



Written Testimony of Marc A. Levin of the Texas Public Policy Foundation and Texas Smart on Crime Coalition on the TDCJ Budget

Senate Finance Committee

January 28, 2019

Introduction

Texas policymakers have an opportunity to build on more than a decade of successful reforms that have ushered in the closure of eight prisons, a renewed emphasis on rehabilitation, and greater public safety.

Prisons cost Texas taxpayers \$61.63 per inmate per day, which is \$22,495 per year, compared to a state cost of less than \$2 per day for probation (offender fees cover slightly more than half). Correctional costs, though they have stabilized in the last several years, have still risen far beyond inflation when analyzed over the last few decades. TDCJ's budget increased from \$793 million in 1990 to \$3.3 billion in 2018. This is partly due to increased health care costs for staff and prisoners, the latter which is partly attributable to an aging population that highlights the need to look at expanding geriatric/medical parole.

Though we have been moving down the list, Texas still has the seventh highest incarceration rate in the nation and the most prisoners of any state, about half of whom are nonviolent offenders. However, since 2005 when the state began strengthening probation and other alternatives to incarceration, the state's incarceration rate has fallen more than 20 %. During this same period, Texas' crime rate has dropped more than 30%, reaching its lowest level since 1967.¹

In 2007, the Texas Legislature approved a justice reinvestment plan that avoided the construction of more than 17,000 new prison beds, which the Legislative Budget Board (LBB) had projected would be needed by 2012. Instead of spending between \$2 and \$4 billion to build and operate the projected new beds, lawmakers appropriated \$241 million for a package of prison alternatives from drug courts to treatment beds. Funds were also used to clear out parolees not being released because of waiting lists for in-prison treatment programs that must be completed as a condition of release and halfway houses (paroled inmates are not actually released until they have a valid home plan). The new capacity brought online in the 2008-09 budget included 4,000 new probation and parole treatment beds, 500 in-prison treatment beds, 1,200 halfway house beds, 1,500 mental health pre-trial diversion beds, and 3,000 outpatient drug treatment slots.

Given that nearly all offenses can result in either probation or prison, sentencing trends may reflect the confidence that judges, juries, and prosecutors have in the effectiveness and capacity of probation and other alternatives. Although the LBB had traditionally assumed an annual 6 % increase in the number of offenders sentenced to prison due to population growth and other factors, sentences

to prison actually declined beginning in 2009 as more nonviolent offenders went on probation. Similarly, members of the Board of Pardons and Paroles have suggested inmates who complete treatment programs are more attractive candidates for parole, which likely explains significant increases in the parole rate over the last decade even as new crimes by parolees have fallen. Capitalizing on Texas' recent success, the state has closed eight prisons since 2007, avoiding millions in operating costs while also selling valuable land, such as the former Central Unit in Sugar Land.

Recommendations

- ✓ **Implement Senate Bill 1055, which was unanimously enacted in 2011 to incentivize lower costs and less recidivism.** SB1055 provides that counties can use the share of the state's savings that they receive for community-based corrections programs, which include drug courts, specialized probation caseloads, and residential programs, including short-term use of the county jail to promote compliance.

Under SB 1055, each county that chooses to participate sets its own goal for a reduction in commitments, and they can receive 35 to 60 percent of the resulting state savings on prisons based on their success in not only reducing commitments, but also lowering the rate at which probationers commit new offenses and increasing the share of their probationers who are current on their victim restitution payments. The portion of the projected savings tied to the commitment reduction would be distributed upfront while the performance-based portion would be distributed at the end of each fiscal year.

The rationale for the upfront portion is that counties will need these resources to put in place the strategies, such as specialized reduced caseloads and treatment for mentally ill probationers, electronic monitoring, and even weekend and other short county jail stays for technical probation violations that enable judges, prosecutors, and probation department leaders to have confidence in their ability to safely supervise more people locally.

Despite the fact that a portion of the prison savings would be distributed upfront, the state is protected, as language specified in SB 1055 authorizes TDCJ to proportionally claw back funds from any county that does not meet its target. This should also be reflected in the budgetary authorization implementing SB 1055. Notably, a similar clawback provision in the budget provision for the state's juvenile Commitment Reduction Program, which is now incorporated into the Texas Administrative Code², has never come into play, as all participating counties have met or exceeded their goals. Indeed, in 2010 – the first fiscal year of the Commitment Reduction Program – juvenile commitments to state lockups fell 36 percent, saving taxpayers at least \$114 million, while juvenile crime continued to decline.³

The success of incentive funding programs in reducing both recidivism and overall costs to taxpayers has been well documented with examples such as the Texas' juvenile system (the 2009 budget provision giving rise to the Commitment Reduction Program or "Grant C"), Arizona's adult probation incentive funding model, the Ohio RECLAIM juvenile system, and Illinois juvenile Redeploy program.⁴ In Ohio and Illinois, the local jurisdictions participating in RECLAIM and Redeploy have achieved the desired goals of reducing recidivism and utilization of state youth lockups.⁵

