

INTERIM REPORT

to the 85th Texas Legislature



HOUSE COMMITTEE ON
CORRECTIONS



DECEMBER 2016



**HOUSE COMMITTEE ON CORRECTIONS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2016**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
85TH TEXAS LEGISLATURE**

**JIM MURPHY
CHAIRMAN**

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Committee On
Corrections

December 5, 2016

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Chairman

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The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Corrections of the Eighty-fourth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-fifth Legislature.

Respectfully submitted,


Jim Murphy

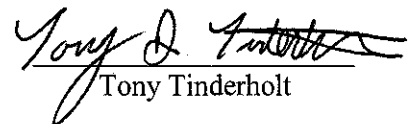

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INTRODUCTION

At the beginning of the 84th Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Corrections. The committee membership included the following: Jim Murphy, Chairman; James White, Vice Chair; Alma Allen, Mark J. Keough, Matt Krause, Leighton Schubert, and Tony Tinderholt.

The committee was given jurisdiction over all matters pertaining to:

- The incarceration and rehabilitation of convicted felons;
- The establishment and maintenance of programs that provide alternatives to incarceration; and
- The following state agencies: the Texas Department of Criminal Justice, the Special Prosecution Unit, the Board of Pardons and Paroles, the Office of Violent Sex Offender Management, and the Texas Correctional Office on Offenders with Medical or Mental Impairments.



INTERIM STUDY CHARGES

1. Examine fees and revocations for those on probation and parole; examine effectiveness of fees imposed as a condition of probation and parole; study technical revocations in adult probation to identify drivers of revocations, disparities across the state, and strategies for reducing technical revocations while ensuring program effectiveness and public safety. *(Joint charge with the House Committee on Criminal Jurisprudence)*
2. Study recidivism, its major causes, and existing programs designed to reduce recidivism, including a review of current programs utilized by the Texas Department of Criminal Justice (TDCJ) and the Windham School District for incarcerated persons. Examine re-entry programs and opportunities for offenders upon release. Identify successful programs in other jurisdictions and consider how they might be implemented in Texas.
3. Study incarceration rates for non-violent drug offenses and the cost to the state associated with those offenses. Identify alternatives to incarceration, including community supervision, that could be used to reduce incarceration rates of non-violent drug offenders.
4. Study inmate release policies of the Texas Department of Criminal Justice, including the release of inmates directly from administrative segregation. Identify best practices and policies for the transitioning of these various inmate populations from the prison to appropriate supervision in the community. Identify any needed legislative changes necessary to accomplish these goals.
5. Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:
 - a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
 - b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
 - c. determine whether an agency is operating in a transparent and efficient manner; and
 - d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.



The State of Criminal Justice

"The fact that these reforms began in Texas is a unique advantage. 'You can't go into the state legislatures and say "Hey, they did this in Vermont!" and everybody would go "oh, jeeze, they'd do anything in Vermont!" But in Texas, they go "Oh, they're serious about crime in Texas and they're not weenies. They did this, it works, wow, OK."'"¹

"Everyone said, 'How can Texas do that kind of stuff?' and lo and behold, many, many states have followed."²

Texas as a Leader

Not many inside the state are aware of this fact, but outside of the state's borders, Texas is considered a leader in criminal justice reform.

In 2007, it was projected that Texas would need to come up with 17,000 new prison beds at a cost of \$2 billion to keep up with the influx of new residents. Instead, \$241 million was invested to expand in-prison and community-based treatment and diversion programs.³

By investing that \$241 million, the state saved \$443 million, which allowed increased funding in other areas to help reduce crime and recidivism.

Texas now uses risk-assessment and better probation procedures to divert large numbers of nonviolent offenders away from the prison system, keeping them away from hard-core criminals. It requires strict implementation of victim-restitution measures, while offering alternatives to prison such as civil sanctions, drug courts and drug-abuse and mental health treatment. It also offers rehabilitation programs like job training for those in prison to prepare them to re-enter society. And Texas has invested heavily in reducing the caseloads of parole and probation officers so the state can keep better track of the people it supervises and help them move in a new direction.⁴

And even though the state's population continues to grow at a dramatic rate, the crime rate has fallen dramatically. Even recidivism is down, from 28 percent before the reforms took effect to 21.4 percent for offenders released in fiscal year 2011 (the latest year for which numbers are available). To look at it another way, that means that of those offenders released in fiscal year 2011, 78.6 percent of them did NOT return to prison. Three prisons have been shut down in the last three years.

People are starting to notice. In the past few years, representatives of the Australia Northern Territory Department of Correctional Services toured several units to observe the daily operations of each facility; staff of the California Department of Corrections toured several units to observe general operations, contraband detection, unit programs and security; a delegation from the United Kingdom toured the Kyle unit to learn more about the In-Prison Therapeutic Community Program; and a group of elected officials and correctional staff from Wisconsin visited the Darrington unit to observe the Seminary program.⁵

84th Legislation

Last session, legislators addressed blue warrants, which are orders issued by the Parole Division of the Texas Department of Criminal Justice to individuals on parole or under mandatory supervision who are accused of violating the terms of their release or committing a new crime. In the past, these individuals are then incarcerated in a county jail until a hearing was held to decide whether to revoke them to prison or release them back to the community, even when the violation was minor, and did not pose a threat to public safety.

This resulted in substantial costs for the counties that incarcerated the violators, as well as the offenders who were being kept away from home and work. And in the end, over half of the violators were released back into the community after a hearing.

HB 710 allowed low-risk offenders to remain at home while awaiting the decision of the Board of Pardons and Paroles, saving counties millions of dollars, and allowing those offenders to continue to work and provide for their families.⁶

HB 1546 streamlined the process involved in awarding diligent participation credits to those participating in education, vocational, treatment, or work programs in state jails by authorizing TDCJ to automatically grant credits in certain circumstances. Doing so now allows credit to be applied as soon as it is earned, which provides an ongoing incentive to participate in rehabilitative programs throughout the duration of the sentence while allowing the state to conserve judicial resources.⁷

SB 1024 authorized the Windham School District to award high school diplomas instead of just the GEDs they had been allowed to issue in the past. This fits with Windham's goal to reduce recidivism and increase the success of former inmates in obtaining and maintaining employment.⁸

There is, as always, more to be done.

The Challenges

*"Challenges are what make life interesting; overcoming them is what makes life meaningful."*⁹

*"Into the woods you go again; you have to, every now and then."*¹⁰

When dealing with human beings, there will always be challenges. There will never be a time to sit back and feel that everything possible has been accomplished. Continuing issues include mentally ill offenders, elderly inmates with expensive medical needs, and the costs of probation that can be unduly harsh to the poor.

As Texas tries to move away from a severe punishment model to one that sees individuals with individual problems, the state will have to decide how to deal with those problems. Lawmakers are already considering changes to foster care and child protective services. In the arena of criminal justice, sentencing guidelines will most likely be examined, and tweaked. Additional substance abuse assistance for those who request it will probably be considered. If done right, these are changes that could make a huge difference on the front end.

The Texas Department of Criminal Justice, however, deals with fallout, the back end. And those needs are no less deserving. If an inmate can be taught to be a better mother or father, can be helped to land a job, can learn new ways of thinking from what they have always known, the

results will benefit all of us, including those on the front end. Any of TDCJ's efforts towards those goals that have shown promise should continue to be funded. And strengthened.

Unfortunately, the next legislature will face funding issues. Most agencies have been asked to submit a Legislative Appropriations Request with 4% fewer funds. As TDCJ cannot cut back on the security and public safety components of their mission, it is likely that many of the programs that are making a real difference will face the axe.

Individuals and their problems are exhausting. It's easier to address "the homeless problem" rather than "John, the homeless man who hangs out on 15th Street." But Texas criminal justice is better for the fact that lawmakers chose to see the individuals with specific needs.

The state that leads the nation in executions also leads the nation in providing alternatives to incarceration. An American state that used to be infamous for its "lock 'em up and throw away the key" approach to crime is now providing an unlikely inspiration to other states and countries.¹¹

Texas is a leader by being "softer on crime," although we prefer the word "smarter." It's something to think about as we head into the next legislative session.



Fees and Revocations

Interim Charge #1: Examine fees and revocations for those on probation and parole; examine effectiveness of fees imposed as a condition of probation and parole; study technical revocations in adult probation to identify drivers of revocations, disparities across the state, and strategies for reducing technical revocations while ensuring program effectiveness and public safety. (Joint charge with the House Committee on Criminal Jurisprudence)

The committee met jointly with the House Committee on Criminal Jurisprudence on May 17, 2016. Invited testimony included:

Carey Welebob, Director, TDCJ Community Justice Assistance Division
Federico Rangel, Huntsville Member, Texas Board of Pardons and Paroles
Laurie Molina, Manager, Criminal Justice Data Analysis, Legislative Budget Board
Angela Isaack, Manager, Public Safety & Criminal Justice Team, Legislative Budget Board
George Purcell, Applied Research & Performance Audit Team, Legislative Budget Board
Douglas Smith, Policy Analyst, Texas Criminal Justice Coalition
Javed Sayed, Director, Dallas County Community Supervision and Correction Division
Arnold Patrick, Director, Hidalgo County Community Supervision and Correction Division
Roxane Marek, Director, Matagorda County Community Supervision and Correction Division
Leighton Iles, Director, Tarrant County Community Supervision and Correction Division
William Shull, Director, Nueces County Community Supervision and Correction Division
Rick Magnis, Dallas County District Court Judge
Tina Yoo Clinton, Dallas County Criminal Court Judge

Fees

*"Probation fees are very important to the whole stability of the system. But it's not something we focus on to the detriment of the individual probationer."*¹²

*"It might be, from all the years in law enforcement that I've had, that some of the conditions and things that are imposed on them are just so restrictive that they have actually become a part of the system that we just can't kick them out of."*¹³

There are always bills to pay. Most of us deal with bills for housing, utilities and vehicles--the costs that are a part of life. We grouse about it, we can't believe how much the basic necessities of life cost. But we pay. We have jobs, and obligations, and those who depend on us, and we pay. We may have some tough months, but we make it through somehow.

To be poor in this country means that your life will be more of a struggle. You may have to juggle bills, or choose between air conditioning and food.

For those who have been involved in the criminal justice system, there is an added layer of financial obligation, and bad choices can result in a really thick layer. And those without financial resources feel the pain more than others.

Comparisons

What's the difference between parole and probation?

To be on parole means that you have served a sentence in prison, and you have been released on supervision. During that time of supervision, you will pay a fee of approximately \$18 per month.

To be on probation means that for whatever offense you have committed, you are not going to prison. Instead, you will be under supervision for a period of time.

In 2014:

- 6.5% of offenders on active parole supervision were revoked (5,629 out of 87,029)
- 4,506 of those offenders (80%) were returned to prison for a new offense.
- 15.6% of offenders on probation were revoked (25,090 out of 160,628)
- 50.7% of those offenders (12,720) were revoked due to committing a new offense.¹⁴

There have been many theories as to why the rate of those whose parole is revoked is so much lower than those whose probation is revoked, but more importantly, the two statistics shouldn't be compared. When you put someone on probation, you are giving them a second chance. And second chances don't always mean clear sailing.

It may not be prison, but life isn't easy on probation.

Life on Probation

"Of course, they shouldn't have done anything wrong to get into that predicament, but humans do. We do. We do things wrong."¹⁵

There are two types of supervision: direct and indirect. Offenders are under direct supervision if they are legally on community supervision, work or reside in the jurisdiction in which they are supervised, and receive a minimum of one face-to-face contact with a community supervision officer every three months. Local Community Supervision and Correction Departments (CSCDs) may maintain direct supervision of offenders living and/or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions. In April of 2016, there were 243,062 on direct supervision status.

Offenders are classified as indirect when they do not meet these requirements--so, an example of someone on "indirect" status would be an absconder, someone who reports by mail, someone serving time in an onsite treatment program, or someone in jail in another jurisdiction.¹⁶

If someone is on probation, there will be a lot of fees. First, a probationer pays up to \$60 a month for supervision. Depending on the crime, there will be program fees for drug education or domestic violence classes. If substance abuse is involved, there will be costs for random urinalysis tests, and perhaps an ignition interlock (for DWI cases). If you have lost your license, which happens with any drug conviction, you will have to take a class to renew that license. Once the class is completed, you will need to go to the Department of Public Safety and pay between \$125 and \$325 to get your license back.

Grant Funding

The state provides \$310 million per year for the 122 probation departments that cover 254 counties. Of that \$310 million, \$142 million is grant funding, which is offered by the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice to establish treatment programs and specialized caseloads.

The grant funding is a competitive process. Some of it is need based, consideration is also taken for the specific needs of the individual CSCDs. For instance, a CSCD may have a heavy population of sex offenders to manage, and needs additional resources to do so successfully. CJAD requires regular reporting and rigorous standards, and a funding stream that is not being successfully utilized can be diverted to another CSCD.

These grants can help lessen the cost for the probationer, but not every CSCD receives grant funding. So your cost can depend on where you live, or where you were arrested.

Restitution

If a victim is involved, the probationer will be required to pay restitution. Several community supervision officers testified that they often put restitution as a higher priority than their own fees. And while community service can be an option to paying many fees, it cannot take the place of restitution.

And if there is no victim, other fees will apply. Those who don't pay restitution can expect to pay \$100 into a victims of crime fund, and a crime stoppers fee of about \$50.

Court Costs and Fees

In addition to the aforementioned restitution and probation fees, a probationer will probably also incur court costs and attorney fees. Although these are one-time fees, they can be paid off on a monthly basis.

The 83rd Legislature directed the Office of Court Administration to study the necessity of certain court costs and fees in the state. The report outlined several troubling trends.¹⁷

Many of the court fees and costs, whether deposited at the state or local level, are not dedicated fees and are simply deposited in the general fund of the state or local government. They are then appropriated at the discretion of the funding body.

Some of these court fees and costs are used to fund programs outside of and unrelated to the judiciary. Meanwhile, court fees and costs are generally insufficient to cover the cost of funding the judiciary at the local government level, with expenditures for the judiciary oftentimes far surpassing collected revenues for court fees and costs.

