

## Testimony before the House Corrections Committee Interim Hearing

*Regarding Interim Charge Relating to Females in the Corrections System*

by Marc Levin, Esq.  
Director of the Center for Effective Justice

### Introduction and Background

Clearly, individuals who violate the law must be held accountable regardless of their gender, but there are variations in the types of offenses prevalent among males and females and their pathways to entering the juvenile and adult justice systems. Research increasingly indicates that evidence-based alternatives to incarceration for many nonviolent offenders in the juvenile and adult justice systems can enhance public safety, restore victims in a greater percentage of cases, and preserve and strengthen more families whose bonds would otherwise be frayed or severed by incarceration. Given that the vast majority of females in the justice system are nonviolent offenders, this finding is particularly salient for the Committee to consider as it examines this interim charge.

Initiatives in this area should not come at the expense of effective responses to addressing male offenders, but rather be part of a broader effort to foster data-driven programs that prevent, sanction, and deter criminal behavior. Texas' recent and successful expansion of community-based programs for both juveniles and adults properly recognizes that there is a vast spectrum of proven solutions that lie between the unacceptable approaches of simply ignoring criminal activity and resorting to incarceration when it is not necessary to protect public safety.

In 1978, women accounted for 3 percent of the nation's state prisoners, but today women account for 8 percent of inmates in Texas' adult prisons and state jails.<sup>1</sup> Of the 10,655 women who entered prisons, state jails, and substance abuse felony punishment facilities

(SAFPFs) in the 2009 fiscal year, only 1,184 or 11.1 percent entered for a violent offense.<sup>2</sup>

There are more than 100,000 females in the state's adult and juvenile justice systems. In 2008, there were 12,431 women in the state's prisons and jails, but this figure declined to 11,954 in 2009.<sup>3</sup> Significantly, the 3,007 women in Texas state jails account for 23 percent of the state jail population.<sup>4</sup> State jail felons are typically convicted of possessing less than a gram of drugs or low-level property offenses such as writing a hot check and, because there is no good time or parole for state jail felons, they serve a sentence of up to two years on a day-for-day basis.

There are also 72,878 women on direct adult probation supervision and 5,278 in county jails.<sup>5</sup> An unknown number of women are in the hundreds of municipal jails operated by police departments that are the subject of a Senate Criminal Justice Committee interim charge. Among the 136,026 intakes into the Harris County Jail, some 22 percent or 29,926 are women.<sup>6</sup> Nationally, some 83.1 percent of female jail inmates have never been arrested for an act of violence.<sup>7</sup>

From 1991 to 2007, the number of incarcerated mothers in the U.S. grew by an astounding 122 percent.<sup>8</sup> Similarly, the number of children with an incarcerated parent has increased by a staggering 81 percent since 1991, growing to more than 1.7 million kids.<sup>9</sup> Half of these children are under 10 years old.<sup>10</sup>

While incarceration is sometimes needed to protect the public, if it is used when another sanction would have been more effective,

whatever negative consequences the crime itself had on the child may be exacerbated unnecessarily. Additionally, more than 51 percent of juveniles in custody have a parent behind bars.<sup>11</sup>

Through the adoption of innovative, evidence-based policy approaches that break the cycle of crime and incarceration, policymakers can achieve the goals of safer communities, stronger families, and creating future generations of productive citizens rather than more lawbreakers and inmates draining taxpayer resources.

Additionally, inmates, including females, are vulnerable to sexual abuse. In 2006, within two months, charges were filed in court against two male prison guards for improper sexual relations with female inmates.<sup>12</sup> Alarming, in the 2008 Department of Justice sexual victimization survey of prisoners, some 9.5 percent of inmates at the Mountain View women's prison in Gatesville, Texas reported they had been sexually assaulted during the past 12 months of their incarceration.<sup>13</sup> In contrast, the national average is 4.5 percent, though some other states do less than Texas to foster reporting of sexual abuse.<sup>14</sup> Among female inmates at Mountain View, 3.4 percent reported being sexually victimized by a staff member.<sup>15</sup> It is important to note that supporting evidence is not found for many reports.

In 2005, the most recent year for which data is publicly available, the Mountain View Unit built in 1962 cost \$67.64 per inmate per day to operate, about twice as much as the average prison.<sup>16</sup> The current figure may be as much as \$80 per day based on system-wide increases in costs. There are likely several reasons for the high cost of operating units, including the implementation of various rehabilitation programs many of which are not offered in the state jails which may reduce recidivism and the age of the facility, as new facilities typically have better sight lines and other innovations that enable inmates to be safely managed with fewer prison guards.

