

## Work Release: Con Job or Big Payoff for Texas?

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### RECOMMENDATIONS

- Combine work release and electronic monitoring.
- Include employment rate in performance-based probation funding system.
- Utilize work release to relieve county jail overcrowding.
- Explore state jail work release pilot program.
- Allow offenders approved for parole to be released without a home plan if they have a job.
- Enhance ability of inmates to find employment.
- Streamline procedural and zoning rules that limit community-based correctional facilities with work release and explore use of existing state property for transitional housing.
- Loosen facility mandates on TTCs.
- Align prison vocational programs with workforce demands.
- Add new PIE sites.

### INTRODUCTION

Former Texas Senator Phil Gramm frequently said “those in the wagon should get out and help the rest of us pull the wagon.” This kernel of wisdom may apply doubly to those who are not only riding in the wagon, but have stolen from it. That’s part of the promise of work release, as it provides a means for individuals whose criminal activity has imposed costs on victims and taxpayers to offset some of those expenses while at the same time advancing their own reentry into society as productive taxpayers who support their families.

Several trends make work release for non-violent, low-risk offenders an increasingly attractive option. First, incarceration expenses continue to escalate, due to the rising expenses associated with construction, energy, and food, all of which are needed to build and operate a prison. It now costs \$49.40 per day to incarcerate and provide health care to the more than 156,000 Texas prison inmates and a similar amount for the approximately 86,000 inmates in Texas county jails. Second, technological advances in monitoring enable authorities to verify that the offender is at the work site. Additionally, ex-offenders who are employed are three to five times less likely to re-offend, according to the Federal Bureau of Prisons.<sup>1</sup> Finally, despite the national economic slowdown, the Texas labor market remains tight with a 4.1 percent unemployment rate in March 2008,<sup>2</sup> and the demand for workers in industries such as food service, lawn maintenance, and construction that ex-offenders commonly enter could increase further as illegal immigration is curtailed

Table 1: Texas Probationers’ Arrest and Incarceration Rates by Employment Type on Placement<sup>3</sup>

	% Arrested	% Incarcerated
Full Time Student	35.8%	21.5%
Part Time	42.9%	28.8%
Unemployed	48.9%	39.0%

through heightened border security, electronic employer verification, and workplace raids.

Carter MacKenzie, CEO of Lubbock-based BoDart Recruiters, Inc., a firm that has placed over 1,000 Texas prison inmates into jobs immediately upon release, says they are finding increased interest among employers, particularly in trucking and the West Texas oil industry. For years, the Texas Workforce Commission’s Project RIO (Re-Integration of Offenders) sought to create an oil field work program for inmates discharged from prisons, but logistical difficulties stymied the project, including the politically sensitive requirement that inmates be released to the same city from which they originated.

Employers who hire an ex-offender are eligible for a federal tax credit of \$2,400 after the worker earns his first \$6,000. Project RIO staff certify the hiring and length of employment in writing and the employer mails in a one-page form to the IRS to receive their tax credit. Also, the Texas Workforce Commission (TWC) bonds ex-offenders at no cost to the employer for six months against theft or some other form of employee dishonesty. TWC’s John Ownby, who coordinates Project RIO, says there have been few such claims.

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The evidence from Texas and around the country indicates that work release—particularly when accompanied by effective supervision techniques like electronic monitoring that prevent absconding and verify work participation—can reduce recidivism while providing financial relief to taxpayers, crime victims, and children of offenders.

### WHAT IS WORK RELEASE?

The first work release program was implemented in North Carolina in 1957. Traditionally, work release has meant that an inmate who sleeps in a penitentiary or work release center at night is released to perform a job during the day. However, there are variations on the concept. Some Texas counties, including Travis, have a weekend jail program in which inmates go to work and sleep at home during the week but report to jail on the weekends.

Work release has been distinguished from community service programs in which, for example, Texas prison inmates pick up trash on the side of the road for the Texas Department of Transportation, and in-prison programs such as Texas’ trusty program where inmates build furniture for state lawmakers, cut each other’s hair, and till agricultural fields owned by the prison system. In contrast, work release traditionally involves private sector employment outside of the prison where the offender earns a paycheck, which almost always is first used to pay for the inmate’s room and board, restitution, and child support. Texas prisoners owe billions in restitution and child support, with average child support arrears of \$28,000 per inmate.<sup>4</sup>

In the broadest sense, Texas’ 450,000 probationers are on work release, since the terms of their probation almost always require them to hold a job. However, as a practical matter, Texas Department of Criminal Justice (TDCJ) reports that 40 percent of probationers are unemployed,<sup>5</sup> but

there are few if any cases of probation being revoked for this reason alone. Yet, it is widely acknowledged that probationers who are behind on their fees, which average \$40 to \$60 a month, are more likely to be revoked for technical violations, such as missing appointments or testing positive for drugs. A TDCJ Parole Division directive issued in September 2007 requires parolees to seek employment through Project RIO under the auspices of TWC’s local workforce centers if they do not have full-time employment lined up upon first reporting to their local parole office.<sup>6</sup>

### HOW IS WORK RELEASE EMPLOYED IN TEXAS?

#### Community Corrections Facilities

Community corrections facilities (CCFs) are residential facilities to which probationers are referred when they violate the terms of their probated sentence or commit a minor offense, such as a Class C misdemeanor. The purpose of CCFs is to serve as an alternative to prison revocation in such instances. CCFs are operated by the state’s 121 probation departments, but are funded primarily by state appropriations, with small contributions coming from offender payments and federal funds. Restitution centers are a type of CCF, which emphasize work release. Originally launched in 1983, there were 16 restitution centers housing about 500 offenders by 1992. Today, there are eight restitution centers housing 422 offenders.

In addition to the eight restitution centers that use work release, work release is a component of programming in eight other community corrections centers of different types, which include court residential treatment centers (CRTCs), substance abuse treatment facilities (SATFs), and intermediate sanctions facilities (ISFs). Like restitution centers, these facilities are primarily utilized for probationers who are on the verge of being revoked to prison for failing to comply with their probation terms.

