



Alternatives to More Prisons Promote Public Safety, Restorative Outcomes, and Fiscal Responsibility

By Marc Levin, Esq. Director of the Center for Effective Justice

For decades, Texas policymakers have been caught in a cycle of regularly passing sentencing enhancements and restricting parole and then, after several biennia, responding to the overflow of inmates by building new prisons. However, January 29, 2007 represented a critical moment as state leaders endeavored to break this cycle. First, Governor Rick Perry issued an executive order creating the Texas Criminal Justice Statistical Analysis Center and, later that day, two alternative scenarios to new prisons were presented by Senate Criminal Justice Committee Chairman John Whitmire (D-Houston) and House Corrections Chairman Jerry Madden (R-Plano) at a historic joint hearing of the Senate Criminal Justice and House Corrections Committees.

These scenarios would spare taxpayers \$1 billion in costs associated with building and operating the 4,000 new prison beds over the next decade, which were proposed by the Texas Department of Criminal Justice (TDCJ). Moreover, these alternative frameworks would herald a culture shift away from excessive incarceration of nonviolent offenders and towards community-based approaches that are more effective than prison in treating addicted and mentally ill offenders, collecting restitution for victims, preserving families, and collecting the \$2.5 billion in

child support owed by Texas prisoners, who cannot earn money while behind bars.ⁱ

The Texas Overincarceration Problem

If current policies are not changed, the Legislative Budget Board (LBB) has estimated that Texas will need another 8,658 beds by 2009 and some 17,332 new beds¹ by 2012.ⁱⁱ However, Texas has more than enough prisons to protect public safety, but failed policies have filled them up with nonviolent offenders who do not endanger the public. Key facts demonstrate this:

- Every year, probation departments revoke 12,000 Texans to prison who did not commit a new crime, but had “technical violations,” which can include missing a meeting, not paying probation fees, failure to hold down a job, and testing positive for drugs. Such “technical revocations” result in an average prison sentence of 2.5 years.
- Some 20,387 nonviolent drug possession offenders, who were not convicted of dealing drugs, are currently in prisons and state jails. Only 15 percent of these offenders receive treatment.

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ⁱEvery year, Texas probation departments collect over \$43 million in restitution payments from probationers, mostly from property offenders. While drug offenses are often viewed as “victimless crimes,” illegal drug abuse costs the state \$9.6 billion per year and among the victims are the children of drug abusers, who often permanently lose a parent due to incarceration, in addition to the estimated \$335 million in child support owed by Texas parents incarcerated for substance abuse that they cannot pay while in prison.

ⁱⁱIt is important to note that these projections are likely overstated because they are based on population indicators as of June 2006. Since that time, probation revocations have continued to decline due largely to fewer revocations by departments that adopted progressive sanctions in exchange for receiving additional funds from the 79th Legislature. The \$27.1 million infusion by the Legislature and Governor Perry has already saved \$104 million in incarceration costs. Because the 400 new residential probation beds to be used as alternatives to revocation in Harris and Bexar County paid for with this money did not come online until late 2006, their impact is not reflected in the most recent LBB projections. Indeed, although there were 1,155 fewer revocations in fiscal year 2006 than in 2005 in the counties receiving these funds, there were 628 fewer in the first quarter of fiscal year 2007 alone, suggesting that revocations have been further reduced as compared with the June 2006 numbers used by the LBB.

- On any given day, there are an average of 1,800 Texas prisoners who have been granted parole but cannot be released because they are waiting as long as a year to enter a backlogged six-month treatment program that the Board of Pardons and Paroles (BPP) has set as a condition of their release.
- Another 600 Texas inmates who have been paroled cannot be released because they don't have an address and there are no subsidized halfway house beds available.

Texas has the second highest incarceration rate in the nation and the state's prison system has grown 278 percent from 1978 to 2004 while population has only increased 35 percent during this time. From 1985 to 2006, the state's incarceration rate ballooned 205 percent.² Texas' *non-violent* prison population is larger than the *total* prison population of all other U.S. states except California and of the United Kingdom.³ Texas has added 13,083 prison beds since 1997 and 3,559 beds since March 2003. By comparison, Florida and New York have increased their incarceration rate at less than half that of Texas in the last 25 years, but have achieved significantly greater crime reductions.⁴

Building two new prisons with 4,000 beds as proposed by TDCJ would saddle taxpayers with \$377 million in construction costs and another \$600 million in operations costs over 10 years, not including additional costs associated with increasing salaries for prison guards to staff these facilities given that the state already is 3,000 prison guards short.

