



**TEXAS CRIMINAL
JUSTICE COALITION**

WRITTEN TESTIMONY

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ON

**THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE
LEGISLATIVE APPROPRIATIONS REQUEST
FOR FISCAL YEARS 2022-2023**

To

THE LEGISLATIVE BUDGET BOARD

NOVEMBER 25, 2020

Dear Members of the Legislative Budget Board:

My name is Doug Smith; I am the Senior Policy Analyst for the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to provide information on policies and investments that tackle the root causes of crime, safely decrease state jail and prison populations, save taxpayer dollars, and improve health in Texas communities. The Texas Criminal Justice Coalition is committed to advancing safe and rehabilitative alternatives to incarceration, which save taxpayer dollars and promote healthy communities.

We support the Texas Department of Criminal Justice's request for funding, especially insofar as it supports high-quality rehabilitative programs, educational and vocational opportunities, and reentry supports. Most notably, we support the Legislature's continued investment in diversion programming, which helps people to succeed in the community and reduces the costly prison population.

The Texas Criminal Justice Coalition is aware that revenues in FY 2022 and 2023 will be significantly less than the previous biennium, and we are pleased to offer recommendations to create improved outcomes at a lower cost to the state.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ)

Probation Funding

We strongly support TDCJ's request for the Legislature to continue funding the 5 percent probation allocation that was excluded from the agency's base budget, given that probation can serve as an alternative to incarceration. However, **we strongly urge the Legislature to adopt strict accountability measures and expectations for the receipt of these funds.** Nearly one-third of people incarcerated in Texas each year (approximately 22,000 total) are there as a result of a probation revocation.¹ Because Texas does not have one centralized probation system, probation practices and outcomes vary widely among counties, with success rates ranging from 30 to 70 percent.² In 2019, a number of Texas counties saw probation failure rates (the percentage of felony probation cases closed each year that were revocations) of well over 50 percent;³ in some of these counties, over 70 percent of revocations were due to technical violations, not new crimes.

Counties with high revocation rates, which simply siphon individuals into jails and prisons, rely more on surveillance and offer probationers little personalized support. Across Texas, this comes at significant cost to taxpayers: With active probation supervision totaling \$4.39 per person per day and prison totaling \$62.34 per day,⁴ **the above-mentioned 22,000 people revoked and sent to prison are collectively costing taxpayers as much as \$1.27 million per day that could be invested mental health and substance use resources in the community.**

On the other hand, counties with low revocation rates are working to improve public safety and do so by following a more therapeutic approach,⁵ with personalized therapeutic interventions. **Counties such as El Paso achieve exceptionally high success rates, yet they receive the same basic allocation from the state as those with low success rates.**

Recommendations: To ensure that probation practices are focused on rehabilitation and more prudently use taxpayer dollars – all while helping to safely move more people off of probation – Texas leadership should:

1. Reduce the length of probation to the time necessary to accomplish the collaborative goals set forth by the probationer and the probation officer. Individualized treatment planning and goal-setting are more important than a long, fixed sentence. Over time, as probation populations continue to fall – and as fewer people are revoked to prison – the state can direct the savings towards communities, more effectively assisting them in facilitating the success of people on probation or recently completing probation.
2. Require TDCJ’s Community Justice Assistance Division (TDCJ-CJAD) to inform probation departments and judges with a greater than 50 percent failure rate of the necessity for corrective action. TDCJ-CJAD has the authority to conduct audits and impose sanctions for noncompliance with probation standards,⁶ and it should be given the authority to require judicial education as a condition of a community supervision and corrections department (CSCD) receiving state-funded probation and treatment services. Further, the Legislature should authorize TDCJ-CJAD to issue diversion grant funds to high-performing CSCDs to provide training and technical assistance.
3. Promote the use of early termination from probation as a motivation to complete probation requirements. Those CSCDs with exceptionally high probation success rates used early termination 7.5 times more frequently than those with very low success rates.⁷
4. Limit probation conditions. On average, a probationer is required to comply with 15 conditions on any given day; the more conditions a probationer must heed, the greater the likelihood that a condition will be violated⁸ and they will be revoked to prison or jail at taxpayer expense.

