



## Putting “Corrections” Back in State Jails

### *How to Reform Texas’ Expensive, Ineffective State Jail System*

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#### Key Points

- State jails were envisioned as a cheaper, more effective way to rehabilitate low level adult offenders and prevent them from a continued life of crime.
- The key to this vision was short terms in state jails focused on rehabilitation and drug treatment, followed by community supervision.
- Today, state jails cost 90 percent of what prisons cost Texas taxpayers, and actually produce much worse recidivism rates.
- By changing state law to require community supervision for state jail felons, state jails can be returned to their original purpose, as both a sanction and integral part of the community supervision system, with a focus on rehabilitation and reducing recidivism.

**S**tate jails in Texas are a part of the prison system. State jails are managed by the state, but unlike prisons, almost exclusively house inmates charged with low-level larceny and drug possession crimes. State jails were designed to be a low-cost alternative to prison, with dual goals of reducing prison populations and reducing recidivism rates in low-risk defendants.

Unfortunately, state jails are universally failing in their objective. Almost as expensive as prisons, with higher recidivism rates, state jails merely cycle state jail felons in and out of the jailhouse doors, doing little to reduce risks of future criminality, but doing a great deal to burden Texas taxpayers.

This paper details the bad deal Texas taxpayers get for the their state jails, both in high costs and increased risks to the public safety, as well as the ways the Texas Legislature can fix the state jail system for good.

#### Executive Summary

In 1993, the Texas Legislature was faced with an overcrowded prison system and prison population projections threatening to bust the state budget. To address these issues, the Legislature took a decisive step in the right direction by creating a state jail system as an alternative to the prison system for low-level offenders. The Legislature sought—and found—a way to provide punishment for drug and minor property crime offenders while alleviating the burden on the prison system, and continuing to prioritize public safety by implementing targeted treatment approaches to strike at the heart of the crimes committed.

The Legislature specifically wanted to accomplish two goals: first, policymakers sought to reserve prisons for violent, serious offenders, ensuring sufficient beds existed to support long sentences for these “worst of the worst,” and capture the cost savings possible by prioritizing prison bed space in this way. Second, however, the Legislature also intended to address the underlying issues for most low-level drug and property offenders. Often described as part of the continuum of options for judges, and with rehabilitation as the state jail system’s cornerstone, state jails were created to be a distinctive system from prisons.

This is no more evident than in the way these facilities originally received offenders: judges were permitted to sentence the new class of state jail felons, low-level offenders, only to a state jail term as a condition of probation supervision. It was envisioned that this would enable judges to maintain leverage over offenders to promote compliance with the terms of supervision, as offenders would know that failure to comply could result in a swift ticket to state jail. In this sense, the concept was ahead of its time, as drug courts and courts employing swift and sure sanctions now use such ongoing oversight and the threat of jail time to cajole offenders to comply with the regimen of appearing in court, taking drug tests, and participating in treatment.

Unfortunately, this plan had not been fully implemented when the next two Legislatures retreated from the bold steps taken by the 73rd Legislature. The next two legislative sessions generated alterations to the state jail system prior to full implementation of the original

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system, and without evidence of its effect on the criminal justice system or public safety. These alterations removed the character of state jails as part of the community supervision system and decreased the likelihood of rehabilitation or supervision. By doing so, those Legislatures cemented their status no longer as an alternative to the prison system, but a substitute for the prison system. And that status remains true today, with unfortunate consequences for taxpayers and the public safety alike.

Today, 99.7 percent of state jail offenders each year are directly sentenced to a term of 6 to 24 months in a state jail facility without any guarantee of rehabilitation or treatment options based on their underlying criminal offense and with no supervision in their community upon release. Today, state jails cost only slightly less than prisons. Today, state jail offenders recidivate more—and more quickly—than prisoners. Today, state jail offenders receive less targeted treatment than those supervised in their communities and even those in the prison system.

As a result, Texas taxpayers shoulder the burden for two prison systems in Texas, with poor results for state jail felons, and with significant effects on the public safety in Texas. Alleviating this burden and enhancing public safety is possible by reinvigorating the original purpose behind the state jail system.

Policymakers must make meaningful reforms to the state jail system to restore the bold intent at their creation and reshape these revolving-door lockups that now warehouse, rather than correct, offenders. First, policymakers must remove the unqualified ability to directly sentence a state jail felon to a term of months in such a facility without supervision or rehabilitation. Second, once the state jail system is again part of the community supervision continuum, the immense success Texas counties have shown with community supervision and treatment of felons can be applied to state jail felons, both with in-house programming as well as court-ordered treatment prior to and after a term is served in the state jail system.

With careful policy reforms, state jails can be returned to their original place in the system: an alternative to prison that more efficiently rehabilitates low-level offenders at a lower cost, giving Texas taxpayers and citizens what they originally bargained for.

## The History of the State Jail System in Texas

In 1993, Texas policymakers began their session facing an uphill battle with the prison system. Overcrowded prisons, a federal order decreeing the current situation to be cruel and unusual, and counties unable to continue housing state inmates awaiting transfers put immense pressure on the system.<sup>1</sup> Lawmakers were tasked with finding a solution that would not only relieve the current overcrowding, but also prevent continued population pressures on the system. One of the solutions proposed and adopted was the creation of an alternative to prison for low-level non-violent offenders, deemed the state jail system.

