



PolicyPerspective

Breaking Addiction without Breaking the Bank *Cost-Effective Strategies for Texas Lawmakers to Reduce Substance Abuse*

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Recommendations

- Implement incentive funding so that local jurisdictions receive a share of the state's savings from reduced prison costs.
- Increase utilization of programs such as drug courts, the Hawaii HOPE Court, and mandatory supervision and treatment.
- Prioritize limited prison capacity for sex and violent offenders who pose a danger to public safety.
- Reform drug sentencing statutes to emphasize alternatives to incarceration for low-level drug possession offenders without a prior sex, violent, or property offense.

Introduction

Substance abuse continues to be a problem for many Texans. Some 6.26 percent of all Texans age 12 or older have used an illicit drug in the last month.¹ In 2009, 133,191 arrests were made in Texas for drug possession and 16,598 for selling or manufacturing illegal drugs.² About 25.9 percent of high school students in Texas in 2009 reported having been offered, sold, or given an illegal drug by someone on school property.³ Often, drug abuse starts at an even earlier age, as data indicates that 9 percent of Texas students in grades 4 to 6 used inhalants in 2008.⁴

At the other end of the spectrum, there are 16,188 inmates in Texas state lockups due to a drug possession conviction, which translates into a biennial cost to Texas taxpayers of \$600.2 million.⁵ In one case in 2010, a Tyler man driving through a school zone with 3.5 ounces of marijuana received a 35 year prison sentence after prosecutors had asked for a 99 year sentence.⁶ Another 5,556 inmates are behind bars for drug delivery.⁷ In fiscal year 2010, more than 22,000 individuals (30.8 percent of incoming inmates) were received by the Texas Department of Criminal Justice for a drug offense, of which 73 percent were for possession.⁸ These figures do not include the thousands of inmates who are serving time because they were revoked from probation or parole while under supervision for a different offense because they were either convicted of drug possession or tested positive for drugs.

In 2007, drug and alcohol abuse was estimated to cost the Texas economy \$33.4 billion,

which includes expenses associated with corrections, social services, health care, and lost productivity.⁹

What Works

It is clear that the extent of the illegal drug use problem in Texas is so pervasive that incarceration alone cannot provide a cost-effective solution.

While there is broad consensus that locking up major drug dealers makes sense, it is not clear that incarcerating so many low-level drug possession offenders is giving Texas taxpayers a good return on their dollars, particularly when it comes to those drug possession offenders who have not demonstrated a proclivity for other types of criminal behavior. According to data obtained from the Texas Department of Criminal Justice (TDCJ), there are some 6,458 drug possession inmates in state prisons and jails who do not have any prior types of felony convictions.¹⁰

Fortunately, there is considerable evidence that other types of approaches for such offenders can produce a greater benefit in the reduction of crime and substance abuse for every dollar spent. A Maryland study found that low-risk substance abuse offenders that were directed into an evidence-based probation and treatment program, were 22 percent less likely to recidivate within a year after the program than comparable offenders sent to prison.¹¹ Reasons for this finding may include: 1) low-risk drug offenders sent to prison may come into contact with more hardened criminals while behind bars; 2) only a small percentage of inmates in

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Texas and other states with a drug addiction actually receive treatment while behind bars; and 3) those sent to prison lose connections to employment, family, and community whereas effective probation supervision helps leverage those supports and, in fact, generally requires work as a condition of probation.

The national Drug Abuse Treatment Outcome Survey of 10,000 treatment participants found that residential treatment reduces criminal behavior, with a 50 percent reduction in drug use and a 61 percent reduction in crime.¹² Outpatient treatment resulted in a 50 percent reduction in drug use and a 37 percent reduction in crime.¹³

The Washington State Institute of Public Policy, a research institute that is part of the Washington state government like the Legislative Budget Board in Texas, conducted a meta-analysis that aggregated empirical studies to determine which adult corrections programs provide the greatest benefit relative to their cost. It found that drug treatment in the community produced \$11,856 in benefits attributable to avoided crime and incarceration costs, while drug courts produced \$8,514 in such benefits.¹⁴

First developed in Miami in 1989, a drug court is a special court assigned to dispose of cases involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services, and immediate sanctions and incentives. Drug courts feature extensive interaction between the judge and the offender and often involve the offender's family and community. Successful completion of the drug court program results in dismissal of the charges (pretrial diversion) or satisfaction or reduction of the sentence (reentry or intensive probation). More than just another type of court, drug courts represent a fundamental shift from incarceration as the primary means of punishing minor drug offenses to mandatory treatment for those offenders willing to take responsibility for

their actions, using prison only as leverage to ensure compliance. The U.S. Department of Justice has outlined the 10 key components of drug court programs.¹⁵

