



Texas Criminal Justice Coalition

Safer, Smarter, and More Cost-Efficient Approaches to Reducing Crime In Texas

State corrections strategies represent a sizeable portion of the state budget (\$3.1 billion annually), and they impact the public safety of communities across Texas. It is imperative that state decision-makers continue Texas' momentum in favor of approaches that truly reduce criminal behavior. Together, stakeholders can continue building an efficient and balanced criminal justice system by advancing smart, responsible policies that hold people accountable, protect taxpayer investments, strengthen families, and boost public safety.

The Texas Criminal Justice Coalition works with peers, policy-makers, practitioners, and community members to identify and promote smart justice policies that safely reduce Texas' costly over-reliance on incarceration. Our focus is specifically on **nonviolent, non-sexually based offenses**.

WHO IS TEXAS LOCKING UP?

According to recent data published by the Texas Department of Criminal Justice, **Texas was incarcerating 152,303 individuals** as of August 31, 2012. Approximately **45% of these individuals (68,126 men and women) were incarcerated for a nonviolent, non-sexually based offense**.¹

Prison: Texas has 57 prison units,² used to confine individuals with felony offenses, who are sentenced to terms of 2 years to life in prison.³

- **137,095 people were incarcerated in prison** as of August 2012 (*90% of all individuals incarcerated*).⁴
 - » **39% of people in prison (53,810 men and women) were incarcerated for a nonviolent, non-sexually based offense**.⁵
 - » Of the 20,313 people in prison for a drug offense, 51% (10,331 people) were incarcerated for **possession, not delivery** or other drug-related offenses.⁶
 - » Of all individuals incarcerated in prison, 36% were Black, 30% were White, and 33% were Hispanic.⁷

State Jail: Texas has 20 state jails,⁸ used to confine individuals with offenses of various levels, but most have committed drug or property crimes,⁹ and they are sentenced to terms of 180 days to 2 years.¹⁰

- **11,729 people were incarcerated in a state jail** (*8% of all individuals incarcerated*).¹¹
 - » **99% of people in state jails (11,578 men and women) were incarcerated for a nonviolent, non-sexually based offense**.¹²
 - » Of the 3,893 people in a state jail for a drug offense, 87% (3,372 people) were incarcerated for **possession, not delivery** or other drug-related offenses.¹³
 - » Of all individuals incarcerated in a state jail, 36% were Black, 36% were White, and 27% were Hispanic.¹⁴

Substance Abuse Felony Punishment Facilities (SAFPFs): Texas has 5 SAFPFS,¹⁵ used to confine individuals needing a structured treatment regimen. They are sentenced to a six- or nine-month therapeutic program, depending on need, followed by placement in a community residential facility or Transitional Treatment Center for three months, then outpatient treatment for up to 12 additional months.¹⁶

- **3,479 people were incarcerated in a SAFPFS** (2% of all individuals incarcerated).¹⁷
 - » **79% of people in a SAFPFS** (2,738 men and women) were incarcerated for a nonviolent, non-sexually based offense.¹⁸
 - » Of the 1,260 people in a SAFPFS for a drug offense, 79% (991 people) were incarcerated for **possession, not delivery** or other drug-related offenses.¹⁹
 - » Of all individuals incarcerated in a SAFPFS, 24% were Black, 47% were White, and 28% were Hispanic.²⁰

WHO IS TEXAS SUPERVISING IN THE COMMUNITY?

Also according to recent data published by the Texas Department of Criminal Justice, **Texas was supervising 493,340 people in the community** as of August 31, 2012, either as an alternative to incarceration or following individuals' release from incarceration. **The majority were being supervised for a nonviolent, non-sexually based offense.**

Probation: Judges have the option of sentencing certain individuals to community supervision (overseen by Texas' 121 probation departments²¹) instead of prison or jail, with terms extending up to 10 years for a felony or 2 years for a misdemeanor.²²

Probation conditions, which vary by judge and offense, typically require regular reporting to a probation officer, fee payments throughout the course of the probation term, full payment of court costs and fees, community service, meeting all mandated class or program obligations (e.g., class or program attendance, drug testing, etc.), school or employment attendance, abiding by restrictive conditions (e.g., curfews, drug and alcohol abstinence, avoidance of negatively influential peers or locations), and remaining law-abiding during the course of the probation term; depending on the offense, probation conditions may also require victim restitution or the installation of an ignition interlock device. **It is incumbent upon each probationer to ensure all conditions are met, making this a highly rigorous and regulated period under supervision.** Failure to meet probation conditions could result in incarceration (with a term length decided by the judge), placement in an intermediate sanctions facility, an extension of the probation term, or the imposition of additional restrictive conditions, at the judge's discretion.

- **406,209 people were on community supervision** (probation) as of August 2012 (82% of all individuals on supervision).²³
 - » 64% of these individuals (259,797 men and women) were on **direct supervision**, which means a person receives a minimum of one face-to-face contact with a Community Supervision Officer every three months.

- ✓ 166,054 people (64%) were on **felony** direct supervision.
 - ✓ 93,743 people (36%) were on **misdemeanor** direct supervision.
- » **82%** of people (212,016 men and women) were on direct supervision for a nonviolent, non-sexually based offense.²⁴
 - » Of all individuals on direct supervision, 24% were Black, 40% were White, and 35% were Hispanic.²⁵

Parole or Other Post-Release Supervision: The vast majority of individuals who are incarcerated are ultimately released back into the community. Many people who are released from prison remain under supervision in the community (overseen by Texas' 67 district parole offices²⁶) for some length of time.

Like with probation, post-release supervision has restrictive conditions, typically including regular meetings with a parole officer, regular fee payments, ongoing employment, stable housing, abiding by all laws, avoiding negatively influential peers or locations, and meeting all other special conditions (e.g., sex offender requirements, electronic monitoring, drug testing, mandatory program or counseling participation, and victim restitution). Failure to comply with terms may result in placement in an intermediate sanctions facility or revocation to prison to serve the time remaining on the sentence. For instance, if a person is sentenced to 10 years, is released in 7 years, and at any point while on parole violates the parole terms, he or she may be sentenced to serve the remaining 3 years in prison.

