TEXAS CRIMINAL JUSTICE COALITION

Effective Approaches to Drug Crimes In Texas:

Strategies to Reduce Crime, Save Money, and Treat Addiction

ACKNOWLEDGEMENTS

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The Texas Criminal Justice Coalition (TCJC) works with peers, policy-makers, practitioners, and community members to identify and promote smart justice policies that safely reduce the state's costly over-reliance on incarceration – creating stronger families, less taxpayer waste, and safer communities.

DURING THE LAST 30 YEARS, Texas has enacted laws and policies meant to enhance public safety, resulting in crowded prisons and jails, and a corrections budget that comprises a huge slice of the state budget. Laws that focus on incarcerating men and women have been founded in genuine concern. However, a considerable percentage of the people arrested, charged, and incarcerated have been low-level drug users.[1] Since 1999, arrests for drug possession in Texas have skyrocketed. In fact, almost all drug arrests in Texas are *not* for delivery or distribution, but for possession of a controlled substance.[2] These numbers include people arrested for possession of illicit drugs, as well as the increasing number of Texans who have become addicted to prescription drugs.[3] Both of these groups share a common thread: their substance abuse problems are often rooted in addiction. **A proper response to this public health issue is treatment, not incarceration.**

Many people prosecuted for low-level drug crimes battle other obstacles, including mental illness, homelessness, joblessness, and poverty. Prosecuting and incarcerating Texans whose addictions push them into using illicit drugs or abusing prescription drugs burdens them with the **collateral consequences associated with conviction and incarceration**; it (further) limits their housing options, employment opportunities, and access to educational and medical programs, and it ultimately lessens the likelihood that they will become healthy, contributing members of their communities. **Incarceration-driven policies are also egregiously expensive**: treatment is a fraction of the cost of imprisoning an individual in Texas.[4] Finally, our prisons and jails are simply not equipped with staff or resources to adequately combat the root causes of substance abuse and addiction, which means that **untreated addicts are much more likely to commit other crimes after release**, threatening public safety and creating a continual drain on limited coffers.

For those with addiction, drug treatment is a more effective strategy to treat the individual, reduce recidivism, and lower costs to the state. Texas should take steps to aggressively and proactively address drug addiction, and thereby decrease associated crime, by promoting medical and public health responses to this issue. Specifically, **policy-makers must support the efforts of practitioners, including probation departments and judges, who are seeking to effectively treat those with substance abuse by improving and making more widely available community-based rehabilitation and treatment diversion alternatives.**

While on probation, men and women can take part in substance abuse and other rehabilitative programs, receive needed support and resources, maintain family relationships and obligations, and remain a participant in the community.

Background of Substance Abuse and Drug Offenses in Texas

90% of drug-related arrests in Texas are for possession – not for delivery or distribution.

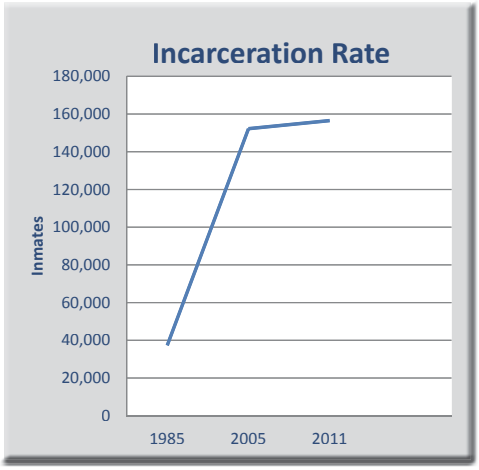
30% of incoming inmates were sentenced for drug offenses in 2011, 75% of which were for possession.

Over 27,000 individuals in prison in 2011 were there because of a drug offense, 16,000 of which were for possession.

While addressing the serious concerns posed by drug abuse, Texas must simultaneously be vigilant against wasteful expenditures on the prosecution, incarceration, and re-incarceration of low-level, nonviolent drug users. Over-criminalizing drug offenses is both costly and ineffective at combating the root causes of substance abuse. **In addition to a strained budget, Texas risks overcrowding its prisons and jails with men and women whose addiction will not be effectively addressed without real treatment. Already, Texas is projected to exceed prison and jail capacity by FY 2014 if it continues on its current trajectory.**[5] While the sharp increase in incarceration is beginning to level, the upward climb has not significantly dropped, and population levels at the Texas Department of Criminal Justice (TDCJ) continue to reach numbers dangerously close to maximum capacity. **Overreliance on incarceration to "treat" substance abuse or co-occurring mental health issues is a major contributor to this overburdened prison system.**

Costly Incarceration: Overburdened State Prisons and Jails

Slowing the upward spike in the Texas prison population has been the result of innovative diversion policies enacted by bipartisan leadership in the Texas Legislature. Although the number of people that Texas has incarcerated increased by 320% from 1985 to 2011 (37,281 to 156,522 individuals), the rate of increase has slowed dramatically, rising only 2.8% from 2005 to 2011 (152,217 to 156,522 individuals).[6] Unfortunately, some of the policies that resulted in that slowed growth have been curtailed due to budget constraints, especially state efforts to funnel drug users into treatment beds or programs. As a result, **there has been little slowing of the numbers of drug users incarcerated in Texas**.



Arrest rates for drug-related crimes have consistently climbed in the past decade, increasing over 30% since 1999; **arrests for drug possession alone have risen by nearly 32%** during that time.[7] About 90% of all drug arrests in Texas are for possession of a controlled substance, not delivery or distribution. In 2010, over 125,000 individuals in Texas were arrested for possession, more than 10% of the total arrests made for any crime.[8] In FY 2005, almost 32% of all incoming inmates (24,453 individuals) were received by TDCJ for a drug offense.[9] In FY 2011, those numbers had hardly changed, with about 30% of all incoming inmates (22,057 individuals) received for a drug offense—and nearly 75% of those individuals were sentenced for drug possession, as opposed

The individuals who entered TDCJ in 2011 for a drug possession offense are costing Texas taxpayers nearly $700,000 EVERY DAY.

to delivery or other offenses.[10] Additionally, in both 2005 and 2011, the percentage of individuals on hand in (vs. entering) a TDCJ institution for drug offenses stayed relatively similar, hovering around 20%.[11] According to TDCJ's 2011 Fiscal Year Statistical Report, over 27,000 individuals were on hand in a TDCJ facility for a drug offense at the end of FY 2011, nearly 20% of the total population. Of those, nearly 16,000 were for drug possession alone.[12]

During the same six-year period, TDCJ's budget increased by $700 million, ballooning from $2.4 billion in 2005[13] to $3.1 billion in 2011.[14] Likewise, the cost of incarcerating one inmate jumped 27%, from $40.05 per day in 2005[15] to $50.79 per day in 2011.[16] These costs are unsustainable, and yet Texas continues to incarcerate individuals for drug offenses at the same rate, driving costs upward. By comparison, the estimated average cost for community supervision outpatient services is about $10 per day,[17] and studies show that providing treatment for these individuals is effective in reducing recidivism (and lowering associated costs) without jeopardizing public safety.[18]

Incarceration vs. Treatment Costs

For just one inmate, Texas spends roughly $18,500 per year, while community supervision along with drug treatment programs cost around $3,500 per client[19] – **five times less than incarceration.**

The charts below delineate various costs to the state associated with incarceration, medical care, treatment, and supervision:

Institutional Facility or Program	Per-Day Cost[20]
State Prison	$50.79
State Jail	$43.03
Psychiatric	$137.33
Medical	$592.96
Mentally Retarded Offender Program	$65.91
Substance Abuse Felony Punishment (SAFP) Facility	$70.87
Emergency Room Visit	$986.00[21]