There are hundreds of these fees, with a few dozen of them ending up in state coffers. A few of the notable:

- DNA Testing Court Cost-Convictions: Up to \$250 for felony sexual assault offenses. 90% of the money goes to the state. Once in the state coffers, 65% goes to the Criminal Justice Planning Account in the General Revenue Fund, and 35% goes to the State Highway Fund. There is no stated statutory purpose for this cost.
- Consolidated Court Cost: Up to \$133 for felonies, \$83 for misdemeanors, \$40 for non-jailable misdemeanor offenses. Ninety percent of collected funding goes to the state for 14 purposes, including; crime stoppers assistance, abused children's counseling, law enforcement and custodial officer supplemental retirement fund, judicial and court personnel training fund, and emergency radio infrastructure account.
- Administrative Fee--failure to appear: A \$30 fee, of which \$20 goes to the state. Of that \$20, \$10 goes to the Department of Public Safety to implement the part of the Transportation Code outlining the procedure for DPS to deny the renewal of a driver's license for the person who has failed to appear. The other \$10 goes to general revenue, with no stated purpose.
- Bail Bond Cost Paid by Surety: \$15 by each surety posting the bail bond, the cost cannot exceed \$30 for all ponds posted at that time for the individual. Of the 90% remitted to the state, 1/3 goes to the Fair Defense Account, and 2/3 goes to provide salary supplements for assistant prosecutors.

There are fees for records management, for juries, for judicial support, for court security, and for indigent defense. Pages and pages of fees. It boggles the mind to read it. Think of what it must be like to live it.

Reform Attempts

In January of 2013, the Legislative Budget Board recommended consolidation of state criminal court costs to reduce complexity and clarify offender obligations.¹⁸ The report noted that the state had implemented partial consolidations of state court costs in fiscal years 1997 and 2004, but additional separate court costs and fees had been authorized since that time.

The LBB recommended that the statutes be amended to consolidate all state criminal court costs and fees into one assessment per offense class for ordinance violations, Class C misdemeanors, Class A/B misdemeanors, and felonies. Further recommendations included authorizing a cost of living indexing feature to be added to the state consolidated court costs, and to consolidate all state and local criminal court costs and fees into one statutory code.

In response, HB 2890 was filed. It received a hearing, but progressed no further through the legislative process.

Ability to Pay

Ability to pay these fees often isn't determined until later in the process. When a judge sentences a person to probation, and assesses fees and costs, he or she often has no idea if that person can actually pay. That is often left to the CSCDs, whose officers help the probationer draw up a budget to help them manage their obligations.

There is also nothing in the criminal code to define "indigent." The Transportation Code, however, has a definition of indigent to determine who can pay driver responsibility fines that could prove useful.

Section 708.158 of the Transportation Code states that the department shall waive all surcharges assessed under the Driver Responsibility Program for a person who is indigent. The following documentation may be used as proof:

- A copy of the person's most recent federal income tax return that shows that the person's income or the person's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines;
- A copy of the person's most recent statement of wages that shows that the person's income or the person's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; or
- Documentation from a federal agency, state agency, or school district that indicates that the person or, if the person is a dependent as defined by Section 152, Internal Revenue Code of 1986, the taxpayer claiming the person as a dependent, receives assistance from the food stamp program, the federal special supplemental nutrition program for women, infants, and children, a medical assistance program, a child health plan program, or the national free or reduced-price lunch program.

In an era when you can find out your credit score for free on the internet, would it be that difficult to determine if a person is indigent prior to appearing before a judge?

According to a report from the Texas Office of Court Administration,¹⁹ information about financial resources and obligations of an individual does not travel with them as they move through the system, to probation, to prison, to parole, or back to the court when the person recidivates, and the information is not updated. Decisions that involve the individual's ability to pay, and the collection of payments, would be dramatically advanced by the state's ability to sustain this flow of information.

Collection Agents

*"Attention has turned to a fault line in the adult probation world. The crack is that probation officers across Texas are required to serve as bill collectors more than rehabilitators."*²⁰

*"Please know that smaller departments are affected differently than larger departments. Some jurisdictions have great collection rates, others don't. Some counties are poverty stricken, while others enjoy a better way of life. There isn't going to be a one fix-all solution."*²¹

Once fines, court costs, restitution, etc., have been decided for a person on probation, it becomes the duty of the community supervision officers to collect. During testimony before the committee, it became apparent that while acknowledging the necessity of collection, it was also a part of the job that is disliked by these officers. Most officers would rather spend their time actually assisting the individual--helping them draw up a budget that showed the probationer how fees could be paid instead of hammering them for money.

The state provides \$1.63 per person per day for basic felony supervision, and only \$.70 per person per day for no more than six months of misdemeanor probation.²² Obviously, this amount of money sustains very little programming or supervision, which means that probation fees are necessary for supervisory costs. Statewide, probation fees comprise approximately 33% of the local probation department's budgets. Departments' fees can comprise as high as 60% of their budget, or as low as 30%.²³

Some departments are based in poverty stricken areas, meaning that the rate of collection will be very low. Many departments waive the fees. One CSCD reported a collection of \$3.5 million in fees one year. However, in the same year, the same CSCD waived, modified, or closed cases owing \$2.4 million in supervision fees.²⁴

But the money must be found somewhere. If CSCDs only relied on the amount of money provided by the state, staff would be reduced, and caseload sizes would increase dramatically, resulting in loss of effective supervision. To replace the fees, the state would have to come up with about \$158 million a year, an unlikely scenario.

So those who do the supervising have to collect the fees to pay their own salaries. This is one of those situations where if you do a gut check, you come away feeling uncomfortable.

Probation Violations

There are two types of violations that could result in probation being revoked. The first way is to commit a new offense. The second is to commit a technical violation.

Technical violations can mean that the probationer has failed to report to his probation officer, that he has failed a urinalysis, or hasn't attended a required treatment program. The definition, in fact, includes any violation other than the commitment of a new offense.

Testimony before the committee indicated that CSCDs rarely recommend revocation for failure to pay fees. Instead, when a person is revoked, the judge asks for a list of all violations. That list invariably includes "failure to pay." But it is not the sole reason for revocations.

In fact, the Texas Code of Criminal Procedure states that the court may not revoke the community supervision of a defendant for failure to pay fees.²⁵ The burden is on the state to prove that the defendant can pay. But the pressure is always there to collect those fees. And whether or not a probationer has been told he can't be sent to jail merely for not paying, the fact that he is behind in payments increases the tension.

Living without Resources

Although it may seem simple: pay your fees, attend your programs, etc., real life isn't that way. And for those who lack life skills, real life is challenging in a way that it isn't for those of us who have resources.

And most of us are still living precariously. An Associated Press Poll indicates that three-quarters of people in households making less than \$50,000 a year and two-thirds of those making between \$50,000 and \$100,000 would have difficulty coming up with \$1,000 to cover an unexpected bill.²⁶ And being arrested would definitely qualify as unexpected.

If someone has been convicted of a minor drug offense (less than a gram of a controlled substance that is not marijuana), there are a number of studies that indicate he or she is likely unemployed and experiencing deficiencies in educational attainment. He or she probably has substance abuse and mental health issues, and could be homeless. One-third of these minor drug offenders are under the age of 25, experiencing all that one might experience in terms of low impulse control and developmental factors.²⁷

If you have resources, you probably take them for granted. These include access to cash, or parents who can help you out with a loan; trusted friends who can give you good advice or a ride when you need one; a permanent home. You have a job, you are educated. These things help to keep you out of trouble.

If a person without these types of resources is ordered to attend a DWI program, but has no one to drive him to the program (because license revocation is part of DWI), then there are parts of the state where there are only two choices: drive to the program without a license, or forgo the program. Either one is reason to have probation revoked. Situations like this can be discussed and dealt with by a probation officer, who is likely to NOT revoke your probation on this technical violation. After all, life happens.

But conversations like this are stressful. And standing before a judge is scary. So those without the skills to maneuver the stress see only one option: avoid the problem. Don't show up for scheduled meetings. Unfortunately, that's called absconding, and when the probationer is finally located, he or she will be in a lot more trouble than before.

The Hard Choices

*"I want to start with the premise that most humans take the path of least resistance. And criminal defendants are very human."*²⁸

*"People in jail understand that if they sign up to do probation, there's going to be a lot that is asked of them. And they don't want to put their life on a payment plan with the state. So they choose to do the quick and fast way rather than having their lives disrupted several more times."*²⁹

Most of us, if faced with a choice between probation and jail time, would choose probation, and avoid "being on paper." If you want a chance to continue in life with a clean record, probation is the easy choice.

If you are someone who can't afford probation for a year or so, can't see how you can make it to parenting classes, and want to put this problem behind you as quickly as possible, you choose jail time, which could be only a few months. Especially if you have been charged with a misdemeanor and can simply plea to your time served. And when you are out, you are done. No supervision, no classes, no fees. It's the quick, short-term solution. But it's a short-term solution that will repeat itself over and over for long-term consequences.

Many of those in state jail have a substance abuse problem. And the average time served in state jail is ten months. This is often not nearly long enough to complete any sort of substance abuse programming that may be offered. When you get out, you will not be under supervision. But it is 62% likely that you will be re-arrested.³⁰ And you will choose to serve out your term in state jail again.

A criminal record stays with you forever. And access to employment, housing, and some benefits will always be a problem. But because those who are poor and have no resources choose jail time, we've inadvertently created a modern day debtors' prison.

Debtors' Prison

From the late 1600s to the early 1800s, imprisonment for indebtedness was commonplace. Many cities and states operated actual "debtors' prisons," brick-and-mortar facilities that were designed explicitly and exclusively for jailing negligent borrowers.³¹ In many jurisdictions, debtors were not freed until they acquired outside funds to pay what they owed, or else worked off the debt through years of penal labor. Congress abolished the practice in 1833.

Are people being jailed for failure to pay? Although most CSCDs testified they had rarely seen it happen, others say that it does happen. And where it appears to be happening a lot is at the city level, for failure to pay fines such as parking tickets. While speaking at the University of Texas earlier this year, Vanita Gupta, the Justice Department's top civil rights prosecutor, said excessive jailing over municipal fines has been a persistent problem in many of the nation's 6,500 municipal courts.³² Municipalities can, and will, jail those who cannot pay. And while paying fines is difficult, it's impossible to pay them while locked up.

Perceptions

*"Jurisdictions across the United States typically base monetary sanctions on offense type. .the same \$10,000 fine could be a slap on the wrist for a rich man, but a harsh sentence for a poor one."*³³

Failure to pay isn't limited to the probation system or the municipal courts. Texas county jails currently detain 40,300 inmates who are awaiting trial, representing over 62% of the entire jail population of the state.³⁴ The decision about who is released and who is detained before trial is determined primarily by a person's financial resources rather than his or her risk to public safety or likelihood to return to court. The National Association of Counties has found that 60% of the confined population presents a low risk of pretrial misconduct.

These kind of statistics add to the consensus that being imprisoned for lack of resources is the same thing as making poverty a crime. And although municipal courts and pre-trial detainees weren't officially part of this committee's charge, it is worth mentioning as part of an overall trend. And that trend also contributes to overcrowding county jails, which is mistakenly seen as being caused by state policies.

Many municipalities are re-examining their policies, however. San Antonio is focusing on helping residents resolve their fees, giving them the opportunity to work out a payment plan without the fear of arrest. And residents can now meet with municipal judges at kiosks in grocery stores throughout the city.³⁵

Diversions from Prison

Parole revocations decreased dramatically years ago, when the Board of Pardons and Paroles was given additional treatment options prior to parole placement, and additional resources to divert parole violators to treatment or Intermediate Sanction Facilities, resources that are also available for probation violation.³⁶ The result was a 55 percent reduction in parole revocations over the past 10 years, and a 47 percent reduction in technical violations.³⁷ Parole, with the exception of the \$18 monthly fee paid by parolees, is mainly funded by the state. Probation is not.

The legislature does appropriate some funding to the Texas Department of Criminal Justice's Community Justice Assistance Division (CJAD) to help probation departments perform their functions. For the most part, that funding has increased over the past seven years, primarily for additional diversion programs.³⁸ In return for the additional funding, local Community Supervision and Correction Departments (CSCDs) have been asked to keep more people in the community, and send fewer people to prison, including fewer revocations.

Funding from CJAD is based on a variety of factors, including the need of the departments, their use of best practices programming, and prior performance. Many counties have used this money to good effect. There just needs to be more of it.

These programs are important, because the laws passed during previous sessions stipulated that probation could only last for a certain number of years. Many of the medium and low risk offenders are now out of the system, leaving a higher-risk, higher-need population. This population needs more resources to ensure they will stay out of prison. A sex offender requires

more monitoring than a shoplifter. And taxpayers should care about providing these resources, because incarceration costs a lot more than probation.

Getting Ahead of the Problem

Although the state provides funding for probation, it's only a percentage of what probation actually costs, especially in light of a population with higher needs. Fees make up the rest, and losing the fees altogether would crash the system. Someone has to pay. And law-abiding taxpayers, while willing to chip in, would probably (justifiably) think they shouldn't pick up the entire tab.

But funding on the front end, before a person becomes seriously involved with the criminal justice system, could pay off for all of us.

If a person charged with a crime could be appropriately assessed before entering the system, and a determination could be made what this person actually needed to improve his or her life, we would all be better off. Appropriate programming for substance abuse, parenting, financial literacy, anger management and cognitive skills build communities; make them stronger.

There are risk assessment tools available to help judges decide which defendants to detain prior to trial. Early indications have shown that the Public Safety Assessment, developed by the Laura and John Arnold Foundation (LJAF), has helped judges increase public safety while reducing jail populations. Arizona, Kentucky and New Jersey have adopted the program, which provides reliable, predictive information about the risk that a defendant released before trial will engage in violence, commit a new crime, or fail to return to court.³⁹ The tool was developed using a large, diverse set of pretrial records--1.5 million cases from approximately 300 jurisdictions across the United States. LJAF plans to make the Public Safety Assessment free to every interested city, county, and state within the next few years.

Four states--Wisconsin, Illinois, Kentucky and Oregon--have eliminated for-profit bail and implemented validated risk assessments as a component of their pre-trial services. Kentucky passed legislation in 2013 to create a presumption of release for low and moderate risk defendants and requiring judges to justify in writing any decision to set financial bond on such a defendant. As the risk level of the defendant increases, courts require more supervision conditions like GPS monitoring and drug testing.⁴⁰ An assessment of Kentucky after pretrial reform showed that 70% of defendants, half of them high risk, were released while their cases were pending, without any decrease in public safety. Of those who were released, 90% made all their court appearances.

