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Written Testimony on Jail Standards and Suicide Prevention Issues

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Chairman Coleman and Committee Members,

Thank you for the opportunity to testify before you today regarding issues related to jail standards, suicide prevention in jails, and the need for enhanced jail oversight in Texas. Although the impetus for this hearing was the tragic death of Sandra Bland, my testimony will be forward-looking and proactive, and will address ways to prevent such deaths and improve safety for all inmates.

By way of background, I am a Senior Lecturer at the University of Texas with a joint appointment in the LBJ School of Public Affairs and the School of Law. I am an attorney by training, and I have spent my 29-year career working on issues related to prisons and jails. Among my professional experiences, I have served as a federal court-appointed monitor of conditions in the Texas prison system; have been a consultant to a number of jail systems around the country on issues related to inmate safety; was the drafter of the American Bar Association's Standards on the Treatment of Prisoners; have been an expert witness in two lawsuits involving deaths in custody; worked with the Commission on Jail Standards on a study involving conditions in Texas county jails; and worked with the Office of the Independent Ombudsman on a study of violence in the Texas Juvenile Justice Department. I also currently serve as the Co-Chair of the American Bar Association's Subcommittee on Independent Correctional Oversight, an issue on which I have done extensive research and writing.

My testimony today draws upon those professional experiences and my familiarity with national best practices in the areas you are examining with respect to jails. In particular, I will focus on issues related to the identification and management of inmates with mental illness and who may be at risk for suicide; on the need for more robust jail standards in Texas; and on the need for additional jail oversight.

Best Practices Regarding Mental Illness and Suicide Prevention in Jails

Jails have become the largest provider of mental health services in this country. Research shows that 64 percent of local jail inmates have symptoms of serious mental illness.¹ The lack of readily available and affordable mental health services in the community contributes to the over-representation of these persons in the jail population. Inmates with behavioral health issues are especially vulnerable to physical and sexual abuse in the jail setting, are more likely to attempt suicide, and are less able to conform their behavior to the jail's rules, which results in an increased likelihood of disciplinary action taken against them. For these reasons, this is a difficult population for jail staff to manage, and yet jails tend to have limited mental health resources to serve this population. Thus, this is an ideal target population to divert from the jails, especially when the underlying offense is extremely minor.

Jails have a constitutional obligation to protect inmates with mental illness or suicidal tendencies, by identifying them and providing them with appropriate treatment and housing placements. Failure to protect them or provide them with services can subject the jail and the county to lawsuits that seek substantial damages as well as injunctive relief. Thus, it is critical that every jail have in place an appropriate and effective mental health plan and suicide prevention plan.

The jail intake process is a fundamental part of those plans, yet this aspect of jail operations often tends to be problematic. In particular, the intake screening form needs to include questions that identify an arrestee's urgent medical needs, including any chronic health or mental health issues, any suicidal thoughts or prior suicide attempts, any medications, and whether they are currently intoxicated by drugs or alcohol. In order to ensure a seamless health transition from the streets, efforts also must be made to obtain and provide any medications that the arrestee has been prescribed, so that there is no discontinuity in treatment.

The standards of the National Commission on Correctional Health Care, the leading association with specific expertise on these issues, indicate that the person who administers the screening questionnaire should be a health care professional.² The reason for this requirement is two-fold: first, a health care professional is better able to assess the urgency of the medical needs presented by the arrestee, and second, an arrestee may be more likely to provide accurate information about sensitive health needs to a nurse rather than a law enforcement representative. In those jails that do not have a health care professional on duty, the standards require that the custodial officer who conducts the screening be someone with supplemental training beyond that provided to other custodial staff. This same requirement is found in the standards of the American Bar Association³ and the American Correctional Association.⁴ However, the

¹ Bureau of Justice Statistics, U.S. Department of Justice, Special Report: "Mental Health Problems of Prison and Jail Inmates," NCJ 213600, September 2006, revised December 14, 2006, p. 1.

² Standard J-E-02, *Standards for Health Services in Jails*, National Commission on Correctional Health Care, 2014.

³ Standard 23-2.1, *Treatment of Prisoners Standards*, ABA Standards for Criminal Justice, 3d Ed., American Bar Association, 2011.

minimum standards of the Texas Commission on Jail Standards are much weaker than this, saying nothing about the need to have a health care professional complete the screening form and requiring only that the person completing the form have “supplemental training” (the amount of such training is left unspecified).⁵

In Texas, only 11 percent of jails have a mental health professional assigned to the facility.⁶ Thus, there is a real need for jails to have clearly written arrangements with local mental health facilities to provide emergency mental health care as well as routine treatment services.

Training of all custodial staff on mental health and suicide prevention issues is essential. Best practices suggest that staff should have at least eight hours of initial suicide prevention training, with two hours of follow-up training annually.⁷ The Texas Minimum Jail Standards do not require this level of training.

