



# **Texas Center for Justice & Equity**

**SOLUTIONS FOR SAFE, HEALTHY,  
JUST COMMUNITIES**

## **WRITTEN TESTIMONY**

### **SUBMITTED BY**

**SARAH REYES, POLICY ANALYST  
TEXAS CENTER FOR JUSTICE AND EQUITY**

### **ON**

**INTERIM CHARGE ON OPIOID ABUSE AND OVERDOSES**

### **To**

**THE HOUSE PUBLIC HEALTH COMMITTEE**

**SEPTEMBER 13, 2022**

Dear Chair Klick and Members of the Committee,

I appreciate this opportunity to provide written testimony on the interim charge to: “Study the impact of fentanyl-related overdoses and deaths in Texas. Evaluate existing data collection, dissemination, and mitigation strategies regarding opioid abuse in Texas. Make recommendations to improve coordinated prevention, education, treatment, and data-sharing.”

Since 2000, the Texas Center for Justice and Equity (TCJE) has fought to reimagine public health and safety. Our work examines how the criminal legal system harms families while wasting money, and how that money would be better invested in community-based resources and alternatives that give people pathways to wellness—in turn preventing and reducing incarceration.

### **The Devastating Consequences of Racist and Feelings-Based Drug Policy**

For far too long, Texas has based drug policy on a Moral Model, which assumes that drug use and addiction are inherently wrong, despite overwhelming evidence to the contrary. This Model has been exacerbated by the racial bias that has undergirded myths about drug users, and it has resulted in the disparate application of penalties for drug use and possession.<sup>1</sup>

Texas’ race- and feeling-based lawmaking has created devastating consequences for millions of residents, some of whom already face extreme disparities and oppression from various systems, as highlighted below.

In determining how to course correct our state and local policymaking and practices around drug addiction, we must consider adopting the Compensatory Model, which acknowledges that addiction is something the affected person has the responsibility to change, but that the person is not responsible for the development of the disorder. Taking a science-based approach to the narratives we weave about addiction and Substance Use Disorder will not only free people of the shame and stigma that may accompany their substance use, but it will empower them to access resources to address their needs.

### **Public Health Failures in Texas**

Texas has an inadequate infrastructure to assist people seeking treatment—meaning, people beyond casual drug users. In fact, the Commonwealth Fund ranked Texas 51<sup>st</sup> in access to and affordability of state health services in 2020.<sup>2</sup> This is a significant driver of criminal legal system involvement. Furthermore, many people with a Substance Use Disorder (SUD) may also have a mental health disorder, which has an additional impact on the likelihood of interacting with the system.

Adults with untreated mental health conditions are 8 times more likely to be incarcerated than the general population. Alarming, more than 3.3 million adults in Texas are living with a mental illness,<sup>3</sup> and when evaluating treatment for adults with mental health issues, Texas ranks 44<sup>th</sup> in receipt of treatment (with 61.7 percent of the relevant population receiving none).<sup>4</sup>

People struggling to get help are often already in vulnerable situations—living in poorer neighborhoods, having limited education, struggling with mental disabilities, and/or having been victims of physical and sexual violence.<sup>5</sup> Inability to access the necessary resources to get help only exacerbates these difficulties. And without available and affordable treatment services, many people will not receive help until they are entangled in the criminal legal system.

## **Insufficient and Harmful Programming in Texas**

While Texas does have state-funded substance use treatment programs, they are severely limited, and treatment options are far more limited and worse for people within the criminal legal system.

