



**Texas Center for
Justice & Equity**
SOLUTIONS FOR SAFE, HEALTHY,
JUST COMMUNITIES

WRITTEN TESTIMONY

**SUBMITTED BY JUSTIN MARTINEZ
POLICY ANALYST & BEXAR COUNTY PROJECT DIRECTOR
TEXAS CENTER FOR JUSTICE AND EQUITY**

ON

**ARTICLE V
TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

To

**THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON ARTICLES I, IV, AND V**

FEBRUARY 27, 2023

Dear Chair González and Members of the House Appropriations Subcommittee on Articles I, IV, and V:

Thank you for this opportunity to provide information and recommendations that seek to provide meaningful and long-lasting solutions to the Texas Department of Criminal Justice's (TDCJ) skyrocketing healthcare costs and the ongoing costs of repairing and maintaining TDCJ's aging facilities.

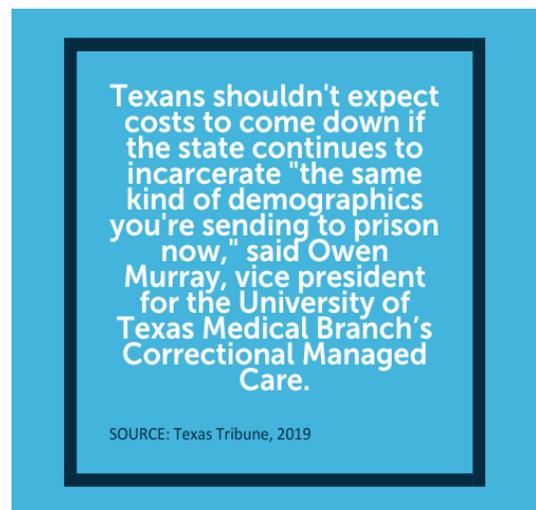
Since 2000, the Texas Center for Justice and Equity (TCJE) has advocated to end mass incarceration, shift funding towards community supports, and reduce deep racial inequities in the criminal punishment system. Our work is guided by the needs of those most impacted by the system: people of color, people in poverty, and people with substance use disorder, mental health issues, and trauma.

Address Ongoing, Skyrocketing Health Care Costs and Inadequate Health Care Services in TDCJ

Skyrocketing healthcare costs and inadequate healthcare services are nothing new for Texas and TDCJ. Some of the **primary drivers that have contributed to the state's ongoing issues related to costs and quality of prison healthcare services** are:

1. An increasing elderly population;
2. Extreme sentencing, which leads to more and more people staying in prison for longer periods of time; and
3. Low overall parole approval rates along with an extremely poor performing medical early release program, known in Texas as the Medically Recommended Intensive Supervision (MRIS) program.

Over time, the aging population in Texas' corrections system has surged. In fact, the incarcerated population in TDCJ over the age of 50 has increased by 61 percent from FY 2005 to FY 2021.¹ Even more notable, those over the age of 60 have increased by 173 percent during that same time period.² Importantly, these increases are despite the overall reduction in TDCJ's population by 24 percent from FY 2005 to FY 2021.³



Along with an increasing number of people who are growing older within Texas' prison system, **lengthier sentences coupled with low parole approval rates contribute to exploding prison costs.** The average

sentence length for people committed to Texas prisons has increased by 35 percent since 2005.⁴ Additionally, in FY 2021, the state's overall parole approval rate was only 38 percent, with only 48 people approved for release to MRIS.⁵



As a result of a growing elderly population, long sentences, and low parole approval rates, publicly funding prison health care costs are escalating: **"The state spent over \$750 million on prison health care during the 2019 fiscal year, a 53 percent increase from seven years earlier, when that cost was less than \$500 million."**⁶

While Texas struggles to finance the aging incarcerated population, it also has a long history of inadequate healthcare services. One of the first major incidents of the Texas prison system failing to provide adequate healthcare was in 1973, when J.W. Gamble was injured while working in a prison textile mill.⁷ He sued the prison system, alleging inadequate medical care, which led to the landmark 1976 Supreme Court ruling that “deliberate indifference” to an incarcerated person’s medical needs was a violation of the “cruel and unusual punishment” clause of the Eighth Amendment. More recently, incarcerated individuals and their family members have brought lawsuits alleging that TDCJ failed to provide adequate healthcare. Some of those lawsuits are highlighted below.