A positive answer to any of the questions on the screening form about mental illness or suicidal tendencies should trigger an immediate referral to and prompt evaluation by a mental health professional, and placement of the inmate in a safe setting pending assessment. That mental health professional should direct the appropriate intervention and treatment, help determine the risk presented by the inmate, and assure follow-up as needed. The involvement of this mental health professional is essential for proper classification of the inmate for purposes of housing placement, level of supervision, and treatment programming.

Inmates should be assessed as “acutely suicidal” (if they are actively threatening suicide or engaging in self-harm) or “nonacutely suicidal” (if they have a prior history of suicide attempts or express current suicidal ideation). This status determines whether the inmate should be subject to constant observation (with checks no more than every five minutes) or frequent observations (with checks on a staggered basis with intervals not to exceed 10-15 minutes). Notably, the Texas Minimum Jail Standards do not address this need to categorize suicidal inmates by this degree of risk, and require only 30-minute checks for inmates who are potentially suicidal.⁸ This time frame is inadequate to protect inmate safety, as suicide attempts and deaths can occur well within a 30-minute period.

It is commonplace for jail staff to assign inmates at risk of suicide to housing in an isolation cell. This is done for administrative convenience, and presumably because these inmates are seen as vulnerable. However, research shows that such isolation can actually

⁴ Standard 4-ALDF-4C-22, Performance-Based Standards for Adult Local Detention Facilities, 4th Ed., American Correctional Association, 2004.

⁵ Texas Administrative Code, Title 37, Part 9, Rule §273.5.

⁶ Daniel Dillon, “A Portrait of Suicides in Texas Jails: Who is at Risk and How Do We Stop It?,” LBJ Journal of Public Affairs, Fall 2013, p. 60.

⁷ Lindsay Hayes, “Guide to Developing and Revising Suicide Prevention Protocols Within Jails and Prisons,” National Center on Institutions and Alternatives, 2011.

⁸ Id., Rule §275.1.

exacerbate the trauma these inmates are experiencing and escalate their suicidal feelings.⁹ Also, it removes the inmate from proper staff supervision. Instead of isolating prisoners who are at risk of suicide, jail staff should seek to house them in the general population in a multi-occupancy cell, mental health unit, or medical infirmary, where they can be close to staff.¹⁰ Removal of an inmate's clothing, placement in restraints, and placement in a rubberized suicide cell should be a last resort for actively suicidal inmates until such time as they can be treated by a mental health professional.^{11 12} Research shows that inmates are more likely to commit suicide when they are placed in isolation cells than when they are housed in multi-occupancy cells.¹³ Housing assignments should be made that maximize the opportunity for staff and peer *engagement and interaction* with the inmate, not simply impersonal staff checks.

Another critical aspect of a suicide prevention plan involves the need for staff to have suicide resistant cells that eliminate physical features that could facilitate suicide attempts. For example, these cells should avoid obvious protrusions that can be used to anchor a device for hanging. Light fixtures should be tamper-proof, and there should be nothing in the cell that can be used as a tool for self-harm, including plastic garbage bags. Most importantly, there should be full visibility into the cell, so staff can see the inmate at all times. Emergency equipment should also be readily available.¹⁴

Additionally, a jail's suicide prevention plan should include a provision for a post-incident review of not only completed suicides but also all serious suicide attempts. This review should provide a critical look at all circumstances surrounding the death or the attempted suicide, and should examine any policies or practices that may need to be changed as a result of the incident.

Finally, the jail's suicide plan should recognize and address the fact that suicides can occur at any time during an inmate's incarceration, not only upon admission, and thus staff must always be alert to indications that an inmate is developing mental health issues or suicidal ideation. Provisions should be made for referral to a mental health professional at any point in time that seems necessary.

Of course, there are many other elements of an effective jail suicide prevention plan, as well as a great deal of research and legal requirements regarding the treatment and management of inmates with mental illness. But the issues discussed above seem to be the source of many problems in jail management that warrant attention by lawmakers and by the Commission on Jail Standards.

⁹ Hayes, "Guide to Developing and Revising Suicide Prevention Protocols Within Jails and Prisons."

¹⁰ Id.

¹¹ Id.

¹² Standard 23-5.4(c) ("Self-harm and suicide prevention"), ABA Treatment of Prisoners Standards.

¹³ Dillon, "A Portrait of Suicides in Texas Jails: Who is at Risk and How Do We Stop It?," p. 57.

¹⁴ Hayes, "Guide to Developing and Revising Suicide Prevention Protocols Within Jails and Prisons."