Community Supervision Facility or Program	Per-Day Cost
Community Supervision (Probation)	$1.30[22]
Targeted Substance Abuse Treatment	$11.94[23]
Treatment Alternatives to Incarceration Program (Non-Residential)	$8.74[24]

An Alternative to Incarceration: Community Supervision

Community supervision (previously called probation) refers to a sentence served in the community instead of in prison or jail.[25] TDCJ's Community Justice Assistance Division (CJAD) is charged with administering and partially funding adult community supervision; it also trains and certifies community

Drug and DWI/DUI offenses comprise nearly 50% of the probation population.

supervision officers. Community Supervision and Corrections Departments supervise individuals who have been placed under community supervision by local courts.[26]

A total of 412,726 individuals were placed on community supervision at the end of FY 2011, including 243,477 felony probationers, and 169,249 misdemeanor probationers.[27] Over half (265,507) of the individuals placed on community supervision are under *direct supervision*, meaning they are legally on community supervision, work and/or reside in the jurisdiction in which they are supervised, and receive a minimum of one face-to-face contact with a Community Supervision Officer (CSO) every three months.[28] Those not meeting the criteria for direct supervision are on *indirect supervision*—which may require a person to report in person, but not face-to-face, and can fit a number of other criteria.[9]

Only 9% of the state's annual $3.1 billion corrections budget goes towards treatment, community supervision, and other diversions from incarceration that are more effective and less expensive.

Focusing on those individuals on direct supervision, over 25% (67,075) were for a drug offense, and over 20% (53,952) were for a DWI/DUI offense—the underlying cause of which can be attributable to substance abuse. Overall, the percentage of people on probation for a drug offense is higher than for any other crime.[30] **As a safe alternative to incarceration, the Legislature must continue to commit funding to the community supervision system. Along with assessment-based treatment, it can effectively meet the needs of individuals with addiction, resulting in long-term cost savings, fewer crime victims, and stronger, healthier communities.**

Recidivism and Revocation Among Individuals with Drug Offenses[31]

Generally, recidivism means a "return to criminal activity after previous criminal involvement."[32] The Legislative Budget Board (LBB) routinely compiles recidivism and revocation data on individuals who have been placed on community supervision, released on parole, or released without supervision from a correctional institution.[33] These rates include re-arrest rates and re-incarceration rates. Additionally, individuals placed on felony community supervision and parole who have had their supervision revoked and were subsequently sentenced to incarceration or confinement are considered recidivists for LBB purposes.[34]

In the context of substance abuse, recidivism and revocation rates—failure rates—can be a strong indicator of deficiencies in the system. Typically, individuals with access to more resources, more programming opportunities, and more support meet higher levels of success. **Those without access to necessary services, resources, or support often have greater rates of failure.** This underscores the importance of monitoring the success rates of individuals who participate in placement programs, diversion alternatives, and any treatment or service-oriented program, to ensure taxpayers are getting a real return on their investment in such programs.

☐ State Jail Recidivism Rates

In Texas, individuals released from state jails are released without supervision, and without having had much (if any) access to treatment programming while incarcerated. As such, it may not be surprising

that almost two-thirds of all individuals released from state jail in 2006 and 2007 were re-arrested, and about one-third re-incarcerated, within three years of release.[35] Among these individuals, men and women with drug offenses have particularly high recidivism rates. About 44% of those re-arrested were originally sentenced for a drug offense.[36] About 40% of those who were re-incarcerated were originally convicted of a drug felony offense.[37]

☐ Prison Recidivism Rates

According to the LBB, about a quarter of the individuals released from a state prison in 2006 and 2007 recidivated within three years.[38] Over 30% of those individuals released in 2006 and 2007 who recidivated were originally sentenced for a drug offense.[39]

The LBB also tracked individuals released in 2005 and 2006 to determine recidivism in the context of re-arrests, monitoring only those arrested for a Class B Misdemeanor or above. (Class C Misdemeanors were excluded in recidivism calculations because they typically do not result in confinement.) The re-arrests for the 2006 cohort indicated close to a 50% recidivism rate.[40] Of those, 32.5% were originally sentenced for a drug offense.

☐ Revocation of Community Supervision

An individual can be revoked from community supervision for violating the terms of his or her probation (e.g., a technical violation like missing a meeting with a probation officer) or for committing a new offense (e.g., drug use). About 50% of revocations in Texas are for technical violations, and 50% are for committing a new offense.[41] In 2010, less than 15% of the community supervision caseload (approximately 25,000 individuals) was revoked,[42] with the majority (95.1%) being re-incarcerated.[43]

Again, **high recidivism rates may be correlated to the unavailability of programming and resources.** Individuals in state prisons have access to more substance abuse programming , job skills training, and other services than those in a state jail. In contrast, individuals on community supervision have access to the greatest opportunities for support, and they have a correspondingly lower recidivism rate.

Understanding the Cycle of Drug Addiction—Related Crimes and Special Considerations

Addiction and Barriers

☐ Addiction is a Disease, and Relapse is a Common Part of Recovery

Addiction, including physical dependence, is characterized by compulsive drug seeking and use despite occasional and potentially devastating consequences.[44] Drug addiction is considered a brain disease.[45] **By altering the chemistry of the brain, drug addiction leads to compulsive cravings and limits the ability of an individual to make voluntary decisions.**[46] Given the ongoing nature of treatment for brain disease, medical experts and addiction researchers have identified relapse as a common part of recovery.[47]

☐ Individuals with Drug Offenses Face Numerous Barriers to Successful Reentry

Collateral consequences for conviction and incarceration can be egregiously harsh relative to the alleged crime committed. Convictions for drug offenses limit the ability of individuals to access public housing, employment, education, and military service.[48] Incarceration removes a person from family responsibilities (e.g., child support), societal obligations, and personal commitments. These barriers make individuals involved in the criminal justice system particularly susceptible to relapse.[49] Without legal employment and safe housing, individuals may turn to underground economies or become homeless.[50] Reuniting with family and community members can also be difficult after incarceration.[51] Ongoing legal problems and strict parole stipulations can increase stress.[52] Individuals on probation face similar challenges.[53] **All of these common struggles can trigger relapse, which can lead to re-arrest or re-incarceration.**[54]

Special Considerations

☐ Intersections of Addiction with Mental Illness, Homelessness, and Incarceration in Texas

Many people prosecuted for low-level drug crimes face correlative obstacles such as mental illness, homelessness, joblessness, and poverty.[55] In fact, about 50% of seriously mentally ill persons are impacted by drugs and alcohol.[56] Individuals with this co-occurring disorder are at a far higher risk of being homeless or incarcerated.[57] Indeed, around 15% of incarcerated persons are estimated to have co-occurring disorders.[58]

Without an effective treatment infrastructure, individuals with co-occurring disorders will continue to cycle in and out of the criminal justice and public health care systems.[59] Incarceration is not the solution. It fails to effectively address these underlying issues and often exacerbates the very challenges that led to drug use and crime—such as joblessness or mental health issues.[60]

☐ Prescription Drug Use

Prescription drug abuse is the intentional use of commonly prescribed medication without a prescription, or the use of such medication outside of how it was prescribed. The more commonly abused prescription drugs are: (1) opioids—typically used to treat pain—including hydrocodone

(Vicodin), oxycodone, morphine, and related drugs; (2) central nervous system depressants—used to treat anxiety or sleep disorders—including Valium and Xanax; and (3) stimulants—used often for attention deficit hyperactivity disorder—such as Adderall and Ritalin.[61]

In 2009, an estimated 16 million people age 12 and older used a prescription pain reliever, tranquilizer, stimulant, or sedative for a non-medical purpose at least once in the year prior to being surveyed.[62] In 2010, approximately 7 million people (roughly 2.7% of the nation's population) were identified as "current users of psychotherapeutic drugs taken nonmedically;"[63] these drugs are broadly categorized as drugs targeting the central nervous system, including those used to treat psychiatric disorders. According to a 2010 National Survey on Drug Use and Health, an estimated 2.4 million Americans used prescription drugs non-medically for the first time in the year prior to being surveyed. More than half were females and about a third were ages 12-17.

