

2019-20

LEGISLATOR'S GUIDE to the Issues

Corrections Budget

The Issue

Texas has the sixth highest incarceration rate in the nation and the most prisoners (147,000) of any state, about half of whom are nonviolent offenders. However, since 2005 when the state began strengthening probation and other alternatives to incarceration, the state's incarceration rate has fallen more than 20%. During this same period, Texas' crime rate has dropped more than 30%, reaching its lowest level since 1967.

In 2007, the Texas Legislature approved a justice reinvestment plan that avoided the construction of more than 17,000 new prison beds, which the Legislative Budget Board (LBB) had projected would be needed by 2012. Instead of spending between \$2 billion and \$4 billion to build and operate the projected new beds, lawmakers appropriated \$241 million for a package of prison alternatives, from drug courts to treatment beds. Funds were also used to clear out parolees not being released because of waiting lists for in-prison treatment programs that must be completed as a condition of release and halfway houses (paroled inmates are not actually released until they have a valid home plan). The new capacity brought online in the 2008-09 budget included 4,000 new probation and parole treatment beds, 500 in-prison treatment beds, 1,200 halfway house beds, 1,500 mental health pretrial diversion beds, and 3,000 outpatient drug treatment slots.

Given that nearly all offenses can result in either probation or prison, sentencing trends may reflect the confidence that judges, juries, and prosecutors have in the effectiveness of probation. Although the LBB had traditionally assumed an annual 6% increase in the number of offenders sentenced to prison due to population growth and other factors, sentences to prison actually declined beginning in 2009 as more nonviolent offenders went on probation. Similarly, members of the Board of Pardons and Paroles have suggested inmates who complete treatment programs are more attractive candidates for parole, which likely explains significant increases in the parole rate over the last decade even as new crimes by parolees have fallen.

Capitalizing on Texas' recent success, the state has closed eight prisons since 2007, avoiding millions in operating costs while also selling valuable land, such as the former Central Unit in Sugar Land.

The Facts

- Prisons cost Texas taxpayers \$61.63 per inmate per day, which is \$22,495 per year.
- TDCJ's budget increased from \$793 million in 1990 to \$3.3 billion in 2018.

Recommendations

- **Fully implement Senate Bill 1055 (2011) to incentivize lower costs and less recidivism.** SB 1055 provides that counties can use the share of the state's savings that they receive for

community-based corrections programs, which include drug courts, specialized probation caseloads, and residential programs, including short-term use of the county jail to promote compliance. A provision is needed in the next budget authorizing TDCJ to implement SB 1055.

- **Revise probation funding formula.** Currently, state basic adult probation funds are distributed based solely on the number of individuals under direct supervision in that department. Distributing funding based on the number of adult probationers provides an incentive to keep probationers who have been compliant for many years, pose no risk to public safety, and are fully paying their fees on probation no longer than necessary. 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. Furthermore, the current funding formula creates a disincentive for counties to offer pre-charge diversion to first-time, low-risk defendants from probation altogether, such as through the First Chance Intervention program spearheaded by the Harris County district attorney. Adopting a funding mechanism similar to juvenile probation that incorporates the population of the county but not the number of individuals on probation would address this. The new formula could also incorporate the following: an incentive for early termination of compliant probationers who have fulfilled all of their obligations and do not pose a risk to public safety, adjusted funding based on risk level of the caseload, and an incentive to reduce technical revocations so long as new crimes by probationers either remain the same or decline.
- **Enhance use of alternatives to prison for drug offenders and problem-solving courts.** Drug courts, mental health courts, DWI courts, and other problem-solving courts have been proven to reduce recidivism and lower costs by diverting appropriate offenders from incarceration while still holding them accountable. State funding should focus on felony offenders and be based on guidelines that ensure the lowest-risk, low-level drug possession offenders who can succeed with basic probation do not take up slots that could be better used to divert offenders who might otherwise be incarcerated. A presumption of a problem-solving court, probation with treatment, or other alternative to prison should be established for a third degree drug possession offense, which involves possession of one to four grams of most drugs. This presumption could be overcome if the court makes written findings that the offender is a danger to public safety.

continued

Resources

[*Texas Adult Corrections: A Model for the Rest of the Nation*](#) by Greg Glod, Texas Public Policy Foundation (Oct. 2015).

[*Unlocking the Key Elements of the Adult Corrections Budget*](#) by Marc Levin, Texas Public Policy Foundation (May 2011).

[*The Role of Parole in Texas: Achieving Public Safety and Efficiency*](#) by Marc Levin and Vikrant Reddy, Texas Public Policy Foundation (May 2011).

[*Incentivizing Lower Crime, Lower Costs to Taxpayers, and Increased Victim Restitution*](#) by Marc Levin, Texas Public Policy Foundation (April 2011).