### ***Substance Abuse Felony Punishment Program***

Texas relies heavily on the Substance Abuse Felony Punishment (SAFP) program, created in 1992, for in-prison substance use treatment. This program provides six to nine months of intensive drug and alcohol treatment, followed by three or more months of aftercare. Texas invests \$50 million per year in SAFP programs, despite the overwhelmingly high recidivism rate of 42.2 percent, a rate higher than re-incarceration rates following felony community supervision, prison, state jail, Intermediate Sanction Facilities, and parole supervision.<sup>6</sup>

For many reasons, SAFP programming fails to successfully aid in rehabilitation. Most critically, despite being categorized as a therapeutic prison-alternative, SAFP facilities are prison-like environments, which are inherently counterproductive to the goals of rehabilitation,<sup>7</sup> and there is no evidence that the programming is trauma-informed or evidence-based. TCJE interviewed 26 past participants in the SAFP program, finding: (1) clients were more engaged in substance use treatment when they were receiving clinical therapeutic services from counselors who seemed invested in their recovery—but that happened infrequently; (2) long periods of non-therapeutic-focused programming (like sitting in chairs for up to 14 hours per day) led clients to feel like they were missing out on opportunities to concentrate on personal rehabilitation; (3) the SAFP curriculum lacks a trauma-informed, intersectional approach to treatment; and (4) the transition from the SAFP program to transitional housing is abrupt, and clients feel unprepared to reenter society.<sup>8</sup>

Additionally problematic, mandated treatment programs like SAFP are rooted in abstinence models. Given that relapse is a well-documented part of the recovery process,<sup>9</sup> these treatment programs do not take the full recovery process into account. Moreover, they force people to receive treatment when they may not want or even necessarily need it, further decreasing the likelihood of success.

### ***State Jails***

Texas' state jail system is another example of failed programming to combat illicit drug use. The state jail system was created in 1994 to serve as an alternative to the state's prison system—emphasizing rehabilitative programming for low-level felonies rather than lengthy incarceration.<sup>10</sup> This vision has failed. State jail felonies consist of offenses as minor as possession of less than a gram of a controlled substance, the equivalent of a sugar packet. People convicted of a state jail felony face 180 days to 2 years in a state jail facility, with fines of up to \$10,000.<sup>11</sup> People must serve day for day with no opportunity for early release, and most facilities fail to provide treatment and rehabilitation. Ultimately, the state jail system has the highest rearrest rate of all correctional programs: 63 percent of people released from state jail are rearrested within three years of release, compared to 48 percent of people released from prison.<sup>12</sup>

## **Policy Recommendations**

Not only does Texas unnecessarily over-criminalize recreational drug use with devastating consequences, but its approach to addressing Substance Use Disorder—from punishment, to abstinence, to lack of adequate support—is failing Texans and costing lives. State and local decision-

makers must take crucial steps to implement viable, effective programs and strategies that focus on meeting people's needs.

### 1. Decriminalize Drug Use: End Criminal Penalties and Bookings for Most Drug Offenses

Drug use is not inherently wrong, nor is it an inherent risk to public safety. Criminalizing Texans' ability to choose what they put in their bodies only creates harm, ruins lives, and costs the state and local taxpayers money. The Texas Legislature should begin walking back the harms of the War on Drugs by taking bold action to remove criminal penalties for drug use and possession.

**Lawmakers should enact policies that bring an end to bookings for Class C misdemeanors and citation-eligible offenses, like possession of marijuana and possession of drug paraphernalia.**

Decriminalizing drug paraphernalia will be especially critical to advancing harm reduction programs that can help keep Texans healthy and safe. Current law not only prevents the implementation of programs like syringe exchanges but also leads to harmful criminal records, which carry long-term, negative consequences for people's employment, housing, and other resources that promote stability and wellness. *[See more on harm reduction in Recommendation 3.]*

### 2. Phase Out the Use of State Jails and Substance Abuse Felony Punishment (SAFP) Programs

In 2019, Texas' state jail system housed more than 15,000 people, approximately 43 percent of whom were serving time for possession of less than a gram of a controlled substance.<sup>13</sup> The state jail system wastes money incarcerating people for possession of a personal-use amount of substances, while **funding could instead be allocated to harm reduction and community efforts**. In 2017, the Texas Legislature passed Senate Bill 292, which created a mental health matching grant program to reduce recidivism, arrests, and incarceration among people with mental illness and Substance Use Disorder.<sup>14</sup> The Texas Legislature should expand this and other health care models in efforts to replace the state jail system and bolster local, evidence-based treatment programming.

