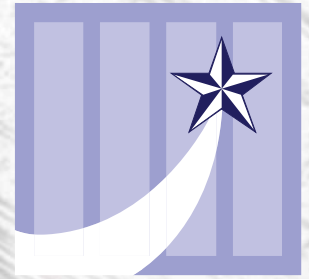


# **Cost-Saving Strategies For Texas' Criminal and Juvenile Justice Systems**

**A Policy Guide, 2011  
Part 1 of 4**



**TEXAS CRIMINAL  
JUSTICE COALITION**

## **Responsibly Reduce Incarcerated Populations To Increase Public Safety and Taxpayer Savings**



## ACKNOWLEDGEMENTS

We would like to extend our most sincere appreciation to the members of the Policy Research Team at the Texas Criminal Justice Coalition for their invaluable input in the compilation of this policy guide – Chris Cunico, Travis Leete, Leah Pinney, Erica Surprenant, Molly Totman, and Ana Yáñez-Correa.

We would also like to extend our gratitude to those who believe in and guide our work and who remind us that we are not alone. You are an inspiration to us in our pursuit of real solutions to the problems facing Texas' criminal and juvenile justice systems.

Finally, we would like to acknowledge Kim Wilks for her cover design and interior layout and design.

## FEBRUARY 2011

*The Texas Criminal Justice Coalition advances criminal and juvenile justice solutions that promote effective management, accountability, and best practices in efforts to increase public safety and preserve human and civil rights*

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## Letter from the Executive Director

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Dear Reader,

As the Executive Director of the Texas Criminal Justice Coalition (TCJC), I am thrilled to present our third policy guide, *Cost-Saving Strategies for Texas' Criminal and Juvenile Justice Systems*. For your convenience, we have created four independent booklets that address each of TCJC's major areas of policy interest.

In this upcoming 82<sup>nd</sup> legislative session, the state will face an historic budget deficit that our leadership must reconcile with the ongoing need for public safety, social services, education, workforce development, and various infrastructure improvements. The difficulty lies in making cuts now to address the state's immediate needs, while also keeping in mind long-term ramifications so that policy-makers do not simply shift the costs to Texans down the line. Especially in the area of criminal justice, this challenge is clear. Budget reductions in key line items today could lead to increased recidivism and threats to public safety in the future.

**PART 1** of this guide examines **alternatives to incarceration**. We know that cuts to services are inevitable in 2011, but our policy-makers must think carefully about what history has proven: that diversions – including treatment and programming – are not only more cost-effective than incarceration, but they lead to more successful and productive community members. Indeed, diversion investments have saved the state nearly \$2 billion since 2007, and programming (unlike warehousing individuals in a corrections facility without programming) can truly address the root causes of criminal behavior. During a time when budget cuts are Texas' reality, diversion funding must remain intact.

Included throughout this guide are comprehensive, cost-saving strategies that the state and counties can employ to address the immediate financial deficit, as well as preserve public safety throughout our communities in the future. Already, state leadership has laid the foundation for the continuous success of risk-reduction strategies with their bipartisan support during the past three legislative sessions. These additional smart-on-crime recommendations must serve as a critical consideration-point for policy-makers seeking to implement a rational, responsible, fiscally sound budgetary approach, as they can and will deliver taxpayers a return on their investment. But in consideration of Texas' current economic climate, this policy guide not only provides legislative recommendations that will save the state money now, it also outlines strategies that policy-makers can take back to their respective communities for consideration and implementation during the legislative interim.

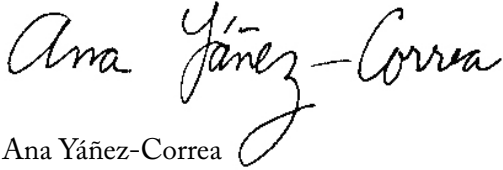
Please note that if you are interested in other areas of criminal and juvenile justice reform, you should have a look at the additional parts in our four-part policy guide.

**PART 2** addresses the need to bolster the state's **re-entry infrastructure**, including through in-house and community-based tools for personal responsibility that will enable returning individuals to find and maintain both housing and employment, in turn living as law abiding, contributing members of our communities.

**PART 3** recommends **front-end strategies** that can save the state money in incarceration costs, including public defender systems, a strengthened Task Force on Indigent Defense, and improved attorney appointment and representation procedures.

**PART 4** provides guidance to policy-makers in light of a possible restructuring of the state's **juvenile justice system**. Emphasis must remain on ensuring that funding and rights follow the youth.

Sincerely,

A handwritten signature in black ink that reads "Ana Yáñez-Correa". The signature is written in a cursive style with a large, stylized "Y" and "C".

Ana Yáñez-Correa  
Executive Director, Texas Criminal Justice Coalition

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# Introduction

## Responsibly Reduce Incarcerated Populations To Increase Public Safety and Taxpayer Savings

According to the Texas Department of Criminal Justice (TDCJ), 1 in 22 Texans are currently under some form of supervision in the state’s criminal justice system, with approximately 155,000 individuals incarcerated in TDCJ facilities, 420,000 individuals on misdemeanor or felony probation, and 81,000 individuals on active parole.<sup>1</sup>

Given the state’s massive, multi-billion dollar budget shortfall, policy-makers must strive to implement cost-saving criminal justice strategies that will address the immediate financial deficit while also preserving public safety in Texas’ communities in the future.

Incarceration diversions – including treatment programming, probation, and parole – have saved the state nearly \$2 billion since 2007 while safely keeping inmate populations from exceeding state and local budget capacity.<sup>2</sup> In fact, “Texas’ offender population has decreased slightly since 2007, when the Legislature began investing more money in treatment, diversion and lower caseloads for local probation officers.”<sup>3</sup> Continued investments in such areas are critical to meeting short- and long-term fiscal and public safety objectives. Indeed, diversion strategies will continue to deliver taxpayers a return on their investment by addressing the root causes of criminal behavior, which in turn keeps costly incarceration rates down and results in more productive community members.

On the other hand, focusing billions of dollars on hard incarceration – prison construction and maintenance – for nonviolent, non-sex related offenses will sap valuable resources and continue to churn out inmates who have been warehoused, not rehabilitated. Rates of re-offending (both arrests and re-incarceration) will remain high,<sup>4</sup> and more troubling, so will the number of victims in our communities. The cycle of incarceration and re-incarceration will continue.

The state’s historic incarceration model is ripe for much-needed improvement. According to recent data, Texas’ incarceration rate is more than 30% higher than the national average, and yet our crime rate is almost 20% higher than the national average rate.<sup>5</sup> However, after an investment in probation in 2007, the crime rate within the state has fallen by 9%.<sup>6</sup> The state’s new approach to diversions must continue. Being “tough on crime” only makes sense if billions of dollars are not wasted in its pursuit. A real emphasis on what truly decreases crime – programming, treatment, community supervision, progressive sanctions – is not only clear but crucial given the limited dollars Texas can devote to criminal justice.

**“We call upon government to redirect the vast amount of public resources away from building more and more prisons and toward better and more effective programs aimed at crime prevention, rehabilitation, education efforts, substance abuse treatment, and programs of probation, parole, and reintegration.”**

*United States Catholic  
Conference of Bishops*

Ultimately, cutting diversion funding would be an irresponsible approach to budget difficulties, one that will only create problems with high and financially unsustainable incarceration rates, and result in negative long-term public safety consequences. Furthermore, it will force taxpayers to shoulder the additional burden of costly prison construction.

Again, our state leadership must prioritize a re-investment in cost-effective, smart-on-crime diversion strategies. With lawmakers' bipartisan support of several critical policies during the past two state legislative sessions, we have begun to see the development of a strong diversion infrastructure. Included throughout Part 1 are best practices that we hope can be implemented to continue the momentum to build and sustain long-term improvements.

# Implement Systemic Reforms that will Safely Reduce Incarcerated Populations, Increase Transparency, and Better Allocate Resources

## Background

Policy-makers must consider more efficient, system-level improvements to the criminal justice system that will safely reduce the over-criminalization of low-level, nonviolent individuals, with great cost-savings to the state and Texas counties. Resources must be focused on addressing the root causes of criminal behavior, while enforcement efforts must target those who truly pose a threat to public safety.

## Key Findings

- Approximately 49% of individuals incarcerated in the Texas Department of Criminal Justice (TDCJ) are there for nonviolent offenses.<sup>7</sup> Furthermore, approximately 80% of individuals entering TDCJ in Fiscal Year 2010 were nonviolent.<sup>8</sup> **The 72,909 nonviolent individuals on hand in state prisons and state jails alone<sup>9</sup> are costing taxpayers nearly \$3.4 million daily.**<sup>10</sup>
- The total per-day cost to the state for the supervision of 419,920 probationers<sup>11</sup> is only \$520,701.<sup>12</sup>
- The total per-day cost to the state for the supervision of 81,101 parolees<sup>13</sup> is only \$303,318.<sup>14</sup>
- Incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives, which are proven to be more cost-efficient,<sup>15</sup> as well as programmatically effective.<sup>16</sup>
- Specifically, “redirecting nonviolent offenders who do not pose a high risk to probation instead of prison can actually reduce crime because such offenders may deteriorate in prison, as they intermingle with more hardened inmates and lose positive family, employment, and community ties.”<sup>17</sup>
- Fine-only offenses (versus incarceration) for low-level violators save thousands in incarceration and defense costs, as Class C misdemeanants are not eligible for county-funded indigent defense.

## Cost-Saving Strategies

### (1) Close outdated prisons.

It is clear that the state’s corrections budget is facing significant cuts. For corrections dollars to be invested in strategies that truly address the root causes of crime, other areas of inefficient funding and waste must be reduced.

Incarceration currently accounts for more than 88% of the state’s corrections spending (more than \$6 billion), and only 12% is allocated for diversions such as probation, treatment, and parole.<sup>18</sup> Yet **incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives,**<sup>19</sup> which are proven to be more cost-efficient and programmatically effective. Not only should new prison construction be avoided in the coming biennium, but older, technologically ill-equipped and outdated units with inflated prisoner costs-per-day should also be closed. Texas has three units over 100 years old, all of which should be considered for closure.

For instance, a prison in Sugar Land, adjacent to an airport, “was appraised in 2006 for more than \$30 million and has an estimated redeveloped taxable value of \$242 million, according to an analysis commissioned by the City which seeks to close and redevelop the facility,” with the support of the community.<sup>20</sup> Because this unit was built in the early 1900’s, it costs 14.4% more to operate than the average unit. Policy-makers must consider closing this and similar facilities to “yield revenue from the sale, in addition to operating savings.”<sup>21</sup>

The savings generated by closing at least one of Texas’ 112 facilities should be rerouted to recently expanded diversions that have produced positive outcomes. Doing otherwise – continuing to keep the financial focus on prison construction and maintenance – will result in another costly cycle of prison construction, which historically has accompanied reductions in diversion and rehabilitation funding. Such emphasis on hard incarceration will also drastically limit communities’ ability to implement crime-reduction strategies that have proven to work.

It is long-overdue that we ask ourselves a practical question: What have we gained through the inefficient

and costly incarceration of thousands of Texans whose risk of re-offending would have been more effectively reduced if they had received programming, treatment, re-entry tools, and meaningful supervision? The bottom line is that shifting money from risk *containment* to risk *reduction* means fewer victims in the long term and greater taxpayer savings.

**(2) Promote policies that will deter criminal behavior rather than focusing on criminal enhancements.**

Currently, 2,474 offenses are considered felonies in Texas<sup>22</sup> – an increase of 150 felonies since 2007.<sup>23</sup> Criminal enhancements, which increase the penalties for offenses (including from a misdemeanor to a felony punishment), contribute to prison and jail overcrowding at great taxpayer expense. On the front end, the numbers of arrests can increase and opportunities for increased sentence lengths can swell, while on the back end, fewer individuals may be considered parole-eligible earlier.

Not only do additional enforcement strategies and longer lengths-of-stay result in increased costs, but a misdemeanor to felony increase also shifts the financial burden for confinement from counties to the state. Also, importantly, enhancements do not act as a deterrent to criminal behavior or tackle its root causes. As it is, many individuals have become accustomed to serving time and prefer it to probation and programming.<sup>24</sup> As such, making behavior more illegal merely becomes an ineffective exercise. Instead of passing dozens of new enhancements each session, policy-makers must find solutions that will not only look good on paper but actually be implemented to improve people’s lives through increased public safety in their communities. An emphasis on programming is especially critical, since it is proven to work.

Again, being “tough on crime” only makes sense if billions of dollars are not wasted on such efforts. Refraining from increasing the penalties for already existing crimes will ensure that law enforcement target their resources on established, higher-level offenses.

**(3) Improve transparency and efficiency by providing judges with information about how much each punishment will cost the state, per nonviolent offense.**

Judges should have access to accurate information that they can take into account during sentencing; this should detail the price tag to the state for various penalties (probation, a jail sentence, a prison term followed by parole, etc.). Specifically, the state should create a computer algorithm that generates cost data for various recommended sentencing options, based on information a judge could input in regards to an individual’s offense, criminal history, and other necessary information.<sup>25</sup>

This data will better enable judges, as well as the jurors they inform, to examine and potentially consider alternatives to prison for nonviolent cases, especially imperative in light of the state’s strained budget.<sup>26</sup> The specificity of the data would create a clearer picture for judges and other criminal justice practitioners – including policy-makers – about the cost-savings associated with diversions and other models, which will surpass the current system of calculating general per-day costs of housing inmates.

**(4) Save the state and county taxpayers millions of dollars by re-examining penalties and thresholds for various low-level, nonviolent offenses that do not endanger communities.**

The Legislature should revisit the financial thresholds for current theft offenses. For instance, Class A, B, and C misdemeanor theft of property offenses have financial thresholds created over 20 years ago. Because of inflation, a Class B misdemeanor 20 years ago is a Class A misdemeanor today (a *de facto* “criminal inflation”).

The current theft schedule is as follows:

- Class C Misdemeanor: Theft under \$50.
- Class B Misdemeanor: Theft of \$50 or more but less than \$500.
- Class A Misdemeanor: Theft of \$500 or more but less than \$1,500.

These figures should be adjusted for inflation to bring the penalties in line with their original intent:

- Class C Misdemeanor: Theft under \$100.
- Class B Misdemeanor: Theft of \$100 or more but less than \$1,000.
- Class A Misdemeanor: Theft of \$1,000 or more but less than \$3,000.

*Note:* Another benefit of this threshold realignment lies in the increased likelihood of individuals to make financial restitution to property crime victims. Keeping individuals in the community where they can maintain employment obligations will better ensure that they can afford and pay restitution.

**Fine-only offenses reduce the burden on county courts and prosecutors, while eliminating the long-term and costly collateral consequences associated with jail time. Furthermore, they save thousands in incarceration and defense costs, as Class C misdemeanants are not eligible for county-funded indigent defense.**

Policy-makers should also consider reducing first-time, less-than-a-gram possession offenses with substances in Penalty Groups 1 and 2 from a state jail felony to a Class A misdemeanor (meaning this would apply to users only, not dealers). Doing so will reserve more prison beds for those who have committed violent offenses, while also removing the burden and stigma associated with being a felon that increase the likelihood of re-offending and re-incarceration.<sup>27</sup> Individuals suffering from substance abuse should not be barred from the housing or meaningful employment that enables self-sufficiency.

Finally, to help minimize the stress on county jails, policy-makers should also reduce the penalty for possession of an ounce or less of marijuana to a Class C misdemeanor (while retaining the Class B misdemeanor penalty designation for possession of more than 1 ounce but 2 ounces or less of marijuana). However, a Class B misdemeanor should be imposed for the smaller amount if it is proven that the defendant has been convicted of possessing such an amount three times, and that each prior offense was committed within the two years preceding the commission of the current offense.

Furthermore, a judge who determines that a defendant falls under this policy should require the defendant to successfully complete a drug abuse awareness and education program approved by the Department of State Health Services.

**NOTE:** At the very least, the Legislature should conduct a study examining the financial ramifications of incarcerating vs. fining individuals who have committed low-level, nonviolent misdemeanor offenses.

#### **(5) Promote a comprehensive, system-wide assessment to more effectively assist system-involved individuals.**

The state should expand the use of validated and verified diagnostic tools throughout the criminal justice system – from sentencing through parole – to assist probation and re-entry efforts. For each stage in the criminal justice system, the instrument should be modified to account for relevant factors that determine an individual's risk to public safety (e.g., substance abuse and/or mental health issues, combat-related trauma,<sup>28</sup> completed programming, work history, etc.). But across stages, agency and department practitioners should have access to shared electronic file information that could inform next steps, including further treatment and programming decisions.

Validated instruments, especially those that incorporate evidence-based practices, are essential in determining individuals' risk levels. They are also critical for departments/agencies that want to use their limited resources efficiently. They allow practitioners to decide if supervision is necessary, as well as maintain a sufficient level of supervision and treatment (matching risk to need) when necessary. These valuable outcomes can be accomplished without wasting time, funding, and beds for individuals who have committed higher-level offenses, and without endangering public safety.<sup>29</sup>

However, each department/agency must be provided with training assistance to identify practitioners' skills and enable them to properly utilize the results of diagnostics to offer individuals tailored supervision and rehabilitation plans. Overall, the evidence-based assessment process should prioritize definable and measurable results, and it should aim to achieve practical realities (e.g., reduced recidivism, cost effectiveness, etc.).<sup>30</sup> With appropriate, individualized, assessment-based care, those under supervision are less likely to recidivate.

Ultimately, use of a system-wide assessment across departments and TDCJ divisions will reduce duplication of effort: certain common pieces of information will need to be entered only once into the system, allowing for enormous efficiency and time savings. Likewise, use of a single assessment will cut down on human error at various points in the data entry process.

From a cost-savings perspective, this assessment strategy is especially critical. Not only would agencies' and departments' resources be used more effectively up front, but practitioners who share the information with re-entry specialists will better assist each individual in successfully transitioning to the community – again, saving costs through lowered recidivism rates.

# Implement Responsible Prison Population Reduction Strategies by Strengthening the Efficacy of Probation and Parole

## Background

Diversion investments – funding for probation, treatment, and parole – have saved money, lives, and prison beds for those who have committed high-level offenses. Cuts in any of these areas *must* be avoided. Fewer probation slots will mean increased confinement for individuals suffering from substance abuse and/or mental illness. It will also mean likelier revocations. Reduced parole capacity will similarly boost revocations. Prisons will fill up with individuals who have committed administrative rule violations or minor crimes, and a lower likelihood of release on parole will cause prisons to become a bottleneck for those eligible for release. Taxpayers will foot the bill for thousands more people to be warehoused rather than be given the (much less expensive) tools for personal responsibility they need to become productive and law-abiding community members. This will cause higher rates of re-offending and the need for more prison construction. The state simply cannot sustain such a cycle – especially with a large projected loss in corrections staffing.

Recently expanded diversion funding has already bore fruit: Between 2006 and 2009, 14,019 people were re-routed from prison to felony probation<sup>31</sup> and, during that same period, large urban probation departments decreased revocation rates.<sup>32</sup> Over time, there have also been fewer revocations to prison for rule violations and fewer individuals sentenced to prison, likely due to judges' increased confidence in probation and treatment. Additionally, the parole board began releasing more people due to a higher parole approval rate, and between 2006 and 2009, the number of parole revocations (both for rule violations and for new crimes) fell from 9,885 to 7,178, the lowest it has ever been.<sup>33</sup>

Making cuts in these areas now will roll back crucial progress. **It is simply not worth the gamble to slash diversion funding, especially given the cost savings and**

**collateral benefits it has produced.** We have seen what happened in 2003 when a similar state budget shortfall and the resulting cuts to probation and parole flooded prisons, driving them to a breaking point. The Legislative Budget Board (LBB) in 2007 consequently projected the need for another 17,000 prison beds by 2012 (in addition to the 5,675 beds added between 2004 and 2007) if Texas' pace of incarceration continued. **The price tag: \$2.63 billion over five years.**<sup>34</sup> Since then, wise investments in diversions have safely reduced incarceration levels and have gotten the state back on track, causing the Chief Executive Officer of the National Association of Drug Court Professionals to assert, "Texas is a remarkable example of how to take control of an explosive prison population."<sup>35</sup> As of June 2010, the LBB projected that incarceration levels will remain flat at almost 155,000 individuals, while felony probation levels and parole levels will steadily increase,<sup>36</sup> provided current, cost-effective diversion policies remain in place.<sup>37</sup>

**“Community monitoring and treatment account for only a dime of every corrections dollar the state spends, with 80 cents still devoted to running prisons. And yet even deluxe treatment efforts cost less than one-third of what it takes to house a prison inmate, which is nearly \$50 a day.”**

*Robert T. Garrett, The Dallas Morning News, August 2010*

Why risk a devastating step in the wrong direction? Programs and services that exist solely to rehabilitate individuals and reduce their risk of recidivism must be preserved. Probation must continue to be a strong, viable alternative to prison; parole departments should be provided more tools to assist those under supervision; and re-entry efforts should be bolstered to break the cycle of re-offending. Texas needs continued investments in the fidelity and success of diversions today to help meet public safety demands and create safer communities tomorrow. The state simply cannot afford to have costly incarceration be its only option for addressing criminal behavior.

## Key Findings

### **Probation:**

- According to data from the state's Legislative Budget Board (LBB), average inmate costs-per-day in prisons ring in at \$47.50, while probationer costs-per-day to the state are only \$1.24.<sup>38</sup> Put another way, the cost of 10 days of prison is equal to an entire year of probation.
- Travis County's probation department systematically implemented evidence-based practices into all aspects of the department (e.g., standardizing evaluations, tailoring supervision, readjusting officer interactions). The new practices, in turn, reduced the department's recidivism rate by 17%<sup>39</sup> through fewer revocations, post-release re-arrests, and absconders.<sup>40</sup> As a result of the county's revamped system, the LBB concluded that Travis County would save the state more than \$4.8 million over three years.<sup>41</sup>
- Treatment combined with cognitive skills programming can decrease criminal behavior by 44%, while incarceration can increase an individual's inclination towards criminal activity by .07%.<sup>42</sup>
- Administering positive reinforcements (feedback and incentives) four times as often as negative reinforcements (sanctions for non-compliance) is "optimal for promoting behavior changes."<sup>43</sup> Probation supervisors should employ this 4:1 ratio to better ensure that probationers successfully meet their conditions of probation and lower their risk of re-offending in the long term.

### **Parole:**

- With prison beds costing the state nearly \$50 per inmate per day and parole costing only \$3.74 per individual per day,<sup>44</sup> the beds must be preserved for individuals who have committed violent offenses and who carry a higher risk of failure on parole.
- In FY 2010, nearly 1,100 individuals were sent to prison for a technical violation of their parole, mandatory supervision, or discretionary mandatory supervision. They did not commit a new crime, just an administrative infraction.<sup>45</sup> This population costs the state more than \$50,000 per day.

- Yet, Texas' recidivism rate among parolees is low: currently, it is the lowest (27.9%) among the four largest correctional systems (California: 58.23%; Florida: 44.2%; New York: 44.2%).<sup>46</sup> Reducing parole funding could threaten Texas' low rate.
- An increase of 2% in the parole approval rate translates into approximately 1,500 additional parole releases per year.<sup>47</sup>
- Throughout the past decade, prison doctors have advised the use of medically recommended parole for 4,000 aged and infirmed inmates – those who pose a low threat to public safety – but the Texas Board of Pardons and Paroles has denied parole in all but a quarter of the cases. The remaining inmates have died while incarcerated, consuming prison beds and costing taxpayers up to \$50 million annually in medical care (costs that would largely be borne by the federal government, through Medicaid, or Medicare if eligible individuals were in nursing homes or hospices).<sup>48</sup>

## Cost-Saving Strategies

### **Probation:**

Approximately 420,000 individuals are on misdemeanor or felony probation in Texas.<sup>49</sup> Given this large number of individuals under supervision, Texas' probation departments are instrumental in slowing the number of individuals entering confinement. **Probation gives individuals the tools to live responsibly, keeping them from needlessly consuming prison and jail beds at taxpayer expense.** Instead, probationers remain in the community where they can maintain employment, support their families, pay victim restitution and participate in community service,<sup>50</sup> and take part in treatment or other programming.

**“Probation is prevention. A successful probationer means one less person in prison, one less victim, and one more contributing member of our great state.”**

*Stephen L. Enders, Former Chair of the  
Probation Advisory Council*



Not only does this mean that the state sees reductions in costly incarceration, but the long-term advantages of probation are also significant. Indeed, the use of smart-on-crime strategies to effect *true and positive changes* in probationer behavior has been shown to reduce future criminal behavior, with both fiscal and public safety benefits. Less crime means less incarceration: the state and counties can implement proven practices to reduce the costly burden associated with over-crowded jails and prisons, including constructing and staffing new facilities, or contracting with other facilities to house inmates there. Likewise, a fewer number of absconders and re-offenders lowers the costs of enforcement associated with identifying, tracking, and re-arresting such individuals, while also lowering the costs associated with overburdened court dockets.

But equally important as a positive economic impact are the swells in public safety that accompany the implementation of proven practices. Again, positive behavior modification causes lower rates of revocation for offenses. Additionally, the ability of a probation department to focus resources on high-risk probationers frees up money for other effective tactics, such as substance abuse treatment programs, which continue to help individuals change their behavior for the better.

In order for probation departments to maintain their low revocation rates, especially if the number of probationers grows over time, they must be given the tools necessary to continue along the path that is gaining positive national recognition. Policy-makers must work in conjunction with probation leadership, front-line practitioners, and programming/treatment providers to develop strategies that promote success for probationers and their families, and aid neighborhoods in which high concentrations of probationers live.

Ultimately, continued investments in community supervision are imperative to sustain a safe, successful, fiscally responsible criminal justice system. Texas must allocate funding towards evidence-based practices in probation, create incentives that encourage other departments to implement such practices, and do its best to remove barriers that currently prevent departments and leadership from employing best practices.

