

## **IMPACT OF CUTS FOR CERTAIN CRIMINAL JUSTICE AGENCIES UNDER FILED VERSION OF H.B. 1, 82<sup>ND</sup> TEXAS LEGISLATURE**

### ***Information provided by the Texas Criminal Justice Coalition***

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Article V of the budget encompasses all criminal justice and public safety expenditures, with the exception of the judiciary. Looking at all funds, H.B. 1 would reduce criminal justice spending in Texas by nearly \$2 billion (\$1,994,530,685) from the previous biennium.<sup>1</sup>

Most of that reduction comes from lower spending from state general revenue (GR) funds. Total GR funding for Article V under the filed version of H.B. 1 would be \$1,694,622,862 lower than the amount requested by state agencies.<sup>2</sup> For purposes of calculating budget reductions, though, this document compares H.B. 1 recommendations to the previous biennium, combining estimated FY 2010 expenditures with budgeted FY 2011 amounts.<sup>3</sup>

### **TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

The Texas Department of Criminal Justice (TDCJ) requested a total of \$6,261,561,994 in GR funds for the 2012-13 biennium, but the filed version of H.B. 1 recommends the agency receive only \$5,227,283,592. That is more than one billion (\$1,034,278,402) less than requested, or a 16.5% gap between the recommended budget and what TDCJ has requested to sustain its operations and services.<sup>4</sup>

All told, 59% of Article V savings would come from TDCJ, which has been asked to operate with \$786.5 million less than it (will have) spent in the previous biennium.<sup>5</sup> To put things in perspective, the Office of Court Administration's budget during the current biennium is approximately \$5 million per year, and the Texas Commission on Jail Standards' annual budget is under one million. Realistically, the budget cannot be balanced on the backs of these smaller agencies.

Reduced incarceration and additional prison closures at TDCJ would free up money to preserve programs and services that exist solely to rehabilitate individuals and reduce their risk of recidivism. Probation must continue to be a strong, viable alternative to prison; parole departments should be provided more tools to assist those under supervision; and re-entry efforts should be bolstered to break the cycle of re-offending. Texas needs continued investments in the fidelity and success of diversions and re-entry services today to help meet public safety demands and create safer communities tomorrow. The state simply cannot afford to have costly incarceration be its only option for addressing criminal behavior.

In other words, the Texas Criminal Justice Coalition agrees that TDCJ's budget must be cut, but H.B. 1 goes about it the wrong way.

## ➤ Prison Units

H.B. 1 directs TDCJ to close the Central Unit in Sugar Land no later than September 1, 2011. No other state-owned facilities have been publicly identified as possible candidates for closure. Instead, cuts have been focused nearly exclusively on community supervision, parole, and programming funds.

Closing additional units would allow TDCJ and other agencies (particularly the Office of Court Administration, whose needs are minimal) to avoid most of the other painful cuts described below and still save the amount required by the Legislative Budget Board (LBB). However, based on the latest inmate population projections, the Legislature would also have to enact policy changes to reduce the inmate population to achieve that goal, a subject that is beyond the scope of this report.<sup>6</sup>

### Security Staff:

- *Layoffs:* H.B. 1 reduces staffing for core operational areas within TDCJ's incarceration function by 1,562 positions.<sup>7</sup> Since closure of the Central Unit would eliminate only a few hundred positions, TDCJ will have to also reduce staffing at units it intends to keep open. **This will heighten security risks**, particularly at units that already have difficulty retaining full staffing levels. The only way to reduce staffing without losing security is to close additional units so that staffing reductions will not leave other facilities shorthanded.
- *Pay Cuts:* H.B. 1 eliminates funding required for the biennialization of the FY 2010-11 approved pay raise for correctional officers and unit staff, which had totaled 7%.<sup>8</sup> Also, TDCJ will not pay career ladder salary adjustments in FY 2012 or 2013.<sup>9</sup>

### Maintenance:

H.B. 1 budgets \$17 million per year for repair and maintenance of facilities in 2012, less than half the amount that TDCJ requested, and it leaves the item unbudgeted for 2013 (D.1.1).<sup>10</sup> Presumably, TDCJ would shift money from other sources to pay for routine maintenance, but on its face **it is untenable to operate 112 prison units with a zero maintenance budget** for a year.

### Debt Service:

Texas has paid \$479.6 million during the current biennium on criminal justice-related bond debt, most of it for expenses related to past prison construction. However, the LBB has recommended reducing that by 9.7% over the next two years to \$433.3 million.

TCJC has two concerns about this reduction. First, that figure represents a high debt load generated by the state's criminal justice functions. Second, unless some of the bonds have recently been paid off, owners of TDCJ debt will continue to expect the state to service those obligations, or risk the state's overall bond rating. This is an item which cannot simply be reduced by fiat.

