



WRITTEN TESTIMONY

**REGARDING ARTICLE V – TEXAS DEPARTMENT OF CRIMINAL JUSTICE
AND TEXAS COMMISSION ON JAIL STANDARDS**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
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To

THE SENATE COMMITTEE ON FINANCE

FEBRUARY 21, 2011

TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition (TCJC) 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.

TCJC'S PROJECTS

The Juvenile Justice Initiative: *Creating Avenues to Success for Troubled Youth and Their Families.*

The Public Safety Project: *Advocating for Fair, Effective Police Practices that Improve the Safety of Our Communities.*

The Fair Defense Project: *Ensuring a Just and Accountable Judicial System by Protecting the Right to Counsel.*

The Solutions for Sentencing & Incarceration Project: *Providing Proven and Cost-Effective Answers that Address Texas' Over-Reliance on Incarceration.*

Tools for Re-Entry: *Advocating for Policies that Enable the Previously Incarcerated to Live Responsibly.*

Tools for Practitioners: *Featuring Effective Criminal and Juvenile Justice Programs and Practices.*

Public Policy Center: *Providing Nonpartisan Criminal and Juvenile Justice Policy Recommendations.*

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on Article V.

Below we have explained the impact of budget cuts on the adult criminal justice system (specifically, the Texas Department of Criminal Justice (TDCJ), and the Texas Commission on Jail Standards (TCJS)), under the filed version of Senate Bill 1. We have also provided relevant policy recommendations for both the prison and jail systems that the state can employ to address its immediate financial deficit, as well as preserve public safety throughout our communities in the future. Already, state leadership has laid the foundation for the continuous success of risk-reduction strategies with their bipartisan support during recent legislative sessions. The additional smart-on-crime strategies outlined here must serve as a critical consideration-point for policy-makers seeking to implement a rational, responsible, fiscally sound budgetary approach, as they can and will deliver taxpayers a return on their investment.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Introduction

Incarceration currently accounts for more than 88% of the state's corrections spending (more than \$6 billion), and only 12% is allocated for diversions such as probation, treatment, and parole.¹ Yet **incarceration results in significantly greater levels of re-offending than treatment and other risk-reduction alternatives**, which are proven to be more cost-efficient and programmatically effective.²

In fact, alternatives to incarceration – including treatment programming, probation, and parole – have saved the state nearly \$2 billion since 2007 while safely keeping inmate populations from exceeding state and local budget capacity.³ According to a recent *Dallas Morning News* article, “Texas’ offender population has decreased slightly since 2007, when the Legislature began investing more money in treatment, diversion and lower caseloads for local probation officers.”⁴ Further investments in such areas will continue to deliver taxpayer savings by addressing the root causes of criminal behavior, which in turn keeps costly incarceration rates down and results in more productive community members.

On the other hand, cutting diversion funding would simply be an irresponsible approach to budget difficulties, one that will only create problems with high and financially unsustainable incarceration rates, and result in negative long-term public safety consequences. Furthermore, it will force taxpayers to shoulder the additional burden of costly prison construction.

Budget Cuts to TDCJ

TDCJ requested a total of \$6,261,561,994 in GR funds for the 2012-13 biennium, but the filed version of S.B. 1 recommends the agency receive only \$5,227,283,592. That is more than \$831 million less than requested, or a 13.2% gap between the recommended budget and what TDCJ has requested to sustain its operations and services.⁵

All told, 59% of Article V savings would come from TDCJ, which has been asked to operate with \$583.6 million less than it (will have) spent in the previous biennium.⁶ To put things in perspective, the Office of Court Administration's budget during the current biennium is approximately \$5 million per year, and the Texas Commission on Jail Standards' annual budget is under one million. Realistically, the budget cannot be balanced on the backs of these smaller agencies.

The Texas Criminal Justice Coalition agrees that TDCJ's budget must be cut, but S.B. 1 goes about it the wrong way.

➤ **Prison Units**

S.B. 1 directs TDCJ to close the Central Unit in Sugar Land no later than September 1, 2011. No other state-owned facilities have been publicly identified as possible candidates for closure (though TDCJ will reduce its number of leased private prison beds). Instead, cuts have been focused nearly exclusively on community supervision, parole, and programming funds.

Security staff:

- *Layoffs:* S.B. 1 reduces staffing for core operational areas within TDCJ's incarceration function by 786 positions,⁷ but cuts required of the agency during the interim will be larger than that. The *Austin American-Statesman* recently reported that TDCJ will fire hundreds to meet budget cut requirements in the current fiscal year.⁸ Since closure of the Central Unit would eliminate only a few hundred positions, TDCJ will also have to reduce staffing at units it intends to keep open. **This will heighten security risks**, particularly at units that already have difficulty retaining full staffing levels.
- *Pay Cuts:* S.B. 1 eliminates funding required for the biennialization of the FY 2010-11 approved pay raise for correctional officers and unit staff, which had totaled 7%.⁹ Also, TDCJ will not pay career ladder salary adjustments in FY 2012 or 2013.¹⁰

Maintenance:

S.B. 1 budgets \$17 million per year for repair and maintenance of facilities in 2012, less than half the amount that TDCJ requested, and it leaves the item unbudgeted for 2013 (D.1.1).¹¹ Presumably, TDCJ would shift money from other sources to pay for routine maintenance, but on its face **it is untenable to operate 112 prison units with a zero maintenance budget** for a year.

