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**TEXAS CRIMINAL  
JUSTICE COALITION**

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**WRITTEN TESTIMONY**

**SUBMITTED BY DOUGLAS SMITH, MSSW  
TEXAS CRIMINAL JUSTICE COALITION**

**To**

**HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE**

**FEBRUARY 27, 2017**

Dear Members of the Committee,

My name is Doug Smith; I work for the Texas Criminal Justice Coalition (TCJC). Our mission is to advance solutions that transform the adult and youth justice systems to strengthen families and foster safer communities. Thank you for allowing me this opportunity to present on policies and investments that safely decrease state jail and prison populations, save taxpayer dollars, and improve public safety, creating healthier communities in Texas.

TCJC has long been committed to identifying cost-effective policies that reduce crime and incarceration, while improving rehabilitation to ensure that people have opportunities to lead productive lives. The Legislature's commitment to these same principles has resulted in improved public safety and taxpayer savings. In 2007, as the number of people in Texas correctional institutions approached 156,000, the Legislative Budget Board projected an increase of up to 17,000 inmates in just five years. The Texas Department of Criminal Justice requested an additional \$523 million to build three new prisons. Instead, the Legislature invested in treatment, community supervision, and rehabilitation.

This strategy greatly expanded sentencing options for new offenses and sanctioning options for probation violators. At the same time, Texas began increasing its parole grant rate and shortened probation terms. The result is that Texas has been able to close four prisons since that time, saving the state hundreds of millions of dollars, and the prison population has declined to 147,000 people. Moreover, crime rates are at a level not seen since the 1960s.<sup>1</sup> Most importantly, these reforms are leading to improved public safety, with recidivism rates dropping 25 percent.<sup>2</sup>

Recent key reforms have continued the momentum in favor of smarter solutions. In 2015, the 84<sup>th</sup> Legislature revised the antiquated property offense penalty thresholds. Before that time, property crimes had been declining in Texas, yet felony convictions for property crimes had been rising. By adjusting the penalty thresholds to account for 22 years of inflation, state jail populations have dropped with no negative impact on property crime rates.

While Texas is moving in the right direction, there are still problems that continue to drive up costs without contributing to public safety. Below we offer two major issues to be addressed, with relevant recommendations.

#### **PROBLEM 1: FELONY INCARCERATION DOES NOT PREVENT OR FIX SUBSTANCE ABUSE**

While Texas crime rates have dropped to historic lows and overall prison placement has declined statewide, the number of people sentenced to state jail for minor drug possession offenses increased between 2011 and 2015.<sup>3</sup> Texas spends nearly \$60 million annually to incarcerate people for possessing drugs in amounts less than a sugar packet.<sup>4</sup>

**This staggering expenditure of tax dollars has neither reduced addiction nor improved public safety.** People are being released to the community without supervision or services, and they face monumental barriers to employment and housing due to their felony conviction, in turn increasing their likelihood of relapse and re-arrest.<sup>5</sup> In fact, the re-arrest rate for people convicted of low-level possession and sentenced to state jail is 67.7%.<sup>6</sup>

### **Texas Must Facilitate Treatment and Reduce Recidivism**

The existence of a harsh punishment does not prevent people with a substance use disorder, including opiate addicts, from continued drug use.<sup>7</sup> People with addiction leave incarceration “detoxed” but with their cravings for drugs intact, and the reduced tolerance can lead to overdose shortly after release.<sup>8</sup>

Further, studies have shown that the barriers to employment, housing, and occupational licensing – as well as the stigma and shame – that result from a felony conviction actually *increase* the likelihood of relapse and re-offense.<sup>9</sup>

People with a drug addiction, especially the growing number of people addicted to opioids (many of whom started with a legal prescription), need the following:

- » community-based drug treatment, including non-addictive medication to combat cravings,
- » family and community support to remove stigma and promote recovery, and
- » services that local probation supervision can provide.

### **Cost-Saving and Public Safety-Driven Solution: Recalibrate Certain Drug Possession Offenses from a State Jail Felony to a Class A Misdemeanor**

Recalibrating minor drug possession offenses from a state jail felony to a Class A misdemeanor will facilitate the local provision of appropriate services to address the underlying addiction, reducing the likelihood of reoffending, as well as reducing opioid overdoses. The elimination of a felony conviction will also help people get jobs, rebuild their lives, and support their families.

Furthermore, Texas taxpayers can see significant savings, both in the short and long term. It costs \$52.88 per day to incarcerate someone in state jail, whereas, treatment and intensive supervision are collectively a fraction of that cost.<sup>10</sup> Further, such investments have a far greater impact on later re-arrest. **According to the National Institute on Drug Abuse, “Treatment offers the best alternative for interrupting the drug abuse/criminal justice cycle.”<sup>11</sup>**

**The bottom line is that emphasizing treatment over state jail incarceration will decrease the demand for drugs, lower recidivism, save taxpayer dollars, and improve public safety.<sup>12</sup>**

### **PROBLEM 2: HIGH PROBATION REVOCATION RATES HARM COMMUNITIES AND SQUANDER LIMITED RESOURCES**

Another factor that continues to drive up costs in Texas without improving public safety relates to probation revocations.

