



Chloe Lieberknecht
Sunset Advisory Commission
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Dear Ms. Lieberknecht,

February 1, 2012

Thank you for the invitation to participate in the sunset review of the Texas Department of Criminal Justice and related entities.

We very much appreciate the opportunity to share the following recommendations which are based on our research and that of other organizations. These suggestions reflect our focus on reducing crime, controlling costs to taxpayers, reforming offenders, and empowering and restoring victims.

Thanks in advance for your consideration and please do not hesitate to contact me should you have any question or if you would like to meet to discuss these and other TDCJ sunset issues.

Best Regards,

A handwritten signature in black ink that reads "Marc".

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RECOMMENDATIONS ON TDCJ TO THE SUNSET ADVISORY COMMISSION

Incentive Funding to Empower Counties to Reduce Prison Population and Total TDCJ Budget

- One of the best ways to achieve the important goal of reducing TDCJ's budget for the next biennium is incentivizing local jurisdictions to identify low-level offenders now sentenced or revoked to prison who could be safely supervised in the community with the proper program. Currently, a county has no fiscal incentive to reduce its unnecessary use of state incarceration. To the contrary, the county would have to bear the cost of instituting alternatives needed to safely supervise the diverted offenders, such as drug courts or electronic monitoring. In the 2011 legislative session, Senate Bill 1055 was enacted, which sought to enable counties to voluntarily enter into an agreement with the state to reduce prison commitments of low-level offenders. The success of incentive funding programs in reducing both recidivism and overall costs to taxpayers has been well documented with examples such as the Texas' juvenile system (the 2009 budget provision giving rise to the Commitment Reduction Program or "Grant C"), the Ohio RECLAIM juvenile system, and Illinois juvenile Redeploy program.¹
- A budgetary provision is needed in the next TDCJ budget to implement Senate Bill 1055 to redirect some savings from prison closures achieved through the implementation of the local commitment reduction plans described in SB 1055.. The provision would, as specified by SB 1055, ensure a net reduction in the overall TDCJ budget, as counties would receive between 35 and 60 percent of the savings that result from meeting the goal they set in their agreement with the state to reduce their prison commitments in the next fiscal year. Moreover, language specified in SB 1055 that should also be part of the corollary budget provision authorizes TDCJ to claw back funds from any county that does not meet its target. A similar provision in the budget provision for the state's juvenile Commitment Reduction Program has never come into play, as all participating counties have met or exceeded their goals. Indeed, in 2010 – the first fiscal year of the Commitment Reduction Program – juvenile commitments to state lockups fell 36 percent, saving taxpayers at least \$114 million, while juvenile crime continued to decline.²

¹ Marc Levin, "Rewarding Results; Measuring and Incentivizing Performance in Corrections," Texas Public Policy Foundation, Aug. 2010, <http://www.texaspolicy.com/pdf/2010-08-RR08-RewardingResults-CEJ-ml.pdf>.

² Marc Levin, "Incentivizing Lower Crime, Lower Costs to Taxpayers, and Increased Victim Restitution: Testimony before the Senate Criminal Justice Committee," April 2011, <http://www.texaspolicy.com/pdf/2011-04-SB1055-testimony-ml.pdf>.

- Senate Bill 1055 provides that counties can use the share of the state’s savings that they receive for community-based programs, which include treatment, specialized probation caseloads, and residential programs including short-term use of the county jail to promote compliance,. It also calls for some of the funds saved to be distributed based on performance measures at the end of the fiscal year commensurate with the extent to which the jurisdiction reduced recidivism and increased victim restitution and employment among its probationers.
- Many counties such as Dallas have expressed a strong interest in submitting a plan and participating. To the extent county plans can be developed and submitted prior to the budget being adopted next session, the Legislative Budget Board and policymakers will have a clearer idea of the potential savings that can be achieved through the prison closures associated with the number of counties participating, their share of annual prison takes, and the various targets that each county sets.

Revise Probation Funding Formula

- Currently, state basic adult probation funds are distributed based on the number of individuals under direct supervision in that department. Other state probation funds are distributed in the form of grants or based on the presence of community corrections facilities under the department’s jurisdiction. These facilities are not uniformly distributed based on population and some accept offenders from other probation departments. As the Commission recognized in its last review of TDCJ, distributing funding based on the number of adult probationers provides an incentive to keep probationers who have been compliant for many years and are fully paying their fees on probation longer than necessary. Texas’ formula for distributing juvenile probation funds avoids this problem, as it is based on the number of youths adjudicated and referred to probation as well as county population. Also, because the current funding formula does not incorporate risk, there is a disincentive to put individuals on probation in lieu of prison who could be safely supervised but only with a lower caseload, specialized treatment, electronic monitoring, and/or other interventions that are costly, though far less so than prison.
- Accordingly, the current statute that mandates funding based on the number of probationers should be revised to instruct the TDCJ Community Justice Assistance Division to develop a new formula that includes the following factors: 1) the number of felony probation referrals; 2) an incentive for early termination of compliant probationers who have fulfilled all of their obligations and do not pose a risk to public safety; 3) adjusted funding based on risk level of the caseload; and 4) an incentive to reduce technical revocations so long as new crimes by probationers either remain the same or decline. A bill that incorporated many of these factors – HB 3200 – was vetoed in 2007. However, the reason indicated for the veto was that the term “technical revocation” was not defined.³ It can and should be defined. An example of

³ Governor’s Veto Proclamation, <http://www.lrl.state.tx.us/scanned/vetoes/80/hb3200.pdf#navpanes=0>.

one reasonable definition is that the probationer being revoked has not been alleged to have committed a new offense in the past three months.

