

COSTLY CONFINEMENT & SENSIBLE SOLUTIONS: JAIL OVERCROWDING IN TEXAS

TEXAS CRIMINAL JUSTICE COALITION PUBLIC POLICY CENTER

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We would also like to thank Scott Henson and Leah Pinney for their invaluable input.

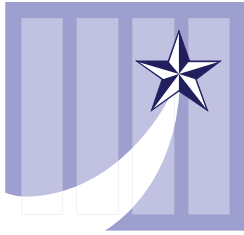
Additionally, we would like to extend our appreciation to the dedicated individuals and entities throughout the state who routinely deal with the regulation of Texas' county jails.

Finally, we would like to acknowledge Kim Wilks for her cover design and interior layout and design.

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LETTER FROM THE TEXAS CRIMINAL JUSTICE COALITION

TEXAS CRIMINAL
JUSTICE COALITION

Dear Reader,

As the Executive Director of the Texas Criminal Justice Coalition, I am pleased to present this report on smart-on-crime strategies that will assist Texas counties in meeting the costly challenges associated with surging county jail populations. With the information provided herein, we hope to encourage counties to implement front-end and corrections-level policies and practices that will relieve taxpayers of the financial burden associated with growing jail populations, while boosting public safety through effective programming and the targeting of high-risk individuals.

The widespread implementation of such strategies cannot be accomplished without a continuing commitment from the Legislature to support the efforts that keep jail populations low and community safety interests in mind. First and foremost, the Texas Commission on Jail Standards (TCJS) must be assured a level of funding adequate to provide critical assistance to Texas counties. TCJS protects counties from damaging lawsuits by setting constitutional jail standards for counties to follow, conducting facility inspections, and enforcing compliance with rules and procedures.

The state must also do its part to assist counties in their jail population management strategies – ensuring the fidelity and success of safe, responsible crime-reduction practices already in place, while helping counties implement needed new best practices. Policy-makers must work in conjunction with county leadership, law enforcement executives, attorneys and judges, pre-trial services, probation and parole heads, treatment providers, corrections personnel, re-entry specialists, and other agencies and organizations to create an infrastructure that promotes success for counties and the families who live there.

Please join us as we work to stop the cycle of offending by collaborating for more socially effective and fiscally responsible means of dealing with overcrowding among our state's jail populations. Especially in light of an ongoing statewide budget shortfall, it is crucial that the Legislature continues its commitment to public safety-driven, cost-effective policies that have been tackling the root causes of crime and delivering taxpayers a return on their investment. Texas simply cannot afford to have jail construction be its only option for addressing criminal behavior.

Sincerely,

A handwritten signature in black ink that reads "Ana Yáñez-Correa". The signature is written in a cursive style with a large, stylized initial 'A'.

Ana Yáñez-Correa

Executive Director, Texas Criminal Justice Coalition

Also included in this population are 4,119 individuals on probation who have been incarcerated either for a probation violation or a subsequent offense, or who are awaiting placement in a Substance Abuse Felony Punishment facility (SAFPF⁹).¹⁰

With so many individuals incarcerated, Texas has six of the 50 largest national jail populations: Harris, Dallas, Bexar, Tarrant, Travis, and El Paso Counties.¹¹ These, in addition to Cameron, Hidalgo, Denton, and Galveston Counties, account for the state’s 10 largest county jail populations, comprising 45% of Texas’ total jail population:¹²

table 2

County	Jail Population
Harris	9,002
Dallas	6,560
Bexar	4,063
Tarrant	2,842
Travis	2,305
El Paso	1,959
Cameron	1,251
Hidalgo	1,137
Denton	1,113
Galveston	961
TOTAL:	31,193

Many individuals are incarcerated for low-level offenses. As noted in Table 1, almost 11,000 inmates in Texas’ jails (15.6%) are misdemeanants. From 1990 to 2009, certain categories of misdemeanor offenses have grown increasingly prevalent on county-level court dockets. Specifically, drug offenses have risen by 296.2% over this time (from 28,330 offenses in 1990 to 85,245 in 2009), while assault offenses (which do not necessarily involve physical contact) have risen by 169.1% (from 12,325 offenses to 56,544).¹³ Similarly, the percentage of non-traffic misdemeanors in municipal courts and justice courts have risen throughout this same time period by 78% and 14%, respectively.¹⁴

Other types of inmates housed in local county jails include individuals from outside of Texas and those awaiting transfer to another facility. In fact, as of April 1, 2010, 132 out-of-state inmates were being housed in Bailey, Bowie, Dickens, and Parmer Counties. The Texas Department of Criminal Justice (TDCJ) also housed 478 inmates in Bexar, Burnet, and Travis Counties.¹⁵



LETTER FROM THE TEXAS COMMISSION ON JAIL STANDARDS

Dear Reader:

When the Texas Criminal Justice Coalition approached me about assisting in the development of a report that would identify and address the factors associated with jail overcrowding, I anticipated a thorough effort based upon their previous work. What I was presented with for review is certainly one of the most useful tools for criminal justice planners and should be required reading for each stakeholder within the criminal justice community.

As counties face budget restrictions that will require them to make tough decisions, the information and recommendations contained within this report will provide officials with data and options to make informed decisions while still ensuring public safety. Not all of the situations described or the conclusions reached will apply to each and every county, but I strongly urge you to review the report and give strong consideration to implementing or tailoring these programs to meet your needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Adan Muñoz Jr.", is written over a light blue horizontal line.

Adan Muñoz Jr.
Executive Director
Texas Commission on Jail Standards

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<ul style="list-style-type: none"> ◆ Support mental health services and strategies throughout the state, including state hospital facilities and community health centers, increased prosecutor and judge trainings, and more appropriate protocols for taking individuals into custody. ◆ Support the Texas Commission on Jail Standards, especially with regards to general operations, staff and inspectors, training and resource availability, educational capabilities, and release planning. 	55 57
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COSTLY CONFINEMENT & SENSIBLE SOLUTIONS: JAIL OVERCROWDING IN TEXAS

introduction

THE TEXAS CRIMINAL JUSTICE COALITION (TCJC) IS A NON-PARTISAN, non-profit organization committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

This report provides a snapshot of county jails in Texas. **Part 1** details the demographics, funding sources, and budgetary expenditures for local jails. **Part 2** specifies the financial, public safety, and public health ramifications of jail overcrowding. **Part 3** provides the major contributors to jail overcrowding in Texas, as well as comprehensive information on strategies that can assist system stakeholders in reducing the flow of individuals into county jails. **Part 4** summarizes the various recommendations for each system stakeholder, and offers additional suggestions that fall outside the scope of the major contributors outlined in Part 3.

It is our hope that the Texas Legislature will consider this information as it examines the challenges facing counties with surging jail populations. Likewise, we hope that this report will inform conversations among county leadership, law enforcement executives, attorneys and judges, probation and parole heads, treatment providers, corrections personnel, re-entry specialists, and other agencies and organizations that are interested in creating more efficient and cost-effective corrections and diversion models throughout Texas.

To sustain such models, Texas legislators must shift funds towards front-end and corrections-level population management strategies. Doing so can relieve county taxpayers of the financial burden associated with growing jail populations while reducing the number of crime victims in Texas communities. Collectively, stakeholders must ensure that jails are legally compliant, that they protect the rights of those passing through the system, and that they are being fiscally responsible while lowering recidivism.

With a strong commitment to minimizing county jail populations through public safety-driven, cost-effective means, Texas can target its criminal justice resources on high-risk individuals. It can also reinvest saved funds in public safety strategies that produce positive outcomes. Especially in light of current economic realities, Texas cannot afford to continue its historic dependence on costly jails to regulate criminal behavior: it simply consumes critical taxpayer dollars while failing to decrease crime.

If, after reading this report, you can recommend any additional programs or strategies that may assist counties in reducing jail overcrowding, or you can provide updated information about a program we have included here, please let us know. We are always interested in learning more about sensible, successful criminal justice practices that we can potentially feature on our Tools For Practitioners page, available at **www.criminaljusticecoalition.org/tools_for_practitioners**.

Please address all recommendations to Ana Yáñez-Correa at **acorrea@criminaljusticecoalition.org**.

part 1 overview of county jails in texas

In Part 1, we provide information on the demographics, funding sources, and budgetary expenditures for Texas' county jails.

demographics

jail facilities

The Texas Commission on Jail Standards (TCJS) currently has 245 jails under its purview.¹ Among other things, TCJS sets constitutional jail standards and conducts inspections of jail facilities to enforce compliance with rules and procedures. *(Please see Appendix A for a more comprehensive description of TCJS' critical mission, funding, and duties.)*

Of Texas' 245 jails, 235 jails are "county jails" – 225 are county-operated while 10 are privately operated.² The private facilities are managed either by the GEO Group, Southwestern Correctional, or the Community Education Center (CEC).³

Texas is also home to 10 privately operated "detention facilities," which house county inmates on a contract basis. In other words, one county's jail holds another county's inmates. For the most part, the bulk of these detention facilities' populations is comprised of federal inmates.⁴

Note: Throughout the remainder of this report, the term "jails" will be used to designate both county jails and detention facilities.

In addition to the jails listed above, Texas counties had 36 jail expansion/construction projects in the planning or construction phase as of July 2010, representing a total of 5,482 beds. *Please note:* This number will not be a net gain (as some counties will be closing older facilities) but instead is the gross bed count of the new projects.⁵

jail populations

As of April 1, 2010, Texas' 245 jails housed 68,992 inmates.⁶ These inmates can be delineated by the following offense categories:

table 1

Offense Level or Type	Number of Violations
Felons	31,662
Misdemeanants	10,797
State Jail Felons	7,814
Parole Violators	4,958
Federal	9,212
Others ⁷	3,151
Bench Warrant	989
TOTAL:	68,583 ⁸

Also included in this population are 4,119 individuals on probation who have been incarcerated either for a probation violation or a subsequent offense, or who are awaiting placement in a Substance Abuse Felony Punishment facility (SAFPF⁹).¹⁰

With so many individuals incarcerated, Texas has six of the 50 largest national jail populations: Harris, Dallas, Bexar, Tarrant, Travis, and El Paso Counties.¹¹ These, in addition to Cameron, Hidalgo, Denton, and Galveston Counties, account for the state’s 10 largest county jail populations, comprising 45% of Texas’ total jail population:¹²

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Many individuals are incarcerated for low-level offenses. As noted in Table 1, almost 11,000 inmates in Texas’ jails (15.6%) are misdemeanants. From 1990 to 2009, certain categories of misdemeanor offenses have grown increasingly prevalent on county-level court dockets. Specifically, drug offenses have risen by 296.2% over this time (from 28,330 offenses in 1990 to 85,245 in 2009), while assault offenses (which do not necessarily involve physical contact) have risen by 169.1% (from 12,325 offenses to 56,544).¹³ Similarly, the percentage of non-traffic misdemeanors in municipal courts and justice courts have risen throughout this same time period by 78% and 14%, respectively.¹⁴

Other types of inmates housed in local county jails include individuals from outside of Texas and those awaiting transfer to another facility. In fact, as of April 1, 2010, 132 out-of-state inmates were being housed in Bailey, Bowie, Dickens, and Parmer Counties. The Texas Department of Criminal Justice (TDCJ) also housed 478 inmates in Bexar, Burnet, and Travis Counties.¹⁵

funding sources

Jails require funding for two major areas: construction of new facilities, and operation of existing facilities.

new construction

Construction is generally financed by the selling of bonds – either General Obligation bonds (voter-approved) or Certificates of Obligation (issued by a county commissioners court without a vote). Bonds usually pledge future tax revenue towards the retirement of debt.

A few jails in Texas have been financed in other ways, including through the pledging of speculated (as opposed to tax) revenue that privately operated, for-profit facilities will generate from housing contract inmates.¹⁶

Meanwhile, some counties have attempted to use federal aid for jail construction, such as loans provided by the Rural Communities Facilities Program at the United States Department of Agriculture (USDA).¹⁷ Other counties have received grants from the United States Marshals Service (USMS, a bureau of the Department of Justice), which in turn requires the county to house a specific number of USMS prisoners there.¹⁸

general operations

Jail operations are funded through each county's general revenue budget, which is created by local ad valorem taxes.¹⁹ As discussed above, some counties offset operational costs by housing contract inmates for other county, state, or federal governmental entities. Counties are also able to recoup the cost of incarcerating certain criminal aliens by applying for federal SCAAP (State Criminal Alien Assistance Program) funds through the Bureau of Justice Assistance.²⁰

It should also be noted that most counties charge inmates a small co-payment for medical services, which has in part reduced medical costs.²¹

expenditures

Again, jails' operational costs are funded by taxpayers, whose ad valorem taxes contribute to counties' general revenue budgets. And in Texas counties, a significant portion of each county's budget goes towards jail expenses, including the following:

- ♦ administrative and correctional officer salaries (as well as overtime pay for jailers working in understaffed facilities²²)
- ♦ food, clothing, and other amenities for inmates
- ♦ medical care and mental health specialists
- ♦ programming and family services
- ♦ maintenance of facility buildings and grounds, including electrical and sewage systems, as well as measures to prevent premature degradation due to overcrowding

Even ten additional inmates per year dramatically increases costs: 30 extra meals per day (3 each for 10 inmates) translates to 900 extra meals per month, and 10,800 extra meals per year.

For Fiscal Year 2008, the ten counties with the largest jail capacities were spending an average of almost 14% (or 1/7) of their county budgets on jails:²³

table 3

County	Capacity	FY 2008 County Budget	FY 2008 Jail Budget	% of County Budget
Harris	11,006	1,286,985,451.00	167,742,187.00	13.03%
Dallas ²⁴	8,031	498,661,403.00	93,027,357.00	18.66%
Bexar	4,596	321,067,746.00	56,341,698.00	17.55%
Tarrant	4,571	454,539,047.00	61,862,228.00	13.61%
Travis	3,080	653,639,854.00	72,716,089.00	11.12%
El Paso	2,440	405,649,215.00	55,920,729.00	13.79%
Fort Bend	1,770	214,362,881.00	20,103,518.00	9.38%
Cameron	1,422	121,211,733.00	16,082,222.00	13.27%
Denton	1,400	175,166,696.00	23,965,473.00	13.68%
Bell	1,367	80,476,547.00	11,602,658.00	14.42%
Average:				13.85%

Note: Each of these counties also expends general revenue funds on debt service related to jail construction. This amount is not included in the figures above.²⁵

Though Texas counties vary in what they spend per inmate per day – with \$42 per day in some counties, and \$71 per day in others – TCJS estimates the average cost-per-day at approximately \$45.²⁶

Because jail overcrowding drives up county budgets through associated costs – including the need for additional staff, as well as program and service resources – **dramatic cost-savings to counties and taxpayers could come in the form of jail population management strategies.** Indeed, strategies to keep inmate levels even, if not reduced, may increase budget predictability and help keep county budgets in check. Population-control practices also prevent the state from having to direct funds needed for other social services and programs to criminal justice oversight.

On the other hand, without such strategies in place, further jail construction will become a reality, and it will necessitate additional resources for the state-funded TCJS. New jails may require TCJS to hire additional inspectors, increase administrative staff to provide technical assistance and training, and/or increase travel budgets. Policy-makers and other key stakeholders must consider this budgetary implication and support local efforts to reduce jail populations whenever possible.

In 2008, in response to questions posed by the Sunset Advisory Commission in regards to the mission and performance of TCJS, the Texas Criminal Justice Coalition developed an anonymous on-line survey that measured the feedback of Texas Sheriffs, County Court Judges, and Jail Administrators.

When asked about the **major challenges facing TCJS** in the next 5-10 years, respondents cited the following:

- 36% = overcrowding (due to increasing jail populations)
- 22% = additional jail and TCJS staffing
- 13% = additional jail construction
- 9% = needed funding
- 6% = aging facilities/poor conditions

part 2 **ramifications of jail overcrowding**

Between 2000 and 2007, the rate of people incarcerated in Texas' county jails rose by 4.3%.²⁷ The continual push of oftentimes low-risk, nonviolent individuals into local jails harms counties: not only do their tax bases decline as the number of individuals with criminal records rises, but the costs associated with managing jail populations can be extensive. Public safety and health are likewise compromised when overcrowded jails fail to meet the needs of incoming and exiting individuals.

financial ramifications of overcrowding

Under-funded, overcrowded jails with continually swelling populations often force county officials to choose between (1) constructing a new jail or unit, (2) housing inmates elsewhere, or (3) obtaining a variance from the Texas Commission on Jail Standards (TCJS) to house additional inmates in already cramped spaces within the jail.

new construction

This requires the use of General Obligation bonds or Certificates of Obligation, each of which is accompanied by immediate tax increases for county residents, a long-term bill, and the need to staff the new space. According to state staffing standards, a jail must have one guard for every 48 inmates;²⁸ among other things, new guards require training, equipment, and insurance.²⁹ Along with additional program and service resources needed to meet the demands of a growing jail population, a county can reasonably estimate spending millions of dollars per year in maintenance costs, over and above the significant one-time cost of building the facility.

County taxpayers who seek to preempt new jail construction should encourage county officials to implement strategies that will slow their local incarceration rate. Below are the incarceration rates for Texas' 10 counties with largest capacities:³⁰

table 4

County	Incarceration Rates ³¹	Capacity
Galveston	3.35	1,187
Cameron	2.97	1,422
Harris	2.94	11,006
Bexar	2.89	4,596
Dallas	2.74	8,031
Travis	2.61	3,659
El Paso	2.16	2,440
Denton	2.03	1,400
Tarrant	1.90	4,571
Hidalgo	1.70	1,232
State Average:	2.57	

housing inmates elsewhere

Some counties have opted to deal with an influx of individuals by housing them in other county jails or neighboring state’s prisons. In fact, 77 counties are housing a total of 2,676 inmates elsewhere.³² The 5 counties that have transferred the largest number of inmates to other facilities are as follows:

table 5

County	Number of Inmates Housed Elsewhere
Harris	1,368
Lubbock	239
Smith	144
Limestone	68
Cameron	49
TOTAL:	1,868

These 5 counties account for more than two-thirds (70%) of all inmates housed elsewhere.

Counties must pay significant amounts to transfer and keep their inmates elsewhere. Harris County, the largest renter of out-of-county beds, spent \$17 million in Fiscal Year 2009 to house inmates in other jails.³³ Out-of-county placements also force home counties to pay transfer fees when an inmate is needed in court or must undergo medical procedures in a local facility.³⁴

Additionally, keeping inmates out of county poses potential problems for those with counsel in their home county, upon whose services they rely to assist them through the criminal justice process. Out-of-county or -state transfers also burden families of moved inmates: they must sacrifice greater time, money, and effort to visit their loved ones. It is all the more difficult to ensure the inmates continue to be a part of their families’ support network and, if applicable, their children’s lives.

This situation is especially unfortunate when jails are sitting partially empty. As discussed in Part 1, counties can enter into federal contracts to house a certain number of federal prisoners. Poor planning in regards to this “rent-a-bed” policy can pose financial setbacks for counties. For instance, some counties are currently in long-term contracts that require them to maintain a specific number of beds strictly for federal inmates. If local, non-federal inmates ultimately exceed the jail’s capacity of regular beds, the federal beds cannot be used – even if they are sitting empty. This can force counties to house their local inmates elsewhere, sometimes paying those counties more money per inmate than they receive for each federal inmate.³⁵

obtaining a variance

Counties with overcrowding problems may attempt to obtain a variance from TCJS that would allow them to temporarily deviate from standard regulations and house an additional number of inmates per cell.³⁶ In calendar year 2009, Grayson County sought 49 new beds through a population variance, Harrison County sought 14 beds, and Polk County sought 10 beds. Harris County’s variances, first issued in August 2006, incrementally increased until they reached a high of 2,064, but they have been decreasing and are currently at 1,612.³⁷ TCJS also notes a history of requests for additional variances by counties in previous years.

Though a variance in and of itself does not cost taxpayers money, it can drive up costs in other areas: more inmates means greater expenditures across the board, not only in potential staffing to manage and control a more crowded environment, but also in services, programming, and medical care.

For instance, counties can face rising health care costs brought on by an influx of entering individuals living in close proximity.³⁸ Inmates not only become more susceptible to communicable diseases, but they must be tracked, provided medication, and transferred (at taxpayer expense) to hospitals for care if no on-site medical facilities exist.

public safety and public health ramifications of overcrowding

Jail overcrowding poses significant public safety and health issues that lawmakers and other stakeholders should seek to address through population management strategies.

loss of employment & housing

A critical contributor to recidivism may be associated with long waits in jail. Many people who spend weeks or months awaiting trial not only keep jails crowded, but they are at risk of losing their jobs, if not their homes.

Unemployment and lack of housing drastically increase an individual's likelihood of re-offending upon release. With regards to unemployment, research has consistently found it to be linked with crime: "one of the most important conditions that leads to less offending is a strong tie to meaningful employment."³⁹ Having a home to return to also improves the chances of individuals reconnecting with their families, which, again, is pivotal to their success in re-entering the community.⁴⁰ In fact, "without the benefits provided by stable housing, released prisoners struggling to meet other basic needs, such as finding employment or gaining access to substance abuse treatment and health care services, may face a higher risk of relapse and recidivism."⁴¹

As of September 1, 2010, TCJS began enforcing a recently adopted administrative rule revision that requires jail administrators, when requesting a variance, to first provide information about their current "utilization of alternatives to incarceration, including diversion initiatives and reentry efforts to reduce recidivism."

Such a policy will have tremendous benefits. Among other things:

- It will encourage counties to consider – and, ideally, implement – cost-effective, risk-reducing jail population management policies and practices.
- It will assist TCJS in determining which localities are implementing successful programs, thus providing the agency with information to recommend to other local governments.
- It will enhance governmental transparency by allowing taxpayers, policy-makers, and other concerned stakeholders to understand why a population variance is requested and what alternatives are available to meet the demands in a safer and more cost-effective way.

Note: This rule is estimated to have no government fiscal implications or economic ramifications for those who will come under its purview.

Lack of programming and medical attention

Overcrowded jails also pose problems for those who would benefit from in-house programming. Ideally, inmates in jail for a long enough period of time should have access to available substance abuse and/or mental health treatment, as well as cognitive behavioral classes where necessary, in order to better themselves. Programs with already limited slots will be hard-pressed to address the various needs of inmates. This prevents exiting individuals from having the tools to meet the challenges of re-entry and live as rehabilitated, productive, law-abiding members of their communities.

On a similar note, overcrowded jails may preclude individuals from receiving adequate medical attention and mental health treatment, which, among other things, may cause those at risk of suicide to be placed in general population beds rather than under specialized care. This is especially alarming given the high rate of suicides in local jails: aside from illnesses, which were responsible for 47% of deaths in custody from 2000-2006, suicide ranked second at 30%.⁴² Some Texas jails have had to take drastic measures to ensure that “overcrowding issues [...] which caused potentially suicidal inmates to be placed in cells where they could hang themselves” would be addressed and prevented.⁴³ However, counties without the resources to provide medical care to those who need it – or, at the very least, provide crisis intervention or suicide-prevention trainings to detention personnel⁴⁴ – face increasing threats of inmate risk, as well as costly lawsuits.

increased illness and disease

From a public health perspective, overcrowded jails – with similarly overburdened sewage systems and other unsanitary conditions – increase the spread of illnesses. And already strained health care resources may not be able cover all who need care. Inmates, 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.⁴⁵ Given poor conditions of confinement in jail, even short stays can worsen existing problems. Likewise, because jail officials may not have the time to test an incoming inmate for health issues,⁴⁶ these individuals may introduce illnesses to other inmates, while sick or mis-diagnosed individuals can take their illness with them upon release from jail.

If prevention measures are not fully enforced, other inmates – as well as spouses/partners, children, friends, and co-workers of inmates – are at risk of contracting communicable diseases. Medical access and treatment are especially imperative with regards to infectious diseases. Alarming, the spread of HIV is particularly common in prisons and jails. In a 2010 report by the Bureau of Justice Statistics of the U.S. Department of Justice, Florida (3,626), New York (3,500) and Texas (2,450) reported the largest number of inmates with HIV/AIDS in 2007 and 2008. Together, the states account for 24 percent of the total state custody population, but 46 percent of HIV/AIDS cases among incarcerated populations.⁴⁷

A key part of the re-integration process is having and maintaining a healthy family unit. Yet nationwide, 1.5 million people per year are released from jail and prison with a life threatening infectious disease.⁴⁸ The devastation of contracting such an illness – a stronger possibility in overcrowded jails – can disrupt efforts to re-enter society and become self-reliant.

part 3 major contributors to jail overcrowding, with policy solutions

Below we have provided comprehensive information about 10 contributors to jail overcrowding in Texas, each of which imposes a significant burden on taxpayers and negatively impacts public safety.

In response to each contributor, we have provided policy recommendations that can assist the Texas Legislature, county officials, and others as they attempt to address overcrowding and related issues.

Especially with an ongoing state budget shortfall and deficits in counties' own budgets, system stakeholders must collectively press for the wise use of resources while firmly protecting public safety, individuals' rights, and the integrity of our criminal justice system.

