

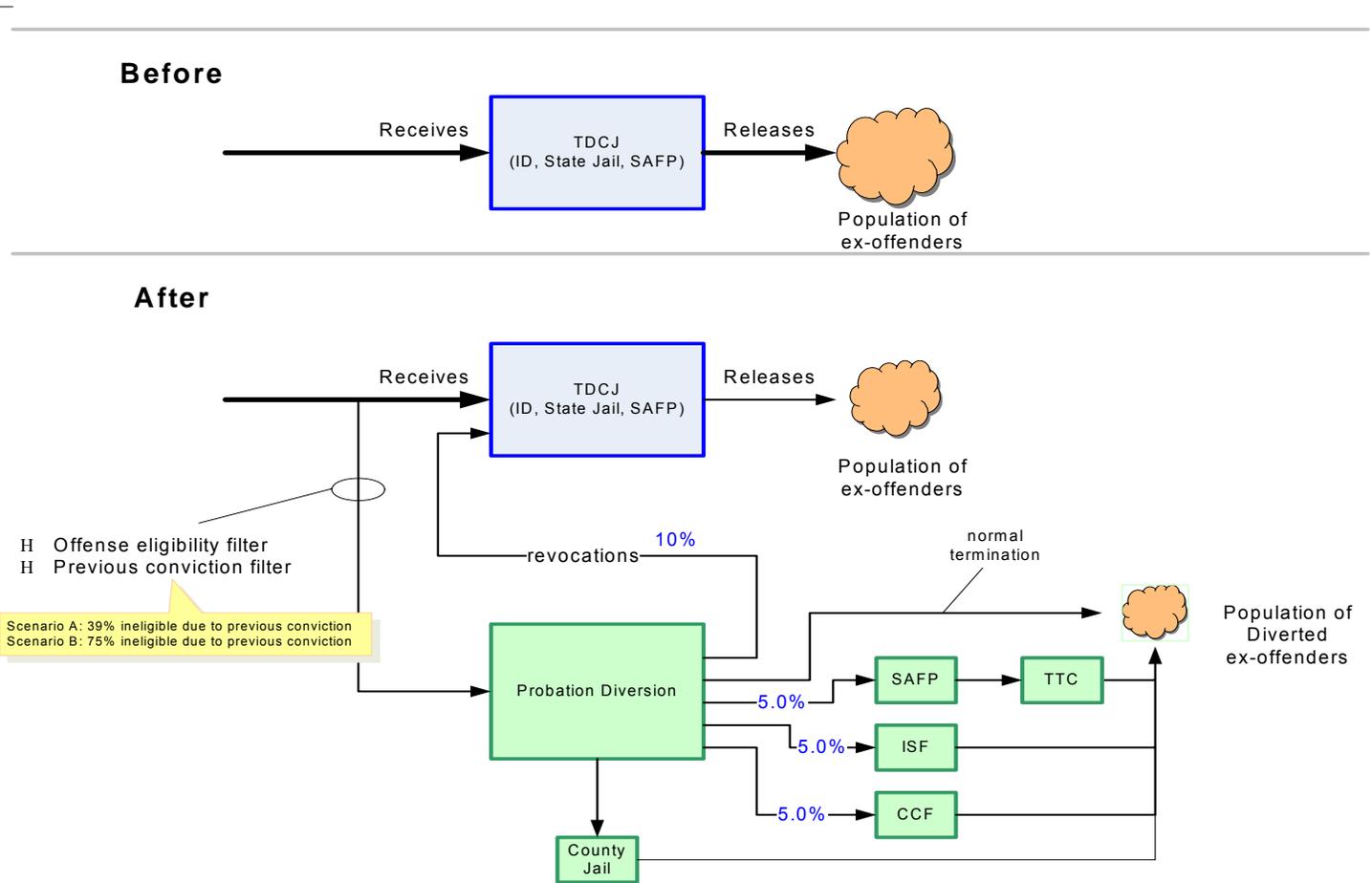
SPECIAL LEGISLATIVE BRIEFING ON CRIMINAL JUSTICE

Texas Can Protect Public Safety and Save Money by Not Building More Prisons

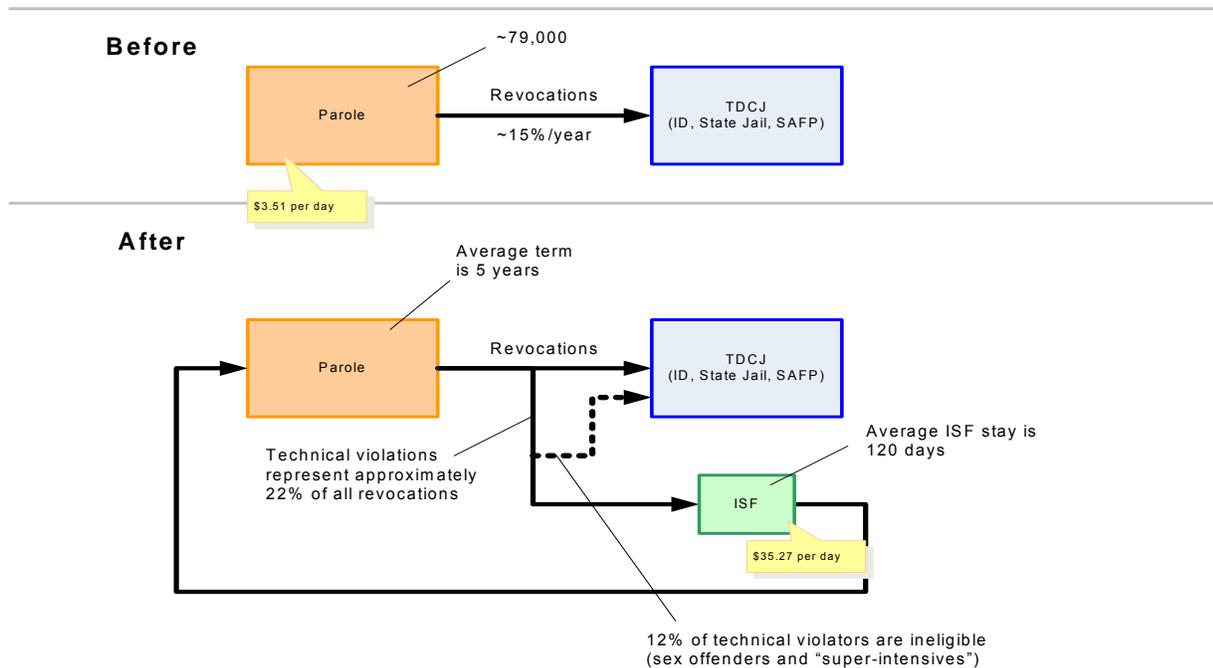
► Through key legislation and prioritizing alternatives to prison in the budget, lawmakers can avoid spending billions of taxpayer money on new prisons over the next decade. Moreover, this can be accomplished solely by focusing on alternatives to incarceration for nonviolent, low-level drug offenders and parolees who commit administrative violations, such as missing a meeting or going outside of their zone. The Senate budget proposes 3,900 new prison beds while the House budget envisions no new prisons, although both budgets fund thousands of additional beds in secure intermediate sanctions and treatment facilities. **These new prison beds would cost at least \$233.4 million to construct and another \$750 million to operate over the next ten years, totaling nearly \$1 billion dollars.**

► SB1909 by Senator Rodney Ellis and SB838 by Criminal Justice Chairman John Whitmire have both passed the Senate, and SB1909 has been approved by the House Corrections Committee. SB1909 will divert thousands of nonviolent, low-level drug possession offenders into treatment while SB838 will redirect parolees who commit technical violations and misdemeanors into intermediate sanctions facilities.

SB1909 Model



SB838 Model



TPPF and LBB Figures Show Diversion Legislation Results in Significant Capacity Relief and Savings

Texas Public Policy Foundation Estimates of Diversions 2003-2007

Had SB1909 and SB838 in Place From 2003 to 2007, We Would Be Well Under Capacity Today

SB838: 3,637.....SB1909: 5,407.....Total Diversions: 9,044

Legislative Budget Board Projections 2008-2012

LBB Finds Total Prison Beds Saved in 2012 As a Result of SB1909 and SB838 Equals 19,954, Exceeding LBB's January Projection of 17,332 Bed Overflow by 2012

Fiscal Year	January 2007 Forecast		Internal Operating Capacity	Decrease in Demand for Prison/State Jail Capacity		
	Incarceration Population Projection	Contract Bed Demand		Senate Bill 838	Senate Bill 1909	House Bill 1678
2008	155,652	4,818	150,834	932	1,916	
2009	158,632	7,798	150,834	3,203	6,868	
2010	161,288	10,454	150,834	5,227	9,019	
2011	163,812	12,978	150,834	6,634	10,008	490
2012	167,182	16,348	150,834	7,773	10,778	1,403

► The LBB fiscal note indicates that SB1909 will produce net savings of \$112.3 million to the state this biennium, \$243.1 million in the 2010-11 biennium, and \$493.5 million through 2012. The fiscal note also states that this bill would divert 7,693 low level drug possession offenders who have not previously committed another type of felony every year from prison into intensive treatment and probation. This estimate assumed that all drug possession offenders with a past felony would be excluded. In fact, the bill allows for, but does not require, the exclusion of a drug possession offender with a prior conviction of any crime other than drug possession or fine only traffic misdemeanor. The LBB also assumed that treatment would consist only of outpatient treatment at a cost of a \$3.64 per day for those offenders who cannot meet the requirement that they pay for their own treatment.

► In contrast, our estimates assume that, on average, offenders would be placed in 90 days of residential treatment at a rate of \$69 per day (Texas Department of State Health Services) following their average of 90 days of outpatient treatment. Like the LBB, we assumed that half of the offenders would be unable to pay these costs themselves. Also, our depiction of SB1909 above and calculations build in failure rates, whereby some of the offenders diverted to probation and treatment under SB1909 are revoked or placed in a facility like an ISF—for the first time, probation will have access to some of the 1,400 new ISF beds being budgeted. Accordingly, our estimated savings of \$80.6 million from 2003-2007 had this policy been in place are less than the LBB projection for both this reason and the fact that there will be more total diversions in future years due to the increased number of convictions every year. In all likelihood, the savings will be between \$80.6 million and the \$493.5 million forecasted by the LBB, but it is important to note that neither estimate includes the avoided cost of building new prisons. Just as importantly, the public policy goal of SB1909 is not simply to maximize savings, but to achieve those savings that are consistent with also providing for the types of diversions, including residential placement where necessary, to protect public safety and offer the intensive rehabilitation that is needed to keep some of the most severe drug addicts from re-offending.

2008-09 Budget Supports Diversion Strategies

► The conference committee budget will provide significant resources to support the diversion strategies, ensuring that there is sufficient community-based capacity so that judges have the resources at their disposal needed to make the diversions effective.

Strategy	Senate	House
Probation Residential Treatment	800 new beds	475 new beds, 125 mental health beds
Substance Abuse Felony Punishment	1,800 new beds	800 new beds
Parole Halfway Houses	600 new beds	150 new beds
Intermediate Sanction Facilities	1,400 new beds	1,400 new beds
In-Prison Therapeutic Treatment	1,500 beds/slots	400 beds/slots
DWI Treatment	500 new beds	----
Mental Health Pretrial Diversion	1,500 new clients	1,500 new clients
Probation Outpatient Treatment	2,894 new clients	5,500 new clients
State Jail Therapeutic Treatment	1,200 offenders	---
Transfer of TYC Units	1,200 beds	1,200 beds

Recent Increase in Parole Rate and Better Utilization of County Jails and Private Facilities Relieve Capacity Pressures

► The parole rate has increased from 26 percent to 31 percent. The last projections released by Legislative Budget Board in January 2007 were based on a 26 percent parole rate. Since then, the Board of Pardons and Paroles has enhanced its efforts to meet its own guidelines for the parole of nonviolent, low-risk offenders. According to the Council of State Governments report by Dr. Tony Fabelo, an ongoing 31 percent parole rate would itself clear out the backlog by 2012¹, but more realistically, a historically realistic parole rate of 28 percent combined with key reforms

¹ See http://justicereinvestment.org/files/TX%20mid-term%20report_9%20final.pdf.

will be more than sufficient to eliminate the need for new prisons through 2012. The budget proposals for expanding IPTC beds and halfway houses will support more efficient parole release because there are regularly between 500 and 1,000 inmates who have been paroled, but are not released either because of a waiting list to get into the six-month IPTC program as a condition of parole or a waiting list to get into a halfway house.

► Given that there is always a potential for estimates to be inaccurate, the state can lease beds from private operators and county jails. Pending legislation would free up more space in county jails. The House passed and the Senate Criminal Justice Committee is now considering Chairman Madden's HB198, which would increase the artificial caps on capacity at existing private correctional facilities. Also, Madden's HB2391 could free up thousands of beds in county jails by allowing officers the discretion to issue a citation and notice to appear for minor Class B misdemeanors.

Alternatives to Prison Are Proven to Work

► These strategies have been proven to reduce recidivism. A Criminal Justice Policy Council study found that SAFP and IPTC reduced recidivism and resulted in \$1.56 in savings in prison costs for every \$1 spent.²

► Policies similar to SB1909—the diversion of nonviolent, low-level drug offenders into treatment—have proven successful in other states. For example, after Arizona redirected nonviolent, low-level drug addicts from prison into treatment through a plan similar to SB1909, an Arizona Supreme Court study found 77 percent of participants successfully completed treatment and beat their addiction.³ The national Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and 61 percent reduction in crime while outpatient treatment resulted in a 50 percent reduction in drug use and 37 percent reduction in crime.⁴ The National Institute on Drug Abuse (NIDA), Director concluded, “Research findings show unequivocally that drug treatment works.”⁵ Community-based treatment is most effective because a family and support network is often present, and offenders can be reintegrated into productive educational and employment opportunities.

► On SB838 and the issue of parole revocations for technical violations, Dr. James Austin of JFA Associates, who is advising the Board of Pardons and Paroles, has found that there is no evidence that parolees who commit technical violations are more likely to commit another crime than other parolees. Under SB838, these offenders would nonetheless be secured in nearby Intermediate Sanctions Facilities (ISFs) that provide substance abuse treatment, which was recently added to most existing ISFs. Such placements could last up to a year, though we assume the average would be 120 days.

Conclusion

► In light of the current parole rate in 2007 and the new diversion funding in both budgets, the capacity shortfalls projected by the LBB through 2012 will not occur, based on the new projections done by the LBB and released by the Council on State Governments. However, given that the parole rate can fluctuate, policy changes such as SB1909 and SB838 are needed to ensure that existing prison capacity remains sufficient. If both of these bills are implemented, the parole rate averages a historically realistic 28 percent, and the currently envisioned budgetary support for diversion strategies is finalized, taxpayers will not only avoid \$1 billion in costs associated with new prisons, but the state can discontinue leasing several thousand county jail beds, resulting in hundreds of millions of additional savings—all while protecting public safety.

² See http://www.lbb.state.tx.us/PubSafety_CrimJustice/6_Links/SA3TR.PDF.

³ See <http://www.justicepolicy.org/article.php?id=24>.

⁴ See <http://www.oregon.gov/DHS/addiction/outcome-flyer.pdf>.

⁵ See <http://www.nida.nih.gov/Testimony/2-8-06Testimony.html>.