexual assault evidence kits to two outside labs for testing. Approximately 2,800 kits had been processed as of October 2013, 464 of those yielding usable DNA that will be entered into federal databases.²⁷ Due to the unusual size of Houston's backlog and the large number of kits requiring testing, the Houston Police Department was able to negotiate a testing price of \$400 per kit—roughly a third of the usual cost—with two outside firms.²⁸

Local crime labs report increases in their caseload of as much as 500% but have not been able to grow their staffs accordingly. Law enforcement agencies and local crime labs should be encouraged to outsource testing to private labs, as the City of Houston did. The Texas Government Code requires law enforcement agencies to submit sexual assault evidence to a public accredited crime laboratory for analysis within 30 days of when the evidence was received.²⁹ The law also provides that, "[in order] to ensure expeditious completion of analyses the Department and other applicable public accredited crime laboratories may contract with private accredited laboratories as appropriate to complete those analyses."³⁰ In other words, both DPS and local crime labs presently have the legal authority to outsource testing.

²⁵ http://www.lbb.state.tx.us/Appropriations_Bills/83/Conf_Bill.pdf, at p. 607

²⁶ "Mayor announces \$4.4 M plan to cut rape kit backlog," Anita Hassan, Mike Morris, Houston Chronicle, February 13, 2013. <http://www.chron.com/news/houston-texas/houston/article/Mayor-announces-4-4-M-plan-to-eliminate-rape-kit-4275053.php>

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tex. Gov. Code §420.042(a).

³⁰ Tex. Gov. Code §420.042(d).

The most critical component to incentivizing outsourcing in the future is funding. It costs twice as much to outsource testing compared to working cases in-house. During the last round of budgeting, DPS based figures in its Legislative Appropriations Request upon the assumption that local labs would work their own cases; however, when lawmakers declined to provide a funding source to local laboratories, most continued to rely on DPS. Unless local labs are able to secure funding for outsourcing, most will continue to submit their kits to DPS for free for testing. Lawmakers next session should approve funding for local labs in an amount commensurate to the costs of each lab's outsourcing need. Outsourcing 4,000 untested kits will cost an estimated \$4.4 million.

Efficient Methods of Testing Kits

As sexual assault evidence continues to be collected in the future, law enforcement will benefit from more efficient means of tracking backlogs. In 2011, only 30 percent of DNA evidence submitted to DPS was tested within 90 days.³¹ The above recommended \$6,394,887 appropriation to DPS is based on DPS estimates of the cost to analyze 10,000 kits in-house and includes \$400,000 for equipment, \$100,000 for travel and training, and \$1 million in operating costs. These funds should be spent with the goal of reducing required testing time while maximizing cost efficiency. For example, funding for instrument maintenance contracts that include shorter guaranteed response times would enable DPS to get instruments used for DNA testing back online faster and with fewer interruptions. Additionally, DPS could contract with a qualified consultant to examine the Department's existing protocols for examining sexual assault kits, reviewing case files, and reporting findings. The consultant's report should include an assessment of DPS crime labs' current process, as well as recommendations for improving testing efficiency.

Laboratory Information Management Systems (LIMS) allow laboratories to track backlogs in real time and also give law enforcement a clearer picture of caseloads. Texas recently added a new LIMS at DPS; however additional funding to increase the bandwidth to the laboratory locations to speed up the completion of analysis reporting would benefit victims and law enforcement. Additionally, communication between crime labs and district attorneys' offices should be improved to provide prosecutors and investigators with a clearer, more up-to-date picture of the status of cases they are working. Currently, laboratories notify law enforcement with test results; however if a case has been referred to a prosecutor, the law enforcement may not forward the results. Standard protocol should ensure that all interested parties are notified of changes in status of any case they are working.

Texas DPS Crime Laboratory Service has implemented a DNA Case Acceptance Policy, which restricts the types of cases for which DNA evidence may be submitted for testing.³² Current policy permits the submission of up to two pieces of evidence for property crimes. Given the seriousness of sexual assault, DNA testing for crimes involving sexual assault, bodily injury, or death should be prioritized over testing for property crimes, temporarily, until testing is completed for the existing untested kits in DPS custody. The Los Angeles Police Department has adopted this strategy.³³

³¹ DPS Legislative Appropriations Request for FY 2014 and 2015. <http://www.dps.texas.gov/LBB/lar2014-15.pdf>

³² DNA Section, DPS. <http://www.txdps.state.tx.us/CrimeLaboratory/DNA.htm>

³³ "Eliminating the Rape Kit Backlog: A Roundtable to Explore a Victim-Centered Approach," Office of Violence Against Women, May 11-12, 2010. <http://www.ovw.usdoj.gov/docs/rape-kit-roundtable-summary-10262010.pdf>

Another initiative, which would amplify the efficiencies generated from automated “male screening” could be implemented in cooperation with sexual assault nurse examiners (SANEs). As part of this joint effort, SANE nurses would be asked to submit three of the most probative swabs directly to the DPS crime lab or a local law enforcement agency’s lab. These swabs would be submitted separately from the components of the sexual assault evidence collection kit. This would allow a “fast track” for DNA testing based on solvability. Under current law, when law enforcement receives a sexual assault evidence kit, the agency has up to 30 days to submit the kit to an accredited crime lab for testing.³⁴ Encouraging SANE nurses to submit swabs directly to labs eliminates the 30-day waiting period. When used in conjunction with automated “male screening”, this method could save time and resources by generating results faster and without the need for additional analysis of the entire sexual assault evidence kit.

See Appendix C for information on DPS estimated costs and timeline.

Recommendation: To close gaps in the sex offender registry, require offenders to register before they are released into the public, and completely automate the system to improve information sharing between agencies.

Over half of the Top 10 Most Wanted Sex Offenders in Texas are wanted for failure to register as a sex offender, among other things (8 of 10 as of January 23, 2014).³⁵ Indeed, according to a 2007 study by the *San Antonio Express News* and the *Houston Chronicle*, about 20 percent of the more than 800 sex offenders released from prison in Harris and Bexar Counties over the 18-month period ending in December 2006 failed to register with authorities or gave incomplete addresses.³⁶ As of August 31, 2012, TDCJ reported having on hand at prisons, state jails, and substance abuse facilities, 1,980 persons whose offense of record was “Failure to Register as a Sex Offender.”³⁷

Under Texas Code of Criminal Procedure, Article 62.051, a person who has a reportable conviction, adjudication, or who is required to register as a condition of parole, release to mandatory supervision, or community supervision, must satisfy the requirements of general registration no later than the latter of:

1. the seventh day after the person’s arrival in the municipality or county; or
2. the first date the local law enforcement authority of the municipality or county by policy allows the person to register or verify registration, as applicable.

³⁴ Tex. Gov’t Code §420.042.

³⁵ Texas 10 Most Wanted Sex Offenders. <http://www.txdps.state.tx.us/Texas10MostWanted/sexOffenders.aspx>

³⁶ See, e.g., “Many sex offenders in South Texas fail to register,” Associated Press, YNN, March 4, 2007. <http://austin.ynn.com/content/news/180187/many-sex-offenders-in-south-texas-fail-to-register>

³⁷ Fiscal Year 2012 Statistical Report, Texas Department of Criminal Justice. http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf

Additionally, each provision regarding registration gives a seven-day window for the individual to comply with this requirement. Each local authority operates its own sex offender registration process. For example, the Dallas Police Department requires that sex offenders go to one particular police station (1400 S. Lamar St., Dallas), on one of three days a week (Tuesday-Thursday), and only during a short time window (7:30 a.m. - 2:00 p.m.).³⁸ Similarly, registration at the Washington County Sheriff's office is only on Thursdays from 8:00am - 5:00pm.³⁹

Since sex offenders have only seven days at most to register, the limited convenience of the registration window in many localities makes it more likely that offenders will fail to comply with registration requirements. Additionally, allowing sex offenders such significant freedom of action in becoming initially registered gives those who intend not to comply an opportunity to escape the eye of the law.

The process could be expedited and simplified by implementing a statewide electronic process, which could speed up pre-release notice and provide more consistent and immediate information to local law enforcement. The correctional authority in question (whether state or local) should perform the sex offender's initial registration upon the offender's release from the correctional facility. The correctional authority should then report this information directly to DPS for inclusion in the statewide sex-offender database. This information would then immediately be made available, also electronically, to the appropriate unit of local law enforcement. It is anticipated that any cost to the state would be minimal and related to software changes incorporated into the existing DPS system.

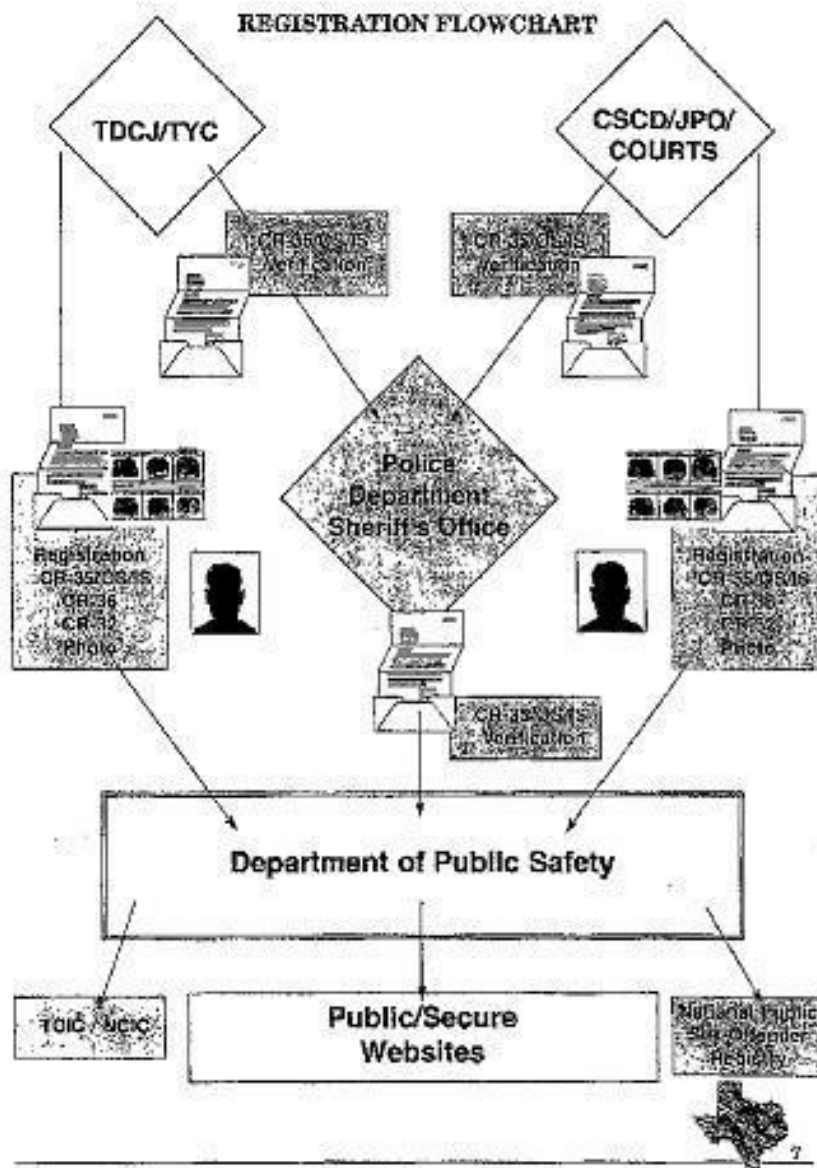
The current process for registering sex offenders is overly complicated and is out of date. TDCJ's Policy and Operating Procedure on the Sex Offender Registration Program (Policy 3.6.4), for example, requires that for two of the sex offender registration forms processed by TDCJ, the form "shall be faxed to the DPS Sex Offender Compliance Unit... and the original shall be mailed to DPS Crime Records Service."⁴⁰ Fax machines, once a communications mainstay, are now much rarer and less frequently used; in 2009 Business Insider included them on a list of items that became obsolete in the preceding decade.⁴¹ The fact that the sex offender registration program still requires that certain forms be faxed indicates that the entire registration system is in need of modernization. Other than a reliance on older and less efficient technology, the current registration process is overly complicated, as indicated by the flowchart below. Rather than the existing process whereby information is conveyed, for example, separately from TDCJ to DPS and local law enforcement, with local law enforcement independently conveying information to DPS, all relevant public entities should convey information directly to a single, centralized electronic system.

³⁸ Source: Dallas Police Department

³⁹ Washington County Sheriff's Office. <http://www.washingtoncosheriff.org/sex-offender-registration.html>

⁴⁰ *Id.*

⁴¹ "21 Things That Became Obsolete This Decade," Bianca Male, Business Insider, December 11, 2009. <http://www.businessinsider.com/21-things-that-became-obsolete-this-decade-2009-12?op=1>



Source: TDCJ

Additionally, the state could provide funding for more regular compliance checks by local law enforcement. Current law generally requires verification of sex offender data at regular intervals, usually either every thirty days, ninety days, or once per year, depending on the exact offense and sentencing. However, local law enforcement sometimes conducts additional verification initiatives. For example, in December, 2013, the Titus County Sheriff's Office conducted a Sex Offender Compliance Check that was not mandated by the state, but conducted independently by the Sheriff's Office for the safety of local citizens.⁴² The operation involved 29 individual compliance checks and resulted in 1 arrest.⁴³ A similar operation by the Liberty County Sheriff's Office in October, 2013, conducted 17 individual compliance checks and found 3 persons in noncompliance.⁴⁴ In determining local law enforcement priorities, local law enforcement agencies should emphasize sex offender registration compliance, including implementing spot compliance checks where these would be useful.

Recommendation: Increase appropriations to OAG to increase by 100 the number of newly-certified Sexual Assault Nurse Examiners (SANEs) who are trained each year to provide an improved level of care and compassion for victims, along with careful evidence collection and the expertise needed for effective prosecution.

For survivors of sexual assault, the hours immediately following the attack are among the most harrowing moments of a victim's life—it's also the most crucial opportunity for collecting and preserving evidence that can prove critical for obtaining a conviction in the case. Even if a victim has not yet decided whether to report an incident of sexual assault to law enforcement, the first thing all survivors should do is obtain a medical forensic exam for the purpose of evaluation and treatment of trauma and possible infection, counseling referrals, and for the collection of evidence.⁴⁵ Hospitals are often the starting point of the victim's road to recovery, as well as their initial contact point with the criminal justice system. As hospitals have become increasingly aware of the important role they play in the prosecution of sexual assault cases, more and more have implemented Sexual Assault Nurse Examiner programs designed to provide comprehensive and compassionate care to survivors.⁴⁶

⁴² "Sex Offender Compliance Checks," John Livingston, Titus County Sheriff's Office, December 16, 2013.

<http://www.tcsoinfo.com/press-releases/sexoffendercompliancechecks>

⁴³ *Id.*

⁴⁴ "Liberty County sex offender compliance check finds some not at registered address," Cleveland Advocate, Nov 17, 2013.

http://www.yourhoustonnews.com/cleveland/news/liberty-county-sex-offender-compliance-check-finds-some-not-at/article_4fcc10a4-5faa-54d0-8886-e44e90d6b6a6.html

⁴⁵ <https://www.oag.state.tx.us/victims/sane.shtml> Last checked: August 26, 2013.

⁴⁶ <http://www.texashealth.org/dallassane> Last checked: August 20, 2013.

A Sexual Assault Nurse Examiner, or SANE as they are commonly called, is a registered nurse who has been trained to: (1) provide comprehensive care to sexual assault patients; (2) conduct a medical forensic exam and evaluation for evidence collection; (3) possess the expertise required to provide effective courtroom testimony; and (4) display compassion and sensitivity to sexual assault survivors.⁴⁷ As a result of their training, Sexual Assault Nurse Examiners are capable of providing survivors of sexual assault with a superior level of treatment and care that is vital to victims' recoveries. By ensuring that the evidence is properly collected, SANEs also play a critical role in prosecuting the offender. Survivors who receive proper treatment from trained sexual assault examiners recover from the physical and mental trauma of an assault more quickly and are more likely to follow through with the prosecution of criminal cases.⁴⁸ Dallas' first SANE program launched in 2010, and within four months reporting for sexual assaults in Dallas County rose by twenty-five percent.⁴⁹

SANE start-up costs can frustrate efforts to launch additional SANE programs in new communities. One way to secure funding to cover these costs is to convince the administrator at a local hospital of the utility of implementing a SANE program. The average start-up costs for a new SANE program is reported to run between \$30,000 and \$40,000.⁵⁰ Occasionally, medical centers are willing to incur the initial costs of SANE program development.⁵¹ Emphasizing the cost saving benefits of having a SANE on staff is essential to making an effective case to the hospital administration. SANE can conduct a forensic medical exam more efficiently than a hospital physician, and their hourly rates are much lower.⁵²

The Office of the Attorney General, through the Sexual Assault Prevention and Crisis Services (SAPCS), a program of the Crime Victim Services Division that certifies SANEs, will be requesting proposals from hospitals for participation in a pilot program to provide funding for training and certification of sexual assault nurse examiners. The program will endeavor to identify qualified instructors to train SANE nurse candidates in evidence collection and testifying in court. Pilot programs such as this one are useful for assessing the demand for SANE training. Nationally, SANE training per person costs between \$250 for basic training to \$1,200 for a week of advanced clinical training.⁵³ Lawmakers in the upcoming session should examine the results of the OAG program and appropriate \$500,000 to support SANE start-up costs, as well as training and certification of an additional 100 SANE nurses each year. Additionally, lawmakers should work with the state's higher education nursing programs to encourage the creation of more SANE specialty slots.