Correctional Managed Health Care

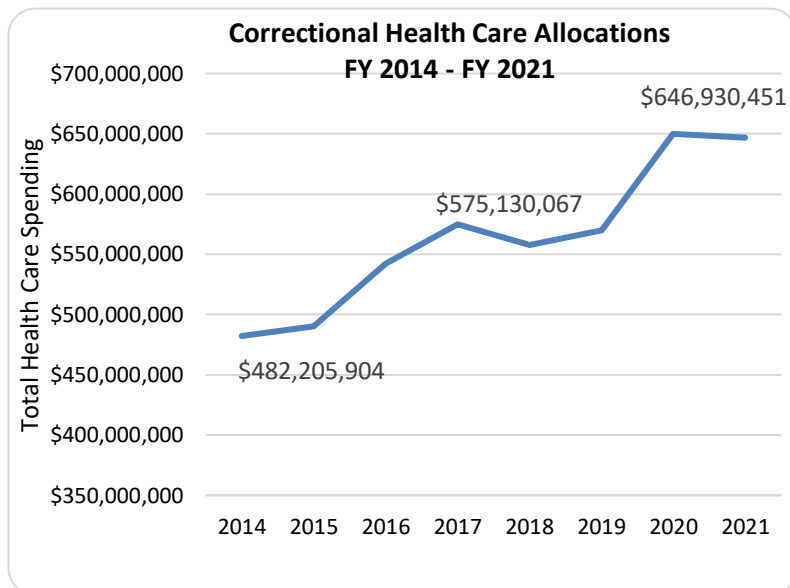
The **primary drivers of correctional health care costs** include:

- the increasing length of sentences,
- an aging incarcerated population, and
- parole approval rates below 50 percent.

Since 2005, the average length of sentence for people committed to TDCJ has increased by 35 percent.⁹

Combined with a parole approval rate of approximately 40 percent,¹⁰ these factors have increased the average age of incarcerated individuals by 42 percent.¹¹ Today,

the average age of a person in a Texas prison is 51.7. As a result, and despite recent *decreases* in Texas’ prison population, **publicly funded prison health care costs are escalating, increasing by 34.7 percent since 2014 – a rate of increase that far outpaces increases in state spending over the same period.**¹²



People aged 55 and older now account for one-eighth of Texas' total prison population but represent one-half of the system's hospitalization costs.¹³

Additionally, **the Texas Board of Pardons and Paroles (BPP) denies parole to nearly 50,000 parole eligible people each year,¹⁴ costing the state hundreds of millions in taxpayer dollars annually.¹⁵** There are key reasons for low parole approval rates, high costs, and an aging population.

The BPP makes an individualized determination of parole in each case, but it has only a limited set of factors to consider.¹⁶ The parole guidelines, as set forth in statute, direct the BPP to contact the prosecuting attorney, review the person's criminal record, and evaluate prison disciplinary records. **The BPP is not able to evaluate an individual's progress in certain rehabilitative programs when determining parole because only the BPP can place people in those programs – which, under current practice, comes after a person's parole review.** Consequently, the BPP frequently denies parole to incarcerated individuals based on the nature of the crime committed, only to have the individual wait for several years – at state expense – before the Board decides to place the individual into rehabilitative programming that would decrease their risk to public safety.

Texas has an opportunity to be a leader through parole reforms that will return people safely to their communities and save millions of taxpayer dollars each year – **funding that could be shifted to Texas communities desperately in need of financial support.** But without significant reforms that would impact the length of time that people are expected to serve for certain offenses, correctional health care inflation will consume increasingly greater portions of general revenue each fiscal year.

Recommendations: A smart and less costly parole system would facilitate individual accountability, strengthen rehabilitative outcomes to promote safety, and improve release rates, leading to dramatic reductions in correctional managed health care costs. The system should:

1. Provide each incarcerated individual with a copy of their Individualized Treatment Plan (ITP) within 45 days of intake into a state prison.
2. Place individuals into appropriate rehabilitative programming – especially programming that is currently only accessible through BPP vote – *prior* to their first date of parole eligibility.
3. Allow TDCJ's Rehabilitative Programs Division to be responsible for providing reports to the BPP on an incarcerated individual's progress and allow the Division to revise the person's risk assessment following program completion.
4. Base parole decisions on a person's progress toward completing their ITP.