Additionally, state lawmakers should rethink SAFP programs, where more than 6,000 people are sent every year.<sup>15</sup> To help people get true rehabilitative support, leadership should begin eliminating beds and **shift the savings to treatment options in the community, including dual-diagnosis programs at community treatment facilities, virtual outpatient programs for defendants in rural areas, or Oxford Housing and other individualized treatment centers that allow people to maintain autonomy.**

### 3. Implement Harm Reduction Strategies

Harm reduction refers to policies, programs, and practices that aim to minimize negative health, social, and legal impacts associated with drug use and drug policies. Harm reduction is grounded in dignity, justice, and human rights—working with people without judgment, coercion, or discrimination, and without requiring them to stop using as a condition of support. **Numerous studies confirm that harm reduction prevents overdose; prevents diseases such as HIV, viral hepatitis, and tuberculosis; and supports recovery for those who seek it.**<sup>16</sup>

Given that harm reduction strategies are based in the interest of public health, Texas should adopt this approach—and shift from failed deterrence and abstinence-based approaches to drug use and

addiction. Substance use researchers and justice organizations like Drug Policy Alliance and Texas Harm Reduction Alliance promote various strategies, some of which are listed below.

### ***Drug Testing***

Limited quality controls exist for illegal drug manufacturing, which can lead to drugs that include chemicals or other adulterants that are far more harmful than the drugs themselves.<sup>17</sup> One example can be seen in the recent rise in fentanyl-laced drug products, which has caused accidental overdoses across the country. Texas saw 658 synthetic opioid deaths from 2019 to 2020, a number that more than doubled to 1,482 the following year.<sup>18</sup> The Texas Legislature should implement quality controls in drug manufacturing, as well as utilize resources like the Opioid Abatement Fund to ensure access to drug testing equipment and, at the very least, allow the widescale use of this equipment to prevent overdose and harm.

### ***Evidence-Based Education Around Substance Use***

Texas, like many states, relies on a debunked drug education model for individuals, with a perspective rooted in abstinence.<sup>19</sup> Relying on an abstinence-only model creates risks to the safety of students, who will continue to use substances regardless of any prohibition. Instead, substance use education should be rooted in harm reduction strategies; it should be comprehensive and address ways to limit drug use *and* keep students safe, including by avoiding harmful and/or adulterated substances, and it should provide strategies to prevent and address overdoses.

### ***Expanded Good Samaritan Law***

Texas has seen a steady rise in overdose deaths over the last decade, from 2,579 deaths in 2015 to the provisional estimated 4,718 deaths in 2021.<sup>20</sup> These deaths are preventable, but the lack of certain policies—like a meaningful Good Samaritan law—has made it nearly impossible for people in an emergency to get needed help. In 2021, the Texas Legislature passed House Bill 1694, a Good Samaritan law that fails to provide the meaningful support needed, as it excludes protections for people who either have a felony record or have called 9-1-1 for an overdose in the preceding 18 months.<sup>21</sup> An effective Good Samaritan law should provide protection from prosecution for drug offenses to all 9-1-1 callers requesting emergency assistance for a suspected overdose.

## **4. Expand Health Care Access**

The lack of access to health care has negative consequences for Texans, especially those experiencing Substance Use Disorder. Making routine medical treatments more affordable and attainable will give more people the opportunity to live a safe and healthy life. This can also reduce instances of self-medication with illicit substances, allowing people to access necessary treatment, if they so choose.

### ***Expand Medicaid***

Along with expansions to existing Substance Use Disorder and mental health treatment services, Texas should expand access to Medicaid coverage for low-income adults through the Affordable Care Act, which will allow people to access health care services and treatment that they otherwise could not afford.

### ***Increase Access to NARCAN***

Texas should make NARCAN readily available to people and increase education around NARCAN.