- **87,131 people were on post-release "active supervision"**²⁷ as of August 2012 (*18% of all individuals on supervision*).²⁸
 - » **75%** of people (65,205 men and women) were on active supervision for a nonviolent, non-sexually based offense.²⁹
 - » Of all individuals on active supervision, 42% were Black, 33% were White, and 25% were Hispanic.³⁰

HOW MUCH IS TEXAS SPENDING ON CORRECTIONAL APPROACHES?

According to Texas' Legislative Budget Board, the state spends the vast majority of its \$3.1 billion annual corrections budget on incarceration, rather than on community-based supervision, programming, and services.

As you will note from the figures below, it costs **36 times more** to put people in prison than supervise them on probation, and it costs nearly **14 times more** to keep people in prison than release them on parole.

Incarceration: Texas spends approximately **86% of its \$3.1 billion annual corrections budget** (\$2,657,127,650) on incarceration, facilities, special needs inmates, and administration.³¹

- Texas spends **\$50.04 per person per day** to incarcerate one individual in prison.³² Given August 2012 correctional population totals, Texas was spending:

- » **\$6,860,234 per day** to incarcerate people in prison.
 - » **\$2,692,652 per day** to incarcerate people in prison for a nonviolent, non-sexually based offense.
 - » **\$516,963 per day** to incarcerate people in prison for a **drug possession** offense.
- Texas spends **\$42.90 per person per day** to incarcerate one individual in a state jail.³³ Given August 2012 correctional population totals, Texas was spending:
 - » **\$503,174 per day** to incarcerate people in a state jail.
 - » **\$496,696 per day** to incarcerate people in a state jail for a nonviolent, non-sexually based offense.
 - » **\$144,659 per day** to incarcerate people in a state jail for a **drug possession** offense.
 - Texas spends **\$63.19 per person per day** to incarcerate one individual in a SAFPF.³⁴ Given August 2012 correctional population totals, Texas was spending:
 - » **\$219,838 per day** to incarcerate people in a SAFPF.
 - » **\$173,014 per day** to incarcerate people in a SAFPF for a nonviolent, non-sexually based offense.
 - » **\$62,621 per day** to incarcerate people in a SAFPF for a **drug possession** offense.

Probation and Other Diversions from Incarceration: Texas spends approximately **9% of its \$3.1 billion annual corrections budget** (\$297,726,807) on basic supervision, diversion programs, community corrections, treatment alternatives to incarceration, and probation department health insurance.³⁵

- Texas spends **\$1.38 per person per day** to supervise a person on probation.³⁶ Given August 2012 correctional population totals, Texas was spending:
 - » **\$358,520 per day** to supervise people on direct supervision.
 - » **\$292,582 per day** to supervise people on direct supervision for a nonviolent, non-sexually based offense.

Parole or Other Post-Release Supervision: Texas spends approximately **5% of its \$3.1 billion annual corrections budget** (\$156,183,342) on parole processing, parole supervision, halfway house facilities, and intermediate sanctions facilities.³⁷

- Texas spends **\$3.63 per person per day** to supervise a person on active supervision.³⁸ Given August 2012 correctional population totals, Texas was spending:
 - » **\$316,286 per day** to supervise people on active supervision.
 - » **\$236,694 per day** to supervise people on active supervision for a nonviolent, non-sexually based offense.

IS INCARCERATION REDUCING CRIMINAL BEHAVIOR?

The Legislative Budget Board (LBB) calculates the percentage of people who are re-arrested and re-incarcerated within 3 years following their release from prison, state jail, or a SAFPF.

According to the LBB's recent findings, people leaving SAFPFs have the highest rates of re-incarceration after release (40%), followed by people leaving state jails (31%), then people leaving prisons (23%). As such, **incarceration fails to keep people from costly re-incarceration in approximately 20-40% of instances.**

It is also important to note that the **vast majority** of people who re-offended following release from **any type of correctional facility** were originally sentenced for a nonviolent, non-sexually based offense. This demonstrates that incarceration is **especially failing to address nonviolent criminal behavior.**

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Separately from correctional facility recidivism rates, the LBB measures annual rates of revocation among probationers and parolees.

In both instances, **revocation rates have fallen over the last several years while supervised populations have grown**, saving the state millions in enforcement and incarceration costs.

Prison Recidivism:

- **Re-arrests: 47.2%** of individuals released from prison in FY 2008 (measured through FY 2011) were re-arrested.³⁹
 - » **73.7%** of re-arrested individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁴⁰
- **Re-incarceration: 22.6%** of individuals released from prison in FY 2009 (measured through FY 2012) were re-incarcerated.⁴¹
 - » **76%** of re-incarcerated individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁴²
 - » **32.1%** (the largest majority) of individuals were re-incarcerated for committing a new, drug-related offense.⁴³

State Jail Recidivism:

- **Re-arrests: 62.7%** of individuals released from state jail in FY 2008 (measured through FY 2011) were re-arrested.⁴⁴
 - » **98.9%** of re-arrested individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁴⁵

- **Re-incarceration: 31.1%** of individuals released from a state jail in FY 2009 (measured through FY 2012) were re-incarcerated.⁴⁶
 - » **98.9%** of re-incarcerated individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁴⁷
 - » **42.8%** (the largest majority) of individuals were re-incarcerated for committing a new, property-related offense.⁴⁸

SAFPF Recidivism:

- **Re-arrests: 40.9%** of individuals released from a SAFP in FY 2008 (measured through FY 2011) were re-arrested.⁴⁹
 - » **81%** of re-arrested individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁵⁰
- **Re-incarceration: 40.3%** of individuals released from a SAFP in FY 2009 (measured through FY 2012) were re-incarcerated.⁵¹
 - » **80.2%** of re-incarcerated individuals had originally been incarcerated for a nonviolent, non-sexually based offense.⁵²
 - » **33.6%** (the largest majority) of individuals were re-incarcerated for committing a new, drug-related offense.⁵³

Community Supervision Revocations:

- **Revocations: An average 14.8%** of individuals on felony direct supervision revoked their probation from FY 2008 through FY 2012.⁵⁴
 - ✓ **In FY 2012, 50% of probation revocations were for technical violations.**⁵⁵ According to the LBB, "A technical violation is any violation of community supervision conditions other than committing a subsequent new offense (e.g., positive urinalysis or failure to pay court-ordered fees)."⁵⁶
 - ✓ In FY 2012, **96.3%** of revoked individuals were sent to prison or state jail; the remainder went to county jail or other facilities.⁵⁷

**** Since 2004, felony direct supervision revocations have declined from 16.7% to 14.5%, while probation populations have grown by more than 11,000 (from more than 157,000 to nearly 169,000).**⁵⁸ Keeping more individuals in the community while reducing revocations to costly incarceration has saved the state millions of dollars.

