

Prisons and Penny-Pinching: Finding Budget Savings in the Time of COVID-19



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by Michael Haugen

Executive Summary

As last year's novel coronavirus continues its deadly spread across the planet, the largely unprecedented responses to the pandemic, taken by individuals and governments alike to arrest its impact, have caused deep and broadly felt shocks to national and state economies. This is true in Texas.

In this case, as goes the state economy, so too goes the public treasury. Foreseeing the need for "prudent fiscal management" in light of projected tax revenue shortfalls due to suppressed economic activity, Texas's state leaders in May called upon some agency heads and institutions of higher education to identify savings of 5% in general revenue (GR) related appropriations for the 2020-2021 biennium. Certain exceptions applied for select government services.

The Department of Criminal Justice—which implemented policies aimed at halting the spread of the novel coronavirus at the state's prison system, especially given its disproportionately vulnerable population—was included in that savings request. In addition to nearly \$123 million in savings outlined for the current Fiscal Year 2021, the agency's Legislative Appropriations Request (LAR) for FY2022-23 details an additional \$306 million in proposed cost efficiencies.

In addition to calling attention to the growing elderly population within TDCJ, which likely creates even longer-term fiscal (and social) challenges for agency leaders than the novel coronavirus presents in the near term, this paper offers several policy recommendations that can help reduce costs while also ensuring improved performance within the state's finite corrections resources (especially for alternatives to incarceration).

Additionally, a running theme throughout is that a lack of available data regarding many aspects of the justice system hinders the ability to faithfully judge the fiscal merits of various criminal justice legislation. Policymakers must endeavor to craft sensible legislation to repair (or forestall) damage to Texas's economy in the 2021 legislative session, which requires reliable data to examine the economic and fiscal situations. To aid in this, efforts ought to be made to provide more thorough, granular data to nonpartisan researchers so that there are more accurate projections of a bill's savings or expenses.

Introduction

Whether foreseen or unforeseen, reality asserts itself one way or another.

Such has been the experience of much of the planet in 2020, as the novel coronavirus (hereafter abbreviated to COVID-19, the disease caused by the virus) continues its deadly spread throughout the population. COVID-19 has necessitated largely unprecedented responses, both mundane and consequential, on the part of citizens and governments alike—from almost ubiquitous mask usage and

Key Points

- Largely unprecedented responses to COVID-19 taken by individuals and governments have caused deep and broadly felt shocks to national and state economies.
- The need for "prudent fiscal management" in light of projected tax revenue shortfalls moved state leaders to request 5% budget reductions by some state agencies for the 2020-2021 biennium.
- The Department of Criminal Justice has identified about \$306 million in cost savings in its FY 2022-23 Legislative Appropriations Request.
- Proposed reforms to technical violations, expansion of diligent participation credits, and enacting presumptive supervision for some drug offenses can help save money while improving public safety.
- A lack of available state data regarding many aspects of the justice system hinders the ability to faithfully judge the fiscal merits of various criminal justice legislation.

social distancing measures, to travel bans and the shuttering of entire segments of a country's economy. Despite these attempts to mitigate destruction caused by the virus, its impact has nonetheless been grim: As of December 17, 2020, there have been over 74.5 million cases and 1.6 million deaths globally, according to Johns Hopkins University's dashboard ([Center for Systems Science and Engineering, n.d.](#)).

A glance at Texas tells much the same story, with over 900,000 cases and 18,000 fatalities reported to the Texas Department of State Health Services as of early November ([Texas Department of State Health Services \[TDSHS\], n.d.](#); see **Table 1**).¹

COVID-19 and Texas

The Fiscal Effects

The onset of the pandemic brought rapid shifts in individual behavior to avoid crowds and public areas and was soon followed by enactment of stay-at-home orders by local governments across the state. This resulted in a case study in cause and effect for the broader Texas economy—and, for purposes of this paper, the public treasury.

