

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Monday, January 24, 2011

TIME: 12:30 —2:30 p.m.

PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Evers, Chair; Senator Dean, Vice Chair; Senators Dockery, Margolis, and Smith; EX
OFFICIO: Senator Bennett

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
This is a joint meeting of the Senate Criminal Justice Committee and the Senate Subcommittee on Criminal and Civil Justice Appropriations.			
1	Presentation by Texas Representative Jerry Madden (R-Plano), co-chair of the National Conference of State Legislatures (NCSL) workgroup on sentencing and corrections policy issues and vice-chair of the Texas House of Representatives Committee on Corrections.	Presented	

Texas House of Representatives



Rep. Jerry Madden
District 67

Capitol Address:
Room CAP GW 11, Capitol
P.O. Box 2910
Austin, TX 78701
(512) 463-0544
(512) 463-9974 Fax

District Address:
P.O. Box 940844
Plano, TX 75094
(972) 424-2235
(972) 424-6730 Fax

Biography

Representative Madden and his wife Barbara, a retired nurse, have been married 45 years. They are the proud parents of three adult children - Jerry, Stephanie and Kristina - and have six grandchildren. Upon graduation from West Point with a Bachelor of Science in Engineering, Jerry spent six years in the Army, including one year in Vietnam and two years in Germany, before bringing his family to Richardson, Texas, in 1971.

Madden worked 11 years for Texas Instruments, 8 years for Teledyne Geotech, and in 2000 formed Jerry Madden Insurance to offer group health plan coverage options to small businesses out of his independent agency's Plano offices. In July of 2008, he sold his company and retired from the insurance business. He obtained a Master of Science in Management and Administration Sciences from the University of Texas at Dallas in 1979.

As a 39 year resident of Collin County, Jerry has been involved in numerous veterans' and community organizations, holding positions such as President of the Collin County School Board, and Chairman of the Collin County Hospital Board as well as serving on the Advisory Board of the Plano Chamber of Commerce. He was instrumental in launching the Collin County Caring for Children program, a joint venture between Blue Cross/Blue Shield of Texas and the private sector. Dedicated to the Republican philosophy, Jerry was elected Precinct Chairman in his local neighborhood in 1974, and Chairman of the Republican Party of Collin County in 1984.

First elected to the Texas Legislature in November of 1992 and now in his ninth term, Madden is Vice Chair of the House Committee on Corrections, which he chaired from 2005-2009, and is a member of the Judiciary and Civil Jurisprudence Committee. Prior committee appointments have included Calendars, Public Education, House Select Committee on Public School Finance, State Affairs, Urban Affairs, Public Safety, Elections, State, Federal and International Relations, and Rules and Resolutions.

Different legislative initiatives for which he has been commended range from the highly successful 2007 criminal justice system reforms which sought to divert individuals from prison through mental health and drug treatment programs, provide more opportunities in prison for rehabilitation, and properly utilize probation and parole mechanisms to avoid greater costs if new prisons were built; from establishing a state virtual education system to supporting participation of military voters in elections; from advocating for victim's rights to instituting judicial campaign fairness. He has been honored for his work in a variety of policy areas by organizations including the American Legion-Dept. of Texas, Texas Common Cause, Texas Association of Business, Texas Library Association, Texas Classroom Teachers Association, Texas Home School Coalition, American Family Association of Texas, Texas Public Policy Foundation and Texas Criminal Justice Coalition.