Parole Revocations:

- **Revocations: An average 8.5%** of individuals on active felony supervision revoked their parole from FY 2008 through FY 2012.⁵⁹
 - ✓ **In FY 2012, 15.1% of parole revocations were for technical violations.**⁶⁰

**** Since 2004, parole revocations have declined by half (14.8% to 7.4%), while parole populations have grown by more than 7,000 (from nearly 77,000 to nearly 84,000).⁶¹ Keeping these individuals out of costly prison beds while reducing revocations to incarceration has saved the state millions of dollars.**

**WHAT WORKS BETTER FOR TEXAS:
SMART APPROACHES THAT CREATE ACCOUNTABILITY, BOOST PUBLIC SAFETY,
AND INCREASE COST SAVINGS**

Over the last several years, a bipartisan group of Texas legislators has been incrementally prioritizing smart-on-crime strategies. These include **progressive sanctions** for drug offenses, implemented in 2003; diversion funding for probation departments to **reduce revocations**, beginning in 2005; 2007 investments in **treatment and diversion programs** (also funded, where possible, in following years); and **shortened probation terms** alongside **increased parole rates**.

Due in part to these ongoing investments in responsible alternatives to incarceration, Texas has experienced positive change. The state has seen an **26.1% drop in the violent crime rate between 2003 and 2011, and a 24.4% drop in the property crime rate over that same period.**⁶² In 2011 alone, according to the Texas Department of Public Safety, the state's **crime rate fell 8.3% (with violent crime dropping 9.3% and property crime dropping 8.2%), while the incarceration rate fell 1.45%.**⁶³

*Texas's Crime Rates on the Decline
Listed by Offense, 2003-2011⁶⁴*

Offense	2003	2011	Percentage Change
Murder	6.4	4.2	-34.4
Rape	36.3	29.0	-20.1
Robbery	167.5	110.6	-34.0
Aggravated Assault	342.9	265.0	-22.7
Violent Crime Total	553.1	408.8	-26.1
Burglary	994.8	839.4	-15.6
Larceny-Theft	3160.8	2389.6	-24.4
Motor Vehicle Theft	444.3	246.9	-44.4
Property Crime Total	4599.9	3475.9	-24.4
INDEX CRIME TOTAL	5153	3884.7	-24.6

In addition to falling crime rates benefiting Texas communities, the state has **saved nearly \$2 billion since 2007** through less need for incarceration.⁶⁵

These policies have put Texas on the right road, making us a model for other states seeking ways to safely address high prison and jail populations. **We must continue our commitment to common sense strategies through wise investments, or risk undermining the critical progress Texas has been making.**

What Do Voters Want?

TEXAS Poll: In October 2012, the University of Texas and *Texas Tribune* polled statewide participants on various issues, including the “most important problem facing the state of Texas today.” Of all participants, 44% identified themselves as Republicans and 41% identified themselves as Democrats, with the largest percentage (39%) between the ages of 45 and 64, and the majority (65%) self-identifying as white. They **ranked crime and drugs as the 10th most important problem** facing Texas, behind immigration, border security, the economy, education, unemployment/jobs, political corruption/leadership, state budget cuts, health care, and gas prices.⁶⁶

These results show that Texans prioritize economic growth and budget issues over crime, seemingly providing support for cost-saving criminal justice strategies that will simultaneously improve public safety.

NATIONAL Poll: In early 2012, the Pew Center on the States commissioned a nationwide survey of likely voters to determine their thoughts on sentencing and corrections policies. Of all respondents, 39% identified themselves as conservative, while 30% identified themselves as liberal.

The 3 “Key Takeaways” from the survey are as follows:

1. American voters believe too many people are in prison and the nation spends too much on imprisonment.
2. **Voters overwhelmingly support a variety of policy changes that shift non-violent offenders from prison to more effective, less expensive alternatives.**
3. Support for sentencing and corrections reforms (including reduced prison terms) is strong across political parties, regions, age, gender, and racial/ethnic groups.

Drilling deeper into the findings, we see that voters think about a fifth of prisoners could be released without posing a threat to public safety, and that they would be more willing to reduce funding for prisons than for education, health care services, or transportation projects. Furthermore, 87% of Republicans and 88% of Democrats agree: “Prisons are a government program, and just like any other government program they need to be put to the cost-benefit test to make sure taxpayers are getting the best bang for their buck.”⁶⁷

These results clearly demonstrate that the voting public wants effective, cost-conscious strategies to meet local public safety needs. Programs and practices that truly address and reduce criminal behavior – at a cheaper cost than incarceration – should be Texas’ first choice. While a small but vocal segment of the population will always clamor for tougher penalties, it is important to implement policies that will benefit the greatest number of people.

What Do Victims Want?

According to Pew’s 2012 poll results (*discussed directly above*), both violent and non-violent crime victims support **alternatives to incarceration**, like probation and parole, for non-violent crime. In fact, 70% of violent crime victim households and 73% of nonviolent crime victim households agree: “One out of every 100 American adults is in prison. That’s too many, and it costs too much. There are more effective, less expensive alternatives to prison for non-violent offenders and expanding those

alternatives is the best way to reduce the crime rate.”