Some of this response can be traced to the March 31 executive order issued by Governor Greg Abbott to restrict much of the public's out-of-home activities solely to "essential services" ([Exec. Order No. GA-14, 2020](#)). Working from home was strongly encouraged unless it constituted an essential service that otherwise could not be rendered remotely. Citizens were ordered to avoid bars, restaurants and food courts, salons, gyms, and other such establishments (with the exception that food and drink could still be purchased via drive-thru, delivery, or curbside options). A previous executive order ([Exec. Order No. GA-09, 2020](#)) also halted all surgeries and other medical procedures that were not "immediately medically necessary" ([p. 2](#)) so as to prevent the depletion of hospital capacity in anticipation of severe COVID-19 infections creating demands on bed space.²

The numbers tell the tale of this sudden, grinding halt in economic activity—and they are sobering. The unemployment rate, which had been stable statewide at 3.5% since mid-2019, ticked upward in March before skyrocketing in April (see **Table 2**; [Bureau of Labor Statistics, 2020a](#)). The

Table 1
COVID-19 in Texas, by the Numbers^{*}

	Offenders	TDCJ Staff	General Population
Tests Administered	219,918	77,542	8,071,785 (molecular)
Positive Tests	23,419	5,561	885,838
Positivity Rate (%)	10.6	7.2	11.0
Confirmed/Presumed Dead	166	21.00	17,931
Case Fatality Ratio (%)	7.1	.37	2.0

Note. Data from *COVID-19 in Texas*, Texas Department of State Health Services, n.d. (<https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9c9c8b83>) and *COVID-19 Updates*, Texas Department of Criminal Justice, n.d.-b (<https://txdps.maps.arcgis.com/apps/opsdashboard/index.html#/dce4d7da662945178ad-5fbf3981fa35c>). Data from November 2, 2020, updates.

^{*}General population data reported on TDSHS's COVID-19 dashboard include testing performed by TDCJ on offenders and correctional staff. In order to fully differentiate between the wide outcomes experienced between prisoners and non-prisoners, especially case fatality rates, offender data has been backed out of general population figures reported on the TDSHS dashboard for November 2. Adding offender data back into the general population figure will show the overall figure reported by TDSHS for that day. Correctional staff data remain included in the general population figure—as they are not wards of the state—and is also provided as a separate item for information's sake.

rate was over or at 13% in April and May—peaking at 13.5% in April—before falling rapidly over the summer to 6.8% by August. The labor force participation rate sank beginning in March, as well, before rebounding to near pre-COVID levels in October.

State tax revenues have not fared any better. Monthly sales tax collections, which are the largest source of state funding for the budget, fell significantly in 2020 compared to 2019 levels (see **Table 2**; [Hegar, 2020a](#)). After March, year-over-year sales tax collections were higher only in July compared to the same time in 2019, according to Texas Comptroller Glenn Hegar ([2020b](#)), as people who were confined at home drove higher than expected e-commerce sales. Sales tax revenue for Fiscal Year (FY) 2020, which ended in September, was nonetheless slightly higher than in FY2019 ([Hegar, 2020c](#))—at 0.2%—buoyed by strong sales in the first part of the fiscal year ([Hegar, 2020a](#)).

However, sales tax revenues are projected to fall 4% for FY2021 ([Hegar, 2020a](#)).

Severance taxes from oil and natural gas production also experienced substantial losses this year. Nearly 17% and 45% revenue reductions compared to FY2019, respectively, will yield roughly \$540 million less being deposited into the state's Economic Stabilization Fund (the "rainy day" account) and State Highway Fund this year (\$1.13 billion into each, versus \$1.67 billion last year; [Hegar, 2020c](#)), and collections in FY2021 are expected to drop significantly as well ([Hegar, 2020a](#)). According to Hegar, the effects of the economic slowdown and volatility in oil prices were also

¹ Data for Texas was retrieved on November 3, but the latest update within the Department of State Health Services' dashboard occurred on November 2 at 6:10 p.m.

² An exception to this rule stated that it "shall not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster" ([Exec. Order No. GA-09, 2020, p. 2](#)).

Table 2*Various Economic Markers in Texas, 2020*

Month	Texas Unemployment Rate	Texas Labor Force Participation (%)	U.S. Unemployment Rate	U.S. Labor Force Participation	Change in State Sales Tax Revenue from 2019 (%)
January	3.5	64.1	3.6	63.4	+ 8.9
February	3.5	64.1	3.5	63.4	+ 3.5
March	5.1	63.1	4.4	62.7	+ 2.9
April	13.5	58.4	14.7	60.2	- 9.3
May	13.0	60.7	13.3	60.8	- 13.2
June	8.4	61.9	11.1	61.5	- 6.5
July	8.0	62.0	10.2	61.4	+ 4.3
August	6.8	64.4	8.4	61.7	- 5.6
September	8.3	63.6	7.9	61.4	- 6.1
October (p)	6.9	62.9	6.9	61.7	-3.5

(p)=preliminary

Note. Data taken from Bureau of Labor Statistics ([2020a](#); [2020b](#); [2020c](#)) and Texas Comptroller of Public Accounts (monthly reports of state sales tax revenue, [February-October](#))

evident in other sources of revenue, including motor vehicle sales, hotel occupancy, and alcohol taxes ([2020c](#)).