⁴⁷ SANE Program FAQ. <https://www.oag.state.tx.us/victims/sane.shtml>

⁴⁸ SANE Program FAQ. <https://www.texasattorneygeneral.gov/victims/sane.shtml#14>

⁴⁹ Texas Health Resources Sexual Assault Nurse Examiner Program. <http://www.texashealth.org/dallassane>

⁵⁰ <http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>

⁵¹ "SANE Development and Operation Guide," Dr. Linda E. Ledray, Office for Victims of Crime, DOJ Office of Justice Programs. <http://www.ovc.gov/publications/infores/sane/saneguide.pdf>

⁵² *Id.*

⁵³ <http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>

Protecting Children

Recommendation: Increase the penalty for kidnapping a child from a Third Degree Felony to a First Degree Felony to match the seriousness of the crime and to deter those who intend to do harm to any child.

Under Texas Penal Code Section 20.03, which defines the offense of kidnapping, “[a] person commits an offense if he intentionally or knowingly abducts another person.” Abduct is defined as “to restrain a person with intent to prevent his liberation by: (A) secreting or holding him in a place where he is not likely to be found; or (B) using or threatening to use deadly force.”⁵⁴ Such an offense is classified as a third degree felony, unless it can be demonstrated that the actor intended to commit a felony against the child, which would elevate the offense to a first-degree felony.

Certain conditions may raise the offense to an “aggravated kidnapping,” which is penalized as a first degree felony unless the victim is voluntarily released by the kidnapper.⁵⁵ Scenarios that implicate this heightened offense and more severe penalty include kidnapping with the intent to hold the victim for ransom, intent to use the victim as a hostage, and intent to interfere with the performance of any governmental or political function. However, kidnapping a minor does not raise the penalty for a kidnapper. In 2012, the last year for which complete information is available, there were 135 total convictions of aggravated kidnapping and 70 convictions of kidnapping.⁵⁶

Please note that custody battles involving a parent taking a child in violation of a custody agreement would generally be prosecuted as non-kidnapping offenses; especially Penal Code Sec. 25.03 (interference with child custody) and Penal Code Sec. 25.031 (agreement to abduct from custody). These offenses are generally state jail felonies. To ensure that custody disputes are not improperly elevated, an exception from the offenses of kidnapping and aggravated kidnapping applies under current law⁵⁷ where the kidnapper is a relative of the child and the actor's sole intent was to assume lawful control of the victim. Taking of a child in violation of a custody agreement can only be prosecuted as a kidnapping where the exception does not apply.

Special care should be taken to ensure that potential kidnappers are discouraged from abusing the most vulnerable members of our society—our children. Designating kidnappings where the victim is a minor child under the age of 18 as aggravated kidnappings, thereby raising the penalty from a Third Degree Felony to (except in cases of voluntary victim release) a First Degree Felony, would help protect the children of Texas.

⁵⁴ Texas Penal Code Section 20.01(2)

⁵⁵ Texas Penal Code Section 20.04

⁵⁶ See, e.g., DPS conviction rats for concealed handgun license holders, 2012.
<http://www.dps.texas.gov/RSD/CHL/Reports/ConvictionRatesReport2012.pdf>

⁵⁷ Sec. 20.03 (b)(2)-(3)

Curbing Domestic Homicides

Recommendation: To provide more protection for victims of domestic abuse, create Domestic Violence High Risk Teams, which unite law enforcement, medical professionals and victim advocates at the local level to review cases of domestic violence and to identify, monitor, and contain the most dangerous perpetrators before they can inflict deadly harm.

In 2012, there were 198,366 family violence incidents in Texas, up 11.5 percent from 2011.⁵⁸ In 2012 alone, domestic, or family violence, took the lives of 114 women in Texas, 12 more fatalities than occurred in 2011.⁵⁹ In Harris County, the per capita female intimate partner murder rate in 2012 was one in 71,121.⁶⁰ Research by the nation's leading expert on domestic violence suggests that the single biggest indicator for domestic homicide is a prior incidence of physical domestic violence.⁶¹

An innovative tool for fighting domestic violence has been developed by the Jeanne Geiger Crisis Center (JGCC) in Newburyport, Massachusetts, the Domestic Violence High Risk Team Network is a nationally recognized program that prevents domestic violence and domestic homicide by performing risk assessments to predict when a violent or lethal incident is likely to occur. The assessments evaluate the batterer's history and of behavioral patterns, allowing law enforcement and victim services providers to view distinct acts of violence in context. Analyzing lethality factors and violent behavior patterns enables high risk team to intervene in order to prevent homicides and re-assaults.⁶²

The Domestic Violence High Risk Team (DVHRT) consists of multi-disciplinary teams that coordinate efforts to increase victim safety by monitoring and containing perpetrators while providing victim services.⁶³ Risk assessments allow team members to put individual incidents of violence in context and form the basis for individualized intervention plans. Naturally, however, team decisions are only as good as the information on which they are based. That is why information sharing across disciplines is so important. To this end, teams unite police, prosecutors, victim-witness advocates, probation officials, batterers' intervention teams, and hospital staff in order to create a vehicle for communication among disciplines to provide the best possible responses to victims at high risk. In the JGCC high risk team's first eight years, 92 percent of survivors have reported that there have been no re-assaults.⁶⁴ The DVHRT model has been replicated in 21 communities in Massachusetts and several others across the country.⁶⁵ In its first six years, the JGCC team has handled 106 high risk cases (less than five percent of cases score in this bracket, for those that do, an intervention plan is immediately put into place) and experienced zero homicides.

⁵⁸ "Family Violence," Texas Crime Report for 2012. <http://www.dps.texas.gov/crimereports/12/citCh5.pdf>

⁵⁹ "Honoring Texas Victims: Family Violence Fatalities 2012," Texas Council on Family Violence. http://www.tcfv.org/wp-content/uploads/2013/10/HonoringTexasVictims_FullReport_8.5X11.pdf

⁶⁰ <http://www.tcfv.org/wp-content/uploads/2013/10/BytheNumbersSummary.pdf>

⁶¹ "A Raised Hand," Rachel Louise Snyder, *The New Yorker*, July 22, 2013, p. 34.

⁶² "Working to Predict and Prevent Domestic Violence," Suzanne Dubus, *Champions of Change*, November 2, 2011. <http://www.whitehouse.gov/blog/2011/11/02/working-predict-and-prevent-domestic-violence>

⁶³ Domestic Violence High Risk Team Network, Jeanne Geiger Crisis Center. <http://www.jeannegeigercrisiscenter.org/dvhrtn.html?pg=01>

⁶⁴ <http://jeannegeigercrisiscenter.org/dvhrtn.html?pg=04>

⁶⁵ "Making An Impact By Preventing Domestic Violence Homicide," Domestic Violence High Risk Team Network, Jeanne Geiger

Based on the same research underpinning the DVHRT Network, the Maryland Legislature in 2005 passed a law authorizing the establishment of local domestic violence fatality review teams (DVFRT), which review domestic violence fatalities and develop recommendations based on their findings. Proposals are published in an annual report.⁶⁶ Teams are organized through the Maryland Network Against Domestic Violence, which also oversees a Lethality Assessment Program (LAP) for law enforcement. The LAP is a tool used by law enforcement to identify victims of domestic violence who are at risk of being seriously hurt or killed by their intimate partner.⁶⁷ Between 2006 and 2011, an estimated 33% of victims identified by LAP as high risk went in for services.⁶⁸ Both programs are based on the same research underlying the DVHRT model.⁶⁹ Between 2007 and 2012, domestic violence homicides in the state fell by 40 percent.⁷⁰ A 12-member domestic violence death review team was created in Chattanooga, Tennessee in 2007 thanks to enabling legislation.⁷¹ The team reviewed local domestic violence homicide cases between 1992 and 2006 as the basis for its recommendations, published in 2008.⁷² Subsequently, the 2009-2011 Tennessee Domestic Violence Report showed that homicides determined to be the result of domestic violence decreased by 11.1%.⁷³

Crisis Center. <http://jeannegeigercrisiscenter.org/dvhrtn.html?pg=04>

⁶⁶ House Bill 471, Maryland General Assembly. <http://mlis.state.md.us/2005rs/billfile/HB0741.htm>

⁶⁷ "Lethality Assessment Program: The Maryland Model," Maryland Network Against Domestic Violence. http://mnadv.org/_mnadvWeb/wp-content/uploads/2012/11/MNADV-LAP-Brochure_2012.pdf

⁶⁸ *Id.*

⁶⁹ "Fatality Review," Maryland Network Against Domestic Violence. <http://mnadv.org/what-we-do/fatality-review/>

⁷⁰ "Fighting Back: One professor's statistics-driven screen is reshaping the way domestic violence is policed in Maryland," Tim Stelloh, *The New Republic*, April 20, 2012. <http://www.newrepublic.com/article/politics/magazine/102779/domestic-violence-vawa-maryland-abuse-women>

⁷¹ "Domestic Violence Fatality Review Team," Chattanooga Family Justice Alliance. http://dvcchatt.org/?page_id=77

⁷² *Id.*

⁷³ "Tennessee Domestic Violence Report 2009-2011," Tennessee Bureau of Investigation. http://www.tbi.tn.gov/tn_crime_stats/documents/DomesticViolenceinTN2009_2011.pdf

Dallas police receive 13,000 domestic violence calls each year and in 2013 the city lost 23 people to domestic violence homicide.⁷⁴ In October of 2012, Dallas police officers began utilizing the lethality assessment program, and in January of 2013 the department began prioritizing serving family violence warrants to repeat offenders and those abusers considered most likely to inflict immediate harm.⁷⁵ Maj. Rob Sherwin has announced that the Dallas Police Department is also considering a home-visit plan, under which officers would personally check in on the most vulnerable victims during the time between when a case is filed and when the case is resolved—a period that last on average between eight and 10 months.⁷⁶ The department has already added five additional family violence detectives, bringing the unit's total up to 34.⁷⁷ The World Health Organization lists alcohol and drug use as a factor that increases men's risks of committing sexual violence.⁷⁸ Dallas county judges have begun prohibiting alcohol and deadly weapon possession as a condition of bond for family violence felonies.⁷⁹ Creating a network of domestic violence high risk teams in Texas would build on these initiatives while expanding the effort to prevent domestic violence homicides in Texas on a statewide scale.

Texas should work to create its own network of local Domestic Violence High Risk Teams throughout the state. Texas has already taken a similar public-private partnership approach in its successful efforts to improve the prosecution of cases involving children. Created in 1994, Children's Advocacy Centers of Texas (CACTX) came together to set standards for children's advocacy centers (CACs) in Texas, standards which the Legislature codified in the Texas Family Code.⁸⁰ While each local CAC is unique in culture, centers utilize the same evidence-based practices and compassionate professionalism. CACs partner with law enforcement, district and county attorneys' officers, and CPS workers to influence positive outcomes in investigation of crimes against children and develop best practices that are redefining the way child abuse victims are treated.⁸¹ Children's Advocacy Centers receives grant funding from the Office of the Attorney General, including approximately \$20 million for FY 2014 - 2015.⁸² The organization also benefits from private donations. Domestic violence high risk teams should be established in Texas in a similar fashion. Federal grant dollars could be used for a competitive grant program focusing on creating these teams and curbing family violence in Texas, without imposing any additional cost on the state.

⁷⁴“Deadly Affection: A Look Back,” Sarah Mervosh, *The Dallas Morning News*, January 2014.
http://res.dallasnews.com/interactives/2014_deadlyaffection/

⁷⁵“Dallas police consider home visits to prevent domestic violence deaths,” Sarah Mervosh, *Dallas Morning News*, Nov 23, 2013.
<http://www.dallasnews.com/news/crime/headlines/20131123-with-knock-on-door-dallas-police-hope-to-prevent-domestic-violence-deaths.ece>

⁷⁶*Id.*

⁷⁷“Deadly Affection: A Look Back,” Sarah Mervosh, *The Dallas Morning News*, January 2014.
http://res.dallasnews.com/interactives/2014_deadlyaffection/

⁷⁸“Preventing Sexual Violence in Texas 2010-2018: A Primary Prevention Approach.”
<http://www.taasa.org/prevention/pdfs/PreventingSexualViolenceinTexas.pdf>

⁷⁹“Deadly Affection: A Look Back,” Sarah Mervosh, *The Dallas Morning News*, January 2014.
http://res.dallasnews.com/interactives/2014_deadlyaffection/

⁸⁰ Children's Advocacy Centers of Texas FAQ. <http://www.cactx.org/about/faq>

⁸¹ *Id.*

⁸² Senate Bill 1 (83-R)

The first step to implementing a network of Domestic Violence High Risk Teams in Texas is the creation of a new \$2 million annual grant program under the purview of the Office of the Attorney General.⁸³ Implementing a DVHRT model in Texas can be achieved using existing resources of the various agencies and entities involved. Additional funding for the new program could come from federal grants solely dedicated for the prevention of family violence. For example, in the 2013 fiscal year, Congress appropriated \$409 million for Violence Against Women Act (VAWA) programs.⁸⁴ Texas is eligible for a portion of this funding, having received \$14.7 million in 2010-11, and \$16 million in 2012-13. These funds were used to “develop and strengthen effective criminal justice strategies and victim services programs to combat violent crimes against women.”⁸⁵ Federal law requires that certain amounts of these grants be used directly for prosecution, law enforcement, victim services, and court costs, but that “the remainder of the funds may be spent at the discretion of the state... to provide personnel, training, technical assistance, data collection, and equipment for apprehension, prosecution, and adjudication of persons committing violent crimes against women.”⁸⁶ Grant resources would be awarded to law enforcement and local non-profits that will take the lead in forming domestic violence high risk teams to respond to domestic violence in their respective communities.

A Texas-based High Risk Team initiative would seek to unite key community players who work at the local level.⁸⁷ Each member of the team would bring a different perspective and intersect with domestic violence victims in a different way—with law enforcement working to enforce batterer accountability while domestic violence advocates focus on creating safety strategies for survivors. Team members would share high-risk case information—via secure email and other technology—with one another to ensure everyone on the team is aware of each case and ready to act if needed. This ability to share confidential information is a key part of the team’s success. Once the model has been implemented, the basic framework could be adapted to suit other agencies, such as Child Protective Services, where the recent deaths of four young children have created concern about the agency’s ability to detect deception.⁸⁸

⁸³ The Jeanne Geiger Crisis Center’s weekly operating budget is \$38,000 (\$1,976,000 annually).

⁸⁴ “Cardin, Mikulski Announce \$1 Million Grant To Protect High Risk Victims of Domestic Violence,” March 28, 2013. <http://www.cardin.senate.gov/newsroom/press/release/cardin-mikulski-announce-1-million-grant-to-protect-high-risk-victims-of-domestic-violence->

⁸⁵ Legislative Budget Board, Fiscal Size-Up, 2010-11 and 2012-13.

⁸⁶ Legislative Budget Board, “Top 100 Federal Funding Sources in the Texas State Budget,” February 2013.

⁸⁷ “Tragedy’s legacy,” David Rattigan, *The Boston Globe*, October 16, 2008. http://www.boston.com/news/local/articles/2008/10/16/tragedys_legacy/ August 1, 2013.

⁸⁸ “When CPS workers accept lies, children can die,” Robert T. Garrett, *The Dallas Morning News*, Dec 14, 2013. <http://www.dallasnews.com/news/metro/20131214-when-cps-workers-accept-lies-children-can-die.ece>

Recommendation: Expand GPS monitoring to include domestic violence abusers who pose a severe threat to their victims, as determined by a judge at a hearing to set bail, so victims do not have to hide in shelters while the defendant is out on bail, awaiting trial, or subject to a protective order.