Various theories explain why victims are interested in a restorative justice approach to crime. According to one report:

While individual victims may be angry and initially seek vengeance, surveys have repeatedly found that most victims do not have these feelings. [...] Many victims are, in fact, quite “lenient” in their own views about sentencing. Large proportions of crime victims surveyed are willing to consider alternatives to imprisonment for their offenders if they can play a part in the way their case is handled. [...] A relatively influential factor in victim attitudes about meeting offenders was the extent to which the victim felt emotionally upset by the offence: those most affected in this way were the ones most likely to want to meet their offenders and were also the ones most open to reparation.⁶⁸

Other sources cite to victims’ interest in **rehabilitating** individuals (vs. exacting retribution), so as to lower the likelihood of future victims, while some victims are more interested in **restitution**, seeking to recoup losses resulting from the crime.⁶⁹

Unfortunately, with criminal penalty enhancements and other punitive policies that are sending more people to prison or jail, victims are left behind, struggling to get restitution from individuals who are making a low wage, if any wage at all, and without much hope for true rehabilitation among people committing criminal offenses.

Texas Deserves Smarter Solutions

(1) Assessments, with Placement in Appropriate Programming Where Necessary. It is important to identify the underlying causes of individuals’ criminal behavior to determine which rehabilitative strategy will best benefit them. This means assessing each person’s risk of further criminal behavior, as well as their need for programming and other services, and placing them in the appropriate rehabilitative or correctional environment.

The Dallas County probation department has identified 9 risk-reduction target areas, which, when considered along with each probationer’s criminal history, help probation officers determine the probationer’s probability of re-offending or being revoked within one year (low, moderate, moderate high, or high risk).

The department has also identified the most predictive factors of re-arrest or revocation for men and women with state jail or third-degree felony offenses. *See the following page.*

Most Predictive Criminogenic Factors of Re-Arrest or Revocation for State Jail and 3 rd Degree Felony Offenses ⁷⁰	
MEN	WOMEN
Education/Employment Problems	Alcohol and Drug Problems
Family and Marital Problems	Emotional and Mental Health Problems
Criminal Attitude	Education/Employment Problems
Unstable Housing/High Crime Neighborhood	Family and Marital Problems
Too Much Leisure Time	Financial Problems
Alcohol and Drug Problems	Companions (Criminal Friends)
Companions (Criminal Friends)	

The utilization of similar risk indicators at other probation departments throughout Texas would help match individuals' needs to available programming and services, thus reducing the risk of re-offending.

(2) Community Supervision with Treatment and Sanctions Components. As mentioned above, probation is 36 times cheaper than prison, and costly probation revocation rates are declining. While on probation, individuals can take part in rehabilitative programs, maintain family relationships, and remain a participant in the community – critical to reducing the flow to prison without jeopardizing public safety.

- » **Rehabilitative programming** may be especially key to probationers' success. According to the Texas Department of Criminal Justice (TDCJ), treatment resources that have been legislatively allocated for purposes of diverting individuals from prison have resulted in various benefits, including decreased revocations to TDCJ and decreased technical revocations.⁷¹
- » **The utilization of progressive sanctions** for failing to meet a condition of probation (e.g., through use of stronger forms of treatment, placement in an intermediate sanctions facility, or more restrictive conditions) is also reducing felony revocations to TDCJ. Probation departments that received diversion funding and implemented programs with a sanctions model or sanctions components "demonstrated the greatest reductions in felony revocations to TDCJ (a 4.5% decrease between FY 2005 and FY 2012)," while departments without a progressive sanctions model or components showed increases in felony revocations between FY 2005 and FY 2012.⁷²

Especially for individuals with **first-time drug possession offenses**, it is important that Texas responds with a tailored approach to stem future drug use. This includes placing such individuals on probation, assessing their need for treatment or other behavioral programming, placing them in appropriate and available programming, and requiring compliance with all terms (e.g., program participation, drug testing, communication with the judge, employment, fee payments, etc.). This model will increase personal responsibility – and **holding people accountable is not being soft on crime!**

(3) More Transparency About Judicial Decisions to Sentence Individuals to a Term of Incarceration. Judges play a crucial role in determining whether defendants will be incarcerated or instead placed on probation and/or in a treatment program. To identify statewide sentencing patterns, judges should be required to provide a finding as to why they did not sentence an individual charged solely with possession of a controlled substance to an available treatment program (including a SAFPF,

drug court, community-based treatment program, etc.), via reporting to a county office or state agency, with the data made public at regular intervals.

- (4) A More Effective, Efficient State Jail System.** Texas' state jail system was originally designed to divert individuals with low-level offenses out of overcrowded prisons, providing them the opportunity to serve their sentence on probation. If they did not comply with their conditions of probation, judges could incarcerate them in a state jail facility.

However, as a result of various statutory changes over the years, tens of thousands of Texans, primarily with low-level drug or property offenses, have been sentenced directly to state jail, with little if any access to treatment,⁷³ and typically without post-release community supervision or support⁷⁴ – leading to high rates of re-offending upon release.⁷⁵

To save taxpayer dollars, enhance public safety through lower recidivism, increase self-responsibility, and strengthen communities, Texas should make four changes to address its broken state jail system:

- **Conduct a robust study of the current state jail system.** A small committee composed of legislative members, practitioners (e.g., probation directors or chiefs, district and defense attorneys, etc.), advocates, and criminal justice scholars should examine: (a) recidivism rates among state jail releasees, (b) vocational and educational programs offered per state jail facility, (c) rehabilitation programming offered per facility, and (d) state jail-focused reentry initiatives to identify what works and what programs are failing. The study should contain clear directives and include findings and recommendations that identify areas where improvements can be made and offer suggestions as to how to effect positive changes in the state jail system.
- **Encourage judges to utilize their current discretion to place individuals with certain state jail offenses on community supervision.** Again, community supervision was intended to be judges' first response to state jail offenses, so an individual would receive needed treatment or programs. Now, state jails are often judges' first choice, and because of under-funding and a lack of resources, rehabilitation programs in these facilities are deficient, leaving individuals without critical tools to address their criminal behavior. To comport with the original intent of state jails, judges should use their discretion under Section 15(b), Article 42.12 of the Texas Code of Criminal Procedure to effectively utilize community supervision instead of directly sentencing eligible individuals to state jails.
- **Provide judges the discretion to reduce the level of offense for which a person is convicted after he or she successfully completes such programming.** Because community supervision terms are typically longer and require more personal responsibility and accountability than state jail incarceration, many individuals elect to serve their sentence in a state jail—where there are frequently fewer opportunities for rehabilitation or post-release supervision. The choice of state jail over probation carries significantly greater taxpayer costs, while also leaving individuals with a criminal record and the lifelong barriers associated with a felony conviction. Allowing judges to reduce a conviction (from a state jail felony to Class A misdemeanor, for instance) after an individual successfully completes a term of community supervision will be more cost-effective, and will provide greater incentive for individuals to agree to a term of probation, where they will have access to more programs and treatment that can help them maintain a stable, productive life in the community.

