Justice Reinvestment: A Framework to Improve Effectiveness of Justice Policies in Texas

Dr. Tony Fabelo

Austin, Texas

80th Texas Legislature, 2007
TEXAS DEMAND FOR PRISON BEDS ON A NATIONAL PERSPECTIVE

MAIN FACTORS IMPACTING PRISON POPULATION GROWTH

JUSTICE REINVESTMENT SCENARIOS
Texas Prison “Bathtub” is Overflowing Again

Faucet
Over flowing
with
probation
revocations

Drain
Plugged by low
parole release
rate

Overflow
Backlog in county
jails growing

Bathtub is Full...
System is at capacity with
over 152,000 inmates
Annual cost of $2.5 billion

...Even After Adding...
3,559 beds in internal prison
capacity since March 2003

...and Overflowing
Present emergency contracts
for approximately 1,900 beds
Additional $27 million cost
annually
Prison Bed Surplus of 2002 Was Consumed in About a Year and Texas Has Been Adding Capacity Every Year Since 1997

Recent Capacity Additions (# beds)
- 1997: 717
- 1998: 1,739
- 1999: 2,107
- 2000: 3,046
- 2003: 1,572
- 2004: 1,986
- 2005: 1,916
Total: 13,083

Source for building: TDCJ “Closing of a Millennium, Reviewing the Past Decade”; bed utilization, CJPC Biennial Report, 2003
Official Projections by LBB Show the TDCJ Population Continuing to Increase Assuming No Changes in Policies


Source: Legislative Budget Board, June 06 and January 07, Adult and Juvenile Correctional Population Projections
TDCJ is Requesting Additional Prisons and Contracted Capacity and Some Expansion of Alternatives to Incarceration

Request for Appropriations, August 2006
Texas Department of Criminal Justice (TDCJ)
Biennial Additional Funds Requested (approx.)
$899.3 million

- $440.6 million for three prison units totaling 5,080 beds
- $173.9 million for 7,328 contracted beds in 08-09
- $284.8 million in additional operational/other funds

Included here are an additional 250 SAFP beds, 200 IPTC beds, 150 halfway house beds, 250 residential probation beds and outpatient substance abuse treatment for probationers

Source: “TDCJ, Fiscal Year 2007 Operating Budget and Fiscal Years 2008-2009 Legislative Appropriations Request, August 18, 2006”
Texas Has Increased Its Prison Population and Incarceration Rates at a Pace That Surpasses the Percentage Increase in the State Population

TDCJ Population, 1985-2006

State Resident Population 1980-2005: +61%
TDCJ Population 1985-2006: +310%
Incarceration Rate 1985-2006: +205%

Texas Has More Persons Under the Control of the Correctional System Than Any of the Other Three Most Populous States

<table>
<thead>
<tr>
<th>State</th>
<th>Population</th>
<th>Probation, Jail, Prison and Parole Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>TX</td>
<td>22.8 million</td>
<td>767,765 (4.6% of adults)</td>
</tr>
<tr>
<td>CA</td>
<td>36.1 million</td>
<td>752,817 (2.8% of adults)</td>
</tr>
<tr>
<td>FL</td>
<td>17.1 million</td>
<td>436,006 (3.2% of adults)</td>
</tr>
<tr>
<td>NY</td>
<td>19.2 million</td>
<td>264,836 (1.8% of adults)</td>
</tr>
</tbody>
</table>

## Historical View Shows the Relationship Between Population Growth, Incarceration Rates and Crime Rates in Populous States

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TX</td>
<td>14,229,191</td>
<td>22,859,968</td>
<td>226</td>
<td>691</td>
<td>6,030</td>
<td>4,862</td>
</tr>
<tr>
<td>CA</td>
<td>24,037,626</td>
<td>36,132,147</td>
<td>162</td>
<td>466</td>
<td>6,468</td>
<td>3,849</td>
</tr>
<tr>
<td>FL</td>
<td>9,746,324</td>
<td>17,789,864</td>
<td>242</td>
<td>499</td>
<td>6,821</td>
<td>4,716</td>
</tr>
<tr>
<td>NY</td>
<td>17,558,072</td>
<td>19,254,630</td>
<td>187</td>
<td>326</td>
<td>5,577</td>
<td>2,554</td>
</tr>
</tbody>
</table>

