



Testimony

Invited Written Testimony: Interim Charges Relating to State Jails, Technology in the Criminal Justice System, and Offender Reentry

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STATE JAILS

- **Restore state jails to original purpose and regionalize urban state jails.** State jails were created in the early 1990s to house the lowest level, nonviolent state offenders, including those convicted for possessing less than a gram of controlled substances and shoplifting. Now, just as many inmates at state jails are not state jail felons, but more serious offenders placed there due to capacity pressures. To separate nonviolent and violent offenders, some rural state jails should be repurposed as prisons. To facilitate reentry, the state jails in Dallas, Houston, San Antonio, and Austin should be dedicated to state jail felony offenders from those cities.
- **Promote balanced utilization of state jails for low-level drug possession offenders through flexible and performance-based funding approaches.** State jail utilization is disproportionate across the state. For example, Harris County accounts for more than half of state jail felony confinees convicted for less than a gram of a controlled substance but only 17 percent of the state's population and 12 percent of all drug possession cases. This could be addressed in two ways. First, each county could be given an appropriation based on the number of offenders convicted of less than a gram of drugs with no prior property or violent felonies, which could be used for intensive probation, county jail, work camps, intermediate sanctions or community corrections facilities, or to "purchase" a slot at a state jail. This would promote competing sentencing alternatives and remove the fiscal incentive to dump offenders in state jails who do not endanger the public. Alternatively, the probation funding formula could include a weight giving a greater share of funding to probation departments in counties that initially sentence these low level drug possession offenders to probation and agree to use intermediate sanctions facilities, community corrections facilities, and/or days or weeks of shock confinement in county jail prior to technically revoking such offenders to state jails.
- **Create earned parole option for selected state jail confinees.** Unlike all other inmates, state jail felons do not earn good time and there is no parole. This creates no incentive for good behavior, exacerbating management challenges faced by state jail staff. Similarly, without the possibility of parole, inmates may be less motivated to participate in treatment, work, and education programs. However, it is impractical to evaluate state jail offenders through the lengthy parole process, given that they serve no more than 2 years and an average of 1.3 years. A more workable approach would permit state jail offenders with no convictions other than drug possession, who have already served at least six months with good behavior; pursued work, treatment, and educational opportunities behind bars; and are not identified gang members, to convert up to six months of their remaining sentence to a year on parole that includes compliance with conditions such as a work requirement, drug testing, and electronic monitoring imposed by the Parole Board. This would relieve crowding and the parole supervision may reduce recidivism. Such a proposal could affect about 648 state jail confinees, resulting in net operational savings of approximately \$4 million dollars and avoiding up to \$40 million in possible prison construction costs.
- **Review placement of youths in state jails.** As of earlier this year, there were 25 youths ages 14 to 17 at state jails.¹ Under TDCJ policy, they are not eligible for placement in the Youthful Offender Program (YOP), which is at Clements for males and Hilltop for females. Their offenses may be significantly less severe than youths in the YOP and the capacity of the YOP was recently scaled back. Youths currently in state

jails could be redirected to the Texas Youth Commission or the state could re-direct funds currently spent on state jail incarceration to pay counties to place them in postadjudication facilities.