After adopting its incentive funding model in 2008 that promised to give local probation departments a share of the state's savings if they reduced both revocations and new offenses among probationers, Arizona had, by 2011, reduced its probation revocation to prison rate by more than 39 percent compared to its fiscal year 2008 rate. Most importantly, the number of new felony convictions among its felony probationers had also decreased by more than 41 percent, as probation departments implemented evidence-based practices such as motivational interviewing.⁶ A November 2012 Vera Institute report summarizes state experiences with such incentive funding approaches and recommends strategies to promote successful implementation in Texas and other states.⁷

A provision is needed in the next budget authorizing TDCJ to implement SB1055. Funding could be provided to jumpstart this incentive model through an appropriation and/or through a rider allowing unspent probation funds to be allocated towards these commitment reduction plans.

- ✓ **Prioritize pretrial diversion funding.** TDCJ has requested an exceptional item of \$8 million for the biennium that would allow an additional 8,900 people to be served by pretrial diversion programs. Pretrial diversion programs are critically important because they identify suitable candidates shortly after admission to jail, before they have lost their employment and housing and accumulated jail time. Combined with the fact that success in the program can result in no conviction, pretrial diversion largely solves the problem of offenders declining probation and opting for state jail.

Existing state funding for certain counties, including Harris County, has proven to produce an incredibly positive impact. Indeed, in its first year of implementation, Harris County's Responsive Interventions for Change (RIC) program has results in 424 fewer people sent to prison and 600 fewer people sent to state jail for low-level drug possession. Additionally, recidivism rates are much lower for participants than for those of a similar profile who are sentenced to incarceration. Indeed, the success rate to date is 89 percent.⁸ By including additional support for pretrial diversion in the budget, these benefits can be achieved in many other counties.

Moreover, the TDCJ budget should include funding for pretrial diversion participants as part of the basic probation funding formula. The Legislative Budget Board should also count participants in pretrial diversion when projecting supervision populations. Finally, when distributing discretionary grants to probation departments, the Community Justice Assistance Division should give preference to those jurisdictions that significantly utilize pretrial diversion. This is consistent with a state policy of avoiding unnecessary incarceration of low-risk individuals, reserving prison beds for those that are dangerous, and ensuring that all state taxpayers are not forced to pay for decisions by some jurisdictions to overutilize state prisons and jails.

- ✓ **Revise probation funding formula.** Currently, state basic adult probation funds are distributed based solely on the number of individuals under direct supervision in that department. Distributing funding based on the number of adult probationers provides an incentive to keep probationers who have been compliant for many years, pose no risk to public safety, and are fully paying their fees on probation longer than necessary. Also, because the current funding formula does not incorporate risk, there is a disincentive to put individuals on probation in lieu of prison who could be safely supervised but only with a

lower caseload, specialized treatment, electronic monitoring, and/or other interventions that are costly, though far less so than prison.

Furthermore, the current funding formula creates a disincentive for counties to offer pre-charge diversion to first-time, low-risk defendants from probation altogether, such as through the First Chance Intervention program spearheaded by the Harris County District Attorney. Adopting a funding mechanism similar to juvenile probation which incorporates the population of the county but not the number of individuals on probation would address this. The new formula could also incorporate an incentive for early termination of compliant probationers who have fulfilled all of their obligations and do not pose a risk to public safety; adjusted funding based on risk level of the caseload; and an incentive to reduce technical revocations so long as new crimes by probationers either remain the same or decline.

A bill that incorporated many of these factors – HB 3200 – was vetoed in 2007. However, the reason indicated for the veto was that the term “technical revocation” was not defined.¹ It can and should be defined. An example of one reasonable definition is that the probationer being revoked has not been alleged to have committed a new offense in the past three months. In addition to statutory changes, a hold harmless provision is needed in the budget for the first biennium to help transition departments that would otherwise lose funds in the first biennium.