Privately Operated Facilities

People approved for parole who have no other housing options must wait in prison for months or even more than a year for an available bed in a residential reentry center (RRC). **While Texas paroles approximately 28,000 people per year,¹⁷ it has approximately 2,000 state-funded RRC beds in eight facilities throughout the state,** all operated by private prison corporations, including the GEO Group, CoreCivic, and Correctional Solutions Group.¹⁸

The annual cost to the state for these contracts is approximately \$35 million;¹⁹ over and above that is the amount that Texas must pay to incarcerate individuals who remain in prison beyond their parole release date while awaiting an RRC bed. **The state's investment in these centers becomes more troubling when**

one considers that it could provide monthly housing stipends during the reentry period to more than double the number of people housed within RRCs.²⁰

Not only do RRCs have long waiting periods, but they are widely known not to provide an environment conducive to successful reentry. For instance, because there are only eight facilities spread across seven Texas cities, it is unlikely that a person will be placed in a facility in or near their home community and support network.

This presents challenges for returning individuals in finding employment: employers are aware that most people living in an RRC are unlikely to remain in the community for more than a few months,²¹ resulting in extreme delays in finding a job and earning enough income to move back to their home communities. When returning individuals are finally able to relocate to their home communities, they are then forced to repeat the reentry process a second time.



Other challenges with RRCs are as follows:

- Interviews with individuals previously residing in RRCs report a prison-like environment, including strip searches, limited movement, and **restrictions that inhibit the ability of residents to find steady employment.**²²
- Many employers near the RRCs in Texas report not wanting to hire individuals from the facilities because residents are not allowed to leave the RRC for evening or weekend shifts.²³
- Researchers evaluating the effectiveness of RRCs found patterns of indifference, misconduct, and under-training among staff. These factors resulted in violence, drug use/abuse, and overall dangerous environments for residents.²⁴
- Private prison companies — such as the GEO Group and CoreCivic, the two major corporations in Texas — have lengthy track records of neglecting the basic needs of returning individuals and ultimately failing to provide a positive environment conducive to rehabilitation.²⁵

Recommendations: Texas should rethink its investment in residential reentry centers. To achieve improved reentry outcomes at a lower cost to taxpayers, Texas leadership should:

1. Shift to a model that expands the use of housing vouchers at approved housing providers that meet standards established by the Legislature. This could double the amount of available housing at lower cost to the state than relying on RRCs.²⁶ Collateral benefits include a stronger candidate pool for employers in additional Texas communities, and greater opportunities for success on reentry through more stable housing environments.

2. Allow people to move into recovery housing, such as Oxford House or similar evidence-based accountability-driven models, which are well known to support long-term recovery. Again, this would both save taxpayer dollars and improve reentry outcomes.²⁷

Repair and Renovations of Facilities

Texas continues to operate more than 100 units across the state, many of which were constructed more than a century ago (*see chart*). Facilities’ costs rise every year, especially on antiquated structures that do not meet modern standards. Unless the system is downsized and funding is shifted toward community-based interventions known to prevent incarceration, including substance use recovery programs, Texas will be forced to increase funding every year for maintaining outdated units.

TDCJ Unit	Date Established
Clemens	1893
Darrington	1917
Eastham	1917
Goree	1907
Huntsville	1849
Ramsey	1908
Scott	1919
Stringfellow	1908
Vance	1885
Wynne	1883

Recommendation: Rather than allocating additional state dollars to facility costs, the state should close aging and under-staffed facilities.

Opportunities to Improve Treatment Programming

Texas spends \$50 million per year on the Substance Abuse Felony Punishment Facility (SAFPF) program,²⁸ created by the Legislature in the 1990s to provide an intensive in-prison therapeutic community for people at risk of probation or parole revocation due to repeated drug or alcohol use.²⁹

The program has not been thoroughly evaluated by the Texas Sunset Commission or any other independent entity in almost two decades.³⁰ In the most recent evaluation by TDCJ, which operates SAFPF programs, the only reductions in recidivism were experienced by those who completed the aftercare component – accounting for approximately one-third of overall participants.³¹

Per the findings of the two above-mentioned evaluations:

- The curriculum for SAFPF programs is not published; therefore, it is unclear if the program meets statutory requirements.
- SAFPF is the “largest, most intensive, and most expensive” program that TDCJ offers for substance abuse treatment.³²
- As of 2001, only 44 percent of initial SAFPF participants had completed the program,³³ and that completion rate dropped to 39 percent by 2011.³⁴

Other reports have found additional concerns:

- SAFPF has the highest percentage of individuals who are re-incarcerated within three years of release compared to the felony community supervision, prison, state jail, In-prison Therapeutic Community, Intermediate Sanction Facility, and parole supervision programs.³⁵
- Despite these numbers, in 2007, the 80th Texas Legislature added 1,500 beds to the SAFPF program.³⁶

The SAFPF model’s limitations are not unique to Texas. Research on similar programs in other states has found problems with noncompletion and program mismatch.³⁷ **To be effective, these programs must be**

aimed at those in the highest-risk classification, and every effort should be taken to ensure that program participants complete all phases of the program, including aftercare. In Texas, courts may place individuals in SAFPF as part of a plea agreement or when other treatment programs are not available. Unfortunately, this ensures that people not appropriate for SAFPF are placed in the program anyway.

Recommendations: More than 6,000 people are sent to SAFPF programs every year.³⁸ To safely and significantly lower that number, correspondingly reduce taxpayer waste, and help people get effective rehabilitative support, Texas leadership should:

1. Require plea agreements to include that participation in SAFPF programs must be the best fit for an individual based on a risk and needs assessment.
2. Allow TDCJ to reject individuals who do not meet the program criteria or who could be better served through alternative programs available to probation and parole departments.
3. Reduce the number of SAFPF beds and shift the savings into additional treatment options in the community, including dual-diagnosis programs at community correctional facilities, virtual outpatient programs for defendants in rural areas, or placement in Oxford Housing.
4. Require the regular, independent evaluation of SAFPF's program effectiveness and make appropriate changes to the treatment curriculum, especially for vulnerable subpopulations for whom the SAFPF model may be inappropriate.

Citations on the following pages.

Citations

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- ² “FY 2019 Probation Fact Sheet,” Texas Department of Criminal Justice (TDCJ), June 2020.
- ³ “FY 2019 Probation Fact Sheet,” TDCJ.
- ⁴ Legislative Budget Board, “Criminal and Juvenile Justice Uniform Cost Report, Fiscal Years 2017 and 2018,” January 2019, 4 and 6, https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4911_Criminal_Juvenile_Uniform_Cost_Jan_2019.pdf.
- ⁵ Jennifer L. Skeen and Sarah Manchak, “Back to the Future: From Klockars’ Model of Effective Supervision to Evidence-based Practice in Probation,” *Journal of Offender Rehabilitation*, Vol. 47, Issue 3 (2008).
- ⁶ Texas Administrative Code, Title 37, Part 6, Chapter 163 Community Justice Assistance Division Standards, Rule 163.35 Supervision, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=6&ch=163&rl=35](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=6&ch=163&rl=35)
- ⁷ Texas Department of Criminal Justice, FY 2019 Probation Stat Book. The data was calculated by comparing counties with probation failure rates (percentage of cases closed each year due to revocation compared to successful completion) of greater than 58% with those with failure rates below 30%.
- ⁸ Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, “Less is More: How Reducing Probation Populations Can Improve Outcomes,” Harvard Kennedy School, Program in Criminal Justice Policy and Management, August 2017, https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.
- ⁹ The data was 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.
- ¹⁰ Legislative Budget Board, *Monthly Tracking of Adult Correctional Population Indicators (September 2020)*, https://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/812_MonthlyReport_Sept.pdf.
- ¹¹ The data was calculated by averaging the age of the on-hand prison and state jail population in TDCJ as of August 2005 and August 2020.
- ¹² The data was calculated by analyzing the amount allocated by the Texas Legislature to medical and mental health care in each state budget dating back to 2014.
- ¹³ Davis Rich, “Prison Healthcare Costs Are Higher Than Ever in Texas. Many Point to an Aging Prison Population,” *Texas Tribune*, November 25, 2019, <https://www.texastribune.org/2019/11/25/texas-prison-health-care-budget-parole/>.”
- ¹⁴ The Texas Board of Pardons and Paroles, *Annual Statistical Report, FY 2019*, https://www.tdcj.texas.gov/bpp/publications/FY_2019_Annual_Statistical_Report.pdf.
- ¹⁵ The data was calculated by taking the average cost per day from the Legislative Budget Board’s *Uniform Cost Report*, multiplying that by 50,000 (which comes from the Board of Pardons and Paroles FY 2019 Fact Sheet), and again by 365 days.
- ¹⁶ Section 509.152, Government Code.
- ¹⁷ Texas Board of Pardons and Paroles, FY 2019 Annual Statistical Report, https://www.tdcj.texas.gov/bpp/publications/FY_2019_Annual_Statistical_Report.pdf.
- ¹⁸ Directory - Residential Reentry Centers, Parole Division, TDCJ, https://www.tdcj.texas.gov/divisions/pd/halfway_houses.html.
- ¹⁹ Data from the Texas Department of Criminal Justice, June 2020.
- ²⁰ Costs were based on an estimated monthly housing voucher of \$500 multiplied by 4,000, then by 12 months. The number of people the state could house through housing vouchers may be much higher when considering the variance in monthly rental costs by city.
- ²¹ Texas Criminal Justice Coalition conducted interviews with individuals who had been placed in RRCs.