Debt Service:

Texas has paid \$479.6 million during the current biennium on criminal justice-related bond debt, most of it for expenses related to past prison construction.¹² However, the LBB has recommended reducing that by 9.7% over the next two years to \$433.3 million.

TCJC has two concerns about this reduction. First, that figure represents a high debt load generated by the state's criminal justice functions. Second, unless some of the bonds have recently been paid off, owners of TDCJ debt will continue to expect the state to service those

obligations, or risk the state's overall bond rating. This is an item that cannot simply be reduced by fiat.

➤ **Private Prisons/Contract Beds**

Approximately 11.6% of TDCJ's overall capacity comes in the form of leased beds from private prison operators.¹³ Eliminating contract beds has the benefit of immediacy and a less messy wind-down process than closing a state-owned facility, firing state employees, selling real property, etc. On the other hand, private prison's costs-per-day are relatively low compared to some of TDCJ's older, pre-1920 prisons which are much more costly to run in accordance with modern standards.¹⁴

S.B. 1 would cut funding for private prisons and state jails (C.1.13) by \$15.4 million for the biennium, a 6.6% reduction since the previous biennium. The LBB's budget summary estimates that TDCJ would reduce private prison capacity by 1,133 beds.¹⁵

This would either mean closing one private prison unit, or spreading the reductions among multiple units within TDCJ's portfolio of private beds. State Senator John Whitmire has publicly suggested closing the Mineral Wells Pre-Parole facility, the contract for which expires at the end of February 2011,¹⁶ not to save money but because the unit is too close to a nearby road that allows contraband to be easily thrown into the prison yard. The unit houses 2,100 prisoners, and TDCJ recently announced it would reduce that number by 500 during this fiscal year.¹⁷ Separately, funding for pre-parole transfer facilities is also cut in a separate line item (C.1.14, by \$5.2 million, or 7.9%).

No funding at all is contemplated over the next two years for contracted capacity with county jails.¹⁸ Several Texas counties have overbuilt local jail capacity hoping to contract with TDCJ for surplus prisoners,¹⁹ but in 2009 TDCJ canceled "contracts to house up to 1,900 state convicts in county lockups because the number of inmates in state prisons has fallen."²⁰

➤ **In-Prison Programming**

In-prison programming prepares incarcerated individuals for re-entry and makes the parole board more amenable to inmates' release, but such programming will be decimated by proposed cuts.

S.B. 1 reduces already minimal academic and vocational education services for incarcerated individuals by 43.6%, down from \$4,841,279 last biennium (C.2.2). Substance abuse treatment in prison also takes a hit (C.2.6), with a 19.6% decrease over the biennium, amounting to a \$14.7 million cut.

➤ **Special Needs Services**

S.B. 1 cuts funding for special needs services (B.1.1) by \$5.9 million, or 14.4% for the biennium. The number of individuals served through the Continuity of Care program will be reduced from 28,500 to 23,880 in 2012, or 16.2%. These include people with severe mental illness, geriatric prisoners, and an array of people with chronic medical problems that will not vanish just because

the state chooses not to pay to treat or accommodate them. **Such a drastic cut risks the agency falling out of compliance with the Americans with Disabilities Act²¹ and/or failing to provide minimum constitutional levels of care to special needs inmates.**

To reduce spending on special needs inmates without running these risks would require greater use of medical parole, which, if targeted to the most prolific users of medical services, could achieve significant savings.

➤ **Probation, Treatment, and Diversions**

S.B. 1 reduces funds for Texas' much-lauded probation reforms of 2007, lowering funding for diversion programming and giving TDCJ greater control over remaining funds by eliminating restrictions in various budget riders.

Diversion/Probation funding overall is cut \$65.9 million for the biennium, or 11.8%, including these four categories:

- **Basic supervision** (A.1.1) is cut by \$25.9 million, or 11.8%. Most of this comes through the elimination of state funding for misdemeanor probation.
- **Diversion programs** (A.1.2) are cut by \$23.5 million, or 9.8%.
- **Community Corrections** (A.1.3) is cut by \$4.7 million, or 6.2%.
- **Treatment Alternatives to Incarceration** (A.1.4) is cut by \$11.7 million, or 50.5%.

In addition to eliminating funding for misdemeanor probation supervision, S.B. 1 eliminates caseload reduction funds distributed to local probation departments.

The bill would also cut funding for Texas' new, highly successful Intermediate Sanctions Facilities (ISFs, used both for parole and probation violators) by 5%, while the agency had requested a 33.7% increase. The number of people served would decline from 3,220 this year (FY 2011) to 2,546 each in 2012 and 2013.²² In reality, boosting funds for ISFs would likely reduce overall spending by reducing long-term incarceration costs. **If ISF beds are cut, judges will instead be forced to send individuals to TDCJ, costing the state significantly more money.**

The same goes for reductions in drug treatment programming. Adult probation utilizes approximately 90% of substance abuse felony punishment (SAFP) facility beds.²³ Funding for SAFP facilities would decline by \$8.3 million, but that number understates the cut. This program was eliminated completely in 2003 and only began to ramp up again after 2007, reaching full-participation levels for the first time in FY 2011 (this year), when TDCJ is budgeted to spend \$62.1 million on SAFP programs. Going forward, S.B. 1 budgets SAFP at \$47 million for both 2012 and 2013, or a 24.2% cut from 2011 levels.