Counties are funded mainly by property taxes. And one of the most expensive parts of county government is jail. If someone is arrested and waiting trial, and they cannot make bond, they are awaiting trial in the county jail. If funding was available on the front end, before trial, it's not just the state that would ultimately save money.

Just a few years ago, Texas decided to spend money up front to divert people from prison, rather than build more prisons. That investment saved the state hundreds of millions of dollars. That same type of investment on pre-trial diversions (discussed more fully on page 55) could do the same today.

Recommendations

"Probation officers across the state I think would be happy not to collect any fees, and just concentrate on the issues that brought the offender before them in the first place. However, it's not realistic to think that the state of Texas could pick up such a tab."⁴¹

Perhaps it is time to think of probation as a payment plan. If you have been given probation for one year, fulfill all of your obligations such as classes and restitution, and discharge six months ahead of time, that's great. However, you should still owe six months of probation fees. Conversely, no one should be kept on probation merely because they still owe restitution. If one year of probation is up, and restitution is still owed, then a payment plan should be set up for the restitution. And since that person is no longer on probation, CSCDs should no longer be collecting that restitution.

During testimony heard by the joint committee, it became clear that many of those convicted of a DWI face uneven sanctions. If someone convicted of a homicide goes on probation for ten years, that person can be removed from probation after a few years if they do not get into further trouble. Not so for DWIs. It makes no sense to keep a DWI on probation if they attend classes, quit drinking, and go several years without further incident.

A federal program mandates automatic suspension of a driver's license for any drug conviction, including a small amount of marijuana. Getting a license back can cost a lot of money, and Texas has the ability to opt out of the federal program. The state should do so.

The fee system for probation should not be done away with entirely. In fact, the upcoming session promises to be a difficult one, with agencies encouraged to start looking at possible budget reductions now. Fees have a place in probation, as those who pay for a program are more likely to attend that program. However, when jail time is chosen over probation, the fees are too burdensome. For that reason, the state should start to assume more of this cost, which would likely be less expensive than paying for unnecessary incarceration.

The state should consider allowing a CSCD to receive full state share of misdemeanor probation, but allow for non-report for minor offenses. Consideration should also be given to a system where those charged with Class B misdemeanors complete a class or perform community service rather than complete the full term of probation. This would allow CSCDs to dedicate their time and energies to people with a more intensive level of need.

Pre-trial detainees who cannot afford bail are, in essence, serving time for being poor. While bail is an accepted and necessary part of the trial system, those who are indigent and accused of minor offenses should be allowed to wait for their trial at home. The state of Kentucky has moved to a risk-based system to assess who is best-suited for release to await trial. A federal study has shown that the court system's method for helping judges determine whether to grant pretrial release is a proven success. The study by the JFA Institute in Washington found that Kentucky has a high pretrial release rate of 74 percent, with low rates of rearrest and failure to appear in court among individuals who were granted pretrial release.⁴²

Absconding is a probation violation, but it is usually the result of a technical violation. If someone knows they will be unable to pass their urinalysis (a technical violation), they often run away (a serious violation). A system of swift and certain sanctions could help solve this

problem. If a probationer knows what the result of being unable to pass their urinalysis will be (a weekend in jail, perhaps), they will be more likely not to run. Texas should encourage the use of this model. Hawaii's HOPE program, discussed more thoroughly in the section on recidivism, would be a good place to start.

HB 2890, an attempt to consolidate court costs and fees in 2013, should get another look. Consolidation would help eliminate confusion for all parties involved.

There are many reforms that could be studied, such as pre-trial resources and graduated sanctions, which are valuable and work well. But in the end, it's all about the money, and until the state bears a greater burden of the costs of rehabilitating people, real reform will be difficult.



Recidivism

Interim Charge #2: Study recidivism, its major causes, and existing programs designed to reduce recidivism, including a review of current programs utilized by the Texas Department of Criminal Justice (TDCJ) and the Windham School District for incarcerated persons. Examine reentry programs and opportunities for offenders upon release. Identify successful programs in other jurisdictions and consider how they might be implemented in Texas.

The committee met on February 10, 2016, to consider Charge #2. Invited testimony included:

Katasia Jordan, Analyst, Criminal Justice Data Analysis, Legislative Budget Board
Bryan Collier, Deputy Executive Director, Texas Department of Criminal Justice
David G. Gutierrez, Presiding Officer, Texas Board of Pardons and Paroles
Dr. Clint Carpenter, Superintendent of Windham School District
Bert Smith, CEO, Prison Entrepreneurship Program
Traci Berry, Senior Vice President for Education and Community Engagement, Goodwill
Christina Melton Crain, Esq., President and CEO, Unlocking Door Reentry Network
Gregory S. Glod, Esq., Policy Analyst, Center for Effective Justice, Texas Public Policy Foundation
Douglas Smith, MSSW, Policy Analyst, Texas Criminal Justice Coalition
Tom Jackson, CEO, Edison Learning

Recidivism

*"I don't think we sell hope enough."*⁴³

*"Teach a child to choose the right path, and when he is older, he will remain upon it."*⁴⁴

*"We have a re-entry problem in this state."*⁴⁵

The Numbers

For analysis purposes, the Legislative Budget Board defines recidivism as a return to criminal activity after previous criminal involvement. Offenders released from prison in fiscal year 2011 had a rearrest rate of 46.5 percent, and a reincarceration rate of 21.4 percent within a three-year period.⁴⁶

In 2006, the Board of Pardons and Paroles revoked over ten thousand offenders. In fiscal year 2015, that number was reduced to about 5500.⁴⁷ This is a good number. It shows that many policies are beginning to bear fruit. To continue to reduce the recidivism numbers, we need to examine why it is so difficult to re-enter society.

Don't Come Back

It's what everyone wants, for an offender to leave prison and make it in the outside world. No one wants this more than the offender. But there are barriers. Some are put there by law, such as the inability to obtain certain licenses, and the right of a landlord to refuse housing. Some are due to circumstances, such as poverty, family support and peer groups. Substance abuse and lack of job skills also play a major role, as well as the increasing difficulty of obtaining middle class status. All of these circumstances must be addressed before success can be realized.

It's a Brave New (Scary) World

*"Here we must run as fast as we can, just to stay in place. And if you wish to go anywhere you must run twice as fast as that."*⁴⁸

By many accounts, the 21st century American middle class appears to be struggling.

Households headed by people aged 30 through 44 are more likely to be lower income--and less likely to be middle income--than in 2000. Our demographics are changing, our opportunities are diversifying, and job opportunities have relocated to other parts of the country.

Education matters more than it used to. In the 1970's, high school graduates who did not have a four-year college degree were well represented among the middle and upper class. They are no longer.⁴⁹

In 2014, the median income of middle income households was 4% less than in 2000. And due to the housing market crisis and Great Recession, their median wealth (assets minus debts) fell by 28% from 2001 to 2013.⁵⁰ Roughly one in three people born into middle-class households, those between the 30th and 70th percentiles of income, now have fallen out of that status as adults.⁵¹

After-tax middle incomes in Canada--substantially behind in 2000--now appear to be higher than in the United States. The poor in much of Europe earn more than poor Americans.⁵² This does not take into account the many programs formulated by the United States to assist those who are impoverished.

Meanwhile, to be fair, other studies suggest that the middle class is shrinking because many are being lifted upward, into the upper classes. But for those who are not being lifted, it seems that the United States is not the place for opportunity any more.

Bewildered Americans, who were told since childhood that all they had to do to live the American dream was to work hard, are finding that hard work, when they can get it, isn't enough. Nor is a college degree, once thought to be the gold standard of a successful life. Increasingly, what kind of college degree is what really matters. And even then, there are no guarantees.

Into this world, we drop those who have been incarcerated. And we expect them to make their way in an alien landscape that we ourselves find difficult to navigate.

Skills and Education

In 2004, approximately 36 percent of individuals in state prisons had attained less than a high school education compared with 19 percent of the general U.S. population age 16 and over. In addition, offenders often lack vocational skills and a steady history of employment, which is a significant challenge for individuals returning from prison to local communities.⁵³

To add another layer of complication, many offenders (and many of us on the outside) lack the thinking skills that will be needed in the future. These include:

- The ability to determine the deeper meaning or significance of what is being expressed.
- Proficiency at thinking and coming up with solutions and responses beyond that which is rote or rule-based.
- The ability to discriminate and filter information for importance.⁵⁴

The elusive "soft skills" must also be taken into account. Hard to explain, but you know them when you don't see them. The ability to shake hands properly, chat with a customer, show up to your place of employment every day ready to work.

Remember the book or movie where the hero was educated, clever, up on all the current events, knew just what to wear and what to say, and could escape from a tight spot using only his wits and a butter knife? Now we all have to be that hero just to survive.

Off-Limits Licensing

And if you do have skills, you may not be able to use them. Many licenses are off limits to ex-offenders. The Texas State Law Library has a website that details some of these restrictions.⁵⁵ Job restrictions on convicted felons in Texas extend to bingo operators, dog trainers, geoscientists, house manufacturers, combative sports referees, contact lens dispensers,

occupational therapists, locksmiths, sign language interpreters, and dozens more. (See Appendix 1 on page 37).

It might make some sense to ban offenders from serving as jailers or polygraph examiners. But midwives? Interior designers? Land surveyors?

If we are to increase opportunities for ex-offenders, we need to loosen some of these restrictions. Auctioneers, towing operators and mold remediators do not threaten the general public, no matter what their background.⁵⁶

Windham School District consults with the Texas Department of Licensing and Regulation in order to confirm the eligibility of WSD vocational students for licensure in certain occupations upon release. The ex-offender will not be denied licensure simply due to having committed a felony. Each ex-offender who applies for a license is considered on a case by case basis for licensure and is granted or denied a license based on the ex-offender's individual criminal history as it relates to the specific concerns of that industry.⁵⁷

But not knowing for sure would make it difficult for anyone to take on a specific course of study.

The Rules of Poverty

Poverty is its own drawback, with its lack of opportunities and supportive families. But according to author Ruby Payne, poverty brings about its own "rules" that hold the class back from success.⁵⁸

One of the key resources for success in school and at work is an understanding of the hidden rules, which are the unspoken clues that individuals use to indicate membership in a group. Generally, in middle class, work and achievement tend to be the driving forces in decision-making. In wealth, the driving forces are the political, social, and financial connections. In generational poverty, the driving forces are survival, entertainment, and relationships. That is why you will have a student whose Halloween costume cost \$30, but the textbook bill is not paid. Relationships and entertainment are more important than achievement.

The classes think differently. In general, the poor see people as possessions. It is worse to steal someone's girlfriend than a thing. Relationship is valued over achievement, which is why you must defend your child no matter what he or she has done. You laugh when you are disciplined; it is a way to save face. The noise level is higher; non-verbal information is more important than verbal. The notion of having choices is foreign; destiny and fate govern.

The inability to change your mindset and adapt to a new set of rules makes it difficult to better your opportunities.

A Lifetime Sentence

Historically, colonial America punished crimes swiftly but temporarily. Only a few convicts were hanged or exiled. Most paid a fine, and were shamed in the town square. Having condemned the crime, the colonists then forgave the criminal, who had paid his debt to society and the victim. That was in keeping with the colonists' Christian faith in forgiveness, and it meant there was no permanent underclass of ex-cons.⁵⁹

Today provides a very different scenario. Many offenders never recover from their prison term, as their records continue to follow them the rest of their lives. They cannot vote, receive student loans, or secure public housing.⁶⁰ A person's chances at a callback interview for an entry-level job dropped by 50% when that applicant had a criminal history.⁶¹

All of these circumstances make it difficult to "change your fate." Changing circumstances, however, is the only way to make differences that have staying power.

Trying to Make a Difference

Once an offender arrives in prison, an individualized treatment plan is prepared. For the first thirty days, assessments and testing are done to identify specific needs and issues. TDCJ officials do IQ testing, mental health assessments, and medical assessments, including determining whether or not a chemical dependency is involved.⁶² Educational assessments to determine grade level are performed, as well as risk level assessments. Offenders meet with an Individualized Treatment Plan committee to go over the plan, which determines what programs are needed and the priority of those programs. For instance, if an offender is going to be incarcerated for a short time, and their biggest need is substance abuse treatment, then that treatment will be given higher priority over another program, such as vocational training.

Substance Abuse Programs

The TDCJ has 9235 beds for their substance abuse treatment programs. The In-Prison Therapeutic Community (ITPC) and the Substance Abuse Felony Punishment Facility (SAFP) are six to nine month programs in a prison setting. They are intensive substance abuse treatment programs that are followed up with a three-month transitional treatment center residential placement, and then a nine-to-twelve month outpatient after care component in the community.

Offenders who take part in ITPC are those who have been voted by the parole board to attend the program. Once they have successfully completed the program, they are released on parole supervision. SAFP is attended by offenders who have been directly sentenced from the court, and are typically released on probation once the program is successfully completed. The SAFP program is also often used by the parole board as an alternative to revocation of parole.

Other programs that are substance-abuse related included the Pre-Release Therapeutic Community, a cognitive-based program with a substance abuse element, and a Pre-Release Substance Abuse Program, which is a six-month, moderate substance abuse program. DWI offenders now have their own program, which is six months long and has cognitive and substance abuse treatment. In addition, the state jail substance abuse program is a 90-120 day program based on the offender's need and length of sentence.

Changes in Parole

*"Programming is imperative to reduce the recidivism rate."*⁶³

Substance abuse programs are having a major effect on parole revocations. In 2015, about 5500 offenders were revoked, compared to about ten thousand in 2006. The Board of Pardons and

Paroles is placing offenders in programs such as SAFFP instead of sending them back to prison for failing a drug urinalysis test.⁶⁴ Mental health care understanding has increased over the past ten years, and offenders with mental health issues are now under some sort of continuity of care after release.

In addition, the Board has found that too much supervision, especially for low-risk offenders, may set them up for failure, and now periodically reviews the stringent conditions placed on offenders. For instance, if an offender is placed on electronic monitoring, and the offender is compliant for a period of time, the Board votes to remove that condition.

