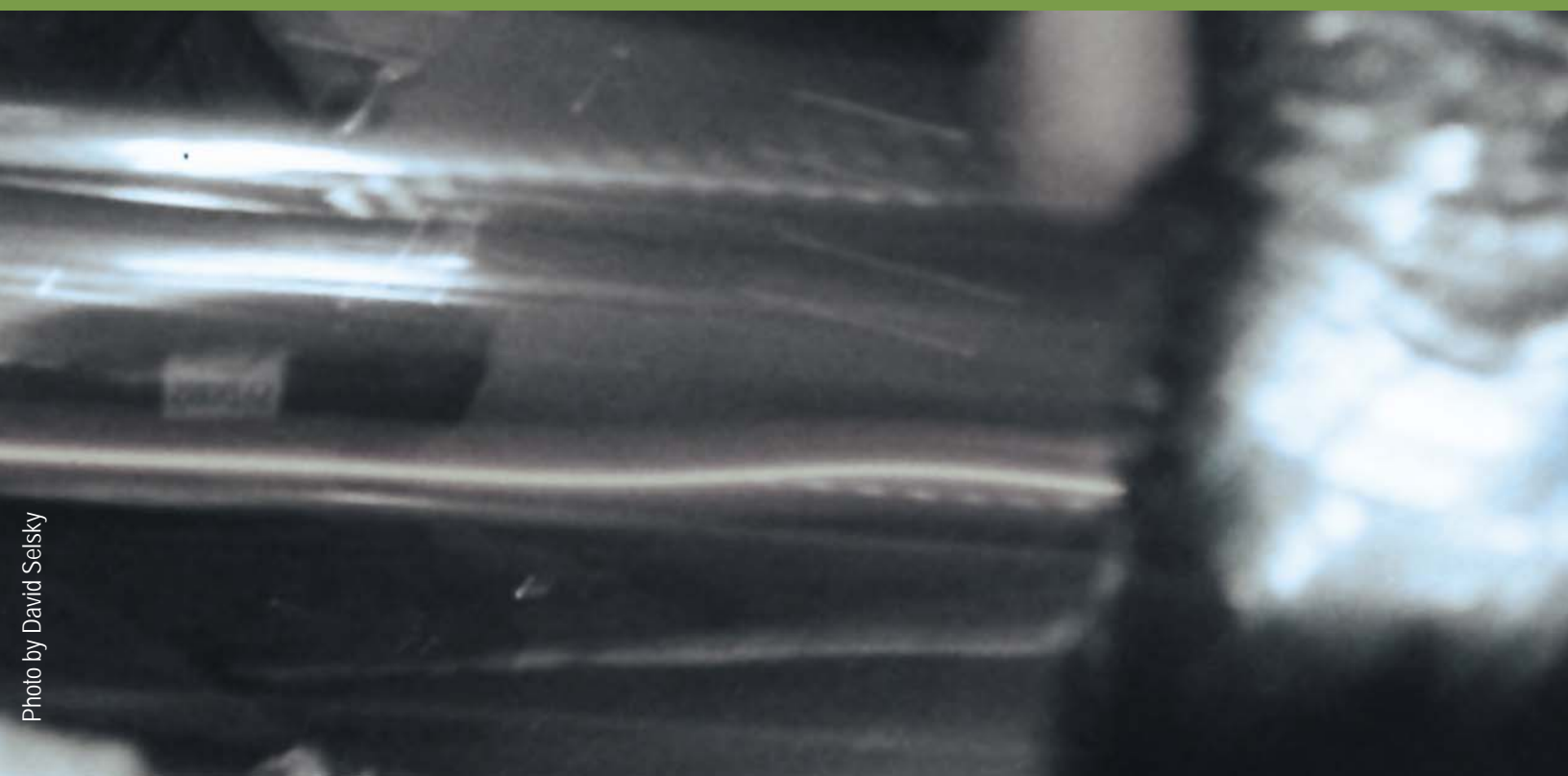




Effective Approaches for Reducing Prostitution in Texas:

Proactive and Cost-Efficient Strategies
to Help People Leave the Streets





ACKNOWLEDGEMENTS

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

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A FAILED APPROACH TO PROSTITUTION IN TEXAS

The diversion of individuals with low-level, nonviolent offenses from the criminal justice system has not only been shown to improve public safety; it has also resulted in significant cost savings for state prison systems.¹ Diversion programs have proven especially successful in re-directing individuals with mental illness and addiction issues away from incarceration and toward much needed treatment services. Individuals who engage in sex work are far more likely to suffer from mental illness, drug and alcohol addiction, and past trauma than both the general population and many other individuals entering the criminal justice system.² The proven effectiveness of diversion programs when applied to similar populations compels us to believe that an increase in the number of prostitution diversion programs in Texas will positively impact public health and public safety while simultaneously saving taxpayer dollars.