Separately, S.B. 1 eliminates program funding for the Battering Intervention and Prevention Program.

Finally, even where diversion programs were not completely eliminated, much of the Rider language prescribing how diversion money would be spent (e.g., prioritizing progressive sanctions programs for diversion grants) has been deleted in the first draft of S.B. 1. So TDCJ would not only have less money to spend if this version of the budget became law, but agency management would have greater flexibility to decide priorities for the money that remains. In effect, S.B. 1 as filed would completely dismantle Texas' 2007 probation reforms, rather than expand on them to reflect the state's stated goal of reducing the inmate population.

➤ Parole

There is a bizarre and irreconcilable element to the budget for the Texas Board of Pardons and Paroles (TBPP). As noted, S.B. 1 would shutter the Central Unit and eliminate private prison beds. However, cuts to TBPP's bureaucracy would cause the agency to process an estimated 2,985 *fewer* parole cases each year,²⁴ which would immediately boost the prison population by a similar number (unless front-end diversion programming, which is also slated for cuts, is expanded). Costs for prisoners being kept longer as a result of fewer release hearings are simply not accounted for in the agency's budget, but TDCJ would still be required to feed and house those individuals until TBPP approves their release. In 2010, according to S.B. 1 (pg. V-15), TBPP reviewed 97,376 cases. After proposed cuts under S.B. 1, TBPP will only have capacity to review 85,560 cases per year. That represents a 12.1% reduction in cases reviewed, and a 6.9% reduction in paroles granted, according to the LBB.

Under S.B. 1, parole officer caseloads would shoot up from 62 per officer to 87 on paper (probably more in reality). Budgetary limits on caseload size are lifted under the bill.²⁵ Like other TDCJ staff, parole officers will similarly see a salary freeze, cuts in state retirement contributions, and a suspension of raises associated with the career ladder.

Bottom line: The budget's section on parole fundamentally does not make sense. **It is *simply not possible* to let fewer people out of prison each year, presumably keep the same number coming in, and cut the overall number of prison beds.** Short of double-bunking (as they do in California), something has got to give.

Even more critically, there are no savings to be had from cutting parole processing functions. This is because the alternative for every individual whose release date is postponed (incarceration) costs many times more than processing his or her parole application. To really save money, in fact, TBPP would need to *expand the number of parole applications processed* or (even better) simply increase the perennially low approval rate for those convicted of low-risk offenses.

Other Parole Concerns:

S.B. 1 cuts funding for parolee Sex Offender treatment services (C.2.4) by a staggering \$14.7 million, or 19.7%.

Funding for halfway houses would be cut 6.4%, by \$2.5 million, which will reduce the number of people they are able to serve by approximately 93 (F.2.2).

County sheriffs concerned about the expense from housing individuals held on "blue warrants" for alleged parole violations will be dismayed to learn of a proposed 7.5% cut in funds for

processing parole revocations, a cut which will pass on extra incarceration expenses to counties as individuals wait longer for their parole revocation hearings to be held. (*Note:* The Sheriff's Association of Texas has recommended legislation to allow bail for parole violators held on blue warrants.²⁶)

At the very least, one new and welcome element in the budget bill itself is the requirement of a study:

to evaluate and identify process inefficiencies related to parole review and offender release that is contingent upon successful completion of an assigned rehabilitation program. A report including the results of the study shall be submitted to the Legislative Budget Board and the Governor's Office not later than January 1, 2012. The report shall include recommendations and strategies to better align parole votes, program start dates, and offender releases.

Not later than December 1, 2012, the Board of Pardons and Paroles and the Department of Criminal Justice shall submit to the Legislative Budget Board and the Governor's Office an update to include actions, if any, implemented since the initial report. The update shall include savings associated with any actions taken to reduce delays in releasing paroled offenders who have completed an assigned rehabilitation program.²⁷

In the context of the rest of the budget, though, this may be unrealistic. How can parole be made more "efficient" while fewer cases are processed for release, parole officer caseloads are growing, and funds for revocation hearings are slashed? Even if the study finds "inefficiencies," there seemingly will not be staff or resources available to implement proposed solutions.

➤ **Re-Entry**

Among states that have successfully reduced their prison populations while simultaneously achieving reductions in crime, a focus on re-entry services has been a critical component.²⁸ The draft budget of S.B. 1, however, would devastate Texas' recent investments in re-entry programming. Specifically, it would:

- Eliminate Project RIO,²⁹ which is the primary state job assistance program for previously incarcerated individuals.
- Eliminate the Job Placement Pilot Program, a new project which was funded at \$1,000,000 last biennium.³⁰
- Eliminate funding (\$50,000 per year) for the Parole Transitional Support Program, a small pilot program that contracts for services with recognized non-profit organizations to facilitate parolees' transition from incarceration to release on parole.³¹

These cuts are likely to increase costs rather than save money thanks to higher recidivism rates. Indeed, investments in re-entry services can pay big dividends both in reduced incarceration rates and less crime. For example, "Through vigorous job placement programs and prudent use of parole, [Michigan] state officials say they have cut the prison population by 7,500, or about 15 percent, over the last four years, yielding more than \$200 million in annual savings.