The 73rd Legislature considered and passed two bills, Senate Bill 532 and Senate Bill 1067. The former created the state jail division, while the latter created the category of offenses that would become state jail felonies.<sup>2</sup> The selected offenses were culled together by reclassifying offenses that were previously third degree felonies and some Class A misdemeanors.

The Legislature created state jails to not only permit longer periods of time served for serious, violent offenders in Texas prisons, but also to increase positive outcomes for low-level drug and non-violent property offenders by providing an array of programming to specifically address those issues.<sup>3</sup> In fact, legislative reports make it quite clear: “[r]ehabilitation programming is meant to be the cornerstone of the state jail system.”<sup>4</sup>

This rehabilitation was thought possible as state jails were a part of the “community continuum,”<sup>5</sup> able to provide low-cost community-based secure confinement when necessary *and* rehabilitation for low-level non-violent offenders, usually found guilty of property or drug offenses.<sup>6</sup> State jails were meant to be an important part of the community continuum, as they created a “structured environment” for offenders who needed it to truly take hold of rehabilitation programs or to sanction violations of their probation.<sup>7</sup>

To achieve this high rate of rehabilitation and desistance from crime, state jail officials in the Texas Department of Criminal Justice (TDCJ), in collaboration with the existing community justice assistance division, were to create work programs, rehabilitation opportunities, education systems, and recreation on a 90-day cycle within the facilities.<sup>8</sup> This 90-day cycle was key—and specific to state jails, as state

jails were created with the intention that 90 days would usually be the maximum normal term for a state jail offender.

This is because state jails, as part of the continuum, were normally to be used as a condition of probation. As “part of the available resources for judges who place defendants under probationary supervision,”<sup>9</sup> time served in a state jail facility was an excellent tool for encouraging adherence to rehabilitation goals or to punish violations of community supervision.

Judges had a few options for using state jails. At the outset, a state jail felony conviction automatically resulted in probation for at least two years.<sup>10</sup> Judges could, if they so chose, require a state jail felon to serve 60 days of “up front time” in a state jail; otherwise, defendants could be sent to a state jail after violating a term of their probation, for terms of 75 to 181 days. Or, if their community supervision was revoked, the original sentence was reinstated, and the court retained jurisdiction for one year to evaluate the offender’s progress and potentially reinstate community supervision.

Whether or not the system was effective at rehabilitating low-level drug and property offenders, however, was never determined. This is because prior to full implementation the Legislature altered the state jail system. It previously stood as a part of community corrections, a sanction and tool for judges; two bills stripped it of this character and turned it into an independent incarceration system, more akin to prisons than community corrections.

In 1995, the Legislature introduced discretionary placement on community supervision for state jail felons with one previous felony conviction, and increased upfront time to 90 days.<sup>11</sup> In 1997, the Legislature removed all mandatory community supervision for state jail felons, permitting direct sentences to state jails in all cases.<sup>12</sup> With these changes, judges were no longer required to place a state jail felon on community supervision, and a previously distinct tool for probation enforcement was dissolved into the prison system.

Judges quickly used their new discretion and permission to directly sentence state jail offenders. In fact, *both* judges and offenders now prefer direct sentencing to a state jail.<sup>13</sup> This

likely is because judges see a state jail term as a “tougher” sentence than community supervision, while offenders would prefer a stint in a state jail rather than a longer period of community supervision and the attendant requirements and tracking a probationer in Texas undergoes. As a result, today, out of 23,231 state jail offenders received into a state jail facility in the 2011 fiscal year, all but 78 were directly sentenced, and only 158 were ever released to community supervision.<sup>14</sup>

The original model was not in place long enough to be evaluated, but we have clear outcomes for the current formulation of state jails: the result has been high rates of recidivism and significant costs to taxpayers.

## Today’s Problematic State Jails

State jails, originally created as an alternative to prisons, have veered away from this intended purpose. No longer an alternative to prisons, state jails have also become increasingly expensive and less effective in rehabilitation. Texas policymakers saw the possibility for state jails to provide less costly incarceration and targeted, effective rehabilitation. Today, state jails provide neither. The cost-per-day for incarceration rivals that of prisons, and the rehabilitative successes, as measured by recidivism rates, is even worse than prisons. In fact, for capacity reasons, about half of the offenders in state jails now are not state jail felons, but those convicted of more serious felonies placed in state jails for capacity purposes, further illustrating the extent to which the state jail system has dissolved into the broader prison system.<sup>15</sup>

## Mounting Costs

One of the reasons lawmakers saw fit to create an alternative placement for low-level offenders was the ability to incarcerate these offenders at a lower cost. Given the fewer risks and shorter terms for these offenders, policymakers sought to take advantage of the “cheaper operational cost than prisons”<sup>16</sup> when voting for the enabling legislation in 1993. Today, however, state jails provide very little—if any—cost savings.

In 2010, prison costs varied from \$44.12 to \$49.56 per day, per offender,<sup>17</sup> varying with the type of prison. State jail costs rose to \$43.03 per day in 2010, fully 87 to 97.5 percent of the cost of a prison bed.<sup>18</sup> Private state jails are operated at a cheaper rate than state facilities, but still the costs in those facilities are over \$30.73 per day, and only five of the state jails

## State jail inmates are reincarcerated 23 percent more often than prison inmates.

in Texas are operated privately (this cost figure does include indirect administration costs, but does not include health care or fixed costs associated with overall operation).<sup>19</sup> Thus, the cost savings once thought possible are barely realized, if any still exist.