### ***Increase Access to Medicated-Assisted Treatment (MAT)***

MAT involves the use of medications, in combination with counseling and behavioral therapies, to provide a “whole-patient” approach to the treatment of Substance Use Disorder. Stigma and funding are cited as the two biggest barriers to MAT access, both for justice system-involved clients and for opioid users generally. Public and political skepticism toward MAT remains an obstacle to securing needed funding and connecting justice system-involved individuals with these services. Funding is even challenging despite recent federal and state opioid response efforts that have increased MAT availability. But most problematically, the state reimbursement rates for MAT providers are too low to be economically viable, often not covering the full cost of service provision.<sup>22</sup> Texas leaders should improve reimbursement rates to make this a viable resource for people in need.

## **5. Enact and Expand Justice and Community Reinvestment Initiatives**

Despite overall decreases in most crime and incarceration nationwide, state spending on corrections and policing continues to skyrocket.<sup>23</sup> To better utilize state and local funds, some researchers and advocates have been pushing a reinvestment model for over a decade. Indeed, since 2010, national investment and interest has grown around a data-driven solution to enhancing public safety: Justice Reinvestment Initiatives (JRIs) and Community Reinvestment Funds (CRFs). **These strategies seek to manage and save costs associated with the corrections system by shrinking its impact, then redeploying savings to agencies and community-based programs that serve to prevent and address the root causes of crime.** As a result of Texas’ past reliance of data-driven JRI in 2007, Texas was able to create much of the capacity for mental health and Substance Use Disorder treatment we have today. At the time, the state was forecasting an increase in the prison population of 17,000 people; it invested \$241 million in treatment and diversion programs rather than fund prison facility construction, saving more than \$1.5 billion and preventing the projected population increase.<sup>24</sup> The Texas Legislature should re-up on its commitment to these types of initiatives to enhance public safety and save lives.

## **6. Improve Data Transparency Around Treatment Programs**

Counties should provide publicly available data about the availability of local treatment programs and their efficacy (with clear evaluation metrics), both so that residents and referring entities are able to determine waitlists and likelihood of success, and so local budget-makers can make informed decisions about ongoing investments in public programs. Ideally, a statewide dashboard could house the information—making it most user-friendly, and promoting the highest level of transparency and accountability.

*For questions about this testimony, contact Sarah Reyes at [SReyes@TexasCJE.org](mailto:SReyes@TexasCJE.org) or at (512) 441-8123.*

### **Citations**

---

<sup>1</sup> Stephen Koppel, “Evidence-based Drug Crime Policy: Looking Beyond the Moral and Medical to a Multi-level Model of Addiction,” *Journal of Civil Legal Sciences*, 5:175, February 9, 2016.

<sup>2</sup> The Commonwealth Fund, *2020 Scorecard on State Health System Performance - Texas*, <https://2020scorecard.commonwealthfund.org/state/texas>.