PRE-ARREST AND OTHER FRONT-END CONTRIBUTORS

It is imperative that Texas adopt new approaches to address the behavior of individuals suffering from substance abuse and mental illness. Likewise, low-risk, nonviolent individuals should, where possible, be handled outside of already overburdened court and jail systems, rather than forcing taxpayers to foot the bill for their confinement.

(1) Failure of Law Enforcement to Use the Cite-And-Summons Option for Nonviolent Individuals Who Commit Certain Low-Level Offenses, As Authorized by State Law

In 2007, Texas policy-makers overwhelmingly came together to pass H.B. 2391, which permits law enforcement officers to give county residents a ticket rather than immediately arrest and book them for certain nonviolent offenses. (*See Article 14.06, Code of Criminal Procedure.*) The following violations fall under the purview of the law:

- ◆ Contraband in a corrections facility (Class B misdemeanor only)
- ◆ Criminal mischief with less than \$500 damage
- ◆ Driving With an Invalid License
- ◆ Graffiti with less than \$500 damage
- ◆ Marijuana possession (up to 4 ounces)
- ◆ Theft by check with less than \$500 value
- ◆ Theft of service with less than \$500 value

This bill was widely supported by a number of sheriff's departments, the Sheriffs' Association of Texas, the Combined Law Enforcement Associations of Texas, and the Texas State Lodge & Fraternal Order of Police. These groups recognized the overwhelming amount of law enforcement time consumed by targeting individuals who have committed minor offenses. As such, this policy not only saves taxpayers money in incarceration costs, it enhances law enforcement's ability to fight crime: understaffed departments can use Art. 14.06 to concentrate their resources and personnel in a more efficient and effective way. Instead of spending hours arresting, transporting, and booking individuals for the above offenses, officers can focus

their energy on investigating and preventing serious crimes in the field, which increases public safety and lessens the likelihood of victims.⁴⁹ In Travis County specifically, the ability to issue field release citations has cut the time to effect an arrest from more than four hours to less than one hour in most instances, while allowing officers to remain in their districts.⁵⁰

Although some counties have fully implemented this measure, those that have yet to take advantage of it are missing the opportunity to save money, minimize jail overcrowding, and protect valuable law enforcement time.⁵¹

policy solutions:

■ **Reduce the intake of low-level, nonviolent individuals into county jails with cite-and-summons policies.**

Recommendation for County Commissioners, Law Enforcement, District Attorneys, and Judges

Any county that has not already put in place a cite-and-summons policy – but especially those that have considered funding new facilities, obtaining population variances from TCJS, or housing inmates elsewhere – should immediately consider implementing Art. 14.06.

Doing so will involve a concerted effort among the district attorney’s office or county attorney’s office, the judiciary, and law enforcement personnel. (*Note: Young officers may need training to view their role as discerning decision-makers in touch with their communities and local jail capacity issues, rather than enforcers who automatically arrest individuals for every offense.*)

In the end, a re-examination of arrest policies for nonviolent offenses will divert a significant number of individuals from county jails and relieve court caseloads.

Logistics: Major Scott Burroughs of the Travis County Sheriff’s Office explained how the cite-and-summons process works there, including a fingerprinting component to best protect public safety over time:

After [deputies] conduct their investigation and determine that probable cause exists, [they] make an arrest. They then determine whether the arrestee fits under the guidelines laid out in HB 2391. Deputies determine whether the arrestee lives in the county and if any other warrants exist. If the person has an existing warrant or lives outside the county, he or she is taken to the Travis County Jail like normal. If the person resides within Travis County and does not have another warrant, the arrested individual is given a field release citation and told to report for book-in and bonding on the third Thursday after the offense was committed, effectively making book-in part of the bonding procedure instead of the arrest procedure.

That third Thursday, the person must report first to the justice of the peace court where the justice of the peace issues an order of commitment. **The arrestee then reports to the pretrial facility and fills out an application for personal bond and goes to the bonding desk for fingerprinting and photographing.** The person then returns to the justice of the peace court to be released on personal bond and given a first court appearance date in front of a county court-at-law judge.⁵²

Maj. Burroughs specified, “One of the benefits from the corrections side is that we can anticipate when these people come in for booking and coordinate with the jail staff.”⁵³

Note: Law enforcement officers who choose to issue citations under Art. 14.06 must stress to individuals that failure to appear at the scheduled magistration hearing can result in jail time,⁵⁴ just as those later convicted of the offense can receive jail time. Art. 14.06 only eliminates unnecessary time in jail awaiting trial – a significant contributor to jail overcrowding.

■ **Relevant Recommendation: Make cite-and-summons offenses non-jailable.**

Recommendation for Statewide Policy-Makers and County Commissioners

Policy-makers or a county’s commissioners court could declare that the offenses under the purview of Art. 14.06 – as well as various Class C misdemeanors – be non-jailable. In other words, individuals would never be jailed for such offenses, even in the event of conviction. They would merely have to pay a fine and/or provide some other remuneration, including community service.

For example, the current penalty for possession of two ounces or less of marijuana is a Class B misdemeanor. Policy-makers should consider reclassifying the penalty: a Class B misdemeanor should apply only to those caught in possession of more than one ounce but less than two ounces of marijuana. A Class C, fine-only misdemeanor should apply to those in possession of less than one ounce of marijuana.

Fine-only offenses reduce the burden on county courts and prosecutors, while eliminating the long-term and costly collateral consequences associated with jail time. Furthermore, they save thousands in incarceration and defense costs, as Class C misdemeanants are not eligible for county-funded indigent defense.

A final benefit of this penalty-reduction policy lies in the increased likelihood of individuals to make financial restitution to crime victims. Keeping individuals in the community where they can maintain employment obligations will better ensure they can afford and pay restitution.

If a Class B misdemeanor receives a maximum penalty of 180 days in jail at an average cost to taxpayers of \$45 per day, taxpayers could potentially pay \$8,100 for that individual to sit in jail, not including any costs associated with providing him or her a defense attorney. On the other hand, if that individual is merely fined up to the maximum amount of \$2,000, the county could collect that amount while saving taxpayers the \$8,100.

If individuals cannot afford to pay their fines immediately, they could be permitted to pay in installments – or if they cannot afford to pay the fines at all, they could be permitted to perform community service hours in exchange for nonpayment of the fine.

■ **Relevant Recommendation: Bring additional offenses under the cite-and-summons policy.**

Recommendation for Statewide Policy-Makers and County Commissioners

State leadership could bring additional low-level offenses under the purview of Art. 14.06 (e.g., Penal Code Section 30.05 (Criminal Trespassing); Penal Code Section 42.01 (Disorderly Conduct)) – or even remove them from the court system altogether. This would further reduce overcrowding and keep law enforcement’s focus on higher-risk individuals.

For instance, Harris County has decided to implement a policy that applies to those found with trace amounts of drugs. Similar to what currently occurs in Travis and Bexar Counties, individuals found with less than one hundredth of a gram of residue (equal to half a grain of rice) of cocaine, crack, heroin, methamphetamine, or other drugs will not face state jail felony charges. Nor will they incur the collateral consequences that accompany such charges. Instead, these individuals will be issued a fine-only citation for a Class C misdemeanor (drug paraphernalia). Counties interested in implementing such a policy can dramatically reduce strains on court dockets and forensic labs. If interested in going one step further, practitioners can also provide a treatment referral to those who may be habitual users to prevent future contact with law enforcement.

Whenever possible, nonviolent individuals who are not unduly impacting public safety should be diverted from jail rather than being incarcerated at rates of almost \$50 per day.⁵⁵

(2) Failure to Fully Utilize Community Supervision and Drug Treatment for Individuals Convicted of Low-Level Drug Offenses, As Authorized by State Law

Many individuals convicted of low-level drug offenses should be diverted from jail to community supervision and, where appropriate, drug treatment. Indeed, for those who suffer from addiction, drug treatment is proven to be more effective than incarceration at reducing recidivism.⁵⁶ As an added advantage, treatment is significantly less expensive than incarceration, and it creates long-term cost savings in overall health care, accidents, absenteeism from work, and other areas.⁵⁷ According to the National Institute on Drug Abuse, “total savings associated with treating addiction can exceed the costs of that treatment by up to 12 to 1.”⁵⁸

However, current approaches to even low-level drug offenses by many counties in Texas often require that individuals be sent to already crowded jails. This continually reduces jail capacity while failing to meet defendants’ needs. In other counties, treatment resources are so scarce that there are simply no diversion options. As it is, people are now waiting in jail to get into treatment programs.⁵⁹

The state must halt the wasteful expenditure of millions of dollars each year on the incarceration (and re-incarceration) of nonviolent drug users. Lacking more effective means, local budgets will continue to be consumed by costs associated with otherwise treatable addiction. Again, these costs can result from additional jail beds, emergency room visits and hospital stays, law enforcement resources expended on abuse-fueled offenses (often including domestic violence calls), or foster care placements for children of those suffering from substance abuse.⁶⁰ The list goes on and on.

Texas can close the treatment gap by promoting medical and public health responses to substance abuse issues. Specifically, policy-makers must work in tandem with district attorneys, judges, treatment providers, and probation leadership to expand the availability and utilization of tailored, community-based rehabilitation and treatment diversion programs. The criminal justice system should be a place of last resort – not the first option for those suffering from the disease of addiction.

policy solutions:

■ **Reduce the intake of nonviolent individuals suffering from drug abuse into county jails.**

Recommendation for District Attorneys, Judges, Probation Leadership, and Treatment Providers

During the first part of 2009, the Justice Management Institute (JMI) reviewed the Harris County criminal justice system to determine, in part, reasons for the county's rapidly growing jail population. In June 2009, JMI's preliminary findings included the following two reforms, likely relevant in many counties throughout Texas today:

- ◆ "Seek to utilize pre-trial intervention/diversion in a significantly higher proportion of cases involving [...] persons charged with possession of small amounts of illegal drugs as a first offense."
- ◆ "Revise plea and sentence recommendation practices to encourage greater emphasis on drug abusing offenders receiving substance abuse treatment. Seek to avoid building felony conviction records in cases involving persons charged with possession of small amounts of illegal drugs, particularly as a first or second offense."⁶¹

The means of accomplishing these diversion reforms could come in the full implementation of two current state laws:

- **H.B. 2668** (effective 2003) requires certain individuals with state jail felony drug offenses to be placed on community supervision with drug treatment (rather than incarcerated), which allows them to benefit from state-funded drug treatment programs not available in state jails. (*See Article 42.12, Section 15, Code of Criminal Procedure.*) This is imperative: sadly, only 6% of state jail confinees with substance abuse problems receive treatment while incarcerated.⁶²

As passed, H.B. 2668 did not require nonviolent individuals with *prior* felonies to receive probation – even though some prior felonies included state jail felonies that had been punished as Class A misdemeanors. As such, a population of individuals with drug offenses who had committed prior state jail felonies, deemed sufficiently minor to receive a lesser punishment, were excluded from the mandatory probation/drug treatment initiative.

Even worse, some judges who have allowed probation have also imposed up to six months of incarceration as a condition of that probation sentence. Harris County is especially notorious for incarcerating hundreds of such individuals.⁶³

Full and appropriate implementation of H.B. 2668 would relieve overburdened jails and more fully address the needs of those suffering from addiction.

- **H.B. 1610** (effective 2007) authorizes judges to punish persons convicted of a state jail felony to the lower level of punishment permitted for a Class A misdemeanor in the interest of rehabilitation. (*See Article 12.44, Penal Code.*) In other words, H.B. 1610 sought to address a problem posed by H.B. 2668 by expanding the group of individuals who could receive probation and have access to treatment. While judges did have the ability to grant probation to such persons under previous standards, this legislation intended to facilitate opportunities for more uniform access to probation and treatment.

Again, probation supervision coupled with treatment is a better, more cost-effective option than the policies and practices leading to state jail time for low-level drug offenses – during which little formal, state-funded drug treatment is available. Judges should use this option whenever possible to slow influxes into county jails, better ensuring the availability of beds for more serious, higher-risk individuals.

Note: As of June 25, 2010, there were 707 regular-needs bed vacancies at Substance Abuse Felony Punishment Facilities (SAFPFs) in Texas, while there were 35 special-needs bed vacancies.⁶⁴ Probation departments could use these beds for probationers needing intensive treatment.

■ **Relevant Recommendation: Allow judges to place certain individuals with a first-time drug possession offense on probation and in treatment.**

Recommendation for Statewide Policy-Makers, District Attorneys, Judges, Probation Leadership, and Treatment Providers

Another means of accomplishing the JMI’s recommended diversion reforms (*listed on the previous page*) could include the implementation of a policy that provides judges the discretion to place non-dangerous individuals with a first-time drug *possession* offense on probation and, if necessary, in a tailored substance abuse program. This program could require supportive inpatient or outpatient treatment for the most severe addicts to address the triggers that set off addictive behavior. It could also include initiatives for less severe cases, such as drug education and prevention courses, as well as vocational training, family counseling, or literacy training, which would assist each participating individual in understanding how to stay on course and live responsibly. A probation/treatment policy would allow judges to particularize services to the individual to better address special detoxification, relapse, or severe dependence issues, while more efficiently expending resources and maximizing outcomes.

Some counties are already implementing similar strategies. For instance, Denton County has a program for individuals charged with a first-time misdemeanor for a trace amount of drugs. That individual must agree to certain requirements, including meeting with a probation officer, completing community service hours, etc.; upon successful completion of the requirements, the case is dismissed and eligible for expunction.⁶⁵

Note: While judges should be allowed to incarcerate an individual if s/he determines the person is either a threat to public safety, a drug dealer, or not amenable to treatment, **this policy alone could divert thousands of people from jail and save taxpayers millions of dollars in incarceration costs**, not including potential savings in jail construction avoidance. Furthermore, such a policy could address the recidivism problems posed by individuals who choose incarceration over programs that force them to address the illness of addiction.

Note Additionally: Judges should have the option of using **progressive sanctions** to handle probation violators who are failing to meet their treatment terms. Penalties aimed at risk-reduction could include stronger forms of treatment, intermediate sanctions (including placement in Intermediate Sanctions Facilities), and more restrictive conditions (such as participation in behavioral programming, alcohol/drug testing, or community supervision). Progressive sanctions would keep a significant proportion of people from jail while doing more to meet their needs.

■ **Make a larger investment in community supervision and community-based treatment programs that utilize evidence-based practices.**

Recommendation for Statewide Policy-Makers, Probation Leadership, and Treatment Providers

According to the Justice Policy Institute, treatment is an imperative (and cost-efficient) step in the process of changing an individual’s criminal behavior:

For every dollar invested in community-based drug treatment, \$18 is generated from reduced crime and improved public safety savings to taxpayers. Since three-quarters of people in jail are there for property, drug, or public order offenses, and drug treatment or mental health needs are prevalent among people in jail, community-based supervision and treatment holds more promise than does a jail bed in helping people improve their life outcomes.⁶⁶

Local probation departments are especially instrumental in slowing the number of individuals consuming beds in county jails – and thus they are critical in eliminating the need for costly jail construction and maintenance. Furthermore, while jails only *contain* risk, probation – if properly implemented – will reduce risk by producing successful probationers and keep crime rates down. As such, investing Texas’ corrections dollars in the probation system can satisfy both fiscal and public safety needs. However, probation departments lack the full spectrum of resources (especially with regards to programming) that can bolster their efforts to meet the needs of the growing probation population.

Not only must policy-makers attempt to ensure that community supervision is utilized more heavily for low-level drug offenses, but they must strengthen the current probation structure to more effectively meet individuals’ needs. With the proper elements in place, local probation departments can save their counties significant incarceration (and re-incarceration) costs. In fact, Travis County’s probation department saved an estimated \$386,736 in jail avoidance costs in 2008 through the successful implementation of evidence-based practices, while also reducing revocations, post-release re-arrests, and absconders.⁶⁷ In fact, by 2009, revocations for failing to meet the terms of probation were down by 48% from 2005. **As a result of the county’s best-practice driven system, the Texas Legislative Budget Board concluded that Travis County would save the state more than \$4.8 million over three years.**⁶⁸

At a time when local and state budgets are tight, [Travis] county’s reforms to probation, officially called Travis Community Impact Supervision, are being held up as a model.

– “*New Conditions of Probation*,” Miller-McCune, April 2010

Probation departments must be supported with the following:

□ **Staffing**

It is imperative that departments are provided the necessary resources to identify, recruit, and retain highly qualified probation officers. With proper funding, departments can hire additional staff and pay them commensurate wages, as well as implement departmental strategies that will improve probation officers’ morale and job satisfaction. This, in turn, can help to lower turnover rates among probation officers and direct care staff in probation departments,⁶⁹ which ensures experienced officers continue to provide effective supervision and risk-reduction tools to probationers.

□ A validated risk- and needs-based assessment tool

Proper identification of probationers' needs will better ensure that each person receives an individualized plan for appropriate programming and services. This is especially key for individuals with frequent arrests who have demonstrated a continuing risk of recidivism. A "roadmap" can enable these individuals to more effectively and healthily manage their lives, and reduce the criminal activity derived from drug addiction or mental illness.

A proper assessment is imperative when tailoring the plan: too heavy or too little supervision/programming may work to an individual's disadvantage. For instance, severe punishments for low-level offenses can have the opposite effect of that intended. According to the National Institute of Corrections (NIC) at the U.S. Department of Justice:

- ◆ *Punishment* produces a -0.07% change in an individual's inclination towards criminal activity (meaning it increases criminal behavior).
- ◆ *Treatment* produces a 15% positive change in an individual's inclination towards criminal activity (meaning it decreases criminal behavior).
- ◆ *Cognitive skills* programs produce a 29% decrease in an individual's inclination towards criminal activity (meaning these programs are most effective at decreasing criminal behavior).⁷⁰

Use of a data-driven assessment tool ensures probationers are assigned to an appropriate risk/needs-based caseload and placed in proper, specialized programming. *Note:* Assessments that determine the degree to which an individual has mental health issues requiring additional intervention are especially important, as those with mental disorders are two times more likely than individuals without such disorders to have their probation revoked.⁷¹

□ Access to programming for all probationers who would benefit

Programming for probationers best ensures that they can change their behavior and successfully meet their conditions of probation. This includes, for example, education classes and employment counseling,⁷² mental health programs, and intensive substance abuse treatment, and cognitive behavioral programs that target individuals' antisocial thinking patterns. As mentioned above (*as well as in the side bar to the right*), the use and proper implementation of these cognitive behavioral programs are especially effective at reducing recidivism,⁷³ as antisocial values are called "the foundation of criminal thinking."⁷⁴ Anti-social attitudes, anti-social relationships (potentially as a result of gang membership), substance abuse, lack of empathy, and impulsive behavior are all traits that can cause recidivism and must be adjusted.⁷⁵

Cognitive behavioral programs are generally the most effective programming interventions for higher risk offenders. Furthermore, employing program interventions that influence the traits that lead to future crime [...] yield stronger reductions in recidivism.... The net value (the cost of the program less the savings derived from preventing crime) of the average targeted, evidence-based cognitive behavioral program, using a cost/benefit formula, is \$10,299 per adult offender.

– *Excerpt from "A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems," by the National Institute of Corrections. April 2010.*

Mental health units within probation departments are also imperative in meeting individuals' particularized needs. Departments working in cooperation with Texas' Department of State Health Services (DSHS⁷⁶) and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI⁷⁷) can best provide intensive case management alongside various services including psychiatric treatment, medication monitoring, substance abuse treatment, anger management, supportive job and housing assistance,⁷⁸ and programming to address criminogenic factors.⁷⁹ According to Dennis McKnight, former Commander of the Court Security, Transport and Mental Health Division of the Bexar County Sheriff's Office, cognitive adaptive training is key. For the majority of mental health consumers, "it is not an issue of rehabilitation, it is an issue of habilitation. The skills and knowledge are not present to rehab. New skills and knowledge must be imparted to the consumer if there is to be any hope of successful integration back into society."⁸⁰

Ultimately, probation departments should have access to and contract with a broad spectrum of community-based providers and local services. Doing so will better facilitate efforts to mitigate probationers' criminal tendencies, keep them united with their families and larger support network, and reduce their likelihood of re-entering the system.

A Special Note about Drug Treatment Programming

Although the Legislature has continued to allocate funding for treatment resources through the probation system, a further increase would more effectively reduce or eliminate current obstacles hindering treatment providers and their clients. Enough funding should be allocated so that agencies and programs 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 faced by criminal justice clients seeking treatment. This is critical 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.

□ Technical assistance and training

It is imperative that the state – through the Community Justice Assistance Division (CJAD) – provide assistance and training to each of Texas' 122 probation departments. These departments must be supported in their efforts to use more effective, evidence-based supervision and sanctioning practices that will address the root causes of criminal behavior and reduce the likelihood of re-arrest.⁸¹ Of particular importance is localized training in the use of **incentives and progressive sanctions** for probation violations.

Evidence suggests that positive reinforcements (incentives and feedback) that are administered four times as often as negative reinforcements (sanctions for non-compliance) are "optimal for promoting behavior changes."⁸² Probation supervisors should employ this 4:1 ratio in efforts to best ensure that probationers successfully meet their conditions of probation and lower their risk of re-offending in the long term. *(Please see Appendix B for a sample of incentives that could be utilized by probation departments.)*

When sanctions are warranted, they must be modified to meet the violation. Rather than revoking an individual to jail for every violation of a probation condition, graduated penalties outside of incarceration – which ideally focus on risk-reduction in addition to accountability⁸³ – can provide direct and responsive feedback to probationers, making future violations less likely. As noted by the NIC, “swift, certain, and proportional actions that reflect disapproval of behavioral misconduct are more effective in reducing recidivism than actions that are disproportionate, delayed, or inconsistent.”⁸⁴

Punishment only tells people what not to do; it doesn't tell them what to do.

– Edward Latessa, Ph.D.,
renowned University of
Cincinnati criminologist

- **Relevant Recommendation: Allow probation officers the flexibility to administratively sanction probationers with technical violations.**

Recommendation for Statewide Policy-Makers and Probation Leadership

Giving probation officers the option of imposing administrative sanctions for technical violations will allow them to efficiently place the probationer in more appropriate or intensive treatment as needed, rather than having to wait for a violation report that could potentially lead to a revocation. Furthermore, it will free up judges' time for non-technical violations.

- **Use case “expeditors” to reduce pre-trial jail overcrowding.**

Recommendation for Probation Leadership

A case expeditor, in collaboration with county judges, can address needed jail population reductions through accelerated case processing. They can assist courts in more quickly bonding out low-level, nonviolent individuals, and getting eligible individuals onto probation and into needed treatment programs. Especially in areas where pre-trial services divisions are non-existent or struggling, a case expeditor could assist counties in reducing individuals' average daily lengths of stay in jail prior to trial.⁸⁵

(3) Lack of Effective Mental Health Treatment Options and Resources

Nationally, Texas ranks 50th (out of 51 states and the District of Columbia) in State Mental Health Agency (SMHA) per-capita expenditures.⁸⁶ As a result, our jails have become warehouses for people with mental health issues who have failed to receive proper treatment. In fact, 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.⁸⁷ Sadly, Harris County jail has become the largest mental health facility in the state, at any given time dosing up to 2,500 inmates with psychotropic drugs.⁸⁸

Dennis McKnight, former Commander of the Court Security, Transport and Mental Health Division of the Bexar County Sheriff's Office, wrote this in 2007, a sentiment still appropriate in many Texas jail systems today:

The mental health consumer spends, on average, twice as long in jail as a non-consumer for the same offense. The system is slow, over burdened, understaffed and bureaucratic. Mental health consumers tend to be at-risk persons and afflicted with one or more chronic medical problems that increase the daily cost of incarceration. The daily cost to the taxpayer to house a mental health consumer can easily be double or triple that of a non-consumer.⁸⁹

Counties struggling with these issues are critically straining their budgets as officials attempt to address individuals' needs. Likewise, state hospitals are routinely overburdened as they strive to treat higher-risk patients throughout Texas. Policy-makers, county officials, and other stakeholders must adopt new approaches in efforts to manage those suffering from mental illness. Their absolute first objective must be the diversion of individuals from jails and into appropriate treatment, starting at the primary point of contact with law enforcement. Treatment programs are exponentially better equipped than jails to stabilize individuals, make effective medical recommendations, supervise prescription regimens, and recommend appropriate behavioral programming to address long-term needs. Collectively, practitioners must strive to halt the recycling of these individuals in and out of local jails, especially for minor offenses, at the alarming rates and costs we are currently seeing.

The strategies below can lower the burden on counties with strapped budgets to more cost-effectively meet the needs of those with mental illness. Specifically, they can reduce jail and emergency room populations, and maximize law enforcement time. The strategies can also decrease the threat of injury to other jail inmates, personnel, or hospital patients by a mentally ill person, and better direct such individuals into proper care – often without further involvement with the criminal justice system.

policy solutions:

■ Implement pre-booking diversion programs where possible.

Recommendation for County Commissioners, Law Enforcement, and Treatment Providers

Individuals with mental illness and/or co-occurring disorders should be identified for diversion by police before formal charges are brought. A thorough screening should be routinely completed during intake, including a full mental health assessment, with a confidential records check on state mental health databases and a crisis stabilization evaluation conducted by a mental health authority. This review should inform decisions by law enforcement to place individuals in alternate settings.

