



CENTER FOR EFFECTIVE JUSTICE

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Testimony of Marc Levin on

TDCJ Legislative Appropriations Request

I am pleased to appear before this distinguished committee.

I am the Director of the Center for Effective Justice at the Texas Public Policy Foundation, a non-profit, non-partisan research institute guided by the core principles of limited government, free markets, private property rights, individual liberty and personal responsibility.

Most of the exceptional items that TDCJ has presented are relatively modest in cost and involve operational costs that cannot be readily altered through policy changes. For example, we recognize that the Department, due to its large footprint throughout the state, is heavily impacted by the increased cost of operational items such as energy and electricity.

From a policy standpoint, we are pleased that the Department has proposed increasing its emphasis on community-based programs that can divert more nonviolent offenders from prison, thereby ultimately saving the state money. One clear example of this is the Department's proposal for more halfway house placements, as there are currently many inmates who have been paroled but not released simply because they do not have an address. Subsidizing a halfway house will cost the state less than the \$40 a day to keep that inmate in prison, let alone the \$90 per bed cost of new prison construction to which that inmate is effectively contributing.

We believe alternatives must be considered to the Department's request for \$378 million in new funding to construct new prisons. This figure represents some 73 percent of the Department's proposed exceptional items totaling \$520 million. This does not count the over \$140 million in operation costs of these three prisons for each biennium based on the current \$40 per day cost at public prisons and the somewhat lower cost of private facilities. Given that we are currently 2,000 to 3,000 prison guards short, even more money would likely be needed to attract sufficient staff for the new facilities. In addition to fully appreciating all the costs involved, we must put this proposal in historical perspective. From 1988 to 2004, we increased prison capacity by 278 percent while the state's population grew at only 35 percent.

We realize that the LBB has estimated that yet another 11,000 beds will be needed by 2011 if we maintain current policies and practices. Given the specter of a repeat of the costly *Ruiz* litigation where federal courts again take over our prisons due to overcrowding, it is only prudent for the Department to be upfront today about the potential cost associated with the decisions being made by the Legislature, judges, prosecutors, and probation officials, which continue to foist more and more offenders on TDCJ. However, our research indicates that current policies and practices of these actors can be substantially changed to curtail the need for new prisons without endangering public safety.

Parole is the one area affecting capacity where TDCJ does have substantial control over the system. One of the most immediate ways to stem the state's prison crowding crisis would be to make at least some nonviolent state jail felons eligible for parole, a policy decision that is up to the Legislature. From a budget standpoint, we could allocate a small amount of the savings from reduced incarceration to some additional parole staff to review these files, although we'd suggest that, given the less serious offense levels of the eligible state jail confinees, the use of a more automated, data-driven review process that is less paper-intensive than the current parole system.

There are currently over 5,000 confinees in state jails for possessing small quantities of drugs, a state jail felony. Meanwhile, those who possess larger quantities and deal drugs are in prison for first, second, or third degree felonies. But unlike those prisoners, state jail felons are not eligible for parole. Therefore, if state jail felons are sentenced for the maximum of two years, they serve the whole sentence while more serious felons serve less than two-thirds of their sentences. If we made some nonviolent state jail felons eligible for parole, space in the existing

17 state jails could be freed up for violent offenders and, in fact, one or more state jails could be converted to a prison.

There are also more capacity-savings to be found in probation reform in addition to those that the Department believes can be achieved through its probation-related exceptional items. Some 37 percent of state prison intakes and 41 percent of state jail intakes are revoked probationers, whose sentences average 4.5 years. The good news is that the progressive sanctions initiative passed last session has already reduced total felony probation revocations by 11.69 percent and technical revocations by 20.48 percent, according to data for the first quarter of 2006.

We can further reduce revocations by better distributing basic probation funding. Currently, this funding is based equally on the number of probationers and size of the county, the latter variable which has little to do with actual supervision costs. Moreover, basic probation funding is the same regardless of the nature of the offense and the offender's special supervision needs, such as drug treatment and enhanced monitoring for sex offenders. We will be proposing new formulas that better align funding with actual supervision costs and create an incentive to provide intensive supervision to high-risk probationers early in their terms when they are most likely to be revoked, as opposed to the current funding approach that creates an incentive for a cookie-cutter system of long terms and little supervision for all probationers.

Another way to relieve capacity pressures associated with probation revocations is to legislatively limit the revocation of nonviolent drug offenders. In Dallas County, one probationer was revoked to prison for life simply for testing positive for marijuana. The Legislature should set guidelines for revocations for technical violations and nonviolent offenses, including limiting the length of the revoked sentence for nonviolent offenders.

We can also reduce capacity pressures going forward by diverting new nonviolent, minor drug offenders to mandatory inpatient or outpatient treatment. This would free up space both in state jails, as well as county jails which already have about 3,000 empty beds. This is a proven approach. In 2000, 61 percent of California voters approved Proposition 36, requiring mandatory treatment, instead of incarceration, for minor drug offenders. A University of California study concludes this saved the state \$800 million in incarceration costs.

Another area where capacity pressures can be relieved is DUI, which accounts for 5,564 current inmates in state prisons and jails. We support the use of a special

unit to house DUI inmates, who often are nonviolent and have normal socialization levels but for their alcoholism problem. However, this is also an area where we could explore increased use of parole for DUI offenders who have successfully completed the treatment program while in prison. Given the availability of interlocking devices to prevent drunk driving and the use of GPS to enforce a parole requirement that the DUI offender not drive at all, many DUI inmates who have successfully completed treatment can be supervised on parole without endangering the public.

In sum, even absent making some of these policy changes, we do not know for sure how many new prison beds we will need by 2011, which is when the two new publicly operated prisons proposed by TDCJ would be ready. As demographic shifts occur after 2011, it is unclear whether prisons that become superfluous could be readily converted to other productive uses. TDCJ has requested exceptional funding for many initiatives it believes will reduce capacity pressures, such as outpatient drug treatment and residential community corrections centers for drug addicts and the mentally ill. Furthermore, early results from the progressive sanctions initiative passed during the last session have put us on a path to reduce probation revocations by 3,000 a year. The advantage of relying more on temporary contracts with private operators and county jails as the need arises is that a large construction commitment can be avoided when it may prove to be unnecessary in whole or part. In fact, operators of the existing 12 privately-run prisons and state jails have offered to accommodate additional inmates on temporary contracts, but the Legislature has arbitrarily capped the number of inmates that can be held at any privately operated state prison and TDCJ restricts the capacity of the privately-operated state jails. Maximizing available beds at these facilities would likely be cheaper than new construction.

Finally, in addition to focusing on ways to stem the need for new prisons, we believe a greater emphasis must be placed on victims' services. In particular, we are concerned that not all probation departments report their rates of collecting restitution to TDCJ. The Department has requested a \$200,000 exceptional item for the next biennium to improve its victim services. However, there is also a need for local probation departments to improve their services to victims, including collection of restitution. We suggest, as part of overhauling probation funding, the creation of a financial incentive to reward those probation departments that are particularly effective in collecting restitution, but such a plan would depend on all departments being held accountable for reporting this data to TDCJ.

Thanks very much for your consideration.