In the juvenile justice system, 127 girls were committed to Texas Youth Commission (TYC) institutions in 2009, representing 9 percent of commitments.<sup>17</sup> Girls are primarily at the Ron Jackson Unit, where in 2008 14.6 percent of incarcerated youths reported being sexually victimized, though additional steps have reportedly been taken since the survey and are ongoing in an attempt to address this.<sup>18</sup> Girls are much more prevalent among Texas youths on juvenile probation than at TYC, accounting for 27 percent of the population.<sup>19</sup> Statewide data is not published regarding the number of girls on juvenile probation who enter secure and non-secure residential post-adjudication facilities and the number of girls who are among the 50,000 Texas youths processed through juvenile detention centers every year.

Despite the increasing number of females in the criminal justice system, since more than 90 percent of Texas adults behind bars are men and 73 percent of adult probationers are men, evaluations of programs that focus on the entire correctional population will necessarily reflect to a much greater degree the impact of the program on men. Consequently, programs that are particularly effective for females may be overlooked and, conversely, too many resources may be allocated for programs that work for men but are not equally effective for women.

It is well documented that females often follow different pathways into the justice system than males.<sup>20</sup> For example, in 2007, there were 6,529 Texas runaways referred to juvenile probation, of which 64 percent were girls.<sup>21</sup> A total of more than 100,000 Texas youths ages 7 to 17 run away annually.<sup>22</sup> In Texas, running away from home is a status offense and, though many of these youths are reunited with their families with no further involvement in the juvenile justice system, for others it may be a precursor to more serious delinquency.

A significant national finding is that girls are much more likely to be status offenders. Status offenses refer to transgressions such as running away or curfew violations that are illegal only for minors. Indeed, running away and curfew violations account for 25 percent of the arrests of girls across the nation.<sup>23</sup> Moreover, girls who commit such status offenses are much more likely to enter a correctional facility or residential placement. Nationally, some 13 percent of girls are in correctional facilities for status offenses, compared to just 3 percent of all boys.<sup>24</sup> Similarly, 23 percent of the girls who are in residential placement are there for status offenses, compared to only 4 percent of the boys.<sup>25</sup>

Many girls who enter the juvenile justice system as runaways are victims of sexual abuse.<sup>26</sup> Also, a 1994 study found that 80 percent of women prisoners had experienced physical and sexual abuse, often beginning in childhood.<sup>27</sup> This finding is a sobering reminder that many offenders—both male and female—have themselves also been victims of various types of illegal activity.

Incarcerated women are highly likely to have children. Nationally, some 80 percent of women inmates are mothers and most have more than one child.<sup>28</sup> A study of Texas female state jail inmates found 88 percent of females entering state jails had been pregnant in their life with an average of 2.6 children.<sup>29</sup> Some 54 percent had become pregnant with their first child prior to the age of 18.<sup>30</sup> The vast majority of these mothers cared for their child or children before being arrested. Also, national reports indicate that some 5 percent of women are pregnant upon entering prison and another

15 percent gave birth within six weeks of entering prison.<sup>31</sup> All told, 10 million American children have had a parent incarcerated at some point in their life.<sup>32</sup>

While the Legislative Budget Board publishes the cost of incarcerating an adult at in a Texas Department of Criminal Justice (TDCJ) prison, which is \$47.50 per day, the many indirect costs of incarceration to taxpayers are not measured such as the additional welfare dependency associated with the incarceration of the family breadwinner and the cost of foster care and group home placement that is associated with incarcerating thousands of Texas mothers.<sup>33</sup>

## Recommendations

- **Close unneeded lockups and increase the utilization of cost-effective alternatives to the traditional court process and incarceration for suitable nonviolent offenders, including females, which are proven to reduce crime, restore victims, lower costs, preserve families, and strengthen communities. Examples include substance abuse treatment, victim-offender mediation, and community service.**

Many females in the juvenile and adult justice systems either committed a drug possession offense or a property offense to obtain money to support a drug habit. Residential drug treatment has been found to result in a 50 percent reduction in drug use and a 61 percent reduction in crime, while outpatient treatment is correlated with a 50 percent reduction in drug use and 37 percent reduction in crime.<sup>34</sup> Drug treatment is at least five times less costly than prison.<sup>35</sup> In drug courts, offenders contribute to the extent possible to cover part of the cost of their treatment whereas prison costs are borne fully by taxpayers.

Nationally, half of all girls who are arrested are taken into custody for running away from home or shoplifting.<sup>36</sup> Shoplifting is an offense well suited to mediation. The Lubbock County Dispute Resolution Center mediates up to 600 criminal cases per year and has successfully resolved juvenile shoplifting cases where, for example, a child who took a belt from a department store met with an employee from the store to apologize and gain a better understanding of how shoplifting negatively impacts merchants and their employees. A key feature of pretrial victim-offender mediation is that the offender does not receive a criminal record provided that they complete the mediated agreement which usually includes monetary and/or service restitution and, in some cases, community service or service learning.

