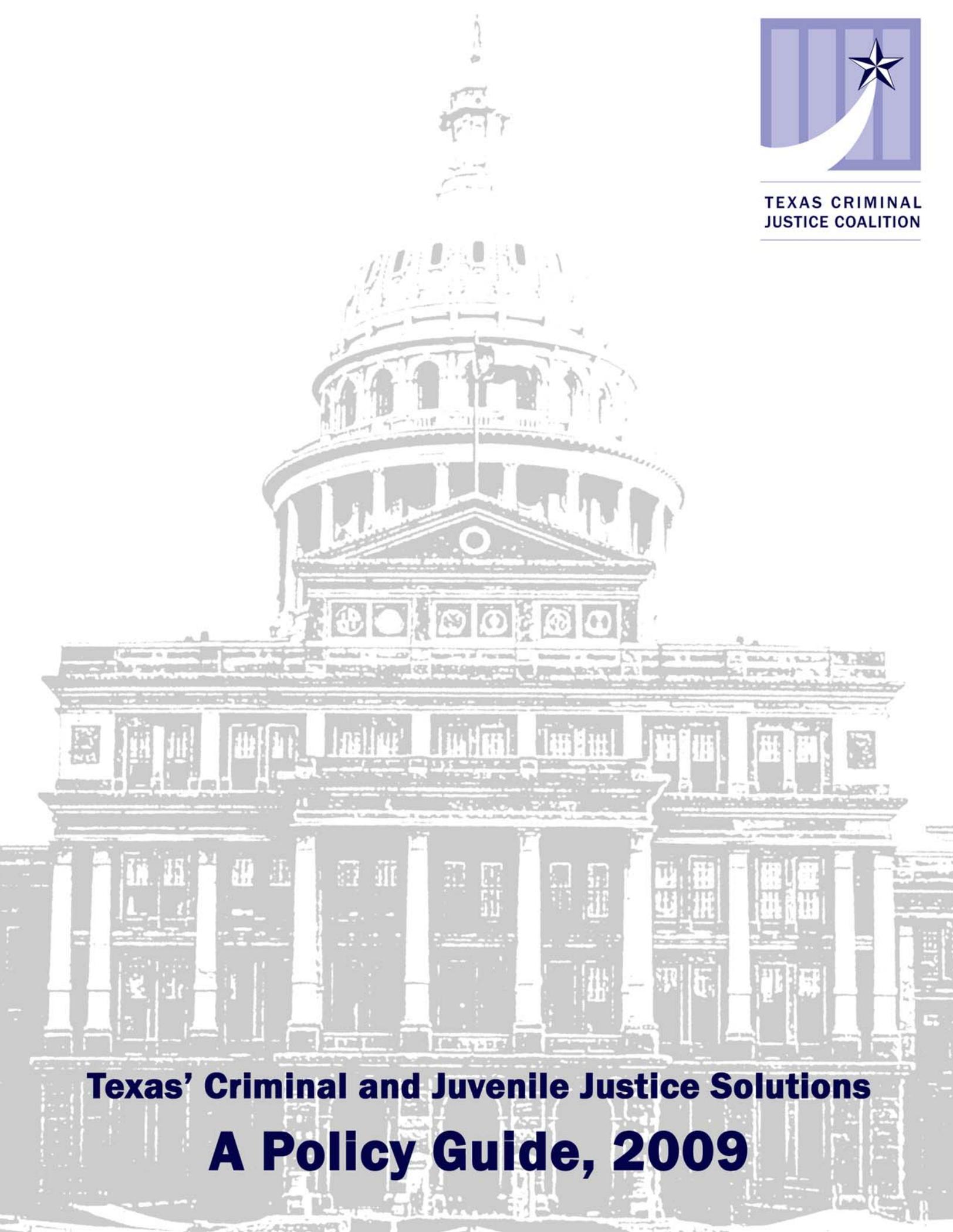
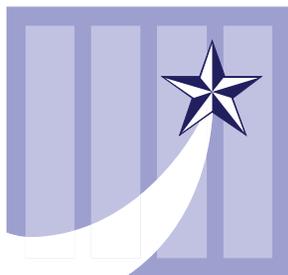




TEXAS CRIMINAL
JUSTICE COALITION

A detailed black and white architectural rendering of the Texas State Capitol building, showing its grand facade with columns and the prominent dome. The building is centered in the background of the cover.

**Texas' Criminal and Juvenile Justice Solutions
A Policy Guide, 2009**



TEXAS CRIMINAL
JUSTICE COALITION

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JANUARY 2009

The Texas Criminal Justice Coalition promotes criminal and juvenile justice solutions that embody the principles of effective management, accountability, public safety, and human and civil rights.

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Dear Reader,

As the Executive Director of the Texas Criminal Justice Coalition (TCJC), I am thrilled to present our second policy guide, which promotes criminal justice solutions that embody the principles of effective management, accountability, public safety, and human and civil rights.

Considering the state's anticipated budget shortfall for 2010-2011, the Legislature cannot waste taxpayers' dollars on the status quo by locking up individuals and throwing away the key. Instead, during this 81st Legislative Session, the goal of policy-makers from both sides of the aisle must be to continue to support the cost-effective "smart on crime" practices put in place during our last state session in 2007. These public safety strategies have laid the foundation for an infrastructure focused on saving taxpayers money, increasing public safety, and boosting the strength of our communities.

To build upon this groundwork, policy-makers must continue their commitment to ensuring the fidelity and success of responsible crime-reduction best practices. Specifically, state lawmakers must address four crucial areas: the turbulent juvenile justice system that has historically failed to protect our youth; the arrest, court, and conviction practices that are impeding fair treatment in our legal system; the lack of treatment services, as well as under-funded and understaffed probation and parole systems, that contribute to prison overcrowding; and the barriers to re-entry that lead many formerly incarcerated individuals back inside prison walls.

It is our hope that policy-makers, corrections and supervisory personnel, treatment providers, stakeholders in the legal system, and other advocates collaborate to drive efficient, socially effective policies and funding streams. We urge all invested in these issues to join us in support of responsible juvenile and criminal justice practices that will ultimately decrease the flow into prisons and stop the cycle of offending.

Sincerely,

A handwritten signature in black ink that reads "Ana Yáñez-Correa". The signature is written in a cursive style.

Ana Yáñez-Correa
Executive Director, Texas Criminal Justice Coalition

TABLE OF CONTENTS

Part 1: Protect Youth and Communities by Improving Juvenile Justice	1
Improve Efficiency and Positive Outcomes Within Independent Juvenile Justice Agencies	2
Strengthen Juvenile Probation and Increase Accountability	10
Part 2: Rebuild Confidence in the Criminal Justice System	15
Improve Funding for Effective Indigent Defense Delivery Models	16
Ensure Innocent Individuals Are Not Sent to Prison	21
Part 3: Save Money and Increase Public Safety by Strengthening Criminal Justice Practices	25
Stop the Flow into Prisons by Supporting Probation	26
Fight Drug Addiction and Address Mental Illness Head On	31
Increase the Efficiency of the Texas Department of Criminal Justice	40
Part 4: Encourage Economic and Workforce Development by Reducing Re-Entry Barriers	45
Equip Individuals with Personal Responsibility Tools, Inside and Outside of Prison Walls	46
Broaden Access to Housing and Food	54
Create an Enhanced Employability and Employment Protection Policy	56
References	61

PART 1: PROTECT YOUTH AND COMMUNITIES BY IMPROVING JUVENILE JUSTICE

- ❑ **Improve Efficiency and Positive Outcomes Within Independent Juvenile Justice Agencies**
- ❑ **Strengthen Juvenile Probation and Increase Accountability**

Throughout its existence, juvenile justice has often struggled to live up to its lofty ideals of rehabilitating delinquent youth while also protecting public safety. Too often, the narrative has been one of rising expectations that are rarely met in reality. A pattern has emerged over the past century nationally and in Texas in which abuse of incarcerated youth is revealed, followed by public outrage, assuaged by promises of reform and sudden investments of funds into juvenile justice agencies. However, once public attention has waned, the funds have quickly dried up: Budgetary requests for community-based prevention, intervention, and diversion programs heralded as the solution in times of reform are passed over in favor of the construction of expensive maximum security facilities.¹

Since the 1940s, experts have largely concurred on the superior effectiveness of smaller, community-based, therapeutic programs as compared to remote, secure institutions for the rehabilitation of troubled youth. However, Texas has consistently failed to sustain its investment in such programs. In 2009, Texas policy-makers once again have the opportunity to develop an effective juvenile justice system. In order to do so, the next chapter for juvenile justice in Texas must be characterized by the commitment of policy-makers from both sides of the aisle to invest in successful juvenile justice policies, and the willingness of agency heads and practitioners to implement the strategies that will yield positive outcomes.

Embracing this challenge to improve the lives of our youth will strengthen communities and result in long-term economic and public safety benefits for Texans. Texas can once again be a national leader in juvenile justice - for the right reason - if it is willing to step out of the long shadows of its past.



Improve Efficiency and Positive Outcomes Within Independent Juvenile Justice Agencies

Each teen prevented from becoming a career criminal (including future adult offenders) could save between 1.7 and 2.3 million dollars per youth. The ultimate goal is to stop the cycle of violence that feeds the juvenile-to-adult pipeline in which so many youth and families are trapped.

- "Transforming Juvenile Justice in Texas: A Framework for Action," Blue Ribbon Task Force Report, 2007

Background

Frustrated by the lack of coordination between the Texas Youth Commission (TYC), the Texas Juvenile Probation Commission (TJPC), and local juvenile probation departments, the Sunset Advisory Commission ("Sunset") recently recommended that the two agencies be consolidated into one Texas Juvenile Justice Department. Sunset staff hopes that this will at last lead to the development of a seamless continuum of juvenile justice services that operates according to national standards and recognized best practices - something all Texans want to see.

However, lawmakers must avoid viewing consolidation as a panacea for a dysfunctional system. Consolidation is most likely to result in further disruption of the state's role in Texas' juvenile justice system, creating an additional burden on county governments in a time of economic insecurity, and further delaying the implementation of the 2007 legislative reforms to TYC. Likewise, while some may believe that consolidating

the agencies will potentially save Texas money on administrative expenses, the real savings to the state derives from a strong probation system.² If TJPC were to merge with an agency dedicated exclusively to incarceration of the state's most serious offenders, it is likely that the agency's focus on delivery of community-based rehabilitative services for youth would be weakened. One of TJPC's primary objectives is a reduction of commitments to TYC through the use of various preventative "risk-reduction" (rehabilitation and early intervention) strategies, including family-oriented, community-based residential and non-residential services.³ This approach saves Texas money in juvenile incarceration costs, and has been shown to result in better outcomes for youth, families, and communities.

A deliberate movement toward systems coordination is more likely to produce needed results than yet another sudden and haphazard change in administrative structure. Especially with the 2007 reforms still winding their way toward implementation, now is not the time to upset the system again. Doing so places the real youth, families, and communities served by the juvenile justice system at risk of falling through the cracks and not receiving the services needed to prevent recidivism - something Texas cannot afford. Improving collaboration and synchronicity between TYC and TJPC, ensuring that state juvenile justice dollars follow proven programs, and reserving state facilities for only serious, violent juvenile offenders are critical policy goals that can and should be implemented through the existing administrative structure.

Key Findings

- In Fiscal Year (FY) 2007, TYC spent \$258 million on its facilities and programs for the approximately 2,276 youth received by local courts.⁴
- The amount of money spent on Texas' juvenile justice system is \$725.9 million annually. Of that money, \$246.4 million (34%) goes to TYC, \$99.9 million (14%) goes to TJPC, and \$54.9 million (8%) comes from federal sources. The bulk of the funding comes from counties, which contribute \$324.7 million (44%).⁵

- Past decisions have resulted in TYC's institutions being built in rural communities, which often lack the workforce to provide the intensive treatment needed by incarcerated youth.⁶
- Youth in TYC have very complex and specialized needs. One-third of commitments have serious mental health issues, are chemically dependent, and have a documented history of abuse and neglect. Half come from families with histories of criminal behavior, and two-thirds come from chaotic home environments.⁷

Solutions

(1) Maintain TYC and TJPC as two separate agencies, rather than waste valuable resources and energy to establish a new Texas Juvenile Justice Department.

Many of the reforms identified in the 2008 Sunset staff report - such as a community corrections pilot program and the development of a Juvenile Justice Improvement Plan (discussed more fully in Recommendation 2) - can and should be implemented within the existing structure of two separate state agencies.

Other alternatives to consolidation that lawmakers should consider are:

- Mandating Sunset staff recommendations under Issue 1,⁸ short of consolidation, followed by a follow-up Sunset review in 2011. By that time, S.B. 103 (2007) reforms⁹ will have been fully implemented and new leadership will be settled.
- Placing both agencies under one governing board tasked with improving coordination and collaboration.
- Consolidating the two agencies effective 2011, contingent upon the successful development of a Juvenile Justice Improvement Plan.

One impediment to effective juvenile justice policy is that policy-makers are often unaware of research evidence on programs and policies that are not only effective but also cost-effective.

- Laurence Steinberg, internationally renowned expert on adolescent psychological development and juvenile justice

(2) Require the development of a five-year Juvenile Justice Improvement Plan to facilitate effective coordination between TYC and TJPC.

The development of an effective juvenile justice system that delivers adequate rehabilitative services to youth is critical to the current and long-term public safety of Texas communities. New neurological research demonstrates that the adolescent brain is still developing its capacity for rational judgment and impulse control until age 25; thus, juvenile justice interventions represent the last, best chance to redirect troubled youth toward a law-abiding future. Texas must ensure that the juvenile justice services delivered with state funds maximize this opportunity to turn young lives around.

As such, a major overhaul of the juvenile justice system requires careful planning by state and local stakeholders to best support youth success. Developing a Juvenile Justice Improvement Plan to guide that effort will provide an opportunity for local juvenile probation departments and the state to partner to determine where service gaps exist and to develop collaborative solutions to address these unmet needs. Critical elements that must be a part of the planning effort to ensure full realization of positive outcomes are following:

- **A transparent and inclusive development process** that includes outside stakeholders, such as youth, families, community and advocacy groups, and experts in the field.
- **A major data collection initiative** so that Texas lawmakers can base their deliberations on objective data about effective programs, rather than on anecdotal evidence alone. Currently, no state agency tracks local juvenile probation outcomes to determine which programs are working for youth. This lack of data is a major roadblock to Texas' efforts to rationalize and coordinate state juvenile justice funding. This initiative should receive dedicated funding that can only be used toward this purpose, and lawmakers should require an outside entity to conduct this data collection and research. The outside entity could be either a legislative advisory entity, such as the State Auditor or the Legislative Budget Board, or a nationally recognized organization that specializes in juvenile justice policy research and has done it for other states, such as the National Council on Crime and Delinquency.¹⁰

In Florida, the Office of Public Policy and Government Accountability (OPPAGA) conducted extensive research on the provision and quality of juvenile justice services. Many of the areas studied by OPPAGA are critical for Texas lawmakers to understand in order to develop the juvenile justice system that Texans deserve. Below are key research topics that should be included for study in any Juvenile Justice Improvement Plan:

- Use of state and local post-adjudication facilities, including the kinds of treatment programs offered, staffing ratios for direct care, case management and clinical staff, and the demographics of youth (offense, treatment need, age, race, gender, education, etc.) who are placed in state facilities versus local post-adjudication facilities.
- Outcomes of local post-adjudication facilities by facility.
- Use of probation revocation to commit youth to TYC custody. Approximately 50% of all youth who are committed to TYC each year arrive as a result of a probation violation.
- Use of progressive sanctions guidelines by juvenile judges.
- Use of risk and needs assessments to guide disposition decisions.

Research consistently shows that low level offenders get worse by being incarcerated, which in turn results in more crime, an increase in the number of victims, and an increase in the amount of money needed to address crime.

- "Transforming Juvenile Justice in Texas: A Framework for Action," Blue Ribbon Task Force Report, 2007

(3) Redesign state funding to encourage the use of intensive, non-residential interventions for lower-risk offenders.

Texas should strive for safe communities and successful juvenile justice interventions, with only those youth who pose a danger to themselves or others incarcerated in TYC facilities. Yet, the state funding structure for juvenile justice fails to support these goals.

Texas counties bear the brunt of costs for locally administered juvenile justice services. Conversely, once a youth is committed to TYC, the state covers all expenses for his or her care. This produces a fiscal incentive for counties to commit youth, such as non-violent property or drug offenders, who could be served in the community, if the state provided local governments with sufficient resources.

This lopsided fiscal architecture is not unique to Texas. Other states struggling to reduce abuses in their juvenile corrections system have successfully adopted pilot funding programs to encourage counties to reduce their commitments to state juvenile correctional facilities and instead provide the needed intensive services to youth at the local level.

- **Redeploy Illinois.** Created in 2004, Redeploy Illinois is a pilot program designed to provide services to youth between the ages of 13 and 18 who are at high risk of being committed to the state juvenile corrections system. The program gives counties a fiscal incentive to provide services to youth within their home communities by building a continuum of care for youth who are in the juvenile justice system. Unfortunately, many counties in Illinois lack the resources to effectively serve delinquent youth locally, which has played a significant role in courts' decisions to commit a youth to a correctional facility. The funds provided to the Redeploy pilot sites fill the gaps in their continuum of services, allowing them to cost-effectively serve youth in their home communities and reduce the system's reliance on corrections. Using Redeploy funds, counties link youth to a wide array of needed services and supports within the home community, as indicated through an individualized needs assessment. Services are provided in the least restrictive manner possible, and can include case management, court advocacy, education assistance, individual/family/group counseling, and crisis intervention. Data from its first year of operation indicate that the program resulted in savings to the state of over \$2.4 million, and reduced commitments to the juvenile corrections system by an average of 33%.¹¹
- **RECLAIM Ohio.** Ohio's Reasoned and Equitable Community and Local Alternatives to Incarceration of Minors (RECLAIM) is a funding initiative started in 1993 which encourages juvenile courts to develop or purchase a range

of community-based options to rehabilitate youth offenders. By diverting youth from the state juvenile correctional system, juvenile courts have the opportunity to increase the funds available locally through RECLAIM. The direct connection between funding and sentencing provides the local juvenile court with an incentive to carefully consider the appropriateness of an institutional placement for non-violent youth prior to commitment. A key component of RECLAIM is coordination and communication between the local juvenile courts and the state juvenile corrections system.¹²

Note: RECLAIM funding to local courts is based on the average number of felony offenses adjudicated by that court during a four-year period. The money comes initially in the form of "credits." The court's number of credits is reduced for every Department of Youth Services "bed day" used to carry out a disposition from that court during the previous year. "Public safety" beds, for youth charged with serious violent offenses (such as murder or rape) are not counted against a county's RECLAIM allocation. (RECLAIM is a complementary funding stream to the Youth Services Grant, another more generalized type of state support for local juvenile justice systems).