Interestingly, state jail costs for state-run facilities rose 38.5 percent between 1998 and 2010, leading to today's mounting costs. However, private state jails were much more effective at controlling costs, as privately run facilities only rose in cost 3.5 percent (from \$29.69 per day to \$30.73 per day).<sup>20</sup>

### Poor Rehabilitation and High Recidivism

Costs alone don't provide the entire picture of the failing state jail system. Generally, costs—even rising costs—are commonplace in criminal justice systems, and a necessary price to keep streets safe. Unfortunately, these rising costs are failing to do just that: ensure the safety of Texas citizens. This is because state jail inmates reoffend and are re-incarcerated at increasingly high rates, even higher than prison inmates.

State jail inmates released in 2007 were re-incarcerated 31.9 percent of the time after three years, with an average time-to-failure of 17 months.<sup>21</sup> The rearrest rate for the 2006 cohort of state jail inmates was 64.2 percent. That means that out of every three inmates released from a state jail, two were rearrested and one of those was reincarcerated.

In contrast, according to the most recent data, only 26 percent of prison inmates were reincarcerated after three years and 48.8 percent were rearrested.<sup>22</sup> This is especially significant in light of the fact that prison inmates are convicted of substantially more serious crimes than state jail inmates, and often have longer records.

Further, today's high recidivism rates for state jail offenders are far greater than those in years past. In 2001, a study of state jail offenders released in 1997 and 1998 tracked re-incarceration within two years, and found that 24.7 percent of offenders in the 1997 cohort recidivated, while 19.4 percent of those released in 1998 were re-incarcerated within two years.<sup>23</sup> Interestingly, the report credited higher rates of releases with supervision in 1997,<sup>24</sup> and the subsequent technical violations, as the reason for the higher recidivism rates in 1997. The two-year recidivism rates based solely on new offenses, excluding technical violations, was higher for those released without supervision in 1997 and 1998.<sup>25</sup>

These high recidivism rates are often sourced to the lack of targeted rehabilitation provided in state jails. Part of the original design of state jails was to provide intensive targeted rehabilitation and programming to low-level offenders, cutting off the cyclical nature of criminality prior to it taking hold in these offenders.

That rehabilitation focus has largely disappeared, and perhaps was never fully realized. As late as 1998, state jail inmates were still required to participate in six hours of programming every day, and the system reported over 70,000 hours of labor each month.<sup>26</sup> By 2003, however, program-

### Today's State Jail Inmate

In Texas, there are 15 state jails owned and operated by the state, and five state jails contracted out to private operators. These 20 facilities received 23,231 offenders in the fiscal year 2011. Out of these offenders, 47.9 percent were property offenders, while 35.2 percent were drug offenders. Both property and drug offenders usually have a sentence of between 7 and 12 months. The average sentence for all offenders was a little under 10 months.

The most common crime for property offenders was larceny, the conviction for 48 percent of property offenders, followed by burglary, which made up 16.7 percent of property crimes. Drug offenders were almost wholly convicted of possession, the crime of choice for 88 percent of drug offenders in state jails.

*Source: Texas Department of Criminal Justice*

ming in state jails had entirely shut down due to “funding constraints.”<sup>27</sup> In 2007, in-facility substance abuse treatment was initiated in select facilities—but only in six of Texas’ state jails, at a cost of \$7.04 per day in fiscal year 2010. Even that programming lasts only 30 days, and at most 90 days, making up only a portion of the average state jail term.<sup>28</sup> Only 3,907 offenders completed substance abuse treatment in a state jail in the last year data was available, approximately 17 percent of all offenders.<sup>29</sup> Notably, 64.7 percent of state jail offenders were tested and found to be chemically dependent—a significantly higher proportion than those actually receiving treatment.<sup>30</sup>

Today’s state jail programming is sporadic and lacks in participation, scope, and effectiveness. In addition, because offenders are almost always directly sentenced to a term in state jails, rather than as a condition of probation or as up-front time on probation, there is little incentive for participation in rehabilitative programming. State jail terms are served day-for-day, with no opportunity for early release, leaving little encouragement, incentive, or ability to compel participation or adherence to rehabilitation or programming.<sup>31</sup>

Recent legislation, enacted in 2011, modified this to some degree by enabling most state jail felons to earn up to 20 percent of their term in good credit days by completing treatment, vocational, or educational programs while behind bars.<sup>32</sup> Although judges could use existing authority to put them on “shock probation” for the remainder of the term, such “shock probation” continues to be rarely used, including for the third of state jail offenders who have received this new credit. The lack of availability of such programs is limiting the number of offenders who obtain the credit and even those who do are typically discharged without supervision.

This lack of programming has also contributed to the high recidivism rates for state jail felons.\* Especially in light of the costs to house an offender in a state jail facility, this failure to rehabilitate these low-level offenders is especially disconcerting.

