



**WRITTEN TESTIMONY**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR  
TEXAS CRIMINAL JUSTICE COALITION**

**REGARDING INTERIM CHARGE 2**

**HOUSE COMMITTEE ON CORRECTIONS**

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## **TEXAS CRIMINAL JUSTICE COALITION**

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The Texas Criminal Justice Coalition is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

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Ms. Molly Totman, J.D. for her invaluable research and editing assistance.

Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to present testimony on Charge 2: *“Study and evaluate the availability and efficiency of community-based corrections supervision and treatment programs and their impact on prison capacity and recidivism rates. Determine whether the supervision and treatment programs have been designed in accordance with evidence-based practices and whether adequate evaluation methods have been incorporated.”*

*Note:* In preparation for this hearing, we sent an anonymous, electronic survey to each of Texas’ probation directors to solicit their feedback in regards to current treatment options, collaboration barriers, use of SAFPFs and other alternatives, and departmental needs. We have attached the survey results for your review.

## **INTRODUCTION**

Due to an increase in probation felony placements on community supervision and a simultaneous decrease in revocations, Texas’ probation departments have been instrumental in slowing the number of individuals entering prisons. This outcome was made possible by critical legislative investments in community supervision, and as a result Texas taxpayers have saved millions of dollars that would otherwise have been spent on the construction and maintenance of prisons. Also significantly, public safety has not been compromised: the state’s crime rate was lower in 2008 than in 2005.

In order for probation departments to properly supervise this increasing number of individuals using evidence-based practices, they must be given the tools necessary to continue along the smart-on-crime path that is gaining positive national recognition.

## **EVIDENCE-BASED PRACTICES**

### ***Benefits of Evidence-Based Practices***

The use of evidence-based practices (EBP) in the probation area – meaning *true and positive changes* in probationer behavior – has been shown to reduce future criminal behavior, with both fiscal and public safety benefits. Less crime means less incarceration: counties and the state can implement EBP to reduce the costly burden associated with over-crowded jails and prisons, including constructing and staffing new facilities, or contracting with other facilities to house inmates there. Likewise, a fewer number of absconders and re-offenders lowers the costs of enforcement associated with identifying, tracking, and re-arresting such individuals, while also lowering the costs associated with overburdened court dockets.

But equally important as a positive economic impact are the swells in public safety that accompany the implementation of EBP. Again, positive behavior modification causes lower rates of revocation for offenses. This keeps individuals out of jail or prison, employed, and able to assist their families. Additionally, the ability of a department to focus resources on high-risk probationers frees up money for other effective tactics, such as substance abuse treatment programs, which continue to help individuals change their behavior for the better.

## ***General Implementation of Evidence-Based Practices***

In general, EBP are those that have been examined among various populations and on various levels – through data studies, cost analyses, etc. – and can reliably produce positive, problem-solving results when replicated in other areas over time. In the criminal justice area specifically, effective implementation of EBP can be a multi-year process necessitating the collaboration of multiple agencies and organizations: law enforcement, defense counsel and district attorneys, the judiciary, corrections, probation and parole departments, treatment providers, community service providers, and re-entry specialists. These intersecting groups must understand how the practices work, and they must be committed to their full utilization.

With regards to the implementation of EBP in the probation area, core leadership is essential both to prepare for the challenges and obstacles that come with change, and to ensure that all moving parts of the reform process remain transparent and well paced to allow for the learning curve that inevitably accompanies it. This core team should include the director of the probation department, and it may benefit from an outside facilitator who can objectively report on progress. Technical assistance and research may be done by such a facilitator or another consultant.

## ***Key Components of the Implementation Process***

- First and foremost, use of EBP requires the **buy-in of departmental staff**. Implementation of an EBP system will require a realignment in departmental philosophy and culture, best accomplished by constant open communication among leadership and staff about upcoming changes and the expectations of potential new practices. On the front end, staff participation is crucial to a **departmental evaluation** to determine its strengths and weaknesses prior to undergoing any change; honest input is key to outlining the need for and types of EBP to be implemented, and to the development of committees that will oversee implementation of various aspects of the new system.

Later, ongoing, hands-on **training sessions** will be necessary to teach staff about specialized components and techniques of EBP, performance requirements, and timelines for implementation. Ultimately, such staff involvement can be effectively reinforced through a modified **personnel evaluation system**, which must emphasize positive probationer outcomes in addition to departmental paperwork mandates.

It must be noted that leadership should continue to encourage open communication with all staff *after* implementation. Modifications may be necessary to improve various strategies which will need the ongoing support of staff.

- Judges are another key player in the implementation of EBP: they are crucial in (a) heeding probation officers' recommendations for customized terms of supervision plans, (b) educating themselves about and utilizing effective community-based corrections programs within their jurisdictions, and (c) working with prosecutors to appropriately handle violations or new offenses – ideally through progressive sanctions which are uniformly and consistently administered from court to court. Only with the **collaboration and commitment of the judiciary** to EBP (and to allowing probation heads the discretion to implement them) will

probation officers be able to effectively work with those under their supervision to modify and incentivize positive behavior change over time.