Taken in totality, Hegar ([2020a](#)) reported in July that the pandemic and ongoing oil-price volatility could result in an estimated FY2021 budget shortfall of \$4.6 billion, a nearly \$7.5 billion swing from the original \$2.89 billion positive year-end balance projected in October 2019.³

Foreseeing the need for “prudent fiscal management efforts” to ensure that the state could continue providing government services in light of anticipated economic uncertainty, Governor Abbott, Lieutenant Governor Dan Patrick, and House Speaker Dennis Bonnen sent a letter in May to some state agency and higher institution heads to submit a plan to identify savings that would reduce general and general revenue (GR) related appropriations by 5% for the 2020-2021 biennium ([Abbott et al., 2020](#)). They outlined various saving strategies that would not compromise agencies’ COVID-19 mitigation efforts, including foregoing capital expenditures, any avoidable travel expenditures, any administrative expenses that are not mission critical, and keeping unfilled any open positions that are non-critical.

They also cited exceptions to the 5% reduction request for “critical government functions,” including—for this paper’s interests—appropriations for Correctional Security Operations and Correctional Managed Health Care within the Texas Department of Criminal Justice (TDCJ). An upcoming section details how TDCJ’s budget reflects this request.

The Practical Effects on Criminal Justice in Texas

While COVID-19 has had direct implications for the practices of many areas of state government, the disease has caused particularly acute effects on Texas’s criminal justice system, both in terms of the virus’s impact on inmates and the steps taken to mitigate that fact.

Many of those adverse effects became apparent during the spring and early summer months. In an April 11 letter to county sheriffs, TDCJ Executive Director Bryan Collier explained that, despite numerous preventative measures aimed at halting the spread of the novel coronavirus, it had nonetheless entered the prison system—with 69 staff members and 130 inmates diagnosed to that point ([Collier, 2020](#)). As a result of this spread, Collier announced that TDCJ would immediately halt the intake of county jail inmates into the prison system—which statutorily takes place within 45 days of having received an individual’s commitment papers—until the situation stabilized. To that point, COVID-19 had already been detected in 10 county jails ([McCullough, 2020a](#)), making that decision likely appropriate given the continuous churn usually seen among county jail inmates.

Nonetheless, prisons appeared to remain a locus for rapid spread of COVID-19 well into June, even as Governor Abbott moved forward with plans to reopen businesses that had been idled for months. State data show that overall cases jumped just over 19,000 between May 25 and June 7 ([TDSHS, n.d.](#)), with the TDSHS naming 10 counties that made up a quarter of that increase due to testing in prisons

³ Comptroller Hegar’s statement stressed that this projected shortfall did not include any reductions in agency spending requested by state leadership in May 2020 for 2020-2021 general revenue appropriations. Any realized savings would reduce the projected shortfall.

and meatpacking plants, according to one report ([Astudillo et al., 2020](#)).

Citing increased flexibility that mass testing had given agency officials to move inmates in and out of state facilities, TDCJ announced at the beginning of July that limited intake from county jails would resume ([McCullough, 2020b](#)).

The prison population fell sharply as a result of halting intakes from county jails. In March, the end-of-month population was 140,124, but by the end of June, the population had fallen to 126,590—a 9.7% drop ([Legislative Budget Board \[LBB\], 2020a](#)).

(At the beginning of December, the latest data show that the prison population continued to fall to 121,876, a 13% drop from the 2020 high. According to the LBB [[2020b, p. 1](#)], the Garza East and Jester I units have been closed, and the Bradshaw State Jail idled, due to this reduced population.)

Another major consequence of COVID-19's spread within TDCJ—one of practical import for the sake of safely reducing populations to maximize distancing—has to do with the parole system. COVID-19 has caused delays to in-prison educational and rehabilitative programming, which can last months and are a common requirement for parolees to complete prior to their release ([McCullough, 2020c](#)). Coupled with limited transfers of inmates to facilities that operate such programs in an attempt to stem transmission of the virus, thousands of parole-eligible inmates have remained in lock-up. According to recent TDCJ “on-hand” offender data, there are over 11,500 individuals who have been approved for parole this year alone yet remain confined to a TDCJ facility ([TDCJ, n.d.-a](#)).