The passage of HB 710 last session allowed those offenders with certain technical violations to remain in the community with their families and jobs pending a final decision by the parole board. Prior to HB 710, such offenders would have been incarcerated in a county jail while awaiting the decision, often losing their employment and housing in the process.

Windham

*"For released offenders to successfully reintegrate into their home community, significant emphasis needs to be placed on the ability to cope with peer pressure, engage with family in a productive and supportive way, and engage with employment supervisors so they can have a successful work experience."*⁶⁵

*"I am thinking about the dynamic of someone being in the system, wanting to improve themselves, and being told 'you're not a priority.' If we're trying to get someone not to recidivate, that's exactly opposite of what I think the intended result would be."*⁶⁶

Windham School District provides educational programming to offenders in the TDCJ. During the 2014-2015 school year, over 60,000 offenders were served in academic, vocational and life skills by certified teachers.⁶⁷ In the past four years, Windham has increased the number of industry recognized certifications--from 5600 to 11,000 this past year. Windham has also added vocational training classes to state jails and other shorter term facilities, and has recently begun a program offering vocational programming to those offenders who want to leave administrative segregation environments and return to the general population.

Windham is also adding courses in the middle STEM careers, such as copper and fiber optic cabling and CNC machining. These courses make the offenders highly employable, and in some cases, employers are making job offers and holding positions until the offenders are released. Windham is also expanding basic levels in OSHA certifications and construction trade classes.

TDCJ also has partnerships with about ten colleges that provide vocational and academic programming for offenders. In 2015, 321 degrees were issued (mainly associate's degrees) and a little over 1000 certificates for various vocational trades were issued that had been earned in the colleges.

But you need more than work training and education to make it in the job world. Windham is also working diligently on their cognitive behavior and life skills classes. These classes have been shown to reduce recidivism, but the curriculum has not been upgraded since 1998. Windham is working with national recognized experts in the field of psychology assessment and behavioral change to make certain that their critical "soft skills" classes are even more effective.

Windham targets those students that show the highest needs. Those with lowest academic achievement are given priority, such as younger offenders who read at a 5th grade level or lower, and have no prior employment skills. Consideration is also given for those nearing the end of their sentences. There are waiting lists for all of their courses. And some of those waiting lists are significant.

In 2011, Windham funding was reduced by \$33 million. And although some of that has been restored by legislators (about \$8 million), the school district is still behind about \$25 million from their pre-2011 funding. Prior to 2011, the district was serving 77,000 to 80,000 students. They are now serving about 61,000.

Pell Grants

For decades, the federal government has banned the use of Pell Grants funds for prisoners. But recently, the Second Chance Pell Pilot Program has initiated to study whether reinstating Pell Grants for prisoners might increase their chances of finding employment. More than 2,500 Texas inmates will participate in the program. Three of the nine Texas schools participating in the national pilot will be offering prison-based education for the first time.

Cedar Valley College in Lancaster is using the federal aid to re-establish its prison education program, after budget cuts at the TDCJ forced the school to stop offering certificates and associate's degrees to inmates in 2012. Now, 120 inmates are expected to enroll in its Air Conditioning and Refrigeration Technology certificate program.⁶⁸

The Data on Training

When incarcerated individuals complete educational and vocational training while incarcerated, their likelihood of returning to prison drops significantly. A 2012 evaluation of the Windham School District determined that higher levels of exposure to their programs decreased the likelihood of participant re-incarceration, and that participants earned higher wages per quarter than non-participants.⁶⁹

While providing free vocational education doesn't seem like a fair idea (why should prisoners get free education when those on the outside can't?), it is a practical one. Inmates who participate in correctional education programs had a 43 percent lower odds of recidivating than inmates who did not.⁷⁰

A 2013 Rand Corporation Study found that correctional education programs are cost-effective. Focusing only on the direct costs of correctional education programs and of incarceration itself, and using a three-year reincarceration rate for a hypothetical pool of 100 inmates, Rand estimated that the three-year reincarceration costs for those who did not receive correctional education would be between \$2.94 million and \$3.25 million.

In comparison, for those who did receive correctional education, the three-year reincarceration costs would be between \$2.07 million and \$2.28 million. This means that reincarceration costs are \$0.87 million to \$0.97 million less for those who receive correctional education.

In comparison, Rand's estimates indicate that the costs of providing education to inmates would range from \$140,000 to \$174,400 for the pool of 100 inmates. This translates into a per-inmate

cost of correctional education ranging from \$1,400 to \$1,744, suggesting that providing correctional education is cost-effective compared with the cost of reincarceration.

To further help interpret the cost savings, Rand also calculated the break-even point--defined as the risk difference in the reincarceration rate required for the cost of correctional education to be equal to the cost of incarceration. For a correctional education program to be cost-effective, Rand estimated that a program would need to reduce the three-year reincarceration rate by between 1.9 and 2.6 percentage points to break even. Their studies showed that participation in correctional education programs is associated with a 13 percentage-point reduction in the risk of reincarceration three years after release from prison.⁷¹

Working in Prison

For most of its existence, the Texas prison system has manufactured and sold goods to help defray its operating costs. Currently, Texas Correctional Industries operates 35 factories across the state, providing work opportunities to approximately 4,800 offenders.⁷² In addition to manufacturing goods for prison use, offenders also provide Texas public schools with refurbished computers and transcribed Braille to education agencies.

Offenders who take part acquire job skills training through on-the-job training, short courses and apprenticeship courses, and have the ability to earn national certifications. They are placed in jobs within the units that utilize those skills.

The PEP Program

The Prison Entrepreneurship Program is an independent, non-profit that seeks to facilitate whole life positive transformation by uniting inmates and executives around a shared passion for entrepreneurship.⁷³ The program relies on over one thousand executive volunteers and students, who participate both inside and outside the TDCJ facility. In addition to inspiring entrepreneurship, the program helps train offenders in a better understanding of business and a network of social capital. Over the past six years, 100% of their active graduates have landed their first jobs within 90 days of release.

Currently, the program is offered in two units, but PEP recruits applicants from offenders in facilities across the state, looking for men who have demonstrated a commitment to personal transformation and who have a strong work ethic. Those who are accepted into the program are moved to one of the two units.

The program starts working with incarcerated offenders three years prior to release and continue into post-release to develop their ideas into workable business models. Each class runs for nine months and consists of character development, business skills training, and "life skills" training. Students are also taught marketing strategies, public speaking, and job interview skills. The program finishes with each student giving a 15 minute pitch to a panel of executives in an MBA-style Business Plan Competition.

Once the inmates are released, five transition homes are available to create a positive community with high standards and to encourage a big vision for the rest of their lives. The homes provide shelter, as well as an easy means for the PEP re-entry team to monitor the individual progress of each participant. Post release education programs meet weekly in Dallas and Houston.

PEP's latest survey in 2015 identified 211 new companies started by their graduates, including six that are generating over \$1 million in sales. A Baylor study showed that PEP generates a benefit of \$7 million to taxpayers through reduced incarceration costs. In addition, the roughly 1,200 PEP graduates released so far are earning at least \$24 million per year in legitimate wages and salaries, and spending about \$16 million per year in the Texas economy. The recidivism rate for PEP runs at about seven percent.

Prison Ministers

Southwestern Baptist Theological Seminary offers four years of studies to inmates who are then divided into teams and sent back to prison to assist inmates who will soon be released. The second class of thirty-three new pastors recently graduated with a bachelor's degree in biblical studies. The goal of the program is to reduce prison violence and ensure that fewer inmates commit crimes after they have been released. Last year's class of thirty-three are already working in several prisons statewide, leading Bible studies and visiting prisoners in solitary confinement.

There are currently more than 180 inmates enrolled in the four-year degree program, which costs about \$300,000 a year to run.⁷⁴ The Heart of Texas Foundation, a non-profit that supports prison ministry efforts, foots the bill.

TDCJ has over 24,000 active volunteers, many of them provide faith-based programming, along with AA meetings and substance abuse counseling. Nearly every unit has a faith-based dorm, with 6,350 offenders placed in these dorms throughout the system.⁷⁵

Leaving TDCJ

Lots of things happen before you leave a TDCJ facility. Besides basic essentials such as proper identification, offenders have re-entry plans, and discuss employment, housing and family reunification with caseworkers assigned to the units. Barriers to goals are discussed, and offenders are asked to come up with a plan to deal with those barriers. Those with mental health or medical needs are assisted with locating a provider network in the community. If social security or veterans' benefits are warranted, help is given to obtain those benefits. A re-entry assessment identifies the offender's risk, and determines post-release supervision level.

Last session, the legislature appropriated funds for additional re-entry staff to be located in the community. Those 53 case managers are located in parole offices around the state, and at least half of their time is spent working on employment--getting offenders ready for employment and targeting employers that are willing to hire offenders.⁷⁶

Community Organizations on the Outside

*"Unless someone like you cares a whole awful lot, nothing is going to get better. It's not."*⁷⁷

There are many community organizations who are willing to assist. One of the major players is Goodwill.

In 2015, Goodwill served 151,000 people in the state, and 70 percent of them had criminal backgrounds.⁷⁸ Typically, Goodwill's clients need education, housing, job training, and employment.

In 2013, legislation created a pilot program for Goodwill to offer the first adult high school in the state of Texas. Goodwill graduated 43 students last year, and expects to graduate about 135 this summer.

Unlocking Doors attempts to help those with criminal backgrounds by pulling together all resources, organizations, and programs into one coordinated effort, thus reducing gaps in critical services and over-duplication of existing services.⁷⁹

Other organizations include the Texas Offenders Reentry Initiative, Cornerstone Assistance Network, and Restorative Justice Ministries Network of Texas.

Efforts to Consider

There are always other measures to consider, and things to learn from other states. Although they may not work for our state, they are worthy of consideration. Anything that legislators can do to increase the odds for ex-offenders will eventually result in savings for Texas taxpayers. Not to mention the value of a changed life.

Sealing Records

In April 2016, Pennsylvania lawmakers introduced a first-of-its-kind bill, the Clean Slate legislation, that would automatically seal certain criminal records of individuals who have remained free of crime for a period of time. The bi-partisan measure would seal non-violent misdemeanor convictions after ten years, summary convictions after five years, and charges that fail to result in conviction after sixty days.⁸⁰

Not only would this bill remove barriers to employment for roughly 30 percent of those with a criminal past, but it would remove the need to obtain a lawyer, and the related fees, for expungement. The bill was signed into law by Pennsylvania governor Tom Wolf earlier this year.

HOPE Program

The Hawaii Opportunity Probation Enforcement (HOPE) program uses swift, certain sanctions for higher risk probationers.⁸¹ Begun as a pilot program in 2004, the program uses an assessment tool to determine which drug offenders are at highest risk to reoffend.

Generally, it is easy for drug offenders to "game" the system. Drug testing is sporadic, and offenders can usually guess when they might be tested. Drugs like cocaine and alcohol leave the system fairly quickly, so an offender can lay off those substances a few days before they think they might be tested. Once caught, the punishment is far removed in time from the offense, and the severity has no continuity.

The HOPE system gives each probationer a color code, depending on their risk level. Each day, the offender calls the assessment center to find out what color is to be tested that day. If your color is scheduled for that day, you must come in to be tested and meet with a probation officer.

Those who complete drug tests successfully, pay fines, and appear on time are rewarded with a lower level color code, with lower supervision. Those who fail their drug tests are brought before a judge within 72 hours, and will spend two or three days in jail, usually during the weekend to avoid conflict with employment.

Studies of the program showed a drop in the rate of positive drugs tests from 53 percent three months prior to joining the program to 4 percent six months after joining HOPE, an 83 percent reduction. A one year evaluation showed that HOPE probationers (when compared to a control group) were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their probation officer, 53 percent less likely to have their probation revoked, and 48 fewer days incarcerated.

Recommendations

*"Almost everyone who goes to prison is going to return to the community from which he or she came, and most will not have been improved by the experience of incarceration."*⁸²

*The cornerstone of a conservative criminal justice agenda should be strengthening families."*⁸³

An emerging trend is a growing emphasis on providing vocational education/CTE programming that will lead to industry or nationally recognized certificates. Smaller states are more likely to emphasize this type of training than medium-sized or larger states.⁸⁴ Texas should join the smaller states in this trend.

Vocational education classes in prison cost money. And many offenders don't have supportive, able family members who are able to float the cost. At the same time, many offenders work without pay while incarcerated, which bothers some of their advocates. Why not consider a pilot program that would "pay" the offender with vocational education credits?

Windham funding was cut severely in 2011, and has yet to reach the level of funding prior to that time. Education and vocational training have been shown to be effective in reducing recidivism. Funding for Windham should be increased so that all who want education should be able to obtain it. The goal should be that every person who leaves prison should be equipped with the skills necessary to compete in a difficult job market.

This committee was tasked to determine whether or not new programs were needed inside prison walls to reduce recidivism. Creating new programs when the current ones are not adequately funded would be a mistake, and lead to a bureaucratic mess. The current programs are cohesive and proven. Enhanced funding of Windham and correctional aftercare should be strongly considered next session.

Texas should consider legislation based on swift and certain sanctions, such as the HOPE model. Probation violators would face sanctions that could either be doled out by the courts, the probation officer, or the Board of Pardons and Paroles. Immediate consequences are more cost effective and personally motivating than hearings set to determine punishment at a later date.

Organizations such as Goodwill would like to expand their influence to reach inmates before they leave prison. Legislators should encourage the TDCJ to examine ways to use their expertise without sacrificing public safety.

Work release programming was mentioned during testimony as an option to assist offenders who are trying to re-integrate into the community. In this federal model, offenders are released to a halfway house type of environment, to go into the community and find a job and receive programming in the evening. The offender is still in the custody of the TDCJ, so to not return to the house in the evening would be considered an escape. With the help of entities such as Goodwill and Unlocking Doors, a pilot project should be considered.

There are over 200 licensing restrictions on convicted felons in Texas. While many of them may have made sense at one time, they should be re-evaluated, or at least amended to exclude those who have kept a clean record for a certain period of time.