It is important to note that passing "Jessica's Law" would not create the need for building additional prison beds in the near term. By requiring 25 years without parole for violent sex offenses against children, this proposed legislation will only increase capacity pressures a decade from now because LBB projections account for the fact that such offenders serve double-digit prison terms already.ⁱⁱⁱ

The Alternatives to More Prisons

The Council on State Governments Justice Center (CSG), under the direction of Dr. Tony Fabelo, presented two scenarios on January 29, 2007 that represent alternatives to TDCJ's plan to build one new medium and one new high-security prison.^{iv} These scenarios closely mirror our recommendations and those of the Sunset Advisory Commission.⁵ The non-partisan Legislative Budget Board estimates that either of these scenarios would fully address the projected need for new prison capacity.

Scenario One: Parole Reforms, SAFF/DUI Treatment & Halfway Houses

The first CSG scenario relies in part on parole reforms to keep the prison population at current levels. This scenario envisions the Board of Pardons & Paroles (BPP) following its guidelines by increasing its cumulative parole release rate from 26 percent to 29 percent (actually below the 31 percent recommended by their own guidelines) and increasing the discretionary mandatory release (DMS) rate from 52 percent to 57 percent. This scenario also includes a new 1,000 bed combination Substance Abuse Felony Punishment (SAFF) and Driving Under the Influence (DUI) treatment unit to be available by September 1, 2008, an item that was also requested by TDCJ in addition to the 4,000 hard beds and recommended by the Sunset Commission. This unit is estimated to result in 6,244 diversions from prison by addressing the backlog of up to 1,900 inmates who have been paroled but are waiting to complete a six-month treatment program that is a condition of release set by BPP.⁶ This scenario also includes creating 150 new halfway house beds to clear out the backlog of paroled inmates awaiting release as soon as they have a home plan.

While prison—including health care—now costs the state \$49.40 per day, parole costs \$3.15 a day. This scenario would result in savings of \$99.8 million for the 2008-09 biennium and \$543 million by 2012, not including the avoided cost of building new prisons.

ⁱⁱⁱ The other part of Jessica's Law—executing repeat violent sex offenders against children—would have a positive but very negligible impact on prison population, since 23 murderers were executed in 2005.

^{iv} Justice Reinvestment Scenarios, <http://justicecenter.csg.org/downloads/TX1+JR+Scenarios.pdf>.

The CSG and legislative leaders have not released details concerning the mechanisms for achieving the parole capacity savings, but we summarize here the most significant recommendations we made in our previous report on parole.⁷ Most importantly, our analysis indicates that the parole capacity savings can be accomplished simply by targeting non-violent drug offenders, thereby continuing current parole practices for violent, sex, and even property offenders. An increase of 5 percent in the DMS rate and three percent in the parole rate would amount to about 3,100 earlier releases. “Earlier” is an important word, because some 99 percent of these inmates, excepting the few who die in prison, will be released regardless, in most cases within a few years. We estimate that restoring mandatory supervision for offenders convicted of nonviolent felony drug possession would result in 1,500 beds saved that can be allocated to violent offenders.^v

We also recommend adopting mandatory supervision for some state jail felons. Currently, unlike more serious felons, state jail felons serve every day of their sentence, which can be up to two years. Making state jail felons convicted of a minor drug possession offense eligible for mandatory supervision after serving one year behind bars would expedite the release of 1,238 such offenders.^{vi} Moreover, currently state jail felons are simply released to the street without parole with no reentry or treatment services. An Urban Institute study shows parole is more effective in reducing recidivism as compared with simple release for nonviolent minor drug offenders than virtually any other class of offenders.⁸ Accordingly, such a policy change would both reduce costs and enhance public safety.

Although parole and DMS, unlike mandatory supervision, involve substantial discretion on the part of the BPP, Presiding Officer Rissie Owens has stated that a major reason they are not paroling more offenders, even though they have profiles indicating

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they would not re-offend with proper treatment, is because they know that they have not received treatment in prison and that the treatment programs they can set as a condition of parole are full with long waiting lists.