While prescription drug abuse affects all demographics, it is youth, older adults, and women who are thought to be at particular risk.[64] Additionally, current research suggests that veterans returning from Iraq and Afghanistan are significantly vulnerable to risks related to prescription drug dependency, addiction, and abuse[65] *(described more fully below)*. In Texas, the Drug Demand Reduction Advisory Committee (DDRAC), a statutorily established committee mandated to "develop comprehensive statewide strategy and legislative recommendations that will reduce drug demand in Texas," recently published its biennial report identifying growing issues related to substance abuse.[66] According to findings published in 2009, non-medical use of prescription drugs has increased by 80% since 2000. DDRAC also asserts that "abuse of prescription drugs is problematic in all age groups with **overdose deaths from prescription medication now the leading cause of accidental death among adults ages 45 to 54**."[67]

Special Veterans Issues: A disconcerting trend related to prescription drugs was recently revealed in a special six-month investigative report produced by *The Austin American-Statesman*. The report explains that an "alarmingly high percentage [of veterans returning from Iraq and Afghanistan] died from prescription drug overdoses, toxic drug combinations, suicide and single-vehicle crashes—a largely unseen pattern of early deaths that federal authorities are failing to adequately track and have been slow to respond to."[68] According to the newspaper report, **use of prescription drugs among veterans is rising, and many of the deaths are correlated to prescription drug use.**[69]

Sadly, Texas' response to prescription drug abuse among veterans seems to be partly incarceration driven. Texas is currently faced with crowded prisons and jails, and many of those incarcerated are veterans.[70] Convicting and incarcerating veterans who are addicted to prescription drugs only exacerbates the problem. Veterans face many obstacles when returning to civilian life, including psychological and physical issues stemming from their overseas experiences, which are often compounded by civilian stresses that all Texans face. Medical advancements make certain medications a viable option to treat individuals, including veterans, who are dealing with physical or psychological challenges. Texas must invest in these safe, effective community-based treatment and alternative programs. It is irresponsible to worsen the problem by simply intensifying criminalization and increasing incarceration.

Treatment Options and Information

Budget Cuts to Treatment Hurt Texas

A broad cross-section of criminal justice practitioners and advocates favor increased funding for rehabilitative services and less reliance on incarceration to "treat" addiction. Yet Texas has one of the lowest drug treatment admission rates, and one of the highest incarceration rates in the country.[71]

The 82nd Texas Legislature (2011) was challenged by a substantial budget deficit.[72] Instead of choosing to raise taxes to bring income to Texas, state leaders reduced government spending by over $15 billion, often being forced to slash funding for critical programs.[73] The majority of these cuts were made to health and human services, and included significant reductions in spending on substance abuse treatment in communities and in prisons.[74]

Texas cannot afford to undermine the improvements that are making communities safer and healthier, and keeping more money in taxpayer wallets.

Investments in Drug and Mental Health Treatment Keep Texans Healthy and Safe

The Mental Health and Substance Abuse Division of the Texas Department of State Health Services[75] contracts with treatment service providers throughout the state. As of 2009, there were over 46,000 licensed and funded outpatient drug treatment slots and about 7,500 residential drug treatment beds in Texas.[76] In 2009, over 14,000 individuals were on waiting lists for treatment.[77] Statewide, the average monthly number of individuals waiting for mental health services was over 6,700;[78] again, many of these individuals have co-occurring substance abuse disorders.

Outpatient Drug Treatment Slots[79]	Inpatient Drug Treatment Beds[80]	Prison and Jail Beds
46,644	7,415	156,297[81]

Wherever possible, Texas must boost investments in effective substance abuse treatment beds. Forcing people who are attempting to better themselves onto long wait lists can have devastating consequences. For instance, delays in admission to treatment programs can quickly lead to re-arrest for relapse or committing a new crime, revocation of probation or parole, and return to prison.[82]

Diversions with Treatment Reduce Crime

Incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives that are proved to be more cost efficient and programmatically effective. Indeed, **research indicates that substance-using individuals are far less likely to commit a crime after receiving substance abuse treatment.**[83] For example, the National Treatment Improvement Evaluation Study demonstrated that, following treatment, participants' rates of drug dealing, shoplifting, and assault decreased by about 80%, their rates of arrest decreased by 64%, and their engagement in illegal activity to support themselves

dropped by almost 50%.[84] Treatment participants also reduced their drug use by about 50%, were more likely to be employed, and were less likely to receive public benefits and be homeless.[85] Other research shows that states that admit more people to drug treatment programs incarcerate significantly fewer people.[86]

Community Supervision and Corrections Departments (probation departments) also provide evidence that placing individuals on probation is critical to reducing the flow to prison without jeopardizing public safety. **While on probation, men and women can take part in substance abuse and other rehabilitative programs, receive needed support and resources, maintain family relationships and obligations, and remain a participant in the community.** Texas has seen an increase in probation felony placements while simultaneously realizing a *decrease* in revocations. While the average felony direct supervision population has increased from 2006 to 2010, jumping from 158,479 to 172,893 individuals, the average revocation rate decreased, falling to 14.7% in FY 2010.[87]

Treatment Saves Money

Importantly, treatment in lieu of incarceration creates long-term cost savings in overall health care, accidents, absenteeism from work, and other areas.[88] A rigorous study conducted by the Washington State Institute for Public Policy evaluated the potential benefits, costs, and fiscal impacts of evidence-based treatment of substance abuse and mental health disorders. Researchers found that **every dollar invested in treatment can lead to about $3.77 in benefits**.[89] Benefits are derived from increased participation in the job market, fewer health care costs, and lower costs associated with crime.[90] In Washington State, scaling up evidence-based treatment was estimated to produce a net benefit of $1.5 billion for taxpayers.[91] **In Texas, these potential savings would be far higher** because Texas incarcerates at almost three times the rate of Washington.

Nonresidential treatment programs in Texas are also typically more cost effective than incarceration, costing less than $10 per day, while incarceration in a state prison averages $50.79 per day.[92] Other diversion programs are similarly cost efficient and programmatically effective when compared to incarceration. For instance, it is estimated that the current adult drug court treatment program in Texas produces about $2.21 in benefit for every $1 in costs.[93] Additionally, recidivism rates are lower upon successful completion of diversion programs.[94] Travis County's probation department provides evidence of this: in 2008, through systematic implementation of evidence-based practices, the department lowered the number of revocations, post-release re-arrests, and absconders;[95] over time, this reduced recidivism rates by 17%.[96]

Legislative Efforts to Improve Responses to Low-Level Drug Offenses

Throughout the last 25 years, several strategies have been proposed and implemented to reduce incarceration and revocation rates for low-level drug offenses. These proposals have led to a range of outcomes. Below are a few highlights of these efforts.