**Table 2: Community Corrections Facilities in Texas with Work Release**

Bexar SATF 1	Burnett ISF	Cass RC	Cameron RC	Collin ISF/RC
El Paso CRTC	El Paso RC	Jefferson RC	Lubbock CRTC	Montgomery SATF/ISF
San Patricio RC/SATF	Taylor RC	Tom Green CRTCs 1 & 2	Travis SATF	Uvalde CRTC

SOURCE: Texas Department of Criminal Justice–Community Justice Assistance Division

**Table 3: Taylor-Callahan-Coleman Counties Work Restitution Center Phases of Advancement (1-4 of 7 shown)<sup>7</sup>**

Task	Advance from Phase 1-2	Advance from Phase 2-3	Advance from Phase 3-4
Minimum Length Per Phase	45 days	30 days	30 days
Programs	Must complete all programs assigned. Achieve 70 score on knowledge assessment.		
Counseling/Process Groups	Participate actively and appropriately in all assigned groups.	Attend 1 group per week & continue individual as referred.	Attend 1 group every 14 days & continue individual as referred.
Behavior	Learn and demonstrate pro-social values. All disciplinary must be complete to phase and have privileges.	All disciplinary must be complete to phase and have privileges.	All disciplinary must be complete to phase and have privileges.
Thinking Reports	6 reports	5 reports	4 reports
CSR (Minimum)	20 hours	60 hours	100 hours
Minimum Average Assessment Score	3	3	3
Employment		Full Time Employed: min. of 2 weeks	Full Time Employed
Privileges	TV as scheduled.	TV	TV
Phone Calls Are Made on Inmate Phones (white phones)	Unlimited phone calls can be made during free time by asking Staff permission.	Unlimited phone calls can be made during free time by asking Staff permission.	Unlimited phone calls can be made during free time by asking Staff permission.
Furloughs	No furloughs allowed.	1 ½ hour furlough per week.	2 hour furlough per week.
Educational	Attend 4 hours per week.	Attend 4 hours per week.	Attend 4 hours per week.
Financial			Earning at least \$650 per month.

NOTE: CSR=Community Service Restitution

Like most other CCFs, restitution centers are not characterized by bars, cells, and jumpsuits, but offenders are aware that if they abscond they can be arrested and revoked to prison. Restitution centers operate vans that drop off residents at their jobs in the morning and pick them up at the end of the work day. While the restitution centers in major urban areas generally house offenders from those areas, restitution centers in small cities or rural areas house probationers from throughout the region.

**Transitional Treatment Centers**

The other primary work release sites—in addition to the 16 CCFs—are transitional treatment centers (TTCs), which are privately operated residential facilities overseen by TDCJ’s Private Facility Contract Monitoring/Oversight Division. TTC residents leave the premises every day to

work in the private sector but must return for counseling sessions and to sleep each night. TTCs house both probationers and parolees following their placement for six months in Substance Abuse Felony Punishment Facilities (SAFPFs). Most offenders placed in SAFPFS are *probationers* referred by judges in lieu of revocation. Others are *parolees* in lieu of revocation. Approximately 70 percent of the offenders placed in SAFPFS would have been revoked to prison or state jail if the SAFPFS program was not available.<sup>8</sup> Because the prison term would have been longer, SAFPFS are estimated to result in \$6 million in savings to the state per year.<sup>9</sup> A smaller number of offenders are directly sentenced to SAFPFS as a condition of probation. Although all offenders in SAFPFS have a drug addiction, many have non-drug offenses. For example, 30 percent have committed a property offense.

After completing the SAFPF placement, offenders go directly to a TTC where they are required to work full-time in addition to attending counseling sessions. The Clover House TTC in Odessa, which encompasses 72 beds for men and 30 beds for women, reports that their residents have little difficulty finding work. Until their first paycheck, the Clover House provides vans that transport them to and from work—after being paid for the first time, residents must transport themselves and do so by either car or city bus. TTCs provide three meals a day for residents, including a sack lunch for working residents to bring to their job.

The average TTC placement cost in 2000 was \$2,450 based on an average stay of 81 days and the \$30 per day contract rate.<sup>10</sup> Most of the current contracts are still at \$30 to \$32 per day while a few of the newer ones are up to \$35 per day. Based on a \$35 rate, the placement cost would be \$2,835. Even at \$35 per day, the cost is nearly a third less than the \$49.40 prison cost per day.

Some of the state savings associated with the combination of SAFPF and TTC placement as an alternative to prison have been offset by costs to counties due to the backlog that has resulted from insufficient SAFPF and TTC capacity. As of December 2006, there were 823 offenders in county jails awaiting SAFPF placement.<sup>11</sup> This was one reason the 2007 Legislature appropriated funds to add 1,500 SAFPF beds and another 1,300 TTC beds, as part of a package that avoided \$300 million in prison construction costs.\* The \$35 TTC per diem represents the total cost. There are no taxpayer construction costs because TDCJ leases these beds from private, primarily non-profit operators such as the Gateway Foundation. Parolees contribute 25 percent of their gross income from employment to the TTC, which is credited to the state as an offset against the contractor's per diem.

### ***Other Texas Work Release-Related Programs Past & Present***

In the 1980s, Texas had about 1,100 pre-parole inmates in residential settings across the state that were similar to restitution centers.<sup>12</sup> Today, such inmates whom TDCJ projects may soon be granted parole are in several large pre-parole facilities that, while aesthetically distinguishable from prisons because inmates wear street clothes and are in dormitories instead of cells, are little different programmatically.

Inmates are not permitted to leave the premises and many wait years before being paroled because placement there is at the discretion of TDCJ's Parole Division while the separate Board of Pardons and Paroles determines whether and when the inmate will actually be paroled. The pre-parole residential centers, which folded in the 1990s due in part to crime fears associated with inmates who absconded, enabled many offenders to work in the community and, as with restitution centers, part of their earnings went for room and board and victim compensation.

In addition to the CCFs and TTCs, there are over 4,000 contract residential drug treatment beds scattered at facilities throughout the state that contract with TDCJ to treat probationers. Some residents of these facilities work during the day, although no data is available. Many parolees at halfway houses that contract with TDCJ are also working in the private sector, but there is no data on their levels of workforce participation or earnings.