Strong containment methods are measures designed to ensure victim safety by keeping dangerous actors away from their targets. Victims of domestic violence face the greatest threat of homicide when leaving or engaging in legal separation from their batterer. The most dangerous time is within the first year of leaving, and the risk is critically high during the first three months.⁸⁹ In the days preceding a court hearing, strong containment methods, such as Global Positioning System (GPS) monitoring, can keep victims safe while the defendant is free on bond following an arrest for a domestic violence related offense. Data from the Jeanne Geiger Crisis Center's High Risk Team shows that, in the areas served by the Team, virtually no offenders monitored by GPS, approximately five percent of high risk cases, have re-assaulted their victims.⁹⁰

In 2009, a Connecticut woman, Tiana Notice, was stabbed to death by her boyfriend James Carter. Carter had repeatedly violated the protective order Notice has against him. Carter emailed Tiana and told her not to tell the police. Instead, Tiana went to the police for protection and was told Carter would be arrested. Instead, police called Carter and told him that, if they discovered he was the one who had sent the email, he would be arrested. Having been made aware of Tiana's disobedience, Carter went to Tiana's apartment with a knife and killed her. In the aftermath of Tiana's murder, Connecticut passed legislation that has been called "the most targeted attack on these crimes in 24 years." Among other things, the new law set up a pilot GPS monitoring program for offenders in high-risk domestic violence cases.⁹¹

Texas passed legislation in 2007 to allow for GPS monitoring of sexually violent predators.⁹² The Parole Division of the Texas Department of Criminal Justice (TDCJ) uses 3M brand GPS technology to monitor approximately 1700 offenders with Special Condition SISP (Super Intensive Supervision Program) and Special Condition EM (Electronic Monitoring).⁹³ This technology has consistently proven to be the most reliable. The department uses both active and passive GPS monitoring. When an individual under active monitoring violates a condition of his release, a report is sent in real time to TDCJ. With passive technology, reports are downloaded in intervals as determined by the department. Importantly, TDCJ monitoring personnel maintain a low caseload ratio of 15:1 in order to ensure all the information is properly filtered.

⁸⁹ "Intimate Partner Homicide: Review and Implications of Research and Policy," J. Campbell, p. 254

⁹⁰ "The High Risk Team Model and GPS Offender Monitoring: Stopping DV in its Tracks," Dian L. Rosenfeld, Domestic Violence Report Vol. 17, No. 3, February/March 2012.

⁹¹ Domestic Violence Report Vol. 17, No. 3, February/March 2012.

http://jeannegeigercrisiscenter.org/jimg/resources/reportpdf/jgcc_DomesticViolenceReportw_JGCCarticles.pdf

⁹² Office of Violent Sex Offender Management 80th Legislative Summary.

<http://www.ovsom.texas.gov/docs/80LegislativeSession.pdf>

⁹³ Department of Criminal Justice, Parole Division. http://www.tdcj.state.tx.us/divisions/parole/parole_contracts_em.html

“Pretrial services” is the term used to describe the process which involves assessing arrestees, making recommendations regarding release in light of such assessment, and supervising individuals released on bond.⁹⁴ Pretrial services play an important role in the state’s criminal justice system: pretrial services protect defendant’s right against excessive bail, reduce overcrowding in jails, and save taxpayer dollars by providing arrestees an opportunity for release. Pretrial services makes recommendations to magistrates relating to bond release and conditions. Magistrates take these recommendations into account when setting bail.

Not all counties in Texas provide pretrial services, and those choosing to do so have broad discretion in the design and administration of pretrial services programs. An effective pretrial services program utilizes validated assessment instruments; considers the risks defendants pose to themselves, victims, and their communities; evaluates the need for services/treatment; and facilitates frequent and effective communication between services providers and the courts.⁹⁵

Releasing arrestees on bond is reflective of the presumption that all individuals are innocent until proven guilty. While the Texas Constitution and Code of Criminal Procedure provide exceptions for classes of defendants who may be denied bail, as a general rule, Texas upholds the restriction against excessive bail set forth in the U.S. Constitution.⁹⁶ The amount of bail is determined by the officer taking bail, usually a magistrate.⁹⁷ The Code of Criminal of Procedure authorizes the imposition of reasonable conditions on released defendants to ensure community safety and the safety of the alleged victim.⁹⁸ These conditions may include no-contact with alleged victims, restrictions on communications and travel, GPS monitoring, home confinement or curfew, drug testing, counseling, motor vehicle interlock devices, and electronic monitoring.⁹⁹

⁹⁴“Overview of Pretrial Services & Bail in Texas,” Travis Leete, Texas Criminal Justice Coalition.
[http://www.texascjc.org/sites/default/files/publications/Overview%20of%20Pretrial%20Services%20Bail%20in%20TX%20\(Mar%202012\).pdf](http://www.texascjc.org/sites/default/files/publications/Overview%20of%20Pretrial%20Services%20Bail%20in%20TX%20(Mar%202012).pdf)

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Tex. Code of Crim. Proc. Art. 17.15

⁹⁸ Tex. Code of Crim. Proc. Art. 17.40

⁹⁹ Tex. Code of Crim. Proc. Art. 17.292, 17.41, 17.46, 17.49, 17.03(c).

While not all Texas counties operate pretrial programs with sufficient staff that can supervise offenders who are free on bond, some such as Bexar County, use GPS technology and electronic monitoring to monitor defendants who are out awaiting trial.¹⁰⁰ If a Bexar County court orders GPS monitoring as a condition of release on bond, the defendant will be placed under intensive supervision and the defendant's movements will be monitored at all times. With electronic monitoring, monitors are alerted whenever an offender enters an "exclusion zone," geographic areas that are usually set up around a victim's home or workplace. Both the GPS and electronic monitoring programs at Bexar County Pretrial Services are defendant paid programs. Defendants subject to GPS monitoring are required to pay \$300 each month, which covers the cost of the GPS equipment and monitoring (\$5 per day) and the salaries of the case managers. The monthly fee for electronic monitoring is \$270.¹⁰¹ Approximately half of all defendants who are ordered to submit to GPS monitoring fail to make their monthly payments. However, as GPS monitoring is less expensive than what it cost to jail a defendant awaiting trial, the county courts typically cover the monitoring costs for those defendants that don't pay.

In counties with large, well-staffed pretrial services programs, magistrates should be encouraged to require GPS monitoring as a condition for release for certain perpetrators of family or domestic violence. This will have the effect of keeping victims safe while their abusers are out on bail awaiting trial or subject to a protective order. In determining which defendants require GPS monitoring, judges and prosecutors should evaluate cases based on risk factors such as recidivism and threats made to victims.

GPS monitoring would provide instant notification to law enforcement whenever a defendant violates the terms of release, facilitating police intervention and suspect apprehension, and allow victims to stay in their homes, instead of hiding out in a shelter. Although defendant paid programs are designed to have no negative impact on the monitoring entity's operating budget, not all defendants placed under GPS monitoring make their monthly payments. Therefore, an additional \$1 million in general revenue should be appropriated annually to the Criminal Justice Division (CJD) of the Office of the Governor grant program for dedicated purposes of compensating county courts for financial losses pretrial services programs incur as a result of utilizing GPS technology to enforce restraining orders and monitor defendants charged with family violence crimes. The CJD promotes strategies that improve and support criminal justice efforts across the state through the administration of grants.¹⁰² Resources are awarded to programs that protect Texans from crime, reduce the number of crimes committed, address crime victims' needs, and promote accountability within the criminal justice system.¹⁰³

Although it is generally not the policy of the Texas criminal justice system to punish individuals preemptively for crimes not committed, the objective of GPS monitoring in the domestic violence setting is to serve as a temporary precaution to last for as long as the victim remains in a heightened state of danger or risk. In 2012, 5,510 arrests were made for offenses against the family or children.¹⁰⁴ Imposing GPS monitoring on domestic violence arrestees who pose the risk of reoffending is an effective means of safeguarding victims without violating defendants' constitutional rights or wasting taxpayer dollars.

¹⁰⁰ Bexar County Pretrial Services. <http://gov.bexar.org/pretrial/>

¹⁰¹ GPS & Electronic Monitoring, Bexar County Pretrial Services. http://gov.bexar.org/pretrial/gps_elm.html

¹⁰² <http://governor.state.tx.us/cjd/>

¹⁰³ *Id.*

¹⁰⁴ 2012 Texas Arrest Data, DPS. <http://www.txdps.state.tx.us/crimereports/12/citCh9.pdf>

It is important, however, to note that GPS tracking technology is not foolproof. Indeed, a Los Angeles County, California audit indicated that one in every four GPS devices used to track serious criminals released in the county was faulty.¹⁰⁵ GPS monitoring is only effective when it is part of a larger coordinated system, one with enough trained officers to respond quickly when an offender violates a condition of release and courts with resources to hold offenders accountable.¹⁰⁶ Texas must ensure that the GPS technology used for the program is secure and works properly. Pretrial services programs should adopt the TDCJ's system, which includes multiple layers of alert verifications and equipment status reports to verify reliability.

¹⁰⁵ "Audit Uncovers Faulty GPS Devices on Criminals in Los Angeles County," Paige St. John, McClatchy News Service, January 2, 2014. <http://www.govtech.com/public-safety/Audit-Uncovers-Faulty-GPS-Devices-on-Criminals-in-Los-Angeles-County.html>

¹⁰⁶ "GPS monitoring of offenders," National Network to End Domestic Violence, Safety Net Project. 2008.

“Revenge” Porn

Recommendation: Create civil liability for perpetrators of “revenge porn,” who post illicit images online without consent.

“Revenge porn” occurs when one person publishes online illicit videos or images of another person without consent. Usually the images are of a partner from a former relationship and are meant to cause embarrassment and anguish. While it is difficult to track statistics on the prevalence of revenge porn, among all adults, 15 percent say they have received nude or nearly nude photos or videos of someone they know personally.¹⁰⁷

A revenge-porn industry has sprung up online. Websites that focus on revenge porn provide the perpetrators a platform on which to post images and videos. These websites earn money from advertising, as much as \$13,000 per month.¹⁰⁸ There is also evidence to suggest that these sites operate sister websites that specialize in “reputation protection.” For a fee, these sites will remove a victim’s photos from the original site.

Victims of revenge porn have traditionally sought redress through existing laws governing threats, stalking, and harassment; however, prevailing under these traditional legal theories as they relate to revenge porn often proves costly and difficult. For example, a provision in the Texas Penal Code makes it a state jail felony to record, broadcast, or transmit photographs or video without consent and with the intent to invade the privacy of the subject, or arouse or gratify the sexual arousal of another person. However, a Texas appellate court recently invalidated the statute as a violation of Constitutional Rights under the First Amendment.^{109 110} Today, victims of revenge porn are pushing state legislatures to pass anti-revenge porn laws.¹¹¹ In the two states with revenge porn statutes on the books already, California and New Jersey, lawmakers have taken two different approaches. California’s law makes it a misdemeanor, punishable by up to six months in jail and a \$1,000 fine, to distribute sexual images of an ex. The law only applies to scenarios where the individual accused of distributing the images was the person who took the photographs; in other words, California’s law does not protect so-called “selfies”, where an individual takes sexual pictures of him or herself and then sends them to another.¹¹² Advocacy groups claim the law does not go far enough and they point out that up to 80 percent of victims had taken the photos of themselves.¹¹³

¹⁰⁷ “Anti-‘revenge porn’ group focusing on state bans, for now,” Niraj Chokshi, *The Washington Post*. October 30, 2013. <http://www.washingtonpost.com/blogs/govbeat/wp/2013/10/30/anti-revenge-porn-group-focusing-on-state-bans-for-now>
¹⁰⁸ *Id.*

¹⁰⁹ Tex. Penal Code §21.15.

¹¹⁰ *Ex Parte Ronald Thompson*, No. 04 - 12 - 00127- CR, Court of Appeals 4th District, August 30, 2013.

¹¹¹ “Revenge Porn Websites such as yougotposted.com Raise Complex Legal Issues,” Gary Marshall. January 14, 2013. <http://marshall2law.com/2013/01/14/yougotposted-com-website-raises-complex-legal-issues/>

¹¹² “New California ‘revenge porn’ law may miss some victims,” Heather Kelly, CNN, October 3, 2013. <http://www.cnn.com/2013/10/03/tech/web/revenge-porn-law-california/>

¹¹³ *Id.*

In 2003, New Jersey passed legislation making it a felony to post secretly recorded videos or photos online.¹¹⁴ A separate statute also creates a civil cause of action. The civil statute covers the capturing of a sexual image without the subject's consent and also provides that:

An actor who, without license or privilege to do so, discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed, shall be liable to that person, who may bring a civil action in the Superior Court. For purposes of this section, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, or offer.¹¹⁵

A plaintiff who successfully brings a claim under the New Jersey civil statute may be awarded¹¹⁶:

1. actual damages, but not less than liquidated damages computed at the rate of \$1,000.00 for each violation of this act;
2. punitive damages upon proof of willful or reckless disregard of the law;
3. reasonable attorney's fees and other litigation costs reasonably incurred; and
4. such other preliminary and equitable relief as the court determines to be appropriate.

Texas common law provides the basis for the majority of privacy protections in Texas, and Texans enjoy a right to privacy, the violation of which constitutes an injury for which a remedy will be granted.¹¹⁷ The common law tort of invasion of privacy protects three main privacy interests, including an individual's right to be free from publication of his or her private affairs with which the public has no legitimate concern.¹¹⁸ Like New Jersey's statute, this protection similarly fails to consider the element of consent. Texas lawmakers should enact legislation mirroring New Jersey's law. Texas lawmakers can achieve this end by amending the Texas Civil Practices and Remedies Code, Title 4, Liability in Tort, to include a new chapter, "Liability for online publication of photographs and video," codifying the prohibition on revenge porn in circumstances where photographs or video are posted to the Internet without consent.

Additionally, Texas should make a provision for public advocacy against acts of revenge porn. Many of those persons creating revenge porn may be irregular and atypical offenders who are insufficiently aware of the pain they inflict on others and the legal consequences of their actions. Public education about this problem, which might include public service announcements and billboards (akin to past Texas campaigns against drunk driving, driving without a seatbelt, and littering), could help dissuade persons from creating revenge porn and reduce instances of this harmful act. This could be done either by enabling private advocacy groups, committing state resources and support, or some combination of the two.

¹¹⁴ *Id.*

¹¹⁵ N.J.S.A. 2A:58D-1(b)

¹¹⁶ N.J.S.A. 2A:58D-1(c)

¹¹⁷ *Billings v. Atkinson*, 489 S.W.2d 858 (Tex. 1973)

¹¹⁸ *Indus. Found. of the South v. Texas Indus. Accidental Board*, 540 S.W.2d 668 (Tex. 1976)

Enhanced School Safety

Texas law currently provides schools within the state multiple options for properly securing their campuses. Because of the vast range in geographic size, resources, student populations, and needs within Texas school districts, it is necessary that schools have the ability to tailor their individual safety needs.

The Texas Education Code, section 37.081, authorizes the board of trustees of a school district to commission peace officers and establish a school district police department. However, this is not the only option that school districts have. One alternative that school districts may use instead of establishing a district police department is to contract with a local police or sheriff's department to have school resource officers assigned to the district. Additionally, school districts also have the option of relying on local law enforcement personnel without any formal arrangement.

With incidents from Columbine to Sandy Hook, it is imperative that Texas take all steps necessary to ensure the safety of school children, faculty, and staff. After the Sandy Hook incident, Attorney General Greg Abbott called on each Texas school to plan now before a shooting or another emergency situation occurs, stating: "we owe it to our children to be prepared for such a situation... [a]lthough we hope it doesn't happen here in Texas, we must be vigilant. We must be ready."¹¹⁹

Peace Officers at Charter Schools

Recommendation: Provide open-enrollment charter schools the authority to commission or appoint peace officers.

The first public school charter was granted in 1995; currently, public charter enrollment has grown to 178,826 students. Charters accept students on a first-come, first-served basis, using random lotteries when school capacity is reached.

Texas law dictates that the regulation of charter schools "may not be applied in a manner that unduly regulates the instructional methods or pedagogical innovations of charter schools."¹²⁰ Some regulatory freedoms that charters enjoy include school day and calendar flexibility; at-will employment; and governance by a volunteer board of directors. However, the Texas Education Code does not specifically provide open-enrollment charter schools the authority to commission or appoint peace officers for their safety needs.

