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A Texas state prison in Gatesville. The prison population has tripled over the past decade.

Probation may be a problem in Texas' criminal justice system

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At around 10:30 a.m., Darnell Walker opened the door to the florescent waiting room of the Travis County Adult Probation Department wearing all black: mid-length shorts, a button down T-shirt and a baseball cap. He shuffled up to the payment window, filled out a form and carefully unfolded a wad of 20s from his wallet. He carried a weathered yellow folder bearing the Travis County seal and the words Adult Probation and Community Supervision.

Walker has had the folder for the two years since he started probation and will need it for three more, when he's expected to complete his probation sentence.

"As long as I keep my head straight, I'll get through it fine," he said, sitting in the probation office.

Walker said he was arrested in July 2004 for cocaine possession. He'd been helping his cousin sell crack in northeast Austin for about a week when undercover cops caught them, he said.

"It was a bad mistake," said Walker, a soft-spoken 25-year-old who said he had never been arrested before and is confident he'll get through probation fine. "They gave me another chance to be a better person and to get it off my record."

Under Walker's five-year probation term, he can't drink or do any drugs, and he has to meet with an officer once a month, stay employed and pay \$60 monthly in supervision fees. His sentence is one of the most lenient possible for possession of a controlled substance.

According to the Texas Department of Criminal Justice's most recent 2003 statistics, there were 238,209 people who, like Walker, were on probation for five to 10 years for felonies. With an additional 196,303 people who have committed misdemeanors, the total number of probates in Texas was nearly 450,000 at that time.

With state criminal justice budgets increasingly stretched and a prison population that has tripled over the past decade, the question of who should be on probation and for how long is becoming more and more pressing.

"There are too many people for the officers to keep track," said Ana Yáñez-Correa, executive director of

the Texas Criminal Justice Coalition, a prison reform advocacy group. "Each probation officer has to look at 150 cases."

Texas has longer probation supervision than any other state in the country. The profits Texas receives from supervision fees provide an incentive for the state to maintain long probation periods, Yáñez-Correa said. She said there is a reluctance to let people off their probation early, even if they have complied with supervision restrictions.

"Probation profits from those on it," Yáñez-Correa said. "They don't let people off early."

According to a study by the Texas Public Policy Foundation, the state collects \$1.13 for every dollar it spends on probation.

Tony Fabelo, a prison analyst who used to head Texas' Criminal Justice Policy Council, said the whole probation system must be rearranged to give priority to supervising violent offenders, rehabilitating drug users and making sure the rest comply with probation rules. He said right now there are too many probates for officers to prioritize. For example, under the current system, offenders only fill out forms on their first visit.

"We have a probation system that in general is badly organized," Fabelo said, sitting in the Starbucks on San Antonio and 15th streets, a few blocks from the probation office. "It's a big paperwork processing machine. They're not supervising these people."

Fabelo noted that Texas' supervision terms of up to 10 years are the longest of any state, contributing to high caseloads. The result is that not enough attention goes to new probates. With such long supervision periods, probates also have more chances to mess up, he said.

Probates who break the terms of probation are sent to jail. A recent Texas Public Policy Foundation study reported that 41 percent of state jail intakes were revoked from probation. Half of those were revoked for a "technical" reason, such as having a beer or missing a meeting. The study, conducted last year, reported that the average length of probation in Texas is 67 months, or about five-and-a-half years, nearly two years longer than the national average.

As Fabelo greeted politicians and consultants coming in and out of the coffee shop for their morning lattes, he said legislators are now more willing to try things like probation reform as an effort to solve prison overcrowding. In the late '80s, the last time Texas' prisons began to overcrowd, the emphasis was on building prisons, he said.

"Building prisons is very appealing, because it's quick," he said. "When you do it enough, you get the feeling that there's more to it than that, and we have legislators who've been here for 10 or 15 years who know that."

Back to where we were in the '80s

"We were full back then, and we're full today," said Rodney Cooper, deputy director of the Texas Department of Criminal Justice, which oversees prisons.

When Cooper started as a correctional officer in 1978, there were 16 prison units scattered throughout East Texas. Today, there are 105, stretching from Jasper to El Paso, according to the department. With nearly 150,000 inmates today, six times Texas' prison population of 25,000 in 1978, Texas' prison system is second in size only to the federal government's.

"Back then, there were 15 or so staff members to a shift," Cooper said. "Today, you might have 50."

Part of the prison system's expansion resulted from the 1980 case *Ruiz v. Estelle*. The court ruled that certain enforcement practices and inmate overcrowding in Texas' prison system violated inmates' civil rights. One measure ruled against was the "building tender" system, in which inmates would be appointed by the wardens to help keep the peace.

When Cooper came on in the late '70s, it wasn't unusual for three inmates to share a two-person cell, because there weren't strict capacity limits. After the case, room capacity limits were put in place, and prisons struggled to find room for all the inmates and to hire new staff to accommodate the law's requirements. At the same time, Texas' population kept rising. The federal "war on drugs" initiative also contributed to the influx of prisoners.

During this transitory period in the mid-'80s, Cooper remembers at one point having 20-inmate tents set up around the perimeter fence at Huntsville to make up for bed shortages.

"You literally ran out of room," said Keith Price, who started as a correctional officer 30 years ago and retired as warden in 2003. Price, who is currently an assistant criminal justice professor at West Texas A&M in Canyon, remembers a time in the late '80s when one inmate getting discharged from the prison hospital would cause frantic phone calls to find an extra bed.

"You get to the point where a handful of people will put things into a crisis," he said. "We weren't quite at that point when I left [in 2003], but we were getting there. I'm sure it's happening all the time today."

Price said the system stabilized after the prison building boom in the early '90s, but that continued convictions have caused the population to keep climbing.

"Right now, we're back to where we were in the '80s," he said. "The problem was that we kept sending people to prison, and that's where we are today."

"You can't lock everybody up," said James Marquart, a criminology professor and director of the crime and justice studies program at UT-Dallas. At this point, it costs about \$40 a day to keep someone incarcerated. With 169,110 inmates, according to the 2004 statistics, this amounts to \$6.7 million per day and \$2.4 billion annually. For this reason, the system needs to prioritize who is put in jail, he said.

"We need to cream off the less risky people and find something to do with them, Marquart said.

Marquart said one of the ways to do that is to put less risky people on probation instead of in prison.

Reform efforts during the 79th Legislature aimed to do that, including House Bill 2193, vetoed by Gov. Rick Perry in June 2005. The bill, sponsored by state Rep. Jerry Madden, R-Richardson, and state Sen. John Whitmire, D-Houston, previous chairman of the Senate Criminal Justice Committee, meant to head off prison overcrowding. Provisions of the bill included decreasing the maximum period of probation from 10 years to five and provided incentives to encourage the early release of well-behaved probates, Madden said. It would also provide probation instead of jail time for non-violent third-degree felonies, often drug offenses.

Geraldine Nagy, director of adult probation for Travis County, has elected to adopt many of the changes in the bill. Nagy said long supervision terms are not effective because most people who re-offend do so within the first two or three years of being put on probation. Under her tenure, the Travis County

probation office has launched a program to profile the probation population to determine which group needs the county's limited resources the most, she said.

Williamson County District Attorney John Bradley disagrees with probation reform. He said weakening third-degree felony statutes will put criminals back on the streets. He said the state has sufficient resources to supervise probates for 10 years, and it should continue to do so and build more prisons.

"That state continues to grow," Bradley said. "As it does, criminals move here, and we need a place to put them."

Madden still believes he can find a better solution after consulting with objecting district attorneys and the governor's office. He is confident a compromise can be reached this legislative session, when he plans to reintroduce his bill.

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