In early 2010, the Texas Criminal Justice Coalition sent an anonymous, electronic survey to each of Texas' probation directors to solicit their feedback in regards to current treatment options, collaboration barriers, use of Substance Abuse Felony Punishment Facilities (SAFPFs) and other alternatives, and departmental needs.<sup>51</sup>

Below are responses to the following question: **What does your department need to more effectively address the needs of your probationers?**

**19.8%** More resources to better utilize and develop assessments

**19.8%** More resources to address the needs of dual diagnosis probationers

**19.0%** More resources for community-based programming using evidence based practices

**13.4%** More local flexibility to place probationers in appropriate programming based on assessment

**12.6%** "Other" Answers (specifically regarding additional resources or specialized programming, quality control measures, and stakeholder and probationer buy-in)

**6.3%** More special needs beds for males

**4.7%** Quality assurance for Intermediate Sanctions Facilities.

**3.9%** More special needs beds for females

### **(1) Strengthen the effectiveness of community justice plans.**

Every March of odd-numbered years, each of Texas' 121 probation departments must submit to the Community Justice Assistance Division (CJAD) its Community Justice Plan, which outlines various programs and services offered by the department, and includes a list for program needs identified by each community. Ultimately, the development and submission of these plans has become a burdensome, futile bureaucratic exercise. Indeed, due to the timing of the reports' submission, these plans fail to be reflected in TDCJ's biannual legislative appropriations

request (LAR). The LAR, in turn, fails to reflect an accurate picture of what each community needs to meet its short- and long-term public safety goals, as well as the goals of the state.

To increase the efficiency and usefulness of the plans, the Legislature should instruct CJAD to collect the reports from departments no later than March 1<sup>st</sup> of even-numbered years. This will allow CJAD time to review them before LARs are submitted to the state's Legislative Budget Board (LBB) later in the year. In fact, CJAD should be required to compile and analyze the actual programmatic needs of each probation department in a report for submission to the LBB no later than September 1<sup>st</sup> of even-numbered years. Then, TDCJ should be required to include in its LAR the information from CJAD's report, as well as any additional information from the individual departmental plans that TDCJ feels is necessary to boost the effectiveness of probation departments.

Making these modifications will better ensure that the state's budget-making authority, and TDCJ itself, have a clear, timely idea of the needs of probation departments and officers in the field. This data will increase the likelihood that departments have the opportunity to implement successful probationer strategies that will reduce recidivism and keep probationers from ending up in prison or jail at great cost to taxpayers.

*Note:* Departments should satisfy two specific program-related criteria when making funding requests to the state. First, they must show that specialized programming is needed, perhaps due to a lack of existing treatment services in the community, to address probationers' varied issues. Departments could base their request on a probationer profile (e.g., the number of probationers that are considered low-, medium-, or high-risk), as well as on assessment results showing the factors impacting probationers' behavior. Secondly, departments must explain how the program's efficacy will be monitored for results.

## **(2) Encourage probation departments to utilize evidence-based practices.**

Although investing Texas' corrections dollars in the probation system can satisfy both fiscal and public safety

needs, probation departments currently lack the full spectrum of resources that can aid their efforts to meet the needs of the growing probation population.

Not only must policy-makers attempt to ensure that community supervision is utilized more frequently for low-level drug offenses, but they must strengthen the current probation structure to more effectively meet individuals' needs. With the proper elements in place, local probation departments can save their counties significant incarceration (and re-incarceration) costs. For instance, Travis County's probation department saved an estimated \$386,736 in jail avoidance costs in 2008 through the successful, systematic implementation of evidence-based practices in all aspects of the department (e.g., standardizing evaluations, tailoring supervision, readjusting officer interactions). The new practices, in turn, reduced the department's recidivism rate by 17%<sup>52</sup> through fewer revocations, post-release re-arrests, and absconders.<sup>53</sup> In fact, by 2009, revocations for failing to meet the terms of probation were down by 48% from 2005. **As a result of the county's best-practice driven system, the LBB concluded that Travis County would save the state more than \$4.8 million over three**<sup>54</sup> **years.**

For similar results throughout Texas, probation departments must be supported with the following:

### **□ Staffing**

It is imperative that departments are provided the necessary resources to identify, recruit, and retain highly qualified probation officers. With proper funding, departments can hire additional staff and pay them commensurate wages, as well as implement departmental strategies that will improve probation officers' morale and job satisfaction. This, in turn, can help to lower turnover rates among probation officers and direct care staff in probation departments,<sup>55</sup> which ensures experienced officers continue to provide effective supervision and risk-reduction tools to probationers.

To boost probation departments' ability to address the needs of individuals suffering from substance abuse and/or mental illness, it is also critical that probation departments are given the resources to hire or train probation officers that understand the

nuances of such issues. Through early identification and prompt placement of probationers into treatment programs, departments will best help them address their addiction and mental health problems.

□ ***A validated risk- and needs-based assessment tool***

Proper identification of probationers' needs will ensure that each person receives an individualized plan for appropriate programming, services, and surveillance. This is particularly important for individuals with frequent arrests who have demonstrated a continuing risk of recidivism. A "roadmap" can enable these individuals to more effectively and healthily manage their lives, and reduce the criminal activity derived from drug addiction or mental illness. Specifically, a higher likelihood of probation violations can be offset by educating probationers about the consequences of violations or absconding, mandating drug treatment when necessary, utilizing frequent and random drug tests, and imposing swift sanctions when appropriate.<sup>56</sup>

**"Punishment only tells people what *not* to do; it doesn't tell them what to do."**

*Edward Latessa, Ph.D., renowned University of Cincinnati criminologist*

A proper assessment is the first step when tailoring the individualized plan. Too heavy or too little supervision/programming may work to a person's disadvantage. For instance, severe punishments for low-level offenses can have the opposite effect of that intended.<sup>57</sup> According to the National Institute of Corrections (NIC) at the U.S. Department of Justice:

- ***Punishment*** increases an individual's inclination towards criminal activity by .07%.
- ***Treatment*** decreases an individual's inclination towards criminal activity by 15%.
- ***Cognitive skills programs*** decrease an individual's inclination towards criminal activity by 29%, making them most effective at decreasing criminal behavior.<sup>58</sup>

Furthermore, when low-risk probationers are placed in programs with high-risk probationers, they tend to do worse.<sup>59</sup>

Use of a data-driven assessment tool ensures probationers are assigned to an appropriate risk/needs-based caseload and placed in proper, specialized programming.

*Note:* Assessments that reveal an individual's mental health issues are especially important, as those with mental disorders are two times more likely than individuals without such disorders to have their probation revoked.<sup>60</sup>

*Note Additionally:* Supervision should be front-loaded so that it is heaviest during the early critical period (the first eight months) of probation terms, with officer caseloads adjusted accordingly. Reducing caseloads will also give probation officers more time to devote to helping probationers secure housing and jobs, receive treatment, and support their families. This better ensures that probation terms are achievable so that revocations decrease and the flow to prison is slowed.

Furthermore, limiting the time officers spend supervising nonviolent probationers with property and drug offenses will give them even more time to supervise individuals convicted of more serious crimes or who pose a flight risk or threat to public safety.

□ ***Access to programming for all probationers who would benefit***

Programming for probationers best ensures that they can change their behavior and successfully meet their conditions of probation. This includes, for example, education classes and employment counseling,<sup>61</sup> intensive substance abuse treatment and/or mental health programming, and cognitive behavioral programs that target individuals' antisocial thinking patterns. As mentioned above, the use and proper implementation of these cognitive behavioral programs are especially effective at reducing recidivism,<sup>62</sup> as antisocial values are called "the foundation of criminal thinking."<sup>63</sup> Antisocial

attitudes, antisocial relationships (potentially as a result of gang membership), substance abuse, lack of empathy, and impulsive behavior are all traits that can cause recidivism and must be adjusted.<sup>64</sup>

Mental health units within probation departments are also important in meeting individuals' particularized needs. Departments working in cooperation with Texas' Department of State Health Services (DSHS<sup>65</sup>) and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI<sup>66</sup>) can best provide intensive case management alongside various services, including psychiatric treatment, medication monitoring, substance abuse treatment, anger management, supportive job and housing assistance,<sup>67</sup> and programming to address criminogenic factors.<sup>68</sup> According to Dennis McKnight, former Commander of the Court Security, Transport and Mental Health Division of the Bexar County Sheriff's Office, cognitive adaptive training is key. For the majority of mental health consumers, "it is not an issue of rehabilitation, it is an issue of habilitation. The skills and knowledge are not present to rehab. New skills and knowledge must be imparted to the consumer if there is to be any hope of successful integration back into society."<sup>69</sup>

**“Cognitive behavioral programs are generally the most effective programming interventions for higher risk offenders. Furthermore, employing program interventions that influence the traits that lead to future crime [...] yield stronger reductions in recidivism.... The net value (the cost of the program less the savings derived from preventing crime) of the average targeted, evidence-based cognitive behavioral program, using a cost/benefit formula, is \$10,299 per adult offender.”**

*Excerpt from “A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems,” by the National Institute of Corrections, April 2010*

Ultimately, probation departments should have access to and contract with a broad spectrum of community-based providers and local services. Doing so will better facilitate efforts to mitigate probationers' criminal tendencies by addressing specific or multi-diagnosis needs, keep probationers united with their families and larger support network, and reduce their likelihood of re-entering the system. Furthermore, a greater and much-needed array of options for dealing with probationers will in turn improve judges' confidence that individuals can be safely supervised in the community.

*Note:* Neighborhood programs that keep probationers near their families and support networks are key to individuals' successful supervision and willingness to remain law-abiding.

#### □ **Technical assistance and training, especially in progressive sanctions**

It is critical that the state – through the Community Justice Assistance Division (CJAD) – provide assistance and training to each of Texas' 122 probation departments. These departments must be supported in their efforts to use more effective, evidence-based supervision and sanctioning practices that will address the root causes of criminal behavior and reduce the likelihood of re-arrest. Of particular importance is localized training in the use of **incentives and progressive sanctions** for probation violations.

Evidence suggests that positive reinforcements (feedback and incentives – like reduced probation fees and fewer community service hours) that are administered four times as often as negative reinforcements (sanctions for non-compliance) are “optimal for promoting behavior changes.”<sup>70</sup> Probation supervisors should employ this 4:1 ratio in efforts to better ensure that probationers successfully meet their conditions of probation and lower their risk of re-offending in the long term. (*Please see Appendix A for a sample of incentives that could be utilized by probation departments.*)

When sanctions are warranted, they must be modified to meet the violation. Depending on one's risk level, a probationer should be given leeway to make small mistakes (e.g., more tolerance if the probationer is low- or medium-risk; less or no tolerance if the probationer is high-risk). Rather than revoking an individual to jail for every violation of a probation condition, graduated penalties outside of incarceration that focus on risk reduction in addition to accountability<sup>71</sup> can provide direct and responsive feedback to probationers, making future violations less likely. As noted by the National Institute of Corrections, "swift, certain, and proportional actions that reflect disapproval of behavioral misconduct are more effective in reducing recidivism than actions that are disproportionate, delayed, or inconsistent."<sup>72</sup>

### **(3) Promote incentives for the successful completion of misdemeanor probation.**

#### **(a) Reward successful probationers with early termination from probation ("earned discharge").**

Positive behavior reinforcement – as opposed to doling out punishments for noncompliance – is necessary for targeting the root causes of anti-social behaviors that lead an individual to break the law. To assist probation departments in offering incentives for positive behavior, judges should be permitted to provide credit to a probationer towards the finalization of his or her term of community supervision for the faithful completion of certain court-ordered obligations, provided the individual is not delinquent in paying required fines or fees, and as long as s/he has fully satisfied any order to pay victim restitution.

For instance, judges should have a range of forfeitable credits they can offer a probationer towards the completion of a term of either regular or deferred adjudication community supervision, including for *educational achievements* (e.g., a high school diploma or an associate degree), for *full payments* of court costs, fines, attorneys fees, and restitution, and for the *successful completion* of a court-ordered treatment or rehabilitation program (e.g., alcohol or substance abuse counseling or treatment, a vocational education or training program, a parenting class, an anger management program, or a life skills program).

In addition, the Community Justice Assistance Division (CJAD) should reward probation departments that provide incentives to probationers. The agency should create a non-monetary reward package that it can draw from to reward the departments that utilize a proportionally large number of such incentives.

This cost-free policy would be especially beneficial to probationers holding minimum wage jobs – as many do. In addition to supporting themselves and, in many instances, their families with the income they obtain from these low-paying jobs, probationers are also responsible for paying a high number of court-mandated fees and supervision-related fines, such as restitution fees, program fees, etc. The financial burden imposed by probation fees increases the likelihood of probationers absconding and/or failing to meet their probation terms.

#### **(b) Reward successful probationers with potential case dismissal.**

For many individuals on misdemeanor probation in Texas, a 30-day stay at the local county jail is much more attractive than a rigorous two-year probation term.<sup>73</sup> As such, many probationers proactively fail conditions of probation so that they can instead serve a shorter time in the county jail. This contributes to costly jail overcrowding, and it prevents probation departments from providing much needed, judicially ordered supervision and programming that can reduce the likelihood of re-offending.

As an incentive for misdemeanants to successfully complete probation, the judge should be required to consider a dismissal of the case after the probationer's term has been discharged. If a dismissal is in fact granted, the individual will face fewer challenges to employment, housing, and other needs that will allow him or her to live responsibly.

*Note:* This incentive will not be available to misdemeanants charged with domestic violence or DWI, as repeat offenses in these situations require an enhanced penalty and must show on a person's record.

**(4) Allow probation departments the flexibility to administratively sanction probationers with technical violations to keep the sanctioning process more efficient and manageable.**

Giving probation departments the option of imposing non-custodial, administrative sanctions for technical violations – dispensing quick and commensurate measures on their own, *provided they are no more restrictive than sanctions that could be set by the judge* – will enable officers to place the probationer in more appropriate or intensive treatment as needed, rather than having to wait for a violation report that could potentially lead to a revocation. This will more swiftly and effectively prevent further violations and future revocations, as well as prevent criminal behavior down the road. It will also better encourage leniency for the lower-level, nonviolent violators whose offenses do not warrant treatment or programming. Finally, it will free up judges' time for non-technical violations and reserve court dockets for higher-level violators.

*Note:* Georgia created a similar system in 2004 through the Probation Options Management (POM) Program:

[It] authorizes the Georgia Department of Corrections (GDC) to establish an administrative process to sanction probation violators without judicial amendment to the original court order. Handled administratively within GDC, this system is an alternative to traditional judicial modification of court orders for offenders who violate the terms and conditions of their probation. Although the judge still retains authority in all cases, GDC can modify the probationer's current supervision as long as the restrictions (sanctions) imposed are equal to or less restrictive than the maximum non-prison sanction set by the sentencing judge. In cases where the probationer believes the Hearing Officer sanction is excessive, probationers can appeal the POM sanction to the judge. In all cases, the judge is still the only person who can revoke a probationer to prison.<sup>74</sup>

An analysis of POM found the following benefits:

- POM participants spend three to five times fewer days in jail between arrest and disposition than similarly situated non-POM participants, with an accompanying decrease in costs associated with jail time.<sup>75</sup>
- POM participation results in fewer probation hearings, which saves significant probation officer time awaiting hearings in court.<sup>76</sup>
- POM participants see significantly fewer days (more than four times less) between a violation and a POM hearing, which reinforces the sanction by providing participants with more immediate feedback.<sup>77</sup>

**(5) Allow probation departments more authority to make programming decisions.**

Just as probation departments should be given more leeway to address technical violations, they should also be permitted to make decisions about program placement to meet their local needs. Currently, officers must collaborate with judges before an individual can be sent to a treatment program. Allowing probation departments to use the results of the risk/needs assessment and their knowledge about program vacancies to drive placement decisions would put probationers into needed programs (such as substance abuse or cognitive behavioral programs) more quickly, thus reducing their chances of recidivism.

**(6) Help probationers meet their court-mandated obligations.**

**(a) Utilize probation kiosks for proven probationers.**

Studies show that if a probationer is going to re-offend, s/he will usually do it within the first two years. Implementation of ATM-type machines, where probationers can check in with their officer and pay fees through the machine, would benefit those deemed low-risk who have passed out of the critical early years of their probation term.<sup>78</sup>

For instance, whereas many probation departments are only open from 8 a.m. to 5 p.m. (and closed at lunch) – which limits probationers' timeframe for making payments – kiosks offer more convenience.

With remote loads (which involve Internet and 1-800 number options), probationers can make payments any time of day. Furthermore, unlike probation departments that usually exclusively take money orders, kiosks accept cash and credit cards, and they have recently begun accepting the pre-paid Green Dot MasterCard and Visa as well, available to buy at thousands of locations.

Other advantages: Kiosks are free and can handle more than 10,000 payments per month, relieving administrative probation staff from having to process payments and write receipts. Kiosks also prevent the liability of probation officers who are currently handling probationers' fee payments.<sup>79</sup>

Probation departments can use the kiosks as a supplement to their work, still requiring in-person meetings or conducting home visits where it is deemed necessary.

**(b) Assist probationers with financial difficulties.**

For probation departments with high absconding rates, individuals likely to abscond for financial purposes should be permitted to enter into a payment plan. This will encourage more probationers to successfully meet the terms of their probation while saving law enforcement costs associated with identifying, tracking, and re-arresting absconders.

**(c) Use phone messaging and scheduling systems.**

A messaging system to remind probationers about meetings, drug testing appointments, and other obligations not only assists probationers but improves officer efficiency. Travis County implemented a Voice4net messaging and scheduling system to reduce reporting and call workloads, and free officers' time for supervision.<sup>80</sup> Voice4Net also allows for automated tracking of community service hours and court fee payment processing, relieving officers and administrative staff of even more time.

**(7) Encourage judges to learn more about the use of evidence-based practices in probation.**

Judges can be agents of positive change by encouraging individuals' voluntary compliance with all conditions

of probation. As such, they should educate themselves about the efficacy of community-based corrections programs within their jurisdictions and, when appropriate, utilize those programs shown to be effective at reducing recidivism. Furthermore, like probation officers, judges should consider the use of "motivational interviewing" techniques.<sup>81</sup> Finally, to achieve multiple sentencing objectives (e.g., risk-reduction/rehabilitation, punishment, and behavior modification), treatment provisions must be successfully integrated with intermediate sanctions and behavioral controls.

*Note:* It is imperative that prosecutors are also exposed to best practices that reduce the risk of recidivism. They must communicate with probation, as well as the judiciary, in a constructive way to facilitate this.

**Parole:**

Just over 81,000 individuals are on active parole in Texas,<sup>82</sup> with a rise in parole levels projected by the Legislative Budget Board by 2015.<sup>83</sup> However, increasing the parole rates for eligible individuals and relieving crowded prisons will depend on current, cost-effective alternative-to-incarceration policies, as well as parole funding, remaining in place.<sup>84</sup> Funding for Intermediate Sanction Facilities, Institutional Parole Officers, and Parole Hearing Officers is especially critical to preserve public safety goals. Indeed, continued investments in parole supervision will help keep Texas' recidivism rates among parolees low. Currently, the state's recidivism rate (27.9%) is the lowest among the four largest correctional systems, with California's at 58.23%, Florida's at 44.2%, and New York's at 44.2%.<sup>85</sup>

Policy-makers must renew their commitment to the parole system, ensuring that those eligible for release are processed in a timely manner and at a rate that does not endanger public safety. State leadership must also encourage the Parole Division to implement strategies to ensure that supervision is needs-based, and they must make programming available to help parolees make a successful transition to our communities. Limited resources must be focused on individuals who truly pose a threat to public safety, and the controls on low-level individuals must be minimized. With prison beds costing the state nearly \$50 per inmate per day, and parole costing only \$3.74 per individual per day,<sup>86</sup> the beds must be preserved for individuals who have committed violent offenses and who will have a higher risk of failure on parole.

Furthermore, parole officers must be trained in evidence-based, risk-reduction practices that promote the personal success of their clients on parole, contribute to public safety, and save the state millions of dollars.

**(1) Strengthen the parole process in Texas to increase public safety and save taxpayer dollars.**

**(a) Require inmates set to be released on “flat discharge” for serving their entire sentence to be placed in a community-based, supervised program for nine months to decrease their likelihood of recidivating.**

A large number of inmates are released from prison without any level of supervision because they have served every day of their sentence and, as such, the state has no obligation to supervise them any longer. These individuals – 20.4% of total TDCJ releases in 2010<sup>87</sup> – are released to the community without support or assistance, leaving them at risk of re-offending and becoming a threat to public safety.

Inmates who are eligible for flat discharge but who have not yet been released should be placed by the parole panel under supervision nine months prior to the conclusion of their sentence, as determined by actual calendar time (versus good conduct time). Those who fail to comply with mandated conditions of supervision should be subject to sanctions, including revocation.

This strategy can increase the success rate of the flat discharge population. Furthermore, providing individuals with post-release supervision will reduce the financial strain associated with incarceration (with costs-per-day at \$47.50), which is much greater than the costs associated with parole supervision (\$3.74 per day).<sup>88</sup>

*Note:* In states that use determinate sentencing – North Carolina, Ohio, California, and Illinois – mandatory re-entry supervision is common. Likewise, mandatory post-release supervision is gaining consideration in states with indeterminate sentencing.<sup>89</sup> In 2010, New Hampshire passed Senate Bill 500-FN, which requires all inmates not previously placed on parole to be released at least nine months prior to the end of their sentence. South Carolina also recently passed legislation (the South Carolina Omnibus Crime

Reduction and Sentencing Reform Act of 2010, S.B. 1154) mandating that all nonviolent individuals who have been in prison for two years or more be released to supervision at least 180 days before they are set to leave confinement.<sup>90</sup>

**(b) Ensure the Parole Division carries out its mandated duties.**

Texas’ Parole Division has been imposing conditions on parolees over and above those imposed by the Texas Board of Pardons and Paroles (TBPP) and not notifying TBPP about them. Instead, the Parole Division refers to these extra conditions as something else (e.g., requirements [like license suspension] that are only “facilitating” TBPP’s conditions [like mandated treatment]), which prevents the Division from having to notify TBPP. This practice of amending the conditions must be eliminated.

At the very least, if the Division feels that, for the sake of public safety, they must impose additional conditions or amendments to the conditions on a parolee, the Division should be required to notify TBPP and obtain its approval for the extra conditions. This will streamline the parole process, keeping everyone, including the parolee, on the same page about conditions necessary for compliance.

**(c) Use a risk assessment tool to ensure that appropriate individuals are being released from confinement onto parole.**

TBPP should evaluate each case according to risk level to avoid releasing high-risk individuals too early or low-risk individuals too late. A risk assessment would help parole board members identify which category that each individual eligible for release falls within:

- Those who are likely to recidivate and return to prison [“high risk”].
- Those who are likely to be incarcerated only once [“low risk”].
- Those who, with appropriate treatment/resources, will not return to prison, but who may recidivate in absence of assistance [“medium risk”].



High-risk individuals should not be favored for parole over lower-risk individuals.

**(d) Permit inmates with first-time, low-level, nonviolent offenses and satisfactory disciplinary prison records to be placed on parole as soon as they become eligible for supervision.**

In 1995, the Texas Legislature added language to the Government Code pertaining to mandatory supervision (Sec. 508.149), in effect creating “discretionary” mandatory supervision. More specifically, this new language requires any person who is mandatory supervision-eligible to be reviewed by TBPP and approved for release.

As a result of the policy change, more cases are sent to TBPP for approval, adding to the already high number of cases they must review. In fact, in 2009 alone, TBPP reviewed 18,554 mandatory supervision-eligible individuals on top of the 76,607 parole considerations they were already responsible for reviewing.<sup>91</sup> These figures do not include the parole violation and clemency cases that TBPP must review as well.

When individuals with (a) a first-time, low-level, nonviolent offense, and (b) a satisfactory disciplinary prison record become eligible for supervision, they should be placed on parole. This will not only alleviate TBPP’s tremendous workload, it will increase public safety by allowing TBPP to spend more time and resources reviewing cases for individuals with serious offenses who may pose a legitimate risk to public safety. In other words, in addition to increasing TBPP’s efficiency, this strategy will save taxpayers money by ensuring that only those who truly pose a threat to society remain behind bars.

**(e) Increase the number of successful parolees through the use of incentives for good behavior and for the completion of conditions.**

Positive behavior reinforcement is essential to targeting the root causes of antisocial behaviors that lead an individual to break the law. To assist TBPP in offering incentives for positive behavior, policy-makers should grant the agency the authority to shorten or terminate a period of parole supervision

for nonviolent, non-3g parolees,<sup>92</sup> provided they demonstrate good behavior and successfully complete all conditions and rules.

Specifically, after a parolee has satisfactorily completed either one-third of the original parole supervision period or two years, whichever is greater, TBPP should be permitted to reduce or terminate the remainder of the sentence if the parolee has been in substantial compliance with his or her conditions of release, has never been revoked, and has made a good-faith effort to comply with any condition ordering restitution. However, TBPP should have the discretion to keep a parolee under supervision if shortening or terminating the sentence would pose a danger to public safety.

This policy change would reduce costs of supervision and promote public safety by allowing exemplary parolees to end their supervision early.

**□ Allow TBPP to terminate the supervision period early for an inmate who has successfully completed a community-based rehabilitation program.**

In regards to parolees who participate in and successfully complete a substance abuse treatment program or other rehabilitation program, TBPP should consider terminating their supervision period early. This incentive would motivate individuals to make real progress during treatment, in turn allowing parole officers to devote more attention and resources to parolees who pose a high risk of offending in the community. Furthermore, early termination has the potential to free up space in already crowded halfway houses that have long waiting lists.

**(f) Increase the use of medical parole for low-risk elderly and terminally ill inmates, at enormous cost savings to the state.**

Throughout the past decade, prison doctors have advised the use of “medically recommended intensive supervision” (MRIS) for 4,000 aged and infirm inmates – those who pose a low threat to public safety. TBPP has denied parole in all but a quarter of the cases. The remainder of inmates have died while incarcerated, consuming prison beds

and costing taxpayers up to \$50 million annually in medical care. Such costs would largely have been paid by the federal government, through Medicaid or Medicare, if eligible individuals were in nursing homes or hospices.

In TDCJ's last fiscal year alone, more than 440 inmates died in prison, with 31 awaiting TBPP's decision on their recommended release, 26 who were denied release, and 12 whose parole was approved but who died before they could be sent home.