For example, there are 5,500 DUI prison inmates (only 700 of whom injured someone), but a mere 500 are receiving in-prison treatment for their alcoholism. As Chairman Whitmire has repeatedly noted, most of these DUI inmates are taking up maximum security prison beds even though they pose no danger when they are not drinking and driving. Indeed, new technology allows many of these offenders to be safely supervised on parole at a much lower cost. The Secure Continuous Remote Alcohol Monitor (SCRAM), which TDCJ’s Parole Division is experimenting with, is an ankle bracelet worn by DUI offenders that detects alcohol in their sweat and immediately alerts their parole officer if they have violated the terms of their parole by consuming alcohol.⁹ By expanding in-prison treatment for alcoholism through the new 500 beds, inpatient and outpatient alcoholism treatment for parolees, and utilizing SCRAM and other monitoring technologies, more DUI offenders who have been sufficiently punished can be paroled while protecting public safety.

^v In 1995, the Legislature abolished mandatory supervision (MS), which automatically released inmates after their calendar time served and good time (varies depending on inmate security level classification but usually about a day for each day served) equaled the sentence. While inmates sentenced before September 1, 1996 remain eligible for MS, all other inmates are governed by DMS. The word “discretionary” signifies that the parole board must still approve the release after time served and good time equal the sentence.

^{vi} Additional capacity savings could be achieved through mandatory supervision after one year of time behind bars for first-time property offenders. Larceny and forgery are the two largest groups of state jail property offense inmates. These categories include first-time hot check writers and shoplifters. Home burglary is a second degree felony so these property offenders are not in state jails, and therefore would not be impacted by instituting mandatory supervision for first-time, state jail property offenders.

Scenario Two: SAFP/DUI Treatment, Halfway Houses, ISF Facilities, Probation Residential Treatment Facilities, IPTC, and Conversion of Youth Facilities

The second CSG scenario, based on no additional offenders being paroled, envisions:

Facility	Current capacity	Proposed additional beds
Intermediate Sanctions Facilities (ISF)	1,793 beds in parole system (1 per 42 parolees) and 439 in probation system (1 per 544 probationers)	2,400 beds for parole and probation system
Probation Residential Treatment	2,123 beds for 187,054 offenders on probation with substance abuse problems	1,600 beds
In-prison Therapeutic Community (IPTC)	537 beds with 174 offenders on a waiting list	200 beds converted to IPTC
Substance Abuse Felony Treatment (SAFP)	3,250 beds with a waiting list of 823 offenders	500 beds
DUI Prison Treatment	No facility	500 bed facility
Parole Halfway Houses	1,159 beds with a current backlog of 600 inmates	150 beds
TDCJ Capacity	Transfer San Saba and Marlin Texas Youth Commission units to TDCJ	1,200 beds
		6,550 total

Source: Justice Center of Council of Governments

This second scenario could cost an additional \$142.7 million in the 2008-09 biennium, but would avert the \$377 million in proposed new prison construction costs. Moreover, the second scenario is projected to net a total savings of \$65.1 million by 2012.

Central to the second scenario is a focus on short-term, community-based residential beds. The new probation residential treatment and ISF beds would provide a community-based alternative for probationers now revoked to prison for technical violations, such as testing positive for drugs, or a new drug possession offense. When such offenders go for timeout and treatment for 90 days or more in one of these secure community residential facilities, the state saves the costs of the offender being revoked to

prison for years. These programs also include a job training and community-service component, making it more likely that offenders will be rehabilitated and employed so that they can support themselves and meet any restitution and child support obligations. A TDCJ study found that offenders participating in these programs have lower recidivism when compared with those who are simply sent to prison, resulting in a savings of 38.8 percent of the cost of revocation and incarceration.¹⁰ Another study by Texas Christian University researchers found that the Wilmer ISF, which offers substance abuse treatment, reduced rearrest rates by 40 percent.¹¹

This scenario also envisions converting two Texas Youth Commission (TYC) facilities into prisons. We recommend that, if this is done, they be reconfigured into special TDCJ facilities serving the least serious of the 10,000 inmates aged 18-25. These youthful offenders, who may make substantial progress in rehabilitation while at TYC, are now mixed in with older, more hardened criminals upon being transferred to TDCJ.