Incarceration and Reported Index Crime Rate by FBI per 100,000 population

Today Texas Incarceration Rate is the Second Highest in the Nation

2005 Incarceration Rate & (Rank)
Per 100,000 Population

Incarceration per 100,000 State Rank

Data Source: Bureau of Justice Statistics “Prisoners in 2005,” Table 4
TEXAS DEMAND FOR PRISON BEDS ON A NATIONAL PERSPECTIVE

MAIN FACTORS IMPACTING PRISON POPULATION GROWTH

JUSTICE REINVESTMENT SCENARIOS
State Resident Population is Growing But Policies Have a Bigger Impact on the Prison Population Growth

- Increase in conviction rates
- Low parole rates
- Shortage of probation and parole alternative sanctions and prison treatment programs
Since 2000 Changes in Crime and Arrests Have Been Lower Than Population Growth But Convictions Have Continued to Increase

<table>
<thead>
<tr>
<th>% Change 2000-2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Population</td>
</tr>
<tr>
<td>Crime Rate</td>
</tr>
<tr>
<td>Adult Arrests</td>
</tr>
<tr>
<td>Felony Convictions</td>
</tr>
</tbody>
</table>

Judicial machinery and laws are “engaged” to produce more convictions out of fewer arrests

More persons with prior “failures” make it easier to convict

Source: Population US Census, Crime and Arrests, DPS Crime in Texas Reports; Felony Convictions, Office of Court Administration
Low Parole Approval Rates Are a Key Factor Driving the Increase in the Population as Offenders Eligible for Release Are Not Approved

Parole Approval Rates, 1990-2006

88,000 inmates are eligible for discretionary release in prison or 66% of the prison population

55% of those eligible have a "non-violent" offense of record

78% “Revolving Door”

17% “Shut Down”

31% Minimum under Guidelines

26%
Sunset Commission Said Parole Board Has Consistently Not Followed Its Own Guidelines Negatively Impacting Releases
Parole Board Adopted Guidelines Based on Risk and Severity with Recommended Rates to Guide Its Discretion

High Risk

Level 1
0-5% Approval

Level 7
76-100%
Approval

Low Risk

Level 2
6-15%

Level 3
16-25%

Level 4
26-35%

Level 5
36-50%

Level 6
51-75%

Overall
31-45%

Low Severity

High Severity
Less Severe Cases in Parole Guidelines Are Not Being Released at the Levels Recommended by Guidelines

<table>
<thead>
<tr>
<th>Guideline Level</th>
<th>Estimated Rate</th>
<th>Actual FY 06</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (More Severe)</td>
<td>0% - 5%</td>
<td>2.8%</td>
</tr>
<tr>
<td>2</td>
<td>6% - 15%</td>
<td>12.8%</td>
</tr>
<tr>
<td>3</td>
<td>16% - 25%</td>
<td>17.3%</td>
</tr>
<tr>
<td>4</td>
<td>26% - 35%</td>
<td>21.0%</td>
</tr>
<tr>
<td>5</td>
<td>36% - 50%</td>
<td>33.3%</td>
</tr>
<tr>
<td>6</td>
<td>51% - 75%</td>
<td>40.3%</td>
</tr>
<tr>
<td>7 (Less Severe)</td>
<td>76% - 100%</td>
<td>47.9%</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td><strong>31-45%</strong></td>
<td><strong>26.5%</strong></td>
</tr>
</tbody>
</table>

Meeting minimum overall parole approval rate would have meant 2,480 additional parole releases in 2006.

Probation Revocations Represent One-Third of Prison Admissions and Probation Budget Cuts Impacted Recent Increases

12,440 technical revocations in FY 06 will cost the state $757.5 million in incarceration costs

<table>
<thead>
<tr>
<th>Year</th>
<th>Revocations to Prison/State Jails</th>
<th>Technical Revocations</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 00</td>
<td>21,447</td>
<td>12,088</td>
</tr>
<tr>
<td>FY 01</td>
<td>20,623</td>
<td>12,257</td>
</tr>
<tr>
<td>FY 02</td>
<td>21,370</td>
<td>12,700</td>
</tr>
<tr>
<td>FY 03</td>
<td>23,281</td>
<td>13,702</td>
</tr>
<tr>
<td>FY 04</td>
<td>24,609</td>
<td>14,287</td>
</tr>
<tr>
<td>FY 05</td>
<td>24,021</td>
<td>13,504</td>
</tr>
<tr>
<td>FY 06</td>
<td>23,202</td>
<td>12,440</td>
</tr>
</tbody>
</table>