Michigan spends \$56 million a year on various re-entry programs, including substance abuse treatment and job training.”³²

Texas’ re-entry investments are still relatively new (having been a big focus during the 81st Texas Legislature in 2009) and little documentation yet exists regarding their effectiveness. But based on other states’ experience, these line items should be increased, not lowered, if the goal is to reduce overall corrections costs.

➤ **Medical Care**

S.B. 1 closes down the Correctional Managed Health Care Committee,³³ moving contract oversight to TDCJ seemingly without also giving the agency commensurate staff and resources to perform the new function. S.B. 1 also reduces prison health care by \$236.9 million from these four critical areas:

- *Psychiatric Care* (C.1.7) would decline by \$11,997,741, or 14.5%.
- *Managed Health Care – Unit Level* (C.1.8) would decline by \$76,775,039, or 18.8%.
- *Managed Health Care – Hospital Care* (C.1.9) would decline by \$123,362,800, or 36.3%
- *Managed Health Care – Pharmacy* (C.1.10) would decline by \$24,797,648, or a 21.9% reduction.

Overall, medical costs per individual per day in the 2012-13 budget would decline from \$7.67 in 2011 to \$5.84 in 2013³⁴ – a 24% per-inmate decrease which will challenge the agency to both provide constitutional levels of health care, and maintain a price point that will keep the University of Texas Medical Branch (UTMB) providing services. UTMB has threatened to cancel the contract if the state will not increase compensation, but S.B. 1 goes the other direction, requiring university medical providers to get written permission from the LBB to charge TDCJ more for services than would be allowable under Medicaid.³⁵ In California, cuts to inmate health care led to federal litigation (still pending) that may ultimately force the state to release tens of thousands of inmates if it cannot improve health services.³⁶

The most likely probable method for achieving these reductions will be reducing the compensation rate for UTMB prison services. A recent report from the Texas State Auditor found that UTMB’s “reimbursement amount for physician billing services is, on average, 135 percent of the Medicare reimbursement amount. Additionally, UTMB-CMC Division reimbursement amounts exceeded standard Medicare reimbursement amounts for each type of hospital service, including inpatient and outpatient services.”³⁷

➤ **Other**

Office of Inspector General:

S.B. 1 cuts this office’s budget by 8.7% (G.1.3). **This is especially problematic in light of ongoing TDCJ problems with contraband routinely entering TDCJ facilities.** Reducing resources to investigate wrongdoing at TDCJ will dilute the effectiveness of recent investments in new security apparatuses because fewer investigators will be available to follow up on leads

and complaints. This cut, along with proposed reductions in staffing, place TDCJ staff and inmates at risk.

Victim Services Division:

The Victim Services Division provides immediate services to victims of crime, as well as providing a necessary liaison between the public and TDCJ. Proposed cuts (G.1.4) would reduce the Division's budget by 40.8%,³⁸ devastating the single most important organization that provides guidance and a myriad of other services to crime victims.

Central Administration:

S.B. 1 cuts this line item by 6.3%, or \$3.7 million (G.1.1).

Chaplains:

The powerful impact that these individuals make is worth their presence in prison units. Sadly, under S.B. 1, this program would be completely eliminated.

Food Reductions:

In response to calls for budget cuts over the last biennium, TDCJ has already slashed its prisoner food budget by 13.5% from 2009 levels, though its inmate population has remained the same.³⁹ (Even further cuts to the food line item have been announced for the current biennium on top of what is depicted in S.B. 1.⁴⁰)

Policy Recommendations

Again, we have seen throughout the past few years that new investments in diversion programming and re-entry services have increased public safety and produced significant, cost-effective outcomes. Our state leadership must continue to invest in smart-on-crime policies that have earned Texas positive national recognition and, most importantly, have strengthened the ability of communities to reduce criminal behavior.

(1) Focus limited corrections dollars on diversions and treatment programming.

Investments in probation, treatment, and parole have saved money, lives, and prison beds for those who have committed high-level offenses. Cuts in any of these areas *must* be avoided.

Return on Taxpayer Investment:

Recently expanded diversion funding has already bore fruit:

- Between 2006 and 2009, 14,019 people were re-routed from prison to felony probation⁴¹ and, during that same period, large urban probation departments decreased revocation rates.⁴²

- Over time, there have also been fewer revocations to prison for rule violations and fewer individuals sentenced to prison, likely due to judges' increased confidence in probation and treatment.
- Additionally, the parole board began releasing more people due to a higher parole approval rate, and between 2006 and 2009, the number of parole revocations (both for rule violations and for new crimes) fell from 9,885 to 7,178, the lowest it has ever been.⁴³

Grim Picture:

Making cuts in areas of probation, parole, treatment, and re-entry now will roll back crucial progress.