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.³ 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, and they have created collateral consequences for the arrested individuals themselves and the communities where prostitution occurs.⁴ Indeed, individuals face lifelong barriers associated with conviction, including limited access to housing and employment, while communities struggle to address populations that are under-employed or homeless, and draining local budgets.

Prostitution diversion programs throughout the country, including one in Dallas, have a proven track record of success in offering individuals a safe exit from prostitution. Based on an examination and consideration of these successful models, the Texas Criminal Justice Coalition urges legislators to consider expanding such programs throughout the state.



Photo by Ashley Webb

Who Are Sex Workers?

The majority of individuals who engage in prostitution are low-income females who have suffered childhood abuse and sexual assault, and who are afflicted with mental illness and/or struggling with drug and/or alcohol abuse.⁵

Poor people of color: Although only 10-20% of prostitution occurs on the streets, the majority of law enforcement activity focused on prostitution targets street solicitation. Since those working on the streets are disproportionately poor people of color, this leads to the disproportionate incarceration of low-income individuals and people of color.⁶

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Victims of violence and abuse, many of whom suffer from PTSD: Women and transgendered⁷ individuals experience significantly more violence during sex work than men, although men are victimized as well.⁸ Not surprisingly, several studies reveal a high and ever-increasing rate of incidents of Post Traumatic Stress Disorder (PTSD) among prostitutes. PTSD results from a direct experience that involves actual or threatened injury or death, or witnessing an event that causes the death or injury of someone else. It can also result from learning about the unexpected or violent death of, or infliction of harm on, a family member or close associate. When such death or injury is caused by another person, as is the case with the assault and abuse experienced by sex workers, PTSD may be especially severe or long lasting. With a majority of sex workers reporting a history of childhood physical and sexual abuse, and with more than 68% of prostitutes reporting being victims of rape since entering the prostitution business, there is no doubt that many of these individuals suffer from PTSD.⁹ This fact must be taken into account when determining the most effective way to serve this population.¹⁰

Homeless, and struggling with addiction and other disorders: Frequently, sex workers report being homeless or previously having been homeless. In many cases, homelessness contributed to an individual's decision to engage in prostitution, this line of work being the only viable means to afford housing and food.¹¹

In a study published by Prostitution Research and Education, 75% of surveyed prostitutes also reported a problem with drugs and/or alcohol. Furthermore, research has revealed that individuals who engage in prostitution suffer from chronic medical conditions at a disproportionately high rate.¹²

Without comprehensive services in place, it is not easy for prostitutes to simply abandon their primary means of support. Accordingly, any program hoping to offer prostitutes a viable and sustainable alternative to sex work must provide assistance with housing, education, healthcare, employment, substance abuse treatment, and mental health counseling.¹³

Prostitution in Texas

The Criminalization of Prostitution In Texas: History and Ramifications

Throughout American history, states have experienced both periods of enforcement and periods of tacit acceptance of prostitution. During World War II, the United States experienced a renewed effort to criminalize prostitution, a trend based on the fear that sexually transmitted diseases would threaten the health of the military. Following a resurgence of prostitution in Texas cities after the war, civic, religious, and media groups launched an aggressive campaign aimed at intensifying the public's concern with prostitution. As of the 1980s and 1990s, city officials had a limited number of legal tools and resources to effectively address prostitution. They therefore decided to focus their efforts on what they viewed as the most publicly offensive dimension of prostitution: street solicitation.¹⁴

Despite these efforts, a leading anti-prostitution organization named Galveston as the nation's number one hotspot for prostitution in 1995. In addition, the Dallas–Fort Worth metropolitan area also experienced high levels of prostitution, particularly at truck stops.¹⁵ Although the Dallas Police Department would later go on to develop a model prostitution diversion program (*discussed more fully below*), Texas lawmakers have focused primarily on locking people up.¹⁶ As a result, Texas has developed a reputation for imprisoning more prostitutes than almost any other state; and, as previously mentioned, it remains the only state in the nation to charge prostitutes with a felony.