- **Modify existing statutes to offer a split-sentencing alternative for state jail felonies.** Both community supervision and state jail facilities make up important components of the state jail system. However, we recognize that sending every individual with a state jail felony directly to community supervision may not be viable for the community. As such, Texas should consider a split-sentencing program, where certain individuals would serve limited time in a state jail facility (e.g., half of the original sentence), followed by a period of post-release supervision— with access to community-based services that will increase the success of reintegration. With both systems sharing the load, Texas will be promoting public safety while more efficiently using taxpayer dollars, and cost savings could go toward treatment and diversion programs in Texas communities.

(5) Smarter Approaches to Low-Level, Nonviolent Offenses in Texas. Individuals who have committed various nonviolent crimes are filling prison and jail beds at great taxpayer expense. Texas must adopt a more cost-conscious approach to these offenses, which can be accomplished while still protecting public safety.

- **Property Offenses:** Under Texas law, property offenses include things like graffiti, criminal mischief (intentional damage to property), theft, and theft of service (intentionally avoiding paying for someone’s services). People can be arrested and incarcerated for property offenses based on the amount of damage they cause to someone’s property. For instance, if a person steals or damages up to \$50 worth of property, he or she could be found guilty of a Class C misdemeanor. If a person steals or damages \$50 to \$500 worth of property, the offense becomes a Class B misdemeanor and carries jail time.

Current “offense thresholds” (like \$0-\$49, or \$50-\$500) were set in 1993. They do not reflect **20 years of inflation** – so a Class C misdemeanor in 1993 has become a Class B misdemeanor today, and people are going to jail for offenses that were not considered jail-worthy by Texas lawmakers in 1993. People are also going to state jails for offenses that would previously have warranted only county jail time: As of August 2012, over 35% of state jail inmates were serving time for larceny or burglary, two of the most prevalent offenses in a state jail.⁷⁶ These individuals cost taxpayers over \$250,000 per day to incarcerate and over \$90 million annually.⁷⁷

It is long overdue that Texas adjusted the offense thresholds for property offenses. Below is a chart that outlines a proposed, updated offense threshold per offense level. The penalties for each offense level (jail time, a fine, etc.) would remain the same as in current statute.

Suggested Offense Thresholds		
OFFENSE	OFFENSE THRESHOLD (DAMAGE AMOUNT)	PENALTY
Class C Misd.	Less than \$100	Up to \$500 fine
Class B Misd.	\$100 or more but less than \$1,500	30 days-180 days jail; \$2,000 fine
Class A Misd.	\$1,500 or more but less than \$3,000	90 days-1 year jail; \$4,000 fine
State Jail Felony	\$3,000 or more but less than \$30,000	180 days-2 years jail; \$10,000 fine
3 rd Degree Felony	\$30,000 or more but less than \$150,000	2-10 years prison; \$10,000 fine
2 nd Degree Felony	\$150,000 or more but less than \$300,000	2-20 years prison; \$10,000 fine
1 st Degree Felony	\$300,000 or more	5 years-life in prison; \$10,000 fine

Again, making this policy change will mean spending fewer tax dollars on pretrial detention and

incarceration, and less time and money on public defense for poor defendants. In fact, estimated figures suggest that **local and state governments could save upwards of \$90 million annually** in enforcement, incarceration, and supervision costs by adjusting the property offense thresholds to reflect the value of today's property.⁷⁸ A policy change will also mean that police, attorney, and court resources are reserved for real threats to public safety.

- **Graffiti:** Graffiti costs some Texas cities millions of dollars in cleanup costs each year,⁷⁹ while burdening property owners. In response, some have advocated for penalizing graffiti artists more harshly, but many Texas cities are seemingly seeing no decrease in graffiti from such an approach.⁸⁰ What's worse, punitive approaches to graffiti come with high price tag, draining city budgets through enforcement and incarceration costs, and saddling graffiti artists (many of them youth) with criminal convictions that pose lifelong obstacles, including limited employment and housing opportunities.

Create Accountability Through Probation: Individuals who commit graffiti offenses – other than offenses committed as part of gang activity or in conjunction with burglary or criminal trespass – should be placed on community supervision and in programs that address the needs of property owners while deterring further misbehavior (e.g., community service, education programs, etc.). *Note:* Philadelphia has pioneered the diversion of adjudicated graffiti artists into mural making, allowing them to express their artistic impulses and be recognized as legitimate artists. The resulting murals created a large economic boost to Philadelphia, and the beauty and variety of the murals were recognized in a report as crucial to the development of vibrant commercial corridors in Philadelphia.⁸¹

Provide Property Owners Relief: Texas should also provide assistance for cities seeking to implement a “rapid response” model, which focuses on the prompt eradication of graffiti to remove the perception of blight and decay. Additionally, cities’ “rapid response” teams should be comprised of convicted graffiti artists, as part of their community service.

Corpus Christi⁸² and Houston⁸³ have invested in successful “rapid response”⁸⁴ approaches to graffiti. This involves two crucial components: (1) a community-wide campaign, where citizens detect and report graffiti as soon as it occurs, and (2) the ability of the community to respond to the graffiti within 24 to 48 hours, to remove it as quickly as possible. More specifically, these efforts include neighborhood education, hotlines, and referrals of probationers as clean-up crews from local probation departments.⁸⁵

- **Prostitution:** Texas incarcerates sex workers at a higher rate than most other states, and it is the only state in the nation to charge individuals engaging in prostitution with a felony.⁸⁶ This punitive approach has not significantly deterred individuals from prostitution or decreased the number of prostitution arrests. Instead, Texas’ policies have resulted in high costs associated with policing, prosecuting, and incarcerating these individuals. In the summer of 2012, the *Austin American-Statesman* estimated that there were **currently 350 individuals serving time in state jail or prison due to prostitution convictions**.⁸⁷ This does not take into consideration all of the people serving time in county jails for prostitution offenses.