- **In 2015, Texas courts revoked nearly 23,000 individuals on felony probation**, with more than ninety-five percent of these individuals sent to prison or state jail.<sup>13</sup> **Probation revocations to the Texas Department of Criminal Justice (TDCJ) cost the state hundreds of millions of dollars,<sup>14</sup>** not counting the costs to families and communities, which ultimately pay the price of incarceration.
- *Technical* violations of the conditions of probation – such as not paying probation fees, or showing up late to an appointment – accounted for more than half of the adult felony probation revocations in 2015.<sup>15</sup> When one looks at only technical violations (not absconding or new offenses), Texas spends nearly \$70 million per year to incarcerate people for not meeting probation requirements.
- Despite years of progress in other areas of criminal justice, **probation revocation rates remain largely unchanged, representing nearly *one-third* of all new receives into TDCJ each year.<sup>16</sup>**

If we dig into the numbers, we can see where Texas can save significant costs. According to TDCJ's Community Justice Assistance Division, there were 22,606 probation revocations to TDCJ (state jail or prison) in the last fiscal year; 53% were for technical violations.<sup>17</sup> The number of people on probation is falling, so the percent of the probation population that is revoked to TDCJ is actually the same or *rising*. The probation revocation rate in 2011 was 14.5%, whereas it was 15.3% in 2016.

Revocations for technical violations totaled 11,981 people in the last fiscal year; reducing that figure by the number of people who absconded leaves 6,518 people sent to TDCJ on purely technical reasons. If we presume that 15% (the typical average) had a prior criminal record with violent or sexual offenses, we would reduce the number to 5,540.

- » 54% of those 5,540 people went to prison, that is 2992 individuals. If we estimate that they serve 335 days (a conservative estimate) at an average cost of \$51.72 per day (using the transfer facility rate), the cost totals \$51.8 million.
- » If 40% of those 5,540 people went to state jail, that is 2,216 individuals. If we estimate that they serve 150 days (based on past data requests to TDCJ) at an average cost of \$52.88 per day (using the state jail rate), the cost totals \$17.6 million.

So, the total estimated cost to the state for technical revocations would be approximately \$69.4 million (adding the above two costs together).

**By instituting best practices and limiting time served for technical revocations to 90 days, the state could save approximately \$45 million.**

***The Goal of Probation Should be Rehabilitation in the Community – Diverting People from Costly Incarceration, Providing Programming, and Preventing Rearrests***

Texas can have a substantial impact on probation success rates by ensuring that the demands placed on people on probation are aligned with the goal of rehabilitation.

Probation is the primary way in which the State prevents people from entering prison, and its primary goal is to prevent people from reentering the justice system upon successful completion. Policies that can improve probation placements and success rates include:

- » Establishing a sliding scale for probation fees to improve payment rates and help low-income people on probation focus on treatment, employment, and restitution.
- » Allowing those who cannot pay their probation fees to satisfy them through community service hours.
- » Allowing hours spent in educational, vocational, or treatment programs to count toward community service hours.
- » Requiring that probation conditions be based on the findings of a validated risk/needs assessment so that the requirements are aligned with rehabilitative goals.

### **Swift and Certain Sanctions Also Promote Success on Probation**

It is not uncommon for people on probation with substance abuse issues to struggle; yet, probation departments are inconsistent in how they handle violations. **Overly harsh sanctions lead to absconding, while unduly lenient sanctions lead to relapse and expensive use of state-funded treatment.**<sup>18</sup> Either approach contributes to low success rates for those with the most minor offenses.

Furthermore, when sanctions are not known or are administered inconsistently, defendants often *request* revocation rather than attempt to abide by conditions that seem impossible.

#### **Swift and Certain Sanction Models**

Probationers in departments that utilize evidence-based probation practices, such as “Swift and Certain Sanction Models” that promote adherence to treatment and court requirements, are:

- 55% less likely to be arrested,
- 72% less likely to use drugs,
- 61% less likely to miss appointments, and
- 53% less likely to have their probation revoked.

*Source: National Institute of Justice, “Swift and Certain” Sanctions in Probation are Highly Effective.*

### **Cost-Saving and Public Safety-Driven Solutions: Safely Limit Time Served for Technical Probation Revocations; Ensure Probation Practices are Aligned with Rehabilitative Goals; and Implement a Clear Sanctions Process**

Texas should limit time served for technical probation violations to 90 days, and return people to probation after serving that term of incarceration. Doing so will hold people accountable while allowing them to access community-based resources and maintain jobs and housing that support their families.

The State should also ensure that probation policies collectively improve success rates, using a validated risk/needs assessment to determine probation conditions, helping low-income people meet those conditions and pay fees, and encouraging participation in programs that improve personal responsibility.