In wake of the 2007 Legislative Session, Rep. Madden was designated by Texas Monthly as one of its 10 Best Legislators. While this honor is certainly notable, Rep. Madden is especially proud to have been the first recipient in 2007 of the Carmen Miller Michael Mental Health Advocate Prism Award, being presented in March of 2009 with a University of Texas at Dallas Distinguished Alumnus Award, being named as a member of the Board of Directors of the Council of State Governments' Justice Center in April of 2009, and in July of 2009, being nominated to serve as Chairman of the Law and Criminal Justice Committee formed by the National Council of State Legislatures (became Immediate Past Chair as of July 2010). He is also a member of the American Legislative Exchange Council's Public Safety and Elections Task Force and is the Public Sector Chair of its Corrections and Reentry Subcommittee, and serves as well on the Texas Criminal Justice Integrity Unit which is charged with exploring ways to avoid wrongful convictions. In June of 2010, Rep. Madden was appointed to serve on the Texas State Council for Interstate Adult Offender Supervision, and in July of 2010 was named co-chair of the National Conference of State Legislatures' Sentencing and Corrections Work Group. On November 18, 2010, Rep. Madden was honored at a special ceremony in Washington, D.C., as a consequence of being named one of Governing magazine's 2010 Public Officials of the Year, an award he shared with Sen. Whitmire and six other individuals from across the country.

Jerry Madden continues to exhibit the commitment and drive which he first brought to the Legislature. Always accessible to his constituents and sensitive to the changing needs of Texas and District 67, Representative Madden seeks to promote limited government, fiscal responsibility, safe and thriving communities and successful families and businesses.



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MADDEN TO LEAD NATIONAL WORK GROUP IN DEVELOPING GUIDING PRINCIPLES FOR SENTENCING AND CORRECTIONS

by: **Madden, Jerry**
08/13/2010

Plano, TX--A new National Conference of State Legislatures (NCSL) work group co-chaired by Rep. Jerry Madden (Plano) will discuss and develop a set of recommendations to guide states on sentencing and corrections policy issues. The co-chairs will have the lead role in identifying topics, framing discussion and steering the group to consensus principles, which will be reported in about one year at the 2011 NCSL Legislative Summit in San Antonio, Texas.

The bipartisan group, which includes officers of NCSL's Law and Criminal Justice Committee and other leaders on these issues from around the states, had its first meeting in a special ancillary session at the NCSL Legislative Summit in Louisville, Kentucky, on July 29. The opening meeting included a policy advisor from the Pew Center on the States, Public Safety Performance Project, which is funding the NCSL effort. Officials from the Bureau of Justice Assistance also contributed a federal perspective to the talking points.

Representative Madden and the work group co-chair, Representative Janice Pauls of Kansas, emphasized the intention of the group to create broad guiding principles based on best practices and solid research that would not take positions on sentencing and related issues under specific state laws.

"We want principles that every state can put to work within their own climate and their own ideological interest and issues," Madden said. "This is something evergreen that states can pick up now or 5 or 10 years from now, and use, that combines what we learn from legislators and private sector groups."

The initial NCSL work group discussion in Louisville included public safety concerns; use of information to guide policy; agency mission statements that reflect shared goals; criminal justice collaboration with other service providing agencies; risk assessment; offender outcomes; and meeting the needs of victims of crimes.

Recent overhauls in state policy, plus research of Pew Center on the States, will provide plenty of fodder for the group, especially when it comes to what stops repeat offenses. In recent years, some states have redefined and reclassified offenses, setting new financial thresholds for felony crimes. Other states are using risk assessment to drive smarter probation methods rather than forcing offenders into publicly funded incarceration. Examples include using ankle monitors or house arrest.

In Minnesota, which is known for having a low incidence of repeat offenders, the state also has turned to pre-charge diversions that allow a low-level offender to meet the punishment set out by a judge and avoid record of the charge.

The work group expects to convene again at the NCSL Fall Forum in Phoenix on December 9, 2010, to continue to discuss a framework for solid effective criminal justice policy. Such a framework can transcend party lines with the right input and guidance, said Madden. The NCSL work group is an opportunity for both sides of the aisle to find some common ground and articulate those in the forthcoming guiding principles. "Good ideas are not just conservative or liberal; they're just good public policy ideas. What we did was to start there and talk to experts across the spectrum to pull it together."

Now in his sixth year as a member of the Texas House Corrections Committee, Madden has come to be a true believer in building consensus. He finds it valuable to bring groups like Ana Correa's Texas Criminal Justice Coalition on the left and Marc Levin's Center for Effective Justice on the right together.

Madden noted that criminal justice was a top interest item among a number of national groups, including others than the bipartisan NCSL. The conservative American Legislative Exchange Council also has convened working groups and has drafted some model legislation, Madden said.