Source: TDCJ, CJAD Statistical Tables; Cost avoidance: cost per year of $14,622 * each offender incarcerated* by average of four years in prison per LBB Revocation study of September 06; rates from LBB January 07 recidivism report
Increased Funding for Probation in 2005 is Producing a Return of More Than Two Dollars in Incarceration Savings Per Dollar Invested

New Funding in 2005 = $27.6 million

$13.6 million a year for 635 residential treatment and sanction beds

$14 million a year to reduce probation caseload

Impact on revocations in counties receiving new funding

1,155 fewer revocations in FY 2006 than in FY 2005

628 fewer revocations in 1st Quarter FY 2007 than in 1st Quarter 2005

Approximately $67 million in avoided incarceration costs for this group

Approximately another $37 million in avoided incarceration costs for this group

Source: TDCJ, CJAD, Dec, 2006. Cost avoidance: cost per year of $14,622 * each offender diverted* by average of four years in prison per LBB Revocation study of September 06
Parole System Has Fewer Technical Revocations Than Probation System in Part Due to Larger Intermediate Sanction Capacity

Parole Revocations

- Technical: 19%
- New Conviction: 9%
- New Offense Pending or Alleged: 72%

ISF Beds = 1,793
1 per 42 parolees

Probation Revocations

- Technical: 54%
- New Conviction: 18%
- New Offense Pending or Alleged: 28%

ISF Beds = 439
1 per 544 probationers

Source: Board of Pardons and Parole Annual Report; TDCJ, CJAD Statistical tables
Probation and Community Substance Abuse Treatment Capacity Has Been Reduced Even as the State Population Has Increased

| Probation Residential Beds | 1995: 4,534  
1 for every 53 felons | 2006: 3,148  
-30%  
1 for every 76 felons |
|---------------------------|----------------|------------------|
-42% |
| Transitional Treatment Center (TTC) Beds Needed to Support Present SAFP Program | 1,800 | Present Available  
1,300  
-28% |
| Therapeutic State Jails Program | 1,206 treatment beds eliminated |

Source: CJAD memo, 11/10/06 from Mike Eisenberg; Rep. Madden’s memo from Marsha McLane, 10/31/06 using DSHS figures
*There were 3,786 prison beds licensed in 2003 but these are excluded from the count as the DSHS stopped licensing TDCJ beds by 2006
There Are Waiting Lists for Key Programs Creating a Backlog of Releases from Prison and Placements from Probation

Waiting Lists in Key Programs

- Substance Abuse Felony Punishment (SAFPs)
  - 823 awaiting program placement in county jails
- In-Prison Therapeutic Community
  - 174 awaiting in prison for program as condition of parole
- Parole Halfway Houses
  - 600 offenders awaiting in prison to be released to a halfway house

Offenders recommended for parole on condition that they complete a program cannot be released and being on a waiting list adds to their time in prison
Mental Health Problems Are Prevalent in Correctional Populations and Failure to Address Them Also Fuels the Recycling of Offenders

Offenders with a Prior Record in the Mental Health System, February 06
Record Match, Number and % of Population

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probationers</td>
<td>57,719</td>
<td>(13%)</td>
</tr>
<tr>
<td>Parolees</td>
<td>21,097</td>
<td>(27%)</td>
</tr>
<tr>
<td>Prisoners</td>
<td>45,628</td>
<td>(30%)</td>
</tr>
<tr>
<td>Total</td>
<td>124,444</td>
<td>(19%)</td>
</tr>
</tbody>
</table>

About 10% of prisoners and parolees and 6% of the probationers matched with a “priority population” diagnosis

CJPC, “Overview of the Enhanced Mental Health Services Initiative” May 2002; AAS, July 02. 06
“Straining to Serve, Texas Mental Health System is at a Crossroads”; TCOMMI Biennial Report, February 2007
Parole Scenario Assumes Funding of New Treatment Facilities and Strategies to Strengthen Parole Supervision

<table>
<thead>
<tr>
<th>Parole Scenario Key Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TDCJ Facilities</strong></td>
</tr>
<tr>
<td><strong>Parole Facilities</strong></td>
</tr>
<tr>
<td><strong>Key Assumptions</strong></td>
</tr>
<tr>
<td><strong>Other Policies</strong></td>
</tr>
</tbody>
</table>
LBB Model Shows That Slightly Increasing Discretionary Release Rates Will Wipe Out the Projected Bed Shortfall