- Fewer probation slots would mean increased confinement for individuals suffering from substance abuse and/or mental illness. It would also mean likelier revocations.
- Reduced parole capacity would similarly boost revocations.
- Prisons would fill up with individuals who have committed administrative rule violations or minor crimes, and a lower likelihood of release on parole would cause prisons to become a bottleneck for those eligible for release.
- Taxpayers would foot the bill for thousands more people to be warehoused rather than be given the (much less expensive) tools for personal responsibility they need to become productive and law-abiding community members. This would cause higher rates of re-offending and the need for more prison construction.

The state simply cannot sustain such a cycle – especially with a large projected loss in corrections staffing.

Moving Forward:

It is simply not worth the gamble to slash diversion funding, especially given the cost savings and collateral benefits it has produced. We have seen what happened in 2003 when a similar state budget shortfall, and the resulting cuts to probation and parole, flooded prisons, driving them to a breaking point. The LBB in 2007 consequently projected the need for another 17,000 prison beds by 2012 (in addition to the 5,675 beds added between 2004 and 2007) if Texas' pace of incarceration continued. The price tag: \$2.63 billion over five years.⁴⁴ **Since then, wise investments in diversions have safely reduced incarceration levels and have gotten the state back on track,** prompting the Chief Executive Officer of the National Association of Drug Court Professionals to assert, "Texas is a remarkable example of how to take control of an explosive prison population."⁴⁵ As of June 2010, the LBB projected that incarceration levels will remain flat at almost 155,000 individuals, while felony probation levels and parole levels will steadily increase,⁴⁶ provided current, cost-effective diversion policies remain in place.⁴⁷

Why risk a devastating step in the wrong direction? Programs and services that exist solely to rehabilitate individuals and reduce their risk of recidivism must be preserved. Probation must continue to be a strong, viable alternative to prison, while parole departments should be provided more tools to assist those under supervision. Texas needs continued investments in the fidelity and success of diversions today to help meet public safety demands and create safer

communities tomorrow. The state simply cannot afford to have costly incarceration be its only option for addressing criminal behavior.

(2) Close more corrections facilities than the unit closure recommended in S.B. 1.

Closing facilities in addition to the Sugar Land unit would allow TDCJ to avoid most of the other painful cuts described above and still save the amount required by the LBB. For instance, **the savings generated could be rerouted towards recently expanded diversions that have produced positive outcomes.** *Note:* Based on the latest inmate population projections, the Legislature would also have to enact policy changes to reduce the inmate population to achieve that goal, a subject that is beyond the scope of this testimony.⁴⁸

Additional facility closure would also ensure that staffing could be reduced without leaving existing facilities shorthanded and, thus, risking security loss.

Doing otherwise – continuing to keep the financial focus on hard incarceration – will result in another, costly cycle of prison construction, which historically has accompanied reductions in diversion and rehabilitation funding. It will also drastically limit communities’ ability to implement crime-reduction strategies that have proven to work.

It is long-overdue that we ask ourselves a practical question: What have we gained through the inefficient and costly incarceration of thousands of Texans whose risk of re-offending would have been more effectively reduced if they had received programming, treatment, re-entry tools, and meaningful supervision? The bottom line is that shifting money from risk *containment* to risk *reduction* means fewer victims in the long term and greater taxpayer savings.

(3) Maintain funding for Institutional Parole Officers and Parole Hearing Officers.

This is especially critical to keep Texas’ recidivism rates among parolees low and, thus, preserve public safety goals. Currently, the state’s recidivism rate (27.9%) is the lowest among the four largest correctional systems, with California’s at 58.23%, Florida’s at 44.2%, and New York’s at 44.2%.⁴⁹

(4) Continue to support re-entry reforms to break the costly cycle of re-offending.

Annually, over 70,000 people leave Texas prisons, many of whom are released without any supervision requirements.⁵⁰ Re-entry strategies are critical to supplementing the diversion and corrections-level practices that reduce incarcerated populations and address the specific needs of those who have exhibited criminal behavior. Indeed, without assistance for those exiting confinement, rates of re-offending are likely to rise – along with comparable increases in enforcement and re-incarceration costs. The cycle will merely continue, and at enormous taxpayer expense. On the other hand, providing tools for personal responsibility to re-entering individuals ensures they are more capable of finding and maintaining both housing and employment, in turn living as contributing members of our communities.

Policy-makers must make every effort to exempt from budget cuts any successful programming and practices that keep individuals from falling back into crime and re-entering prisons and jails. Public safety-driven strategies including tailored in-house programming (e.g., medical treatment,

and substance abuse and mental health programming), as well as improved post-release services (e.g., community-based aftercare, services for parolees, etc.) can help individuals become and remain law-abiding, to the benefit of family cohesion, local economies (including through tax savings and employment), and public health.

Note: Individuals suffering from mental illness issues are especially in need of pre- and post-release mental health services to best address the associated crime that accompanies mental disorders. Treatment and programming that address schizophrenia, bipolar disorder, and other mental illness issues exist to assist these individuals (including the consistent provision of psychotropic medication).⁵¹ Such services, when coupled with programs that take into account predictors of recidivism, like antisocial behavior or antisocial associates, substance abuse, and lack of familial support, can minimize rates of re-offending⁵² and reduce accompanying costs in enforcement and arrests.