- ✓ **Support state jail reentry pilot program.** Currently, state jail offenders are released without supervision, since they are ineligible for parole. Although they are almost all nonviolent drug possession and property offenders, they have much higher recidivism rates than those released from state prisons, which has been attributed in part to the lack of programming in state jails and lack of any accountability or support upon reentry. In response to this, last session the Legislature passed HB 3130, carried by Senator Joan Huffman, to create a pilot to divert non-violent offenders from state jail to participate in a coordinated program of education, job training and job placement while on community supervision. TDCJ will identify qualified participants and be ready to implement the program in September, if the legislature funds it. The cost of the pilot, to be established in four areas of the state, will cost \$5.3 million for the biennium. This pilot program represents a worthwhile investment that can result in lower long-term costs by avoiding further crime and incarceration.
- ✓ **Support specialty courts, medication-assisted treatment, and specialized caseloads for probationers and parolees with serious mental illness.** Drug courts, mental health courts, DWI courts, and other problem-solving courts have been proven to reduce recidivism and lower costs by diverting appropriate offenders from incarceration while still holding them accountable.⁹ Medication-assisted treatment, particularly when used in conjunction with other interventions such as drug courts and counseling, has proven to be effective among correctional clients with opioid-related substance abuse disorders.¹⁰

Current funding only allows some of the seriously mentally ill individuals on community supervision to be placed on a specialized caseload, which features a smaller caseload and a probation or parole officer with specific training on supervising this population. The three-year statewide re-incarceration rate for 3,300 probationers and parolees on these smaller caseloads is 15.1 and 16.0% respectively, half of total state recidivism rate.

¹ Governor’s Veto Proclamation, <http://www.lrl.state.tx.us/scanned/vetoes/80/hb3200.pdf#navpanes=0>.

The NewStart specialized caseload with MHMR treatment in Harris County has 4% revocation rate and similar Genesis program in Bexar County has 6% rate.¹¹

- ✓ **Prepare contingent budget rider for “raise the age” legislation.** Last session, the Texas House passed HB122 under which Texas would join 45 other states in presumptively treating 17 year-olds in the juvenile justice system. While they could still receive blended sentences or be certified as adults for serious crimes, this legislation reflected the reality that 17 year-olds, as juniors and seniors in high school who typically live with their parents, should not be placed in adult jails and prisons and given the lifetime stigma of an adult criminal record. Moreover, research has found that the juvenile justice system is far more effective in reducing recidivism among this population, partly because it is set up to work with parents and schools.¹² While making this change will reduce costs to TDCJ, it will increase the number of individuals in the juvenile system. Other states such as Connecticut and North Carolina have found long-term net cost reductions and county jails in Texas would reap immediate savings from complying with the federal Prison Rape Elimination Act requirement of separation and specialized programming. Nonetheless, we recommend that a contingent budget rider be prepared that would assist the juvenile system, especially juvenile probation departments, in accommodating this population.

Conclusion

The evidence suggests that Texas can continue to reduce crime while also reducing the burden on taxpayers by taking additional steps to redirect people who do not pose a public safety threat away from incarceration. Although many of the necessary changes require revising statutes, much can be accomplished through budgetary modifications and incentives to strengthen community-based programs that prevent crime, restore victims, and keep more families together. Together, we can continue to build upon Texas’ recent progress in both controlling corrections costs and enhancing public safety that has become a model for the nation.

¹ Texas Crime Rates (FBI Reports), <http://www.disastercenter.com/crime/txcrime.htm>.

² [Grant C Commitment Reduction Program](#), Texas Administrative Code, Title 37 Public Safety & Corrections, Part 11, Chapter 346 Funding Formulas, Subchapter B Grants, Rule §346.202 Grant C Commitment Reduction Program.

³ Marc Levin, [“Incentivizing Lower Crime, Lower Costs to Taxpayers, and Increased Victim Restitution: Testimony before the Senate Criminal Justice Committee,”](#) Apr. 2011.

⁴ Marc Levin, [“Rewarding Results: Measuring and Incentivizing Performance in Corrections,”](#) Texas Public Policy Foundation, Aug. 2010.

⁵ *Ibid.*

⁶ Arizona Supreme Court, Adult Probation Services Division, [Arizona Adult Probation: Probation Works in Arizona Fiscal Year 2011](#) (Phoenix: Administrative Office of the Courts, 2012).

⁷ [“Performance Incentive Funding: Aligning Fiscal and Operational Responsibility to Produce More Public Safety at Less Cost,”](#) Vera Institute, Nov. 2012.

⁸ Harris County Presentation to Texas Legislature,

<https://capitol.texas.gov/tlodocs/85R/handouts/C3942018080710001/9bc6fac4-b4ed-4775-826c-94c4d5b32527.PDF>.

⁹ National Institute of Justice, <https://www.nij.gov/topics/courts/drug-courts/pages/work.aspx>,

¹⁰ Pew Trusts, https://www.pewtrusts.org/~media/assets/2016/11/medicationassistedtreatment_v3.pdf.

¹¹ Texas Public Policy Foundation, <https://files.texaspolicy.com/uploads/2018/08/16093244/2009-05-PP15-mentalillness-ml.pdf>.

¹² Texas Public Policy Foundation, <https://files.texaspolicy.com/uploads/2018/08/16103725/2017-04-PP-RaisingAgeOfJuvCourtJurisdiction-CEJ-DerekCohen.pdf>.