

East Texas Review

Probation bill likely to return

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With Texas' state prison population expected to exceed capacity by nearly 10,000 beds as soon as 2010, state lawmakers face a public policy crisis.

In its legislative appropriations request for fiscal year 2008-2009, the Department of Criminal Justice (TDCJ) called for the biggest expansion in prison building in over two decades. Whether legislators have the political will to commit to spending at least \$520 million on construction is another matter.

DJC's plan envisions three new prisons and 5,080 new beds, 500 of them for a DWI treatment center. The plan also recommends 850 beds for special drug treatment prisons, substance-abuse treatment centers for parole-ready inmates, halfway houses, and community-based treatment programs for minor offenders.

So far, legislative response has been lukewarm at best. Texas is already home to the largest prison system in the country. Building more prisons seems an unlikely option given the state's current fiscal situation. With an expected tight budget next year and a projected \$20+ billion shortfall in the out years, there won't be much wiggle room in the budget.

Prison overcrowding is a recurring problem for the state. In the 1990s, Texas completed a \$2 billion expansion program, tripling the size of its prison system. Yet the state has recently exceeded its 151,000 inmate capacity and must rent beds from county jails. Part of the reason is that Texas has one of the nation's highest incarceration rates - 694 inmates per 100,000 residents - compared to the U.S. average per capita of 488.

The Legislature may look to other options to relieve prison overcrowding, such as easing probation requirements, changing the law on sentencing for nonviolent offenders and creating new community-based programs to keep at-risk individuals from seeing the inside of a prison cell.

Rep. Jerry Madden (R-Richardson) and Sen. John Whitmire (D-Houston) have vowed to reintroduce legislation next year that would reform the state's probation system. According to TDCJ, Texas' probation term is 67 percent longer than the national average. Madden and Whitmire would shorten minimum probation terms for nonviolent felons from 10 years to five while also expanding community supervision and treatment programs. A similar bill the duo passed last year was vetoed by Gov. Rick Perry. Madden and Whitmire hope next year will be the charm.

According to the Legislative Budget Board (LBB), probation revocations are a significant driver of the increase in the prison population, accounting for 30 percent of prison admissions annually. In 2004, according to Whitmire, more prison sentences resulted from probation revocation than from direct sentencing by the courts. In fact, more than half of the 26,239 felony probationers were sent to prison due to technical violations such as failure to keep appointments with probation officers or to perform court-mandated community service.

"We do make it, in many instances, impossible for a probationer to succeed," said Whitmire at a recent public policy forum at the Texas Public Policy Foundation.

Nearly 400,000 Texans are on probation for crimes ranging from kidnapping to petty theft to white-collar offenses. Almost half of probationers are under direct daily or weekly supervision. The rest are under some form of indirect or occasional supervision.

Changing probation terms for low-risk individuals from 10 years to five would reduce probation officers' caseloads and allow for increased supervision of those who really need it, argue Madden and Whitmire. Judges would also have more discretion as to extending probation terms beyond five years.

Lawmakers may also consider changing the way the law treats substance abusers, such as people convicted of driving while intoxicated (DWI). According to Whitmire, approximately 4,000 DWI repeat offenders are housed in maximum security prisons that receive no drug treatment for their addictions. The Legislature cut \$94 million in rehab programming from the prison system two years ago. It makes more sense, Whitmire said, to keep these nonviolent offenders in community treatment centers - where they could get help - than to imprison them.

"We're all tough on crime... but we've got to be smart and the smart things to do are not necessarily those such as 'Lock them up and throw away the key,'" said Madden, "but are those things that provide the programs and provide the insight to do things differently than what we've been doing."

Last session, Madden proposed expanding Drug Courts throughout the state. Currently eight counties use this type of system for non-violent drug-related offenders. Drug Court programs offer judicially led intensive supervision, treatment sessions, and drug testing for up to one year to 18 months.

Proponents of the system argue that those who successfully complete a drug court program have much lower recidivism rates than non-participants. Madden's bill would have required counties with more than 200,000 residents to implement a drug court if a county could secure state or federal funding for the program. In addition, the bill would have expanded the use of probation for nonviolent, repeat drug offenders, freeing up the space in state jail for more serious criminals.

TDJC and LBB estimate that the state needs to find up to 10,000 new beds to house prisoners by 2010. The state currently has already exceeded its 152,000 bed capacity which includes state jails, prisons and transfer facilities. TDJC now leases over 1,800 beds from county jails at a cost of \$40 per bed a day. The LBB projects that it will need to lease an additional 2,000 beds by August of next year.

The agency can lease beds from privately operated prisons; however, state law imposes a cap of 1,000 beds per private prison with a total cap on the number of private prison beds at 4,580.

Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation, has called the caps "arbitrary." Levin advocates eliminating the cap altogether to allow private entities to compete with county governments in leasing beds to the state. According to Levin, privately-operated prisons can do the job cheaper, at an average cost of \$20 to \$30 a day, excluding medical costs.

Private prison facilities typically offer more educational programs and treatment services to prisoners than do county jails, which were generally designed as holding cells for arrestees awaiting trial or court arraignment. Madden said he would introduce a bill in the next session to increase the number of beds by which TDJC can lease from private facilities.