Appendix I

Restrictions on Convicted Felons

A database provided by the Texas Law Library lists those occupations with restrictions on convicted felons in Texas. The searchable database can be found at:

<https://www.sll.texas.gov/library-resources/collections/restrictions-on-convicted-felons/?view=home#professions>

The occupations:

Accountants	Acupuncturists	Alcohol Distributors
Alcohol Retailers	Amusement Ride Operators	Architects
Athletic Trainers	Attorneys	Auctioneers
Audiologists	Auto Dealers	Automotive Parts Recyclers
Bail Bondsman	Bail Bondsmen	Bank Directors
Banking Commissioners	Bar Ownership	Beer Brewers
Beer Distributors	Beer Retailers	Bingo Commercial Lessors
Bingo Distributors	Bingo Manufacturers	Bingo Operators
Bingo Unit Managers	Board Members	Board of Directors
Boot Operators	Bus Aides	Bus Drivers
Bus Monitors	Business Opportunity Sellers	Camping Contract Brokers
Career School Reps	Cat Breeders	Certified Public Accountants
Charter School Employees	Charter School Officers	Chauffeurs
Child Care Administrators	Child Care Providers	Chemical Dependency Counselors
Chiropractors	Cigarette Bonded Agents	Child & Adult Care Food Program Providers
Cigarette Distributors	Cigarette Importers	Cigarette Manufacturers
Cigarette Retailers	Cigarette Wholesalers	City Councilmembers
City Officers	Code Enforcement Officers	Combative Sports Judges
Combative Sports Referees	Commercial Applicators	Contact Lens Dispensers
Contractors	Corporate Managers	Continuing Care Facility Managers
Corrections Officers	Counselors	Controlled Substances Distributors
County Employees	County Jail Guards	Controlled Substances Manufacturers
County Jailers	County Officers	County Ethics Commission Members
County Officials	Couriers	Court Clerks
Court Reporters	Court Stenographers	CPA
Deer Breeders	Delivery Persons	Dental Hygienists
Dentists	Dietitians	Distillers
Doctors	Dog Breeders	Dog Trainer
Drug Abuse Counselors	Drug Distributors	Dyslexia Practitioners
Dyslexia Therapists		
Educators	Embalmers	Emergency Medical Personnel
Engineers	Equine Dental Providers	Equipment Dealers
Exterminators	Eye Doctors	Fire Fighters
Firefighters	Funeral Directors	Geoscientists
Handgun Instructors	Health Coverage Navigators	Health Professionals
Hearing Instrument Dispensers	Hearing Instrument Fitters	House Manufacturers

Insurance Agents	Insurance Brokers	Insurance Corporate Officers
Insurers	Interior Designers	Interpreters
Investment Advisers	Jailers	Judicial Officers
Justices	Labor Organizers	Labor Union Officers
Land Surveyors	Landscape Architects	Law Enforcement Officers
Lawyers	Limousine Drivers	Licensed Professional Counselors
Loan Originators	Locksmiths	Lottery Commission Members
Massage Therapists	Masseuses	Manufactured Home Retailers
Mayors	Meat Producers	Marriage & Family Therapists
Medical Physicists	Medication Aides	Medical Assistance Providers
Midwife	Midwives	Medical Device Distributors
Mold Assessors	Mold Remediators	Medical Device Manufacturers
Mortgage Bankers	Mortgage Brokers	Medical Radiologic Technologies
Mortgage Loan Originators	Motor Vehicle Dealers	Municipal Officers
Nongame Dealers	Notary Public	Nursing Facility Administrators
Nurse Aides	Nurse Practitioners	Nurses
Nutritionists	Occupational Therapists	Opticians
Optometrists	Oral Interpreters	Orthotists
Paramedics	Pawnbrokers	Personal Emergency Response System Providers
Peace Officers	Perfusionists	Personal Trainers
Pharmacists	Pharmacy Technicians	Pharmacy Technician Trainees
Physical Therapists	Physician Assistants	Physicians
Plumbers	Podiatrists	Police Officers
Polygraph Examiners	Poultry Producers	Prescribed Pediatric Extended Care Center Owners
Private Security	Professional Counselors	Property Owner's Assn. Board Members
Prosthetists	Psychiatrists	Psychologists
Public Elected Officials	Public Insurance Adjusters	Public Security Officers
Radiologic Technologists	Real Estate Agents	Real Estate Appraisers
Real Estate Brokers	Real Estate Inspectors	Real Estate Sales
Realtors	Referees	Registered Nurses
Repairman	Repairmen	Respiratory Care Practitioners
Sanitarians	School Bus Aides	School Bus Drivers
School Bus Monitors	School Contract Employees	School District Employees
School Employees	Securities Agents	Securities Dealers
Security Officers	Security Services Contractors	Sex Offender Treatment Providers
Sheriffs	Sheriff's Dept. Employees	Sexually-Oriented Business Employees
Shorthand Reporters	Sign Language Interpreters	Sexually-Oriented Business Owners
Single-line Dealers	Social Workers	Shorthand Reporting Firm Employees
Speech Therapists	State Bank Board Members	Speech-Language Pathologists
State Employees	State Lottery Sales Agents	State Trust Company Members
Substance Abuse Counselors	Surgical Assistants	Taxicab Drivers
Teachers	Telecommunicators	Texas Juvenile Justice Dept. Employees
Texas State Guard Members	Therapeutic Optometrists	Texas Racing Commission Members
Therapists	Towing Operators	Vehicle Inspectors
Vet Techs	Veterinarians	Vehicle Storage Facility Employees

Vocational Nurses

Volunteers

Wholesalers

Wholesale Distributors of Nonprescription Drugs

Veterinary Technicians

Volunteer Health Practitioners

Wine and Beer Retailers

Vehicle Storage Facility Operators

Wine Distributors

Wine Retailers

Non-Violent Drug Offenses

Interim Charge #3: Study incarceration rates for non-violent drug offenses and the cost to the state associated with those offenses. Identify alternatives to incarceration, including community supervision, that could be used to reduce incarceration rates of non-violent drug offenders.

The committee met on February 9, 2016, to consider Charge #3. Invited testimony included:

Ed Sinclair, Analyst, Criminal Justice Data Analysis Team, Legislative Budget Board
Carey Welebob, Director, Community Justice Assistance Division, Texas Department of
Criminal Justice

David G. Gutierrez, Presiding Officer, Texas Board of Pardons and Paroles

Mike Wolfe, Director, Taylor, Callahan, and Coleman County CSCD

Teresa May, Ph.D., Director, Harris County CSCD

Jarvis Anderson, Director, Bexar County CSCD

Kathy Braddock, Chief of Staff, Assistant District Attorney, Harris County District Attorney's
Office

Nicole L. Clark, Assistant District Attorney, First Chance Intervention Program, Harris County
District Attorney's Office

Cathy Stoebner DeWitt, Vice President, Governmental Affairs, Texas Association of Business

Douglas Smith, MSSW, Policy Analyst, Texas Criminal Justice Coalition

Gregory S. Glod, Esquire, Policy Analyst, Center for Effective Justice, Texas Public Policy
Foundation

Matthew Simpson, Senior Policy Strategist, American Civil Liberties Union of Texas

Non-Violent Drug Offenses

"The notion that prisons are filled with young pot smokers, harmless victims of aggressive prosecution, is patently false."⁸⁵

"The War on Drugs is never going to be won. All it does is shift. So the only thing that we can do is change behavior. We need to change the behavior (of those who abuse drugs), but we also have to change our behavior in how we deal with those who commit these crimes."⁸⁶

Background: How We Got From Here to There

Slogging through background information when writing about non-violent drug offenders may seem a waste of time, but it's important. You can't discuss incarceration of drug offenders without a history lesson of what was going on in the United States in the 1980's. You can't discuss drug offenses without talking about treatment options, and you can't talk about treatment options without talking about where time is served. And the "where" is very important. So first, a history lesson.

Crime Increases

From the 1960's to the 1980's, crime in the United States surged by over 350%.⁸⁷ Crime was a concern of the majority of Texans. And they weren't just concerned. They were terrified. Some sample headlines from that period:

"Major Crime Sets Record," Dallas News, March 20, 1964: According to Col. Homer Garrison Jr., director of the Department of Public Safety, "the constant rise in lawlessness in the past ten years is a shocking and shameful commentary on the conduct of our society in our time."

"Barnes Labels State 'U.S. Crime Capital,'" Dallas News, October 5, 1967: According to Speaker Ben Barnes, "we have the fastest rising crime rate in the United States today here in Texas. Houston is now the murder capital in our United States."

"Crime rate strangling us' says State law head," Houston Post, January 2, 1970: According to Col. Wilson E. Speir, director of the Texas Department of Public Safety, the problem still isn't under control, despite legislative action to strengthen penalties for use and sale of marijuana and to prohibit possession of LSD.

"Legislation lag cited for crime spiral," San Antonio Express, April 1, 1975: The lack of proper legislation was blamed Monday for San Antonio's increasing crime rate, which leaped 16.9 percent in 1974.

"Poll says Texans fear being crime victims," Beaumont Enterprise Journal, July 3, 1983: Most Texans believe crime will strike them in the next year and are more impatient than ever with the state's system of justice, a recent Sam Houston State University poll indicated.

"Criminals run wild in Texas," San Antonio Express, April 14, 1987: According to Judge Ted Butler, judge of the 226th District Court, "the state has failed us. . .and that failure is continuing."

Theories for the crime wave varied, but included: too many single moms, the difficulty of living in an urbanized area (as opposed to a rural one), the restlessness of those who lived in poverty, and drugs.

The War on Drugs

*"With every passing year, the result becomes plainer to see: the 'all-out war' approach has failed to cut the number of consumers, while it has driven up the price of a few cheap agricultural commodities to create a hideously violent, \$300-billion global industry."*⁸⁸

During the late 1960's, recreational drug use became representative of protest and social rebellion. By 1969, President Richard Nixon identified drug abuse as "a serious national threat," and called for a national anti-drug policy at the state and federal level. In 1973, the Drug Enforcement Administration was created to coordinate the efforts of all other agencies.

In November of 1975, the Mendellin Massacre occurs, resulting in the killing of 40 Colombians in retribution for the seizure of cocaine by the Colombian police, signaling the new power of Colombia's cocaine industry. By 1979, the Mendellin cartel is using a private island in the Bahamas to refuel small planes transporting drugs from Colombia to the United States. By 1982, Manuel Noriega is allowing cocaine to be shipped through Panama.

By the mid 1980's, crack cocaine, a cheaper alternative, is developed, and the Mexican border becomes the major point of entry for cocaine headed into the United States. With the passage of the North American Free Trade Agreement in 1993, it becomes more difficult for customs agents to detect narcotics hidden in the enormous volume of legal trade.⁸⁹

And the War on Drugs didn't work. As Time Magazine reports: ".study after study showed that programs such as D.A.R.E.--no matter how beloved--produced negligible results. And while the Bush administration's 2002 goal of reducing all illegal drug use by 25% led to unprecedented numbers of marijuana-related arrests, pot use only declined 6% (and the use of other drugs actually increased). Drug trends tend to wax and wane, and a dip in the use of one type of drug might lead to a rise in another, causing officials to play a never ending game of narcotic whack-a-mole."⁹⁰

The Dallas Times Herald spoke for many Texans in its May 1988 article when it advocated the following measures:

- Dealers who sell large quantities of drugs must serve at least 15 years, or one-fourth of the penalty, whichever is shorter. No parole.
- Those convicted of drug sales a second time should receive mandatory life sentences with no parole.
- Mandatory sentencing with no parole for those who use or possess firearms in connection with a drug crime.
- Prison sentences should be doubled for those who use juveniles to sell drugs.
- State penalties should be tripled for selling drugs to a minor.⁹¹

Although some of these measures may seem harsh now, legislators were driven by what their constituents wanted. And those constituents were afraid. They wanted tough anti-drug

measures, they wanted those convicted to serve more of their time, and they were willing to pay massive amounts of money to build prisons to hold those convicted.

And it soon became apparent that more prisons would be needed. And although the state committed to a massive building program to hold offenders, the crime rate continued to rise, and the prisons remained filled beyond capacity, resulting in felony offenders serving an average of 11.2 months in prison. Payments to counties to reimburse them for housing the overflow of state inmates, was quickly reaching the \$1 billion mark.⁹²

The 72nd Legislature created the Texas Punishment Standards Commission in 1991 to study the situation and report back with recommendations. One of those recommendations was to establish state-run, short-term jails to serve eight regions in the state--the state jail system.

The plan was to provide less expensive, state-funded, secure facilities to fill the gap between prison and community supervision, and to provide drug treatment to those who needed it. Because these facilities were short-term, they would avoid being under the purview of *Ruiz*, a lawsuit brought against the state that was providing long-term headaches.

The state had the desire to do the right thing, and that was to ensure that those who needed drug treatment in state jails would get it. Legislators might have been a little naïve about how long it would take, but weren't we all in those days? A month or two of treatment, and you'd be good to go.

Their hearts were in the right place. But they didn't know that their agency partner wasn't quite up to the job.

TCADA

*"The clients are convicted felons, and we've got some bigger needs in this state than worrying about convicted felons."*⁹³

The Texas Commission on Alcohol and Drug Abuse was charged with oversight of the newly created program to assist state jail felons with substance abuse problems. Unfortunately, TCADA already had serious issues with oversight.

By 1994, it was discovered that a rehabilitation center in Austin possibly owed the state \$2 million due to excessive bonuses to administrators, overbilling, and expensive gifts.⁹⁴

Soon, the same audit found that a facility in Corpus Christi had used tens of thousands of dollars earmarked to cure drug abusers for a personal weight trainer, a \$50,000 salary increase for the executive director and gifts for employees and friends.⁹⁵ These findings were only the beginning of a story that got uglier by the day. And the Legislature was in session.

By spring of 1995, angry House members had slashed millions from the proposed budget of TCADA. The Senate General Investigating Committee began a statewide investigation and audit with the assistance of the Texas Rangers. The findings showed problems with providers statewide. Tax-funded trips, gifts, pay raises, luxury car rentals, a mariachi band, club memberships, and the purchase of a camper for a trip to the lake to distribute literature were only some of the inappropriate expenses. Other abuses included homes purchased, renovated at state cost, and resold to relatives for less than the original purchase price; buying personal vehicles,

and funding a wedding with state monies.⁹⁶ Then-governor Bush appointed a three member conservatorship board to run the agency. Criminal charges were filed.