State Jails

The creation of the state jail system in 1993 was intended to avoid long incarceration terms for individuals with low-level drug offenses.[97] State jails were conceptualized as a back-up sentence for individuals who did not comply with community supervision.[98] Over the years, however, tens of thousands of Texans with low-level drug offenses have been sentenced directly to state jail, serving more than one year, on average, and having little (if any) access to treatment and programming. This period of incarceration has not only further destabilized many men and women by removing them from their support systems and creating an additional barrier to securing legal employment, it has also cost state taxpayers millions of dollars.[99]

2003 Sentencing Reform

In 2003, Texas passed legislation that disallowed courts from sentencing individuals with first-time state jail drug felonies to state jail, and instead mandated community supervision.[100] This law aimed to ensure that individuals received addiction treatment.[101] In practice, however, this law fell short of its goals. Long waitlists interfered with probationers' ability to efficiently access drug treatment, and some relapsed and were re-arrested for a second felony offense.[102] Since the 2003 legislation did not require individuals with *prior* felonies to receive probation,[103] many of these individuals were excluded from the mandatory probation/drug treatment initiative. Advocates and policy-makers have proposed legislation that would disallow punishing this class of individuals for a second-time felony offense, but they have been unsuccessful in passing this bill into law.

2005 Diversion Funding

In 2005, the Texas Legislature allocated additional diversion funding to many county probation departments.[104] This funding incentivized counties to decrease rates of community supervision revocation.[105] Counties that received funding decreased revocation rates by about 14.5%.[106]

2007 Justice Reinvestment

Faced with a ballooning prison population and overcrowded prison system, the Texas Legislature diverted funding from prison construction, and invested $241 million in substance abuse treatment, community-based mental health and drug treatment, and community supervision.[107] Justice reinvestment significantly decreased the rate of growth of the prison population in Texas,[108] and it has saved Texas more than $2 billion.[109]

Ongoing Commitment to Smart-on-Crime Programming

During Texas' 2009 and 2011 legislative sessions, policy-makers continued to allocate funding, where possible, to diversion and treatment programs, as well as other strategies to help meet the needs of individuals with substance abuse and/or mental health disorders.

For instance, in 2009, legislators passed bills to establish and expand the implementation of specialty courts (e.g., drug courts and veterans' courts); allow the use of mental health problems to be introduced as mitigation in punishment; and create a comprehensive statewide reintegration program for individuals leaving prison, to include wraparound treatment. In addition, funding was provided for diversion programs that attempted to put more people on probation and in community-based diversion programs.

In 2011, state legislators continued their push to increase programming participation and reduce unnecessary system involvement. They passed bills to provide incentives for state jail felons and probationers to participate in programming; require pre-sentence reports to include information about a defendant's military history and possible mental health-related disorders; and permit counties to establish programs to reduce nonviolent prison commitments.

While Texas is still measuring the effects of these policies, it must be noted that in 2011, the Legislature also chose for the first time in Texas history to close an adult prison—an accomplishment symbolizing the dramatic shift in pursuit of smarter policies that save taxpayer dollars while increasing public safety. And Texas communities have not suffered in the wake of new policies. Texas witnessed an 18% drop in the crime rate between 2003 and 2010;[110] furthermore, the state's violent crime rate dropped 9.3% in 2011, while the property crime rate dropped 8.2% during that year.[111] Continued investments in programs and services that offer tools for recovery to individuals battling addiction will further reduce incarcerated populations while keeping Texas communities safe.

Solutions

(1) Help probation departments fully implement localized "commitment reduction plans" to safely reduce the number of individuals who are sent to prison, through funding for collaborative strategies with local treatment practitioners and other stakeholders.

These commitment reduction plans were created by S.B. 1055 (2011). Under the bill, counties are permitted to set target reduction goals to reduce the number of people from that county who will be sent to prison, either as a result of direct sentencing to prison or probation revocations. Participation in the plan is completely voluntary, and counties may choose to partner with other counties to set and achieve their desired targets. Participating counties receive an upfront, lump sum of the savings from commitment reductions to establish the programs necessary to meet their reduction goals; funds will then be apportioned to participating counties based on their continued performance and ability to achieve their desired goals.

To help interested counties begin to implement a local commitment reduction plan, especially to reduce the number of individuals ending up in prison for drug offenses or co-occurring mental disorders, the state must provide promised front-end funding. This, in turn, will save Texas long-term costs associated with incarceration and enforcement, and lead to reductions in crime.

Commitment reduction plans will help reduce costly incarceration. TDCJ received nearly 70,000 new inmates in FY 2011. About 10,000 individuals were received because of a parole supervision revocation.

(2) Fully support the implementation of a criminal justice system-wide risk assessment instrument, to be used on system-impacted individuals from sentencing through parole, with modifications at each stage in the system to account for relevant factors that determine an individual's risk to public safety.

Currently, various assessment tools are used throughout the system, each applied in a variety of circumstances and designed for slightly different purposes. With one tool, agency and department practitioners will have easier access to shared information that can inform next steps, including further treatment and programming decisions.

(3) Revise sentencing recommendations and encourage more effective approaches—such as pretrial diversion—for low-level drug offenses, so those with substance abuse issues can avoid felony convictions and obtain the treatment they need to become law-abiding, self-sufficient community members.

As noted previously, about 90% of all drug arrests in Texas are for possession of a controlled substance, not dealing or distribution.[112] These people are low-level consumers of either illicit drugs or illegally used prescription drugs. They are addicts, and addiction is a brain disease that can be treated with proper resources and services.[113]

Limiting sentencing options through more effective alternatives for low-level drug offenses will result in significant savings to Texas, and healthier communities. Whereas state prison costs over $50 per person per day, and state jail costs about $43 per person per day, community supervision costs the state $1.30 per person per day, and it is better equipped to address the underlying causes of drug crime through local programs and services. **An emphasis on such drug and mental health treatment, alongside effective supervision in the community, will continue to help vulnerable individuals become productive and healthy members of society**, while preventing the gross inefficiencies and significant costs of incarceration.

(4) Strengthen investments in safe, cost-effective alternatives to incarceration, including treatment and community-based programs proved to be effective, for positive public health and safety outcomes.

In addition to the individual benefits of community-based rehabilitative services, investing in programming as opposed to incarceration is a smart-on-crime solution for Texas that can save taxpayer dollars, while producing great community and public safety benefits. For instance, drug treatment can improve employment opportunities and reduce dependence on welfare. The National Treatment Improvement Evaluation Study found that 19% more people received income from employment within 12 months of completing treatment, and 11% fewer people received welfare benefits.[114] According to the National Institute on Drug Abuse, "total savings associated with treating addiction can exceed the costs of that treatment by up to 12 to 1."[115]

But to be effective, treatment must be specifically tailored to the type of drug used and the needs of the affected individual. Successful approaches to treatment may include detoxification, counseling, and the use of addiction medications. Two main approaches to drug addiction treatment include behavioral treatments and pharmacological treatments.[116]

Kicking addiction is a difficult process. Successful approaches to treatment often require detoxification, intensive counseling, addiction medication, and a continuum of resources: a complex approach that can be better served in a community setting.

Treatment in conjunction with supervision is highly successful, and research on the outcomes of Texas probationers in Community Corrections Facilities[117] underscores how necessary it is to equip local probation departments with the tools to implement treatment programs.[118] Specifically, probationers completing residential programs showed a significantly lower two-year arrest and re-incarceration rate than those who did not complete their program. Furthermore, probationers who received more than 15 hours per week of cognitive programming also had lower arrest rates than those who did not. Finally, facilities with more than six counselors per 100 beds, and those that provide an aftercare component, result in lower arrest and re-incarceration rates than facilities that are not equally equipped.[119]

Despite this evidence, Texas has one of the lowest drug treatment admission rates, and one of the highest incarceration rates in the country.[120] Texas should increase resources for substance abuse treatment to prevent criminal behavior associated with addiction. **Supporting Texas' probation departments, and treatment alternatives to incarceration will increase the likelihood that Texas**

will continue to achieve desired outcomes regarding statewide cost savings, lowered recidivism, decreased crime, increased probationer success, greater victim restitution, and increased public safety. Policy-makers must work in conjunction with probation leadership, frontline practitioners, and programming/treatment providers to develop strategies that promote success for probationers and their families, including the following:

- ***Improved specialty courts, to better ensure efficiency, public safety outcomes, and effective resource allocation.*** Texas should support recommendations by the Criminal Justice Advisory Council of the Governor's Office that pertain to improved specialty courts.