A meta-analysis found that 72 percent of victim-offender mediation programs reduced the rate of re-offending and 89 percent resulted in completed restitution agreements.<sup>37</sup> A multi-site study found that 79 percent of victims who participated in mediations were satisfied, compared with 57 percent of victims who went through the traditional court system.<sup>38</sup> In mediation programs in the U.S. and Canada, victims who went through mediation were more than 50 percent less likely to express fear of re-victimization than the sample of victims who did not go through mediation.<sup>39</sup>

In regard to both males and females who commit a property offense, incarceration greatly reduces the chance that the victim will obtain restitution. In 2008, Texas adult probationers who owed victim restitution paid an average of \$109, totaling \$46.8 million.<sup>40</sup> Texas probationers also performed 9.7 million community service hours, which would be worth \$63.3 million based on an hourly rate of \$6.55 per hour.<sup>41</sup> In 2008, Texas prison inmates paid a mere \$501,000 in total victim restitution, fines, fees, and court costs, an average of only \$3.21 per inmate.<sup>42</sup>

With nearly 2,000 empty prison beds below the 97.5 percent operating capacity threshold that TDCJ prefers and some 700 empty TYC beds, the state is in a position to close unneeded lockups to help balance the budget while continuing to strengthen evidence-based probation diversion programs that reduce crime, restore victims, and preserve and strengthen families. The female prison population has fallen by 477 from 2008 to 2009, decreasing at a steeper rate than the male population.<sup>43</sup>

At the same time, crime is declining, having fallen 12.8 percent from 2004 to 2008.<sup>44</sup> The 2008 per capita crime rate in Dallas was at its lowest level in 40 years, declining 10 percent from 2007.<sup>45</sup> It dropped another 10.7 percent through August 31, 2009, indicating Texas' recent initiatives to divert thousands of additional youths and adults from incarceration into expanded community-based residential and non-residential programs are associated with lower crime and lower costs to taxpayers.<sup>46</sup> These trends are consistent with results from Maryland's correctional options program demonstrating that low-risk, nonviolent offenders sentenced to probation with graduated sanctions and services were 22 percent less likely to recidivate than comparable offenders sentenced to prison over the same period of being in the community following their prison term.<sup>47</sup> Given that the average time served in Texas state jails is eight months, the incapacitation benefit during that period may be more than offset by the disruptive effect on attachment to family, employment, and community that is associated with incarceration.

As state agencies are asked to cut expenses to balance the budget, it is important to close unneeded lockups. If the Mountain View unit could be shuttered, taxpayers would save approximately \$37.7 million during each biennium. However, research is needed to identify the most appropriate male and female facilities to close based on a variety of factors, such as the cost to operate, recidivism of each unit, and value of the land on which the unit sits. Given that state lockups account for 88 percent of the adult corrections budget, closing unneeded facilities is vital to making sure that sufficient resources are available to provide programming to probationers, parolees, and inmates—both male and female—that reduces recidivism and promotes positive educational and vocational outcomes. Like most other agencies, TDCJ must respond by February 15, 2010 to a request by the Legislative Budget Board, Governor, and Lieutenant Governor to identify a 5 percent possible cut in their current biennial budget.

- **Accelerate ongoing efforts to end the sexual abuse of incarcerated youths and adults, including females.** In June 2009, the National Prison Rape Elimination Commission issued a report containing recommendations for curtailing sexual abuse in prisons and juvenile lockups along with model standards.<sup>48</sup> While some have already been implemented in Texas, state and local authorities should consider implementing those recommendations that are not already in place in their facilities. For example, initial classification policies can prevent sexual victimization by ensuring that the most vulnerable inmates are not housed with those most likely to commit an assault. Every reasonable effort must be made to prevent and redress both sexual and physical abuse by staff of youths and adults in custody.

Many county jails across the state may lack the many procedures and avenues for reporting sexual assault that TDCJ has implemented. Although the Texas Commission on Jail Standards enforces some 600 standards, they lack the statutory authority to promulgate and enforce standards concerning sexual abuse. Research is needed to identify best practices in counties and determine whether the state can play a role in this area or whether it is best addressed at the local level.