TECHNOLOGY IN CRIMINAL JUSTICE

- **Expand use of electronic monitoring.** Electronic monitoring can deter criminal activity because an offender knows he is more likely to be caught, which in turn reduces harm to victims and corrections costs. Also, some 18 percent of Texas probationers abscond, undermining public safety and the confidence of prosecutors and judges in the probation system.² A Florida study of 75,000 offenders found that electronic monitoring almost completely eliminated absconding.³ Also, monitored offenders were 89 to 95 percent less likely to be revoked for a new offense. It complements Texas' new focus on treatment and work programs, because the monitoring ensures that the offender is actually complying and, thus, justice is being served. Offenders should, to the greatest degree possible, pay the cost of their own monitoring, though to the extent monitoring enables some offenders to be safely supervised in the community who might otherwise need to be incarcerated, it can produce significant savings even for those offenders who are unable to fully fund their own monitoring.
- **Utilize active GPS for high-risk offenders.** Active GPS offers the most intensive supervision, as an offender's location is instantly reported. Yet, only 30 of the very highest-risk Texas parolees are currently on active GPS, whereas Florida has more than 700 offenders on active GPS.⁴ The Florida study concluded: "Based on the surveillance value, active GPS is best suited for the high-risk habitual and sex offenders. Radio frequency may be appropriate for the lower risk community control offenders as a means to enforce a house arrest curfew."
- **Examine benefits of one-piece GPS with crime scene correlation.** A study by the University of California at Irvine Center for Evidence-Based Corrections found that a one-piece active system avoids one of the main sources of false alarms—an offender being too far away from the modem box—because the cellular device is part of the anklet itself. It noted: "Parole agents and staff consistently raised the possibility that a parolee monitored with a two-piece unit could leave his home without the tracking unit, assert that he had forgotten it, and commit a crime before he returned
- to collect the tracking unit. They felt more confident with a one-piece unit....⁵ Also utilized as part of California's state-wide active GPS program, crime scene correlation enables law enforcement to see every morning whether any offender on GPS was at the location of a reported crime. Not only does this facilitate the solving of crimes committed by monitored probationers and parolees, it also excludes those not in the area from being questioned unnecessarily, which often occurs at work and creates disruption and embarrassment. Crime scene correlation coupled with active GPS monitoring of paroled gang members enabled California police to nab a fleeing murderer and a robber on the run.⁶
- **Reform probation funding formula to encourage greater use of electronic monitoring.** By tying probation funding to the percent of nonviolent offenders receiving probation and their risk level, probation departments would have a greater incentive and the necessary resources to implement electronic monitoring. Offenders should be required to contribute all they can to cover monitoring, but many lack the resources to cover the full cost, particularly of active GPS.
- **Create electronic monitoring funding stream that is linked to the parole rate.** Provide a pool of funding to TDCJ's Parole Division for electronic monitoring that varies with the parole rate. This will ensure that the funding is self-regulating—as more inmates are paroled, thereby saving the state incarceration costs, the available funds for monitoring would increase. The Parole Board should receive regular reports on the monitoring funds available and how many parolees on various types of monitoring that can support.
- **Clarify that sheriffs' departments can contract with a private provider to run an electronic monitoring program for pre-trial defendants not on probation.** In June, the McLennan County District Attorney requested an AG's opinion on this question.⁷
- **Expand use of the ignition interlock and explore use of SCRAM for high-risk parolees.** A 2007 report to Congress found that interlock use cuts a driver's DWI recidivism by 65 percent, but that only 10 percent of the nation's approximately 1 million convicted drunk drivers are using the interlock.⁸ In Texas, there are 16,000 interlock devices in use, but there were some 129,474 DWI/DUI cases in the 2006-07 fiscal year that did not result in an acquittal or dismissal. Texas should require the interlock for first-time DWI offenders with a prior felony or two prior misdemeanors in the past

10 years, as they are three times more likely to commit another DWI.⁹ While the ignition interlock works well to keep alcohol offenders from driving, Secure Continuous Remote Alcohol Monitoring (SCRAM), an alcohol-monitoring device worn on the ankle that detects alcohol in the offender's perspiration, is particularly useful for offenders whose alcohol abuse is associated with other criminal activity besides drunk driving. Some Texas district courts and probation departments are using SCRAM, including Dallas and Tarrant counties, and the Parole Division is currently exploring it.