By the summer, TCADA had run out of money for drug treatment programs for criminal offenders with two months to go in the budget year, and all after care programs were also suspended. All operations for such programs were transferred to the TDCJ by September of 1995. It was determined by legislators that programs should start small and prove their worthiness. At that time, the Substance Abuse Felony Punishment programs were cut from 5200 beds to 4500, and the In-Prison Therapeutic Community programs were reduced from 1700 to 800 beds.⁹⁷ All existing contracts were cancelled, and the TDCJ opened them up for rebidding.

Several decades and sunset reviews later, the treatment options have morphed into the following programs:

The Programs

Substance Abuse Felony Punishment Facilities (SAFPF).⁹⁸

Consisting of 3,678 beds, this is an intensive substance abuse treatment program for offenders on probation or parole, and can be used as an alternative to revocation of parole. The program is for those who have been assessed as having severe substance dependence. The ideal offender for this program is one who has several arrests or a history of incarceration and whose circumstances are compounded by an unhealthy family environment and unemployment.⁹⁹ The program is operated in a therapeutic community setting and lasts six months in most cases, but nine months for offenders with special needs.

Upon completion of the incarceration portion of the program, offenders are released to transitional residential treatment or outpatient care for up to 90 days. After that, they will continue on an outpatient basis from nine to twelve months. Offenders may also participate in peer support groups such as Alcoholics Anonymous.

In-Prison Therapeutic Community (IPTC)

This intensive six month substance abuse therapeutic community program for Correctional Institutions Division offenders consists of 1,647 slots, and is for those who have been approved for parole contingent upon completion of the program. Successful graduates are released to parole supervision. Upon completion of the incarceration portion of the program, offenders are released to a Continuum of Care through placement in Transitional Treatment Residential Services or Outpatient Care Services for up to 90 days. Continuing Outpatient Services lasts nine to twelve months, and offenders may also participate in groups such as Alcoholics Anonymous.

Pre-Release Substance Abuse Program (PRSAP)

An intensive six month substance abuse treatment program for offenders approved for parole contingent upon successful completion of the program. This program, consisting of 1,008 beds, is operated in a substance abuse treatment environment similar to the IPTC program. Offenders released from the PRSAP onto parole supervision may be placed on a specialized therapeutic community caseload, and may also participate in peer support groups such as Alcoholics Anonymous. The program is similar to SAFPF, but without the same aftercare component.

Pre-Release Therapeutic Community (PRTC)

Consisting of 600 beds, this is an intensive six month therapeutic community program for offenders approved for parole contingent upon successful completion. The treatment is similar to the IPTC program, but includes educational and cognitive intervention tracks. Offenders released from the PRTC onto parole supervision may be placed on a specialized therapeutic community caseload and participate in peer support groups.

In-Prison Driving While Intoxicated (DWI) Recovery Program

This six month, 1,000 bed, multimodal program provides treatment services facilitated through a cognitive-based modality by licensed and certified counselors. Offenders may also participate in support services, such as treatment planning, study groups, and family services. Programming includes individual sessions, group therapy, family restructuring and educational activities. Once an offender completes the program, they are either paroled or continue aftercare treatment at a designated unit.

State Jail Substance Abuse Program (SJSAP)

An integrated, systematic, multimodal substance abuse program designed to meet the needs of the diverse characteristics of the state jail population. Offenders within 4 months of release are targeted for this program, which consists of 1,200 slots. Eligible offenders are placed in one of two tiers: 60-90 days or 90-120 days based upon need and assessments. Offenders may also participate in peer support groups.

The SJSAP is the program that concerns most of those who work locally in criminal justice, such as those in the community supervision field. Not that the program isn't a good program, the problem is that offenders aren't in state jail long enough to benefit from it.

State Jails and Plea Bargains

*"I just couldn't understand letting the sickest person in the room make the decision about what was going to happen. And then, of course, have all that negative financial and emotional impact with that decision."*¹⁰⁰

If you are charged with a crime such as drug possession that is obviously for personal use, and you are poor, you will probably wait for trial in jail. Once you are sentenced, there are options. You can serve the remainder of your sentence in state jail. Or you can take probation. If you take probation, you will be on probation longer than you will sit in the state jail. And there are fees and conditions associated with being on probation. If you are poor, you will probably take the remaining jail time. Remember, once you have served time in state jail, that's is pretty much it. Although the state put mandatory probation into place for certain low level state offenders, and judges have the option to put state jail offenders on probation if they want, for the most part it is no probation, no parole.

And then you are arrested again. For possession again. Obviously, you could probably use a drug rehabilitation program. But because state jail is for short terms, it's difficult to provide a meaningful drug rehabilitation program. Which is ironic, because state jail is mainly for drug offenses.

Although it would make sense to lengthen the period of time an individual spends in state jail to ensure treatment is received, the political realities make this difficult to achieve. An interesting side note: one of the reasons the state jail system was created was to ease overcrowding in the prison system and the county jails. But the fact that they are meant for short-term confinement means that they do not fall under *Ruiz* constraints. Lengthening the confinement period could result in future litigation revolving around these facilities.¹⁰¹

The Original Plan

*"The tragedy would be to have these prisoners here and not do anything to change their lives."*¹⁰²

*"The worse punishment is having to change. And change is the goal of this program."*¹⁰³

Interestingly, state jails weren't originally envisioned this way. When legislation passed in 1993, the intent was to house non-violent offenders in dorm-like settings, hoping to reduce the revolving door of recidivism. While there, the offenders were to participate in drug and alcohol counseling, education, job training, and community-based rehabilitation. It was hoped that inmates imprisoned near their communities could maintain ties with their families and potential employers.¹⁰⁴

The idea won praise, and during a Texas tour, then U.S. Attorney General Janet Reno said the state's effort in drug rehabilitation of prisoners was a crime-fighting tool that served as a model for the nation.¹⁰⁵

But public opinion, a governor's race, and a confluence of other events intervened.

The transition to a new criminal justice approach was not a seamless one. Some state jails didn't open because judges were not sentencing enough offenders to make opening the facilities financially feasible. In other cases, judges couldn't sentence people to state jails in their communities because they weren't open yet.

The public wasn't too happy about having those convicted of burglary, forgery, auto theft and drug possession released earlier than they would have been previously under the old system. The new system called for a possibility of an automatic probated term ranging from 180 days to two years. .meaning that a jail sentence was not a sure thing. It's called "probation on the front end," and although most of us would consider that straight probation, legally, it's a jail term that has been probated. Hard to see the difference if you're not a lawyer.

During the next session, the maximum punishment for state jail crimes increased, and mandatory community supervision for state jail offenders was eliminated, although judges and juries would still have discretion to order mandatory probation.

The original intent of state jails fell apart.

Is it the job of the criminal justice system to punish? Or to rehabilitate? If it is to punish only, then we're spending a lot of money incarcerating the same individuals over and over again. If it is to rehabilitate, we need to think differently. And if we are considering cost savings, we need

to put our thoughts about doing things differently into action. Because if you are incarcerating the same person over and over again, the costs to actually rehabilitate would be less than incarceration.

The Statistics

Nearly 80 percent of individuals in the Texas criminal justice system have substance abuse problems. Substance abuse is by far the most common crime-related problem among offenders. Some individuals enter the justice system because of a drug charge. Others enter on other charges, but drugs are clearly implicated.¹⁰⁶

In fiscal year 2014, the latest year that such statistics are available, it cost approximately \$54.89 to incarcerate an individual per day. This includes direct costs such as food, housing, and guard salaries, as well as indirect costs such as administration costs and employee benefits.

The cost for parole is approximately \$4.04 per day. And community supervision is \$3.20. In the case of community supervision, the cost is split between the state and the local entity, which usually passes on their costs to the person being supervised in the form of fees.

The cost for substance abuse residential treatment during the same period was \$73.18.¹⁰⁷

Simple math would indicate that it is cheaper to incarcerate someone than to treat them. But anyone who has ever taken a statistics class knows that math is never simple. Especially when people are involved.

If you have a drug problem, and are locked up for a non-violent (usually property) crime, you will probably end up in the state jail system. And once you leave the state jail, the likelihood that you will be rearrested in five years is 69%. And 39.2 % will be reincarcerated.¹⁰⁸ This is mainly because property and drug crimes have a higher than average recidivism rate. And although this may seem high, it is lower than the national rearrest rate of similar offenses.

Nevertheless, when you are re-arrested, the \$54.89 per day starts up again.

The Addicted

"Just say no."

"This is your brain on drugs."

"Catchy slogans are no match for chemical addictions. . . programs such as D.A.R.E.--no matter how beloved--produce negligible results."¹⁰⁹

Consider obesity. Most people don't want to be obese. And many will tell you that they are addicted to food. But if you are obese, and want help, there are places to go for that help.

If you are addicted to caffeine, you could probably quit on your own, but you'd have a few rough mornings. Quitting cigarettes would be more difficult; so too, would leaving an alcohol addiction behind.

Try to imagine addiction as a health problem, not a personal weakness. Those who are addicted to drugs don't want to be addicted. And trying to find help is difficult, because drug addicts don't

want to be incarcerated, either. And as far as self-help, we're talking about a lot worse than a few rough mornings.

We all have our weaknesses. We are all addicted to something. The difference is that chocolate, caffeine and tobacco are all legal.

The Mental Health Aspect

Obviously, a prison cell is probably not the best place for a mentally ill person. But often, that's where they end up.

About a third of all people experiencing mental illnesses and about half of people living with severe mental illnesses also experience substance abuse. These statistics are mirrored in the substance abuse community, where about a third of all alcohol abusers and more than half of all drug abusers report experiencing a mental illness. Men are more likely to develop a co-occurring disorder than women. Other people who have a particularly high risk of dual diagnosis include individuals of lower socioeconomic status, military veterans and people with more general medical illnesses.¹¹⁰

A lot of people commit crimes due to an addiction. And many of those people are experiencing some sort of mental illness. This means that correction facilities are very likely to house a high percentage of mentally ill people. Learning to recognize and work with this population is crucial to solving addiction issues.

The Texas Department of Criminal Justice began a Mental Health Therapeutic Diversion program late in 2014. The goal is to provide a different type of housing environment for offenders with mental health needs, with a psychiatrist on staff to help address their issues. There are 420 beds in Gatesville for this program, with another 420 beds planned near Palestine.¹¹¹

Brazos County has trained all who come into contact with mentally ill detainees--jail staff, court staff, and local mental health officials--to recognize mental illness and get together to determine the best course of action before charging them. Those recognized as being less dangerous, but in need of help, are placed somewhere other than a jail environment by the local mental health authority.

A side issue with mental health is that those incompetent to stand trial are ordered housed in state mental health facilities. However, there are only slightly over one thousand beds available for mentally ill inmates. At the time of this report, more than 380 men and women remained in county lockups because there was no mental health bed available. As of April 1, the average wait for a maximum-security bed--for those charged with violent crimes, was approximately 120 days.¹¹² Obviously, county jails are not the appropriate place for these inmates.

Assessing the Need - TRAS

So how do you determine who has a real problem, and who is likely to reoffend? How do you measure a person's level of risk? And because a large percentage of crimes are committed due to an addiction, that has to be taken into account.

All offenders who are under community supervision start with an assessment, the Texas Risk Assessment System. That assessment determines criminogenic risk, and determines if the individual has a tendency towards criminal thinking. The instrument also determines the specific needs of the individual, such as whether or not they need help with problem solving skills. This assessment also takes into account the amount of supervision needed, since studies have shown that over-supervision does more harm than good. For instance, a fallible human being might think that an individual with a long offense history might need intense supervision. The TRAS, however, might point out that the individual is aging out of crime, and does not need that level of supervision.

In addition, a separate assessment to determine addiction severity is conducted on those determined to require it. Last fiscal year, 60,000 screenings were done for those involved with controlled substances.

At the lowest level, you would have an individual who is simply monitored, maybe not in treatment, but urinalysis testing would be done to see how they are doing under supervision.¹¹³

The next level would be short term residential treatment, such as detoxification, which could also have an outpatient component. These two levels keep the individual in the community, able to maintain their job and home.

Next are community correction facilities. Although the TDCJ allocates funding, they are locally operated by the CSCD's (parole offices). They provides judges with a residential setting option for substance abuse treatment. There are currently 28 facilities with 2,927 beds.

Cognitive Behavioral Programs

What does it mean to be in a cognitive behavior class?

Cognitive behavior classes address antisocial values, considered the foundation of criminal thinking. These values can be addressed through proven curricula designed to give the offender the opportunity and tools to make life changes that can reduce recidivism.¹¹⁴

It's hard to understand that many people don't have the background of a stable family to teach them right from wrong. The state attempts to correct that deficit. Cognitive behavior classes can also help an offender understand "why I do what I do," and give them skills to change that behavior. Practical issues are also addressed, such as budgeting, scheduling, and "soft skills" that most of us take for granted: showing up to work on time, how to shake hands, and choosing your friends with care.

Wrestling with the Definition

"A lot of the individuals we see are charged with some crime other than a drug offense. But they have a serious drug problem."¹¹⁵

At the time of this report, 380,000 offenders were on community supervision in the state of Texas. Twenty-five percent of those, 96,000, were under supervision for a non-violent drug offense.

A non-violent drug offense would include possession of a controlled substance, which could be marijuana or any other illegal substance. It would also include manufacture and/or delivery of a controlled substance, and prescription drug related offenses. Loosely defined, no one was directly injured. There were no guns or assaults involved.

Using this definition, researchers identified 46 nonviolent drug offenses with penalties ranging from a Class C misdemeanor to life in prison, and in some cases, a significant fine.