(4) Support partnerships with private foundations engaged in innovative juvenile justice reform efforts.

For example, the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) partners with local jurisdictions to seek alternatives to pre-adjudication detention of youth who do not pose a risk to public safety. Currently, both Dallas and Harris Counties are JDAI sites. Evidence from other JDAI sites throughout the country demonstrate that successful detention reform at the local level can ultimately lead to fewer youth committed to state care.¹³

Texas is one of four states (along with Colorado, Connecticut, and Ohio) that was selected in 2008 in a highly competitive process by the John D. and Catherine T. MacArthur Foundation to participate in a Juvenile Justice/Mental Health Action Network to improve mental health services for young offenders. The network is coordinated by the National Center for Mental Health and Juvenile Justice. As part of the network, TJPC and other state agencies will work to find new ways to identify and treat youth involved in the juvenile justice system who have serious mental health needs. Efforts will be carried out in local juvenile probation departments to develop model programs that can be used to create a set of best practices for others across the nation.

These private-public partnerships with foundations committed to positive reform of the juvenile justice system should be supported and encouraged by Texas lawmakers through matching funds, when needed.

The real challenge in juvenile justice budgeting is not the size of the investments, but rather the quality.

– "A Road Map for Juvenile Justice Reform," Annie E. Casey Foundation, 2008

(5) Effectively implement S.B. 103.

Significant work from numerous stakeholders went into the development of S.B. 103 in 2007, and its proper implementation is critical to restoring the trust of Texans in the state's capacity to protect the incarcerated youth in its custody. If successful, an improved TYC will increase public safety and economic prosperity for Texas in the long term. As such, policy-makers in this 81st legislative session must sustain the vision and investment necessary to create a model juvenile corrections system. Since the problems facing TYC were structural and

historical - at least a decade in the making - it is not altogether surprising that the 2007 reforms have not yet led to the new and improved TYC sought by stakeholders. A succession of three conservators in the two years following the omnibus bill's passage has also thwarted successful implementation of the legislation's mandates. At last, TYC has the permanent leadership it needs to move forward with S.B. 103 implementation. Lawmakers must ensure that the agency stays the course toward deliberate, transparent implementation of the intent and the letter of the law.

(a) Hire qualified staff and improve rehabilitative programming to increase control and safety in TYC institutions. Without adequate numbers of qualified staff and improved programming for incarcerated youth, TYC institutions will continue to suffer from violent conditions and poor outcomes. Both under-staffing and lack of programming were cited by the U.S. Department of Justice as reasons for the unconstitutionally high levels of violence in TYC's Evins Regional Juvenile Justice Center in Edinburg.¹⁴

(i) TYC should develop a long-term workforce development plan with the goal of recruiting and retaining qualified staff. In the short term, TYC should ensure that all employees are informed about the various benefits available to them, such as Homes for Heroes and the Employee Assistance Program.¹⁵ In the long term, TYC should strive to gradually increase the pay and qualifications for direct care staff with the goal of eventually hiring college-educated employees. Currently, juvenile corrections officers (JCOs) are only required to have a high school diploma or GED, but direct care staff with additional education are needed to best address the complex needs of youth committed to TYC. The agency should actively work with policy-makers and higher education institutions to develop incentive programs that will encourage graduates to consider a career in TYC. In doing so, TYC must look beyond the tradi-

tional corrections field to other highly relevant disciplines, such as social work and psychology. At present, TYC is taking initial steps in this direction by providing tuition reimbursement for direct care staff taking college classes, and by providing college credit for training through a partnership with Navarro Community College. These programs should be continued and expanded.

Note: More on the importance of staff incentives is discussed in Part 3 of this guide, on page 38-39.

(ii) TYC must have adequate numbers of clinical staff to provide needed rehabilitative services in order to best administer quality rehabilitative programming. A serious commitment to public safety requires investment in the quality of services delivered to youth incarcerated in state-run facilities. Thus, budget appropriations must reflect the real costs of having a workforce that can provide needed rehabilitative services to the state's most troubled youth.

(b) Enhance independent oversight of TYC services and youth rights. Over the last 18 months of an often turbulent reform process, the Office of the Independent Ombudsman (OIO) has served as a critical, independent voice for youth incarcerated in TYC institutions and on parole. Despite its tiny size and limited resources, the OIO has successfully identified a number of systemic problems with delivery of services to youth in TYC (such as medical care and special education), drawn attention to severely inadequate conditions of confinement at contract care facilities, and provided assistance to hundreds of individual youth and families. The OIO plays a vital role in S.B. 103 implementation and continued reform of the system: the federal Office of Juvenile Justice and Delinquency Prevention has identified the existence of ombudsman offices as an important element in

protecting the rights of youth in custody, as well as protecting the state against liability. In order to guarantee that this office continues to serve the important role of protecting the state's most troubled youth, greater resources are necessary.

(c) Strengthen TYC parole to protect public safety and give troubled youth, families, and communities a chance at success, without placing additional burdens on counties. The real measure of TYC's effectiveness is in a youth's behavior post-release. Untreated chemical dependency, a lack of coordination among agency systems, and an often fractured family system contribute to the likelihood that a juvenile offender will commit another crime. In order to provide meaningful oversight and support to youth exiting its institutions, TYC's parole program requires an increased investment and focus from the Legislature. Parole must no longer be treated as an afterthought by TYC, with its effectiveness contingent upon the resources provided by counties. The first several months following a youth's institutional confinement is a critical one where the lessons learned in secure care can easily be undone without proper supports. The period of re-entry should be viewed as the last and most important phase of a youth's treatment while in TYC custody. The role of parole should be to support youth in applying the lessons learned in secure confinement and to connect them with resources, while closely monitoring their progress.

TYC parole must:

- Provide youth with more structured re-integration into their home environments, including day treatment programs, re-entry support groups, and family counseling.
- Increase family and community involvement in parole by implementing elements of proven, non-residential programming such as Functional Family Therapy, Multisystemic

Therapy, and Multidimensional Treatment Foster Care.¹⁶ Currently, TYC is moving in this direction through the development of Functional Family Parole, a program that utilizes the evidence-based Functional Family Therapy program as its foundation.

- Allocate sufficient resources to the parole division so that offices have funds to send a youth to specialized aftercare services (e.g., chemical dependency, sex offender, etc.), or access to family counseling. Currently, youth are directed to county-provided services. If counties do not provide adequate medical, behavioral health, educational, or vocational resources, a youth is simply on his or her own.

TYC also has an obligation to protect public safety in making its parole decisions. A parole risk-needs assessment instrument would assist TYC in making better choices about when youth are ready to be paroled. A well-designed parole assessment instrument would assess not only risk, but also treatment need.

- (d) **Move TYC over the next decade toward a regionalized system of state-operated juvenile correctional and transition facilities that are smaller (<100 beds), more therapeutic, and closer to the communities that youth come from - similar to those operated in Missouri.** In spring 2007, TYC in conjunction with the University of Texas-Austin School of Social Work convened a Blue Ribbon Task Force to explore best practices for juvenile justice in Texas. In its final report, the Task Force put forth numerous recommendations,¹⁷ some of which focused on Texas adopting aspects of the widely-acclaimed Missouri model.

In addition to their ineffectiveness, juvenile correctional facilities have shown a persistent propensity toward shocking and sometimes pervasive abuses against youth.

- "A Road Map for Juvenile Justice Reform," Annie E. Casey Foundation, 2008

Throughout the 1960s and into the early 1970s, Missouri's large juvenile institutions, also known as "training schools," were struggling with very high numbers of assaults and escapes. By 1971, this violent atmosphere had left about a quarter of staff positions vacant.¹⁸ In 1975, Missouri adopted a five-year plan that laid the groundwork for today's accomplishments; it called for the closing of the large training schools, the expansion of community-based services, and the establishment of five service delivery regions. The end goal for the change was the creation of a quality and seamless continuum of care, which would provide a range of services to youth in each of the five regions within 30 to 50 miles of their homes, also bringing them closer to medical and mental health care professionals, as well as their families.

In the three decades since its adoption, the "Missouri model" has been heralded as a "guiding light for reform"¹⁹ in juvenile justice. Its unconventional approach - emphasizing treatment and least-restrictive care - is considered to be far more successful than the incarceration-oriented systems used in most other states.²⁰ The Missouri system has garnered bipartisan praise from across the state's political spectrum.²¹

Much has been made of Missouri's surprisingly low recidivism rate of around 8%, but recidivism is measured somewhat differently in Missouri than in other states. The 8% refers only to those youth who are recommitted to the Missouri Division of Youth Services (DYS) within a year

following their release and does not track youth who re-offend as adults. A recidivism report from Missouri's DYS released in February, 2003, shows that in FY 1999:

- 8% of youth were sentenced to state prison/adult incarceration within three years;
- 19% of youth were sentenced to adult probation;
- 6% of youth were recommitted to MDYS; and
- 9% of youth were temporarily returned to residential facilities for breaking rules while in aftercare.

It is also important to note that the state of Missouri relies more heavily on certification of juvenile offenders as adults than Texas does. In FY 2003, Texas certified 61 children as adults.²² In that same year, Missouri certified 120 children as adults.²³ Given the difference in the states' juvenile populations (Texas' being much larger), Missouri's is a shockingly high number.²⁴ This suggests that Missouri's system deals with a different population in its state juvenile corrections system than Texas does; the most serious offenders are likely to go to the adult system rather than come through Missouri's DYS. From FY 2001-05, only about half of the new commitments to Missouri's state juvenile system had committed a felony-level offense.

Thus, while there are striking population differences between Missouri and Texas, there are still many lessons that we can learn from Missouri's successes. The replacement of a punitive philosophy with one centered on treatment has been integral to the success of the entire system. Moreover, the regionalization of MDYS allowed for the development of a continuum of services, ensured access to qualified treatment professionals, and facilitated inclusion of families and communities in the rehabilitation process - all of which paved the way for Missouri's lower recidivism rates.

- **Use the Juvenile Justice Improvement Plan as a vehicle toward transformation of the Texas system,** using the lessons of Missouri's system change as a guide.
- **Allow TYC flexibility in using 2007 bond funding.** In 2007, Texas voters approved \$25 million in bond funding to construct a new TYC facility of 150 beds near an urban center.²⁵ In 2008, TYC requested permission from state leadership to use that bond funding to construct three 48-bed facilities located near urban areas. This request more closely reflects the goal of moving toward a regionalized system of care similar to Missouri's. Generally speaking, bigger is not better when it comes to secure juvenile facilities. Large training schools that house 100+ youth, like TYC facilities, have been proven to be the least effective and most costly way of rehabilitating troubled youth.²⁶ These facilities are expensive to run, extremely difficult to staff, and are located far from the communities that these young people come from and the services that they need.

Strengthen Juvenile Probation and Increase Accountability

Juvenile probation departments have traditionally been very successful in treatment of offenders which ultimately results in less state spending. Successful programs need to be rewarded for further success. Additional funding and resources would only allow departments to continue in this direction.

– Anonymous comment from a juvenile probation chief in response to a TCJC survey

Background

Texas relies on county juvenile probation programs to serve the vast majority of youth who enter the system. Local juvenile probation departments are the "work-horses" of the juvenile justice system, handling 95% of juvenile justice-involved youth.²⁷ Local coffers also bear the brunt of the responsibility for juvenile probation programs, with counties contributing 44% of the cost for community-based services and treatment. In order to reduce the number of non-violent youth in state custody and ensure that resources in TYC facilities are targeted toward rehabilitating high-risk youth, juvenile probation must be strengthened. In the 2008-09 biennium, TJPC received approximately \$57.9 million in new funding to divert youth from TYC (including misdemeanor offenders who are no longer eligible for commitment).²⁸ This increased investment in juvenile probation has already demonstrated significant reductions in TYC commitments from the major urban counties, which are the largest contributors to the TYC population. From FY 2006 to 2008, Bexar

County commitments decreased by 44%; Dallas County commitments decreased by 39%; Harris County commitments decreased by 50%; Tarrant County commitments decreased by 39%; and in Travis County, commitments decreased by a whopping 83%.²⁹ In order to build upon these results and ensure that as many youth as possible are served in proven, community-based programs, Texas must continue to invest in juvenile probation. This additional investment will also continue to produce substantial cost-savings to the state.

Key Findings

- Local courts sent 51,623 youth to probation departments for supervision, including deferred prosecution, in FY 2007.³⁰
- In FY 2007, TJPC distributed \$143 million in state and federal funding to counties, or about 31% of total juvenile probation costs.
- Counties contributed an additional \$325 million toward juvenile probation services and operation of secure facilities.³¹
- In FY 2008, Harris, Dallas, Bexar, Tarrant, Hidalgo, Jefferson, and Lubbock Counties accounted for 51% of TYC commitments.³²
- TJPC was created in 1981, replacing the Community Assistance Program administered by TYC. TJPC's primary mission when created was to ensure access to juvenile probation services throughout the state, which TYC had historically proven unable to provide.³³

Solutions

(1) Make permanent the juvenile probation intensive community-based pilot program to divert non-violent, repeat offenders from TYC.

S.B. 103 (2007) created an intensive community-based pilot project in the FY 2008-09 biennium for counties with populations over 335,000. TJPC funded pilot programs in eight counties: Bexar, Cameron, Dallas, Denton, El Paso, Harris, Tarrant, and Travis. Each county implemented a different approach to providing intensive, community-based services targeted toward misdemeanor offenders who are no longer eligible for a TYC commitment. In FY 2008, the intensive community-based program pilots provided services to 676 youth. Expenditures for the year totaled \$1,185,017 (or approximately \$1,750 per youth). Using FY 2006 data for an average TYC length of stay and average cost per day, it would have cost approximately \$67,715,000 (or approximately \$100,000 per juvenile) to commit the same youth to TYC. Data regarding one-year outcomes for youth served by the pilot programs is not yet available.³⁴

(2) Expand the state's successful Special Needs Diversionary Program (SNDP) to keep youth with mental health needs from being committed to TYC.

The SNDP was created in 2001 as a pilot in eight urban counties, in response to a study released by the Criminal Justice Policy Council indicating that a substantial percentage of youth in the juvenile justice system had mental health problems, but very few were receiving mental health services to address those problems. In 2002, SNDP was expanded to another eleven small and medium-sized counties. In the 2008-09 biennium, funding was renewed at \$1.9 million per year to maintain the 19 existing programs. The average cost per

youth is \$58.93/day. Medicaid funding is used for those enrolled in a SNDP to offset costs to the state. The program pairs either a Licensed Mental Health Professional or a Qualified Mental Health Professional with a probation officer to provide a range of services to mentally ill youth offenders and their families. In order to qualify for the program, a youth must be between the ages of 10 and 17 and possess a documented mental health diagnosis, and the family must be willing to participate. In 2007, 1,402 youth were served, and 68% of those completed the program successfully. In 2003, a study was conducted with the SNDP, and although 57% of participants had been re-arrested, only 10% were re-arrested for a felony level offense.³⁵

(3) To more effectively allocate state funding, Texas must improve data collection and analysis around revocation of youth on juvenile probation to TYC.

Every year since 1997, between 45-50% of youth committed to TYC arrive as a result of having violated a condition of their probation. However, there is no state-level entity that keeps data on the type of probation violation (e.g., technical, law, status offense, etc.) that triggers the revocation. Without this data, it is not possible for the state to determine whether such revocations to TYC are the result of law violations or technical violations. The latter could be indicative that a locally operated juvenile probation department requires additional resources. A data collection initiative is a way to develop the Texas-specific evidence base that policy-makers need. Such a data collection initiative can easily be integrated into the Juvenile Justice Improvement Plan recommended by Sunset staff and discussed on page 3.

In an attempt to better understand the nature of youth revocation to TYC, the Texas Criminal Justice Coalition gathered data from five counties. From an analysis of the data, it appears that the majority

of probation violators revoked to a TYC facility arrive as the result of a technical violation. These violations include: failure to follow curfew, failure to report, failure to attend school, or simply failure to follow rules.

Note: In reviewing data provided by the county juvenile probation departments, it is important to recognize that many counties differ in the way they document youth violations of probation, which hampers attempts at data analysis.

- From FY 2000-08, Harris County reported that over 33% of its commitments to TYC had been committed based on technical violations (over 1,400 youth out of a total 4,238 commitments).
- From FY 2000-07, Dallas County reported that 50% of its commitments to TYC had been committed based on technical violations (1,112 youth out of a total 2,220 commitments).
- From 2002 through November, 2008, El Paso County reported that 34% of its commitments to TYC had been committed based on technical violations (125 youth out of a total of 370 commitments).
- From FY 2000-07, Denton County reported that 44% of its commitments to TYC had been committed based on technical violations (161 youth out of a total of 363 commitments).
- From FY 2000-09, Williamson County reported that 58% of its commitments to TYC had been committed based on technical violations (95 youth out of a total of 163 commitments).³⁶

This initial and limited look at the available data on revocation indicates significant numbers of youth committed to TYC arrive as a result of a technical violation. Additional data collection and analysis, as well as discussions among system stakeholders (such as juvenile probation departments, prosecutors, defense

attorneys, and others), is required to understand how many of the youth currently being committed to TYC on a technical violation could be better handled through some kind of community-based sanction.