Incarcerated youths and adults in local and state lockups must be informed of a confidential method of reporting abuse and assured that such complaints will be expeditiously and fairly investigated. Measures put in place following the passage of Senate Bill 103 in 2007 have resulted in substantiated incidents of staff-on-youth sexual misconduct at TYC declining from 21 during both 2005 and 2006 to six in 2008.<sup>49</sup> The Texas Juvenile Probation

Commission (TJPC) recently required local juvenile lockups to install phone lines through which youths can report allegations of sexual and other abuses to the Commission, which are also shared with law enforcement.

- **Examine the state's capacity to evaluate current and planned correctional programs to determine whether there is sufficient evidence to enable policymakers and corrections leaders to identify those programs that are working to reduce recidivism and improve positive outcomes, such as educational and vocational advancement, among the female offender population.** A national study entitled "Women Offenders: Programming Needs and Promising Approaches," reviewed 242 innovative psychological, work, parenting, and other innovative programs for women offenders across numerous states.<sup>50</sup> Corrections officials nominated 49 model programs, such as substance abuse education, life skills, mental health, health, and multiple-focus programs. A 2009 Rutgers University study of FORGE (Female Offender Reentry Group) found that women parolees who participated in this female-focused reentry program funded by the Nicholson Foundation, particularly those attending monthly support group sessions, had a significantly lower recidivism rate than women who were not paroled and served their entire sentence.<sup>51</sup>

Whenever possible, program design and evaluation should incorporate female offenders in recognition of the fact that the effectiveness of a program may vary based on gender and that adjustments in a program's design upon implementation for females may significantly enhance effectiveness. Using data specific to females can enable existing limited programmatic resources to be more effectively used to reduce recidivism through: 1) better matching of the program type to the type of offender for whom the program has been demonstrated to be successful, and 2) tailored modifications in program delivery that can cost-effectively enhance outcomes for female participants by taking into account their specific needs and risk factors.

- **Ensure that risk and needs assessment instruments are specifically validated on females.** Prior to the development and implementation of risk assessment instruments, all probationers and parolees often received the same level of supervision or, if distinctions were made, they were based on a purely subjective evaluation by one person, which was frequently inaccurate. Not only can more intensive supervision of high-risk offenders reduce recidivism, but conversely high levels of supervision for low-risk offenders have actually been found to increase recidivism.<sup>52</sup> For example, requiring a low-risk probationer

who is employed to report twice a week to the probation office during the work day may jeopardize the offender's employment status and, ultimately, increase risk.

If an assessment instrument is only validated on the entire correctional population, the results may well not be applicable to females. Accurate actuarial risk and needs assessment instruments are vital to efficiently allocating supervision and treatment resources in community corrections, as well as in making parole decisions.

A recent analysis of the risk assessment instrument used in Georgia by the parole board to make discretionary release decisions found that 46 percent of females were classified as high-risk compared to 36 percent of males.<sup>53</sup> However, 44 percent of males were re-arrested compared with 28 percent of females.<sup>54</sup> This is consistent with national findings that women inmates are 14.3 percent less likely to be re-arrested.<sup>55</sup> Somewhat different factors predict recidivism for males and females, as women have been shown to follow different pathways to crime.<sup>56</sup> In response to the study showing this disparity, Georgia tested and implemented a separate parole risk assessment instrument for females.<sup>57</sup>

The Texas Board of Pardons and Paroles uses the same guidelines and risk factors for all parole candidates and does not report parole decisions by gender. Similarly, Texas adult probation and parole departments use the same risk assessment without regard to gender. However, when the TJPC implements a risk assessment for the disposition of youths in early 2010, there will be a separate instrument for females.<sup>58</sup> If the primary instrument used by a correctional agency accurately predicts risk for women, a separate instrument may not be necessary, but the first step is to determine if the instrument currently being used is valid for the female population to which it is administered. As TDCJ's Community Justice Assistance Division, which oversees adult probation departments, explores the development of a new statewide risk and needs assessment instrument, they should take steps to make sure that the instrument is accurate assessing the risk and needs of females on adult probation.

- **Promote best practices involving girls in detention and alternatives to detention for appropriate youths.** A Dallas County detention bed costs \$54,955 a year to operate.<sup>59</sup> Nationally, two-thirds of youths in detention are held on allegations of non-violent offenses.<sup>60</sup> Additionally, after controlling for offense severity and other factors, detained youths are three times more likely to enter costly long-term residential placement.<sup>61</sup> Evidence suggests that, by mixing low-risk youths with more deviant

peers and disrupting family life and schooling, detention actually increases re-offending for many youths.<sup>62</sup> Moreover, detention does not help the victim obtain restitution in cases involving a property offense.