¹¹⁹ "Texas School Districts Failing To Comply With Required Safety Audits," David Martin Davies, Texas Public Radio, December 17, 2012. <http://tpr.org/post/texas-school-districts-failing-comply-required-safety-audits>

¹²⁰ TEC 12.001(b)

Currently, the Texas Education Code, section 12.103(a), provides that open-enrollment charter schools are generally “subject to federal and state laws and rules governing public schools.”¹²¹ However, section 12.103(b) provides that the Education Code and rules adopted under that code apply “only to the extent the applicability to an open-enrollment charter school . . . is specifically provided.”¹²² Section 12.104(b) provides multiple provisions that specifically apply to open-enrollment charter schools. However, Education Code section 37.081, which expressly authorizes school district police departments, is not specifically included.

Additionally, section 37.081 expressly states only that “[t]he board of trustees of any school district may employ security personnel and may commission peace officers to carry out this subchapter.” As explained in a 2007 Texas Attorney General Opinion, “while section 12.104(a) grants open-enrollment charter schools ‘the powers granted to schools,’ section 37.081 grants a school district’s board of trustees—not a school—the authority to create a police department.”¹²³ Open-enrollment charter schools do not have a school district board of trustees as defined by the statute, therefore this provision does not apply to them, denying them the ability to create a police department.

The current limitations on open-enrollment charter schools impede their ability to provide the same school safety capabilities that are afforded to Texas public schools. The Texas Legislature should amend each necessary provision of the Texas Education Code to authorize open-enrollment charter schools to operate or maintain a commissioned police force.

Active Shooter Response Training

Recommendation: Provide Active Shooter Response training for free to school marshals, Texas ISD police, police departments at Texas institutions of higher education, and police at open-enrollment charter schools that may be authorized under future law.

The 83rd Texas Legislature enacted a number of laws to contribute to the safety of Texas students, including from incidents of gun violence like those described above. In Senate Bill 1857 (83R), the Department of Public Safety (DPS) was required to establish a process to enable qualified handgun instructors to obtain an additional DPS certification in school safety. Senate Bill 1556 (83R) provides for a school safety certification program which would make a certificate available to schools that adopt and implement a multi-hazard plan that includes:

- Measures for security of facilities and grounds;
- Measures for communication with parents and the media in event of an emergency;
- An outline of safety training for school employees;
- Self-reporting by districts that they have conducted separate, annual drills for a school lockdown, evacuation, a weather-related emergency, a reverse evacuation, and a shelter-in-place event.

¹²¹ Texas Attorney General Op. No. GA-0532. (March 19, 2007) <http://www.texasisdchiefs.com/images/AGOpinion532GA.pdf>

¹²² *Id.*

¹²³ Texas Attorney General GA-0532

In House Bill 1009 (83R), the Legislature provided for a new category of security officer, known as a “school marshal,” who could be designated by school districts and open-enrollment charter schools. Only one employee could be designated for this purpose per 400 students. A marshal may act only as necessary to prevent an offense that could cause death or serious bodily injury; the marshals are empowered to make arrests, and their identity is confidential. House Bill 1009 also authorizes the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to establish a training program open to all school employees who hold a concealed handgun license (CHL). That course involves 80 hours of specified instruction by TCLEOSE staff, including, per the text of the bill, “enabl[ing] the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.”

Among the courses provided by TCLEOSE is Active Shooter Response training, which prepares course graduates to deal with a crisis situation involving a hostile active shooter.¹²⁴ The course made available to CHL holding school employees under HB 1009 has a similar component. In the wake of recent incidents of school violence, Texas must ensure that school security officers are as prepared as possible for active shooter incidents. When an active shooter incident arises, seconds may literally mean the difference between life and death; an immediate response by a trained security professional could potentially avert tragedy.

Accordingly, Texas should make available through TCLEOSE an Active Shooter Response training course that is free to at least one law enforcement officer from any public higher education campus, public school campus, or open-enrollment charter school campus that wishes to participate. Law enforcement personnel should be defined to include campus ISD police, police that may be established at open-enrollment charter schools if authorized under future law, police departments at Texas institutions of higher education, and school marshals.

Likely the most appropriate course on active shooter training is the “Terrorism Response Tactics: Basic Active Shooter Level I” course offered by the Advanced Law Enforcement Rapid Response Training (ALERRT) Center at Texas State University, which has trained more than 50,000 police officers nationwide in force-on-force scenario-based training.¹²⁵ In June of 2013, in a White House Press Conference, the FBI partnered with the ALERRT Center at Texas State and named the ALERRT their standard for active shooter response.¹²⁶ The cost per to the state per participant in this course is approximately \$460.¹²⁷

¹²⁴ See, e.g., http://www.tcleose.state.tx.us/content/training_course_list_general.cfm.

¹²⁵ Advanced Law Enforcement Rapid Response Training (ALERRT) Center at Texas State University. <http://alerrt.org/Course-Catalog/Level1> ; see also: <http://alerrt.org/About>

¹²⁶ ALERRT About. <http://alerrt.org/About>

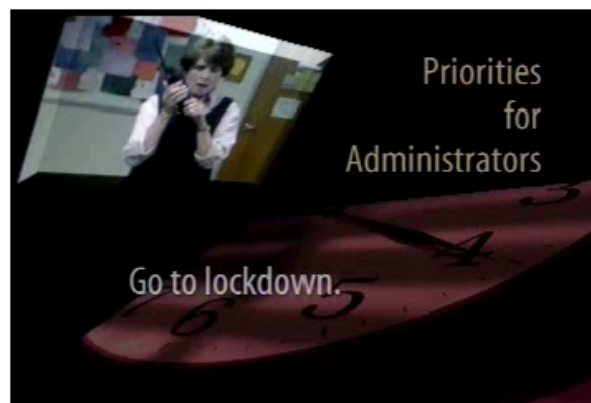
¹²⁷ Source: Advanced Law Enforcement Rapid Response Training (ALERRT) Center.

According to the Legislative Budget Board (LBB), “[t]he number of school campuses employing security or police officers is unknown.”¹²⁸ LBB indicates that there are 8,528 public schools and open-enrollment charter schools in Texas,¹²⁹ and there are a total of 104 public institutions of higher education in Texas, some with multiple campuses.¹³⁰ Assuming as an approximation that each of these institutions sent one individual in the coming biennium to receive the ALERT Active Shooter Level I training, the cost to the state would be approximately \$3.97 million in the next biennium.

School Safety Training

Recommendation: Create a training program for OAG staff to educate faculty, staff, and administration on a school shooter scenario based on the “Saving Lives: When Seconds Count” video.

In response to the tragic Virginia Tech shooting in 2007, the Office of the Attorney General (OAG) created a 25 minute video that dramatizes a school shooting scenario.¹³¹ The video point-by-point outlines the responsibilities of school administration, teachers, and law enforcement in the event infiltration by a school shooter. It emphasizes vigilance and readiness, and concisely explains how to prepare in advance and how to react in such a situation.



Much like a school shooting, preventing human trafficking is reliant on communication and cooperation among various agencies. Thus, the OAG’s human trafficking task force training program could serve as a model for school safety training. This task force has created a manual to identify human trafficking for criminal justice professionals,¹³² and has also provided training to those professionals. The human trafficking training program is a small but effective group of three employees to educate on identifying instances of human trafficking.¹³³ Since 2010, they have held 196 trainings, and trained over 11,000 law enforcement professionals, prosecutors, and other interested parties.¹³⁴ Indeed, the Health and Human Services Commission (a member of the task force) notes that, “[c]ollaboration across all spectrums of law enforcement and social services is a critical cornerstone of successful prosecution and provision of service in human trafficking cases because of the complexity and resources needed to address each individual case.”¹³⁵ As a result, the HHSC has strongly recommended that joint training of law enforcement and non-governmental organizations should continue, as well as maintaining a dialogue between task forces and victims services.

¹²⁸ Fiscal note for SB 17 (83R), available online at: <http://www.legis.state.tx.us/tlodocs/83R/fiscalnotes/html/SB00017E.htm>

¹²⁹ *Id.*

¹³⁰ Texas Higher Education Coordinating Board (THECB), <http://www.txhighereddata.org/Interactive/Institutions.cfm>

¹³¹ “Saving Lives When Seconds Count: School Safety for Texas Schools,” Office of the Attorney General. https://www.oag.state.tx.us/criminal/schoolsafety_video.shtml

¹³² “Introduction to Human Trafficking: A Guide for Criminal Justice Professionals,” Texas Human Trafficking Prevention Task Force, September 2013. https://www.oag.state.tx.us/AG_Publications/pdfs/HT_CrimJust_GUIDE_2013.pdf

¹³³ “Gov. Perry Calls for Increased Penalties for Human Traffickers,” August 19, 2010. <http://governor.state.tx.us/news/press->

Currently, the Texas School Safety Center (TxSSC) provides training free of charge to school districts around the state, and is the central location for school safety information.¹³⁶ Each school district is required to have a school safety and security committee that relies on information from the TxSSC. That committee is responsible for preparing and running a school safety and security audit every three years. Based on materials from the TxSSC and the OAG video, the OAG can institute a school safety training program by hiring three commissioned peace officers to act as trainers at \$234,903 for salaries and benefits per annum (\$78,301 for each). Approximately \$18,000 would be needed for travel across the state (\$6,000 each per year). This is an annual cost of \$252,903 and a biennial total of \$505,806. Because the OAG is also responsible for ensuring that school districts are complying with safety standards,¹³⁷ direct contact via a training program for faculty, staff, and administrators at every campus on an in-service day would be an effective way to ensure a school district, or charter school's understanding of the materials, and assess their readiness.

release/15021/

¹³⁴ Source: Office of the Attorney General

¹³⁵ "Report to the 81st Legislature: The Texas Response to Human Trafficking," Health and Human Services, October 2008. <http://www.hhsc.state.tx.us/reports/texasresponsehumantrafficking.pdf>

¹³⁶ "School Safety Guide," OAG, June 2007. https://www.oag.state.tx.us/ag_publications/pdfs/schoolsafety_2007.pdf

137 "Attorney General Abbott Calls for School Districts to Review Their School Safety Plans, Says 78 School Districts in Texas Are Not Compliant with School Safety Measures," OAG, Dec. 17, 2012. <https://www.oag.state.tx.us/oagnews/release.php?id=4254>

Border Security

Recommendation: To combat the threat of violence along the border, significantly enhance border security by doubling General Revenue appropriations for the Department of Public Safety to add manpower, technology, and tools for added surveillance.

The Border Patrol, as of 2011, failed to maintain operational control over 56 percent of the U.S.-Mexico border, with the weakest presence from Marfa to the Rio Grande Valley.¹³⁸ “Operational control” is “defined as the number of border miles where Border Patrol had the capability to detect, respond to, and interdict cross-border illegal activity.”¹³⁹ After 2011, the Department of Homeland Security stopped using the metric of “operational control,” arguing that it required “new goals and measures that reflect a more quantitative methodology and an evolving vision for border control.”¹⁴⁰ The International border separating Texas and Mexico is 64 percent of the U.S.-Mexico border.¹⁴¹ Border security is especially imperative for our state. To properly account for this need, Texas should increase appropriations for border security spending to the Department of Public Safety by approximately \$286 million in the next biennium (including one cost over a four year period, see below).

All too often, federal agencies such as U.S. Immigration and Customs Enforcement (ICE) have provided insufficient protection for Texas’ border. Thus, it is Texas that must inevitably pick up the slack. Currently, DPS deployments to the border region are operating in normal routine along the border. Normal routine means routine patrols 24 hours a day, 7 days a week, with a set number of troopers assigned to each district. From time to time, DPS conducts “surge operations,” in which DPS personnel from other districts are temporarily assigned to the border. Notably, DPS recently engaged in a related Operation Strong Safety, which temporarily increased the patrol presence in the Rio Grande Valley area from September 15 to October 4, 2013.¹⁴² Operations like these may be necessary when the threat-level on the border demands it, and they require adequate funding. Such a strategy to deter criminal activity requires adequate funding, personnel, and resources to sustain those goals.

¹³⁸ “Border Security: Preliminary Observations on Border Control Measures for the Southwest Border,” U.S. Government Accountability Office (GAO), February 15, 2011. <http://www.gao.gov/products/GAO-11-374T>

¹³⁹ “Testimony: DHS No Longer Uses Control of Border as Measure of Border Patrol,” Terence P. Jeffrey, cnsnews.com, February 26, 2013. <http://cnsnews.com/news/article/testimony-dhs-no-longer-uses-control-border-measure-border-patrol>

¹⁴⁰ “Border Patrol: Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs,” GAO Testimony Before the Subcommittee on Border and Maritime Security, Committee on Homeland Security, House of Representatives. <http://www.gao.gov/assets/660/652331.pdf>

¹⁴¹ “Texas Border Security Funding Overview,” Legislative Budget Board (LBB), April, 2013. http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/420_Texas_Border_Security_Funding_Overview.pdf

¹⁴² “Operation Strong Safety Targets Crime, Takes Back Border,” Department of Public Safety, October 24, 2013. https://www.txdps.state.tx.us/director_staff/media_and_communications/pr102413.htm

With the ability to conduct strategic surge operations along the border on a year-round basis, DPS would be better able to secure the border and deny Mexican cartels and transnational gangs the ability to carry out heinous crimes. The estimated cost to provide this capability in the next biennium is \$92 million for continuous border surge operations, \$100.7 million for the biennium (and \$275 million over a four-year period) for 500 new troopers to be stationed in the border region—a necessity for this surge, an additional \$6 million to DPS recruit schools to handle the influx of new Trooper recruits, and \$24.2 million for new vehicles for DPS troopers to use in the border region.¹⁴³ The 500 Troopers will require the addition of 50 Sergeants, 12 Lieutenants, 4 Captains, and 2 Majors to command them, for a total of 568 new Full Time Equivalent positions (FTE's). While these troops will be dedicated to the border region, in the event of an emergency, i.e., a homeland security event, etc., DPS reserves the right to deploy its resources, when, where and how based on threat conditions. In addition, funding for local law enforcement border security should be increased by \$10 million in the coming biennium.¹⁴⁴ This is an increase to the current budget's "A.1.4. Strategy: LOCAL BORDER SECURITY," which appropriated over \$47 million for the 2014-15 biennium.

A new deployment of DPS troopers to the border would help secure South Texas, and funding for such a deployment should be allocated for maximum effectiveness. Part of this funding should be used to support local law enforcement authorities in the border region. One of the strategies that local law enforcement authorities may adopt with additional DPS support is setting up a system of southbound roadblocks at border crossing points in order to prevent contraband, drugs, cash, and weapons from flowing south across the border to supply cartels and gangs. These roadblocks would exclusively be placed at or in the immediate vicinity of border crossing ports of entry only on the international border with Mexico. The Texas Highway Patrol Service currently consists of 2,119 commissioned officers. Adding 568 Troopers and officers would give a total of 2,687 Troopers, an increase of 26.8%.

A number of specific units should also receive increased funding. DPS has established a Public Corruption Unit under the Texas Rangers Division of the Texas Department of Public Safety (House Bill 2086, 81st Legislature). During the current biennium DPS requested approximately \$41 million to fund special investigations which provides investigative expertise and assistance to local law enforcement agencies in the identification, arrest, and conviction of subjects responsible for major and/or violent crimes.¹⁴⁵ Additionally, these DPS resources target investigations against offenses involving political corruption, public corruption, law enforcement corruption, and other corruption related criminal offenses within the Texas Penal Code.¹⁴⁶ Adequately funding these functions is essential to provide a safe and secure environment for the people of Texas.¹⁴⁷

¹⁴³ Source: Information provided by the Department of Public Safety.

¹⁴⁴ Source: Information provided by the Department of Public Safety.