- A person incarcerated at the Gist State Jail filed suit in 2018 after TDCJ staff failed to treat a flesh-eating bacteria infection for a week.⁸
- A 2019 federal lawsuit alleged that TDCJ denied thousands of incarcerated individuals access to a medication known to be effective against Hepatitis C, which exposed thousands to liver damage and other health-related consequences.⁹
- A terminally ill incarcerated individual sued TDCJ in 2019 for abruptly ending his morphine treatments and forcing him to detox cold turkey, allegedly in response to a sexual harassment complaint he filed.¹⁰
- A mother who lost her son to suicide filed a federal lawsuit against TDCJ and the University of Texas medical provider in 2019 for allegedly leaving her 19-year-old son alone in a cell, even though he was “openly suicidal.”¹¹

Recommendations: The “greying” of Texas’ prison system, along with the failings within the state’s parole system and MRIS program, are contributing to high incarceration rates, leading to skyrocketing healthcare costs and inadequate healthcare services. To significantly reduce the fiscal and human costs currently plaguing our state, Texas needs a parole process that centers both safety and higher release rates. Texas leadership should:

- 1. Shift the focus of parole reviews to factors an applicant can control.** Although parole applicants have already been sentenced and punished for their offense by incarceration, their offense is the leading factor in release decisions – effectively turning parole review into resentencing exercises.

Under Texas’ parole guidelines, as set forth in statute, the Board of Pardons and Paroles is directed during the parole review process to contact the prosecuting attorney, review the person’s criminal record, and evaluate prison disciplinary records. The Board is not able to evaluate an individual’s progress in certain rehabilitative programs when determining parole because only the Board can place people in those programs – which, under current practice, comes *after* a person’s parole review. Shifting toward a system of providing rehabilitative services prior to parole review and safely releasing those who are aging or medically vulnerable will have the **twofold effect of saving taxpayer dollars and improving public safety.**

- 2. Allow for earlier access to effective pre-release programs, such as substance use treatment and cognitive intervention.** With little access to programs during incarceration, the years between parole reviews are wasted opportunities for individuals to participate in required programs. Improving opportunities for substance use treatment and other interventions are critical to parole release and successful reentry into the community. Furthermore, ineffective or unnecessary pre-release programs, which keep individuals needlessly incarcerated, should be identified for elimination.

3. **Allow for earlier parole consideration for people serving lengthy sentences.** This can be achieved by (a) expanding the number of offenses for which individuals can earn time off their incarceration period through time credits (e.g., good behavior, diligence in prison work, and program completion), and (b) ending de facto life sentences for people under 18 by halving the date for parole eligibility (a policy change also referred to as “second look”).
4. **Expand access to and increase transparency within the state’s early medical release program, MRIS.** MRIS has overly stringent qualifications, poor reporting, and limited approval rates that exclude from release many individuals with serious medical conditions who do not present a public safety risk. This exacerbates taxpayer spending on correctional-managed health care.

Continue Closing TDCJ Facilities and Reallocate Dollars to Community Care Solutions

As of 2021, there were nearly **118,000 people incarcerated in TDCJ**.¹² While current population numbers are still roughly 17 percent lower than in 2019, the prison population has been steadily increasing since the height of the COVID-19 pandemic.¹³

We should seize every opportunity to stop any progress that would increase Texas’ place on the incarceration leaderboard. In 2021, **Texas had an incarceration rate of 840 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities)**.¹⁴ To put that number into context, this was roughly 27 percent more than the national incarceration rate and surpassed incarceration rates from other NATO-member countries.¹⁵

One of the best ways for the state to work towards real public safety for all Texans – while reducing the overall prison population for good – is to continue closing prison facilities and to invest the savings into community care solutions: housing, health, mental health, education, and jobs. The saving from prison closures can also be used to support climate control in remaining facilities, improved healthcare services for those currently incarcerated, and more resources to provide meaningful support to people reentering society.

