TDCJ Sunset Committee Hearing
November 14, 2024

Sunset Advisory Committee, Staff Report

RE: Sunset Advisory Committee, Staff Report, Recommendations (89th (R))

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Introduction

Thank you to the Texas Sunset Commission for its tireless work in reviewing the functions and outcomes of the Texas Department of Criminal Justice (TDCJ), and thank you to the Chair, Vice Chair, and full Sunset committee for convening to address the issues brought forth in this report.

Our names are Cole Meyer, Natasha Malik, and Christopher Cassella. We work on the Criminal Justice Project at Texas Appleseed. Our organization is dedicated to changing unjust laws and supporting data-driven, safe, and efficient policies. We leverage the skills and resources of volunteer lawyers, policy professionals, and community partners to identify problems and advocate for their solutions.

Today, we will provide testimony on Issues 3 and 4 of the Committee's Report: which speak to the outdated data practices and the lack of oversight and strategic planning for rehabilitative programming. We are happy to see that the report conveys what supporters of reform have been saying for far too long.

Discussion

Issue 3: Uncoordinated Strategic Planning and Outdated Data Systems and Practices Hinder TDCJ from Effectively Modernizing to Address Technology and Staffing Challenges

The third issue identified in the Committee report is *Uncoordinated Strategic Planning and Outdated Data Systems Hinder TDCJ from Effectively Modernizing to Address Technology and Staffing Changes.* The importance of accurate and timely data collection cannot be overstated. The committee is correct in identifying that shortcomings in data collection, management, and modernization, can have major consequences for the feasibility of effective policy change. To this end, we are in support of recommendations 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6, as they are outlined in this report.

Recommendations for Modernization and Improved Data Collection

- 3.1: Direct TDCJ to establish an office of modernization and strategic initiatives.
- 3.2: Direct TDCJ to develop a plan to prioritize improving its data collection and analysis, focusing on correctional and parole functions.
- 3.5: Direct TDCJ to develop a written plan to phase out paper-based processes, reduce manual data processes, and identify opportunities for automation.

Recommendations 3.1, 3.2, and 3.5 address the importance of improved and up-to-date data collection. While any available data is better than no available data, it is paramount that data collection practices strive to approach the industry standards. Modernizing data collection includes imputing data into digital formats where researchers can analyze it with computer software. In so doing, researchers can have more success in creating reliable conclusions about program successes, as well as offer more accurate predictions for outcomes of future programs. Modernizing data collection can also allow for cross-jurisdiction comparison. If the TDCJ lags behind other state data practices across the country, it puts significant restrictions on comparing TDCJ policies with other, similar-sized jurisdictions.

The issues created by uncoordinated strategic planning and outdated data systems limit the ability for improvement. There are two branches of non-coordination. The first is that there is no prioritization of goals within TDCJ's 2030 Plan. This means that agencies have at best, "a wish list for the agency rather than achievable and actionable initiatives. The second branch of non-coordination relates to cross-division communication. Internal to TDCJ, there is no staff responsible for tracking strategic initiatives across divisions. Several initiatives proposed in TDCJ's 2030 Plan would require an IT component. However, "TDCJ staff reported that they did not have to consult with IT staff on the

agency's capacity to implement the initiatives." The plan was uncoordinated, rendering it impossible to implement.

Moreover, automating data collection and maintenance practices, as well as phasing out paper-based processes (Recommendation 3.5), would reduce the strain on staff who would occupy their time with manual data collection. By making this change, there could then be more attention devoted to data collection within institutional and community correction functions. Data-driven decision-making in these two areas is paramount for better serving the system-impacted individuals.

Recommendations for Public Access and Data Governance

- 3.3: Direct TDCJ to establish and maintain a report that enables users to view an array of indicators of prison health and safety.
- 3.4: Direct TDCJ to establish administrative directives for the data governance program established by the Data Management Office.
- 3.6: Direct TDCJ to evaluate its process for reviewing external research requests.

Recommendations 3.3, 3.4, and 3.6 address the second step of data collection–the importance of data reporting. It is commonplace for many major metropolitan areas to have live digital dashboards that compile up-to-date information for public use. Public access to this data allows researchers to conduct their evaluations without utilizing public records requests. Recommendation 3.6 specifies the attention that should be paid to these research requests. As with automating data collection and maintenance practices, reevaluating which data is available to the public, and studying the process through which requests are made, can expedite researchers' ability to produce reports to aid decision-makers within TDCJ.

Unintentionally, whether it has been through reporting practices, restraints placed on external researchers, or vague processes for accessing data, TDCJ has supported a culture that is resistant to outside researchers. In FY23, TDCJ received 32 external research requests. Six of the requests were approved, 23 were denied, and three were withdrawn. The Committee report is correct in identifying that the resistance to outside researchers can lead to, "missed opportunities to gather information that could help improve operational outcomes and staff efficiencies."[1]

Taken together, the six recommendations we support emphasize the clear need for increased attention to data collection and management. The forward-looking nature of data-driven decision-making should not overshadow the present challenges created by low-quality data. Namely, there are errors and gaps in information that limit TDCJ's ability to identify and address ongoing problems. As mentioned in the Committee report, "the

ways in which TDCJ collects and reports data often do not contain the level of data that would best allow the agency to identify and address consistent problems that impact inmates and staff." Examples of the aforementioned data include but are not limited to, incidents of use of force, employee complaints and grievances, and untracked I-60s (i.e., offender request to official forms).[2]

Taking it One-Step Further: Texas Appleseed Criminal Justice Data Project

As a part of our mission to support safe, efficient, and data-driven decision-making, the Criminal Justice team began a project centered on tracking data reported by TDCJ. The aptly named "data project," began by identifying key statutes within the Government Code, the Texas Administrative Code–Public Safety and Corrections (Title 37), and the Code of Criminal Procedure (Title 1: Code of Criminal Procedure - Chapter 66. Criminal History Records System) that have explicit mentions of data collection and data reporting. The statutes were split pertaining to one of four divisions: Community Justice Assistance Divisions (seven statutes), Institutions Division (45 statutes), the Windham School District (17 statutes), and Release and Reentry/Parole (13 statutes). In addition to the sections of the code, we identified the data point (or points) to be collected; an example of a data point is the number of incarcerated individuals. We also identify which parties are responsible for data collection, as well as, if available, links to these reports.

A second goal of this project is to determine the number of data points identified in these statutes that are in line with the *best practices* for data collection. We used reports from four organizations to classify these best-practices data points: The National Conference of State Legislatures[3],The Council of State Governments Justice Center[4], Safety and Justice Challenge[5], and the Urban Institute[6]. Also included in these best-practices data recommendations are the eight criminogenic factors that researchers in criminology and criminal justice have consistently identified as factors that have an impact on recidivism (referred to more commonly as the "Central 8")[7]; this includes criminal history, schooling, and work history, family background, recreation and leisure time, substance use, pro-criminal attitudes or beliefs, pro-criminal acquaintances, and antisocial personality patterns. We believe that through identifying mentions of and encouraging the further development of the best-practices variables, as well as recommending continued attention to these databases over time, both the quality and quantity of the available data will be improved.

We look to have this project solidified at the start of next year and look forward to working with the Committee and TDCJ to help further explore the areas of growth for data collection and reporting.

Issue 4: The State Lacks Sufficient Oversight and Strategic Planning for Inmate Rehabilitation Programs.

The fourth issue noted in the staff report is *The State Lacks Sufficient Oversight and Strategic Planning for Inmate Rehabilitation Programs*. Amongst the many poignant revelations in this section, the committee's investigation revealed that much of the programming is having adverse effects and that the responsible parties have abdicated their responsibility for program outcomes.

For the past year, the Criminal Justice Project has been researching the state of substance use disorder (SUD) treatment in state jails. This includes systematically reviewing all offered programming published on TDCJ's website, sending several Public Information Requests (PIRs) to the relevant agencies and programming administrators, and reviewing the testimony of system-impacted individuals with first-hand experience.

Of the 16 state jail facilities in Texas, only three offer any sort of special treatment program specific to SUDs. Within these three units, the Pre-Release Substance Abuse Program (PRSAP) has been found to produce consistently higher rates of recidivism among program participants.[8] The program shows persistent increases in recidivism rates, rather than reductions, within the ten-year period. The magnitude of these increases fluctuates but remains within a range of roughly +0.4% to +3.5%.[9] Attempts to learn more about programming from TDCJ, its Health Services Division, the Correctional Managed Health Care Program, and its operating partners proved fruitless. Recipients of our PIRs either had no responsive information to our requests or would direct us to other agencies for the information. Thus, our conclusion is the same as the report's - comprehensive programming is not offered, the programs that do exist have no proven efficacy, and those who are in charge deflect to other agencies or partners when questioned on these issues.

Therefore, we are in support of recommendation 4.1 as laid out in this report.

Recommendation for Improving Rehabilitative Programming

- 4.1: Require TDCJ to comprehensively inventory rehabilitation and reentry programs, conduct biennial program evaluations, and recommend changes to programs needed.

The first recommendation under this issue is to require TDCJ to comprehensively inventory rehabilitation and reentry programs, conduct biennial program evaluations, and recommend changes to programs when needed. Much like the sunset committee, we could not get definitive answers on what programs exist across the 13 state jails and 3 privately-operated state jail facilities, nor on how the programs were evaluated or updated.

Through the testimony of system-impacted individuals, we learned that entry and completion of a decent rehabilitation program, such as cognitive-behavioral therapy, largely depended on the length of time the individual was in state jail. Those with 6-month sentences automatically did not qualify because the waiting list was at least 6 months long. Additionally, the programs that are easier to get into are poorly run and serve mostly as a way to get early release rather than to gain meaningful treatment and long-term recovery help. As mentioned above, a few units have access to special treatment programs such as PRSAP, State Jail Substance Abuse Program (SJSAP), and Pre-Release Therapeutic Community (PRTC). The remaining units have a hodgepodge of programs that are largely dependent on the community and volunteer services.

We strongly support this recommendation and encourage a multifaceted approach to addressing the inadequacies of current programming.

Texas Appleseed's Strategy for Reducing Recidivism in State Jails

With effective rehabilitative programming, Texas state jail facilities have the opportunity to break cycles of "pro-criminal behavior" and reincarceration and can boost positive outcomes for those with short-term sentences. Currently, the state jail system has the highest rates of recidivism across all statewide criminal and juvenile justice facilities.[10] The most recent reports show that within three years of release from a Texas state jail, 60.1% of individuals were rearrested and 20.5% were reincarcerated.[11] Approximately 64% of people in Texas state jails fit the criteria for substance use disorder diagnosis.[12] Given the prevalence, the need to evaluate and improve existing methods for treatment is imperative.

For one, the availability and quality of evidence-based SUD treatment needs to be improved. This requires incorporating comprehensive assessments upon intake, evidence-based behavioral therapies, and reentry planning that ensures continuity of care post-release.[13] Research has shown that planned longer-term treatment or support increases one's chances of abstaining or consuming moderately by almost 25% (23.9%).[14]

To this end, we additionally endorse the integration of peer support specialists, whose experience offers perspectives that can foster trust and motivate individuals to engage in the recovery process. Peer support specialists also help individuals navigate challenges post-release, by building community connections and providing accountability to maintain their commitment to a healthier lifestyle.[15] Finally, these treatment programs should be provided alongside educational and vocational training, enabling people to rebuild their lives once they have served their time.

Investing in this strategy would enhance general safety, reduce costs to the criminal justice system, and uphold Texas' commitment to rehabilitation and recovery for people being "treated" by the system.

Highlighting the Importance of Education: Texas Appleseed's Push for Higher Education in Prisons

Over the interim, our organization also conducted extensive research and outreach to explore the reinstatement of the FAFSA Simplification Act in carceral settings and how correctional institutions can launch Pell-funded education programs to advance their workforce development and reentry efforts.

Decades of criminological research have illustrated the importance of education in reducing recidivism.[16] Over the past 40 years, studies examining the impact of education on recidivism show that completing education while incarcerated reduces one's chances of recidivism, on average, by 28%.[17] Additionally, education is one of eight factors consistently shown to be critical in curbing one's likelihood of "re-offending."[18] Given that the average educational achievement score of someone confined in TDCJ is equivalent to a 7th-grade education, educational programming is a critical long-term priority.[19]

In 2020, Congress passed the FAFSA Simplification Act which allowed Pell Grants to be used to fund one's education while incarcerated. When the Department of Education released its guidelines for how Reinstatement should take place, it emphasized the need for *consistent* data collection and evaluation to ensure that education programming in our prison system is robust and sustainable. In speaking with Texas stakeholders and other states' higher education in prison stakeholders, the sentiment remains the same - it is of utmost priority to strengthen the administrative and data collection processes in this work.

Recommendations for Improving Rehabilitative Programming *and* Evaluation

- 4.12: Modify language in the General Appropriations Act to direct TDCJ to transfer administration and postsecondary correctional education to Windham through a Memorandum of Understanding.
- 4.2: Require TDCJ to develop a strategic plan for rehabilitation and reentry programs in conjunction with Windham and report on implementation status biennially.
- 4.5: Require TDCJ, BPP, and Windham to collaborate in developing evidence-based ITP and parole-voted program criteria and to develop and maintain associated program lists.

In this instance, it is not just about having data but being *intentional* about what data criteria are used to measure larger concepts like program effectiveness. Given the Windham School District's track record of collecting and reporting on this very issue (i.e., educational efforts of students receiving their services), we believe that they are in the best position to guide the direction of improved higher educational programs in TDCJ's institutions. Thus, we are supportive of recommendation 4.12, as provided in this report.

In supporting recommendation 4.12, we believe that this will positively impact recommendations 4.2 and 4.5, as higher education is an empirically supported factor that has a direct impact on recidivism. Again, Windham already publishes a biennial report utilizing many empirical data points, and they employ evaluation-based approaches to their programming.[20] They are well-suited to continue fulfilling this responsibility within the realm of postsecondary education and adhering to recommendation 4.2.

We also support the establishment of evidence-based criteria to evaluate programs *and* believe that equal emphasis must be placed on the establishment and regulation of the measures used to evaluate and amend the prison education programs currently outside of Windham's purview. When the US Department of Education issued its final regulations that institutions of education must abide by to be eligible for Pell-based funding, they provided a guide to the types of data that institutions should be collecting to evaluate the quality and effectiveness of their programming.[21] Some of the larger concepts of measurement include (1) instructor experience, credentials, and retention, (2) transferability of credits, (3) academic and career advising, (4) recidivism, (5) completion, (6) continuing education, and (7) job placement.

Our organization recently published a report that delves into sample criteria that can be used to fulfill the federal government's guidelines for Pell Reinstatement *and* fulfill recommendation 4.5.[22] Some sample data points include:
- ○ Job Placement
  - Level of education attained in prison (e.g., high school degree, some college, associate's degree)
  - Was the student placed in a job post-program completion? (yes/no)
    - ■ Within 3 months of completion
    - ■ Within 1 year of completion
  - Type of job placement (e.g., full-time, part-time, temporary, fellowship)
  - Was the student placed in a job relevant to their degree, licensure, and programming? (yes/no)
- ○ Continuing Education Rates
  - Did the student enroll in postsecondary education post-release? (yes/no)
    - ■ If yes, what type? (e.g., certificate, associate, bachelor, etc.)

- ○ Recidivism Rate
    - - Has the student been convicted of a felony 1-year post-program release?
    - - Has the student been convicted of a felony 3 years post-program release?
    - - Has the student been convicted of a felony 5 years post-program release?

These criteria are vital as federal Pell guidelines require each educational institution to undergo a "best interest determination" after operating within a prison unit for two years. This determination is conducted by TDCJ - with input from relevant stakeholders via an advisory committee - to determine if the programming is operating in the best interest of the students. TDCJ's advisory committee was created in 2023 and is composed of various higher education stakeholders, including the Windham School District, the Texas Higher Education Coordinating Board, the Texas Workforce Commission, the Texas Department of Licensing and Regulation, representatives of incarcerated students, and more. By formally enshrining postsecondary education and this advisory committee into statute, the legislature can ensure that there are resources in place to help Windham and TDCJ meet their goals of providing effective higher (or continued) educational programming.

Conclusion

The benefits that TDCJ and the state of Texas stand to gain from improved data collection processes and the expansion of postsecondary education are twofold: (1) enhanced data collection processes would improve transparency within our criminal legal system and allow TDCJ to make the changes necessary to improve its facilities and programming, and (2) incarcerated students enrolled in postsecondary programming would gain the hands-on skills and knowledge necessary for successful re-entry. We implore you to support these recommendations so the state of Texas can expand educational access, strengthen its communities, and bolster its diverse workforce. Thank you for your time and consideration. If you have any questions or concerns, please do not hesitate to contact our team.

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Resources & Endnotes

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