



Texas Criminal Justice Coalition

Talking Points

Safe Alternatives to State Jail will Increase Cost Savings, Public Safety, and Personal Responsibility

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Intent of Recommendations: More Successful Outcomes through Greater Use of Safe Diversions

These recommendations are designed to do the following:

- **Save taxpayer dollars and avoid wasteful expenditures on incarceration** by encouraging judges to use their discretion to redirect specific low-risk individuals away from costly state jails and place them on community supervision (probation).
- **Enhance public safety** by lowering recidivism through increased access to community-based services and tools that help people become responsible members of Texas communities.

History of the State Jail System in Texas

- In 1993, faced with prison overcrowding and an inmate population that could potentially break the state budget, the Texas Legislature passed S.B. 1067 and S.B. 532, creating the state jail system. In developing this system, the Legislature created a new class of state jail felonies, consisting primarily of low-level drug and property crimes, as well as guidelines for sentencing and corrections operations.
- **The state jail system was originally designed to restructure and improve the state criminal justice and corrections systems by redirecting individuals with low-level offenses out of overcrowded prisons, providing them the opportunity to serve their sentence on community supervision while reserving space in prisons for those who posed a legitimate risk to public safety.**¹

More specifically, individuals convicted of state jail felonies would have their confinement immediately suspended and they would be placed on probation. While on community supervision, these individuals would have access to community-based resources and programs, but they would also have adequate supervision to maintain stability and compliance with various probation conditions.

- **For individuals who did not comply with community supervision conditions, state jail facilities were intended serve as a back-up,**² **offering judges an option to incarcerate someone for a short time if necessary.** These individuals were expected to be assessed for criminogenic needs, such as substance abuse, mental health, employment, etc., and state jail facilities were supposed to provide robust rehabilitative options, such as substance abuse and education opportunities. With proper rehabilitation services, this system was created to offer a viable option if community-based rehabilitation methods were not working.
- The original plan was also to have state jails near the sentencing jurisdiction, which would allow men and women to rehabilitate near their homes if they violated the terms of probation and were sent to a state jail facility to serve the remainder of their sentence. Also, at the judge's discretion, a person could have been required to serve "upfront" time at a nearby state jail facility, where a prescribed amount of time was served prior to being sent to probation for a suspended sentence.

- **However, over time, and partially due to continued legislative modifications, state jails have become warehouses for individuals, offering little (if any) meaningful access to rehabilitation programs and devolving into an extension of the very system they were designed to improve.**
 - » In 1995, shortly after state jails were created, the Legislature began to dilute the efficacy of the state jail system by making placement on community supervision for state jail felons discretionary for certain individuals and increasing the upfront time a person could serve.³
 - » Subsequently, in 1997, the Legislature removed all mandatory community supervision, allowing direct sentencing straight to state jails.⁴
 - » In 2003 and 2007, the Legislature again revised this, returning to a more rehabilitative and community-based strategy, by ratifying HB 2668 and HB 1610; the first bill mandated community supervision for certain first-time drug offenses, while the second provided judges the discretion to lower certain state jail felony convictions to a Class A misdemeanor, allowing individuals to participate in community-based rehabilitation and treatment.⁵
Yet still, in contrast to the original conception that state jails would be secondary to community supervision, most individuals are sentenced directly to the state jails.

STATE JAIL FACTS

A state jail felony carries a penalty of six months to two years in a facility, or community supervision (probation) for two to five years.⁷

Individuals sentenced to a facility must serve day-for-day, with no opportunity to earn “good time” credit or gain early release through parole. However, based on 2011 legislation, state jail inmates do have the opportunity to become eligible for time credits if they participate in a rehabilitation or education program, in which case they are either granted or denied time credit.

Key Demographics

Over the years, tens of thousands of Texans, primarily with low-level drug or property offenses, have been sentenced directly to state jail, serving less than a year on average.

