



PolicyPerspective

The Role of Parole in Texas: Achieving Public Safety and Efficiency

by Marc Levin, Esq.

Director, Center for
Effective Justice

Vikrant P. Reddy, Esq.

Policy Analyst, Center for
Effective Justice

Recommendations

- Regularly update offense classifications and prioritize nonviolent, low-risk inmates and those who are not incarcerated for a new offense.
- Create earned time incentive for state jail offenders.
- Continue enhancing collaboration between parole system, state government, and local law enforcement.
- Provide qualified relief to employers in negligent hiring suits.
- Create a brief reentry supervision period for parole eligible inmates denied parole

Introduction

Texas recently earned national acclaim for avoiding what was expected to be a catastrophic prison overcrowding crisis. In 2005, in anticipation of overcrowding, the Legislative Budget Board recommended building more than 17,000 new prison beds. Texas did not build the beds, however, and it still managed to reduce crime throughout the state. Part of the credit for this impressive accomplishment must go to the state's parole system. In 2009, out of 76,607 parole-eligible cases considered, 23,182 Texas inmates were placed on some kind of parole supervision.¹ More importantly, the number of parolees revoked to prison has sharply declined from 11,311 in 2004 to 6,678 in 2010, reflecting a drop in both new crimes and technical violations serious enough to warrant revocation.²

The parole system is designed to ensure those leaving prison are under supervision during their initial reentry into society and promote order in prisons by providing inmates with an incentive for good behavior, but it is also the primary means by which the state controls the size and cost of the prison population at the back-end of the system. Some states don't have parole and instead adhere to "truth-in-sentencing" policies which incarcerate offenders for every day of their sentence. While such policies have some appeal, they don't allow for an appraisal of the inmate's behavior in prison and his efforts at self-improvement through completing rehabilitation programs. As conservative Congressman Howard Coble of North Carolina noted, "I still embrace the theory of locking the cell door if an offender has been convicted of a crime. But I don't say throw the key away. I say, keep the key handy, so the same key that locked that door can also unlock it."³

In a practical sense, parole is also the state's response to the problematic incentive created by a dual system of locally elected prosecutors and judges and state-funded incarceration. The incentive is for locally elected officials to seek public support and eliminate any risk of crime in their local jurisdictions through the longest sentences possible for every offender at the state's expense, as opposed to managing risks by balancing incarceration costs with other priorities, such as better policing programs that may prevent more crime for every dollar spent.

In Texas, parole revocations have declined in recent years, from 14.8 percent in 2004 to 8.2 percent in 2010.⁴ Further parole reforms, if properly targeted, could improve this, staving off prison crowding problems long before they start and contributing to gains in public safety. The recommendations below stand in stark contrast to the late 1980's debacle when the state leadership decided to turn the parole system into a gigantic jailbreak rather than incur the cost of building new lockups. At that time, some 750 prisoners were being released early every week, including many murderers and rapists.⁵

There are key differences, however, in our situation today: 1) the state has more than three times as many prison beds due to the early 1990s prison building spree triggered in part by the public outrage at these releases in the 1980s; 2) carefully targeted changes have resulted in only a slight increase in the total parole rate from 27 to 31 percent;⁶ and 3) the state has far more nonviolent inmates today who are either ineligible for parole or who are being refused parole. By continuing to focus parole changes on this population, the state can avoid building new prisons while also not repeating the mistakes of the past.

Figure 1: Texas Parole Has Increased Even While Crime Has Declined



Sources: ???

Overview of the Parole System

The Texas Board of Pardons and Paroles (TBPP), a separate constitutional entity whose budget is within the Texas Department of Criminal Justice (TDCJ), has 12 full-time commissioners who review prisoners’ files and, in some cases, conduct interviews, usually by phone, to determine whether an early release should be granted. Current law provides two primary means by which prisoners may be released early: discretionary mandatory supervision (DMS) and parole.

prisoners guilty of murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, and aggravated robbery.⁸

The word “discretionary” signifies that the parole board must still approve the release after the combination of time served and good time equal the sentence. There are two criteria for the decision: whether the time served is indicative of the inmate’s rehabilitation and whether the inmate presents a danger to society. Well-behaved inmates, as a general rule, receive one year of good time for every year served. In 2009, 48.28 percent of inmates eligible for DMS were released.⁹