According to a recent report issued by TDCJ and the Correctional Managed Health Care Committee, the largest factor contributing to health care costs in the Texas prison system is the growing population of individuals age 55 and older.<sup>93</sup> Overall in Texas, geriatric inmates comprise 7.3% of the incarcerated population but account for a disproportionate one-third of prison hospital costs. Their average hospitalization bill comes to \$4,700 annually, as opposed to \$765 for inmates under 55 years of age.

Worse, the state's geriatric inmate population is growing by approximately 6% each year, while health care costs are rising by 4% annually. If parole rates among the elderly population do not increase, the state will find itself in an unsustainable situation. Given cuts to medical personnel in light of the state's budget shortage, Texas may also find itself in an unconstitutional position for lack of adequate health care provision.<sup>94</sup>

Although Texas has a well-developed MRIS policy in place, it is imperative that the process be reviewed regularly to address obstacles that are limiting releases which could save the state millions. For instance, policy-makers must expand eligibility for medical parole and streamline the review process. They should repeal the requirement that inmates be within six months of death or require intensive long-term care to be removed from prison. Instead, for those who are terminally ill, incapacitated, or no longer a threat to public safety, policy-makers should allow the use of GPS tracking in conjunction with placement in a nursing facility or hospice to monitor parolees' whereabouts.

Texas should also consider allowing certain individuals to complete their sentences in their homes. In 2009, the Federal Bureau of Prisons began a program called the "Elderly Offender Home Detention Pilot Program," which allows inmates who are 65 years of age and older to complete their sentence under supervision in their own home.<sup>95</sup> A similar pilot in Texas could have vast cost-savings to the state. Individuals could be eligible for Medicare, social security, or Department of Veterans Affairs (VA) benefits if they were able to complete their sentence in the community.

Finally, a 2009 report by the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) concluded that inmates' parole cases could have been referred in a timelier manner by unit medical providers.<sup>96</sup> This front-end practice should also be considered, where feasible.

**(g) Encourage alternatives to incarceration for technical parole violators.**

Policies related to technical parole violators must be revised to increase the efficiency of Texas' parole system and save taxpayer dollars. While current policies vary, they have resulted in thousands of individuals currently languishing in jails and prisons for violating only an administrative rule of their parole supervision. These technical violations can range from things such as missing an appointment with a parole officer or missing a mandated treatment session, associating with prohibited individuals, or being arrested, even if the charges are dropped.<sup>97</sup> In 2009, TBPP received 13,363 allegations of technical violations that required an administrative decision.<sup>98</sup> The process to admit these individuals into prison for a short sentence takes as much time and costs as much money as processing individuals convicted of new, high-level crimes, which diverts valuable resources away from efforts that have been shown to reduce recidivism and the number of victims.<sup>99</sup>

Parole offices should use graduated sanctions to deal with low-risk individuals who have violated a minor condition of their parole. For instance, Intermediate Sanction Facilities can be utilized to a higher degree

to allow for technical parole violators to receive punishment. A parolee and his or her officer must work together to form a partnership that will help the parolee succeed and contribute to improving public safety.

**(h) Allow certain individuals to receive “street time” credit if they are revoked on a technical parole violation.**

In FY 2010, nearly 1,100 individuals were sent to prison for a technical violation of their parole, mandatory supervision, or discretionary mandatory supervision. They did not commit a new crime, just an administrative infraction.<sup>100</sup> These individuals are incarcerated at a rate of \$47.50 per day, compared to the \$3.74 per-day cost of keeping them on parole.<sup>101</sup> Because TDCJ is barred from restoring street time credit to eligible individuals, which is the time between a person’s release from confinement and his or her subsequent parole revocation, they are costing taxpayers’ great expense while they serve their entire supervision period in confinement.

Low-level, nonviolent individuals who violate an administrative condition of their parole should be eligible to receive credit for the time they successfully spent on parole prior to being revoked. This will decrease the amount of time an individual must serve in prison on a technical violation, which will in turn create a cost-savings for the state, as well as free up space and resources for violent individuals who pose a legitimate risk to public safety.

The state should untie the hands of TDCJ in its efforts to implement strategies that will reduce term length and, in turn, prison overcrowding.

**(2) Increase the professional development of parole practitioners through trainings that promote evidence-based practices and measurable outcomes.**

Parole officers and their supervisors should obtain needed training on motivational interviewing, trauma-informed care, workforce development, substance abuse and mental health, and other issues so they can provide more effective and meaningful supervision to their clients, thereby boosting the likelihood of their clients’ success in the community.

As it is, parole officers may see themselves as advocates and perform duties that include residence and employment searches for their clients to provide them assistance when returning to the community.<sup>102</sup> A strong relationship among parole officer and parolee is critical, allowing the parolee to feel more comfortable being honest about drug or alcohol use, and/or other violations of conditions of parole.

As such, TBPP and the parole division, through trainings for officers and supervisors, should commit to redefining their responsibilities in a “case management” framework, rather than solely viewing themselves in a supervisory role. This method takes a holistic approach to supervision with a focus on engaging the parolee in the process of change, addressing risk and need levels through targeted programming, and setting outcomes of success.<sup>103</sup>

*Note:* These trainings should be allowable during the normal workweek and should be offered regionally to prevent high travel expenses or time waste. Officers should not be punished by TBPP or the Parole Division (e.g., through forced use of vacation days for the trainings, etc.) if they are seeking out opportunities that will make them more effective.

# Implement County Jail Population Reduction Strategies to Help County Leadership Maximize Resources and Improve Public Safety

## Background

According to TDCJ, more than one million individuals are processed through local jails on an annual basis.<sup>104</sup> As of December 1, 2010, Texas' county jails housed 69,999 inmates,<sup>105</sup> meaning hundreds of thousands of other individuals had already cycled through.

The continual push of low-risk, nonviolent individuals into local jails harms counties: their tax bases decline as the number of individuals with criminal records rises, and the costs associated with managing jail populations can be extensive. Public safety and health are likewise compromised when overcrowded jails fail to meet the needs of incoming and exiting individuals.

Sadly, many individuals consuming beds in county jails have committed low-level offenses. In fact, approximately 15% of Texas jail inmates are misdemeanants.<sup>106</sup> From 1990 to 2009, certain categories of misdemeanor offenses have grown increasingly prevalent on county-level court dockets. Specifically, drug offenses have risen by 296.2% over this time (from 28,330 offenses in 1990 to 85,245 in 2009), while assault offenses, which do not necessarily involve physical contact, have risen by 169.1% (from 12,325 offenses to 56,544).<sup>107</sup> Similarly, the percentage of non-traffic misdemeanors in municipal courts and justice courts have risen throughout this same time period by 78% and 14%, respectively.<sup>108</sup>

In addition to the over-criminalization of low-level offenses, various other factors contribute to jail overcrowding, including the lack of effective jail diversion programs and practices, case-processing and appeals-related delays, and failure to implement administrative mechanisms that safely reduce jail populations. But probably the greatest contributor to jail overcrowding is excessive pre-trial detention. In fact, as of December 1, 2010, more than half (53%) of Texas' jail population was inmates awaiting trial.<sup>109</sup> Not only do pre-trial detainees take up beds while they wait, sometimes for

several months, for trial, programming, or other services, but some may eventually end up serving more time than required by law.<sup>110</sup>

Overcrowding forces county leadership to choose between (1) constructing a costly new jail or unit, with millions of dollars per year in maintenance costs, over and above the significant one-time cost of building the facility; (2) housing inmates in other county jails or neighboring state's prisons, which brings with it transfer and inmate-housing costs,<sup>111</sup> as well as disruptions with attorney and family interaction; and (3) obtaining a variance from the Texas Commission on Jail Standards (TCJS<sup>112</sup>) to temporarily deviate from standard regulations and house an additional number of inmates in already cramped spaces within the jail.<sup>113</sup> At an average inmate cost to taxpayers of \$45 per day,<sup>114</sup> jail overcrowding also drives up local budgets through associated costs, including the need for additional staff, as well as program and service resources.

Policy-makers must make every effort to deliver cost-savings to counties and taxpayers through state-level jail population management strategies that can dramatically impact local practices. Ultimately, where possible, low-risk, nonviolent individuals should be handled outside of already overburdened court and jail systems, rather than forcing taxpayers to foot the bill for their confinement. In addition to assisting sheriffs and county commissioners, population-control practices can also prevent the state from having to direct funds needed for other social services and programs to criminal justice oversight.

Without such strategies in place, further jail construction will become a reality, and it will necessitate additional resources for the state-funded TCJS. New jails may require TCJS to hire additional inspectors, increase administrative staff to provide technical assistance and training, and/or increase travel budgets. Policy-makers and other key stakeholders must consider this budgetary implication and support local efforts to reduce jail populations whenever possible.

**Even ten additional inmates per year dramatically increases costs: 30 extra meals per day (3 each for 10 inmates) translates to 900 extra meals per month, and 10,800 extra meals per year.**

**NOTE:** Throughout the remainder of this section we have provided county-specific incarceration-reduction measures. Many of the strategies outlined previously for prison inmate reductions would also apply for jail overcrowding.

## Key Findings

- Whenever possible, nonviolent individuals who are not unduly impacting public safety should be diverted from jail rather than being incarcerated at rates of almost \$50 per day.<sup>115</sup>
- Housing “blue warrant” parolees – those who have violated a technical condition of their parole, versus having committed a new crime – in county jails while they await a hearing on their infraction comes at huge taxpayer expense: at least \$42 million per year. Harris County alone pays an estimated \$7.6 million annually to house blue warrant parolees.<sup>116</sup>
- In Travis County, the ability to issue individuals a field release citation and a summons to report to court, rather than immediately arresting and booking them, has cut the time to effect an arrest from more than four hours to less than one hour in most instances, while allowing officers to remain in their districts.<sup>117</sup>
- Fine-only offenses for low-level violators save thousands in incarceration and defense costs, as Class C misdemeanants are not eligible for county-funded indigent defense. Furthermore, keeping individuals in the community where they can maintain employment obligations will better ensure they can afford and pay restitution.
- According to TDCJ’s Criminal Justice Assistance Division in regards to probation, “revocation and incarceration for financial noncompliance can actually increase public costs where not only is revenue lost through nonpayment but taxpayers are burdened with the costly housing and care of technical violators in jail and prison.”<sup>118</sup>
- Smith County’s Alternative Incarceration Center, a supportive day reporting center for primarily low-level violators, has resulted in a net savings of over \$3 million annually to Smith County by diverting people out of jail.<sup>119</sup>

- The Dallas Police Department’s Prostitute Diversion Initiative provides women access to services *prior to* arrest, allowing them to avoid jail and instead receive much-needed health, substance abuse, and mental health assistance in the community,<sup>120</sup> with associated savings in jail avoidance costs.
- Many Texas counties, including Bexar, McLennan, Tarrant, and Travis, have implemented a 3-for-1 “good time” policy for well-behaved, industrious jail inmates, without negatively impacting public safety.<sup>121</sup> In spring 2010, Harris County also began awarding credit for participation in education or vocational programs, with almost 200 inmates successfully meeting the terms and gaining release by July 2010.<sup>122</sup>

## Cost-Saving Strategies

### (1) Encourage counties to examine alternatives to jail expansion before undertaking costly construction measures.

Before seeking to build or expand a county jail through general obligation bonds or certificates of obligation, the county should first be required to articulate and demonstrate to the state that it has taken all necessary or viable steps to reduce the need for such expansion.

Not only will this cut down on potentially unnecessary spending, it will increase transparency for taxpayers.

### (2) Permit judges to transition inmates from jail to a re-entry program at least 30 days prior to the end of their sentence.

Currently, judges do not have the option of placing individuals who are exiting county jail confinement into a supervised transitional re-entry program. Such a program could provide re-entering individuals with the tools necessary to ensure their successful reintegration into the community, including mandated substance abuse and/or mental health treatment, counseling, or other social service programs (e.g., housing and employment assistance), where necessary. Without this support or assistance, many individuals are likely to return to county jail.

Providing individuals with post-release supervision can increase the success rate of the exiting population. It will also reduce the financial strain associated with incarceration (with average costs-per-day at approximately \$45<sup>123</sup>).

### (3) Minimize the over-criminalization of low-level offenses and indigency.

#### (a) Use the cite-and-summons option for nonviolent individuals who commit certain low-level offenses, as authorized by state law.

Ongoing police practices drive up arrests for low-level offenses and significantly contribute to jail overcrowding. To reduce arrest rates for low-level, nonviolent offenses, Texas policy-makers overwhelmingly came together in 2007 to pass H.B. 2391, which permits law enforcement officers to give county residents a ticket and a summons to report to court, rather than immediately arrest and book them for certain offenses. (See *Article 14.06, Code of Criminal Procedure*.) The following violations fall under the purview of the law:

- Contraband in a corrections facility (Class B misdemeanor only).
- Criminal mischief with less than \$500 damage.
- Driving With an Invalid License.
- Graffiti with less than \$500 damage.
- Marijuana possession up to 4 ounces.
- Theft by check with less than \$500 value.
- Theft of service with less than \$500 value.

This bill was widely supported by a number of sheriff's departments, the Sheriffs' Association of Texas, the Combined Law Enforcement Associations of Texas, and the Texas State Lodge & Fraternal Order of Police. These groups recognized the overwhelming amount of law enforcement time consumed by targeting individuals who have committed minor offenses. As such, a cite-and-summons policy not only saves taxpayers money in incarceration costs, it enhances law enforcement's ability to fight crime: understaffed departments can use Art. 14.06 to concentrate their resources and personnel in a more efficient and effective way. Instead of spending hours arresting, transporting, and booking individuals for the above offenses, officers can focus their energy on investigating and preventing serious crimes in the field, which increases public safety and lessens the likelihood of creating victims.<sup>124</sup> **In Travis County specifically, the ability to issue field release citations has cut the time to effect an arrest from**

**more than four hours to less than one hour in most instances, while allowing officers to remain in their districts.**<sup>125</sup>

Any county that has not already put in place a cite-and-summons policy – but especially those that have considered funding new facilities, obtaining population variances from TCJS, or housing inmates elsewhere – should immediately consider implementing Art. 14.06. It is an opportunity to save money, minimize jail overcrowding, and protect valuable law enforcement time.<sup>126</sup>

*Note:* Law enforcement officers who choose to issue citations under Art. 14.06 must stress to individuals that failure to appear at the scheduled magistration hearing can result in jail time,<sup>127</sup> just as those later convicted of the offense can receive jail time. Art. 14.06 only eliminates unnecessary time in jail awaiting trial, a significant contributor to jail overcrowding.

*Note Additionally:* Local jurisdictions that implement a cite-and-summons process can include fingerprinting and photographing components to better protect public safety over time.

#### (b) Bring additional offenses under the cite-and-summons policy.

As a means of reducing jail overcrowding and keeping law enforcement's focus on higher-risk individuals, state leadership should consider bringing additional low-level offenses under the purview of Art. 14.06 (e.g., disorderly conduct, criminal trespassing, or minor property offenses), or even remove them from the court system altogether.

For instance, Harris County has decided to implement a policy that applies to those found with trace amounts of drugs. Similar to what currently occurs in Travis and Bexar Counties, individuals found with less than one hundredth of a gram of residue (equal to half a grain of rice) of cocaine, crack, heroin, methamphetamine, or other drugs will not face state jail felony charges. Nor will they incur the collateral consequences that accompany such charges. Instead, these individuals will be issued a fine-only citation for a Class C misdemeanor (drug

paraphernalia). Counties interested in implementing such a policy can dramatically reduce strains on court dockets and forensic labs. If interested in going one step further, practitioners can also provide a treatment referral to those who may be habitual users to prevent future contact with law enforcement.

**(c) Make cite-and-summons offenses non-jailable and increase community-based responses, where necessary.**

Many offenses under the purview of Art. 14.06 should be non-jailable, in effect making them a Class C misdemeanor. In other words, individuals would never be jailed for such offenses, even in the event of conviction. They would have to pay a fine and/or provide some other remuneration, such as community service or victim restitution.

Fine-only offenses reduce the burden on county courts and prosecutors, while eliminating the long-term and costly collateral consequences associated with jail time. Furthermore, they save thousands in incarceration and defense costs, as Class C misdemeanants are not eligible for county-funded indigent defense.

Another benefit of such a policy lies in the increased likelihood of individuals to make financial restitution to crime victims. Keeping individuals in the community where they can maintain employment obligations will better ensure they can afford and pay restitution.

*Note:* If individuals cannot afford to pay their fines immediately, they could be permitted to pay in installments; if they cannot afford to pay the fines at all, they could be permitted to perform community service hours in exchange for nonpayment of the fine.

**(d) Properly sanction probation and parole violators, especially for technical violations.**

As of December 2010, Texas' jails were housing 5,292 parole violators,<sup>128</sup> while earlier months saw 4,119 individuals on probation incarcerated for various reasons, including a probation violation.<sup>129</sup> Many probation and parole violators are sent back to jail for technical violations such as missing a fee payment or a meeting, not new crimes. Revocations

for these infractions clog jails with individuals, many who are misdemeanants, whose violations could often be more effectively addressed without costly incarceration.

According to TDCJ's Community Justice Assistance Division (CJAD), "**revocation and incarceration for financial noncompliance can actually increase public costs** where not only is revenue lost through nonpayment but taxpayers are burdened with the costly housing and care of technical violators in jail and prison."<sup>130</sup>

Policy-makers can take three steps to more effectively and efficiently address probation or parole violators:

□ *Continue to invest in progressive sanctions for probation violators.*

An immediate revocation for a minor offense is rarely warranted. Depending on one's risk level, a probationer should be given leeway to address his or her needs on an ongoing basis, and departments should administer tailored and proportionate punishments according to the severity and frequency of each probation violation. Prior to a full revocation hearing and possible violation report, the continuum of sanctions for infractions should include probation officer admonishment, supervisory and administrative hearings, and enhanced conditions, including a longer probation term, an additional fine, and/or mandated participation in a secure SAFPF<sup>131</sup> if addiction is at issue.<sup>132</sup>

CJAD makes its own recommendations for restorative justice alternatives to revocation and incarceration:

- In cases of an offender's inability or failure to pay court costs, fines, or restitution fees, the courts can apply community service restitution as an alternative to revocation. *TCCP Art. 42.12 §22(a)(1)*.
- Courts can also discharge all or part of a fine through community service restitution. *TCCP Art. 43.09(f), TCCP Art. 45.049(a)*.

- A court may require a defendant to serve all or part of a jail sentence or jail confinement as a condition of supervision by performing community service restitution in lieu of jail confinement. *TCCP Art. 42.036(a)*.
- In cases of financial noncompliance with court-ordered restitution, another alternative to revocation is the establishment and perfection of a Restitution Lien. A victim of the offense entitled to court-ordered restitution, or the state entitled to certain fines and costs, may file and perfect a Restitution Lien against the defendant that remains in effect for a period of 10 years. *TCCP Art. 42.22.*<sup>133</sup>

As emphasized here, judges are especially important in the implementation of sanctioning strategies. They must be willing to work with prosecutors to appropriately handle violations or new offenses with graduated sanctions. They must also agree to consistently administer such sanctions from court to court,<sup>134</sup> as well as inform their local commissioners about strategies and programming that require continued or strengthened funding.

□ *Create a Technical Violation Docket to handle probation violators.*

Judge Mike Lynch created a Technical Violation Docket in Travis County, which gives technical probation violators the opportunity to remain on probation with modified conditions.<sup>135</sup> Other counties interested in such a system could also designate one court as a “sanctioning court,” to specialize in enforcing a continuum of sanctions for administrative violations. In this case, the original court would continue to retain jurisdiction to revoke an individual for a violation, but it would be free from having to review requests for summons and requests for review of administrative violations short of a Motion To Revoke.<sup>136</sup>

Again, use of progressive sanctions by judges will keep low-level violators out of overcrowded jails. Furthermore, devoting a specific docket to particular offenses reduces the time between a violation and sanction, better reinforcing the sanction and improving probationer success.

□ *Allow judges to grant bail to nonviolent “blue warrant” parolees detained in jail awaiting a technical revocation hearing.*

Technical parole violators, known as “blue warrant” parolees, should not be detained for unnecessary lengths of time in county jails while awaiting a hearing on their infraction, especially without reimbursement to the county. **This practice comes at huge taxpayer expense – at least \$42 million per year**<sup>137</sup> – while consuming valuable beds.

**Harris County alone pays an estimated \$7.6 million annually to house blue warrant parolees under this blanket policy.**

*James Pinkerton, Houston Chronicle, December 2010*

As of December 1, 2010, there were 2,345 blue warrant parolees detained in Texas’ county jails who could have been released to make room for violent or higher-level violators.<sup>138</sup> Releasing low-risk individuals on bail/bond prior to a revocation hearing will prevent community members from footing the bill while nonviolent individuals sit in jail awaiting a hearing by the Texas Board of Pardons and Paroles to determine whether the charges against them will result in their reincarceration.<sup>139</sup> It will also allow individuals the opportunity to remain with their family and continue with their employment, thereby increasing the stability and the overall success of their parole.

*Note:* Jail overcrowding can be further reduced if this policy’s scope is expanded to include not just technical violators, but those who have been arrested for committing new *minor* offenses. Technical violators comprise 14% of statewide parole revocations (1,045 out of 7,471 total revocations in 2009).<sup>140</sup> Widening the net of this policy to give judges the option of allowing bail for parole violators arrested for other nonviolent offenses could have a much larger impact on jail reduction.<sup>141</sup>



*Note Additionally:* Judges and attorneys should also make every effort to hold quicker parole violation hearings to address the problem of parole violators languishing in jail cells. Currently, parolees wait an average of 45 to 70 days in county jail before the revocation process is completed.<sup>142</sup>

**(e) Eliminate jail as punishment for an inability to pay fines and fees.**

Overall, policy-makers should create an indigency/hardship program with reasonable and consistent standards to allow community service for individuals unable to afford court fines, Department of Public Safety (DPS) fees, and other surcharges. Indigency programs would save taxpayer dollars spent to incarcerate indigent individuals, and they would increase personal responsibility through community service.

**(f) Stop using jails to carry out debt collection efforts.**

Numerous Texas law enforcement agencies have held annual warrant roundups to target individuals with outstanding traffic violations (Class C misdemeanors) and other offenses.<sup>143</sup> Arrestees fill overcrowded jails with people who cannot afford to pay fines, often costing taxpayers more than the county would otherwise have earned with the money paid by the misdemeanants.<sup>144</sup>

**Whenever possible, nonviolent individuals who are not unduly impacting public safety should be diverted from jail rather than being incarcerated at rates of almost \$50 per day.**

One way to more expeditiously and cost-effectively resolve warrants is by implementing the “**Fugitive Safe Surrender**” program:

Fugitive Safe Surrender is an increasingly popular initiative currently in 16 cities that involves the collaboration of efforts by U.S. Marshals and local law enforcement agencies with local faith-based organizations and leaders. The program establishes churches as meeting

points for people with outstanding arrest or bench warrants to report on predetermined dates/times. This puts the onus on the person with the outstanding warrant to resolve their case, rather than expending law enforcement resources. Judges are on-hand at the meeting points in order to expedite the trial process. While the program primarily targets people charged with nonviolent offenses, those with a warrant for any type of offense are welcomed to surrender. Most cases can be disposed of immediately, but in some instances the nature of the offense or warrant may require that the person be arrested, which is done discreetly to avoid deterring other participants.<sup>145</sup>

Fugitive Safe Surrender programs can result in thousands of people resolving their warrants on-site.<sup>146</sup>

**(4) Implement effective jail diversion programs and practices.**

Diversion programs and specialty dockets are not the only means of directing people away from jail. In addition to Community Corrections Facilities (CCFs<sup>147</sup>) and Intermediate Sanction Facilities (ISFs<sup>148</sup>), various other options are available to hold individuals accountable while keeping them out of overcrowded jails. These include day reporting centers, community-policing programs, victim-offender mediation policies, and labor programs.

County officials can be hesitant to promote new diversion programs or practices, but without a commitment to changing failed policies, they can continue to expect the status quo – and the financial burden that accompanies it.

**(a) Encourage counties to consider day reporting centers for individuals with nonviolent offenses.**

Counties with a large influx of nonviolent arrestees into jail should examine the feasibility of a day reporting center, which, according to CJAD, emphasizes “assessment, risk management, intervention, and close supervision.”<sup>149</sup> One immensely successful program in Smith County, called the Alternative Incarceration

Center (AIC), began operating after voters rejected two jail bond measures in 2006. Initiated by former District Judge Cynthia Kent, the program's ongoing goals are "to reduce the Smith County jail population, protect the public by intensive supervision through a day reporting program, provide extraordinary efforts to place these offenders into paying jobs, promote public safety by special rehabilitation services to these offenders, and enhance the reintegration of reformed offenders back into society."<sup>150</sup>

According to the AIC's Policy and Procedures, individuals eligible for participation are primarily low-level violators – those incarcerated for misdemeanors, state jail felonies, or nonviolent third degree felonies. Other eligible participants include the following: individuals who are on community supervision and awaiting a hearing on a Motion To Revoke or a motion to proceed to final adjudication;<sup>151</sup> SAFFP probationers awaiting a bed in treatment, depending on the level of addiction; and individuals who are delinquent on child support payments and would have been sentenced to incarceration, or those who have been found to violate a child support probation order.<sup>152</sup>

The structured program requires individuals to plead guilty. After evaluation by a program screening officer to determine eligibility and with the approval of the district attorney's office, individuals must agree to be placed on specialized probation with assignment to the AIC.<sup>153</sup> According to Judge Kent, these individuals are also required to "sign the AIC rules and guidelines agreement, be employable and commit to accepting employment, agree to good faith participation in rehabilitation and reintegration programs, and if found to be a person with mental health issues agree to good faith participation and cooperation with diagnostic evaluations, mental health counseling, symptom management and skills training, and medication regimen compliance."<sup>154</sup>

Individuals who agree to all terms and who are accepted into the program must report to the AIC each morning of their term at a designated time and remain until late afternoon or evening. They spend their evenings at home, rather than taking up valuable jail beds.<sup>155</sup>

Individuals at day reporting centers like the AIC may do the following:

- Participate in drug/alcohol rehabilitation counseling through a licensed professional counselor.
- Participate in drug and alcohol screening tests.
- Submit to an electronic monitoring program and drug patch program.
- Receive supervision in taking medication for mental illness.
- Receive G.E.D. training.<sup>156</sup>
- Receive job training and job counseling services on-site and accept assignments for job interviews.
- Be available for and participate in job pool assignments and day labor jobs.
- Receive life skills training on-site.<sup>157</sup>
- Engage in community service.
- Participate in cognitive development programming.
- Receive other types of non-academic education.<sup>158</sup>

Within a year of the AIC's opening in 2006, approximately 90% of participants were completing Smith County's program,<sup>159</sup> while the jail saw a reduction of more than 120 inmates per day.<sup>160</sup> Smith County taxpayers' cost savings during that period was almost \$1 million, an average of nearly \$210,000 per quarter.<sup>161</sup>

The program has continued to be a success, averaging 289 participants in the 2009-10 fiscal year. A review of 36 months of program data finds that 88% of individuals who complete the program remain successful on regular probation after six months, while a review of 30 months of data finds that 77% remain successful on regular probation after one year. All told, the AIC is saving Smith County approximately \$4.4 million per year for a cost of approximately \$1 million – **a net savings of over \$3 million annually to Smith County by diverting people out of the jail and into the AIC program.**<sup>162</sup>

In addition to cost-savings and lowered recidivism rates, three additional benefits of county day reporting centers include the following: (1) participants at some centers may be permitted to work off fines or debts to victims, thereby providing restitution while freeing jail beds;<sup>163</sup> (2) individuals on pre-trial release, probation, or parole may also be permitted to participate in some counties' day reporting programs,<sup>164</sup> which can more effectively meet the needs of such populations; and (3) participants at some centers may have access to aftercare services, including intensive outpatient substance abuse treatment, which decreases the likelihood of re-offending and re-entering the system.<sup>165</sup>

Counties seeking to minimize jail overcrowding caused by low-level populations and instead reserve jail space for higher-risk individuals should consider implementing a similar program in their local jurisdiction.