Traditionally, only individuals charged with non-violent drug offenses may be diverted from trial in a regular criminal court to a drug court, although some drug courts in other states have begun including offenders who committed property crimes to obtain money to support a drug habit. The most well-known drug court in Texas is a pretrial diversion program overseen by Dallas Judge John Creuzot, which limits eligibility to first-time minor drug offenders willing to follow the stringent regimen of treatment, counseling, and testing. While participation is voluntary, Judge Creuzot informs prospective participants that they cannot opt out once they enroll.

Texas has 101 drug courts. This includes DWI courts, juvenile drug courts, and tribal drug courts.¹⁶ Texas offenders completing drug court programs have a 28.5 percent re-arrest rate compared to 58.5 percent in the control group.¹⁷ Even including those offenders who failed to successfully complete the drug court program, the re-arrest rate is 40.5 percent.¹⁸ Similarly, the incarceration rate of offenders who complete drug court programs is only 3.4 percent after three years compared with 12.0 percent for all drug court participants and 26.6 percent for the control group.¹⁹

The recidivism rate of participants in Judge Creuzot's drug court is 17 percent compared to 61 percent in the control group.²⁰ Other Texas drug courts have been nearly as successful. Jefferson County drug courts graduates have a re-arrest rate of 24.5 percent compared to 43.7 percent for non-participants, while Travis County drug courts have a re-arrest rate of 24.5 percent versus 45.5 percent for non-participants.²¹

Nationally, the average recidivism rate for drug court graduates is between 4 percent and 29 percent as compared to 48 percent for the control group.²² A survey of 17,000 annual drug court graduates nationwide found that recidivism rates for drug court participants one year after graduation is only 16.5 percent and 27.5 percent after two years.²³ Some 71 percent of all offenders entering drug courts since 1989 have either successfully completed their drug court program or are currently participating.²⁴

In addition to reducing recidivism, drug courts keep families together and relieve burdens on the social service system, since

offenders diverted from prison are often primary breadwinners. For example, research shows drug courts reduce the utilization of the strained foster care system.²⁵ Also, by enabling participants to avoid a criminal record, pretrial diversion drug courts promote employment, since the participant can truthfully state they have not been criminally convicted.

A comprehensive drug court program typically costs between \$2,500 and \$4,000 annually for each offender.²⁶ By comparison, the annual cost per Texas prison inmate is more than \$18,500, not including initial construction costs.²⁷ A study of a drug court in Portland, Oregon found \$5,071 in savings, including victimization costs, due to reduced rates of drug use and recidivism.²⁸ The Maricopa County, Arizona drug court saves more than \$600,000 annually in pretrial expenses because the drug court procedure combines arraignment, change of plea, and sentencing in one hearing held within 14 days of arrest, eliminating multiple court hearings, court-appointed counsel, police interviews, trials, and presentence reports.²⁹

A highly successful variation on the drug court concept—Hawaii’s Opportunity Probation with Enforcement (HOPE) Court—focuses on those drug possession offenders who may not be chemically dependent and need extensive treatment, but primarily need the discipline of a strict regimen of testing with swift and sure consequences for failure. The HOPE Court addresses the problem cited by the National Institute of Justice: many probationers do not show up for their appointments with probation officers and decline to take mandatory drug tests.³⁰ Probationers could commit numerous infractions before action was taken, which ultimately led to revocations to prison because a strong message was not being sent upon initial violations.

In the HOPE Court launched in Honolulu by former federal prosecutor Judge Steve Alm, probationers receive “warning hearings” from the judge in which they are informed they must comply with the terms of probation. They also learn that they will be required to report directly to the court for drug tests. In traditional probation, offenders would receive notice of a drug test as much as a month in advance. In the HOPE program, probationers must call into a number every morning to find out if their assigned color is being tested. If a probationer tests positive, he is arrested and put in jail for a few days. Weekend jail is used initially to preserve employment. These short jail stays are effective because of their immediacy. Only numerous failures would result in revocation to prison.

HOPE has also been found to reduce new crimes by more than 50 percent. HOPE costs \$1,000 per participant, which is considerably less than a drug court, a difference largely attributable to a larger docket and only a small share of participants undergoing extensive treatment.