Although not considered a work release program because offenders work for a private company that operates on the prison premises, the Prison Industry Enhancement (PIE) program fulfills many of the same goals. Under the federal law enacted in 1979 to establish the PIE program, inmates must be paid at least minimum wage and 5 to 20 percent of earnings must go for crime victim restitution. The PIE program first began in Texas in 1993 with 11 inmates. The program now enrolls between 250 and 450 inmates each year. Among the five current Texas PIE sites, inmates manufacture air conditioning parts and computer chips in Lockhart, windows in Coffield, and veneer products in Ellis. From 1993 to 2007, the program has produced about \$34 million in paychecks, of which \$14 million has gone to pay room and board, \$5 million to child support, and nearly \$3 million to the Crime Victims' Compensation Fund.<sup>13</sup> However, existing PIE sites can only accommodate a fraction of 1 percent of Texas' 156,000 prison inmates.

Many Texas sheriffs operate work release programs to relieve county jail overcrowding and costs, although statewide statistics are unavailable as the Jail Standards Commission does not keep track of such programs. Brazos County Sheriff Chris Kirk reports that they have 121 offenders partici-

\*Partly due to the legal obstacles in locating these beds that have contributed to a lack of interest in the requests for proposals, TDCJ is considering redirecting some of the funds appropriated for these beds to day treatment facilities that can be located without a public hearing and other procedures.

participating in work release, which includes 101 in the Electronic Home Monitoring Program and 20 who check in to jail. The offenders must be approved for participation by the court. Kirk says they started the program because the county's 546-bed jail had filled up. Like in Travis County, some offenders sleep in jail on the weekends but go to work and sleep at home during the week.

In September 2007, McLennan County announced it was studying a proposal to begin a work release program that would use GPS monitoring. McLennan County Commissioner Ray Meadows estimated such a program would save the county \$800,000, not including any avoided costs of future jail construction.<sup>14</sup> However, the program has yet to be implemented.

Bexar County is currently exploring setting up a camp to relieve county jail overcrowding where inmates would either work on site or be released to private sector jobs during the day.<sup>15</sup> The County estimates the proposal could save taxpayers \$8 million.<sup>16</sup> If the participating offenders were placed on probation, and as a condition of probation required to report to the camp—including possibly sleeping in tents that may be placed on the site—the County's program would be outside of the regulatory purview of the Jail Standards Commission. The Commission only regulates facilities housing inmates that are under control of the Sheriff's Department, not those holding probationers. The Commission has generally not allowed "tent jails" except as an emergency measure during jail construction. The Commission, whose members include sheriffs and county elected officials, crafts their regulations to avoid the costly specter of federal litigation against counties regarding jail conditions.

Perhaps the most exciting use of work release in Texas is being implemented with no state funds. In November 2007, BoDart Recruiters opened a residential center in Lubbock that consists of a handful of quadplexes that currently house 50 parolees and will eventually include 85 parolees. When BoDart interviews inmates, they screen for motivation and skill, but accept all types of inmates other than sex offenders. Most of the just-released inmates are parolees who would have normally been released back to major urban areas like Houston or Dallas from where they originated, but have been transferred to the Lubbock parole division. Employers pay for 55 percent of the cost of these residences

while offenders pay 45 percent. Offenders pay 25 percent of their net paycheck, not to exceed \$500 a month. Employers chip in \$100 a week for 24 weeks, which is equivalent to the \$2,400 federal tax credit they receive. Neither BoDart, a for-profit company, nor its new residential program receives any state funds. Parolees living in these units pay \$15 a week for transportation, which covers vans that take them to and from work, the parole office, grocery store, etc., although MacKenzie notes it does not go to bars. Alcoholics and narcotics anonymous sessions are held four days a week. BoDart has worked closely with the Lubbock Economic Development Board on the facility.

## DOES WORK RELEASE DELIVER THE GOODS?

### *The Texas Experience*

There is limited data on work release in Texas, and some of it is dated, but the available evidence is encouraging. It appears that restitution centers for probationers are effective in saving taxpayers' money by diverting offenders who would otherwise be revoked to prison, promoting employment, and reducing recidivism. The average state cost of a CCF placement is about \$60 a day, in addition to the \$10-\$25 a day paid by those offenders who are working. This is more than prison primarily because CCFs provide extensive programming and enjoy far fewer economies of scale. For example, the Taylor-Callahan-Coleman Counties Work Restitution Center in Abilene offers a GED and life skills program; cognitive restructuring which has proven effective in changing criminal thinking patterns; substance abuse education; anger management; family group counseling; and aftercare/post release supervision following release. Nonetheless, substantial savings result as compared with prison revocation because the average CCF placement is 143 days,<sup>17</sup> compared with a combined average time served in prison or state jail of 1.84 years for revoked felony probationers. Dr. Tony Fabelo has estimated that 75 percent of placements in CCFs are diversions from prison whereas 25 percent are "net widening," meaning that the offender would not have otherwise been revoked at that time but might be put in a CCF in lieu of outpatient treatment or other intermediate sanctions.<sup>18</sup>

In addition to these savings, restitution center residents pay more than \$4.5 million toward victim restitution, fines and fees, and contribute another \$600,000 in community service restitution.<sup>19</sup>

Table 4: Cost Comparison Restitution Center vs. Revocation to Prison

Disposition of Probationer	Restitution Center	Revocation to Prison
Cost of Placement	\$8,580	\$33,177
Cost of Unsuccessful Placement	\$7,203 (22% two-year reincarceration rate in remaining two-year period following average placement of 143 days)	N/A
Widening of the Net	\$2,145 (assumes 25% of placements would not have been revoked to prison)	N/A
<b>TOTAL COST</b>	<b>\$17,856</b>	<b>\$33,177</b>