Neither of these two consequences is exhaustive of policies or outcomes that TDCJ has implemented or experienced as it has addressed COVID-19.

As grim as the general population's run-in with the novel coronavirus has been in terms of fatalities so far this year, prisoners have fared much worse on a per-case basis (see [Table 1](#)).

Prisons and Penny-Pinching

May's policy letter from state leadership to some agency heads and institutions of higher education directed them to submit a plan outlining a 5% reduction to their FY2020-21 biennial operating budget. Furthermore, budget requests for the FY2022-23 biennium were directed not to exceed

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FY2020-21 GR-related funding levels adjusted by that reduction.

TDCJ's FY2021 operating budget and Legislative Appropriations Request (LAR) for FY2022-23 reflect these directions ([Texas Board of Criminal Justice \[TBCJ\], 2020](#)).

For FY2021, TDCJ's plan details an operational impact of \$122.9 million to account for the 5% reduction ([TBCJ, 2020, p. 7](#)). According to their budget document, these reductions were realized through several efficiencies, including (but not limited to):

- Filling only critical positions;
- Reducing travel expenditures and administrative operating costs;
- Reducing capital funding;
- Reducing funding for academic and vocational programs, and;
- Closing the Garza East and Jester I units and idling the Bradshaw State Jail.

TDCJ details ongoing fiscal and operational challenges for the current operating budget, particularly those related to confronting COVID-19 in the prison system. Of special note, the agency states that rising medical costs correlated with an aging prison population will necessitate a supplemental appropriation for Correctional Managed Health Care for FY2020-21 ([TBCJ, 2020, p. 8](#)).

Because the elderly are disproportionately vulnerable to COVID-19, an aging population creates both short- and long-term challenges the agency must reckon with.⁴

For FY2022-23, TDCJ's LAR baseline request funds programs at 95% for those subject to the baseline limitation, resulting in an aggregate funding reduction of approximately \$306 million ([TBCJ, 2020, p. 8](#)). This takes into

⁴ According to financial reports from TDCJ's Correctional Managed Health Care Committee (CMHCC), the average proportion of total prisoners aged 55 and over was 7.7% in 2010 (11,690 out of 151,176; [CMHCC, 2010, p.2](#)). In 2020, this proportion climbed to 14% (20,038 out of 143,479; [CMHCC, 2020, p.5](#)). As we have seen, older populations suffer particularly adverse effects from COVID-19. Of roughly 57,000 completed case studies by TDSHS as of October 29, 2020, patients aged 60 and over accounted for about 17% of confirmed COVID-19 cases statewide (9,699) but accounted for 80% of total fatalities (13,822; [TDSHS, n.d.](#)).

account prisoner population projections over the next five years, as well as closure of an additional facility to be identified in the future.

Policy Recommendations

A Brief History of Criminal Justice Reform in Texas

Texas is no stranger to budget crunches that implicate its prison system.

During its 2007 legislative session, which has become akin to lore among criminal justice reformers, Texas faced an acute issue with its prison population. According to estimates from the LBB, Texas was projected to need an additional 17,000 beds by 2012 to keep up with recent growth ([Council of State Governments \[CSG\], 2009, p. 3](#)). Analyses into the putative causes of this rapid prison buildup showed an increased number of probationers being revoked from supervision; a reduction in residential treatment capacity for those on supervision (due to previous budget cuts); and fewer approvals for placement onto parole.

In response, the Texas Legislature adopted—and the governor approved—a package of reinvestment policies that would, in part, expand in-prison treatment capacity and increase the number and quality of diversionary options for those placed on probation and parole ([Haugen, 2019b](#)).

This general rubric—a large state known for its “tough on crime” stance, undertaking systemic reforms to sentencing, community corrections, and other areas—would serve as a model for many other conservative red states as they addressed their own growing corrections systems, including Alaska ([Pew Charitable Trusts, 2016](#)), South Carolina ([Pelletier et al., 2017](#)), and Georgia ([CSG, n.d.](#)).

Although the policy state of play has progressed from 2007—meaning that low-hanging fruit ripe for reform has since been picked—there are still areas for substantial fiscal efficiencies to be found in Texas’s corrections system that can help ease pressure on policymakers looking to address COVID-related budget challenges.