Dallas and Harris counties implemented the Juvenile Detention Alternatives Initiative (JDAI) in 2007. Since then, Dallas has reduced its detention population by 48 beds, resulting in annual savings of \$1 million using proven alternatives such as in-home supervision and electronic monitoring.<sup>63</sup> The juvenile felony referral rate has declined 9.8 percent in Dallas County since JDAI was implemented.<sup>64</sup> Similarly, Harris County closed a detention center and reduced detention costs 25 percent.<sup>65</sup> Some 95 percent of Houston youths diverted from detention show up for their court date.<sup>66</sup>

Girls are particularly likely to be status offenders and it is important to carefully review the use of detention for both male and female status offenders since they do not typically pose a danger to public safety. However, if they are being abused at home they need to be placed in a safe environment, but that could more appropriately be a children's shelter or foster home than detention in such cases. For youths who must be obtained to protect public safety or in the rare instances when that is the only way to ensure their appearance in court, detention centers should ensure that their programming is effective for girls as well as boys in reducing recidivism and maintaining educational continuity.

- **Enhance the state and local data capacity to identify offenders with a sibling or parent in the juvenile or adult criminal justice system to better coordinate family-oriented interventions.** Non-residential juvenile probation programs that are family-based such as functional family therapy and multisystemic therapy have been shown to be more effective in preventing re-offending than incarceration and, according to a meta-analysis by the Washington State Institute for Public Policy, they result in more than \$20,000 in net benefits to taxpayers and victims per youth through reductions in recidivism.<sup>67</sup> These approaches involve more than simply a counselor talking with the youth, as they emphasize a holistic approach to strengthening the parent's capacity to provide appropriate discipline and encouragement, promote behavior change through proven cognitive techniques, and draw upon the collaborative efforts of the treatment team who communicate regularly with the juvenile probation officer in the monitoring the progress of the youth. These approaches also link the family with available services in the community, volunteers, faith-based communities, and other resources outside of juvenile probation. Such

family-based interventions, many of which are provided by non-profits that contract with probation departments and can be held accountable for reducing recidivism through performance-based contracting, produce an additional multiplier effect when there is a sibling involved in the juvenile justice system or at-risk of entering the juvenile justice system, as strengthening the family's capacity to provide discipline and encouragement likely results in better outcomes for all children in the household.

- **Monitor the implementation of House Bill 199 enacted in 2007 to reunite suitable incarcerated mothers with their recently born child.** This legislation requires the TDCJ to set up an infant care program for appropriate mothers in prison who will be reuniting with their child or children.<sup>68</sup> TDCJ is working to implement this legislation. The agency will create a program modeled after the federal Mother and Infant Nurturing Together (MINT) alternative residential program in Fort Worth that targets mothers in federal prison who are approaching their date of release.<sup>69</sup> While the language in the bill would also permit prison-based nurseries which are used in many states as well as the nation's only jail-based nursery at the Rikers Island jail in New York City, community-based residential reentry alternatives outside the prison walls are likely to provide a superior environment for children and the statutory language recommended that TDCJ model its program after the federal alternative residential program that began in Fort Worth and now includes several other sites.
- **Authorize TDCJ to implement a good time program for state jail inmates and a reentry component for state jail inmates who earn an earlier transition into society through exemplary behavior and demonstrated progress in rehabilitation while incarcerated.** This is particularly relevant to the female inmate population, as women are nearly three times more prevalent in state jails than in prisons. It is important that any such program include an evidence-based reentry component based on proven recidivism reduction strategies, such as progressive sanctions and incentives and supervision based on individualized risk and needs factors. State jail inmates currently serve a two-year maximum term on a day-for-day basis with no good time, parole, or supervision of any kind after release and that they have a higher recidivism rate than paroled prison inmates. Accordingly, a well-designed earned reentry program for state jail inmates who have earned release through participation in work and treatment and exemplary behavior could both enhance public safety and reduce costs, as the reduction of state jail incarceration costs more than offsets the cost of the reentry component.<sup>70</sup>

- **Review institutional visitation policies to maximize the opportunities for family interaction consistent with the orderly operation of facilities.** The Sentencing Project reports: "In 2004, more than half of parents housed in a state correctional facility had never had a personal visit from their child(ren), and almost half of parents in a federal facility had experienced the same. Frequency of contact between children and parents incarcerated in federal correctional facilities has dropped substantially since 1997; monthly contact has decreased 28 percent, while those who report never having contact with their children has increased 17 percent."<sup>71</sup> A major 2008 academic study of adult inmates in Florida found that visitation reduces recidivism.<sup>72</sup> Similarly, a 2005 study of youth offenders in Michigan residential programs found that visits initiated by family members, as well as in-home counseling upon release, reduced recidivism.<sup>73</sup>