Table 1: Texas Trend: Lower Incarceration Rate & Less Crime

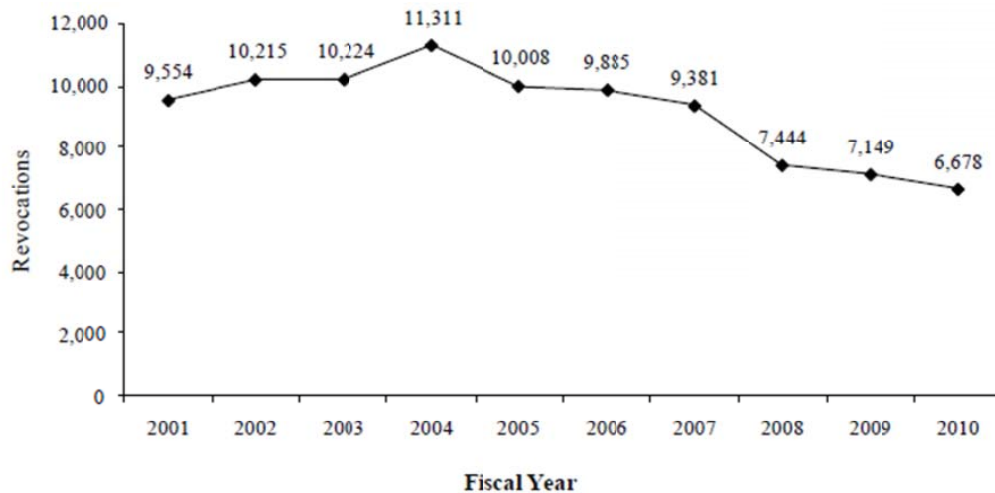
Year	Incarceration Rate Per 100,000 Residents	Serious Crimes Per 100,000 Residents
2004	704	5,039
2009	648	4,506
% Change	-8.0%	-10.6%

Sources: Bureau of Justice Statistics and Texas Law Enforcement Agency Uniform Crime Reports⁷

In 1995, the Legislature abolished mandatory supervision (MS), which automatically released inmates after their calendar time served and good time equaled the sentence. While inmates sentenced before September 1, 1996 remain eligible for MS, all other inmates are governed by DMS. Just as with MS, the most serious violent criminals are ineligible for DMS. This group of offenders, known as “3g offenders,” includes

Most inmates become eligible for parole when their actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less. However, “3g offenders” must serve one-half of their sentence or 30 calendar years, whichever is less, before becoming parole eligible. Eligible inmates receive a score of between one and seven, with seven being the best, based on their offense level and individualized risk level. The TBPP utilizes a schedule that classifies over 1,900 offenses as low, medium, high, or very high severity.¹⁰ The second component of the inmate’s score is their individual risk factors, which include age, gang membership, employment history, and prison disciplinary record. In 2001, the TBPP adopted guidelines that provide a recommended percentage range for approvals for inmates at each of the seven levels. In 2009, 30.26 percent of inmates eligible for parole were released.¹¹

Figure 2: Texas Parole Revocations: 2001-2010



Sources: Legislative Budget Board; Texas Department of Criminal Justice, "Statistical Report"

For MS, DMS, and parole, the TBPP may set conditions for release in addition to the regular reporting requirements. These can include participation in a pre-release treatment program and GPS monitoring upon release. The Parole Division of TDCJ also operates residential intermediate sanction facilities, which currently house 1,793 offenders who have violated a condition of their parole. In 2009, 7,471 parolees were revoked to prison.¹² Of these revocations, 1,045 were for technical violations.

Recommended Policy Approaches

Regularly Update Offense Classifications and Prioritize Non-violent, Low-risk Inmates and Those Who Are Not Incarcerated for a New Offense

Guidelines adopted by the TBPP in 2001 called for 76 to 100 percent of inmates at level 7 to be approved for parole. Level 7 inmates are nonviolent offenders who also have low individualized risk assessments. Many of them were convicted for possessing a small amount of drugs. Similarly, the recommended range for inmates at level 6 is between 51 and 75 percent.

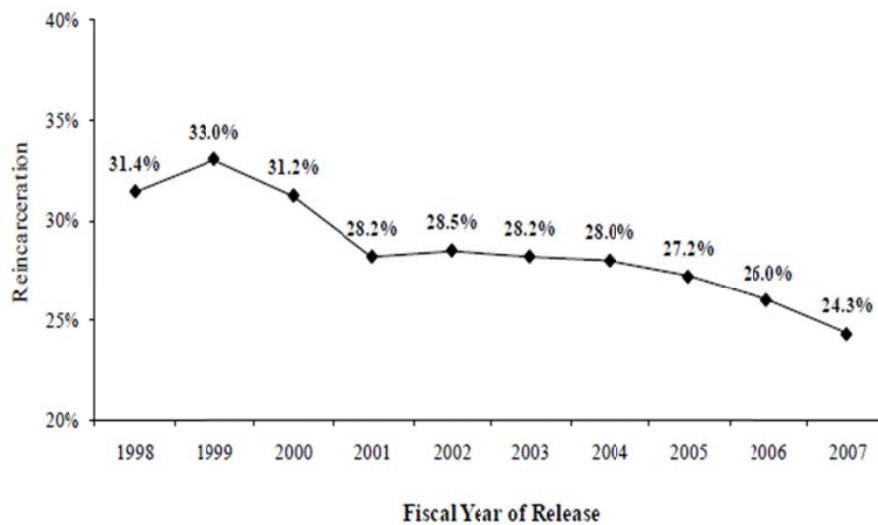
While the offense classifications are evidence-based and largely categorize nonviolent crimes as low and medium severity and violent crimes as high and very high severity, the TBPP should ensure that it regularly updates the classifications to see if some crimes may be moved into the levels that call for higher levels of release. Appropriately, homicide, kidnapping,

and rape are rated "high," and capital murder and aggravated kidnapping and rape are rated "very high." The failure to remit taxes of \$200,000, however, also receives a "high" designation.¹³

In addition to updating the offense classifications, which could result in properly placing more offenders in levels 6 and 7, another way to increase the parole rate of level 6 and 7 offenders would be to grant release if their first parole commissioner votes "yes" while continuing the current system of requiring two out of three votes for other offenders. This would also reduce the strain on the parole commissioners, allowing them to focus more resources on the most difficult cases. Some parole commissioners review as many as 15,000 cases per year, and on average the commissioners have only fourteen minutes to consider each case.

One weakness of the current parole process is that when a parole file is presented to the Board, there is no indication as to whether the inmate is incarcerated on a new charge or has been revoked from probation for technical violations. Technical violations include missing meetings and do not involve an allegation of a new offense. A provision of HB 3386 by House Corrections Chairman Jerry Madden, which may be attached to other legislation, would specify that when a nonviolent probationer is revoked solely for technical violations, they would serve one year before being released to supervision. Per a recommendation from prosecutors, an updated version of

Figure 3: Three-Year Re-Incarceration Rate of Texas Inmates by Year of Release



Sources: Legislative Budget Board; Texas Department of Criminal Justice; Criminal Justice Policy Council

this provision specifies that if the same probationer is again revoked for technical violations, that would trigger a prison term for the entire remaining sentence. In 2010, there were some 9,786 technical probation revocations with an average of 5.37 years remaining on these sentences at the time of revocation.¹⁴ Empirical research has demonstrated that there is no connection between the length of time served and recidivism and that inmates who serve longer, particularly nonviolent, low-risk inmates, recidivate at a higher rate because they become more hardened and disconnected from how to live by the rules in the real world and critical supports such as family and church.¹⁵

Create Earned Time Incentive for State Jail Offenders

The more than 12,000 confinees in state jail are not eligible for DMS or parole. Therefore, they serve 100 percent of their sentences, which are a maximum of two years. Yet, these non-violent offenders have committed less serious drug and property offenses than their counterparts in prison. Many of these state jail felons were convicted of possessing a small amount of drugs, stealing, graffiti, or writing a hot check.

There are 6,200 state jail confinees on hand with sentences of between one and two years, including 1,767 for the two year maximum.¹⁶ TDCJ has stated that these beds can be used for prisoners who do not require maximum security facilities, and indeed more than half of those now in state jails are transferencees from prison.*

Currently, state jail confinees are simply discharged to the street and are not subsequently monitored. Even though an early release program for state jail felons would put more of them on the street sooner, the crime attributable to them may decrease, because many would be released under supervision with access to reentry services, to the extent they are available. It is clear the current flat discharge approach is not working, as state jail inmates, although the lowest-level offenders in the system, have a 64 percent three year re-arrest rate compared with a 49 percent rate for prison inmates, the majority of whom are discharged on to parole supervision.¹⁷

In the 2011 Legislative Session, HB 3366, proposed by Rep. James White (R-Tyler), and HB 2649 by Rep. Alma Allen (D-Houston) which has been approved by the House, would allow state jail inmates to earn up to 20 or 25 percent of the time off their sentence through diligent participation credits. The credits would be based on successful completion of self-improvement programming, including work and vocational, educational, and treatment programs. This would encourage personal responsibility, provide wardens a tool for inmate management, and incentivize participation in those programs that have been proven to reduce recidivism.

Offenders with a prior conviction for a serious violent or sex offense are excluded from both bills, as are any offenders with two or more prior felonies. Additionally, the judge in whose

* These prison inmates in state jails are not considered among the approximately 12,000 "state jail confinees." They are housed in state jails for capacity reasons.

Table 2: Texas Parole Revocation Rate Has Significantly Declined

Fiscal Year	Average Active Parole Population	Parole Revocation Admissions to Prison	Revocation Rate
2001	78,215	9,554	12.2%
2002	79,740	10,215	12.8%
2003	76,727	10,224	13.3%
2004	76,669	11,311	14.8%
2005	76,540	10,008	13.1%
2006	76,696	9,885	12.9%
2007	76,601	9,381	12.2%
2008	77,964	7,444	9.5%
2009	78,945	7,149	9.1%
2010	81,220	6,678	8.2%

Sources: Legislative Budget Board; Texas Department of Criminal Justice, "Statistical Report"

court the inmate was sentenced could block the release if they determine the offender is a danger to public safety. The primary difference in the two bills is that under HB 2649 a judge could put the state jail inmate on probation for the remaining portion of their sentence using the current "shock probation" statute, whereas under HB 3366 the default would be, if the judge does not act, that the inmate would reenter on probation. Since the "shock probation" statute is very rarely used at present, under both bills, a significant share of state jail inmates who are now released "off paper" would be discharged under supervision. This means they would be required to comply with relevant probation conditions (e.g., regular reporting, a work requirement, drug testing, attending substance abuse or mental health treatment, staying away from gangs and other anti-social peers). In contrast, when an inmate is flat discharged, local communities and law enforcement have no way of knowing who these people are and where they are living. Of particular concern are the many state jail inmates with serious mental illness and on powerful psychiatric medications who are now discharged without supervision. Since they cannot be required to continue treatment and only 12 percent voluntarily showed up for their first appointment with the local mental health authority, the state discontinued making such appointments a couple of years ago.¹⁸

HB 3366 also specifies that if, after being placed on community supervision, the offender substantially violates the terms of supervision, they could be placed in an intermediate sanc-

tions facility, which are state-run lockups designed for short-term incarceration of up to 180 days. In the case of a new offense, the offender could and should be prosecuted and likely would be sent to prison for an extended period as a repeat offender.

The fiscal notes for these bills indicate that, in the 2012-13 biennium, HB 2649 would save \$48.99 million while HB 3366 would save \$72.36 million.¹⁹

Continue Enhancing Collaboration Between Parole System, State Government and Local Law Enforcement

The public is likely to be more receptive to the parole of additional nonviolent inmates if effective parole supervision and law enforcement practices are in place. After all, if more Texans are being paroled, the state has a responsibility to ensure that they receive appropriate supervision in the community. Fortunately, the Parole Division has long utilized the progressive sanctions model that swiftly addresses technical parole violations. Additionally, the Division has begun working with the Austin Police Department to overlay the location of parolees with the Department's GPS system. Police should know where parolees are and parolees should know that they are being watched by law enforcement in addition to their parole officer.

Research has shown that community-oriented policing can deter and solve more crimes by increasing the visibility of

law enforcement, encouraging neighbors to cooperate with police, and curbing an atmosphere of disorder through consistent but measured responses to minor crimes.²⁰ The latter approach is often termed “broken windows” policing and is partly credited for making New York City the safest major city in the United States (2,675.5 reported crimes per 100,000 people) according to FBI crime statistics released in 2006.²¹ Dallas, by contrast, is among the most dangerous (8,484.4 reported crimes per 100,000 people).²² Effective community policing requires a force large enough to initiate activity rather than simply respond to calls, best practices for assigning officers to beats and neighborhoods, and a performance system that measures the effectiveness of officers by more than simply time worked and arrests.

Provide Qualified Relief to Employers in Negligent Hiring Suits

While it is clear that from a criminal justice and economic perspective that the employment of ex-offenders should be encouraged, our civil liability system is working at cross-purposes with this goal. The Urban Institute noted, “The high probability of losing coupled with the magnitude of settlement awards suggest that fear of litigation may substantially deter employers from hiring applicants with criminal history records.”²³ That fear is not without basis. Employers lose 72 percent of negligent hiring cases with an average settlement of more than \$1.6 million.²⁴

HB 3327 by Rep. Beverly Woolley would give ex-offenders a second chance, promote workforce productivity, lower crime, and reduce incarceration costs by establishing that employers, contractors, and premises owners cannot, except in certain exceptional circumstances spelled out in the legislation, be sued for negligent hiring on the basis that the employee had previously committed a nonviolent criminal offense. Such legislation has been recommended by the American Bar Association and enacted in Kansas.

Expand the use of GPS Technology

Texas has admirably utilized GPS technology to monitor parolees, but as technology advances, the state should advance with it. The only tracking technology that is currently used is via a link to the home telephone, a method that is increasingly outdated. With active GPS monitoring, however, officers can watch parolees much more closely. They can tell, for example, whether an offender was present at a crime scene. They can also monitor whether the parolee is in a place known for high levels of drug trafficking or near a school. Perhaps most im-

portantly, GPS technology can help to monitor pure technical violations as opposed to abscondee. A Florida study of 75,661 individuals conducted in 2006 concluded that with the use of electronic monitoring, offenders were 89 to 95 percent less likely to be revoked for a new offense.²⁵

Active GPS monitoring is not inexpensive. The technology costs more than twice the parole system’s daily cost of \$3.51. Costs can be mitigated, however, by using GPS technology in narrowly tailored fashion. For example, active GPS is ideal for high-risk offenders because it allows the police to respond instantly to violations. For lower-risk offenders, it may suffice to use less expensive radio frequency technology. A particularly promising area to apply electronic monitoring is to parolees detained in county jails on “blue warrants” for allegedly committing technical violations such as missing appointments. They can wait at least a month in the county jail at the county’s expense while the Parole Board decides whether to revoke them. HB 2735 by Rep. Jerry Madden, which passed the House and is being considered by the Senate, would allow these individuals to be eligible for release on bond. If this is enacted, it presents an opportunity to use electronic monitoring to ensure these parolees appear for their revocation hearing.

Create a Brief Reentry Supervision Period for Parole Eligible Inmates Denied Parole

Not all parole-eligible inmates ought to be granted parole, and thus the TBPP is rightly granted discretion to make parole decisions. Even those offenders who are denied parole, however, could be made eligible for a supervised reentry period.

In the 2011 legislative session, Senator Juan “Chuy” Hinojosa (D-McAllen) and Representative Ryan Guillen (D-Rio Grande City) introduced SB 976 and HB 1299, respectively. The legislation proposes to allow parole-eligible individuals nearing their full “end-of-sentence” date to be released for a period of supervision. This measure would result in some 5,320 fewer inmates being discharged without any supervision and with merely a \$50 bus ticket. Whether the right number is 90 percent or 95 percent of their sentence, it makes sense to ensure inmates spend at least few months under parole supervision as the immediate period following incarceration may determine whether they go return to the same association and activities that landed them in prison or chart a new course. Providing these individuals with post-release supervision will likely reduce recidivism, and it will subsequently reduce the accompanying the financial strain associated with

further incarceration. Savings of approximately \$33.1 million are projected.

Conclusion

Some may say parole is a topic a Texas politician wouldn't touch with a 10-foot pole. No one wants to be blamed for releasing an inmate who commits another crime. Yet, with limited taxpayer resources for corrections and law enforcement, risk must be managed and funds allocated to strategies that will be most

effective in reducing crime. Parole must continue to be difficult, if not impossible, for violent criminals and sex offenders to earn, but lawmakers must also consider parole reforms for offenders at the other end of that ten foot pole. Through targeted, evidence-based parole initiatives, more nonviolent, low risk offenders can be released with proper supervision, thereby safeguarding public safety while also freeing up existing space behind bars for the most dangerous criminals. ★

Endnotes

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About the Authors

Marc A. Levin is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an attorney and an accomplished author on legal and public policy issues.

Levin has served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court. In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law.

Levin's articles on law and public policy have been featured in publications such as *The Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News* and *Reason Magazine*.

Vikrant P. Reddy is a policy analyst in the Center for Effective Justice at the Texas Public Policy Foundation. Reddy is an attorney and a member of the State Bar of Texas.

Reddy graduated from the University of Texas at Austin with a B.A. in Plan II Honors, Economics, and History, and he earned his law degree at the Southern Methodist University Dedman School of Law in Dallas.

He has worked as a research assistant at The Cato Institute, as a law clerk to the Hon. Gina M. Benavides of the Thirteenth Court of Appeals of Texas, and as an attorney in private practice, focusing on trial and appellate litigation.

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