## Recommendations for Reform: Statutory Fixes for State Jail Sentencing

Today’s problematic state jails must be reformed to reduce costs and increase the effectiveness as well as positive outcomes for public safety. The primary way to do so is to return the state jail system to its former state, a part of the community supervision continuum of correctional tools. The Texas Legislature in 1993 was decades ahead of its time, using the state jail system to implement swift and sure sanctions for probationers before the Hawaii HOPE court model was even a glimmer in Judge Steven Alm’s eye.<sup>33</sup>

Swift and sure sanctions have been proven effective by probation departments following the HOPE court’s lead, which to this day achieves a more than 50 percent reduction in probation revocations and reoffending, an 80 percent reduction in missed probation appointments, and an 86 percent reduction in positive drug tests.<sup>34</sup>

The key to swift and sure sanctions is the knowledge that far tougher sanctions are immediately handed down upon violation. As Judge Alm has explained, a small possibility of a longer term in jail which might start months from the date in question is far less of a deterrent than the clear understanding that one will go to jail this weekend if a drug test is positive. Texas policymakers envisioned something similar to the HOPE Court model for the state jail system almost two decades ago, but today statutory changes are necessary for the state jail system to act as a more effective sanction. Instead of maintaining the leverage that a judge and probation department gain from ongoing oversight of an offender and setting clear expectations as to what is required to avoid flash incarceration in a state jail, those offenders now sent to state jail typically never see the judge again and never come in contact with the probation department.

By removing the 1995 and 1997 amendments to Section 15, Article 42.12, that permitted judges to directly sentence state jail felons to a term of years in a state jail facility without any community supervision whatsoever, state jails could return to their originally conceived status—an enhanced sanction

\* Prison programming has been shown to reduce recidivism. For example, inmates in California’s in-prison substance abuse programs recidivated at a rate 18.9 points lower than the general population. (California Department of Corrections and Rehabilitation, “In-Prison Substance Abuse Program Return to Prison Analysis,” 2009). In addition, a variety of drug treatment, cognitive-behavioral treatment, and basic and vocational education in prisons were found to reduce recidivism risks between 5.1 and 12.6 percent. (Washington State Institute for Public Policy, “Evidence-Based Adult Corrections Programs: What Works and What Does Not,” Jan. 2006).

## Recommendations for Reform

- Require community supervision for all state jail felons. State jail placement can be used as either up front time or as a sanction for violating terms of community supervision.
- Reinvest a portion of the savings with Community Supervision and Corrections Departments (CSCDs), to aid in their efforts to reduce recidivism and safely supervise state jail felons.
- Reemphasize the importance of rehabilitation for state jail felons, as it is essential to kick the criminal habit before their behavior escalates. Rehabilitation should be a required focus during both short state jail stays and community supervision terms.

for low-level state jail felons who violate a term of their community supervision.

Simply, the code must be amended to read,

"On conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subdivision (1), the judge ~~may shall~~ suspend the imposition of the sentence and place the defendant on community supervision ..." Texas Code of Criminal Procedure, Art. 42.12, Sec. 15(a)(2).

It is important to note that state jail offenders in Texas with previous long records of violent felonies and sex crimes would still be subject to the penalty enhancement found in the Texas Penal Code Section 12.35(c), which permits any state jail offender to be punished for a third degree felony if he or she used a deadly weapon or knew one would be used, or were previously convicted of certain felonies.<sup>35</sup>

By universally requiring community supervision in this way, a judge can impose a significant degree of leverage over state jail offenders that is not currently possible. In addition, offenders that have a job, strong family and community supports, and positive peer groups have every motivation to keep them, and since even a three month initial term of incarceration undermines or eliminates those strengths, beginning a sentence on community supervision may permit more offenders to keep those supports.

It is vitally important that state jails exist as a tool for judges to ensure adherence to community supervision provisions. However, the current trajectory of state jails—ever-increas-

ing costs *and* recidivism—is failing Texas taxpayers and citizens who desire only safe streets. The 73rd Legislature was right in ensuring that secure confinement is an option for state jail felons, along with community supervision.

## Supervision in Communities to Keep Streets Safer

With state jail felons now placed on community supervision as a default, local probation departments will be tasked with, at least primarily, providing community supervision for these offenders. Fortunately, the Legislature has entrusted Community Supervision and Corrections Departments (CSCDs) with felony supervision before, and the CSCDs have proven particularly adept at leveraging diversion funding into increased public safety.

Generally, supervision has been shown to reduce recidivism. Offenders who "max out," or serve their entire term in prison without supervision, are re-arrested and re-incarcerated more often than those released to supervision, and more of those were for violent crime or assaults than those under supervision, while maxed out offenders' survival time was shorter than those released with supervision.<sup>36</sup>

Currently, state jail felons are not provided any community supervision following their state jail term. Such supervision would ensure that offenders stay on the right track and obtain housing, employment, or desist from drug use. Data indicates that state jail felons could be safely supervised in the community. Non-violent criminals to begin with, while inside a state jail, almost all state jail felons received in 2011 (21,382 or 92 percent) had good disciplinary history.<sup>37</sup>

As noted earlier, an indication of the importance of supervision for state jail felons arose last legislative session. House Bill 2649, which permitted offenders who demonstrate “exemplary conduct” by participating in education, treatment, or vocational programs (if offered at the state jail) to spend up to 20 percent of their sentence on probation in their community, was a step towards increased supervision for state jail felons.<sup>38</sup> Policymakers were encouraged by not only the projected \$49 million in cost savings, but also in the benefits of supervision—accountability, job and housing direction, and other restrictions.