Help Sex Workers Leave the Business: Prostitution diversion programs throughout the country have a proven track record of success in offering individuals a safe, permanent exit from

prostitution, while simultaneously saving states and counties much-needed funds and positively impacting public health. For instance, the Dallas Police Department established the Prostitution Diversion (PDI) Initiative in 2007 after recognizing that its punitive approach to prostitution was ineffective and a constant drain on resources. The program draws upon a vast array of community-based resources, engaging a broad range of organizations in an effort to help individuals exit prostitution. **Over time, it has been able to connect service providers with many in need of treatment and other help**, and by engaging individuals prior to a trip to jail, the PDI not only saves money but also avoids criminalizing these individuals.⁸⁸ Counties with high rates of prostitution offenses – such as Harris, Tarrant, and Bexar counties⁸⁹ – should have assistance to implement similar diversion programs.

Monitor Prostitution Offenses: Texas should develop a system to track prostitution cases and their corresponding sentences and outcomes. This will enable decision-makers to better understand the scope of the problem and respond with effective and appropriate policies.

Make Prostitution a Misdemeanor Offense and Encourage Programming Participation that will Target the Root Causes of Prostitution Involvement: Texas should repeal the 2001 law that stipulates a felony conviction following a third conviction for prostitution, instead capping the offense at a misdemeanor and encouraging programming participation. As the Texas Association of Business argues, this would allow several hundred women per year to avoid costly prison and enter rehabilitative programs.⁹⁰

- (6) More Attention to Victims.** Texas owes it to crime victims, both victims of nonviolent and violent crime, to identify ways to address their losses. This includes expanded funding for the Crime Victims' Compensation Fund, as well as ensuring more probationers and inmates fully pay victim restitution. It also includes prioritizing rehabilitative programs that will reduce future criminal behavior and future victims (e.g., victim-offender programs and cognitive behavioral programming).

It's True: Implementing Best Practices is Hard Work But It's Well Worth the Effort

We know that identifying and implementing best practices within and across areas of the criminal justice system is difficult.

- It often requires front-end investments in new systems or strategies, and vocal support for such front-end investments.
- It requires agencies and departments to change their organizational culture to target different priorities. This typically involves staff trainings, buy-in, and evaluations.
- It requires practitioners, like judges and attorneys, to re-think long-entrenched approaches to crime. This involves treating each case individually, conducting assessments, supporting the expansion of successful programs and strategies at the local level, relying on such programs, and evaluating outcomes.

Texas is slowly building a strong, bipartisan base of practitioners and other stakeholders who understand the value of evidence-based approaches to criminal behavior. Because of them, we are seeing great progress in reducing crime and reducing taxpayer waste. But without more widely considering an overhaul of the “lock 'em up” approach to crime in Texas, the status quo – and the fiscal

and human costs associated with it – will never truly change.

More Effective Outcomes Will Do Better by Taxpayers and Produce a Greater Value for Texas

When smart strategies reduce crime rates, Texas families and communities benefit through less taxpayer waste and safer streets. With cost savings, Texas can strengthen programs that work, giving judges additional, safe diversion and sanctions options, and allowing probation and parole officers to more effectively meet the needs of people they are supervising in the community. Successful probationers and parolees, in turn, will contribute to economic growth and county stability. That is the Texas that lies ahead if all stakeholders join in the effort to implement safer, smarter, and more cost-efficient approaches to reducing crime in our communities.

References

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- ¹ Texas Department of Criminal Justice (TDCJ), *Fiscal Year (FY) 2012 Statistical Report*, p. 1; available at www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf.
- ² Texas Department of Criminal Justice (TDCJ), *Unit Directory*; available at: http://www.tdcj.state.tx.us/unit_directory/index.html.
- ³ TEXAS PENAL CODE, SEC. 12.34 TO 12.31.
- ⁴ TDCJ, *FY 2012 Statistical Report*, p. 1.
- ⁵ *Ibid.*
- ⁶ *Ibid.*, p. 9.
- ⁷ *Ibid.*, p. 1.
- ⁸ TDCJ, *Unit Directory*.
- ⁹ According to TDCJ, state jail offenses are primarily property crimes and low-level controlled substance offenses. Available at <http://www.tdcj.state.tx.us/definitions/index.html>. See also: Mike Ward, "State jails struggle with lack of treatment, rehab programs," *Austin American-Statesman*, December 30, 2012; available at <http://www.statesman.com/news/news/state-regional-govt-politics/state-jails-struggle-with-lack-of-treatment-rehab-/nTh8q/>. "John Hurt, a spokesman for the Texas Department of Criminal Justice [...] said that state jails housed 25,458 of the approximately 152,000 convicts in state-run lockups at the end of October [2012]. Of those, just 11,802 were serving time for state jail offenses. Another 13,530 were regular convicts, some enrolled in treatment programs and others awaiting a slot in special drug therapy prisons."
- ¹⁰ TEXAS PENAL CODE, SEC. 12.35.
- ¹¹ TDCJ, *FY 2012 Statistical Report*, p. 1.
- ¹² *Ibid.*
- ¹³ *Ibid.*, p. 9.
- ¹⁴ *Ibid.*, p. 1.
- ¹⁵ TDCJ, *Unit Directory*.
- ¹⁶ According to TDCJ, SAFP is typically assigned as a condition of community supervision or a modification of parole/community supervision. Available at <http://www.tdcj.state.tx.us/definitions/index.html>.
- ¹⁷ TDCJ, *FY 2012 Statistical Report*, p. 1.
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*, p. 9.
- ²⁰ *Ibid.*, p. 1.
- ²¹ Texas Department of Criminal Justice, Community Justice Assistance Division, *Who We Serve: Community Supervision & Corrections Departments*; available at http://www.tdcj.state.tx.us/divisions/cjad/cjad_who_we_serve.html.
- ²² Texas Code of Criminal Procedure, Art. 42.12, Sec. 3.
- ²³ TDCJ, *FY 2012 Statistical Report*, p. 6.
- ²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Texas Department of Criminal Justice, Parole Division, *District Parole Officer*; available at <http://www.tdcj.state.tx.us/vacancy/hr-home/parole-dpo.html>.