SOURCE: Criminal Justice Policy Council

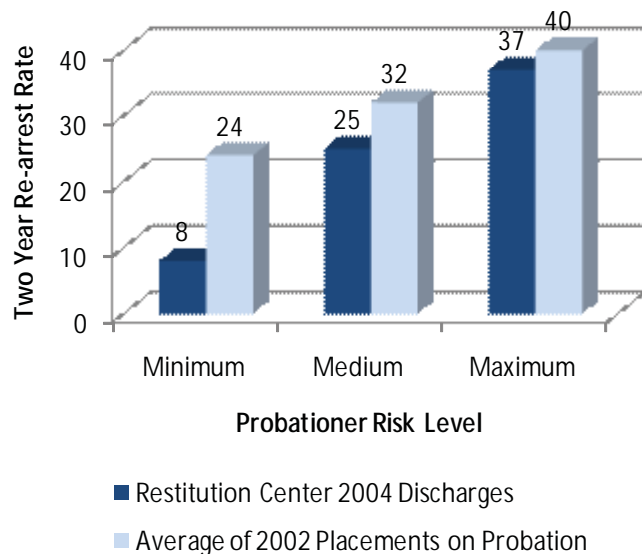
Two studies by TDCJ—one in 1999 and one in 2007—assess recidivism among restitution center offenders. The 1999 TDCJ study found that only 18.4 percent of successfully discharged restitution center offenders were revoked to prison in the subsequent two years.<sup>20</sup> This is a substantially lower rate than the 30 percent two-year felony probation revocation rate in that time period.<sup>21</sup> It’s more impressive considering that 63.8 percent of restitution center participants were designated maximum risk compared to 23.4 percent of all felony probationers, and higher risk probationers consistently have higher revocation rates. Also, Kirk Long, an analyst in TDCJ’s Community Justice Assistance Division which oversees probation departments and CCFs, notes that the least effective restitution centers identified through the 1999 study were those that were eliminated in 2002 and 2003 as part of broader budget reductions.

However, the 1999 TDCJ study also found that 26.1 percent of restitution center participants absconded, more than three times the rate of other community corrections facilities such as substance abuse treatment facilities and intermediate sanctions facilities where participants generally do not go off-premises to work. That, in addition to funding limitations, likely explains why restitution centers have not proliferated.

Re-arrest rate is perhaps the best measure for evaluating the impact of restitution centers on recidivism because it is rare for a participant to be quickly returned to a CCF. Having exhausted this intermediate sanction, if they commit another offense or seriously violate the terms of probation shortly after leaving the CCF, they are almost certainly going to be revoked. The 2007 study of restitution center participants in

2004 showed favorable re-arrest rate results relative to those of average probationers of the same risk level,<sup>22</sup> though gains were modest for the highest risk offenders.

Comparing Re-arrest Rates for Work Restitution Centers



Texas work restitution centers have clearly had a positive effect on the employment rate of participating offenders. The 2007 TDCJ study found that 80 percent of offenders leaving a restitution center were employed upon discharge.<sup>23</sup>

There is also limited but encouraging data on the effectiveness of TTCs, and particularly their work release component. A Criminal Justice Policy Council report found that 14 percent of TTC residents relapsed while at the TTC, with relapse defined as testing positive for drugs, being caught with drugs, or committing a new drug offense.<sup>24</sup>

Data provided by the Gateway Foundation, a non-profit organization which operates SAFPFs and TTCs under contracts with TDCJ, shows that from September 2006 to March 2007, the monthly success rates (upon a 90 day follow-up after release from the SAFFP to the TTC) were significant (see Table 5).

**Table 5: Monthly Success Rates  
September 2006-March 2007**

	Abstinent from Drugs	Employed	Not Arrested
<b>Glossbrenner SAFFP</b>	80-86%	65-88%	92-99%
<b>Walker Sayle SAFFP</b>	84-96%	85-92%	94-98%

SOURCE: Gateway Foundation

As for the new BoDart residential facility in Lubbock, MacKenzie says the success rate since November is 70 percent. Moreover, no new criminal offenses have occurred. The primary source of the failures has been positive drug tests, which result in the offender being removed from the program and transferred back to the parole department in his home city. MacKenzie notes that many of the jobs involve operating machinery or trucks and that he and employers cannot risk employing a worker who is inebriated.

Although also not technically work release because inmates do not work for a private company until they are paroled or have served their entire sentence, job placement through Project RIO has also yielded similar benefits. In 2005, 15,013 inmates released from state lockups used Project RIO services at a local workforce center and, of those, 12,717 (85 percent) obtained jobs.<sup>25</sup> Likewise, of the 192 youth discharged from Texas Youth Commission facilities who participated in Project RIO, 152 (80 percent) landed employment. A National Institute of Justice study found that 23 percent of Project RIO participants were reincarcerated, compared with 38 percent of non-participants.<sup>26</sup>

**The National Experience**

In addition to the Texas data, there is a significant body of national research on the impact of work release programs, including two 2007 studies of work release programs in Washington and Florida. Washington state has a robust work release program, where 11,413 of the 35,475 offenders released from the state's prisons from 1998 to 2003 were

placed in community-based residential work release centers. A 2007 study by the state-run Washington Institute for Public Policy found a 2.8 percent reduction in recidivism among work release participants, after adjusting for all other variables.<sup>27</sup> A cost-benefit analysis included as part of this study found a net benefit of \$1,698 per participant.

**Table 6: Washington State Work Release Program  
Cost-Benefit Analysis**

(1)	<u>Effect Size</u>	
	Unadjusted effect size	-0.040
	Adjusted effect size	-0.020
(2)	<u>Effect on Crime Outcomes</u>	
	Percentage change in crime outcomes	-1.4%
(3)	<u>Benefits</u>	
	Crime victim costs avoided	\$1,161
	Taxpayer costs avoided	\$1,140
	Total crime-related costs avoided	\$2,301
(4)	<u>Costs</u>	
	Total work release cost per program participant	\$603
(5)	<u>Benefit-Cost</u>	
	Benefit-Cost Ratio	\$3.82
	Total benefits minus costs per participant	\$1,698
	Internal Rate of Return on Investment	33%

SOURCE: Washington Institute for Public Policy

Florida is also a leader in work release, operating some 3,000 work release center beds. State prison inmates are evaluated for participation in work release 10 months prior to completion of their sentence. Interestingly, Florida work release centers do not have a program for helping inmates find jobs. Most find jobs through newspaper listings, although some centers have informal arrangements with employers. Almost all offenders find employment within two to four weeks.

While inmates at Florida work release centers can work unsupervised in the community, they are only allowed out of the centers during their scheduled work hours. Inmates cannot sleep late and miss work or leave work early and go out with friends; such behavior could result in a return to prison. Florida work release center staff visits each offender's workplace twice a week to monitor their conduct on the job.