Those restrictions are indeed what lead many state jail felons to request a direct sentence to a state jail rather than community supervision. Probation is not an easy task—it is longer than average state jail terms (two to five years, generally, and can be extended up to ten years) and restricts a great deal of their freedom. There are a wide variety of possible conditions of supervision an offender must meet while on probation. In fact, a judge can impose “any reasonable condition” to protect the community, restore the victim, or for purposes of punishment, rehabilitation, or reformation.<sup>39</sup>

Texas law also suggests the following conditions:

1. Commit no offense against the laws of this State or of any other State or of the United States;
2. Avoid injurious or vicious habits;
3. Avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang;
4. Report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;
5. Permit the supervision officer to visit the defendant at the defendant's home or elsewhere;
6. Work faithfully at suitable employment as far as possible;
7. Remain within a specified place;
8. Pay the defendant's fine, if assessed, and all court costs whether a fine is assessed or not, in one or several sums;
9. Support the defendant's dependents;
10. Participate, for a time specified by the judge, in any community-based program, including a community-service work program under Section 16 of this article;
11. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending the defendant in the case, if counsel was appointed, or if the defendant was represented by a public defender's office, in an amount that would have been paid to an appointed attorney had the county not had a public defender's office;
12. Remain under custodial supervision in a community corrections facility, obey all rules and regulations of the facility, and pay a percentage of the defendant's income to the facility for room and board;
13. Pay a percentage of the defendant's income to the defendant's dependents for their support while under custodial supervision in a community corrections facility;
14. Submit to testing for alcohol or controlled substances;
15. Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Department of State Health Services;
16. With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;
17. Submit to electronic monitoring;
18. Reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32, of the defendant's offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;

19. Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;
20. Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;
21. Make one payment in an amount not to exceed \$50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Texas Crime Stoppers Council;
22. Submit a DNA sample to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant;
23. In any manner required by the judge, provide public notice of the offense for which the defendant was placed on community supervision in the county in which the offense was committed; and
24. Reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case.<sup>40</sup>

Recent law also requires submission of a DNA sample.<sup>41</sup>

This list provides an indication of why state jail felons are opting for 10 months in a state jail rather than two to five years of probation. Texans who seek safer streets, however, may choose the latter.

Furthermore, many CSCDs have shown themselves to be effective providers of supervision, and the Legislature has repeatedly entrusted them with taxpayer dollars to do so.

The Legislature has, in recent years, appropriated considerable resources for community supervision. The 79th Legislature provided an additional \$55.5 million per biennium

intended to reduce caseloads, increase the utilization of progressive sanctions models, and provide additional residential treatment beds.<sup>42</sup> This included \$28 million over two years (2006-2007) to hire additional community supervision officers for medium and high risk offenders, \$26 million over those two years for residential treatment and sanction beds, and a commitment to "encourage" the use of progressive sanctions.<sup>43</sup>

The 80th Legislature provided \$32 million for 800 new community correction facility beds, \$10 million more for outpatient substance abuse treatment, \$63 million for 1,500 new Substance Abuse Felony Punishment Facility beds, and \$28 million for 1,400 new Intermediate Sanction Facility beds.<sup>44</sup> The 80th Legislature also provided a transfer of \$6.5 million over the biennium from Department of State Health Services to TDCJ for outpatient substance abuse treatment for probationers.<sup>45</sup>

Funding appropriated in recent years for community supervision for higher risk offenders has proven effective. Between August 2005 and August 2011, community supervision of felons increased eight percent, to 170,558 offenders, while revocations dropped one percent with the new funding.<sup>46</sup> Specifically, CSCDs that received the diversion funding from the legislature used it to obtain a 3.6 percent drop in felony revocations.<sup>47</sup> Technical revocations have also dropped, at a rate of 10.4 percent statewide and 14.5 percent in CSCDs using diversion funding.<sup>48</sup> CSCDs that declined diversion funding, and therefore were not required to implement graduated sanctions, increased felony revocations 9.1 percent, and technical revocations 6.9 percent, even while the number of offenders monitored dropped.<sup>49</sup>

Data shows that residential programs operated by CSCDs are more effective in reducing recidivism rates. On average, across all the residential programs CSCDs operate, which are known as community corrections facilities, only 25 percent of offenders completing\* their programs were re-incarcerated after two years, and only 33 percent were rearrested.<sup>50</sup>

In order to ensure competent supervision of state jail felons in the community, a portion of the savings realized by the reduced use and populations in state jails should be sent to the counties to provide for their increased probation pop-

\* High proportions of offenders complete their residential treatment programs as well: 77 percent in the 2008 fiscal year.

## Other Benefits of Supervision

- Probation supervision includes requirements for the offender, but also assistance finding employment and stable housing.
- Probation supervision can include requirements to keep and attend mental health appointments; previously, attendance at these appointments by state jail felons released without supervision was under 18 percent, according to TDCJ officials, prompting mental health authorities to discontinue their work with released state jail felons.
- Probation supervision includes a requirement to have a valid home plan. Living under a bridge is a recipe for recidivism, and probation officers can not only require but in some cases facilitate stable housing for state jail felons on probation.

ulations. By basing this reinvestment on the reduction in daily state jail bed use by state jail felons attributable to a particular county, the state can obtain far more effective supervision and rehabilitation of state jail felons while retaining a portion of the savings to reduce the overall budget for TDCJ. This also is an equitable recognition of the increased demand on a county's probation budget and the role that county played in the reduced state jail population.