Nonviolent Drug Offenses and Related Penalties.¹¹⁶

Texas Controlled Substances Act, Chapter 481, Health and Safety Code

Offense	Statute	Penalty
Manufacture or delivery of a substance in Penalty Group 1	481.112	Depending on the amount of the substance, penalties range from a state jail felony to life in prison and may include a maximum fine of \$100,000 or \$250,000, as applicable.
Manufacture or delivery of a substance in Penalty Group 1-A	481.1121	Penalties range from a state jail felony to life in prison and a maximum fine of \$250,000, depending on the amount of the substance.
Manufacture or delivery of a substance in Penalty Group 2 or 2-A	481.113	Penalties range from a state jail felony to life in prison and a maximum fine of \$100,000, depending on the amount of the substance.
Manufacture or delivery of a substance in Penalty Group 3 or 4	481.114	Penalties range from a state jail felony to life in prison and a maximum fine of \$100,000, depending on the amount of the substance.
Possession of a substance in Penalty Group 1	481.115	Penalties range from a state jail felony to life in prison and a maximum fine of \$100,000, depending on the amount of the substance.
Possession of a substance in Penalty Group 1-A	481.1151	Penalties range from a state jail felony to life in prison and a maximum fine of \$250,000, depending on the amount of the substance.
Possession of a substance in Penalty Group 2	481.116	Penalties range from a state jail felony to life in prison and a maximum fine of \$50,000, depending on the amount of the substance.
Possession of a substance in Penalty Group 2-A	481.1161	Penalties range from a Class B misdemeanor to life in prison and a maximum fine of \$50,000, depending on the amount of the substance.
Possession of a substance in Penalty	481.117	Penalties range from a Class A misdemeanor to life in prison and a maximum fine of \$50,000, depending on

Group 3		the amount of the substance.
Possession of a substance in Penalty Group 4	481.118	Penalties range from a Class B misdemeanor to life in prison and a maximum fine of \$50,000, depending on the amount of the substance.
Manufacture, delivery, or possession of miscellaneous substances	481.119	Penalties range from a Class B misdemeanor to a third degree felony, depending on the actor's conduct and whether the actor has previously been convicted of the offense.
Delivery of marijuana	481.120	Penalties range from a Class B misdemeanor to life in prison and a maximum fine of \$100,000, depending on the amount of the substance.
Possession of marijuana	481.121	Penalties range from a Class B misdemeanor to life in prison and a maximum fine of \$50,000, depending on the amount of the substance.
Delivery of a controlled substance or marijuana to a child	481.122	Second degree felony.
Possession or transport of certain chemicals with intent to manufacture a controlled substance	481.124	Penalties range from a Class A misdemeanor to a second degree felony, depending on the type of substance.
Possession or transport of anhydrous ammonia; use of or tampering with equipment	481.1245	Third degree felony.
Possession or delivery of drug paraphernalia	481.125	Penalties range from a Class C misdemeanor to a state jail felony, depending on the actor's conduct and whether the actor has previously been convicted of the offense.
Illegal barter, expenditure, or investment	481.126	Second degree felony or first degree felony, depending on the actor's conduct.
Unauthorized disclosure	481.127	State jail felony.

of information		
Certain offenses under the Texas Controlled Substances Act committed by a registrant or a dispenser of a controlled substance	481.128	Penalties range from a civil penalty to a state jail felony, depending on the actor's conduct.
Diversion of a controlled substance by registrants, dispensers, and certain other persons	481.1285	State jail felony or third degree felony, depending on the actor's conduct.
Fraud as it relates to the Texas Controlled Substances Act	481.129	Penalties range from a Class B misdemeanor to a second degree felony, depending on the actor's conduct and the type of substance.
Diversion of a controlled substance property or plant	481.131	State jail felony.
Falsification of drug test results	481.133	Class B misdemeanor or Class A misdemeanor, depending on the actor's conduct.
Unlawful transfer or receipt of chemical precursor	481.136	State jail felony or, for a subsequent conviction of the offense, a third degree felony.
Transfer of precursor substance for unlawful manufacture	481.137	Third degree felony.
Unlawful transfer or receipt of chemical laboratory apparatus	481.138	State jail felony or, for a subsequent conviction of the offense, a third degree felony.
Transfer of chemical laboratory apparatus for unlawful manufacture	481.139	Third degree felony.

Simulated Controlled Substances, Chapter 482, Health and Safety Code

Offense	Statute	Penalty
Unlawful delivery or manufacture with intent to deliver	482.002	State jail felony.

Texas Dangerous Drug Act, Chapter 483, Health and Safety Code

Offense	Statute	Penalty
Possession of a dangerous drug	483.041	Class A misdemeanor
Delivery or offer of delivery of a dangerous drug	483.042	State jail felony.
Manufacture of a dangerous drug	483.043	State jail felony.
Forging or altering a prescription	483.045	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Failure to retain a prescription	483.046	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Refilling a prescription without authorization	483.047	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Unauthorized communication of a prescription	483.048	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Failure to maintain records	483.049	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Refusal to permit inspection	483.050	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Using or revealing trade secret	483.051	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor
Violation of certain other Texas Dangerous Drug Act	483.052	Class B misdemeanor or, for a subsequent conviction of the offense, a Class A misdemeanor

provisions		
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Abusable Synthetic Substances, Chapter 484, Health and Safety Code

Offense	Statute	Penalty
Producing, distributing, selling, or offering for sale a mislabeled abusable synthetic substance	484.002	Class C misdemeanor or, for previous convictions of certain offenses, a Class A misdemeanor

Abusable Volatile Chemicals, Chapter 485, Health and Safety Code

Offense	Statute	Penalty
Possession and use of an abusable volatile chemical	485.031	Class B misdemeanor
Delivery of an abusable volatile chemical to a minor	485.032	Penalties range from a Class B misdemeanor to a state jail felony, depending on the actor's conduct.
Inhalant paraphernalia	485.033	Class B misdemeanor or Class A misdemeanor, depending on the actor's conduct.
Failure to post sign	485.034	Class C misdemeanor
Sale of an abusable volatile chemical without permit	485.035	Class B misdemeanor

But just because violence isn't directly involved doesn't mean that someone isn't harmed. And the amount of controlled substance may be small, but it doesn't mean that substance doesn't have huge potential.

For instance, during testimony before the committee, it became obvious that a small amount of marijuana and a small amount of other drugs are not the same thing. For instance, a small amount of black tar heroin can be cut into hundreds of doses. And although several states have legalized marijuana, studies show that there is evidence linking early, chronic use of marijuana to mental health disorders. No one in this state wants to downplay the use of marijuana as innocuous.

Further, manufacture and delivery of controlled substances may not be considered a violent offense, but such activity surely merits more than a ticket or a warning. And being picked up for mere possession this time doesn't mean that there wasn't an assault or robbery (considered violent offenses) the last time the individual was picked up. The totality of a non-violent offender's circumstances should be considered in the context of determining whether or not an offense is considered a non-violent offense. This is similar to considering prior convictions in a criminal case for determining punishment. The existence of multiple convictions, other recent convictions, and violent or aggravated cases, should prevent the offender, as opposed to the record offense, from being misclassified as "non-violent."

Although the list of 46 violations are technically considered non-violent, they are not emotionally non-violent.

Penalty enhancements should also be taken into consideration. For instance, the manufacture of a substance in Penalty Group 1 of the Texas Controlled Substances Act has an enhanced penalty if a child under the age of 18 was present on the premises where the offense was committed. Enhancements also apply for an offense committed in a drug-free zone, if a child younger than 18 was coerced to commit or assist in the commission of an offense, or if serious bodily injury or death resulted after delivery of a controlled substance by the actor.

These enhancements, too, are subjective. A person picked up on school grounds for selling a controlled substance to a minor is not the same league as a motorist stopped in a school zone who is found to have a small amount of marijuana in his ashtray. Both occurred in drug-free zones. But they are not the same. It's all in the intent.

Most people could perhaps, agree on this "non-violent" scenario: a person is stopped for an expired vehicle registration. He seems a little nervous. His car is searched. He is found with a small amount of marijuana in his pocket, obviously for personal use. It is his first offense.

If that person is in Harris County, there's a program for that.

Local Successes

Harris County's local jail was full of individuals who were charged with possession of a controlled substance less than a gram, which is a state jail felony. Their cases were set for trial, and on the trial date, the individual would have sat in the jail long enough to earn enough credit to discharge whatever plea bargain was going to be offered to them.¹¹⁷ Oftentimes, the same individual was in custody again less than a week later, charged with the same offense.

Harris County decided to take offenders arrested for felony possession of illegal drugs of less than a gram, with no evidence that the offender was involved in delivery of the substance, and offer them an alternative.

Those coming to court and agreeing to take part in the program would be assessed for specific needs, such as cognitive skills classes or a residential drug treatment program. Those successfully completing the program will have the criminal charge against them dismissed. In addition, the district attorney's won't oppose an expungement filing as long as law enforcement is able to keep a record of their name, so they know they have been a part of the program.

The program was only weeks old at the time of the committee hearing, so statistics aren't available at this time, but most individuals who are arrested appear to be choosing assessment and participation in the program.

Harris County also operates the First Chance program, which is only for first time offenders detained for less than two ounces of marijuana.¹¹⁸ An officer will detain an offender on the scene for possession of two ounces of marijuana or less, and determine whether or not they are eligible for the program. To be eligible, the offender must have no prior convictions, no prior probations, and no prior deferred adjudications--a true first offender.

Once the determination of eligibility has been made, the officer gives the individual a program notice form, and does not make an arrest on the scene. The offender must report to pre-trial services within three days for intake and assessment. Those at low risk of re-offending are placed on a 60-day track, where they complete eight hours of community service and pay a \$100 program fee. Those at moderate to high risk of re-offending are placed on a 90-day track, where they complete a cognitive skills class and pay a \$100 program fee.

Those who complete the program and fail to pick up any new offenses are rewarded by not having charges filed. The case is disposed without any record being entered into a database, and no criminal record is created. As of February, 2016, Harris County had 1905 participants who have completed the program, 385 who have terminated, and 447 active participants. Overall, Harris County has achieved an 87% completion rate with First Chance.

Other States

Hawaii's Opportunity Probation with Enforcement (HOPE) is an intensive-probation program that has the hardest-core drug users face random urinalysis one day each week; violators immediately go off to a weekend in jail. Under HOPE, even habitual drug users usually go clean on their own when faced with the immediate threat of two days in jail. Well over 80 percent stop using drugs right away and remain clean, without any further treatment.¹¹⁹

Pennsylvania has introduced a bill that would provide a clean slate for certain offenders. The proposed law would automatically seal non-violent misdemeanor convictions after ten years, summary convictions after five years, juvenile adjudications after seven years, and charges that fail to result in conviction after sixty days. There would no longer be a need to pay for expungement, and those affected should have better access to jobs, housing and education services.¹²⁰ This bill could provide a powerful incentive if it were to be combined with drug treatment.

Early Intervention

Seattle has created a pre-booking program, with no record of arrest if the individual completes the program.¹²¹ Police officers are able to direct low-level drug offenders at the point of arrest to a case manager. The case manager meets with the offender, looking into things like substance abuse history, psychological symptoms, personal relationships, health status--the entire makeup of the person.

After evaluation, services are provided, such as legal advocacy for other crimes that are pending charges, child support and custody, housing assistance, counseling and financial support--everything needed to get the individual back on his feet.

A comprehensive study of the program looked at the individuals from 2009 to 2014, and compared them to a control group. The individuals in the program had a 57% lower odds of arrest subsequent to being enrolled in the program.

Florida has a program for juvenile offenders similar to Seattle's, in that it diverts juveniles with non-serious, first time misdemeanors at the point of arrest. Case managers work with the juveniles, giving them a series of programs and stipulations. These include drug screening, urinalysis testing, substance abuse treatment, mental health treatment, restitution, and apology letters to victims. In 2013-2014, there were 7300 participants, with 6200 completions. The re-arrest rate for one year was five percent. Juvenile crime is down in Florida, and the state is now looking at implementing the program for adult offenders.

Pre-charge law enforcement diversion programs would affect probation funding, however, as Texas funds their current probation system on a per day amount for each felony offender directly supervised. Other states have tackled this problem with incentive programs for counties.

Arizona enacted a performance based incentive funding for counties who reduce their probation revocations and save the state funding from having to actually incarcerate these individuals. The state set a target number for each county, and if the county came below the target number, a portion of the funding saved would go back to the county for drug treatment programs.

California enacted a similar program, and saved about \$179 million. Of that, \$88 million went back to the counties to intervene with more pre-trial and intervention programs.

Texas Attempts

Texas passed legislation in 2011, SB 1055, providing a beginning lump sum on the front end based on a county's goal commitment of reduction. If a county met the goal, they didn't have to give the money back. If not, a clawback provision came into effect. Based on performance, an additional 25 percent of funding saved by not incarcerating returned to counties on the back end. Although the bill passed, it was never funded.

Last session, HB 3579 attempted to address the lack of treatment options in state jails by encouraging those offenders to engage in community supervision, which offers a chance to participate in rehabilitative and treatment opportunities. In return, offenders charged with state jail felonies would be given the opportunity to receive a conviction for a lower-grade offense.¹²²

The bill passed, but had morphed into a "tree" of bills by the time it landed on the governor's desk. The bill was vetoed due to an issue not related to the community supervision piece.

In 2007, the Texas legislature approved policies for the 2008-09 biennial budget that increased treatment capacity in the prison system by 3,700 program slots for substance use treatment (outpatient, in-prison, and post-release) and mental health treatment, and expanded diversion options in the probation and parole system by 3,000 slots for technical violations of the conditions of their supervision or transitional treatment and substance use treatment. The \$241 million in funding for these policies were based on the assumption that these changes would

make building new prisons unnecessary, thus saving a projected \$443 million in new construction costs.¹²³

The new prisons weren't built. In fact, three prisons have been closed. The prison population has decreased 4%, even though the population in Texas has increased 20%. The state's incarceration rate has dropped by 10% since 2007, and between 2006 and 2013, the crime rate decreased by 20%.

But.

While the overall number of people sent to prison dropped between 2011 and 2015, the number of people sentenced to state jail for drug possession was two percent higher in 2015 than in 2011. It costs the state more than \$67 million to incarcerate people in state jails for low-level drug offenses in 2014.¹²⁴

The state spent \$241 million for the programs that saved \$443 million in new construction costs, and saved additionally with the closure of three prisons. Think what we could do with more treatment slots. Imagine what we could save--not just money, but lives. Fewer victims. More tax-paying citizens. We would all benefit.

Recommendations

*"Too often, when it comes to fighting crime, money is no object--as long as it is spent on enforcement. Making cuts to rehab and education programs in jails might save a few thousand dollars. But if it means even a handful of prisoners failing to learn to read, or to kick their drug addiction, and as a result reoffending rather than finding work on their release, the cost is immense."*¹²⁵

In 2015, legislators provided more funding for drug treatment options in and out of prison, and that trend should continue. In particular, funding aftercare is critical and has proven to be successful.

In a perfect world, the legislature might consider moving towards providing treatment for people before they get into trouble, rather than relying on the criminal justice system.