²⁷ Individuals can be released on parole, to Discretionary Mandatory Supervision (DMS), or to Mandatory Supervision. (Information below available at <http://www.tdcj.state.tx.us/definitions/index.html>.)

Parole: This is the conditional (discretionary) release of an individual from prison to serve the remainder of his or her sentence under supervision in the community, per a decision by the Texas Board of Pardons and Paroles (BPP).

DMS: In 1995, the Texas Legislature gave the BPP the authority to review eligible individuals whose offenses were committed on or after September 1, 1996, for possible release on DMS. The BPP must review eligible prisoners on or before their discretionary mandatory eligibility date, and it has the discretion to deny release.

MS: This is a type of release from prison provided by law for restricted categories of individuals being released from incarceration. Eligible individuals are released on MS when their served calendar time plus their good time credit equals the length of their prison sentence. Under previous law (effective until August 31, 1996), release to MS was automatic, with no requirement for release approval from the BPP.

²⁸ TDCJ, *FY 2012 Statistical Report*, p. 4.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Texas Department of Criminal Justice (TDCJ), *Fiscal Year (FY) 2013 Operating Budget and Fiscal Years 2014-2015 Legislative Appropriations Request [Summary Document]*, August 23, 2012, p. 1 of 20; available at www.tdcj.state.tx.us/documents/finance/Operating_Budget_FY2013_LAR_Summary_FY2014-15.pdf. Figure taken from “Budgeted FY13” numbers.

³² Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, Submitted to the 83rd Texas Legislature, January 2013, p. 8; available at www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf.

³³ *Ibid.*

³⁴ *Ibid.* This includes both incarceration and treatment costs.

³⁵ TDCJ, *FY 2013 Operating Budget*, pp. 1, 2 of 20. Figure taken from “Budgeted FY13” numbers.

³⁶ LBB, *Criminal Justice Uniform Cost Report*, p. 14.

³⁷ TDCJ, *FY 2013 Operating Budget*, pp. 1, 3 of 20. Figure taken from “Budgeted FY13” numbers.

³⁸ LBB, *Criminal Justice Uniform Cost Report*, p. 13.

³⁹ Legislative Budget Board (LBB), *Statewide Criminal Justice Recidivism and Revocation Rates*, Submitted to the 83rd Texas Legislature, January 2013, p. 23; available at

www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf.

⁴⁰ *Ibid.*, p. 25.

⁴¹ *Ibid.*, p. 4.

⁴² *Ibid.*, p. 29.

⁴³ *Ibid.*, p. 29.

⁴⁴ *Ibid.*, p. 31.

⁴⁵ *Ibid.*, p. 33.

⁴⁶ *Ibid.*, p. 4.

⁴⁷ *Ibid.*, p. 37.

⁴⁸ *Ibid.*, p. 36.

⁴⁹ *Ibid.*, p. 39.

⁵⁰ *Ibid.*, p. 40.

⁵¹ *Ibid.*, p. 4.

⁵² *Ibid.*, p. 44.

⁵³ *Ibid.*, p. 43.

⁵⁴ *Ibid.*, p. 11.

⁵⁵ *Ibid.*, p. 11.

⁵⁶ *Ibid.*, p. 19.

⁵⁷ *Ibid.*, p. 20.

⁵⁸ *Ibid.*, p. 20.

⁵⁹ *Ibid.*, p. 11.

⁶⁰ *Ibid.*, p. 11.

⁶¹ *Ibid.*, p. 63.

⁶² Federal Bureau of Investigation (FBI), *Uniform Crime Reports*, U.S. Department of Justice; accessible at <http://www.ucrdatatool.gov/Search/Crime/State/OneYearofData.cfm>; see Texas' violent crime rate (553.1) and property crime rate (4,599.9) for 2003. See also: Texas Department of Public Safety (DPS), *Annual Report of 2011 UCR Data Collection: Crime in Texas Overview*, p. 2; see Texas' violent crime rate (408.8) and property crime rate (3475.9) for 2011; available at www.dps.texas.gov/director_staff/public_information/2011CIT.pdf.

⁶³ Texas Department of Public Safety, *News Release: Crime Rate in Texas Drops for Second Consecutive Year*, July 6, 2012; available at http://www.txdps.state.tx.us/director_staff/public_information/pr070612a.htm.

⁶⁴ FBI, *Uniform Crime Reports*; see Texas' violent crime rate (553.1) and property crime rate (4,599.9) for 2003. See also: Texas DPS, *Annual Report of 2011 UCR Data Collection*; see Texas' violent crime rate (408.8) and property crime rate (3475.9) for 2011.

⁶⁵ The Pew Center on the States, *Issue Brief: Prison Count 2010*, Revised April 2010, pp. 3-4: "In January 2007, Texas faced a projected prison population increase of up to 17,000 inmates in just five years. Rather than spend nearly \$2 billion on new prison construction and operations to accommodate this growth, policy makers reinvested a fraction of this amount – \$241 million – in a network of residential and community-based treatment and diversion programs. This strategy has greatly expanded sentencing options for new offenses and sanctioning options for probation violators. Texas also increased its parole grant rate and shortened probation terms. As a result, this strong law-and-order state not only prevented the large projected population increase but reduced its prison population over the three years since the reforms were passed."

⁶⁶ The Texas Tribune, *UT/TT Poll: Economy, Immigration Top Texas Issues; October 31, 2012*; available at <http://www.texastribune.org/2012/10/31/uttt-poll-economy-immigration-top-texas-issues/>; this links to PDF with full results: s3.amazonaws.com/static.texastribune.org/media/documents/ut-tt-oct12-summary-3.pdf (see pp. 3, 14, 15, 19).