Indeed, an early screening with professional input will most accurately determine the best course of action for each individual, increasing the likelihood that pre-booking diversion will occur at the point of contact with law enforcement officers. For instance, law enforcement should include feedback from substance abuse service providers during the screening, as they can help identify co-occurring disorders. A DSHS Jail Liaison can be instrumental in not only assisting with the assessment but providing individuals with referrals to wrap-around services while in custody or when discharged.⁹⁰

Ultimately, preemptive diversion from jail to a more appropriate treatment program must be paramount. Specialized supervision strategies will increase the likelihood of positive changed behavior and reduce the threat of escalating offenses by a mentally ill person. Diversion to community-based treatment will also minimize the burden on court dockets and prevent jail beds from being unnecessarily wasted on those suffering from disorders that would be better addressed elsewhere.

Implement Crisis Intervention Teams

Recommendation for County Commissioners, Law Enforcement, and Treatment Providers

Crisis Intervention Teams (CITs) have been found to be especially beneficial in dealing with the mentally ill who come in contact with the criminal justice system. These programs involve officers who are specialized to respond to calls involving individuals with mental illness. If efforts to de-escalate crises at the scene are not entirely effective, they work in tandem with localized mental health providers to direct such persons into appropriate treatment.

Some CIT officers also work preemptively, visiting those with mental illness in efforts to provide (or to encourage taking) medication to remain stabilized and law abiding. Additionally, officers may follow up after attempted suicides or make home visits to those they referred to treatment to ensure continuing care.⁹¹

The Houston Police Department (HPD) has the largest CIT program in the nation, with 1,300 CIT officers in patrol.⁹² Key to its success has been streamlining the process for obtaining emergency psychiatric evaluations for individuals brought in by officers. Now, the average time it takes an officer to admit a person into the NeuroPsychiatric Center is 15 minutes. Overall, HPD's reported positive effects of the program have been numerous, including increased jail diversion efforts, increased safety for both officers and the mentally ill, improved willingness of families to call the department about someone suffering from mental illness, improved confidence of officers to respond to such calls, and reduced liability/litigation through fewer injuries and shootings.⁹³

Community partners also benefit from investments in specially trained officers. For instance, "many of the problems faced by emergency rooms could be improved if skilled law enforcement officers were more aware of protocols to divert cases to other locations for a mental health screenings."⁹⁴

Finally, the cost-savings created by CITs can be significant. Williamson County's Crisis Intervention Team saved the county \$2.3 million from 2006 to 2008 by diverting 1,088 mentally ill individuals from jail into appropriate programming.⁹⁵

■ Implement Mental Health dockets.

Recommendation for County Commissioners, District Attorneys, Judges, and Treatment Providers

The Justice Management Institute (JMI) made a recommendation to Harris County which, like the jail diversion recommendations discussed in Contributor 2, could apply in many counties throughout Texas: "Consider major expansion of specialty dockets, in light of the high population of persons charged with misdemeanor offenses and lower-level felony offenses who have substance abuse, mental illness, or co-occurring disorders."⁹⁶

Dockets for individuals suffering from mental health issues can more effectively address their unique needs and match them with necessary services. Such dockets can also reduce the amount of time individuals wait in jail for trial. Specifically, practitioners that work with defendants can best identify who may be eligible for a personal recognizance bond (*discussed more fully in Contributor 7*), which eliminates pre-trial time spent in jail.

Travis County created a docket for misdemeanor mental health cases. Meeting on Tuesdays and Thursdays, prosecutors and defense counsel work with judges in efforts to ensure that defendants will have a support structure in place to assist them in remaining law-abiding.⁹⁷ According to Judge Nancy Hohengarten, “the philosophy of the MH Docket is that time spent now finding appropriate disposition of these cases will help alleviate recidivism and further drain on public resources. Prevention of subsequent arrests protects public safety, saves money, and is more just for mentally ill defendants.” Judge Hohengarten goes on to note the low associated expenses: “the mental health docket has not required significant additional funding. Indigent defense representation and prosecution must be paid as usual and no additional court staff has been needed.”⁹⁸

A Bexar County court also has a magistrate facility to address misdemeanors committed by those suffering from mental illness. Caseworkers consult with judges to ensure individuals receive referrals to appropriate treatment services.⁹⁹

■ **Make a larger investment in post-booking, pre-trial mental health diversion programs.**

Recommendation for Statewide Policy-Makers, County Commissioners, Law Enforcement, District Attorneys, Judges, Probation Leadership, and Treatment Providers

JMI makes another applicable recommendation in this area: “Seek to utilize pre-trial intervention/diversion in a significantly higher proportion of cases involving [...] mentally ill persons accused of committing relatively minor offenses.”¹⁰⁰

County commissioners must work with local mental health practitioners, law enforcement, judges, and probation departments to expand post-booking diversion opportunities for individuals with mental illness. Together, these stakeholders must implement and enforce mandates to swiftly assess incoming jail inmates for mental illness, especially in efforts to identify those who would benefit from treatment outside jail walls, as well as those who need referral assistance before posting bond. Likewise, stakeholders must develop and widen the availability of cost-effective treatment programming, other localized wrap-around services, and outpatient competency restoration centers. Doing so will better meet the demands of growing populations in need of care and counseling, including pre-trial inmates with documented disorders and those on mental health dockets necessitating program referrals (*discussed above*).

□ **Some counties have already successfully implemented diversion plans to assist those suffering from mental illness.**

- ◆ For instance, Williamson County has a diversion program for those with mental health problems. It includes pre-and post-booking efforts, including an outreach team, a Crisis Intervention Team, and resource coordination among various mental health and corrections providers, including the Williamson County Mental Health Task Force. **Between 2005 and 2008, diversions into appropriate programming saved \$3.2 million** – including in costs associated with jail bookings, the administration of psychotropic medication, and the use of emergency departments and Emergency Medical Services (EMS). Programming also dramatically reduced the percentage of beds used at state hospitals, as well as the use of associated resources involved in transporting individuals to those facilities after they have been through the court process and sentenced.¹⁰¹

- ◆ Likewise, the Bexar County Jail Diversion Program, in partnership with the county’s Crisis Care Center, diverts an estimated 7,000 mentally ill individuals from incarceration to treatment every year.¹⁰² The Center is a **one-stop drop-off destination** that “places medical, psychiatric and jail diversion officials under one roof,”¹⁰³ allowing officers to leave individuals with specialized providers. Through a cooperative, centralized network comprised of law enforcement, mental health professionals, and the judiciary, mentally ill individuals with low-level offenses are provided immediate screenings and assistance (including stabilization through treatment, as well as support services) outside of jail walls.¹⁰⁴ In turn, Bexar County has saved at least \$5 million annually in jail costs and \$4 million annually in inappropriate admissions to the emergency room,¹⁰⁵ while eliminating the need to build a 1,000-bed jail.¹⁰⁶
- ◆ Bexar County also offers **assisted outpatient treatment (AOT)** through its Center for Health Care Services. The program has 50 slots, wherein seriously mentally ill individuals – those habitually cycling through the state hospital – are court-ordered to take their medication as a condition of living in the community upon release. Four caseworkers, two assistants, and a liaison are responsible for helping participants find housing, offering assistance with medication, and providing support at weekly progress meetings with the judge.¹⁰⁷ According to the Treatment Advocacy Center, “AOT is effective in reducing the incidents and duration of hospitalization, homelessness, arrests and incarcerations, victimization, and violent episodes. AOT also increases treatment compliance and promotes long-term voluntary compliance.”¹⁰⁸ Additional counties in Texas – one of the 44 states that permits the use of AOT¹⁰⁹ – should consider this option, where feasible, to meet localized demands.

Every county must make efforts to expand community health systems and provide outpatient programming. Otherwise, individuals suffering from mental illness will continue to sit in jail awaiting a bed at an always-crowded state hospital (*discussed more fully below*), or wait to be transferred to other, out-of-county facilities for treatment. Not only does the latter come with hefty transportation costs and consume valuable law enforcement time, but treatment at various facilities outside of one’s community can impede progress: “If the patients caught in the current revolving-door system of state mental health care go to a new hospital each time, they’ll be strangers, making treatment harder.”¹¹⁰ Access to localized treatment will better ensure that mentally ill individuals get more rapid assistance and move more quickly down the path towards law-abiding behavior.

- **Four Texas counties have been designated as urban pilot sites to implement an outpatient competency restoration program, which addresses the needs of those who have been declared incompetent to stand trial.**

Through various services, the outpatient competency restoration programming helps mentally ill individuals reach a minimum level of competency so that their case can be heard. This pilot was made possible in 2008, in response to legislation passed the prior year (S.B. 867) that allowed nonviolent individuals with mental illness to receive supervised outpatient services. (*See Art. 46B.072(a), Code of Criminal Procedure*). Previously, these individuals had been waiting in jail, sometime for months at a time, for a slot to open at an overcrowded state hospital; after receiving treatment, they were returned to jail to continue awaiting trial,¹¹¹ with some decompensating to the point of being declared incompetent once again.

DSHS ultimately launched pilots in Bexar, Dallas, Tarrant, and Travis Counties – all of which followed in the footsteps of a similar program previously initiated in Harris County. Harris was the first county in the state to offer competency restoration services at a community-based facility, quickly reducing the time for defendants to be declared competent to stand trial from 60 days to 21 days.¹¹²

To ensure the four pilots would be most effective, the Mental Health Authority and local judges collaborated to put in place evidence-based services and curricula used in other states.¹¹³ Participants must be willing to follow their medical regimen and take part in intensive programming while under the supervision of a caseworker.¹¹⁴ Program services include a risk assessment, residential treatment options, psychosocial programming, and training activities.¹¹⁵ In addition to substance abuse treatment, participants may also take classes in anger management or life skills.¹¹⁶ Again, the pilots target misdemeanants who “would otherwise face months in jail and inpatient facilities to complete competency restoration, often exceeding normal time served for misdemeanor offenses and incurring high community costs for jail and inpatient bed days.”¹¹⁷

The results of the pilots have been overwhelmingly positive. Individuals treated through the outpatient programs have had lower recidivism rates than others treated in county jails or state hospitals.¹¹⁸ Likewise, these individuals have not had to consume jail beds while awaiting space at state hospitals. In fact, the Dallas pilot saved the county \$300,000 in 2009 in jail avoidance costs for approximately 50 misdemeanants.¹¹⁹ The diversion of individuals from state hospitals has also lowered waiting lists there, allowing for related cost avoidance and increasing the capability of the state to treat people with more severe diagnoses.¹²⁰

Policy-makers should fund an expansion of these programs in additional counties to provide them much-needed short- and long-term cost savings, as well as to assist them in meeting the needs of specialized populations. Likewise, where feasible, county leadership must consider implementing outpatient programming with local funds, which will more immediately respond to growing demands from both providers and clients for additional assistance. Collectively, stakeholders must address the ever-expanding need for competency restoration that is posing a vital problem for counties already struggling to meet growing jail populations.

Addressing the Needs of Military Service Members and Veterans

Recommendation for Statewide Policy-Makers, County Commissioners, Law Enforcement, District Attorneys, Judges, Probation Leadership, and Treatment Providers

A more recent and specialized population of defendants has been coming before local courts: military service members and veterans whose criminal conduct was materially affected by brain injuries or a mental disorder (including post-traumatic stress disorder (PTSD)) resulting from military service.

According to a June 2010 survey of over 18,000 recent army and National Guard veterans conducted by psychiatrists from the Walter Reed Army Institute of Research, approximately “8 to 14 percent of infantry soldiers who served in Iraq and Afghanistan return seriously disabled by mental health problems. [...] About half the soldiers with either PTSD or depression also misused alcohol or had problems with aggressive behavior.”¹²¹ The need for specialized programming to treat this population and its members’ potentially long-term impairments¹²² is clear.

Not only should law enforcement undergo training to identify and respond to the needs of veterans at the initial point of contact (as Crisis Intervention Team officers do), but courts should allow veterans with cognitive problems or drug/alcohol-dependence issues to participate in a deferred prosecution program if they commit a misdemeanor or felony offense. As part of this process, judges should conduct a thorough screening to ensure a proper diagnosis prior to recommending treatment options (including gender-specific programming) that would best address each defendant's brain injury or mental illness. Housing and employment referrals could be included in the provision of services, with the help and advice of outreach specialists.¹²³

Upon a defendant's successful completion of the conditions imposed by the court under the diversion program, a judge should have the authority to dismiss the criminal action against him or her. This type of program – already underway in Dallas, El Paso, Harris, and Tarrant counties¹²⁴ – can greatly benefit the men and women returning to Texas counties. Such programming can also free up jail beds, save valuable taxpayer dollars in incarceration costs, and minimize potential re-arrest and enforcement costs associated with other, possibly escalating offenses.

A well-developed model program should be widely replicated to meet the needs of military service members throughout Texas, as well as others suffering from various mental health issues and/or substance abuse. To be most effective, the following elements are essential:

- ◆ Early identification and prompt placement of eligible participants in the program.
- ◆ Use of a cooperative approach by prosecutors and defense attorneys to promote public safety and protect program participants' due process rights.
- ◆ Ongoing and regular judicial interaction with program participants.
- ◆ Integration of alcohol and other drug treatment services during case processing.
- ◆ Related treatment and rehabilitation services during program participation.
- ◆ Monitoring of abstinence through weekly alcohol and other drug testing.
- ◆ A coordinated strategy to govern program responses to participants' compliance.
- ◆ Development of partnerships with public agencies and community organizations to enhance effectiveness.
- ◆ Continuing interdisciplinary education to promote effective program planning, implementation, and operations.
- ◆ Monitoring and evaluation of program goals and effectiveness.¹²⁵

With these program elements in place, counties could make large strides towards diverting and assisting hundreds of otherwise incoming jail inmates. Absent such programming, veterans may continue to suffer, as well as place undue strain on the criminal justice system: "If you look at the Vietnam-era veterans, where nothing was done, they have an inordinately high number of people who are homeless, have chemical dependency issues or are incarcerated. So if we do nothing, we know what the results are going to be."¹²⁶

(4) Lack of Other Diversion Options

Diversion programs and specialty dockets are not the only means of directing people away from jail. In addition to Community Corrections Facilities (CCFs¹²⁷), Intermediate Sanction Facilities (ISFs¹²⁸), and SAFPFs, various other options are available to hold individuals accountable while keeping them out of overcrowded jails. These include day reporting centers, community-based programs that address co-occurring disorders, short-term detoxification and referral facilities, community-policing programs, victim-offender mediation policies, and labor programs.

County officials can be hesitant to promote new diversion programs or practices, but without a commitment to changing failed policies, they can continue to expect the status quo – and the financial burden that accompanies it.

policy solutions:

■ Implement day reporting centers for individuals with nonviolent offenses.

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, Probation Leadership, and Treatment Providers

Counties with a large influx of nonviolent arrestees into jail should examine the feasibility of a day reporting center, which emphasizes “assessment, risk management, intervention, and close supervision.”¹²⁹ One immensely successful program in Smith County, called the Alternative Incarceration Center (AIC), began operating after voters rejected two jail bond measures in 2006. Initiated by former District Judge Cynthia Kent, the program’s ongoing goals are “to reduce the Smith County jail population, protect the public by intensive supervision through a day reporting program, provide extraordinary efforts to place these offenders into paying jobs, promote public safety by special rehabilitation services to these offenders, and enhance the reintegration of reformed offenders back into society.”¹³⁰

According to the AIC’s Policy and Procedures, individuals eligible for participation are primarily low-level violators – those incarcerated for misdemeanors, state jail felonies, or nonviolent third degree felonies. Other eligible participants include individuals who are on community supervision and awaiting a hearing on a motion to revoke or a motion to proceed to final adjudication;¹³¹ SAFPF probationers awaiting a bed in treatment, depending on the level of addiction; and individuals who are delinquent on child support payments and would have been sentenced to incarceration, or those who have been found to violate a child support probation order.¹³²

The structured program requires individuals to plead guilty; after evaluation by a program screening officer to determine eligibility and with the approval of the district attorney’s office, individuals must agree to be placed on specialized probation with assignment to the AIC.¹³³ These individuals are also required to “sign the AIC rules and guidelines agreement, be employable and commit to accepting employment, agree to good faith participation in rehabilitation and reintegration programs, and if found to be a person with mental health issues agree to good faith participation and cooperation with diagnostic evaluations, mental health counseling, symptom management and skills training, and medication regimen compliance.”¹³⁴

Individuals who agree to all terms and who are accepted into the program must report to the AIC each morning of their term at a designated time and remain until late afternoon or evening. They spend their evenings at home, rather than taking up valuable jail beds.¹³⁵

Individuals at day reporting centers like the AIC may do the following:

- ◆ Participate in drug/alcohol rehabilitation counseling through a licensed professional counselor
- ◆ Participate in drug and alcohol screening tests
- ◆ Submit to an electronic monitoring program and drug patch program
- ◆ Receive supervision in taking medication for mental illness
- ◆ Receive G.E.D. training¹³⁶
- ◆ Receive job training and job counseling services on-site and accept assignments for job interviews
- ◆ Be available for and participate in job pool assignments and day labor jobs
- ◆ Receive life skills training on-site¹³⁷
- ◆ Engage in community service
- ◆ Participate in cognitive development programming
- ◆ Receive other types of non-academic education¹³⁸

Within a year of the AIC's opening in 2006, approximately 90% of participants were completing Smith County's program,¹³⁹ while the jail saw a reduction of more than 120 inmates per day.¹⁴⁰ Smith County taxpayers' cost savings during that period was almost \$1 million – an average of nearly \$210,000 per quarter.¹⁴¹

The program has continued to be a success, averaging 289 participants in the 2009-10 fiscal year. A review of 36 months of program data finds that 88% of individuals who complete the program remain successful on regular probation after six months, while a review of 30 months of data finds that 77% remain successful on regular probation after one year. All told, the AIC is saving Smith County approximately \$4.4 million per year for a cost of approximately \$1 million – **a net savings of over \$3 million annually to Smith County by diverting people out of the jail into the AIC program.**¹⁴²

In addition to cost-savings and lowered recidivism rates, three additional benefits of county day reporting centers include the following: (1) participants at some centers may be permitted to work off fines or debts to victims, thus providing restitution while freeing jail beds;¹⁴³ (2) individuals on pretrial release, probation, or parole may be also permitted to participate in some counties' day reporting programs,¹⁴⁴ which can more effectively meet the needs of such populations; and (3) participants at some centers may have access to aftercare services (including intensive outpatient substance abuse treatment), which decreases the likelihood of re-offending and re-entering the system.¹⁴⁵

Counties seeking to minimize jail overcrowding caused by low-level populations and instead reserve jail space for higher-risk individuals should consider implementing a similar program in their local jurisdiction.

■ **Establish corrections triages for individuals with mental health and/or substance abuse problems.**

Recommendation for Statewide Policy-Makers, County Commissioners, Law Enforcement, District Attorneys, Judges, Probation Leadership, and Treatment Providers

Evidence-based studies show that integrated treatment most appropriately and effectively addresses the needs of individuals suffering from both mental illness and substance abuse.¹⁴⁶ However, findings of a joint survey of Texas judges show that additional resources are needed in integrating such treatment.¹⁴⁷ Furthermore, the state's current "lack of drug and alcohol detox and treatment services is a significant barrier to treating people in mental health crisis. [...] Repeated contact with the crisis service system

may be exacerbated by the lack of treatment available for drug- or alcohol-involved mental health consumers.”¹⁴⁸ Policy-makers, county officials, and other stakeholders must develop a strong treatment infrastructure to ensure that those with co-occurring disorders have the tools to effectively and healthily manage their lives.

As noted in Contributor 3, Bexar County has made inroads in this area through the development of a centralized, community-based receiving center that diverts individuals convicted of nonviolent offenses away from jail and into treatment. Approximately 800 individuals per month undergo an assessment to properly identify their needs, receive short-term stabilization through rapid medical and psychiatric care, complete detoxification programs as necessary, and obtain access to other, longer-term treatment options in the community. With this diversion and continuity-of-care program, the county eliminated the need to build a 1,000-bed jail.¹⁴⁹

Establishment of the Bexar County Crisis Care Center has also positively impacted law enforcement. Previously, officers spent an average of 12 to 14 hours waiting in hospitals for individuals’ psychiatric evaluations. Now, individuals can receive such services in one hour – allowing police to return to the field more quickly.¹⁵⁰ This is another cost-saver: Prior to the Center’s establishment, “the San Antonio Police Department had been spending about \$600,000 annually on overtime and additional shifts for officers forced to wait in crowded emergency rooms with people needing treatment.”¹⁵¹

With this diversion and continuity-of-care program, [Bexar] county eliminated the need to build a 1,000-bed jail.

Policy-makers and county leadership should strengthen funding for similar corrections triages throughout Texas, especially in urban areas. Likewise, **a stronger investment in local outpatient services to follow up initial treatment programming and address criminogenic factors is especially imperative to ensure that early treatment successes will be sustained.**¹⁵² Without well-structured aftercare, individuals are more likely to return to crime, creating more victims in the community and further burdening jails.

■ **Create short-term detoxification and referral facilities to address public inebriation offenses.**

Recommendation for County Commissioners and Law Enforcement

Nationally, law enforcement officers are taking advantage of “sobering up” facilities to divert publicly intoxicated individuals from local jails rather than arrest them for the low-level offense. Such facilities can provide individuals with a basic needs assessment, round-the-clock care,¹⁵³ or treatment referrals. This system better handles (and protects) individuals in need, while allowing law enforcement to focus their time on higher-level public safety issues.

The Urban Institute also emphasizes the cost savings associated with diverting public order violators: “making significant investments in resources that will help this population in both the short term and the long term can limit these frequent residents’ interaction with the criminal justice system, providing the county with significant savings by reducing jail bed day consumption.”¹⁵⁴ The Urban Institute specifically highlights the savings generated in Seattle, Washington, after the city built its 75-unit Downtown Emergency Service Center designed to “address the needs of chronically inebriated homeless individuals by providing them with permanent housing solutions and access to services to help reduce their alcohol consumption.” The city saved \$4 million the first year in costs associated with the population, spending \$13,440 per program participant rather than the \$86,000 per-person cost while the individuals were homeless.¹⁵⁵

■ **Expand innovative community policing programs that respond to specialized populations.**

Recommendation for Statewide Policy-Makers, County Commissioners, Law Enforcement, and Treatment Providers

Specialized interventions can successfully target and reduce criminal behavior among various populations. For instance, policy-makers should require counties with moderate to high arrest rates for prostitution to examine the feasibility of implementing a program like the Dallas Police Department's Prostitution Diversion Initiative (PDI). This location-specific truck stop prostitution program gives women effective, pre-booking options to leave the business:

On the first Wednesday of each month, the Dallas Police Department conducts an operation targeting prostitution in areas designated by the Vice Unit as hot spots for prostitution arrests. A staging area for the operation is established within the target area with medical personnel, social services, and courts convening on-site. [...]

Entry onto the staging area is by arrest or by voluntary walk-on by prostitutes who wish to avail themselves of on-site acute care. However, this is a police operation and those individuals that walk onto the site will be searched, checked for outstanding warrants, and debriefed by the Vice Unit. All prostitutes on site are accompanied by a police officer and assigned an advocate (former prostitute) throughout the multi-step process.¹⁵⁶

The PDI works in collaboration with other organizations to assist women in addressing various needs: substance abuse, mental health issues, and physical health.¹⁵⁷ The latter is critical in light of Dallas' ranking as the nation's syphilis capital – a crisis that swelled as the city's enforcement-only, anti-prostitution tactics failed miserably.¹⁵⁸

Another significant benefit of the PDI is that, unlike similar initiatives nationally, it provides women access to services *prior* to arrest: "The advantage of bringing resources directly into the population is the immediate evaluation of the individual and recommendation to the court for diversion. By diverting from the field, the offender avoids a trip to jail, which reinforces the mindset that they are being treated as victims."¹⁵⁹

Counties should consider duplicating or, where necessary, tailoring this program to meet the needs of other specialized populations (such as those suffering specifically from substance abuse and/or mental illness). Jail overcrowding can be drastically reduced when law enforcement have the opportunity to assist low-level, non-violent individuals at high risk of recidivism, especially during pre-arrest stages.

■ **Implement pre-trial victim-offender mediation programs.**

Recommendation for Statewide Policy-Makers, District Attorneys, and Judges

Mediation for low-level offenses can dramatically reduce court caseloads and jail overcrowding. Individuals are required to issue their victims an apology and provide compensation or community service, rather than be convicted and incarcerated.¹⁶⁰ This program also allows crime victims to choose to become involved in a defendant's rehabilitation as the defendant takes responsibility for his or her actions.¹⁶¹

In a national survey by the Department of Justice on victim-offender mediation programs, the agency found “high levels of participant satisfaction,” with interviewees noting that “communities benefit as well, because mediation works to reduce community isolation and fragmentation.”¹⁶² Policy-makers should expand the use of these programs to help relieve the burden on county court dockets and local jails, while potentially improving community relations.