### ➤ **Private Prisons/Contract Beds**

Approximately 11.6% of TDCJ's overall capacity comes in the form of leased beds from private prison operators.<sup>11</sup> Eliminating contract beds has the benefit of immediacy and a less messy wind-down process than closing a state-owned facility, firing state employees, selling real property, etc. On the other hand, private prison's costs-per-day are relatively low compared to some of TDCJ's older, pre-1920 prisons, which are much more costly to run in accordance with modern standards.<sup>12</sup>

H.B. 1 would cut funding for private prisons and state jails (C.1.13) by \$38,001,624 for the biennium, a 16.2% reduction since the previous biennium. The LBB's budget summary estimates that TDCJ would reduce private prison capacity by 2,000 beds,<sup>13</sup> but that estimate seems low. According to its most recent Uniform Cost Report, TDCJ spends an average of \$37.47 per day on private prison beds (excluding transportation and classification costs), from which we may estimate that a reduction by \$38 million would reduce capacity by 2,779 beds.<sup>14</sup>

This could either mean closing one or two private prison units, or spreading the reductions among multiple units within TDCJ's portfolio of private beds. State Senator John Whitmire has publicly suggested closing the Mineral Wells Pre-Parole facility, the contract for which expires at the end of February 2011,<sup>15</sup> not to save money but because the unit is too close to a nearby road that allows contraband to be easily thrown into the prison yard. That unit houses 2,100 prisoners and would seem a likely choice to close that many beds. Separately, funding for pre-parole transfer facilities is also cut in a separate line item (C.1.14, by \$12,869,917, or 19.5%), but if the state must eliminate 2,000-2,800 private beds, it could do so by closing the Mineral Wells facility and perhaps one other private unit.

Either way, no funding at all is contemplated over the next two years for contracted capacity with county jails.<sup>16</sup> Several Texas counties have overbuilt local jail capacity hoping to contract with TDCJ for surplus prisoners,<sup>17</sup> but in 2009 TDCJ canceled "contracts to house up to 1,900 state convicts in county lockups because the number of inmates in state prisons has fallen."<sup>18</sup>

### ➤ **In-Prison Programming**

In-prison programming prepares incarcerated individuals for re-entry and makes the parole board more amenable to inmates' release, but such programming will be decimated by proposed cuts.

H.B. 1 eliminates already minimal academic and vocational education services, zeroed out from \$4,841,279 last biennium (C.2.2).<sup>19</sup> Substance abuse treatment in prison also takes a big hit (C.2.6), with a 44.2% decrease over the biennium, amounting to a \$33,080,965 cut.

### ➤ **Special Needs Services**

H.B. 1 cuts funding for special needs services (B.1.1) by \$18,417,308, or 45.1% for the biennium. The number of individuals served through the Continuity of Care program will be reduced from 28,500 to 15,415, or 45.9%. These include people with severe mental illness, geriatric prisoners, and an array of people with chronic medical problems that will not vanish just because the state chooses not to pay to treat or accommodate them. **Such a drastic cut risks the agency**

**falling out of compliance with the Americans with Disabilities Act<sup>20</sup> and/or failing to provide minimum constitutional levels of care to special needs inmates.**

To reduce spending on special needs inmates without running these risks would require use of medical parole, which, if targeted to the most prolific users of medical services, could achieve significant savings.

### ➤ **Probation, Treatment, and Diversions**

**H.B. 1 defunds and denudes Texas' much-lauded probation reforms of 2007**, reducing funding for diversion programming and giving TDCJ greater control over remaining funds by eliminating restrictions in various budget riders.

Diversion/Probation funding overall is cut \$116,085,728 for the biennium, or 20.7%, including in these four categories:

- **Basic supervision** (A.1.1) is cut by \$38,705,846, or 17.5%. Most of this comes through the elimination of state funding for misdemeanor probation.
- **Diversion programs** (A.1.2) are cut by \$47,886,981, or 24.9%.
- **Community Corrections** (A.1.3) is cut by \$8,541,770, or 12.7%.
- **Treatment Alternatives to Incarceration** (A.1.4) is cut by \$20,951,131, or 90.3%.

(*Note:* The Senate budget draft, by contrast, would cut these programs by “only” 11.8% overall.)

In addition to eliminating funding for misdemeanor probation supervision, H.B. 1 reduces the felony basic probation formula funding per diem to \$1.37, based on the LBB's June 2010 population projections.

The bill would also cut funding for Texas' new, highly successful Intermediate Sanctions Facilities (ISFs, used both for parole and probation violators) by 23%; the number of people served would decline from 3,220 this year (FY 2011) to 2,330 each in 2012 and 2013.<sup>21</sup> **Of all the suggested cuts, this is among the most short-sighted.** If ISF beds are cut, judges will instead be forced to send individuals to TDCJ, costing the state significantly more money.

The same goes for reductions in drug treatment programming. Adult probation utilizes approximately 90% of substance abuse felony punishment (SAFP) facility beds.<sup>22</sup> Funding for SAFP facilities would decline by \$4.7 million, but that number understates the cut. This program was eliminated completely in 2003 and only began to ramp up again after 2007, reaching full-participation levels for the first time in FY 2011 (this year), when TDCJ is budgeted to spend \$62.1 million on SAFP programs. Going forward, H.B. 1 budgets SAFP at \$48.8 million for both 2012 and 2013, or a 21% cut from 2012 levels.

