

April 14, 2023

SENT VIA ELECTRONIC MAIL TO:

Re: SB 1035/HB1708, HB1355, HB2950

Dear Members of the Texas House of Representatives/ Members of the Texas Senate

This letter, signed by 51 organizations, is in support of SB 1035, HB 1708, HB 1355, and HB 2950. For several sessions, advocates representing people held in TDCJ custody, people working in TDCJ facilities, and community members have spoken on the cruel, inhumane conditions experienced by everyone in TDCJ facilities. ***It is time to act.*** Every summer, thousands of people suffer in unbearably hot conditions, with suicide rates trending upward every summer, and we know that, just like last summer, people will die this summer without immediate action. This torture and these deaths are preventable, and the Texas legislature has the power to make meaningful changes and save lives.

Texas jails already adhere to the temperature standards proposed in the identified legislation. Under Texas Administrative Code § 260.154, all Texas county jails are to be maintained between 65 and 85 degrees Fahrenheit. The Texas prison system currently has the capacity to house 155,000 people, which leaves the potential of approximately **136,658 incarcerated citizens suffering without humane temperatures and an unknown number of officers and staff.** Both staff and people who are incarcerated have to endure inhumane, extreme heat during the Summer months, with temperatures ***routinely in the triple digits*** without adequate air-conditioning and ventilation.¹ Living and working in such extreme temperatures is detrimental to the physical and emotional well-being of staff and the people who are incarcerated and is also counterproductive to any rehabilitation efforts. As of April 2023, 70 out of TDCJ's 98 units, plus the two that are currently being utilized by Operation Lone Star units, are not fully air-conditioned. People who are incarcerated are "one of society's most disenfranchised minorities,"² and they are at the mercy of the environmental effects of TDCJ.³ The current heat policy in TDCJ is riddled with problems, is unsatisfactory, simply is not working, and still violates human rights. ***If correctional***

¹ See Comparative Climate Data for the United States Through 2015, NAT'L OCEANIC & ATMOSPHERIC ADMIN. RES., <https://www1.ncdc.noaa.gov/pub/data/ccd-data/CCD-2015.pdf> [<https://perma.cc/2BR9-ZB4T>] (showing selected Texas cities as experiencing over 20 days per month of temperatures over 90 degrees from June until August, while some areas in Texas experienced temperatures in the 90s from April through October in 2015); see also Linda Lam, The Triple-Digit Club: Here's How Often Your City Reaches 100 Degrees, WEATHER CHANNEL (June 7, 2017, 2:00 PM), <https://weather.com/news/climate/news/100-degreetemperatures-us-cities-average-most-records> [<https://perma.cc/4U89-938U>] (identifying Dallas, El Paso, Houston, and Brownsville as having experienced triple digit temperatures during summer months).

² *Cole v. Collier*, 2017 WL 3049540, at *1.

³ Brenna Helppie-Schmieder, Note, Toxic Confinement: Can the Eighth Amendment Protect Prisoners From Human-Made Environmental Health Hazards?, 110 NW. U. L. REV. 647, 661 (2016) ("Prisoners are uniquely vulnerable to the environmental conditions around them for the simple reason that they cannot choose where they live. Non prisoners can, and often do, modify their homes based on their environment. In hot climates, people can buy air conditioners and fans.").

departments fail to maintain humane temperatures within their facilities, they can expect to see an increase in heat-based litigation.

Current Legislative Progress

Although appropriations (HB1) includes language to pay for two phases of installation of air conditioning (approx 46 units). We believe that this is unsatisfactory, and **ALL units should be funded immediately!** If funding is not made available, then consideration should be given to facility closure.