Several of those testifying before the committee brought up the issue of judicial discretion. In other words, the legislature shouldn't micromanage penalties so thoroughly that the role of the judge to decide the appropriate punishment is compromised. In some counties, however, local judges and district attorneys are under pressure from their citizenry to lock up as many people as possible. Other jurisdictions are too lenient; an offender who has been arrested dozens of times for misdemeanors shouldn't get a slap on the wrist. While a balance between legislative and judicial branches is to be preferred, improvement of public safety is the main goal.

HB 3579 should be given another chance. The community supervision aspect of the legislation was not the reason it was vetoed, and its goal of directing more state jail felons to community supervision is a worthy one.

SB 1055 should be considered for funding. Local entities have programs in place to assist with drug treatment programs. Seed funding on the front end would result in savings to the state on the back end. Front-loading would also assist those who find community supervision

requirements financially challenging. If probationer fees could be collected from individuals after they have completed treatment and achieved employment and housing stability, revocation rates should be lowered. In addition, payment rates would be higher, and employees could assist the individuals, rather than be bill collectors.

Legislators should consider lowering the penalties certain felony drug charges that are considered non-violent in nature. For instance, drug activity in a school zone automatically becomes a felony, when an individual may not even be aware they are in a school zone. Specifically, charges that involve personal possession of small amounts of marijuana should be examined. This means possession ONLY, not manufacturing and/or delivering. Offenders should still be considered for a treatment program, no matter if the charge is reduced to a misdemeanor.

Success on probation is a key factor, and legislators should ensure that success is possible. Legislators should consider changes to make it easier for past offenders to lead productive lives on the outside. Specifically, legislators should consider "ban the box" legislation, in which employers don't check criminal backgrounds of non-violent offenders until the final interview.

The state should consider additional mental health funding for counties struggling to work with mentally ill offenders. Any funding for addiction programs should take this group into consideration.

Legislators should consider narrowing the scope of penalty enhancements, particularly offenses committed in drug-free zones. Such zones can be difficult to distinguish, especially in urban areas. Obviously, there is a difference between someone selling a controlled substance to a minor on school property, and a motorist being stopped in a school zone with a controlled substance in his car. This committee is not advocating a free pass for any offender, rather the circumstances of the violation and previous arrest records (if any exist) should be taken into account.

Testimony regarding state jail terms not being long enough for offenders to participate in drug treatment programs was considered by legislators; but longer sentences are not a viable option. If the length of stay is not long enough, perhaps the programs could be adjusted to fit the time allotted. Options could include a longer, more intensive class day.

Pre-trial release programs should be considered for non-violent offenders, to make room for those who need to be there. Judges can assist with this process when setting bail.



Release Policies

Interim Charge #4: Study inmate release policies of the Texas Department of Criminal Justice, including the release of inmates directly from administrative segregation. Identify best practices and policies for the transitioning of these various inmate populations from the prison to appropriate supervision in the community. Identify any needed legislative changes necessary to accomplish these goals.

The committee met on February 9, 2016, to consider Charge #4. Invited testimony included:

Bill Stephens, Director, Correctional Institutions Division, Texas Department of Criminal Justice
Gregory S. Glod, Esquire, Policy Analyst, Center for Effective Justice, Texas Public Policy
Foundation

Incarceration and Release in Texas

*"In your dealings with Texans of the American extraction you must take care not to provoke them. The consequence might be a bullet in your head, and nobody would take any notice of it."*¹²⁶

Texas has one of the highest incarceration rates in the world. And there have been many theories as to why this is so. We are a large state, both in land and population. Those who originally settled our state were, to a large extent, looking for a fresh start after problems elsewhere. The state is diverse in its peoples, which can lead to tension. We are a part of the Bible Belt, statistically meaning that we want people to pay for their crimes. Our social net, which includes such things as foster care and mental health intervention services, is weak.

Does all of this make Texans more violent?

A State of Violence

Since the early 1990's, violent crime rates in Texas and the United States have fallen, but Texas rates have run ahead of the national average in seventeen of the twenty years between 1991 and 2010.¹²⁷

And Texas often has the kind of crime that makes headlines. Since 1990, Texas has been host to a mass killing at Luby's cafeteria in Killeen, a serial killer in Dallas, the Branch Davidian conflagration in Waco, a shooting rampage at the Wedgwood Baptist Church in Fort Worth, a dragging death along country roads in East Texas, and a multiple-baby drowning in Houston.¹²⁸

Statistics show that the South is American's most violent region. The sixteen states and one district in the Southeast (Maryland, Delaware, Washington, D.C., Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma and Texas), make up America's largest region with just over 37 percent of the population. In 2012, it was also the most violent. The Southeast accounted for nearly 497,000 violent crimes, 41 percent of all reported violent crime in the U.S. The South also led the country with the highest violent crime compared to population, followed by the West, and Midwest, and finally the Northeast.¹²⁹

And it's not necessarily because Texans like guns.

In 2012, firearms only accounted for 65 percent of Texas homicides for which data is available, below other states like Illinois, Michigan, and California. However, in the same year, Texas led the country in number of people killed by "hands, fists and feet." In other words, you are more likely to be punched to death in Texas than any other state.¹³⁰

We may never know exactly why so many people are incarcerated in Texas. We can look at our laws, and tweak our punishments, and legislators have done some of that. The upshot is that there are a lot of people incarcerated. And eventually, most of those incarcerated will get out.

Letting Go

In fiscal year 2015, 70,311 offenders were released from the Texas Department of Criminal Justice.¹³¹ Prison offenders are released from one of six regional sites across the state: Abilene, Amarillo, Beeville, Dallas, Gatesville, and Huntsville. Offenders are transported to the area nearest their residence, and due to the length of transport, offenders can be housed in transit as they are moved across the state.

Most offenders are released to regional release sites, but some, such as sex offenders, those with special needs, or those requiring electronic monitoring, are released at the Huntsville unit. Some offenders are released to detainers such as law enforcement and immigration.

Those offenders who have been assigned to state jails and substance abuse treatment felony punishment facilities are released from their unit of assignment. Substance abuse felony punishment offenders are released to a transitional treatment center, an approved home plan, or sentencing county official.

Preparing for Departure

Prior to release, the offender's identification is verified, fingerprints are taken, and TDCJ staff ensures that a DNA sample has been collected and entered into the Department of Public Safety database. Releasing offenders are provided a one-way bus voucher to their destinations, and staff is assigned at bus stations to monitor the offenders prior to their release. Prison offenders released to supervision are provided \$50 and receive another \$50 upon reporting to their parole officer. Discharge offenders receive \$100 upon their release.

Departure takes place in three phases:¹³²

Phase One

- Documents are ordered. These include replacement social security cards, certified birth certificates, Military service record and/or DPS identification certificate. These documents are ordered within six months of parole eligibility for prison sentenced offenders, or within one week of arrival to the TDCJ for state jail and SAFFP offenders.

Phase Two

- Those offenders who are being released to parole supervision are administered the Texas Risk Assessment System (TRAS) to determine the level of supervision post release. Case management is initiated for those who score as moderate or high risk to address needs, goals, action steps and resources.

Phase Three

- Parole offenders who were enrolled in Phase II case management are referred to Phase III Community Reentry upon release from the TDCJ.
- Enrolled offenders are provided employment counseling and referrals as well as linkages to community based resources for assistance.

Additional resources that offenders are provided upon release include a release certificate, an individual re-entry plan, and resource referrals that include local and statewide organizations that assist with health care, social services, substance abuse, veteran specific needs, employment and support systems. Offenders are also provided a toll-free reentry hotline number which allows the offender to contact the Reentry and Integration Division at the TDCJ for additional assistance and referrals post-release.

Veterans benefit applications are processed for eligible offenders prior to release, and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) provides screening and referral for post release mental health and medical services for special needs offenders. TCOOMMI has contracts with local mental health authorities statewide to complete the continuity of care process from incarceration to the community.

Administrative Segregation

*"The natural condition of life for human beings is reciprocal rootedness in others."*¹³³

*"I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body."*¹³⁴

Administrative segregation changes you.

Stephen F. Austin, arrested by Mexican authorities for advocating independence from Mexico, spent many long months in administrative segregation. Prior to his imprisonment, Austin counseled moderation in Mexican politics, and forswore rebellion. After his imprisonment, however, Austin endorsed a Declaration for Taking Up Arms, asserting that Texas citizens would fight to defend "their rights and Liberties" against a "reign of despotism." The Texas Revolution had begun.¹³⁵

Solitary confinement was not originally meant to punish. It was considered a place to think about one's misdeeds with the hope of change.

In 1790, Walnut Street Jail in Philadelphia was built by the Quakers and was the first institution in the United States designed to punish *and* rehabilitate criminals. At Walnut Street, each cell block had 16 one-man cells. An entire sentence would be served in isolation, not just as punishment, but as an opportunity to seek forgiveness from God. It was a revolutionary idea, as no penal method had ever before considered that criminals might be reformed.¹³⁶

By the late 1800's, the practice of solitary confinement was largely abandoned. It gained favor again in the 1980's with the advent of the "tough on crime" movement.¹³⁷ Legislators poured

money into prisons, and some states built "supermax" prisons, which consisted entirely of solitary confinement cells. In 1984, there was only one "supermax" facility in the United States. By 1999, there were sixty "supermax" facilities in thirty states.

AdSeg in Texas

What does solitary confinement look like in Texas?

The average cell size in administrative segregation is 60 square feet, with one bed, a toilet, desk and sink. Some have showers in the cells, but most have separate shower areas. Offender cell doors have a window in the cell door.

Offenders generally get one hour a day of recreation. Although physically separated, they may converse with other offenders. They are allowed clergy visits, and may have books and radios. They may purchase items from the commissary and participate in correspondence courses. Visitors are allowed during one two-hour visit per weekend.

Under TDCJ policy, offenders are housed in administrative segregation because they have committed assaults or other serious disciplinary offenses while in prison or because they are members of one of the 12 gangs that TDCJ labels "security threat groups."¹³⁸ The length of stay in administrative segregation is not pre-set but determined by an offender's behavior in solitary. Placement is reviewed once a month.

Leaving AdSeg

Unfortunately, although solitary confinement may be best for the general population, and thus, the common good, it isn't best for the individual. TDCJ has recognized this and operates several programs to transition inmates from administrative segregation to the general population or to divert offenders from such placement.

The Gang Renouncement and Disassociation (GRAD) program works with members of security threat groups so they can disassociate from their gangs and return to the general offender population. About 4,787 offenders have been released from administrative segregation after going through the GRAD program through the end of fiscal 2016. Of those, only 3% have returned to administrative segregation during their incarceration.

In 2014, TDCJ began its four-month Administrative Segregation Transition Program to help offenders not associated with gang activity to transition from administrative segregation to the general population. Since program inception, 508 offenders have completed the cognitive-based program through the end of fiscal year 2016. Less than 4% have returned to administrative segregation during their incarceration.¹³⁹

Inmates who are expected to be released directly from administrative segregation to the community now have a new program, the Corrective Intervention Pre-Release Program. Offenders get group interaction and recreation, and a case management staffer works with them on a pre-release curriculum.¹⁴⁰

Since 2009, the administrative segregation population has dropped by 40.58%; from 8,492 to 5,046 by the end of 2015.¹⁴¹

Other States

Mississippi, facing a federal lawsuit, agreed in 2007 to enact several policies which changed how individuals in administration segregation are classified. Case managers were appointed to explain to inmates what they needed to do to get out of administration segregation. Mississippi managed to reduce their administrative segregation population from 1300 to about 300 today, and prison facilities in the state have seen an improvement in inmate and staff safety.¹⁴² Because administrative segregation costs much more than housing an inmate in general population, Mississippi is saving an average of \$6 million per year.

Maine cut the number of people in solitary cells in half between 2010 and 2012 and gave those who remained recreation activities, counseling sessions, and opportunities to earn greater access to radios, televisions, and reading materials with good behavior. The number of violent incidents in Maine prisons remained fairly steady, but the state saved money with the closing of several administrative segregation facilities.¹⁴³

In 2013, Illinois closed its supermax prison. Colorado reduced its population in solitary confinement by nearly sixty percent between 2011 and 2014.¹⁴⁴

AdSeg to the Streets?

In 2013, TDCJ released 1,243 people directly from solitary-confinement cells into the outside world. Judging from the testimony before the committee, the TDCJ recognizes the problem of releasing offenders directly from administrative segregation to the general public, and has taken steps to create more of a transition phase.

In the past couple of years, TDCJ has developed or expanded a number of programs for administrative segregation offenders to include two that prepare them for release to the community. The Board of Pardons and Paroles stipulates whether the offender will attend SVORI, which is the Serious Violent Offender Re-Entry Initiative. If the Board does not stipulate this program, almost all other administrative segregation offenders are moved from segregation and placed in the a corrective intervention pre-release program four months prior to their release to the community.

Both programs involve congregate activities, which have recently been expanded to four hours a day, and an in-cell curriculum using a PC based equipment that addresses anger management, life skills, parenting, and cognitive behavioral intervention to address attitudes, thought processes and enhanced coping skills and address the re-entry planning for the individual offender.

The SVORI program has an after release component consistent with the individual supervision level. It is TDCJ's goal that all segregation offenders participate in one of these programs prior to their release from TDCJ.

In FY 2015, 579 offenders completed these two programs, and it is estimated that very few, if any, will be released directly from administrative segregation to the street in the future.

Recommendations

Any parent can tell you that preparing someone to go out into the world isn't easy. And entering the world after a prison term can be doubly difficult, especially with no support system in place. Programs to prepare inmates for the outside world should be monetarily supported and strengthened. The TDCJ has used the resources it has been given to create programs that work, and that work should be encouraged with continued funding.

Although consideration should be given to allowing people in solitary confinement more out-of-cell time, that would mean more staffing, which will always be a problem. Even with a raise allowed by legislators last session, working in a prison is not a job many want to do. Upping staffing levels to capacity may never be realized. With the funding difficulties that the state is expected to face in 2017, additional funding for the TDCJ to increase staffing to possibly ease solitary confinement restrictions is unlikely. But the unlikeliness of something happening to solve a problem doesn't mean that the problem shouldn't be pointed out. And reducing the administrative segregation population would free up monies.

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