



# PolicyPerspective

## Texas Criminal Justice Reform: Lower Crime, Lower Cost

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In recent years, Texas has strengthened alternatives to incarceration for adults and juveniles, achieving significant reductions in crime while avoiding more than \$2 billion in taxpayer costs that would have been incurred had Texas simply constructed more than 17,000 prison beds that a 2007 projection indicated would be needed. Similarly, juvenile crime has markedly declined at the same time Texas has reduced the number of youths in state institutions by 52.9 percent. By building on these successes in a challenging budget environment, policymakers can continue delivering improved results for public safety and taxpayers.

### Adult Reforms and Results

- In 2003, the Legislature required that all drug possession offenders—not dealers—with less than a gram of drugs be sentenced to probation instead of state jail time.<sup>1</sup> In 2005, probation departments began receiving additional funds with the goal of implementing evidence-based supervision practices and treatment programs to reduce unnecessary revocations to prison both by preventing new offenses and reducing technical revocations. A technical revocation occurs when a probationer violates one or more terms of probation, which may range from missing a meeting to a positive drug test, but is not charged with a new offense. In 2007, lawmakers were faced with a Legislative Budget Board projection that 17,332 new prison beds would be needed by 2012.<sup>2</sup> These beds would have cost \$1.13 billion to build based on a \$65,000 per bed construction cost and another \$1.50 billion to operate over five years based on the \$47.50 per day operating cost in 2008.<sup>3</sup> The budget adopted in 2007 represented a historic shift, as, in lieu of building more prisons, policymakers allocated \$241 million for residential and non-residential treatment-oriented programs for non-violent offenders, along with enhancing in-prison treatment programs.<sup>4</sup> In 2009, the Legislature continued funding for this justice reinvestment initiative, and added new components such as 64 reentry coordinators with the goal of reducing the number of released inmates who return to prison.<sup>5</sup>
- Serious property, violent, and sex crimes per 100,000 Texas residents have declined 12.8 percent since 2003.<sup>6</sup> Such crimes per 100,000 residents fell 7.3 percent from 2005 to 2008.<sup>7</sup> From 2007 to 2008, there was a 5 percent drop in murders, a 4.3 percent drop in robberies, and a 6.8 percent decline in forcible rapes.<sup>8</sup> The number of parolees convicted of a new crime declined 7.6 percent from 2007 to 2008, despite an increase in the number of parolees.<sup>9</sup> The 2008 per capita crime rate in Dallas was at its lowest level in 40 years, declining 10 percent from 2007.<sup>10</sup> It dropped another 10.7 percent through August 31, 2009.<sup>11</sup>
- Among all states, Texas and Massachusetts had the sharpest drop in their incarceration rates from 2007 to 2008. Texas' incarceration rate fell 4.5 percent while the average state incarceration rate increased 0.8 percent.<sup>12</sup> Texas with its 154,361 inmates has slipped from the state with the third highest incarceration rate in 2007 behind only Louisiana and Mississippi to the fourth highest rate in 2008, falling slightly behind

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Oklahoma.<sup>13</sup> Moreover, progress has continued in 2009 as Texas' prison population dropped by another 1,563 inmates from December 31, 2008 to November 30, 2009.<sup>14</sup> Compared with 2008, in 2009 direct sentenced commitments to Texas prisons fell 6.0 percent and parole revocations fell 3.6 percent.<sup>15</sup> This drop in parole revocations follows a 27.4 percent decline from 2007 to 2008.<sup>16</sup>

#### Texas Trend: Lower Incarceration Rate & Less Crime

Year	Incarceration Rate Per 100,000 Residents	Serious Crimes Per 100,000 Residents
2004	704	5,038.6
2008	639	4,492.5
% Change	-9.2%	-10.8%

Sources: Bureau of Justice Statistics and Texas Law Enforcement Agency Uniform Crime Reports<sup>17</sup>

offending, including the likelihood of entering the adult prison system. Less restrictive approaches involving victim and community restitution were most effective.<sup>20</sup>