**(b) Expand innovative community policing programs that respond to specialized populations.**

Specialized interventions through community policing can successfully target and reduce criminal behavior among various populations. According to the Bureau of Justice Assistance, such interventions “achieve longterm problem reduction.”<sup>166</sup>

One example is the Dallas Police Department's Prostitute Diversion Initiative (PDI). This location-specific truck stop prostitution program gives women effective, pre-booking options to leave the business:

On the first Wednesday of each month, the Dallas Police Department conducts an operation targeting prostitution in areas designated by the Vice Unit as hot spots for prostitution arrests. A staging area for the operation is established within the target area with medical personnel, social services, and courts convening on-site. [...]

Entry onto the staging area is by arrest or by voluntary walk-on by prostitutes who wish to avail themselves of on-site acute care. However, this is a police operation and those individuals that walk onto the site

will be searched, checked for outstanding warrants, and debriefed by the Vice Unit. All prostitutes on site are accompanied by a police officer and assigned an advocate (former prostitute)<sup>167</sup> throughout the multi-step process.

The PDI works in collaboration with other organizations to assist women in addressing various needs, such as substance abuse, mental health issues, and physical health.<sup>168</sup> The latter is critical in light of Dallas' ranking as the nation's syphilis capital, a crisis that swelled as the city's enforcement-only, anti-prostitution tactics failed.<sup>169</sup>

**Another significant benefit of the PDI is that, unlike similar initiatives nationally, it provides women access to services prior to arrest:** “The advantage of bringing resources directly into the population is the immediate evaluation of the individual and recommendation to the court for diversion. By diverting from the field, the offender avoids a trip to jail, which reinforces the mindset that they are being treated as victims.”<sup>170</sup>

Policy-makers should require counties with moderate to high arrest rates for prostitution to examine the feasibility of implementing a program like the PDI. Counties should also consider duplicating or, where necessary, tailoring this program to meet the needs of other specialized populations, such as those suffering specifically from substance abuse and/or mental illness. Jail overcrowding can be drastically reduced when law enforcement have the opportunity to assist low-level, nonviolent individuals at high risk of recidivism, especially during pre-arrest stages.

Another successful pre-booking program is **Law Enforcement Assisted Diversion (LEAD)**, which is utilized by officers in Seattle, Washington. Like PDI, it stresses both immediate access to services and participant accountability, although the target is low-level drug users for whom probable cause exists for an arrest. Officers receive extensive training to recognize the needs of those with substance abuse issues. They are under clear mandate to immediately divert the individuals into community-based treatment with access to support services.<sup>171</sup> To boost the program's efficacy, “peer outreach workers

and case managers serve as community guides, coaches, and/or advocates, who work to link diverted individuals to housing, vocational and educational opportunities and community services, while also providing credible role models of success.”<sup>172</sup> Community members have the option of providing program feedback, which is especially important in tailoring strategies to different drug “hot spots.”<sup>173</sup> Again, this program strives to change behavior, freeing participants from the life-long burdens associated with criminal records, and improving the quality of life in their communities, all while saving costs of trial, defense, and incarceration.<sup>174</sup>

Where possible, local law enforcement agencies should implement model risk-reduction programs and problem-solving strategies that seek to improve the trust between community members and law enforcement. Doing so better enables officers to identify and address individuals’ criminal behavior, thus more effectively implementing public safety-focused, value-driven police services.

**(c) Implement pre-trial victim-offender mediation programs.**

Mediation for low-level offenses can dramatically reduce court caseloads and jail overcrowding. Individuals are required to issue their victims an apology and provide compensation or community service, rather than be convicted and incarcerated.<sup>175</sup> This program also allows crime victims to choose to become involved in a defendant’s rehabilitation as the defendant takes responsibility for his or her actions.<sup>176</sup>

In a national survey by the Department of Justice on victim-offender mediation programs, the agency found “high levels of participant satisfaction,” with interviewees noting that “communities benefit as well, because mediation works to reduce community isolation and fragmentation.”<sup>177</sup> Policy-makers should expand the use of these programs to help relieve the burden on county court dockets and local jails, while potentially improving community relations.

*Note:* If no agreement is reached or if a defendant does not complete the terms of the mediation agreement, his or her case should proceed as usual.

This will encourage personal accountability and successful completion of the program, keeping more individuals out of jail.

**(d) Fully implement the requirement of manual labor in appropriate instances.**

According to state legislation passed in 2009 (S.B. 2340), certain individuals may be required to perform manual labor rather than be incarcerated in county jail. Specifically, Article 43.10, Code of Criminal Procedure, states the following:

**Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, or where the party is sentenced to jail for a felony or is confined in jail after conviction of a felony, the party convicted shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with the provisions of this article [...].**

The article specifies that each day of manual labor may be deducted from a person’s sentence.

Credit for required manual labor is an especially valuable tool for counties facing severe overcrowding issues. For instance, there were 4,376 inmates in the Harris County jail as of May 1, 2009, who could have been eligible for post-trial manual labor.<sup>178</sup> Awarding them credit would have a drastic impact on that jail’s population.

*Note:* In some circumstances, manual labor may only excuse an inmate during the day; at night, individuals return to jail to sleep. Judges and jail administrators should consider a true diversion when at all possible, with full release from jail, to prevent work-eligible inmates from consuming beds.

**(5) Reduce case-processing and appeals-related delays, both pre- and post-conviction.**

According to Article 17.151, Code of Criminal Procedure, a felony defendant awaiting trial in jail must be released within 90 days, either on personal bond or through a reduced bail amount, if the state is not ready for trial. Misdemeanor defendants can be held up to 30 days.

Despite this mandate, poor case processing practices lead to clogged court dockets and delays, which leaves inmates sitting in jail for longer periods at taxpayers' expense. Attorneys and judges alike are struggling to clear large caseloads. The options below deserve significant consideration in the effort to relieve overburdened systems.

**(a) Judges should mandate pre-trial hearings in requested cases.**

A court should set a pre-trial hearing in a criminal case if requested by either the state or the defendant. The pre-trial hearing should be held no later than the 30<sup>th</sup> day before the date that the trial commences.

**(b) Encourage speedy dockets when at all possible.**

Keeping judges responsible for case processing will expedite case setting and resolution. Adan Muñoz, Jr., Executive Director of the Texas Commission on Jail Standards, noted the need for effective, fast-moving dockets, stating, "the sooner you get that inmate out of jail the sooner you are going to reduce overcrowding."<sup>179</sup> Judges should make great effort to minimize continuances and other postponements whenever possible.

*Note:* It is imperative that responsible case processing balances expediency with defendants' rights. Judges must ensure that individuals understand their right to counsel, as well as the ramifications of pleading guilty and of waiving certain rights.<sup>180</sup> Uninformed and involuntary guilty pleas also contribute to jail overcrowding.

**(c) Expedite the post-conviction appeals process.**

Under Texas law, a defendant sentenced to less than 10 years of incarceration may remain in custody until

his or her appeal is fully resolved.<sup>181</sup> In many cases, convicted felons are taking up county jail beds for months while their appeals move through the court system. For instance, as of September 2009, the Harris County jail was housing 102 convicted felons who were awaiting final judgment in their appeal; 62 of these inmates had appeals pending for six months or longer.<sup>182</sup>

Counties should consider expediting their appeals processes to reduce overcrowding and save taxpayers money. The Bexar County Appellate Defender Office has accelerated court proceedings and appellate filings to reduce the average post-conviction time that inmates spend in county custody from six months to 55 days. **As a result, the county saved \$531,000 in county jail incarceration costs from October 2007 to August 2008.**<sup>183</sup>

Other counties with large percentages of post-conviction appellate filings should implement similar practices, with cost-saving results.

**(6) Implement administrative and other mechanisms that safely reduce jail populations.**

**(a) Minimize Failure to Appear (FTA) warrants by establishing a court date notification system.**

Individuals who are not under the supervision of the local pre-trial services division do not receive reminders from staff about upcoming hearing dates. This, in turn, can increase the likelihood of a person failing to appear before the judge and subsequently having an FTA warrant issued for him or her. Not only do FTAs waste judges' time, they force law enforcement to expend valuable resources arresting those with outstanding warrants. Furthermore, they repeatedly fill jail beds with individuals who missed their court dates and now cannot post bail because of the charge.<sup>184</sup>

Various jurisdictions have implemented a court date notification system to reduce the rates of FTA incidences. For example, the Multnomah County, Oregon Circuit Court created an automated dialing system that calls defendants up to three times prior to each court appearance and leaves a 30-second,

prerecorded message about the date, time, and location of the hearing. Annually, the program is estimated to save up to \$6.4 million in staff time.<sup>185</sup>

Counties without pre-trial services divisions should consider implementing such a system in their courts.

**(b) Reward inmates with early release for good behavior by allowing 3-for-1 good time credit.**

Though jails are largely saturated with pre-trial detainees, those who have been convicted may also serve more time than is necessary to protect public safety. Judges and jail administrators should weigh an inmate's risk of re-offending. If low, that person should be returned to his or her obligations in the community.

One metric for determining an inmate's threat to public safety is whether s/he has exhibited good behavior while incarcerated in county jails. When appropriate, jail administrators should take advantage of "good conduct" credits, permitted in Texas through Article 42.032, Code of Criminal Procedure.

Currently, some counties have a 1-for-1 or 2-for-1 "good time" credit policy, wherein the Sheriff deducts one or two days from a defendant's original sentence for each day s/he actually serves of that sentence, provided no charge of misconduct has been sustained against the individual. In the interests of further reducing growing jail populations in overburdened counties, officials should consider a 3-for-1 good time policy for deserving defendants.

**Many Texas counties have implemented such a policy without negatively impacting public safety.** For instance, the Bexar, Tarrant, and Travis County Sheriff's Departments have confirmed that they award 3-for-1 jail credit for a combination of discretionary good conduct time (Art. 42.032, Code of Criminal Procedure (CCP)) and mandatory manual labor (Art. 43.10, CCP). Likewise, the McLennan County Sheriff's Office enforces 3-for-1 credit for all eligible inmates.<sup>186</sup>

In April 2010, Harris County began a pilot program that has now become a permanent practice. Sentenced county jail inmates can earn a third day of credit by (a) participating in an in-house education program, (b) obtaining vocational certification, or (c) receiving comparable on-site training. As of July 19, 2010, almost 200 inmates had been released after successfully participating in the program, while 957 inmates were eligible to receive the credit. This number is likely to grow daily, as jail administrators have begun screening incoming inmates for eligibility.<sup>187</sup>

Allowing good time credits towards time served can free up jail beds more quickly, while also encouraging proper behavior among more inmates. Jail administrators should reward inmates who exhibit appropriate conduct and/or undertake manual labor (*discussed above*) to significantly reduce swelling jail populations.

**(c) Require law enforcement agencies to reimburse local jails for certain arrestees' booking and per diem fees.**

Officers who override a local cite-and-summons policy, instead arresting and booking an individual eligible for release under Art. 14.06, Code of Criminal Procedure, should be responsible, via their agency, for associated costs to the jail. Already, jails in other states have begun charging municipalities booking and per diem fees for arrestees brought to the jail, which decreases admissions through the incentivized use of citation release.<sup>188</sup> *Note:* County leadership in jurisdictions without cite-and-summons policies could mandate certain offenses as divertible and effectively create a similar practice there.

**(7) Disincentivize the over-use of county jails for state jail felons.**

One way of saving costs at both the state and county levels while also encouraging personal responsibility is by awarding good time and work time credit for appropriate or industrious behavior among state jail confinees.

Currently, individuals convicted of state jail-level offenses may be permitted to serve their time in county jail, as per Article 12.44(a), Penal Code.<sup>189</sup> Many individuals seek to take advantage of this option because county jails permit good- and work-time credits, resulting in early release

for eligible individuals. State jail confinees, on the other hand, must serve “day for day,” meaning early release is not possible, even if their good behavior would have made them eligible for release by county jail administrators. Taxpayers foot the bill while inmates serve their full term at massive expense. For instance, as of August 31, 2010, state jails held 12,133 individuals, 98.6% of whom were incarcerated for nonviolent offenses.<sup>190</sup> **Given an average cost-per-day for state jail inmates of \$40.12,<sup>191</sup> this population of nonviolent confinees is costing taxpayers \$486,776 daily.**

Allowing state jail felons to serve time in county jail crowds already overburdened facilities and could be ameliorated by allowing those convicted of state jail offenses to receive credits while being housed in state jails. Not only would this increase the number of persons discharged from a state jail facility, freeing up needed space, but credits would improve in-house and re-entry efforts. Specifically, allowance of good time credits would encourage more appropriate behavior among inmates, in turn increasing safety in state jails for inmates and staff and serving as a free tool for wardens for inmate management. Program credits would also create an incentive to complete in-prison rehabilitative programs.

**(8) Assist the Texas Commission on Jail Standards (TCJS) in continuing its important role in monitoring and regulating county jails.**

In the early 1970’s, various lawsuits were filed against Texas counties for poor conditions of confinement in local jails, as well as for the lack of regulated and funded inspections of those jail facilities. In 1975, with the urging and support of various groups including the Sheriffs’ Association of Texas, the Texas Legislature effectively created the nine-member Texas Commission on Jail Standards, tasked with ensuring the proper management of county jails. Possibly the most critical feature of the new law was TCJS’s authority and responsibility to set constitutional jail standards, conduct facility inspections, and enforce compliance with rules and procedures – all of which keep Texas jails safe, well regulated, and run by educated, professional leadership.

TCJS must continue to be provided a level of funding equal to what it is presently receiving. Budget cuts pose threats to already overworked personnel. Indeed, across-

the-board 5% agency cuts and an extra 10% budget cut could result in TCJS losing 2-3 staff members, possibly inspectors (out of a current total of 5 inspectors). Cuts will also jeopardize the agency’s crucial functions, specifically including travel for on-site trainings and technical assistance for jail administrators, the timely re-inspection of noncompliant facilities, special inspections of at-risk facilities, and meetings with local leadership to address facility issues.

**(a) Expand the composition of TCJS’s board.**

TCJS’s policy-making body is comprised of nine Commission members appointed by the Governor to six-year terms. The Commission consists of a sheriff from a county with a population of more than 35,000; a sheriff from a county with a population of 35,000 or less; a county judge; a county commissioner; a practitioner of medicine; and four private citizens, at least one of whom is from a county with a population of 35,000 or less.<sup>192</sup>

In other words, five of the nine members of TCJS’s policy-making body are drawn from a pool of county officials.<sup>192</sup> Expanding the board’s representation to include, for instance, **academics or advocates who research jail practices and conditions and who are knowledgeable about strategies/programs that counties could utilize to safely reduce jail populations**, could add value to the current work of the TCJS board and staff.

**(b) Strengthen TCJS’s oversight authority.**

To help TCJS supplement its annual county jail inspection costs, counties should pay an “inspection” fee based on each county’s number of jail beds. For those counties that have demonstrated compliance with Minimum Jail Standards for at least 10 years (which is longer than the length of at least two sheriff terms to account for sheriff turnover and/or continuity), the fee should be waived for future years of compliance. For counties that fail to comply with the Standards, an additional fee should continue to accompany annual inspections.

Alternatively, the Legislature could recommend that the fee be charged to all agencies annually so that TCJS becomes as close to a zero-cost agency as possible.

**(c) Promote TCJS's long-term strategic planning.**

Like many other state agencies that are permitted to keep unexpended funds for various agency responsibilities, TCJS should be allowed to keep money not spent on inspections and other strategies. Instead, the state should allow those funds to be used for further inspections or technical assistance to counties, with amounts not spent down in one year allowed to carry over to the next year. In 2010, TCJS was forced to reimburse the state the \$5,000 it was able to maintain due to frugal travel expenses. That money, a drop in the bucket compared to the state's general revenue, would have a critical impact on TCJS's ability to assist counties in meeting standard compliance.



# Improve Community-Based Substance Abuse and Mental Health Services to Halt the Costly Cycle of Re-Offending

## Background

Individuals suffering from substance abuse and/or mental illness need real opportunities for treatment and education to break the cycle of re-offending as early as possible and turn their lives around. Community-based supports, where individuals can best sustain family relationships and continue to meet employment obligations, are not only more cost-efficient than incarceration, but they are more effective at addressing treatable addiction and managing mental illness. In fact, even the most expensive treatment program is less costly than building and maintaining additional prisons or jails to house individuals in need of treatment.

It is imperative that Texas adopts new approaches to address the behavior of individuals suffering from substance abuse and mental illness. Confinement only *manages*, not *reduces*, risk. The state must support clearly defined and evidence-based rehabilitation and treatment diversion programs that encourage personal responsibility and accountability. The collateral consequences of even low-level convictions, including job loss, housing difficulties, and negative impacts on the family, only increase the likelihood of re-offending. On the other hand, community-level programs that address social problems provide greater public safety through effective treatment of the root cause.

Policy-makers must make all efforts to strengthen the statewide treatment infrastructure and increase the availability of treatment facilities and professionals that help individuals in need.

## Key Findings

### Overview:

- Every dollar spent on treatment, rather than incarceration, will save the state \$7 in criminal justice and public welfare expenses.<sup>194</sup> Yet, Texas spends 88% of criminal justice funds on prison beds and “hard incarceration,” and only 12% on diversion programs, community correction, and treatment alternatives to incarceration,<sup>195</sup> which are more likely to

increase public safety when properly implemented.<sup>196</sup> It is long overdue that the state takes steps to aggressively and proactively address drug dependence and mental illness, and thereby decrease associated crime.

### Substance Abuse:

- In Fiscal Year 2010, more than 22,000 individuals (30.8% of incoming inmates) were received by TDCJ for a drug offense,<sup>197</sup> and 73% of those individuals were charged with possession, as opposed to delivery or other offenses.<sup>198</sup>
- In state jail facilities alone, more than 7,300 individuals (31% of incoming inmates) were received for less-than-a-gram possession offenses in 2010.<sup>199</sup> This population is costing taxpayers \$292,996 daily.<sup>200</sup>
- Drug treatment along with supervision is more than six times less costly than prison. According to the Legislative Budget Board, Texas is spending an average of \$17,338 per year on each prisoner,<sup>201</sup> while community supervision along with drug treatment programs cost the state an average of \$2,624.<sup>202</sup>
- According to the fiscal note attached to state legislation that would have allowed judges to place non-dangerous individuals with a first-time drug *possession* offense in a tailored substance abuse and supervision program, taxpayers would save over \$108 million in the first biennium and \$474 million over 5 years. A percentage of verifiable cost savings to the state realized under such a policy could be reinvested in diversion programs used by community supervision to assist local probation and treatment practitioners.
- Drug treatment can also improve employment opportunities and reduce dependence on welfare. The National Treatment Improvement Evaluation Study found that 19% more people received income from employment within 12 months of completing treatment, and 11% fewer people received welfare benefits.<sup>203</sup>
- The Drug Abuse Treatment Outcome Survey of 10,000 treatment participants found that residential treatment reduces criminal behavior, with a 50% reduction in drug use and a 61% reduction in crime. Outpatient treatment resulted in a 50% reduction in drug use and a 37% reduction in crime.<sup>204</sup>

- In 2009, of the 91,072 individuals admitted to substance abuse treatment programs funded by Texas' Department of State Health Services, over 25,000 people, or more than a quarter of the total population admitted, were there for alcohol abuse/dependency.<sup>205</sup>
- Texas leads the nation in DWI fatalities, which make up 38% of all traffic fatalities on Texas roads.<sup>206</sup> Furthermore, the number of those arrested for driving violations in Texas is alarming. According to 2009 data from the Texas Department of Public Safety, 96,350 individuals were arrested for driving under the influence on Texas roads.<sup>207</sup>
- Texas A&M's "Carpool" program, where students can call for a ride home with no questions asked,<sup>208</sup> gives an average of 650 rides per weekend.<sup>209</sup> Since its founding in 1999, it has prevented 179,377 drunk drivers.<sup>210</sup>
- Without intensive treatment, individuals with a history of substance abuse prior to incarceration are three times more likely to return to prison or state jail.<sup>211</sup>

### **Mental Health:**

- Nationally, Texas ranks 50<sup>th</sup> (out of 51 states and the District of Columbia) in State Mental Health Agency per-capita expenditures.<sup>212</sup> As a result, Texas prisons and jails have become warehouses for people with mental health issues who have failed to receive proper treatment.
- According to the most recent comparison of FY 2009 and FY 2010 data on prisoners with mental illness, cross referencing activities between TDCJ and the Department of State Health Services, the number of individuals with mental illnesses increased by almost 2%.<sup>213</sup>
- According to a 2010 report by the National Sheriffs' Association, Texas prisoners with mental illness cost the state anywhere from \$30,000 to \$50,000 per person per year.<sup>214</sup>
- Policy-makers' absolute first objective regarding mentally ill individuals must be their diversion from prisons or jails and into appropriate treatment, starting at the primary point of contact with law enforcement.
- Williamson County's Crisis Intervention Team, with specialized officers who respond to calls involving individuals with mental illness, saved the county \$2.3

million from 2006 to 2008 by diverting 1,088 mentally ill individuals from jail and into appropriate programming.<sup>215</sup>

- The Bexar County Jail Diversion Program diverts an estimated 7,000 mentally ill individuals from incarceration to treatment every year.<sup>216</sup> The Center is a one-stop drop-off destination with medical, psychiatric, and jail diversion officials under one roof.<sup>217</sup> Through this initiative, Bexar County has saved at least \$5 million annually in jail costs and \$4 million annually in inappropriate admissions to the emergency room,<sup>218</sup> while eliminating the need to build a 1,000-bed jail.<sup>219</sup>
- Harris was the first county in the state to offer competency restoration services at a community-based facility, quickly reducing the time for defendants to be declared competent to stand trial from 60 days to 21 days.<sup>220</sup> Dallas' competency restoration pilot program saved the county \$300,000 in 2009 in jail avoidance costs for approximately 50 misdemeanants.<sup>221</sup>
- Individuals declared incompetent to stand trial are being turned away from state mental hospitals because they are already at capacity. This forces clogged county jails to pay to hold inmates awaiting treatment and competency restoration. For instance, approximately 80 inmates per day are sitting in Harris County's jail waiting for a state hospital slot to open.<sup>222</sup> In Dallas County, 90 people are waiting, sometimes for as long as two months,<sup>223</sup> while in Bexar County the list is also close to 100 individuals long.<sup>224</sup>

### **Co-Occurring Disorders:**

- Evidence-based studies show that integrated treatment most appropriately and effectively addresses the needs of individuals suffering from both mental illness and substance abuse.<sup>225</sup>
- According to the Public Policy Research Institute, the state's current "lack of drug and alcohol detox and treatment services is a significant barrier to treating people in mental health crisis. [...] Repeated contact with the crisis service system may be exacerbated by the lack of treatment available for drug- or alcohol-involved mental health consumers."<sup>226</sup>
- Local outpatient services to follow up initial treatment programming for co-occurring disorders and address criminogenic factors are especially imperative to ensure that early treatment successes will be sustained.<sup>227</sup>

## Cost-Saving Strategies

### Substance Abuse:

#### **(1) Strengthen investments in community-based supervision and treatment.**

Many individuals convicted of nonviolent drug offenses should be diverted from prison or jail to community supervision and, where appropriate, drug treatment. Indeed, for those who suffer from addiction, drug treatment is the most effective strategy for reducing recidivism.<sup>228</sup> As an added advantage, treatment is significantly less expensive than incarceration, and it creates long-term cost savings in overall health care, accidents, absenteeism from work, and other areas.<sup>229</sup>

**According to the National Institute on Drug Abuse, “total savings associated with treating addiction can exceed the costs of that treatment by up to 12 to 1.”<sup>230</sup>**

However, current approaches to even low-level drug offenses by many officials in Texas often require that individuals be sent to prison or jail, at great expense to the taxpayer. This continually reduces the capacity of correctional facilities while failing to address the root causes of addiction.

The state must halt the wasteful expenditure of millions of dollars each year on the incarceration and re-incarceration of nonviolent drug users. Lacking more effective means, local and state budgets will continue to be consumed by costs associated with otherwise treatable addiction. Again, these costs can result from additional jail beds, emergency room visits and hospital stays, law enforcement resources expended on abuse-fueled offenses (often including domestic violence calls), or foster care placements for children of those suffering from substance abuse.<sup>231</sup> The list goes on and on.