*Note:* To reiterate, it is imperative that prosecutors too are exposed to EBP that reduce the risk of recidivism. They must communicate with probation, as well as the judiciary, in a constructive way to facilitate this.

- Staff and judges must use **data-driven strategies and techniques** to more successfully – and cost-efficiently – handle each probationer. It is imperative that probationers undergo a proper **validated assessment** that correctly classifies their risk level and programming (e.g., treatment, education) needs. This is a crucial step: research has found that the over-supervision or treatment of lower risk individuals can be as counterproductive as a lack of appropriate supervision of higher risk individuals; likewise, low-risk probationers placed in programs with high-risk probationers tend to do worse.

Probation officers should be assigned **risk/needs-based caseloads**, and they must work closely with probationers to develop a tailored **supervision plan** that matches the risk/needs identified during assessment. If probationers fail to meet various terms of their plan, they must be **sanctioned** in a graduated manner in keeping with their risk level: more leeway for violations if the probationer is considered low- or medium-risk, less or no tolerance for violations if the probationer is considered high-risk.

*Note:* Supervision should be front-loaded so that it is heaviest during the early critical period (the first eight months) of probation terms, with officer caseloads adjusted accordingly. Additionally, limiting the time officers spend supervising non-violent probationers with property and drug offenses will give them additional time to supervise individuals who are convicted of more serious crimes or who pose a flight risk or threat to public safety.

- Another important tool for probation officers is the use of **motivational interviewing**, which focuses on a strong, collaborative, probation officer/probationer approach to fulfilling the terms of supervision, and specifically involves reflective listening, using open-ended questions, and identifying inconsistencies in compliance together. This critical this strategy can assist probationers in recognizing how best to meet their goals, especially when complemented by positive reinforcements (incentives and feedback) that are administered four times as often as negative reinforcements (sanctions for non-compliance).

*Note:* Key incentives that promote probationer accountability for taking initiative and responsibility include the following:

- Reduced probation fees to encourage program attendance and completion.
  - Fewer community service hours to encourage program attendance and completion.
  - A reduced probation sentence (“earned discharge”) to reward positive, law-abiding behavior while on probation and faithful completion of program requirements.
- Just as with specialized strategies used by staff when working with probationers to positively modify their behavior, programming must be tailored to best meet their needs. Specifically, **programs should employ cognitive behavioral techniques** that identify and address an

individual's criminogenic traits to reduce his or her tendency to commit crime. Anti-social attitudes, anti-social friends, substance abuse, lack of empathy, and impulsive behavior are all traits that can cause recidivism and must be adjusted. A department should maintain an inventory of proven programs available to take referrals; access to a variety of programs that can address each probationer's specific, possibly multi-diagnosis needs will most successfully effect a change in behavior.

*Note:* Neighborhood programs that keep probationers near their families and support networks are key to individuals' successful supervision and willingness to remain law abiding.

- A final important component of the EBP implementation process involves **measurement of outcomes**. To best maximize service delivery and provide staff with relevant feedback and a sense of ownership, departments should collect data that can (a) track the effectiveness of EBP at various levels throughout the department, and (b) inform necessary modifications to improve practices or program fidelity where needed. Additionally, data collection and analysis can provide support for the use of similar strategies in comparable settings.

Performance measures should primarily include revocation trends and recidivism rates, though reductions in substance abuse or improved family relations – if measurable – can assist leadership and policy-makers in making future decisions about the implementation of EBP.

## **POLICY RECOMMENDATIONS**

### **➤ Assist Probation Departments In Their Efforts to Implement Evidence-Based Practices**

Broad supervision and oversight of probation departments should be strengthened to ensure that local departments are adopting best practices and correctly implementing them, while still being given the flexibility to tailor their programs to meet probationers' needs.

- **Provide intensive technical assistance grants to all large departments to implement evidence based practices.**

To facilitate the most resource-conscious adoption of best practices over time, large departments should be provided with expert consultants that can assist them in the implementation of new, proven programs. After they begin successfully utilizing such practices, their experiences can inform a curriculum to be used by smaller departments.

*Note:* Large departments should be required to submit evidence-based program proposals to the Community Justice Assistance Division (CJAD) before being provided technical assistance and program grants. Upon approval, they should be provided assistance with (a) organizational change, including how to conduct staff trainings to allay staff concerns, and then implement an appropriate personnel evaluation system; (b) implementing a validated assessment to inform tailored supervision plans; (c) supervision strategies, such as motivational interviewing and proper sanctioning practices; (d) program improvements (including in content and delivery) that will best support risk reduction; and (e) accountability and auditing of programs through monitored outcomes. To secure renewed

funding, programs should also be subject to periodic review based on a cost-benefit analysis of outcome measures of risk reduction, including recidivism and revocations, and probationer success rates (e.g., reductions in substance abuse).