According to UCLA researchers, for a group of methamphetamine-using probationers, failed drug tests declined 80 percent after entering the HOPE program.³¹ Similarly, for the 685 probationers who were in the program for at least 3 months, the missed appointment rate fell from 13.3 percent to 2.6 percent and failed drug tests declined from 49.3 percent to 6.5 percent.³² HOPE has also been found to reduce new crimes by more than 50 percent.³³ HOPE costs \$1,000 per participant, which is considerably less than a drug court, a difference largely attributable to a larger docket and only a small share of participants undergoing extensive treatment.³⁴ HOPE saves money by reducing prison revocations. While 37 percent of Hawaii probationers are revoked, the rate for HOPE participants is less than 5 percent.³⁵ The HOPE model has recently been replicated in Clark County, Nevada (Las Vegas).

Recommendations

Texas lawmakers are considering two significant proposals that would promote more cost-effective correctional approaches in addressing substance abuse.

First, Senate Bill 1076 is this session’s version of Senate Bill 1909 that passed the Senate in 2007, and at that time was projected in the fiscal note to save more than half a billion dollars over five years, including \$112 million in the first biennium.³⁶ Because the current bill has some additional limitations, the fiscal note indicates it will save \$51.53 million in the 2012-13 biennium and \$178.91 million over five years.³⁷ These figures were net totals, accounting for increased costs of probation and drug treatment. The legislation establishes a preference in sentencing law for alternatives to incarceration for low-level drug possession offenders who do not have a prior sex, violent, or property felony and whom the judge determines not to pose a danger to public safety. An accompanying budget rider would redirect some of the savings on prison costs into strengthening local options for holding such offenders ac-

countable, while still producing considerable savings to help balance the budget.

Under this legislation, the recommended options for such offenders would include probation supervision, drug courts, mandatory outpatient or inpatient drug treatment, and placement in a Substance Abuse Felony Punishment Facility (SAP-FP). These are six-month secure state lockups that include therapeutic group drug treatment. They have been found to produce lower recidivism rates than Texas prisons and the total cost is far less because the length of stay is shorter.³⁸ The legislation would apply only to third degree and lower possession offenses. Third degree possession of most drugs is one to four grams. For such offenses, if the judge determined the offender posed a danger to public safety, the judge could still sentence that offender to up to 10 years in prison. Moreover, if the offender failed to comply with the conditions of probation, failed to attend treatment, or failed out of the drug court, he or she could be revoked to prison for up to the 10 year maximum. SB 1076 applies only to possession, not dealing.

New York State implemented similar drug sentencing reforms that went into effect in 2009. While fewer low-level drug offenders were sent to prison in 2009 as a result, the state's crime rate fell another 3 percent, dropping to a level not seen in decades.³⁹

Second, SB 1055, which passed the Senate unanimously on April 21, 2011, would give counties through their District Attorney and other county leaders the option of entering into an agreement with the state to reduce the number of non-violent offenders they will send to state lockups in the coming biennium, in return for receiving 35 to 60 percent of the state's savings from their reduced utilization of state prisons and jails. Some of the savings would be provided upfront to

support the resources needed to implement strategies such as drug courts, enhanced probation supervision, electronic monitoring, expanded treatment capacity, and partnerships with law enforcement. Nearly half of the jurisdiction's share of the savings, however, would be based on the county achieving performance benchmarks such as reduced recidivism among probationers and an increased share of probationers who are current on victim restitution payments. This would help move Texas from a corrections system that grows when it fails to one that rewards results.

Similar incentive funding legislation adopted in Arizona that became effective in December 2008, has led to a 31 percent decline in new felony convictions among probationers and a 28 percent decline in revocations of probationers to prison.⁴⁰ Senate Bill 1055 is based on model incentive funding legislation unanimously adopted by the American Legislative Exchange Council (ALEC) Public Safety & Elections Task Force and ratified by the ALEC leadership and membership.⁴¹

Conclusion

Substance abuse takes a significant toll on Texas families and taxpayers. Given that the state has increasingly limited resources, it is an opportune time to evaluate those strategies that can produce the greatest reductions in substance abuse and related criminal activity with every dollar spent. While prisons are appropriately utilized to protect the public from drug kingpins and those whose illegal drug use is part of a pattern of criminal or gang activity indicating a threat to the community, the evidence indicates that for those low-level drug possession offenders who are not a danger to public safety, other approaches are often more cost-effective. As Virginia Department of Corrections Director Gene Johnson said in 2010, "At some point in time we need to stop locking up people we're mad at and lock up people we're afraid of."⁴² ★

Endnotes

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