

[2015 Session] Allow Judges to Create Tailored Treatment Programs, as Necessary, to Address Substance Abuse and Mental Health Issues

Policy Background:

Texas wastes millions of taxpayer dollars every year imprisoning individuals who suffer from substance abuse and/or mental health problems. Their offense is low-level drug possession, which often results from chemical dependency and/or self-medication among those with mental illness or trauma – conditions that cannot be “treated” through incarceration.

Diverting these individuals from confinement to treatment programming and other supportive services is not only a more effective approach to low-level drug use, it can save the immediate costs associated with typically high incarceration expenses, as well as trial and defense expenses. Additionally, valuable law enforcement and corrections resources can remain focused on higher-risk offenses and legitimate threats to public safety.

Texas policy-makers should reduce penalties for minor drug possession offenses and require courts to divert individuals to community supervision and a treatment program, if needed.

The savings derived from diversion programs should be used to strengthen existing treatment programs in the community, or create tailored treatment programs, as necessary.

Key Facts:

A considerable percentage of people arrested, charged, and incarcerated in Texas are low-level drug users, often in need of treatment.

- About 90% of all drug-related arrests in Texas are for possession of a controlled substance, not delivery or distribution.^[1] In FY 2014, almost 30% of individuals who entered the Texas Department of Criminal Justice (TDCJ) were admitted for

a drug offense – and 76% of those individuals were charged with drug possession, as opposed to delivery or other offenses.[2] Incarcerating individuals for drug possession costs Texas taxpayers approximately \$745,000 daily, or \$272 million per year.[3]

- Brad Livingston, TDCJ's Executive Director, testified in April 2014 at a joint interim hearing convened by the House Committees on Corrections and Criminal Jurisprudence that 62% of all Texas inmates have some level of chemical dependency, while 67% of those who have been diagnosed with a mental illness have chemical dependency issues. Further, he stated that "some of the bigger challenges . . . are probably more significant upstream in the jail setting and pretrial," indicating that there should be a more-concentrated effort to identify and assess co-occurring disorders upon entrance to the criminal justice system well-before individuals enter incarceration.[4]
- Prescription drug abuse is on the rise in Texas,[5] putting more people at risk of criminal justice system involvement – particularly youth, older adults, women,[6] and veterans returning from Iraq and Afghanistan.[7]

Incarceration-driven responses to addiction are bad for Texas.

- Many Texans struggle with addiction, and increasingly, research indicates that chemical dependency is a brain disease that can be treated with proper resources and services – not incarceration. By altering the chemistry of the brain, drug addiction leads to compulsive cravings and limits the ability of an individual to make voluntary decisions.[8] Treatment is critical to address these issues.
- Unlike effective treatment programming, strict incarceration results in higher rates of re-offending and relapse.[9]
- Incarcerating a person in prison (\$17,827/year) is almost seven and a half times more expensive than community supervision with treatment (\$2,438/year).[10]
- Mental health treatment providers are scarce in many Texas correctional facilities (including private and state-operated prisons, state jails, transfer facilities, and others). As of August 31, 2013, over 40 of the 112 facilities listed in the Texas Department of Criminal Justice's directory had no mental health employees on site, despite some units having a maximum capacity of nearly 1,400 inmates.[11]
- Incarceration creates barriers to accessing housing, employment, education, and other services, and reduces the ability of individuals to pay child support

and meet other obligations. These challenges can trigger relapse, leading to re-arrest or re-incarceration.[12]

Relevant Bill:

- **Bill Number:** SB 82 (Ellis) Bill Caption: Relating to community supervision for certain drug possession offenses.

Other TCJE Materials:

- **Report:** *Effective Approaches to Drug Crimes in Texas: Strategies to Reduce Crime, Save Money, and Treat Addiction* [January 2013]

Outside Publications:

- House Committee on Corrections, *Interim Report to the 84th Legislature* [January 2015]

See Charge 2 [Joint Charge with the House Committee on Criminal Jurisprudence]: Examine the association between co-occurring serious mental illness and substance use disorders and parole revocation among inmates from the Texas Department of Criminal Justice; review current policies and procedures for incarcerating individuals with a dual mental health diagnosis in both state and county correctional facilities and examine potential remedies within the State's criminal justice system to ensure that the public is protected and that individuals with a mental health diagnosis receive a continuum of mental health services. (pages 33-39)

- House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* [January 2015]

