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JUSTICE REINVESTMENT IN TEXAS

Assessing the Impact of the 2007 Justice Reinvestment Initiative



WHEN THE 80TH SESSION of the Texas Legislature convened in 2007, elected officials faced a major dilemma: spend a half billion dollars to build and operate new prisons to accommodate the surging number of people expected to be incarcerated or explore options to control that growth. A bipartisan group of legislative leaders commissioned the Council of State Governments Justice Center (“Justice Center”) to conduct a comprehensive analysis of the state’s prison population. The data collected were used to shape a series of policies that avoided the need to build more prisons and allowed for the reinvestment of roughly half the funds earmarked for prison construction toward a range of strategies designed to increase public safety and reduce recidivism.

This report reviews the situation the legislature faced in 2007; the policies

lawmakers enacted; the extent to which policies enacted in 2007 have been implemented; trends in the prison, parole, and probation population since 2007; projections for the prison population beyond 2009; and the challenges the 81st Session of the Texas Legislature faces as it convenes in 2009.

This bulletin is part of a series for state policymakers interested in following what happened in states that applied a justice reinvestment strategy to increase public safety and reduce spending on corrections. Beginning in 2005, Texas policymakers worked with the Council of State Governments Justice Center, and with the support of the Bureau of Justice Assistance, a component of the U.S. Department of Justice, and the Public Safety Performance Project of The Pew Charitable Trusts’ Center on the States, to pursue a justice reinvestment strategy.

The report highlights the following findings:

- In 2007, the legislature rejected plans to spend \$523 million in additional prison construction and operations and instead, through its Justice Reinvestment Initiative, appropriated \$241 million to expand the capacity of substance abuse, mental health, and intermediate sanction facilities and programs that focused on people under supervision who would otherwise likely be revoked to prison.
- Since the enactment of the reinvestment initiative, the expansion of prison-based programs and some outpatient services has been mostly on track, but a number of beds in residential substance abuse treatment or intermediate sanction facilities are not yet operational. Communities have resisted the placement of non-secure treatment facilities, and few vendors have bid for the contracts. State officials remain confident they can address these challenges by the end of 2009 as recent strategies have resulted in more positive responses to the expansion of these residential options.
- From January 2007 to December 2008, the Texas prison population increased by only 529 individuals; the projected increase for that period at the beginning of the 2007 legislative session was 5,141 individuals if the justice reinvestment strategies had not been implemented.¹
- Between 2006 and 2008, probation revocations to prison declined by 4 percent and parole revocations to prison plummeted 25 percent. During this same period, the parole board's rate of approvals for supervised releases rose from 26 percent to 31 percent.
- The increased availability of treatment and intermediate sanction facilities – made possible through the Justice Reinvestment Initiative – has facilitated the reduction in revocations and the enhanced use of parole.
- Although the state's nonpartisan Legislative Budget Board projected in 2007, before the enactment of the Justice Reinvestment Initiative, that the prison population would grow by approximately 17,000 people over five years, it now projects relatively minimal growth. No shortfall in capacity is predicted until 2013, when the system will need approximately 1,300 beds.
- State revenue shortfalls projected for the 2010–11 budget could cause some strategies enacted through the Justice Reinvestment Initiative to be scaled back. Such action by the legislature in 2009, however, would likely restart prison population growth, and, as a result, in 2011 the legislature may again need to appropriate funds for new prison construction. State leaders are aware of this fact and are being careful about substantially scaling back the initiative.

1. Legislative Budget Board, "January 2007 Projection Report," 2007. Legislative Budget Board, "LBB Tracking Spreadsheet: TDCJ Population Report," 2008.