Contact:
Mark Hey
(512)463-0544

Contact Info

Capitol Address:

Room CAP GW.11, Capitol
P.O. Box 2910
Austin, TX 78701
(512) 463-0544
(512) 463-9974 Fax

District Address:

P. O. Box 940844
Plano, TX 75094
(972) 424-2235
(972) 424-6730 Fax



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REPRESENTATIVE JERRY MADDEN HONORED WITH NATIONAL AWARD by: **Madden, Jerry**

10/25/2010

Governing Magazine Releases Public Officials of the Year List

State Representative Jerry Madden from Texas is among the 8 individuals honored by Governing magazine as they announced their Public Officials of the Year for 2010. The magazine has honored individual state and local government officials for outstanding accomplishment annually since 1994.

"I am honored to be recognized by GOVERNING, and want to express my gratitude to my colleagues who nominated me, to the panel who voted, and especially to the people who worked alongside of me including my good friend Senator John Whitmire who is also an honoree," said Madden. "This award brings the national spotlight to the innovative and successful progress that Texas has made in the Criminal Justice arena."

"In the Texas House, Jerry is an experienced, trusted voice on criminal justice issues," said Speaker Joe Straus. "My colleagues and I value Rep. Madden's efforts to improve our state, and this award from Governing Magazine is well-deserved recognition for one of our state's most effective representatives."

"Jerry Madden and John Whitmire formed one of the most effective teams I have ever seen in the Texas Legislature. They have truly shown what can be done for our state by those dedicated to work for the best interests of our state," Texas State Senator Florence Shapiro. "We all look to them on issues of Criminal Justice. Rep Madden has been a great teammate for me in our work in Education and with the breaking of the cycle of violence with our Ashley's Law and with our Nurse Family Partnership. This award is richly deserved and I am so proud to work with Jerry in the Legislature," continued Shapiro.

"I have known Jerry - and sought advice and friendship from him for the last twenty years. He is a special guy - knowledgeable, capable and always a friend," said Congressman Ralph Hall.

"I have known Rep Madden for over a quarter of a century. I have seen him rise from a local leader to the national spokesperson for Texas on Criminal Justice," said Congressman Sam Johnson. "I can vouch for the testimony he has given Congress and know the respect that national organizations have for his work. I am honored to call him my friend and to second the other leaders in our area in saying thank you for a job so well done," stated Johnson.

"I have worked with Rep Madden for almost 18 years in the Legislature. I have seen him grow from a rookie legislator to a good legislator to a recognized leader and a true statesman," said Brian McCall, Chancellor of the Texas State University System. "I have witnessed his great efforts in Criminal Justice here in Texas and true appreciate his efforts as a national spokesman telling the country about what we did together in Texas. I know of no one more deserving of this national recognition" said McCall.

Rep Madden has been a great spokesman for Texas in the Criminal Justice arena. What we have done together has made our state safer and led the nation in the wise use of our state funds," said State Representative Jodie Laubenberg. "I have been honored to work with Rep Madden on these and many other issues and am truly honored to call him my friend. This award shows the level of national respect there is for our Collin County leadership," said Laubenberg.

Rep Madden and I share the common West Point background. We share a common love for our country and for the people of our state and county. The leadership Rep Madden has shown in Criminal Justice is a true inspiration for all of us," said Collin County Judge Keith Self. "His devotion to duty honor and country makes us all proud and this award is truly deserved," stated Self.

In addition to Madden the list also includes Mick Cornett the Mayor of Oklahoma City, John Covington Superintendent in Kansas City - Missouri Public Schools, Steve Fletcher Chief Information Officer - State of Utah, Ana Gelabert-Sanchez City Planner - City of Miami Florida, Sonny Perdue Governor of Georgia, Diana Urban State Representative in Connecticut and John Whitmire State Senator in Texas.