Post-COVID Reforms for Texas

Expanding Diligent Participation Credits for Those Sentenced to State Jail

Recidivism rates among prisoners sentenced to state-jail facilities are worse than for those sentenced to prison for longer terms (see **Table 3**).

Originally conceived as more cost-effective than prisons and meant to place an emphasis on treatment, rehabilitation, and successful reentry, “state jail” felony offenses were created in 1993, mostly for first-time, nonviolent

Table 3

Conviction/Reconviction Rates After Placement or Release for 2015 Cohort

Felony Community Supervision	29.2%
Prison	34.8%
State Jail	53.5%

Note. Data from *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, Legislative Budget Bureau, 2019b, pp. 6-9 (https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4914_Recidivism_Revocation_Rates_Jan2019.pdf)

drug possession or minor property crimes ([Graves, 2019](#)). While state jails have indeed been more cost effective, they have chronically lagged behind other modalities in terms of recidivism and other measures of successful outcomes. The likely reasons for this are manifold, but according to a 2019 interim report published by the House Committee on Criminal Jurisprudence ([2018, p. 33](#)), one explanation may be the lack of adequate funding and development of treatment and rehabilitation programming within those facilities from their inception. Additionally, there is a lack of aftercare programs available for those released that can help follow up with individuals and ensure they land on their feet.

As a result of these and other shortcomings, state jails have

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become little more than inmate warehouses—where what little programming that does exist is underutilized, and individuals who are released are among the most likely to recidivate.

To help incentivize active participation in available treatment or work-education programming, the Legislature approved a policy in 2011 allowing state-jail inmates to reduce their sentences by up to 20% by “diligently participating” in recidivism-reducing programs. However, there is a catch: Under current law, in order for diligent

participation credits to apply, a sentencing judge must enter a finding that a person is presumptively entitled to them only after program completion. This requirement has led to reports of uneven awarding of credits ([HB 4566 Bill Analysis, 2019, p. 1](#)).

In the 86th Texas Legislature, House Bill 4566 (2019) was introduced to address any uneven awarding of diligent participation credits. The bill repeals language from the Code of Criminal Procedure that requires an affirmative finding from a judge that an individual is presumptively entitled to participation credits, instead allowing TDCJ to simply credit time spent by all individuals diligently participating in educational, vocational, treatment, or work programs against time the defendant is required to serve in the state jail facility (minus any period they are subject to disciplinary measures).

Ultimately, HB 4566 was never enacted, having stalled in the Senate after passage in the House by an 87-35-1 vote.

According to the LBB, the two-year net impact to GR-related funds, should such a bill be enacted in the future, is expected to create substantial cost savings to the state ([HB 4566 Fiscal Note, 2019, p. 1](#)). Assuming sentencing patterns and release policies are held constant, HB 4566's policies were projected in 2019 to save over \$63 million over the 2020-21 biennium, with additional such savings expected through 2024.

Due to COVID-related reductions in those being sent to state jail, and therefore, fewer people being subject to the provisions of the bill, this figure would likely be slightly smaller in the future. However, it would still likely total in the tens of millions of dollars saved. But the bill's benefits go well beyond cost savings. To the extent that far more individuals would avail themselves of an opportunity to reduce their sentence by participating in programs geared toward addressing their underlying social or behavioral issues—and helping ensure a smoother transition to their communities upon release—HB 4566's policies would be a win-win across the board.

Addressing Technical Violations

Probation and parole provide an important alternative to incarceration for many individuals. However, those on these forms of community supervision—particularly those for whom probation is the primary sentencing option—can paradoxically *contribute* to incarceration through revocations. Revocations from supervision generally come in two forms: commission of a new criminal offense or through technical violations of conditions for community

supervision, such as missing appointments with a probation or parole officer or testing positive for drugs ([Haugen, 2019b](#)).

In a typical year, felony technical revocations alone make up roughly 18% of total prisoner receives into TDCJ facilities.⁵ Given an incarceration cost of about \$62 on a per-offender per-day basis ([LBB, 2019a, p. 1](#)), compared to \$3.75 per offender while on community supervision, even a small percentage reduction in the number of annual revocations can potentially yield millions in annual cost savings, while keeping individuals supervised in the community where they generally recidivate at lower levels and experience far better outcomes.

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Policy reforms enacted nationwide reveal that several states have innovated effective methods for addressing stubbornly high rates of technical revocations that could benefit Texas, including the use of administrative jail sanctions and capping revocation terms.