Texas's Growing Prison Population in 2007

In January 2007, the state's nonpartisan Legislative Budget Board (LBB), which is charged with issuing an annual projection of the Texas prison population, predicted significant growth. It estimated the need for 17,000 additional prison beds, requiring new construction before 2012 at a minimum cost of \$2 billion. Based on this official estimate, the Texas Department of Criminal Justice (TDCJ) submitted a budget request for the FY 2008–09 biennium of \$523 million to build additional prisons and an additional \$184 million in “emergency” contracted capacity to rent detention space in county jails.²

A bipartisan group of legislative leaders, led by Senator John Whitmire (D), Chair of the Senate Criminal Justice Committee, and Representative Jerry Madden (R), Chair of the House Corrections Committee, sought to examine why the state's prison population continued to grow. They requested technical assistance from the Justice Center to analyze corrections data and assist in developing policy options that could achieve cost-effective increases in public safety and control the size of the prison population.³

The Justice Center's analysis found that the increase in the prison population (both recent and projected) significantly outpaced the growth in the state's resident population. The Justice Center focused on three factors contributing to the buildup of the prison population:

- 1) Increased probation revocations.** Between 1997 and 2006, the number of people revoked from probation to prison increased 18 percent, despite a 3 percent decline in the probation population.
- 2) Reduced capacity of residential treatment programs serving people on probation and parole.** Reductions in funding for community-based substance abuse and mental health services during the 2003 legislative session forced the closure of various treatment programs and facilities. By 2006, more than 2,000 individuals were awaiting placement in such programs and facilities.
- 3) Fewer approvals for parole.** Parole grant rates were lower than even those suggested by the parole board's own guidelines. For example, had the parole board adhered to its minimum approval rates for low-risk individuals, an additional 2,252 releases would have been made from prison to community supervision in 2005.

2. Texas Department of Criminal Justice, Legislative Appropriations Request, Fiscal Years 2008–2009, August 2007.

3. The analysis and policy options were presented in different policy briefs by the Justice Center. A summary of the work is in the September 2007 publication *Justice Reinvestment in Texas: A Case Study* at www.justicecenter.csg.org.

Table 1: Implementation Status of the Texas 2007 Justice Reinvestment Initiative

PROGRAM	2007 LEGISLATIVE INCREASE IN FUNDING/SIZE	DESCRIPTION	STATUS AS OF JANUARY 2009
Probation Outpatient Treatment	\$10 million 3,000 slots	Probation outpatient substance abuse treatment under contract or by probation department	All funding distributed to local probation departments for the services
Mental Health Pre-Trial Diversion	\$10 million 1,500 slots	Mental health treatment funding dedicated to encouraging pre-trial release of mentally ill offenders	All funding distributed to local authorities for the services
State Jail Treatment	\$5.8 million 1,200 slots	Substance abuse treatment in state jail facilities housing low-level property and drug offenders	Operational
In-Prison Therapeutic Community (IPTC)	\$21.7 million 1,000 slots	The program provides intensive substance abuse treatment services to offenders in prison and post-release. The 6-month in-prison phase is followed by 3 months in a TTC in the community, and 3 to 9 months of outpatient counseling. The parole board uses the program as a condition for the release of offenders who need substance abuse treatment.	Operational
DWI Prison Treatment	\$22.2 million 500 beds	A prison facility dedicated to providing offenders convicted of DWI offenses with a 6-month substance abuse treatment program.	Operational
Probation Residential Treatment	\$32.2 million 800 beds	Residential treatment facilities provide substance abuse treatment, counseling, and rehabilitation services. Programs range from 3 to 12 months.	752 beds operational (84% operational) with 48 beds pending
Parole Halfway Houses	\$5.6 million 300 beds	Halfway houses are used for offenders approved for prison release who need transitional housing contingent upon a suitable residence plan. The average length of stay in a halfway house is 90 days.	200 operational with 100 pending in late 2009
Substance Abuse Felony Punishment (SAFP)	\$63.1 million 1,500 beds	The program provides intensive residential substance abuse treatment services to offenders on probation who are violating the conditions of their supervision due to substance abuse problems. The program involves treatment in a secure facility for 6 months, followed by 3 months in a TTC in the community, and 3 to 9 months of outpatient counseling. This program is also available to parolees, but most of the capacity is used for probationers.	704 beds operational (47% operational) with 796 pending in 2009 and 2010. 236 of pending will be operational in April 2009 and 560 in September 2009 100% operational by September 2009
Transitional Treatment Centers (TTCs)	After-care funding included in institutional programs above 1,250 beds	Residential facilities dedicated to providing transitional treatment for up to 6 months for offenders participating in any of the institutional treatment programs such as the IPTCs and SAFPs.	312 beds operational (25% operational) with 938 pending or pending program restructuring
Intermediate Sanction Facilities (ISFs), Parole/ Probation	\$28.7 million 1,400 beds	ISFs are secure facilities that serve as detention centers for offenders violating the conditions of their supervision ("technical violations"). These facilities are used to sanction offenders in lieu of a revocation to prison. The average length of stay is 60 days.	309 beds operational (22% operational) with 1,091 fully operational by August 2010

Description of the Justice Reinvestment Initiative Enacted in 2007

Senator John Whitmire and Representative Jerry Madden worked with their colleagues and the Justice Center to develop a justice reinvestment initiative that would address these three drivers of prison growth, generate savings to the state, and reinvest in strategies that could improve public safety by reducing recidivism. In May 2007, the Texas legislature adopted, and the governor approved, a budget that included greater treatment capacity in the prison system and the expansion of diversion options in the probation and parole system. A total of 4,500 new diversion beds and 5,200 new program slots were funded.⁴ At the end of the 2007 legislative session, the LBB projected that the justice reinvestment policies, if adopted and implemented, would cause the prison population to stabilize and would result in no significant shortfall in the prison system capacity by 2012. Subsequent projections completed in January 2008 and June 2008 were consistent with these projections.⁵

The final budget adopted by the legislature for the 2008–2009 biennium reflected an increase of \$241 million in funding for additional diversion and treatment capacity. The expansion of these programs translated into a net savings of \$443.9 million in the FY 2008–09 budget by reducing funding for contracted bed space and canceling funding for the construction of the new prison units originally proposed.⁶

Implementation of the 2007 Justice Reinvestment Initiative

The extent to which components of the 2007 Justice Reinvestment Initiative were implemented by December 2008 varied considerably.

Although the expansion of prison-based programs and some outpatient services is on track, plans to increase the capacity of some residential treatment facilities are behind schedule. Particularly, the requests for proposals that TDCJ issued for Transitional Treatment Centers (TTCs) for residential treatment on reentry into the community from an institutional program generated few responses. The underwhelming interest does not appear to be related to the rates TDCJ offered to pay; the request for proposals (RFPs) stated the agency would be willing to negotiate per diem rates for these facilities. Instead, two challenges in particular appear to have discouraged vendors from submitting proposals.

First, contractors report having an insufficient number of certified counselors to make available the services the RFPs contemplate. Second, state officials and private contractors have had little success securing community approval for the establishment of new – or the expansion of existing – non-secure residential treatment facilities, particularly smaller ones located in urban areas. Texas law requires public hearings and approval by county and city officials before correctional residential centers are located or expanded in a county or city, and community leaders have been outspoken in their opposition

4. Figure 2 as presented in Council of State Governments Justice Center, September 2007. *Justice Reinvestment Texas: A Case Study*, cited above.

5. Legislative Budget Board, Adult and Juvenile Correctional Population Projections, January 2008 and June 2008, http://www.lbb.state.tx.us/PubSafety_CrimJustice/PubSafety_CrimJustice.htm#.

6. Council of State Governments Justice Center, September 2007. *Justice Reinvestment Texas: A Case Study* www.justicecenter.csg.org. The savings represent the difference between the original request for appropriations by the administration and the final adopted plan and do not consider potential future savings or cost-avoidance due to the impact of the plan on the projected prison bed shortfall and reductions in recidivism.

to the delivery of these services in their neighborhoods.

For example, the City of Amarillo opposed the proposal of a residential substance abuse treatment center – even though it was located in a light-industrial zone.⁷ In El Paso, where elected officials have historically supported alternatives to incarceration, leaders successfully opposed the expansion of an existing halfway house.⁸ Finally, in Austin, which is widely seen as especially accepting of alternatives to incarceration, the local probation department abandoned attempts to expand a treatment counseling center near the downtown area after running into strong opposition among neighborhood leaders.⁹

TDCJ continues to pursue strategies to have the rest of the facilities operational by late 2009 and 2010. It also is developing an intense outpatient treatment transition program in response to the shortage in TTC beds.

Prison Population Trends 2007–2009

Despite the challenges of expanding residential treatment, the legislature's 2007 initiative appears to be helping to stabilize the growth of the Texas prison population. The increase in treatment capacity and intermediate sanction facilities funded by the initiative has helped to increase the number of people on probation connected to services and reduce the number revoked to prison. The legislation's in-prison program resources have reduced delays in parole release, enabling the parole board to increase its rate of grants for supervised release. And, the infusion of resources

for intermediate sanction facilities and the administrative policy changes regarding violations seem to be the main reasons for decreasing parole revocations.

As the prison population in Texas has stabilized, the number of people placed on probation has increased and the parole approval rate has slightly increased. The number of people placed on felony probation in Texas increased by 6 percent from FY 2006 (before the initiative) to 2008 (see Table 2).¹⁰ Consequently, the average number of felons under probation supervision increased almost 7 percent during the same period.

Between FY 2006 and FY 2008, the average number of monthly parole releases increased by about 14 percent. The 30-percent parole approval rate has been relatively stable during this two-year period, representing an increase over the preceding two-year period and moving closer to the 31-percent approval rate the state's parole guidelines provide. The number of people under parole supervision did not increase significantly (2 percent), which may indicate that parole supervision terms have shortened.

Although the number of people being placed on probation has increased and the parole approval rate has increased the number of people on parole, revocation rates for people on probation and parole have held steady or improved. The parole revocation rate decreased by 25 percent from 2006 to 2008. Texas had 77,990 parolees under direct supervision in 2008, but only 7,444 were revoked to prison, and, of these, only about 20 percent were revoked for technical violations.¹¹ As documented in a Justice Center report to TDCJ, this is the result of the aggressive implementation of progressive sanctions and the use of ISFs in lieu of a prison revocation.¹²

7. "Rehabilitation Center Shot Down" at http://www.amarillo.com/stories/040208/new_10009429.shtml, April 2, 2008.

8. "200 new beds headed to halfway house near Sparks," www.kvia.com, April 3, 2008.

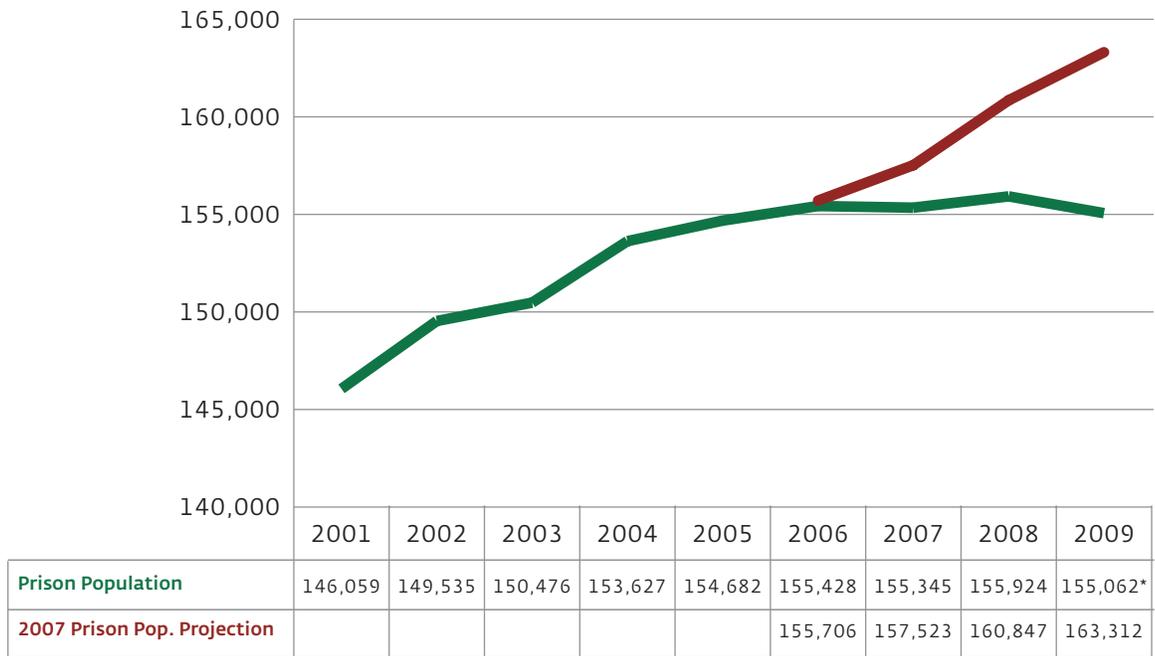
9. http://www.co.travis.tx.us/commissioners_court/minutes/2007/12/071204vrsd.pdf.

10. Texas' fiscal year is September to August.

11. Texas Board of Pardons and Paroles Annual Reports FY 2000–2006. TDCJ-CJAD, Annual Statistical Report FY 2007.

12. Internal Report to TDCJ, Justice Center, Texas Parole System: A Case Study of Progressive Sanctions and Risk Reduction Strategies at Work, February 2009.

Figure 1: Actual TDCJ Population at Calendar Year End Compared to Projected Population of January 2007 Before Justice Reinvestment Initiative



*Projected TDCJ population for December 2009 from the most recent projection (January 2009, LBB)

Table 2: Probation Population and TDCJ Admissions and Population Trends

FISCAL YEAR	FELONS PLACED ON PROBATION	AVERAGE YEARLY FELONS ON PROBATION	TOTAL ADMISSIONS TO TEXAS PRISONS	TDCJ POPULATION*
2006	56,706	157,993	75,544	155,651
2007	59,742	159,851	74,779	155,428
2008	60,214	168,788	74,283	156,127
% Change 2006–2008	6.1%	6.8%	-0.01%	0.3%

*Note: Texas prison population for August 2006 and August 2007 adjusted to account for a methodological change in the population count that became effective in September 2007 and explained in the note of Figure 6, in Justice Center, Council of State Governments, September 2007. The number of admissions and population includes inmates in prison, state jails and SAFP facilities. *Justice Reinvestment Texas: A Case Study* www.justicecenter.csg.org.

Source: Texas Department of Criminal Justice, Community Justice Assistance Division and Legislative Budget Board unpublished statistical tables.

Table 3: Parole Release and Approval Rate Trends

FISCAL YEAR	AVERAGE MONTHLY PAROLE RELEASES	PAROLE APPROVAL RATE	PAROLE POPULATION
2006	1,504	26.43%	76,721
2007	1,532	29.87%	76,709
2008	1,719	30.93%	77,990
% Change 2006–2008	14.3%	17.0%	1.6%

Source: Legislative Budget Board unpublished statistical tables and Texas Board of Pardons and Paroles, Parole Guidelines Reports.

Table 4: Probation and Parole Revocation Trends

FISCAL YEAR	FELONY PROBATION REVOCATIONS	FELONY PROBATION REVOCATION RATE	PAROLE REVOCATIONS	REVOCATION RATE
2006	23,214	14.7%	9,875	12.87%
2007	23,952	15.0%	9,792	12.77%
2008	24,028	14.2%	7,444	9.54%
% Change 2006–2008	3.5%	-3.1%	-24.6%	-25.8%

Source: Texas Department of Criminal Justice, Community Justice Assistance Division and Legislative Budget Board unpublished statistical tables.

2009 Prison Population Projection

The LBB's prison population projection issued in January 2009 takes into account the policy shifts resulting from the legislature's 2007 actions. This updated projection reflects a net reduction of approximately 15,000 people in the estimated growth of the prison population by 2012.

The January 2009 projection, unlike the January 2007 projection, does not suggest a pressing need for new prison construction. Little growth is projected for the prison population, and no shortfall in capacity is projected until August 2013, when the system will need 1,293 additional beds. Traditionally, when a relatively small shortfall of beds is projected (as in this case), the state of Texas has contracted with the counties for additional, temporary bed space. For example,

in 2007 and 2008 the state contracted with the counties to use more than 2,000 beds. Another (less costly) option for the state is to eliminate the need for additional capacity by slightly increasing the parole grant rate for people in prison who have a low risk of reoffending and streamlining the release process for individuals whose parole is approved.

Parole grant rates have yet to reach 31 percent consistently, which is the average rate recommended by the board's own guidelines. Moreover, the LBB performance review of the parole release process showed that inefficiencies in the process create delays in an offender's release and limit bed availability. Minor modifications in the release protocols could reduce the prison population by more than 1,000 offenders and potentially save close to \$14 million in the next two fiscal years.¹³

13. Legislative Budget Board, January 2009. "Reduce the Prison Population by Reducing Parole Process Delays" in *Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations*.

Challenges for the Legislature

The 81st Texas Legislature, which convened in January 2009, still faces major challenges regarding the state's corrections system. A shortage of correctional officers persists with 2,354 correctional officer vacancies, or 8.9 percent of all correctional officer positions, on January 31, 2009.¹⁴ The state will also need to address the problems related to the expansion of residential treatment center capacity. Additional support for probation and reentry strategies must also be a priority (see Table 5). These needs will compete with the agency's additional priorities, as shown below, as well as with the priorities of other state agencies.

TDCJ has requested \$6.853 billion for its FY 2010–11 budget, an increase in funding of approximately \$1 billion over the preceding two-year period. The TDCJ baseline budget includes continued support for all the programs adopted during the 2007 legislative session. In addition, TDCJ has requested “above the baseline” funds for FY 2010–11 for correctional and parole officers' pay raises (\$453.4 million); probation supervision, outpatient treatment, and mental health treatment (\$72 million); and reentry coordinators (\$10.4 million). The basic probation supervision funding request also includes funding for a probation officer pay raise.¹⁵ This will compete within the TDCJ budget for additional funding for items such as correctional healthcare (\$181.2 million); repairs and rehabilitation of facilities (\$100 million); correctional security equipment (\$30 million officially requested and potentially more to be requested to address the public safety concerns related to smuggled cell phones, an issue that gained national attention in late 2008);

and for 2009 an “emergency” request of more than \$176 million to address a budget shortfall during the present fiscal year related to increased fuel and electricity costs and other unanticipated operations expenses.¹⁶

Texas is facing better budget prospects than 44 states with major budget shortfalls.¹⁷ Still, the backdrop for this legislative session is one of declining revenues and expected economic downturns; the governor and the LBB have instructed state agencies, including TDCJ, to present an alternative budget, which incorporates across-the-board cuts of 10 percent.¹⁸

Historically (and as was the case during the 2003 recession), Texas policymakers have shown little interest in cutting agency expenses by reducing the prison population and closing down old, expensive prison units. Accordingly, TDCJ has proposed realizing a 10 percent spending cut by reducing funding for alternatives to incarceration and rehabilitation programs. Of the proposed \$124.3 million FY 2010–11 reduction, \$109.4 million, or 88 percent, will be reductions in probation and parole supervision, alternatives to incarceration, mental health services, substance abuse treatment, halfway houses, and intermediate sanction facilities.

Unfortunately, any such reductions will likely cause an increase in the prison population as they have in the past. For example, if the increase in prison population materializes due to a reduction in alternatives to incarceration in FY 2010–11, Texas will again face demands for a costly prison expansion program. Breaking this vicious cycle will be one of the biggest corrections and budgetary challenges faced by the Texas Legislature.

14. Legislative Budget Board, January 2008. “The Impact of Correctional Officer Workforce Shortages on Prison Operations and Security” in *Texas State Government Effectiveness and Efficiency*.

15. Texas Department of Criminal Justice, Community Justice Assistance Division, Strengthening Community Supervision Fact Sheet, February 2009.

16. Austin American-Statement, “Prison officials ask for \$66 million to help stop cell phone smuggling,”

December 4, 2008 at <http://www.statesman.com/news/content/news/stories/local/12/04/1204cellphones.html>.

17. Center on Budget and Policy Priorities, November 12, 2008 “State Budget Woes Worsen.”

18. LBB and Governor's Office Policy Letter, May 5, 2008 as presented in the FY 2010–11 TDCJ Legislative Appropriations Request, August, 14, 2008.

Table 5: Challenges Faced by the 81st Texas Legislature to Maintain an Effective Correctional System

ISSUE	DESCRIPTION
Prison correctional officer shortage and high turnover rate for probation officers	The present shortage in correctional officers negatively impacts all aspects of prison operations. TDCJ has requested a budget increase of \$453.4 million in FY 2010–11 for a 20 percent average pay increase for correctional and parole officers and \$40 million for a pay increase for probation officers.
Treatment facility locations	The rural location of some treatment facilities makes it difficult to hire qualified counseling staff and increases isolation from family who can assist in rehabilitation efforts. There are also cultural issues that have never been addressed; namely, the ability of a rural Anglo staff to effectively connect and establish “treatment” relationships with a predominantly African-American and Hispanic urban offender population.
Transitional Treatment Centers in the community and treatment staff	Transitional Treatment Centers (TTCs) are used to manage the transition from in-prison treatment to community treatment of offenders. There is a shortage of vendors to operate TTCs due to low per diem payments, the shortage in qualified certified counselors, and urban communities’ opposition to having these facilities (which are usually in urban areas to be effective). There is also a significant shortage of Spanish-speaking counselors, which negatively impacts the ability to deal with the growing Hispanic population. TDCJ is developing an intensive outpatient transitional treatment program and shortening the length of stay in TTCs, but these strategies need to be evaluated to assure an impact on recidivism equivalent or better than the impact that has been documented for the TTCs.
Per diem payments	With state agencies competing against each other due to different per diem payment schedules, per diem payments vary. In general, TDCJ pays lower per diem than those provided by the state health agency or federal government, which affects its competitive position in the market.
Probation/mental health	Probation officer turnover has increased, and the general higher operational costs for the probation system is putting pressure on diverting funds from programs and diversion efforts. The number of mentally ill persons in the system continues to increase and put added demands to more effectively deal with this population. TDCJ has requested an additional \$72 million for FY 2010–11 for enhancements in this area, including funding for additional outpatient substance abuse treatment and mental health courts.
Reentry and collaboration	Transitioning offenders from programs to community reentry requires effective collaboration with other public and private social services providers, such as housing acquisition or workforce development, but programs are staffed at levels that do not allow for dedicated personnel to do this. TDCJ has requested \$10.4 million in new funds for “reentry transitional coordinators” to enhance collaboration and reentry follow-up.
Barriers to success	State policies enacted in this decade are directed at the apparent protection of different segments of the public, but these policies have created significant barriers to offender success. Occupational license restrictions prevent offenders from engaging in certain occupations; results of background checks increasingly restrict housing options; and ex-inmates’ employment opportunities and financial obligations related to the payment of court imposed fines and fees have increased the financial burdens of an already economically distressed population. These policies need to be re-examined.
Sustainability	The state has not funded adequate research to measure the outcomes of Justice Reinvestment programs, which over the long term decreases the confidence the programs are producing well-documented results. Funding for this research should be considered an important part of improving the programs and sustaining their support.

To learn more about the justice reinvestment strategy
in Texas and other states, please visit:
www.justicereinvestment.org.

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The Justice Center is a national, nonpartisan organization that works with policymakers to develop data-driven, consensus-based strategies that increase public safety and strengthen communities. Assistance from the Justice Center is made possible in part through funding support provided by the Bureau of Justice Assistance, a component of the U.S. Department of Justice, and the Public Safety Performance Project of The Pew Charitable Trusts' Center on the States.



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Council of State Governments Justice Center

100 Wall Street
20th Floor
New York, NY 10005
tel: 212-482-2320
fax: 212-482-2344

4630 Montgomery Avenue
Suite 650
Bethesda, MD 20814
tel: 301-760-2401
fax: 240-497-0568

504 W. 12th Street
Austin, TX 78701
tel: 512-482-8298
fax: 512-474-5011

www.justicecenter.csg.org