Separately, H.B. 1 eliminates program funding for the Battering Intervention and Prevention Program.

Finally, even where diversion programs were not completely eliminated, much of the Rider language prescribing how diversion money would be spent (e.g., prioritizing progressive

sanctions programs for diversion grants) has been deleted in the first draft of H.B. 1. So TDCJ would not only have less money to spend if this version of the budget became law, but agency management would have greater flexibility to decide priorities for the money that remains. In effect, H.B. 1 as filed would completely dismantle Texas' 2007 probation reforms, rather than expand on them to reflect the state's stated goal of reducing the inmate population.

## ➤ Parole

There is a bizarre and irreconcilable element to the budget for the Texas Board of Pardons and Paroles (TBPP). As noted, H.B. 1 would shutter the Central Unit and eliminate private prison beds. However, cuts to TBPP's bureaucracy would cause the agency to process an estimated 6,000+ *fewer* parole cases each year,<sup>23</sup> which would immediately boost the prison population by a similar number (unless front-end diversion programming, which is also slated for cuts, is expanded). Costs for prisoners being kept longer as a result of fewer release hearings are simply not accounted for in TBPP's budget, but TDCJ would still be required to feed and house those individuals until TBPP approves their release. In 2010, according to H.B. 1 (pg. V-15), TBPP reviewed 97,376 cases. After proposed staff cuts under H.B. 1, TBPP will only have capacity to review 79,700 cases per year. That represents an 18% reduction in cases reviewed.

Under H.B. 1, parole officer caseloads would also shoot up from 62 per officer to 87 on paper (probably more in reality). Budgetary limits on caseload size are lifted under the bill.<sup>24</sup> Like other TDCJ staff, parole officers will similarly see a salary freeze, cuts in state retirement contributions, and a suspension of raises associated with the career ladder.

Maintaining funding for Institutional Parole Officers and Parole Hearing Officers is especially critical to keep Texas' recidivism rates among parolees low and, thus, preserve public safety goals.

Bottom line: The budget's section on parole fundamentally does not make sense. **It is *simply not possible* to let fewer people out of prison each year, presumably keep the same number coming in, and cut the overall number of prison beds.** Short of double-bunking (as they do in California), something has got to give.

Even more critically, there are no savings to be had from cutting parole processing functions. This is because the alternative for every individual whose release date is postponed (incarceration) costs many times more than processing his or her parole application. To really save money, in fact, TBPP would need to *expand the number of parole applications processed* or (even better) simply increase the perennially low approval rate for those convicted of low-risk offenses.

### Other Parole Concerns:

H.B. 1 cuts funding for parolee Sex Offender treatment services (C.2.4) by a staggering \$16,229,087, or 42.1%; however, the budget contemplates only a 20.7% reduction in the number of individuals receiving treatment. The only way this can work is to reduce the length of some or all sex offender treatment programs.

Funding for halfway houses would be cut 10.5%, by \$4.1 million, which will reduce the number of people they are able to serve by approximately 185 (F.2.2).

County sheriffs concerned about the expense from housing individuals held on “blue warrants” for alleged parole violations will be dismayed to learn of a proposed 15% cut in funds for processing parole revocations, a cut which will pass on extra incarceration expenses to counties as individuals wait longer for their parole revocation hearings to be held. (*Note: The Sheriffs’ Association of Texas has recommended legislation to allow bail for parole violators held on blue warrants.*<sup>25</sup>)

At the very least, one new and welcome element in the budget bill itself is the requirement of a study:

to evaluate and identify process inefficiencies related to parole review and offender release that is contingent upon successful completion of an assigned rehabilitation program. A report including the results of the study shall be submitted to the Legislative Budget Board and the Governor’s Office not later than January 1, 2012. The report shall include recommendations and strategies to better align parole votes, program start dates, and offender releases.

Not later than December 1, 2012, the Board of Pardons and Paroles and the Department of Criminal Justice shall submit to the Legislative Budget Board and the Governor’s Office an update to include actions, if any, implemented since the initial report. The update shall include savings associated with any actions taken to reduce delays in releasing paroled offenders who have completed an assigned rehabilitation program.<sup>26</sup>

In the context of the rest of the budget, though, this may be unrealistic. How can parole be made more “efficient” while fewer cases are processed for release, parole officer caseloads are growing, and funds for revocation hearings are slashed? Even if the study finds “inefficiencies,” there seemingly will not be staff or resources available to implement proposed solutions.

## COMMUNITY SUPERVISION

Investments in probation, treatment, and parole have saved money, lives, and prison beds for those who have committed high-level offenses. Cuts in any of these areas *must* be avoided.

### *Grim Picture*

- Fewer probation slots will mean increased confinement for individuals suffering from substance abuse and/or mental illness. It will also mean likelier revocations.
- Reduced parole capacity will similarly boost revocations.
- Prisons will fill up with individuals who have committed administrative rule violations or minor crimes, and a lower likelihood of release on parole will cause prisons to become a bottleneck for those eligible for release.
- Taxpayers will foot the bill for thousands more people to be warehoused rather than be given the (much less expensive) tools for personal responsibility they need to become productive and law-abiding community members. This will cause higher rates of re-offending and the need for more prison construction.