In addition to learning how to hold down a job, work release participants have a safety net upon release. Florida participants, even though most held minimum wage jobs, had saved an average of \$1,000 by their release whereas offenders in Texas and Florida often have only \$50 or \$100 to their name upon the time of release from prison. While there is no study of the financial position of Texas inmates upon release, an Urban Institute report found Maryland prison inmates median savings upon release were \$40.<sup>28</sup>

A 2007 study found that the Florida work release program has had significantly positive effects on employment rates, earnings, and recidivism.<sup>29</sup> Selection bias was limited in this study because Florida prison administrators did not choose the inmates most likely to benefit from work release, but those chosen over the many others on the waiting list were selected based on the capacity pressure and the need for that applicant's labor at his prison unit.

Comparing Florida work release program participants with other minimum security inmates, work release participation increases the probability of employment by 11 percentage points in the first year and 6 percentage points in the next two years.<sup>30</sup> Work release participation was also found to increase earnings by 30 to 50 percent.<sup>31</sup> Finally, the study showed the Florida work release program cut recidivism, achieving a 6 percentage point reduction in recidivism in the first year, a 7 percentage point reduction by year two, and an 8 percentage point reduction by year three.<sup>32</sup>

Similarly, an audit of Georgia's work release program found that those released from transitional (work release) centers had a 25.2 percent rate of committing another crime over 36 months compared with a 35.2 rate for those released directly from prison.<sup>33</sup> While offenders being released from a work release facility were found to have a higher rate of revocation for technical violations of parole, that is likely due to the fact that 59 percent of participants were parolees who did not have a suitable home plan or employment. To the extent a greater percentage of the control group was not on parole at all, they would not have had the opportunity to be revoked for technical violations.

The Kansas Department of Corrections reports that 72 percent of work release participants successfully complete the program and that the recidivism rate is 12 percent less for work release participants versus non-participants.<sup>34</sup> The

Wichita Work Release Facility holds 250 men who leave the premises during the day to perform jobs, the proceeds of which pay for their room and board, transportation, restitution, and dependent support.<sup>35</sup>

In addition to positive effects on recidivism and employment rate, there is also evidence that work release may be more of a deterrent to criminal behavior than prison. An Oklahoma survey of offenders found that at least 24 percent were completely unwilling to participate in work release (referred to as a "day fine") as an alternative to incarceration in a medium security prison.<sup>36</sup> Of those who were willing to participate, males were only willing to do 137 days of work release in exchange for avoiding a year in prison. Females were willing to trade 141 days for a year in prison. More than 72 percent of offenders said that a somewhat to very important reason for this is that "serving time in prison is easier than the alternatives."

## RECOMMENDATIONS

### *Combine Work Release and Electronic Monitoring*

One of the primary shortcomings of work release programs has been the rate of absconding. In addition to the 26 percent rate at Texas restitution centers, the high rate of absconding was cited as a major reason why Texas discontinued community-based, pre-parole facilities with work release. Absenteeism also remains a major weakness of Washington state's successful work release program. The problem of absconders is not unique to work release, but impacts the entire probation system, as the average annual rate of absconding among the 450,000 Texas probationers is 18 percent.<sup>37</sup> Fortunately, electronic monitoring techniques have improved in recent years. In fact, GPS monitoring in Florida has reduced the rate of absconding among participating offenders to a minuscule 0.3 percent.<sup>38</sup>

Electronic monitoring can verify that the offender is at the site of employment, and with active monitoring, it can do so in real-time. Moreover, it is used to pick up probationers who do not show up for an appointment and pretrial defendants who skip out on a hearing.

The most advanced form of monitoring can also confirm whether the offender was at the location of a reported crime. This crime scene correlation feature, which is currently used in California and other jurisdictions, allows law enforce-



**Table 7: Reasons Why Washington State Work Release Participants Fail: 20 Percent Don't Show Up<sup>39</sup>**

Reason for Return	Percent of 290 Offenders
<b>Law Violation</b>	3.6
Forgery	0.7
Theft	1.4
Other, unspecified	1.5
<b>Medical Condition</b>	3.6
<b>Drug Possession</b>	34.9
<b>Program Rule Violation</b>	57.8
Alcohol possession	12.2
Escape/curfew	20.1
Fighting	3.2
Failure to work	4.3
Failure to report income	2.5
Miscellaneous	15.5

ment and probation and parole departments to immediately see whether any monitored probationer and parolee was at a crime scene. This puts probationers and parolees on notice that there is little chance that any offense they commit will go unsolved and, at the same time, prevents those probationers and parolees who were not responsible for a reported crime from being questioned. Parolees, in particular, often complain that they are the first to be questioned, sometimes in embarrassing fashion at work, for crimes they did not commit. Although work release in Texas would target non-violent offenders, it is noteworthy that in December 2007 the Los Angeles Police Department successfully used GPS with crime scene correlation to nab a parolee gang member fleeing a slaying.<sup>40</sup>

The Brazos County work release house arrest program utilizes electronic monitoring—the cost of which is borne by offenders—using radio frequency. This passive form of monitoring only allows for real-time verification that the offender is at home when he should be. If the offender is not home, the ankle bracelet records the offender's location and downloads the location at the end of the day when the offender returns home. Brazos County reports that 361 of the 484 offenders, or 75 percent, have complied with work release. Sheriff Kirk believes a more effective means of employment verification is needed.

Texas is behind most other states in utilization of electronic monitoring, particularly active GPS. At the state level, about 1,900 parolees are on radio frequency monitors, but only 21 are on active GPS.<sup>41</sup> In other states, monitoring has proven effective. In Salt Lake County, Utah, for example, the Sheriff's electronic detention program diverts more than 100 inmates from the county jail. A study concluded that repeated bookings among participants “dropped from an average of 10.3 in the year prior to program participation to 3.1 in the year after program completion” and produced savings to taxpayers of 33 percent.<sup>42</sup> A Virginia study found that “the longer an individual served on electronic monitoring, the smaller the likelihood of rearrest and the longer the time until rearrest.”<sup>43</sup>

**Table 8: 2003-2004 Results of Citrus County, Florida, Pretrial Active GPS Program with Crime Scene Correlation<sup>44</sup>**

<b>Total Offenders Participating</b>	120
<b>Total Completing Program</b>	91
<b>Total Rearrested, Technical/Curfew Violations</b>	8
<b>Total Rearrested, New Law Violations</b>	9
<b>Total Tracked Days</b>	3,516
<b>Average Tracked Days Per Offender</b>	29