Since their inception, the Public Officials of the Year awards have become the nation's preeminent honor for state and local officials. The awards are regularly cited by journalists, governmental leaders and the winners themselves

Elected, appointed and career officials from any branch of state or local government are eligible. The Public Officials of the Year will be honored at an awards banquet in Washington, and their profiles appear in the November issue of GOVERNING.

CONTACT: Karin Tucker
(972) 424-2235

Contact Info**Capitol Address:**

Room CAP GW.11, Capitol
P.O. Box 2910
Austin, TX 78701
(512) 463-0544
(512) 463-9974 Fax

District Address:

P. O. Box 940844
Plano, TX 75094
(972) 424-2235
(972) 424-6730 Fax



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TOP GOVERNMENT OFFICIALS OF 2010 HONORED BY GOVERNING MAGAZINE

by: **Madden, Jerry**

10/26/2010

(WASHINGTON, D.C., October 26, 2010) — GOVERNING announced the top state and local government officials who are being honored for leadership and excellence as GOVERNING's 2010 Public Officials of the Year. In its 17th year, the annual awards program recognizes leaders from state, city and county government for outstanding accomplishment in their department/agency, community or state.

"These dynamic state, city and county public officials faced both economic and political challenges," said GOVERNING Publisher Fred Kuhn. "Through their collective vision, these eight stellar leaders worked to better not only their communities but set an example for future leaders to follow."

GOVERNING's 2010 Public Officials of the Year include:

Mick Cornett, Mayor, Oklahoma City, Oklahoma, began with a plan to reduce obesity in his city – 43,000 participating residents have already lost over 600,000 pounds – and parlayed that into a grand vision for remaking the downtown into a sustainable, walkable core, culminating last year with a voter-approved, \$777 million plan to fund sidewalks, a new 70-acre park, a new streetcar system and an extensive network of new bike lanes.

J. Wm. Covington, Superintendent, Kansas City, Missouri Public Schools, transformed an underachieving school district by making tough decisions that combined cost-cutting measures, including the closure of more than two dozen schools, and eliminating hundreds of jobs, with a new, standards-based education improvement program that is showing promising results.

J. Stephen Fletcher, Chief Information Officer, State of Utah, has built a widely acclaimed digital infrastructure that supports shared services, consolidates redundant computer systems, helps remote workers across a large, rural area and, most importantly, has moved more services online than just about any other state, making Utah's website nationally recognized as one of the best in government.

Ana Gelabert-Sanchez, former Planning Director, City of Miami, Florida, was the driving force in designing Miami 21, the nation's most ambitious New Urbanist zoning code, which incorporates walkability, sustainability and the preservation of existing structures citywide, shaping Miami's future as a sustainable place to live.

Sonny Perdue, Governor, State of Georgia, used his business-savvy leadership skills to turn Georgia into one of the best managed states in the country and confronted two of the most difficult challenges facing Georgia – shepherding landmark transportation funding and water conservation bills through the legislature—while keeping the state's fiscal house in order.

Rep. Diana S. Urban, State of Connecticut, was the architect and prime mover behind Results Based Accountability legislation, which requires all Connecticut state agencies to submit performance metrics along with budgets – the first legislation of its kind in the United States.

Sen. John Whitmire and Rep. Jerry A. Madden, State of Texas, teamed up to oppose funding another round of prison building in Texas, the world center of incarceration; opting instead for a smaller investment in treatment and diversion that has since become a model for corrections reformers everywhere.

Public Officials of the Year are selected from nominations submitted by readers, experts in the public and private sectors and the GOVERNING editorial team. Among the qualities recognized are leadership, courage, innovation, creativity and good management. Award winners are profiled in the November issue of the magazine and on governing.com. They will also be honored at a dinner at the Willard InterContinental in Washington, D.C. on November 18. The event is hosted by GOVERNING and sponsored by Citrix, Motorola and Oracle.

About GOVERNING

More than 75,000 public officials turn to GOVERNING for the trusted information they can't find anywhere else. GOVERNING covers state and local government politics, policies and programs essential to this audience.

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Karin L. Tucker
T.972-424-2235.

Contact Info

Capitol Address:

Room CAP GW.11, Capitol
P.O. Box 2910
Austin, TX 78701
(512) 463-0544
(512) 463-9974 Fax

District Address:

P. O. Box 940844
Plano, TX 75094
(972) 424-2235
(972) 424-6730 Fax



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Rep. Madden Honored Recently for Success on Two Fronts: Decreasing Crime and Saving Taxpayer Dollars

by: **Madden, Jerry**

05/14/2010

Austin, TX – On April 20th on the South Steps of the Capitol, a sizeable crowd assembled to participate in a press conference called to honor Rep. Jerry Madden and Sen. Kel Seliger for successfully passing legislation during the 2007 Regular Session of the Texas Legislature providing for the establishment of drug and DWI courts in counties with a population of 200,000 or above. The event was jointly sponsored by Beam Global Spirits & Wine, Inc. [Fortune Brands, Inc. (NYSE:FO)], which encourages socially responsible consumption of alcohol through different programs, and the National Center for DWI Courts to spotlight the need to continue fighting drunk driving while observing both as Alcohol Awareness Month and National Crime Victims Rights Week.

Since the passage of House Bill 530, the number of DWI Courts established in Texas has tripled, with 25 DWI Courts currently functioning, including "hybrid" courts that oversee both DWI and drug cases. The bill passed unanimously in both the Texas House of Representatives and Senate and was signed into law in June 2007.

The innovative DWI Court system goes beyond traditional discipline. In addition to a conviction, DWI Courts provide hardcore drunk driving offenders with long-term, ongoing accountability and rehabilitation. As DWI Courts are launched throughout the country, NCDC provides training and research to the personnel needed to operate them.

Hardcore drunk drivers are drivers with a blood alcohol concentration of .15 and above and/or are repeat offenders. These drunk drivers are 20 times more likely to be involved in a crash. In Texas, there were nearly 1,500 alcohol-related traffic fatalities in 2008 with 26 percent of those deaths caused by hardcore drunk drivers.

"I want to thank the National Center for DWI Courts and Beam Global for choosing to bestow on Sen. Seliger and I this Community Safety Award," stated Rep. Jerry Madden, District 67. "DWI Courts have proven that long-term ongoing accountability and rehabilitation is more effective than punishment alone. I am proud to support effective and cost-efficient ways to fight alcohol abuse and reduce crime."

"I appreciate both this award and the shared commitment of my Senate colleagues for making real progress in terms of the rehabilitation of individuals with substance abuse problems, and the protection of the public from those who drive while impaired, while hopefully diverting people away from expensive prison cells that increase the costs to all Texas taxpayers," stated Sen. Kel Seliger, District 31.

On April 6th, Rep. Madden was featured as a panelist at the 2010 Defendant/Offender Workforce Development (DOWD) Conference in Dallas, explaining during a morning breakout session what Texas has done and still needs to do to foster constructive and effective re-entry policies for those exiting the criminal justice system. Often, a criminal record erects barriers to acquiring housing, getting a meaningful job at a living wage, and similarly hindering becoming a productive member of society again. By seeking to remove deterrents to making a new start in life, the likelihood of a former lawbreaker re-offending is lowered, our communities are safer, and costs to taxpayers are reduced when evidence-based practices which foster rehabilitation are utilized.

During the national awards ceremony luncheon which occurred on Wednesday, April 7th, Rep. Madden was presented the DOWD Justice Reinvestment State Champion Award in recognition of his efforts to reduce recidivism, enhance public safety and promote effective prisoner reentry strategies here in Texas.

Contact: Mark Hey
512-463-0544

Contact Info**Capitol Address:**

Room CAP GW.11, Capitol
P.O. Box 2910
Austin, TX 78701
(512) 463-0544
(512) 463-9974 Fax

District Address:

P. O. Box 940844
Plano, TX 75094
(972) 424-2235
(972) 424-6730 Fax

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.

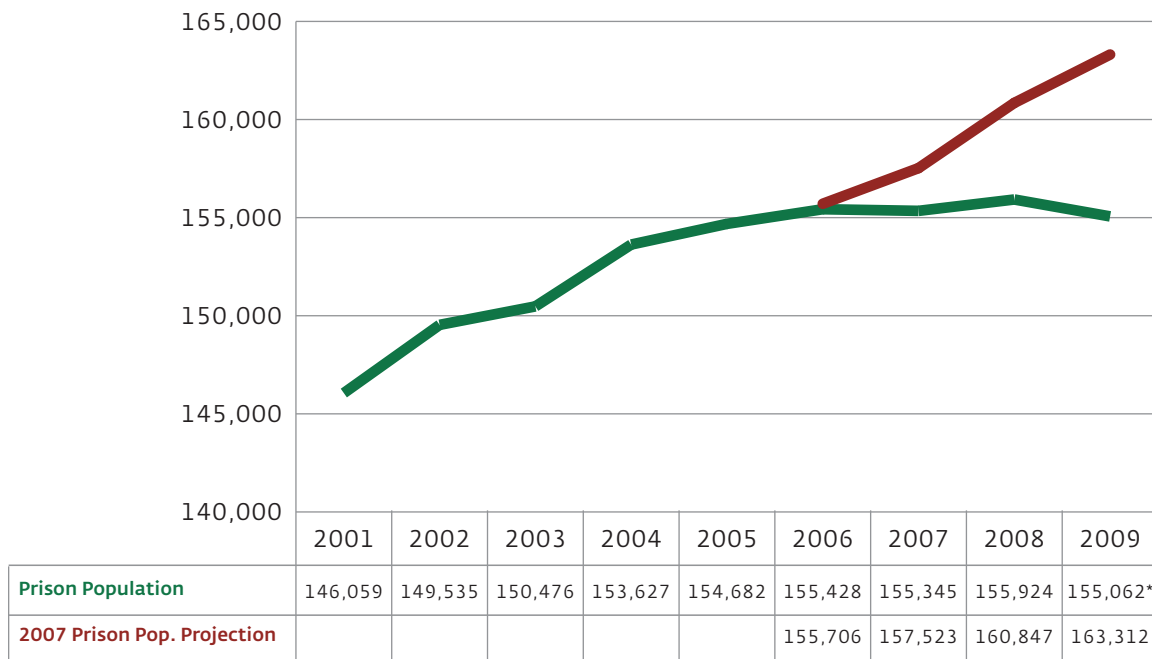
9. http://www.co.travis.tx.us/commissioners_court/minutes/2007/12/071204vsrd.pdf.

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 SAFB 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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To learn more about the Public Safety Performance Project, please visit: <http://www.pewpublicsafety.org/>.

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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



Changing Direction: A Bipartisan Team Paves a New Path for Sentencing and Corrections in Texas

Expert Q&A

No. 4 | January 2008

Whitmire File



- Occupation: Attorney
- House Member, 1973-1982; Senate Member 1983-present
- Chair, Senate Criminal Justice Committee
- Dean of the Senate
- 15th Senatorial District (North Houston and North Harris County)

Madden File



- Occupation: Insurance
- House Member, 1992-present
- Chair, House Committee on Corrections
- Lead House Member, Legislative Oversight Committee for Criminal Justice
- 67th House District (Plano)



Despite having built more than 100,000 prison beds in the 1980s and '90s, Texas was looking at a 17,000-bed shortfall by 2012 at an additional cost of \$900 million for fiscal years 2008 and 2009.

The huge price tag, combined with its uncertain payoff in public safety, encouraged policymakers to reconsider their reliance on incarceration.

Two leaders in particular, Senator John Whitmire (D-Houston) and Representative Jerry Madden (R-Plano), found that the drivers of prison growth were not the state's increasing resident population or rising crime rates, but rather the state's criminal justice policies and practices. Data analysis revealed the specific culprits: high revocation rates of probationers, a lack of in-prison or community-based treatment and diversion options, and a low parole grant rate.

Tackling these problems, Sen. Whitmire and Rep. Madden helped enact a legislative package that represents a striking redirection of corrections policy in a state known for being tough on crime. The centerpiece is a \$241 million network of short-term residential diversion and treatment facilities for low-level substance abusing offenders and additional outpatient drug and mental health treatment resources. The package will save Texas \$210 million over the next two years, and an additional \$233 million if the programs cut recidivism as expected. With successful implementation, new projections from the Legislative Budget Board show Texas' prison population holding flat over the next five years.

The two lawmakers spoke recently with Pew's Public Safety Performance Project about their accomplishment and what lies ahead.

It probably would have been a lot easier to stay the course and continue to build more prisons. Why did you choose a different path?

MADDEN: My challenge was real simple. As the speaker said when I first became Chairman of the Corrections Committee, "don't build new prisons; they cost too much." You've got to recognize how much the prisons actually cost us. We had projections that by the year 2011, we were going to be somewhere between 14- and 17,000 beds short. That meant that I was going to have to build probably seven new prisons just to keep up with the next three years' demand. That's a



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Washington, DC 20004-1409
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"If we can show that we've taken the return-to-prison rate and cut it in half, what a huge thing that would be."

**—Representative
Jerry Madden
(R-Plano)**

billion and three-quarters dollars, and that doesn't take into account the fact that we also spend about \$40 million to operate each one of those prisons. So we're talking somewhere around \$280 to \$300 million a year in additional costs.

WHITMIRE: I started working on this in '93 because the prisons were overcrowded, we were putting every type of inmate in one type of facility, we were letting out murderers and rapists to put in a car thief, and it made no sense. The trick is to leave the hard beds for the more violent offenders and not break the bank. It's an ongoing battle. But I agree with Jerry: we've got to show that this new direction is not only tough and smart, it's also about money. Money! Money! Money! We need to let people know that we can save the state money because our tax system—from now 'till we change it—will be short of money for whatever services we're talking about, whether it's public education, highways, or social services.

This was a significant shift in how Texas approaches criminal justice. How were you able to overcome partisan differences and concerns that this could be seen as soft on crime?

MADDEN: I learned pretty quickly that the think tanks that were working on this process—both very conservative think tanks and very liberal think tanks—agreed on a lot of things. So I said, "OK guys, go sit in a room and tell me what you agree we should do." And it quickly came out that there were a lot of things that could be done that made good sense. And many of those had to do with treatment: treatment of drug addicts, of alcoholics and treatment for people on parole or probation who were having problems.

WHITMIRE: The justice think tanks, including a right-wing bunch of folks, got behind it because everything we do is very conservative. What's more conservative than preventing the next crime?

MADDEN: So at that stage we started turning the debate from one that says, "be tough on crime" to one that says, "be smart on crime." And I will say that my conservative Republicans are all on board with that. They think we should be intelligent in how we use our money and how we produce results. "Tough"—you know, we have a lot of people that *choose* to go into our state jails instead of going through rehabilitation. But it's far better for our society if we can get rid of the drug habit than if they just serve a short period of incarceration and go back to drugs after they come out.

“We have a lot of people that choose to go into our state jails instead of going through rehabilitation. But it’s far better for our society if we can get rid of the drug habit than if they just serve a short period of incarceration.”

**—Representative Jerry Madden
(R-Plano)**

WHITMIRE: I agree. The treatment I support ain’t a feel-good program. It’s to treat these people so they don’t go out on the street and commit another crime. For instance, DWI: we got 5,500 drunks locked up today, 5,500 people with three or more DWIs, which will get you prison in Texas. They go in and out and don’t get any treatment. They come out and they drink and drive again. What’s liberal about making a guy quit drinking—so he doesn’t kill you? So, there’s a law and order spin to being smart on crime. And since my early chairing of the Criminal Justice Committee in ’93, my whole belief has been that you cannot just be tough on crime. If you’re just tough, you’ll lose the battle.

MADDEN: We put together a bipartisan coalition on this. It was Republicans and Democrats, it was liberals and conservatives, all basically saying what it is we agree on, and those were the things that we were able to put into the budget bill.

WHITMIRE: We teamed up and it made a good package. I’m a Houston Democrat, pretty progressive guy, knew the ins and outs of the

criminal justice committee. And here Jerry was a new face: a Plano Republican. We helped each other because we’d get up and talk, and we said the same thing.