TEXAS COMMISSION ON JAIL STANDARDS

Introduction and History

In the early 1970's, various lawsuits were filed against Texas counties for poor conditions of confinement in local jails, as well as for the lack of regulated and funded inspections of those jail facilities. In 1975, with the urging and support of various groups including the Sheriff's Association of Texas, the Texas Legislature effectively created the nine-member Commission, tasked with ensuring the proper management of county jails. Possibly the most critical feature of the new law was TCJS's authority and responsibility to set constitutional jail standards, conduct facility inspections, and enforce compliance with state rules and procedures – all of which keep Texas jails safe, well regulated, and run by educated, professional leadership.

Today, TCJS has 245 jails under its purview.⁵³ Of these, 235 jails are “county jails,” with 225 being county-operated and 10 being privately operated.⁵⁴ Texas is also home to 10 privately operated “detention facilities,” which house county inmates on a contract basis.⁵⁵

Annually, more than one million individuals cycle in and out of these local jails,⁵⁶ which have an average end-of-month population of 70,000 inmates.⁵⁷ With so many individuals incarcerated, Texas has six of the 50 largest national jail populations: Harris, Dallas, Bexar, Tarrant, Travis, and El Paso Counties.⁵⁸ TCJS is critical to the management of these inmates, as well as to the ability of jail personnel to detain and provide for them in a manner in keeping with state laws and constitutional mandates.

Budget Cuts to TCJS

Texas' jail regulatory structure has never been given sufficient resources, and proposed cuts would further debase TCJS's ability to accomplish even its core functions.

General Revenue expended on TCJS under S.B. 1 would decline by 39%, or \$775,301 over the biennium. Most of that comes from reduced funding for inspections and enforcement (A.1.1), as well as reduced funding for management consultation with counties about jail overcrowding. To

partially make up for the shortfall, fees charged to counties for jail inspections will go up by roughly a factor of 22.⁵⁹

The budget's performance measures anticipate the percentage of jails with management deficiencies to increase, from 9.79% in FY 2009 to 17.1% in 2013, perhaps as a result of fewer inspections. Consequently, budgeters predict, **10 fewer jails will be in compliance with minimum standards.**

Further, the number of TCJS management consultations with local jails would decline 32%, from 311 to 211. This service is designed to assist local jails with overcrowding, security, and other common jail issues. **If it goes away, counties must either do without or will be required to pay for independent expertise.**

Policy Recommendations

In a state as large and diverse as Texas, local administration of jail regulation is essential to ensure its adequate, timely implementation and address local interests. However, the state must ensure that each county protects the rights of incarcerated individuals. With a strong, well-resourced Commission to oversee and provide assistance to counties with their jail management efforts, the state can ensure that discrete facilities are collectively providing a system that is effectively meeting the needs of both inmates and staff.

The following policy recommendations would protect the gains made in county jail regulation and accountability throughout the past three decades in Texas.

(1) Assist TCJS in continuing its important role in monitoring and regulating county jails.

The Legislature cannot allow the state to roll back the progress it has made in jail management since the mid-70's. Budget cuts will jeopardize the agency's crucial functions, potentially including travel for on-site trainings and technical assistance for jail administrators, the timely re-inspection of noncompliant facilities, special inspections of at-risk facilities, and meetings with local leadership to address facility issues. In other words, budget cuts will leave TCJS unequipped to meet the growing demands of counties.

TCJS must continue to be provided a level of funding equal to what it is presently receiving. As such, we encourage the Committee to consider fully restoring budget cuts outlined in S.B. 1, especially in regard to A.1.1 (Inspections and Enforcement).

(2) Sustain TCJS's oversight authority.

If the state fails to provide TCJS with the necessary resources to fully fulfill its mission, policy-makers will be forced to examine other strategies that will be fiscally burdensome to counties. For instance, to help TCJS supplement its annual county jail inspection costs, counties could pay an inspection fee, to be determined by the agency. This would ensure that TCJS becomes as close to a zero-cost agency to the state as possible.

Although we understand that this is not the best approach from a county's perspective, another strategy to ensure TCJS can help keep counties in compliance with standards/laws (and out of the courtroom) could include instructing sheriffs to draw from their county's commissary fund

to pay the annual inspection fee. Currently, these funds are used for programs to address inmates' rehabilitative issues (e.g., education and vocational services) and personal needs (e.g., clothing and hygiene supplies), commissary staff salaries, inmate libraries, and facility maintenance projects.⁶⁰

(3) Promote TCJS's long-term strategic planning.

Like many other state agencies that are permitted to keep unexpended funds for various agency responsibilities, TCJS should be allowed to keep money not spent on inspections and other strategies. Instead, the state should allow those funds to be used for further inspections or technical assistance to counties, with amounts not spent down in one year allowed to carry over to the next year. In 2010, TCJS was forced to reimburse the state the \$5,000 it was able to maintain due to frugal travel expenses. That money, a drop in the bucket compared to the state's general revenue, would have a critical impact on TCJS's ability to assist counties in meeting standard compliance.