⁶⁷ Pew Center on the States, Public Opinion Strategies, and The Mellman Group, *Public Opinion on Sentencing and Corrections Policy in America*, March 2012, pp. 1, 2, 3, 7; available at www.pewstates.org/uploadedFiles/PCS_Assets/2012/PEW_NationalSurveyResearchPaper_FINAL.pdf.

⁶⁸ Heather Strang and Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, Utah Law Review, 2003, p. 18 [15-42].

⁶⁹ Andrew Carmen, *Crime Victims: An Introduction to Victimology*, Sixth Edition, Chapter 6, 2006; PowerPoint presentation: slides 5, 6; available at <http://bit.ly/YdwORI>.

⁷⁰ Dallas County Community Supervision and Corrections Department, information received via email November 1, 2012. *Information available upon request.*

⁷¹ Texas Department of Criminal Justice (TDCJ), *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2012, p. 22; available at www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2012_Report_To_Governor.pdf.

⁷² *Ibid.*, p. 24.

⁷³ Mike Ward, *State jails struggle with lack of treatment, rehab programs*. "The state jails [...] have fewer treatment and rehabilitation programs than many of the regular prisons — the opposite of the original goals." Also: "while some prisoners in state jails have two-year sentences, the maximum allowed by state law, others are there for just six months — not enough time to complete some treatment and rehab programs."

⁷⁴ TDCJ, *FY 2012 Statistical Report*, p. 34; of all state jail releases in FY 2012 (22,784 individuals), 99.4% were released without supervision, while the remaining 0.6% were released on community supervision.

⁷⁵ LBB, *Statewide Criminal Justice Recidivism and Revocation Rates*, pp. 4, 31. Approximately 63% of individuals released from state jail in FY 2008 (measured through FY 2011) were re-arrested, while 31% of individuals released from a state jail in FY 2009 (measured through FY 2012) were re-incarcerated.

⁷⁶ Texas Department of Criminal Justice, information received via Freedom of Information Request, October 16, 2012. *Information available upon request.*

⁷⁷ LBB, *Criminal Justice Uniform Cost Report*, p. 6.

⁷⁸ This figure is estimated based on the cost of arrest and cost to jail those arrested for misdemeanor-level criminal mischief and theft offenses. *Data available upon request.*

⁷⁹ Julia Narum, Child Development Program Supervisor, City of Austin Health and Human Services [dedicated budget of \$500,000 to \$600,000 yearly for graffiti], telephone conversation with Jorge Renaud, Texas Criminal Justice Coalition (TCJC), October 22, 2012; Lisa McKenzie, Neighborhood Services Coordinator, City of San Antonio [dedicated budget of \$1,008,000 in 2012], telephone conversation with Jorge Renaud, TCJC, October 22, 2012; Jerry McDowell, City of Fort Worth Parks Department [dedicated budget of \$464,000 in 2012], telephone conversation with Jorge Renaud, TCJC, November 26, 2012.

⁸⁰ "Austin seeing a spike in graffiti," KXAN-TV report, aired July 19, 2011 (cites 22% increase in graffiti from 2010); available at <http://www.kxan.com/dpp/news/local/austin-seeing-a-spike-in-graffiti->. "CCPD reports increase in graffiti," KIII-TV report, aired January 27, 2012; available at <http://www.kiiitv.com/story/16565472/ccpd-reports-increase-in-graffiti?clienttype=printable>. Martin Chavez, Director, Graffiti Abatement, Greater East End District Management, in telephone conversation with Jorge Renaud, TCJC, November 20, 2012; Mr. Chavez made the caveat that greater community recognition and reporting may account for increases.

⁸¹ *Commercial Corridors: A strategic investment framework for Philadelphia – Executive Summary*, March 2009, p. 7; available at http://www.philadelphialisc.org/pdfs/Strategic_Investment_Framework_Econsult.pdf.

⁸² Lawrence Mikalajczk, Assistant Director of Solid Waste Department, City of Corpus Christi, in telephone conversation with Jorge Renaud, TCJC, November 13, 2012, discussing the high-priority, rapid-response model initiated in 2008.

⁸³ Martin Chavez, Director, Graffiti Abatement, Greater East End District Management, in telephone conversation with Jorge Renaud, TCJC, November 20, 2012, discussing the program that initiated in 2001. Program details available at <http://www.greatereastend.com/graffiti-abatement>.

⁸⁴ Charles Thompson, International Municipal Lawyers Association, and Robert Hills, National Council to Prevent Delinquency, *Congress Paper on Graffiti Vandalism in America – Shaping the Municipal Response*, Paper presented to World Jurist Association's 24th Biennial Congress on the Law of the World, October 23-28, 2011; available at <http://anti-graffiti.org/anti-graffiti-legislation/municipal-responses-to-graffiti-vandalism>.

⁸⁵ Telephone conversations with Mikalajczk and Chavez; see endnotes 82 and 83.

⁸⁶ Mike Ward, "Texas Rethinks Law Making Repeat Prostitution a Felony," *Austin American-Statesman*, August 25, 2012; available at <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>.

⁸⁷ *Ibid.*

⁸⁸ Martha Felini et al., *Prostitution Diversion Initiative Annual Report: 2010-2011*; available at www.pdinewlife.org/wp-content/uploads/2012/05/PDI-Annual-Report-2010-2011f.pdf. See p. 1: "Since being launched in 2007, the PDI contacted a total of 728 adult prostitutes. Of these women and men, 411 were eligible for immediate diversion from the streets into mental health and/or substance abuse treatment." See p. 3: "The PDI is unique in that it is law enforcement led, allowing multiple services and health care professionals to access sex workers in previously inaccessible parts of the city. Since field operations are conducted on the street, immediate diversion to treatment services can occur prior to the individual entering into the criminal justice system."

⁸⁹ Mike Ward, *Texas Rethinks Law Making Repeat Prostitution a Felony*.

⁹⁰ Correctional News, "Texas Business Powerhouse Calls for Prison Reform," February 6, 2013; available at <http://www.correctionalnews.com/articles/2013/02/6/texas-business-powerhouse-calls-prison-reform>.