The negative ramifications of such a punitive approach are significant. Besides the financial disadvantages of incarceration, criminalizing prostitution and incarcerating prostitutes has proven ineffective, and it is a clear example of a policy driven by public opinion rather than systematic analysis. One theory is that criminalizing prostitution makes it an unattractive option to those who might consider this line of work, and also encourages those already working as prostitutes to search for other livelihoods. **Unfortunately, the current laws related to prostitution have not only failed on both fronts, but have actually made it more difficult for prostitutes to leave the profession,** since once a prostitute has a criminal record, finding legitimate work becomes that much more difficult. In addition, the criminalization of prostitution forces prostitutes to retreat even further from public view, making an already vulnerable population even more susceptible to violence and abuse.

Texas Prostitution Laws

The table below shows the charges and corresponding sentences for prostitution in Texas, as per Section 43.02 of the Texas Penal Code.

Offense	Charge	Sentence & Fine
First Offense	Class B Misdemeanor	No more than 180 days and/or no more than a \$2,000 fine
Second Offense	Class A Misdemeanor	No more than 1 year and/or no more than a \$4,000 fine
Third Offense +	State Jail Felony	180 days to 2 years and/or no more than a \$10,000 fine

The law that has resulted in Texas being the only state in the nation to make prostitution a felony was enacted in 2001. If an individual has been convicted of prostitution on three or more occasions, he or she will subsequently be charged with a felony and sent to state jail or prison.

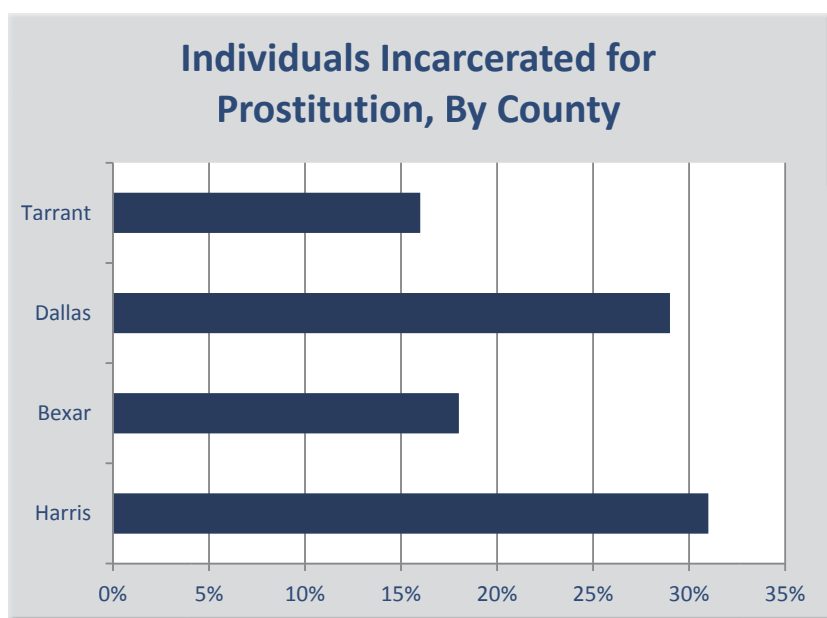
NOTE: Grounds for exemption from prosecution for prostitution include intoxication, entrapment, age, duress, lack of knowledge, and the absence of money being received for sexual contact.¹⁷

Texas Prostitution Laws in Practice

In the summer of 2012, the *Austin American-Statesman* estimated that there are currently 350 individuals serving time in state jail or prison due to prostitution convictions, although at the time of the report not even one person was serving time due to solicitation of prostitution services. (The report did not detail the number of individuals who cycle in and out of local jails for prostitution offenses every year; that data is difficult to obtain in any standardized format across Texas’ 254 counties.)

As the chart to the right shows, 94% of all individuals incarcerated in Texas state prisons for prostitution come from only four counties. This illustrates the need for a targeted approach, whereby diversion programs are implemented in specific communities.

It costs an average of \$15,500 to \$18,538 annually to house an individual in a state jail or prison, while participation in a community-based rehabilitation program costs only \$4,300 per individual per year. The repeal



of the 2001 law and the increased use of prostitution diversion programs could result in savings of over \$4 million annually, money that could instead be funneled into much needed treatment programs.¹⁸ **Given Texas' ongoing budget deficit, the fiscally sensible choice for the state would be to treat individuals convicted of prostitution in their own communities at one-fourth the cost that the state currently incurs for incarcerating these individuals.**

Human Trafficking in Texas

Human trafficking – the sale, transport and profit from human beings who are forced to work for others – is the modern equivalent of slavery. (It is important to note that victims of human trafficking are no longer prosecuted according to prostitution laws but are instead provided with the services and assistance they need to escape their exploitation.) While not all individuals working as prostitutes are victims of human trafficking, it is difficult to discuss prostitution without addressing this serious issue. The I-10 corridor in Texas (from the El Paso area through San Antonio and Houston, to Louisiana) has been identified by the Department of Justice as one of the main routes for human trafficking in the United States. In 2006, 25% of all individuals certified in the United States as victims of human trafficking were certified in Texas. Human trafficking is a problem in the state largely due to its long border with Mexico, its diverse demographics, and a large migrant labor force.¹⁹ Since many individuals working as prostitutes began their prostitution careers when, as victims of human trafficking, they were forced to perform this work, it is absolutely imperative that law enforcement agencies and members of programs working with prostitutes are well versed on the issue.