- ***Programs such as the Law Enforcement Assisted Diversion (LEAD) program, which help local criminal justice system leadership reduce the intake of nonviolent individuals with addiction into confinement.*** The LEAD program is a pre-booking strategy that stresses both immediate access to services and participant accountability, with the target being low-level drug users for whom probable cause exists for an arrest. Specially trained law enforcement officers immediately divert the individuals into community-based treatment with access to support services (housing, vocational and educational assistance, etc.). Giving individuals the tools to remain healthy and law-abiding will keep communities safer, while reducing the significant costs associated with incarceration.

- ***Programs that promote more robust case management.*** An essential component of community-based substance abuse treatment is case management.[121] Studies show that case management has a positive impact on the process of recovery from alcohol and substance abuse, increasing employment and decreasing criminality among individuals with case managers.[122] In terms of the financial benefits of treatment, one analysis found that court-supervised treatment (with case managers) for individuals with co-occurring disorders would save the state $1.73 for every $1 spent.[123]

  Even something as simple as proper case management can yield significant results in overcoming substance abuse.

- ***Expanded community partnerships and the implementation of evidence-based practices.*** Probation departments should contract with a broad spectrum of community-based providers and services to provide treatment and support for individuals with substance abuse issues. This will improve efforts to mitigate probationers' potential to engage in criminal behavior by addressing specific needs, while keeping probationers united with their families and support networks. A greater array of options for helping probationers succeed will in turn improve judges' confidence that individuals can be safely supervised in the community.

  Policy-makers should also encourage practitioners to identify evidence-based practices—such as 12-step facilitation, motivational therapy, cognitive-behavioral therapy, and strategic family therapy – to support diverted individuals in remaining sober.[124] Below are two programs that may provide direction for policy-makers interested in implementing substance abuse diversionary treatment.

- **The Alternative Incarceration Center in Smith County, Texas,** is a day reporting center that emphasizes assessment, risk management, intervention, and close supervision.[125] The Center allows individuals to plead guilty to their charge and accept probation terms including participation in substance abuse and/or mental health treatment, searching for or continuing employment, and reporting to the Center for a specified amount of time each day.[126] The program has an 88% success rate, and produces a net savings of over $3 million annually.[127]

- **The Drug Offender Sentencing Alternative** is a statewide diversion program in Washington State for individuals with a felony charge who committed drug offenses or drug-involved property offenses. A study of the program showed that every dollar spent providing treatment to individuals who committed drug offenses reaped $7.25-$9.94 in benefits to the community.[128]

Finally, Texas has a number of resources that can assist in connecting individuals in need with proper services and treatment. For example, the Association of Substance Abuse Programs (ASAP) is a statewide organization providing coordination between community leaders and service providers to ensure that Texans have access to prevention and treatment services. ASAP represents over 60 community-based service providers and organizations, and works as an advocate and conduit between community-based programs and the Texas Department of State Health Services.[129] Policy-makers and practitioners should work with organizations like ASAP to ensure that individuals with substance abuse issues have access to the appropriate treatment programs and facilities that can help them maintain sober, productive lives in the community.

(5) Use swift and certain graduated sanctions for drug-related community supervision violations to encourage compliance with supervision terms, and prevent revocation for a positive urinalysis.

Research demonstrates that swift and certain graduated sanctions are effective at deterring crime and fostering compliance and accountability among probationers. Individuals who commit crimes are more likely to alter their behavior as a result of high-probability threats of mild punishment than low-probability threats of severe punishment.[130] In other words, a guarantee that missing a probation meeting will lead to increased supervision is more likely to produce compliance than the long-term possibility of being returned to prison. In addition, community supervision is better equipped to address the underlying causes of drug crime and addiction than revocation to prison, where individuals do not have similar access to local programming or their family support networks.

Indications of drug relapse, such as a positive urinalysis, must also be handled appropriately. Effective responses include enhanced support, and/or drug treatment and supervision—not re-incarceration.

HOPE Program

Hawaii's Opportunity Probation with Enforcement (HOPE) Program was established in 2004 to decrease drug use and crime rates among probationers. Through the use of "swift and certain" graduated sanctions, HOPE has led to promising outcomes, and has sparked a national discussion about innovative strategies to effectively manage people on probation.

HOPE is different than most probation operations in several important ways:

- HOPE responds to probation violations with "swift and certain" sanctions, usually within 72 hours.
- HOPE sanctions probation violators with brief stays in jail, usually 1-3 days. Stays increase for every additional violation.
- Drug treatment is not mandated. Instead, officers assign treatment to probationers who request help for an addiction, or when probationers have violated rules three times.
- Random drug testing is administered about once weekly. Frequency is reduced after several negative urinalyses.[131]

HOPE for Texas?

Tarrant County District Judge Mollee Westfall recently founded Supervision With Intensive enForcemenT (SWIFT), an approach to community supervision that administers swift and certain punishments for probation rule violations. Probationers who break a rule—like missing a meeting—are arrested and brought to the county jail for a short stay. While administering clear sanctions is aligned with the successful programming of the HOPE system, **bypassing graduated sanctions like increased supervision or mandatory drug treatment in favor of incarceration represents a departure from the proven practices of HOPE, and limits the ability of SWIFT to effectively manage individuals with addiction, mental illness, and homelessness**. Frequent re-incarceration in county jails also fails to save money. Maintaining fidelity to the evidence-based community supervision practices is critical to improving outcomes for probationers in Texas.[132]

(6) Ensure that staff throughout the criminal justice system—including probation and parole practitioners, as well as corrections staff—have access to adequate training on substance abuse and mental health issues to better meet the needs of those they supervise.

At an increasing and unsustainable cost to Texas, our prisons have become warehouses for people with substance abuse and mental health issues who have not received proper treatment. According to one report on prisoner reentry in Texas, approximately 63% of the prison population is chemically dependent,[133] while a Bureau of Justice Statistics report determined that 56% of state prison inmates have mental health issues.[134] Additionally, the Department of State Health Services (DSHS) determined that, as of April 2010, an average of 23% of people involved with TDCJ (30% in prison, 30% on parole, and 19% on probation) were current or former DSHS clients.[135]

High representations of individuals with substance abuse and/or mental health issues in the state corrections systems may be due to current sentencing practices, a lack of recognition or understanding among criminal justice practitioners of appropriate programs and interventions, and/or a lack of availability of such programs and interventions. With properly trained staff, probation, parole, and correctional officers (among others) can recommend appropriate community-based or in-house programming that will best address the root causes of criminal behavior and, as such, reduce individuals' likelihood of recidivism.

For instance, in cooperation with other agencies with expertise in these specific areas, probation and parole departments can best provide appropriate case management[136] and programming to address criminogenic factors.[137] Additionally, probation and parole practitioners should be trained in substance abuse and mental health, trauma-informed care, motivational interviewing, workforce development, and other issues so they can provide more effective and meaningful supervision to their clients, thereby boosting the likelihood of their clients' success in the community.