In 2004, Oklahoma began a GPS work release program that has proven highly effective. Some 1,188 inmates have been enrolled and 90 percent have successfully completed the program, resulting in discharge or parole.<sup>45</sup> Of the 10 percent who fail, only 20 percent of the failures are for new offenses. The Oklahoma Department of Corrections reports savings of \$32.50 per day per offender for a total savings of \$2.32 million just from January to June 2006. These savings exclude offender fees, of which \$153,180 has been collected at a 90 percent collection rate. Offenders pay the \$150 monthly cost of the equipment and must be employed and comply with the treatment program specified by the supervising officer. The Oklahoma program includes the following eligibility conditions:

- Must have been incarcerated at least 180 days;
- Must be work release eligible and assigned to an accredited halfway house, community work center, or community corrections center;

- Must have less than one year remaining on their sentence;
- Cannot have any violent offenses within the last 10 years;
- Cannot have been convicted of a drug trafficking offense;
- Cannot have been denied parole within the last 12 months;
- Drunk driving offenders must be receptive to treatment;
- Cannot have been removed from another alternative to incarceration program;
- Cannot have been convicted of any violations of the Domestic Abuse Act;
- Cannot have any active protective orders;
- Cannot have any active felony or misdemeanor warrants;
- Cannot have any current sex offenses that require sex offender registration;
- Cannot have been convicted of racketeering;
- Cannot have been convicted of assault and battery on a law enforcement official;
- Cannot have any escapes within the last 10 years; and
- Cannot have any current disciplinary violations.

The Oklahoma program uses passive GPS. It is important to note that the equipment cost of \$150 a month or \$5 a day is only sufficient to cover the cost of a passive GPS system. An ideal work release program should include both active and passive systems which would be allocated by program staff among participating offenders based on their risk level. Given that active GPS is approximately \$10 a day and many offenders have few resources, particularly at the outset of a work release program, some subsidization of the device cost is likely necessary. Even with that, savings to taxpayers can be substantial. Milwaukee County is considering replacing its 350-bed work release center with electronic monitoring of these offenders, which it estimates would save \$12 million in renovation costs and \$2.5 million in annual costs, even including the cost of purchasing and operating the GPS equipment.<sup>46</sup>

### ***Include Employment Rate in Performance-Based Probation Funding System***

In 2007, the Legislature passed HB 3200, a performance-based probation funding plan that was vetoed by Governor Perry.<sup>47</sup> The bill would have tied part of state funding of probation departments to technical revocations and early

terminations, discouraging the former while encouraging the latter. One impetus for the bill was candid testimony from probation leaders that they sometimes kept probationers on the rolls longer than necessary for public safety because they needed their fees to fund their department—the fees cover 40 percent of probation departments' budgets.

The approach of HB 3200 could be improved by including additional outcome measures, such as the rate of new crimes committed, particularly violent crimes; the employment rate of probationers; and the percent of restitution collected. While the cost of revocations and longer probation terms are the easiest to quantify, probation departments that are successful in enhancing levels of workforce participation relieve costs to the social service system, such as free emergency room health care and welfare payments that are more likely to be collected by dependants if the probationer fails to pay child support. If the probationer is employed, child support will be garnished. Making employment rate a performance measure that is linked to state funding of probation departments will encourage these departments to develop initiatives, such as employer partnerships, that increase workforce participation.

### ***Utilize Work Release to Relieve County Jail Overcrowding***

Many Texas county jails are at their breaking point. Last year, Harris County voters rejected a \$245 million bond measure to build a new county jail, suggesting they want local officials to explore alternatives. Pretrial defendants account for 48.3 percent of Texas county jail inmates.<sup>48</sup> One way county jails can use work release to control populations is to accelerate the pretrial release of those who are already employed and who have been charged with a nonviolent offense. Keeping such offenders in jail pending trial likely causes them to lose their job, increasing the odds of recidivism while reducing the prospects for restitution collection. Many large Texas counties have a rapid processing system in place where pretrial services personnel and a magistrate screen applicants to identify those that can safely be released on personal bond, which is nominal, or a reasonable bond secured through a private bonding agency. Harris County, for example, often conducts this process the night the arrested individual is booked. Because private bail bondsmen lose money if more than one out of every 17 pretrial offenders absconds, the process is highly effective. As *The New York Times* noted, a major bail bondsmen in Florida has less than a 1 percent failure rate.<sup>49</sup>

A major priority for the Sheriffs' Association of Texas has been reducing what they view as the unfunded mandate associated with incarcerating blue warrant inmates—parolees arrested in their county for a new offense or technical violations. These parolees sometimes stay in county jails for several months while the Board of Pardons and Paroles determines whether to revoke. Bexar County alone estimates that incarcerating blue warrant parolees costs them \$5 million per year.<sup>50</sup>

In 2007, the Legislature passed and the Governor vetoed HB 541, which would have given judges the discretion to release on bond blue warrant parolees arrested for technical violations or a new misdemeanor offense other than drunk driving and domestic violence. To better protect public safety, this proposal could be revised to apply only to those parolees who do not have a violent offense on their records and who are currently employed. Policymakers should also consider whether other new misdemeanors should be excluded or whether, alternatively, the option for release should apply only to technical violators. Finally, this would also be an ideal circumstance to utilize electronic monitoring to ensure the parolee does not abscond prior to their revocation hearing and verify continued employment that is a condition of release.

### ***Explore State Jail Work Release Pilot Program***

For several reasons, state jails and state jail felons are the *best* suited for work release among TDCJ's inmates and facilities. First, state jail felons are the least serious felony offenders—they are nonviolent drug and property offenders. In the drug category, they include only those convicted of possessing, not dealing, less than a gram of a controlled substance. State jail property offenders have committed crimes such as hot check writing and shoplifting rather than home burglary, which is at least a third degree felony. Second, the state jails themselves tend to be closer to major urban areas, such as the Dawson State Jail in downtown Dallas, the Kegans State Jail in downtown Houston, the Dominguez State Jail in south San Antonio, and the Travis State Jail in southeast Austin. Also, since state jail felons are in prison for no more than two years, and an average of about 1.4 years, they tend to have less experience as trustys and are therefore less likely to be in the most critical trusty jobs that are vital to penitentiary operations.