Additionally, Texas should require probation departments to institute a graduated sanction model and utilize a “swift and certain sanction model” to reduce revocations and further improve probation success rates.

#### **Citations**

<sup>1</sup> Disaster Center, *Texas Crime Rates 1960 – 2015*, <http://www.disastercenter.com/crime/txcrime.htm>.

<sup>2</sup> Legislative Budget Board (LBB), *Statewide Criminal Justice Recidivism and Revocation Rates*, January 2007, p. 5, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2007.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2007.pdf). Compared to: LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, January 2017, p. 4, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/3138\\_Stwide\\_Crim\\_Just\\_Recid\\_Revoc.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf).

<sup>3</sup> Office of Court Administration, *Annual Statistical Reports, 2011 – 2015*, <http://www.txcourts.gov/statistics/annual-statistical-reports/2015.aspx>.

<sup>4</sup> LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, pp. 4, 6, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/1440\\_Criminal\\_Juvenile\\_Justice\\_Uniform\\_Cost\\_Report.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf). In FY 2014 Texas spent as much as \$53.87 per person per day to incarcerate one individual in prison and as much as \$47.30 to incarcerate one individual in state jail.

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[Note on Methodology: Using a dataset of Texas Department of Criminal Justice state jail admissions for the 12-month period of July 1, 2015, to June 30, 2016, there were a total of 7,373 people admitted to state jail for possession. (Data obtained through information request to Texas Department of Criminal Justice, June 2016). The current cost-per-day for state jail is based on the February 2015 Criminal and Juvenile Justice Uniform Cost Report. Incarceration savings are estimated at \$47.30 per person per day for state jail. The yearly cost was discounted to account for time served in county jail.]

<sup>5</sup> LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February 2015, p. 2, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/1450\\_CJ\\_Statewide\\_Recidivism.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf).

<sup>6</sup> LBB, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February, 2017, p. 2, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/3138\\_Stwide\\_Crim\\_Just\\_Recid\\_Revoc.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf).

<sup>7</sup> Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, 2015, Columbia University Press, New York, ebook location 5014.

<sup>8</sup> Grimm JW, Hope BT, Wise RA, Shaham Y, "Neuroadaptation: incubation of cocaine craving after withdrawal," *Nature*, 2001, 412(6843): 141–142.

<sup>9</sup> Chandler, Redonna, Fletcher, Bennet, Volkow, Nora, "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," *JAMA*, January 14, 2009, 301(2): 183–190, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/#R15>.

<sup>10</sup> LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2015 and 2016*, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/3137\\_UniformCosts\\_2017.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3137_UniformCosts_2017.pdf).

<sup>11</sup> National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations – A Research-Based Guide*, <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/introduction>.

<sup>12</sup> RTI International, "Study: Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Justice Costs," January 8, 2013, <https://www.rti.org/news/study-replacing-prison-terms-drug-abuse-treatment-could-save-billions-criminal-justice-costs>.

<sup>13</sup> Texas Department of Criminal Justice (TDCJ), *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2015, p. 8, [https://www.tdcj.state.tx.us/documents/cjad/CJAD\\_Monitoring\\_of\\_DP\\_Reports\\_2015\\_Report\\_To\\_Governor.pdf](https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf).

<sup>14</sup> The cost to the state was calculated by determining the percentage of revocations to TDCJ sent to prison versus state jail. According to TDCJ, over the past five years, 55% of individuals with probation revocations on average were sent to prison, and 41% were sent to state jail. The Texas Smart-On-Crime Coalition assumed that those sent to prison would spend at least one year at the transfer facility cost of \$45.63 per day; and those sent to state jail would spend 176 days (data obtained through information request to Texas Department of Criminal Justice, May 2016) at the state jail cost of \$47.63 per day (LBB, *Uniform Cost Report*, February, 2015). There were 22,980 revocations to TDCJ, so we calculated that 12,639 of them were sent to prison, and 9,422 were sent to state jail.

<sup>15</sup> TDCJ, *Effectiveness of Diversion Funds Allocated by the Texas Legislature*, December 1, 2015, p. 8, [https://www.tdcj.state.tx.us/documents/cjad/CJAD\\_Monitoring\\_of\\_DP\\_Reports\\_2015\\_Report\\_To\\_Governor.pdf](https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf).

<sup>16</sup> TDCJ's *Report to the Governor and Legislative Budget Board* provides data on revocations for the past six years. In each year, revocations exceeded 10% of the felony direct and indirect populations, which were at least 33% of the nearly 70,000 people received by TDCJ each year, according to the TDCJ Statistical Report for each of these years.

<sup>17</sup> TDCJ, *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds*, December 1, 2016, [https://www.tdcj.state.tx.us/documents/cjad/CJAD\\_Monitoring\\_of\\_DP\\_Reports\\_2016\\_Report\\_To\\_Governor.pdf](https://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2016_Report_To_Governor.pdf).

<sup>18</sup> Hawken, Angela & Kleiman, Mark, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, December 2, 2009, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.