Physical and Emotional Well-being

Excessive and prolonged high temperatures during Texas summers can have dangerous consequences and cause concern for those who face the heat.⁴ Texas, in particular, has experienced an increase in “prolonged excessively hot temperatures” over the course of recent decades.⁵ With documented temperatures within the prisons as high as 150 degrees. Exposure to high temperatures can cause a number of heat-related illnesses, ranging from mild ailments, such as heat cramps, to life-threatening heat strokes, which can result in death.⁶ We also note increases in suicide and aggression during the summer months. Texas governmental agencies are aware of and recognize the potential dangers of increasingly high temperatures and issue warnings to the public when daily temperatures reach triple digits.⁷ While the general population has the ability to take precautions to protect themselves against extremely high temperatures⁸, this is not an option for the staff and the people who are incarcerated in Texas prisons.⁹ Furthermore, the current situation is in violation of OSHA work standards which recommends that employers keep the thermostat between 68 and 78 degrees.

⁴ See Ali Stevens, Ready for Summer Heat? Study Finds New Primary Driver of Extreme Texas Heat Waves, NAT’L OCEANIC & ATMOSPHERIC ADMIN. RES. (June 28, 2018), <https://research.noaa.gov/article/ArtMID/587/ArticleID/2366/Ready-for-summer-heat-Studyfinds-new-primary-driver-of-extreme-Texas-heat-waves> [<https://perma.cc/WT5Q-Z7US>] (noting rising concerns in Texas where summer can be “dangerously hot”).

⁵ See *id.* (emphasizing the increased threat of dangerously hot temperatures as “heat waves have become more frequent in recent decades” in Texas).

⁶ See Scott Kinkade & Megan Warhol, Beat the Heat: Identification and Tx of Heat-Related Illness, 67 J. FAM. PRAC. 468, 468–69 (2018) (identifying heat cramps as a benign heat-related illness resulting from dehydration and loss of salt and recognizing heat stroke as “the most severe form of heat-related illness” resulting in “an inability to maintain a normal body temperature”).

⁷ See DPS Warns Texans of Safety Concerns in Summer Heat, TEX. DEP’T PUB. SAFETY (July 16, 2018), http://www.dps.texas.gov/director_staff/media_and_communications/pr/2018/07_16a [<https://perma.cc/CGZ9-CKNJ>] (“The Texas Department of Public Safety (DPS) is reminding Texans to take extra safety precautions as temperatures and heat indices continue to reach 100 degrees and above in many parts of the state.”).

⁸ See Tips for Preventing Heat-Related Illness, CTR FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/disasters/extremeheat/heattips.html> [<https://perma.cc/W5UZ-F3MM>] (recommending people without air conditioning in their homes go to public places with air conditioning to prevent heat-related illnesses).

⁹ See Jeff Edwards & Scott Medlock, Air Conditioning is a Human Right, TIME (July 21, 2016), <http://time.com/4405338/air-conditioning-human-right/> [<https://perma.cc/S8Q3-898W>] (reporting temperatures in the offender housing area of Hutchins State Jail “reached 102 degrees by early afternoon, and that the heat index inside was likely 123” degrees shortly before an offender died from a heat stroke).

Rehabilitation Efforts

The limited rehabilitative programs that TDCJ has are unit specific. We estimate that thousands of incarcerated individuals meet the criteria for having medical heat restrictions. With that said, there are too many incarcerated individuals at various units within the system to have them all move to one unit or even spread out to the 30 units within the system that do have air conditioning. Currently, some of those individuals are being forced into the few beds within restrictive housing areas, which has caused a loss of privileges, visitation, and oftentimes phone calls with loved ones. Those privileges have been found to be essential for resiliency, family relationships, and recidivism rates. Therefore, if an incarcerated individual cannot transfer to one of those particular units, then they are unable to participate in the rehabilitative programs, which may then impact their parole status.