(4) Texas should develop and monitor the implementation of a pilot program to divert youth from being committed to TYC for non-law violations of probation to community-based sanctions.

If even a portion of the youth who are currently revoked to TYC for non-law or technical violations could stay in their communities and be treated along with their families, the state of Texas could save millions of dollars and likely reduce the rate of repeat offense and re-arrest, according to the outcome of Florida's Redirect project, detailed below.

- **Florida Redirect** - In 2004, the State of Florida allocated funds to community-based therapeutic programs to prevent youth from being revoked to state institutions for non-law violations of probation. In the past, this type of infraction had been dealt with by referring the youth to a state institution, akin to a TYC facility. Two years after the pilot started, the Florida Legislature found that the Redirect Program had equal or superior outcomes to residential commitments in terms of recidivism and re-arrest. The lower level of intervention did not result in a threat to public safety; instead, the Redirect Program provided needed services to youth at a lower cost than keeping offenders in a state residential institution. Those who completed the Redirect Program were less likely to be convicted or adjudicated of a crime within one year than their counterparts who were referred to a state residential institution: Only 14% of youth (305) who completed a Redirect Program were adjudicated or convicted of a felony, as compared to 30% of youth (11,823) who had been committed to a state institution.

Florida's Office of Public Policy and Government Accountability estimated the savings for the first two years of the program at \$5.8 million in cost avoidance. Florida was able to serve youth in the Redirect Program for a cost of \$3.1 million versus the \$8.9 million the state would have typically spent on residential delinquency programs. The cost of a residential commitment in Florida is approximately \$34,774 per youth, whereas completion of a Redirect Program runs the state about \$7,715 per youth. This cost includes education and family therapy, modeled after evidence-based approaches.

(5) To assist in informed decision making, Texas must improve data collection on progressive sanctions guidelines.

The 1995 reforms to the juvenile justice system provided a model for determining appropriate sanctions for delinquent youth. This model has never been mandatory but is considered to be a baseline recommendation for how juvenile probation departments should generally make disposition decisions. Yet, no state entity currently collects or analyzes data on the use of the progressive sanctions model. The last report examining the implementation of progressive sanctions guidelines was in 2001. Without data on how disposition decisions are being made, Texas lawmakers are unable to determine the efficacy of progressive sanctions in ensuring that adjudicated youth receive appropriate services. By understanding which probation departments follow the model and why they have chosen to do so, the state can better ensure that, regardless of what county probation department they are supervised under, all Texas youth are given equivalent sanctions for equivalent offenses.

PART 2: REBUILD CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

- Improve Funding for Effective Indigent Defense Delivery Models
- Ensure Innocent Individuals Are Not Sent to Prison

Both the Texas Constitution and the United States Constitution ensure that an individual is entitled to legal representation regardless of whether he or she can afford it. Additionally, any individual wrongfully convicted of a crime is entitled to the available tools to prove his or her innocence. However, there are many obstacles to truth and justice in Texas' criminal justice system, especially for individuals with limited resources.

Texas must make improvements to the provision of indigent defense services. Policy-makers should continue to allocate funds for effective indigent defense delivery models, such as public defender offices. Furthermore, policy-makers should provide defendants, as well as those who claim they are wrongfully convicted, with the means to ensure their innocence is proven - especially through improved front-end practices relating to the collection and presentation of evidence. Only through a strengthening of these models and policies can the state renew public trust and confidence in the justice system.



Improve Funding for Effective Indigent Defense Delivery Models

Unless criminal defense lawyers are genuinely independent, adequately compensated and able to fully and effectively represent their clients, the capacity of government to overreach - and also to make mistakes - will not be challenged. And the great protections of our Bill of Rights will not be realized for all people.

- Norman Lefstein, nationally recognized expert on indigent defense

Background

Defendants often do not realize that if they cannot afford to hire a lawyer, they are entitled to a court-appointed lawyer for any offense punishable by confinement in jail or prison - even if the charge is a misdemeanor. Other defendants request court-appointed representation but never receive it, increasing the risk of wrongful convictions and undermining public confidence in the criminal justice system.

In order to best ensure that defendants knowledgeably navigate the criminal justice system, their ability to obtain court-appointed representation must be clear, and representation must occur quickly in the process - prior to plea negotiations or arraignment proceedings. Defendants who pass through the system alone face many barriers:

- They are exposed to a greater risk of wrongful convictions, leaving the public at continued risk from the true perpetrators of crimes.
- Because they often do not understand the charges against them - or their possible defenses or sentencing alternatives - they are more likely to receive longer prison sentences, costing taxpayers money and contributing to Texas' prison over-crowding crisis.
- They are at much higher risk of harsher probation terms and probation revocation (another contributor to jail and prison over-crowding) because they are untrained in the law.
- These defendants may accept convictions for jailable misdemeanors that do not actually result in confinement in jail or prison, not realizing the serious consequences that follow - including loss of employment, housing, and the right to operate a motor vehicle, according to federal and state law.

One way to assist defendants in seeking qualified representation is through the establishment and expansion of county public defender officers, through which attorneys provide legal services to indigent citizens who are otherwise unable to afford representation. Performance data produced by the state's long-standing public defender programs demonstrate cost and quality benefits for areas that use public defenders: counties can more cost-effectively and justly handle high-volume caseloads, and they are better equipped to provide specialized services to vulnerable classes of defendants, such as the mentally ill or youth.³⁷ Both current and new public defender offices require support from the state to ensure long-term success.

Key Findings

- The 77th Texas State Legislature passed the Fair Defense Act of 2001 (S.B. 7) to improve indigent defense services. This legislation established the State Task Force on Indigent Defense (Task Force) and set basic standards for the provision of indigent defense, while allowing for flexibility among Texas' 254 counties.

- In 2008, Texas ranked 45th in per capita indigent defense spending.³⁸ Although spending levels have increased dramatically in Texas over the past few years, they remain far below what other states spend on indigent defense.³⁹
- Individual counties shoulder just under 88% of the costs related to meeting the constitutional requirement to provide indigent defense services. In FY 2008, individual Texas counties spent nearly \$174.2 million on indigent defense, while the State of Texas provided just over \$21 million to defray some of these costs to counties.⁴⁰ In contrast, 25 other states provide 100% of funding for indigent defense, ensuring that counties are not forced to comply with an unfunded mandate.
- Currently, the majority of Texas counties provide defense services through a rotational system of court-assigned private attorneys. However, 15 counties have established public defender offices serving clients with certain cases (capital, appellate, juvenile, mental health, etc.) in approximately 134 counties.⁴¹
- Nationwide, 90 of the 100 most populous counties incorporate public defender programs.⁴² In Texas, 6 of the 15 most populous counties (Bexar, Cameron, Dallas, El Paso, Hidalgo, and Travis) have public defender offices.⁴³
- A recent Task Force study demonstrates that Texas' public defender offices provide a more cost-effective model than the assigned-counsel delivery model, projecting a cost savings of \$13.7 million if mature public defender offices were available in all Texas counties.⁴⁴
- The Task Force study also shows that public defender offices in Texas have demonstrated a higher degree of control over case quality to ensure the effective and efficient delivery of legal services to indigent clients.

Solutions

(1) Fund indigent defense models that work, specifically through an expansion of the number of general and specialized public defender offices.

One of the most important safeguards against unjust convictions is access to a quality defense. It is incumbent upon the state to guarantee adequate representation for anyone who is at risk of incarceration and unable to hire an attorney. However, in Texas, the burden is largely borne by counties, which most often rely on a rotational system of appointment. This model of indigent defense delivery often pits the expertise and limited resources of a single defense attorney against a unified prosecution team that has greater access to resources - such as in-house administrative support and investigators, and the advantage of shared expertise and workload among several attorneys. In fact, state appropriations for the 2008-09 biennium provided only \$48.7 million toward indigent defense grants to counties, as compared to \$87 million toward prosecutor salaries and expenses.⁴⁵

Other criticisms of rotational and contract methods of assigning counsel include problems with inconsistent quality in representation, unfair denial of appointed counsel, and gaps in providing services which leave some (even innocent) defendants waiting extended periods in jail before being charged or released.⁴⁶ As county leaders consider solutions to meet the demand for improved indigent defense systems, they should look to public defender offices, which experts have found to provide independence and quality in indigent defense services, bridge gaps in oversight and administration of services, and save valuable county resources - representing a cost-effective solution for the state despite initial start-up expenses.⁴⁷

Note: A county interested in establishing a public defender office may apply for a state grant through the Task Force on Indigent Defense. A county that is awarded one of these grants is eligible to receive 80% of a county's public defender costs in the first year of establishment.⁴⁸ To cover the entire costs of public defender start-up, the state should increase its investment in indigent defense delivery systems.

■ ***Public defender offices improve the overall quality of representation to indigent defendants.***

Effective public defender offices provide organizational structure for training and shared institutional knowledge, proper oversight and accountability mechanisms, and necessary resources for investigation, case management, and administrative support.⁴⁹ The National Legal Aid and Defender Association warns that an over-burdened court system and excessive number of cases diminishes quality of representation,⁵⁰ an issue that public defender offices are able to effectively monitor and address. Furthermore, public defender offices serve as a valuable resource to the local criminal defense bar - they operate in cooperation with private defense attorneys to provide continuing legal education and legal assistance, ensure a share of cases which might otherwise pose a conflict of interest or excessive caseload, and function as an institutional "voice" for indigent defense issues.⁵¹

■ ***Public defender offices increase public trust and confidence in our criminal justice system.***

Public defenders must be afforded the resources necessary to combat the risk of wrongful convictions or unjust sentences, and thus to increase fairness and accuracy in the administration of justice in Texas. Those providing indigent defense are often an innocent defendant's last hope for fairness and justice. Public defender offices can bring increased independence and opportunity for a cohesive and zealous defense, essential to a balanced system of justice. They better ensure early

assignment of appointed counsel, in turn increasing the availability of information for both defendants and the court at initial stages in the process. Public defender offices also bring institutional structure, which ensures adherence to the American Bar Association's Ten Principles of a Public Defense Delivery system (specifically, the first principle in which the ABA urges independence from the judiciary⁵²).

■ ***Public defender offices are a cost-effective means of ensuring that high-population counties comply with Texas' Fair Defense Act.***

Public defender offices provide budget predictability and overall cost savings through lower per-case expenses.⁵³ Public defenders also streamline the appointment process and increase consistent case management, thereby decreasing court administrative costs.⁵⁴

Likewise, pre-trial jail expenses for defendants waiting for appointment, bond, or trial are decreased.⁵⁵ Right now, many individuals who have been arrested but not convicted are forced to remain in jail - which not only places an economic burden on them, but also contributes to jail overcrowding and costs taxpayers more money. A strengthened public defender system will assist in the release of low-risk defendants, in turn reducing the unnecessary and harmful collateral consequences of job and/or housing loss, promoting family stability, facilitating diversion into treatment programs as appropriate, and reducing overcrowding and jail costs for counties. For instance, an increase in defense lawyer appointments in misdemeanor cases in Kaufman County enabled the county to reduce its jail expenses as defense attorneys assisted incarcerated defendants in leaving jail more quickly. Bottom line: Savings from increased efficiency in defender appointment and processing may lead to substantial savings in jail costs (\$50 per person, per day) in high-population counties already struggling with jail overcrowding.⁵⁶

* * *

Special attention must be paid to the need for juvenile-focused and mental health public defender offices.

- **Juvenile Public Defender Offices.** As with adults, youth (ages 10 through 16) held in detention, whose parents or guardians are found to be indigent by the court, have a right to appointed counsel during detention hearings and throughout adjudication.⁵⁷

Also like the adult system, juvenile indigent defense in Texas is largely funded by individual counties, each maintaining their own juvenile public defense delivery system. Essentially, each county Juvenile Board sets its own guidelines and procedures for determining whether a youth's parents are indigent (through an examination of income and assets), as well as the method of assigned counsel to be utilized. Typically, appointment of counsel must be made within five working days of the child's release from custody, or immediately after a detention hearing if the child is not released from custody. However, problems with this system have arisen: in many cases, a child may appear before the court for a detention hearing - a crucial stage in which a child may be held in the state's custody - without ever speaking to an attorney prior to the hearing.⁵⁸

Juvenile public defender offices would be better positioned to handle these specialized case-loads in already overburdened county systems. Early intervention by defense attorneys and trained case managers would also increase youth access to community-based treatment programs, in turn strengthening families and helping non-violent youth by diverting them from the Texas Youth Commission (TYC). Too often, non-violent youth with mental health issues and/or substance problems end up in high-security TYC facilities. Frequently, treatment programs at TYC are inadequate or unavailable to the youth that need them; while

awaiting treatment, non-violent youth in TYC are at risk of abuse, sexual assault, and exposure to more hardened youth. Because of these problems, most young people coming out of TYC end up back in the system. Local public defender offices would give non-violent youth a real chance to get their lives back on track by working with them to meet their needs and keep them out of abusive, violent, and ineffective TYC facilities.

Currently, eight counties have established public defender offices to provide juvenile indigent defense services.⁵⁹ These specialized offices increase efficiency through the same mechanisms as the adult system: organizational structure, which ensures proper training, oversight, and accountability; as well as access to shared resources. Furthermore, juvenile public defender offices are best situated to provide the added benefit of specialized case management to work with the court and the families to ensure public safety while increasing opportunities to improve the lives of the youth they serve.⁶⁰

- **Mental Health Public Defender Offices.** All too frequently, those suffering from mental illness become entangled in the criminal justice system for non-violent behaviors that are often manifestations of symptoms of their illness and circumstances.⁶¹ Due to a lack of community-based treatment alternatives, jails have become *de facto* warehouses for the mentally ill, and they are often poorly equipped to address the issues at the root of individuals' illness or addiction.⁶²

Mental health public defender offices help bridge the gap between the criminal justice and mental health systems, ensuring that individuals suffering from mental illness are given appropriate assistance throughout the criminal justice process, while larger public safety interests are met. These specialized defenders incorporate

the expertise of social workers and case managers to provide mental health assessment, treatment referral, service integration, and follow up as an alternative to incarceration for indigent defendants charged with low-level crimes.

As such, mental health public defender offices operate as a unique early-system resource to courts by serving dual purposes: (a) providing specialized indigent defense representation and case management to address many interrelated issues, such as homelessness, disability, and access to medication and/or treatment programs; and (b) advocacy for alternatives that will divert individuals into treatment, assist clients in their efforts to stabilize, and ensure compliance with court requirements.⁶³

However, only six Texas counties have established mental health public defender offices.⁶⁴ Many counties lack the resources, coordination, and knowledge about such models to implement them locally. Travis County's Mental Health Public Defender Office serves as an example for these counties to follow,⁶⁵ providing quality legal representation and taking a holistic approach that better ensures mental health treatment and continuity of services to assist mentally ill defendants in stabilizing and avoiding re-offending behaviors.

Ensure Innocent Individuals Are Not Sent to Prison

When unvalidated forensic science and palpably false testimony from a jailhouse snitch converge in a courtroom, justice is dead on arrival.

- Peter J. Neufeld, Co-Director of the Innocence Project, which is affiliated with Benjamin N. Cardozo School of Law at Yeshiva University

Background

Texas leads the nation in wrongful convictions. Statewide, there have been recent waves of individuals being exonerated for crimes they were incarcerated for (sometimes for more than a decade) but did not commit. Wrongful convictions destroy public trust and confidence in the justice system - guilty culprits are free, threatening communities and preventing justice for victims.

Major factors contribute to the problem of innocent people being sent to prison: Juries hear evidence that has been collected through questionable practices, like unrecorded interrogations or improper eyewitness identification methods; likewise, they are presented with uncorroborated informant testimony and forensic lab results with high error rates. Such evidence leads to unfair and unjust assumptions of wrongdoing and, in turn, guilty convictions.

The State of Texas owes it both to the victims of crime, as well as to individuals convicted of those crimes, to do everything within its means to ensure that innocent individuals are not sent to prison.

Key Findings

- The problem of false confessions is not entirely uncommon. In Austin's infamous Yogurt Shop murders, more than 50 different individuals confessed to the crime, most of whom had nothing to do with the case.⁶⁶
- Eighty-two percent of Texas' 38 wrongful convictions exposed by DNA testing were based largely or exclusively on incorrect eyewitness identifications.⁶⁷
- Dallas County has had more DNA-based exonerations than any other place in the nation since 2001, when state law began allowing post-DNA testing. In Dallas County, 18 of 19 DNA exonerations involved faulty eyewitness identifications.⁶⁸

Solutions

(1) Require all interrogations to be recorded prior to being admissible in felony cases.

People falsely confess to crimes for a myriad of reasons - fear, confusion, mental illness, or biased police interrogation techniques. Recording interrogations in all felony cases (through the use of inexpensive recording technology already used by some departments) will allow members of the jury to understand how a confession was obtained, and it will ensure that they have the ability to assess the validity of a confession if it is later recanted.

Note: Recorded interrogations can also assist the prosecution - if police are falsely accused of unfair interrogation practices, the recording may clear them of any wrongdoing and allow the evidence to stand on its own merits.⁶⁹

(2) Require law enforcement agencies to use known best practices in photo or live lineup procedures to strengthen the quality of eyewitness identifications.⁷⁰

Because juries often rank eyewitness testimony second only to a confession when determining a defendant's guilt, it is essential that law enforcement use the most reliable procedures to obtain accurate eyewitness identification. Unfortunately, 88% of Texas law enforcement agencies do not have specific policies regarding the procedures for lineups or photo arrays.⁷¹

Researchers have identified proper - and inexpensive - methods for law enforcement officers to use when conducting a lineup or using a photo array, which should be put in place before jury members are presented with eyewitness testimony: (a) ensure that a 'blind' administrator (someone not involved in the investigation and who does not know who the suspect is) conducts the procedure, which will better prevent his or her body language and verbal cues from unintentionally influencing the results; (b) ensure that photos do not provide clues as to which person the officers expect the witness to pick; (c) ensure the witness is informed that the suspect may not be there; and (d) ensure that the witness' exact response and level of certainty are recorded at the time of the identification. It is important to record this level of certainty at this point because, in the time it takes for a case to go to trial, witnesses will have had the opportunity to convince themselves that the person they identified must be the guilty culprit.