¹⁴⁵ DPS Legislative Appropriations Request for FY 2014 and 2015. <http://www.dps.texas.gov/LBB/lar2014-15.pdf>

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

Texas should allocate additional resources to deploy members of this unit of the Texas Rangers to the border to deal with any possible problem of corruption among local law enforcement in the region. Unfortunately, corruption among these agencies, often related to drug trafficking, has become all too common.¹⁴⁸ The Texas Rangers Public Corruption Unit investigates public corruption and wrongdoing by law enforcement officers and public officials. These investigations have included a 2012 arrest of five individuals, four police officers and a police dispatcher, at the Socorro Police Department Substation in El Paso County, and the 2013 arrest of the Panola County Sheriff on allegations of theft, abuse of power, and fraud.^{149 150}

According to the “Texas Public Safety Threat Overview 2013”, since October of 2004 more than 140 U.S. Customs and Border Protection (CBP) employees have been arrested or indicted for acts of corruption, including drug smuggling, alien smuggling, money laundering, and conspiracy.¹⁵¹ Additionally, the report provides that multiple law enforcement officers have been charged on allegations that they assisted drug traffickers in smuggling drug loads into Texas: including the former Chief of the Sullivan City Police Department, who pleaded guilty to federal charges regarding his role in helping drug traffickers cross loads of marijuana by alerting them to the location of U.S. Border Patrol units, as well as directing his officers to other locations to avoid them interfering with or intercepting the traffickers.¹⁵²

As recently as December 2013, the Sheriff of Hidalgo County fired a senior officer facing federal charges for drug trafficking and money laundering.¹⁵³ This case has also “ensnared members of . . . an anti-narcotics task force between the Sheriff’s Office and the Mission Police Department,” undermining the public trust essential to combating cross-border violence and drug trafficking.¹⁵⁴ This problem should be addressed by allocating an additional twenty Texas Rangers, with supervision from two new Lieutenants, to the border region. The estimated cost of hiring 20 new Texas Rangers, plus officers as listed above and administrative support staff, is \$8 million in the next biennium.¹⁵⁵ There are currently 150 commissioned Texas Rangers.¹⁵⁶ Adding 20 Rangers for the Public Corruption Unit would increase that total to 170 Rangers, an increase of 11.8%.

¹⁴⁸ See, e.g., “Border Trial That Exposed Police Corruption Ends In Guilty Verdict,” Melissa del Bosque, Texas Observer, August 6, 2013. <http://www.texasobserver.org/border-trial-that-exposed-police-corruption-ends-in-guilty-verdict/>

¹⁴⁹ “4 Socorro officers, dispatcher arrested are identified,” Aileen B. Flores, El Paso Times, November 1, 2012. http://www.elpasotimes.com/ci_21896496

¹⁵⁰ “Panola County sheriff arrested, charged in corruption investigation,” Becky Barlish, News-Journal, May 3, 2013. http://www.news-journal.com/news/police/panola-county-sheriff-arrested-charged-in-corruption-investigation/article_211e132a-57d9-5607-a1b5-c66ca3368304.html

¹⁵¹ 2013 Texas Public Safety Threat Overview, DPS, February 2013. http://www.txdps.state.tx.us/director_staff/media_and_communications/threatoverview.pdf

¹⁵² *Id.*

¹⁵³ “Hidalgo County sheriff fires high-ranking commander accused of drug trafficking,” John Tedesco, My San Antonio, December 27, 2013. <http://www.mysanantonio.com/news/local/article/Hidalgo-County-sheriff-fires-high-ranking-5097026.php>

¹⁵⁴ *Id.*

¹⁵⁵ Source: Information provided by the Department of Public Safety.

¹⁵⁶ “Texas Rangers,” DPS. <http://www.txdps.state.tx.us/texasrangers/>

In addition, adding 20 new Criminal Investigations Division (CID) agents, with supervision from three lieutenants and one Captain, could significantly increase operations against gang and cartel money laundering and human trafficking operations. The CID currently consists of 800 members, including 654 commissioned officers and 146 civilian support personnel.¹⁵⁷ The estimated cost of hiring 20 new CID agents, plus officers as listed above and administrative support staff, is \$8 million in the next biennium.¹⁵⁸ Adding 20 new CID agents would increase the overall total of CID commissioned officers to 674, an increase of 3.1%.

DPS also recently acquired a high-altitude aircraft, a Pilatus PC-12 NG, which accommodates as many as two pilots and seven passengers, can reach an altitude of 30,000 feet, and can travel as fast as 322 mph. It is being used for surveillance and assisting operations along the US-Mexico border. The aircraft has also been used to support emergency situations such as flooding.¹⁵⁹ Funding DPS acquisition of an additional Pilatus would assist DPS in observing suspicious and criminal activities occurring along the border and could send real-time images of that activity to the law enforcement personnel on the ground. The estimated cost for this expenditure is \$8.4 million in the next biennium,¹⁶⁰ equivalent to the cost of DPS's current Pilatus aircraft, which costs \$7.4 million and is equipped with approximately \$1 million in surveillance cameras.¹⁶¹ This would involve the creation of 18 FTE's: 9 pilots and 9 tactical flight officers.

Additionally, DPS recently created a Tactical Marine Unit (TMU) equipped with shallow-water interceptor boats to deter lawbreakers utilizing the Rio Grande and the Intracoastal Waterways.¹⁶² This fleet is an important component of Texas' efforts to prevent cartel drug smuggling and criminal activity in the state. The Texas Legislature should allocate the funding for two new heavy boats and six new shallow-water boats in order to deter criminal use of Texas' waterways, such as smuggling. This cost is estimated at \$13.1 million in the next biennium.¹⁶³ The expansion of the Tactical Marine Unit would involve an estimated 34 new Full Time Equivalent (FTE) positions, compared to the 34.9 called for in the 2014-15 LAR¹⁶⁴: for a total complement of approximately 69 FTE's attached to the unit and an increase of approximately 49.3%.

¹⁵⁷ "Criminal Investigations Division," DPS. <http://www.txdps.state.tx.us/CriminalInvestigations/>

¹⁵⁸ Source: Information provided by the Department of Public Safety.

¹⁵⁹ "DPS flies \$7.4 million spy plane to the border," Holten Parker, San Antonio Express News, January 10, 2014. <http://www.mysanantonio.com/news/local/article/DPS-flies-7-4-million-spy-plane-to-the-border-5131338.php>

¹⁶⁰ Source: Information provided by the Department of Public Safety.

¹⁶¹ *Id.*

¹⁶² "DPS gunboats prepare to patrol border waters: Heavily armed boats imposing new presence on Rio Grande," Jessie Delgado, KSAT, July 2, 2012. <http://www.ksat.com/news/DPS-gunboats-prepare-to-patrol-border-waters/-/478452/15375808/-/pqvu6xz/-/index.html>

¹⁶³ Source: Information provided by the Department of Public Safety.

¹⁶⁴ DPS Legislative Appropriations Request for FY 2014 and 2015. <http://www.dps.texas.gov/LBB/lar2014-15.pdf>

In 2001, the 77th Legislature called for the development of an interagency communications network, intended to include all emergency response agencies in the State, and as a result an interagency Radio Interoperability Plan was adopted in January of 2003.¹⁶⁵ The Texas Interoperable Communications Coalition (TxICC), according to the governing structure adopted in January 2013, is led by the Governor and the Director of DPS, as shown in the chart below.¹⁶⁶ However, according to DPS, a number of problems persist, including a lack of radio communication equipment, limited radio signal coverage for some agencies, and obsolete and ineffective radio systems, radio towers, and antenna systems.¹⁶⁷ This is particularly problematic for border security, with the U.S. Department of Homeland Security noting that:

Coordinated communications between Federal, State, local, and Tribal organizations with a border security mission is critical in combating [cross-border illegal] activity. ...the varying terrain and pockets of sparsely populated areas continue to result in limited operable and interoperable communications.¹⁶⁸

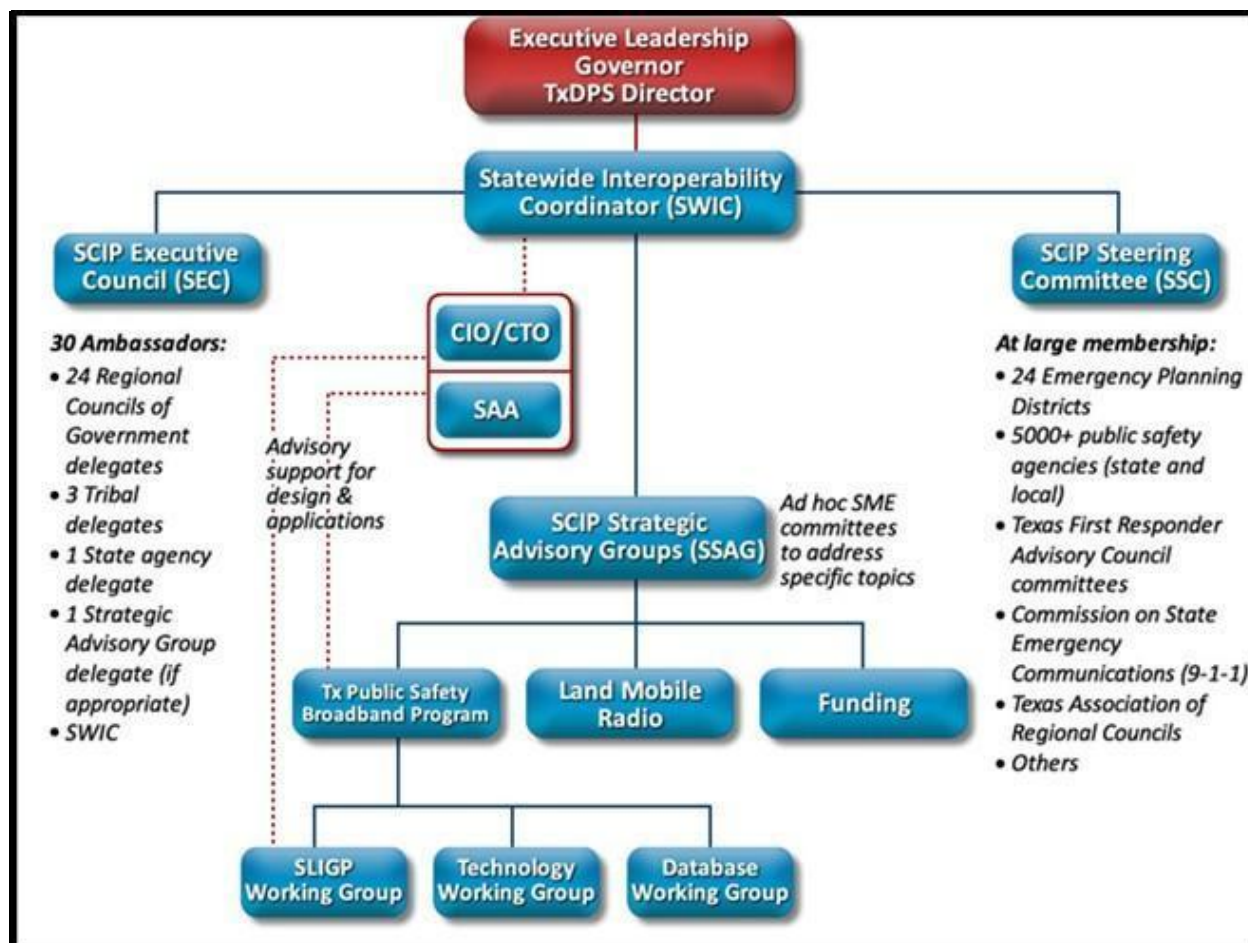
Additional funding and equipment is needed to maximize radio interoperability among law enforcement agencies along the border, as well as across the entire state of Texas. DPS needs authorization to receive appropriations from the Interoperability Fund to expand interoperable communications. Appropriation for DPS communications needs for border operations in the coming biennium is estimated at \$15,800,000.

¹⁶⁵ "Texas Department of Public Safety Report on Interoperable Communications to the Texas Legislature," August 2013. <http://www.dps.texas.gov/LawEnforcementSupport/communications/interop/documents/interopRpt.pdf>

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*; citing the Southwest Border Communications Working Group Executive Level Briefing Summary, April 2013.



Source: Texas Interoperable Communications Coalition Governance Structure¹⁶⁹

One source for funding some portion of this expenditure may be drawing from a special fund maintained by DPS and drawn from civil asset forfeiture proceedings in certain drug cases. More specifically, under Texas Code of Criminal Procedure Section 59.06(c-3), when a default judgment is rendered in favor of the State in certain drug cases, the local agreement between the prosecutor and DPS governing the funds seized must either:

1. Transfer all forfeited property to a DPS special fund to maintain, repair, use, and operate for official purposes; or,
2. Allocate proceeds from the sale of forfeited property (after deducting court costs) as follows:
 - a. 40% to the DPS special fund as described above;
 - b. 30% to a special fund in the county treasury for the benefit of the office of the prosecuting attorney for official purposes; and,
 - c. 30% to General Revenue.

Some portion of the increased funding for DPS border spending described in this policy proposal could come from the DPS special fund drawn from Civil Asset Forfeiture as described above.

¹⁶⁹ Texas Department of Public Safety Report on Interoperable Communications to the Texas Legislature, *infra*.

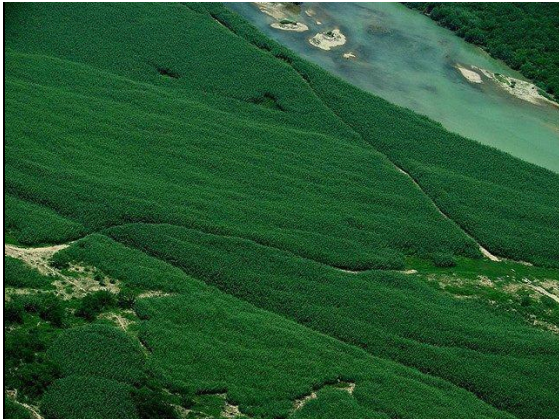
Carrizo Cane Removal

Recommendation: To impede illegal border crossings, improve safety for law enforcement officers and facilitate apprehension of drug and human traffickers, eradicate invasive and non-native Carrizo cane along the Rio Grande river through a multi-jurisdictional effort and only with the consent of private landowners.

Arundo donax (Carrizo cane) is a non-native and invasive plant species that grows along the banks of the Rio Grande in the Rio Grande Valley. The cane “commonly grows from 9 to 27 feet tall,” and clusters into large groups.¹⁷⁰ Carrizo cane interferes with the Border Patrol’s ability to clearly see individuals attempting to cross the border illegally, and the cane also restricts agents’ access to these areas. This gives illegal border crossers the ability to evade agents and enter the United States undetected. It also creates an obstruction that puts border patrol agents at risk by potentially making them more vulnerable to attack from lawbreakers.¹⁷¹

Additionally, a large swath of trash and debris often accumulates in the cane; a former Texas Department of Transportation regional vegetation management director noted that the cane “grows so thick that it collects trash in the median and can block up water . . . [w]e have to mow at least four times a year.”

Carrizo Cane Along the Rio Grande



Source: Pull, Kill, Plant¹⁷²

Carrizo Cane Blocking a Channel Along the Nueces River



Source: Pull, Kill, Plant

As the U.S. Border Patrol explains the problem:

¹⁷⁰ “Frequently Asked Questions,” U.S. Customs and Border Protection, November 6, 2009.
www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_sectors/laredo_sector_tx/carrizo_removal/faqs.xml

¹⁷¹ “Affect of Carrizo Cane on Border Patrol Operations,” U.S. Customs and Border Protection, November 6, 2009.
http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_sectors/laredo_sector_tx/carrizo_removal/about/affect_cane.xml

¹⁷² <http://www.pullkillplant.org/Pg/field/>

With respect to Border Patrol operations, Carrizo cane:

- Greatly reduces Border Patrol's ability to detect an illegal entry by obstructing the agents' view and interfering with the effectiveness of technology.
- Slows Border Patrol's ability to respond by restricting agents' access to the immediate area.
- Presents a threat to individual Border Patrol agents because Carrizo cane provides illegal border crossers the opportunity to hide and approach agents virtually undetected.

Simply put, controlling Carrizo cane is essential if the Border Patrol is to attain effective control of the border.¹⁷³



Source: *The Epoch Times*¹⁷⁴



Source: *CNN*¹⁷⁵

U.S. Customs and Border Patrol launched a pilot plan in 2009 to remove the Carrizo cane using contractors.¹⁷⁶ The U.S. Army Corps of Engineers awarded two separate contracts totaling \$2.13 million for the Carrizo cane removal pilot project.¹⁷⁷ This plan included removing the cane and planting native plant species in their place to anchor the soil.

Border Patrol has chosen two methods of ground-level removal: Cut Stem and Mechanical.

In the Cut Stem Removal method, canes are cut down approximately 12 inches above the ground by hand or small machinery. Within 2 to 3 minutes, an herbicide solution diluted according to product label directions is applied to the tops of cane stumps with a wand or paintbrush-like applicator. The plant stump draws the herbicide down into its roots and the plant usually dies within 45 to 60 days. The previously cut cane stalks are removed from the site or chipped and used as mulch.