Note: If no agreement is reached or if a defendant does not complete the terms of the agreement, his or her case will proceed as usual. This encourages personal accountability and successful completion of the program – keeping more individuals out of jail.

■ **Fully implement the requirement of manual labor in appropriate instances.**

Recommendation for County Commissioners, Judges, and Jail Administrators

According to state legislation passed in 2009 (S.B. 2340), certain individuals may be required to perform manual labor rather than be incarcerated in county jail. Specifically, Article 43.10, Code of Criminal Procedure, states the following:

Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, or where the party is sentenced to jail for a felony or is confined in jail after conviction of a felony, the party convicted shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with the provisions of this article [...].

The article specifies that each day of manual labor may be deducted from a person’s sentence.

Credit for required manual labor is an especially valuable tool for counties facing severe overcrowding issues. For instance, there were 4,376 inmates in the Harris County jail as of May 1, 2009, who could have been eligible for post-trial manual labor.¹⁶³ Awarding them credit would have a drastic impact on that jail’s population.

Note: In some circumstances, manual labor may only excuse an inmate during the day; at night, individuals would return to jail to sleep. Judges and jail administrators should consider a true diversion when at all possible – with full release from jail – to prevent work-eligible inmates from consuming beds.

PRE-TRIAL CONTRIBUTORS

Excessive pre-trial detention is a significant contributor to jail overcrowding. In fact, as of April 1, 2010, more than half (52%) of Texas’ jail population was inmates awaiting trial.¹⁶⁴ This number is staggering – the result of rising pre-trial detainee numbers throughout much of the decade. In fact, between 2000 and 2007, the number of such detainees increased by 49.2%, while the overall jail population only increased 18.6% during that time.¹⁶⁵

Pre-trial detention is caused by a variety of factors, including long waiting lists for substance abuse or mental health services (*discussed above*), lack of indigent defense to help eligible individuals obtain release, case-processing delays by law enforcement, district attorneys, and judges, and the inability of defendants to afford bond or bail costs. In other words, taxpayers are spending more and more to house individuals awaiting programming, services, or trial.

Below are the percentages of pre-trial jail inmates in Texas’ six largest counties; also provided is the percentage of pre-trial inmates who are misdemeanants:¹⁶⁶

table 6

County	% Pre-trial	% Misdemeanants
Dallas	71%	6%
Travis	66%	16%
Bexar	58%	13%
Harris	56%	5%
Tarrant	53%	7%
El Paso	45%	6%
STATEWIDE:	52%	9%

Note: As is discussed more fully in Contributor 7, not all felony and misdemeanor defendants booked into county jail are eligible for a bond review. If these defendants are not released through other means, they may be included in the percentages above.

Not only do pre-trial detainees take up beds while they wait (sometimes for several months) for trial or other services, but some may eventually end up serving more time than required by law. In August 2009, at least 500 individuals in Harris County had been jailed for more than a year awaiting trial, while approximately 1,200 had been incarcerated six months or more – including for such nonviolent offenses as bouncing checks, credit card fraud, trespassing, and civil violations. Approximately 200 of these individuals had served more than the minimum amount of time for the crime they were accused of.¹⁶⁷

As county leaders and other system stakeholders examine strategies to address swelling jail populations, they should take serious consideration of the problems posed by rising pre-trial detainee numbers.

(5) Inefficient and Uncoordinated Indigent Defense Efforts

Many indigent defendants are forced to face the criminal justice system without the assistance of counsel, due in part to Texas’ narrow funding for indigent defense. In fact, according to recent data, Texas ranks 48th in per-capita indigent defense spending,¹⁶⁸ placing tenth out of the ten largest states.¹⁶⁹ Although spending levels have increased dramatically in Texas over the past few years – due in large part to passage of Texas’ Fair Defense Act in 2001¹⁷⁰ – they remain far below what other states spend on indigent defense. Funding for regional programs in underserved areas is especially scarce.

In many counties, budget difficulties prevent the appointment of counsel for misdemeanor defendants. In fact, during 2009, 17 counties did not provide misdemeanants *any* counsel (a 0.0% appointment rate), while 93 counties appointed counsel for misdemeanants in less than 10% of instances.¹⁷¹ Sadly, the overall state misdemeanor appointment rate was only 35.2%. However, the state felony appointment rate was not even double that, at 67.7%.¹⁷²

Especially in areas without public defender offices, many defendants are left to negotiate deals on their own – often to their disadvantage. Individuals may eventually end up sitting in jail for days or weeks awaiting trial with high, unaffordable bond payments that preclude their release. Taxpayers foot the bill as these defendants languish in jail without understanding their options. Then, because many do not fully grasp the charges against them – or their possible defenses or sentencing alternatives – these individuals are more likely to waive rights or receive longer jail sentences when they do reach trial.

policy solutions:

■ **Expand public defender offices.**

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, and Treatment Providers

One of the most important safeguards against unjust convictions is access to a quality defense. 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 arraignment/first appearance proceedings or plea negotiations. Wider establishment and continued support of county or regional public defender offices will assist individuals in obtaining swiftly appointed, qualified representation. This is especially important in reducing the number of days between a defendant’s arrest and trial, thus helping individuals more promptly return to their obligations in the community.

Performance data produced by Texas’ long-standing public defender programs demonstrate **cost benefits** for areas that use public defenders. Counties get budget predictability and overall cost savings through lower per-case expenses.¹⁷³ Likewise, because public defenders streamline the appointment process and increase consistently in case management, counties see reductions in court administrative costs typically associated with judicial decisions about attorney appointments, training and experience qualifications, caseload management, and fee vouchers.¹⁷⁴

Public defender programs also have mechanisms to **increase the quality of indigent defense services**. For instance, counties can put in place independent oversight boards to encourage transparency and ensure that defenders act “without fear of outside intervention or a reduction in resources for performing effective advocacy.”¹⁷⁵ In other words, board leadership can prevent a system riddled with conflicts of interest, wherein attorneys receive appointments from judges based on political contributions or friendship, rather than merit, undermining the justice process to the potential detriment of the client.¹⁷⁶

Additionally, counties can implement safeguards to more justly and effectively handle large caseloads, promoting accountability¹⁷⁷ and ultimately reducing a defendant’s time in jail awaiting trial. According to the Bureau of Justice Assistance, “When more attention is paid to individual cases, with fewer requests for continuances, more effective bail and sentencing recommendations are developed and less time is spent in jail.”¹⁷⁸ This is especially possible when defender programs are resourced at levels near to or on par with district attorneys. Such resource allocation allows these programs to provide investigators, experts, administrative assistants, interpreters, and case coordinators, in balance with services provided by prosecutors. An even resource allocation also allows defender programs to provide the online research tools and training necessary to improve case management (for both felonies and misdemeanors) and to facilitate an equitable resolution.¹⁷⁹ Furthermore, well-resourced offices – especially those with access to social workers and mental health support services – are better equipped to provide specialized, timely assistance to vulnerable classes of defendants, such as the mentally ill¹⁸⁰ or youth.

Lastly, public defender offices have been proven to **significantly reduce the number of days between an individual’s arrest and trial**, in turn (a) reducing the unnecessary and harmful collateral consequences of job and/or housing loss, (b) promoting family stability, and (c) reducing overcrowding and substantial jail costs for counties – in terms of both lowered pretrial detention rates and a decline in jail sentences.¹⁸¹ For example, in Kaufman County, the public defender office reduced the average jail population from 306 to 246 within its first year by clearing a backlog of cases. Likewise, Val Verde County’s Regional Public Defender Office reduced the regional jail population by 20% in 11 months, from 78 to 61 inmates, by resolving cases more quickly than the private bar.¹⁸²

In light of all aforementioned benefits, jurisdictions have great incentive to consider a public defender model to meet their representation needs. And yet, just 8% of Texas counties use public defender offices in noncapital felony and misdemeanor cases.¹⁸⁴ **It is incumbent upon the state to guarantee representation for anyone who is at risk of incarceration and unable to hire an attorney.** To avoid having counties spend valuable resources jailing individuals who do not pose a threat to public safety, policy-makers should continue to allocate funds to bolster current indigent defense delivery models, as well as assist counties in their efforts to develop new systems.

Reduce Misdemeanants' Jail Time Prior to Trial

Counties with high misdemeanor arrest rates should especially examine the feasibility of establishing a public defender office. Misdemeanants are typically nonviolent and should not be unnecessarily consuming jail space. In Hidalgo County, the public defender office positively impacted misdemeanor defendants, reducing the average number of days between their arrest and case disposition from 15 to 11 days.¹⁸³

Note: Counties that cannot currently afford to establish a public defender office in their jurisdiction should look into a **multi-county regional program** in partnership with surrounding counties. For instance, the Lubbock Capital Public Defender Office serves 70 counties by providing specialized defense in costly capital cases at a reasonable and predictable expense shared among the counties – much like an insurance policy might provide coverage at a known rate for unexpected and potentially catastrophic events.

■ **Expand legal assistance for indigent, mentally ill defendants.**

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, and Treatment Providers

As discussed repeatedly above, those suffering from mental illness all too frequently become entangled in the criminal justice system for nonviolent behaviors that are often manifestations of symptoms of their illness, circumstances, and criminogenic factors. The following are strategies that can assist counties in meeting the demands posed by mentally ill defendants.

- ◆ First, counties should implement and expand **mental health public defender offices**. These programs help bridge the gap between the criminal justice and mental health systems, ensuring that eligible individuals suffering from mental illness are given appropriate assistance throughout the criminal justice process, while meeting larger public safety interests. Specialized defenders incorporate the expertise of local social workers and case managers to provide mental health assessment, treatment referral and compliance monitoring, service integration, and follow-up as an alternative to incarceration for indigent defendants charged with low-level crimes. Given defendants' personal progression throughout this continuum, **counties can see lowered rates of incarceration for mentally ill populations, as well as cost savings from improvements in recidivism rates.**¹⁸⁵ Indeed, "six months after case disposition, people represented by the mental health public defender experience significantly lower rates of recidivism than otherwise identical people who are not in the program... Recidivism continues to be suppressed up to 18 months after case disposition for people with schizophrenia,"¹⁸⁶ especially important given the prevalence of schizophrenia diagnoses.¹⁸⁷

Ultimately, mental health public defender offices operate as a unique early-system resource to courts by serving dual purposes: (1) providing specialized indigent defense representation and case management to address interrelated issues, such as homelessness, disability, and access to medication and/or treatment programs; and (2) advocacy for alternatives that will divert individuals into treatment, assist clients in their efforts to stabilize, and ensure compliance with court requirements.¹⁸⁸ Probation with treatment is one example of an effective alternative to jail for those suffering from mental illness, and mental health public defenders can assist in identifying those who would be better served by probation rather than jail. In fact, “among clients who are found guilty, the chance of probation instead of jail time for people represented by the [mental health public defender] is approximately twice that of similar people with other forms of counsel. [...] Under community supervision these individuals can be held accountable for their criminal behavior while avoiding the stresses of confinement and reducing the risk of decompensation.”¹⁸⁹

Travis County’s Mental Health Public Defender (MHPD), which opened in early 2007, was the first office of its kind in the U.S., and has since made great strides towards reducing the disproportionate lengths and repeated occurrences of jail stays for those suffering from mental illness in Travis County.¹⁹⁰ Annually, it now serves 400 indigent misdemeanants with at least one major priority population diagnosis, including schizophrenia, bi-polar disorder, major depression and/or schizoaffective disorder.¹⁹¹ In addition to providing legal representation, the office’s team approach – including partnerships with social workers¹⁹² – better ensures the provision of mental health treatment and a continuity of services that will assist mentally ill defendants in stabilizing and avoiding re-offending behaviors.

- ◆ In addition to public defender programs, other models can provide direct client services to indigent defendants with mental health issues. For instance, Montgomery County’s **Managed Assigned Council Program (MACP)**, recently approved for funding by Texas’ Task Force on Indigent Defense,¹⁹³ will provide specially trained defense attorneys, case management services for the court, and investigators and experts to support eligible defendants. These defendants, identified during the jail intake process, will be assigned to a newly formed specialized mental health docket at their initial appearance before a magistrate. Once the MACP is running at full capacity, county officials estimate that a panel of 12 private attorneys will serve a client base of approximately 600 indigent defendants, with a docket that will meet weekly.

The MACP, the first program of its kind in Texas, will be led by attorneys in the local defense bar who will be under contract with the county. Case management services will be provided by “at least one (1) master degree level Clinician to assess persons while in jail, two (2) Caseworkers to provide assistance to clients with appointments/court dates, rehabilitative skills training, etc. and two (2) clinical staff persons to provide field support to clients such as home visits and transportation. Case management services will include, but not be limited to, referrals and other assistance for housing, education, employment, counseling, mental health treatment, substance abuse, and other direct services which will aid the defendant and assist in lowering his/her recidivism.”¹⁹⁴

As a pilot program with great potential to be replicated by other Texas counties, Montgomery County officials have set as major priorities both attorney evaluations (as per defender requirements and caseload standards) and the reporting of outcomes. Specifically in regards to the latter, the county intends to conduct research to assess the cost-effectiveness of video conferencing technology for use with detained mentally ill defendants. Equally important, county leadership intends to keep its sights focused on reducing recidivism among the mentally ill population, using a research study to better ensure the MACP’s desired outcomes.

The program’s overarching intent is to address, in a humane and cost-efficient manner, the 30-35% of jail inmates in Montgomery County with documented mental health issues, a large percentage of whom are indigent.¹⁹⁵

■ **Establish guidelines for the allocation of grant funds to counties by the Task Force on Indigent Defense (Task Force).**

Recommendation for Statewide Policy-Makers

Policy-makers should instruct the Task Force to revamp its current grant allocation structure to better ensure the sustainability of successful programs. Specifically, one-third of the Task Force’s available grant funds should be allocated to counties (in compliance with standards set by the Task Force) to offset the costs of indigent defense. One-third should be designated for discretionary grants, which provide funding for the expansion and implementation of new indigent defense programs. And the final one-third should be used to help counties sustain successful, cost-effective defense-delivery programs.

Separately, the Task Force’ enabling statute (Government Code, Sec. 71.062) allows the agency to be flexible when allocating funds among its grant programs. Policy-makers should require the Task Force to prioritize discretionary grant funding for public defender offices, independent assigned counsel programs, and counties that use best practices.

■ **Establish minimum performance guidelines for criminal defense attorneys.**¹⁹⁶

Recommendation for Statewide Policy-Makers

Attorneys who neglect to seek (a) bond or bail reductions, (b) personal recognizance bonds, or (c) other bonds for their clients may contribute to jail overcrowding. Failing to assist defendants in this manner may also increase the number of days that individuals spend in custody unnecessarily.

Policy-makers should ensure that criminal defense attorneys inform their clients of any right that may exist to be released on bond or bail, and any bond options available to them.

■ **Clarify that the Fair Defense Act (FDA) applies to attorney appointments in cases of probation revocations and appeals proceedings.**

Recommendation for Statewide Policy-Makers and Judges

According to the Code of Criminal Procedure, Art. 42.12, Sec. 21, Subsection (d), a person accused of violating probation has the right to counsel for a probation revocation hearing. However, some judges fail to appoint representation in such cases.

In regards to appeals, although the FDA does not directly address attorney appointments, it implies that initial attorney appointments continue through a case’s conclusion, including during the appeals process.

Policy-makers must make clear that defendants have the right to counsel at various stages throughout the criminal process, to protect their rights and the integrity of the system, and to keep individuals from unnecessarily or unjustly being sentenced to jail time.

(6) Case-Processing Delays

According to Article 17.151, Code of Criminal Procedure, a felony defendant awaiting trial in jail must be released within 90 days – either on personal bond or through a reduced bail amount – if the state is not ready for trial. Misdemeanor defendants can be held up to 30 days.

Despite this mandate, poor case processing practices lead to clogged court dockets and delays, which leaves inmates sitting in jail for longer periods at taxpayers' expense. Attorneys and judges alike are struggling to clear large caseloads. The options below deserve significant consideration in the effort to relieve over-burdened systems.

Policy Solutions:

■ Implement more efficient data tracking systems to improve coordination and transparency.

Recommendation for County Commissioners and Jail Administrators

Some Texas counties are in need of updated electronic data systems that can track jail detainees, coordinate that information with other criminal justice agencies, and efficiently respond to requests for public information. The National Association of Counties (NACo) reiterates the need for data collection, monitoring, and sharing, advising the following: “At the most basic level, jails should be able to provide county officials with figures on admissions, average length of stay, and average daily population. With this information, discussions about safely reducing the population can begin. If there are subpopulations within the jail who can be targeted for either release before admission or reducing their length of stay, they should be identified.”¹⁹⁷

Certainly, standardized information across counties would be of most use to stakeholders seeking to craft jail population management policies. Indeed, duplication of effort could be identified and eliminated, saving “considerable staff time [...] by having certain common pieces of information entered only once into the larger information system.” Specifically, “enormous efficiency improvements could be gained if the information gathered by the arresting officer, pretrial services office, and the jail personnel were entered into an information system accessible, as appropriate, by all members of the local criminal justice system.”¹⁹⁸ An integrated criminal justice system would also reduce the likelihood of human error at various points in the data entry process.¹⁹⁹

However, implementing local, web-based data systems is a strong first step in the standardization process. Ultimately, transparency is key in determining which local jails would benefit from jail reduction strategies.

■ Implement more efficient direct-filing systems to speed case processing.

Recommendation for County Commissioners, Law Enforcement, District Attorneys, Judges, and Jail Administrators

Many counties would also benefit from electronic direct-filing systems that enable cases to be handled more quickly. The following are examples of effective direct-filing systems in Texas:

- ◆ Harris County implemented the state's first direct-filing system. At least three prosecutors are on call 24 hours every day. Law enforcement must have them evaluate cases prior to making an arrest, thereby minimizing the number of cases that go unprosecuted, and reducing the number of individuals waiting in jail because they are unable to afford bond.²⁰⁰ Travis County has decided to operate a similar system, with prosecutors staffed around the clock to immediately vet cases brought by police, thereby reducing docket caseloads.²⁰¹

- ◆ El Paso’s District Attorney Information Management System (DIMS) also allows law enforcement to immediately file cases with the district attorney,²⁰² again preventing defendants’ unnecessary lag time in jail awaiting charges. In fact, “El Paso prosecutors receive offense reports an average of 7 hours after an arrest using the DIMS system. By contrast, offense reports for El Paso’s non-DIMS cases take an average of 19 days to reach a prosecutor.”²⁰³ The DIMS system also aids defense attorneys, who can access case files within 24 hours, allowing for case disposal within three days.²⁰⁴ Outcomes are even more positive when accompanied by a pre-set bond schedule for routine cases, in which defendants can post bond prior to a magistration hearing.²⁰⁵
- ◆ Kerr County has also implemented a direct-file system. Defendants are magistrated by a judge within one or two days of arrest and placed on a court docket, even if the district attorney has not accepted the case.²⁰⁶
- ◆ Tarrant County implemented the Differentiated Case Management System, which divides felony cases in district courts into three categories: Expedited, Basic, and Complex. Prosecutors move state jail and third degree felonies on the Expedited Track through the system more quickly using this standardized process.²⁰⁷

More counties should implement these direct, open-file systems to expedite case processing and free up court dockets.

■ Utilize other fast-tracking systems that speed case processing.

Recommendation for County Commissioners, District Attorneys, Judges, and Jail Administrators

- ◆ ***In-house pleas:*** In addition to its direct file system, Kerr County has implemented a system allowing individuals who are booked in the county jail to enter a plea there. They meet with their defense attorney to decide whether to plea; those who do then meet with the assistant district attorney, who routinely visits the jail to finalize plea details.²⁰⁸

Other counties seeking to implement such strategies can similarly expedite cases and reduce overcrowding, but **it is imperative that the right to counsel is protected at all steps – especially the early steps – in the process.** Guilty pleas carry with them collateral consequences that should be explained to both misdemeanor and felony defendants.

- ◆ ***Expedited misdemeanor cases:*** Counties can have a judge make daily misdemeanor “jail runs” to magistrate cases for nonviolent, indigent offenses,²⁰⁹ such as not paying surcharges or fines on tickets, which saves taxpayers incarceration costs. Likewise, counties can hold misdemeanor arraignments more than once per week to increase defendants’ opportunities to request counsel and resolve their cases.²¹⁰
- ◆ ***Specialized dockets:*** Counties can also handle misdemeanants, as well as specified felony cases, with specialized dockets. For instance, Travis County created a Magistrate’s Docket to move low-level felonies through the court system within five business days of the defendant’s booking. The district attorney offers the defendant a plea bargain before his or her court date. Similarly, Travis County’s Jail Reduction Docket expedites case processing for misdemeanants.²¹¹ Again, other counties seeking to accelerate case resolution must protect the right to counsel at all steps in the process.

- ◆ **Additional courts:** Counties can also look into creating extra courts to help speed case processing. Judge Cynthia Kent, who initiated the Alternative Incarceration Center discussed in Contributor 4, noted that additional district courts should expedite cases, and they are less expensive to build and staff than prisons.²¹²

■ Encourage speedy dockets when at all possible.

Recommendation for Judges

Keeping judges responsible for case processing will expedite case setting and resolution. Adan Muñoz, Jr., Executive Director of the Texas Commission on Jail Standards, noted the need for effective, fast-moving dockets, stating, “the sooner you get that inmate out of jail the sooner you are going to reduce overcrowding.”²¹³ Judges should make great effort to minimize continuances and other postponements whenever possible.

Note: Again, it is imperative that responsible case processing balances expediency with defendants’ rights. Judges must ensure that individuals understand their right to counsel, as well as the ramifications of pleading guilty and of waiving certain rights.²¹⁴ Uninformed and involuntary guilty pleas also contribute to jail overcrowding.

(7) Lack of Uniformity in Bond and Bail Settings, Harsh Conditions, and Inability to Pay

A large contributor to pre-trial delays derives from the inconsistent setting of bond. In some courts, judges are inclined to seem more “tough on crime.” As a result, they favor cash bonds (which must be paid in full to the court but are refunded to defendants after appearing in court) over personal bonds (which are either a small monetary amount or a small percentage of the full bond, marking a promise to appear before the judge). Without necessary funds to pay bond – and an unwillingness to simply plead guilty – indigent defendants must sit in jail until their trial. Over time, cash bond amounts have also grown very high, leading to “punitive” bonds that even non-indigent defendants have difficulty paying.

Bond and bail amounts pose particular difficulties for defendants lacking counsel, who must attempt to negotiate deals or reduce the amount owed on their own, often to poor results (*discussed in Contributor 6*). Many end up in jail awaiting trial: they lack knowledge about pre-trial services or their bond options, and they consequently fail to secure their own release.

Even in instances when individuals do make bond, extra conditions can be imposed on their release – including urinalysis tests, mandatory ignition interlock and electronic monitoring, and evening curfews – which increases the likelihood of revocations.²¹⁵ Often these conditions are in place for extended periods.

Individuals arrested for nonviolent offenses who are likely to remain law-abiding and appear before the judge for a scheduled hearing should be eligible for low bail or inexpensive personal bonds – not sitting in jail wasting taxpayer dollars and valuable space.²¹⁶

Policy Solutions:

■ Counties should create and rely on pre-trial services divisions to identify defendants who are eligible for release on low bail or personal bonds.

Recommendation for County Commissioners, District Attorneys, Judges, and Treatment Providers

Pre-trial services divisions are imperative in reviewing the eligibility of defendants for bond release. However, not all defendants are eligible for personal bond review, including the following:

- ◆ those with bond forfeitures
- ◆ those with probation warrants
- ◆ those for whom the Court has set the bond at cash or surety only²¹⁷
- ◆ those with out-of-county and out-of-state felonies
- ◆ those held in jail by an external agency, including Immigration and Customs Enforcement (ICE)
- ◆ those held by the U.S. Marshall's Service
- ◆ federal detainees
- ◆ those with TDCJ bench warrants
- ◆ parole violators
- ◆ felony probation violators
- ◆ those on contempt charges
- ◆ those on writ charges²¹⁸
- ◆ those with capital offenses
- ◆ those with civil commitments²¹⁹

In other cases, pre-trial services divisions assess whether individuals meet various criteria for pretrial bond release. The criteria can include employment, current housing, retention of counsel, family support, and ties to the community, which point to a relatively low flight risk or likelihood of recidivism.²²⁰

Pre-trial services division staff provide courts and attorneys with this information prior to magistration, which helps inform release and detention decisions. In the case of an individual's pre-trial release, staff are also responsible for supervising him or her in the community prior to trial. Effective supervision can minimize criminal behavior and reduce failure to appear rates, in turn reducing law enforcement time spent making warrant arrests.²²¹ Pre-trial services division staff can also match individuals suffering from mental illness, substance abuse, and/or homelessness to needed services – especially through utilization of a validated risk/needs assessment tool – which, again, lowers the risk of re-offending. The critical role of pre-trial services divisions is noted by the American Probation and Parole Association (APPA): “The bail bond industry is simply unable to provide such service to the community.”²²²

In some counties, pre-trial services divisions do not exist, leaving judges to make bond decisions with often limited available information. In other counties that do have such divisions, staff recommendations for bond, bail, or conditions upon release are frequently ignored.²²³

Counties that have the ability to pre-screen defendants for flight risk and recidivism – and whose judges who rely on those screenings – can **reduce costly pre-trial jail overcrowding** (especially through increased personal bond usage), while keeping public safety intact. Equally important, they allow released individuals to maintain crucial support networks in the community. Counties that cannot currently afford such valuable offices should look into alternatives, including multi-county programs, partnerships with community- and faith-based organizations, or an incorporation of pretrial services within jail administration or probation departments.²²⁴

Note: Measuring a pre-trial services division's success in reducing the local jail population should include the following: (a) the percentage of the county's arrestees interviewed, (b) the rate of and time to release based on those recommended for release, (c) the rates of compliance with pre-trial release conditions, (d) the appearance rates for all court events, and (e) crime-free rates for those on release.²²⁵

■ **Related Recommendation: Invest in additional staff at pre-trial services divisions.**

Recommendation for County Commissioners

Providing more staff for pre-trial services divisions will expedite screenings and go further towards reducing jail overcrowding. Likewise, additional staff will enable a quicker identification of those eligible to participate in volunteer manual labor programs in lieu of awaiting trial in jail, as authorized by Article 43.101, Code of Criminal Procedure:

(a) **A defendant who is confined in county jail before trial**, after conviction of a misdemeanor, or after conviction of a felony or revocation of community supervision, parole, or mandatory supervision and awaiting transfer to the Texas Department of Criminal Justice may volunteer to participate in any work program operated by the sheriff that uses the labor of convicted defendants.

