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HOUSE BILL 3538

Dear Members of the Committee,

Thank you for the opportunity to present testimony regarding House Bill 3538. The Texas Criminal Justice Coalition is in favor of this bill because it addresses one of the largest problems facing the criminal justice system, specifically costs borne by the state to house prisoners with serious medical issues. H.B. 3538 saves taxpayers money, addresses prison overcrowding, and diminishes negative effects on public safety by freeing up bed space for high-risk individuals with more serious offenses.

SAVE MONEY AND AVOID PRISON OVERCROWDING BY ALLOWING INDIVIDUALS WITH A SERIOUS MEDICAL CONDITION TO BE SAFELY RELEASED TO THE COMMUNITY

PROBLEM

One of the largest contributors to correctional costs is the aging incarcerated population. The U.S. Bureau of Justice Statistics reported that during an 8-year span – 1999 to 2007 – the number of individuals aged 55 or older in state and federal prisons grew nearly 77 percent.¹ Older prisoners cost more because they are plagued with health conditions, both minor and serious, and they are at heightened risk for chronic health difficulties.² In addition, the needs of the elderly incarcerated population are difficult to manage in a correctional setting due to inadequate resources and lack of staff.³

Because of the increased needs of elderly and seriously ill inmates, these individuals use a disproportionate share of the funds allocated for prison health care costs. It has been estimated that, on average, older inmates visit prison health facilities five times more frequently than their younger counterparts.⁴ However, many older prisoners are no longer a threat to the public due to prolonged or chronic conditions that often leave them incapacitated. In addition, research has consistently found that the likelihood of someone committing additional crimes decreases as they age.⁵

Although Texas has a medical release policy in place – called Medically Recommended Intensive Supervision (MRIS) – cost savings will not be realized until it is used to its full potential. The Parole Board's approval rates of MRIS cases remain low despite the increase in the number of cases the Board reviews. For instance, although 1,318 individuals were screened for MRIS release in FY 2009, only 50 were approved and only 40 were released.⁶ The approval rate fell from 35% in 2007 to 24% in 2008; although one major factor contributing to the low rate is the number of deaths that occur during the review process, which increased by 62% during the same time period.⁷ In 2009, 74 individuals died while awaiting review for a MRIS release vote.⁸ The 2009 Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) concludes that although the sudden onset of a serious medical condition affected timely referrals, some cases could have been referred by unit medical providers in a more suitable fashion.⁹

A report by the Committee on Correctional Managed Health Care (CCMHC) states that the cost of an elderly prisoner's health care is three times higher than their younger counterparts,¹⁰ and it asserts that there are individuals who could be released without a threat to public safety.¹¹ Although Texas has a well developed MRIS policy in place, it is imperative that the process be reviewed regularly to address obstacles that are limiting releases that could save the state millions.¹²

Other states have considered and passed legislation that would allow elderly and ill prisoners to complete their sentences in the community, where costs are lower for the state and individuals can spend their last days with their families.¹³ In Texas, large cost savings could be realized if the Board would release more individuals who have been screened and identified as eligible for MRIS. According to a 2010 Legislative Budget Board report, releasing just 17 additional individuals per year could yield over \$200,000 in medical cost savings alone.¹⁴

Stakeholders must consider other strategies that can save the state money and safely release aging and costly prisoners. Again, allowing certain individuals to complete their sentences in the community should be evaluated.¹⁵ In 2009, the Federal Bureau of Prisons began a program called the “Elderly Offender Home Detention Pilot Program,” which allows inmates who are 65 years of age and older to complete their sentence in their own home.¹⁶ A similar pilot in Texas could have vast cost savings to the state; individuals would be eligible for Medicare, social security, or VA benefits if they were able to complete their sentence in the community.