In North Carolina, persistently high rates of revocations from community supervision spurred the adoption of administrative jail sanctions in 2011, called “quick dips,” to address minor violations. These sanctions were not intended to be punitive per se but rather to serve as a wake-up call in hopes of encouraging probationers to comply with supervision terms before facing more serious consequences for rule-breaking. According to the state's Department of Public Safety (DPS) analysis on the effects of quick dips on the likelihood of being revoked ([2016, p. 14](#)), DPS compared outcomes between 1,200 offenders who received any length of quick dip (2 or 3 days) in FY 2014 to a group of matched offenders who did not receive a quick dip for similar behavior. They found that those who received a quick dip were about one-third less likely to be revoked from supervision than those who never received that sanction (32% to 46.6%, respectively).

⁵ For instance, there were 11,204 statewide felony technical revocations and 62,621 total receives into TDCJ facilities in 2019 (17.9%; [Community Justice Assistance Division \[CJAD\], 2019, p. 9](#); [TDCJ, 2019, p. 18](#)). This was a reduction from prior years, in which the usual number of felony technical revocations eclipsed 12,000 per year.

Overall, there was a 65% decrease in the number of prison admissions in North Carolina due to probation revocations in FY 2015 compared to the year prior to justice reinvestment ([Haugen, 2019b](#)). Based on 2018 figures, a similar reduction in Texas would yield as much as \$506,000 in incarceration-related savings, per offender-day.⁶

Meanwhile, Louisiana addressed high rates of technical violations—which had contributed to a doubling of its prison population between 1990 and 2010, according to LaVigne et al. at the Urban Institute ([2014, p. 81](#))—in 2007 by capping the number of days that each probationer or parolee could be revoked to prison for their first technical violation (at no more than 90 days).

A 2014 study commissioned by the Pew Charitable Trusts ([2014, p. 3](#)) to determine the public safety effect of the reform in its first 5 years found that, compared to technical supervision violators incarcerated before the act took effect, those incarcerated afterward had an average length of stay that declined by 9.2 months. According to Pew ([2014, p. 1](#)), this reform saved taxpayers an average of \$17.6 million in annual corrections costs.

Louisiana probationers and parolees revoked for technical violations saw their average re-incarceration length decline by 9.2 months after the state capped the number of days they could be revoked for a first violation.

Precise figures regarding the average duration of a prison stay for those revoked from supervision in Texas on a first-time technical violation (or otherwise) are unknown. Therefore, judging the extent to which Texas would benefit from a similar reform is difficult. However, to the extent that supervisees are not revoked for technical violations, or any individual prison stay upon revocation is longer than 90 days (or whichever such cap policymakers choose), such reforms would yield overall cost savings.

So, too, would a bill filed during the 86th Texas Legislature ([HB 3831, 2019](#)), which would prohibit revocations for certain state jail and third-degree felony defendants based on fewer than three technical violations (with certain exceptions). This would almost certainly result in some aggregate amount of fiscal savings. However, an analysis conducted by the LBB has acknowledged that, due to the paucity of state data regarding who would be subject to the terms of the bill, the probable impact cannot be determined ([HB 3831 Fiscal Note, 2019, p. 1](#)).

Greater granularity in data reporting by state agencies could help to illuminate potential cost savings with more precision and help policymakers better judge the merits of these and other reforms (which is of special importance when facing budgetary uncertainties—COVID-related or not—that require careful balancing of priorities). Improved data reporting should be a focus of future legislatures.

Presumptive Community Supervision for Certain First-Time, Possession-Related Drug Offenses

It has taken millennia for society to grasp a hard lesson: Prisons are not for everyone.

Prisons serve a necessary purpose—sequestering dangerous individuals who present an ongoing threat to the general public. But they also have a point of diminishing returns. Simply warehousing offenders for increasingly long periods of time is often a poor motivator for people to meaningfully examine and change their behavior, especially for criminal offenses related to various behavioral maladies, including drug addiction. Dealing with this type of anti-social behavior in an anti-social environment for long periods, at least as far as America's ongoing problem with drugs is concerned, has been a costly gambit (and in more important ways than simple dollars and cents). Drug abuse is unlikely to be resolved by imprisoning our way out of it ([Haugen, 2019a](#)).

Therefore, beyond adopting strategies to prevent those who violate the terms of their community supervision from backsliding into prison, policymakers should also reconsider whether certain drug offenses merit imprisonment from the outset.