More Effective Approaches to Prostitution Offenses

In order to significantly reduce the number of individuals working as prostitutes, a coordinated approach that addresses the various problems and needs of this population over a longer period of time is critical. There are a number of prostitution diversion programs operating throughout the country and world, including ones here in Texas. These programs differ in many ways, but generally share two important characteristics: they treat individuals engaged in prostitution as victims rather than criminals, and they offer an array of services that enable sex workers to find other livelihoods if they so choose.

Prostitute Diversion Initiative (PDI)

The Prostitute Diversion Initiative (PDI) in Dallas became operational in 2007 and has drawn upon a vast array of community-based resources, engaging a broad range of organizations in an effort to help individuals exit prostitution. The Dallas Police Department took the lead in developing this diversion program in response to its realization that its aggressive focus on enforcement at Dallas truck stops only served to move the foot traffic from the streets into the big rigs themselves. The Department was experiencing a nearly constant drain on resources and realized that its approach was not working. The PDI has been able to connect service providers with those 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.

The procedure used by PDI is as follows, per participant:

- 1) Admitted into staging area through arrest or voluntary walk-in.²⁰
- 2) Accompanied by a police officer and assigned an advocate.²¹
- 3) Moved to triage, consisting of a brief assessment to determine immediate needs.
- 4) Provided food and clothing.
- 5) Provided STD screening, treatment, and education by the county health department mobile unit, which is onsite.
- 6) Provided ID cards for access to services, if needed.
- 7) Taken before a judge in community court.²²
- 8) Referred/Assigned to PDI New Life, a 45-day treatment and recovery program.
- 9) Upon successful completion of the New Life program, individuals become eligible for transitional housing, job training, outpatient mental health services, and mentorship.

The following statistics about individuals served by the PDI provide insight into the adversity that sex workers face. This reinforces the argument that **the provision of services in lieu of a more punitive approach is not only the most effective way to help individuals leave prostitution, but it is also in the best interest of a community's public health and safety.**²³

Did You Know?

- ❑ Nearly half of participants had less than a high school education.
- ❑ Fifty-nine percent of participants had children.
- ❑ Many participants had an array of chronic medical conditions.
- ❑ Ninety-seven percent of participants reported using drugs and/or alcohol.
- ❑ Fifty-four percent of participants reported having a mental health condition.
- ❑ Thirty-seven percent of participants had attempted suicide.
- ❑ Over half of the 182 participants tested for STDs screened positive for an STD, and 20 new cases of syphilis and 2 new cases of HIV were identified.

Phoenix-Based Prostitution Diversion Program

A similarly successful prostitution diversion program in Phoenix helps participants understand their options, the risks they face, and how they can better take care of their mental and physical health. Working in collaboration with other community services and employing former sex workers, the program has been able to help many individuals transition out of prostitution while providing substantial savings for the city.²⁴

**Multi-Purpose Diversion Program:
Law Enforcement Assisted Diversion (LEAD)**

LEAD is a pre-booking diversion program developed by the Seattle city government in collaboration with community interest groups to address low-level drug crime in a more cost effective and sustainable manner. This program diverts individuals engaged in low-level drug activity into community-based services in an attempt to improve public safety and public order, while reducing the criminal behavior of the program's participants. Proponents of LEAD argue that the program can reduce the recidivism rates for individuals with low-level offenses, allowing the criminal justice system to more effectively focus its resources on those committing more serious, violent crimes. The developers and supporters of LEAD believe that for the program to be a success, there must be: 1) adequately trained staff and officers; 2) clear policies and protocols; 3) immediate access to needed programs for participants; 4) funding allocated solely for direct services; 5) use of peer outreach workers and case managers; 6) the involvement of community leaders and stakeholders; 7) cultural competency; and 8) a commitment to reinvesting savings in preventative social service programs.

“It’s nuts that we’ve got this many prostitutes in prison, people that we’re not afraid of, but we’re just mad at. By locking them up, we’re not fixing the problem — we’re just spending a lot of money incarcerating them, warehousing them, when we could be spending a lot less getting them treatment so they can get out and stay out of this business.”