The state simply cannot sustain such a cycle – especially with a large projected loss in corrections staffing.

### *Return on Taxpayer Investment*

Recently expanded diversion funding has already bore fruit:

- Between 2006 and 2009, 14,019 people were re-routed from prison to felony probation<sup>27</sup> and, during that same period, large urban probation departments decreased revocation rates.<sup>28</sup>
- Over time, there have also been fewer revocations to prison for rule violations and fewer individuals sentenced to prison, likely due to judges' increased confidence in probation and treatment.
- Additionally, the parole board began releasing more people due to a higher parole approval rate, and between 2006 and 2009, the number of parole revocations (both for rule violations and for new crimes) fell from 9,885 to 7,178, the lowest it has ever been.<sup>29</sup>

Making cuts in these areas now will roll back crucial progress. **It is simply not worth the gamble to slash diversion funding, especially given the cost savings and collateral benefits it has produced.** We have seen what happened in 2003 when a similar state budget shortfall, and the resulting cuts to probation and parole, flooded prisons, driving them to a breaking point. The Legislative Budget Board (LBB) in 2007 consequently projected the need for another 17,000 prison beds by 2012 (in addition to the 5,675 beds added between 2004 and 2007) if Texas' pace of incarceration continued. The price tag: \$2.63 billion over five years.<sup>30</sup> **Since then, wise investments in diversions have safely reduced incarceration levels and have gotten the state back on track.** As of June 2010, the LBB projected that incarceration levels will remain flat at almost 155,000 individuals, while felony probation levels and parole levels will steadily increase,<sup>31</sup> provided current, cost-effective diversion policies remain in place.<sup>32</sup>

#### ➤ **Re-Entry**

Among states that have successfully reduced their prison populations while simultaneously achieving reductions in crime, a focus on re-entry services has been a critical component.<sup>33</sup> The draft budget of H.B. 1, however, would devastate Texas' recent investments re-entry programming. Specifically, it would:

- Eliminate Project RIO,<sup>34</sup> which is the primary state job assistance program for previously incarcerated individuals.
- Eliminate the Job Placement Pilot Program, a new project which was funded at \$1,000,000 last biennium.<sup>35</sup>
- Eliminate new Reentry Transitional Coordinators created during the 81<sup>st</sup> Texas Legislature [2009].<sup>36</sup>
- Reduce funding for adult release payments by 50%.<sup>37</sup>
- Eliminate funding (\$50,000 per year) for the Parole Transitional Support Program, a small pilot program that contracts for services with recognized non-profit organizations to facilitate parolees' transition from incarceration to release on parole.<sup>38</sup>

These cuts are likely to increase costs rather than save money thanks to higher recidivism rates. Indeed, investments in re-entry services can pay big dividends both in reduced incarceration

rates and less crime. For example, “Through vigorous job placement programs and prudent use of parole, [Michigan] state officials say they have cut the prison population by 7,500, or about 15 percent, over the last four years, yielding more than \$200 million in annual savings. Michigan spends \$56 million a year on various re-entry programs, including substance abuse treatment and job training.”<sup>39</sup>

Texas’ re-entry investments are still relatively new (having been a big focus during the 81<sup>st</sup> Texas Legislature) and little documentation yet exists regarding their effectiveness. But based on other states’ experience, these line items should be increased, not lowered, if the goal is to reduce overall corrections costs.

## ➤ **Medical Care**

H.B. 1 closes down the Correctional Managed Health Care Committee,<sup>40</sup> moving contract oversight to TDCJ seemingly without giving the agency the commensurate staff and resources to perform the new function. H.B. 1 also reduces prison health care by \$236.9 million from these four critical areas:

- **Psychiatric Care** (C.1.7) would decline by \$11,997,741, or 14.5%
- **Managed Health Care – Unit Level** (C.1.8) would decline by \$76,775,039, or 18.8%.
- **Managed Health Care – Hospital Care** (C.1.9) would decline by \$123,362,800, or 36.3%
- **Managed Health Care – Pharmacy** (C.1.10) would decline by \$24,797,648, or 21.9%.

Overall, medical costs per individual per day in the 2012-13 budget would decline from \$7.67 in 2011 to \$5.84 in 2013<sup>41</sup> – a 24% per-inmate decrease which will challenge the agency to both provide constitutional levels of health care, and maintain a price point that will keep the University of Texas Medical Branch (UTMB) providing services. UTMB has threatened to cancel the contract if the state will not increase compensation. In California, cuts to inmate health care led to federal litigation (still pending) that may ultimately force the state to release tens of thousands of inmates if it cannot improve health services.<sup>42</sup>

The most likely probable method for achieving these reductions will be reducing the compensation rate for UTMB prison services. A recent report from the Texas State Auditor found that UTMB’s “reimbursement amount for physician billing services is, on average, 135 percent of the Medicare reimbursement amount. Additionally, UTMB-CMC Division reimbursement amounts exceeded standard Medicare reimbursement amounts for each type of hospital service, including inpatient and outpatient services.”<sup>43</sup>

## ➤ **Other**

### Office of Inspector General:

H.B. 1 cuts this office’s budget by 16.2% (G.1.3). **This is especially problematic in light of ongoing TDCJ problems with contraband routinely entering TDCJ facilities.** Reducing resources to investigate wrongdoing at TDCJ will dilute the effectiveness of recent investments in new security apparatuses because fewer investigators will be available to follow up on leads and complaints. This cut places TDCJ staff and inmates at risk.