HB 4594 ([2019](#)), another bill proposed during the 86th Texas Legislature, would be a good start. Under provisions of the bill, upon conviction of a first-time drug possession offense—defined by the bill as those punishable under the Health and Safety Code as a state jail or third-degree felony—judges would be required to suspend the imposition

⁶ \$62.34 times 8,118 equals about \$506,000 (where \$62.34 is the 2018 average cost of incarceration in TDCJ facilities—per offender, per day—while 8,118 is equivalent to 65% of FY2018's total number of felony technical revocations; [CJAD, 2019, p. 9](#)). This dollar-per-day figure assumes that each offender would be revoked for at least one day, and, furthermore, represents the maximum that could be saved, all at once, *given these idealized parameters*. It should not be assumed that every potential revocation would be averted at the same time. Therefore, aggregate annual savings in incarceration-related costs would ultimately vary, depending on the period of revocation each offender actually receives.

of the sentence and place the defendant on community supervision (p. 2).⁷ All such defendants would be required to submit to risk-needs screenings as a condition of supervision to determine whether they are indicated for a drug treatment, and if so, participate in a prescribed course. Such treatment may include faith-based programs, outpatient or halfway house treatment, drug education, or medication-assisted therapies, and/or inpatient/residential treatments (p. 4).

Furthermore, the court can require—in addition to any prescribed course of treatment—participation in vocational training, family counseling, literacy training, or community service. Any violations of these terms would result in potential imposition of graduated sanctions (or incentives for positive behavior), electronic monitoring, additional substance or mental health treatment, or revocation of supervision (HB 4594, 2019, pp. 5-6).

Successful completion of a term of supervision would afford the defendant an opportunity to petition the court for dismissal of charges (HB 4594, 2019, p. 7).

This sort of “carrot and stick” approach to drug offenses is useful, at least on a behavioral basis, for one chief reason: People respond to incentives, whether positive or negative (Haugen, 2019b, p. 2). With respect to differences in public safety outcomes, various data bear out the community supervision route as opposed to imprisonment. For example, state data show that those sentenced to community supervision are substantially less likely to be reconvicted of an offense after placement than those sentenced and released from state jail (in 2015, the conviction/reconviction

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rate among that year’s community supervision cohort was 29.2%, whereas the reconviction rate for state jail releases was 53.5%; LBB, 2019b, pp. 6-9). This is an unsurprising result for several reasons, not least of which is the fact that community supervision affords far more opportunities for individuals with drug problems to be rooted in pro-social supports and programming that can help instill better habits and coping strategies (to say nothing of establishing gainful employment as a norm).

To be sure, there would be short-term challenges to presumptive community supervision for this population of drug offenders. For instance, there has been a steady reduction in the average number of employed community supervision officers available to supervise individuals to begin with (from 3,530 in 2010, to 3,032 in 2019; CJAD, 2019, p. 11). Average regular caseload size has risen since 2014 as a partial result. However, there exist ways which mitigate the impact of this. In order to reduce the likelihood that those being supervised do not fall through the cracks—to say nothing of maintaining community supervision as a reliable sentencing option for the courts—it will be important to prioritize finite resources toward supervision and to reduce revocations, including front-loading probation funding toward the beginning of supervision when the risk of failure is highest (Haugen, 2019a, p. 6).

Once again, it is difficult to measure the aggregate fiscal impact of such a policy. Common sense indicates that reducing the number of individuals admitted to prison in favor of supervising more in the community would result in substantial overall cost savings, given the large difference in their average associated costs. According to the LBB, that reduction would indeed be the expected result should the bill become law (HB 4594 Fiscal Note, 2019, p. 1). Nonetheless, the agency’s fiscal note explains that there is a lack of specific data necessary to determine the number of those admitted to prison who would meet the provisions of the bill and be diverted to community supervision.⁸

Such data will be needed in the future to estimate the fiscal impact of the bill’s provisions. Regardless, shifting the state’s strategy to a more pro-social stance for addressing ongoing drug problems, while still retaining the discretion to impose sanctions to encourage program compliance or address true recalcitrance, would be a far more effective use of limited

⁷ With various exceptions. For example, for those with prior possession offenses; those who, by a preponderance of evidence, present a danger to the safety of others, or possessed with intent to deliver; those who have been convicted in the same proceeding of additional felony offenses, etc. (HB 4594, 2019, pp. 2-3).