- Over 50% of the individuals in a state jail are there for their first or second offense. Over 3,000 individuals (nearly 30%) have only one offense, while nearly 40% have one or two prior offenses.⁸
- Over 83% of the individuals in a state jail are there for nonviolent property or drug offenses.⁹
- The majority of individuals are in for drug-possession (nearly 30%), followed by larceny, and then burglary.¹⁰
- Almost two-thirds of the individuals released in 2006 and 2007 were rearrested and about one-third recidivated within three years.¹¹
- About 40% of those who were released in 2006 and 2007 and recidivated were originally convicted of a drug felony offense.¹²
- The average sentence for an individual in a state jail is 1.02 years.
- The average length of time an individual will spend in a state jail is about 6 months.¹³

<i>Figures as of 31 August 2012¹⁴</i>			
Total State Jail Population: 11,732			
Individuals in State Jail And Number of Offenses		Individuals in State Jail And Type of Offense	
# of Individuals	# of Offense(s)	# of Individuals	Offense Type
3,392 (28.9%)	1	3,371	Drug Possession
2,599 (22%)	2	3,049	Larceny
1,825 (15.5%)	3	1,064	Burglary

State Jails are More Expensive, Less Effective, and Leave the Community Worse Off

- From an economic standpoint, state jails are failing our communities.** State jails provide a poor return on taxpayers’ investment: Texas pays more to put low-level individuals in a deficient system that produces worse outcomes. Indeed, state jails cost significantly more money—averaging about \$43 per day per person¹⁴—than incarceration alternatives such as diversion treatment and community supervision, which together average \$10 per day.¹⁵ In 2011, there were nearly 12,000 individuals on hand in a state jail facility and over 23,000 new “receives” (individuals entering state jail) throughout the year.¹⁶ Incarcerating these men and women cost taxpayers over \$500,000 a day and over \$187 million annually.¹⁷

- State jails are less effective at improving public safety.** Incarceration in state jails typically results in higher recidivism rates than both prison and community supervision. In fact, almost two-thirds of all individuals released from state jail in 2006 and 2007 were re-arrested within three years, and about one-third were re-incarcerated during that period.¹⁸ Individuals with drug offenses have particularly high recidivism rates, at about 40%.¹⁹ By way of comparison, revocation rates for felony community supervision, which costs the state less than \$1.50 per day per person, has dropped below 15%, less than half that of the state jail.²⁰

Recidivism Rates		
	State Prison	State Jail
Re-Incarceration Rate	24.3%	31.9%
Re-Arrest Rate	48.8%	64.2%

Community Supervision Revocation Rate: 14.7%		

- State jails do not adequately prepare or equip individuals under their care for success in the community.** The average sentence for an individual in a state jail is 1.02 years, and the correlated length of stay is about six months;²¹ this offers little opportunity for an individual to participate in meaningful rehabilitation or treatment, if any is even available at the facility. Moreover, after serving a brief stint in a state jail, and after having been ripped away from jobs, family, and other responsibilities, these individuals will return to the community without support or resources. Typically, individuals are discharged from a state jail without any post-release supervision; in fact, of the over 22,000 individuals released from a state jail in fiscal year 2011, only 158 were released to community supervision.

Yet continually, individuals choose to serve time in state jail rather than take advantage of the support and resources offered by community supervision, due primarily to the extra requirements of community supervision. Community supervision terms are generally longer than state jail terms and require a higher level of personal accountability to ensure compliance with probation terms.

Cost-Saving and Public Safety-Driven Solutions

- Encourage judges to utilize their current discretion to place individuals with certain state jail offenses on community supervision, which will hold individuals accountable and save tax dollars.**

Heavy reliance on incarceration in state jail facilities is incongruent with the concept of state jails, insofar as it removes a critical piece in the reintegration continuum. Community supervision was intended to be judges’ first response to state jail offenses, so an individual would receive needed

treatment or programs. State jail facilities were supposed to serve as a backup, to support individuals by providing more robust rehabilitation services in the event they failed on probation. Now, state jails are often judges' first choice, and because of underfunding and a lack of resources, rehabilitation programs in these facilities are deficient, leaving individuals without critical tools to address their criminal behavior. Furthermore, once released from a state jail, the majority of individuals have no community supervision or support to help them avoid falling into the same patterns that landed them in the system to begin with. This is partially to blame for high recidivism rates.