Conclusion

Substance abuse, in its multifaceted forms, is an ailment that cannot be cured simply through incarceration. Treatment and support for addiction yields better public safety outcomes than incarceration, both for the individual and the community. As such, rather than punish individuals already in the grips of a crippling and debilitating ailment, Texas must seek relief for those with addiction through treatment, programming, and support. The Texas Criminal Justice Coalition strongly urges state and local decision-makers to increase options for practitioners seeking to address the harmful impact of addiction, including by making critical investments in programming that will benefit Texas in both the short- and long-term. This will create stronger families, less taxpayer waste, and safer communities.

Endnotes

[1] Texas Department of Public Safety (DPS), *Crime in Texas: Texas Arrest Data,* 1999 – 2011 (as cited in Caitlin Dunklee Policy Brief, "Rethinking Responses to Drug Crime in Texas: Strategies to Save Money, treat Addiction, and Reduce Crime," Spring 2012, p. 1); Texas Department of Criminal Justice (TDCJ), "Statistical Report Fiscal Year 2011," p. 9-12. Drug possession offenses account for over 11,000 inmates in Texas' prison and 3,584 in state jails.

[2] DPS, *Crime in Texas: Texas Arrest Data,* 1999 – 2011 (as cited in Caitlin Dunklee Policy Brief, "Rethinking Responses to Drug Crime in Texas: Strategies to Save Money, treat Addiction, and Reduce Crime," Spring 2012, p. 1).

[3] The Texas Drug Demand Reduction Advisory Committee (DDRAC), *Report to State Leadership*, January 2009, pp. 12-13, http://www.dshs.state.tx.us/sa/ddrac/default.shtm. DDRAC's last published report was released in 2009 and submitted to the 81st Legislature. According to findings published in 2009, non-medical use of prescription drugs has increased by 80% since 2000. DDRAC also asserts that "abuse of prescription drugs is problematic in all age groups with **overdose deaths from prescription medication now the leading cause of accidental death among adults ages 45 to 54**."

[4] Legislative Budget Board (LBB), "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," January 2011, pp. 6, 11, 12. Prison costs can exceed $50 a day per person to house them in a state facility, and can be even more costly if they need medication or treatment, whereas community based treatment for an individual serving their sentence on probation is estimated at around $10 a day per person.

[5] LBB, "Adult and Juvenile Correctional Population Projections: Fiscal Years (FY) 2012-2017, p. 3, available at http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2012.pdf.

[6] The Council of State Governments, *Collaborative Approaches to Public Safety.* (2007) Report from The Justice Center. Available at http://justicecenter.csg.org/downloads/TX3+big+picture+growth.pdf; *see also* Texas Department of Criminal Justice (TDCJ), "Statistical Report Fiscal Year 2011," p. 1.

[7] DPS, *Texas Arrest Data, supra* note 2.

[8] *Id*.

[9] TDCJ, "Statistical Report Fiscal Year 2005," p. 2.

[10] TDCJ, "Statistical Report Fiscal Year 2011," pp. 2, 21.

[11] *TDCJ, Statistical Report Fiscal Year 2005, supra* note 9, at 9 and *Statistical Report Fiscal Year 2011, supra* note 10, at 9.

[12] *TDCJ, Statistical Report Fiscal Year 2011, supra* note 10, at 9-12. Drug possession offenses account for over 11,000 inmates in Texas' prison and 3,584 in state jails.

[13] TDCJ, "Annual Report, 2005," p. 9.

[14] TDCJ, "Annual Report, 2011," p. 12.

[15] LBB, "Criminal Justice Uniform Cost Report: Fiscal Years 2004-2006," January 2007, p.6.

[16] LBB, *Criminal Justice Uniform Cost Report, supra* note 4, at 6, 11, 12.

[17] *Id*. at 6, 11, 12.

[18] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment. 1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*. Online at http://www.ncjrs.gov/nties97/index.htm; Justice Policy Institute, "Substance Abuse Treatment and Public Safety," January 2008, p. 9, http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf.

[19] LBB, *Criminal Justice Uniform Cost Report*, *supra* note 4, at 6, 11, 12; using FY 2011 prison inmate costs-per-day of $50.79; state costs-per-day for community supervision of $1.30; and state costs-per-day for substance abuse outpatient treatment of $7.54.

[20] All costs in this chart, except the emergency room visits, gleaned from the LBB, *Criminal Justice Uniform Cost Report*, *supra* note 4, at 6.

[21] Health Management Associates, *Impact of Proposed Budget Cuts to State Hospitals,* March 2011.

[22] LBB, *Criminal Justice Uniform Cost Report*, *supra* note 4, at 11, 37. This accounts only for the state costs, the local cost (participant costs) is $1.62, which makes the total for community supervision $2.92.

[23] *Id.* at 12, 37. Targeted Substance Abuse Treatment: Targeted Substance Abuse Treatment is used to provide substance abuse aftercare and treatment in an outpatient setting in conjunction with ongoing monitoring and oversight.

[24] *Id.* at 12, 37. This differs from the residential treatment program, which cost the state roughly $35.00 a day per person. Treatment Alternatives to Incarceration Program (TAIP) provides screening, evaluation, and referral to treatment for persons arrested for an offense in which an element of the offense is the use or possession of alcohol or drugs, or in which the use of alcohol or drugs is suspected to have significantly contributed to the offense. TAIP programs target indigent offenders. Although there are a few TAIP outpatient programs operated by CSCDs, TAIP primarily contracts for group and individual counseling for the cessation of alcohol or other drug abuse. The average cost for a group hour of counseling through TAIP is approximately $11 per individual and the average cost for an individual hour of counseling is approximately $45 per individual.

[25] Texas Department of Criminal Justice, Community Justice Assistance Division (CJAD), *What We Do,* Accessed May 4, 2012.

[26] There are currently 121 CSCDs serving Texas' 254 counties.

[27] TDCJ, *Statistical Report*, *supra* note 10, at 6.

[28] *Id*. at iii, 6. TDCJ differentiates between four main categories of supervision: (1) direct, (2) indirect, (3) pretrial supervision, and (4) pretrial diversion. These are further broken down by felony or misdemeanor. As per the FY 2011 Statistical Report, there were 128,263 individuals on indirect supervision, 8,082 on pretrial supervision, and 10,874 under pretrial diversion. *See also* Texas Department of Criminal Justice, Community Justice Assistance Division (CJAD), *Fiscal Year 2007 Offender Profile-Active Supervision,* Report run by Dustin Johnson, Ph.D., Research Specialist.

[29] CJAD, "Report to the Governor and LBB on the Monitoring of Community Supervision Diversion Funds," 1 December 2011, p. 9 available at http://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2011_Report_To_Governor.pdf.

[30] TDCJ, *Statistical Report Fiscal Year 2011, supra* note 10, at 6.

[31] The LBB's recidivism rates are based on a three-year progress report, examining a cohort of individuals over the course of three years after release. The LBB looks at both arrest rates and re-incarceration rates.

[32] LBB, "Statewide Criminal Justice Recidivism and Revocation Rates," submitted to the 82nd Texas Legislature, January 2011, p. 2.

[33] The typical timeframe used to calculate recidivism and revocation rates is three years

[34] LBB, *Recidivism and Revocation Rates, supra* note 32, at 2.

[35] *Id.* at 21, 25.

[36] *Id.* at 27.

[37] *Id.* at 23.

[38] *Id.* at 31.

[39] *Id.* at 33.

[40] *Id.* at 35.

[41] *Id.*

[42] *Id*. at 11.

[43] *Id*. at 10, 11.