¹⁷³ "Affect of Carrizo Cane on Border Patrol Operations," U.S. Customs and Border Protection, November 6, 2009.
http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_sectors/laredo_sector_tx/carrizo_removal/about/affect_cane.xml

¹⁷⁴ <http://www.theepochtimes.com/n2/world/giant-reed-in-trouble-with-homeland-security-169070.html>

¹⁷⁵ <http://i2.cdn.turner.com/cnn/2009/US/03/25/mexico.border.herbicide/art.laredo.cane.gi.jpg>

¹⁷⁶ "Critics blast US border patrol's herbicide strategy," *The Guardian*, March 24, 2009.
<http://www.theguardian.com/world/2009/mar/24/usa-mexico-border-herbicide>

¹⁷⁷ "Project Timeline/History," U.S. Customs and Border Protection, November 6, 2009.
http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_sectors/laredo_sector_tx/carrizo_removal/about/timeline.xml

The Mechanical Removal method takes a different approach. Heavy equipment digs up and physically removes all of the roots and aboveground portions of the cane. The biomass is chipped and distributed on-site as mulch or hauled off and disposed of appropriately (such as in a landfill).¹⁷⁸

This project has already been completed on a 1.1-mile stretch near the City of Laredo.¹⁷⁹ The Texas Department of Agriculture and Texas Parks and Wildlife Department should coordinate with the U.S. Department of Agriculture and the U.S. Border Patrol in order to facilitate this process.

Another means of cane control, proposed by the USDA and Border Patrol, is the widespread release of the Arundo wasp and the Arundo scale. These insects act as biological controls and are capable of destroying large swaths of Carrizo cane.¹⁸⁰ Small populations were released along the Rio Grande in 2009 and 2010.¹⁸¹ The Texas Department of Agriculture and Texas Parks and Wildlife Department could provide further support for the project. A biological control method, releasing these insects, which are harmless to humans, may be more agreeable to stakeholders in the Rio Grande Basin than the widespread use of herbicides to remove the cane; however, a complete picture will not be available until the insect populations are more established.¹⁸²

A similar program coordinated with the Nueces River Authority (NRA) has made progress in eradicating Carrizo cane along the Nueces River basin.¹⁸³ The program, which has strong support from many area stakeholders, including private landowners and the Nueces River Authority, also helps ensure the longer-term revegetation of the land through the planting of native riparian trees.¹⁸⁴ The Nueces River Authority has engaged 200 landowners in removing Carrizo cane from some 60 miles of the Nueces River.¹⁸⁵

¹⁷⁸ "Frequently Asked Questions," U.S. Customs and Border Protection, November 6, 2009.

www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_sectors/laredo_sector_tx/carrizo_removal/faqs.xml

¹⁷⁹ *Id.*

¹⁸⁰ "Carrizo Cane Biological Control Program Finding of No Significant Impact (FONSI)," U.S. Customs and Border Protection, September 27, 2011. http://www.cbp.gov/xp/cgov/about/ec/nepa_pr/docs_for_projects/carrizo_fonsi.xml

¹⁸¹ "Controlling Invasion," Chenghai Yang, *The Scientist*, October 15, 2012. <http://www.the-scientist.com/?articles.view/articleNo/32830/title/Opinion--Controlling-Invasion/>

¹⁸² *Id.*

¹⁸³ See: <http://www.pullkillplant.org/>

¹⁸⁴ *Id.*

¹⁸⁵ "Killing Cane: Learning from Large-Scale Conservation on the Nueces River," J. Daniel Oppenheimer, *National Wetlands Newsletter*, January-February 2012.

The Nueces River Authority was able to secure the support of private landowners through the creation of the Nueces River Riparian Landowners Network, which educated landowners and stakeholders on riparian zones in the region. In fact, it was private members of the network that first noticed the scourge of Carrizo cane. They were especially concerned about “water quantity, wildlife, aesthetics, and riparian function.”¹⁸⁶ The NRA then initiated the “Pull. Kill. Plant.” project along with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department. A Landowner Incentive Program also provided support, and offered demonstrations for those concerned, led by 12 riparian landowners.¹⁸⁷ This effort has shown that it is possible to bridge the landowner-agency divide in order to take on-the-ground action to control the cane. Such a joint effort is necessary in Texas, as much of the land along the Texas-Mexico border is privately owned.¹⁸⁸

Finally, to ensure maximum protection for the local environment and Texas wildlife, the removal process should include input and monitoring by the The Caesar Kleberg Wildlife Research Institute at Texas A&M University-Kingsville, one of the leading authorities on plants and animals in South Texas. In this way the delicate ecosystem of the Rio Grande Valley will experience minimal disruption from the Carrizo cane removal project.

A study conducted by the USDA Agricultural Research Service determined that Carrizo cane affects approximately 558 miles of the Rio Grande approximately from San Ygnacio to Lajitas, with growth much denser on the U.S. than the Mexican side of the river.¹⁸⁹ Approximately 3,714 hectares on the U.S. side (about 9177.5 acres) were affected by Carrizo cane. Based on the cost of \$300,000 for the Pull-Kill-Plant program to clear Carrizo cane on approximately 280 acres of land in the Nueces River basin, clearing cane on 9177.5 acres of the Rio Grande Basin would cost approximately \$9.833 million.

¹⁸⁶ “Killing Cane: Learning from Large-Scale Conservation on the Nueces River,” J. Daniel Oppenheimer, National Wetlands Newsletter, January-February 2012.

¹⁸⁷ *Id.*

¹⁸⁸ Congressional Record, Proceedings and Debates of the 110th Congress, First Session, Vol. 153, Pt. 15, Pg. 20366, July 25, 2007. <http://books.google.com/books?id=ht4QmoOTphIC&pg=PR29&lpg=PR29&dq#v=onepage&q&f=false>

¹⁸⁹ “Mapping Giant Reed (*Arundo donax*) Infestations along the Texas–Mexico Portion of the Rio Grande with Aerial Photography,” Chenghai Yang, James H. Everitt, and John A. Goolsby, USDA-ARS, 2011. <http://www.bioone.org/doi/abs/10.1614/IPSM-D-10-00081.1>

Organized and Transnational Crime

Recommendation 1a & 1b: One of the most effective crime-fighting tools to confront the threat from international cartels across the border and from transnational gangs in our communities is closer collaboration and coordination between law enforcement agencies, all border states and the federal government through data sharing; another necessary tool is increasing funds for the Border Prosecution Unit to assist border county DAs overburdened and strained by the well-funded legal teams defending these criminal enterprises.

Since the 2006 crackdown on Mexican drug cartels by former Mexican President Felipe Calderon, there has been a rise in cartel-related violence.¹⁹⁰ The related violence in Mexico—responsible for nearly 60,000 deaths, by one count, as of November 2012¹⁹¹—has led to noticeable spillover effects in the U.S. This cross-border impact has included recent killings of law enforcement and civilians alike.¹⁹² One instance of spillover violence involved the deaths of four people in Cochise County, AZ—three police officers and a rancher.¹⁹³

Cartel-related crime is not limited to parts of Texas near the border. For example, reports in recent years have indicated that Mexican cartels have begun growing marijuana in rural areas of the state, without knowledge of the local landowners. *The Houston Chronicle* reported in 2012 that “Mexican drug-trafficking organizations are believed to be behind the secret farms springing up across the [sic] Texas.”¹⁹⁴ “Loads covertly grown on Texas soil by Mexican organizations avoid the risks of trying to sneak past U.S.-Mexico border guards.”¹⁹⁵

The largest suppliers of illicit drugs to the U.S. are the Mexican drug cartels.¹⁹⁶ Mexican Drug Trafficking Organizations (DTOs) have long-established drug trafficking routes across the border. These sophisticated operations tend to engender violence and crime both along the border and along interstate distribution routes. The cartels have also begun paying established gangs within the state of Texas to conduct illegal activities on their behalf: tasks ranging from drug and human trafficking to contract killings and kidnappings.¹⁹⁷ The cartel problem thus feeds into the larger problem of gang-related crime in Texas.

¹⁹⁰ “Mexico’s Drug War,” Aimee Rawlins, Council on Foreign Relations, January 11, 2013. <http://www.cfr.org/mexico/mexicos-drug-war/p13689>

¹⁹¹ “Mexican daily: Nearly 60,000 drug war deaths under Calderon,” Fox News Latino, November 1, 2012. <http://latino.foxnews.com/latino/news/2012/11/01/mexican-daily-nearly-60000-drug-war-deaths-under-calderon/>

¹⁹² *Id.*

¹⁹³ “Debate Rages of Mexico ‘Spillover’ Violence in U.S.,” Mark Potter, NBC News, March 15, 2012, http://daily.abcnews.com/_news/2012/03/15/10701978-debate-rages-over-mexico-spillover-violence-in-us?lite

¹⁹⁴ “Cartel-connected pot farms rise up from rugged Texas backwoods,” Dane Schiller, *The Houston Chronicle*, August 15, 2012, <http://www.chron.com/news/houston-texas/article/Cartel-connected-pot-farms-rise-up-from-rugged-3791677.php>

¹⁹⁵ *Id.*

¹⁹⁶ “Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence,” Kristen Finklea, Congressional Research Service, February 28, 2013. <http://www.fas.org/sgp/crs/homesecc/R41075.pdf>

¹⁹⁷ “Texas Gang Threat Assessment 2012,” Texas Department of Public Safety, March 2013. http://www.txdps.state.tx.us/director_staff/media_and_communications/TXGangThreatAssessment.pdf

Data Sharing

A concerted effort to combine intelligence among different law enforcement agencies is a necessary aspect of preventing organized crime, including spillover violence from the Mexican Drug War.¹⁹⁸ The next step will be to include cartel and gang-related violence data within currently established data-gathering systems; this will allow dissemination of accurate information among law enforcement agencies in the U.S. by way of the DHS Fusion Centers.

The Texas Department of Criminal Justice should also be included in the process, since TDCJ gang separation units have a wealth of data on the transnational gangs within the units, which could assist the fusion centers. In fact, many prisons have had to deal with powerful prison gang cultures; in some cases, prison guards have even colluded with powerful gangs of prisoners.¹⁹⁹ Additionally, the reach of Texas prison gangs increasingly extends outside of prison units, with law enforcement indicating that gangs that originated in prisons now have a strong presence in communities at large and have even threatened law enforcement officials outside of prisons.²⁰⁰ TDCJ's wealth of knowledge will contribute significantly to the success of the data-sharing process. Additionally, data shared on border and transnational gangs could help the Governor make more fully-informed decisions in determining whether to grant clemency upon written recommendation of a majority of the Board of Pardons and Paroles.²⁰¹

The federal government has already put into place several types of data sharing programs. The FBI is in charge of maintaining a crime statistics database to assist law enforcement allocation of resources.²⁰² The Department of Homeland Security also administers Fusion Centers around the nation that are responsible for coalescing, analyzing, and sharing threat-related information between federal government and state, local, tribal, territorial, and private sector partners.²⁰³

These Fusion centers are located around the nation and situated to assist local forces in applying information regarding crimes committed around the nation. According to DHS: "The focus of the Fusion Center System is for terrorism prevention; however, it is also used for other types of crimes."²⁰⁴ Fusion centers are owned and operated by state and local entities with support from federal partners; their purpose is to "conduct analysis and facilitate information sharing while assisting law enforcement and homeland security partners in preventing, protecting against, and responding to crime and terrorism."²⁰⁵

¹⁹⁸ Fusion Center, *infra*.

¹⁹⁹ "Ex-Warden: Texas Prison Gangs Are Colluding With Guards," Erin Fuchs, Business Insider, April 8, 2013. <http://www.businessinsider.com/how-do-prison-gangs-break-the-law-2013-4#ixzz2drkenLdy>.

²⁰⁰ "Experts: Prison Gang Reach Increasingly Extends Into Streets," Alan Greenblatt, NPR, April 5, 2013. <http://www.npr.org/2013/04/02/176035798/experts-prison-gang-reach-increasingly-extends-into-streets>.

²⁰¹ Clemency, Texas Board of Pardons and Paroles. http://www.tdcj.state.tx.us/bpp/exec_clem/exec_clem.html.

²⁰² "Data Are Limited and Concerns Vary about Spillover Crime along the Southwest Border," Government Accountability Office, February 2013. <http://www.gao.gov/assets/660/652320.pdf>.

²⁰³ State and Major Urban Areas Fusion Centers, DHS. <http://www.dhs.gov/state-and-major-urban-area-fusion-centers>

²⁰⁴ *Id.*

²⁰⁵ *Id.*

The Fusion Center in Texas has been integral in several successful law enforcement operations. In March of 2012 the Texas Fusion Center liaised with Las Vegas Metropolitan Police to find information regarding an unsolved murder in Southern Texas that was related to a cartel member imprisoned in Nevada.²⁰⁶ Later in 2012 the Texas Fusion Center worked with the California Orange County Intelligence Assessment Center in retrieving information regarding subjects suspected of smuggling large amounts of drugs and cash into the Los Angeles Airport. This allowed officers to gain intelligence in real time that led to arrests and seizure of contraband.²⁰⁷ In 2013, the Texas Fusion Center has been successful in thwarting a suspected terrorist attack perpetrated by a Minnesota militia leader.²⁰⁸

Fusion centers have received federal funding, with the Senate Permanent Subcommittee on investigations finding that: “DHS has funded state and local fusion center operations primarily through its Homeland Security Grant Program (HSGP)...,” with the amount of the grants determined on a yearly basis.²⁰⁹ However, the amount of funding is indeterminate, with the same panel in a 2012 study finding that the Federal Emergency Management Agency (FEMA) was unable to properly account for the total amount of federal grants given to fusion centers, with estimates ranging between \$289 million and \$1.4 billion.²¹⁰

Fusion centers are funded by both the federal and state governments. Partly due to the U.S. Senate report’s criticism, the 83rd Legislature’s Budget Conferees initially voted to eliminate the entire \$16 million over the 2014-15 biennium required to continue operating the Texas Fusion Center.²¹¹ Issues highlighted by House budget documents as reasons for withholding the funding were diversion of State Highway Fund monies to this use, and a U.S. Senate report finding that the fusion centers sometimes engaged in “irrelevant, useless or inappropriate” intelligence gathering and wasteful spending on private contractors.²¹² However, DPS criticized the report, with Director McCraw indicating that it did not reflect the condition of the seven fusion centers then operating in Texas, which were not among the fusion centers considered in the report’s sample.²¹³ A rider later restored \$12.6 million of this funding.²¹⁴

Texas must develop a mechanism to clearly share data with the federal government and with other border states, to better regulate border crime. This system will provide useful data for local law enforcement, the prison system, and local units of federal law enforcement, to prevent violence from crossing the border.

²⁰⁶ 2012 Fusion Center Success Stories, DHS. <http://www.dhs.gov/2012-fusion-center-success-stories>

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ “Federal Support for and Involvement in State and Local Fusion Centers,” Permanent Subcommittee on Investigations, US Senate, Oct. 3, 2012. Download at: <http://www.hsgac.senate.gov/download/?id=49139e81-1dd7-4788-a3bb-d6e7d97dde04>

²¹⁰ “Austin police, DPS defend fusion centers after critical Senate report,” Patrick George, Austin American-Statesman, October 8, 2012. <http://www.statesman.com/news/news/austin-police-dps-defend-fusion-centers-after-crit/nSXyW/>

²¹¹ “Budget conferees vote not to fund DPS fusion center,” Brenda Bell, Austin American-Statesman, May 14, 2013. <http://www.mystatesman.com/news/news/budget-conferees-vote-not-to-fund-dps-fusion-cente/nXrPx/>

²¹² *Id.*

²¹³ George, *infra*.

²¹⁴ “DPS troopers in line for 20 percent pay hike,” Brenda Bell, Austin American-Statesman, June 2, 2013.

<http://www.mystatesman.com/news/news/state-regional-govt-politics/dps-troopers-in-line-for-20-percent-pay-hike/nX9Dc/>

Prosecutions for Border-Related Crime

Although Texas law enforcement has successfully disrupted and dismantled many cartel and gang operations and networks, “[g]angs continue to represent a significant public safety threat to the State of Texas, and are responsible for a disproportionate amount of crime in our communities.” In addition, the increase in border security funding called for in these proposals is likely to lead to an increase in arrests in the border counties, which will necessitate increased funding for prosecution.

One of the difficulties with prosecuting high-level leadership is that cartel and gang leaders usually manage to keep themselves at arm’s length from the criminal acts they order.²¹⁵ Some courts, with already overburdened caseloads, may feel strained when dealing with sophisticated criminal defense legal teams.²¹⁶ Prosecutors may also feel overwhelmed when saddled with these cases, especially prosecutors who may not have the experience or the resources to combat these defendant’s various pretrial maneuvers.²¹⁷ Additionally, District and County Attorney’s Offices on the border must have the financial resources available to attract the best and brightest attorneys to the region and the prosecutorial career path.