In addition to reviewing policies to identify ways to enhance visitation at state lockups, visitation is also important for county jail inmates, particularly those that spend a substantial amount of time behind bars. The Bexar County Jail has joined with the Junior League of San Antonio to implement an innovative program called MATCH (Mothers and Their Children) in 1984, which was expanded to PATCH (Papas and Their Children) in 1993. Through this program, parents can earn visits with their children beyond the brief customary meetings through windows by attending educational, life, and parenting skills classes provided by community agencies and exhibiting good behavior. Child development theory is stressed during the parenting classes to provide parents with a good understanding of children's different stages of development and the impact of parental incarceration. While women are more likely to be primary caregivers, it is significant that this program was expanded to male offenders who are also suitable to play a positive role in their child's life, as a healthy relationship between a father and child is also of paramount importance.

The current capacity can accommodate 70 fathers and 40 mothers. The program is highly efficient since it relies on volunteers, some of whom are students at San Antonio College completing service learning hours for their social work course. A brightly colored play room filled with books, stuffed animals and toys serves as a stark contrast to the typical jail environment, ensuring that the children who visit are in a positive atmosphere. Immediately following the visitation sessions, an inmate parent support group meets which enables inmates to share their emotions prior to returning to the austere jail setting.



Inmates visit with their children at the Bexar County Jail

Visiting children range from infants to 15 year-olds, though most are preschoolers or kindergartners. During one session, 17 parents read stories to their children and helped them draw letters on a chalkboard.<sup>74</sup>

- **Identify and replicate effective juvenile probation programs that provide an alternative to incarceration for appropriate male and female youths, including those with children, and prevent teen pregnancy among juvenile probationers.** The Lubbock County Juvenile Probation Department has implemented a program called the Parent Empowerment Project (PEP), which is based on the principles of multisystemic therapy. As such, it addresses both the internal and external factors that contribute to delinquency. The program is targeted to serve chronic juvenile offenders who would have previously been referred to TYC. One of the three focus populations is juvenile probationers with children of their own.

PEP primarily consists of in-home interventions, with treatment provided by a team of professionals. The treatment incorporates individual and family therapy, parent education, and access to community resources, as well as increased probation officer supervision. The treatment team consists of a family therapist, a parent educator, and the probation officer. Weekly supervision meetings are attended by all treatment teams and are typically used to discuss the most problematic cases and to develop treatment plans and intervention strategies. Family therapists for this program are contracted for 10 hours per week, with a caseload of five to seven families. They are recruit-

ed primarily through the various training programs at Texas Tech University and are supervised by an experienced clinician.

The most unique aspect of the program is the parent educators. They are individuals identified within the community who exhibit a desire to work with the targeted population. They are trained in a curriculum developed for this type of community-based intervention. Parent educators are contracted for 10 hours per week to teach parenting skills, handling five to seven families. Together, the treatment team works to build on the family's strengths and address areas of weakness, such as a lack of discipline and negative peer influences. The treatment team empowers the parent in establishing an appropriate family hierarchy with clear boundaries for the youth while creating a nurturing environment. One juvenile probation officer is assigned to the PEP program. The officer provides supervision to ensure compliance with the conditions of probation and enforces compliance with treatment. The officer attends in-home sessions when needed for safety purposes or to assist in intervention strategies.

Of the 75 youths participating in the PEP program, only two have been sent to TYC.<sup>75</sup> Sixty-four percent either have successfully completed the program or are still participating. The remaining youths: 1) moved out of Lubbock County, 2) were placed in a post-adjudication facility, 3) failed to comply with the program, or 4) were referred to the juvenile drug court. The cost of the program is \$100,000 annually, about the same as incarcerating one youth in TYC.<sup>76</sup>

In addition to implementing effective alternatives to incarceration for juvenile probationers with a child or children, juvenile probation departments should identify those girls who are at risk of becoming pregnant and partner with existing agencies and privately supported non-profit and faith-based organizations that can provide appropriate information and counseling. Texas has the nation's fifth highest teen pregnancy rate and a Texas teen becomes pregnant every 10 minutes.<sup>77</sup> When a youth on probation becomes a father or mother, the educational and vocational challenges they face are further complicated and children born to teens have higher rates of dysfunction, welfare dependency, and incarceration.<sup>78</sup> The possible benefits from reducing the number of males who become fathers while on juvenile probation should also be considered.