⁸ Annual receives into TDCJ facilities for drug possession still provide at least a clue as to the scale of imprisonment for those offenses, even without specifics regarding who would ultimately be diverted to community supervision under the provisions of the bill. In 2019—the latest year for which data pertaining to the offense of record is available—there were 6,269 individuals admitted into state jails and 6,927 individuals admitted into prison for drug possession (TDCJ, 2019, p. 21). Some of those individuals will have been imprisoned for first- and second-degree felony possession, and therefore, would not be subject to HB 4594’s provisions. Nonetheless, considering that the pool of individuals imprisoned for drug possession in a typical year is so large, suggesting that many hundreds or even thousands of them could potentially benefit from the bill’s policies is not an unjustified assertion. Still, more granular state data are needed to know for certain.

Table 4
Growth in Various Areas of TDCJ Annual Budget, FY2011-FY2021

Area (Goal Section)	FY 2011 (budgeted)	FY 2021 (budgeted)	% change
All Prison Diversions (A.1.1-4.)	\$286M	\$247.4M	-13.5
Correctional Security Ops. (C.1.1.)	\$1.05B	\$1.24B	+18.1
Managed Health Care (C.1.7-9.; C.1.8-11 in 2021)	\$472.3M	\$646.9M	+37
Institutional Goods (C.1.4.; C.1.5 in 2021)	\$160.4M	\$167.9M	+4.6
Institutional Services (C.1.5.; C.1.6 in 2021)	\$166.1M	\$210M	+26.4
TDCJ Grand Total	\$3.12B	\$3.43B	+9.9

Note. Data from the Texas Legislative Budget Board *General Appropriation Act of 2010-2011* (https://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2010-11.pdf) and *General Appropriation Act of 2020-2021* (https://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2020_2021.pdf).

resources and would promote better public safety (even absent significant cost efficiencies).

Other Areas for Consideration

There are other areas within the criminal justice system that merit (or even demand) further consideration for potential reform in the future, yet, due to insufficient state data, have not yielded determinate fiscal scoring in legislation written so far.

For instance, the prison system’s aging population should command increased attention in the near future, if for no other reason than simple fiscal realities. As mentioned above, the proportion of those prisoners aged 55 and over has increased by nearly 70% over the last decade (to 14%, from 7.7%). Prisoners, as a general cohort, are not known for their robust health. Elderly prisoners, even less so. The result is that it is becoming increasingly expensive to provide medical treatment to them (with the cost of doing so being borne entirely by TDCJ). A sampling of some of the largest line items in TDCJ’s annual operating budget for the

Some of the largest line items in TDCJ’s annual operating budget for the last decade not only show growth in healthcare costs in absolute terms but also that healthcare spending is one of the fastest-growing areas relative to the rest of the budget.

last decade not only shows this growth in absolute terms (up 37.5% between that budgeted in FY2011 versus FY2021) but also shows that health-care spending is one of the fastest-growing areas relative to the rest of the budget (see **Table 4**; [TDCJ, 2020, pp. 4-6](#); [TDCJ, 2011, pp. 5-6](#)).

This level of sustained cost growth in a single area of TDCJ’s budget cannot continue indefinitely. At least one bill that would have taken a sen-

sible first step to address this by expanding consideration for medical parole for a small number of elderly inmates—resulting in potential eligibility for Medicaid assistance, which is partially funded by Congress—has been proposed but never adopted ([SB 126, 2015](#)). Whether they accept this proposal or some other, the Texas Legislature should take proactive steps to readdress this issue in the future—well before fiscal realities arrive to finally force their hand.

Other positive reforms related to primary caretaker diversion ([HB 1389, 2019](#)) and theft enhancement reductions ([HB 1240, 2019](#)), to name a couple, have also been proposed in recent memory but received indeterminate fiscal notes due to a dearth of state data necessary to run useful models. State agencies should endeavor to make more granular data available in the future—both to aid the Legislative Budget Board in fiscal modeling and to advance policy deliberations.

Conclusion

Having a global pandemic steamroll its way through a state’s economy is no one’s good idea of enacting budgetary restraints. But facing reality is not optional. Texas has faced budget tightening in its corrections system before. So, legislators must address this situation in a similar fashion—by once again prioritizing finite resources while, this time, seeking to get a handle on a costly, aging prison population and reducing technical violations that undermine the entire purpose of community supervision in the first place. ★

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