This conversion could not come at a better time for the TYC, whose Executive Director Dwight Harris has been candid about the agency’s problems and receptive to the idea of moving away from its almost exclusive reliance on large, remotely located facilities that feature difficult-to-manage, dormitory-style barracks with no privacy. In fact, both the San Saba and Marlin units were originally adult prisons before being transferred to TYC in the mid 1990s. TYC faces a projected shortage of 769 beds by 2012.¹² Currently, TYC houses 5,000 youth offenders, 64 percent of whom are nonviolent. It is beset with a 75 percent turnover rate among its guards and guard-to-student ratios that fluctuate between and 1-18 and 1-24, far in excess of the 1-12 recommended level.¹³ Some one in seven TYC employees file workers compensation claims, costing the state \$6 million a year, and abuse rates by guards of students have tripled since 2002.¹⁴ TYC’s large, crowded facilities in remote areas of the state that lack substantial workforce pools contributes to its recruitment and retention crisis.

In contrast, Missouri, by converting its large training schools to community-based facilities with no more than 40 youngsters, has achieved a recidivism rate of

8 percent compared to the TYC's rate of over 50 percent, which represents a poor return on the annual per bed cost of \$56,600.¹⁵ On January 24, we held a primer at which several Missouri juvenile justice leaders discussed their new system and efforts to assist Louisiana with making a similar transition. At the February 1 Senate Finance Committee hearing, Senators Royce West (D-Dallas) and Juan "Chuy" Hinojosa (D-Mission), who spoke at the primer, asked the Legislative Budget Board to study what would be involved in converting some or all of the Commission's facilities to the Missouri model.¹⁶ While such an overhaul could take years and will probably be considered as part of the TYC's sunset review in 2008, the conversion of these two TYC facilities could pave the way for a more immediate pilot program in which 600 of the most obedient, nonviolent youths could be moved to therapeutic, secure community-based group homes similar to those in Missouri.

The Back-Up Plan

Some lawmakers have asked what the fallback position would be if, for some reason, the projected diversions in these scenarios do not materialize. First, more beds can be leased from county jails, which are currently at 90 percent capacity.^{vii} This includes 2,000 out-of-state inmates and, per state law, these inmates can be returned with 30 days notice by the state that these beds are needed for Texans. We also recommend that the Legislature lift arbitrary caps on capacity at privately operated prisons. Currently, Texas Government Code Section 495.001(b) arbitrarily limits the number of beds a state may lease in any one private prison to 1,000. Private providers have offered additional beds at existing facilities if this cap was lifted, which would be far more cost effective than new construction. Section 495.007, which caps the total number of private prison beds at 4,580, should also be repealed.

There are also spec private prisons being built that are looking for inmates, including a 1,160 bed unit in Henderson coming online in March and facilities in South Texas being constructed by private operators hoping to win federal contracts to house illegal immigrant detainees. Lawmakers should examine current data concerning new construction compiled by the Jail Standards Commission on an ongoing basis throughout the session.

Conclusion

While the state's criminal justice challenges can seem daunting, they are easier to solve precisely because, for the most part, incarceration is now the hammer and every offender the nail. Given that half of Texas prison inmates are nonviolent offenders, we need not and should not hesitate to incarcerate when it comes to violent offenders. By simply utilizing a bigger toolbox when it comes to nonviolent drug offenders, and selected nonviolent property and DUI offenders, Texas taxpayers can be spared a billion-dollar commitment to new prisons. Furthermore, we can transition to a system that still punishes and protects public safety, but also more effectively reforms offenders and restores victims. ✨

Marc Levin, Esq., is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Contact Marc Levin at: mlevin@texaspolicy.com.

^{vii} The amount of additional beds that could be leased without evicting out-of-state inmates is relatively modest because county jails cannot go close to 100 percent due to the daily fluctuations they experience as a result of new arrests. Legislation to allow police officers to issue citations and notices to appear for most Class B misdemeanors could free up additional space in county jails where the largest share of the 70,000 inmates are pretrial detainees, including many minor misdemeanants who either cannot post bond or need considerable time to come up bond money.

Endnotes

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- ¹⁵Texas Coalition Advocating Justice for Juveniles, http://www.tcajj.org/PDFFiles/TCAJJ_Brochure.pdf.
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