Finally, and perhaps most importantly, state jail felons have a definite date of release whereas higher degree felons do

not. That's one reason the non-profit Prison Entrepreneurship Program, which utilizes volunteer corporate executives to train inmates awaiting release in business skills and then helps them find and succeed in employment upon release, operates out of the Hamilton State Jail in Bryan. The remarkable program has achieved a recidivism rate over several years of less than 3 percent and an employment rate of 93 percent.<sup>51</sup> In contrast to state jails, pre-parole facilities would be less suitable for a transitional work program for two reasons. First, the two pre-parole transfer facilities in Mineral Wells and Bridgeport are not near major employers. Second, placement in a pre-parole facility, despite the name, is not highly correlated with actual release, as many inmates remain there for years before actually being paroled.

A work release program for state jail felons would be best targeted at those who are within six months of release. The program could require that, in exchange for work release participation, the offender voluntarily agree to be on parole for a year following release, a potential public safety benefit that could outweigh any increased risk from work release. Currently, there is no parole system for state jail felons so they are simply released with \$50, meaning that there is no supervision and little data on their subsequent success or failure.

Such a program could be structured in several different ways and possibly utilize different approaches for different offender types. It could involve daily transportation to and from the state jail to a job or full release with GPS monitoring. Another approach would be for the state to offer to pay the offender's county of origin to place that offender in the county jail with work release or on an electronic monitoring work release program. To the extent counties would be willing to participate, partnering with counties offers the advantage of ensuring that offenders are placed in jobs in the same area in which they will be released so that they can continue the same employment upon completion of their sentence. However, this could also be achieved by targeting the work release program at the urban state jails to eligible state jail offenders at those jails who were sentenced in that metropolitan area.

### ***Allow Offenders Approved for Parole to be Released Without a Home Plan if They Have a Job***

Currently, inmates approved for parole must have a home plan in order to be released and can wait in prison for six

months or more after being paroled if they do not. While MacKenzie praises TDCJ's Parole Division for being very cooperative in transferring parole of inmates in his program to the city where they have been placed with an employer, often there are inmates with a job waiting who have been granted parole but have not been released because they do not have an approved home plan. If an employer or placement agency pledges that they will employ that parolee or be able to place them in a job and the parolee agrees to it, the parolee should be released even if he does not have a suitable home plan. With gainful employment, the parolee could live in an extended stay motel on a temporary basis while accumulating the savings needed to find more permanent housing. The employers and placement agencies involved can be audited to confirm that they are not vouching to employ individuals and then failing to do so.

### ***Enhance Ability of Inmates to Find Employment***

In 2007, the Legislature approved, and the Governor signed into law, HB 1888 that will allow inmates to make phone calls using a new, monitored telephone system that will be installed at no cost to taxpayers by a private vendor. Prior to this legislation, inmates could only talk for five minutes every three months. Inmates will pay for the calls from the 4,000 new phones out of their own accounts. The Legislative Budget Board projects that the phones will raise \$25 to \$30 million for the state, with the first \$10 million being dedicated to the Crime Victims' Compensation Fund, which had been approaching insolvency.<sup>52</sup> Inmates must obtain pre-approval for recipients of their calls, and TDCJ should allow legitimate recruiters and employers who hire ex-offenders to be among those authorized to receive inmate calls.

The same high speed phone lines that will be installed for the phone system could also support computer work stations that could be used by inmates for the sole purpose of applying for work to employers have indicated they are willing to hire inmates upon release. Once again, because the terminals would be furnished by the private sector, there would be no cost to taxpayers and correspondence would be monitored to ensure security. While not every employer is interested in receiving resumes from prison, there is significant demand. MacKenzie says he currently has commitments from employers in Lubbock alone for 350 additional former inmates as workers this year and Roadway Specialties in Austin, which installs guardrails on Texas highways,

is ready to hire another 20 former inmates, and says this has proven to be their only reliable pool of laborers.<sup>53</sup>

### ***Streamline Procedural and Zoning Rules that Limit Community-Based Correctional Facilities with Work Release and Explore Use of Existing State Property for Transitional Housing***

Local zoning rules are a major barrier to reentry programs of all types. The Texas Supreme Court is currently considering a case in which the City of Sinton banned parolees from living within 1,000 feet of a church, which caused the church to close its rehabilitation program.<sup>54</sup> The church, working with the Liberty Legal Institute, challenged the restriction on freedom of religion grounds. Additionally, the Houston City Council is currently considering ordinances that would restrict the number of parolees that can live in apartment complexes. BoDart plans to open residential programs like the one in Lubbock in other secondary markets like Midland and Beaumont that are experiencing similar labor shortages. Overly burdensome local zoning rules could frustrate their efforts.

Also, provisions in the Texas Government Code require that group housing facilities receiving state funds hold a public hearing and place large notices in the newspaper advertising such hearings. Government Code Sections 508.118 and 508.119 spell out the procedural requirements for halfway houses and community residential facilities (CCFs, and TTCs) respectively. They also apply the provisions of Government Code Section 509.010, which mandates that the newspaper notices must be at least "3-1/2 inches by 5 inches" and be printed on three consecutive days. The ad space for such notices can cost \$15,000. The notices and hearing must occur prior to submitting a bid in response to a request for proposal issued by TDCJ for halfway houses or TTCs, which effectively excludes many potential contractors who cannot commit the upfront resources to obtain both the property and local government approval. The Government Code provides that either the City Council, if the proposed facility is within the City, or the County Commissioners Court, if it is in an unincorporated area, can veto it following the hearing.

As a result, when TDCJ issued an RFP for halfway houses after receiving funding in the 80th Legislature for 300 additional beds, the only application came from El Paso. The 200 beds placed there are actually at a converted jail-like fa-

cility. Remarkably, San Antonio has no halfway house beds, which results in parolees originally from San Antonio that are placed in TDCJ-contracted halfway houses being sent to other counties—in some sense rewarding Bexar County and shifting the reentry burdens to other counties with less stringent policies. Several recent notices of public hearings for halfway houses in San Antonio were canceled after various elected officials expressed opposition. It remains to be seen whether there will be any bids for the current, re-issued RFP from TDCJ for TTC beds. Key legislative staff are concerned that the Government Code provisions present one of the major obstacles to attracting more bidders with plans for transitional facilities in the counties from which the most offenders originate and often have family and other support networks that increase the odds of successful community reintegration.