Texas can close the treatment gap by promoting medical and public health responses to substance abuse issues. Specifically, policy-makers must work in tandem with district attorneys, judges, treatment providers, and probation leadership to expand the availability and utilization of tailored, community-based rehabilitation and treatment diversion programs that follow evidenced-based practices. The criminal justice system should be a place of last resort, not the first option for those suffering from the disease of addiction.

#### **(a) Reduce the intake of nonviolent individuals suffering from drug abuse into confinement.**

According to the Justice Policy Institute, treatment is an imperative and cost-efficient step in the process of changing an individual’s criminal behavior:

For every dollar invested in community-based drug treatment, \$18 is generated from reduced crime and improved public safety savings to taxpayers. Since three-quarters of people in jail are there for property, drug, or public order offenses, and drug treatment or mental health needs are prevalent among people in jail, community-based supervision and treatment holds more promise than does a jail bed in helping people improve their life outcomes.<sup>232</sup>

In the interests of both public safety and fiscal responsibility, Texas must emphasize pre-trial diversions into treatment for those charged with low-level drug offenses, which will better prevent a conviction and record for those struggling with substance abuse.

#### **(b) Allow judges to place non-dangerous individuals with a first-time drug possession offense in a tailored substance abuse and supervision program.**

Policy-makers must support the efforts of judges to effectively handle those suffering from substance abuse. This is especially necessary in jurisdictions in which adequate treatment programs and services are already available – in other words, areas with the resources to implement or continue their diversion options.

For instance, policy-makers should support a policy that enables judges to require defendants to undergo a drug and cognitive assessment, followed by mandated treatment, where necessary. This should include supportive inpatient or outpatient programming for the most severe addicts to address the triggers that set off addictive behavior. It should also include initiatives for less severe cases, such as drug education and prevention courses, as well as vocational training, family counseling, or literacy

training, which would assist each participating individual in understanding how to stay on course and live responsibly. A probation/treatment policy would allow judges to choose from these numerous services and particularize them to the individual to better address special detoxification, relapse, or severe dependence issues, while more efficiently expending resources and maximizing outcomes.

Discretion could be further preserved by allowing judges to end treatment upon ineffectiveness or danger to the public.

Such a diversion program should allow defendants to apply for non-disclosure of their record if they have successfully completed treatment. This would encourage personal responsibility and address the recidivism problems posed by individuals who choose incarceration for cost, convenience, or other reasons, over programs that force them to address the illness of addiction. It would also allow individuals who have reformed their behavior to avoid the stigma of a criminal record and the associated restrictions on housing, employment, and other tools for personal responsibility. *Note:* Individuals' records should still be available to law enforcement officials and prosecutors when necessary.

**This crime-prevention policy, a best practice guide for dealing with defendants who have substance abuse problems, will divert thousands of nonviolent individuals from confinement and save taxpayers millions of dollars in incarceration costs, not including potential savings in prison and jail construction avoidance. As mentioned above, community supervision with treatment is considerably cheaper than prison. In fact, according to the fiscal note attached to state legislation that would have accomplished the outcomes detailed here, taxpayers would save over \$108 million in the first biennium and \$474 million over 5 years.** A percentage of verifiable cost savings to the state realized under such a policy should be reinvested in diversion programs used by community supervision to assist local probation and treatment practitioners.

*Program Logistics:* Judges should be allowed to incarcerate an individual if s/he determines the

person is either a threat to public safety, has a serious criminal history, is a drug dealer, or is not amenable to treatment. (Because judges would be given the authority to make the treatment/probation determination at the time of conviction, they can deny probation to drug dealers who plead down to possession charges, as well as deny probation to those who have committed violent, sex, or property offenses.) Concurrent convictions with a drug possession offense could also disqualify a defendant from probation. Ultimately, this policy change should apply only to those who possess amounts indicative of private consumption with no intent to re-sell, which guarantees that it targets those suffering from addiction only.

Prosecutors who are concerned that those in possession of dealer-level amounts would fall under this policy should charge such defendants with delivery, bringing them outside of this policy's scope.

*Note:* Judges should have the option of using **progressive sanctions** to handle individuals who are failing to meet their treatment terms, without unnecessarily revoking those who are non-dangerous. Penalties aimed at risk-reduction could include stronger forms of treatment, intermediate sanctions including placement in Intermediate Sanctions Facilities, and more restrictive conditions, such as participation in behavioral programming and alcohol/drug testing. Progressive sanctions would keep a significant proportion of people from prison or jail while doing more to increase public safety in the long term.

*Note Additionally:* Again, limiting this policy to jurisdictions in which adequate treatment programs are already available and appropriate will ensure the most successful roll-out, while also allowing the state to evaluate which areas are in need of funding to properly and responsibly establish and operate a diversion program. Policy-makers who care about community supervision will have the data necessary to make a strong case for resources for the field in the future.

**(2) Maintain the allocation of funds for community-based treatment programs proven to be effective.**

Texas must also do all that it can to sustain existing treatment programs that work. Maintaining investments in probation and the programs they utilize has resulted in millions of dollars in savings to the state. Again, **while Texas spends an average of \$17,338 per year on each prisoner,<sup>233</sup> community supervision along with drug treatment programs cost the state an average of \$2,624,<sup>234</sup> making treatment and supervision more than 6 times less costly than incarceration.** The state simply cannot afford to endanger such savings through harmful budget cuts, nor can it afford to roll back the progress made as it has safely diverted individuals into programs that address the root causes of criminal behavior.<sup>235</sup>

**(3) Create an additional revenue source through a tax on alcohol to fund substance abuse programming.**

Alcohol is the choice drug of abuse in Texas. **In 2009, of the 91,072 individuals admitted to substance abuse treatment programs funded by Texas' Department of State Health Services, over 25,000 people, or more than a quarter of the total population admitted, were there for alcohol abuse/dependency.**<sup>236</sup> A 2008 study found that 63% of Texas secondary school students (grades 7–12) had previously consumed alcohol, while 30% had consumed alcohol in the past month.<sup>237</sup>

More resources are needed in Texas to combat substance abuse issues. Punitive criminal justice sanctions alone do not effectively address the root causes of alcohol abuse/dependency. Nor do they present opportunities for prevention. In failing to target the causes of addiction, they merely delay the problem, and at great cost to taxpayers in incarceration expenses.

Increasing the current tax on alcoholic beverages – specifically, an additional one-cent, per-serving tax that would be rolled into the cost of the beverage – would create a revenue source that could be re-invested in community-based education, prevention, and intervention programs that can save lives and reduce the number of individuals entering confinement.

*Note:* The state could also expand the times and days during which hard liquor can be sold over the course of the week, so that money made from the additional sales could offset the tax, if not increase sellers' revenue. Similarly, the time that beer and wine can be sold on Sundays could be expanded.

**(a) Address the specific treatment needs of DWI arrestees.**

Texas leads the nation in DWI fatalities, which make up 38% of all traffic fatalities on Texas roads.<sup>238</sup> Furthermore, the number of those arrested for driving violations in Texas is alarming. According to 2009 data from the Texas Department of Public Safety (DPS), 96,350 individuals were arrested for driving under the influence on Texas roads.<sup>239</sup> This is despite Texas having “some of the toughest DWI laws and sanctions in this nation,” according to a report by Texas' Senate Committee on Criminal Justice.<sup>240</sup>

Increased funding for substance abuse programming, achieved through a tax on alcoholic beverages, could better target DWI arrestees. It is imperative that the state implement preventions that can more effectively reduce DWI cases and the dangerous consequences that accompany alcohol abuse and dependency. Incarceration alone is not working. Current prison population numbers include an approximate 5,500 individuals with a third DWI offense, a consistent figure for the last several years.<sup>241</sup>

Treatment programs must incorporate counseling, education, traditional alcoholism treatment, peer/sponsor support, and supervision/monitoring. These elements, along with the integration of medication, technology, and/or community supervision, increase effectiveness in addressing alcohol dependency and ensure a more successful recovery, thereby reducing the number of individuals entering confinement.

The state should also expand education and prevention programs to college communities. A report from mid-2010 finds that 58% percent of college students under the age of 21 had reported drinking in the past month.<sup>242</sup> Research suggests that, with interventions, many people who drink and drive at such ages are able to change drinking and

driving behaviors as they grow older.<sup>243</sup> Targeted strategies, including reduction in access to alcohol by minors and safe-ride alternatives for college students, may significantly reduce risks, like DWIs, related to youthful drinking in Texas.<sup>244</sup> One example is Texas A&M's "Carpool" program (founded in 1999), where students can call for a ride home with no questions asked;<sup>245</sup> the program gives an average of 650 rides per weekend,<sup>246</sup> and **as of December 12, 2010, it has prevented 179,377 drunk drivers.**<sup>247</sup>

**(b) Create short-term detoxification and referral facilities to address public inebriation offenses.**

Nationally, law enforcement officers are taking advantage of "sobering up" facilities to divert publicly intoxicated individuals from local jails rather than arrest them for the low-level offense. Such facilities can provide individuals with a basic-needs assessment, round-the-clock care,<sup>248</sup> or treatment referrals. This system better handles and protects individuals in need, while allowing law enforcement to focus their time on higher-level public safety issues.

Again, funding raised through a tax on alcoholic beverages could help support detoxification facilities, which in turn create cost savings associated with diverting public order violators. According to the Urban Institute: "Making significant investments in resources that will help this population in both the short term and the long term can limit these frequent residents' interaction with the criminal justice system, providing the county with significant savings by reducing jail bed day consumption."<sup>249</sup> The Urban Institute specifically highlights the savings generated in Seattle, Washington, after the city built its 75-unit Downtown Emergency Service Center designed to "address the needs of chronically inebriated homeless individuals by providing them with permanent housing solutions and access to services to help reduce their alcohol consumption." The city saved \$4 million the first year in costs associated with the population, spending \$13,440 per program participant rather than the \$86,000 per-person cost while the individuals were homeless.<sup>250</sup>

**(4) View probation and drug treatment separately to reduce drug-related technical violations.**

Often, addiction to drugs causes criminal activity, such as theft, because people require funds to feed their addiction. Whereas drug treatment will best get to the *root* of the criminal activity – as it can address the physiological impact of the substance on the addict and help put an end to the need for criminal activity spurred by the addiction – probation will help determine if the drug treatment program is truly working for that individual. For instance, if an individual fails a drug test, his or her probation officer will be able to verify that the current treatment program is not working.

**"Far too often mental illness goes undiagnosed, and many in our prison system would do better in other settings more equipped to handle their particular needs."**

*United States Catholic Conference of Bishops*

This should not be a cause for probation revocation as committing another crime, like theft, would be. Not all treatment programs work for every type of addiction and, on average, an addict relapses three times before successfully completing a treatment program. If an individual is punished with probation revocation for failing to control his or her illness, s/he will ultimately re-enter society with unmet needs and will continue to make poor life decisions and engage in unlawful activity.

**Mental Health:**

**(1) Invest in mental health treatment options and resources for probationers and pre-trial defendants being supervised in their communities.**

Nationally, Texas ranks 50<sup>th</sup> (out of 51 states and the District of Columbia) in State Mental Health Agency per-capita expenditures.<sup>251</sup> As a result, our prisons and jails have become warehouses for people with mental health issues who have failed to receive proper treatment. According to a 2010 report by the National Sheriffs' Association, Texas is housing a significantly higher number of seriously mentally ill individuals in jails and prisons than in public or private sector psychiatric

hospitals. The state's prisoner-to-patient ratio is 7.8 to 1, more than doubling than the national average of 3.2 to 1. In fact, Texas has the third highest ratio in the nation.<sup>252</sup>

Approximately 30% of Texas' state jail prison inmates are logged in the state's public mental health database, with approximately 10% of all inmates having a diagnosis of serious mental illness that would be considered in the "priority population" for receipt of public mental health services.<sup>253</sup> Sadly, the Harris County jail has become the largest mental health facility in the state, at any given time dosing up to 2,500 inmates with psychotropic drugs.<sup>254</sup>

Dennis McKnight, former Commander of the Court Security, Transport and Mental Health Division of the Bexar County Sheriff's Office, noted:

The mental health consumer spends, on average, twice as long in jail as a non-consumer for the same offense. The system is slow, over burdened, understaffed and bureaucratic. Mental health consumers tend to be at-risk persons and afflicted with one or more chronic medical problems that increase the daily cost of incarceration. The daily cost to the taxpayer to house a mental health consumer can easily be double or triple that of a non-consumer.<sup>255</sup>

Counties struggling with these issues are critically straining their budgets as officials, including law enforcement, attempt to address individuals' needs. Likewise, state hospitals are routinely overburdened as they strive to treat higher-risk patients throughout Texas. Policy-makers must adopt new approaches in efforts to manage those suffering from mental illness, enhancing the supervision and treatment of individuals with special needs inside local jails and state correctional facilities. **Policy-makers' absolute first objective must be the diversion of individuals from prisons or jails and into appropriate treatment, starting at the primary point of contact with law enforcement.** Treatment programs are exponentially better equipped than prisons or jails to stabilize individuals, make effective medical recommendations, supervise prescription regimens, and recommend appropriate behavioral programming to address long-term needs.

Collectively, practitioners must strive to halt the recycling of these individuals in and out of prisons and local jails, especially for minor offenses, at the alarming rates and costs we are currently seeing. With expanded options to allow for linkage to an array of community-based services, treatment providers will have the greatest opportunity to address the criminal behavior of suffering individuals and reduce the risk of recidivism and incarceration in the future.

The strategies below can lower the burden on agencies and departments with strapped budgets to more cost-effectively meet the needs of those with mental illness. Specifically, they can reduce incarcerated and emergency room populations, and maximize law enforcement time. The strategies can also decrease the threat of injury to other inmates, corrections personnel, or hospital patients by a mentally ill person, and better direct such individuals into proper care, often without further involvement with the criminal justice system.

#### **(a) Encourage counties to implement Crisis Intervention Teams.**

Crisis Intervention Teams (CITs) have been found to be especially beneficial in dealing with the mentally ill who come in contact with the criminal justice system. These programs train officers to respond to calls involving individuals with mental illness. If efforts to de-escalate crises at the scene are not entirely effective, the officers work in tandem with localized mental health providers to direct such persons into appropriate treatment.

Some CIT officers also work preemptively, visiting those with mental illness in efforts to provide or encourage taking medication to remain stabilized and law abiding. Additionally, officers may follow up after attempted suicides or make home visits to those they referred to treatment to ensure continuing care.<sup>256</sup>

The Houston Police Department (HPD) has the largest CIT program in the nation, with 1,300 CIT officers on patrol.<sup>257</sup> The key to its success has been streamlining the process for obtaining emergency psychiatric evaluations for individuals brought in by officers. Now, the average time it takes an officer to

admit a person into the NeuroPsychiatric Center is 15 minutes. Overall, HPD's reported positive effects of the program have been numerous, including increased jail diversion efforts, increased safety for both officers and the mentally ill, improved willingness of families to call the department about someone suffering from mental illness, improved confidence of officers to respond to such calls, and reduced liability/litigation through fewer injuries and shootings.<sup>258</sup>

Community partners also benefit from investments in specially trained officers. For instance, according to the Public Policy Research Institute, "many of the problems faced by emergency rooms could be improved if skilled law enforcement officers were more aware of protocols to divert cases to other locations for a mental health screenings."<sup>259</sup>

Finally, the cost savings created by CITs can be significant. **Williamson County's Crisis Intervention Team saved the county \$2.3 million from 2006 to 2008 by diverting 1,088 mentally ill individuals from jail into appropriate programming.**<sup>260</sup>

*NOTE:* Law enforcement should also undergo training to identify and respond to the needs of veterans at the initial point of contact. Specialized training can help law enforcement officers identify veterans with mental illness and/or co-occurring disorders so that they may be diverted by police before formal charges are brought and they are admitted to a Department of Veterans Affairs (VA) hospital or other appropriate care.

**(b) Examine an expansion of post-booking, pre-trial mental health diversion programs.**

Post-booking diversion programs identify and divert individuals with mental illness after they have been arrested. Policy-makers must work with mental health practitioners, law enforcement, judges, prosecutors, and probation departments to consider expanding such diversion opportunities for individuals with mental illness. Together, these stakeholders must implement and enforce mandates to swiftly assess incoming prison and jail inmates for

mental illness, especially in efforts to identify those who would benefit from treatment outside prison or jail walls, as well as those who need referral assistance before posting bond. Likewise, state leadership must consider developing and widening the availability of cost-effective treatment programming, other localized wrap-around services, and outpatient competency restoration centers. Doing so will better meet the demands of growing populations in need of care and counseling, including pre-trial inmates with documented disorders and those on mental health dockets necessitating program referrals (*discussed below*).

□ **Some counties have already successfully implemented diversion plans to assist those suffering from mental illness.**

■ For instance, Williamson County has a diversion program for those with mental health problems. It includes pre- and post-booking efforts, including an outreach team, a Crisis Intervention Team, and resource coordination among various mental health and corrections providers, including the Williamson County Mental Health Task Force. **Between 2005 and 2008, diversions into appropriate programming saved \$3.2 million**, including in costs associated with jail bookings, the administration of psychotropic medication, and the use of emergency departments and Emergency Medical Services (EMS). Programming also dramatically reduced the percentage of beds used at state hospitals, as well as the use of associated resources involved in transporting individuals to those facilities after they had been through the court process and sentenced.<sup>261</sup>

■ Likewise, the Bexar County Jail Diversion Program, in partnership with the county's Crisis Care Center, diverts an estimated 7,000 mentally ill individuals from incarceration to treatment every year.<sup>262</sup> The Center is a **one-stop drop-off destination** with medical, psychiatric, and jail diversion officials under one roof,<sup>263</sup> allowing officers to



leave individuals with specialized providers. Through a cooperative, centralized network comprised of law enforcement, mental health professionals, and the judiciary, mentally ill individuals with low-level offenses are provided immediate screenings and assistance (including stabilization through treatment, as well as support services) outside of jail walls.<sup>264</sup> In turn, **Bexar County has saved at least \$5 million annually in jail costs and \$4 million annually in inappropriate admissions to the emergency room,<sup>265</sup> while eliminating the need to build a 1,000-bed jail.**<sup>266</sup>

- Bexar County also offers **assisted outpatient treatment** (AOT) through its Center for Health Care Services. The program has 50 slots, wherein seriously mentally ill individuals, those habitually cycling through the state hospital, are court-ordered to take their medication as a condition of living in the community upon release.

Four caseworkers, two assistants, and a liaison are responsible for helping participants find housing, offering assistance with medication, and providing support at weekly progress meetings with the judge.<sup>267</sup> According to the Treatment Advocacy Center, “AOT is effective in reducing the incidents and duration of hospitalization, homelessness, arrests and incarcerations, victimization, and violent episodes. AOT also increases treatment compliance and promotes long-term voluntary compliance.”<sup>268</sup> Additional counties in Texas, one of the 44 states that permits the use of AOT,<sup>269</sup> should consider this option, where feasible, to meet localized demands.

Counties should be given the opportunity to expand community health systems and provide outpatient programming. Otherwise, individuals suffering from mental illness will continue to sit in jail awaiting a bed at an always crowded state hospital, or wait to be transferred to other, out-of-county facilities for

treatment. Not only does the latter come with hefty transportation costs and consume valuable law enforcement time, but treatment at various facilities outside of one’s community can impede progress. According to the Medical Director of Bexar County Detention Health Care Services, “If the patients caught in the current revolving-door system of state mental health care go to a new hospital each time, they’ll be strangers, making treatment harder.”<sup>270</sup> Access to localized treatment will ensure that mentally ill individuals get more rapid assistance and move more quickly down the path towards law-abiding behavior.

- **Four Texas counties have been designated as urban pilot sites to implement an outpatient competency restoration program, which addresses the needs of those who have been declared incompetent to stand trial.**

Through various services, the outpatient competency restoration programming helps mentally ill individuals reach a minimum level of competency so that their case can be heard. This pilot was made possible in 2008, in response to legislation passed the prior year (S.B. 867) that allowed nonviolent individuals with mental illness to receive supervised outpatient services. (*See Art. 46B.072(a), Code of Criminal Procedure*). Previously, these individuals had been waiting in jail, sometime for months at a time, for a slot to open at an overcrowded state hospital. After receiving treatment, they were returned to jail to continue awaiting trial,<sup>271</sup> with some decompensating to the point of being declared incompetent once again.

DSHS ultimately launched pilots in Bexar, Dallas, Tarrant, and Travis Counties – all of which followed in the footsteps of a similar program previously initiated in Harris County. **Harris was the first county in the state to offer competency restoration services at a community-based facility, quickly reducing the time for defendants to be declared competent to stand trial from 60 days to 21 days.**<sup>272</sup>

To ensure that the four pilots would be most effective, the Mental Health Authority and local judges collaborated to put in place evidence-based services and curricula used in other states.<sup>273</sup> Participants must be willing to follow their medical regimen and take part in intensive programming while under the supervision of a caseworker.<sup>274</sup> Program services include a risk assessment, residential treatment options, psychosocial programming, and training activities.<sup>275</sup> In addition to substance abuse treatment, participants may also take classes in anger management or life skills.<sup>276</sup> Again, the pilots target misdemeanants who “would otherwise face months in jail and inpatient facilities to complete competency restoration, often exceeding normal time served for misdemeanor offenses and incurring high community costs for jail and inpatient bed days,” according to a report by Bexar County’s Center for Health Care Services.<sup>277</sup>

**The results of the pilots have been overwhelmingly positive.** Individuals treated through the outpatient programs have had lower recidivism rates than others treated in county jails or state hospitals.<sup>278</sup> Likewise, these individuals have not had to consume jail beds while awaiting space at state hospitals. In fact, the Dallas pilot saved the county \$300,000 in 2009 in jail avoidance costs for approximately 50 misdemeanants.<sup>279</sup> The diversion of individuals from state hospitals has also lowered waiting lists there, allowing for related cost avoidance and increasing the capability of the state to treat people with more severe diagnoses.<sup>280</sup>

Policy-makers should consider expanding these programs in additional counties to provide them much-needed short- and long-term cost savings, as well as respond to growing demands from both providers and specialized populations for additional assistance. Bottom line: It is imperative that Texas addresses the ever-expanding need for competency restoration that is posing a vital problem for counties already struggling to meet growing jail populations.

### (c) Encourage counties to expand Mental Health dockets.

Specialty dockets for individuals suffering from mental health issues can more effectively address their unique needs and match them with necessary services. Subsequent programming can include monitoring of compliance with treatment, with the level of supervision and the active involvement of the court varying as needed.

Mental health dockets can also reduce the amount of time individuals wait in jail for trial. Specifically, practitioners that work with defendants can best identify who may be eligible for a personal recognizance bond (*discussed more fully in Part 3 of this four-part guide*), which eliminates pre-trial time spent in jail.

Travis County created a docket for misdemeanor mental health cases. Meeting on Tuesdays and Thursdays, prosecutors and defense counsel work with judges in efforts to ensure that defendants will have a support structure in place to assist them in remaining law-abiding.<sup>281</sup> According to Judge Nancy Hohengarten, “the philosophy of the MH Docket is that time spent now finding appropriate disposition of these cases will help alleviate recidivism and further drain on public resources. Prevention of subsequent arrests protects public safety, saves money, and is more just for mentally ill defendants.” Judge Hohengarten goes on to note the low associated expenses: “the mental health docket has not required significant additional funding. Indigent defense representation and prosecution must be paid as usual and no additional court staff has been needed.”<sup>282</sup>

A Bexar County court also has a magistrate facility to address misdemeanors committed by those suffering from mental illness. Caseworkers consult with judges to ensure individuals receive referrals to appropriate treatment services.<sup>283</sup>

Where possible, judges should reduce or drop charges upon an individual’s successful completion of service or program terms. In the alternative, the individual diverted should receive less or no time in jail at sentencing as a result of participating in the jail diversion program.

**(d) Improve community-based treatment for veterans on probation.**

Every year, U.S. war veterans are welcomed home after pursuing a dutiful career serving our country. As it now stands, over 1.6 million veterans call Texas home.<sup>284</sup> Many individuals who return find difficulty transitioning to civilian life, often because they are suffering from mild to severe traumatic brain injury (TBI), as well as other psychological damage such as post-traumatic stress disorder (PTSD), that can severely hinder their ability to return to their pre-war lives. Over recent years, courts have been seeing more and more military service members and veterans whose criminal conduct was materially affected by brain injuries or mental disorders resulting from military service.

Veterans with established cases of PTSD and TBI should receive care and treatment in a supportive environment, something they are not likely to receive in a correctional setting.<sup>285</sup> In fact, because punitive sanctions may further compromise the physical and mental health of a veteran suffering from PTSD or TBI, they should be considered as a last-resort option.<sup>286</sup> Community-based treatment, which has proven to be effective in treating the root causes of criminal behavior (such as addiction), can reduce the risks of re-offending while saving the state money.<sup>287</sup>

Policy-makers should create incentives and opportunities, as well as improve coordination among providers, to ensure that every community can appropriately address the needs of this vulnerable population. By further developing treatment options and refining treatment standards, the state can assist mental health providers in increasing veterans' likelihood of a successful rehabilitation.

- Counties should be afforded the opportunity to **implement community-based programs** to assist veterans involved with the criminal justice system. For instance, Bell County has created a one-of-a-kind Substance Abuse/Post Traumatic Stress Disorder Program to assist probationers who have served in a combat zone, helping them to cope with their PTSD-related symptoms and reduce their reliance on drugs and alcohol

as a means of coping. As an added benefit, this program is available to any individual on probation who has served his or her country, regardless of discharge status. In addition to PTSD and substance abuse counseling, participants receive acupuncture treatments designed to reduce stress and anxiety.<sup>288</sup>

Another PTSD program in Bell County provides services through the VA, offered at the Vet Center in Harker Heights. The program provides 12 weeks of no-cost PTSD counseling to probationers who have served in a combat zone.<sup>289</sup>

Other effective treatments for PTSD, TBI, and co-occurring disorders are being undertaken nationwide. Examples include cognitive behavior and exposure therapy, as well as medications.<sup>290</sup> Cognitive behavioral therapy focuses on re-programming an individual with regard to his or her stress response to a certain traumatic event. The therapy promotes the use of relaxation techniques in an effort to reduce the "physical reaction to PTSD triggers and overcome avoidance symptoms."<sup>291</sup> Exposure therapy, a type of cognitive behavioral therapy, has been effective in treating symptoms associated with panic disorder and PTSD in combat veterans.<sup>292</sup> Virtual reality treatments have also begun to be used in exposure therapies with recorded success.<sup>293</sup>

*Note:* Treatments for combat-related mental health disorders are especially critical in light of the high rates of suicide among veterans. The greatest risk factors associated with suicide among this population include difficulties with fellow military members, legal issues, and personal relationships.<sup>294</sup> Given the prevalence of these difficulties, as well as mental health and substance abuse issues among veterans,<sup>295</sup> 18 veterans commit suicide each day in the United States.<sup>296</sup>

- Policy-makers should **improve standards for medication-assisted therapy**. Where appropriate, community-based health providers and the VA should focus on counseling and behavioral therapies, rather than rely solely on medication, to treat veterans exhibiting

symptoms of PTSD and other mental health issues. However, medication-assisted therapies should be embraced where the client warrants it.<sup>297</sup> (Note: Anti-psychotic medication should be used cautiously due to its potential to increase negative behavioral symptoms<sup>298</sup> and the risk of overdose.)