- The TYC population declined 6.8 percent from 2008 to 2009, contributing to a total 52.9 percent drop since 2006.<sup>21</sup> After Senate Bill 103 became effective in June 2007 diverting misdemeanants from TYC, juvenile adjudications declined 10.3 percent from fiscal year 2008 to 2009.<sup>22</sup> Similarly, filings to revoke probation for a new offense or rule violation dropped 6.3 percent from 2008 to 2009.<sup>23</sup> The most recent data on statewide referrals to juvenile probation shows a 4.3 percent drop from 2007 to 2008.<sup>24</sup> In Bexar County (San Antonio), juvenile referrals declined 5.8 percent from 2007 to 2008 and then another 10.0 percent in 2009.<sup>25</sup> In Dallas County, the juvenile felony referral rate has declined 7.8 percent from 2005 to 2008.<sup>26</sup> Also in Dallas County, offenses filed in court fell 16.5 percent from 2007 to 2008 and have been projected to decline another 20.0 percent in 2009 based on data for the first three quarters of the year.<sup>27</sup>

## Juvenile Reforms and Results

- In 2007, Senate Bill 103 precluded misdemeanants from being sent to Texas Youth Commission (TYC) institutions and the adopted budget provided counties with an additional \$57.8 million to handle these youths, about half the cost that would have been incurred had they been sent to TYC.<sup>18</sup> In 2009, lawmakers reduced the TYC budget by \$115 million, primarily by ordering the closure of two remotely located TYC lockups. With part of the savings, policymakers invested \$45.7 million in juvenile probation, providing diversion funding to juvenile probation departments whose judicial oversight boards agree to a reduced target for commitments to TYC. These funds must be used for programs that are proven to reduce re-offending. Most programs are non-residential and focus on treatment, community service, and strengthening the family.
- A 2006 study of 1,500 youths by University of Cincinnati researchers that controlled for offender risk levels found that incarceration *increases* re-offending.<sup>19</sup> An August 2009 study that tracked boys for 20 years found that, for youths who engaged in similar self-reported offenses, incarceration and residential placement increased re-

## Sustaining and Enhancing Texas' Gains for Public Safety and Taxpayers

- Prisons account for 88.1 percent of the 2010-11 budget attributable to adult corrections, including operating and debt service costs.<sup>28</sup> Some \$6.22 billion is being spent on prisons in the current biennium while only \$820 million goes to probation and parole. In the last major budget shortfall in 2003, no prisons were closed. Instead, probation and parole supervision and treatment programs that provide a viable alternative to prison for appropriate offenders and may prevent re-offending were cut 20 percent.<sup>29</sup> In-prison treatment, education, and vocational programs were similarly slashed. Assuming prison costs remain the same (not counting possible increases in salaries which are by far the largest item as well as food and energy), a 2.5 percent annual cut in the corrections budget would translate into a 42.9 percent cut in probation and parole.\*
- Such a large cut in probation and parole would dramatically reduce supervision and treatment. With

\* In December 2009, Lieutenant Governor David Dewhurst indicated he would ask most agencies to propose a 2.5 percent annual budget cut.

less supervision and treatment available for probationers, diminished confidence in probation could lead to more prison sentences and more probationers could be revoked to prison. In fiscal year 2009, direct sentenced commitments to prison unexpectedly fell from 23,393 to 21,996.<sup>30</sup> In January 2009, the Legislative Budget Board had projected a 5.3 percent increase in direct commitments each year from 2009 to 2014 based on the recent historical trend.<sup>31</sup> Probation placements increased 9.3 percent from fiscal years 2004-05 to 2008-09 among the probation departments receiving diversion grants.<sup>32</sup> Redirecting nonviolent offenders who do not pose a high risk to probation instead of prison can actually reduce crime because such offenders may deteriorate in prison, as they intermingle with more hardened inmates and lose positive family, employment, and community ties. Results from Maryland's correctional options program show that low-risk, non-violent offenders sentenced to probation with graduated sanctions and services were 22 percent less likely to re-offend than comparable offenders sentenced to prison.<sup>33</sup>