LBB Projected Parole Rates, Baseline and Parole Scenario, 2006-2012

2007-2012 Average Parole Rate
Parole Scenario = 29%
1,705 average more releases a year

Average DMS Rate
Parole Scenario = 57%
1,567 average more releases a year

Parole guidelines expected grant rate 31 to 45%

Source: Legislative Budget Board, January 07 Scenarios Impact Analysis
### LBB Fiscal Analysis Showed That the State Can Save a Substantial Amount of Funds That Could Be “Reinvested” in Other Alternatives

**LBB Projected Five Year Fiscal Impact for Parole Enhancement Scenario, 2008-2012**

<table>
<thead>
<tr>
<th>Year</th>
<th>General Revenue Probable Net Positive Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-2009</td>
<td>$99,874,930</td>
</tr>
<tr>
<td>2009-2012</td>
<td>$443,186,977</td>
</tr>
<tr>
<td><strong>Total: 2008-2012</strong></td>
<td><strong>$543,061,907</strong></td>
</tr>
</tbody>
</table>

Above does not include potential “cost avoidance” of $377.7 million for the construction of 4,080 beds proposed by TDCJ

Source: LBB, Memorandum to Senator Whitmire from John O’Brien, January 23, 2007
Reinvesting in Probation/Treatment Can Significantly Increase Sanctioning Capacity for Alternative Punishments

<table>
<thead>
<tr>
<th>Facility</th>
<th>Present Capacity</th>
<th>Proposed Additional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intermediate Sanctions Facilities (ISFs)</td>
<td>1,793 beds in parole system (1 per 42 parolees) and 439 in probation system (1 per 544 probationers)</td>
<td>2,400 beds available for parole and probation system</td>
</tr>
<tr>
<td>Probation Residential Treatment (PRT)</td>
<td>2,123 beds for 187,054 offenders on probation with substance abuse problems*</td>
<td>1,600 beds</td>
</tr>
<tr>
<td>In-prison Therapeutic Community (IPTC)</td>
<td>537 beds with 174 offenders in a waiting list</td>
<td>200 beds</td>
</tr>
<tr>
<td>Substance Abuse Felony Punishment (SAFP)</td>
<td>3,250 beds with a waiting list of 823 offenders</td>
<td>500 beds</td>
</tr>
<tr>
<td>DWI Prison Treatment</td>
<td>No facility dedicated to this</td>
<td>500 bed facility</td>
</tr>
<tr>
<td>Parole Halfway Houses</td>
<td>1,159 beds with a current backlog of 600 inmates</td>
<td>150 beds</td>
</tr>
<tr>
<td>TDCJ Capacity</td>
<td>Transfer of San Saba and Marlin TYC Units to TDCJ</td>
<td>1,200 beds</td>
</tr>
</tbody>
</table>

6,550 beds in different types of facilities

* Sunset Advisory Commission, TDCJ Report, October 1996
Diversion Impact for Main Scenario Was Calculated Based on Research But LBB Also Calculated Alternative Impacts

**Diversion Factor for Probation Programs**

- **100 Offenders**
  - **75**
    - Placed in program
    - Would have gone to prison
  - **25**
    - Placed in program
    - Would not have gone to prison

Counts as “diversion” for projection

**Baseline**
- 75% diversion factor based on CJPC research

**100% diversion factor**
- Not Sustained by Data

**50% diversion factor**
- Should not occur if best practices are used

“Expansion of the net”
LBB Estimated Impact on TDCJ Projected Bed Shortfall Using Three Sets of Assumptions Regarding Diversion Factors

LBB Projection

Projected Bed Shortfall

Source: Legislative Budget Board, January 07 Scenarios Impact Analysis
LBB Fiscal Analysis Shows That the State Can Save Substantial Funds by “Reinvesting” in Probation/Treatment

LBB Projected Five Year Fiscal Impact for 75% Diversion Probation/Treatment Enhancement Scenario, 2008-2012

<table>
<thead>
<tr>
<th>General Revenue Probable Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-2009</td>
</tr>
<tr>
<td>2009-2012</td>
</tr>
<tr>
<td>Total: 2008-2012</td>
</tr>
</tbody>
</table>