With this funding realignment, community supervision, then, is both a tougher "deal" for state jail felons and a more effective use of taxpayer dollars. Today's broken state jail system must cede to the more efficient community supervision system. The Legislature has already made the investment, constructed the facilities, and brought the beds online—furthermore, the regional structure of these jails not only cuts down on transportation cuts and increases the possibility of family visits while in the state jail, but also eases the geographic transition between community supervision and the time, if any, one serves in a state jail.

## Rehabilitation Alternatives In and Out of State Jails

Finally, a key component of this system of handling state jail felons is a reinvigoration of the commitment to treatment shown by the Legislature in 1993. First, providing intensive

treatment to offenders with a proven record of drug addiction will break the cycle of drug abuse in many offenders and reduce further cycles through the state jails. Second, adding a work release option to offenders with financial crimes will not only aid in restitution for victims but put them on track towards earning an honest living, rather than persisting in criminal activity.

Through the use of community supervision, the original commitment to rehabilitation for these low-level offenders can be reinstated. The vast majority of state jail felons are either drug or property offenders, and the latter often experience substance abuse issues as well. CSCDs already use a risk and needs assessment to appropriately place offenders under their jurisdiction.<sup>51</sup> State jail felons should be similarly assessed with a reliable and accurate risk and needs assessment to determine the level of substance abuse treatment or work programming needed, as well as the amount of supervision necessary to keep the state's streets safe.

Prior criminal histories of drug offenders in state jails indicate a likelihood of successful placement in drug treatment programs. Out of the 3,288 drug offenders on-hand as of April 30, 2012, 31.6 percent had no prior offenses.<sup>52</sup> Overall, 72 percent of those drug offenders had two or fewer prior convictions.<sup>53</sup> These very low-level offenders would likely be appropriate and safe placements into a drug treatment program, although there are drug treatment programs with more security for even high-level offenders.

Table 1 (*see next page*) provides information on the variety of substance abuse treatment options offered through CSCDs, and a few provided by the state.

While fewer in number than substance abuse programs, work related programs are also available for property offenders without a substance abuse issue. Some—but not all—property crimes are motivated by poverty. Employment and legal access to funds would certainly decrease the impetus for property crimes.

For instance, restitution centers are residential placements targeted towards offenders who previously had difficulty holding down employment and also had outstanding restitution orders. Such centers aid in job placement, while ensuring payment of restitution and providing life skills and other cognitive programming.<sup>54</sup>

**Table 1: Community-Based Substance Abuse Treatment Options**

Name	Description	Eligibility/Appropriate Placement	Additional Services
Day Reporting Center (DRCs)	Non-residential placements providing high levels of structure and supervision.	Felony and misdemeanor offenders.	DRCs can broker substance abuse services, job placements, or referrals.
Intensive Supervision Probation (ISP)	Non-residential placement on a specialized (smaller) probation caseload.	Lower-risk offenders that can be safely placed in their home communities; appropriate for those with stable employment.	ISPs can use electronic monitoring, field surveillance, or more frequent urinalysis.
Treatment Alternative to Incarceration Program (TAIP)	Outpatient substance abuse treatment placements provided by a CSDC. Costs average \$7.79 per day.	Indigent offenders with substance abuse issues (TAIP works to resolve financial barriers to treatment).	Screening, assessment and evaluation, referrals or placements into a licensed chemical dependency program.
Transitional Treatment Centers (TTCs)	Private, residential placement for substance abuse aftercare, usually a 90-day placement with evening reporting (offenders are able to work fulltime). Costs average \$35 per day.	Usually offenders that have completed in-prison substance abuse treatment or a SAFFP.	Counseling; 25 percent of an employed offender's gross income is given to the TTC, which then credits the amount to the state's payments.
Court Residential Treatment Centers (CRTCs)	Residential placement ordered by the court or as a condition of probation. Placement lasts less than 24 months.	Felony or misdemeanor offenders with substance abuse issues.	CRTCs can involve substance abuse treatment, educational programming, vocational training, and life skills training.
Substance Abuse Treatment Facilities (SATFs)	Residential facilities targeted towards encouraging desistance from drug and/or alcohol abuse. Placement lasts less than 24 months.	Offenders with substance abuse issues.	SATFs usually use cognitive-based substance abuse treatment.
Intermediate Sanction Facilities (ISFs)	Short-term detention alternative to revocation or prison placement, placement is for less than 24 months.	Offenders who have previously been placed on community supervision and have violated one or more terms.	ISFs focus on substance abuse issues and encourage education and employment
State-Contracted Intermediate Sanction Facility (SC-ISFs)	Secure lockdown facility, akin to detention. Placement is usually for 90 days, although a 45-day track targets relapsed offenders.	Medium or high-risk felony offenders in violation of supervision.	Substance abuse treatment or cognitive therapies.
Substance Abuse Felony Punishment Facilities (SAFPFs)	Highly structured prison-like facilities. Placement for six to nine months. Existing capacity of 400-500 beds. Followed by aftercare.	Serious offenders, usually with history of failure in other settings.	Highly structured work, education, and treatment schedules, and well-defined goals and guidelines.