- While in-prison treatment programs have, in most cases, been more than restored since 2003, the budget for the Windham School District that provides in-prison education is 15.6 percent less than in 2000 when adjusted for inflation, primarily due to budget cuts in 2003 that resulted in the firing of teachers.<sup>34</sup> Windham accounts for only 1.9 percent of the \$6.22 billion Texas is spending on adult incarceration in the 2010-11 biennium.<sup>35</sup> Only 20 percent of inmates attend classes provided by Windham on a given day, though inmates who complete a GED through the district's programs have a 20 percent lower rate of re-offending.<sup>36</sup> Similarly, Windham vocational programs in which 28 percent of released inmates participate have been correlated with increased employment upon release, which is associated with less re-offending.<sup>37</sup> The average inmate enters and leaves with less than an 8th grade achievement level. In 2008, inmates received into prison demonstrated a 7.47 achievement level while those released had a similar 7.64 level, a difference of 2.2 percent.<sup>38</sup> High-risk Texas inmates who learned to read while in prison have a re-incarceration rate that is 37 percent lower than those who remain illiterate upon release.<sup>39</sup>
- Just as reducing educational and vocational programs can lead to more re-offending and ultimately higher

incarceration costs, backlogs to enter in-prison treatment programs that are a condition of parole can cause inmates otherwise appropriate for release to be kept in prison waiting for a treatment slot even after being approved for parole. While more difficult to measure, participation in treatment prior to parole review probably increases the likelihood that the Board of Pardons and Paroles will deem the inmate suitable for release. The parole rate was 30.74 percent in 2008 compared with 27.50 percent in fiscal year 2005.<sup>40</sup> An increase of 2 percent in the parole approval rate translates into nearly 1,500 additional parole releases for a fiscal year.<sup>41</sup> Even while the parole rate increased from 2005 to 2008, there were 709 fewer annual new convictions and pending offenses charged against parolees in 2008 than in 2005, despite 1,412 more parolees in 2008.<sup>42</sup> However, revocations from parole could increase if the drug treatment, job placement, and chaplaincy that were restored after 2003 become less available.

- Instead, Texas must continue breaking the cycle of crime and prison building by focusing on probation and parole supervision and treatment strategies that prevent re-offending. At the same time, Texas must do more than simply warehouse inmates, as more than 95 percent of inmates are ultimately released into society. Policymakers should identify those in-prison treatment, educational, and vocational programs that cost-effectively reduce re-offending, and continue funding those programs while making adjustments to any programs that are ineffective.
- The corrections budget can be trimmed by continuing to emphasize policies that protect public safety by reducing crime, enabling the state to prioritize prison space for offenders who pose a danger to society and close unneeded lockups. While efficiencies should always be sought in prison operations, they are unlikely to reap large savings given that Texas spends \$17,338 per inmate per year, which is 39.6 percent less than the average and far less than the \$46,000 per year in California.<sup>43</sup> The most significant difference is that the mean salary for correctional guards and jailers in California is \$63,230 compared to \$29,870 in Texas.<sup>44</sup> It is also harder to reduce parole costs in Texas without cutting actual supervision and treatment, as Texas spends \$1,900 per parolee compared with \$4,500 in California. In the Golden State, parole officers' salaries

are 61 percent higher than in Texas and a much higher percentage of parolees are re-incarcerated.<sup>45</sup> There are currently 1,612 empty beds in the Texas prisons—defined as the difference between the current inmate count and the operating capacity, which is 97.5 percent of the total capacity.<sup>46</sup> These lockups house 19,263 offenders convicted of drug possession. Only 18.5 percent of incoming inmates were sentenced or revoked from supervision for a violent offense.<sup>47</sup>

Two key priorities for the 2011 session are among the options to further drive down the prison population without jeopardizing public safety:

- First, lawmakers must strengthen the probation diversion grants to provide greater accountability for results among all departments. One way to accomplish this is through an incentive funding formula that ties funding to performance in lowering both revocations and new crimes, as implemented in Arizona in 2008 through Senate Bill 1476.<sup>48</sup> Currently, probation funding is primarily based on the number of offenders on probation. In Texas, revocations have declined 4.14 percent in probation departments receiving diversionary grant funds since fiscal year 2006 while increasing 9.79 percent in departments that did not participate in this program. However, Bexar County received the second most funding after Harris County, but has increased its revocations by 65.1 percent; and other large participating departments, such as Collin, Taylor, and Nueces, have also substantially increased their revocations even though participating departments had agreed to a goal of reducing revocations by 10 percent.<sup>49</sup>
- The Travis County (Austin) Adult Probation Department's Community Impact Supervision initiative (TCIS) has demonstrated that evidence-based practices can significantly reduce both revocations and arrests for new offenses through strategies such as using risk and needs assessments to better match supervision and treatment resources to each offender, neighborhood-based supervision that allows officers to spend less time driving and more time working with offenders at a location convenient to the offender's home and job, improved data systems, and realigning the composition of the agency's staff to reduce administration and increase the share of staff that interacts directly with offenders. The TCIS launched in 2006 has saved the state \$4.88 million in fewer prison and state jail commitments while reducing the probationer re-arrest rate by 17 percent.<sup>50</sup>
- Secondly, policymakers should consider targeted sentencing reforms focused on the thousands of incarcerated drug possession offenders with less than four grams of the substance and no prior property or violent offenses. There are an estimated 7,567 inmates received into state lockups for drug possession who have no prior felony.<sup>51</sup> Incarcerating this many inmates is costing taxpayers \$262.4 million over the current biennium. 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>52</sup> Drug treatment is at least five times less costly than prison.<sup>53</sup>
- Closing a single unit on valuable land would yield revenue from the sale, in addition to operating savings. One prison in Sugar Land that is adjacent to a general aviation airport costs 14.4 percent more to operate than the average unit largely because it was built in 1909. It was appraised in 2006 for more than \$30 million and has an estimated redeveloped taxable value of \$242 million, according to an analysis commissioned by the City which seeks to close and redevelop the facility.<sup>54</sup>
- There are 700 empty beds at TYC. Based on the current population, there would be 124 empty beds after the West Texas State School and Victory Field are closed in 2011. Burglary, stolen vehicle, and drug offenders account for 37 percent of the 2009 commitments and 69 percent of committed youths have been adjudicated for only one felony offense, though some of these youths have committed one or more prior misdemeanors and some were unsuccessful in the available local programs.<sup>55</sup> Closing an institution is preferable to reducing educational and treatment programs. TYC has redesigned programs such as its substance abuse treatment program that has not been successful in the past and is currently evaluating the results. Less than 20 percent of youths at TYC read at grade level.<sup>56</sup> While more than 90 percent of youths achieve at least one month of educational advancement for each month at TYC, they are on average several years behind upon entering TYC.<sup>57</sup> In recognition of this reality, TYC lengthened its school day in 2009.

- An attractive option is shifting TYC's facilities more towards halfway houses and group homes (primarily different from halfway houses in that they serve as the initial placement), which can more efficiently achieve the goals of regionalization and successful reentry than institutions. TYC currently has only 157 halfway house beds, but these beds cost 33 percent less to operate than institutions.<sup>58</sup> The one-year re-incarceration rate in Missouri where group homes replaced institutions is 11 percent compared with 22 percent for TYC.<sup>59</sup> Bonding authority exists for creating adult and youth correctional facilities so no new bond issue would be necessary. Finally, improving parole programming, which currently is little more than office visits, could reduce the number of youths on juvenile parole who are revoked back to TYC. In 2008, some 421 youths were revoked from parole to TYC for a misdemeanor or rules violation.<sup>60</sup> Approaches that result in more reentering youths pursuing educational and workforce opportunities could also lead to fewer youths being revoked to TYC for felonies and entering county jails and prisons.

## Conclusion

While Texas still has the nation's fourth highest adult incarceration rate, an increased emphasis on policies that are both tough and smart has enabled the state to turn the tide and reduce crime while controlling costs to taxpayers. Given the strain on the state's budget, policymakers will likely face a new challenge of not merely avoiding the massive costs of new lockups, but actually trimming the corrections budget while continuing to enhance public safety. Fortunately, solutions are available, such as realigning corrections spending to strengthen cost-effective community corrections programs that prevent re-offending, fostering the use of evidence-based supervision practices in all probation departments, and enacting targeted sentencing reforms. Policymakers must also evaluate the effectiveness of programs to rehabilitate inmates before they are released, ensuring those that keep inmates from returning are not eliminated. By continuing to build upon the initiatives that are successfully reducing both crime and incarceration rates, Texas can achieve further crime reductions and lower its corrections budget through the closure of unneeded adult and juvenile correctional facilities. ★

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