Some experts suggest using *sequential* blind photo lineups, where the administrator reveals the photos one at a time. This should better prevent the witness from choosing the wrong person because it precludes that witness from comparing one person to another and choosing someone who resembles the suspect. *Note:* Seven police departments in Texas currently use this sequential blind lineup method.⁷³

(3) Ensure informant testimony is corroborated in certain situations.

Informants are those who agree to provide testimony against another individual in exchange for a financial reward or leniency in their own criminal proceedings. Unfortunately, jailhouse informants with nothing to lose abuse the system by fabricating confessions or testimony - leading to a reduced charge or sentence for themselves, and to a wrongful conviction of an innocent person. Juries should learn of this incentivised testimony. Though currently, Texas law requires that informant testimony be corroborated by another person in cases of undercover drug stings, this corroboration requirement should be extended to *all* informant testimony used to secure the conviction of another.⁷⁴

In addition, informant testimony should be subjected to a pretrial reliability hearing, where the informant's criminal background could be disclosed, as well as the concessions made by the state to secure that informant's testimony (e.g., promises or suggestions for leniency or financial reward). A pretrial hearing will allow a judge to assess the validity of informant evidence before it reaches the jury.⁷⁵

(4) Ensure continued implementation of HB 681 (Hochberg; effective 2007), which amended Texas' post-conviction DNA statute to untie judges' hands in granting DNA tests, as well as improve opportunities for justice.

As of 2007, judges are now permitted to order forensic testing to resolve controverted and previously unresolved facts in an applicant's capital case where it has the scientific potential to produce new evidence relevant to the defendant's assertion of actual innocence - even if the results alone may not completely exonerate the defendant. This important improvement must be fully implemented throughout the state.

(5) Remove the barriers that exonerated individuals face in their efforts to re-enter society.

Wrongfully convicted individuals are not eligible to receive the limited re-entry support services currently available to exiting individuals, nor do they have access to much needed mental health services or medical and dental care. A wrongful conviction, in other words, bears an astonishingly harsh social stigma - in addition to other tremendous hardships that severely limit individuals' ability to find employment and housing and to restore normalcy to their lives.

To best ensure that exonerees receive the assistance they need to regain the years lost to false imprisonment (e.g., with shelter, employment, medical care, etc.), Texas should remove the financial cap on payments to them, currently included in Texas' post-conviction statute. In addition, the law should clarify that in order to receive payment, a wrongfully convicted individual should not first be required to obtain a certification of actual innocence from the District Attorney in the county of conviction (usually, the prosecutor that convicted him or her).

(6) Create an Innocence Advisory Council to identify the common causes of wrongful conviction.

The Council should ensure the investigation of all post-conviction exonerations in order to identify problems and patterns that lead to wrongful convictions. It should also produce publicly-available annual reports - based on investigative findings and other input provided by a diverse range of practitioners, legal scholars, legislative representatives, and advocates - that would identify specific weaknesses in Texas' criminal justice process; these reports should identify procedures and programs that may prevent future wrongful convictions. Biannually, the Council should make recommendations to the Legislature with regards to best practices that prevent wrongful convictions or executions.

Through its work, the Council could raise awareness of the issues surrounding wrongful convictions, which would increase the integrity of convictions, positively impact public trust and confidence in Texas' justice system, and decrease costs associated with multiple appeals.

PART 3:

SAVE MONEY AND INCREASE PUBLIC SAFETY BY STRENGTHENING CRIMINAL JUSTICE PRACTICES

- Stop the Flow into Prisons by Supporting Probation
- Fight Drug Addiction and Address Mental Illness Head On
- Increase the Efficiency of the Texas Department of Criminal Justice

In 2007, Texas spent 8.6 percent of its general funds on corrections, more than all but five states.

- "One in 100: Behind Bars in America 2008," The Pew Center on the States' Public Safety Performance Project

Since the early 1990's, Texas has tripled the capacity of its prisons, increasing the number of prisoners faster than any other state. Texas' rate of incarcerated adults per 100,000 is 40% higher than the national average; however, the crime rate in Texas is about 21% higher than the national average rate.⁷⁶

In 2007, Texas was at crossroads - the Legislature had to choose whether to spend money on the maintenance and staffing of three additional prisons, or invest in strategies that would eliminate the need for costly prison construction. Although a couple of members fought to keep prison construction as the status quo, many other members from both sides of the aisle came together in an historic effort to support the strategies that will make our criminal justice system more responsible, just, safe, and cost-effective. Through the leadership and hard work of members on the House Corrections Committee, Senate Criminal Justice Committee, and Appropriations Committee, Texas chose to invest in diversions - including funding for drug and alcohol treatment programs, and systems to return people to their communities in a responsible way (including increased funding for halfway houses, additional out-patient drug treatment programs, and flexibility for judges and supervision staff).

Texas is finally realizing that the expensive "lock-em-up" approach has not increased public safety, nor addressed the root causes of crime head on. Our elected officials have started us down the path of reversing the decades of costly, irresponsible policies and spiraling prison growth, and because of their efforts, taxpayers will not be forced to shoulder the costs of additional prison construction and maintenance.

Texas cannot afford to undo the strides made during the 80th legislative session, especially in light of current economic realities. We must build on these past successes and create even bigger change in Texas. Perhaps most importantly, we must continue to find solutions that will not just look good on paper but actually be implemented to improve people's lives. Both the Texas House and Senate must continue the bipartisan effort to implement smart and sustainable solutions that will reduce the risk of individuals re-offending and provide those who are re-entering society with tools for personal responsibility. Probation departments must be supported with the resources to ensure probationer success, treatment programs that focus on reducing criminal behavior must be fully funded and implemented, and practices throughout the Texas Department of Criminal Justice must be strengthened and monitored to increase efficiency.

The use of diversion programs has been shown to reduce recidivism by 68%. And for every dollar spent on individuals in these programs, the state saves \$9.34.

- Judge John Creuzot, Criminal District Court No. 4, Dallas

Stop the Flow into Prisons by Supporting Probation

Probation is prevention. A successful probationer means one less person in prison, one less victim, and one more contributing member of our great state.

– Stephen L. Enders, Chair of the Probation Advisory Council

Background

Probation departments are instrumental in slowing the number of prisoners entering state correctional facilities, thereby eliminating the need for costly prison construction and maintenance. However, probation departments do not receive the necessary resources to adequately support their ongoing efforts - especially through programming - to produce successful probationers.

Additionally, because under current funding structures, probationers' fees comprise the largest percentage of probation departments' budgets, departments lose income when a person is no longer on probation. Essentially, when departments decide to re-focus their resources on high-risk probationers and release other individuals early from probation for successfully meeting their probation terms (critical to slowing the number of people entering prison through revocations), the departments are financially penalized. Texas cannot continue to punish departments that are meeting the state's public safety needs, and therefore it should supplement departments to make up for any missing income.

Another obstacle facing probation departments is the lack of overall statewide criminal justice strategic planning, which makes the use and implementation of evidence-based practices even more difficult to

accomplish. As such, it is imperative that the state provide technical assistance to all 122 probation departments to ensure more effective supervision practices that will address the root causes of criminal behavior.

Key Findings

- The cost of incarcerating an individual in prison is approximately \$43 per day while the cost of maintaining him or her on probation is \$1.19 per day (i.e., the cost of 10 days of prison is equal to an entire year of probation).⁷⁷
- Texas' probation population consists of approximately 432,000 people.⁷⁸
- Probation departments receive approximately one-third of their operating budget dollars through the collection of fees from probationers, which creates a financial incentive for departments to maintain long probation terms.⁷⁹
- The use and proper implementation of cognitive behavioral programs rooted in social learning theory are most effective at reducing recidivism.⁸⁰
- Treatment must be individually determined to match to each individual's personal characteristics and needs.⁸¹
- Imposing additional conditions of probation beyond those directly related to an individual's risks/needs only distracts and impedes the individual and his or her progress on probation.⁸²

Solutions

(1) Give probation departments the necessary resources to identify, recruit, and retain highly qualified probation officers.

It is imperative that departments are given the tools to realize their full potential and ensure quality supervision of probationers. With proper funding, they can hire additional staff and pay them commiserate wages, as well as implement departmental strategies that will improve probation officers' morale and job satisfaction, in turn (a) lowering turnover rates among probation officers and direct care staff in probation departments, and (b) boosting probationers' success.

(a) Reduce turnover rates at probation departments.

In 2008, the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice commissioned a self-report survey of state probation officers and direct care staff in regards to high voluntary turnover rates. Their study finds that "[low] pay and [poor] benefits" was the most significant factor in turnover. Also, an alarming 41.3% of respondents have "serious thoughts about leaving in the near future or are actively looking for alternate employment."⁸³ To ward off a potential staffing crisis at probation departments, the state must increase funding for the departments, which will also help to reduce the negative consequences of high turnover rates, such as the currently high number (40%) of supervision officers within departments that have three years or less of experience supervising probationers, as well as "unstable caseload sizes, inexperienced staff, training issues, decreased quality of supervision, and lower staff morale."⁸⁴

(b) Assist probationers in improving their chances of success. A key factor contributing to probationer success is how they view their relationship with their probation officer. In other words, if

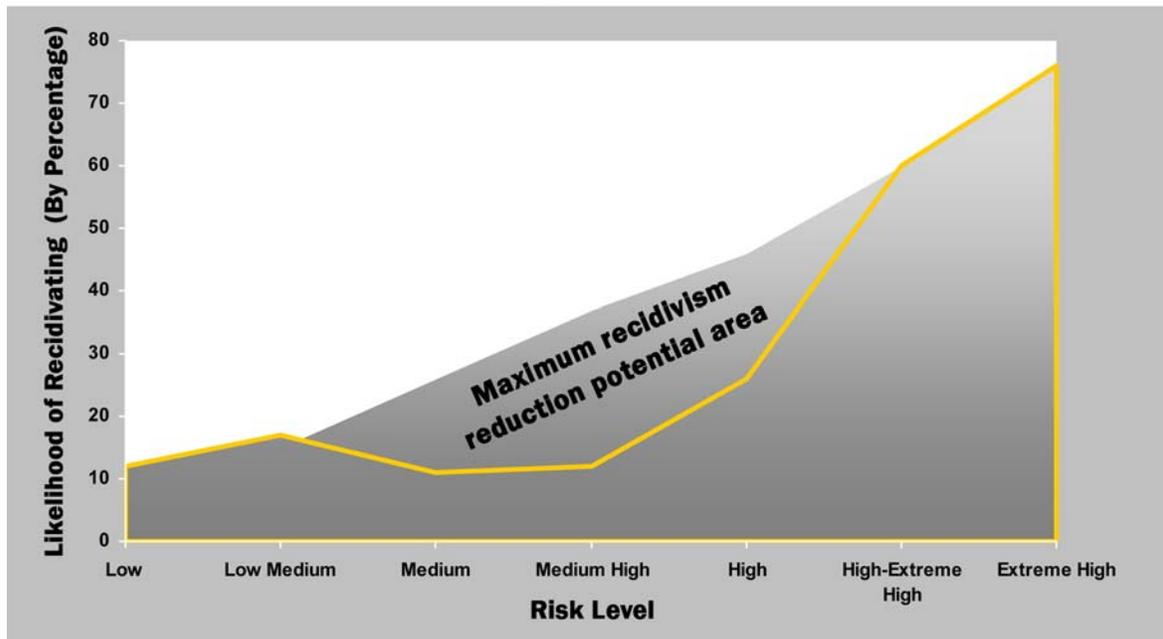
departmental culture is improved and probation officers believe that probationers can change their behavior, their interaction will be much more positive - producing better results. The state must provide probation departments with resources to conduct intensive trainings for newly hired probation officers that focus on recognized best practices, such as "motivational interviewing" (e.g., reflective listening, identifying inconsistencies, using open-ended questions, and reinforcing positive behaviors), that improve probation officer/probationer interaction.

(2) Reduce probation officers' caseloads for high- and medium-risk individuals, and increase programming opportunities for probationers (as needed) in additional efforts to improve probationer success.

While prison population growth is stabilizing, the number of people on probation is growing - increasing the caseloads for current probation officers. If probation officers' caseloads were reduced by half, they could keep a better eye on probationers during the critical early period: most probationers who re-offend do so in the first two years, and the majority of those re-offend within the first eight months. Reducing caseloads will also give probation officers more time to devote to helping probationers secure housing and jobs, receive treatment, and support their families - and thus better ensure that probation terms are achievable so that revocations decrease and the flow to prison is slowed.

But in addition to caseload reduction, programming for probationers (including substance abuse treatment, as well as cognitive thinking programs that target individuals' antisocial thinking and antisocial personality) must be available to best ensure that probationers successfully meet their terms. The chart on the following page shows how programming can positively affect probationers, according to their risk level. Probationers considered between "Medium" and "High" risk levels are

Potential Impact on Recidivism⁸⁵



most benefited by properly implemented recidivism-reduction programming. Note that probationers considered low risk will do worse if overly programmed and overly supervised; likewise, when low-risk probationers are placed in programs with high-risk probationers, they also tend to do worse.

(3) Invest in strategies that will reduce risk.

Prisons only *contain* risk. Probation - if properly implemented - reduces risk. As such, probation should not (as it currently does) operate mostly to oversee the judge-ordered requirements mandated to probationers. A risk-reduction strategy should be implemented to affect all areas of administration, including funding and management, and the design of supervision and sanctioning practices. Such a strategy will likely lead to a change in culture and in the attitudes of probation officers and administrators, which will better accomplish Texas' public safety needs.

(a) **Increase basic funding for departments.** Again, current funding structures - under which probationers' fees are providing probation departments' income - create incentives to keep probationers on probation too long. Each probation department's fiscal incentive for implementing long supervision periods should be eliminated by increasing basic budget funding (e.g., for operational costs and treatment), which will compensate for decreased probationer fees - especially from early terminations. These terminations are critical to slowing the number of people entering prison; as such, departments should be supplemented to make up for any missing income. Departments should not be penalized for the success of those they supervise.

An increase in funding for departments will also help probationers remain law-abiding citizens. Most probationers who are employed hold minimum wage jobs; in addition to supporting themselves and, in many instances, their families with the income they obtain from these low-paying jobs, probationers are also responsible for paying a high number of court-mandat-

ed fees and supervision-related fines, such as restitution fees, program fees, etc. The financial burden imposed by probation fees increases the likelihood of probationers absconding and/or failing to meet their probation terms. Allowing for and encouraging early termination from probation - especially by offsetting fee loss through increased departmental funding - will help ensure probationer success.

(b) Continue to implement shorter and stronger probation terms.

Departments should focus probation officer resources where they are needed most. Again, supervision should be front-loaded so that it is heaviest during the early critical period (the first eight months) of probation terms, with officer caseloads adjusted accordingly. Limiting the time they spend supervising non-violent property and drug offense probationers will give them additional time to supervise individuals who are convicted of more serious crimes or who pose a flight risk or threat to public safety. *Note:* Early release should be used as a meaningful incentive for good probationer performance. By rewarding the completion of requirements rather than the punishments associated with non-compliance, departments can provide probationers with a roadmap to success while still holding them accountable for taking initiative and responsibility.

(c) Encourage judges to learn more about the use of evidence-based practices.

Judges can be agents of positive change by encouraging individuals' voluntary compliance with all conditions of probation. As such, they should educate themselves about how effective the community-based corrections programs within their jurisdictions are in reducing recidivism, and, when appropriate, utilize those programs shown to be effective. Judges should also be aware of the "stages of change" model, which is a useful tool for understanding an individual's readiness to change and the corresponding strategies that have proven most effective in facilitating that

behavioral change.⁸⁶ Furthermore, like probation officers, judges should consider the use of "motivational interviewing" techniques (discussed in Solution 1(b)). Finally, judges should avoid threatening, lecturing, shaming, arguing with, or sympathizing with the individual. To achieve multiple sentencing objectives (e.g., risk reduction (rehabilitation), punishment, and behavioral control), treatment provisions must be successfully integrated with intermediate sanctions and behavioral controls.ⁱⁱⁱ

Note: It is imperative that prosecutors are also exposed to best practices that reduce the risk of recidivism. They must communicate with probation, as well as the judiciary, in a constructive way to facilitate this.

(4) Encourage the use of and fully fund locally tailored, evidence-based supervision and sanctions practices.

(a) Expand the use of validated and verified diagnostic tools, and make training available to all departments so that they can most effectively use the results of the diagnostic.

Validated instruments are essential in determining each probationer's risk level and propensity for criminal behavior. They are also critical for departments that want to use their resources efficiently; they allow officers to maintain a sufficient level of supervision without wasting time and funding. However, each department must be provided with assistance (through trainings) to enable probation officers to properly utilize the results of these tools and offer each probationer an individualized supervision plan. This much-needed training will ensure the best use of supervision resources and better ensure probationer success.

(b) Fully fund progressive sanctions. Departments should provide locally tailored, swift, certain, and proportionate punishments according to

the severity and frequency of each probation violation. Each department must be provided the resources to implement best practices and encourage the sharing of program ideas that prove to be successful within their own departments. This will aid in program development and better respond to the needs of each probationer in each situation. Furthermore, sanctions that are immediately administered and proportionate to the offense provide more clear and direct feedback to probationers, making future violations less likely.

(5) Mandate accountability to verify progress.

(a) **Strengthen the Community Justice Assistance Division (CJAD) and provide technical assistance/accountability grants to eligible probation departments to implement progressive sanctions.** To facilitate the adoption and realization of best practices over time, technical assistance should be given to departments; they should have access to expert consultants that can assist them with the implementation of new, proven programs. Local departments should be required to submit evidence-based program proposals to CJAD before being given program funding for the assistance. Technical assistance and grants should be provided for (i) organizational change, (ii) supervision strategies, (iii) accountability and auditing of programs, and (iv) program improvements supporting risk reduction. To secure renewed funding, programs should be subject to periodic review based on a cost-benefit analysis of outcome measures of risk reduction, including recidivism and probationer success rates.

Note: The state should increase funding to CJAD so that it can hire additional staff to effectively oversee funds allocated to probation departments - as well as the programs on which those funds are spent - and to meet the technical needs of the field in all areas.

Specifically, CJAD should be given additional staff to do the following:

- Ensure that funds distributed to the field are properly spent and effectively utilized.
- Conduct routine evaluations of all rehabilitation programs and services designed to reduce re-incarceration and revocation rates, and conduct audits for compliance with CJAD rules and standards.
- Provide much needed technical assistance to the field to further the mission and goals of effective community supervision.
- Provide meaningful ongoing training to probation officers so they can become certified within the period prescribed by law, as well as enhance their professional development.
- Broaden CJAD's current training capabilities on best practices for judges, district attorneys, and probation departments. *Note:* CJAD hosts a successful biannual conference on sentencing issues; the agency should be provided funding to host more frequent regional trainings - at the very least, annually.
- Conduct research that will identify emerging trends and best practices in the field of community corrections, which will be useful to the members of the Legislature.

(b) **Promote the sharing of what works.** CJAD should compile an annual report to be distributed to judges and probation directors that assesses the successes and failures of all programs using the outcome measures of (i) completion, and (ii) recidivism rates of program participants. Post-completion program evaluations should include an examination of rates of probationer recovery, employment, and educational attainment.

Fight Drug Addiction and Address Mental Illness Head On

As a state, we should be ashamed of the lack of services for...individuals [suffering from substance abuse and/or mental illness]. It does not protect the community and does nothing to address the crimes committed.

– Texas Judge, from survey response included in "Judicial Perspectives on Substance Abuse & Mental Health Diversionary Programs and Treatment," 2009

Background

Currently, thousands of individuals who suffer from drug addiction and/or mental illness are being housed in Texas prisons. Meanwhile, Texas has an inadequate number of substance abuse and mental health treatment providers and facilities, both inside and outside of prison walls, to deal with their addictions and related crime.

Because the vast majority of people who enter prison are one day released into the community, the state must create a strong recidivism prevention infrastructure to better ensure that those suffering from drug abuse and/or mental illness have the tools to effectively and healthily manage their lives.

Key Findings

□ Every dollar spent on treatment (rather than incarceration) will yield \$7 in future state savings.⁸⁷ Yet Texas spends 90% of criminal justice funds on prison beds and "hard incarceration," and only 10% on diversion programs, community correction, and treatment alternatives to incarceration, which are more likely to increase public safety when properly implemented.⁸⁸

- Texas has the second largest incarcerated population in the U.S., 80% of which reports a history of drug and alcohol abuse.⁸⁹
- In 2007, 25,678 individuals (34.9% of received inmates) were sent to Texas prisons for drug-related offenses according to statistics from the Texas Department of Criminal Justice (TDCJ).⁹⁰
- Only 34% of state prisoners with substance abuse problems receive treatment while incarcerated, while a much smaller population - only 6% - of state jail confines do.⁹¹
- A dollar spent on drug courts saves \$4 in health care costs.⁹²
- Research shows that evidence-based treatment programs are more likely to reduce crime than "tough on crime" penalties. After conducting an analysis of various criminal justice models, the Texas Criminal Justice Policy Council found that individuals who received appropriate treatment were 4 times less likely to go back to prison than those who did not receive treatment.⁹³
- Other studies have shown that severe punishments for low-level offenses can have the opposite effect of that intended. According to the National Institute of Corrections at the U.S. Department of Justice:
 - *Punishment* produced a -0.07% change in an individual's inclination towards criminal activity (meaning it increases criminal behavior).
 - *Treatment* produced a 15% positive change in an individual's inclination towards criminal activity (meaning it decreases criminal behavior).
 - *Cognitive skills programs* produced a 29% decrease in an individual's inclination towards criminal activity (meaning these programs are most effective at decreasing criminal behavior).⁹⁴

- Evidence-based studies show that integrated treatment is the most appropriate and effective response for addressing individuals suffering from both mental illness and substance abuse. Findings show that considerable work is needed in integrating substance abuse and mental health treatment.⁹⁵
- Nationally, Texas ranks 46th in mental health care resources, which includes correctional care.⁹⁶
- 30% of Texas' state jail prison inmates are logged in the state's public mental health database, with approximately 10% of all inmates having a diagnosis of serious mental illness that would be considered in the "priority population" for receipt of public mental health services.⁹⁷
- Psychiatric treatment providers are scarce in most Texas state prison units. Not every unit is equipped with mental health professionals, and some units have only one staff member for every 1,034 prisoners.⁹⁸
- Nationally, nearly a quarter of both state prisoners and jail inmates who have had a mental health problem had served 3 or more prior incarcerations.⁹⁹
- According to TDCJ, approximately 5,400 individuals with special needs (mental illness, mental retardation, serious medical or long term care needs) were released from incarceration in fiscal year 2007 alone.¹⁰⁰

With innovative techniques and a little imagination, we can do things differently, less expensively, and we can achieve better results than just the old normal way of case processing.

– Judge John Creuzot, Criminal District Court No. 4, Dallas

Solutions

(1) Expand community-based substance abuse and mental health diversion opportunities.

Texas must halt the wasteful expenditure of millions of dollars each year on the incarceration (and re-incarceration) of non-violent drug users and individuals suffering from mental illness. Instead, the state should promote medical and public health responses to these issues by improving and making more widely available tailored, coordinated, and effective community-based rehabilitation and treatment diversion programs.

(a) With regards to non-violent defendants charged with drug possession or drug use, reject the policy of incarceration and divert individuals to probation and treatment, as needed.

Judges should have the discretion to place non-dangerous individuals with a first-time drug possession offense on probation and in a tailored substance abuse program, which in most cases would begin in a secure residential facility rather than prison. While judges should be allowed to incarcerate an individual if s/he determines that individual is either a threat to public safety, a drug dealer, or not amenable to treatment, this practice alone could divert 10,000 people from prison and save the state \$500 million by 2012, not including potentially avoided prison construction costs.¹⁰¹ Furthermore, such a practice would address the recidivism problems posed by individuals who choose incarceration over programs that force them to deal with the illness of addiction.

(i) Boost probation departments' ability to identify and seek treatment for individuals suffering from substance abuse. It is imperative that probation departments are given the resources to hire qualified probation officers with an understanding of substance abuse and mental health problems. Specialized staffing will enable probation departments to

offer early identification of probationers who suffer from drug addiction/abuse, and promptly place them in a treatment program.

Probation departments should also have access to and contract with a broad spectrum of providers and services to mitigate probationers' criminal tendencies and reduce the likelihood of them recidivating.

(ii) Maintain the allocation of funds for the treatment of substance abuse addiction.

Although federal and state funding for treatment programs outside prison walls began a drastic decline in 2003, the 80th State Legislature began to address the devastating effects of under-funded programs in Texas by providing funds for alternatives to incarceration. According to TDCJ, program expansions approved by the Legislature have increased the number of incarcerated individuals with access to treatment.

Now and in the future, the state should invest in further strengthening the treatment infrastructure to produce healthy citizens and decrease the criminal activity derived from substance abuse addiction. This, in turn, will boost the public safety of our communities most affected by drug- and alcohol-related crimes, as well as prevent costly and ineffective prison construction and maintenance. Ultimately, the social benefits to be gained by assisting those suffering with addiction outweigh the initial budgetary costs and will produce long-term savings. With a greater allocation of state funding towards substance abuse treatment, Texas will further its mission to improve public safety by producing more capable, law abiding, and productive citizens.

First and foremost, funding must be increased in efforts to reduce or eliminate current obstacles facing treatment providers

and their clients. Enough funding should be allocated so that agencies and programs - not only in major metropolitan areas, but also in historically underserved areas (such as rural areas) where counseling and recovery services are scarce and desperately needed - can (A) attract qualified front-line practitioners and provide them with continuing education and other necessities, (B) enable them to conduct program evaluations, and (C) help to minimize the waiting periods and statutory barriers faced by criminal justice clients seeking treatment (*this is discussed more fully in the bullet below entitled "Address treatment program backlogs for current probationers"*).

Texas must also do all that it can to sustain existing treatment programs that work. Currently, there are 435 certified programs in Texas that deal with the broad range of substance abuse needs; only 28.5% identify themselves as serving criminal justice clients.¹⁰² Generally, these latter treatment providers have a limited amount of out-patient program availability. More problematic, they often choose to treat the clients who will pay higher rates because they must support their own program survival (as, like probation departments, their funding comes from fees). These treatment providers often accept (A) federal clients whose rates for reimbursement for substance abuse treatment services are based on a competitive bidding process (*Note: the reimbursement rates vary based on the type of service provided and the area of the state solicited for services*), or (B) clients who fall under the Department of Health and Human Services who pay treatment fees of \$74 per day for intensive residential treatment, \$41 per day for supportive residential treatment, \$54 per hour for individual counseling, and \$17 per hour for group counseling.¹⁰³

Treatment providers are often less likely to serve individuals with judge-ordered drug treatment requirements because there is little financial incentive:

- providers receive an average of \$43.44 per day to cover operation and treatment costs for Substance Abuse Felony Punishment Facilities (SAFPFs), which are therapeutic community programs for individuals sentenced by a judge as a condition of community supervision or parole.
- they receive an average of \$32.61 per day for supportive residential Transitional Treatment Centers (TTCs), into which individuals are placed upon completion of a SAFPF program.
- they receive \$54.53 per day for relapse residential TTCs.
- they receive \$32.62 per day for halfway houses.¹⁰⁴

Increasing average per-day costs - while also keeping in mind relative cost of living standards throughout the state - will increase the likelihood of providers contracting with probation and parole departments (as well as the Department of Criminal Justice in general) to fulfill current treatment needs.

(iii) **Ensure that SAFPFs and TTCs use effective, evidence-based treatment practices.** TDCJ should be provided the resources to contract with outside correctional experts with a proven track record in best practices who can offer technical assistance on effectively implementing and tracking the success of legislated diversions and drug treatment programs (SAFPFs, TTCs, etc.) in a timely manner. Of individuals with substance abuse problems, 85% can be treated in community-based programs, but 15% will require programs like SAFPF. All SAFPF facilities must

utilize a three-pronged approach to be effective: First, substance abusers must stay in SAFPF for 9 months instead of the current 6-month stay. Second, after SAFPF, individuals need to be admitted to a TTC for 90 days. Finally, individuals must spend at least 9-10 months in an out-patient program. As has been demonstrated by past attempts to use SAFPF to address drug addiction for those who cannot be treated in community-based programs, recidivism rates do not decrease without implementation of all three of these components.

Note: The state must ensure that SAFPFs, TTCs, and out-patient programs have the resources to hire qualified professionals.

(iv) **Address treatment program backlogs for current probationers.** For individuals on probation, current treatment resources are scarce. The following chart shows the number of individuals in state SAFPFs or In-Prison Therapeutic Communities (IPTCs) who have completed their terms and are awaiting TTC beds, as of the week of December 22, 2008, through December 26, 2008.

Facility	Backlogs
East Texas (SAFPF)	19
Estelle (SAFPF)	24
Glossbrenner (SAFPF)	139
Hackberry (SAFPF)	41
Halbert (SAFPF/IPTC)	160
Havins (IPTC)	137
Henley (IPTC/SAFPF)	0
Jester I (SAFPF)	24
Johnston (SAFPF)	84
Kyle (IPTC)	73
Ney (IPTC)	65
Sayle (SAFPF)	131

Essentially, these individuals are consuming much-needed beds in their respective facilities while waiting to be placed in TTCs. *Note:* It is likely that many of these individuals have been waiting longer than 30 days.

(v) View probation and drug treatment separately to reduce drug-related technical violations.

Oftentimes, addiction to drugs causes criminal activity (such as theft), because people require funds to feed their addiction. Whereas drug treatment will best get to the *root* of the criminal activity - because it will address the physiological impact of the substance on the addict and help put an end to the need for criminal activity spurred by the addiction - probation will help determine if the drug treatment program is truly working for that individual. For instance, if an individual fails a drug test, his or her probation officer will be able to verify that the current treatment program is not working. This should not be a cause for probation revocation (as committing another crime, like theft, would be) - not all treatment programs work for every type of addiction and, on average, an addict relapses three times before successfully completing a treatment program. If an individual is punished with probation revocation for failing to control his or her illness, s/he will ultimately re-enter society with unmet needs and will continue to make poor life decisions and engage in unlawful activity.

(b) With regards to defendants suffering from mental illness, reject the policy of incarceration and divert individuals to mental health treatment, as needed. Prisons often take the place of mental health centers, and sadly, only 17% of prison inmates and 11% of jail inmates in need of mental health treatment actually receive it. The effectiveness of treatment on those who do receive it is undermined by long waiting lists, few incentives to follow treatment plans, and a

lack of qualified mental health professionals.¹⁰⁶ Like those in prison suffering from substance abuse, these individuals will also be released without the tools to effectively and healthily manage their lives - unless they are diverted to mental health facilities, where they will receive the help they need without contact with the criminal justice system.

Research has substantiated that intensive outpatient case management services coupled with specialized supervision are not only effective in reducing recidivism, but are less costly than institutionalization or in-patient care. Furthermore, using outpatient services allows local and state providers the ability to bill Medicaid for outside assistance.

– Dee Wilson, Director, TCOOMM

■ ***Pre-booking Diversion Programs.*** Individuals with mental illness and/or co-occurring disorders should be identified for diversion by police before formal charges are brought. Specifically, a thorough screening - including a complete mental health assessment - should be done during intake at arrest, ensuring that pre-booking diversion occurs at the point of contact with law enforcement officers. Furthermore, to most accurately determine the best course of action, law enforcement must ensure that this screening includes the input of qualified community mental health and substance abuse service providers.

Note: Crisis Intervention Teams (CIT) have been found to be especially beneficial in dealing with the mentally ill in the criminal justice system. The Houston Police Department (HPD) has the largest CIT program in the nation, with over 1,300 CIT officers in patrol since October, 2008. HPD's reported effects of the program have been numerous and include jail diversion efforts, increased safety, improved community relations, improved confidence of officers, and reduced liability/litigation.¹⁰⁷

- **Post-booking Diversion Programs.** Post-booking diversion programs can also be implemented with success. These programs identify and divert individuals with mental illness after they have been arrested. Post-booking diversion program staff must work with prosecutors, public defenders, community-based mental health and substance abuse providers, and the courts to develop and implement a plan for diversion and linkage to an appropriate array of community-based services. To be effective, post-booking diversion programs should include some type of monitoring of compliance with treatment, though the level of supervision and the active involvement of the court can vary as needed. Charges should be reduced or dropped upon the individual's successful program completion. In the alternative, the individual diverted should receive less or no time in jail at sentencing as a result of participating in the jail diversion program.

Note regarding military service members or veterans: We must also address a more recent and specialized population of defendants coming before the court: military service members or veterans whose criminal conduct was materially affected by brain injuries or mental illnesses (including post-traumatic stress disorder) resulting from mil-

itary service. With regards to these individuals, courts should allow participation in a deferred prosecution program, and judges should recommend available treatment options to address the defendant's brain injury or mental illness. Upon a defendant's successful completion of the conditions imposed by the court under the program, a judge should have the authority to dismiss the criminal action against him or her. This type of program would greatly benefit the men and women who have served our country, while also increasing public safety.

- (c) **Fully fund specialty courts, such as drug, DWI, mental health, and re-entry courts.** In addition to aiding probation officers, the state should continue to fund courts specially designed to handle cases involving individuals who abuse addictive substances. These diversion programs effectively address addiction and mental illness issues, generally by using a cooperative approach linking efforts of the judge, defense, prosecution, and treatment providers to achieve participants' goals. They are developed at the local level to reflect the unique strengths, circumstances, and capacities of each community. By concentrating on the root causes of criminal behavior and the recovery of defendants, specialty courts better ensure public safety.

In my 40 years of experience in the field of criminal justice, I've never seen a program [drug courts] that changes the lives of so many for the better, that increases public safety and saves money.

- The Honorable Al Alonso, Bexar County Court at Law; former President of and current member of Legislative Committee for Texas Association of Drug Court Professionals

- Specifically, **drug court programs** involve intensive interaction between participants and judges (including bi-weekly personal appearances before a drug court judge), more comprehensive supervision than regular probation (including personal supervision and treatment contacts three times each week), routine (even weekly) drug testing, immediate sanctions for violations, and meaningful incentives for good behavior. Drug courts have been highly successful and immensely popular in Texas, and for many reasons: they are far less expensive than incarceration (on average nearly 10 times less) and can help resolve the prison overcrowding crisis through program diversion; they successfully reduce drug abuse and recidivism (by up to 44%)¹⁰⁸; and they encourage personal responsibility by requiring participants to pay program and court costs to the extent that they are financially able to do so.
 - **DWI-specific drug courts** can quickly identify individuals who habitually abuse alcohol and place them under strict court monitoring and community supervision; this is coupled with long-term treatment services to address the root cause of DWIs and reduce recidivism.¹⁰⁹ Only through actively and forcefully intervening and breaking the cycle of alcohol abuse and addiction will the criminal acts that result from these problems stop. Individuals with a DWI offense can be encouraged to participate through program provisions that would allow judges or magistrates to suspend any probation requirement that would prevent a participant from operating a motor vehicle without an ignition interlock device or that would require a participant to work a specified number of community service hours. Fort Bend County's DWI court, the first of its kind in Texas, has experienced a great amount of success, serving 79 clients between 2006 and mid-2008 and maintaining a 97.5% success rate.
 - **Mental health courts** are a recent development and require collaboration and consideration from practitioners in both the criminal justice and mental health fields. Mental health courts typically involve judges, prosecutors, defense attorneys, and other court personnel who have expressed an interest in or possess particular mental health expertise. The courts generally deal with non-violent individuals who have been diagnosed with a mental illness. Today, eight of these courts exist in the most populous regions of Texas, and more are being planned. In order to pool resources and establish court procedures and goals, mental health court professionals should form a network in which to share experiences and collaborate with other similar organizations to strengthen their own goals.
- Despite all their benefits - and the 2007 legislative mandate requiring the implementation of specialty courts in counties with populations over 200,000 - these courts still lack funding in many counties to realize their full potential. They should be fully funded and institutionalized so that the state can more effectively address addiction and mental illness issues.

(2) Maintain in-prison substance abuse treatment programs and expand mental health treatment services.

In order to enhance public safety by decreasing drug use and mental health-related crime, Texas must proactively address drug dependence and mental illness. Every crime reduction strategy should include a solid drug and/or mental health treatment plan in order to break the cycle of re-offending as early as possible. Even the most expensive treatment program is less expensive - and far more effective - than the costs of building and maintaining additional prisons, which would only manage (not reduce) risk.

(a) **Improve the availability of in-prison substance abuse treatment programs.**¹¹⁰ A large percentage of those incarcerated in Texas prisons have a history of substance abuse problems. For those already within prison walls, a transition plan should be developed to include how each individual will most successfully re-integrate into society, to include in-prison substance abuse treatment participation.

Furthermore, drug users entering the criminal justice system should be provided full access to effective, professionally supervised treatment and rehabilitation programs. Cognitive therapy, especially, should be made available to all individuals. Ultimately, during each individual's intake process into prison, his or her history should be assessed to determine severity and evaluated to create an individualized plan best suited to respond to his or her substance abuse problems (or other issues).

Additionally, the state should expand the number of programs like the recently implemented DWI Recovery program at the East Texas Treatment Facility in Henderson, Texas, from which more than 130 individuals have graduated. The six-month program teaches DWI-convicted inmates from across Texas basic life skills, alternatives to drinking and driving, and the medical, lifestyle, and stress effects of alcohol.¹¹¹ Regional facilities throughout the state would allow more individuals to participate, while also ensuring that participants are closer to their families and support networks.

(b) **Improve the availability of in-prison mental health treatment services.** As many as one in five of the 2.1 million Americans currently in jail and prison are seriously mentally ill, far outnumbering the number of individuals in mental institutions.¹¹² However, as mentioned above, only 17% of prison inmates and 11% of jail inmates in need of mental health treatment

actually receive it. The state must ensure that currently incarcerated individuals with special needs are being properly diagnosed and treated, or continue to waste valuable taxpayer money on their constant incarceration and re-incarceration.

(3) Ensure that programs are properly implemented by having qualified staff in the criminal justice field (including both adult and juvenile probation, parole, and in-prison program staff).

In order to best ensure that individuals who enter the criminal justice system are provided effective programming and supervision, Texas must attract, recruit, train, and retain quality professionals in the field of substance abuse treatment and mental health services. Incentives for practitioners - such as loan reimbursement programs - will enhance the state's professional pool - from the probation and parole officers who supervise individuals, to the substance abuse treatment and re-entry professionals that handle individuals with mental health and/or substance abuse issues. The better equipped these practitioners are to meet Texas' public safety needs, the more faith the public will have in the criminal justice system, the more likely it will be for those suffering from substance abuse or mental health issues to receive quality treatment, and the greater the likelihood of those re-entering our communities to have the tools to live responsibly.

(a) **Increase the number of qualified treatment professionals that focus on criminal and juvenile justice clients.** High levels of debt as a result of student loans, as well as low salary pay and limited opportunity both for recognition and financial rewards for exceptional performance, ultimately discourage individuals from entering the criminal and juvenile justice field, leaving Texas with an insufficient number of qualified professionals. The state should adopt a loan reim-

bursement program for those obtaining social work, psychology, and/or counseling degrees who are seeking to enter the criminal or juvenile justice field.

Note: To qualify for the reimbursement program, a student should have to agree in writing to be employed for four years within an adult or juvenile probation or parole department in Texas, or within a state correctional facility. The total amount of tuition and mandatory fees that the public or private institution of higher education charges the recipient for that academic year should be reimbursed. This reimbursement should only be used towards tuition and mandatory fees for degree-specific credit hours.

In addition to the reimbursement program, individuals who have already paid their student loans and who are considered well performing employees within this field should be eligible to receive merit bonus incentives over the long term to encourage retention of the best personnel.

Increase the Efficiency of the Texas Department of Criminal Justice

Background

Texas must implement responsible practices with regards to individuals passing through the criminal justice system - not only on the front end with quality defense representation, but also for individuals within prison walls. Incarcerated individuals must be given adequate medical treatment, as well as the ability to file legitimate grievances that will receive a response, without fear of reprisal.

Furthermore, prison staff should be better compensated so as to reduce turnover rates and personnel shortages, in turn reducing corruption and improving the safety of prison conditions.

Finally, Texas' various criminal justice agencies and treatment providers - probation, corrections, parole, mental, and health services - should improve their coordination and communication so as better to provide a continuum of just and compassionate services for the tens of thousands of Texans entering and exiting criminal justice facilities every year.

Key Findings

- Harsh prison conditions - including poor medical care - can increase recidivism rates.¹¹³
- TDCJ recommends about 70 or more inmates per month for medical-based parole, but the Texas Board of Pardons and Paroles releases only about 10% of those recommended.¹¹⁴
- 48% of TDCJ's total pharmacy budget goes to pay for drugs for prisoners with HIV, who represent less than 10% of prisoners.¹¹⁵
- Texas spent approximately \$557,657 on settlements for prison conditions over a four-year span. This figure does not include the attorney fees of the Attorney General staff, who must spend countless hours defending TDCJ against prisoner complaints.¹¹⁶
- Nationwide, 1.5 million people per year are released from jail and prison with a life threatening infectious disease.¹¹⁷

Solutions

(1) Improve medical access and treatment within prison walls, especially with regards to infectious diseases.

Prisoners, on average, require more health care than most Americans because of poverty, substance abuse, and lack of access to medical services in the free world. Texas, however, only spends \$7.42 on health care per inmate per day, a number significantly lower than rates in California and New York.¹¹⁸ In addition, Texas prison health care is already borderline unconstitutional, according to officials at University of Texas Medical Branch at Galveston (UTMB), which, along with Texas Tech, manages Texas' prison health care facilities.¹¹⁹

Medical access and treatment is imperative in prisons, particularly with regards to infectious diseases. The spread of HIV is especially common in prisons and jails. In 2006, the United States Centers for Disease Control and Prevention (CDC) found that the estimated prevalence of HIV infection is nearly five times higher for incarcerated populations than for the general U.S. population.¹²⁰ Likewise, people in prison are more likely to die of AIDS than other Americans - their rate is 1.5 times that of the general population between the ages of 15-54.¹²¹ Texas, meanwhile, has the third largest HIV positive population among state prison systems in the nation.¹²²

According to the CDC, Hepatitis C is also rampant in U.S. prisons, affecting more than 40% of the national prison population - making it the most prevalent infectious disease. A study conducted by the University of Texas Health Science Center found infectious diseases such as Hepatitis C to be the most prevalent disease category of Texas prisoners, at 29.6%.¹²³ This number is substantially higher than those reported for the general population.

A view of the health status of inmates is a view through a window to our society at large.

- Robert Greifinger, nationally recognized correctional health expert

Without preventive measures, inmates will continue to contract HIV and other infectious diseases. Additionally, vulnerable populations (such as those with Hepatitis C and HIV) must be given consistent and diligent care, including regular doctor visits and the ability for inmates to administer their own medications, thereby eliminating the need to stand in dangerously long pill window lines. (These window lines have been linked with the development of drug-resistant strains of HIV and Hepatitis C, because those waiting for medication are not always able to receive it before the window closes, causing an inconsistent administration of necessary medications.¹²⁴) It is imperative that qualified staff at individual units have the ability to implement care when necessary and honor UTMB or Tech caregivers' orders once the inmate has returned to the unit following diagnosis or treatment recommendations.

Failure to provide necessary care will continue to leave the state open to costly liability and ongoing exposure to lawsuits concerning inadequate health services. Furthermore, if Texas' prison health care services are declared unconstitutional in federal court, the state could face the pricey and embar-

assing prospect of relinquishing control of prison health care to a federal court receiver. This happened in California in 2005, causing health care costs to explode, including mandated new payments of \$10 million per year for the salaries of the consulting team.¹²⁵

But there are public health implications for those leaving the system as well. During FY 2007, approximately 1,400 HIV-positive individuals were released from TDCJ.¹²⁶ In addition, an estimated 4,500 individuals with Hepatitis C were released in 2007.¹²⁷ A small number of individuals with other diseases were also released: for example, 16 individuals were released while receiving treatment for tuberculosis.¹²⁸

The state must ensure that prevention measures are fully enforced so that other inmates - as well as spouses/partners, friends, and children of inmates - will not contract communicable diseases. A key part of the re-integration process is having and maintaining a healthy family unit. The devastation of contracting an infectious disease like HIV completely disrupts any efforts to re-enter society and become self-reliant. Pre-release planning to manage HIV and AIDS would ensure that networks are in place prior to these individuals rejoining our communities.

(2) Strengthen the efficiency of TDCJ's Offender Grievance Program.

TDCJ must ensure that this Program is effectively addressing inmates' concerns with regard to medical care, without reprisal for filing a grievance.

- (a) **Improve access to forms.** While grievance forms are available in the law library, some individuals may not have access or reason to use that library, therefore making the grievance forms unavailable. TDCJ should ensure that grievance forms are accessible by all, as well as provide clear instructions on completing them. To better guarantee access to the information, these

materials should be provided in common areas, such as the recreation room and cafeteria.

(b) Increase the grievance filing period. TDCJ's current grievance process allows inmates only 15 days from the date of the incident to grieve. This amount of time is usually insufficient for those inmates who are ill, injured, or otherwise unable to properly grieve their complaint. By allowing for a longer time period in which to grieve and by making the grievance officers more accountable for the integrity of the grievance process, the state can increase the efficiency of the Offender Grievance Program as well as increase the safety of both inmates and prison staff.

(c) Clarify grievance decisions. After inmates file an initial grievance (Step 1), the grievance officers respond with either a denial of the inmate's request or agree to further investigate the inmate's claim. Step 1 responses from grievance officers should be specific as to why an inmate's request was denied. (In other words, a one-line response denying action should be discouraged.) By providing specific reasons and details as to how a decision was reached, the grievance program will be more efficient and lessen the likelihood of the inmate filing an appeal with the central grievance office (Step 2), which would decrease that office's workload.

(d) Create independence on grievance boards. Grievance boards are comprised of TDCJ correctional officers who have been promoted to the grievance officer position, creating a clear and inherent conflict of interest when inmates file complaints about mistreatment by guards (likely the former colleagues of grievance panel members) or the lack of available services by TDCJ. The Governor should appoint a board at least partially composed of independent members who are not and never were employed by TDCJ. This group should review inmates' more serious grievances; also, their credentials, expertise, and decision patterns should be

made public to constituents. Having at least one independent board member would allow for more objectivity throughout the grievance decision-making process, as well as allow for a practical evaluation of the weaknesses in the Offender Grievance Program.

(e) Protect truthful guards. Due to the nature of a correctional officer's work, it is often difficult to provide truthful testimony regarding events that involve an officer and an inmate. TDCJ should offer "whistle blower" protection for corrections staff persons that wish to come forward with information about events described in an inmate's Step 1 grievance form.

(3) Increase correctional officers' salaries to decrease turnover.

Currently, Texas faces an enormous shortage of correctional officers, due in part to the lack of competitive salaries. In efforts to address this chronic personnel shortage, TDCJ must be given the resources necessary to provide much needed raises for these officers, which will allow for the recruitment and retention of highly qualified individuals.

As an additional employment incentive, as well as to improve employee morale and retention, the state should create a pilot program for loan repayment assistance for individuals attending Sam Houston State University (SHSU) who agree to serve as correctional officers for a certain amount of time. Prior to qualifying for loan reimbursement, students should hold a bachelor's degree from SHSU, have maintained good academic standing while there, and complete at least one year of employment as a full-time correctional officer in Texas within two years of graduation.

Note: With more guards and less turnover, prison conditions should improve: acts of violence will decrease, gang formation will be discouraged, and incoming contraband will be reduced. Staff will have a safer workplace.

(4) Improve communication strategies between criminal justice and treatment agencies to meet the state's public safety needs.

Texas should fund and expand the ability of TDCJ institutional administrators, their medical care contractors (UTMB and Texas Tech), probation, parole, health and human service departments, and the community-based service providers who contract with them to effectively communicate and coordinate their resources. Currently, many criminal justice agencies do not communicate with each other, due in part to the absence of uniform datasets across agencies. For instance, probationers and parolees tend to be concentrated in "high stake" communities, yet probation and parole do not share data or coordinate strategies and services.¹²⁹

Tracking data and sharing information about individuals who receive or have received social services, mental health services, substance abuse services, or health services from a particular agency will help practitioners implement evidence-based practices: it will allow them to match risk level and criminogenic needs to responsive interventions, which has been proven to increase the success of clients.

Management of information could best be accomplished by an Interagency Coordinating Council for Data Sharing (Council), which could facilitate the interagency coordination of information systems, including the creation of standards for sharing information electronically under appropriate controls to ensure that confidential information remains confidential. Agencies could report to the Council regarding their implementation of various policies and procedures, and every two years the Council could evaluate the efficiency and effectiveness of the information sharing system.

Ultimately, agencies must be given incentives and provided with resources to share information, making their supervision strategies more effective and better assisting judges and treatment providers.

Creating gateways of communication between departments will allow supervisors to provide a holistic service to increase the success rate of those under supervision.

In addition, agencies must be encouraged to share best practices. The Community Justice Assistance Division at TDCJ should compile an annual report to be distributed to practitioners that assesses the successes and failures of all programs using evidence-based outcome measures. Post-completion program evaluations should include an examination of rates of recovery, employment, and educational attainment.

(5) Adopt a Public Health Model of Correctional Care to ensure inmates, correctional staff, and the public lead healthy and productive lives.

The Public Health Model of Correctional Care focuses on connecting local care providers, including public hospitals, local clinics, teaching institutions, and doctors in private practice, with correctional institutions. This model is especially effective because inmates receive a medical treatment plan upon intake and are held to that plan throughout their contact with the criminal justice system. After release, their plan of care continues; recently released prisoners remain with the same provider that treated them during their incarceration. This continuum of care is essential during the re-entry process.

The Hampden County Correctional Center in Massachusetts currently uses a public health model and has become a national example of effective correctional medical care. Their model emphasizes five elements as the basis for all their services and programs: (a) early assessment and detection, (b) prompt and effective treatment at a community standard of care, (c) comprehensive health education, (d) prevention measures, and (e) continuity of care in the community upon release.¹³⁰ The model also lists key elements for successful implementa-

tion of their model, which includes support from high-level correctional administrators and a commitment to collaborate openly with state agencies and non-profit health organizations.

The benefits of adopting a public health model for prison health care are numerous and can include improved inmate and community health, improved public safety and correctional staff safety, improved use of the health care system, cost savings for communities, and high quality health care at a cost no greater than the national average. In fact, the Hampden County Correctional Center reported spending \$.66 less for medical care per inmate per day than the largest jails nationally.¹³¹

Implementing a public health model for correctional care could also decrease recidivism by allowing a continuum of care after inmates are released into the community, thus increasing their ability to manage their own medical care and lives. Another major benefit of the model is the dramatic decrease in the use of the emergency room as a primary care giver for released individuals. This would save communities thousands of dollars per year in rising hospital care costs.

Note: The Hampden County Correctional Center has a step-by-step manual explaining implementation that could be easily tailored to meet local needs.

PART 4:

ENCOURAGE ECONOMIC AND WORKFORCE DEVELOPMENT BY REDUCING RE-ENTRY BARRIERS

- Equip Individuals with Personal Responsibility Tools, Inside and Outside of Prison Walls
- Broaden Access to Housing and Food
- Create an Enhanced Employability and Employment Protection Policy

Annually, over 70,000 people leave prison and return to Texas communities without ever having developed the tools necessary to avert them from the criminal justice system. Among other things, undiagnosed mental health disorders, drug dependence, and low education levels all act as barriers to successful re-entry to society. Likewise, lack of housing availability, an inability to purchase food, and limited economic opportunities (due in part to legal barriers to obtaining occupational licenses and identification cards) jeopardize efforts to participate in society in a fulfilling and productive way.

In order to support these men and women in their re-integration efforts, a broad range of stakeholders - including agencies, providers, community groups, and members of law enforcement - must work together to promote the resources that will empower formerly incarcerated individuals to become and stay law-abiding, responsible citizens. It is imperative that these stakeholders collaborate to strength-

en Texas' social support infrastructure - specifically by investing in resources that will assist re-entry practitioners in reducing the obstacles preventing individuals from becoming productive members of our communities. Front-line practitioners and other concerned groups must work to develop programs and services that promote success for individuals and families, as well as aid neighborhoods to which high concentrations of formerly incarcerated men and women return. Ultimately, their successful re-entry will benefit public safety, family cohesion, local economies (including through tax savings and employment), and public health.

When given the right tools, these men and women become assets - not liabilities - to our communities.

- Angel D. Ilarraza, Ph.D.
Tarrant County Reentry Program Coordinator

Equip Individuals with Personal Responsibility Tools, Inside and Outside of Prison Walls

Background

In 2007, individuals released from the Texas Department of Criminal Justice (TDCJ) exhibited an alarming recidivism rate of 67%.¹³² The cause for this high level of re-offending lies in the failure of the system to provide individuals inside and outside of prison walls with the tools necessary to cope with the challenges of re-entry. In order to close the revolving door to our prisons, Texas must better assess incoming individuals' needs; boost family interaction; provide exiting individuals with assistance (such as certification of treatment programs completed, or information on county-specific resources and services); and implement best practices in re-entry being employed by other states to reduce recidivism.

Key Findings

- Approximately 156,000 individuals are currently institutionalized in the State of Texas.¹³³ At least 95% will eventually return to our communities.¹³⁴
- In 2007, TDCJ released 72,032 individuals; of those, 47,904 (roughly 66%) had been previously incarcerated in TDCJ.¹³⁵
- The most pivotal period of re-entry is within the first year of release. When looking at a formerly incarcerated individual's first three years after release, it is the first year which will account for nearly two-thirds of all re-offending.¹³⁶
- Recidivism rates are negatively affected by ongoing substance abuse, which tends to lead to crim-

inal activity.¹³⁷ In fact, substance abuse-related offenses constituted the majority of offenses among TDCJ's released population in FY 2007.¹³⁸ Yet only 34% of state prisoners with substance abuse problems receive treatment while incarcerated, while a much smaller population - only 6% - of state jail confinees do.¹³⁹

- In a 2008 survey of state re-entry practitioners, the largest percentage of survey respondents feel there are "sometimes" or "often" mental health and substance abuse issues that pose barriers or obstacles to re-integration, especially with regards to (a) post-release inconsistency in taking psychotropic medication, (b) post-release inability to access or afford psychotropic medication, (c) pre-release inconsistency in taking psychotropic medication, and (d) a lack of pre-release mental health services.
- Access to health care services upon release is limited and community-based care is lacking, which creates additional public safety risks.
- Re-entry failures are expensive and fiscally burdensome: total TDCJ expenditures in FY 2007 exceeded \$3 billion.¹⁴⁰

Solutions

(1) Mandate that TDCJ create assessment-driven, individualized re-entry plans that span intake and incarceration, and provide funding to implement these plans.

In 2007, more than 73,000 individuals entered a prison, state jail, or Substance Abuse Felony Punishment facility (SAFPF) in Texas. Though almost all of these individuals will one day return to our communities, a very small portion of TDCJ's budget is devoted to re-entry efforts. In fact, in FY 2008, approximately 3.4% of TDCJ's total budget was directed towards re-entry efforts.¹⁴¹

Below is a chart showing direct program expenditures and administrative costs of each re-entry program funded by the state:

Re-Entry Initiatives	Appropriation	Salaries	
		Direct	Indirect
Academic/Vocational	\$ 2,332,715	-	-
Project RIO	\$ 3,566,364	3,481,988	-
Treatment Services	\$15,814,445	13,971,043	849,215
Substance Abuse	\$75,543,749	5,372,945	326,589
Total Funding	\$97,257,273	22,825,976	1,175,804
		23.47%	1.21%

Note about chart: Direct salaries are costs associated with providing programmatic services, such as Chaplains, Project RIO Assessment Counselors, Case Managers, Psychologists, and Substance Abuse Counselors. Indirect salaries include central administrative and support costs associated with managing an agency.

Additional funding is needed to ensure that re-entering individuals have the tools to be law-abiding and contributing members of society. However, it is important to note that the re-entry process will be most successful and effective if it begins long before release - during an individual's intake at the correctional facility.

(a) Strengthen TDCJ's current intake process.

Currently, TDCJ staff use a 6-page intake questionnaire to determine, among other things, incoming individuals' work experience, vocational skills, military experience, previous criminal activity (including sex offenses), family background (including whether any family members have been in law enforcement or incarcerated), suicide attempts, homosexual experiences, previous in-prison experiences, and substance abuse experiences.¹⁴²

However, to get the clearest picture of the incarcerated population and best meet the

needs of communities to which they will return, other pieces of data - in addition to those collected on the intake form - should be collected, verified, and made easily available to policy-makers and the general public, including the following information:

- Whether incoming individuals' housing statuses are ascertained (e.g., homeless, living with relatives, independently living, residing in public housing, etc.); and
- Information about who TDCJ screens (and who conducts the assessments) in order to determine the incarcerated population's psychological issues, mental health issues, and/or substance abuse and dependency issues.

Note: Equally as important as expanding the data currently being collected by TDCJ is the sharing of the data with local re-entry providers. Presently, these providers are burdened with duplicating (and supplementing) TDCJ's intake process by having to ask all exiting individuals about the same points of information they provided to TDCJ at intake. Collaboration among TDCJ and re-entry providers will more quickly facilitate placement and referral.

An example of an intake form that would best assist initiatives in aiding re-entering individuals is that used by the Tarrant County Reentry Initiative, which - in addition to what TDCJ inquires about (above) - also asks about information in the following categories: Academic, Vocational/Career, Interpersonal, Wellness, Mental Health, Cognitive, Character, Leisure, and Daily Living.

- (b) Mandate that all TDCJ inmates will have comprehensive transition planning services and resources during incarceration.** The state should ensure that assessments guide each re-entry candidate's placement into re-entry-

focused programs, as based on the individual's educational and employment abilities, mental health diagnoses and dispositions, history of drug abuse, and family dynamic and history of domestic violence. Each inmate should participate in creating his or her own re-entry plan, which should be guided by this assessment.

For re-entry candidates with healthy family support networks, a strengths-based and family-focused perspective should be used when developing their re-entry plans. Specifically, attention should focus on assets in the areas of education, cognitive ability, social skills, employment potential, and access to community-based (including family) resources. The ultimate goal of rehabilitation should be the strengthening of each re-entry candidate's prosocial assets (above) and family/social ties through a process that will guide the individual in becoming a positive role model. [*Please see the section in Part 3 titled "Fight Drug Addiction and Address Mental Illness Head On" for more on in-prison treatment programs; see the section below titled "Create an Enhanced Employability and Employment Protection Policy" for more on in-prison employment and education programs.*]

Note: The title of the TDCJ staff person(s) responsible for writing the re-entry plan with the inmate should be written into statute and include credential requirements and a mandate that these positions be permanently filled.

(2) Improve the quality of in-prison programs for the more than 70,000 individuals being released each year, especially through performance measures.

It is important that intermittent quality control checks be made to evaluate programs and services within prison walls; this will prevent obvious prob-

lems with program administration from being overlooked and ultimately undermining the goals of the programs to assist re-entry candidates with re-entry needs. In addition to performance-tracking technology, the state could develop a client and staff feedback survey. Staff and client feedback is the simplest method of evaluating programmatic progress and can improve participants' investment in the process when they know their feedback is valued.

Note: The state should offer incentives for staffers inside prison walls who provide programmatic services. It should create a student loan reimbursement program for students willing to work in prisons in the fields of education, social work, and counseling. Likewise, these students should be reimbursed in increments after periods of sustained employment while they work in the criminal justice system.

(3) Invest in additional post-release substance abuse and mental health treatment programs.

Not only must prisons ramp up the availability of treatment programs within prison walls to best address the root causes of crime and re-offending, but the state must couple these in-prison programs with tailored, coordinated, and effective community-based aftercare services to best ensure program and personal success.¹⁴³ Programs within formerly incarcerated individuals' home communities are especially critical: A survey conducted by the Urban Institute found that formerly incarcerated individuals who reported closer relationships with family members after release were less likely to use drugs and more likely to find work.

(a) Ensure there is a continuum of care readily available for exiting individuals who will require ongoing substance abuse and/or mental health assistance. At the very least, exiting individuals should be provided with a comprehensive contact list of providers in local areas that can meet their needs.

(b) **Offer incentives for participants who successfully complete a drug treatment program.** Also for those who, as a condition of release, must participate in a substance abuse treatment program, the Texas Board of Pardons and Paroles (BPP) should grant early termination of parole or mandatory supervision for individuals who successfully complete the program. This would motivate individuals to not only participate in but make real progress towards substance abuse treatment, in turn allowing parole officers to devote more attention and resources to parolees who pose a high risk of re-offending in the community. Furthermore, early termination has the potential to free up space in already crowded halfway houses that currently have long waiting lists.

Note: All revenue generated from participants' program fees should be deposited into the state's general revenue fund to be appropriated only for the administration and provision of substance abuse treatment.

(4) **Create program enhancements to support the children of incarcerated parents.** According to TDCJ, it already facilitates family connections through a variety of measures:

- TDCJ runs a program that allows for both contact and non-contact visitation (with children not counting towards the limit of two adult visitors per visit).
- A new telephone system authorized by the 80th Legislature was implemented, further enhancing inmate/family interaction.
- Programs are offered at some units which include family participation and target the children of the incarcerated.
- TDCJ has instituted the GO KIDS Initiative (Giving Offenders' Kids Incentive and Direction

to Succeed), which is a directory showing which units have family-friendly programs, as well as an information directory for families of inmates that provide resources in the community which may be of assistance to the family.

- TDCJ has been working with the Department of Family and Protective Services to establish a system to identify individuals who have active (or inactive) cases with Child Protective Services (CPS). This will assist the criminal justice and CPS systems as they (i) identify individuals who have active (or inactive) cases with child protective services, and (ii) work more closely on cases that may need additional support and monitoring toward a successful outcome.
- A new visitor tracking system is being developed which would provide additional statistical information regarding visitation.

To better assist families as they strengthen themselves through positive visitations and social service support, the state should invest in the following:

- **An enhancement to visitation environments.** Specifically, enhancements to visitation that nurture parent-child bonding should become standardized. "Window visits," in which visitors are separated from prisoners by glass and converse by telephone, are not appropriate for small children. In facilities such as county jails where these visits are the norm, exceptions should be made for prisoners with children. Furthermore, in facilities where contact visits already take place, visiting rooms should be designed with children's needs in mind, or separate accommodations should be made for prisoners with children.
- **Mentoring/tutoring programs and counseling services for children of the incarcerated.** Given that children of incarcerated parents are more likely than other children to enter the criminal justice system, the state should invest in inter-

ventions to support the educational, emotional, psychological, health, and mental health needs of these children in order to improve their outcomes in life. Programs that target these children should be welcomed into the TDCJ visitation environment to facilitate therapeutic family-based support. This programming should ultimately include interventions that span visitation, as well as after-school programs that address the unique needs of these children.

Such investments by the state will pay off over the long term when re-entry candidates and their loved ones are more prepared for the re-entry transition.

Note: These services should be coordinated with services already being provided by Health and Human Services, CPS, child support programs, and additional state and community programs intended to aid families.

(5) Assist formerly incarcerated individuals as they leave incarceration, whether at full discharge of their sentence or when being released onto parole.

(a) Provide exiting individuals with reasonable records at discharge to facilitate successful re-entry. Upon each individual's release, TDCJ should provide him or her with verification of work history during incarceration, as well as certification of educational and/or treatment programs completed. Each outgoing person should also be provided a driver's license, identification card, social security card, and birth certificate. This information will facilitate individuals' ability to obtain employment, housing, and other benefits.

(b) Give exiting individuals the tools to be responsible during the key post-release period. According to TDCJ, individuals released from prison are provided a bus ticket to their destina-

tion. *Note:* More extensive travel arrangements are made for individuals with special needs requiring assistance. Also, exiting individuals are permitted to travel home with family and friends if s/he can be picked up upon release.

If an exiting individual is fully discharging his or her sentence upon release, s/he will receive \$100 at the exit gate. However, if s/he is being released to parole supervision, s/he receives a \$50 gate check for necessities, followed by an additional \$50 upon reporting to his or her parole officer for the first time.

A bus ticket and \$100 do not adequately prepare individuals to successfully find housing and food. TDCJ must be provided the necessary staff to identify and connect local services and resources so that exiting individuals can succeed in the communities where they are living or being supervised. Specifically, TDCJ should provide a county-specific information packet to exiting individuals at the time of their release, including the addresses and telephone numbers of workforce offices, viable housing options (both public and private), and contact information for support groups (like churches, peer-to-peer counseling groups, and other charitable institutions).

Ultimately, secured access to a regularly updated electronic database inside the prisons would best provide the information necessary for those planning their re-entry. This database could utilize existing services at no cost to the state – including United Way's 211 referral service¹⁴⁴; TCJC's own Tools for Re-Entry webpage, which links to a comprehensive, regional listing of services in housing, employment, education, basic needs, and treatment ("Adult Re-Entry Services");¹⁴⁵ and Restorative Justice Community of Texas' database of services.¹⁴⁶

(6) Establish a statewide Re-Entry/Re-Integration Policy Council outside of the purview of TDCJ.

A critical re-entry barrier is the lack of coordination between the TDCJ re-entry practitioners, initiatives, and re-entry service providers. Without communication and collaboration, services fail to reach the individuals that need them most during the crucial stages of re-entry, thereby increasing the likelihood of recidivism and decreasing the likelihood of successful re-integration.¹⁴⁷

- **Objectives and Membership:** A Re-Entry/Re-Integration Policy Council should be composed of members representing diverse agencies and disciplines with the stated objectives of (a) coordinating re-entry efforts and fostering interagency communication, (b) identifying other best practices and policies with regards to re-integration, and (c) making recommendations to the Governor and other key stakeholders that outline how to effectively, efficiently, and responsibly implement best practices that will reduce recidivism and increase public safety.

For example, the Council could be involved in the identification of re-entry funding priorities so that, in the event that either state or federal dollars become available (described more fully below), the state can determine how best to spend available funds to improve the current system. The Council could also assist in defining the role and verifying the success of Re-entry Transitional Coordinators (requested by TDCJ in their FY 2010-11 legislative appropriations request).

Membership in the Council should be broad-based and include individuals appointed by the Governor, Lieutenant Governor, and Speaker of the House; members of the re-entry community (e.g. public, private, and non-profit advocacy sectors, including faith-based re-entry groups); and representation from relevant government

entities, including TDCJ (most importantly), but also law enforcement, the Parole Board, TCOOMMI,¹⁴⁸ the Department of Aging and Disability Services, and the Department of State Health Services.

- **Federal Funding Benefits:** Development of this state-level Council would allow Texas to be eligible to apply for much-needed federal grant funding under the Second Chance Act. *Note:* The Department of Justice administers grant funding to state and local government agencies, as well as non-profit organizations, to assist them in implementing recidivism-reduction re-entry initiatives - including the provision of employment assistance, substance abuse treatment, housing, family programming, mentoring, victims' support, and other services that can help reduce re-offending and violations of probation and parole. Outside funding of the Council would better ensure that it is institutionalized as a state entity.

Note Additionally: Receipt of grant funds under the Second Chance Act would require the establishment of a re-entry task force to guide the organization in re-entry-related efforts. The law specifies a number of members of each task force, including state or local leaders and representatives from relevant agencies, service providers, non-profit organizations, and other stakeholders. The task force is charged with examining ways to pool resources and funding streams to promote lower recidivism rates for returning individuals, as well as collecting data and best practices in re-entry from agencies and organizations. The task force may also be charged with developing the re-entry strategic plan, a requirement for all grantees.

(7) Encourage the creation of re-entry offices in municipalities or counties with proportionately high populations of returning individuals ("high stakes communities").

One such office is in Tarrant County, assisting formerly incarcerated individuals and communities in re-integration efforts. The Tarrant County Reentry Initiative began in November, 2005, and included the development of a Reentry Council and a Reentry Coordinator position. Also part of the initiative are various subcommittees: Evidence Based Practices, Housing, Employment/ Vocational Development, Mental Health, Substance Abuse, Policy and Law, Faith-Based, Community Support, Transitional Preparation, and Healthcare.

Currently, Tarrant, Dallas, Bexar, and Harris Counties are the state's top four "high stakes communities." In Houston alone, 50% of former prisoners return to neighborhoods that account for only 15% of the city's adult population.¹⁴⁹ At the very least, Dallas, Bexar, and Harris Counties should be encouraged to follow Tarrant County's lead in establishing a re-entry office that serves as a point of contact for those re-entering into the community, as well as those who serve them.

Note: This recommendation is not meant to negatively impact or replace current re-entry initiatives throughout the state, such as the Austin/Travis County Re-entry Roundtable or the Community Re-Entry Network in Houston, but instead supplement and assist them in their efforts.¹⁵⁰

Note Additionally: Once such offices are established, they should be notified by TDCJ as soon as possible about which individuals are soon to be released from correctional facilities into their counties (at least 90 days prior to an individual's release, when that information is available). Notification will enable the local re-entry office to reach out to individuals prior to release to best facilitate their referral and placement in services immediately

upon release (as opposed to beginning the re-entry process after they return to the community). The first few weeks are critical to ensuring that a formerly incarcerated individual will successfully transition back into the community; immediate assistance decreases the likelihood of re-offending.

(8) Follow program models from other states that have successfully implemented re-entry plans.

Although the following materials are very specific to particular state needs, they do contain strategies that Texas could employ in its re-entry infrastructure:

- ***Kansas Offender Risk Reduction and Reentry.*** In 2007, the State of Kansas enacted a re-entry statute that offers good time credit for inmates, as well as program credit. Although in Texas, individuals in state jail felony facilities are not entitled to good time credit, having the opportunity to receive program credit would afford them an incentive to complete in-prison rehabilitative programs, help to improve their conduct while confined in the facility, and increase the number of persons discharged from a facility - thus freeing up needed prison space.¹⁵¹
- ***Connecticut's 2007 Comprehensive Offender Re-Entry Plan.*** Connecticut has also been a leading state in pushing for re-entry programs to relieve prison overcrowding. Connecticut's re-entry plan focuses on the collaboration of state agencies to develop a more comprehensive and coordinated continuum of criminal justice services, including supervision programs, behavioral and mental health services, and transitional support programs. Many of these programs are considered to be model programs with an ongoing assessment component to determine effectiveness. Specifically, an annual report monitors whether strategy implementation has assisted the state in maintaining the prison population at or under the current authorized bed capacity.¹⁵²

The following projects offer additional strategies that Texas could look to for assistance in improving and strengthening its re-entry policies:

- ***The National Institute of Corrections (Department of Justice, Bureau of Prisons)*** - This Institute provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. It also offers an excellent library of reports.
- ***The Re-entry Policy Council (RPC)*** - This is a national project coordinated by the Council of State Governments' Justice Center, a national nonprofit organization that serves policy-makers at the local, state, and federal levels from all branches of government. RPC works to generate bi-partisan policies for lawmakers and to facilitate coordination and information-sharing among organizations implementing re-entry initiatives, researching trends, communicating about related issues, or funding projects. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies - informed by available evidence - to increase public safety and strengthen communities.

Broaden Access to Housing and Food

Why can't I get a chance to prove myself a decent person, and show I've changed?

- Formerly incarcerated individual looking for housing

Background

In 2005, TDCJ released nearly 6 times as many felons as it released in 1980.¹⁵³ For tens of thousands of these former inmates, the question of where they will live upon re-entry to society is immediate and critical. Housing barriers contribute to recidivism and homelessness, and they negatively impact a formerly incarcerated individual's ability to reconnect with their families - pivotal to their success in re-entering the community and staying out of prison.¹⁵⁴

But the indirect or collateral consequences of felony punishment in Texas extend beyond housing obstacles. For most felons, time in prison begins a life-long series of punishments, with legal barriers and roadblocks severely limiting access to all of life's most fundamental necessities - including food and other public assistance.

Key Findings

- Without the benefits provided by stable housing, exiting individuals struggling to meet other basic needs, such as finding employment and gaining access to substance abuse treatment and health care services, may face a higher risk of relapse and recidivism.¹⁵⁵
- Programs that match individuals' needs with offered services are estimated to reduce recidivism risk by as much as 50%.¹⁵⁶

- Residential stability/instability is closely associated with rates of crime, violence, and health-related issues.¹⁵⁷
- Under statutes in all 50 states, rental property owners may - but are not required to - screen for and refuse to rent to people with criminal backgrounds.¹⁵⁸
- Women with minor children find securing housing particularly challenging given their limited economic resources.¹⁵⁹
- The likelihood of homelessness increases for those with mental health and substance abuse problems,¹⁶⁰ and sadly, only 1/3 of homeless formerly incarcerated individuals have their needs met through supported accommodation.¹⁶¹
- A study found that crime was no more prevalent around halfway houses than in areas where there were no such facilities.¹⁶²

Solutions

(1) Promote affordable housing options for formerly incarcerated individuals.

- (a) **Wherever possible, the state should direct local Texas housing authorities to utilize federal housing assistance programs to help formerly incarcerated individuals find places to live.** Federal Community Development Block Grants and HOME Investment Partnership grants to localities can provide avenues for funding to aid formerly incarcerated individuals when communities support such initiatives.
- (b) **Maintain funding for halfway housing and other transitional housing for formerly incarcerated individuals.** Most public housing laws and regulations stipulate a "one-strike" rule that automatically bars anyone with a criminal record (however minor the offense) from eligibility for

public housing. Additional housing units would help keep formerly incarcerated individuals off the street and in sustainable homes where they are less likely to re-offend.

The state should establish a standard for community residential capacity for transitional re-entry housing within cities and counties. For example, a standard might be that counties have transitional re-entry housing capacity sufficient for 100 beds per every 50,000 residents. The standard could be met with transitional facilities owned and operated by faith-based or non-profit organizations, as well as for-profit organizations. This standard will better promote successful re-entry and reduce recidivism by ensuring access to housing and transitional services critical to those on conditional or mandatory release from prison.

- (c) **Offer tax incentives to landlords who provide housing to formerly incarcerated individuals.** Tax breaks should reward landlords who give formerly incarcerated individuals a second chance to successfully re-integrate into society.

Within the limitations of federal law, the housing commission should be directed to maximize the availability of low-cost housing options for formerly incarcerated individuals and those currently on probation.

- (d) **Implement a housing voucher program for formerly incarcerated individuals.** Texas should look to such programs as the Rental Assistance Coupon Plus Program in Maine, which is a collaborative partnership between Maine's State Housing Authority and Reentry Network/Department of Corrections. This Program provides up to 24 months of transitional housing rental assistance at full market value. A limited number of coupons are available statewide to those meeting HUD homeless criteria. The Maine Reentry Network certifies the homeless status of those being released from the state correctional system, and participants pay 30% of

their adjusted income toward rent (or \$50 minimum). To help secure housing, the program may also provide a security and utility deposit no greater than one month's rent. Housing coordinators participate in individuals' pre-release re-entry planning meetings as well.

- (e) **Create a pilot program with a family mentoring re-integration plan.** This program could provide a small payment to allow qualified, caring families and individuals throughout Texas who want to house low-risk, low severity formerly incarcerated individuals who are eligible for parole but who lack their own housing. This will allow formerly incarcerated individuals to experience the family support they may never have had prior to incarceration, and it will provide them transitional housing while they have the chance to seek employment.

Note: Eligibility to become a host should be contingent upon a review and approval process. Furthermore, families should be allowed prior review and approval of the individuals they take in.

(2) Expand access to temporary public assistance (food stamps) in Texas.

The state should allow individuals with felony drug convictions to be eligible for food stamp benefits, provided they completed or are currently involved in community supervision or a drug treatment program. Also, the Executive Commissioner of the Health and Human Services Commission should be authorized to allow certain exemptions from work requirements under the food stamp program for these individuals. Essentially, individuals with felony drug convictions should be given a chance to rehabilitate themselves and completely pay off their debt to society.

Create an Enhanced Employability and Employment Protection Policy

People out of prison who want to take a different path deserve the chance.

– Christy Visser, Investigator for the Urban Institute

Background

Texas law designates approximately 1,900 individual offenses as felonies, which results in a huge felon population in Texas. In 2007 alone, the Texas Department of Criminal Justice (TDCJ) released 72,032 individuals from incarceration. These are people who must find jobs and housing or else risk turning to illegal activity to survive. However, Texas has 168 state laws that forbid felons from obtaining jobs.

Ultimately, persons with stable employment after release are less likely to be re-incarcerated, and those who participate in in-prison job training are less likely to return to prison.¹⁶³ In order for these individuals to pay their debt to society by living responsible, productive, and law-abiding lives, they must be given the tools to succeed.

Key Findings

- Once an individual above the age of 18 is convicted of a felony in Texas, that person is a "felon" for the rest of his or her life. The felony offense is included on the person's criminal record forever, and most felony conviction records are available to the public on the Internet.
- Based on the most recent Census data, approximately 1 in 11 Texas adults has a felony conviction on his or her record.¹⁶⁴
- Inmates who do not complete high school or a GED are more likely to recidivate.¹⁶⁵
- In a 2008 survey of state re-entry practitioners, the largest percentage of survey respondents feel there are "sometimes" or "often" educational, life skills education, and employment issues that pose barriers/obstacles to re-integration, especially with regards to (a) low literacy levels, (b) a lack of pre-release GED certification, (c) a lack of pre-release cognitive skills education, (d) a lack of pre-release anger management education, (e) a lack of pre-release parenting education, (f) a lack of post-release vocational skills training, (g) a lack of academic/literacy skills, and (h) a lack of pre-release vocational skills training.
- Neighborhoods with high rates of returning prisoners also tend to have high schools with high dropout rates, showing a correlation between educational attainment and likelihood of criminal activity and recidivism.¹⁶⁶
- Half of Texas' largest cities rated to be the "safest" cities had lower unemployment rates than the national average (which is 5.1%); and 8 out of the 10 cities were within 1% of the national rate.¹⁶⁷

Solutions

(1) Invest in additional pre- and post-release programs that support job-readiness, talent assessment, and placement among formerly incarcerated individuals.

(a) Continue to support in-prison education and employment-focused programs offered to incarcerated individuals. Only with a strong skill set will re-entering men and women have a chance to reclaim their lives, become responsible members of our communities, and support their families.

(i) Invest in recidivism-reduction programs. In order to better prepare inmates to re-enter the community - and thus reduce the risk of

recidivism - TDCJ offers eligible individuals the opportunity to participate in employment readiness programs at the Windham School District (WSD), which operates within TDCJ's Correctional Institutional Division. WSD offers assistance with literacy and life skills, provides Career and Technology Education, and includes a Continuing Education Division to offer individuals the opportunity to participate in college courses and Project Re-Integration of Offenders (RIO).

In response to H.B. 2837 (effective 2005) - which, among other things, required WSD to develop educational and vocational training programs and evaluate the effectiveness of such training services provided to inmates - WSD conducted a study of the Career and Technology Education programs and their impact on post-release employment:

- From April 1, 2005, to March 31, 2006, 69,883 individuals were released.
- 39,817 individuals met the criteria for the study (e.g., they had a Social Security Number, they had not been released on a bench warrant, etc).
- 24,841 formerly incarcerated individuals (62% of those studied) had a matching income and were considered employed.
- 12,204 formerly incarcerated individuals (31% of those studied) were still employed on the first anniversary of their initial employment.¹⁶⁸

The state must continue to invest in the programs offered at WSD and provide more pre-release training programs that teach soft skills (problem solving on the job, interviewing skills, effective communication and negotiation with supervisors and fellow employees, and anger management skills). It should also allocate additional funding to

accommodate a larger number of participants interested in following the path to responsibility and success.

- (ii) **Allow for the in-cell education of inmates confined in administrative segregation.** The average length of stay for inmates in administrative segregation in Texas is between two and three years, although some inmates remain much longer. They spend almost 24 hours per day confined in a small cell with little or no human contact. Although they are allowed library and law books, they are denied the right to study for and earn a GED or have any other educational materials or instruction. Some inmates are released into the community directly from administration segregation, totally unprepared for living in the free world. Allowing in-cell tutoring - as long as it would not pose a threat to the health or safety of any staff member or other inmates - would boost re-integration efforts of former "ad seg" inmates by giving them minimal skills and education that may offer them some hope at living a productive life.
- (b) **Give probation and parole officers access to a centralized job-matching system where employers who will hire formerly incarcerated individuals can post their openings.** Based on the participation of formerly incarcerated individuals in the above-mentioned pre-release training programs, as well as in other educational and work-readiness programs, they will be better prepared to meet job readiness and retention criteria, in turn allowing the state to attract and retain the participation of quality employers.
- (i) **Give parole and probation officers the authority similar to Project RIO to bestow tax credits** already provided by the federal government to employers willing to hire formerly incarcerated individuals who are under the supervision of parole or probation officers.

(ii) **Boost parole officers' salaries.** Over the last several years, parole officers' salaries have not increased at the same rate as those salaries for comparable professions. A salary hike will allow the parole division to attract and retain highly qualified individuals.

(c) **Standardize a therapeutic culture within TDCJ's Parole District Reentry Centers (DRCs) - where the Texas Workforce Commission's Project RIO employment services are provided - and enhance the services they offer.** The Parole Division's DRCs provide cognitive intervention, pre-employment assistance, victim impact classes, anger management classes, and substance abuse education. According to TDCJ, DRCs also conduct a regularly scheduled "New Arrival Orientation" where formerly incarcerated individuals receive additional information regarding community efforts, resources, and services. Providers from outreach programs, vocational programs, faith-based programs and educational programs present brief overviews, and offer brochures and contact information for their programs. Approximately 12% of people served by DRCs are there voluntarily, while 88% use the services in tandem with parole visits.

To begin standardizing a therapeutic culture in DRCs, the Parole Division should provide staff trainings on cultural sensitivity towards stigmatized clients, and it should develop value-based mission statements for DRC staff. These mission statements should have at their foundation an acknowledgment of rehabilitation and the preservation of public safety.

The state should also evaluate the current use of funding that, as per the Workforce Investment Act, is allocated towards Project RIO - which provides a link between education, training, and employment during incarceration with employment, training, and education after release. (Essentially, all individuals released to parole supervision are referred to Project RIO services, meaning Project RIO expands upon

WSD services through assessments, referrals, and ongoing training.) Based on the state's evaluation, it should identify how to enhance funding utilization and, in turn, the quality and provision of services.

(2) Remove the legal barriers to employment for previously incarcerated individuals.

(a) **Provide legal protection to employers willing to give formerly incarcerated individuals a second chance.** The state should prevent employers (including general contractors, premises owners, and other third parties) from being held liable solely for hiring or contracting for hire an individual who has been convicted of a non-violent offense. More specifically, employers should not face lawsuits prompted by the criminal or tortuous acts of an employee who had a non-3g status,¹⁶⁹ with the exception of gross negligence and liability regulated under Labor Code Title 5, Workers' Compensation. Employer liability increases hiring costs for businesses and exposes them to potential damages. Encouraging more employers to give formerly incarcerated individuals an opportunity to re-integrate into the workforce and avoid returning to crime can increase public safety and boost the economy.

Note: This protection should only exempt the employer from liability arising directly from the decision to employ a formerly incarcerated individual, and should not affect vicarious liability incurred through the employee during the course of his or her employment.

(b) **Remove barriers that prevent formerly incarcerated individuals from obtaining licensing for jobs that are not directly related to the crime committed.** Current Texas licensing requirements are requisite for a significant number of occupations, including air conditioning and refrigeration contractors, electricians, water

well drillers, dog trainers, manicurists, and many others. Former felons cannot currently qualify for many of these licensed positions, severely limiting their economic opportunities.

The state should allow for the provisional licensure of individuals convicted of non-violent, non-sex-related felonies. Specifically, crimes older than 5 years should not count against an individual's eligibility for professional licenses, and those with a recent criminal history should be granted a 6-month temporary license on the condition that they not break laws or administrative rules and not become revoked from parole or probation. Successful completion of the provisionary period could result in the granting of a full license, while failure to comply would result in disqualification of the license.

Essentially, by expanding the range of possible vocations available to those who have committed a non-violent offense, the state can encourage them to support themselves by applying their particular skill sets, in turn encouraging personal responsibility and reducing the likelihood that they will remain unemployed or return to crime.

- (c) **Grant expunctions to individuals who successfully complete a term of deferred adjudication community supervision.** Deferred adjudication is a tool that enables judges to give a fresh start to defendants who they believe can be successfully reformed and deserve a second chance. Currently, defendants who successfully complete deferred adjudication still retain an arrest record for the offense, even if it has been discharged and dismissed by a judge. District courts should be permitted to expunge the arrest records of certain defendants upon successful completion of their deferred adjudication and after the discharge and dismissal of the charge. This will give individuals a chance to move forward and avoid the obstacles and stigmatization brought on by a criminal conviction.

Note: Expunction should not be available to defendants charged with murder, capital murder, manslaughter, indecency with a child, sexual assault, aggravated assault, aggravated sexual assault, or injury to a child, elderly individual, or disabled individual.

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- ⁵ Ibid. 13.
- ⁶ Ibid. 15.
- ⁷ Texas Youth Commission. *Who Are TYC Offenders?* [Data file], http://www.tyc.state.tx.us/research/youth_stats.html
- ⁸ The Sunset Advisory Commission's staff report listed Issue as, "Texas' Juvenile Justice Agencies, Services, and Funding Need Major Restructuring to Ensure an Effective Continuum of Treatment and Sanctions for Youthful Offenders." Issue 1 includes ten recommendations from Sunset staff. The first two focus on consolidation of TYC and TJPC into one state agency, to be called the Texas Juvenile Justice Department. The remaining eight are recommendations for systems coordination that can be implemented independently of consolidation.
- ⁹ Significant key reforms included in S.B. 103 (Hinojosa, D-McAllen) include enhanced community-based supervision programs as an alternative to detention; a parents' Bill of Rights; a special prosecution system and an Office of Inspector General for the independent investigation and prosecution of crimes occurring in youth detention facilities, an independent ombudsman for youth victims, and public reporting of cases of abuse; the prevention of misdemeanants from being sent to TYC; and improved procedures governing the termination of a child's placement in TYC and improved re-integration back into his or her home community.
- ¹⁰ The National Council on Crime and Delinquency, founded in 1907, is a nonprofit organization which promotes effective, humane, fair, and economically sound solutions to family, community and justice problems. Recently they have worked with juvenile justice reform measures in California, Florida, and numerous other states.
- ¹¹ Illinois Department of Human Services. *Redeploy Illinois*. <http://www.dhs.state.il.us/page.aspx?item=31991>. 01/10/2009.
- ¹² RECLAIM Ohio and the Youth Services Grant (YSG) together make up the DYS Subsidy Grant. The funds received through RECLAIM are restricted to an array of treatment, intervention, diversion and prevention programs designed to divert youth from DYS. The amount is determined by a funding formula based on the number of felony adjudications and bed days used. YSG funds have been in existence since 1981 and are known as the "base" portion of the Subsidy Grant because, unlike the RECLAIM "variable" funds, their allocations do not vary and are allocated annually to juvenile courts based on a formula that uses county population. Much like TJPC's Community Corrections and State Aid Grants, YSG funds comprise the bulk of the money provided by the state to county-operated juvenile systems. No Subsidy Grant funds may be used to supplant local funds.
- ¹³ Mendel, Richard. *Pathways to Juvenile Detention Reform*, Vol. 14, *Beyond Detention: System Transformation Through Juvenile Detention Reform*. (Baltimore: Annie E. Casey Foundation, 2007), 14.
- ¹⁴ Department of Justice Civil Rights Division. *Letter to Governor Perry Re: Evins Regional Juvenile Center, Edinburg, Texas*. (March 2007) Retrieved from http://www.usdoj.gov/crt/split/documents/evins_findlet_3-15-07.pdf.
- ¹⁵ Homes for Heroes, first created in 2003, is a loan program that offers affordable mortgages and down payment/closing cost assistance through grants to certain public employees in acknowledgement of their contribution to the safety and welfare of Texans. The Employee Assistance Program provides confidential, professional assistance to help employees and their families in areas such as depression, marital problems, or legal troubles.

¹⁶ Functional Family Therapy is an empirically grounded and highly successful family intervention for at-risk and juvenile justice involved youth. For more information, go to <http://www.fftinc.com>. Multi-Systemic Therapy is a research-proven and cost-effective treatment for youth with serious behavioral problems. For more information, go to <http://www.mstservices.com>. Multidimensional Treatment Foster Care is a cost-effective alternative to regular foster care, group or residential treatment, and incarceration for youth who have problems with chronic disruptive behavior. For more information, go to <http://www.mtfc.com>. In 2006, the Washington State Institute for Public Policy found that all three of these programs saved money and reduced crime. To read their report, visit <http://www.wsipp.wa.gov/rptfiles/07-06-1201.pdf>.

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²⁷ Texas Sunset Advisory Commission.,13.

²⁸ Texas Sunset Advisory Commission., 78.

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⁶⁵ Travis County Mental Health Public Defender (MHPD) processes up to 500 misdemeanor cases annually and serves as a crucial link between the mental health and criminal justice systems. The MHPD active participates in

state and local mental health working groups and organizational opportunities for continuing legal education and local seminars to increase awareness of mental health issues and to promote communication among service providers, law enforcement, and court actors.

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