Sources: Texas Department of Criminal Justice, Community Justice Assistance Division, Legislative Budget Bureau

Work release programs highlight the effect of having a job on low-level property offenders. At work release centers such as those in Washington State, offenders go to work during the day but report back to the center after work where they sleep. Under the work release model, after an appropriate amount of time in compliance, the offender is transitioned to probation, which in some cases could include electronic monitoring and even house arrest enforced through the monitoring so that the individual is verified to be at home

when not at work. Washington State's work release program has achieved a 2.8 percent reduction in recidivism, amongst otherwise identical offenders.<sup>55</sup> Florida's work release program increased the probability of employment by 6 to 11 percent and cut recidivism by 8 percent after three years,<sup>56</sup> and Kansas found a 12 percent cut in recidivism for offenders participating in their work release program.<sup>57</sup> Work release programs typically cost less than traditional incarceration because the participant often pays some or all of their

room and board cost and eats some meals while working. Although less direct, there may also be tax revenue to the state associated with the individual's employment. Perhaps most importantly, someone transitioned to work release is more likely to maintain long-term employment and less likely to end up being dependent on government programs than if they were simply released straight from prison.<sup>58</sup>

Those offenders without a job at the time of discharge are not out of luck—day reporting centers provide a place to learn a skill and obtain other vocational education on the path to obtaining a job. Georgia uses such centers, and recidivism rates for offenders placed in those facilities are one-quarter the rate of other offenders.<sup>59</sup>

Finally, Texas policymakers should consider creating a new version of Project RIO. Project RIO was a collaboration between TDCJ and the Texas Workforce Commission (TWC) that assisted employment efforts by ex-offenders, involving education, training, and employment referrals. Project RIO was successful in leveraging community ties previously developed by the TWC into 12,000 employers who were willing to hire ex-offenders.<sup>60</sup> Evaluations highlighted almost double the rate of employment for RIO participants than non-participants, and lower recidivism rates.<sup>61</sup> The main drawback to Project RIO was the inherent selection bias in this type of program. That is, it was not clear whether participants in Project RIO were those most likely to obtain employment regardless of the program. Also, data did not clearly indicate which jobs obtained by participants were through Project RIO or due to other efforts or connections. This, in part, led to the Legislature eliminating funding for Project RIO beginning in the 2012 fiscal year in order to streamline TDCJ's budget.<sup>62</sup>

A better version of Project RIO would involve contracts with private sector providers of workforce solutions who would be evaluated and paid based on performance measures, such as how many participating offenders are employed through the program's efforts beyond the baseline rate for that type of offender. Funding for such an initiative would come from savings realized from reductions in the jail population that would result from returning to the original model where shorter-term jail stays are used as conditions of probation.

## Conclusion

State jails are a black eye on Texas' criminal justice system. Expensive and ineffective, the state jail felony system has strayed far from its intended purposes. Policymakers need not permit the losses to compound upon each other any longer, however.

Reforming state law to return state jails to their originally intended purpose would give community supervision in Texas a powerful tool in their efforts to rehabilitate and punish offenders. Swift and sure sanctions have proven effective, and Texas lawmakers' ingenuity in 1993 should finally be truly implemented. Strong community supervision in combination with effective, targeted rehabilitation could substantially decrease recidivism and lower costs, finally putting the "corrections" back in state jails. 