#### Victim Services Division:

The Victim Services Division provides immediate services to victims of crime, as well as providing a necessary liaison between the public and TDCJ. Proposed cuts would eliminate the Division (G.1.4),<sup>44</sup> devastating the single most important organization that provides guidance and a myriad of other services to crime victims.

#### Central Administration:

H.B. 1 cuts this line item by 13.5%, or \$7,928,919 (G.1.1).

#### Chaplains:

The powerful impact that these individuals make is worth their presence in prison units. Sadly, under H.B. 1, this program would be completely eliminated.

#### Food Reductions:

In response to calls for budget cuts over the last biennium, TDCJ has already slashed its prisoner food budget by 13.5% from 2009 levels, though its inmate population has remained the same.<sup>45</sup>

### **TEXAS JUVENILE PROBATION COMMISSION**

H.B. 1 as proposed assumes the Texas Youth Commission (TYC) and the Juvenile Probation Commission (TJPC) will continue to exist as they do today, as separate entities, while the Sunset Advisory Commission has recently (January 2011) recommended merging the agencies, reducing the number of inmates in youth prisons, and expanding community-based alternatives for handling youth with more serious offenses.<sup>46</sup> As filed, however, H.B. 1 is not in line with the Sunset Commission's recommendations. Not only does it treat the agencies separately, but it proposes cuts to Community Corrections that seem antithetical to the cost-saving approaches recommended by the Commission.

Total General Revenue expended on TJPC under H.B. 1 would decline by 13.5%, or \$39,255,982 for the biennium. Basic probation would slightly increase, while funding for progressive sanctions (levels 1-3) would decline by 10%. These reductions, however, are offset by declining juvenile probation referrals.<sup>47</sup> Indeed, over the last year, according to the LBB's Uniform Cost Report, "The average cost per day per offender for basic community supervision (juvenile probation) was \$14.58 in fiscal year 2009 and \$17.25 in fiscal year 2010."<sup>48</sup> These trends take some of the sting from TJPC budget reductions.

Community Corrections funding, however, would take the biggest and most concern-causing hit: 17%, or \$32,448,128. If the Legislature follows through on Sunset Commission recommendations to reduce TYC admissions by having counties manage higher-risk youth in community-based programs, this cut not only must be rescinded but savings from any TYC unit closures should be partially spent to increase this line item. Community Corrections grants pay for various community-based probation services under the auspices of local juvenile boards.<sup>49</sup>

TJPC is mostly a pass-through agency, the bulk of whose budget goes to counties to pay for probation services. Overall, funding to counties through TJPC would decline 14.1% under H.B. 1 from the last biennium to the next. The line item for salary and wages at TJPC will decline 14.4%, possibly presaging staff cuts at the agency's central office in Austin.

Another critical cut: Training funds for juvenile probation officers would decline under H.B. 1 by a staggering 95%, from more than \$8 million per year to around \$411,000 (C.1.1). This is especially problematic because juvenile probation officers have been asked over the last several years to make shifts toward evidence-based practices that require different strategies and tactics than traditional "trail 'em, nail 'em, and jail 'em" approaches. Funds for programming could be wasted if front-line probation officers are not adequately trained to use them effectively.

Finally, on a somewhat positive note, H.B. 1 eliminates \$1 million in annual funding for the Harris County Community Corrections Facility. Boot camps were a fad that evidence-based practices fail to support,<sup>50</sup> and Harris County ran an "adventure based treatment program," which is similar in type to programs criticized by the U.S. Government Accountability Office.<sup>51</sup>

### TEXAS YOUTH COMMISSION

H.B. 1 would lower TYC's budget from \$397 million in general revenue for the current biennium to just over \$334 million for FY 2012-2013, a reduction of \$62.8 million, or 18.8%. Considering all funds, TYC's budget would be reduced from \$455.9 million in the current biennium to \$360.3 million in the upcoming two-year cycle, a reduction of \$95.6 million, or 20.9%.