RECENT MRIS DATA

- In FY 2010, MRIS received 1,443 referrals. Of these, 457 individuals were recommended, and 102 were approved for the program.¹⁷
- Of the total referrals made to the MRIS program, 556 individuals had not met clinical criteria for approval, 254 were sex offenders who did not have organic brain syndrome and were not in a persistent vegetative state (both required for release under MRIS), and 59 died before the Board could consider them for release.¹⁸
- As noted, in FY 2010, 457 individuals were presented to the Board or judge for MRIS consideration. Of these, 113 individuals were terminally ill, 9 were physically handicapped, 79 were elderly, 250 required long-term care, and 6 were mentally ill.¹⁹
- Since the program’s inception on December 1, 1991, 1,356 individuals have been released.²⁰
- The current status of individuals released to MRIS is as follows: 65% are deceased post MRIS-release, 17% have discharged their sentence, 11% are currently on MRIS supervision, 4% returned to TDCJ or were released under other supervision, and 4% was “other.”²¹

H.B. 3538 REQUIREMENTS

This bill amends the Government Code by adding two separate sections:

- **Section 508.1451** – This section creates a mandatory supervised release program for certain elderly inmates. “Elderly” is defined as 55 years of age or older, lowering the current age from 65. All individuals released under this section would be placed on super-intensive supervision parole, the highest level of supervision provided by the Parole Division. Individuals would only be released if they had served enough time on their sentence and met their first parole eligibility date.

Ineligible individuals include those who are serving a sentence of death or life imprisonment, or for high-level, violent offenses such as murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, some drug crimes, improper relationship between educator and student, and any crime with a finding of a deadly weapon. Individuals with a major disciplinary case 60 days prior to release to this program would also be ineligible.

- **Section 508.1459** – This section creates a mandatory release mechanism on MRIS for inmates if it has been determined by two physicians that they are terminally ill, have a condition requiring long-term care, are in a persistent vegetative state, or have organic brain syndrome with significant to total mobility impairment. This section also requires TCOOMMI and TDCJ to prepare a medically recommended supervision plan that promotes public safety. Finally, this section requires as a condition of release that the individual remain under the care of a physician and in a medically suitable living environment.

H.B. 3538 also amends Government Code, Section 508.146 – which relates to MRIS – by making this release type discretionary for individuals who are identified as elderly (55 years of age or older), having a physical disability, or suffering from mental illness or mental retardation.

SOLUTION

Support H.B. 3538. The high cost of maintaining the prison system in Texas makes the current course of incarceration unsustainable. Supporting an initiative to grant release to certain eligible individuals with a serious medical condition can alleviate the financial burden to the corrections system.

NOTES

¹ Vera Institute of Justice, Tina Chiu, *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*, (April 2010), <http://www.vera.org/download?file=2973/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>, 4.

² Ibid, 5.

³ Legislative Budget Board, *Texas State Government Effectiveness and Efficiency*, (January 2010), http://www.lbb.state.tx.us/Performance%20Reporting/TX_Govt_Effective_Efficiency_Report_82nd.pdf, 351.

⁴ Vera Institute of Justice, *It's About Time*, 5.

⁵ Ibid.

⁶ The Texas Board of Pardons and Paroles, *Annual Report Fiscal Year 2009*, (August 2009), <http://www.tdcj.state.tx.us/bpp/publications/AR%20FY%202009.pdf>, 23.

⁷ The Texas Correctional Office on Offenders with Medical and Mental Impairments, *The Biennial Report of the Texas Correctional Office on Offenders with Medical and Mental Impairments*, (January 2009), <http://www.tdcj.state.tx.us/publications/tcomi/Biennial%20Report%202009%20FINAL.pdf>, 20.

⁸ LBB, *Texas State Government Effectiveness and Efficiency*, 347.

⁹ TCOOMMI, *The Biennial Report*, (January 2009), 21.

¹⁰ Ibid, 22.

¹¹ Ibid.

¹² Vera Institute of Justice, *It's About Time*, 2.

¹³ Ibid.

¹⁴ LBB, *Texas State Government Effectiveness and Efficiency*, 353.

¹⁵ Vera Institute, *It's About Time*, 2.

¹⁶ Ibid, 11.

¹⁷ TCOOMMI, *The Biennial Report*, (January 2009), 5.

¹⁸ Texas Department of Criminal Justice, Reentry and Integration Division, Texas Correctional Office on Offenders with Medical and Mental Impairments, *Medically Recommended Intensive Supervision Fiscal Year 2010 Annual Report*, <http://www.tdcj.state.tx.us/publications/tcomi/MRIS%20Statistical%20Report%20FY10.ppt>, 4.

¹⁹ Ibid, 7.

²⁰ Ibid, 12.

²¹ Ibid.