- **Review vocational programs in adult and juvenile institutions as well as such programs in local workforce**

centers offered to parolees through Project RIO to determine if such programs are sufficiently tailored to specific occupations that female ex-offenders are more inclined to pursue and which are currently available in the economy. Additionally, females and all ex-offenders on probation and served through Project RIO should be informed of the new opportunities afforded by the enactment of House Bill 963 in 2009, which allows ex-offenders to obtain at least a probationary license to enter a licensed occupation in most instances.<sup>79</sup> The Texas Department of Licensing and Regulation, which oversees the greatest number of occupations, plans to issue rules this summer to implement the statute, which will be available for public comment. We are working to assess the status of implementation at other licensing agencies. A third of Texans work in a licensed occupation and, particularly in light of growing unemployment, it is vital to remove barriers to workforce participation that go beyond what is necessary to protect the public.<sup>80</sup>

- **Correctional agencies should work collaboratively with the Texas Department of Family and Protective Services (DFPS) to emphasize prevention and promote safe home environments.** The DFPS has not been fully responsive to longstanding efforts by the TJPC to match juveniles on probation with juveniles involved in child protective investigations to better coordinate the delivery of services. Although juvenile probation and child protective services staff have appropriately unique roles and functions, such coordination could improve outcomes and reduce duplication. For example, if a DFPS caseworker has visited a home earlier in the week and verified that the family and youth are functioning well, the juvenile probation officer may not need to make a visit in the same week.

Among youths on juvenile probation in Texas, 17 percent are served by a child protective caseworker.<sup>81</sup> The DFPS' Financial Services, Quality Assurance division is responsible for determining whether youths served by TYC and juvenile probation departments are eligible for federal matching dollars that cover half of the cost of out-of-home placement pursuant to Section IV-E of the Social Security Act. Finally, DPFS licenses non-secure facilities, many of which accept clients from both juvenile probation and DPFS.

Texas juvenile probation departments recently lost tens of millions of dollars in federal Title IV-E funds when the federal government discontinued paying for half of the administrative costs attributed to arranging residential placements. The federal government still provides reimbursement for half of the cost of the placement itself.

Many juvenile probation departments had used funds tied to arranging for placements to subsidize basic supervision and other programs for probationers.

There is also a connection between DFPS and the adult criminal justice system. About 28 percent of Texas female state jail inmates with a child said DFPS investigated their families, though this is from the most recent report published in 2001.<sup>82</sup> As with other agencies that receive complaints, there are many complaints that turn out to be unsubstantiated. Among these female inmates who had been investigated by DFPS, 43 percent had a child brought under CPS custody.<sup>83</sup> Some 53 percent of the inmates who had their child brought under DFPS custody said that alcohol or drugs were involved in the matter.<sup>84</sup>

Accordingly, reports of abuse or neglect are not only an alert that there is a possible danger to a child but also provide an early way of identifying many women who may be prone to engage in criminal activities. Particularly in cases involving alleged neglect rather than abuse, the same type of effective interventions that are vital to protect the child may also prevent criminal activity on the part of the both the parent and youth by strengthening the family environment.

It is important to emphasize that the majority of investigations and foster home placements concern alleged neglect, not alleged abuse, according to a California study.<sup>85</sup> This report by the California State Assembly noted: "Most stakeholders agree that current federal funding mechanisms for child welfare place a greater priority on supports to children while in foster care at the expense of prevention efforts and supports to help at-risk families care for their children at home."<sup>86</sup> Nearly all federal child welfare funding distributed to states must be used for out-of-home placement while only 5 percent is allocated for prevention, early intervention, family preservation and support services, reunification services, and adoption promotion.<sup>87</sup> For this reason, the report observes: "Federal financing has historically been a barrier to the implementation of many strategies to prevent children and their families from unnecessarily entering foster care."<sup>88</sup> Moreover, the cost of keeping children removed from their family in a group home can exceed \$6,000 per month.<sup>89</sup>

However, the federal government has created the Title IV-E Child Welfare Waiver Demonstrations through which states can apply to obtain waivers to use federal child welfare funds more innovatively and efficiently. The waivers that states may apply for include the Title IV-E Child Welfare Waiver Demonstration Capped Allocation

Project (CAP). Through CAP, states can redirect some of the federal funds that would otherwise be required to be used for out-of-home placement to proven in-home programs that preserve and strengthen the family and prevent neglect and abuse.<sup>90</sup> While many Texas leaders are demanding fewer mandates from Washington D.C., Texas is not among the states that have taken advantage of this waiver.<sup>91</sup>

California is among a handful of states that have obtained a CAP waiver and is using these funds to implement evidence-based alternatives to placement through collaborative and coordinated initiatives by child welfare and juvenile probation agencies in Los Angeles and Alameda counties. Similarly, Indiana, North Carolina, Ohio, and Oregon have obtained waivers to implement initiatives that enabled counties or local entities to use capped amounts of title IV-E funds more flexibly to provide an array of services to prevent foster care placements and facilitate permanency for children in foster care. Examples of services funded through these waivers include assessment, substance abuse and mental health services, family decision meetings, new utilization review and quality assurance mechanisms, in-home parenting services, post-adoption services, and subsidized guardianships.<sup>92</sup>