#### Reduced Institutional Capacity:

A new TYC rider would establish a maximum cap of 1,600 institutional beds beginning January 1, 2012, compared to the current average daily population cap of 1,900. TYC's current institutional population is 1,459 youth. The agency may close up to three facilities to reduce institutional capacity under the budget, and TYC would be required report the plan for reducing capacity to the LBB by October 2011. According to TYC Executive Director Cherie Townsend in a letter to employees, "There is no current plan for closing specific facilities, therefore, the plan would need to be developed once the budget is finalized."<sup>52</sup>

Similar to the adult parole system, H.B. 1 makes assumptions about parole funding that appear to contradict other funding priorities in the budget. TYC would be required to reduce institutional capacity, but H.B. 1 also requires the agency to reduce parole services. Specifically, TYC would serve a population of 1,160 youth in FY 2012 and 1,220 youth in FY 2013, down from 1,516 in the current fiscal year.<sup>53</sup> But if TYC reduces institutional capacity, that will likely increase the number of youth on parole. These cost-saving approaches seem to conflict. To reduce incarceration costs, more people inevitably will end up on community supervision.

#### Staffing:

TYC will face significant staff cuts. H.B. 1 reduces FTEs (full-time equivalent employee positions) to 2,986.8 in FY 2012-13, down 553.2 from the FY 2010-11 level. As at TDCJ, H.B. 1 freezes the TYC career ladder. Says TYC, "This rider has the potential to significantly impact both recruitment

and retention of employees who have the most direct contact with youth.” The proposed budget also scales back employee retirement contributions from 6.95 percent to 6.0 percent.<sup>54</sup>

All staffing estimates, though, and indeed most other legislation regarding TYC and TJPC, must be taken with a grain of salt until the Legislature reconciles its proposed budgets with Sunset Advisory Commission recommendations to merge the agencies. If that happens, the budgets for these agencies will radically change in ways that would be difficult to predict from either the House or Senate budgets.

### **TEXAS COMMISSION ON JAIL STANDARDS**

Texas’ jail regulatory structure has never been given sufficient resources, and proposed cuts would further debase the ability of the Texas Commission on Jail Standards (TCJS) to accomplish even its core function: inspecting county jails for compliance with state law and creating an incentive for noncompliant jails to abide by state rules.

General Revenue expended on TCJS under H.B. 1 would decline by 39%, or \$775,301 over the biennium. Most of that comes from reduced funding for inspections and enforcement (A.1.1), as well as reduced funding for management consultation with counties about jail overcrowding. To partially make up for the shortfall, fees charged to counties for jail inspections will go up by roughly a factor of 22.<sup>55</sup>

The budget’s performance measures anticipate the percentage of jails with management deficiencies to increase, from 9.79% in FY 2009 to 17.1% in 2013, perhaps as a result of fewer inspections. Consequently, budgeters predict, 10 fewer jails will be in compliance with minimum standards.

Further, the number of TCJS management consultations with local jails would decline 32%, from 311 to 211. This service is designed to assist local jails with overcrowding, security, and other common jail issues. If it goes away, counties must either do without or will be required to pay for independent expertise.

### **OFFICE OF COURT ADMINISTRATION**

The Office of Court Administration (OCA) faces a 15% reduction: \$712,121 and 4.4 FTEs for the biennium. The agency already has 2 of 31 positions vacant and will leave those unfilled.

OCA has said that additional cuts would require cutting core services, including the court collections program, which generates over \$28 million in revenue each biennium for the state.<sup>56</sup> Due to the latest census data, OCA will be adding about 20 more mandatory jurisdictions to its collections program workload in FY 2012-13, which will be subject to this mandatory program. This revenue will be lost.

The Office of the State Prosecuting Attorney would be moved to OCA to save on administrative overhead.<sup>57</sup>

The Assistance to Administrative Judicial Regions line item was zeroed out (previously having been allotted about \$200,000 per year). These costs would have to be absorbed by the counties and administrative judicial regions.

OCA's specialty courts programs (Child Support Courts and Child Protection Courts) were left intact at their FY 2010-11 levels.

Arguably the most problematic proposed cut at OCA is to its Information Technology (IT) division, which H.B. 1 would reduce by almost 60% from the FY 2010-11 appropriated amount. OCA has said its IT division is "prepared to live with the reduction of almost all of our capital projects (about \$3.1 million of our \$10.2 million baseline request, which equals a 30% reduction to our IT shop)." However, "What we absolutely must have back for IT to continue to perform the core functions of maintaining the court infrastructure, including case management and the first phase of the judicial data recovery system that is being implemented this year, is \$839,634." OCA also requires some restored funding for maintenance on existing IT equipment, since its budget for new computer equipment was zeroed out.

Finally, OCA must cut its already lean administrative costs at the same time that it is being asked to take on the Office of the State Prosecuting Attorney, and after new certification boards were added to its jurisdiction in each of the last three sessions. At some point, OCA cannot continue to accept additional administrative duties with fewer funds.

### **TASK FORCE ON INDIGENT DEFENSE**

The Task Force on Indigent Defense (Task Force) under H.B. 1 would face a 15% cut to the grants it gives to counties for indigent defense (A.2.1), both for general support and startup funds for public defender offices, and a 10% cut to administration, which will cost the agency 1 FTE/Staff position reduction. (The Task Force's board would decide how those cuts would be allocated, if they occur.)