- Utilize new inmate phone system and its bandwidth to connect inmates with housing and jobs upon release.** Under the system being implemented pursuant to HB 1888 enacted last session, inmates will pay for the calls from the 4,000 new phones out of their own accounts. The LBB projects the phones will raise \$25 to \$30 million for the state, with the first \$10 million dedicated to the Crime Victims' Compensation Fund. TDCJ will approve a list of callers for each inmate to ensure security. However, this list should not be limited to family members. Inmates who have been approved for release or are being considered for parole, and who do not have any disciplinary violations, should be permitted to make calls to arrange employment and housing at times determined to be appropriate by the warden. Traditionally, there are 400 to 500 inmates granted parole but still incarcerated because they lack an acceptable home plan. The ability to make phone inquiries will enable more paroled offenders to establish an address, which in turn will help control prison capacity. The same high speed phone lines installed for this system could also support computers used by inmates awaiting release solely to apply for work to employers who have signed up to hire ex-convicts. 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 certainly not every employer is interested in receiving resumes from prison, there is significant demand. BoDart Recruiters has commitments from employers in Lubbock alone to hire 350 additional outgoing inmates.¹⁰

REENTRY

- Allow nonviolent ex-offenders to obtain provisional licenses for most occupations.** One study found that nearly 88 percent of the 624 probationers who were employed both at the start and at the end of their supervision successfully completed their supervision while less than 37
- percent of those unemployed at both stages did so.¹¹ Moreover, a 2006 longitudinal study concluded: "After approximately 7 years there is little to no distinguishable difference in risk of future offending between those with an old criminal record and those without a criminal record."¹² Also, nearly all re-offending has the same impact regardless of whether the person is licensed. Ex-offenders can be excluded from almost every occupation either under Chapter 53 of the Occupations Code or under specific statutes governing the occupation, such as those that apply to the Private Security Board (PSB). Many agencies have defined nearly all crimes as "directly related" under Chapter 53. A drug possession offense, even a misdemeanor, is considered directly related to being a water well driller and an embalmer. Any felony prevents a person from being a vehicle inspector. In 2006 alone, the PSB "cited an unacceptable criminal history to summarily deny nearly 10,000 applicants the opportunity to work in one of the 16 professions it regulates," including locksmiths and guard dog trainers.¹³ These denials often involved minor, unrelated misdemeanors committed decades ago. Clearly, a sex offender should not be a licensed day care worker and someone who committed insurance fraud shouldn't be licensed to sell insurance. A provisional or probationary license incorporating such exceptions would rightly provide a second chance for ex-offenders to earn a living while enabling the agency to summarily revoke their license if they violate any occupational rule or the terms of their probation or parole. This also provides a positive incentive for success on probation or parole. SB 1750 passed unanimously by the Senate in the 80th session would have authorized such provisional licenses for nonviolent ex-offenders in most occupations.
- Limit employers' civil liability for hiring nonviolent ex-offenders.** Employers lose 72 percent of negligent hiring cases with an average settlement of more than \$1.6 million.¹⁴ An Urban Institute analysis concluded, "The high probability of losing coupled with the magnitude of settlement awards suggest that fear or litigation may substantially deter employers from hiring applicants with criminal history records."¹⁵ HB 2537 last session would have immunized employers from liability simply based on hiring nonviolent ex-offenders except for sex offenders in jobs involving children or home visits and employees who manage funds as a fiduciary with convictions related to misappropriation of funds. At the least, punitive damages should be disallowed in such negligent hiring suits, since there is a strong public policy interest in promoting the employment of ex-offenders.

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- **Increase use of work release.** Work release in Texas occurs at 16 community corrections facilities and at transitional treatment centers. However, other states have implemented it more widely with positive results. Washington State’s work release program enrolled 11,413 of the 35,475 offenders released from the state’s prisons from 1998 to 2003. A 2007 cost-benefit analysis by the state-run Washington Institute for Public Policy found a net benefit of \$1,698 per participant.¹⁶ Florida is also a leader in work release, operating some 3,000 work release center beds. Of the existing TDCJ facilities, the urban state jails would be best suited for work release, particularly if they are reoriented to primarily serve state jail felons from that city.
- **Streamline rules for placement of group homes and halfway houses.** A cumbersome and expensive local approval process that is set forth in Local Government Code Chapter 244 and Government Code Sections 508.119 and 509.010, including purchasing large ads in daily newspapers on three consecutive days. Ultimately, the city council or county commissioners court can veto the facility even if meets all the criteria and there is no evidence of a negative impact. Many non-profit operators have given up, which partly explains why 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 where beds are at a converted jail. While the law should continue to allow for neighborhood input, some communities like Bexar County have blocked all such facilities for years, which has shifted hundreds of their parolees to Travis County. The perverse incentive to obstruct these facilities and dump parolees on other counties must be ended.
- **Identify underutilized state-owned sites, including prison and state jail properties, where transitional housing and work camps can be placed to accommodate inmates approved for parole who lack a**