- Lastly, policy-makers should support specific strategies to assist veterans in need of **domestic violence prevention and family counseling**.

Studies have found a strong relationship between PTSD and domestic violence.<sup>299</sup> On a positive note, evidence suggests that treating PTSD symptoms can reduce aggressive behavior in subjects, and anger management training has improved anger control among Vietnam-era veterans with PTSD.<sup>300</sup>

Policy-makers should encourage an expansion of programming to address the growing incidences of family violence among military service members. For instance, the state could support the establishment of Family Violence Prevention Councils (FVPCs). In Norfolk, Virginia, the Hampton Roads Domestic Violence Prevention Task Force established the Military and Civilian FVPC. A collaboration between the Task Force, five military branches, and other stakeholders, FVPC seeks to reduce family violence in the Hampton Roads area through coordinated prevention, intervention, treatment, and rehabilitative measures.<sup>301</sup> A similar program could be established in Texas counties with large military populations.

*Note:* Below are some additional strategies to address domestic violence issues among the veteran population, as recommended by the Central Texas Domestic Violence Task Force:

- Identify which resources state agencies can provide to address PTSD/domestic violence issues involving military personnel, military dependents, and veterans, as well as how these resources can be utilized by local civilian entities, the military, and veterans' services.

- Support a mandate that all Council of Government plans include a component that provides for the coordinated efforts of all local law enforcement, the judicial system (including prosecutors and probation departments), nonprofit service agencies, victim advocacy groups, and hospital authorities to develop preventive strategies and a comprehensive response in their communities to domestic violence and family disruptions, including responses to child abuse/neglect, juvenile delinquency, alcohol and drug abuse, elderly abuse, and other factors that contribute to a "toxic" family environment.

- Assist in developing Memoranda Of Understanding with military authorities, state agencies, local governments, law enforcement agencies, advocacy groups, criminal justice entities, nonprofit service organizations, and hospitals to address PTSD/domestic violence issues.

- Assist local jurisdictions in developing one-stop services for victims of domestic violence.

## (2) Continue to commit necessary funding to state and localized mental health programs.

Building on the successes of previous legislative sessions through continued investments in mental health services will best meet the demand of growing populations and more responsibly satisfy the obligation to provide adequate services to those in need.

Assistance is especially crucial in two areas:

- **State hospital facilities:** It is imperative that individuals declared incompetent to stand trial are not turned away from state mental hospitals because they are already at capacity. This forces clogged county jails to pay to hold inmates awaiting treatment and competency restoration. For instance, approximately 80 inmates per day are sitting in Harris County's jail waiting for a state hospital slot to open.<sup>302</sup> In Dallas County, 90 people are waiting, sometimes for as long as two months,<sup>303</sup> while in Bexar County the list is also close to 100 individuals long.<sup>304</sup>

To reduce these waiting lists, policy-makers must continue to support state hospital facilities that address the needs of the seriously mentally ill, “forensic” beds that assist individuals in need of competency restoration, and properly trained staff who can offer an adequate level of care for those they are tasked with treating. Again, local jails – which are not equipped to handle serious mental health problems – cannot continue to shoulder the financial and safety burdens of a responsibility that lies with the state.

- **Community health centers:** Not only must policy-makers expand local competency restoration pilot sites, they must support the efforts of community mental health centers. In a 2010 report to the Texas Department of State Health Services, the need for expanded community support beyond previous resource levels is underscored:

The number of crisis consumers served has increased from 52,000 in 2007 to a projected 98,000 in 2009. This level of increase over a two year period has placed stresses on all service systems involved [including] law enforcement agencies, emergency rooms, and courts [...]. In the absence of further investment in measures to help [Local Mental Health Authority] partners deal with the growing number of crisis cases, there is a risk of burnout and alienation within community support networks statewide.<sup>305</sup>

Sadly, in light of the state’s upcoming budget shortfall, the Department of State Health Services has had to propose \$134 million in cuts to mental health, which, if approved, would effectively deny both inpatient and outpatient care to 20,000 people and likely force many into more costly county jails.<sup>306</sup>

The state must make a fundamental change in approach towards the over-criminalization of the mentally ill. Every effort must be made to ease the long-term burden on county taxpayers, while more immediately assisting current treatment providers and ensuring more appropriate care for those in need.

### (3) Proactively target “frequent flyers,” who cycle in and out of jails at high rates.

Policy-makers must expand county opportunities to address the needs of individuals who are creating the greatest stress on law enforcement and emergency room resources. The following strategies can be duplicated or tailored to meet localized needs:

- In Bexar County in late 2008, the Commissioners Court approved the formation of a local **Mental Health Advocacy Initiative** (MHAI) to identify and assist mentally ill individuals who repeatedly cycle through jail.<sup>307</sup> Specifically, MHAI’s target population includes nonviolent mentally ill inmates who have had more than one incarceration during the previous 12 months, and mentally ill inmates who are unable to participate in their own defense.<sup>308</sup> Once identified, these individuals can volunteer for participation during their probation term. Each is provided with an individualized treatment plan, created with the input of the judge, attorneys, mental health professionals, and the participant him- or herself, which links the individual with needed services and support before leaving jail. Participants also receive intensive case management for a year following release, which better ensures they remain stabilized and law-abiding in the long term.<sup>309</sup>
- In Houston, law enforcement determined that 30 mentally ill “frequent flyers” were responsible for “194 calls for service resulting in 194 offense reports and 165 [Emergency Detention Orders] from six of their most active months recorded in the [Houston Police Department (HPD)] database.”<sup>310</sup> In response, HPD developed a pilot program called the **Chronic Consumer Stabilization Initiative**, a joint collaboration with the Mental Health Mental Retardation Authority of Harris County and the City of Houston Health and Human Services Department, which ran during the first half of 2009. At the initiation of the program, two licensed case managers made contact with the 30 individuals and conducted assessments of each person’s medical history, habitual system involvement, and prior programming participation.<sup>311</sup> For six months, the case managers supervised individuals in the

community, making daily visits in efforts to link them to available housing, medical or mental health services, substance abuse treatment, and other public, financial, or legal assistance as needed.<sup>312</sup> Ultimately, final program data showed “a 70% DECREASE in overall events reported by the police department. This represents a significant reduction of police contacts,” including calls for service, emergency detention orders, and offense reports.<sup>313</sup>

In addition to saving law enforcement 768 manpower hours and reducing related operational costs,<sup>314</sup> the pilot also minimized strain on hospitals.<sup>315</sup> Furthermore, findings show that if the pilot were expanded to reach 60 individuals under the supervision of four caseworkers with the assistance one dedicated law enforcement officer, **it would save the city \$867,793 the first year, excluding jail cost savings**, while costing only \$282,364 to implement.<sup>316</sup> Lieutenant Mike Lee, who runs HPD’s Mental Health Unit, stated in regards to their pilot program, “Even with the success we’ve seen, we all know that it has much more potential. Just with our little experiment, we know we can make a difference in keeping people out of jail. And ultimately keeping someone from getting killed.”<sup>317</sup>

- Counties with jail systems burdened by frequent flyers should identify as many individuals as possible (500 – 1,000) to participate in a similar program and prioritize their community supervision, with caseworkers who can provide service referrals and monitor their activities.<sup>318</sup>

#### **(4) Address protocols for taking mentally ill individuals into custody.**

Mentally ill individuals confronted with the stresses of confinement are at increased risk of decompensation. As such, law enforcement should be prohibited from transporting a mentally ill person to a jail or a similar detention facility *unless* a treatment facility is unavailable or is located more than 75 miles from the location where the person is taken into custody.

In the event that jail is the resulting option, mentally ill individuals should not be housed with any person

who is charged with or convicted of a crime. Likewise, they should not be detained in such facilities longer than 12 hours. Instead, the priority must be transfer to the nearest appropriate in- or outpatient mental health facility, a mental health facility deemed suitable by the local mental health authority, or a medical facility or other facility deemed suitable by the local mental health authority.

Finally, in regard to the restraints used when transporting a person with a mental illness, they should permit him or her to sit in an upright position without undue difficulty.

#### **Co-Occurring Disorders:**

Evidence-based studies show that integrated treatment most appropriately and effectively addresses the needs of individuals suffering from both mental illness and substance abuse.<sup>319</sup> However, findings of a joint survey of Texas judges show that additional resources are needed in integrating such treatment.<sup>320</sup> Furthermore, according to the Public Policy Research Institute, the state’s current “lack of drug and alcohol detox and treatment services is a significant barrier to treating people in mental health crisis. [...] Repeated contact with the crisis service system may be exacerbated by the lack of treatment available for drug- or alcohol-involved mental health consumers.”<sup>321</sup> Policy-makers and other stakeholders must develop a strong treatment infrastructure to ensure that those with co-occurring disorders have the tools to address their illnesses and reduce their risks of re-offending in the future.

The following pre-booking diversion strategies should be implemented, where possible:

#### **(1) Utilize early screenings.**

Individuals with mental illness and/or co-occurring disorders should be identified for diversion by police before formal charges are brought. A thorough screening should be routinely completed during intake, including a full mental health assessment, with a confidential records check on state mental health databases and a crisis stabilization evaluation conducted by a mental health authority. Law enforcement should also include feedback from substance abuse service providers during the screening, as they can help identify co-occurring disorders. This review process should inform decisions by law enforcement to place individuals in alternate settings.

Indeed, an early screening with professional input will most accurately determine the best course of action for each individual, increasing the likelihood that pre-booking diversion will occur at the point of contact with law enforcement officers. Additionally, a DSHS Jail Liaison can be instrumental in not only assisting with the assessment but providing individuals with referrals to wrap-around services while in custody or when discharged.<sup>322</sup>

**Ultimately, preemptive diversion from jail to a more appropriate treatment program must be paramount.**

Specialized supervision strategies will increase the likelihood of positive changed behavior and reduce the threat of escalating offenses by a mentally ill person. Diversion to community-based treatment will also minimize the burden on court dockets and prevent jail beds from being unnecessarily wasted on those suffering from disorders who would be better addressed elsewhere.

**(2) Consider expanding corrections triages for individuals with substance abuse and/or mental health problems.**

Policy-makers should consider expanding county opportunities to develop centralized, community-based receiving centers that can divert individuals convicted of nonviolent offenses away from jail and into treatment. Bexar County has created such a center, where approximately 800 individuals per month undergo an assessment to properly identify their needs, receive short-term stabilization through rapid medical and psychiatric care, complete detoxification programs as necessary, and obtain access to other, longer-term treatment options in the community. With this diversion and continuity-of-care program, the county eliminated the need to build a 1,000-bed jail.<sup>323</sup>

Establishment of the Bexar County Crisis Care Center has also positively impacted law enforcement. Previously, officers spent an average of 12 to 14 hours waiting in hospitals for individuals' psychiatric evaluations. Now, individuals can receive such services in one hour, allowing police to return to the field more quickly.<sup>324</sup> This is another cost-saver. Prior to the Center's establishment, "the San Antonio Police Department had been spending about \$600,000 annually on overtime and additional shifts for officers forced to wait in crowded emergency rooms with people needing treatment."<sup>325</sup>

Not only must policy-makers consider strengthening the funding for similar corrections triages throughout Texas, especially in urban areas, they must continue to **support local outpatient services to follow up initial treatment programming and address criminogenic factors. This will ensure that early treatment successes will be sustained.**<sup>326</sup> Without well-structured aftercare, individuals are more likely to return to crime, creating additional victims in the community and further burdening jails.

# Strengthen Efficiency and Accountability Throughout the Criminal Justice System

## Background

Our leadership must implement responsible, cost-effective measures that will increase the efficiency of criminal justice practices for the tens of thousands of Texans passing through our court and criminal justice systems every year.

For instance, in regard to driving-related offenses, policy-makers must ensure that public safety is protected while imposing the least degree of hardship on defendants. Excessive fees and jail sentences will only fill beds with individuals who ultimately cannot afford payments or bond options. Punitive conditions may also pose difficulties for individuals struggling to maintain their obligations in the community.

Staffing standards and regulation throughout criminal justice facilities must also be improved to increase transparency and ensure that individuals are given the greatest chance of success on re-entry. Likewise, Texas' various criminal justice agencies and treatment providers – probation, corrections, parole, substance abuse, mental health, and medical services – should improve their coordination and communication so as better to provide a continuum of effective and cost-efficient services for system-involved individuals.

Those who work within our prisons and jails, as well as those incarcerated, must also be ensured safe and sanitary conditions. Furthermore, incarcerated individuals must be provided the ability to take part in a legitimate grievance system that will boost transparency, as well as allow them to share their concerns and receive a meaningful response, without fear of reprisal. The retention of professional, accountable prison staff should be prioritized to improve the safety of prisoners and staff alike.

## Key Findings

### Driver Reforms:

- Pre-trial license suspensions for individuals arrested for DWI offenses have resulted in unintended

consequences, including forcing the state to shoulder as much as \$3 million annually in appeals hearings and other administrative costs.<sup>327</sup>

- The Driver Responsibility Program surcharge has resulted in 1.2 million Texans losing their licenses, making it exceedingly difficult for them to buy insurance and thus making roads *less* safe.<sup>328</sup>
- Harris County created a pre-trial intervention program called DIVERT for those charged with first-time DWI offenses; it utilizes assessments and individually tailored programming. After one year and with approximately 2,700 participants, the DIVERT program has demonstrated a 98% success rate.<sup>329</sup>

### Staffing and Standards:

- To realize Texas' public safety needs, state leadership must prioritize critical personnel before perks, specifically by maintaining the current staffing levels at probation departments, the parole board and division, both in-house and community-based programs, and re-entry entities.
- The lack of oversight of municipal/city jails has led to deplorable, unsanitary conditions of confinement, as well as 66 inmate deaths since 2005.<sup>330</sup>
- Currently, many criminal justice agencies do not communicate with each other, due in part to the absence of uniform datasets across agencies. For instance, probationers and parolees tend to be concentrated in "high stakes" communities, yet probation and parole do not share data or coordinate strategies and services.<sup>331</sup>

### Prison Safety and Conditions:

- TDCJ corrections staff should be provided ample opportunity to learn violence-prevention techniques such as identification and handling of vulnerable inmates, suicide prevention, and strategies to reduce the risk of assaults.<sup>332</sup>
- Many TDCJ units consistently have staff vacancies of around 20%.<sup>333</sup> A depleted staff level contributes to safety concerns for prisoners and officers alike, including physical and sexual assaults, gang formation, and incoming contraband.



- Of the ten facilities that had the country’s highest rates of sexual assault, three were in Texas, with two being the top two facilities.<sup>334</sup>
- TDCJ’s current grievance process allows inmates only 15 days from the date of the incident to report a grievance.<sup>335</sup> This amount of time is usually insufficient for inmates who are ill, injured, or otherwise unable to properly grieve their complaint.
- According to data from a 2010 survey of inmates conducted on behalf of the Texas Criminal Justice Coalition, 84% of respondents did not feel that TDCJ administrators addressed their complaints promptly, and 58% had faced retaliation as a result of filing a grievance, often resulting in cell shakedowns and destruction of personal property by guards.<sup>336</sup>
- Prisoners released from solitary confinement are more likely to commit another felony.<sup>337</sup>

## Cost-Saving Strategies

### Driver Reforms:

#### **(1) Eliminate pre-trial license suspensions for individuals arrested for Driving While Intoxicated offenses.**

In 2001, in efforts to deter drunk driving, Texas enacted legislation allowing law enforcement to confiscate the drivers’ licenses of motorists who either fail or refuse to take an alcohol breath test, for 90 days and 180 days, respectively.

Some critics, including from the Texas District and County Attorneys Association,<sup>338</sup> have argued that the law has resulted in unintended consequences, including forcing the state to shoulder as much as \$3 million annually in appeals hearings and other administrative costs. Indeed, defendants can appeal the license suspension to the state, and those who fail in their appeal can seek out occupational licenses, which judges in some counties almost always grant.

Furthermore, the law has seemingly done little to deter drunk driving. The number of arrests for drunk driving has remained consistent throughout Texas in recent years, with nearly 96,000 arrests in 2009. The number of

driver’s licenses has increased from 13.9 million in 1999 to 16.6 million in 2009. For those with habitual alcohol problems, the deterrent is likely especially ineffective.

Drunken driving suspects should not have their licenses revoked until they are found guilty. Pre-trial license suspension can pose severe problems for individuals who must get to work or meet family obligations, as well as those who must make it to court hearings or other arrest-related appointments.<sup>339</sup>

#### **(2) Eliminate the Driver Responsibility Program surcharge.**

Created in 2003 as a revenue generator and originally pitched as protecting public safety through safer drivers, Texas’ Driver Responsibility Program (DRP) has failed at every goal set for it, including by increasing the financial burden on low-income drivers. Indeed, minor traffic-related offenses – after court costs, fines, and three years of annually imposed surcharges – could cost the driver between \$405 and \$838, according to a Legislative Budget Board report. The offense of driving without insurance could cost \$1,303 over three years, while a DWI conviction could cost up to \$6,603 with surcharges.<sup>340</sup>

In Texas, 6% of drivers presently owe the DRP surcharge, according to the vendor in charge of collections, and 1.2 million drivers have failed to pay.<sup>341</sup> Altogether, more than 60% of assessed surcharges go unpaid.<sup>342</sup> As a penalty for nonpayment, the Department of Public Safety has stripped licenses from these 1.2 million Texans, making it exceedingly difficult for them to maintain employment or buy insurance. In fact, seven years after implementation, Texas’ rate of uninsured drivers remains one of the highest in the nation at 22%,<sup>343</sup> making roads *less* safe.

The DRP is a failed concept on many levels, and no evidence shows that it has improved drivers’ behavior.<sup>344</sup> Even former state Representative Mike Krusee, the original author of the legislation that created the surcharge, has said, “My feeling right now is we definitely made a mistake – that it’s overly punitive [...]. I think it’s past time to either revise or repeal the program. It is inequitable in its enforcement because it doesn’t take into account to a just degree people’s incomes and their ability to pay.”<sup>345</sup>

The surcharge should be abolished and other budget cuts or additional revenue sources should be identified to replace funding for trauma center hospitals. Cognitive thinking programming, which has been proven to change criminal behaviors,<sup>346</sup> will better address public safety needs.

**“The DRP creates “taxation masquerading as a public safety initiative.”**

*John Bradley, Williamson County District Attorney*

*Note:* The DRP surcharge has also been posing difficulties for probationers, who are hard-pressed to pay their probation fees because they are inundated with mandated DRP payments. This surcharge should not be cause for unnecessary technical probation revocations and the associated costs to taxpayers for incarceration.

**(3) Allow judges to address defendants’ needs with tailored interventions.**

Currently, statutes bar judges from utilizing deferred adjudication in DWI cases, as well as pre-trial intervention in some instances. In other instances when judges try to impose a probation sentence for a DWI offense, defendants choose jail time for cost and convenience reasons resulting from high DWI penalties for probationers.<sup>347</sup> For instance, in Harris County, the 2000 conviction rate for DWI was 48%, while the probation rate was 45%; however, the 2008 conviction rate rose to 65% and the probation rate fell to 23%, despite rates of recidivism among those on probation being lower than those with a straight conviction, per a three-year study.<sup>348</sup>

Because of these restrictions and reverse-incentives, many defendants are not participating in treatment that could truly change their behavior. As a result, at least one-third of individuals with a first-time DWI offense will re-offend, and a much higher percentage of those with second offenses will commit third and subsequent offenses.<sup>349</sup>

Judges must be permitted to request an assessment of individuals, followed by a specialized level of supervision and treatment interventions, where

necessary. Deferred adjudication is especially key, as is early release from probation for successfully completing the terms or upon no longer posing a threat to public safety.<sup>350</sup> Prosecutors especially agree with the deferred adjudication recommendation. The Texas District and County Attorneys Association (TDCAA) supports it as an incentive for defendants to safely improve their behavior.<sup>351</sup> In like manner, defense attorneys have reiterated the need for deferred adjudication in first-time DWI cases. This will bring DWI violators in line with others, like those charged with serious sexually related crimes, who have access to deferred adjudication and can later have the crime removed from their records. It will also reduce heavy caseloads. According to an Austin defense attorney, “If they [allowed deferred adjudication] my docket would go down to nothing.”<sup>352</sup>

*Note:* Harris County created a one- to two-year pre-trial intervention program called DIVERT (Direct Intervention using Voluntary Education Restitution and Treatment) for those charged with first-time DWI offenses. Implemented in collaboration with District Attorney Pat Lykos, DIVERT includes an assessment, an individually tailored program including treatment, where necessary, mandatory drug testing, and electronic monitoring of alcohol usage. Participating defendants are required to enter a guilty plea and sign a written contract specifying the conditions of supervision. Successful completion of the terms results in the dismissal of the case and the arrest expunged after one year, with only the driving record indicating the DWI event, which can be used to enhance the offense in a future arrest. On the other hand, program expulsion will lead to a thirty-day jail sentence. After one year and with approximately 2,700 participants, the DIVERT program has demonstrated a 98% success rate.<sup>353</sup>

Other counties with high DWI arrest rates should consider implementing similar initiatives to emphasize “rapid intervention and treatment” in the handling of those convicted of DWI offenses, and to prevent future risks to public safety.<sup>354</sup>

## **Staffing And Standards:**

### **(1) Ensure that programs are properly implemented by having qualified staff in the criminal justice field.**

In order to best ensure that individuals who enter the criminal justice system are provided effective programming and supervision that reduces the risk of re-offending, Texas must retain quality professionals. Unfortunately, high levels of debt as a result of student loans, as well as low salary pay and limited opportunity both for recognition and financial rewards for exceptional performance, ultimately discourage individuals from remaining in the criminal justice field.

To realize Texas' public safety needs, state leadership must maintain the current staffing levels at probation departments, the parole board and division, both in-house and community-based programs, and re-entry entities. Policy-makers must prioritize critical personnel before perks.

### **(2) Improve transparency with regards to municipal jails and other holding facilities.**

Texas is home to hundreds of municipal facilities and other holding cells that exist independently of county jails. The Texas Commission on Jail Standards (TCJS), which oversees county jails, has limited oversight over these holding facilities, only including within its purview those that house inmates under contract with a county, with the state, or with another state (currently totaling three facilities).<sup>355</sup> Over time, little data has been collected on the facilities falling outside of TCJS' oversight.

To determine the number and type of holding facilities in Texas (whether holder, cell, or locking bench facilities), as well as information on individuals detained in such facilities, policy-makers should require registration of the facilities by each municipality with TCJS. Facility administrators should also provide an annual report of the average number of persons detained per day and the average number of hours held prior to release, as well as a description of how the facility operates.

*Note:* All reports submitted by municipal jails to TCJS should be available to the public on the agency's website to further transparency efforts by these jails.

### **(3) Improve the regulation of municipal jails.**

Approximately 350 municipal departments in Texas operate municipal detention facilities to hold state statute violators who are being processed or who are waiting to be interviewed/interrogated before being transferred to a county jail.<sup>356</sup> Unlike county jails, municipal jails have little oversight. While municipal subdivisions may operate a jail under Local Government Code §341.902 and Local Government Code 361,<sup>357</sup> no other state statutes apply to the operation of municipal jails.<sup>358</sup> As a result, "a majority of facilities were not constructed in accordance with minimum jail standards and would likely not meet the most lenient current minimum standards" imposed by TCJS, according to that agency.<sup>359</sup>

According to Texas' Attorney General, "sheriffs are not required to accept [into county jails] offenders charged with municipal ordinance-only violations not based on Texas traffic laws. Municipal ordinance violations may include code compliance issues, animal control, etc and are fine-only violations. Offenders who do not remit required fines may choose or may be sentenced to serve time in a municipal jail. As a result, many municipalities operate short-term facilities for the detention of municipal ordinance-only violators or are required to pay for the detention of municipal violators through an inter-local agreement with the county jail."<sup>360</sup>

Since 2007, TCJS has received approximately 31 written complaints about city jails. The greatest complaint regards sanitation, followed by complaints about food, supervision, and medical care.<sup>361</sup> Another problem is that no state statute defines the length of time an individual may be incarcerated in a municipal detention facility.<sup>362</sup>

Given the lack of oversight over municipal/city jails, which has lead to deplorable, unsanitary conditions of confinement, as well as 66 inmate deaths since 2005,<sup>363</sup> **the state should set a 56-hour limit on the amount of time a person can be detained in such a facility.** Those who have violated a city ordinance should not be held in confinement in inhumane conditions, especially without access to counsel, for lengths of time rivaling a stay in a county jail.