* * *

Thank you for allowing me the opportunity to provide feedback to this Committee on the devastating impact that budget cuts can have on the Texas Department of Criminal Justice and the Texas Commission on Jail Standards. Both agencies play a crucial role in the state's criminal justice system, not only in regard to the treatment of inmate populations, but also in terms of the facilitation of critical alternatives to incarceration that allow for the safe and responsible supervision of individuals in the community. Both agencies require the ongoing support of our state's key leadership to keep inmate populations at a sustainable level and to ensure individuals' rights are protected.

ENDNOTES

¹ “Prisons account for 88.1 percent of the 2010-11 budget attributable to adult corrections, including operating and debt service costs.” From Marc Levin, “Texas Criminal Justice Reform: Lower Crime, Lower Cost,” Center for Effective Justice – Texas Public Policy Foundation, January 2010, pg. 2.

² Judge Marion F. Edwards, “Reduce Recidivism in DUI Offenders: Add a Cognitive-Behavioral Program Component,” 2006, pg. 3.

³ The Pew Center on the States, “Issue Brief: Prison Count 2010,” Revised April 2010, pgs. 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.”

⁴ Robert T. Garrett, “Acclaimed addiction program for Texas felons is vulnerable to cuts,” *The Dallas Morning News*, August 9, 2010.

⁵ Legislative Budget Board (LBB), “Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version,” January 2011, pg. V-8.

⁶ Legislative Budget Board (LBB), “Summary of Legislative Budget Estimates for the 2012-2013 Biennium: Senate Version,” January, 2011, pg. 147 (Table 29).

⁷ LBB, *Summary of Legislative Budget Estimates*, pg. 157 (Table 32).

⁸ Mike Ward, “Prison agency proposes 1,000 layoffs, less drug treatment, fewer convict meals,” *Austin American-Statesman*, February 8, 2011: “If the layoffs begin on April 15, the earliest likely date, about 1,033 full-time positions would be eliminated, the document states. If they do not occur until July, 2,235 positions will have to be eliminated.”

⁹ State of Texas, “Legislative Budget Board Recommendations: Senate Version [Senate Bill (S.B.) 1],” Eighty-second Legislature, 2011, pg. V-31.

¹⁰ *Ibid.*, pg. V-17.

¹¹ In LBB’s *Summary of Legislative Budget Estimates*, this line item is listed at \$17 million in both 2012 and 2013, an 83% cut in maintenance funds (pg. 159). The document titled *Legislative Budget Estimates* lists the 2013 maintenance funding as zeroed out, but it seems likely the “summary” document is correct.

¹² LBB, *Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version*, pg. V-50.

¹³ Suzanne M. Kirchoff, “Economic Impacts of Prison Growth,” Congressional Research Service, April 2010, pg. 22.

¹⁴ Scott Henson, “Data on TDCJ Unit Age and Cost,” *Grits for Breakfast*, November 25, 2009; <http://gritsforbreakfast.blogspot.com/2009/11/data-on-tdcj-unit-age-and-cost.html>.

¹⁵ LBB, *Summary of Legislative Budget Estimates*, pg. 150. By these estimates, TDCJ would cut 1,643 contract beds at private prisons and state jails, and 357 beds at pre-parole transfer facilities.

¹⁶ Scott Henson, “Which prison units should Texas close? Private contracts, security concerns may factor in,” *Grits for Breakfast*, March 1, 2010; <http://gritsforbreakfast.blogspot.com/2010/03/which-prison-units-should-texas-close.html>.

¹⁷ Mike Ward, *Prison agency proposes 1,000 layoffs*.

¹⁸ In August 2009, reacting to declining inmate population numbers, TDCJ stopped leasing beds entirely from local county jails. Neither the House nor Senate proposed budgets for 2012-2013 would reinstate money for leasing beds from counties.

¹⁹ Sarah Kleiner Varble, “Inmates yet to arrive at Jones County jail in Anson,” *Abilene Reporter-News*, December 10, 2010: “For example, in Jones County, ‘Officials originally were expecting [a new, empty jail] facility to be used as an ‘intermediate sanction facility’ ... But when it was complete, the Texas Department of Criminal Justice said there weren’t enough inmates to house for that purpose.’”

²⁰ “Texas plans to move some inmates from county jails,” *Associated Press*, June 27, 2009.

²¹ In 1998, the U.S. Supreme Court ruled the ADA applied to state prisons in *PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. v. YESKEY*.

²² LBB, *Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version*, pgs. V-11 and V-15.

²³ Community Justice Assistance Division (CJAD), “Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds,” Texas Department of Criminal Justice, December 1, 2010, pg. 7.

²⁴ LBB, *Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version*, pg. V-15.