(b) The sheriff may accept a defendant as a volunteer under Subsection (a) **if the defendant is not awaiting trial for an offense involving violence** or is not awaiting transfer to the Texas Department of Criminal Justice after conviction of a felony involving violence, and if the sheriff determines that the inmate has not engaged previously in violent conduct and does not pose a security risk to the general public if allowed to participate in the work program.

As with required manual labor, this policy allows each day of volunteer labor to be deducted from the person's sentence. Especially given the state's 36,000 pre-trial defendants in detention in Texas' county jails,²²⁶ participation in labor programs and the resulting credit for time served could drastically ameliorate several counties' overcrowding dilemmas.

■ **Related Recommendation: Encourage judges to adhere to pre-trial services divisions' recommendations.**

Recommendation for County Commissioners

Judges who override a pretrial services division's recommendation for release should be required to track each override and report that data to the county, along with an explanation of why jail time was warranted.

■ **Increase the use of personal bonds.**

Recommendation for County Commissioners, District Attorneys, and Judges

Again, personal bonds allow eligible, low-risk individuals to pay the court a small monetary amount or a small percentage of the full bond as a promise to appear before the judge. This ensures that individuals can continue their lives in the community – maintaining employment and supporting their families – prior to their trial. It also increases the likelihood that the money saved through the low bond amount can be put towards counsel or court costs, as necessary.

In Travis County, 61% of eligible pre-trial defendants interviewed for personal bonds in 2009 (18,568 out of 30,643 individuals) were released on personal bond²²⁷ – 75% of whom were misdemeanants.²²⁸ This high bonding rate ensured that thousands of individuals (many charged with low-level offenses) did not unnecessarily consume jail beds.

On the other hand, Harris County judges released 5.3% of felony and misdemeanor defendants on personal bond during Fiscal Year 2008-9. Out of 102,949 total defendants, only 5,416 were released on personal

bond (and of the subcategory of felony defendants, only 520 of 41,838 were released).²²⁹ Yet almost 15,000 defendants who underwent pre-trial interviews were deemed low-risk in 2008.²³⁰

Especially for low-risk misdemeanants, personal bonds should routinely be an option offered by judges. **Whenever possible, jail beds should be reserved for housing the dangerous – not the indigent.** As reiterated by the American Bar Association, which advocates for the least restrictive means of release, “Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.”²³¹

■ **Reduce bond and bail amounts.**

Recommendation for County Commissioners, District Attorneys, and Judges

For low-risk, nonviolent individuals who are likely to appear before the judge, the refundable bond and bail amounts that promise those appearances should be low. Keeping the amounts reasonable can prevent the following: (a) untrue guilty pleas with harsh sentences or probation terms (agreed to solely to secure eventual release by defendants who may not understand the collateral consequences of convictions), and (b) unnecessary pre-trial waits in jail by those unwilling to plead guilty.²³² County leaders should encourage judges to set low bond and bail amounts, in keeping with the nature of the offense and reflective of each individual’s likelihood of appearing later. Pre-trial services divisions are key in assisting judges in determining this likelihood.

Reduce Reliance on Bail Bondsmen

Recommendation for County Commissioners, District Attorneys, and Judges

Some defendants rely on bail bondsmen for assistance in paying bail amounts. They pay the bondsman a percentage of the bail owed (typically 10%), which serves as a nonrefundable fee for the loan. The bondsman secures the defendant’s release by promising to pay the court in full if the defendant does not appear for a scheduled hearing. In the case of a no-show, the bondsman can legally track down the defendant and force him or her to repay what the bondsman fronted to the court.

Over time, use of bondsmen has become increasingly controversial. The APPA notes that “the bond industry serves as the de facto decision maker of who is released from jail and these decisions are based on monetary considerations.” On the other hand, “pretrial supervision agencies’ decisions are based on likelihood of court appearance and community safety considerations.”²³³ Leadership throughout the nation have agreed: some take issue with the bond industry’s profiting from crime; some feel the bail bonding system discriminates against lower-income individuals who cannot afford a bondsman’s fee; others feel that because defendants’ money goes towards the bondsmen, they often cannot later afford counsel – and so taxpayers foot the bill for indigent defense.²³⁴ As a result of these various concerns, some states have banned commercial bail bonding outright.²³⁵ However, in Texas, bondsmen are permitted to contribute to elected officials’ campaigns, which incentivizes their continued business. Ultimately, this also keeps indigent defendants waiting in overcrowded jails – suffering the collateral consequences and costing significant taxpayer dollars – while those who can afford bondsmen’s payments are released. A state-mandated reduction in bond and bail amounts would reduce the use of profit-making bondsmen and allay stakeholder concerns.

■ **Related Recommendation: Allow defendants to pay partial cash bonds.**

Recommendation for Statewide Policy-Makers

Under existing law (Article 17.02, Code of Criminal Procedure), counties are not authorized to accept partial cash bonds from defendants who are unable to pay the full amount (though some counties have been allowing the practice²³⁶). Permitting defendants to pay a partial amount would go far towards reducing jail overcrowding in counties where personal bonds are not used as frequently. Furthermore, counties could deposit these bond payments into an interest-bearing account that could serve as a funding source to either offset the administrative costs of operating a pre-trial screening program, or assist in implementing a partial bond policy. Another advantage is that defendants who are allowed to submit such bonds will have a greater ability to pay for their own private representation, saving the county additional indigent defense expenses.

■ **Allow eligible, indigent defendants to return to the community during the pre-trial phase.**

Recommendation for County Commissioners, District Attorneys, and Judges

Counties with a large number of jail beds consumed by indigent defendants should consider the pilot program recently implemented in Coryell County. There, the commissioners court and justices of the peace (JPs) collaborated to create the Supervised Pretrial Services Program, which allowed sworn-indigent defendants to remain out of jail prior to trial, provided they met the following requirements:

- ◆ had a permanent residence;
- ◆ provided positive identification;
- ◆ were willing to appear in court;
- ◆ were in jail for a Coryell County offense;
- ◆ were not on parole and did not have a prior felony conviction;
- ◆ did not have more than two prior convictions of a Class A misdemeanor within the preceding three years;
- ◆ did not have a history of bond forfeiture or failure to appear; and
- ◆ were not at that time incarcerated on a charge related to a sex crime, a crime against children, a crime involving family violence, murder, a first degree felony, or a 3(g) offense.²³⁸

In addition to these requirements, an investigator would screen each defendant to make a determination on bond,²³⁹ including “flight risk, risk of re-offending, and ability to succeed,”²⁴⁰ which was based on such things as employment, substance abuse, family and dependent status, and references.²⁴¹ Any program participants who subsequently failed to (a) report to Pretrial Services, (b) provide requested information, (c) provide required documentation, or (d) comply with other conditions of release could face a bond revocation and possible arrest warrant.²⁴²

Given the collaborative, intersecting nature of a local criminal justice system, other stakeholders – in addition to Coryell County’s Commissioners and JPs – came to the table and agreed to the program. In fact, the county received the support of the District Judge and the County Court at Law Judge, who signed an “order” stating the kind of cases they felt should be considered.²⁴³ Likewise, because Pretrial Services worked with eligible post-indictment and post-information defendants, program approval from the judges for those cases was necessary.²⁴⁴

As created, the program, which ran from May 31 – July 31, 2010,²⁴⁵ and cost the county approximately \$150 per week to implement,²⁴⁶ was intended to address overcrowded jails through decreased pre-trial populations.²⁴⁷ As of June 30, 2010, County Attorney Brandon Belt stated, “Our program is working. We still have plenty of people in jail, but they are mostly the ones that need to be there.”²⁴⁸ By the program’s conclusion, Pretrial

Services had released 17 eligible defendants on personal bond. **Their diversion from jail saved the county \$25,622 per month**, using a \$50.24 inmate cost-per-day. Extending that figure out, year-long cost-savings would total \$307,464.²⁴⁹

Other counties could tailor such a program to fit their particularized needs, keeping indigent defendants and other nonviolent violators from consuming jail beds unnecessarily.

Note: The monthly data elements collected to monitor the program’s efficacy included the number of individuals reviewed for initial eligibility, the number who qualified for program participation, the number released from jail into the program, the number denied release, and the number who bonded out of jail of their own means.²⁵⁰ Other monthly data focused on outcomes: the number of individuals who ultimately (a) were sentenced to community supervision, (b) had their case dismissed, (c) were revoked from pretrial services, (d) were sentenced to incarceration, (e) had a bond forfeiture or failure to appear violation, (f) continued to have a case pending, or (g) fell into the “Other” category.²⁵¹

■ **Eliminate harsh conditions imposed for release on bond.**

Recommendation for County Commissioners, District Attorneys, and Judges

As mentioned above, some individuals have numerous conditions imposed upon them when released on bond, which can increase the likelihood of revocations. *Note:* These are over and above the standard supervision requirements.

In addition to drug testing, electronic monitoring, use of an ignition interlock device, and curfews, these enhanced conditions could include mandatory participation in drug and alcohol counseling, or participation in family violence or stress management counseling.²⁵² For individuals with a multitude of employment and family obligations, these conditions can be difficult to meet. Judges should make great effort to ensure they impose the least restrictive conditions upon defendants while still ensuring that public safety is protected.²⁵³

Separately, judges should evaluate noncompliance with bond conditions on a case-by-case basis. Minor infractions (as opposed to willful noncompliance) may not necessitate immediate revocation and jail time. As with probation conditions, judges should impose graduated sanctions so that small technical violations are not penalized by time in already overcrowded jails.

Judges should make great effort to ensure they impose the least restrictive conditions upon defendants while still ensuring that public safety is protected.

Note: Especially with regards to drug testing, the Justice Management Institute advises the following: “The courts should seek to develop cost-effective common policies concerning when drug testing should be ordered, for what types of drugs, how and by whom the tests should be conducted, what responses should be made to test results, and when (under what circumstances) the drastic step of revoking bond should be taken.”²⁵⁴

POST-CONVICTION CONTRIBUTORS

Though jails are saturated with pre-trial detainees, those who have been convicted may also serve more time than is necessary to protect public safety. Judges and jail administrators should weigh an inmate's risk of re-offending: if low, that person should be returned to his obligations in the community.

(8) Post-Conviction, Appeals-Related Delays in Jail

Under Texas law, a defendant sentenced to less than 10 years of incarceration may remain in custody until his or her appeal is fully resolved.²⁵⁵ In many cases, convicted felons are taking up county jail beds for months while their appeals move through the court system. For instance, as of September 2009, the Harris County jail was housing 102 convicted felons who were awaiting final judgment in their appeal; 62 of these inmates had appeals pending for six months or longer.²⁵⁶

Policy Solutions:

■ Expedite the appeals process.

Recommendation for District Attorneys and Judges

Counties should look into expedited appeals processes to reduce overcrowding and save taxpayers money. The Bexar County Appellate Defender Office has accelerated court proceedings and appellate filings to reduce the average post-conviction time that inmates spend in county custody from six months to 55 days. As a result, the county saved \$531,000 in county jail incarceration costs from October 2007 to August 2008.²⁵⁷ Other counties with large percentages of post-conviction appellate filings should implement similar practices, with cost-savings results.

(9) Failure to Reward Inmates with Early Release for Good Behavior

Many inmates exhibit good behavior while incarcerated in county jails. Allowing good time credits towards time served will encourage proper behavior among more inmates and free up jail beds more quickly.

Policy Solutions:

■ Allow 3-for-1 good time credit.

Recommendation for County Commissioners and Jail Administrators

“Good Conduct” in Texas is permitted through Article 42.032, Code of Criminal Procedure. According to Section 1 of that article: “To encourage county jail discipline, a distinction may be made to give orderly, industrious, and obedient defendants the comforts and privileges they deserve. The reward for good conduct may consist of a relaxation of strict county jail rules and extension of social privileges consistent with proper discipline.”

Currently, some counties have a 1-for-1 or 2-for-1 “good time” credit policy, wherein the Sheriff deducts one or two days from a defendant's original sentence for each day s/he actually serves of that sentence, provided no charge of misconduct has been sustained against the individual. In the interests of further reducing growing jail populations in overburdened counties, officials should consider a 3-for-1 good time policy for deserving defendants.

Many Texas counties have implemented such a policy without negatively impacting public safety. For instance, the Bexar, Tarrant, and Travis County Sheriff’s Departments have confirmed that they award 3-for-1 jail credit for a combination of discretionary good conduct time (Art. 42.032, Code of Criminal Procedure (CCP)) and mandatory manual labor (Art. 43.10, CCP). Likewise, the McLennan County Sheriff’s Office enforces 3-for-1 credit for all eligible inmates.²⁵⁸

In April 2010, Harris County began a pilot program which has now become a permanent practice. Sentenced county jail inmates can earn a third day of credit by (a) participating in an in-house education program, (b) obtaining vocational certification, or (c) receiving comparable on-site training. As of July 19, 180 inmates had been released after successfully participating in the program, while 957 inmates were eligible to receive the credit. This number is likely to grow daily, as jail administrators have begun screening incoming inmates for eligibility.²⁵⁹

Other highly populated, out-of-state jurisdictions have implemented similar policies to keep their jail populations in check.

- ◆ In Los Angeles, California, the Sheriff implemented a somewhat complex formula for granting credit for a combination of manual labor (good time), work release and/or vocational programs, and emergencies (jail overcrowding) per California Penal Code, Title 4, “County Jails, Farms, and Camps.” A jail inmate could receive 17 days credit and 13 days served on a 30-day sentence, just short of 3-for-1 credit.²⁶⁰
- ◆ In Miami-Dade County, Florida, county jail inmates receive “basic gain time” credit from between 5 and 15 days per month depending on the length of one’s sentence, as per Florida State Statutes, 951.21. Under the same statute, a county may award “incentive gain time” credit for manual labor and educational/skills training. Inmates rated “satisfactory” for their program work get 2-for-1 credit; those rated “above satisfactory” are awarded with 3 to 5 days of credit.²⁶¹

Jail administrators should reward inmates who exhibit appropriate conduct and/or undertake manual labor (*discussed in Contributor 4*) to significantly reduce swelling jail populations.

(10) Over-Sanctioning of Probation and Parole Violators, Especially for Technical Violations

As of April 2010, Texas’ jails were housing 4,958 parole violators,²⁶² as well as 4,119 individuals on probation who were incarcerated for various reasons, including a probation violation.²⁶³ Many probation and parole violators are sent back to jail for technical violations such as missing a fee payment or a meeting, not new crimes. Revocations for these infractions clog jails with individuals - many who are misdemeanants - whose violations could often be more effectively addressed without costly incarceration.

Of the largest urban counties, Bexar ranks top in technical revocations for misdemeanants:²⁶⁴

table 7

County	% of Misdemeanant Revocations for Technical Violations
Bexar	85
Dallas	68
Harris	67
Tarrant	65
El Paso	64
Travis	45

As of August 2009, Bexar County's high technical revocation numbers had caused approximately 22% of its jail population to be comprised of misdemeanants, compared to 16% of the population in Harris County and 9% in Dallas County.²⁶⁵

According to TDCJ's Community Justice Assistance Division (CJAD), "**revocation and incarceration for financial noncompliance can actually increase public costs** where not only is revenue lost through nonpayment but taxpayers are burdened with the costly housing and care of technical violators in jail and prison."²⁶⁶

Note: In part, probation violations may be another consequence of the state's inadequate indigent defense system. Individuals unfamiliar with the law who must negotiate deals alone may receive harsher probation conditions than necessary – beyond those directly related to their risk level and needs – which leaves them at higher risk of revocation.

Policy Solutions:

■ Continue to invest in progressive sanctions for probation violators.

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, Probation Leadership, and Treatment Providers

An immediate revocation for a minor offense is rarely warranted. Depending on one's risk level, a probationer should be given leeway to address his or her needs on an ongoing basis. Prior to a full revocation hearing and possible violation report, the continuum of sanctions for infractions should include probation officer admonishment, supervisory and administrative hearings, and enhanced conditions (including a longer probation term, an additional fine, and/or mandated participation in a secure SAFP if addiction is at issue).²⁶⁷

CJAD makes its own recommendations for restorative justice alternatives to revocation and incarceration:

- ◆ In cases of an offender's inability or failure to pay court costs, fines, or restitution fees, the courts can apply community service restitution as an alternative to revocation. *TCCP Art. 42.12 §22(a)(1)*.
- ◆ Courts can also discharge all or part of a fine through community service restitution. *TCCP Art. 43.09(f)*, *TCCP Art. 45.049(a)*.
- ◆ A court may require a defendant to serve all or part of a jail sentence or jail confinement as a condition of supervision by performing community service restitution in lieu of jail confinement. *TCCP Art. 42.036(a)*.
- ◆ In cases of financial noncompliance with court-ordered restitution, another alternative to revocation is the establishment and perfection of a Restitution Lien. A victim of the offense entitled to court-ordered restitution, or the state entitled to certain fines and costs, may file and perfect a Restitution Lien against the defendant that remains in effect for a period of 10 years. *TCCP Art. 42.22*.²⁶⁸

As emphasized here, judges are especially key in the implementation of sanctioning strategies. They must be willing to work with prosecutors to appropriately handle violations or new offenses with graduated sanctions. They must also agree to consistently administer such sanctions from court to court,²⁶⁹ as well as inform their local commissioners about strategies and programming that require continued or strengthened funding.

■ **Create a Technical Violation Docket to handle probation violators.**

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, Probation Leadership, and Treatment Providers

Judge Mike Lynch created a Technical Violation Docket in Travis County, which gives technical probation violators the opportunity to remain on probation with modified conditions.²⁷⁰ Again, use of progressive sanctions by judges will keep low-level violators out of overcrowded jails. Furthermore, devoting a specific docket to particular offenses reduces the time between a violation and sanction, better reinforcing the sanction and improving probationer success.

■ **Allow judges to grant bail to “blue warrant” parolees detained in jail awaiting a technical revocation hearing.**

Recommendation for Statewide Policy-Makers, County Commissioners, District Attorneys, Judges, Parole Leadership, and Treatment Providers

Nonviolent technical parole violators, known as “blue warrant” parolees, should not be detained for unnecessary lengths of time in county jails while awaiting a hearing on their infraction, especially without reimbursement to the county. Releasing low-risk individuals on bail/bond prior to a revocation hearing will prevent community members from footing the bill while nonviolent individuals, sitting in a jail bed, wait for a hearing by the Texas Board of Pardons and Paroles to determine whether the charges against them will result in their re-incarceration.²⁷¹ For instance, as of July 30, 2010, there were approximately 400 blue warrant parolees detained in Harris County’s jail who could have been released to make room for violent or higher-level violators.²⁷²

Note: Jail overcrowding can be further reduced if the above policy’s scope is expanded to include not just technical violators, but those who have been arrested for committing new *minor* offenses. Technical violators comprise 14% of statewide parole revocations (1,045 out of 7,471 total revocations in 2009).²⁷³ Widening the net of this policy to give judges the option of allowing bail to parole violators arrested for other nonviolent offenses could have a much larger impact on jail reduction.²⁷⁴

part 4 what key players can do to help

■ The Necessity of Collaboration

Throughout Part 4, we have summarized major recommendations for each key player in the effort to reduce jail populations – suggestions for policy-makers, county commissioners, law enforcement, district attorneys, the judiciary, probation and parole departments, treatment providers, jail administrators and corrections personnel, and re-entry specialists.

An effective, streamlined criminal justice system necessitates ongoing collaboration and cooperation among these various agencies and individuals. The joint examination of the issues facing our jails and local communities is a critical responsibility: overcrowding is “not simply ‘the sheriff’s problem.’”²⁷⁵ County leadership must work with those at the state, city, and community levels, as well as private foundations (at all levels, including federal) that fund strategies targeting specialized populations.²⁷⁶

Ultimately, for jail population management strategies to be implemented successfully – and to put in place a needed continuum of treatment and programming services – these intersecting groups must be committed to their own individualized tactics for change, as well as the full realization of other groups’ reform strategies. Each must lend their expertise while being held accountable for contributing to the larger effort. Each must make needed shifts in approach to most effectively allocate services and resources.²⁷⁷ **Over time, documented cost-savings should be reinvested in high-stakes communities and monitored to ensure crime-reduction strategies remain effective.**²⁷⁸

The Justice Management Institute, in reference to Harris County but expressing a sentiment relevant to most counties throughout Texas, suggests the following overarching, collaborative approach that summarizes the recommendations we have provided throughout this report:

- ◆ Initiate a multi-faceted Jail Population Reduction Program – including work groups, targets for population reduction, and action plans with oversight and monitoring – that will involve key justice system and county government leaders, with top-quality staff support.

Integrating data management throughout all agencies in the criminal justice system is a difficult task for most jurisdictions. Because the system is decentralized, agencies function autonomously in collecting data relevant to them. This autonomy can be problematic when it comes to assessing the overall jail population.

[A] short term solution is to train more people to use the current systems so that each agency employs more than one person who can extract data for jail population management purpose. This will cut down on the time it takes for IT personnel to run reports and provide data to criminal justice stakeholders.

[A] long term solution is to integrate the system so that everyone can access data from agencies in the criminal justice system. Though some stakeholders have expressed hesitation over whether it is a good idea for everyone to have access to each others’ systems, interagency data collection can be tremendously helpful for jail population management efforts. If the system is properly maintained, criminal justice stakeholders will be able to access the data they need to assess the drivers of the jail population on a real time basis. Having this ability would improve case management in all agencies, since people would have access to all the information necessary for proper case management.

– Excerpt from “Jail Population Management Initiative Preliminary Findings and Recommendations,” by the Justice Policy Center at The Urban Institute. January 2010.

- ◆ Develop and implement strategies for reducing the intake of individuals to the jail.
- ◆ Develop strategies for reducing the duration of confinement of individuals who are in pre-trial detention.
- ◆ Develop strategies for reducing the length of time that individuals convicted of felony or misdemeanor charges are confined in jail after conviction.²⁷⁹

This holistic, transparent, and data-driven approach to jail population management will require system stakeholders to monitor population trends, continually examine local budgetary and public safety realities, and measure program and policy outcomes. Though challenging, this effort can make a substantial dent in the growing number of jail inmates burdening counties and taxpayers.



**TEXAS CRIMINAL
JUSTICE COALITION**

In the following pages, we provide summarized recommendations for each system stakeholder, adopted from the comprehensive information offered in Part 3.

The recommendations, organized by stakeholder, are in the boxes in each section below. For further reference, we offer the corresponding page number(s) for the detailed information found in Part 3.

Where necessary, we also provide additional recommendations for each stakeholder that fall outside the scope of the strategies in Part 3.