Federal funding has been inconsistent; for example, federal reimbursement for border prosecutions totaled \$31 million in 2011 but fell to \$10 million in 2012.²¹⁸ Indeed, the El Paso District Attorney, Jaime Esparza, has stated that “some of the poorest counties in the country are shouldering the federal government’s efforts against drug trafficking... If they don’t want to pay us, we’re not going to do that work. And it’s getting to that point now.”²¹⁹ Similarly, as federal subsidies for border prosecutions have declined, Brooks County, Texas has stopped addressing some drug trafficking cases related to border checkpoints.²²⁰ Texas should not wait for the federal government to act; the security situation on the southern border threatens Texans, and the state must respond aggressively.

In the 81st Legislature, an allocation of \$4,000,000 was approved for “prosecution resources” in aid of Border Security Operations; the program has been administered through the Criminal Justice Division of the Governor’s Office.²²¹ In the 83rd Legislature, an allocation of \$3,375,865 in fiscal year 2014 and \$3,375,865 in fiscal year 2015 was made for border prosecutions.²²² The money is distributed as a grant, allowing each of the sixteen District Attorneys’ Offices in the border region to hire assistant prosecutors and/or investigators whose primary responsibility is to better handle and coordinate prosecution of border crimes (for a map of the affected region, see below).²²³ The program works closely with DPS in handling these cases.

²¹⁵ *supra* TDPS GTA

²¹⁶ See, e.g., “Border Drug Busts Putting Strain On Texas County’s Budget,” KUT News, August 12, 2013. <http://www.everythinglubbock.com/story/border-drug-busts-putting-strain-on-texas-countys-budget/d/story/HDbIL8mIkS56cXIBQoDUw>

²¹⁷ See, e.g., “Prosecutors pool resources to combat border crimes,” Jared James, Brownsville Herald, April 3, 2011. http://www.brownsvilleherald.com/news/article_581ff733-b753-5481-bcf4-6e79528f2806.html

²¹⁸ “Uncertain Future for Border Prosecution Program,” Christopher Sherman, Associated Press, June 19, 2013. <http://bigstory.ap.org/article/uncertain-future-border-prosecution-program>

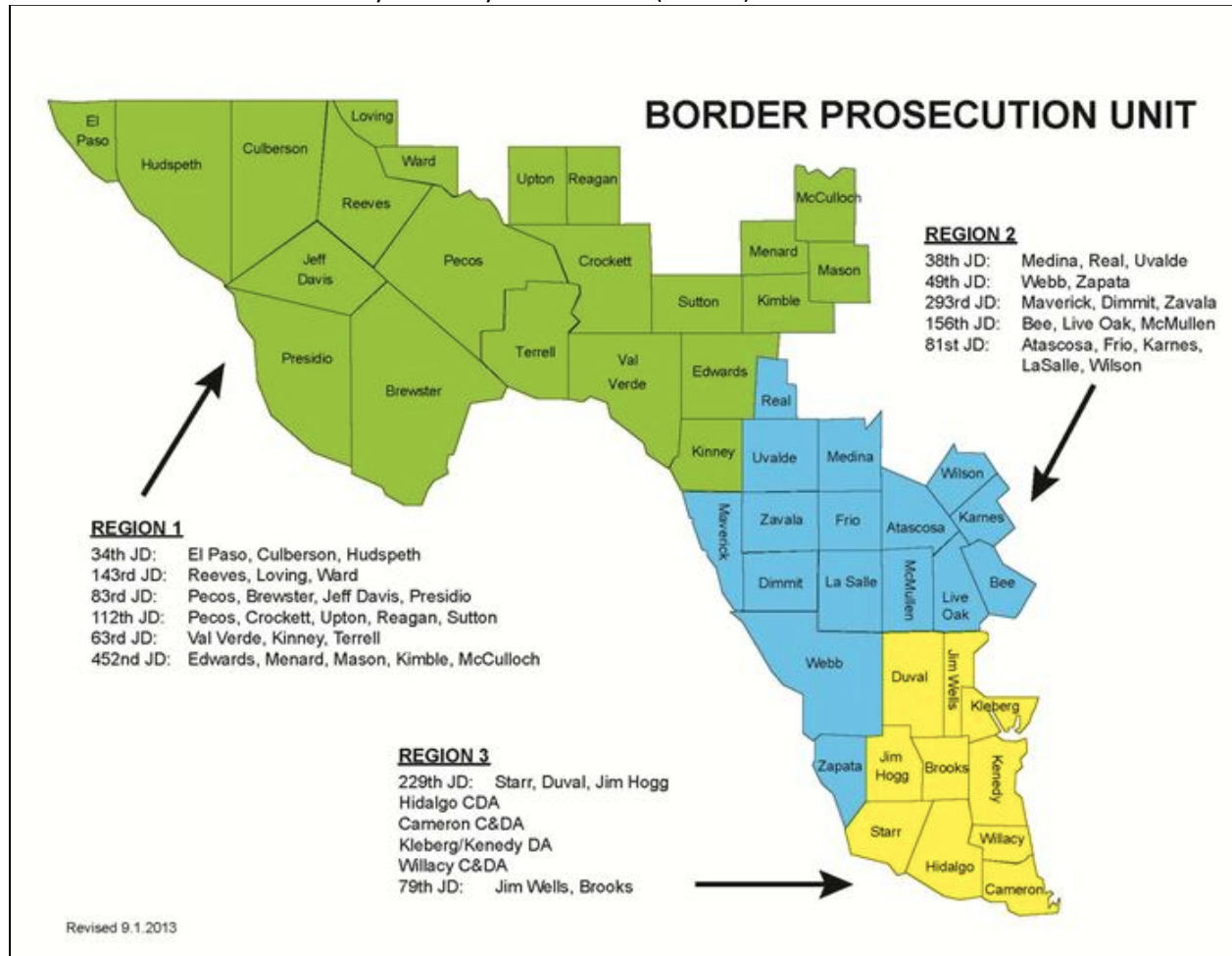
²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Border Prosecution Quick Facts. <http://www.senate.state.tx.us/75r/senate/commit/c640/wtpdf/1108-TomKrampitz-3.pdf>

²²² Conference Committee Report, Senate Bill 1, General Appropriations Bill, via the Legislative Budget Board.

In order to better assist border communities in addressing difficult cases arising from spillover crime, Texas should increase the allocation for the Border Prosecution Unit by an additional \$3 million in the next biennium. The allocation may be at least partially funded via civil asset forfeiture monies held by DPS, as discussed above, with the remainder allocated from General Revenue. Generally, Texas Code of Criminal Procedure 59.01(c)(1) allows for “a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office,” where “a local agreement exists between the attorney representing the state and law enforcement agencies.” The allocation of any drug asset forfeiture monies used should be coordinated with the Texas District & County Attorneys Association (TDCAA).



Source: 79th Judicial District Attorney's Office²²⁴

http://www.lbb.state.tx.us/Appropriations_Bills/83/Conf_Bill.pdf

²²³ 79th Judicial District Attorney. <http://www.79-districtattorney-tx.org/Border-Prosecution-Unit.html>

²²⁴ *Id.*

Expanding the Texas Anti-Gang Program

Recommendation: Directly challenge the threat posed by home-grown gangs by scaling the successful Texas Anti-Gang Task Force in Houston and replicating it in Dallas, Fort Worth, Austin, San Antonio, El Paso, Corpus Christi and Weslaco.

The 2012 Gang Threat Assessment (a state intelligence assessment prepared by the Texas Fusion Center, DPS, and other federal, state, and local law enforcement and criminal justice agencies) notes that more than 2,500 gangs have been identified in Texas, with the current number of gang members in the state likely exceeding 100,000.²²⁵ Human trafficking is one area of cartel-gang cooperation, with the Assessment finding that “[m]ost Tier 1 gangs... are involved in human smuggling in Texas, by transporting or holding illegal aliens in stash houses.”²²⁶ Based on this information, the Assessment includes the following outlook based on current intelligence:

Mexican drug cartels will fight to maintain or increase their share of the lucrative drug and human smuggling markets, Texas-based gangs will continue to play an essential role in supporting cartel operations on both sides of the border, and the cartels will likely seek to expand their existing networks in Texas by leveraging the gangs.²²⁷

In particular, all four Tier 1 gangs—a ranking that indicates the most dangerous and powerful gangs in the state—are heavily linked to cartels south of the border. These four are Tango Blast (estimated at 10,000 members), Texas Syndicate (4,500 members), Barrio Azteca (3,500 members), and Texas Mexican Mafia (6,000 members); all four are dangerous in part due to their strong continuing connections to Mexican drug cartels.²²⁸

Gangs are also a problem at Texas schools, with 35 percent of gang members younger than 18 as of 2011.²²⁹ In September, 2013, gang affiliation was linked to the stabbing murder of one student and injuring of three others at Houston’s Spring High School by 17-year-old Luis Alonzo Alfaro.²³⁰ Texas has recognized and attempted to address this problem with the enactment of law (Texas Penal Code Section 71.028) providing for designated “gang-free zones” within 1,000 feet of certain facilities (including both public school and higher education facilities, playgrounds, swimming pools, movie theaters, and video arcades), where the penalty for nearly any crime committed by an offender aged 17 or older is subject to increased penalty under Texas law.

However, many existing efforts may need to be supplemented with a more aggressive response, due to the increasing alignment of gangs with sophisticated Mexican cartel operations. For example, the Office of the Attorney General has provided, in its “Gangs and Community Response” document, that:

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ “National Youth Gang Survey Analysis,” National Gang Center, Bureau of Justice Assistance, U.S. Department of Justice. <http://www.nationalgangcenter.gov/survey-analysis/demographics>

²³⁰ “Gang rivalry led to fatal stabbing at Spring High,” Dale Lezon, Mike Glenn, Carol Christian, Houston Chronicle, Sept. 5, 2013. <http://www.chron.com/news/houston-texas/houston/article/Gang-rivalry-led-to-fatal-stabbing-at-Spring-High-4789221.php>

Special police tactics may be needed where gangs are violent or where they are driving up local crime rates. But gangs are not primarily a law enforcement problem. Programs are needed to address some of the causes of gang behavior.²³¹

Similarly, the Houston Mayor's Anti-Gang Office relies in two of its three strategies on attempting to correct a gang member or potential gang member's behavior through addressing root causes, rather than providing a law enforcement response (highlighting "Prevention: Educating youth on the dangers and consequences of gang membership before they become involved..." and "Intervention: Providing assistance and opportunities for gang involved youth and their families once the youth has made the decision to leave the gang lifestyle behind.")²³² These efforts are commendable and must be continued. However, to protect Texas communities, an aggressive law enforcement response must be supported to disrupt the criminal alliance between those transnational gangs with a presence in Texas and Mexican cartels.

In 2012, the Texas Anti-Gang (TAG) Tactical Operations Center was established in Houston through a \$1.7 million grant from the Criminal Justice Division of the Governor's Office.²³³ The TAG serves as the unified headquarters for an estimated 75 - 100 of the region's most knowledgeable and experienced federal, state and local anti-gang investigators, analysts and prosecutors—representing federal agencies such as the FBI and DEA, state agencies like DPS, and local agencies like the Houston Police Department and Harris County District Attorney's Office.²³⁴

This approach is aimed directly at those gangs working with Mexican cartels and other foreign threats, with the DPS Director Steven McCraw calling the program an "innovative approach" to addressing "violent criminal gangs operating in Texas, who regularly do business with transnational criminal organizations...."²³⁵ This program is at the frontlines of the state's fight to protect Texans from cartels and their gang allies.

In its strategic plan for 2013-17, DPS noted that "Gang activity in Texas appears to be growing... national gang membership estimates have increased 40 percent over the past two years."²³⁶ As a partial response, the strategic plan promotes the utility of the TAG approach of interagency cooperation under a unified structure, providing that:

²³¹ "Gangs & Community Response," Office of the Attorney General.

https://www.texasattorneygeneral.gov/AG_Publications/pdfs/gangs.pdf

²³² "Department of Neighborhoods: Mayor's Anti-Gang Office," City of Houston. <http://www.houstontx.gov/antigang/>

²³³ "DPS Praises Announcement of Texas Anti-Gang Tactical Operations Center in Houston," DPS, May 17, 2012.

http://www.txdps.state.tx.us/director_staff/public_information/pr051712a.pdf

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ "Agency Strategic Plan for Fiscal Years 2013-17," Department of Public Safety, November 12, 2014.

<http://www.dps.texas.gov/dpsStrategicPlan/2013-2017/DPSStrategicPlan2013-2017.pdf>

The State's operational concept of providing resources to the region and facilitating coordination of unified action among law enforcement agencies at all levels remains a valid and effective approach for addressing this situation both within the border region and across the state. One example of enhanced interagency cooperation that DPS has strongly supported is the establishment of the Texas Anti-Gang Tactical Operations Center in Houston. Sharing information and coordinating the activities of all law enforcement agencies is the best approach to combating the serious and dynamic threat posed by violent criminal gangs and transnational criminal organizations.²³⁷

Very little data about the operations and successes of the TAG center is publicly available; DPS notes that "[f]or operational security purposes, the location and full technological capabilities of the TAG are not being disclosed."²³⁸ However, more support is needed for this center, as in the short time since its May, 2012, opening, gang crime in the Houston area has continued to increase. In November 2012, Houston Police identified almost 20,000 gang members in the region, an increase of 29 percent since 2010.²³⁹ 296 total gang members, up from 260 in the same time period, were identified, with 55 percent being multistate or transnational,²⁴⁰ and a number of them linked to Mexican cartels through crimes like drug trafficking and human trafficking.²⁴¹

Expanding operations in the border region is especially important, with DPS noting that since "the Texas-Mexico border region is . . . the state's and nation's first line of defense against international terrorism and illicit trafficking of people, weapons, drugs and currency, this dynamic will continue to create a situation where federal and state assistance to combat the threats of illicit trafficking and terrorism in the border region is an essential investment."²⁴² The FBI has also noted the extent of the problem, with its 2011 Gang Threat Assessment providing that "[g]ang-related activity and violence has increased along the Southwest border region, as US-based gangs seek to prove their worth to the drug cartels . . . and act as US-based enforcers for cartels which involves home invasions, robbery, kidnapping, and murder."²⁴³

²³⁷ *Id.*

²³⁸ "DPS Praises Announcement of Texas Anti-Gang Tactical Operations Center in Houston," DPS, May 17, 2012. http://www.txdps.state.tx.us/director_staff/public_information/pr051712a.pdf

²³⁹ "Gangs on rise, but idea to fight them raises eyebrows," James Pinkerton, Houston Chronicle, November 1, 2012. <http://www.chron.com/news/houston-texas/houston/article/Solutions-differ-in-fight-to-curb-increasing-gang-4001924.php>

²⁴⁰ *Id.*

²⁴¹ "Mexican drug cartels strengthening ties with local gangs," Kristine Galvan, My Fox Houston, September 9, 2013. <http://www.myfoxboston.com/story/23386024/2013/09/09/mexican-drug-cartels-strengthening-ties-with-local-gangs#ixzz2s78H0Dnp>

²⁴² DPS Strategic Plan, *infra*.

²⁴³ National Gang Threat Assessment 2011: Emerging Trends," National Gang Intelligence Center, FBI, October 21, 2011. <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment-emerging-trends>

The TAG approach provides needed new operational capabilities to participant federal, state, and local agencies, and eases data sharing between them. It has been highlighted as a successful approach by participating agencies, and this success should be recognized by expanding the program. The state should respond aggressively to the continuing gang threat by expanding the TAG program in Houston, and establishing new TAGs in Dallas, Fort Worth, Austin, San Antonio, El Paso, Corpus Christi and Weslaco, at an estimated cost of \$20,000,000 in the coming biennium.²⁴⁴

²⁴⁴ Information received from DPS.

Disincentivizing Unlawful Presence

Recommendation: Enforce current law by requiring all state agencies to make use of E-Verify in order to ensure that only those eligible to work for state government are hired for public employment.