Furthermore, the state should do the following:

- **Require municipal jail officials to adopt and utilize the existing Texas Minimum Jail Standards** contained within the Texas Administrative Code. According to TCJS, its inspection model can help ensure that “all individuals incarcerated in jail facilities are handled in accordance with constitutional standards and possibly reduc[e] the liability of Texas governments.”<sup>364</sup>
- **In the alternative, create a set of standards more specific to municipal jails**, using proven practices. Already, the Texas Police Chiefs Association has created standards that could be used as a model, addressing such areas as searching and transportation issues; juvenile issues (including arrest, detention, transportation, and holding area issues), as well as the separation of prisoners by gender and age; jail cell area issues (including minimum standards, inspections, access to the area and key control, fire protection, an evacuation plan, and weapons issues); detainee rights (including visitors, pre-release identification procedures, property release, medical assistance and medication, and consular notifications); strip and body cavity search issues; detainee escapes; and issues regarding the visual observation of prisoners.<sup>365</sup> These standards reflect the nature and purpose of a holding facility, as opposed to a jail which has specific standards to address the longer periods of inmate confinement and possibly higher-risk populations.<sup>366</sup>

*Note:* As an element of the registration process explained in Recommendation (2), facility administrators should detail whether their facility is in compliance with such standards and, if not, list the obstacles to compliance, the progress being made towards compliance, and the date of projected compliance.<sup>367</sup>

- **Require municipal jailers to receive sufficient training in corrections operation and management.** Although the Municipal Jail Association of Texas (MJAT) provides a 40-hour training course for municipal detention officers in such areas as use of force, crisis intervention, prisoner’s rights, contraband control, and gang recognition, the state should require

standardized, certified training either through MJAT or extension services and community colleges.<sup>368</sup>

- **Create an intake screening form.** This should be completed immediately upon an individual’s admission to a municipal jail.
- **Allow for an independent audit of the municipal facility and operations by an outside corrections consultant.** This will improve efficiency, accountability, and compliance.

*NOTE:* If TCJS becomes responsible for municipal jail oversight, the agency is likely to need no less than six additional inspectors to conduct annual inspections of the facilities, as well as associated travel, equipment, and expanded office costs.<sup>369</sup> Again, the agency must be assisted by the Legislature through the imposition of fees for jail inspections to help meet this additional responsibility (see page 32).

#### **(4) Increase professional standards among those who operate holding cells.**

Constables who are operating holding cells or other detention facilities should be required to comply with all rules and regulations applying to sheriffs who operate jails. Specifically, this must include all educational, certification, and licensing mandates. If constables fail to comply with these requirements, they should not be allowed under any circumstances to operate a detention facility.

#### **(5) Improve communication strategies between criminal justice and treatment agencies to boost efficiency and meet the state’s public safety needs.**

Texas should expand the ability of system agencies and departments to effectively communicate and coordinate their resources, including among TDCJ institutional administrators, their medical care contractors, probation departments, parole officers, health and human service departments and the Department of State Health Services, TCOOMMI, the Department of Family and Protective Services, the Texas Veterans Commission, the Texas Department of Housing and Community Affairs, the Texas Workforce Commission, other re-entry entities, and the community-based service providers who contract with them.

Currently, many criminal justice agencies do not communicate with each other, due in part to the absence of uniform datasets across agencies. For instance, probationers and parolees tend to be concentrated in “high stakes” communities, yet probation and parole do not share data or coordinate strategies and services.<sup>370</sup> Furthermore, individuals from the same *households* can be under the supervision of the criminal justice system, yet the work of different criminal justice entities is not inter-linked.

Streamlining inter-agency communications and collaboration – including by tracking data and sharing information about individuals who receive or have received social services, mental health services, substance abuse services, or health services from a particular agency – will help practitioners implement evidence-based practices. Specifically, it will allow them to match risk level and criminogenic needs to responsive interventions, which has been proven to increase the success of clients.

To achieve the most rapid and effective data-sharing system, the state should first conduct an assessment to determine which information technology systems are used by each agency, which systems are compatible or lend themselves most towards compatibility, which systems can be easily and inexpensively switched over to compatible systems, and which systems are publicly accessible or have parts that could be accessible via open records. When making system improvements, stakeholders must bear in mind the importance of utilizing open, published file formats for the creation and archiving documents to ensure that information is accessible over several decades.<sup>371</sup>

Ultimate management of information could best be accomplished by an Interagency Coordinating Council for Data Sharing (Council), which could facilitate the inter-agency coordination of information systems, including the creation of standards for sharing information electronically under appropriate controls to ensure that confidential information remains confidential. Agencies/departments could report to the Council regarding their implementation of various policies and procedures, and every two years the Council could evaluate the efficiency and effectiveness of the information-sharing system.

For the most effective system, agencies/departments must be given incentives and provided with resources to share information (including on best practices, in addition to individuals within the respective agencies’ jurisdiction), making their supervision strategies more informed, and better assisting judges and treatment providers. Creating gateways of communication between agencies/departments will allow supervisors to provide a holistic service to increase the success rate of those under supervision.

### **Prison Safety And Conditions:**

#### **(1) Provide correctional staff with evidence-based, specialized training that emphasizes violence-prevention techniques.**

While TDCJ correctional staff receive specialized trainings, most involve *reactive* techniques rather than prevention methods. In 2008-09, 16 trainings were provided to 3,700 staff members by the TDCJ Correctional Training and Staff Development Department with a focus on defensive techniques, including firearms qualifications, combat, and munitions training.<sup>372</sup>

In addition to defensive training, corrections staff should be provided ample opportunity to learn violence-prevention techniques such as identification and handling of vulnerable inmates, suicide prevention, and strategies to reduce the risk of assaults.<sup>373</sup>

#### **(2) Increase the safety of prison environments through steps to reduce sexual assaults.**

The federal Prison Rape Elimination Act (PREA) was enacted in 2003, and through grants to states to supplement efforts to investigate, prosecute, and prevent prison rape, Texas received funding in 2004. Texas now has a PREA Ombudsman’s Office, which coordinates TDCJ’s efforts to eliminate sexual assault in its facilities. TDCJ also has a Safe Prisons Program, through which staff are trained to assist those who have been assaulted, as well as to prevent extortion.

These efforts are critical. The Bureau of Justice Statistics publishes yearly findings of sexual assaults in prisons throughout the United States; of the ten facilities that had the country’s highest rates of sexual assault, three were in Texas, with two being the top two facilities.<sup>374</sup>

While TDCJ has begun to show concern for putting an end to sexual assaults in prison, a 2010 survey of inmates conducted on behalf of the Texas Criminal Justice Coalition showed that over 36% of respondents did not know the Safe Prisons representative – the individual responsible for responding to reports of sexual assaults and providing information – at their unit.<sup>375</sup> Stopping sexual assault from happening in prison is not only important for the safety and dignity of the prison population. It affects the free world population when victims of sexual assault return to their community with possible disease and suffering from traumatic events that may require treatment and counseling.

The PREA Ombudsman’s Office, as well as efforts undertaken through the Safe Prisons Program, should collectively seek to improve current strategies to identify and address patterns of sexual assault and abuse. For instance, the PREA Ombudsman should create a form that inmates can use to report sexual assault rather than requiring them to write a letter. Similarly, the Ombudsman should seek to include form data and other expanded information during its data gathering process, which could more effectively identify patterns of sexual abuse/misconduct. Furthermore, individuals who have reported assaults should be notified of where they stand in the resolution process.

The Ombudsman should better promote its services, including through print or radio medium (e.g., the Texas Prison Show), as well as conduct surprise visits at facilities. Ultimately, the Ombudsman’s Office must aggressively and proactively focus its attention on units that have shown patterns of assault.

In efforts to strengthen its service efficacy, the Office of the Ombudsman should also contact volunteers who can immediately counsel individuals who have been assaulted. Separately, the Ombudsman should begin compiling a document for wardens on best practices in sexual assault prevention. (Establishing a repository of data in the Ombudsman’s office on sexual assault complaints will be helpful to the Ombudsman in identifying which best practices to review.) If copies of all reports sent by the Ombudsman’s Office to the Texas Board of Criminal Justice are also sent to legislative offices and selected advocates, efforts can also be bolstered or additional evidence-based practices suggested. Lastly, requiring the Office of the Ombudsman to collaborate

with the Reentry Policy Task Force on strategies that could address the needs of those who have been sexually assaulted will assist in their transition from confinement to our communities.

**(a) TDCJ staff should take a “zero tolerance” approach to sexual assault in prison.**

As an agency responsible for the care of thousands of prisoners, TDCJ should commit to a “zero tolerance” policy on sexual assaults by voluntarily incorporating the 41 PREA Standards put forth by the National Prison Rape Elimination Commission into its policies (*please see Appendix B for the list of Standards*). PREA standards are currently before the U.S. Attorney General. By incorporating these policies before they are made national law, TDCJ can proactively reduce the risk of sexual assaults in its units and present itself as a national leader in the effort to eliminate sexual assaults in prisons.<sup>376</sup>

**(3) Strengthen the efficiency of TDCJ’s Offender Grievance Program.**

TDCJ has implemented an internal Offender Grievance Program since 1975. In fiscal year 2010 alone, the program received 217,177 grievances.<sup>377</sup> This system can be a valuable tool for conflict resolution, while also providing administrators insight into developing issues, both small and large, that may have an impact on institutional operations. By alerting administrators to trends in the system, they are able to more efficiently manage problems without letting them escalate beyond their control, in turn saving money in litigation and other costs, and preserving safety.

For instance, without such procedures, inmates may be encouraged to “create their own systems of accountability that might involve disorder and even violence,” according to the Commission on Safety and Abuse in America’s Prisons. The absence of a formal process may also cause frustration and create hostility for prisoners who are not able to effectively resolve their problems.<sup>378</sup>

Sadly, data from a 2010 survey of inmates conducted on behalf of the Texas Criminal Justice Coalition reveals that TDCJ’s current Offender Grievance Program is not adequate. Respondents perceived the system to be “ineffective” due to its lack of promptness, problems with

confidentiality, and lack of protection from reprisals and intimidation.<sup>379</sup> In fact, 84% of respondents did not feel that administrators addressed complaints promptly, and 58% had faced retaliation as a result of filing a grievance, often resulting in cell shakedowns and destruction of personal property by guards.<sup>380</sup>

According to FY 2010 data, 25% of all reported grievances were appealed from the unit level investigation (Step 1) to the Central Grievance Office in Huntsville (Step 2), a low figure that TDCJ attributes to effective problem resolution.<sup>381</sup> While internal reviews of the grievance system tend to show the program favorably, the above-mentioned survey data suggests that it is possible that many Step 1 grievances are not appealed further because of fear of intimidation and reprisal.<sup>382</sup>

TDCJ must ensure that the Offender Grievance Program is effectively addressing inmates' concerns with regard to care and treatment, without reprisal for filing a grievance.

**(a) Improve access to forms.**

While grievance forms are available in the law library, some individuals may not have access or reason to use that library, therefore making the grievance forms unavailable. TDCJ should ensure that grievance forms are accessible by all, as well as provide clear instructions on completing them. To better guarantee access to the information, these materials should be provided in common areas, such as the recreation room and cafeteria.

**(b) Ensure confidentiality for prisoners who file grievances to protect them from reprisal.**

TDCJ should commit to a "zero tolerance" policy for failure to protect prisoners from retaliation when they use the grievance system. The agency should institute severe consequences for staff members who engage in retaliation and encourage other staff members to report misconduct.

**(c) Increase the grievance filing period.**

TDCJ's current grievance process allows inmates only 15 days from the date of the incident to report a grievance.<sup>383</sup> This amount of time is usually

insufficient for inmates who are ill, injured, or otherwise unable to properly grieve their complaint. By allowing a longer time period in which to report and by making the grievance officers more accountable for the integrity of the grievance process, the state can increase the efficiency of the Offender Grievance Program while also increasing the safety of both inmates and prison staff.

**(d) Clarify grievance decisions.**

After inmates file an initial grievance, the grievance officers respond with either a denial of the inmate's request or agree to further investigate the inmate's claim at the unit level. These Step 1 responses from grievance officers should be specific as to why an inmate's request was denied. In other words, a one-line response denying action should be discouraged. By providing specific reasons and details as to how a decision was reached, the grievance program will be more efficient and lessen the likelihood of the inmate filing an appeal with the Central Grievance Office, which would decrease that office's workload. Furthermore, by providing a written response regardless of the outcome, TDCJ would be in line with the grievance standards advanced by the American Bar Association.<sup>384</sup>

**(e) Create independence on grievance boards.**

Grievance boards are comprised of TDCJ correctional officers who have been promoted to the grievance officer position. This creates a clear and inherent conflict of interest when inmates file complaints about mistreatment by guards (who are usually the former colleagues of grievance panel members) or about the lack of available services by TDCJ. The Governor should appoint a board at least partially composed of independent members who are not and never were employed by TDCJ. This group should review inmates' more serious grievances; also, members' credentials, expertise, and decision patterns should be made public to constituents. Having at least one independent board member would allow for more objectivity throughout the grievance decision-making process, as well as allow for a practical evaluation of the weaknesses in the Offender Grievance Program.

**(f) Protect truthful guards.**

Due to the nature of a correctional officer's work, it is often difficult to provide truthful testimony regarding events that involve an officer and an inmate. TDCJ should offer whistleblower protection for corrections staff persons that wish to come forward with information about events described in an inmate's grievance form.

**(4) Maintain correctional officers' salaries to keep staff levels even and improve the safety of prison conditions.**

In light of financial strains, TDCJ is one of many agencies that is recommending staff cuts. Yet already, Texas faces an enormous shortage of correctional officers, due in part to the lack of competitive salaries.<sup>385</sup> In fact, many TDCJ units consistently have staff vacancies of around 20%.<sup>386</sup> A depleted staff level negatively affects existing correctional staff by limiting support and resources, while also limiting prisoners' ability to participate in activities such as recreation, which provide a positive outlet to manage stress and maintain physical and mental health.<sup>387</sup> Limited staff also contribute to safety concerns for prisoners and officers alike – including increased acts of violence, gang formation, and incoming contraband. According to data from a 2010 survey of inmates conducted on behalf of the Texas Criminal Justice Coalition, nearly half of respondents had reported a physical assault during the time they served in prison,<sup>388</sup> and 74% reported they felt “unsafe” at their prison unit.<sup>389</sup>

Maintaining current staffing levels is key to preventing harm for both prisoners and staff, which incurs greater costs in care and treatment. Despite the financial climate, TDCJ must prioritize efforts that address chronic personnel shortages.

**(5) Reduce reliance on the use of administrative segregation and increase opportunities for rehabilitation.**

In 2010, TDCJ housed 8,701 prisoners – 5.6% of its total population – in administrative segregation,<sup>390</sup> where inmates spend almost 24 hours per day confined in a small cell with little or no human contact. Many prisoners being held in segregation have not violated any institutional rules; instead they have been perceived

as a threat, usually because they are believed to be a gang member.<sup>391</sup> Yet research has shown that containing prisoners in social isolation can be correlated with *higher* rates of violence and recidivism.<sup>392</sup>

The use of administrative segregation should be limited and used as a “last resort” option to house prisoners who pose a serious threat to others, as it was originally intended. Furthermore, the Administrative Committee that reviews prisoners in segregation should hold more meaningful reviews of those in segregation with the goal of integrating them with the general population.<sup>393</sup>

Regarding those who do warrant administrative segregation, they should be allowed to engage in social visits with their family members. Family visits are helpful to the rehabilitative process and encourage pro-social skills that will benefit inmates upon release.<sup>394</sup> In addition, prisoners in administrative segregation should be allowed to work and participate in vocational activities, where available; those identified as “high risk” and thus isolated may be the most in need of this helpful rehabilitative programming. Finally, because prisoners that are isolated are at risk of developing mental health issues, regular mental health assessments should be administered to those kept in isolation for long periods of time.

*Note:* Frequent mental health assessments are especially important in light of research that shows that individuals who are released directly from isolation to the community pose a threat to public safety due to their unstable mental health condition, and because their developed reliance on the restrictive structure of confinement has left them ill-prepared to deal effectively with normal social controls.<sup>395</sup> Research on prisoners in Washington shows that those released from solitary confinement were more likely to commit another felony.<sup>396</sup>



## Appendix A: Sample Probation Incentives

The following chart provides information on positive reinforcements that probation supervisors can use to promote behavior changes and lower probationers' risk of re-offending in the long term.

QUALIFIERS	INCENTIVE	EXPLANATION
<b>LEVEL 1 INCENTIVES</b>		
<ul style="list-style-type: none"> <li>◆ Completes college-level courses or vocational program</li> </ul>	Recognition by unit staff	The unit may hold an informal ceremony where the probationer is recognized by the Case Work Manager (CWM) and officers.
<ul style="list-style-type: none"> <li>◆ Obtains and maintains verifiable full-time employment for 3 months</li> <li>◆ Has observable behavior stabilization (mental health cases)</li> <li>◆ Consistently reports for office visits for 6 months</li> <li>◆ Has improved reporting for office visits for 3 months (for special populations)</li> <li>◆ Passes polygraphs</li> </ul>	Accolades from PO's supervisor or administration	The Probation Officer (PO) may arrange for the probationer to meet with the supervisor or administrator to acknowledge the accomplishment. This may include the probationer receiving a small snack or a "well done" card or similar tangible item – determined by the particular unit manager to which the case is assigned.
<ul style="list-style-type: none"> <li>◆ Reports for and completes Substance Abuse Assessment</li> <li>◆ Reports for and completes Psychological Evaluation</li> <li>◆ Reports for and completes Family Violence Assessment</li> <li>◆ Participates in Strategies for Case Supervision (SCS) interview as part of PO training</li> </ul>	5 hours community service restitution (CSR) credit	The probationer will receive 5 hours credited toward CSR.
<ul style="list-style-type: none"> <li>◆ Engages in mentoring activities</li> <li>◆ Engages in speaking engagements (e.g., gang awareness, recovery conferences, department staff meetings)</li> <li>◆ Tutors other probationers in GED preparation, cognitive mentoring</li> <li>◆ Volunteers at child's school</li> <li>◆ Participates in a community activity or department sanctioned special project, or completes an exceptional deed such as an heroic act/service (must be authorized by CWM)</li> </ul>	Certificate of Achievement or 5 hours CSR credit	The probationer will be presented with a Certificate of Achievement by the Probation Officer. or The probationer will receive 5 hours credited toward CSR.
<ul style="list-style-type: none"> <li>◆ Completes parenting classes (not a condition)</li> <li>◆ Completes work source classes (not a condition)</li> </ul>	Recognition by unit staff or 10 hours CSR credit	The unit will hold an informal ceremony where the probationer is recognized by the CWM and officers. or The probationer will receive 10 hours credited toward CSR.

<b>LEVEL 2 INCENTIVES</b>		
◆ Probationer determined to be indigent based on the completion of a Financial Questionnaire	CSR in lieu of fines	The probationer will be allowed to have fines converted to CSR at the rate of \$10 for every 1 hour of CSR.
◆ Probationer determined to be gainfully employed or to have physical limitations but current on fees	Fine in lieu of CSR	The probationer will be allowed to have CSR converted to additional Fine at the rate of \$10 per 1 hour of CSR.
◆ Completes Special CSR Projects (food bank, school supply drive, box fan drive, etc.)	CSR credit for \$ spent	The probationer will receive 1 hour credited toward CSR for every \$5 spent on special CSR projects/drives.
◆ Completes Achieve Program	Up to 25 hours CSR credit	Amount of CSR hours credited are dependant on the number of modules completed as determined by the Probation Officer.
<b>LEVEL 3 INCENTIVES</b>		
◆ Completes Counseling Center Cognitive Classes	CSR credit	The probationer will receive up to 50 hours credited toward CSR. The probationer will receive 15 hours credited toward CSR for perfect attendance.
◆ Attains GED	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes Substance Abuse Treatment: Residential – Contract vendor, SMART (5 months), or an alternative Community Corrections Facility (CCF) residential placement	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes SAFPF Transitional Treatment Center. Substance Abuse Treatment Aftercare, SMART, or contract vendor	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes Counseling Center Substance Abuse Treatment: Intensive Outpatient	CSR credit	The probationer will receive up to 50 hours credited toward CSR. The probationer will receive 15 hours credit toward CSR for perfect attendance.
◆ Completes Community Substance Abuse Treatment: Intensive Outpatient (60 hours)	CSR credit	The probationer will receive 30 hours credited toward CSR. The probationer will receive 15 hours credit toward CSR for perfect attendance.
◆ Completes Battering Intervention and Prevention Project (BIPP) program	CSR credit	The probationer will receive 1 hour for each week of BIPP completed, up to 45 hours, credited toward CSR.
◆ Completes sex offender treatment	CSR credit	15 hours will be credited toward CSR for each year of treatment completed, without documented non-compliance, for a maximum 3 years, with 15 additional CSR hours credited upon graduation.

## LEVEL 4 INCENTIVES

♦ Low-risk probationers (as defined by the risk and needs assessment) who have an extensive reporting history and no technical violations within the last two years	Lowered reporting requirements	The Officer will allow the qualifying probationer to report once every 90 days in person and by mail the two months in between. Permission from the Court will be obtained, where applicable.
♦ Probationers on deferred or regular probation who have completed ½ of their probated sentence, are not currently classified as high risk, completed all classes and programs, are current with supervision fees, and paid in full all restitution and court costs	Lowered reporting requirements	The Officer will initiate a recommendation to the court for early discharge for qualifying probationers (with victim notification if applicable).



## Appendix B: 41 PREA Standards

The following Prison Rape Elimination Act (PREA) standards are listed according to their cost impact on prisons or jails seeking to implement them.<sup>397</sup>

### Standards with a Negligible or Non-Existent Cost Impact

- (1) Access to emergency medical and mental health services
- (2) Coordinated response
- (3) Criminal and administrative agency investigations
- (4) Data storage, publication, and destruction
- (5) Disciplinary sanctions for inmates
- (6) Disciplinary sanctions for staff
- (7) Inmate reporting
- (8) Medical and Mental Health screenings – history of sexual abuse
- (9) Reporting to other confinement facilities
- (10) Staff and facility head reporting duties
- (11) Staff first responder duties
- (12) Third-party reporting

### Standards with a Minimal or Modest Cost

*\$0-\$4,500 in upfront costs, and \$0-\$5,800 in ongoing costs*

- (1) Accommodating inmate with special needs
- (2) Agency protection against retaliation
- (3) Agreements with outside law enforcement agencies
- (4) Agreements with outside public entities and community service providers
- (5) Agreements with the prosecuting authority
- (6) Audits of standards
- (7) Contracting with other entities for the confinement of inmates
- (8) Data collection
- (9) Data review for corrective action
- (10) Duty to investigate
- (11) Employee training
- (12) Evidence protocol and forensic medical exams
- (13) Evidence standard for administrative investigations
- (14) Exhaustion of administrative remedies
- (15) Hiring and promotion decisions
- (16) Inmate access to outside confidential support services
- (17) Inmate education
- (18) Ongoing medical and mental health care for sexual abuse victims and abusers
- (19) Screening for risk of victimization and abusiveness
- (20) Sexual abuse incident reviews

- (21) Specialized training: Investigations
- (22) Specialized training: Medical and Mental Health care
- (23) Supplement to SC-2: Use of screening information
- (24) Use of screening information
- (25) Volunteer and contractor training
- (26) Zero tolerance of sexual abuse

**Standards with the Highest Costs**

*\$0-\$771,000 in upfront costs, and \$20,000-\$90,000 in ongoing costs*

- (1) Assessment and use of monitoring technology
- (2) Inmate supervision
- (3) Limits to cross-gender viewing and searches

## Endnotes

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<sup>1</sup> Texas Department of Criminal Justice (TDCJ), “Statistical Report Fiscal Year 2010,” pgs. 1, 4, 6; as of August 31, 2010. Actual numbers: 154,795 individuals incarcerated (including in prison, state jail, and in a SAFP facility); 419,920 on probation; 81,101 on parole.

<sup>2</sup> The Pew Center on the States, “Issue Brief: Prison Count 2010,” Revised April 2010, pgs. 3–4: “In January 2007, Texas faced a projected prison population increase of up to 17,000 inmates in just five years. Rather than spend nearly \$2 billion on new prison construction and operations to accommodate this growth, policy makers reinvested a fraction of this amount – \$241 million – in a network of residential and community-based treatment and diversion programs. This strategy has greatly expanded sentencing options for new offenses and sanctioning options for probation violators. Texas also increased its parole grant rate and shortened probation terms. As a result, this strong law-and-order state not only prevented the large projected population increase but reduced its prison population over the three years since the reforms were passed.”

<sup>3</sup> Robert T. Garrett, “Acclaimed addiction program for Texas felons is vulnerable to cuts,” *The Dallas Morning News*, August 9, 2010.

<sup>4</sup> Legislative Budget Board (LBB), “Statewide Criminal Justice Recidivism and Revocation Rates,” January 2009, pgs. 24, 28.

<sup>5</sup> National Institute of Corrections, “Corrections Statistics for the State of Texas,” *Statistics for the State of Texas*; <http://www.nicic.org/features/statestats/?State=TX#3>.

<sup>6</sup> Vikrant P. Reddy, “Federal Interference a Bad Collective Bargain,” Texas Public Policy Foundation, July 23, 2010. Note additionally: “From 2007 to 2008, there was 5 percent drop in murders, a 4.3 percent drop in robberies, and a 6.8 percent decline in forcible rapes” – during the same time period that saw Texas’ incarceration rate fall 4.5 percent. From Marc Levin, “Texas Criminal Justice Reform: Lower Crime, Lower Cost,” Center for Effective Justice – Texas Public Policy Foundation, January 2010, pg. 1.

<sup>7</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 1; as of August 31, 2010.

<sup>8</sup> *Ibid.*, pg. 2.

<sup>9</sup> *Ibid.*, pg. 1. Nonviolent individuals on hand in prison total 60,948; nonviolent individuals on hand in state jail total 11,961.

<sup>10</sup> Legislative Budget Board (LBB), “Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008,” January 2009, pg. 6; using FY 2008 prison inmate costs-per-day of \$47.50 and state jail costs-per-day of \$40.12.

<sup>11</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 6; as of August 31, 2010.

<sup>12</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pg. 11; using FY 2008 state community supervision costs-per-day of \$1.24.

<sup>13</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 4; as of August 31, 2010.

<sup>14</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pg. 10; using FY 2008 state active supervision costs-per-day of \$3.74.