- <sup>1</sup> "Focus Report: New Demands on Texas Prison Space Revive Debate Over Correctional Strategies," House Research Organization, Texas House of Representatives (Nov. 1997) 3-5.
- <sup>2</sup> "Agency Strategic Plan: Fiscal Years 2013-2017," Texas Department of Criminal Justice (July 2012) 2.
- <sup>3</sup> "Interim Report to the 81st Legislature," House Committee on Corrections (Jan. 2009) 18.
- <sup>4</sup> "Interim Report 77th Legislature: Charge Five," Senate Committee on Criminal Justice, 17.
- <sup>5</sup> Ibid.
- <sup>6</sup> Ibid., 5.
- <sup>7</sup> Ibid., 5.
- <sup>8</sup> "SB 532: Bill Analysis," House Research Organization (May 1993) 13; "Bill Analysis: S.B. 532" Senate Research Center, 3.
- <sup>9</sup> "Final Bill Analysis: Senate Bill 532 State Jail Legislation," Texas Punishment Standards Commission (July 1993) 4.
- <sup>10</sup> Senate Bill 1067, 73rd Legislature.
- <sup>11</sup> Senate Bill 15, 74th Legislature.
- <sup>12</sup> Senate Bill 663, 75th Legislature.
- <sup>13</sup> "Interim Report 77th Legislature: Charge Five," Senate Committee on Criminal Justice, 20.
- <sup>14</sup> "Statistical Report: Fiscal Year 2011," Texas Department of Criminal Justice, 34.
- <sup>15</sup> Email, Jeff Baldwin, Texas Department of Criminal Justice, Oct. 3, 2012.
- <sup>16</sup> "Interim Report 77th Legislature: Charge Five," Senate Committee on Criminal Justice, 20.
- <sup>17</sup> "Criminal Justice Uniform Cost Report: Fiscal Years 2008-2010," Legislative Budget Board (Jan. 2011) 6.
- <sup>18</sup> Ibid.
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid., 12.
- <sup>21</sup> "Statewide Criminal Justice Recidivism and Revocation Rates," Legislative Budget Board (Jan. 2011) 21, 25.
- <sup>22</sup> Ibid., 31, 35.
- <sup>23</sup> "Recidivism of State Jail Felons: The First Report," Criminal Justice Policy Council, 4.
- <sup>24</sup> Ibid., i.
- <sup>25</sup> Ibid., 7.
- <sup>26</sup> "The State Jail System Today," Criminal Justice Policy Council (Sept. 1998) i.
- <sup>27</sup> "Statewide Criminal Justice Recidivism and Revocation Rates," Legislative Budget Board (Jan. 2011) 26.
- <sup>28</sup> "Annual Review: 2011," Texas Department of Criminal Justice, 39.
- <sup>29</sup> "Legislative Appropriations Request for Fiscal Years 2012 and 2013," Texas Board of Criminal Justice (Aug. 2010) 94.
- <sup>30</sup> Email, Jeff Baldwin, Texas Department of Criminal Justice, Oct. 4, 2012.
- <sup>31</sup> "Interim Report 77th Legislature: Charge Five," Senate Committee on Criminal Justice, 18-19.
- <sup>32</sup> House Bill 2649, 82nd Legislature.
- <sup>33</sup> "Hawaii's Opportunity Probation with Enforcement (HOPE): An Implementation Analysis," The University of Hawaii at Mānoa Public Administration Program (May 2010).
- <sup>34</sup> "Program Evaluation Results," Hawaii State Judiciary's HOPE Probation Program.
- <sup>35</sup> Tex. Penal Code Ann. § 12.35.
- <sup>36</sup> Melinda Schlager and Kelly Robbins, "Does Parole Work? Revisited: Reframing the Discussion of the Impact of Postprison Supervision on Offender Outcome," *The Prison Journal* 88:2 (June 2008) 245-247.
- <sup>37</sup> "Statistical Report: Fiscal Year 2011," Texas Department of Criminal Justice, 2.
- <sup>38</sup> House Bill 2649, 82nd Legislature.
- <sup>39</sup> Tex. Code Crim. Proc. art. 42.12 § 11.
- <sup>40</sup> Ibid.
- <sup>41</sup> Senate Bill 727, 81st Legislature.
- <sup>42</sup> Senate Bill 1, 79th Legislature, Text of Conference Committee Report (2005) V-23.
- <sup>43</sup> Ibid.
- <sup>44</sup> House Bill 1, 80th Legislature, Text of Conference Committee Report (2007) V-30.
- <sup>45</sup> Ibid., pg. II-49.
- <sup>46</sup> "Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds," Texas Department of Criminal Justice (Dec. 2011) 5, 10.
- <sup>47</sup> Ibid., 10.
- <sup>48</sup> Ibid., 11.
- <sup>49</sup> Ibid. See also "Texas Community Supervision Revocation Project: A Comparison of Revoked Felons During September 2005 and September 2007," Legislative Budget Board (Aug. 2008) (showing that between 2005 and 2007, revocations dropped even while the population increased).

- <sup>50</sup> "Community Corrections Facility Outcome Study of FY 2008 Discharges," Texas Department of Criminal Justice Community Justice Assistance Division Research and Evaluation (May 2011) 13.
- <sup>51</sup> "Community Justice Assistance Division: Assessing Risks and Needs," Texas Department of Criminal Justice, accessed July 13, 2012.
- <sup>52</sup> Email, Jeff Baldwin, Texas Department of Criminal Justice, June 12, 2012.
- <sup>53</sup> Ibid.
- <sup>54</sup> "2009 Texas Progressive Interventions and Sanctions Bench Manual," Texas Department of Criminal Justice Community Justice Assistance Division, 43.
- <sup>55</sup> "Does Participation in Washington's Work Release Facilities Reduce Recidivism?" Washington State Institute for Public Policy (Nov. 2007).
- <sup>56</sup> Jillian Berk, "Does Work Release Work?" (Nov. 2007) 13, 17.
- <sup>57</sup> "Offender Programs Evaluation," Kansas Department of Corrections (Jan. 2007) 153.
- <sup>58</sup> See, e.g., Rob Atkinson and Knut Rostad, "Employment Dimensions of Reentry: Understanding the Nexus between Prisoner Reentry and Work," Urban Institute Reentry Roundtable (May 2003).
- <sup>59</sup> Susan Patton, "A Comparison of Recidivism Rates for the State of Georgia and the Rome Day Reporting Center," Capella University, School of Human Services (2008) 60-63.
- <sup>60</sup> "Program Focus: Texas' Project RIO (Re-Integration of Offenders)," National Institute of Justice, National Institute of Corrections, Office of Correctional Education (June 1998) 3.
- <sup>61</sup> Ibid., 3, 14.
- <sup>62</sup> "Operating Budget for Fiscal Year 2012," Texas Workforce Commission (Dec. 2011) II.A; "Agency Operating Budget 2012," Texas Department of Criminal Justice, 5.





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