To comport with the original intent of state jails, judges should use their discretion under Section 15(b), Article 42.12 of the Texas Code of Criminal Procedure, to effectively utilize community supervision instead of directly sentencing eligible individuals to state jails.

2. Modify existing statutes to offer a split-sentencing alternative for state jail felonies.

With rehabilitative programming options few and far between in state jail facilities, many individuals are unable to acquire the treatment and training that will help them become law-abiding citizens. Both community supervision and state jail facilities make up important components of the state jail felony system. However, we recognize that sending every individual with a state jail felony directly to community supervision may not be viable for the community. As such, Texas should consider a split-sentencing program, where certain individuals would serve a limited time in a state jail facility (e.g., half of the original sentence), followed by a period of post-release supervision—with access to community-based programs and services that will increase the success of the reentry transition. Most critical during the post-release phase will be community programs that assist individuals in overcoming education/employment problems, substance abuse issues, family conflict, and mental health problems.

With both systems sharing the load, Texas will be promoting public safety while more efficiently using taxpayer dollars. According to TDCJ statistics, if half of all individuals with drug and property offenses in the state jail system were to receive split-sentencing, the state could save millions of dollars that could go towards much needed and underfunded treatment and diversion programs in Texas communities.

References

- ¹ House Research Organization, Bill Analysis, Tex. S.B. 1067, 73rd Leg., R.S. (1993); House Research Organization, Bill Analysis, Tex. S.B. 532, 73rd Leg., R.S. (1993).
- ³ Senate Bill 15, 74th Legislature.
- ⁴ Senate Bill 663, 75th Legislature.
- ⁵ House Bill 2668, 78th Legislature; and House Bill 1610, 80th Legislature.
- ⁶ House Research Organization, Bill Analysis, Tex. S.B. 1067, 73rd Leg., R.S. (1993).
- ⁷ TDCJ Open Records Response, 16 October 2012, information available upon request.
- ⁸ Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2011*, pp. 1, 2. Available at http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf.
- ⁹ TDCJ Open Records Response, 16 October 2012, information available upon request.
- ¹⁰ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, pp. 21, 25.
- ¹¹ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 23.
- ¹² TDCJ Open Records Response, 16 October 2012, information available upon request (the average stay is about 6 months in a TDCJ state jail facility, and about 3.5 months in county facility—confinement averages less than 10 months (.8 years)).
- ¹³ TDCJ Open Records Response, 16 October 2012, information available upon request.
- ¹⁴ Legislative Budget Board, *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, Submitted to the 82nd Texas Legislature, January 2011, p. 6 (estimated at \$43.03 a day per person).
- ¹⁵ LBB, "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," January 2011, pp. 6, 11, 12.
- ¹⁶ Texas Department of Criminal Justice, *Statistical Report Fiscal Year 2011*, pp. 1, 2. Available at http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2011.pdf.
- ¹⁷ Based on Legislative Budget Board, *Criminal Justice Uniform Cost Report Fiscal Years 2008-2010*, Submitted to the 82nd Texas Legislature, January 2011, p. 6.
- ¹⁸ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, pp. 21, 25 (recidivism rates are calculated on three-year cycles, so the Legislative Budget Board's numbers reflect offenders who were arrested or returned in 2007).
- ¹⁹ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 23.
- ²⁰ Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2011, p. 11.
- ²¹ The average stay is about 6 months in a TDCJ state jail facility, and about 3.5 months in county facility—confinement averages less than 10 months (.8 years).