[44] National Institute of Health: National Institute on Drug Abuse (NIDA), "Prescription Drugs: Abuse and Addiction," Research Report Series, U.S. Department of Health and Human Service, p. 3, http://www.drugabuse.gov/publications/research-reports/prescription-drugs.

[45] NIDA, *Medical Consequences of Drug Abuse,* accessed May 4, 2012.

[46] *Id.*

[47] A Report to Congress on Substance Abuse and Child Protection. (1999). Blending Perspectives and Building Common Ground." Department of Health and Human Services, available at http://aspe.hhs.gov/hsp/subabuse99/subabuse.htm.

[48] Mauer, Marc et. all, *Invisible Punishment: Collateral Consequences of Mass Imprisonment,* 2002. p. 18.

[49] U.S. Department of Health and Human Service, National Institute on Drug Abuse (NIDA), *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*," 2nd Ed., U.S. Department of Health and Human Services – National Institute of Health, revised April 2009.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] University of California, San Francisco: Department of Psychiatry, *Incarceration associated with homelessness, mental disorder, and co-occurring substance abuse,* July 2005 (as cited in Caitlin Dunklee Policy Brief, "Rethinking Responses to Drug Crime in Texas: Strategies to Save Money, treat Addiction, and Reduce Crime," Spring 2012, p. 1).

[56] National Alliance on Mental Illness, *Substance Abuse and Co-Occurring Disorders,* accessed May 4, 2012.

[57] University of California, San Francisco, *Incarceration associated with co-occurring substance abuse*, *supra* note 55.

[58] National Alliance on Mental Illness, *Dual Diagnosis and Integrated Treatment of Mental Illness and Substance Abuse Disorder,* accessed May 4, 2012.

[59] *Id.*

[60] Mauer, *Invisible Punishment, supra* note 48.

[61] NIDA, *Prescription Drugs: Abuse and Addiction*, *supra* note 44; *see also*, NIDA, "The Science of Drug Abuse & Addiction: Prescription Drugs," website accessed 26 October 2012, http://www.drugabuse.gov/publications/topics-in-brief/prescription-drug-abuse.

[62] NIDA, *The Science of Drug Abuse & Addiction: Prescription Drugs*, website accessed 26 October 2012, http://www.drugabuse.gov/drugs-abuse/prescription-drugs (Source: National Survey on Drug Use and Health (Substance Abuse and Mental Health Administration Web Site)).

[63] *Id.*

[64] NIDA, *Prescription Drugs: Abuse and Addiction*, *supra* note 44, at 7-8.

[65] American-Statesman Investigative Team, "Uncounted Casualties: Home, But not Safe," Austin American-Statesman: statesman.com, 29 September 2012, http://www.statesman.com/news/news/local-military/texas-war-veteran-deaths-studied/nSPJs/.

[66] DDRAC, *Report to State Leadership*, *supra* note 3.

[67] *Id.* at 12-13.

[68] American-Statesman, *Uncounted Casualties*, *supra* note 65.

[69] *Id.*

[70] While it is difficult to ascertain a precise number of incarcerated veterans, the most recent figures from the Bureau of Justice Statistics (published 2007) estimated that in 2004, 10% of those incarcerated nationwide were veterans. *See* Margaret E. Noonan and Christopher J. Mumola, "Veterans in State and Federal Prison, 2004," Bureau of Justice Statistics, May 2007, available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=808.

[71] Justice Policy Institute, "Substance Abuse Treatment and Public Safety," January 2008, p. 7, http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf.

[72] Texas Tribune, Liveblog: *Texas Legislature Passes $15 Billion In Cuts*.

[73] *Id.*

[74] *Id.*

[75] The Texas Department of State Health Services seeks to "improve health and well-being in Texas" through various functions, including by promoting recovery for persons with mental illness and infectious disease, building capacity for improving community health, developing and expanding integrated services, and expanding the effective use of health information.

[76] Texas Department of State Health Services, Substance Abuse Data, Research, and Reports: MHSA Decision, Support, *Licensed Outpatient Slots and Residential Beds by Region*.

[77] *Fiscal Year 2009 BHIPS Wait List Entries by Region*.

[78] Health Management Associates, *Impact of Proposed Budget Cuts to State Hospitals,* March 2011.

[79] These figures are as of 2009 Statewide Data Report; *see* Texas Department of State Health Services, Substance Abuse Data, Research, and Reports: MHSA Decision, Support, *Licensed Outpatient Slots and Residential Beds by Region.*

[80] *Id.*

[81] LBB, *Adult and Juvenile Correctional Population Projections*, *supra* note 5, at 2. The actual unit capacity is 162,809 but the internal operating capacity—meaning the total number of beds available to house individual allowing prison administrators to accommodate logistical, safety, and other issues.

[82] NIDA, *Principles of Drug Abuse Treatment for Criminal Justice Populations, supra* note 49.

[83] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment, 1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*. Online at http://www.ncjrs.gov/nties97/index.htm.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] LBB, *Recidivism and Revocation Rates, supra* note 32, at 11.

[88] Open Society Institute (OSI), "Investing in Treatment: Addiction – A Cost the U.S. Cannot Afford to Ignore," 26 January 2009, p.1.

[89] Washington State Institute for Public Policy, *Evidence-Based Treatment of Alcohol, Drug, and Mental Health Disorders: Potential Benefits, Costs, and Fiscal Implications for Washington State,* July 2006.

[90] *Id*.

[91] *Id.*

[92] LBB, *Criminal Justice Uniform Cost Report*, *supra* note 4, at 6, 11, 12; using FY 2011 prison inmate costs-per-day of $50.79; state costs-per-day for community supervision of $1.30; and state costs-per-day for substance abuse outpatient treatment of $7.54.

[93] House Committee on Corrections, House of Representatives, "Interim Report to the 82nd Texas Legislature," December 2010, p. 28, available at http://www.house.state.tx.us/_media/pdf/committees/reports/81interim/House-Committee-on-Corrections-Interim-Report-2010.pdf.

[94] Dustin Johnson, Ph.D., "Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice – Community Justice Assistance Division: Research and Evaluation," May 2011, pp. 13, 23 (offenders completing residential programs have significantly lower two-year arrest and incarceration rates than those who do not complete their program).

[95] Mike Eisenberg, Jason Bryl, and Dr. Tony Fabelo, "Travis County Community Impact Supervision Project: Analyzing Initial Outcomes," Council of State Governments – Justice Center, May 2009, pp. 14, 15.

[96] Bernice Yeung, "New Conditions of Probation," *Miller-McCune*, 13 April 2010, available at http://www.miller-mccune.com/legal-affairs/new-conditions-of-probation-11435/.

[97] Fabelo, Tony, Criminal Justice Policy Council, *Recidivism of State Jail Felons: The First Report,* 2001.

[98] *Id.*

[99] LBB, *Criminal Justice Uniform Cost Report*, *supra* note 4.

[100] Senate Bill 1067, 73rd Legislature.

[101] "SB 532: Bill Analysis," House Research Organization (May 1993), p. 13; "Bill Analysis: S.B. 532," Senate Research Center, p. 3.

[102] LBB, *Recidivism and Revocation Rates*, *supra* note 32.

[103] House Bill 2668, 78th Texas Legislature (2003), effective September 1, 2003.

[104] LBB, "Texas Community Supervision Revocation Project: Fiscal Year 2006 Follow-Up Study," January 2007.

[105] *Id.*

[106] *Id.*

[107] The Council on State Governments, Justice Center: Reentry Policy Council, *Texas Justice Reinvestment Policies Reduce Corrections Spending and Strengthen Supervision,* April, 2009.