See Charge 4 [Joint Charge with the House Committee on Corrections]: Examine the association between co-occurring serious mental illness and substance use disorders and parole revocation among inmates from the Texas Department of Criminal Justice. Review current policies and procedures for incarcerating individuals with a dual mental health diagnosis in both state and county correctional facilities and examine potential remedies within the State's criminal

justice system to ensure that the public is protected and that individuals with a mental health diagnosis receive a continuum of mental health services. (pages 27-32)

- Texas Senate Committee on Criminal Justice, *Interim Report to the 84th Legislature* [December 2014]

See *Charge 2*: Study the operations of the Texas prison system with respect to the medical and mental health care treatment. Study potential cost savings associated with identifying offenders with dual diagnoses and routing these individuals into appropriate services before, during, and after involvement with the criminal justice system. Study the way in which geriatric parole cases are currently evaluated and identify opportunities for reducing costs associated with the geriatric inmate population without compromising public safety. (pages 17-26)

Also see *Charge 3*: Study and make recommendations related to jail diversion, reduced recidivism rates, and access to services for those within the system who suffer from a mental illness. Monitor the progress and implementation of the jail diversion pilot program for the mentally ill in Harris County and determine the best practices to be applied statewide. (pages 27-35)

- Texas Senate Committee on Health and Human Services, *Interim Report to the 84th Legislature* [December 2014]

See *Charge 2*: Monitor the implementation of programs that were created or expanded by the 83rd Legislature to improve mental health and substance abuse services and assess these efforts' contribution to improved outcomes such as reduced recidivism in state hospitals, diversion from emergency rooms and county jails, and access to permanent supportive housing. Identify and address gaps in the current mental health and substance abuse system and make recommendations to better coordinate services across agencies and programs. (pages 6-14)

[1] Texas Department of Public Safety, *Texas Arrest Data: 2013*, p. 75;
<http://www.txdps.state.tx.us/crimereports/13/citCh9.pdf>

[2] Texas Department of Criminal Justice, *Statistical Report: Fiscal Year 2014*, pp. 2, 21;
http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf

[3] Texas spends the following amounts per person per day, per type of bed: \$48.84 to incarcerate one individual in prison [see the highest per-day figure provided for a System I or System II bed]; \$42.90 to incarcerate one individual in a state jail; and \$63.19 to incarcerate one individual in a Substance Abuse Felony Punishment Facility. See Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, Submitted to the 83rd Texas Legislature, January 2013, p. 8;
www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf

[4] Testimony provided by Brad Livingston before the Texas House of Representatives Committees on Corrections and Criminal Jurisprudence, April 22, 2014. See the House Archived Videos section for 04/22/14, “Joint Hearing: Corrections and Criminal Jurisprudence.”

[5] The Texas Drug Demand Reduction Advisory Committee, *Report to State Leadership*, January 2009, pp. 12-13;
<http://www.dshs.state.tx.us/sa/ddrac/default.shtm>.

[6] National Institute of Health: National Institute on Drug Abuse, *Prescription Drugs: Abuse and Addiction*, Research Report Series, U.S. Department of Health and Human Service, pp. 7-8;
<http://www.drugabuse.gov/publications/research-reports/prescription-drugs>

[7] American-Statesman Investigative Team, “Uncounted Casualties: Home, But not Safe,” *Austin American-Statesman*, September 29, 2012;
<http://www.statesman.com/news/news/local-military/texas-war-veteran-deaths-studied/nSPJs/>

[8] National Institutes of Health, National Institute on Drug Abuse, *Medical Consequences of Drug Abuse*;
<http://www.drugabuse.gov/related-topics/medical-consequences-drug-abuse>

[9] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment, *The National Treatment Improvement Evaluation Study: NTIES Highlights*, 1997; <http://www.ncjrs.gov/nties97/index.htm>. Also see: Dustin Johnson, Ph.D., “Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice – Community Justice Assistance Division: Research and Evaluation,” May 2011, pp. 13, 23 (individuals completing residential programs have significantly lower two-year arrest and incarceration rates than those who do not complete their program).

[10] Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 – 2012*, January 2013, pp. 8, 14, 15; using FY 2012 prison inmate costs-per-day of \$48.84, state costs-per-day for community supervision of \$1.38, and state costs-per-day for substance abuse outpatient treatment of \$5.30.

[11] Texas Department of Criminal Justice, *Unit Directory*; http://www.tdcj.state.tx.us/unit_directory/index.html. *A list of facilities without mental health staff is available upon request.*

[12] U.S. Department of Health and Human Services, National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*; <http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations>