CRIMINAL JUSTICE

Criminal justice policy in Texas, like the rest of the United States, is making a shift away from incarceration to other alternatives like rehabilitation and crime prevention. Ana Yáñez-Correa, Executive Director of the Texas Criminal Justice Coalition, discusses the history of criminal justice in Texas, the challenges we face, and the right path forward to make sure that our justice system is safe, fair and efficient.
TEXAS’ CRIMINAL JUSTICE LANDSCAPE

— Ana Yáñez-Correa, Executive Director, Texas Criminal Justice Coalition

Texas has made great strides in efforts to improve its criminal justice system; however, we have far to go to truly see a system that is just, effective, accountable, cost-efficient, and humane. With 1 in 22 Texans currently under some form of supervision,\(^8^6\) taxpayers are spending billions of dollars on incarceration every year. We must re-examine where we can improve the system so we can achieve a stronger return on our investment.

**Why Does Criminal Justice Reform Matter?**

Texas’ historic tough-on-crime mentality — with its corresponding failure to fully invest in diversions/treatment programming for individuals over the long term — has resulted in a criminal justice system that is deficient in several critical areas, leading to the following:

**Substandard indigent defense and wrongful convictions**

- Continued weaknesses in court and conviction practices lead to unequal sentencing and fill jail and prison beds. In large part, this is caused by Texas’ indigent defense finance structure, under which individual counties shoulder approximately 85\% of the costs related to meeting the constitutional requirement to provide indigent defense services.\(^8^7\)

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- An ongoing lack of support for public defenders’ offices or other defense delivery options leaves defendants sitting in jail awaiting trial. More than half of all inmates in Texas jails (totaling approximately 70,000 per day) have not yet been convicted of a
Putting Texas First

Public defender offices can significantly reduce the number of days between defendants’ arrest and trial, helping them more promptly return to their obligations in the community.

- The state has a responsibility to the victims of crime, as well as to individuals convicted of those crimes, to do everything within its means to ensure that innocent individuals are not sent to prison. Yet more than 40 men have had their convictions overturned in Texas as a result of DNA testing on evidence from the case, having collectively spent more than 500 years in prison for crimes that they did not commit. More than 84% of wrongful convictions in Texas are due to eyewitness misidentification.

The over-criminalization of low-level offenses

- Outdated practices, including race-based policing, as well as the criminalization of nonviolent individuals (including non-citizens), drive up arrests for low-level offenses and significantly contribute to prison and jail overcrowding.

  - State-level facilities: Approximately 48% of individuals incarcerated in Texas’ adult prisons and state jails are there for nonviolent offenses. These 73,000 nonviolent individuals are costing taxpayers more than $3.7 million daily.

At an average per-inmate cost of $45 per day, counties are spending drastic portions of their budgets on the confinement of oftentimes low-risk, nonviolent individuals.

- Local county jails: With nearly 70,000 individuals incarcerated in Texas’ 245 county jails every day — more than 10,000 of which are misdemeanants — Texas has six of the 50 largest national jail populations. At an average per-inmate cost of $45 per day, counties are spending drastic portions of
their budgets on the confinement of oftentimes low-risk, nonviolent individuals.

**Corresponding lack of pre- and post-conviction diversions**

- Texas’ corrections and probation agencies are consolidated, with one pot of money biannually allocated to address the discrete agencies’ mission and activities. Currently, hard incarceration accounts for more than 88% of the state’s spending in this area (more than $6 billion), while only 12% is allocated to diversions that are proven to be more cost-efficient and programmatically effective.

**A re-entry system that fails to support returning individuals**

- The re-entry process must begin inside jail and prison facilities. However, the lack of evidence-based risk/needs assessments, a corresponding lack of programs/services, and poor conditions of confinement within state and county facilities each fail to adequately prepare individuals for their reintegration into Texas communities.

- Annually, over 70,000 people leave Texas prisons, while a million individuals cycle through local jails. Various barriers and restrictions prevent the successful re-entry of many of these people into the community, including housing, employment, benefits and assistance, education, medical and mental health services, and community involvement. Without assistance for those exiting confinement, rates of re-offending remain high — along with associated enforcement and re-incarceration costs.

- Texas’ parole system poses its own problems, as it is under-staffed and under-funded. Backlogs with programming and housing availability also cause parole to become a bottleneck for those otherwise eligible for release. And the parole system’s oversight agencies — the Parole Division and Parole Board — often assign conflicting release terms to parolees, increasing their opportunity for revocation.
Recent History of Criminal Justice Reform in Texas

Texas’ criminal justice system has gone through major periods of change throughout the past decade, with tough-on-crime strategies slowly being replaced by more smart-on-crime alternatives. However, periodic budget crises have forced legislators’ hands, causing cuts to critical treatment and diversion funds that are imperative in creating an infrastructure focused on saving taxpayers money, increasing public safety, and boosting the strength of our communities.

From 2003 to 2011, 73 new reforms positively changed the course of Texas’ criminal justice and re-entry systems, resulting in massive taxpayer savings and an 18% drop in crime rate between 2003 and 2010. We are now seeing a greater emphasis on indigent defense delivery, fewer probation/parole revocations, fewer persons sentenced to prison, higher parole approval rates, and historic advances in re-entry.

In 2007, according to the Legislative Budget Board, Texas faced a projected prison population increase of up to 17,000 inmates by 2012 if Texas’ pace of incarceration continued. Rather than agree to spend $2.63 billion over five years on new prison construction and operations, policymakers worked collaboratively to reinvest a fraction of this amount — $241 million — in probation, parole, and treatment beds.

Despite a $27 billion budget shortfall, several new policies enacted during the 82nd Legislative Session will strengthen Texas families and communities while saving taxpayers millions of dollars, including through the preservation of diversion and treatment programming as well as new alternatives to incarceration. Specifically, we saw reforms in the following key areas:

- **Indigent defense and innocence:** creation of new Texas Indigent Defense Commission to develop standards and policies for indigent defendants at the trial, appeal, and post-conviction stages; improved witness identification procedures; and greater post-conviction DNA testing availability.
• **Sentencing and efficiency:** allowance of diligent participation credits for state jail felons who complete self-improvement, work, or vocational programs.

• **Probation:** allowance of self-improvement programming incentives for probationers; creation of a permissive incentive-based funding program through which counties set goals to reduce the number of nonviolent prison commitments.

• **Re-entry:** requirement that judges disclose to criminal defendants, prior to being placed on deferred adjudication community supervision, their later right to petition the court for an order of nondisclosure; expansion of opportunities for an expunction of one’s criminal record.

**2012-2013 Budget Cuts**

Despite these legislative achievements, the state’s massive budget shortfall did result in fewer dollars to some rehabilitative and treatment areas, as policy-makers’ corrections priority largely continued to favor prisons and “hard incarceration.” First, a $100 million reduction in allocations to the correction system’s medical provider (University of Texas Medical Branch), without corresponding strategies to lower the patient population, risks higher long-term medical costs for those unable to be treated in a preventative or timely matter, and potential costly lawsuits against the state for failing to provide a constitutional level of care. Cuts to frontline mental health service providers are similarly alarming given the high percentage of individuals who cycle through prisons and jails with mental health diagnoses, and given the considerable taxpayer dollars spent warehousing these individuals as they await an open bed at a state hospital.\(^{106}\)

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Policy-makers also reduced the budget for in-prison educational and vocational programming by nearly 30%, with a projected 16,750 individuals losing their seats in Texas Department of Criminal Justice (TDCJ) classrooms as a result of the cuts. Loss of staff and course offerings will result in fewer GED certifications and post-secondary opportunities, and higher potential recidivism rates. Furthermore, overall staffing cuts at TDCJ were drastic: with 2,000 fewer full-time personnel, but no large-scale strategies to significantly reduce prison populations, remaining staff and inmates alike face greater safety and security risks, with associated potential staff retention problems for TDCJ administrators in the coming biennium.

THE WAY FORWARD

All stakeholders must work to identify and promote safe, responsible alternatives to incarceration that counter the state’s wasteful confinement policies and practices. We must collectively strive for strategies that will minimize the entry points into the juvenile and criminal justice systems, as well as address the root causes of criminal behavior — both of which will lessen the devastating impact that many of our state policies and practices have on families, and help people become and stay law abiding, productive community members.

- **Public safety and immigration:** We must advocate for best practices in law enforcement, seeking to equip community members and law enforcement with the tools to work together to implement effective, public safety-focused, value-driven police services.

- **Indigent defense and innocence:** We must advocate for systemic change to better ensure that indigent defendants are both informed of their right to request counsel and are granted timely appointment of counsel that serves their best interests. Regarding innocence, we must seek strengthened innocence-focused policies and practices through measures that will impart more fairness, procedural safeguards, and efficiency for both criminal defendants and the wrongfully imprisoned.
• **Sentencing and efficiency:** Advocates must promote the adoption of programs/practices that use risk-reduction strategies to identify and address individuals’ criminal behavior. We must also promote the full utilization of mechanisms that safely reduce the length of stay for incarcerated individuals. Furthermore, we must advocate for practices that strengthen safety, accountability, transparency, and efficiency within the criminal justice system, including through policies that address poor conditions of confinement.

• **Diversions:** Through educational outreach at the county and state levels, advocates must vocalize the critical need for increased resources to implement and improve community-based diversion programs and treatment options for substance abuse and mental health problems. Advocates must also push policy-makers to continually re-invest cost savings realized under alternative-to-incarceration policies and practices in diversion programs and risk-reduction programming/services.

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• **Probation and parole:** Sustaining the state’s probation and parole revocation rates as some of the lowest in the country is key to eliminating the future need for prison and jail construction and saving millions in day-to-day incarceration costs. Per-day prison costs to the state total $50.79 per individual, whereas probation only totals $1.30 and parole totals $3.74. Put another way, the cost of 10 days in prison is equal nearly 13 months on probation or 5 months on parole.
• **Re-Entry:** We must ensure that corrections facilities provide sufficient access to treatment and programming tailored towards a successful re-entry. Furthermore, returning individuals must be connected with available information and services necessary to successfully re-enter Texas communities, while community-based re-entry providers must be sufficiently resourced to provide necessary assistance to the returning population.
CRIMINAL JUSTICE FACTS AND FIGURES

HOW TEXAS RANKS

Crime rate in 2009:
2nd... at 4,506.4 crimes per 100,000 population\textsuperscript{109}

State prisoner imprisonment rate in 2009:
5th... at 648 state prisoners per 100,000 population\textsuperscript{110}

Total executions since 1976:
1st... at 476\textsuperscript{111}

Per capita state and local government expenditures for police protection in 2008:
34th... at $231\textsuperscript{112}

Per capita state and local government expenditures for judicial and legal services in 2008:
40th... at $90\textsuperscript{113}

State Mental Health Agency per-capita expenditures:
51st\textsuperscript{114}

Total number of exonerations (including DNA exonerations):
3rd... at 78\textsuperscript{115}

DETAILS

- One in 22 Texans are under some form of supervision in the state’s criminal justice system.\textsuperscript{116}

- During fiscal year 2010, the 72,909 nonviolent individuals on hand in state prisons and state jails alone cost taxpayers more than $3.6 million daily.\textsuperscript{117}

- More than 40 men have had their convictions overturned in Texas as a result of DNA testing on evidence from the case, having collectively spent more than 500 years in prison for crimes that they did not commit.\textsuperscript{118}