HB 3654 sponsored by Rep. Debbie Riddle (R-Tomball) in the 80th Legislature would have addressed this problem by requiring counties that do not maintain halfway houses, CCFs, or TTCs to pay their share of the cost of placement by TDCJ of parolees in such facilities in other counties. The bill would have only held the county liable if, in the 24-month period preceding the offender's placement, TDCJ proposed a TTC, CCF, or halfway house in the county under Section 508.120 of the Government Code and operation of the facility was blocked following the required hearing. HB3654 was postponed on the House floor due to feasibility concerns. For example, counties might be forced to pay because the City Council over which they have no control blocked a halfway house or residential facility. It was also unclear how much penalized counties should pay since the state currently bears the entire cost of placement in TDCJ-contracted CCFs, TTCs, and halfway houses.

In addition to reconsidering and possibly reworking HB 3654, policymakers should examine reducing the newspaper advertising requirements in Section 509.010 and specifying certain factual findings that must be made regarding a threat to public safety before local governments can exercise their veto power.

Additionally, at the request of Senate Criminal Justice Chairman John Whitmire, TDCJ is studying whether transitional housing already funded by the Legislature could be placed on extra land surrounding some of their lockups in major urban areas.<sup>55</sup> More broadly, the General Land Office is charged

under Chapter 31, Subchapter E of the Natural Resources Code with conducting an annual study to identify unused and underutilized state properties and recommending more efficient uses, which are automatically implemented within 90 days unless the Governor objects. Although the 2007 study proposes better uses for extra land at 23 state properties, including two of TDCJ's prisons in rural areas, it does not recommend any TDCJ or other state agency land be used for halfway houses or TTCs.<sup>56</sup> The Legislature could add that the GLO should seek to identify such locations that based on criteria—like being in large cities and in industrial areas—are suitable for transitional housing.

The expeditious roll-out of the new TTC beds is important in avoiding a backlog at SAFPFs where inmates stay longer than the six months while waiting for a TTC bed. The waiting list for SAFPF beds is gradually clearing out as newly funded SAFPF beds come online and growing availability of SAFPFs as diversionary placements is a central element of the January 2008 LBB's projection that no new prisons will be needed.

### *Loosen Facility Mandates on TTCs*

In a reversal of prior policy, TTCs currently must meet the facility standards established by the Department of State Health Services (DSHS) for drug treatment centers whose populations are partly or entirely non-criminal justice clients. DSHS requirements relating to physical space are more onerous than the similar rules that TDCJ had in place with regard to square footage of bedrooms, number of toilets, and similar infrastructure items. All told, the DSHS rules substantially increase the cost of TTCs and reduce, and potentially eliminate, the pool of companies willing to bid to operate one at the \$30 to \$35 daily rate that TDCJ customarily pays. While TTCs would continue to meet DSHS standards for treatment programs, given that they serve entirely parolees and that TDCJ's per diems are far lower than those of DSHS for non-criminal justice clients receiving inpatient drug treatment, the physical facility standards in their contracts with TDCJ should supersede DSHS rules.

### *Align Prison Vocational Programs with Workforce Demands*

Some inmates come to prison with marketable skills like Jose Villarreal, a 34 year-old with two children to support who was a welder-fabricator before going to prison for three years on a drug possession charge and being recruited by BoDart.<sup>57</sup> Many other inmates, even if they did not enter

prison with job skills, obtain them while there. Through Windham ISD, TDCJ's inmate education system, Texas prisoners earned 5,774 vocational certificates and 2,802 industry certificates in 2005.<sup>58</sup> Many TDCJ/Project RIO vocational programs in prison impart skills that are useful on the outside. One of the best is welding. BoDart is currently placing former inmates in welding jobs paying \$1,000 a week, and unlike other skilled fields where ex-offenders encounter barriers in obtaining a license, there is no licensing of welders. However, other in-prison vocational programs in areas such as horticulture and business computing are less useful. MacKenzie says almost all inmates he has placed go into fields such as construction, truck driving, machinery, and welding and very few go into office jobs. While Project RIO has made progress in aligning prison vocational jobs to available workforce jobs, they need to be more specifically aligned to those currently available jobs that ex-inmates can realistically obtain given their educational level, policies of different industries on hiring applicants with criminal backgrounds, and licensing barriers.

#### **Add New PIE Sites**

The PIE program has proven its worth at the five state lockups where it is in operation. Since it involves a private company setting up shop on the site, there is no cost to taxpayers, but there are clear benefits associated with inmates learning a marketable skill and paying restitution and child support. The primary challenge in increasing the number of PIE sites is attracting companies that are interested in locating a manufacturing plant or other facility next to a Texas prison, most of which are remotely located. A less significant barrier is that some prisons may have insufficient

unused land. While TDCJ has its own farming operations, the rise in commodity prices could make a PIE agricultural program viable. Five Idaho potato packers employ inmates and in 2007 Colorado responded to shortage of agricultural workers, resulting partly from crackdowns on illegal immigrants, by implementing a pilot program where prison inmates work on private farms. Participating farm operations have indicated that the inmate workers are performing diligently.<sup>59</sup>

#### **CONCLUSION**

The central challenge of any work release program is to mobilize more offenders in helping pull the wagon while ensuring that, at the same time, they don't endanger those on board. Although there will always be some risk of that, effective probation or parole supervision combined with recent advancements in electronic monitoring can minimize that risk. In a well designed program that carefully screens participants, recidivism reductions associated with higher employment rates can potentially more than offset new crimes committed while offenders are on work release. Thus, taxpayers save on prison operation and construction costs and benefit from the restitution, child support, and taxes paid by individuals who would otherwise be behind bars, without any net increase in crime. While work release is not appropriate for the most dangerous offenders who would otherwise be incarcerated at all times, it is a correctional tool that has worked well enough to merit wider utilization in Texas at both the state and local level. ★

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## About the Author

**Marc A. Levin, Esq.,** is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an Austin attorney and an accomplished author on legal and public policy issues.

Levin has served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court.

In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law.

Levin's articles on law and public policy have been featured in publications such as *The Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News* and *Reason Magazine*.

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