Revise Procurement Process to Measure and Incentivize Outcomes

- Current TDCJ procurement policies and practices are almost entirely based on volume. Private operators and facilities are compensated according to how many offenders they house or treat, largely without regard to the results. A related problem is that TDCJ sometimes implements funding for rehabilitation programs with an overemphasis on having the greatest number of inmates in a program given the amount of dollars allocated, with little regard for whether the program is efficacious. For example, funds for drug treatment in state jails were used for drug education, which has a poor record of success, instead of proven treatment programs for a smaller number of inmates.
- We recommend revising the procurement process so that, when feasible, contracts are not based solely on a set per diem, but also link a share of the funds to benchmarks such as recidivism, educational and vocational progress, victim satisfaction, substance abuse desistance, and other measurable outcomes that are correlated with the goal of the program. Additionally, procurement decisions should weight not just the number of offenders that a program would serve, but the program's record of achieving the intended outcomes.

Reform Administrative Segregation

- Currently, TDCJ releases hundreds of inmates every year directly from administrative segregation – some have served out their sentence while others are granted parole. A Washington state study found that inmates released directly from Supermax, which is very similar to solitary confinement or administrative segregation at TDCJ in that inmates remain alone in a cell with little or no stimulation for 23 hours a day, had a much higher recidivism and violent recidivism rate, even after adjusting for all other factors.⁴ Moreover, such inmates who had been stepped down from Supermax for a period of time prior to release were considerably less likely to recidivate.⁵
- It is nonsensical to continue a practice based on the assertion that inmates who are being released to the streets are too dangerous to be outside of their cell for more than an hour a day. Accordingly, we recommend instructing TDCJ to develop guidelines that discontinue the practice of releasing inmates directly from solitary confinement (administrative segregation) by stepping them down to a lower custody level, reduce the assignment of inmates to solitary confinement who have had no disciplinary

⁴ David Lowell, et. al., "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency*, Oct.2007, vol. 53 no. 4 633-656, <http://cad.sagepub.com/content/53/4/633.abstract>.

⁵ *Id.*

violations while in prison solely on the basis of suspected gang affiliation, and streamline the process for inmates to earn transition from solitary confinement to the general population through exemplary behavior and gang renunciation.

Ensure Reentering Prison Inmates Are Supervised Upon Release

- Thousands of inmates are released from TDCJ every year without any supervision in the critical weeks and months immediately following their discharge. This occurs because they have either served out their sentence, were denied parole, or were ineligible for parole. When such releases occur, no one knows where that offenders ends up immediately upon exiting prison, such as whether they live under a bridge, rejoin a gang, or otherwise engage in activities that are highly correlated with recidivism. Moreover, local counties, law enforcement, and social service agencies have no way of dealing with these offenders. This is of particular concern with mentally ill inmates who are flat discharged and likely go “cold turkey” off of their medications and counseling. Given that TCOOMI stopped scheduling MHMR appoints for state jail inmates because they were under no requirement to participate and in fact 80 percent failed to show up, it is reasonable to believe that only a small percentage of flat discharged mentally ill prison inmates continue their treatment upon release.⁶
- Recent research has found that comparable inmates released onto supervision with reentry support have a lower recidivism than those released without supervision after serving out their entire sentence.⁷
- We recommend creating a supervised reentry program for inmates who are now flat discharged from prison after serving their entire sentence that would ensure they spend the last few months of their sentence and the critical first few months upon release under supervision. The research suggests that, the slight additional risk from a few months of inmates not being incarcerated who in many cases have served a decade or more would be offset by the reduction in recidivism associated with an evidence-based reentry program.⁸ Furthermore, in reviewing this legislation in previous sessions (SB976 and HB1299 in 2011) the LBB has determined it would result in net savings of more than \$30 million in the first biennium.⁹

⁶ Marc Levin, “Mental Illness and the Texas Criminal Justice System,” Texas Public Policy Foundation, May 2009, <http://www.texaspolicy.com/pdf/2009-05-PP15-mentalillness-ml.pdf>.

⁷ Melinda Schlager and Kelly Robbins, “Does Parole Work?—Revisited: Reframing the Discussion of the Impact of Postprison Supervision on Offender Outcome,” *The Prison Journal* June 2008 vol. 88 no. 2 234-251, <http://tpj.sagepub.com/content/88/2/234.short>.

⁸ *Id.*

⁹ Fiscal Note for SB976 in 2011 session, <http://www.legis.state.tx.us/tlodocs/82R/fiscalnotes/html/SB00976I.htm>.