MADDEN: We also had in our pocket the work that we’ve done over the last several years in Texas on statistics and data gathering. So we had the numbers that could show what the probable success rates were going to be. The statistics are such that we could clearly show that we could operate these new programs for less money and we wouldn’t have to build new prisons. We showed, in fact, that the prison population probably will drop.

WHITMIRE: One last thing. I think the legislature is finally catching up with the public. I think the public’s been ahead of us for a number of years. In fact, I know they have because back in ’93 I would crisscross Houston and the state talking about a better way to do it, with a heavy emphasis on drug and alcohol treatment. And people in the audience just nodded their heads—they nodded their heads! But we couldn’t pull it off then because the legislature was afraid that someone was going to accuse them of being soft on crime. So, we’ve evolved.

There are hundreds of thousands of offenders under supervision in Texas and any one of them may commit one horrible act that creates a public backlash against this legislation. How do you deal personally and politically with a situation like that?

WHITMIRE: I was robbed, and begged for my life, at gunpoint in ’92. I mean the guy held my wife up and put a gun in my face. I gave him my wallet and just begged him to leave, and so he gets back in the car and leaves. I never pull in my driveway at night now without thinking about that. They captured the guy. And what’s amazing is that right in the middle of our debate last Spring, the parole board called

me and said the guy was up for parole having served half of his 25 year sentence and asked if I had an opinion: should he get out or not? And I said, "Well, that's your call. Hopefully he's a better person than the guy you first got. But I haven't been around him for 13 years—that's your call." And they went ahead and paroled him. The parole board and others are going to be wrong occasionally, but that don't mean you don't make rational decisions.

MADDEN: Well, personally, if I'm totally convinced that we're positively impacting a lot of lives, then I can handle that because I go in as an engineer: knowing that it's statistical. And the statistics will clearly show that there will be failures. You know, we have to be prepared for that. I am prepared because I believe we can still get up and say that we have changed for the positive far more lives than we've changed for the negative.

WHITMIRE: I admit that what I say is not perfect, but it's a hell of a lot better than what we've done for the last 50 years. Look, I have no sympathy for people that are violent, brutal offenders and where every indication is that they'll do it again. I'd lock them up and throw away the key. But that is a small number compared to the 80 percent that are locked up that have a substance abuse problem.

MADDEN: Now, we should also point out that a lot of these programmatic beds are, in fact, in secured locations. While they're going through these programs, these people are not going to be out on the street and many of them are in secured facilities.

Where do you hope to take this issue in the next session?

WHITMIRE: First of all, we're staying on top of it. We got the plan authorized—that's where we are now. But we've got to monitor the authorization and the request for proposals. We've got to make sure that the programs are in the right places and we've got to get some results. For instance,

"You cannot just be tough on crime. If you're just tough, you'll lose the battle."

—Senator John Whitmire (D-Houston)

probation officers can revoke any probationer. I can do it any day of the week. I mean, all you've got to do is follow a probationer close enough and they're going to either be drinking when they shouldn't be drinking, or associating where they shouldn't be. But what we've got to do is make the goal to make probation work.

MADDEN: Exactly. We've got to make sure that we get the results desired. We have got to be able to measure how well each program has really done. We've got to show that the programs are, in fact, effective. If we find some that aren't, we've got to change them. But for those that are effective, we've got to be able to reinforce them. I honestly believe that we will find that the programs work, that there will be a greater demand for those programs, and that we'll probably need to build more of these beds to carry the true need that we have in the State of Texas. If we can get up and show those results two years from now, show that we've taken the return-to-prison rate and cut it in half, what a huge thing that would be as far as cost and the number of lives that we've positively changed. There are a lot of people in the Texas Department of Criminal Justice that will respond positively if you give them a second chance. 

For an analysis of Texas' prison population drivers and the anticipated fiscal impacts of recently adopted legislation, see "Justice Reinvestment State Brief: Texas," a publication by the Council of State Governments Justice Center, a Public Safety Performance Project partner.