Making Jail Standards and Jail Oversight More Robust in Texas

The Texas Commission on Jail Standards is one of the only independent government agencies in the United States charged with conducting routine inspections of county jails and regulating them.¹⁵ Texas should be very proud to have this agency, and the work of the Commission has gone a long way towards helping professionalize the operations of jails and ensuring that they abide by a minimum set of standards. I have had the privilege of working closely with the Commission staff over many years in this field and I think highly of their commitment to their mission.

There are a number of ways in which the work of the Commission can be enhanced, however. First, the Commission's staff is under-resourced. There are currently only four inspector positions for the entire state, and one of those slots is currently vacant. The number of personnel is insufficient to handle the inspection requirements for a state the size of Texas. Effective oversight requires frequent surprise inspections as well as follow-up inspections to check on whether deficiencies have been remedied. The Legislature should provide the Commission with additional resources in order to make their work more robust.

Second, the Commission needs to develop standards on a number of important issues that are currently unaddressed. For example, the Texas Minimum Jail Standards are completely silent on issues related to staff use of force and sexual assault. There are numerous national standards that can be used as models for Texas, including standards of the American Correctional Association and the American Bar Association. The Commission should incorporate the new U.S. Department of Justice's Prison Rape Elimination Act (PREA) Standards into its own standards, and should audit each county jail's compliance with those standards. This would have the added benefit of saving each county the cost of paying for an auditor every three years as required by federal law.

Third, the Commission's standards need to be more detailed, especially on issues related to the health care, mental health, and suicide prevention plans. The standards say simply that the jail needs to have approved plans in each of these areas, but does not provide guidance to the county jailers who must develop the plans. Commissioners should look to the standards cited earlier in this testimony for guidance on what provisions such standards should include. It is not enough to say that the plan should include "provisions for adequate supervision of inmates" or "provide procedures for referral for medical, mental, and dental services."

Fourth, there is no provision for the inspectors to assess the jail's compliance with its own plan. The best plan in the world is no good unless it is followed. Yet the inspectors are limited to ensuring that a plan exists, not that staff actually follow through with its requirements.

Fifth, the Commission should seek to develop performance-based standards, in much the same way that the American Correctional Association has done in recent years. For example, the ACA auditing process requires the collection of data about the number of inmate suicides in the past 12 months divided by the average daily population. Having annual suicide measurements

¹⁵ Michele Deitch, "Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory," 30 Pace L. Rev. 1754 (2010).

like this allow the inspectors and the jail leadership alike to assess the effectiveness of the facility's suicide prevention program. A more robust Commission would not simply ensure that jails have approved plans in place, but would make sure that these plans are achieving their goals of keeping inmates safe and providing them with constitutionally required services and treatment.

Sixth, there needs to be increased attention paid to smaller jails in Texas. For obvious and appropriate reasons, disproportionate attention gets paid to the large urban jails — especially those in Harris, Dallas and Bexar counties — simply because of their size and the huge number of inmates who pass through the doors of those facilities. But nearly half of the state's jails hold fewer than 50 inmates. Those smaller jails, which are typically lacking in mental health resources, have substantially higher rates of inmate suicide than the larger facilities. Moreover, municipal jails operated by cities or police departments have surprisingly high numbers of suicides, and are completely unregulated by the Commission on Jail Standards. This lack of oversight needs to be addressed: municipal jails should be brought under the Commission's mandate.

Finally, Texas needs an oversight mechanism that is focused on the treatment of prisoners and the investigation of inmate complaints. This is not the role of the Commission on Jail Standards, which primarily looks at environmental factors in jails and does not do individual investigations. Inspectors are charged with evaluating jails' compliance with specific technical standards, not assessing inmate treatment or the dynamics between staff and inmates.

The Legislature should consider creating an entity modeled on the Independent Ombudsman for the Texas Juvenile Justice Department, an office created by the Legislature in the wake of the mistreatment of youth in custody in 2007.¹⁶ That office has had remarkable success in identifying problems in Texas' juvenile facilities and providing a way for youth and their families to seek assistance for their concerns. An equivalent office should be set up to go into Texas' jails, meet with inmates, write reports and identify systemic issues that cut across all jail facilities around the state. The Jails Ombudsman could even be a branch of the Commission on Jail Standards. This approach would provide for two extremely important and complementary types of oversight to take place in Texas, one that is more regulatory in nature and focused on jail management, and the other more holistic and focused on the treatment and safety of inmates.

I appreciate this Committee's time and interest in examining and addressing the ongoing problems of mental health care and suicide prevention in Texas's jails. I believe that great strides can be made towards protecting the rights and safety of inmates through more robust jail standards that address the specific issues discussed in my testimony, as well as by enhancing the oversight role of the Commission on Jail Standards and by developing an office of the Jails Ombudsman. I stand ready to assist this Committee and the Commission on Jail Standards in any way that might be helpful.

¹⁶ Independent Ombudsman for the Texas Juvenile Justice Department, <http://www.tjjd.texas.gov/ombudsman/index.aspx>.