Further squeezing the Task Force's grant funds, General Revenue funding for the Office of Capital Writs is eliminated, and that agency will now be funded (with a 20% cut) from the Task Force's fair defense account (\$800,000).<sup>58</sup>

Texas has only been providing state funds to help support indigent defense since 2001, when the Fair Defense Act placed new requirements on counties while the state, in return, agreed to support indigent defense through Task Force grants. However, county indigent defense costs have consistently gone up at greater rates than the Task Force's budget, making these cuts tantamount to unfunded mandates for county grantees whose share is reduced.

### **INNOCENCE CLINICS**

Under H.B. 1, funding for innocence clinics at the state's four public law schools remains intact at \$800,000 for the biennium. These clinics arguably get more bang for the buck than other legal services paid for by the state because of the multiplier effect from dozens of law students working on real-world cases.

## ENDNOTES

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<sup>1</sup>H.B. 1 Legislative Budget Estimates for the 2012-13 biennium, January 2011, pg. 5.

<sup>2</sup>*Ibid.*, pg. 1.

<sup>3</sup>FY 2011 ends August 31, 2011.

<sup>4</sup>H.B. 1 *Legislative Budget Estimates*, pg. V-8.

<sup>5</sup>Legislative Budget Board (LBB) House Summary, Table 29, pg. 147.

<sup>6</sup>Examples include changing sentencing laws and/or probation and parole rules to divert individuals who have committed lower-level, nonviolent offenses from prison to community-based punishments. For a good overview of policy options, see “Texas Criminal Justice Reform: Lower Crime, Lower Cost,” by Marc Levin Esq., Center for Effective Justice, Texas Public Policy Foundation, January 2010. Available online at: <http://www.texaspolicy.com/pdf/2010-01-PP04-justicereinvestment-ml.pdf>. Also see TCJC’s own four-part policy guide, to be released by the end of February.

<sup>7</sup>LBB House Summary, Table 32, pg. 152.

<sup>8</sup>Letter to CSCD directors from TDCJ-CJAD Executive Director Cary Welebob, January 20, 2011.

<sup>9</sup>H.B. 1, pg. V-17

<sup>10</sup>In LBB’s “Summary of Legislative Budget Estimates,” this line item is listed at \$17 million in both 2012 and 2013, an 83% cut in maintenance funds (pg. 159). The document titled “Legislative Budget Estimates” lists the 2013 maintenance funding as zeroed out, but it seems likely the “summary” document is correct.

<sup>11</sup>Congressional Research Service, “Economic Impacts of Prison Growth,” April 2010, pg. 22. Available online at: <http://www.fas.org/sgp/crs/misc/R41177.pdf>.

<sup>12</sup>“Data on TDCJ Unit Age and Cost,” *Grits for Breakfast*, November 25, 2009. Available online at: <http://gritsforbreakfast.blogspot.com/2009/11/data-on-tdcj-unit-age-and-cost.html>.

<sup>13</sup>LBB, “Summary of Legislative Budget Estimates,” January 2011, pg. 150. By these estimates, TDCJ would cut 1,643 contract beds at private prisons and state jails, and 357 beds at pre-parole transfer facilities.

<sup>14</sup>Here is the calculation:  $\$37.45 \times 365 = \$13,676.55$ .  $\$38,001,624 / \$13,676.55 = 2778.6$ , rounded to 2,779 reduction in total private prison beds, since one can’t cut .6 of a bed.

<sup>15</sup>“Which prison units should Texas close? Private contracts, security concerns may factor in,” *Grits for Breakfast*, March 1, 2010. Available online at: <http://gritsforbreakfast.blogspot.com/2010/03/which-prison-units-should-texas-close.html>.

<sup>16</sup>In August 2009, reacting to declining inmate population numbers, TDCJ stopped leasing beds entirely from local county jails. Neither the House nor Senate proposed budgets for 2012-2013 would reinstate money for leasing beds from counties.

<sup>17</sup>“Inmates yet to arrive at Jones County jail in Anson,” *Abilene Reporter-News*, December 10, 2010. “For example, in Jones County, ‘Officials originally were expecting [a new, empty jail] facility to be used as an “intermediate sanction facility’ ... But when it was complete, the Texas Department of Criminal Justice said there weren’t enough inmates to house for that purpose.”

<sup>18</sup>“Texas plans to move inmates from county jails,” *Associated Press*, June 27, 2009.

<sup>19</sup>H.B. 1, pg. V-22.

<sup>20</sup>In 1998, the US Supreme Court ruled the ADA applied to state prisons in *PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. v. YESKEY*.

<sup>21</sup>H.B. 1 *Legislative Budget Estimates*, pg. V-11 and V-15.

<sup>22</sup>“Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision and Diversion Funds,” December 1, 2010, pg. 7.

<sup>23</sup>H.B. 1 *Legislative Budget Estimates*, pg. V-15.

<sup>24</sup>*Ibid.*

<sup>25</sup>The Governor vetoed a similar bill, H.B. 541, after the 80<sup>th</sup> Texas Legislature adjourned in 2007.

<sup>26</sup>H.B. 1, pg. V-26

<sup>27</sup>Dr. Tony Fabelo, data obtained from TDCJ and presented at the Texas Public Policy Foundation (TPPF) criminal justice panel, January 2010.