*Senator John Whitmire,
Austin American-Statesman,
August 25, 2012*

Though the LEAD program was developed in response to low-level drug offenses, it is a model that can easily be applied to the diversion of prostitutes from the criminal justice system. After a careful examination of the efficacy of their criminal justice policies, Seattle officials realized that the city's policies regarding low-level drug offenses were neither cost-effective nor financially sustainable, and they did not result in significant long-term reductions in low-level drug offenses. Officials recognized that the need for fiscal austerity presented a unique opportunity to be innovative and pragmatic in the identification and implementation of new solutions to age-old problems.²⁵ We encourage Texas policy-makers to adopt a similar attitude of innovation and pragmatism when developing new programs designed to reduce rates of prostitution in our state.

Cost-Saving and Public Safety-Driven Solutions

The Case for Prostitution Diversion Programs in Texas

Between 2006 and 2009, 14,019 individuals with a variety of offenses have been re-routed from prison to felony probation with no visible negative impact on public safety. In fact, between 2007 and 2010, the state's crime rate decreased by 9%.²⁶ By contrast, incarceration has been proven to destabilize both individuals and communities, making problems even worse.

Individuals become involved with prostitution for a variety of reasons. It may be a conscious, voluntary decision; it may be a means of survival; or it may have been forced upon them. Whatever the reasons, experiences of violence, childhood abuse, substance abuse, mental illness, and homelessness are common denominators shared by the vast majority of prostitutes. **There have been no studies that have shown prostitution to be a significant danger to public safety, whereas a tradition of punitive responses to prostitution has clearly demonstrated the high social and economic costs.** The development of prostitution diversion programs that offer critical services to individuals engaged in prostitution is, to date, the only proven method to offer prostitutes a viable and permanent exit, while simultaneously saving the state and counties much needed funds and positively impacting both public health and public safety.

Four Critical Solutions

For the above reasons, the Texas Criminal Justice Coalition encourages Texas decision-makers at both the state and county level to:

- 1) Develop and implement prostitution diversion programs in Harris, Tarrant, and Bexar counties, and provide the resources necessary to make such programs a success.
- 2) Continue to support Dallas' Prostitute Diversion Initiative.
- 3) Develop a system to track all prostitution cases in Texas and their corresponding sentences and outcomes, so decision-makers can better understand the scope of the problem and respond with effective and appropriate policies.
- 4) Repeal the 2001 law that stipulates a felony conviction following a third conviction for prostitution.

With these measures, Texas will undertake a more effective, realistic approach to preventing and addressing prostitution.

Endnotes

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- ² Farley, Melissa & Barkan, Howard. "Prostitution, Violence, and Posttraumatic Stress Disorder." *Women & Health* 27, no. 13 (1998): 37-49.
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- ⁶ Meier, Robert & Gilbert Geis. *Criminal Justice and Moral Issues*. New York: Oxford University Press, 2006.
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- ¹² *Ibid.*
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- ¹⁷ Texas Prostitution Laws. <http://www.statelaws.findlaw.com/texas-law/texas-prostitution-laws.html>
- ¹⁸ Ward, Mike. "Texas Rethinks Law Making Repeat Prostitution a Felony." *Austin American-Statesman* August 25, 2012.
- ¹⁹ A Report of the Texas Advisory Committee to the United States Commission on Civil Rights. "Human Trafficking in Texas: More Resources and Resolve Needed to Stem Surge of Modern Day Slavery." August 2011.
- ²⁰ As PDI is a police operation, all voluntary walk-in participants will be subject to search, outstanding warrant check, and debrief by the Vice Unit.
- ²¹ Advocates are often former prostitutes and are thus well positioned to offer support.
- ²² Judge can use Class C misdemeanor offenses as leverage to persuade prosecutors to accept treatment in lieu of jail time.

EFFECTIVE APPROACHES FOR REDUCING PROSTITUTION IN TEXAS

²³ Felini, Martha; Abraham, Amy; & Mendoza, Gloria. "Annual Report: October 2008 - September 2009 Prostitution Diversion Initiative." In *Annual Report*. Dallas: Dallas Police Department, 2010. (Reference for entire discussion of Dallas Prostitution Diversion Initiative)

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²⁵ The Defender Association-Racial Disparity Project. "Law Enforcement Assisted Diversion (LEAD): A Pre-Booking Diversion Model for Low-Level Drug Offenses." Seattle.

²⁶ Federal Bureau of Investigation, Uniform Crime Reports, U.S. Department of Justice; accessible at <http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm>; see Texas' violent and property crime rates for 2007 and 2010.



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