Statewide Policy-Makers

- Require the offenses under the purview of Art. 14.06, Code of Criminal Procedure – as well as various Class C misdemeanors – to be non-jailable, and instead have violators pay a fine and/or provide some other remuneration, such as community service or victim restitution [page 13].
- Bring additional low-level offenses under the purview of Art. 14.06 (e.g., criminal trespassing, disorderly conduct) to further reduce jail overcrowding and keep law enforcement’s focus on higher-risk individuals [pages 13-14].
- Give judges the discretion to place non-dangerous individuals with a first-time drug possession offense on probation and in a tailored substance abuse program, if the judge determines the defendant would be amenable to treatment [page 16].
- Make a larger investment in community supervision and community-based treatment programs that utilize evidence-based practices, including with regards to staffing, assessments, programming, training, incentives, and sanctions, which can keep crime rates down [pages 17-20].
- Continue to allocate funding for treatment resources through the probation system to more effectively reduce current obstacles (including staff shortages and backlogs) that hinder treatment providers and their clients [page 19].
- Allow probation officers the flexibility to provide appropriate, swift administrative sanctions to probationers with *technical* violations [page 20].
- Continue to invest in cost-effective treatment diversion programs, wrap-around services, and outpatient competency restoration centers to provide care and counseling to those with mental health issues, including veterans [pages 23-26].
- Fund additional diversion programs for individuals with nonviolent offenses. These could include day reporting centers with intensive supervision; centralized, community-based receiving centers that direct individuals into treatment; and community-policing programs that respond to specialized populations [pages 27-29, 30].
- Allow counties to create pre-trial victim-offender mediation programs for low-level offenses [page 30].
- Strengthen funding for the public defender system and assigned counsel programs via Texas’ Task Force on Indigent Defense (Task Force), and establish guidelines for the allocation of Task Force grant funds to counties. Additional defense-delivery services and improved indigent defense practices will ensure timely appointment of counsel and better provide defendants with the specialized knowledge and resources to navigate the criminal justice system, including those suffering from mental illness. Funding for regional programs in underserved areas is especially critical [pages 33-36].
- Establish minimum performance guidelines for criminal defense attorneys [page 36].
- Clarify that the Fair Defense Act applies to attorney appointments in cases of probation revocations and appeals proceedings [page 36].
- Amend Art. 17.02, Code of Criminal Procedure, to allow counties to accept partial cash bonds from defendants who are unable to pay the full amount [page 43].
- Mandate the use of progressive sanctions and other alternatives to incarceration for probation and parole violators, especially with regards to technical violations. *Note:* Allowing judges to grant bail to parole violators who either commit technical violations or new, nonviolent offenses could significantly reduce the number of individuals waiting in jail for a revocation hearing [pages 47-48].

Additional Recommendations

■ Alleviate financial pressures on already over-burdened counties through state-level strategies that increase much-needed revenue.

Instead of making harmful budgetary cuts that will severely impact critical programs that assist counties, policy-makers must take advantage of the Rainy Day Fund, which could provide over \$9 billion for the 2012-2013 state budget. Additionally, they must maximize the use of available federal funding, including any additional stimulus aid or new matching funds made available by health care reform. Finally, the Legislature must create new sources of revenue that are equitable and can grow with the need for public services, including through cost-savings from the elimination of unproductive tax breaks.

■ Stop passing enhancement bills.

Currently, 2,474 offenses are considered felonies in Texas²⁸⁰ – an increase of 150 felonies since 2007.²⁸¹ Each of these offenses has the potential to contribute to jail overcrowding. On the front end, the numbers of arrests can increase and opportunities for increased sentence lengths can swell, while on the back end, fewer individuals may be considered parole-eligible earlier.

Refusing to increase the penalties for already existing crimes will assist counties in their efforts to minimize overcrowding and ensure law enforcement focus their resources on established, higher-level offenses.

■ Reclassify the penalty category for various low-level offenses.

Policy-makers should consider reducing first time, less-than-a-gram possession offenses to a Class A misdemeanor. Doing so will remove the burden (and stigma) associated with being a felon, including difficulties finding housing and employment that only increase the likelihood of re-offending and being re-incarcerated.²⁸²

■ Address additional critical indigent defense issues.

◆ Strengthen investments in the Task Force on Indigent Defense to support evidence-based programs.

Every legislative session, policy-makers continue to pass laws that increase penalties for crimes and lengthen the stay of confinement, but the state has failed to allocate additional funds through its general revenue to support these mandates. Although the Task Force has, over time, been provided increased funding through fees for its grant distributions, counties cannot continue to shoulder the majority of the financial burden associated with supporting indigent defense services. Furthermore, the fees disbursed through the Task Force (including court costs and fees upon conviction, surety bond fees, and State Bar fees) are not necessarily a reliable source of revenue. Indeed, the worse the economy becomes, the less likely individuals are to pay fees – especially those whose fees are tied to criminal charges. The Task Force must be allocated additional funding, even if incremental, to assist counties in maintaining well run public defender offices and other cost-effective, evidence-based indigent defense programs.²⁸³

◆ Require county leadership to collect data on appointments, caseloads, expenditures, and outcomes from local attorneys who receive appointments.

Although some counties are already implementing similar practices, others could easily accomplish this recommendation by requiring each attorney to submit brief information to his or her local appointment administrator. *(Please see Appendix C for the specific indigent defense data that could be submitted by*

attorneys to administrators.) Current technology would allow this information to be compiled and reported in real time, or at least on a regular basis. Analysis of the data can inform future appointments, keeping attorney caseloads manageable to maintain more effective quality of representation.

- ◆ **Study the impact (both direct and indirect) that public defender programs in Texas have on jail capacity, especially with respect to the pre-trial phase.** ²⁸⁴

Specific data to be analyzed should include each public defender office's impact on the following: defendants' ability to secure bond reductions, case dismissal rates, and the average number of days defendants spend in custody. Such data can inform future proposals for public defender programs, as well as identify current gaps in defense delivery among particular offices.

- ◆ **Examine whether and how counties are adhering to the Fair Defense Act and H.B. 1178 [80(R)].**

H.B. 1178 (effective 2007) requires that a defendant facing jail time (a) understands s/he has a right to an attorney, (b) has an opportunity to request the assistance of counsel prior to talking to a prosecutor about the facts of the case and/or agreeing to a plea bargain, and (c) has the option of seeking out an attorney without losing the opportunity to request appointed counsel if, ultimately, the individual cannot afford to hire an attorney.

Despite these mandates, some courts may continue to operate as "plea mills," in which prosecutors obtain uncounseled waivers of the right to counsel from defendants and judges are there to rubber stamp any subsequent plea agreement made. These practices invite constitutional challenges to the finality of convictions by raising serious questions about whether such waivers are knowing and voluntary, and thus valid. Policy-makers should study this key issue during the next legislative interim.

■ **Support mental health services and strategies throughout the state.**

- ◆ **Continue to commit necessary funding to state and localized mental health programs.**

Building on the successes of previous legislative sessions through continued investments in mental health services will best meet the demand of growing populations and more responsibly satisfy the obligation to provide adequate services to those in need.

Assistance is especially crucial in two areas:

- (1) **State hospital facilities:** It is imperative that individuals declared incompetent to stand trial are not turned away from state mental hospitals because they are already operating at capacity. This forces clogged county jails to pay to hold inmates awaiting treatment and competency restoration. For instance, approximately 80 inmates per day are sitting in Harris County's jail waiting for a state hospital slot to open.²⁸⁵ In Dallas County, 90 people are waiting, sometimes for as long as two months,²⁸⁶ while in Bexar County the list is also close to 100 individuals long.²⁸⁷

To reduce these waiting lists, policy-makers must make a serious commitment to do the following: build additional state hospital facilities to address the needs of the seriously mentally ill, provide for additional "forensic" beds to assist individuals in need of competency restoration, and ensure staff are properly trained to offer an adequate level of care for those they are tasked with treating. Again, local jails – which are not equipped to handle serious mental health problems – cannot continue to shoulder the financial and safety burdens of a responsibility that lies with the state.

(2) Community health centers: Not only must policy-makers expand and fund local competency restoration pilot sites, they must support the efforts of community mental health centers that are strengthening their re-entry capacity. Indeed, community-based centers can assist those who have left county jail confinement, providing medication and medical supervision to ensure an easier transition to the community. Ideally, a seven-day supply of medication can help individuals remain stabilized while affording time to see a doctor.²⁸⁸

In a 2010 report to the Texas Department of State Health Services, the need for expanded community support beyond previous resource levels is underscored:

The number of crisis consumers served has increased from 52,000 in 2007 to a projected 98,000 in 2009. This level of increase over a two year period has placed stresses on all service systems involved [including] law enforcement agencies, emergency rooms, and courts [...]. In the absence of further investment in measures to help [Local Mental Health Authority] partners deal with the growing number of crisis cases, there is a risk of burnout and alienation within community support networks statewide.²⁸⁹

Sadly, in light of the state's upcoming budget shortfall, the Department of State Health Services has had to propose \$134 million in cuts to mental health, which, if approved, would effectively deny both inpatient and outpatient care to 20,000 people and likely force many into (more costly) county jails.²⁹⁰

The state must make a fundamental change in approach towards the over-criminalization of the mentally ill. Every effort must be made to ease the long-term burden on county taxpayers, while more immediately assisting current treatment providers and ensuring more appropriate care for those in need.

◆ **Require judges and attorneys (both prosecutors and defense counsel) to receive additional training on mental health and substance abuse issues if they take or hear criminal cases.**

Curricula that teach practitioners to recognize, communicate with, and handle mentally ill defendants will raise the likelihood that individuals with mental health issues receive access to needed treatment outside jail walls. Likewise, supplemental training in substance abuse is imperative, as mentally ill individuals often use drugs to self-medicate, and co-occurring disorders require specialized treatment programs.

◆ **Address protocols for taking mentally ill individuals into custody.**

Mentally ill individuals confronted with the stresses of confinement are at increased risk of decompensation. As such, law enforcement should be prohibited from transporting a mentally ill person to a jail or a similar detention facility *unless* a treatment facility is unavailable or is located more than 75 miles from the location where the person is taken into custody.

In the event that jail is the resulting option, mentally ill individuals should not be housed with any person who is charged with or convicted of a crime. Likewise, they should not be detained in such facilities longer than 12 hours. Instead, the priority must be transfer to (a) the nearest appropriate in- or outpatient mental health facility, (b) a mental health facility deemed suitable by the local mental health authority, or (c) a medical facility or other facility deemed suitable by the local mental health authority.

Finally, with regards to the restraints used when transporting a person with a mental illness, they should permit him or her to sit in an upright position without undue difficulty.

■ Support the Texas Commission on Jail Standards (TCJS).

TCJS is responsible for setting constitutional jail standards and conducting inspections of jail facilities to enforce compliance with rules and procedures. *(Please see Appendix A for a more comprehensive description of TCJS' critical mission, funding, and duties.)* While counties strive to slow jail overcrowding through population management strategies, TCJS must be provided the resources to assist in the overall effort and to keep Texas jails safe, well regulated, legally compliant, and run by educated, professional leadership.

First, the state should increase the funding appropriated to TCJS so it can improve its overall functions. More specifically, TCJS would benefit from additional funding for the following:

- ◆ **General operations** to continue the valuable services offered by TCJS to local governments, jail staff, inmates, and the general public.
- ◆ **More staff and inspectors.** It is nearly impossible for five TCJS inspectors to comprehensively examine each of the 245 jails under its jurisdiction, as well as provide localized staff with timely technical assistance, complaint investigations, oversight of medical and mental health practices, and clarifications on standards. Additional, qualified inspectors would increase the frequency of inspections. Likewise, the uniformity and quality of inspections would improve as inspectors more consistently enforced regulations and allocated sufficient time to meet local needs. Lastly, additional staffing would help counties with aging facilities in their efforts to comply with current standards.
- ◆ **More training and resource availability.** The better trained Texas' jail staff are, the more equipped they are to perform at high and professional standards. Unfortunately, in many counties – big and small – budgets are often stretched thin, preventing jail administrators and personnel from attending trainings, including in such critical areas as classification, population reports, and paper-ready processes. The Legislature should provide additional resources to TCJS so that it can continue to offer free, on-site trainings to jail personnel in regards to safety and compliance standards, both during and outside of their inspections.

TCJS should also be resourced to distribute additional educational materials or reports as necessary, as well as offer timely information to counties regarding rules changes and legislative updates.

In addition to ensuring that TCJS can maintain current personnel and conduct critical functions, the Legislature should fully equip TCJS to **expand its educational role in the prevention of jail overcrowding**. The agency is well positioned to aid jail administrators, county commissioners, and others in developing the localized diversion and corrections-level strategies necessary to reduce local populations.

Finally, TCJS should be fully equipped to **assist jail administrators and local officials in their efforts to implement innovative re-integration models to slow recidivism**. A large number of individuals exiting Texas' county jails are incarcerated for periods long enough to lose their employment, their housing, and, ultimately, the ability to support themselves and their families. To prevent individuals from falling back on crime as a means of survival, TCJS should be given additional staff who can focus solely on release planning – including through technical assistance for programs that provide rehabilitation, education, and re-integration support. Such programs could include (a) group counseling, (b) drug education, (c) basic education programs, (d) transition planning, and (e) aftercare planning.

County Commissioners

- Encourage local law enforcement, attorneys, and judges to fully implement Art. 14.06, Code of Criminal Procedure, so that individuals can be cited and summoned rather than immediately arrested and booked for certain nonviolent offenses [pages 12-13].
- In the absence of a state mandate to do so, require the offenses under the purview of Art. 14.06 – as well as various Class C misdemeanors – to be non-jailable, and instead have violators pay a fine and/or provide some other remuneration, such as community service or victim restitution [page 13].
- Bring additional low-level offenses under cite-and-summons policies to further reduce jail overcrowding and keep law enforcement’s focus on higher-risk individuals [pages 13-14].
- Encourage and fund an expansion of alternatives to incarceration for mentally ill individuals. This could include (a) collaborations with local law enforcement and treatment providers to implement preemptive, pre-booking diversion programs (e.g., Crisis Intervention Teams) for individuals with mental illness and/or co-occurring disorders; (b) collaborations with local attorneys, judges, and treatment providers to implement mental health dockets that more effectively address specialized needs; and (c) collaborations with local law enforcement, attorneys, judges, probation leadership, and treatment providers to develop and expand cost-effective treatment diversion programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 21-26].
- Fund an expansion of diversion programs for individuals with nonviolent offenses, and encourage law enforcement, local attorneys, judges, probation leadership, and/or treatment providers to collaborate in their utilization, which will remove pressure on local jails. Such programs could include day reporting centers with intensive supervision; centralized, community-based receiving centers that direct individuals into treatment; short-term detoxification and referral facilities; and community-policing programs that respond to specialized populations [pages 27-30].
- Fund the establishment and expansion of public defender offices and assigned counsel programs, and encourage local attorneys and judges to participate in their use. This will better ensure that defendants have access to timely appointment of counsel and are provided with the specialized knowledge and resources to navigate the criminal justice system, including those suffering from mental illness [pages 33-35].
- Encourage local jail administrators to implement more efficient data tracking systems to improve coordination with county leadership and increase transparency [page 37].
- Encourage local law enforcement and jail administrators to collaborate with attorneys and judges to implement more efficient direct-filing systems at county jails to speed case processing, and encourage jail administrators to collaborate with attorneys and judges to implement other fast-tracking systems to speed case processing. This could include allowing pleas at in-jail meetings with prosecutors, having a judge make daily misdemeanor “jail runs” or hold more frequent misdemeanor arraignments, creating specialized dockets, and utilizing additional courts. *Note:* The right to counsel must be protected at all points during case processing [pages 37-39].
- Encourage local jail administrators and judges to fully implement the requirement of manual labor in appropriate instances, and encourage jail administrators to put in place policies that would allow 2- or 3-for-1 “good time” credit towards time served to encourage proper inmate behavior [pages 31, 45].
- Encourage local attorneys and judges to take measures to improve the number of low-risk individuals successfully released from jail on bond or bail. These could include utilizing pre-trial services divisions to identify defendants who are eligible for release; increasing the use of personal bonds; reducing bond and bail amounts (which minimizes reliance on bail bondsmen); allowing eligible, indigent defendants to

return to the community pre-trial; and imposing the least restrictive conditions for release on bond. *Note:* Judges who override a pre-trial services division’s recommendation for release should be required to track each override and report that data to the county, to explain why jail time was warranted [pages 40-44].

- Invest in additional staff at existing pre-trial services divisions to expedite screenings and go further towards reducing jail overcrowding [page 41].
- Encourage local attorneys and judges to collaborate with probation leadership and treatment providers to reduce the over-sanctioning of probation and parole violators (especially for technical violations) through the use of progressive sanctions and other alternative-to-incarceration measures [pages 47-48].

Additional Recommendations

■ Encourage policy-makers to support strategies that increase much-needed state revenue rather than making harmful budget cuts to critical programs.

As noted in the *Statewide Policy-Makers* section on page 54, the Legislature must alleviate financial pressures on already over-burdened counties, including by (a) taking advantage of the Rainy Day Fund, (b) maximizing the use of available federal funding, and (c) creating new, equitable sources of revenue that can grow with the need for public services, including through the elimination of unproductive tax breaks. County commissioners must press for these strategies to protect the programs that assist their jail population-reduction efforts.

■ Stop renting beds to federal prisoners without careful planning.

As discussed in Parts 1 and 2, counties can enter into federal contracts to house a certain number of federal prisoners. Poor planning in regards to such agreements can pose significant financial setbacks for counties. For instance, some counties are in long-term contracts that require them to maintain a specific number of beds strictly for federal inmates. If local, non-federal inmates ultimately exceed the jail’s capacity of regular beds, the federal beds cannot be used – even if they are sitting empty. This can force counties to house their local inmates elsewhere, sometimes paying those counties more money per inmate than they receive for each federal inmate. Other counties have preemptively built a facility hoping to house federal inmates, only later failing to secure a federal contract, leaving the facility empty – at another enormous expense to taxpayers.²⁹¹

Before entering into potentially harmful “rent a bed” agreements, county commissioners should meet with law enforcement and jail administrators to evaluate current arrest policies and estimate likely, future influxes into the local jail.

■ Require law enforcement agencies to reimburse local jails for certain arrestees’ booking and per diem fees.

Officers who override a local cite-and-summons policy, instead arresting and booking an individual eligible for release under Art. 14.06, Code of Criminal Procedure, should be responsible, via their agency, for associated costs to the jail. Already, jails in other states have begun charging municipalities booking and per diem fees for arrestees brought to the jail, which decreases admissions through the incentivized use of citation release.²⁹² *Note:* County leadership in jurisdictions without cite-and-summons policies should mandate certain offenses as divertible and effectively create a similar practice there.

■ Proactively target “frequent flyers,” who cycle in and out of jails at high rates.

Counties must take steps to address the needs of individuals who are creating the greatest strain on law enforcement and emergency room resources. The following strategies can be duplicated or tailored to meet localized needs:

- ◆ In Bexar County in late 2008, the Commissioners Court approved the formation of a local **Mental Health Advocacy Initiative** (MHAI) to identify and assist mentally ill offenders who repeatedly cycle through jail.²⁹³ Specifically, MHAI’s target population includes (a) nonviolent mentally ill inmates who have had more than one incarceration during the previous 12 months, and (b) mentally ill inmates who are unable to participate in their own defense.²⁹⁴ Once identified, these individuals can volunteer for participation during their probation term. Each is provided with an individualized treatment plan – created with the input of the judge, attorneys, mental health professionals, and the participant him- or herself – which links the individual with needed services and support before leaving jail.²⁹³ Participants also receive intensive case management for a year following release, which better ensures they remain stabilized and law-abiding in the long term.²⁹⁵
- ◆ In Houston, law enforcement determined that 30 mentally ill “frequent flyers” were responsible for “194 calls for service resulting in 194 offense reports and 165 [Emergency Detention Orders] from six of their most active months recorded in the [Houston Police Department (HPD)] database.”²⁹⁶ In response, HPD developed a pilot program called the **Chronic Consumer Stabilization Initiative** – a joint collaboration with the Mental Health Mental Retardation Authority of Harris County and the City of Houston Health and Human Services Department – which ran during the first half of 2009. At the initiation of the program, two licensed case managers made contact with the 30 individuals and conducted assessments of each person’s medical history, habitual system involvement, and prior programming participation.²⁹⁷ For six months, the case managers supervised individuals in the community, making daily visits in efforts to link them to available housing, medical or mental health services, substance abuse treatment, and other public, financial, or legal assistance as needed.²⁹⁸ Ultimately, final program data showed “a 70% DECREASE in overall events reported by the police department. This represents a significant reduction of police contacts,” including calls for service, emergency detention orders, and offense reports.²⁹⁹

In addition to saving law enforcement time (768 manpower hours) and reducing related operational costs,³⁰⁰ the pilot also minimized strain on hospitals.³⁰¹ Furthermore, findings show that if the pilot were expanded to reach 60 individuals under the supervision of four caseworkers with the assistance one dedicated law enforcement officer, it would save the city \$867,793 the first year (excluding jail cost savings) while costing only \$282,364 to implement.³⁰² Lieutenant Mike Lee, who runs HPD’s Mental Health Unit, stated in regards to their pilot program, “Even with the success we’ve seen, we all know that it has much more potential. Just with our little experiment, we know we can make a difference in keeping people out of jail. And ultimately keeping someone from getting killed.”³⁰³

Counties with jail systems burdened by frequent flyers should identify as many individuals as possible (500 – 1,000) to participate in a similar program and prioritize their community supervision, with caseworkers who can provide service referrals and monitor their activities.³⁰⁴

■ **Ensure courts are fully staffed and employees are suitably trained.**

One contributor to court docket backlogs is understaffing at the court level. Overburdened judicial personnel – as well as employees who lack proper training – can cause clerical errors and other delays. This increases lag time for individuals in jail awaiting trial or release. Sufficient staffing and training are key to preventing administrative bottlenecks.

■ **Minimize Failure to Appear (FTA) warrants by establishing a court date notification system.**

Individuals who are not under the supervision of the local pre-trial services division do not receive reminders from staff about upcoming hearing dates. This, in turn, can increase the likelihood of a person failing to appear before the judge and subsequently have an FTA warrant issued for him or her. Not only do FTAs waste judges' time, they force law enforcement to expend valuable resources arresting those with outstanding warrants. Furthermore, they repeatedly fill jail beds with individuals who missed their court dates and now cannot post bail because of the charge.³⁰⁵

Various jurisdictions have implemented a court date notification system to reduce the rates of FTA incidences. For example, the Multnomah County, Oregon Circuit Court created an automated dialing system that calls defendants up to three times prior to each court appearance and leaves a 30-second, prerecorded message about the date, time, and location of the hearing. Annually, the program is estimated to save up to \$6.4 million in staff time.³⁰⁶

■ **Invest in affordable housing options for returning individuals.**

Individuals with criminal records often face housing barriers while attempting to transition back to society. Those who are chronically homeless, mentally ill, struggling from drug abuse, and/or on probation and considered high risk for re-offending are especially likely to recidivate without a stable home. Yet many neighborhoods are unwilling to develop halfway houses or shelters for fear of the wrong "element" on their streets.

However, an investment in structured housing facilities can reduce both crime and victims by keeping high-risk populations from engaging in criminal behavior as a means of survival. Facilities that go a step further and provide supportive services can further reduce the obstacles facing re-entering individuals. Round-the-clock treatment, referrals to education and employment opportunities, assistance with public benefits (e.g., Social Security or food stamps), information on community health care programs, and transportation services³⁰⁷ minimize the likelihood of recidivistic behavior that is currently straining the criminal justice system. Emergency rooms, too, will benefit as more mentally ill individuals are cared for in supportive housing.

Note: Many re-entering individuals are returning to high-stakes communities, where high poverty and crime levels can jeopardize one's attempts to maintain law-abiding behavior. County leadership should consider allocating housing funds to these particular communities to target areas most in need.³⁰⁸

■ **Change the county’s approach to immigration, specifically by prohibiting local law enforcement from taking on Immigration and Customs Enforcement (ICE) responsibilities.**

Current practices by some local law enforcement agencies³⁰⁹ target, detain, and/or arrest day laborers, minor traffic violators, and other people who appear to be immigrants. This crowds jails with low-level misdemeanants (*see note below*) rather than serious public safety threats. Indeed, according to a report by the U.S. Department of Homeland Security’s Inspector General’s Office, which evaluated the process and outcomes of 287(g), “these results do not show that 287(g) resources have been focused on aliens who pose the greatest risk to the public.”³¹⁰

Another drawback of this enforcement strategy is that, despite fulfilling ICE obligations, local law enforcement agencies receive no money to pay local police salaries, instead shifting enforcement and detention costs to local governments and taxpayers.³¹¹ Furthermore, such practices necessitate that more detainees undergo immigration screening processes, leading to long delays in processing for all booked individuals, and further filling already overcrowded jails.

County commissioners should limit law enforcement agency resources to strategies that fight high-level crime among local populations and leave immigration enforcement to ICE.

Note: When ICE places a “hold” on detainees in county jails who are awaiting transfer to another facility, such individuals are not permitted to be released on personal bond. Pre-trial services divisions can at least take preemptive efforts to expedite these cases by conducting an interview and assessment of each detainee. Then, in the event the hold is removed, the judge can be notified more quickly of that individual’s eligibility for bond release.³¹²

Law Enforcement

- Collaborate with attorneys and judges to fully implement Art. 14.06, Code of Criminal Procedure, so that individuals can be cited and summoned rather than immediately arrested and booked for certain nonviolent offenses. *Note:* In efforts to minimize warrant arrests, law enforcement officers must stress to those who receive citations that failure to appear at a scheduled magistration hearing can result in an arrest and jail time [pages 12-13].
- Commit to an expansion of alternatives to incarceration for mentally ill individuals. This could include (a) collaborations with treatment providers to implement preemptive, pre-booking diversion programs (e.g., Crisis Intervention Teams) for individuals with mental illness and/or co-occurring disorders; and (b) collaborations with attorneys, judges, probation leadership, and treatment providers to develop and expand cost-effective treatment diversion programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 21-22, 23-26].
- Collaborate with attorneys, judges, probation leadership, and treatment providers to expand and utilize diversion programs for individuals with nonviolent offenses. These could include centralized, community-based receiving centers that direct individuals into treatment; short-term detoxification and referral facilities; and community-policing programs that respond to specialized populations [pages 28-30].
- Collaborate with jail administrators, attorneys, and judges to implement more efficient direct-filing systems at county jails to speed case processing [pages 37-38].