- 
- <sup>3</sup> Maddy Reinert, Theresa Nguyen, and Danielle Fritze, *State of Mental Health in America – 2020*, Mental Health America, 2019, <https://mhanational.org/sites/default/files/State%20of%20Mental%20Health%20in%20America%20-%202020%200.pdf>.
- <sup>4</sup> Mental Health America, “2020 Adult Data,” <https://mhanational.org/issues/2020/mental-health-america-adult-data#six>.
- <sup>5</sup> Shawna L. Carroll Chapman and Li-Tzy Wu, “Substance Abuse among Individuals with Intellectual Disabilities,” *Research in Developmental Disabilities*, 33, no. 4 (July 2012): 1147–56.
- <sup>6</sup> Texas Center for Justice and Equity (TCJE), *Layers of Trauma, Layers of Treatment: Using Participant Experiences to Reform Texas’ In-Prison Substance Use Treatment Program*, April 2021, <https://texascje.org/system/files/publications/Layers%20of%20Trauma,%20Layers%20of%20Treatment%20-%20TCJC,%20April%202021.pdf>.
- <sup>7</sup> Shon Hopwood, *How Atrocious Prisons Conditions Make Us All Less Safe*, Brennan Center for Justice, August 9, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/how-atrocious-prisons-conditions-make-us-all-less-safe>.
- <sup>8</sup> TCJE,
- <sup>9</sup> Meredith Watkins, ed., *Drug Relapse: Drug Addiction Relapse Statistics & Prevention*, American Addiction Centers, January 4, 2022, <https://drugabuse.com/addiction/relapse/>.
- <sup>10</sup> Patrick Graves, “Texas State Jails: Time for a Reboot?” Fiscal Notes, Texas Comptroller of Public Accounts, August 2019, <https://comptroller.texas.gov/economy/fiscal-notes/2019/aug/jails.php>.
- <sup>11</sup> Texas Penal Code, Sec. 12.35, <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.12.htm>.
- <sup>12</sup> Texas Legislative Budget Board, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January 2021, [https://www.lbb.texas.gov/Documents/Publications/Policy\\_Report/6293\\_CJDA\\_Recidivism-Revocation.pdf](https://www.lbb.texas.gov/Documents/Publications/Policy_Report/6293_CJDA_Recidivism-Revocation.pdf).
- <sup>13</sup> Texas Department of Criminal Justice, *2019 Statistical Report*, February 2019, [https://www.tdcj.texas.gov/documents/Statistical\\_Report\\_FY2019.pdf](https://www.tdcj.texas.gov/documents/Statistical_Report_FY2019.pdf).
- <sup>14</sup> Texas Health and Human Services Commission, *Behavioral Health Collaborative Matching Grant Programs*, September 2017, 3, <https://hhs.texas.gov/reports/2017/09/behavioral-health-collaborative-matching-grant-programs>.
- <sup>15</sup> Texas Department of Criminal Justice, *FY 2018 Statistical Report*, [https://www.tdcj.texas.gov/documents/Statistical\\_Report\\_FY2018.pdf](https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf).
- <sup>16</sup> Harm Reduction International, [www.hri.global](http://www.hri.global).
- <sup>17</sup> Carl Hart, *5 Tips for Decreasing Drug Related Harms*, Dr. Carl Hart, PhD, <https://drcarlhart.com/5-tips-for-decreasing-drug-related-harms/>.
- <sup>18</sup> Arezow Doost, “Fentanyl Overdoses Dropped in 4 States. These Solutions Are Helping,” *KXAN Investigates*, February 18, 2022, <https://www.kxan.com/investigations/missing-the-real-solutions-what-texas-can-learn-from-states-with-fentanyl-overdose-drops/>.
- <sup>19</sup> Scott Lilienfeld and Hal Arkowitz, “Why “Just Say No” Doesn’t Work,” *Scientific American*, January 1, 2014, <https://www.scientificamerican.com/article/why-just-say-no-doesnt-work/>.
- <sup>20</sup> Centers for Disease Control and Prevention, “Products - Vital Statistics Rapid Release - Provisional Drug Overdose Data,” 2019, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.
- <sup>21</sup> Grant McLaurin, “Officials Say Texas’ Good Samaritan Law Comes with Conditions” *The Battalion*, Texas A&M University, November 22, 2021 [https://www.thebatt.com/news/officials-say-texas-good-samaritan-law-comes-with-conditions/article\\_13932cf2-4b15-11ec-9848-17801b07f54c.html](https://www.thebatt.com/news/officials-say-texas-good-samaritan-law-comes-with-conditions/article_13932cf2-4b15-11ec-9848-17801b07f54c.html).
- <sup>22</sup> Katharine Neill Harris and Jay Jenkins, *Diverted Opportunities: Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas*, Rice University’s Baker Institute for Public Policy, December 2019, <https://doi.org/10.25613/XZJH-GX92>.
- <sup>23</sup> Council of State Governments, *The Justice Reinvestment Initiative (Fact Sheet)*, [https://csgjusticecenter.org/wp-content/uploads/2018/06/JRI\\_2pager\\_Update\\_March2021.pdf](https://csgjusticecenter.org/wp-content/uploads/2018/06/JRI_2pager_Update_March2021.pdf).
- <sup>24</sup> Ibid.