Washington State Work Release Program Cost-Benefit Analysis

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

home plan. The General Land Office conducts an annual review identifying underutilized state properties and recommending transactions to enhance the productivity of these properties for taxpayers.¹⁷ As part of this review, the Land Office should be charged with identifying unused land at such sites that is suitable for reentry facilities.

- **Change parole policy to allow inmate to be released who has a job but no suitable home plan.** An inmate who has a verifiable job lined up could stay in an extended stay hotel until he saves up sufficient funding to obtain permanent housing. ★

ENDNOTES

- ¹ Terry Shuster, "Meeting the special needs of TDCJ's youthful offenders," LBJ School of Public Affairs seminar paper (27 Apr. 2008) citing statistics gathered from TDCJ Executive Services, 2008.
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- ³ William D. Bales, et. al., "Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring," *Criminology and Public Policy* 5.1 (2006) 61-69.
- ⁴ "Electronic Monitoring Should Be Better Targeted to the Most Dangerous Offenders," Office of Program Policy Analysis and Government Accountability, State of Florida (Apr. 2005) <http://www.calcasapublicpolicy.org/wp-content/uploads/2007/11/floridas-electronic-monitoring.pdf>.
- ⁵ Jesse Jannetta, et. al., "Report on the Results of the CDCR Two-Piece GPS System Field Test," University of California at Irvine Center for Evidence-Based Corrections (31 Oct. 2007) <http://ucicorrections.seweb.uci.edu/files/ReportontheResultsoftheCDCRTwo-PieceGPSsystemFieldTest.pdf>.
- ⁶ Andrew Blankstein and Richard Winton, "Police say GPS helps crack case in drive-by slaying: A gang member wearing a tracking bracelet is arrested after he is traced after the shooting," *Los Angeles Times* (12 Dec. 2007).
- ⁷ <http://www.oag.state.tx.us/opinions/opinions/50abbott/rq/2008/pdf/RQ0718GA.pdf>.
- ⁸ "Reducing Impaired-Driving Recidivism Using Advanced Vehicle-Based Alcohol Detection Systems: A Report to Congress," National Highway Traffic Safety Administration (12 Dec. 2007) <http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/TrafficInjuryControl/Articles/AssociatedFiles/810876.pdf>.
- ⁹ William Clements, "How Many Come Back? DUI Offender Recidivism in Vermont," *The Vermont Bar Journal* (Mar. 2002) <http://69.39.146.6/Images/Journal/journalarticles/spring2002/Clements.pdf>.
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- ¹² Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, "Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement," <http://www.reentry.net/library.cfm?fa=download&resourceID=81140&print>.
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- ¹⁴ Mary Connerley, Richard Avery, and Charles Bernardy: "Criminal Background Checks for Prospective and Current Employees: Current Practices among Municipal Agencies," *Public Personnel Management* Vol. 20, No. 2.
- ¹⁵ Harry Holzer, Employment Barriers Facing Ex-Offenders, Urban Institute (19 May 2003) http://www.urban.org/UploadedPDF/410855_holzer.pdf.
- ¹⁶ "Does Participation in Washington's Work Release Facilities Reduce Recidivism," Washington State Institute for Public Policy (Nov. 2007) <http://www.wsipp.wa.gov/rptfiles/07-11-1201.pdf>.
- ¹⁷ State Agency Property Recommended Transactions, Report to the Governor (Sept. 2007), http://www.glo.state.tx.us/land/pdfs/gov_report/2007/web%20Govs%20Report.pdf.

About the Author

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