These critical and urgent conversations around facility closure are especially relevant when tackling issues related to an aging prison population and chronic facility understaffing.

If we do not begin to downsize the state’s prison population and close facilities, Texas will continue to be forced to increase funding to address skyrocketing healthcare costs, chronic understaffing issues, and maintenance of its 100 units, some of which are more than a century old.

Importantly, because most corrections spending goes towards operational costs such as salaries and benefits, facility closure is the only meaningful way to realize savings that could be reallocated where



they are needed most: directly into Black, Brown, and other communities across Texas that have been historically harmed by incarceration and are impacted by that legacy.

Recommendations: Rather than allocating additional state dollars to maintain TDCJ's aging infrastructure, the state should restart the facility closure process and reaffirm its commitment to reducing the number of TDCJ facilities. Texas leadership should:

1. Continue the process of closing TDCJ facilities by working with advocates and those currently incarcerated, formerly incarcerated, their loved ones, and the communities in which these facilities are located to create a thoughtful, staggered closure plan.
2. Make meaningful efforts to decarcerate these facilities and not just simply disperse people to other units, expand privately-operated units, or further overburden already overburdened county jails.
3. Use savings from facility closures to go directly to community care and substantive reentry solutions, while also improving current conditions of confinement.

Citations

¹ Data obtained from analyzing TDCJ's Statistical Reports (SAFP population excluded), https://www.tdcj.texas.gov/publications/statistical_reports.html.

² Id.

³ Id.

⁴ Data obtained from Texas Department of Criminal Justice, July 2020. Calculated by averaging the length of sentence of the on-hand prison and state jail population in TDCJ as of August 2005 and August 2020. The average only included the number of people sentenced; no life, capital life, death, or life without parole sentences were included.

⁵ Texas Board of Pardons and Paroles, *Annual Statistical Report FY 2021*, https://www.tdcj.texas.gov/bpp/publications/FY_2021_Annual_Statistical_Report.pdf.

⁶ Davis Rich, "Prison health care costs are higher than ever in Texas. Many point to an aging prison population," *Texas Tribune*, Nov. 2019, <https://www.texastribune.org/2019/11/25/texas-prison-health-care-budget-parole/>.

⁷ "Deprive Texas criminals of liberty, not teeth" [Editorial] *Houston Chronicle*, Sept. 2018, <https://www.houstonchronicle.com/opinion/editorials/article/Deprive-Texas-criminals-of-liberty-not-teeth-13257884.php>.

⁸ Keri Blakinger, "Lawsuit: TX prison too understaffed to take inmate to hospital for flesh-eating bacteria infection," *Houston Chronicle*, Dec. 2018, <https://www.chron.com/news/houston-texas/houston/article/Lawsuit-TX-prison-too-understaffed-to-take-13473308.php#photo-16659605>.

⁹ Gabrielle Banks and Keri Blakinger, "Texas inmates sue for hepatitis C drug, alleging lack of treatment is 'cruel and unusual,'" *Houston Chronicle*, Sep. 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-inmates-sue-for-hepatitis-C-drug-alleging-14453099.php>.

¹⁰ Keri Blakinger, "Lawsuit: Texas prison cuts off dying inmate's morphine after he filed sexual harassment complaint," *Houston Chronicle*, May 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Lawsuit-Texas-prison-cuts-off-dying-inmate-s-13811798.php>.

¹¹ Keri Blakinger, "Mother sues Texas prisons after 'egregious' failure to prevent son's suicide," *Houston Chronicle*, Jan. 2019, <https://www.chron.com/news/houston-texas/houston/article/Mother-sues-Texas-prisons-after-egregious-13548558.php>.

¹² Texas Department of Criminal Justice, *Statistical Report FY 2021*, https://www.tdcj.texas.gov/documents/Statistical_Report_FY2021.pdf.

¹³ Texas Department of Criminal Justice, *Statistical Report FY 2019*, https://www.tdcj.texas.gov/documents/Statistical_Report_FY2019.pdf.

¹⁴ Prison Policy Initiative, *Texas profile*, <https://www.prisonpolicy.org/profiles/TX.html>.

¹⁵ Id.