Current Heat Policy

TDCJ's current heat directive policy is aimed at preventing heat-related injury. *It is simply not working.*

As researchers and advocates, we receive reports like: heat stroke, death, guards and incarcerated individuals passing out, being denied medical treatment or given inadequate treatment, denied access to respite areas, lack of water, and/or contaminated water. It is evident that the mitigating efforts which are provided to those incarcerated in housing areas are insufficient. Drinking water is regularly cited as an effective measure to mitigate heat-related injuries.¹⁰ However, drinking too much water also comes with its own health risks¹¹ as overconsumption of water can dilute electrolytes and salt within the body.¹² While it is the responsibility of TDCJ staff to provide ice to people who are incarcerated, some reports indicate that there are times when the ice contains dirt or other debris.¹³

"The water is not fit to drink; I have noticed fecal matter" Coffield Unit

"I have seen officers stick the water hose to the sewer drain and hook it up to our sinks" Connolly Unit

¹⁰ See Barbara K. Bailes & Kathleen Reeve, Prevention of Heat-Related Illness, 3 J. FOR NURSE PRAC. 161, 167 (2007) (listing "[d]rink[ing] water before, during, and after outdoor activities" as a tip to help prevent heat-related illnesses); see also Shakoor Hajat, et al., Health Effects of Hot Weather: From Awareness of Risk Factors to Effective Health Protection, 375 LANCET 856, 859 (2010) (ranking consumption of fluids as the third "[m]ost commonly provided heat-protection advice").

¹¹ Hajat et al., supra note 65, at 859 ("Replacement of water without sodium has been blamed for causing an imbalance in body electrolytes . . .").

¹² See Overhydration, HEALTH LINE, <https://www.healthline.com/health/overhydration#causes> [<https://perma.cc/45PQ-CXKY>] (listing muscle weakness, unconsciousness, seizures, and coma as possible side effects of low sodium levels due to overhydration).

¹³ UNIV. OF TEX. SCH. OF LAW, supra note 61, at 17 ("Ice, when it is provided, is sometimes filled with dirt and mosquitos . . .").

Providing large personal fans in areas with extreme heat is not recommended by the Centers for Disease Control and Prevention, as running fans do not prevent heat-related injuries when temperatures reach the mid 90's.¹⁴

"We might have fans, but it is hotter in our dorm than outside. Think hot box" Young Unit

"It feels as if I am getting slow cooked alive"

While taking frequent cool baths or showers is recommended to combat the effects of extreme heat, the court in *Cole*¹⁵ recognized "that cool-down showers are a less effective mitigating measure for preventing individuals from becoming overheated in the first place." Incarcerated individuals must ask a correctional officer for permission to access cool-down showers, and this request for a cool-down shower is not always granted.

"Cool down showers only offered to the people with heat restrictions everyone else was denied."

Additionally, the staff is suffering:

"Officer X (name withheld in this email) was taking 12:30 count at the Murray Unit, when he passed out from the heat. A full dorm of women witnessed this and heard his head hitting HARD like a bowling ball on the concrete floor. No officers witnessed this. The women started screaming and my daughter went to the door to get some other guards' attention. Now this could have been really bad, a whole dorm of unsupervised women and an unconscious guard. As poor Officer X was escorted off the dorm in a wheelchair, he was exhibiting seizure-like twitching movements. This should have been caught on camera between 12:30 and 13:05 on July 23rd, 2018."

Staff turnover rates rise in the summer. This staffing crisis has been a long-running issue and contributes to many of the failures of heat mitigation policies. This heat puts undue stress on officers creating an unhealthy work environment, taxes employees' mental and physical resources and lowers morale. Without proper staffing numbers, Texans inside and outside of the system are less safe.

This policy is also costly. Please refer to TPCA'S Cost Saving Report for a more in-depth analysis of the current cost of not providing humane temperatures within TDCJ.

Heat-based litigation

While air-conditioning may initially be expensive, in the long term, it would be cost saving. TDCJ is no stranger to costly heat-related litigation.¹⁶ Numerous lawsuits have cost taxpayers valuable dollars as a

¹⁴ Hajat et al., supra note 65, at 860 ("Electric fans should not be used because they increase the rate of dehydration."); see also *Climate Change and Extreme Heat: What You Can Do to Prepare*, CDC 15 (Oct. 2016) [hereinafter *Climate Change and Extreme Heat*], <https://www.cdc.gov/climateandhealth/pubs/extreme-heat-guidebook.pdf> [<https://perma.cc/3Y8X-FDAG>] (advising not to "[u]se an electric fan when the temperature is over 95°F").