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- ²⁵ *Ibid.*
- ²⁶ The Governor vetoed a similar bill, H.B. 541, after the 80th Texas Legislature adjourned in 2007.
- ²⁷ State of Texas, *S.B. 1*, pg. V-26.
- ²⁸ Steven Greenhouse, “States help ex-inmates find jobs,” *The New York Times*, January 24, 2011.
- ²⁹ State of Texas, *S.B. 1*, pg. V-21.
- ³⁰ *Ibid.*, pg. V-30.
- ³¹ *Ibid.*, pg. V-25.
- ³² Steven Greenhouse, *States help ex-inmates find jobs*.
- ³³ State of Texas, *S.B. 1*, pg. V-28.
- ³⁴ LBB, *Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version*, pg. V-14.
- ³⁵ State of Texas, *S.B. 1*, pg. V-27.
- ³⁶ Solomon Moore, “California prisons must cut inmate population,” *The New York Times*, August 4, 2009.
- ³⁷ John Keel, State Auditor, *An Audit Report on Correctional Managed Health Care at the University of Texas Medical Branch at Galveston*, February 2011; <http://www.sao.state.tx.us/Reports/report.cfm/report/11-017>.
- ³⁸ LBB, *Legislative Budget Estimates for the 2012-2013 Biennium: Articles I-X, Senate Version*, pg. V-12.
- ³⁹ *Ibid.*
- ⁴⁰ Mike Ward, *Prison agency proposes 1,000 layoffs*.
- ⁴¹ Dr. Tony Fabelo, data obtained from TDCJ and presented at the Texas Public Policy Foundation (TPPF) criminal justice panel, January 2010.
- ⁴² CJAD, *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, pg. 23.
- ⁴³ Dr. Tony Fabelo, data obtained from TDCJ and presented at the TPPF criminal justice panel.
- ⁴⁴ “These beds would have cost \$1.13 billion to build based on a \$65,000 per bed construction cost and another \$1.50 billion to operate over five years based on the \$47.50 per day operating cost in 2008.” From Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, pg. 1.
- ⁴⁵ Keith B. Richburg, “States Seek Less Costly Substitutes For Prison: Treatment, Parole Are Gaining Favor,” *Washington Post*, July 13, 2009, quoting C. West Huddleston.
- ⁴⁶ Legislative Budget Board, “Adult and Juvenile Correctional Population Projections: Fiscal Years 2010-2015,” State of Texas, June 2010, pgs. 4, 5. Felony probation levels are projected to rise from 173,867 (end-of-month yearly average) in FY 2010 to 177,525 in FY 2015. Active parole supervision levels are projected to rise from 81,198 (end-of-month yearly average) in FY 2010 to 84,772 in FY 2015.
- ⁴⁷ *Ibid.*, pg. 2.
- ⁴⁸ Examples include changing sentencing laws and/or probation and parole rules to divert individuals who have committed lower-level, nonviolent offenses from prison to community-based punishments. For a good overview of policy options, see Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*. Also see TCJC’s own four-part policy guide, to be released by the end of February.
- ⁴⁹ Texas Department of Criminal Justice (TDCJ), “H.B. 1711 Implementation Report,” Submitted to Governor, Lieutenant Governor, Speaker of the House, Senate Criminal Justice & House Corrections Committees, September 1, 2010, pg. 4.
- ⁵⁰ Texas Department of Criminal Justice (TDCJ), “Statistical Report Fiscal Year 2010,” pg. 44. In FY 2010, prisons released 42,115 individuals, 20.4% of whom were released without any supervision.
- ⁵¹ National Alliance on Mental Illness, *The Criminalization of People with Mental Illness*; http://www.nami.org/Content/ContentGroups/Policy/WhereWeStand/The_Criminalization_of_People_with_Mental_Illness__WHERE_WE_STAND.htm.
- ⁵² Jennifer Eno Loudon, Ph.D., “Reducing recidivism risk for offenders with mental disorder,” presented at the 2009 Conference of the Justice Research and Statistics Association and the Bureau of Justice Statistics: Meeting Justice Policy Challenges Through Research and Statistics, slides 11, 15, 16, 24.
- ⁵³ Brandon Wood, Assistant Director of the Texas Commission on Jail Standards, in email correspondence to Ana Yáñez-Correa, Texas Criminal Justice Coalition, July 20, 2010.
- ⁵⁴ *Ibid.* Note additionally: The private facilities are managed either by the GEO Group, Southwestern Correctional, or the Community Education Center (CEC). From Brandon Wood, in email correspondence to Ana Yáñez-Correa, December 17, 2009.
- ⁵⁵ One county’s jail holds another county’s inmates. For the most part, the bulk of these detention facilities’ populations is comprised of federal inmates. From Brandon Wood, *email correspondence on July 20, 2010*.
- ⁵⁶ TDCJ, *H.B. 1711 Implementation Report*, pg 4: “One million plus offenders are processed in local jails on an annual basis.”

⁵⁷ Texas Commission on Jail Standards, “Texas County Jail Population,” January 1, 2011.

⁵⁸ Bureau of Justice Statistics, “Jail Inmates at Midyear 2009—Statistical Tables,” U.S. Department of Justice – Office of Justice Programs, June 2010, Table 9, pgs. 12-13.

⁵⁹ S.B. 1, pg. V-36, Rider 2. The old Rider 2 (struck) said fees could be collected up to \$13,000 for this purpose. The new Rider 2 authorizes fees up to \$288,200, which is just more than 22 times the old fee total.

⁶⁰ Texas Local Government Code, Section 351.0415(c).