Additional Recommendations

■ Stop using jails to carry out debt collection efforts.

Numerous Texas law enforcement agencies have held annual warrant roundups to target individuals with outstanding traffic violations (Class C misdemeanors) and other offenses.³¹³ Arrestees fill overcrowded jails with people who cannot afford to pay fines, often costing taxpayers more than the county would otherwise have earned with the money paid by the misdemeanants.³¹⁴

One way to more expeditiously and cost-effectively resolve warrants is by implementing the **“Fugitive Safe Surrender” program**:

Fugitive Safe Surrender is an increasingly popular initiative currently in 16 cities that involves the collaboration of efforts by U.S. Marshals and local law enforcement agencies with local faith-based organizations and leaders. The program establishes churches as meeting points for people with outstanding arrest or bench warrants to report on predetermined dates/times. This puts the onus on the person with the outstanding warrant to resolve their case, rather than expending law enforcement resources. Judges are on-hand at the meeting points in order to expedite the trial process. While the program primarily targets people charged with nonviolent offenses, those with a warrant for any type of offense are welcomed to surrender. Most cases can be disposed of immediately, but in some instances the nature of the offense or warrant may require that the person be arrested, which is done discreetly to avoid deterring other participants.³¹⁵

Fugitive Safe Surrender programs can result in thousands of people resolving their warrants on-site.³¹⁶

■ **Implement various community policing strategies.**

Studies have found that “community policing encourages [...] officer discretion – police leniency with minor crimes and disorders – to achieve longterm problem reduction.”³¹⁷ Where possible, local law enforcement agencies should implement model risk-reduction programs and problem-solving strategies that seek to improve the trust between community members and law enforcement. Doing so better enables officers to identify and address individuals’ criminal behavior.

One successful community-policing program is the **Dallas Police Department’s Prostitute Diversion Initiative** (PDI, *discussed in Part 3 on page 30*). As noted, it allows law enforcement to work with low-level, non-violent individuals at high risk of recidivism during the pre-arrest stage.

Another successful pre-booking program is **Law Enforcement Assisted Diversion** (LEAD), which is utilized by officers in Seattle, Washington. Like the PDI, it stresses both immediate access to services and participant accountability, although the target is low-level drug users for whom probable cause exists for an arrest. Officers receive extensive training to recognize the needs of those with substance abuse issues. They are under clear mandate to immediately divert the individuals into community-based treatment with access to support services.³¹⁸ To boost the program’s efficacy, “peer outreach workers and case managers serve as community guides, coaches, and/or advocates, who work to link diverted individuals to housing, vocational and educational opportunities and community services, while also providing credible role models of success.”³¹⁹ Community members have the option of providing program feedback, which is especially important in tailoring strategies to different drug “hot spots.”³²⁰ Again, this program strives to change behavior, the key to positively impacting participants, freeing them from the life-long burdens associated with criminal records, and improving the quality of life in their communities – all while saving costs of trial, defense, and incarceration.³²¹

District Attorneys

- Allow law enforcement to fully utilize Art. 14.06, Code of Criminal Procedure, to cite and summon individuals rather than immediately arrest and book them for certain nonviolent offenses [pages 12-13].
- Collaborate with judges, probation leadership, and treatment providers in the utilization of Article 42.12, Code of Criminal Procedure, and Article 12.44, Penal Code, to allow community supervision and drug treatment for individuals convicted of low-level drug offenses [pages 15-16].
- Collaborate with judges, probation leadership, and treatment providers to place non-dangerous individuals with a first-time drug possession offense on community supervision and in a tailored substance abuse program, if the judge determines the defendant would be amenable to treatment [page 16].
- Commit to an expansion of alternatives to incarceration for mentally ill individuals. This could include (a) collaborations with judges and treatment providers to implement mental health dockets that more effectively address specialized needs; and (b) collaborations with law enforcement, judges, probation leadership, and treatment providers to develop and expand cost-effective treatment programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 22-26].
- Collaborate with law enforcement, judges, probation leadership, and treatment providers to expand and utilize diversion programs for individuals with nonviolent offenses. These could include day reporting centers with intensive supervision, and centralized, community-based receiving centers that direct individuals into treatment [pages 27-29].
- Work with judges to implement pre-trial victim-offender mediation programs in appropriate circumstances [page 30].
- Collaborate with judges and treatment providers to establish and expand public defender offices and assigned counsel programs. Doing so will better ensure that defendants have access to timely appointment of counsel and are provided with the specialized knowledge and resources to navigate the criminal justice system, including those suffering from mental illness [pages 33-35].
- Collaborate with law enforcement, jail administrators, and judges to implement more efficient direct-filing systems at county jails to speed case processing, and collaborate with jail administrators and judges to implement other fast-tracking systems to speed case processing. This could include allowing pleas at in-jail meetings with prosecutors, having a judge make daily misdemeanor “jail runs” or hold more frequent misdemeanor arraignments, creating specialized dockets, and utilizing additional courts. *Note:* The right to counsel must be protected at all points during case processing [pages 37-39].
- Collaborate with judges and treatment providers to improve the number of low-risk individuals successfully released from jail on bond or bail. This could be accomplished by relying on recommendations by pre-trial services divisions to identify defendants who are eligible for release; increasing the use of personal bonds; reducing bond and bail amounts (which minimizes reliance on bail bondsmen); allowing eligible, indigent defendants to return to the community pre-trial; and imposing the least restrictive conditions for release on bond [pages 40-44].
- Work with judges to expedite the post-conviction appeals process for those awaiting resolution in jail [page 45].
- Collaborate with judges, as well as probation leadership and treatment providers, to reduce the over-sanctioning of probation and parole violators (especially for technical violations) through the use of progressive sanctions and other alternative-to-incarceration measures [pages 47-48].

Additional Recommendations

■ Maintain a lower prosecution rate.

Criminal justice experts argue that a 50% non-prosecute rate could indicate “an exceedingly well-run office” and make significant reductions in swelling jail populations.³²² In fact, refusing to prosecute a nominal case at the beginning of the process – rather than dismissing it after charges have been filed – allows for additional low-level violators to be released from overcrowded jails (instead of awaiting a trial that may never happen). Furthermore, responsible use of the screening process eases overburdened court dockets and attorney caseloads.

■ Encourage full implementation of H.B. 1178 [80(R)].

As described above on page 55, H.B. 1178 protects the right to counsel. Both district attorneys and judges must take precautions to ensure that they are complying with the mandates of this legislation, as well as with the Texas Fair Defense Act of 2001.

Judges

- Allow law enforcement to fully utilize Art. 14.06, Code of Criminal Procedure, to cite and summon individuals rather than immediately arrest and book them for certain nonviolent offenses [pages 12-13].
- Collaborate with attorneys, probation leadership, and treatment providers in the utilization of Art. 42.12, Code of Criminal Procedure, and Art. 12.44, Penal Code, to allow community supervision and drug treatment for individuals convicted of low-level drug offenses [pages 15-16].
- Collaborate with attorneys, probation leadership, and treatment providers to place non-dangerous individuals with a first-time drug possession offense on community supervision and in a tailored substance abuse program, if it is determined that the defendant would be amenable to treatment [page 16].
- Commit to an expansion of alternatives to incarceration for mentally ill individuals. This could include (a) collaborations with attorneys and treatment providers to implement mental health dockets that more effectively address specialized needs; and (b) collaborations with law enforcement, attorneys, probation leadership, and treatment providers to develop and expand cost-effective treatment programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 22-26].
- Collaborate with law enforcement, attorneys, probation leadership, and treatment providers to expand and utilize diversion programs for individuals with nonviolent offenses. These could include day reporting centers with intensive supervision, and centralized, community-based receiving centers that direct individuals into treatment [pages 27-29].
- Work with attorneys to implement pre-trial victim-offender mediation programs in appropriate circumstances [page 30].
- Collaborate with jail administrators to fully implement the requirement of manual labor in appropriate instances [page 31].
- Collaborate with attorneys and treatment providers to establish and expand public defender offices and assigned counsel programs. Doing so will better ensure that defendants have access to timely appointment of counsel and are provided with the specialized knowledge and resources to navigate the criminal justice system, including those suffering from mental illness [pages 33-35].
- Notify defendants that they are permitted an appointed attorney in cases of probation revocations and appeals proceedings [page 36].
- Collaborate with law enforcement, jail administrators, and attorneys to implement more efficient direct-filing systems at county jails to speed case processing, and collaborate with jail administrators and attorneys to implement other fast-tracking systems to speed case processing. This could include allowing pleas at in-jail meetings with prosecutors, having a judge make daily misdemeanor “jail runs” or hold more frequent misdemeanor arraignments, creating specialized dockets, and utilizing additional courts. *Note:* The right to counsel must be protected at all points during case processing [pages 37-39].
- Take responsibility for speedy dockets while protecting defendants’ rights [page 39].
- Collaborate with attorneys and treatment providers to improve the number of low-risk individuals successfully released from jail on bond or bail. This could be accomplished by relying on recommendations by pre-trial services divisions to identify defendants who are eligible for release; increasing the use of personal bonds; reducing bond and bail amounts (which minimizes reliance on bail bondsmen); allowing eligible, indigent defendants to return to the community pre-trial; and imposing the least restrictive conditions for release on bond [pages 40-44].

- Work with attorneys to expedite the post-conviction appeals process for those awaiting resolution in jail [page 45].
- Collaborate with attorneys, as well as probation leadership and treatment providers, to reduce the over-sanctioning of probation and parole violators (especially for technical violations) through the use of progressive sanctions and other alternative-to-incarceration measures [pages 47-48].

Additional Recommendation

- **Encourage full implementation of H.B. 1178 [80(R)].**

As described above on page 55, H.B. 1178 protects the right to counsel. Both judges and district attorneys must take precautions to ensure that they are complying with the mandates of this legislation, as well as with the Texas Fair Defense Act of 2001.

Probation and Parole Leadership

- Collaborate with attorneys, judges, and treatment providers in the utilization of Art. 42.12, Code of Criminal Procedure, and Art. 12.44, Penal Code, to allow community supervision and drug treatment for individuals convicted of low-level drug offenses [pages 15-16].
- Collaborate with attorneys, judges, and treatment providers to place non-dangerous individuals with a first-time drug possession offense on community supervision and in a tailored substance abuse program, if the judge determines the defendant would be amenable to treatment [page 16].
- Focus investments in community supervision on evidence-based practices, including with regards to staffing, assessments, programming, training, incentives, and sanctions. Doing so will more effectively keep crime rates down and reduce current obstacles (including backlogs) that are hindering treatment providers and their clients [pages 17-20].
- Use case “expeditors” to reduce pre-trial jail overcrowding [page 20].
- Commit to an expansion of alternatives to incarceration for mentally ill individuals. This could include collaborations with law enforcement, attorneys, judges, and treatment providers to develop and expand cost-effective treatment programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 23-26].
- Collaborate with law enforcement, attorneys, judges, and treatment providers to expand and utilize diversion programs for individuals with nonviolent offenses. These could include day reporting centers with intensive supervision, and centralized, community-based receiving centers that direct individuals into treatment [pages 27-29].
- Collaborate with treatment providers to inform attorneys and judges about the need for reducing the over-sanctioning of probation and parole violators (especially for technical violations) through the use of progressive sanctions and other alternative-to-incarceration measures [page 48].

Treatment Providers

- Collaborate with attorneys, judges, and probation leadership in the utilization of Art. 42.12, Code of Criminal Procedure, and Art. 12.44, Penal Code, to allow community supervision and drug treatment for individuals convicted of low-level drug offenses [pages 15-16].
- Collaborate with attorneys, judges, and probation leadership to place non-dangerous individuals with a first-time drug possession offense on community supervision and in a tailored substance abuse program, if the judge determines the defendant would be amenable to treatment [page 16].
- Collaborate with probation leadership to focus investments in community supervision on evidence-based practices, including with regards to assessments, programming, incentives, and sanctions. Doing so will more effectively keep crime rates down and reduce current obstacles (including backlogs) that are hindering treatment providers and their clients [pages 17-20].
- Commit to an expansion of alternatives to incarceration for mentally ill individuals. This could include (a) collaborations with law enforcement to implement preemptive, pre-booking diversion programs (e.g., Crisis Intervention Teams) for individuals with mental illness and/or co-occurring disorders; (b) collaborations with attorneys and judges to implement mental health dockets that more effectively address specialized needs; and (c) collaborations with law enforcement, attorneys, judges, and probation leadership to develop and expand cost-effective treatment diversion programs, wrap-around services, and outpatient competency restoration centers that provide care and counseling to those with mental health issues, including veterans [pages 21-26].
- Collaborate with law enforcement, attorneys, judges, and probation leadership to expand and utilize diversion programs for individuals with nonviolent offenses. These could include day reporting centers with intensive supervision; centralized, community-based receiving centers that direct individuals into treatment; and community-policing programs that respond to specialized populations [pages 27-29, 30].
- Collaborate with attorneys and judges to establish and expand public defender offices and assigned counsel programs. Doing so will better ensure that defendants have access to timely appointment of counsel and are provided with the specialized knowledge and resources to navigate the criminal justice system, including those suffering from mental illness [pages 33-35].
- Assist pre-trial service divisions that have identified defendants who are eligible for release and require treatment services [page 40].
- Collaborate with probation leadership to inform attorneys and judges about the need for reducing the over-sanctioning of probation and parole violators (especially for technical violations) through the use of progressive sanctions and other alternative-to-incarceration measures [pages 47-48].

Jail Administrators / Corrections / TDCJ Personnel

- Implement more efficient data tracking systems to improve coordination and transparency [page 37].
- Collaborate with law enforcement, attorneys, and judges to implement more efficient direct-filing systems at county jails to speed case processing, and collaborate with attorneys and judges to implement other fast-tracking systems to speed case processing. This could include allowing pleas at in-jail meetings with prosecutors, having a judge make daily misdemeanor “jail runs” or hold more frequent misdemeanor arraignments, creating specialized dockets, and utilizing additional courts. *Note:* The right to counsel must be protected at all points during case processing [pages 37-39].
- Collaborate with judges to fully implement the requirement of manual labor in appropriate instances, and put in place policies that would allow 2- or 3-for-1 “good time” credit towards time served to encourage proper inmate behavior [pages 31, 45].

Additional Recommendation for Jail Administrators

- **Evaluate all possible means of providing resources to certain inmates to expedite their removal from jail.**

Jail administrators must assess both current and potential options for inmates who could benefit from more specialized care outside of jail confinement. For instance, the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) is seeking to amend the Screening Form for Suicide and Medical and Mental Impairments to determine an inmate’s previous military service and, thus, potential eligibility for veterans’ benefits.³²³ This could accelerate an inmate’s diversion from jail into a mental health facility. Similar strategies could be put in place directly by jail administrators to better manage and care for their current populations.



Additional Recommendation for TDCJ Personnel

- **Where possible, TDCJ must accept paper-ready inmates sitting in county jails.**

Inmates sentenced to TDCJ’s Institutional Division are required to be accepted by that entity within 45 days of having their paperwork completed and being ready for transfer.³²⁴ However, many paper-ready detainees spend much longer than the 45-day span in county jails, contributing to overcrowding issues.

In fact, as of April 1, 2010, Texas’ county jails held 3,176 paper-ready inmates:³²⁵

Less Than 45 Days	2,755
45 Days or More	200
SAFP-ready	221

TDCJ personnel must make every effort to accept paper-ready inmates to relieve counties of overcrowded facilities. For instance, Travis County recently decreased its jail population by almost 17%, due in part to TDCJ’s

more expeditious transfer of prisoners from jail to prison after they had been sentenced.³²⁶ Other counties with overcrowding issues could experience similar benefits.

Note: Although overcrowded prisons themselves may be partly to blame for TDCJ's inability to transfer inmates, other problems may lie in ineffective, outdated modes of information transfer. Seemingly, most of the documentation needed by TDCJ for transfer (outlined in Art. 42.09, Code of Criminal Procedure) could be transmitted electronically. Indeed, only the judgment and sentence or revocation order would likely require hard transmissions (though even a judgment could be scanned and certified electronically as authentic). Provided TDCJ has the technological means to accept documents electronically (or the willingness to examine the feasibility of doing so), such a system could expedite transfers while reducing paper costs, and, potentially, human clerical errors.

However, in the absence of such a system, counties should consider increasing administrative staffing to expedite case file processing and better facilitate county-to-state transfers.

Re-Entry Specialists

Re-entry practitioners are a significant piece of the puzzle in terms of keeping recidivism rates (and, thus, incoming jail populations) low. Especially for felons, assistance upon re-entry is crucial. The collateral consequences of a felony conviction include a life-long series of legal barriers and roadblocks severely limiting access to fundamental necessities. Misdemeanants, too, can face challenges in a variety of areas, including employment, child custody, housing, and public assistance benefits. Texas must invest in sustainable systems to return people to their communities in a responsible and effective way.

During each individual's intake process into jail, his or her criminal history, drug/alcohol history, and history of mental illness should be assessed to determine severity. This can inform an **individualized plan** best suited to respond to each person's particular needs. The tailored transition plan could involve participation in education programs (literacy or G.E.D. certification), substance abuse treatment, and/or cognitive behavioral programming (possibly with a focus on disengaging from gang membership). The plan could also provide for assistance in (a) obtaining identification documents, such as a birth certificate or a social security card, or (b) obtaining or re-instating public benefits, such as Social Security or Medicaid.³²⁷ Both would further ease re-entering individuals' transition back to the community.

Especially with regards to "frequent flyers" (those who cycle in and out of incarceration at high rates, many of whom are mentally ill), improved population management requires a **multi-level referral network**. Agencies must collaborate by "integrating databases and improving communication at the staff level so that jail administrators and counselors can tell detainees exactly where to go upon their release."³²⁸

In this respect, housing and employment assistance are crucial. Many who cycle through jail are homeless and will likely return to the streets – and to crime – without a housing assessment and help finding supportive services. Likewise, those with jobs and homes prior to entering jail can jeopardize both by spending weeks or months in incarceration, in turn drastically increasing their chances of re-offending upon release.³²⁹ Job preparedness programs can be especially key for those who know they will need employment assistance. Classes to build résumé and interview skills, as well as events like in-jail job fairs, can assist exiting inmates in finding and maintaining employment in their communities.³³⁰

It is imperative that corrections and re-entry stakeholders collaborate to strengthen Texas' social support infrastructure. Together, they must develop programs and services that promote success for individuals and families, as well as aid neighborhoods to which high concentrations of previously incarcerated men and women return. Mentally ill individuals are especially in need of assistance upon release, with follow-up care a necessity to ensure medication regimens are adhered to and appointments are kept. Through the collection and analysis of data on the number of individuals who successfully complete programs, treatment regimens, and classes (as well as data on those who return to jail), corrections personnel, county leadership, and re-entry specialists can provide more effective services to populations in need.³³¹

Model Re-Entry Program

A re-entry program in Pennsylvania has successfully reduced recidivism rates (69%) and increased employment rates (64%) for those leaving jail. Called the Berks Community Resources Network, it is a group of over 35 non-profit social service and government agencies that work with individuals involved in the Berks County criminal justice and juvenile justice systems. The Network arose out of the state's need to reduce severe overcrowding in jails, as well as lower the recidivism rates for those re-entering the community (due in large part to significant unemployment levels among that population).

The most important factor in the program's success has been use of an **up-front assessment tool that identifies post-release needs**, including housing, employment, and education. Given the fluidity of incoming/outgoing jail populations, the assessment must target those who will remain in jail long enough to complete services. Individualized re-entry plans with arrangements for aftercare (including services provided by jail staff, community staff, probation and parole staff, etc.) is ensured by bringing community resources into jail pre-release, and following individuals out. Employment rates through the program are especially high because the state's career services organization conducts six-week job readiness courses in jails. Once out on parole, individuals go back to that organization's office to continue to receive services, with follow-up for up to three years post-release.

Another cause of the program's success has been the willingness of agencies to collaborate and tackle re-entry problems with a common approach. Chief decision-makers in various communities – judicial (judges, court administrators), legislative (county commissioners), law enforcement (chiefs of police association members), legal (public defenders and district attorneys), and aftercare – all came to the table and continued to meet for routine problem-solving strategy sessions. Ultimately, it was (and continues to be) the myriad issues facing jail inmates that necessitate community/agency collaboration – including mental health problems, substance abuse issues, lack of a high school education or G.E.D., homelessness, low socioeconomic status, children to support, and/or self-esteem or anger management problems. The Berks Community Resources Network is a true support system that provides outgoing individuals with follow-up from the jail, a case manager from the Reentry Resource Center, a parole officer, and a faith-based mentor.

A final factor in the program's success is the willingness of participating agencies and organizations to come together for the common good. In so doing, the collaborative effort has reduced the strain on larger society – both in terms of taxes (which can be put towards other social services) and future crime.³³²

In early 2010, Berks County established a Community Reentry Center (CRC) whose mission is to provide "effective and innovative services that instill pro-social behavior, healthy life choices, and personal accountability, thereby reducing recidivism and its financial burden on the County."³³³ The CRC seeks to divert inmates to a community re-entry setting and introduce agency participants in that setting. Drug and mental health counselors have offices in the CRC so inmates can meet with them weeks before being released and ensure a smooth and seamless transition into the programming upon release.³³⁴

appendix a: **texas commission on jail standards**

Below we have provided information on the Texas Commission on Jail Standards, including legislative history, funding, and major duties.

■ **Legislative History and Statutory Authority**

In the early 1970's, various lawsuits were filed against Texas counties for the poor conditions of confinement in local jails, and for the lack of regulated and funded inspections of those jail facilities. In 1975, with the urging and support of various groups (including the Sheriff's Association of Texas), the 64th Texas Legislature passed House Bill 272, which was signed into law by Governor Dolph Briscoe in June. This bill created the nine-member Texas Commission on Jail Standards ("the Commission"), tasked with ensuring the proper management of county jails. Possibly the most critical feature of the new law was the Commission's authority and responsibility for not only inspecting but enforcing compliance with the standards that were set forth. *A more comprehensive explanation of the Commission's work is detailed below.*



Chapter 511 of the Government Code is the Commission's enabling statute. Along with Chapters 351 and 361 of the Local Government Code, this Chapter provides for the development of uniform inspection reports and procedures for inspecting jail facilities.

Title 37, Part 9 of the Texas Administrative Code codifies the minimum jail standards promulgated by the Commission to operate a compliant facility.

■ **Commission Funding**

To carry out its mission, the Commission relies primarily on appropriations by the Legislature from the state General Revenue Fund.

In addition to these appropriated funds, the Commission is allowed to charge a fee to cover the costs associated with (a) inspecting facilities housing 30% or more non-Texas sentenced inmates, and (b) conducting a facility re-inspection if the areas of non-compliance have not been corrected. However, these inspection fees – combined with appropriated receipts from the sale of resource manuals – account for only 2% of the Commission's budget.

IMPORTANT NOTE: To maintain its critical obligations to set constitutional jail standards, conduct facility inspections, and enforce compliance with rules and procedures – all of which keep Texas jails safe, well regulated, and run by educated, professional leadership – the Commission continue to be provided a level of funding equal to what it is presently receiving. Budget cuts, which have been mandated in light of an upcoming state budget shortfall, pose a threat to personnel and to crucial functions, including travel for on-site trainings and technical assistance for jail administrators, the timely re-inspection of noncompliant facilities, special inspections of at-risk facilities, and meetings with local leadership to address facility issues

■ **Key Commission Duties**

Since its creation, the basic role of the Commission has not changed, but the number of inmates and the size of facilities have increased dramatically. One of the contributing factors is the overall population of the state, which has doubled from 12,568,000 in 1975 to 24,873,773 in 2009. Exacerbating this is the fact that the incarceration rate (the percentage of individuals incarcerated) has increased during that period from approximately 1.2 per 1,000 to 2.6 per 1,000.

While each of the following strategies contributes to the regulatory function of the Commission, the inspection process provides the monitoring capability necessary to (a) identify counties in need of planning or management assistance, and (b) initiate appropriate enforcement action.

◆ **Maintaining Jail Standards**

Maintaining constitutional standards is the primary goal of the Commission. The jail standards process involves reviewing and amending the Minimum Jail Standards for the purpose of building and maintaining safe, secure, and efficient jails. National research, statewide input, and case law are among the resources considered when developing or revising the Standards.

Proposed revisions to the Standards, after Commission approval, are published in the Texas Register for public comment. These comments are reviewed to ascertain whether revision would be appropriate. The final version, possibly altered from the original, is again presented to the Commission for approval and re-published in the Texas Register.

◆ **Conducting Inspections**

As per a uniform inspection process, inspection activities include fairly and impartially monitoring and enforcing compliance with adopted rules and procedures.