¹⁵ *Cole*, 2017 WL 3049540, at *22.

¹⁶ See *Yates v. Collier*, 868 F.3d 354, 360 (5th Cir. 2017) ("TDCJ officials are, or have been, defendants in numerous other cases alleging Eighth Amendment violations based on excessive heat in prison."); see also *Blackmon v. Garza*, 484 F. App'x 866, 874 (5th Cir. 2012) (reversing the district court's decision to grant judgment as a matter of law

result of heat-related conditions and the deaths of incarcerated people¹⁷, as well as officers who were subjected to heat-related injuries.¹⁸ According to a recent report, in the last 11 years, Texas paid more than half a million dollars in worker's compensation to prison staff for heat-related illnesses and injuries. This money could have been better spent by providing air-conditioning in TDCJ facilities which will prevent future heat-related injuries and illnesses. By passing these bills, taxpayer money will no longer be wasted, and people will no longer suffer due to the extreme heat behind the walls of TDCJ. If Texas does not find a permanent remedy to improve the temperature conditions in TDCJ facilities by passing these bills, Texas will continue to waste taxpayer dollars defending inhumane temperature conditions and compensating those who have been injured.¹⁹ TPCA has provided a detailed report which outlines how tax dollars are wasted each year. A brief summary of this report includes the following: heat litigation costs are estimated to be \$12,021,500.00 with an additional 16 pending lawsuits with a potential payout of \$17,485,818.18. TDCJ paid out \$193,000 in medical expenses and temporary income benefits for filed worker's compensation benefits over 5 years. $\$193,000 \div 5 = \$38,600$ average per year.

In conclusion, as advocates of incarcerated people and their family members, we are united in deep concern about the torturous and inhumane conditions behind the walls of TDCJ due to the lack of adequate air-conditioning and ventilation. **Despite decades of deaths, a plethora of media reports, wrongful death lawsuits filed, academic reports, and complaints for family members and union officials, the conditions behind the walls of TDCJ remain unchanged, where staff and people have to endure extreme temperatures daily.** This travesty has gone on for too long and needs to be addressed now. We must do better for our incarcerated loved ones and neighbors. We call on you to do what is morally and humanely just by passing bills that would ensure that TDCJ facilities follow reasonable temperature standards and that incarcerated people and staff are not exposed to extreme heat conditions that threaten their lives at taxpayers' expense.



for TDCJ officers in a heat-related suit); see also *Martone v. Livingston*, No. 4:13-CV-3369, 2014 WL 3534696, at *17 (S.D. Tex. July 16, 2014) (allowing proceedings to continue for suit brought after a heat-related death in the TDCJ).

¹⁷ *Webb v. Livingston*, 618 F. App'x 201, 204 (5th Cir. 2015) ("This consolidated appeal arises from the heat-related deaths of five prisoners who died while housed in facilities operated by the Texas Department of Criminal Justice (TDCJ)."). Since 1998, a minimum of twenty-three men have lost their lives while incarcerated in the TDCJ because of excessive heat. *Cole v. Collier*, No. 4:14-CV1698, 2017 WL 3049540, at *1 (S.D. Tex. July 19, 2017).

¹⁸ See *Cole*, 2017 WL 3049540, at *1 (granting a preliminary injunction regarding offender claims of cruel and unusual punishment because of excessive heat in their housing areas).

¹⁹ DANIEL W. E. HOLT, HEAT IN US PRISONS AND JAILS 33 (2015), https://web.law.columbia.edu/sites/default/files/microsites/climate-change/holt_-_heat_in_us_prisons_and_jails.pdf

[<https://perma.cc/T7N7-E2CS>].



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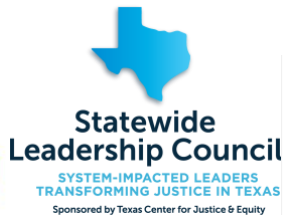


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