- **Share what works.**

With regards to programming specifically, CJAD should compile an annual report to be distributed to judges and probation directors that assesses the successes and failures of programs implemented by local departments. Outcome measures should include (1) rates of program completion by participants, and (2) recidivism rates of program participants. Later, post-completion program evaluations should include an examination of rates of probationer recovery, employment, and educational attainment.

- **Assist probationers in improving their chances of success.**

A key factor contributing to probationer success is how they view their relationship with their probation officer. If departmental culture is improved (including through implementation of EBP) and probation officers believe that probationers can change their behavior, their interaction will be much more positive – producing better results. The State must provide probation departments with resources to conduct intensive trainings for newly hired probation officers that focus on such recognized best practices as motivational interviewing that improve probation officer/probationer interaction.

- **Strengthen the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice.**

CJAD should be given the resources necessary to effectively oversee funds allocated to probation departments and the programs on which those funds are spent.

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

- (1) Ensure that funds distributed to the field are properly spent and effectively utilized.
- (2) Conduct audits for compliance with CJAD rules and standards, and efficacy of programs and services.
- (3) Provide much needed technical assistance to the field to further the mission and goals of effective community supervision (see above).
- (4) Provide meaningful ongoing training to probation officers so they can become certified within the period prescribed by law, as well as enhance their professional development.
- (5) Have broadened training capabilities with regards to best practices for judges, district attorneys, and probation departments.
- (6) Conduct research that will be useful to the members of the Legislature, and provide meaningful program evaluation (see above). Research staff should also be given to CJAD so that they can continue to identify emerging trends and best practices in the field of community corrections.

## ➤ **Other Recommendations for Departmental and Program Reform**

In addition to the components of EBP discussed above – all of which we encourage local leadership to implement when instituting an EBP model in their department – the following recommendations are imperative in creating a safe, successful, fiscally responsible system.

- **Implement strategies that will best reduce revocations.**

- Probation departments with high revocation rates should create a Revocation Review Board to ensure progressive sanctions are being implemented that will more effectively address probationers' behavior and keep them out of overcrowded prisons and jail.
- Probation officers should be given more power when it comes to technical revocations. Specifically, officers themselves should be given the flexibility to provide appropriate administrative sanctions to probationers with technical violations. This will allow them to efficiently place the probationer in more appropriate or intensive treatment rather than having to wait for a violation report that could potentially lead to a revocation. Furthermore, it will free up judges' time for non-technical violations.
- As discussed above, both judges and prosecutors should be given trainings on evidence-based practices, especially in regards to programming and progressive sanctions, to best address probationers' risk level and needs.

- **Allow probation departments more authority to meet their local needs.**

Just as probation officers should be given more leeway to address technical violations, they should also be permitted to make decisions about program placement. Currently, officers must collaborate with various judges before an individual can be sent to a treatment program. Allowing officers – under the supervision of the probation director – to use the results of the risk/needs assessment and their knowledge about program vacancies to drive placement decisions would get probationers into needed programs (such as substance abuse or cognitive behavioral programs) more quickly, thus reducing their chances of recidivism.

*Note:* A court could also appoint one judge to be the point person who could articulate the perspectives of the judiciary to the probation department; this too would expedite the placement of individuals into treatment programs.

- **Assist probationers in meeting their payment obligations.**

For probation departments with high absconding rates, individuals who absconded for financial purposes should be permitted to enter into a payment plan. This will encourage more probationers to successfully meet the terms of their probation while saving law enforcement costs associated with identifying, tracking, and re-arresting such individuals.

- **Address the specialized needs of military veterans.**

With regards to military service members or veterans whose criminal conduct was materially affected by brain injuries or mental illnesses (including post-traumatic stress disorder) resulting from military service, courts should allow participation in a deferred prosecution program, and judges should recommend available treatment options to address the defendant's brain injury or mental illness. Specifically, programs should provide participants with alternative tools and strategies to help them stop the use of alcohol or controlled substances, while also involving both group and individual counseling. Upon a defendant's successful completion of the conditions imposed by the court under the program, a judge should have the authority to dismiss the criminal action against him or her.

To be most effective, the following elements are key:

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

With these program elements in place, counties could make large strides towards diverting and assisting hundreds of otherwise incoming inmates.

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I appreciate the opportunity to testify before this Committee and to offer our organization's ideas about this critical issue. Especially in light of the state's upcoming budget shortfall, it is imperative that legislators invest in responsible, safe, cost-effective strategies that yield a large return on taxpayer investment. Investing Texas' corrections dollars in the probation system can and will satisfy fiscal and public safety needs, and it minimizes the likelihood that taxpayers will be forced to shoulder the costs of expensive new prisons.