Since the Illegal Immigration Reform and Responsibility Act of 1996, the federal government has implemented a useful, but largely discretionary tool, to verify the immigration status of those in the workforce – the E-Verify program.²⁴⁵ The system works by comparing information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration.²⁴⁶

The program is largely discretionary, although it is mandatory for federal government contractors and for all employers in some states, including Arizona and Alabama.²⁴⁷ Several other states require E-Verify for state agencies, state contractors, or both (see map below). As of November 30, 2012, the National Conference of State Legislatures found that a total of 20 states require the use of E-Verify for at least some public and/or private employers.²⁴⁸ At the federal level, in August 2007 the federal Office of Management and Budget indicated that by October 1, 2007, all Federal departments and agencies should begin verifying their new hires through E-Verify.²⁴⁹ In addition, the E-Verify Federal Contractor Rule requires the use of E-Verify by Federal contractors who were awarded a new contract on or after September 8, 2009.²⁵⁰ The Obama White House has also been favorable to E-Verify, providing that it “helps U.S. employers comply with immigration law and ensure that American jobs are available to U.S. citizens and those authorized to work in the U.S.”²⁵¹ Former Homeland Security Secretary Janet Napolitano has stated that E-Verify “can and should be part of (comprehensive) immigration reform.”²⁵²

Texas, however, does not require E-Verify for non-federal employees.²⁵³ Approximately 29 out of 103 Texas state agencies, or 28 percent, currently use the E-Verify program. Though use of the internet verification program E-Verify has grown in recent years, as of 2011, only about 11% of 7.7 million employers nationwide use the program, either voluntarily or as a condition for doing business with the government.²⁵⁴

²⁴⁵ “5 things you should know about E-Verify,” Meena Ganesan, PBS, June 17, 2013.

<http://www.pbs.org/newshour/rundown/2013/06/5-things-you-should-know-about-e-verify.html>

²⁴⁶ “What is E-Verify?” U.S. Citizenship and Immigration Services. <http://www.uscis.gov/e-verify/what-e-verify>

²⁴⁷ *Id.*

²⁴⁸ “E-Verify FAQ,” National Conference of State Legislatures, <http://www.ncsl.org/research/immigration/everify-faq.aspx>

²⁴⁹ <http://www.uscis.gov/iframe/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-145991/0-0-0-165820/0-0-0-172862.html>

²⁵⁰ <http://www.uscis.gov/e-verify/federal-contractors/who-affected-e-verify-federal-contractor-rule>

²⁵¹ Source: http://www.whitehouse.gov/omb/fy2010_department_homeland

²⁵² “E-Verify requirement must be part of larger immigration plan, Napolitano insists,” Richard Dunham, Houston Chronicle, August 30, 2011. <http://blog.chron.com/txpotomac/2011/08/e-verify-requirement-must-be-part-of-larger-immigration-plan-napolitano-insists/>

²⁵³ *Id.*

²⁵⁴ *Id.*

Texas should require all state agencies to make use of E-Verify. Doing so will impose no burdens on the private market, but will place appropriate checks on the hiring of persons not lawfully present in the United States by public institutions. Indeed, by imposing these costs on the public sector only, Texas will obtain more data on the successful use of E-Verify, which will inform our decision makers as to whether E-Verify is useful to our state's unique situation.

The U.S. Department of Homeland Security offers E-Verify as a free service, with the U.S. Citizenship and Immigration Services (USCIS) providing that: "E-Verify is an Internet-based system... [that] is currently free to employers."²⁵⁵ Employers that participate in E-Verify have the option to have an E-Verify employer agent use E-Verify on their behalves, and these agents may charge fees to their clients for using E-Verify; USCIS does not certify E-Verify employer agents nor does it regulate the fees they charge.²⁵⁶ No significant fiscal impact to the state should be anticipated: the Legislative Budget Board found of a similar proposal during the 82nd Legislative Session that "based on the analysis of the Texas Workforce Commission, it is assumed duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources."²⁵⁷

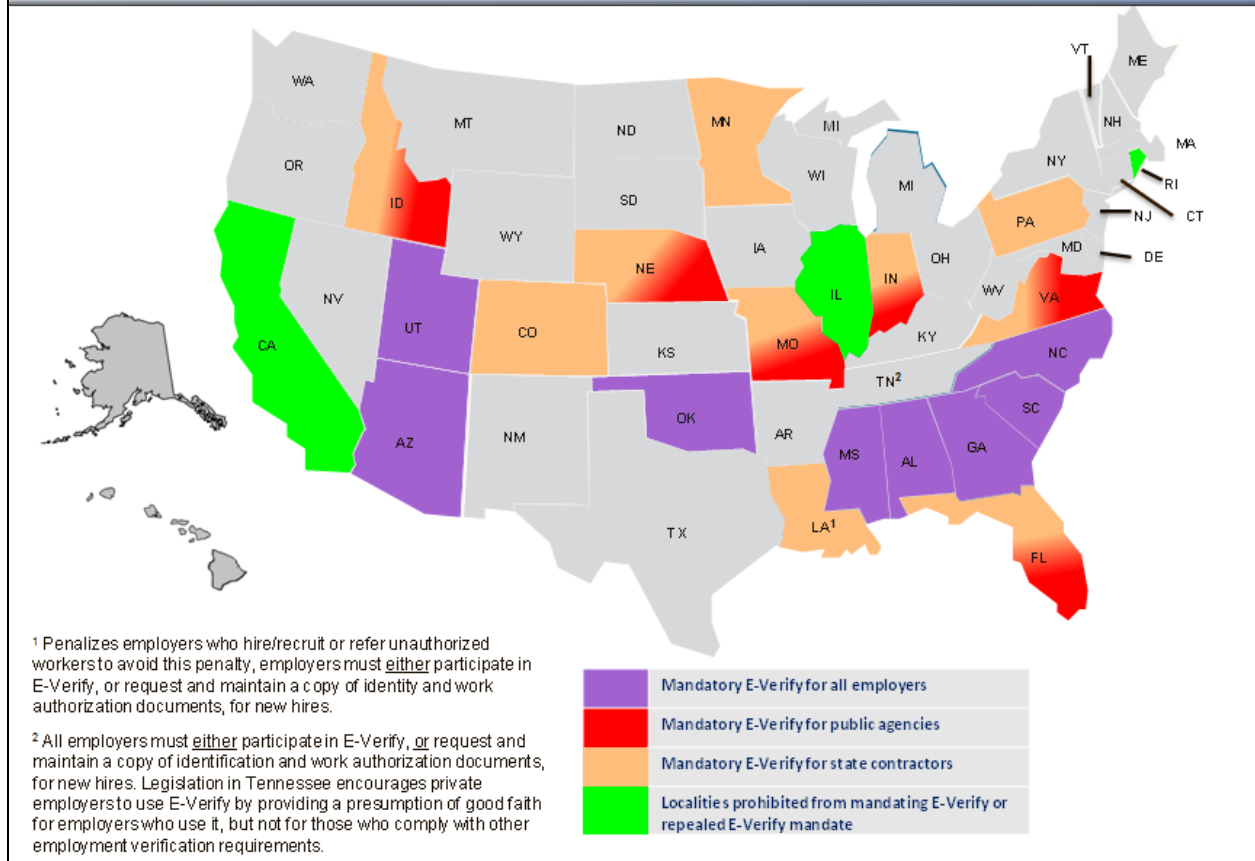
To be very clear, this recommendation would NOT not apply to any other political subdivision, including institutions of higher education, cities, counties, special purpose districts, or public schools or public charter schools. This recommendation does not apply to any private sector employer, and this recommendation does not apply to any private entity that contracts with the state. Only state agencies would be affected.

²⁵⁵ Source: "I Am an Employer: How Do I... Use E-Verify?," USCIS.
<http://www.uscis.gov/sites/default/files/USCIS/Resources/E4en.pdf>

²⁵⁶ "Using an E-Verify Employer Agent," USCIS. <http://www.uscis.gov/e-verify/employers/using-e-verify-employer-agent>

²⁵⁷ "Fiscal Note, 82nd Legislative Session," Legislative Budget Board, April 8, 2011.
<http://www.legis.state.tx.us/tlodocs/82R/fiscalnotes/html/HB001781.htm>

The State of the States: Current Status of E-Verify Laws | July 2012



Source: National Immigration Law Center²⁵⁸

²⁵⁸ "State E-Verify-related Bills, Laws, Executive Orders," National Immigration Law Center.
<http://www.nilc.org/stateeverifypolicyresrces.html>

²⁵⁸ For more details on state policies on E-Verify, please see the "E-Verify FAQ," NCSL,
<http://www.ncsl.org/research/immigration/everify-faq.aspx>

APPENDIX A:

Budget Itemization of Securing Texans Proposals Related to Community and Family Efforts

Item	Estimated Cost in the 2016-17 Biennium	Estimated FTEs Created
Addressing the Backlog of Sexual Assault Kits	\$10,800,000	25
Requiring Registration as Sex Offenders Before Offenders are Released to the Public	No Significant Fiscal Implication Anticipated	0
Increase Appropriations to OAG for Training and Certification Programs for Sexual Assault Nurse Examiners (SANEs)	\$500,000	0
Increase the Penalty for Kidnapping a Child	No Significant Fiscal Implication Anticipated	0
Creating local Domestic Violence High Risk Teams	\$4,000,000	0
Expand the Eligibility Requirements for GPS Monitoring to Include Perpetrators of Domestic or Family Violence Who Pose a Severe Threat to Their Victims	\$2,000,000	0
Provide Comprehensive, Wrap-Around Care to Child Sex Trafficking Victims	\$4,000,000	21
Create Civil Liability for Perpetrators of "Revenge Porn"	No Significant Fiscal Implication Anticipated	0
Authority for Open-Enrollment Charter Schools to Commission or Appoint Peace Officers	No Significant Fiscal Implication Anticipated	0
Active Shooter Response Training	\$4,000,000	0
OAG School Safety Training Program	\$500,000	0
Expansion of the Texas Anti-Gang Program	\$20,000,000	0
Requiring E-Verify for State Agencies	No Significant Fiscal Implication Anticipated (Federal Government Makes Available Without Cost)	0
Total	\$45,800,000	46

APPENDIX B:

Budget Itemization of Securing Texans Border Security Proposals

Item	Estimated Cost in the 2016-17 Biennium	Estimated FTEs Created
Continuous Border Surge Operations, including rotations of DPS Troopers in and out (DPS overtime, fuel, travel & other operating expenses for 611 troopers, rangers, agents, pilots and support staff)	\$92,000,000	0
500 Troopers deployed over a four-year period, plus 68 officers to command them (salaries, vehicles, fuel, equipment & other operating expenses)	\$100,700,000 ²⁵⁹ (Approximate four-year cost: \$275,000,000)	568
Increased Funding for DPS Recruit Schools (one additional school each fiscal year graduating +/-100 more recruits per year)	\$6,000,000	0
New Border Patrol Vehicles (approximately 500 fully equipped vehicles)	\$24,200,000	0
Increased Funding for Local Law Enforcement (Overtime & Operations)	\$10,000,000	0
20 New Texas Rangers for Public Corruption Investigations, plus 2 officers (vehicles, equipment, salaries and operating expenses)	\$8,000,000	22
20 New CID Agents, plus 4 officers (vehicles, equipment, salaries and operating expenses)	\$8,000,000	24
New Pilatus High-Altitude Airplane (including 9 pilots and 9 tactical flight officers)	\$8,400,000	18
New Boats for the Tactical Marine Units (8 boats, fuel, equipment & associated staffing for boats)	\$13,100,000	34
Interoperability Fund Allocation for DPS Communications Border Operations	\$15,800,000	0
DPS Indirect Support	Included in Above Estimates	46
Total DPS New Border Spending	\$286,200,000	712

²⁵⁹ 2016-17 Biennial cost only. Also includes non-DPS related state expenses such as employee benefits.

Carrizo Cane Removal	\$9,800,000	0
Developing Data-Sharing Mechanism with Border States and U.S. Government	No Significant Fiscal Implication Anticipated	0
Increased Funding for Border Prosecutions	\$3,000,000	0
Total New Border Spending	\$299,000,000	712

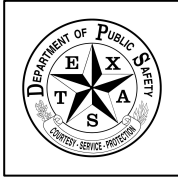
APPENDIX C:

TEXAS DEPARTMENT OF PUBLIC SAFETY

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February 15, 2013

Report in Compliance with SECTION 15 (b) of SB1636, 82nd Legislature regarding estimated cost and timeline for the completion of laboratory analyses of all unanalyzed sexual assault kits submitted to an accredited crime laboratory by a law enforcement agency pursuant to Government Code Section 420, Subchapter B-1.

Total Number of SB1636 Kits:

As of February 1, 2013, law enforcement agencies in Texas have reported 15,823 sexual assault kits applicable to SB1636. This information was provided by a total of 136 agencies. Due to the complexity of evaluating statute applicability by large volume agencies, the DPS estimate remains at 20,000 total kits statewide.

Timeline for Completion of Testing:

The timeline proposed is an estimate based upon certain assumptions of which and how many accredited laboratories will receive and analyze the evidence in these sexual assault cases.

Including the DPS system, there are seventeen accredited crime laboratories in Texas capable of conducting the required analyses on these kits – sixteen public and one private laboratory. Those laboratories are listed below:

- DPS Laboratories in Austin, Houston, Garland, Waco, El Paso, Lubbock, Corpus Christi, and Weslaco.
- The Southwestern Institute of Forensic Sciences at Dallas
- The Bexar County Criminal Investigation Laboratory
- The Harris County Institute of Forensic Sciences
- The Houston Police Department Crime Laboratory
- The Tarrant County Medical Examiner Forensic Laboratory
- The Fort Worth Police Department Crime Laboratory
- The Austin Police Department Forensic Science Service Division
- Cellmark Forensics (private)
- The University of North Texas, Health Science Center, DNA Identity Laboratory

In lieu of submission to DPS, the Houston Police Department Crime Laboratory has declared it will facilitate the testing of its 6,663 identified kits through a combination of outsourcing and in-house analysis.

An assumption is made that other agency laboratories listed above will work their own cases as well. Based on that assumption, the DPS expects to receive and analyze evidence in 10,000 cases. DPS has two alternative plans submitted for completing the analysis.

- The first option will be to outsource all the analysis, and then have DPS personnel enter the DNA profiles into the CODIS DNA database. The outsourcing option is likely to take six months to obtain a contract with a private DNA laboratory and an additional six month ramp up time, due to the volume, for that laboratory to commence testing. The testing of evidence is then expected to take two years. The total estimated timeframe for completion with this option is three years.
- The second option will be for DPS to employ a sufficient number of additional forensic scientists and support staff to complete the DNA testing in-house. Once funding is provided, it will take one year to employ and train personnel. Two additional years will be required to complete the DNA testing. The total estimated timeframe for completion with this option is three years.

The aforementioned options are incorporated as Exceptional Item #15 in the DPS Legislative Appropriation Request (LAR) to the 83rd Legislature.

Statewide, the overall timeline for complete testing of all SB1636 kits - whether analyzing in-house, outsourcing, or a combination - is estimated at three years.

Required Funding:

For DPS, the first option is a plan to out-source the screening and DNA testing of the evidence in the 10,000 cases to one or more accredited private forensic DNA testing laboratories. The estimated cost for a private laboratory to perform screening (detecting biological evidence from which to recover DNA) is \$400 on average for a sexual assault case. The estimated average cost for the subsequent DNA testing is an additional \$1,250 per case. All 10,000 cases will require the screening step. It is estimated that through the screening process, analysts will discover no semen or other male tissue in 30% of the cases to provide for DNA testing. Therefore, we estimate actual DNA testing will be required on evidence in 7,000 cases.

Screening 10,000 cases @ \$400/case:	\$4,000,000.00
DNA testing of 7,000 cases @ \$1,250/case:	\$8,750,000.00
DPS case review and CODIS database work:	\$700,000.00
Total cost for Option 1:	\$13,450,000.00

For DPS, the second option is a plan to conduct all testing of the evidence in the 10,000 cases in-house. This would require adding twenty-five (25) personnel, as well as additional equipment.

	YR1	YR2	YR3
Salaries at \$46,652/yr/FTE	\$1,419,375.00	\$1,419,375.00	\$1,419,375.00
Fringe benefits @ 29.74%	\$453,250.00	\$453,250.00	\$453,250.00
Supplies @ \$329/case		\$1,150,000.00	\$1,150,000.00
Other operating costs	\$500,000.00	\$500,000.00	\$500,000.00

Travel/training	\$50,000.00	\$50,000.00	\$50,000.00
Equipment	\$400,000.00		
Total cost of each year	\$2,822,262.00	\$3,572,625.00	\$3,572,625.00
Total cost for Option 2			\$9,967,512.00

DPS estimates the costs of other laboratories to complete testing in-house or out-source to be similar to the costs listed above.

Statewide, the estimated cost to complete testing on 20,000 kits through out-sourcing would be **\$26,900,000.00**.

Statewide, the minimum estimated cost to complete testing on 20,000 kits through in-house testing would be **\$13,267,512.00**. This figure includes the total DPS in-house option for 10,000 kits, plus the estimated cost for supplies and operating for two years for the additional 10,000 cases assumed to be worked in other local laboratories. Local laboratory estimates for additional staffing, training, and equipment costs cannot be estimated by DPS, but are likely necessary.