[108] *Id.*

[109] The Pew Center on the States, "Issue Brief: Prison Count 2010," Revised April 2010, pp. 3-4: "In January 2007, Texas faced a projected prison population increase of up to 17,000 inmates in just five years. Rather than spend nearly $2 billion on new prison construction and operations to accommodate this growth, policy makers reinvested a fraction of this amount—$241 million—in a network of residential and community-based treatment and diversion programs. This strategy has greatly expanded sentencing options for new offenses and sanctioning options for probation violators. Texas also increased its parole grant rate and shortened probation terms. As a result, this strong law-and-order state not only prevented the large projected population increase but reduced its prison population over the three years since the reforms were passed."

[110] Federal Bureau of Investigation, *Uniform Crime Reports*, U.S. Department of Justice; accessible at http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm; see Texas' violent and property crime rates for 2003 and 2010.

[111] DPS, "News Release: Crime Rate in Texas Drops for Second Consecutive Year," July 6, 2012; available at http://www.txdps.state.tx.us/director_staff/public_information/pr070612a.htm.

[112] DPS, *Texas Arrest Data, supra* note 2.

[113] NIDA, *Medical Consequences of Drug Abuse,* accessed May 4, 2012.

[114] The National Opinion Research Center at the University of Chicago, "The National Treatment Improvement Evaluation Study: Final Report," submitted to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, March 1997, p. 246 (Table 6.15).

[115] NIDA, *Principles of Drug Addiction Treatment for Criminal Justice Populations*, *supra* note 49, at 13.

[116] NIDA, *Prescription Drugs: Abuse and Addiction*, *supra* note 44, at 11.

[117] *See* TEX. GOV. CODE § 509.001(1)(A)-(F); also see Johnson and Perez, *Community Corrections Facility Outcome Study*, p. 4. Defined by statute in TEX. GOV. CODE § 509.001(1), Community Corrections Facilities (CCF) are operated by local Community Supervision and Corrections Departments, funded primarily through diversion grants from CJAD. Each CCF is allowed to customize their program based on local philosophy of treatment and needs of their residents. These CCFs can include: a restitution center; a court residential treatment facility; a substance abuse treatment facility; a custody facility or boot camp; a facility for an offender with a mental impairment; and an intermediate sanction facility.

[118] For more information see Johnson, *Community Corrections Facility Outcome Study*, *supra* note 94, at 13, 23; *see also* Johnson and Perez, *Community Corrections Facility Outcome Study*.

[119] For more information see Johnson, *Community Corrections Facility Outcome Study*, *supra* note 94, at 23; *see also* Johnson and Perez, *Community Corrections Facility Outcome Study*.

[120] Justice Policy Institute, "Substance Abuse Treatment and Public Safety," January 2008, p. 7, http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf.

[121] Case management is "a service that links and coordinates assistance from institutions and agencies providing [social services] for individuals in need of such services." Evelyn Roberts Levine, "Glossary" in *Social Worker's Desk Reference*, ed. Albert R. Roberts and Gilbert J. Green, (New York: Oxford University Press, 2002) p. 831.

[122] W. Patrick Sullivan, "Case Management with Substance-Abusing Clients," in *Social Worker's Desk Reference*, ed. Albert R. Roberts and Gilbert J. Green, (New York: Oxford University Press, 2002) p. 495.

[123] Avinash Singh Bhati, John K. Roman, and Aaron Chalfin, "To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders," Urban Institute Justice Policy Center, April 2008, p. xvi, http://www.urban.org/UploadedPDF/411645_treatment_offenders.pdf.

[124] C. Aaron McNeece and Diana M. DiNitto, "Chemical Dependency Treatment," in *Social Worker's Desk Reference*, ed. Albert R. Roberts and Gilbert J. Green, (New York: Oxford University Press, 2002) p. 601. Also see David Grove, "Strategic Family Therapy," in *Social Worker's Desk Reference*, ed. Albert R. Roberts and Gilbert J. Green, (New York: Oxford University Press, 2002) p. 269.

[125] CJAD, "Texas Progressive Interventions and Sanctions Bench Manual," Texas Department of Criminal Justice, 2009 revision, p. 41.

[126] Judge Joel Baker, "Smith County, Texas, Adopted Budget, Fiscal Year 2010," p. 2. *See also* Judge Cynthia Kent, Press Release: "Jail Overcrowding in Smith County," May 23, 2006. *See also* Cynthia Kent, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, August 3, 2010.

[127] Cynthia Kent, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, August 3, 2010.

[128] Information on this program taken from Steve Aos, P. Phipps, and R. Barnoski, "Washington's Drug Offender Sentencing Alternative: An Evaluation of Benefits and Costs," Washington State Institute for Public Policy, January 2005, p. 1, http://www.wsipp.wa.gov/rptfiles/05-01-1901.pdf.

[129] The Association of Substance Abuse Programs, http://www.asaptexas.org/index.html.

[130] National Institute of Justice, *"Swift and Certain" Sanctions in Probation are Highly Effective: Evaluation of the HOPE Program*.

[131] *Id.*

[132] Texas Public Policy Foundation, *SWIFT Sanctions Can Change Adult Probation in Tarrant County,* April 2012.

[133] J. Watson, et al., "A Portrait of Prisoner Reentry in Texas," Urban Institute Justice Policy Center: Research Report, March 2004, p. 29 (Chapter 3: "How are prisoners prepared for reentry"), available at http://www.urban.org/UploadedPDF/410972_TX_reentry.pdf.

[134] Doris J. James and Lauren E. Glaze, "Mental Health Problems of Prison and Jail Inmates," Bureau of Justice Statistics, September 2006, p. 1, http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf.

[135] Texas Department of State Health Services, "Another Look at Mental Illness and Criminal Justice Involvement in Texas: Correlates and Costs," Decision Support Unit Mental Health and Substance Abuse Services, 2010, pp. 4, 5, available at http://www.dshs.state.tx.us/Mental-Health/Mental-Health-Data-Research-and-Reports.

[136] Through coordinated efforts with agencies such as DSHS and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), probation and parole departments can properly assist individuals with particular needs and connect them with various services, including substance abuse treatment, psychiatric treatment, medication monitoring, anger management programming, supportive job and housing assistance, etc. TCOOMMI provides a formal structure for criminal justice, health and human services, and other affected organizations to communicate and coordinate on policy, legislative, and programmatic issues affecting individuals with special needs—special needs may include individuals with serious mental illness, mental retardation, terminal or serious medical conditions, physical disabilities, and those who are elderly. Part of TCOOMMI's many activities include "Developing, implementing and monitoring the cross-referencing of local and state offender data to health and human service client information to enhance the identification of special needs offenders throughout the criminal justice continuum," *see TCOOMMI Activities*, available at http://www.tdcj.state.tx.us/divisions/rid/tcoommi/tcoommi_activities.html. *See also* Maggie Morales-Aina, LPC, "West Texas Community Supervision and Corrections Department, Mental Health Unit, Specialized Programs," 1 February 2010, slides 4-5.

[137] Probation officer visits with mentally ill probationers "should become less about 'monitoring' and more about discussion of criminogenic needs and risk mitigation. Research by Jim Bonta has shown that just as negative pressure predicts failure, time spent on problem solving and navigating criminogenic factors 'correlates powerfully' with reducing recidivism." From Scott Henson, "Jennifer Skeem on Sentencing and Mental Health," *Grits for Breakfast*, 21 November 2009 (citing findings by Dr. Jennifer Skeem of the MacArthur Research Network on Mandated Community Treatment in "Exploring 'what works' in probation and mental health," 2008), available at http://gritsforbreakfast.blogspot.com/2009/11/jennifer-skeem-on-sentencing-and-mental.html.

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