Above does not include potential “cost avoidance” of $377.7 million for the construction of 4,080 beds proposed by TDCJ

Source: LBB, Memorandum to Senator Whitmire from John O’Brian, January 23, 2007
Both Scenarios or a Combination Can Address the Projected Bed Shortfall at a Lower Cost Than Baseline


- **Baseline**: Potential $377 million in avoided prison construction costs
- **Parole Scenario**: $543 million in probable savings 08-12
- **Probation/Treatment 75% Diversions**: $65.1 million in probable net savings 08-12

Source: Legislative Budget Board, January 07 Scenarios Impact Analysis
Justice Reinvestment Framework Also Shifts Long-Term Strategy to Investments in “High Stakes” Communities

“High Stakes Communities” are those neighborhoods in counties that receive the most residents from and contribute the most residents to the prison system.

The four highest reentry counties in the state cost the state over $1 billion a year in incarceration costs.
Ten of Houston’s 88 Neighborhoods Account for Almost $100 million a Year in Prison Expenditures

50% of former prisoners return to neighborhoods that account for only 15% of the City’s adult population.
Quality of Schools in High Stakes Communities is a Critical Factor to Review

High Schools Test Scores

The HS with the highest % of students passing all tests tend to be concentrated in neighborhoods with the lowest rate of people returning from prison.
Low Performing High Schools Tend to Be in “High Stakes” Communities

Neighborhoods with high rates of returning prisoners tend to be those with low performing High Schools.
High Schools with High Drop Out Rates Also Tend to Be in “High Stakes” Neighborhoods

- Neighborhoods with high rates of returning prisoners also tend to have High Schools with high drop out rates.
Policies to Reduce the High Percentage ofDisconnected Youth in High Poverty NeighborhoodsAre Also Critical

Another key indicator of neighborhood conditions is Disconnected Youth: 16 – 19 year-olds who are not working, not in school, and have no high school diploma.

Neighborhoods with High Rates of Disconnected Youth

<table>
<thead>
<tr>
<th>Neighborhood Name</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Downtown</td>
<td>413</td>
<td>38.2%</td>
</tr>
<tr>
<td>2) Eastex-Jensen Area</td>
<td>401</td>
<td>20.7%</td>
</tr>
<tr>
<td>3) Spring Branch Ctr.</td>
<td>368</td>
<td>19.8%</td>
</tr>
<tr>
<td>4) Spring Branch East</td>
<td>308</td>
<td>18.9%</td>
</tr>
<tr>
<td>5) Gulfton</td>
<td>527</td>
<td>18.6%</td>
</tr>
<tr>
<td>6) Greater Greenspoint</td>
<td>362</td>
<td>16.7%</td>
</tr>
</tbody>
</table>

Neighborhoods with 300 or more 16 – 19 year olds and > 15% not working/not in school/no high school diploma.
Probationers and Parolees Tend to Be Concentrated in “High Stake” Communities Yet Probation and Parole Do Not Coordinate Strategies and Services

Travis County Sector F
Sector F has the highest number of probationer per capita in Travis (24 per 1,000 population)
34% of prison discretionary releases to Austin are also in this area
Thinking About High Stake Communities Can Even Encourage a Better Utilization of Present Resources Like Probation Supervision

Austin, Travis County

<table>
<thead>
<tr>
<th></th>
<th>Maximum</th>
<th>Medium</th>
<th>Minimum</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Average</td>
<td>28</td>
<td>70</td>
<td>22</td>
<td>120</td>
</tr>
<tr>
<td>ZIP 78745 Counts</td>
<td>200</td>
<td>361</td>
<td>127</td>
<td>688</td>
</tr>
</tbody>
</table>

688 probationers in zip 78745 are presently assigned to 72 different officers.
Probation Caseloads Could Be Organized More Effectively Around “High Stakes” Neighborhoods

Austin, Travis County

688 probationers in zip 78745 could be assigned to 6 officers working in the neighborhood instead of 72 different officers from a “central” office.
“Construction only acts as a temporary solution and does not address the causes of the capacity needs.”

“Additional construction does not create incentives to address the causes of increasing capacity; instead it may encourage prison population growth. If the state continues to add beds, history shows that those beds will quickly fill.”

Legislature Sunset Advisory Commission, Staff Report, October 2006
Thank You