<sup>15</sup> According to data from the Legislative Budget Board’s “Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008,” Texas is spending an average of \$17,338 per year on each prisoner, while community supervision along with drug treatment programs cost the state an average of \$2,624 – **making treatment and supervision more than 6 times less costly than incarceration.**

- <sup>16</sup> Judge Marion F. Edwards, “Reduce Recidivism in DUI Offenders: Add a Cognitive-Behavioral Program Component,” 2006, pg. 3.
- <sup>17</sup> Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 3.
- <sup>18</sup> “Prisons account for 88.1 percent of the 2010-11 budget attributable to adult corrections, including operating and debt service costs.” From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 2.
- <sup>19</sup> Judge Marion F. Edwards, *Reduce Recidivism in DUI Offenders*, pg. 3.
- <sup>20</sup> Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 4.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Texas Board of Pardons and Paroles (TBPP), “Current Offense Severity Rankings List,” revised April 15, 2010.
- <sup>23</sup> TBPP, “Current Offense Severity Ranking List,” revised April 20, 2007.
- <sup>24</sup> Brandi Grissom, “Many Choosing Jail Time Over Probation,” *The Texas Tribune*, September 28, 2010.
- <sup>25</sup> Monica Davey, “Missouri Tells Judges Cost of Sentences,” *The New York Times*, September 18, 2010.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> Scott Henson, “Colorado may reduce drug-possession sentences to lower costs; should Texas?,” *Grits for Breakfast*, November 28, 2009; <http://gritsforbreakfast.blogspot.com/2009/11/colorado-may-reduce-drug-possession.html>.
- <sup>28</sup> According to the Center for Mental Health Services’ National GAINS Center, criminal justice professionals in local county jails and state correctional facilities – as well as probation and parole officers – should be trained to recognize the symptoms related to post-traumatic stress disorder and Traumatic Brain Injury, and they should screen individuals for military service and traumatic experiences during the intake process.
- <sup>29</sup> “In 2008, the Virginia pre-sentencing risk assessment instrument was applied to 7,060 drug and property offenders, resulting in a recommended alternative to incarceration in 50.4 percent of cases. [...] Not only has Virginia’s use of risk assessment in sentencing helped prioritize prison utilization, but **there is no evidence that it has diminished public safety**. In fact, **the violent crime rate** in Virginia **declined 12.7 percent** from 2002 when the sentencing risk assessment procedure was implemented statewide to 2008 with the total crime rate falling 11.7 percent [emphasis added].” From Marc Levin, “The Role of Risk Assessment in Enhancing Public Safety and Efficiency in Texas Corrections,” Center for Effective Justice – Texas Public Policy Foundation, July 2010, pg. 6.
- <sup>30</sup> Meghan Guevara and Enver Solomon (contributors to second edition), “Implementing Evidence-Based Policy and Practices in Community Corrections,” Crime and Justice Institute and the National Institute of Corrections, Second Edition, October 2009, pg. 4.
- <sup>31</sup> Dr. Tony Fabelo, data obtained from TDCJ and presented at the Texas Public Policy Foundation (TPPF) criminal justice panel, January 2010.
- <sup>32</sup> Community Justice Assistance Division (CJAD), “Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds,” Texas Department of Criminal Justice, December 1, 2010, pg. 23.
- <sup>33</sup> Dr. Tony Fabelo, *data obtained from TDCJ and presented at the TPPF criminal justice panel*.
- <sup>34</sup> “These beds would have cost \$1.13 billion to build based on a \$65,000 per bed construction cost and another \$1.50 billion to operate over five years based on the \$47.50 per day operating cost in 2008.” From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 1.
- <sup>35</sup> Keith B. Richburg, “States Seek Less Costly Substitutes For Prison: Treatment, Parole Are Gaining Favor,” *Washington Post*, July 13, 2009, quoting C. West Huddleston.
- <sup>36</sup> Legislative Budget Board (LBB), “Adult and Juvenile Correctional Population Projections: Fiscal Years 2010-2015,” State of Texas, June 2010, pgs. 4, 5. Felony probation levels are projected to rise from 173,867 (end-of-month yearly average) in FY 2010 to 177,525 in FY 2015. Active parole supervision levels are projected to rise from 81,198 (end-of-month yearly average) in FY 2010 to 84,772 in FY 2015.
- <sup>37</sup> *Ibid.*, pg. 2.



- <sup>38</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pgs. 6, 11.
- <sup>39</sup> Bernice Yeung, “New Conditions of Probation,” *Miller-McCune*, April 13, 2010.
- <sup>40</sup> Mike Eisenberg, Jason Bryl, and Dr. Tony Fabelo, “Travis County Community Impact Supervision Project: Analyzing Initial Outcomes,” Council of State Governments – Justice Center, May 2009, pgs. 14, 15.
- <sup>41</sup> Bernice Yeung, *New Conditions of Probation*.
- <sup>42</sup> Judge Marion F. Edwards, *Reduce Recidivism in DUI Offenders*, pg. 3.
- <sup>43</sup> Crime and Justice Institute (CJI), “Implementing Evidence-Based Principles in Community Corrections: The Principles of Effective Intervention,” Produced with funds provided by the U.S. Department of Justice, National Institute of Corrections, April 30, 2004, pg. 6.
- <sup>44</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pgs. 6, 10.
- <sup>45</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 18.
- <sup>46</sup> TDCJ, “H.B. 1711 Implementation Report,” Sept. 1, 2010, pg. 4.
- <sup>47</sup> Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 3.
- <sup>48</sup> Emily Ramshaw, “Few Texas Inmates Get Released on Medical Parole,” *The Texas Tribune*, June 3, 2010.
- <sup>49</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 6; as of August 31, 2010.
- <sup>50</sup> Marc Levin, “Thinking Outside the Cell: Ten Truths About Texas Criminal Justice,” Center for Effective Justice – Texas Public Policy Foundation, 2010, slide 21: “In 2008, Texas probationers paid \$45 million in victim restitution and did \$65 million worth of community service work.” Note additionally: During that time, state prisoners paid less than \$500,000 in restitution, fines, and fees.
- <sup>51</sup> Ana Yáñez-Correa, “Survey of Community Supervision Directors: Identifying Current Treatment Options and Educating Stakeholders,” Submitted to the House Committee on Corrections Regarding Interim Charge 2, March 16, 2010, pgs. 10-11.
- <sup>52</sup> Bernice Yeung, *New Conditions of Probation*.
- <sup>53</sup> Mike Eisenberg, Jason Bryl, and Dr. Tony Fabelo, *Travis County Community Impact Supervision Project: Analyzing Initial Outcomes*, pgs. 14, 15.
- <sup>54</sup> Bernice Yeung, *New Conditions of Probation*.
- <sup>55</sup> Community Justice Assistance Division, “2008 Turnover Survey – Overview,” Texas Department of Criminal Justice, 2008, pgs. 1-2.
- <sup>56</sup> Hawaii’s Opportunity Probation with Enforcement (HOPE) program employs these specialized tactics. “In a one-year, randomized controlled trial, HOPE probationers 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 supervisory officer and 53 percent less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48 percent fewer days of incarceration than the control group.” From The Pew Center on the States and the National Institute of Justice, “The Impact of Hawaii’s HOPE Program on Drug Use, Crime and Recidivism,” Issue Brief, January 2010, pg. 1.
- <sup>57</sup> Gary Christensen, Ph.D., Corrections Partners, Inc., *Using Evidence Based Practices to Enhance Long-term Public Safety Outcomes*, presentation given in Fort Worth, Texas, December 10, 2008, slide 13.
- <sup>58</sup> Judge Marion F. Edwards, *Reduce Recidivism in DUI Offenders*, pg. 3.
- <sup>59</sup> Gary Christensen, Ph.D., *Using Evidence Based Practices to Enhance Long-term Public Safety Outcomes*, slide 13.
- <sup>60</sup> Seth Jacob Prins and Laura Draper, “Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice,” Council of State Governments - Justice Center, 2009, pg. vi.
- <sup>61</sup> With regards to employment services, probation officers should have access to a centralized job-matching system where employers who will hire previously incarcerated individuals can post their openings.
- <sup>62</sup> Judge Roger K. Warren (Ret.), “Sentencing in the 21st Century: Instincts, Evidence and Practice,” National Center for State Courts, offered during a presentation at the Idaho Judicial Conference on October 6, 2008.

<sup>63</sup> Community Justice Assistance Division (CJAD), “Texas Progressive Interventions and Sanctions Bench Manual,” Texas Department of Criminal Justice, 2009 revision, pg. 33.

<sup>64</sup> Dr. Tony Fabelo and Angie Gunter, “Organizational Assessment of Travis County Community Supervision and Corrections Department (CSCD),” The JFA Institute (Austin, Texas Office), August 2005, pg. 18.

<sup>65</sup> DSHS seeks to “improve health and well-being in Texas” through various functions, including by promoting recovery for persons with mental illness and infectious disease, building capacity for improving community health, developing and expanding integrated services, and expanding the effective use of health information.

<sup>66</sup> TCOOMMI provides a formal structure for criminal justice, health and human service, and other affected organizations to communicate and coordinate on policy, legislative, and programmatic issues affecting individuals with special needs. Special needs include individuals with serious mental illnesses, mental retardation, terminal or serious medical conditions, physical disabilities and those who are elderly.

<sup>67</sup> Maggie Morales-Aina, LPC, “West Texas Community Supervision and Corrections Department, Mental Health Unit, Specialized Programs,” February 1, 2010, slides 4-5.

<sup>68</sup> Probation officer visits with mentally ill probationers “should become less about ‘monitoring’ and more about discussion of criminogenic needs and risk mitigation. Research by Jim Bonta has shown that just as negative pressure predicts failure, time spent on problem solving and navigating criminogenic factors ‘correlates powerfully’ with reducing recidivism.” From Scott Henson, “Jennifer Skeem on Sentencing and Mental Health,” *Grits for Breakfast*, November 21, 2009, citing findings by Dr. Jennifer Skeem of the MacArthur Research Network on Mandated Community Treatment in “Exploring ‘what works’ in probation and mental health,” 2008;

<http://gritsforbreakfast.blogspot.com/2009/11/jennifer-skeem-on-sentencing-and-mental.html>.

<sup>69</sup> Dennis McKnight, in email correspondence to Scott Henson, April 2007, posted publicly on “Bexar Jail Administrator: ‘Mental health consumers’ don’t belong in jail,” *Grits for Breakfast*, April 27, 2007;

<http://gritsforbreakfast.blogspot.com/2007/04/bexar-jail-administrator-mental-health.html>.

<sup>70</sup> CJI, *Implementing Evidence-Based Principles in Community Corrections: The Principles of Effective Intervention*, pg. 6.

<sup>71</sup> Center For Effective Public Policy, Pretrial Justice Institute, The Justice Management Institute, and The Carey Group, “A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems: A Work in Progress,” National Institute of Corrections, Third Edition, April 16, 2010, pg. 34.

<sup>72</sup> *Ibid.*, pg. 14.

<sup>73</sup> Brandi Grissom, *Many Choosing Jail Time Over Probation*.

<sup>74</sup> Applied Research Services, Inc., “An Evaluation of Georgia’s Probation Options Management Act: Executive Summary,” October 4, 2007, pg. 1.

<sup>75</sup> *Ibid.*, pgs. 1-2.

<sup>76</sup> *Ibid.*, pg. 2.

<sup>77</sup> *Ibid.*

<sup>78</sup> Scott Henson, “Probation kiosks reduce costs when used properly,” *Grits for Breakfast*, September 28, 2005;

<http://gritsforbreakfast.blogspot.com/2005/09/probation-kiosks-reduce-costs-when.html>.

<sup>79</sup> Brandon Wood, Assistant Director, Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, November 3, 2009.

<sup>80</sup> Dr. Tony Fabelo, “Travis Community Impact Supervision: Two Year Department Reassessment – Accomplishments and Areas of Further Work,” The JFA Institute (Austin, Texas Office), August 2007, pg. 10.

<sup>81</sup> Motivational interviewing focuses on a strong, collaborative, probation officer/probationer approach to fulfilling the terms of supervision, and specifically involves reflective listening, using open-ended questions, and identifying inconsistencies in compliance together. This critical strategy can assist probationers in recognizing how best to meet their goals.

<sup>82</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 4; as of August 31, 2010.

- <sup>83</sup> LBB, *Adult and Juvenile Correctional Population Projections: Fiscal Years 2010–2015*, pg. 4. Active parole supervision levels are projected to rise from 81,198 (end-of-month yearly average) in FY 2010 to 84,772 in FY 2015.
- <sup>84</sup> *Ibid.*, pg. 2.
- <sup>85</sup> TDCJ, *H.B. 1711 Implementation Report*, pg. 4.
- <sup>86</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pgs. 6, 10.
- <sup>87</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 34.
- <sup>88</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pgs. 6, 10.
- <sup>89</sup> Vera Institute of Justice, “Summary of August 4, 2010 Coalition Meeting,” August 2010, pgs. 44–51.
- <sup>90</sup> Center on Sentencing and Corrections, “The Continuing Fiscal Crisis in Corrections: Setting a New Course,” Vera Institute of Justice, October 2010 (updated), pgs. 18–19.
- <sup>91</sup> TBPP, *Annual Report FY 2009*, pgs. 17, 21.
- <sup>92</sup> 3g offenses include aggravated kidnapping, robbery and sexual assault, indecency with a child, murder, sexual assault of a child or adult, and any felony with a deadly weapon.
- <sup>93</sup> The Texas Department of Criminal Justice and the Correctional Managed Health Care Committee, “A Report to the Legislative Budget Board and Governor to identify and evaluate mechanisms to lower the cost of, or increase the quality of care in, health or pharmacy services,” 2010, pg. 1.
- <sup>94</sup> Emily Ramshaw, “Few Texas Inmates Get Released on Medical Parole,” *The Texas Tribune*, June 3, 2010.
- <sup>95</sup> Tina Chiu, Center on Sentencing and Corrections, “It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release,” Vera Institute of Justice, April 2010, pg. 11.
- <sup>96</sup> TCOOMMI, “The Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments,” January 2009, pg. 21.
- <sup>97</sup> Citizens Alliance on Prisons and Public Spending, “Denying parole at first eligibility: How much public safety does it actually buy?,” August 2009, pg. 16.
- <sup>98</sup> TBPP, *Annual Report FY 2009*, pg. 28.
- <sup>99</sup> Peggy Burke and Michael Tonry, “Successful Transition and Reentry for Safer Communities: A Call to Action for Parole,” Center for Effective Public Policy, 2006, pg. 14.
- <sup>100</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 18.
- <sup>101</sup> LBB, *Criminal Justice Uniform Cost Report: Fiscal Years 2006–2008*, pgs. 6, 10.
- <sup>102</sup> Danny Hunter, Georgia State Board of Pardons and Paroles, “Improving Parole Outcomes with Performance Leadership and Data: Doing What Works,” *Topics in Community Corrections*, 2007, pg. 43.
- <sup>103</sup> Burke and Tonry, *Successful Transition and Reentry for Safer Communities*, pg. 29.
- <sup>104</sup> TDCJ, *H.B. 1711 Implementation Report*, pg. 4.
- <sup>105</sup> Texas Commission on Jail Standards (TCJS), “Texas County Jail Population,” December 1, 2010.
- <sup>106</sup> TCJS, *Texas County Jail Population*.
- <sup>107</sup> Carl Reynolds, “Non-Traffic Criminal Cases in County-Level Courts, 1990–2009,” Office of Court Administration, table included in a presentation before the Texas Indigent Defense Summit, February 24, 2010.
- <sup>108</sup> Carl Reynolds, “Non-Traffic Criminal Cases in Municipal Courts, 1990–2009 (+78%)” and “Non-Traffic Criminal Cases in Justice Courts, 1990–2009 (+14%),” Office of Court Administration, tables included in a presentation before the Texas Indigent Defense Summit, February 24, 2010.
- <sup>109</sup> TCJS, *Texas County Jail Population*.
- <sup>110</sup> In August 2009, at least 500 individuals in Harris County had been jailed for more than a year awaiting trial, while approximately 1,200 had been incarcerated six months or more – including for such nonviolent offenses as bouncing checks, credit card fraud, trespassing, and civil violations. Approximately 200 of these individuals had served more than the minimum amount of time for the crime they were accused of. From Lise Olsen, “Thousands languish in crowded jail: Inmates can stay locked up more than a year waiting for trial in low-level crimes,” *Houston Chronicle*, August 23, 2009.

<sup>111</sup> Harris County, the largest renter of out-of-county beds, spent \$17 million in Fiscal Year 2009 to house inmates in other jails. From Chris Moran, “Harris County looks for cheaper jail cells,” *Houston Chronicle*, June 9, 2010.

<sup>112</sup> TCJS is responsible for setting constitutional jail standards and conducting inspections of jail facilities to enforce compliance with rules and procedures. This agency is crucial in maintaining safety and order in county jails, as well as in assisting in the education of jail administrators about standards that improve overall conditions of confinement and prevent costly lawsuits.

<sup>113</sup> Though a variance in and of itself does not cost taxpayers money, it can drive up costs in other areas: more inmates means greater expenditures across the board, not only in potential staffing to manage and control a more crowded environment, but also in services, programming, and medical care.

<sup>114</sup> Brandon Wood, Assistant Director, Texas Commission on Jail Standards, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, December 17, 2009.

<sup>115</sup> *Ibid.*

<sup>116</sup> James Pinkerton, “Sheriffs say new parole law could free beds,” *Houston Chronicle*, December 13, 2010.

<sup>117</sup> Greg Hamilton, “HB 2391: Background & Procedures,” Travis County Sheriff’s Office, slides 4, 5, 12.

<sup>118</sup> CJAD, *Texas Progressive Interventions*, pg. 32.

<sup>119</sup> Cynthia Kent, *email correspondence on August 3, 2010*.

<sup>120</sup> Martha Felini et al., “Prostitute Diversion Initiative, Annual Report: October 2008 – September 2009,” Dallas Police Department, pg. 4.

<sup>121</sup> Kim K. Ogg, “Computation of jail credit in discharge of sentence for jail inmates in Bexar County, Tarrant County, and Travis County,” memo to Texas State Senator Rodney Ellis, November 20, 2009, pg. 1.

<sup>122</sup> Adrian Garcia, Sheriff of Harris County, in written correspondence to Senator Rodney Ellis, July 30, 2010, pg. 2; letter posted publicly by Brandi Grissom, “Harris County Seeks to Keep Extra Jail Beds,” *The Texas Tribune*, August 5, 2010.

<sup>123</sup> Brandon Wood, *email correspondence on December 17, 2009*.

<sup>124</sup> Greg Hamilton, “HB 2391: Background & Procedures,” Travis County Sheriff’s Office, slides 4, 5, 12.

<sup>125</sup> *Ibid.*, slide 5.

<sup>126</sup> Nelson W. Wolfe, Bexar County Judge, in written correspondence to Governor Rick Perry, on May 31, 2007: “If the bill had been in effect and the local law enforcement organizations utilized it to issue summons on only those charged with misdemeanor traffic ticket and driving with license suspended offenses, Bexar County jail’s population would have been reduced by 194 inmates and saved the County nearly \$10,000 per day in operational expenses.”

<sup>127</sup> “The inefficient use of citations can lead to an increase in failure to appear rates, thus increasing the number of warrant arrests in the county. If Cite and Release policies lead to the filing of more criminal offenses arrests, they can ultimately add to the jail population as opposed to reducing it.” From Urban Institute – Justice Policy Center, “Jail Population Management Initiative Preliminary Findings and Recommendations,” January 2010, pg. 9.

<sup>128</sup> TCJS, *Texas County Jail Population*.

<sup>129</sup> Aimee Perez, Research and Evaluation Unit of the Criminal Justice Assistance Division, Texas Department of Criminal Justice, in telephone communication with Ana Yáñez-Correa and Molly Totman, Texas Criminal Justice Coalition, July 29, 2010, citing an April 2010 report.

<sup>130</sup> CJAD, *Texas Progressive Interventions*, pg. 32.

<sup>131</sup> SAFPFs are intensive three-phase substance abuse treatment facilities specifically designed for felons (other than sex offenders) assessed as having a substance abuse problem. From CJAD, *Texas Progressive Interventions*, pgs. 44-45.

<sup>132</sup> Dr. Tony Fabelo and Angie Gunter, *Organizational Assessment of Travis County*, pg. 35; information also taken from Mike Eisenberg, Jason Bryl, and Dr. Tony Fabelo, *Travis County Community Impact Supervision Project: Analyzing Initial Outcomes*, pg. 22.

<sup>133</sup> CJAD, *Texas Progressive Interventions*, pg. 32.

<sup>134</sup> Dr. Tony Fabelo and Angie Gunter, *Organizational Assessment of Travis County*, pgs. xi, xiv.

- <sup>135</sup> Dr. Geraldine Nagy, “Travis Community Impact Supervision (TCIS),” Travis County Community Supervision & Corrections, January 2010, pg. 1.
- <sup>136</sup> Dr. Tony Fabelo and Angie Gunter, *Organizational Assessment of Travis County*, pg. 83.
- <sup>137</sup> James Pinkerton, *Sheriffs say new parole law could free beds*, December 13, 2010.
- <sup>138</sup> TCJS, *Texas County Jail Population*.
- <sup>139</sup> Texas Office of Court Administration (OCA), “Criminal Justice Process Study: Midland County,” July 2007, pg. 13.
- <sup>140</sup> TBPP, *Annual Report FY 2009*, pgs. 30, 31.
- <sup>141</sup> Testimony at the Texas House of Representatives Criminal Jurisprudence Committee hearing on H.B. 541, March 6, 2007.
- <sup>142</sup> James Pinkerton, *Sheriffs say new parole law could free beds*.
- <sup>143</sup> Selwyn Crawford, “Roundup targets those with warrants,” *The Dallas Morning News*, February 19, 2010.
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- <sup>146</sup> *Ibid.*: “In cities that have recently conducted Fugitive Safe Surrender, the number of people showing up has been staggering, oftentimes exceeding the expectations of organizers. In Camden, New Jersey in November 2008, 2,245 people surrendered themselves over the course of the four-day program. Detroit’s program proved to be one of the most successful. In June 2008, more than 7,000 people surrendered, 3,300 of whom had their warrants processed on the premises and 750 of whom found out that they did not have active outstanding warrants.”
- <sup>147</sup> CCFs are state-funded residential facilities operated by probation departments that provide a secure environment and treatment targeting specific types of violators, including (cognitive-based) substance abuse treatment; educational, employment readiness, vocational, and life skills training; treatment and services for individuals with mental deficiencies or emotional/family problems; and community service restitution. From CJAD, *Texas Progressive Interventions*, pgs. 42-43.
- <sup>148</sup> ISFs are secure lockdown facilities that completely remove an individual from the community and provide either substance abuse treatment or cognitive treatment to medium- or high-risk felons. *Ibid.*, pg. 43.
- <sup>149</sup> *Ibid.*, pg. 41.
- <sup>150</sup> Judge Joel Baker, “Smith County, Texas, Adopted Budget, Fiscal Year 2010,” pgs. 2-3.
- <sup>151</sup> This decision is solely the decision of the judge/court who placed the defendant on probation. From Cynthia Kent, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, August 3, 2010.
- <sup>152</sup> *Ibid.* Note additionally: Individuals not eligible for the AIC program include those who have committed capital and first and second degree felonies; those who have committed violent offenses; those who have cases of manufacturing and delivery of a controlled substance; felons sentenced to TDCJ’s Institutional Division who have not been awarded probation in the currently pending case; individuals who have absconded (with exceptions approved by the judge); some SAFPF violators (severely addicted substance abusers) who are awaiting a bed in treatment; and pre-trial release or pretrial bond violators.
- <sup>153</sup> Judge Joel Baker, *Smith County*, pg. 2.
- <sup>154</sup> Cynthia Kent, *email correspondence on August 3, 2010*.
- <sup>155</sup> Judge Cynthia Kent, Press Release: “Jail Overcrowding in Smith County,” May 23, 2006.
- <sup>156</sup> “Inmates who do not complete high school or a GED are more likely to recidivate.” From MTC Institute, “Data Spotlight: Recidivism,” February 2003, pg. 2.
- <sup>157</sup> All above bulleted services are listed by Judge Cynthia Kent, *Press Release Re: Jail Overcrowding*.
- <sup>158</sup> CJAD, *Texas Progressive Interventions*, pg. 41.
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- <sup>170</sup> Martha Felini et al., *Prostitute Diversion Initiative, Annual Report*, pg. 4.
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- <sup>173</sup> *Ibid.*, pg. 3.
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- <sup>179</sup> Kathy Williams, “Texas Commission on Jail Standards director speaks to Sherman Rotary Club,” *Sherman Herald Democrat*, September 29, 2009.
- <sup>180</sup> Robert C. Boruchowitz, Malia N. Brink, and Maureen Dimino, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” National Association of Criminal Defense Attorneys, April 2009, pg. 44.
- <sup>181</sup> Texas Code of Criminal Procedure, Article 42.09, Sec. 3: If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the Texas Department of Criminal Justice and he gives notice of appeal, he shall be transferred to the department on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals; Article 44.04(c): Pending [...] appeal [...], the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail; Article 44.04 (d): After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which trial was had may increase or decrease the amount of bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant.
- <sup>182</sup> Texas Fair Defense Project (TFDP), “Benefits of a Public Defender Office: Increasing Accountability and Cost Effectiveness in Harris County’s Indigent Defense System,” September 2009, pg. 13.
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- <sup>357</sup> Under Texas Local Government Code, Sec. 361.061, privately-operated municipal jails fall under the Commission’s umbrella of authority. To the best of Commission knowledge, no municipal jail is being operated by a private vendor.
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- <sup>383</sup> Texas Department of Criminal Justice, “Offender Orientation Handbook,” November 2004, pg. 52.
- <sup>384</sup> American Bar Association Standard 23-9.1: “Grievance Procedures.” This Standard encourages (a) resolution of prisoners’ complaints on an informal basis, if possible; (b) providing prisoners the opportunity to make suggestions to improve programs and conditions; (c) formal procedures for resolving specific prisoner grievances, with prisoner notification; (d) minimization of technical requirements for grievances, easy accessibility to forms, and written rejections; and (e) procedures designed to instill confidence in the process, with periodic evaluations and procedural protections.
- <sup>385</sup> For instance, prison guards in Texas make a mean salary of \$29,870, while in California the mean is \$63,230. From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 3.
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<sup>387</sup> *Ibid.*

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<sup>390</sup> TDCJ, *Statistical Report Fiscal Year 2010*, pg. 1; as of August 31, 2010.

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