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- ²² Kimberly Kras, Breanne Pleggenkuhle, and Beth Huebner, "A New Way of Doing Time on the Outside: Sex Offenders' Pathways In and Out of a Transitional Housing Facility," *International Journal of Offender Therapy and Comparative Criminology*, 60(5), 512–534 (2014).
- ²³ Douglas Smith, personal interview with former resident of an RRC.
- ²⁴ Derek Gilna, "When Halfway Houses Pose Full-Time Problems," *Prison Legal News*, January 10, 2015, <https://www.prisonlegalnews.org/news/2015/jan/10/when-halfway-houses-pose-full-time-problems/>. See also: Caroline Isaacs, "Denver Canceled Its For-Profit Reentry Contracts. Your City Should Be Next!" American Friends Service Committee – Arizona, August 8, 2019. <https://afscarizona.org/2019/08/08/denver-canceled-its-for-profit-reentry-center-contracts-your-city-should-be-next/>.
- ²⁵ "How Private Prison Companies Increase Recidivism," *In the Public Interest*, June 2016, <https://www.inthepublicinterest.org/wp-content/uploads/ITPI-Recidivism-ResearchBrief-June2016.pdf>.
- ²⁶ Cost calculations were determined as follows: Average monthly costs for prison incarceration were reported by the LBB Uniform Cost Report. https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4911_Criminal_Juvenile_Uniform_Cost_Jan_2019.pdf. Monthly costs per person at RRCs were reported by TDCJ through a data request received in June 2020. Average monthly cost of \$500 for residency at Oxford House was reported in a 2015 Texas Oxford House Survey, https://oxfordhouse.org/userfiles/file/doc/eval_tx2015.pdf.
- ²⁷ Leonard Jason and Joseph Ferrari, "Oxford House Recovery Homes: Characteristics and Effectiveness," *Psychological Services*, 2010, Vol 7, No. 2, 92–102.
- ²⁸ General Appropriations Act, FY 2020–2021, Department of Criminal Justice, Strategy C.2.4.
- ²⁹ Texas Government Code §493.009, 1991.
- ³⁰ "The Substance Abuse Felony Punishment Program (SAFP): Evaluation and Recommendations," Criminal Justice Policy Council (CJPC), 2001, i, <https://pdfs.semanticscholar.org/5168/be0c460f9abcf84eb8cd2b4833d72fc9a095.pdf>.
- ³¹ "Evaluation of Offenders Released in Fiscal Year 2011 That Completed Rehabilitation Tier Programs," TDCJ, April 2015, 14.
- ³² "SAFP: Evaluation and Recommendations," 2001, i.
- ³³ "SAFP: Evaluation and Recommendations," 2001, 2.
- ³⁴ "Evaluation of Offenders," 14.
- ³⁵ "Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates," LBB, January 2019, 4, https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4914_Recidivism_Revocation_Rates_Jan2019.pdf.
- ³⁶ "Expanded Community Supervision Residential Alternatives," TDCJ – Community Justice Assistance Division (TDCJ – CJAD), 2008, https://www.tdcj.texas.gov/documents/cjad/CJAD_Expanded_Community_Supervision_Residential_Alternatives.pdf.
- ³⁷ James Griffin et al., "A Cost Effectiveness Analysis of In-Prison Therapeutic Community Treatment and Risk Classification," *The Prison Journal*, Vol. 79, No. 3, 1999, 352–368, <https://nij.ojp.gov/library/publications/cost-effectiveness-analysis-prison-therapeutic-community-treatment-and-risk>.
- ³⁸ "FY 2018 Statistical Report," TDCJ, https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf.