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## **EXAMINING THE TEXAS PRISON REFORM MODEL: How Texas is Maintaining Racial Disparity and Mass Incarceration**

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### **EXECUTIVE SUMMARY**

Prior to 2007, the Texas criminal justice system was often described as overcrowded, lawless, and abusive. Today, however, Texas is considered a model of reform and is lauded for halting prison population growth and averting the need to build new prisons.

In 2007 the Legislative Budget Board projected that the State would need to spend approximately \$2.5 billion over five years on the construction and staffing of 17,000 new prison beds to accommodate persistent increases in incarceration (Council of State Governments Justice Center, 2009). Faced with a fiscal crisis, the 80<sup>th</sup> Legislature adjusted criminal justice spending to fund 4,500 new diversion beds for outpatient substance abuse treatment for individuals on probation, and increased in-prison treatment (CSG Justice Center, 2009). This legislative package became known as the Texas Model. Following the adoption of the Texas Model, the growth of incarceration slowed, and the State averted major prison construction.

While Texas is increasingly considered a model of reform, a closer look reveals major shortcomings in criminal justice reform. This brief analyzes data from 2003 to 2013 to explore how the Texas criminal justice reform model has affected incarceration in Texas. Specifically, this brief considers whether the model has reduced incarceration or racial disproportionality in the Texas State prison system.



The findings of this analysis show:

- Since the establishment of the Texas prison reform model, the State has failed to reduce the number of individuals it incarcerates or significantly decrease racial disproportionality. These failures call into question the effectiveness of the Texas Model of prison reform.
- Texas continues to imprison more people than any other state, driving the nation's incarceration rate. While Texas's rate of incarceration has dropped during the last seven years, it still ranks fifth highest in the nation, and first among the most populous states.
- In 2013, Texas increased the number of people it incarcerates, despite national trends that indicated decreased incarceration in several of the most populous states.
- Texas continues to disproportionately incarcerate African Americans.
- The Texas Model was developed to save taxpayer dollars. While cost savings is a compelling component of prison reform, fiscal austerity reform designs fail to address the underlying drivers of mass incarceration.
- In 2014, Pew Charitable Trusts found that the states that reduced incarceration the most experienced the greatest decline in crime rates (Pew, 2014).

In light of these findings, Texas has an opportunity to set a new course for effective and equitable reform. Specifically, Texas can:

1) reduce the number of individuals living in prison by addressing the underlying causes of mass incarceration, 2) replace the Texas Department of Criminal Justice's antiquated racial classification system with a self-identification system that more accurately gathers information about both race and ethnicity, and 3) mandate that racial impact statements be produced for all proposed criminal justice legislation.

## INCARCERATION IN A NATIONAL CONTEXT

Prior to the 1970s, the United States incarceration rate remained at about 100 per 100,000 residents (Perkinson, 2012, p. 302). In 1968, however, "law and order" became a preeminent political issue in the presidential campaign, laying the foundation for the rapid prison expansion undertaken in the 1970s (Alexander, 2010, p. 46). In 1971, President Nixon declared the War on Drugs, a massive expansion in law enforcement, which was the leading cause of the United States prison boom ([Drug Policy Alliance, 2014](#)). Between the late 1960s and 2000, the United States incarceration rate increased by 600% ([Alexander, 2014](#)). As of December 31, 2013, the United States

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incarcerated 2.2 million people, and an estimated 4.7 million people were on probation and parole (Bureau of Justice Statistics, 2014). According to the National Academy of Sciences, "the growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique" (National Research Council, 2014, p. 2). This scope of imprisonment has earned the descriptor, "mass incarceration."

Between 2003 and 2013, however, the growth of both the rate of incarceration and the number of incarcerated individuals has slowed nationally and decreased substantially in some states (Bureau of Justice Statistics, 2014).



Several states, including New York, New Jersey, and California, have substantially reduced incarceration through a range of means, including sentencing reform (Austin et. al., 2013, p. 12). Unfortunately, increases in the number of individuals that Texas and several

other jurisdictions incarcerate, overshadowed the success of these states, leading to the first national increase of the number of incarcerated individuals since 2009 (Bureau of Justice Statistics, 2014).

## **DAMAGING EFFECTS OF INCARCERATION**

Mass incarceration is critiqued in many ways and from many perspectives. Below is an outline of commonly made critiques:

### Incarceration disproportionately affects low-income communities of color

Research demonstrates that the disproportionate incarceration of African Americans is related to policy and practice. According to the American Psychological Association (2014), "... the nation's get-tough-on-crime policies have packed prisons and jails to the bursting point, largely with poor, uneducated people of color, about half of whom suffer from mental health problems" (p. 1). The starkly disproportionate incarceration of people of color, and in particular African American men, is consistently raised as a crisis of human and civil rights (The Sentencing Project, 2013).

### Incarceration causes harmful collateral consequences

Collateral consequences are penalties, aside from a sentence, that result from a criminal conviction. These penalties result in barriers to acquiring living-wage employment, safe housing, government benefits, financial credit, and higher education. Combined, these collateral consequences contribute to high rates of recidivism (Alexander, 2010).

### Incarceration harms children and families

The incarceration of a caregiver can lead to the immediate loss of financial support, changes in family structure, poor school performance, and increased risk of abuse or neglect. In communities that are disproportionately targeted for incarceration, local economic vitality is undermined, and negative perceptions of police and the legal system are common (The Urban Institute, 2005).

### Incarceration wastes taxpayer dollars

Especially during periods of fiscal austerity, the high costs of incarceration concern taxpayers. This critique is made from both the Right and the Left. While the former generally seeks to cut budgets and size back what it considers to be big-government spending, the latter advocates redirecting funds away from correctional budgets and towards programs that it identifies as more effective in building safe communities, like education and healthcare (Levin & Reddy, 2013; Austin, et. al., 2013).



## Incarceration is ineffective at reducing crime

Researchers have wrestled with the question of whether incarceration reduces crime. The American Psychological Association (2014) found no causal link between rising incarceration and reduced crime. In fact, **an analysis released by Pew in 2014 found that states that reduced incarceration the most saw the greatest decline in crime rates (Pew, 2014).**

## Incarceration threatens public health and fails to address mental illness

Research shows that incarcerated persons develop health issues at an earlier age than the general population (Kirchhoff, 2010) and experience higher rates of infectious and chronic diseases, substance abuse, mental illness and trauma (Justice and Health, 2013; Buck, 2008; Conklin, 2002). Criminalization of mental health has led to more than half of all people in prison and jail experiencing a mental health diagnosis, including 56% in state prisons, 45% in federal prisons, and 64% in local jails (Buck, S. 2008). Health care and mental health care in prisons are historically inadequate, harming both individuals and the communities to which they return.

## **UNDERLYING CAUSES OF MASS INCARCERATION**

The policies and practices that gave rise to unprecedentedly high rates of incarceration were the result of a variety of converging historical, social, economic, and political forces (National Research Council, 2014, p. 128).

Federal and state policies looked to incarceration as the answer to the high crime rates in the 1970s and 1980s (National Research Council, 2014, p. 70). The War on Drugs produced harsher penalties and an increased police force, many of which were targeted at low-income communities of color (Drug Policy Alliance, 2014). For example, federal legislation passed in the 1980s established a penalty structure that punished possession of crack cocaine at up to 100 times more severely than possession of powder cocaine (Sentencing Project, 2010). Despite similar rates of drug use among races, the enforcement of this federal legislation disproportionately targeted communities of color (Sentencing Project, 2010). State policies also shifted with the tough-on-crime national trend, producing mandatory minimums for drug offenses (Erickson, 2013). This combination of state and federal policies

significantly increased incarceration by raising the likelihood of becoming incarcerated and lengthening prison sentences (National Research Council, 2014, p. 70).

**Texas prosecutes 100,000 truancy cases annually, more than twice the number prosecuted in all other states combined (Texas Appleseed, 2015).**

The practices of law enforcement and courts coincided with this wave of harsher policies. Police units focused on arresting street-level drug users and dealers, and prosecutors, judges, and parole boards dealt more harshly with crimes (National Research Council, 2014, p. 70).

Substantial amounts of research have discovered a correlation between race and the likelihood of arrest, and race and the likelihood of harsher penalties (Mauer, 2011; Alexander, 2010). Once convicted, African American men receive longer sentences compared to White men (The Sentencing Project, 2013; Spohn, 2011; U.S. Sentencing Commission, 2010). The U.S. Sentencing Commission (2010) reported the federal system gave African Americans sentences that were 10% longer than White Americans for the same crimes. The Commission also found that mandatory



minimums are applied disproportionately to African Americans.

School discipline policies commonly label classroom misconduct as criminal. Children removed from the classroom are pushed into a gauntlet that often channels them into the juvenile and criminal justice systems. This link between school discipline, school dropout, and incarceration is labeled the “School to Prison Pipeline” and disproportionately impacts students who are low income, who have disabilities, or who are racial and ethnic minorities, despite comparable rates of “infractions” (Heitzeg, 2014). Truancy criminalization is a leading cause of this pipeline. Texas prosecutes 100,000 truancy cases annually, more than twice the number prosecuted in all other states combined (Texas Appleseed, 2015). Unlike most states, Texas prosecutes children accused of truancy in adult criminal courts (Texas Appleseed, 2015). Statewide, African American and Hispanic

students, students in special education, and low-income students are starkly overrepresented in truancy cases (Texas Appleseed, 2015). Convictions result in a criminal record and may lead to a court ordered drop out. The problematic consequences of these policies are highlighted by the fact that more than 80% of individuals in Texas prisons dropped out of school (Texas Appleseed, 2010).

Public funding structures also significantly impact poverty, access to education, and access to mental health care, all of which influence incarceration (Greenberg & Rosenheck, 2008; Heitzeg, 2014). Furthermore, once someone is incarcerated, access to government aid, employment, housing, and education is significantly inhibited, often continuing a cycle that targets low-income people of color (Alexander, 2010). Each of these underlying causes drive and maintain mass incarceration today.

## HISTORY OF INCARCERATION IN TEXAS

Texas earned its reputation as a tough-on-crime state through harsh sentences, abusive and sometimes deadly prison conditions, proud use of the death penalty, and a direct legacy of slavery (Perkinson, 2010).

Throughout the twentieth century, Texas and other Southern states incarcerated at substantially higher rates than the rest of the country. The incarceration rate in the South was 40% higher than in the North in 1950, and was 75 % higher in 1980. A report written by the House Study Group<sup>1</sup> on overcrowding in Texas prisons stated that high imprisonment was related to politics more than growth in population or increases in crime (Perkinson, 2010, p. 302-303). In 1997, the House Research Organization stated that growth in incarceration was caused by “a burgeoning state population; more punitive policies toward offenders, especially for violent crimes; tighter restrictions on parole, including longer minimum periods behind bars before parole eligibility and tougher policies for granting time off sentences for good conduct; and a stepped-up ‘war on drugs (p.2)’”.

Just as in national politics, “law and order” became a leading political issue in Texas during the 1970s. In 1973, the Texas Legislature passed substantial changes to drug laws, lowering penalties for certain low-level marijuana possession charges, but dramatically enhancing sentences for other drugs including

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<sup>1</sup> The House Study Group is now called the House Research Organization (HRO) and is a nonpartisan independent department of the Texas House of Representatives. It provides impartial information on legislation and issues before the Texas Legislature.





heroin and LSD. This iteration of the war on drugs in Texas led to a quickly growing prison population (Perkinson, 2012, p. 305-306).

Between 1968 and 1978 the Texas state population grew by 19%, but the prison population increased 101%, reaching 22,439 in 1978. During the mid-1970s, Texas incarcerated individuals convicted of felonies at 143 per 100,000, while the national average was 86 per 100,000 (Lucko, 2010).

Texas gradually built new correctional facilities throughout the 1970s, but the State began rapid and unprecedented prison expansion in the 1980s (Cohen, 2012). All told, between 1980 and 2004, Texas built 94 state prisons and increased the number of people it incarcerated by 566% (Perkins, 2010). The Texas corrections budget increased from \$600 million in 1985 to \$2.4 billion in 2005 (ACLU, 2007), as the number of people the State incarcerated climbed to 159,255 (Bureau of Justice Statistics, 2005).

As incarceration soared and Texas began to face budget shortfalls, several legislators identified the costs of corrections as a problem facing the State.

## **FISCAL CRISIS AND PRISON PROJECTIONS LEAD TO CONCERN ABOUT MASS INCARCERATION**

In 2003, while at a national convening about corrections during periods of fiscal austerity, former State Representative Ray Allen, then Chair of the House Committee on Corrections, stated that the fiscal crisis in Texas was the only circumstance that could lead to criminal justice reform in Texas. “Nothing short of a 10 to 15 billion dollar crisis would even get people to discuss any alternatives, because we’ve always done it this way and we’ve done it bigger, and tougher, and meaner than anybody else in the country” (Campbell, 2003, p. 5).

In 2006 the Texas Department of Criminal Justice (TDCJ) requested \$899.3 million for increased bed capacity and operations (Fabelo, 2007). The same year, Senator John Whitmire, Democratic Chair of the Criminal Justice Committee, Representative John Madden, Republican Chair of the Corrections Committee, and Senator Kim Brimer, Republican Chair of Sunset Advisory Commission, held hearings to identify the underlying causes of persistent growth in the prison population (Council of State Governments Justice Center, 2012).

Following these hearings and in response to projections released by the Legislative Budget Board (LBB)<sup>2</sup> in 2007 indicating that the State would need to spend approximately \$2.5 billion over five years on the construction and staffing of 17,000 new prison beds to accommodate persistent increases in incarceration (CSG Justice Center, 2009), Whitmire and Madden successfully lobbied the State legislature to commission technical assistance from the Justice Center of the Council of State Governments (CSG Justice Center). The CSG Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels, from all branches of government. Staff provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities (CSG Justice Center, 2015).

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<sup>2</sup> The Legislative Budget Board (LBB) is a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.



The CSG Justice Center was contracted 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” (CSG Justice Center, 2009, p. 3). This approach is coined “Justice Reinvestment,” which according to the CSG Justice Center is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism (CSG Justice Center, 2015, p.1).

## TEXAS JUSTICE REINVESTMENT INITIATIVE AND THE EMERGENCE OF THE TEXAS MODEL

In 2007, the CSG Justice Center released a report that found the growth in the Texas prison population was caused by a) increased probation revocations; b) limited and reduced capacity of residential treatment programs for individuals on probation and parole; and c) reduced parole approvals (CSG Justice Center, 2009).

In partnership with the CSG Justice Center, Madden and Whitmire developed 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” (CSG Justice Center, 2009, p.5). The budget adopted by the legislature in 2007 included \$241 million in funding for 4,500 new diversion beds for outpatient substance abuse treatment for individuals on probation, and increased in-prison treatment (CSG Justice Center, 2009) (See Table 1 below). The decision to fund these new beds became known as the Texas Model.

Table 1. Treatment Spaces Funded by 2007 Justice Reinvestment Initiative

Community Treatment Initiative	
Program	Capacity Increases
Probation Outpatient Treatment	3,000 slots
Probation Residential Treatment	800 beds
Mental Health Pre-Trial Diversion	1,500 slots

In-Prison Treatment Increases	
Program	Capacity Increases
State Jail Treatment	1,200 slots
In-Prison Therapeutic Community	1,000 slots
DWI Prison Treatment	500 beds
Intermediate Sanction Facilities	1,400 beds
Parole Halfway Houses	300 beds
Substance Abuse Felony Punishment	1,500 beds

*Note.* Adapted from “Justice Reinvestment in Texas,” The Council of State Governments (2009).



According to the CSG Justice Center, funding residential treatment helped to stabilize the Texas prison population (CSG Justice Center, 2009). As a result of these changes, the LBB revised its prison population projections, indicating that Texas would no longer face a shortfall of 17,000 beds, and would instead be operating within capacity. Following the release of these revised projections, a 2008 press release distributed by the Criminal Justice Legislative Oversight Committee quoted Senator Whitmire: "With the expanded treatment and new diversion beds funded this last session, Texas will continue to be the toughest on crime, but we will now also be the smartest (p.1)."

## OVERVIEW OF PRAISE FOR THE TEXAS MODEL

Since 2007, the Texas Model has received praise from around the country. Headlines read: "Prison reform is bigger in Texas" (The Daily Beast), "Texas leads the way in needed criminal justice reforms" (Washington Post), and "What Texas is teaching the country about mass incarceration" (U.S. News).

This praise describes Texas as a national model for prison reform. Specifically, the Texas Model is credited for stabilizing the Texas prison population (AL.com, 2014), reducing the number of people Texas incarcerates (Horswell, 2009), closing prisons (Nuzzi, 2014), and prioritizing treatment and diverting individuals with low-level offenses to alternative to incarceration programs (Horswell, 2009).

According to U.S. News commentary, "Given the success of the policies instituted, Texas and the right-leaning states that followed its lead have provided political cover for Republicans nationwide – particularly after the red wave of the 2014 midterms – to hop on board with measures that would cut down on prison populations across the country." (Sneed, 2014).

According to Rick Perry: "...in 2007, with broad support from Republicans and Democrats alike, Texas fundamentally changed its course on criminal justice. We focused on diverting people with drug addiction issues from entering prison in the first place, and programs to keep them from returning." (Solutions: American Leaders Speak Out on Criminal Justice, Brennan Center, 2015).

## THE STATE OF INCARCERATION IN TEXAS<sup>3</sup>

Considering the national praise for the Texas Model, it is important to evaluate the current state of incarceration in Texas and determine how the State's incarceration policies and practices affect Texas communities today. This section analyzes the latest State correctional data available and presents findings on two questions: 1) Has the Texas Model reduced incarceration? and, 2) Has the Texas Model reduced racial disproportionality?

### <sup>3</sup> Inconsistencies and Debate about Texas Prison Data

This brief uses data from the Bureau of Justice Statistics (BJS), the federal agency responsible for collecting, analyzing, and disseminating data relating to criminal justice. BJS data make possible the comparison of incarceration across states, and provide a more complete picture of the total number of sentenced prisoners under the jurisdiction of TDCJ. TDCJ data only capture the number of individuals currently inside of Texas state prisons, which does not include all sentenced state prisoners who may be temporarily held in other types of state correctional facilities or county jails. While TDCJ claims the number of people they imprison has decreased, BJS shows that the number of people being sentenced to state prison has increased.





For the first time since 2009, incarceration in the United States increased slightly in 2013. This change was driven by state-level incarceration. Texas contributed to this increase by admitting approximately 2,400 more individuals into the custody of the state prison system than it released. Texas also released 8,000 fewer prisoners in 2013 than in 2012, representing a steep 10% drop (Bureau of Justice Statistics, 2014).

Texas remains the nation’s lead incarcerator, with 160,295 individuals living behind state bars as of December 31, 2013, an increase from 157,900 in 2012. Texas has the fifth highest incarceration rate in the nation, and the leading rate among the most populous states. Texas decreased its incarceration rate from 710 incarcerated individuals per 100,000 residents in 2003, to 602 in 2013. This rate inflected upwards slightly between 2012 and 2013. Both the raw number of incarcerated individuals and the rate of incarceration are extreme in comparison to the four other most populous states in the U.S. (See Table 2) (Bureau of Justice Statistics, 2014).

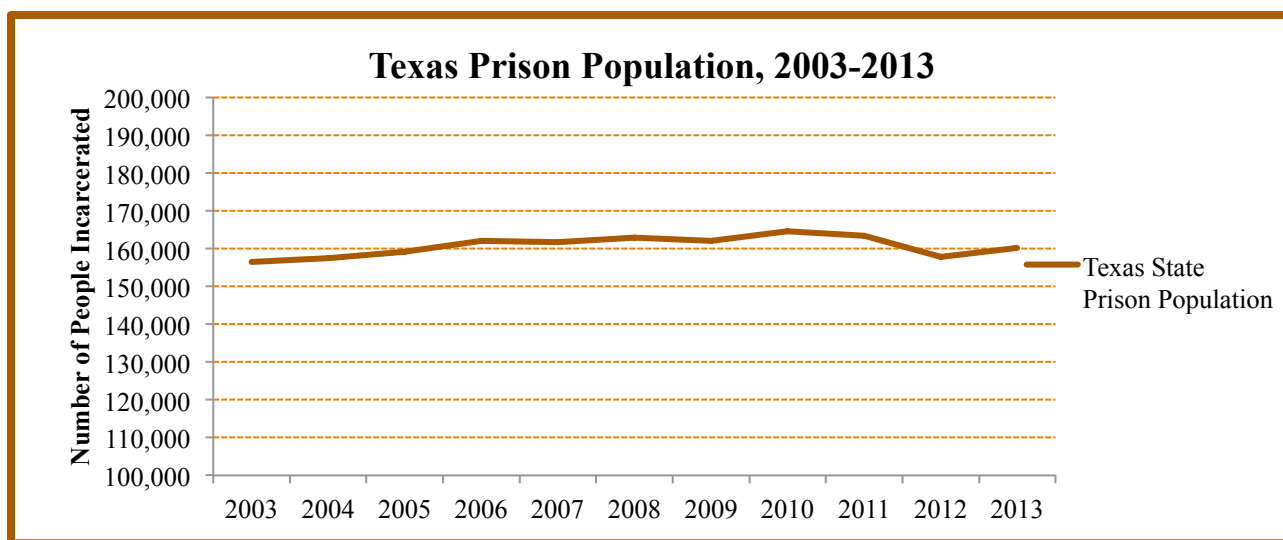


Figure 1. Texas Prison Population, 2003-2013. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

Table 2. Incarceration in Most Populous States, 2013

	State Prison Population	State Incarceration Rate Per 100,000
<b>California</b>	135,981	353
<b>Texas</b>	160,295	602
<b>New York</b>	53,428	271
<b>Florida</b>	103,028	524
<b>Illinois</b>	48,653	377

Note. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

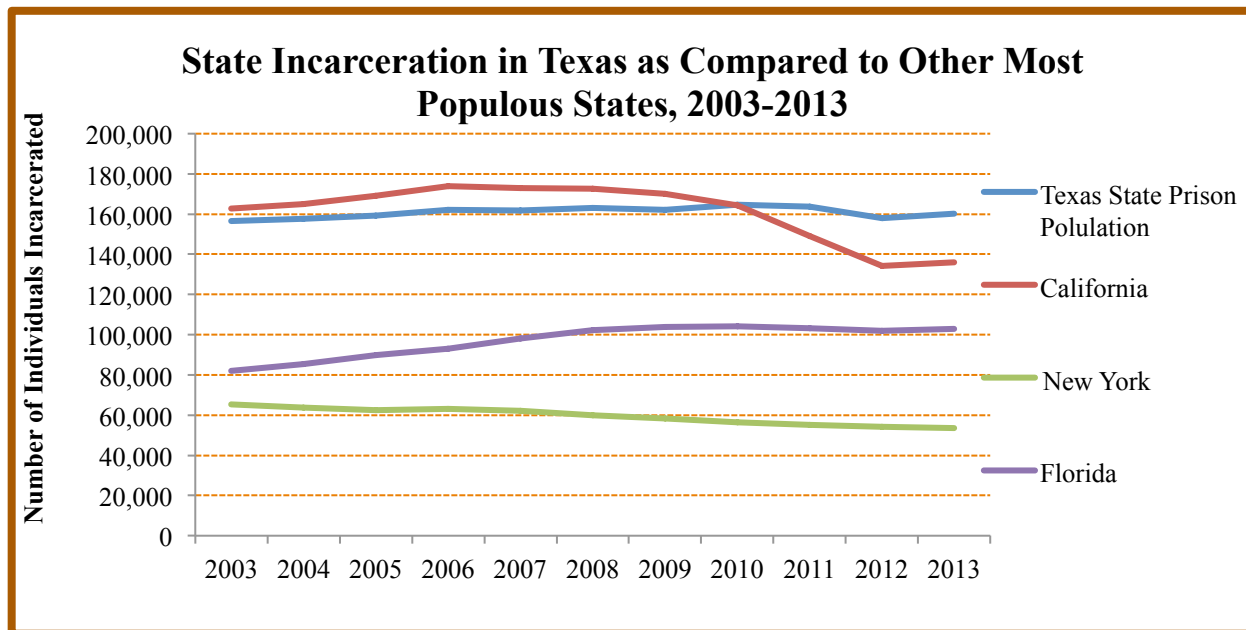


Figure 2. State Incarceration in Texas as Compared to Other Most Populous States, 2003-2013. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

The Texas Department of Public Safety determines crime rates by calculating violent and property crimes. Violent crime in Texas has dropped during the last 10 years, from 553 violent crimes per 100,000 residents in 2003 to just fewer than 400 in 2013. The property crime rate has also dropped during the last 10 years, decreasing 3.1% between 2012 and 2013 (Texas Department of Public Safety, 2013). Despite this steady drop in crime, incarceration has remained mostly steady.

## A NOTE ON RACE AND ETHNICITY

The Bureau of Justice Statistics (BJS) does not report state-level racial distribution data, and so this brief uses TDCJ statistical reports and U.S. Census Bureau data to calculate racial disproportionality. Unfortunately the outdated racial categories and data collection methods used by TDCJ are substantially different than those used by the Census Bureau.

While definitions of race and ethnicity vary and are the subject of much debate, *Racial Formation in the United States* by Omi and Winant (1986) provides commonly cited definitions. Race is a social construct, where racial categories are determined by social, economic and political forces. Though race is often linked to ethnicity, nationality and national heritage inform ethnicity (Omi & Winant, 1986).

Demographers commonly make two recommendations: 1) distinguish between race and ethnicity and collect information on both, and 2) collect data through self-reporting (National Reporting System and Public Education Information Management System, 2015). The Federal Office of Management and Budget further recommend allowing individuals to check more than one racial category to accurately capture multicultural identities (OMB, 1997b).

The Census Bureau collects data on both race and ethnicity. To collect data on race the Census Bureau asks individuals to self-identify as American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White (U.S. Census Bureau,



2013). To determine Hispanic/Latino ethnicity, the Census Bureau asks individuals to self-identify as either Hispanic or Latino or not Hispanic or Latino. “Hispanic or Latino” refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race (U.S. Census Bureau, 2011a).

Despite advancements in demography, TDCJ’s classification system still conflates race and

ethnicity. Instead of self-identifying one’s race, TDCJ generally relies on the perceptions of intake personnel to assign incarcerated individuals with one of four racial categories: White, Black, Hispanic, and Other (TDCJ Intake Department, phone call, 2015; TDCJ, 2013). By failing to properly collect information on race and ethnicity, TDCJ produces inaccurate and incomplete data, making it difficult to fully understand disproportionate incarceration.

In a March 23<sup>rd</sup>, 2015 call with the TDCJ Intake Department, a staff person who requested to remain anonymous responded to question about racial classification:

Researcher: How do intake personnel decide what a person’s race is?

*Intake Personnel: “If they’re Black they’re Black.”*

Researcher: So, intake personnel look at a person’s complexion, phenotype, and facial characteristics and then assign him/her a race?

*Intake: Yes.*

Researcher: What if an individual identifies as both Black and Hispanic?

*Intake: “Then it goes by what they look like.”*

While there are training materials about how to assign a person’s race if it is not clear to staff, that information is not public according to intake personnel.

## THE EFFECT OF CHANGING DEMOGRAPHICS ON INCARCERATION IN TEXAS

Texas is a rapidly growing state. Between 2000 and 2010, the State population grew by 20% (U.S. Census Bureau, 2011b). State demographics are also shifting. The 2000 Census reported that the Texas population was 52.4% White, 32% Hispanic, and 11.3% Black. In 2013, the Census estimated that Texas is approximately 44% White, 12.4% Black, and 38.4% Hispanic.

While Texas incarceration demographics have also changed, the prison system is still characterized by the stark and disproportionate incarceration of African Americans.

For decades, Texas has incarcerated African Americans at far higher levels than their White and Hispanic counterparts. In 2003, 40% of the individuals incarcerated by the State prison system, overseen by TDCJ, were African American, despite African Americans comprising about 11.3% of the State population.



**In 2013, a striking 35% of individuals in Texas State prisons were African American, despite African Americans comprising 12.4% of the State population.**

Alternatively, White individuals are incarcerated at a level under the proportion of their State population. In 2003, White individuals comprised 31.26% of the State prison population but about 50% of the State population. In 2013, the TDCJ population was 31.45% White, while White individuals comprised about 44% of the State population. (U.S. Census Bureau, 2015; TDCJ, 2013).

Texas increased Hispanic incarceration from 2003 to 2013. In 2003, when Hispanic individuals comprised about 32% of the State population, they represented 28% of the incarcerated population. In 2013, the overall Hispanic population grew to 38.4%, and the Hispanic incarcerated population increased to 33%<sup>4</sup> (U.S. Census Bureau, 2015; TDCJ, 2013).

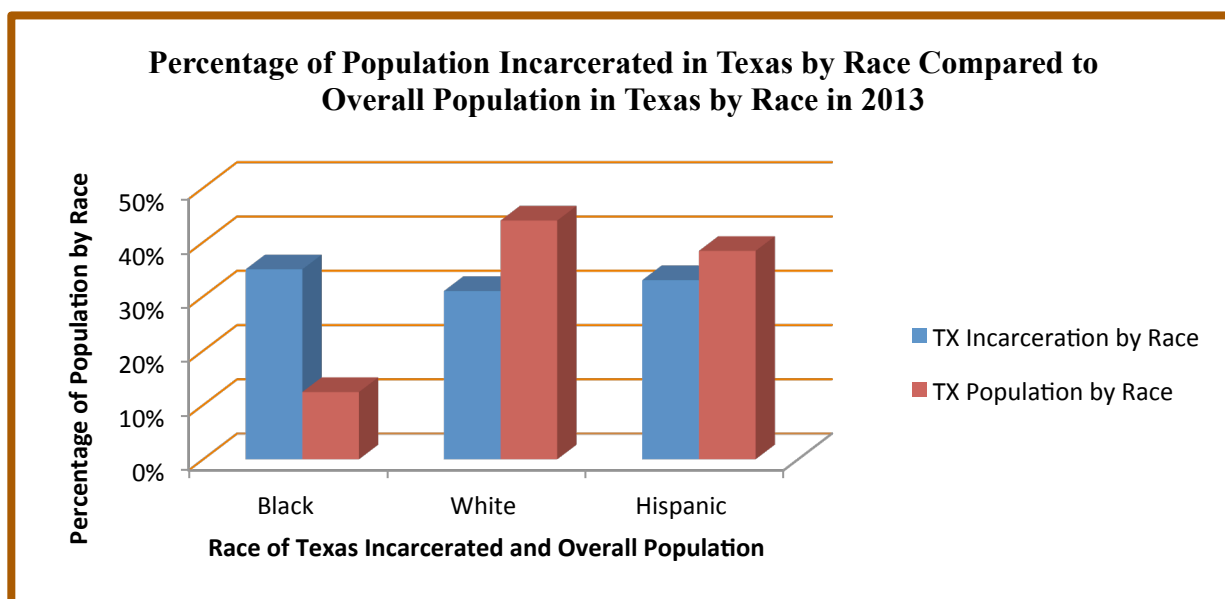


Figure 3. Race of Texas Incarcerated Population in 2013. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

An analysis of the intersection of race and sex among the TDCJ population reveals several important trends. The proportion of African American women in TDCJ has decreased from 3.22% in 2003 to 2.47% in 2013. The proportion of African American men in TDCJ has decreased from 37% to 33% since 2003. The proportion of White men in TDCJ has decreased slightly, while the proportion of White women has increased. The proportion of Hispanic men has increased from 26.89% in 2003 to 31.15% in 2013, and the proportion of Hispanic women has grown from 1.29% to 1.86%. (TDCJ, 2004-2013).

<sup>4</sup> While the intersection of criminal justice and immigration is a critical issue, especially in Texas, it is beyond the scope of this brief, and thus the number of Hispanic individuals detained in U.S. Immigration and Customs Enforcement (ICE) facilities is not included.

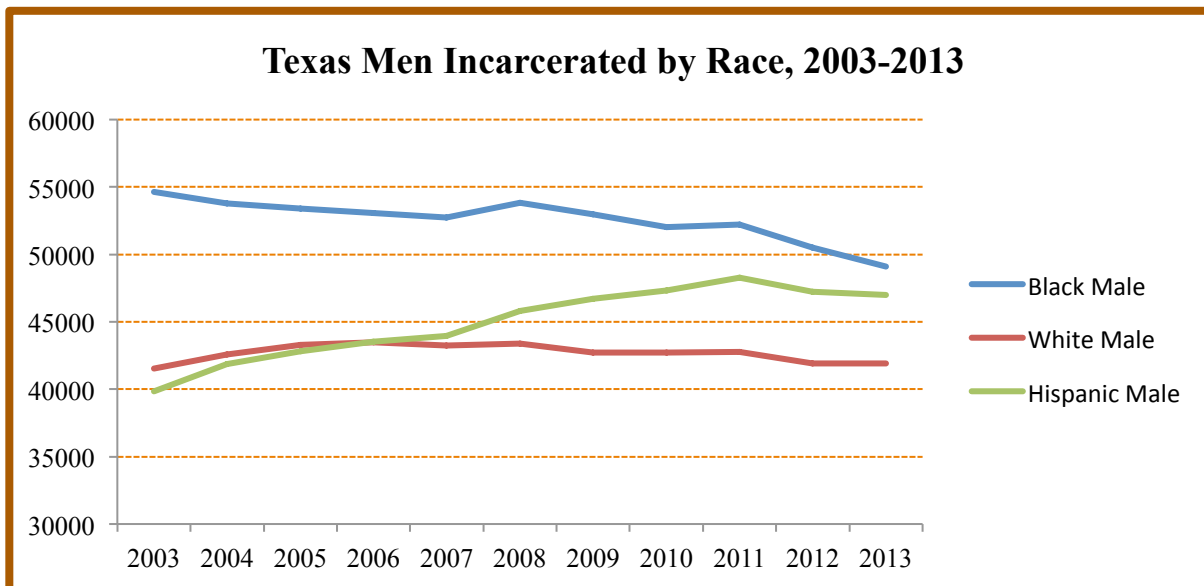


Figure 4. Texas Men Incarcerated by Race, 2003-2013. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

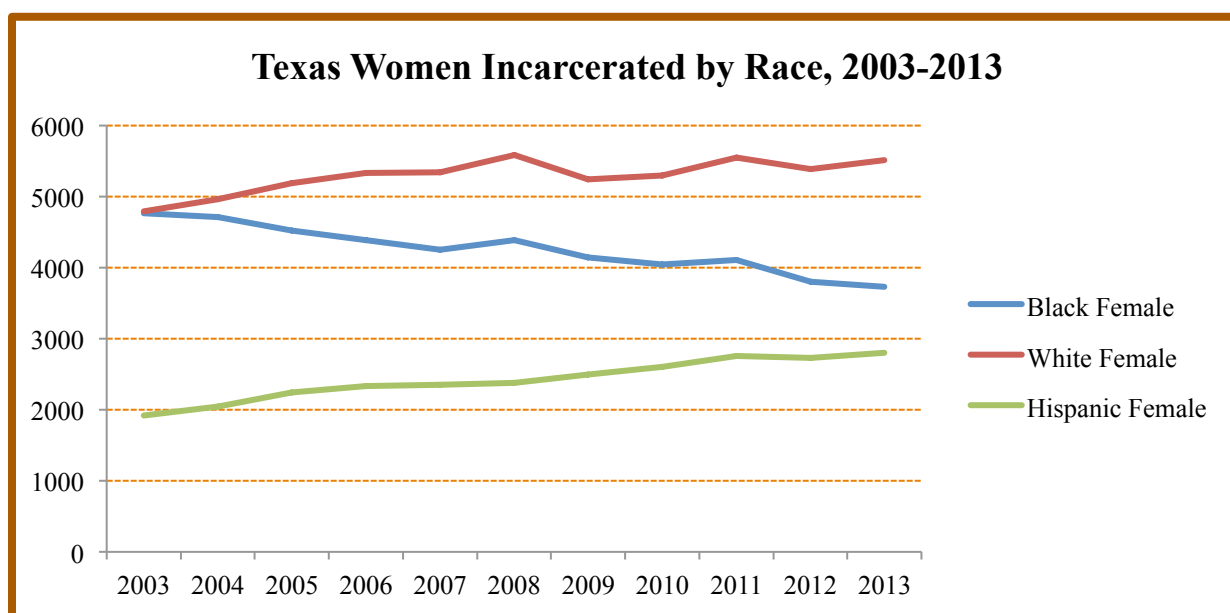


Figure 5. Texas Women Incarcerated by Race, 2003-2013. Developed from data reported in “Correctional Populations in the United States,” Bureau of Justice Statistics (2013).

Despite some decrease in the number of African Americans incarcerated in Texas, African American individuals are still incarcerated at three times the rate of their population.

## FINDINGS AND DISCUSSION

The analysis in this report reveals that the Texas Model has not reduced the number of people incarcerated in state prisons, and that the use of imprisonment remains starkly racially disproportionate. Texas continues to lock up more people than any other state, and has the fifth highest incarceration rate



in the country and the highest among the most populous states. In 2013, Texas increased the number of people the State incarcerates. In 2013, 35% of 160,295 individuals in Texas state prisons were African American, despite African Americans comprising just 12.4% of the State population (TDCJ, 2013). Troubling projections from the LBB now indicate that the state will continue to incarcerate about the same number of people through 2019.

Despite these troubling findings, a recent book of essays edited by the Brennan Center for Justice gave a platform to several national leaders who perpetuated the myth that Texas has fundamentally changed its prison system and reduced incarceration. The excerpts below highlight this dangerous praise:

According to U.S Senator Cory Booker: “So-called “red states” like Texas and Georgia — which have a widely-held reputation for prioritizing law and order — have made sweeping reforms in recent years to reduce their prison populations” (Brennan Center for Justice, 2015, p.10).

According to former Texas Governor Rick Perry: “States across the country can follow the successful example of Texas. By offering treatment instead of prison for those with drug and mental health problems — upon entrance and exit from prison — the United States can eliminate our incarceration epidemic” (Brennan Center for Justice, 2015, p.85).

According to Marc Levin, Founder and Policy Director of the “Right on Crime Movement”, Texas Public Policy Foundation, states: “The recent successes of many states in reducing crime, imprisonment, and costs through reforms grounded in research and conservative principles provide a blueprint for reform — at the federal level and for states across the country” (Brennan Center for Justice, 2015, p.71).

Exaggerated praise misattributes changes that have occurred since 2007 to the Texas Model. While the reforms adopted in 2007 were limited to funding for treatment, during the preceding biennium, significant changes in probation and parole occurred. Specifically, the number of Texans sentenced to probation increased by 6%, representing averted incarceration, and the average number of parole releases each month increased by 14%. These trends have been credited to the Texas Justice Reinvestment Initiative (CSG Justice Center, 2009, p.2).

**Assertions that Texas prioritizes treatment over incarceration are inaccurate. As of 2012, Texas ranked 49<sup>th</sup> for per capita spending on mental health (Mental Health Connection, 2012).**

In addition, Texas refused to expand Medicaid in 2013, leaving about one million more Texans without a viable option to access health insurance. Texas now has six million uninsured residents, more than any other state in the country (Aaronson, 2013). Mental health treatment in TDCJ prisons is completely inadequate and often inaccessible (Texas Civil Rights Project, 2011).





**For three legislative sessions the Texas Legislature has rejected proposals to reduce incarceration.** Since the adoption of the 2007 Justice Reinvestment package, it can be argued that the Texas Legislature has not passed any significant legislation to reduce incarceration. During the 83<sup>rd</sup> Texas Legislative Session, policymakers with the support of advocates introduced dozens of proposals that could have reduced incarceration in Texas through sentencing reform. The vast majority of these bills, however, never received a committee hearing.

The few sentencing reform bills that did advance out of committee, including a drug policy bill that could have substantially decreased incarceration by ending the prosecution of less than .02 ounces of a controlled substance, were stalled by the House Calendars Committee. In fact, 33 new crimes were created and 20 bills lengthening sentences for existing crimes became law (Texas District and County Attorney Association, 2013). Overall, since the 2007 passage of the Texas prison reform model, Texas has increased the number of people it incarcerates. (Bureau of Justice Statistics, 2008 - 2014).

A prominent group of criminal justice researchers conducted an analysis of Justice Reinvestment Initiatives around the country. Their research, released in 2013, produced a troubling finding: “The Justice Reinvestment Initiative, as it has come to operate, runs the danger of institutionalizing mass incarceration at current levels” (p.1). The report’s analysis of Justice Reinvestment in Texas is bleak: “The JRI trumpets Texas’s ‘success,’ and the Texas reforms were a success in one sense: Texas is one of our toughest-on-crime states, so any progress on criminal justice reform is an accomplishment. However, if the metric is reduced to corrections populations and costs, the Texas JRI program must be viewed as a failure” (Austin, J., et. al., 2013, p.24).

This legislative session, several promising bills, discussed below, were introduced that would have lead to reductions in incarceration. Unfortunately, the Texas legislature once again demonstrated an unwillingness to pass legislation that could reduce incarceration and racial disparity.

In 2011 and 2012 Texas sentenced over 16,000 individuals to state jail<sup>5</sup> and separated them from their families for a drug conviction (Texas Criminal Justice Coalition, 2015). Eighty-eight percent of these individuals were convicted for the possession of less than one gram of a controlled substance – equivalent to a sugar packet (Texas Criminal Justice Coalition, 2015). House Bill 254 / Senate Bill 412 would have reduced the penalty for possession of small amounts of controlled substances from a state jail felony to a class A misdemeanor, allowing more Texans to remain in their communities and with their families instead of filling prison beds (H.B. 254, 2015; S.B. 412, 2015). The Criminal Jurisprudence Committee refused to allow a vote on this bill.

In Harris County, a tough-on-crime district attorney prosecutes individuals for possession of trace amounts of a controlled substance. House Bill 253 / Senate Bill 419 would have ended this harmful practice by establishing 0.02 grams (equivalent to 2/100 of a sugar packet) as the minimum weight necessary to prosecute. This legislation would have also protected due process, as the 0.02 grams is the minimum weight necessary to be able to properly test the substance (H.B. 254, 2015; S.B. 412, 2015). The Criminal Jurisprudence Committee refused to allow a vote on this bill.

House Bill 3326 would have helped reduce incarceration in Texas by decreasing punishment for certain low-level **misdemeanor** and felony offenses including low-level

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<sup>5</sup> State jails are TDCJ prisons that incarcerate individuals with sentences of two years or less.



possession of marijuana and controlled substances (H.B. 3326, 2015). The House Calendars Committee chose to prevent a vote on this bill.

The Texas Legislature once again refused to address mass incarceration and racial disparity in a meaningful way. Without intervention, future mass incarceration will continue to devastate Texas's low-income communities of color.

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## RECOMMENDATIONS

### ***Recommendation #1: Reduce state-level imprisonment by addressing key underlying causes of mass incarceration***

#### a) Prohibit admission to prison for technical violations of probation and parole

Texas policy allows for the incarceration of individuals who break the conditions of parole or probation. These broken rules, called technical violations, are not crimes, but instead include missing curfew, failing to pay a fee, or having drug use detected in a urinalysis. Incarcerating individuals for technical violations is unduly harsh and drives mass incarceration in Texas. Many researchers and practitioners have identified limiting reincarceration for technical violations as a key component of reducing prison populations (National Council of State Legislatures, 2011; Austin, 2007; The Sentencing Project, 2013).

#### b) Reduce average length of stay in prison by increasing monthly average parole release rates

Increases in average lengths of stay in prison drive mass incarceration. Longer lengths of stay, however, have not led to reductions in crime. In fact, research produced by institutes including Pew has found that reducing lengths of stay can be implemented without negatively affecting public safety (Pew, 2012).

Between 1990 and 2009, the average length of stay in Texas prisons increased by 15% for property crimes, 14% for drug crimes, and 44% for violent crimes. This average 32% increase in length of stay drives mass incarceration in Texas (Pew, 2012).

Texas released 8,000 fewer prisoners in 2013 than in 2012 (Bureau of Justice Statistics, 2014). This 10% drop is contributing to the maintenance of mass incarceration in Texas. Increasing parole release rates will lower average lengths of stay, leading to a reduction on the number of individuals living in Texas prisons.

#### c) Reduce mass incarceration by reforming harsh drug laws and sentencing.

End criminal prosecution for trace amounts of a controlled substance in Harris County, and prevent the incarceration of Texans for possession of less than a gram of a controlled substance.

#### d) Decriminalize School Misconduct

School discipline policies are inexorably linked to mass incarceration. Ending the practice of criminally prosecuting children accused of truancy will reduce the number of students of color, students with



disabilities, and low-income students being disproportionately targeted, expelled, and pushed into the school to prison gauntlet.

***Recommendation #2: Replace TDCJ's antiquated racial classification system with self-identification system that gathers information about both race and ethnicity.***

Accurately capturing data about the racial and ethnic identities of those incarcerated by TDCJ will provide a more complete picture of disproportionality. This update will also allow Texas to understand its incarceration demographics in relation to national and other state trends.

***Recommendation #3: Adopt Racial Impact Statement Legislation***

Similar to an environmental impact statement and a fiscal impact note, a racial impact statement assesses the impact of proposed legislation on racial and ethnic minorities. In 2008, Iowa passed legislation requiring policymakers to submit racial impact statements with criminal justice legislation, after finding that the state had some of the nation's most severe racial disparity in its prison population (Mauer, 2009). Shortly after, Connecticut and Wisconsin passed similar legislation (Mauer, 2009). In 2009, State Representative Harold Dutton similarly introduced a legislation that would have required racial impact analyses for future criminal justice bills or resolutions. However, Representative Dutton's proposal failed to move beyond committee (Criminal Justice Policy Impact Statement, 2009). Advocates and criminal justice experts (Center for Racial Justice, 2014; Mauer, 2009; Erickson, 2013) recommend the use of racial impact statements because they utilize data to predict disparate impact. Though the success of these assessments relies on how policymakers choose to utilize them, racial impact statements have led to changes in legislation (Center for Racial Justice, 2014; Erickson, 2013; Mauer, 2009). Impact statements would help Texas policymakers understand whether policies will have unintended and inequitable effects. Incorporating racial impact statements in future criminal justice legislation is a strong step toward that goal.

## **CONCLUSION**

Reinforcing a national narrative that celebrates the success of the Texas Model spreads harmful misinformation about the ability of fiscal austerity designs to substantively reduce incarceration and racial disproportionality.

To reduce incarceration and the disproportionate imprisonment of people of color, Texas must address the underlying structural causes of incarceration. The existing Texas Model, which is limited in scope to a fiscal-savings plan, fails to disrupt the drivers of incarceration, and thus cannot lead to substantial reductions in incarceration.

Genuine reform is possible in Texas, but will require bold leadership, vigilant attention to ending racial disparity, and a willingness to address the underlying causes of mass incarceration. The recommendations proposed in this report provide a few options that can reset the State's troubled reform trajectory.



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