

Testimony to Senate Committee on Health & Human Services Substance Use Prevention, Intervention, and Recovery

Dear Members of the Committee,

I am Doug Smith, the Senior Policy Analyst at the Texas Criminal Justice Coalition. Thank you for this opportunity to testify regarding Texas' response to substance use. As a result of local and state policies, people with substance use disorder are over-represented in Texas' criminal justice system, straining facilities that are ill-equipped to treat them. And because underlying issues that lead to criminal involvement are not effectively addressed, many people are likely to cycle in and out of the system at massive taxpayer expense, and at great expense to Texas families, communities, and the workforce. It is imperative that we look at how a **criminal justice** response to drug use actually harms Texans, and how community-based treatment options are a more effective, cost-efficient use of state and local resources.

The Criminal Justice Response to Drug Use Exacerbates the Problem

Incarcerating people with substance use disorder for drug or drug-related offenses fails to address the root causes of drug use¹ and, in fact, most defendants sentenced to a term of incarceration for drug possession will be re-arrested within three years.² **Conversely, diverting people from jail and into community-based services produces 30-50% lower recidivism rates, depending on whether the individual was to be sentenced to local or state jail.**³ That means fewer costs associated with policing and incarceration, and fewer victims. This is the main reason that Texas has made some investments in treatment services and specialty courts: diversion is good for public safety.

“There is no empirical evidence that incarceration will prevent future substance use.”

Dr. William Kelly

Criminal Justice at the Crossroads

Despite widespread agreement among criminal justice practitioners that diversion works, only a small proportion of drug-related cases are addressed through placement on probation or in a drug court. **During the last 12 months alone, there were more than 55,000 arrests for low-level drug possession in Texas.**⁴ **In most cases, the defendants possessed less than one gram (the equivalent of a sugar packet).** Most of those arrested spent time in county jail, state jail, or prison.⁵

Harmful and Costly Criminal Justice Responses

- An alarming number of in-custody deaths in county jails are related to unsupervised withdrawal from drugs or alcohol. County jails are simply not equipped to provide detox services.⁶
- One city spends between \$55 and \$97 per person to arrest and book someone into county jail, and the county spends another \$150 per booking and up to \$96 per jail bed day.⁷ When a person is sentenced to state jail or prison, the state must pay up to \$60 per day,⁸ costing taxpayers tens of millions of dollars each year – only to achieve a 62% re-arrest rate among those with drug offenses.

The Impact on Women in the Criminal Justice System

Criminal justice policies are particularly harmful to women. Of all women incarcerated in Texas prisons, nearly 30% (3,600 women) are incarcerated for a drug offense, as opposed to 15% of men. A quarter of women on probation (more than 16,000) were charged with a controlled substance offense.⁹ Sadly, the rise in opioid use has contributed to women's system involvement. Women are more likely than men to be treated with prescription pain medication, such as opioids, at higher doses and for longer periods than men.¹⁰ As a result, women have become dependent on opioids at nearly twice the rate as men.

Early Access to Community Services is the Key

Criminal justice practitioners agree that lengthy terms of confinement in county jail during the pretrial phase will decrease the incentive for defendants to accept treatment and community supervision. Having already served a period of weeks or months in jail, defendants are often advised to avoid long probation terms or drug courts in favor of “time served” or a short state jail term. But another problem is that probation and specialty court programming may not be a realistic option for defendants who face obstacles with respect to substance use, mental health issues, homelessness, and other factors.

It is critical to connect people with community services as quickly as possible after the initial point of interaction with law enforcement, thereby preventing even short stays in county jail, and helping high-needs individuals stabilize their lives. More counties would implement pre-booking or pretrial interventions that accomplish this goal, but they are constrained by the lack of resources.

Proposed Solutions

- 1. Improve Local Capacity to Serve Justice System-Involved Texans with Substance Use Disorder in the Community:** The State can expand opportunities for diversion by allocating incentive funding to counties to decrease jail and prison populations. This funding will help counties provide more intensive services for people who are currently unable to access traditional probation or drug court options, such as those who are homeless or who have co-occurring mental health disorders. As counties provide linkage to these services and, in turn, meet their commitment reduction targets, the State will be able to recoup costs by taking costly prison facilities off line.
- 2. Create a Graduated Sentencing Structure for Drug Possession-Related Offenses:** Charging someone with a felony for drug possession is unlikely to prevent future drug use, and the felony record creates a permanent barrier to housing, employment, and occupational licensing. A graduated sentencing structure could mandate pre-arrest/pretrial intervention for a person’s first offense, followed by the opportunity for decreased penalties upon completion of programming on subsequent offenses. This will save the State tens of millions of dollars that can be used to improve treatment capacity while simultaneously lowering the re-arrest rate among those with drug and related offenses.

Citations

¹ Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, 2015, Columbia University Press, New York, ebook location 5014.

² Legislative Budget Board, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January, 2017, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf.

³ Fabelo, Tony, et al, *County Uniform Recidivism Measure Project: Third Year Results for Harris County*, April 21, 2017, p. 20.

⁴ Texas Department of Public Safety, Data Request, December, 2017.

⁵ Office of Court Administration, Court Activity and Directory System.

⁶ The University of Texas School of Law Civil Rights Clinic (2016), *Preventable Tragedies: How to Reduce Mental Health Related Deaths in Texas Jails*, p. 65, <https://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf>.

⁷ Austin Travis County Integral Care, *Travis County Plan for Substance Use Disorders*, p. 6, http://www.integralcare.org/wp-content/uploads/2017/09/150901_sud_report_6.pdf.

⁸ Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report*, January 2017, p. 4.

⁹ TDCJ data request, 2017. There were 16,331 women on probation for controlled substance offenses.

¹⁰ Boyd, Heather, Society for Women’s Health Research, “Why the Opioid Epidemic Impacts More Women Than Men,” *Huffington Post*, August 25, 2016.