All operating jail facilities are inspected at least annually. Newly constructed or renovated jails require occupancy inspection(s) to ensure that construction was completed in compliance with Minimum Jail Standards. Not less than once each fiscal year, at least one announced or unannounced inspection of each facility under Commission jurisdiction is performed, inquiring into security, control, conditions, and compliance with the established Minimum Standards. In addition to regular inspections, special inspections may be conducted to determine compliance. The inspection includes a walk-through of the facility and a review of the books, records, data, documents, and accounts pertaining to the facility and the inmates confined within.

Following a review of the Inspector's report by the Commission's Executive Director, facilities that have been found to be in compliance are issued a certificate of compliance. If deficient items are noted during the inspection, the Inspector files a report and issues a notice of noncompliance. Counties are provided a reasonable time to respond to the notice and initiate corrective action.

Special inspections may be conducted on facilities that have either been identified as high-risk or found to be noncompliant. These unannounced inspections may also be performed when county officials indicate that the noncompliant items have been corrected.

◆ **Conducting a Juvenile Justice Survey**

The Commission has responsibility for two separate but related activities concerning juveniles in adult jails and lockups. First, the Commission continues to have statutory responsibility for collecting and processing the juvenile jail logs containing information on all juveniles held in secure adult confinement. That report is collected annually from each sheriff's department and each municipal lockup.

Second, the Commission continues to offer technical assistance and is responsible for coordinating on-site visits through a contract provider at the request of the Governor's Office – Criminal Justice Division (CJD). Information provided by the survey and on-site visits are used to determine compliance with the laws concerning the handling of juveniles in the state's adult jails and lockups. Results of the survey are reported to CJD, which, among other things, is responsible for monitoring the state's compliance with the federal Juvenile Justice and Delinquency Prevention Act (JJDP A).

In addition to the activities outlined above, the Commission is responsible for identifying and compiling a directory of all adult jails and lockups with a juvenile detention, correctional, or holdover center located in the same building or on the same grounds. The JJDP A provides that states receiving federal funds under the Act must comply with certain requirements concerning such juvenile detention facilities and adult jails and lockups.

◆ **Providing Construction Plan Review**

The Commission provides consultation and technical assistance to local governments for the most efficient, effective, and economic means of jail construction that meet minimum standards. Comprehensive facility-needs analyses – which include population projections, historical data regarding incarceration trends, and other pertinent factors – determine the incarceration needs of the counties. The Commission offers recommendations regarding the need for additional or improved jail space or alternatives thereto, based upon such analyses.

Commission staff also conduct reviews and comment on construction documents for construction projects. This includes a formal plan review with design professionals, consultants, county officials, and sheriffs, and it takes place at three phases of completion: schematic design, design development, and construction documents. At each phase, items requiring resolution are noted and satisfied prior to proceeding to the next phase. This process better ensures that counties understand jail requirements. It also provides more effective and economic jails that, upon completion, will comply with Minimum Jail Standards.

◆ **Providing Management Consultation**

To aid counties in meeting Minimum Jail Standards, Commission staff provide ongoing assistance through their review of, comments on, and approval of standard-qualified jail operational plans. This feedback is offered in several areas: the classification of inmates, health services, sanitation, inmate discipline and grievances, recreation and exercise, education and rehabilitation, emergencies, and inmate rights and privileges (such as telephone usage, visitation, correspondence, and religious activities).

Staff also provide jail management training and consultation to counties. This includes clarifying Minimum Jail Standards, as well as establishing procedures and documentation consistent with the Standards. Staff work with county representatives in the Austin office, on the phone, through written correspondence, and through on-site visits and regional training classes. Oral presentations to appropriate groups are also frequently conducted.

As part of its technical assistance, the Commission conducts staffing analyses to assist counties in operating safe and secure facilities. Staff review facility design, facility capacity, county needs, jail operations, and other issues when conducting such analyses.

◆ **Auditing**

The Commission collects, analyzes, and disseminates data concerning inmate populations, felony backlogs, and jail operational costs. Staff assist counties in completing their jail population reports and provide technical assistance. Oral presentations and one-on-one technical assistance activities are also conducted as circumstances require. Additionally, staff collect and analyze statistical data to provide to state and local agencies, which assists with planning and predicting trends in incarceration in Texas.

appendix b: sample probation incentives

The following chart provides information on positive reinforcements that probation supervisors can use to promote behavior changes and lower probationers' risk of re-offending in the long term.

QUALIFIERS	INCENTIVE	EXPLANATION
LEVEL 1 INCENTIVES		
<ul style="list-style-type: none"> ◆ Completes college-level courses or vocational program 	Recognition by unit staff	The unit may hold an informal ceremony where the probationer is recognized by the Case Work Manager (CWM) and officers.
<ul style="list-style-type: none"> ◆ Obtains and maintains verifiable full-time employment for 3 months ◆ Has observable behavior stabilization (mental health cases) ◆ Consistently reports for office visits for 6 months ◆ Has improved reporting for office visits for 3 months (for special populations) ◆ Passes polygraphs 	Accolades from PO's supervisor or administrator	The Probation Officer (PO) may arrange for the probationer to meet with the supervisor or administrator to acknowledge the accomplishment. This may include the probationer receiving a small snack or a "well done" card or similar tangible item – determined by the particular unit manager to which the case is assigned.
<ul style="list-style-type: none"> ◆ Reports for and completes Substance Abuse Assessment ◆ Reports for and completes Psychological Evaluation ◆ Reports for and completes Family Violence Assessment ◆ Participates in Strategies for Case Supervision (SCS) interview as part of PO training 	5 hours community service restitution (CSR) credit	The probationer will receive 5 hours credited toward CSR.
<ul style="list-style-type: none"> ◆ Engages in mentoring activities ◆ Engages in speaking engagements (e.g., gang awareness, recovery conferences, department staff meetings) ◆ Tutors other probationers in GED preparation, cognitive mentoring ◆ Volunteers at child's school ◆ Participates in a community activity or department sanctioned special project, or completes an exceptional deed such as an heroic act/service (must be authorized by CWM) 	Certificate of Achievement or 5 hours CSR credit	The probationer will be presented with a Certificate of Achievement by the Probation Officer or The probationer will receive 5 hours credited toward CSR.

<ul style="list-style-type: none"> ◆ Completes parenting classes (not a condition) ◆ Completes work source classes (not a condition) 	Recognition by unit staff or 10 hours CSR credit	The unit will hold an informal ceremony where the probationer is recognized by the CWM and officers. or The probationer will receive 10 hours credited toward CSR.
LEVEL 2 INCENTIVES		
◆ Probationer determined to be indigent based on the completion of a Financial Questionnaire	CSR in lieu of fines	The probationer will be allowed to have fines converted to CSR at the rate of \$10 for every 1 hour of CSR.
◆ Probationer determined to be gainfully employed or to have physical limitations but current on fees	Fine in lieu of CSR	The probationer will be allowed to have CSR converted to additional Fine at the rate of \$10 per 1 hour of CSR.
◆ Completes Special CSR Projects (food bank, school supply drive, box fan drive, etc.)	CSR credit for \$ spent	The probationer will receive 1 hour credited toward CSR for every \$5 spent on special CSR projects/drives.
◆ Completes Achieve Program	Up to 25 hours CSR credit	Amount of CSR hours credited are dependant on the number of modules completed as determined by the Probation Officer.
LEVEL 3 INCENTIVES		
◆ Completes Counseling Center Cognitive Classes	CSR credit	The probationer will receive up to 50 hours credited toward CSR. The probationer will receive 15 hours credited toward CSR for perfect attendance.
◆ Attains GED	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes Substance Abuse Treatment: Residential – Contract vendor, SMART (5 months), or an alternative Community Corrections Facility (CCF) residential placement	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes SAFPF Transitional Treatment Center. Substance Abuse Treatment Aftercare, SMART, or contract vendor	CSR credit	The probationer will receive 50 hours credited toward CSR.
◆ Completes Counseling Center Substance Abuse Treatment: Intensive Outpatient	CSR credit	The probationer will receive up to 50 hours credited toward CSR. The probationer will receive 15 hours credit toward CSR for perfect attendance.
◆ Completes Community Substance Abuse Treatment: Intensive Outpatient (60 hours)	CSR credit	The probationer will receive 30 hours credited toward CSR. The probationer will receive 15 hours credit toward CSR for perfect attendance.
◆ Completes Battering Intervention and Prevention Project (BIPP) program	CSR credit	The probationer will receive 1 hour for each week of BIPP completed, up to 45 hours, credited toward CSR.

<ul style="list-style-type: none"> ◆ Completes sex offender treatment 	<p>CSR credit</p>	<p>15 hours will be credited toward CSR for each year of treatment completed, without documented non-compliance, for a maximum 3 years, with 15 additional CSR hours credited upon graduation.</p>
LEVEL 4 INCENTIVES		
<ul style="list-style-type: none"> ◆ Low-risk probationers (as defined by the risk and needs assessment) who have an extensive reporting history and no technical violations within the last two years 	<p>Lowered reporting requirements</p>	<p>The Officer will allow the qualifying probationer to report once every 90 days in person and by mail the two months in between. Permission from the Court will be obtained, where applicable.</p>
<ul style="list-style-type: none"> ◆ Probationers on deferred or regular probation who have completed ½ of their probated sentence, are not currently classified as high risk, completed all classes and programs, are current with supervision fees, and paid in full all restitution and court costs 	<p>Probationer may be allowed to discharge early from probation</p>	<p>The Officer will initiate a recommendation to the court for early discharge for qualifying probationers (with victim notification if applicable).</p>

appendix c: attorney indigent defense data for submission to administrator

Attorney	Case Type (all that apply)	Caseload		Payments			Additional Request			Outcomes		
[Name]	Felony, Misdemeanor	Private (by type)	Appointed (by type)	Requested	Paid	Pending	Type	Amount Requested (by type)	Amount Received (by type)	Pleas (by case type)	Dismissals (by case type)	Convictions (by case type)
	Juvenile, Appellate, Capital, Specialized	Number	Number	Amount	Amount	Amount	Investigator, Expert Witness, Case Manager, Other	Amount	Amount	Number	Number	Number

end notes

¹ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, July 20, 2010.

² *Ibid.*

³ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, December 17, 2009.

⁴ *Ibid.*

⁵ Brandon Wood, *email correspondence on July 20, 2010.*

⁶ Texas Commission on Jail Standards (TCJS), *“Jail Population Report,”* April 1, 2010.

⁷ Individuals in the “Other” category are technical, and often those with child support or contempt charges. From Brandon Wood, *email correspondence on July 20, 2010.*

⁸ The reason for the discrepancy between this total and the total listed in TCJS’s *Jail Population Report* (68,992) is likely two-fold: (1) out-of-state inmates, and (2) overlap in fields and hidden fields. From Brandon Wood, *email correspondence on July 20, 2010.*

⁹ SAFPFs are intensive three-phase substance abuse treatment facilities specifically designed for felons (other than sex offenders) assessed as having a substance abuse problem. From Community Justice Assistance Division (CJAD), *“Texas Progressive Interventions and Sanctions Bench Manual,”* Texas Department of Criminal Justice, 2009 revision, pgs. 44-45.

¹⁰ Aimee Perez, Research and Evaluation Unit of the Criminal Justice Assistance Division, Texas Department of Criminal Justice, in telephone communication with Ana Yáñez-Correa and Molly Totman, Texas Criminal Justice Coalition, July 29, 2010, citing an April 2010 report.

¹¹ Bureau of Justice Statistics, *“Jail Inmates at Midyear 2009—Statistical Tables,”* U.S. Department of Justice – Office of Justice Programs, June 2010, Table 9, pgs. 12-13.

¹² TCJS, *Jail Population Report.*

¹³ Carl Reynolds, *“Non-Traffic Criminal Cases in County-Level Courts, 1990-2009,”* Office of Court Administration, table included in a presentation before the Texas Indigent Defense Summit, February 24, 2010.

¹⁴ Carl Reynolds, *“Non-Traffic Criminal Cases in Municipal Courts, 1990-2009 (+78%)”* and *“Non-Traffic Criminal Cases in Justice Courts, 1990-2009 (+14%),”* Office of Court Administration, tables included in a presentation before the Texas Indigent Defense Summit, February 24, 2010.

¹⁵ Texas Commission on Jail Standards (TCJS), *“Texas County Jail Population,”* April 1, 2010.

¹⁶ Brandon Wood, *email correspondence on December 17, 2009.*

¹⁷ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, October 23, 2009; information also taken from Julian Aguilar, *“USDA Approved: Jail Construction,”* *The Texas Tribune*, December 14, 2009.

¹⁸ Brandon Wood, *email correspondence on October 23, 2009.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Chris Moran, *“Taxpayers get tab for OT at Sheriff’s Office: Some workers see paychecks soar as they make up for staff shortage,”* *Houston Chronicle*, April 12, 2010.

²³ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, November 20, 2009. Note additionally: This is the most recent information available. Similar information for Fiscal Year 2009 could not be provided because 7 of 10 counties had not completed their audits as of July 2010. From Brandon Wood, email correspondence on July 20, 2010.

²⁴ Brandon Wood, *email correspondence on November 20, 2009.* Note additionally: Dallas County operates on a “pay as you go” budget and undertook major projects and additional overtime in an attempt to attain compliance with Texas Minimum Jail Standards and the Department of Justice review and lawsuit in Fiscal Year 2008 and 2009.

²⁵ *Ibid.*

²⁶ Brandon Wood, *email correspondence on December 17, 2009.*

²⁷ Dr. Tony Fabelo, *“Managing Jail Population Growth in Texas: The State and Local Challenges,”* The Justice Center, February 7, 2008, slide 19.

- ²⁸ Texas Administrative Code, Title 37, Part 9, Chapter 275, Rule §275.4, *Staff*: “One corrections officer shall be provided on each floor of the facility where 10 or more inmates are housed, with no less than 1 corrections officer per 48 inmates or increment thereof on each floor for direct inmate supervision.”
- ²⁹ Scott Henson, “Smith County commissioners fixated on jail building despite clear voter message,” *Grits for Breakfast*, July 30, 2008; <http://gritsforbreakfast.blogspot.com/2008/07/smith-county-commissioners-fixated-on.html>. Accessed December 17, 2009.
- ³⁰ Texas Commission on Jail Standards, “Incarceration Rate Report – Highest to Lowest,” April 1, 2010.
- ³¹ The incarceration rate is a 12-month average, calculated by dividing the number of inmates per jail by the county’s total population. It is presented as a “1 per 1,000” rate. The averaging process ensures a more accurate reflection of incoming populations. From Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Molly Totman, Texas Criminal Justice Coalition, August 4, 2010.
- ³² Texas Commission on Jail Standards, “Inmates Housed Elsewhere,” April 1, 2010.
- ³³ Chris Moran, “Harris County looks for cheaper jail cells,” *Houston Chronicle*, June 9, 2010.
- ³⁴ *Ibid.*
- ³⁵ Laura B. Martinez, “Nearly 100 Cameron County inmates going to Robstown,” *The Brownsville Herald*, November 20, 2009.
- ³⁶ Texas Administrative Code, Title 37, Part 9, Chapter 299.
- ³⁷ Brandon Wood, *email correspondence on July 20, 2010*.
- ³⁸ “Counties feel ill over inmate medical bills,” *San Antonio Express-News*, October 16, 2006.
- ³⁹ Roger Przybylski, “What Works: Effective Recidivism Reduction and Risk Focused-Prevention Programs,” RKC Group, February 2008, pg. 38.
- ⁴⁰ Jeremy Travis, Amy L. Solomon, and Michelle Waul, “From Prison to Home: The Dimensions and Consequences of Prisoner Reentry,” The Urban Institute, June 2001, pg. 35.
- ⁴¹ Amy L. Solomon, Michelle Waul, Asheley Van Ness, and Jeremy Travis, “Outside the Walls: A National Snapshot of Community-Based Prisoner Reentry Programs,” The Urban Institute, January 27, 2004, pg. 81.
- ⁴² Bureau of Justice Statistics, *Deaths in Custody Statistical Tables: Local Jail Deaths, 2000-2006*, U.S. Department of Justice – Office of Justice Programs; <http://bjs.ojp.usdoj.gov/content/dcrp/tables/dcst06lj2.cfm>. Accessed July 8, 2010.
- ⁴³ Eva Ruth Moravec, “Lax screening cited at jail,” *San Antonio Express-News*, June 4, 2010.
- ⁴⁴ *Ibid.*
- ⁴⁵ National Commission on Correctional Health Care, *Position Statements: Charging Inmates a Fee for Health Care Services*, Adopted by the National Commission on Correctional Health Care Board of Directors, March 31, 1996; <http://www.ncchc.org/resources/statements/healthfees.html>. Accessed May 7, 2010.
- ⁴⁶ Amanda Petteruti and Nastassia Walsh, “Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies,” Justice Policy Institute, April 2008, pg. 15.
- ⁴⁷ Laura M. Maruschak and Randy Beavers, “Bureau of Justice Statistics Bulletin: HIV in Prisons, 2007-08,” Bureau of Justice Statistics, U.S. Department of Justice – Office of Justice Programs, NCJ 228307, December 2009, Revised 1/28/10, pg. 2.
- ⁴⁸ John J. Gibbons and Nicolas de B. Katzenbach, “Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons,” Vera Institute of Justice, June 2006, pg. 13.
- ⁴⁹ Greg Hamilton, “HB 2391: Background & Procedures,” Travis County Sheriff’s Office, slides 4, 5, 12.
- ⁵⁰ *Ibid.*, slide 5.
- ⁵¹ Nelson W. Wolfe, Bexar County Judge, in written correspondence to Governor Rick Perry, on May 31, 2007: “If the bill had been in effect and the local law enforcement organizations utilized it to issue summons on only those charged with misdemeanor traffic ticket and driving with license suspended offenses, Bexar County jail’s population would have been reduced by 194 inmates and saved the County nearly \$10,000 per day in operational expenses.”
- ⁵² Maria Sprow, “Uncuffed: New law offers option of citations instead of jail detention for some misdemeanants but gives little guidance,” *County Magazine*, Volume 20, Number 2, March/April 2008, pg. 30.
- ⁵³ *Ibid.*

⁵⁴ “The inefficient use of citations can lead to an increase in failure to appear rates, thus increasing the number of warrant arrests in the county. If Cite and Release policies lead to the filing of more criminal offenses arrests, they can ultimately add to the jail population as opposed to reducing it.” From Urban Institute – Justice Policy Center, “Jail Population Management Initiative Preliminary Findings and Recommendations,” January 2010, pg. 9.

⁵⁵ Robert C. Boruchowitz, Malia N. Brink, and Maureen Dimino, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” National Association of Criminal Defense Attorneys, April 2009, pg. 7.

⁵⁶ Judge Marion F. Edwards, “Reduce Recidivism in DUI Offenders: Add a Cognitive-Behavioral Program Component,” 2006, pg. 3.

⁵⁷ Open Society Institute (OSI), “Investing in Treatment: Addiction – A Cost The U.S. Cannot Afford to Ignore,” January 26, 2009, pg. 1.

⁵⁸ National Institute on Drug Abuse, “Principles of Drug Addiction Treatment: A Research Based Guide, Second Edition” U.S. Department of Health and Human Services - National Institutes of Health, revised April 2009, pg. 13.

⁵⁹ TCJS, *Texas County Jail Population*.

⁶⁰ Open Society Institute, *Investing in Treatment*, pgs. 1, 2.

⁶¹ Barry Mahoney and Elaine Nugent-Borakove, “Harris County Criminal Justice System Improvement Project: Preliminary Report,” The Justice Management Institute, June 2009, pg. 15.

⁶² Nancy G. La Vigne, Lisa E. Brooks, Tracey L. Shollenberger, “Returning Home: Exploring the Challenges and Successes of Recently Released Texas Prisoners,” The Urban Institute, May 2007, pg. 2.

⁶³ Scott Henson, “Whitmire: Houston doesn’t need more jail beds,” *Grits for Breakfast*, December 12, 2006: “In 2006, as many as 1,300 inmates were incarcerated while on probation”; <http://gritsforbreakfast.blogspot.com/2006/12/whitmire-houston-doesnt-need-more-jail.html>. Accessed April 11, 2010. Information also taken from Scott Henson, “Harris DA’s drug-policy change will improve equity, jail crowding,” *Grits for Breakfast*, December 9, 2009: “If the [Harris County] DA wanted to further reduce the jail population, she could direct her office to stop seeking jail time as a probation ‘condition’ on the first offense in these less-than-a-gram cases – a reactionary policy instituted by her predecessor. Harris is the only county in Texas to routinely send first-offense probationers to county jail for up to six months for less-than-a-gram drug possession. [...] As of November 1 [2009], according to data reported to the Commission on Jail Standards, Harris County had 1,181 convicted state-jail felons housed in the county jail”; <http://gritsforbreakfast.blogspot.com/2009/12/harris-das-drug-policy-change-will.html>. Accessed April 11, 2010.

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⁶⁵ Laura C. Langham, “Trace Drug Policies in Most Populous Counties,” Senate Research Center, January 11, 2010, pg. 3.

⁶⁶ Amanda Petteruti and Nastassia Walsh, *Jailing Communities*, pg. 4.

⁶⁷ Mike Eisenberg, Jason Bryl, and Dr. Tony Fabelo, “Travis County Community Impact Supervision Project: Analyzing Initial Outcomes,” Council of State Governments – Justice Center, May 2009, pgs. 14, 15.

⁶⁸ Bernice Yeung, “New Conditions of Probation,” *Miller-McCune*, April 13, 2010.

⁶⁹ Community Justice Assistance Division, “2008 Turnover Survey – Overview,” Texas Department of Criminal Justice, 2008, pgs. 1-2.

⁷⁰ Judge Marion F. Edwards, “Reduce Recidivism in DUI Offenders: Add a Cognitive-Behavioral Program Component,” 2006, pg. 3.

⁷¹ Seth Jacob Prins and Laura Draper, “Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice,” Council of State Governments - Justice Center, 2009, pg. vi.

⁷² With regards to employment services, probation officers should have access to a centralized job-matching system where employers who will hire previously incarcerated individuals can post their openings.

⁷³ Judge Roger K. Warren (Ret.), “Sentencing in the 21st Century: Instincts, Evidence and Practice,” National Center for State Courts, offered during a presentation at the Idaho Judicial Conference on October 6, 2008.

⁷⁴ CJAD, *Texas Progressive Interventions*, pg. 33.

⁷⁵ Dr. Tony Fabelo and Angie Gunter, "Organizational Assessment of Travis County Community Supervision and Corrections Department (CSCD)," The JFA Institute, Austin, Texas Office, August 2005, pg. 18.

⁷⁶ DSHS seeks to "improve health and well-being in Texas" through various functions, including by promoting recovery for persons with mental illness and infectious disease, building capacity for improving community health, developing and expanding integrated services, and expanding the effective use of health information.

⁷⁷ TCOOMMI provides a formal structure for criminal justice, health and human service, and other affected organizations to communicate and coordinate on policy, legislative, and programmatic issues affecting individuals with special needs. Special needs include individuals with serious mental illnesses, mental retardation, terminal or serious medical conditions, physical disabilities and those who are elderly.

⁷⁸ Maggie Morales-Aina, LPC, "West Texas Community Supervision and Corrections Department, Mental Health Unit, Specialized Programs," February 1, 2010, slides 4-5.

⁷⁹ Probation officer visits with mentally ill probationers "should become less about 'monitoring' and more about discussion of criminogenic needs and risk mitigation. Research by Jim Bonta has shown that just as negative pressure predicts failure, time spent on problem solving and navigating criminogenic factors 'correlates powerfully' with reducing recidivism." From Scott Henson, "Jennifer Skeem on Sentencing and Mental Health," *Grits for Breakfast*, November 21, 2009, citing findings by Dr. Jennifer Skeem of the MacArthur Research Network on Mandated Community Treatment in "Exploring 'what works' in probation and mental health," 2008; <http://gritsforbreakfast.blogspot.com/2009/11/jennifer-skeem-on-sentencing-and-mental.html>. Accessed August 25, 2010.

⁸⁰ Dennis McKnight, in email correspondence to Scott Henson, April 2007, posted publicly on "Bexar Jail Administrator: 'Mental health consumers' don't belong in jail," *Grits for Breakfast*, April 27, 2007; <http://gritsforbreakfast.blogspot.com/2007/04/bexar-jail-administrator-mental-health.html>. Accessed April 11, 2010.

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⁸⁵ Brad Dicken, "Grant To Help Reduce Jail Population," *The Elyria Chronicle-Telegram*, August 13, 2009.

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¹³² *Ibid.* Note additionally: Individuals not eligible for the AIC program include those who have committed capital and first and second degree felonies; those who have committed violent offenses; those who have cases of manufacturing and delivery of a controlled substance; felons sentenced to TDCJ's Institutional Division who have not been awarded probation in the currently pending case; individuals who have absconded (with exceptions approved by the judge); some SAFPF violators (severely addicted substance abusers) who are awaiting a bed in treatment; and pre-trial release or pre-trial bond violators.

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