A meta-analysis by the Washington State Institute for Public Policy found the flexible funding waivers in North Carolina and Oregon produced \$947 in net benefits to program participants, taxpayers, and avoided crime victims per participating family. The benefits stemmed from lower crime, higher high school graduation rates, and reduced costs to state taxpayers from fewer out-of-home placements.<sup>93</sup> The study also found savings to taxpayers from particularly effective evidence-based child welfare interventions that could be funded through this waiver. According to the meta-analysis, Intensive Family Preservation Service Programs (Homebuilders® model), Parent-Child Interaction Therapy, and Dependency (or Family Treatment) Drug Courts produced net benefits from lower crime, higher graduation rates, and reduced out-of-home placements of between \$2,801 and \$7,875 per participating family involved compared with the control group of comparable families.<sup>94</sup>

Texas has obtained a different type of child welfare waiver for a demonstration project that allows for greater flexibility in the use of federal funds to promote adoption. The rationale for the initiative is that more comprehensive assessment will reduce the disruption and dissolution rate of adoptions, decrease the average time that children spend in foster care prior to adoptive placement, increase satisfaction among children and families, and

increase the number of children leaving foster care for placements with adoptive families. These improvements are designed to speed permanency and reduce expenditure of IV-E funds.

Clearly, children must always be protected from abuse even when that requires removal from the home, but effective interventions can prevent neglect, promote better outcomes for children for every dollar spent, and deter damaging activities such as parental substance abuse that negatively impact children and often lead to family dissolution and incarceration.

## Conclusion

Policymakers must continually ask whether, given the limited funds available for criminal justice, incarceration offers the best return on each dollar in enhancing public safety, restoring victims, reducing drug use, and increasing the proportion of families participating in the workforce relative to those that are dependent on the government. These same questions apply regardless of the gender of the offenders involved. Given that 89 percent of women entering Texas prisons are serving time for a nonviolent offense, it is likely that Texas has long passed the point of diminishing returns in achieving whatever public safety benefits may result from incarcerating women in comparison with the benefits that could be realized from spending a portion of these funds to strengthen community-based programs that prevent crime, restore victims, and keep more families together.

National research has found that, as states' prison spending has risen more than 300 percent since 1987, the net of incarceration has been cast wider to take in more low-level and first-time offenders, producing less and less of a crime reduction benefit.<sup>95</sup> One such study published by the Manhattan Institute ranked Arizona prison inmates from most to least harmful and found that while incarcerating the 20 percent most harmful saved an average of \$220,000 in social costs per inmate, incarcerating the 20 percent least harmful prevented just \$3,950 social costs.<sup>96</sup> Similarly, a Washington State Institute for Public Policy analysis found, from 1980 to 2001, the benefit-to-cost ratio for drug offenders plummeted from \$9.22 to \$0.37. Thus, for every one dollar invested in new prison beds for drug offenders, state taxpayers received only 37cents in averted crime based on the Institute's methodology of computing the costs that various types of offenses impose on victims (if there is one) and taxpayers.<sup>97</sup> Finally, a 2006 study found that, after exceeding a threshold in the range of 325 to 430 inmates per 100,000 residents, incarceration fails to reduce crime, and may even increase it.<sup>98</sup> Texas' incarceration rate in 2008 was the nation's fourth

highest at 639 per 100,000 people. However, it has declined from 704 in 2004 and has continued to decline in 2009 as 1,000 people continue moving to Texas every day and the state's prison population dropped by 1,563 from December 31, 2008 to November 30, 2009.<sup>99</sup>

Also, policymakers must strengthen performance measures for every state correctional agency and the adult and juvenile probation departments across the state to assess results, identify areas for improvement, and incentivize better outcomes for public safety, victims, and offenders for every dollar spent.

It is axiomatic that very offender, whether male or female, must be held accountable for violating the law and, where

there is an individual victim, it is particularly important that restitution be provided. For those girls and women who are behind bars, policymakers and agency leaders should work to ensure that programs offered during their incarceration, as well as those provided upon reentry, are demonstrated to be effective in reducing criminal behavior among females. The scourge of sexual abuse behind bars must be ended. Finally, policymakers must continue the state's recent progress in driving down crime and lowering the burden on taxpayers through reducing unnecessary incarceration and investing in alternative approaches for nonviolent offenders that provide a greater public safety return for every taxpayer dollar that is spent. ★

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