<sup>28</sup>Community Justice Assistance Division, “Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds,” Texas Department of Criminal Justice, December 1, 2010, pg. 23.

<sup>29</sup>Dr. Tony Fabelo, data obtained from TDCJ and presented at the TPPF criminal justice panel.

<sup>30</sup>“These beds would have cost \$1.13 billion to build based on a \$65,000 per bed construction cost and another \$1.50 billion to operate over five years based on the \$47.50 per day operating cost in 2008.” From Marc Levin, “Texas Criminal Justice Reform: Lower Crime, Lower Cost,” Center for Effective Justice – Texas Public Policy Foundation, January 2010, pg. 1.

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- <sup>31</sup> Legislative Budget Board, “Adult and Juvenile Correctional Population Projections: Fiscal Years 2010-2015,” State of Texas, June 2010, pgs. 4, 5. Felony probation levels are projected to rise from 173,867 (end-of-month yearly average) in FY 2010 to 177,525 in FY 2015. Active parole supervision levels are projected to rise from 81,198 (end-of-month yearly average) in FY 2010 to 84,772 in FY 2015
- <sup>32</sup> *Ibid.*, pg. 2.
- <sup>33</sup> “States help ex-inmates find jobs,” *The New York Times*, January 24, 2011.
- <sup>34</sup> H.B. 1, pg. V-21
- <sup>35</sup> *Ibid.*, pg. V-30
- <sup>36</sup> Letter to CSCD directors from TDCJ-CJAD Executive Director Cary Welebob, January 20, 2011.
- <sup>37</sup> *Ibid.*
- <sup>38</sup> H.B. 1, pg. V-25
- <sup>39</sup> *States help ex-convicts find jobs.*
- <sup>40</sup> H.B. 1, pg. V-26
- <sup>41</sup> *H.B. 1 Legislative Budget Estimates*, pg. V-14.
- <sup>42</sup> “California prisons must cut inmate population,” *The New York Times*, August 4, 2009. Available online at : [http://www.nytimes.com/2009/08/05/us/05calif.html?\\_r=2&ref=us](http://www.nytimes.com/2009/08/05/us/05calif.html?_r=2&ref=us).
- <sup>43</sup> State Auditor, “An Audit Report on Correctional Managed Health Care at the University of Texas Medical Branch at Galveston,” February 2011. Available online at: <http://www.sao.state.tx.us/Reports/report.cfm/report/11-017>.
- <sup>44</sup> *H.B. 1 Legislative Budget Estimates*, January 2011, pg. V-8
- <sup>45</sup> *Ibid.*, pg. V-12.
- <sup>46</sup> “Sunset Panel: Merge TYC and TJPC,” *Austin American-Statesman*, January 12, 2011.
- <sup>47</sup> Office of Court Administration, “Annual Report for the Texas Judiciary,” 2010, pg. 48. In FY 2010, “The number of cases added to the juvenile dockets of district and county-level courts in 2010—39,822 cases—was 10.0 percent lower than the number added during the previous year and was the lowest number added since 1996 (39,214 cases).”
- <sup>48</sup> LBB, “Criminal Justice Uniform Cost Report, Fiscal Years 2008-2010,” January 2011, pg. 3.
- <sup>49</sup> For more detail on Community Corrections grants at TJPC, see <http://www.tjpc.state.tx.us/publications/standards/Grants10/TJPCGRANTSY.pdf>.
- <sup>50</sup> Lawrence W. Sherman et al, “Preventing Crime: What Works, What Doesn’t, What’s Promising,” National Institute of Justice, 1998. Available online at: <http://www.ncjrs.gov/pdffiles/171676.pdf>.
- <sup>51</sup> Gregory D. Kutz, Managing Director Forensic Audits and Special Investigations, and Andy O’Connell, Assistant Director Forensic Audits and Special Investigations, GAO, “RESIDENTIAL TREATMENT PROGRAMS: Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth,” Testimony Before the Committee on Education and Labor, House of Representatives, October 10, 2007. Available online at: <http://www.gao.gov/new.items/d08146t.pdf?loc=interstitialskip>.
- <sup>52</sup> Letter from Executive Director Cherie Townsend to TYC staff, January 19, 2011. Available online at: [http://www.tyc.state.tx.us/news/ctownsend\\_01-19-2011.html](http://www.tyc.state.tx.us/news/ctownsend_01-19-2011.html).
- <sup>53</sup> *H.B. 1 Legislative Budget Estimates*, pg. V-40.
- <sup>54</sup> *Letter to TYC staff*, January 19, 2011.
- <sup>55</sup> H.B. 1 as filed, pg. V-36, Rider 2. The old Rider 2 (struck) said fees could be collected up to \$13,000 for this purpose. The new Rider 2 authorizes fees up to \$288,200, which is just more than 22 times the old fee total.
- <sup>56</sup> Email from Glenna Bowman, Chief Financial Officer of OCA, January 28, 2010.
- <sup>57</sup> LBB, *House Summary*, pg. 136.
- <sup>58</sup> Email from Jim Bethke, January 19, 2011.