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INTERIM TESTIMONY 2014

Senate Committee on Health & Human Services

Monitor the implementation of programs that were created or expanded by the 83rd Legislature to improve mental health and substance abuse services and assess these efforts' contribution to improved outcomes such as reduced recidivism in state hospitals, diversion from emergency rooms and county jails, and access to permanent supportive housing. Identify and address gaps in the current mental health and substance abuse system and make recommendations to better coordinate services across agencies and programs.

Dear Members of the Committee,

My name is Sarah Pahl. I am a Policy Attorney for Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on effective strategies for addressing mental illness and substance abuse.

SMARTER STRATEGIES WILL REDUCE CRIME, SAVE MONEY, AND TREAT CO-OCCURRING DISORDERS

Many people prosecuted for low-level drug crimes face correlative obstacles such as mental illness, homelessness, joblessness, and poverty.¹ In fact, **55-69% of individuals with substance abuse disorders have a co-occurring mental health disorder and 60% of those who have been diagnosed with a mental health disorder have a co-occurring substance abuse disorder.**² The unique challenges presented by co-occurring disorders cannot be overlooked—individuals with mental disorders are at greater risk of drug abuse and addiction than the general population,³ and individuals with co-occurring disorders are more likely to be arrested, incarcerated, and spend more time incarcerated than substance abusers without mental disorders.⁴

Texas wastes millions of taxpayer dollars every year incarcerating individuals who pose no legitimate risk to public safety; in fact, many of these individuals are merely treating their mental health disorders by self-medicating through the use of illegal drugs. Chemical dependency and mental illness cannot be “treated” through incarceration. Properly assessing addiction and mental illness, and matching individuals with appropriate evidence-based treatment and community supervision, is far more effective and less expensive than simply locking them up.

Failure to comprehensively address chemical dependency and mental health as public health issues will produce the same predictable results Texas has witnessed for decades: a cycle of individuals with addiction and mental illness filling prison and jail beds and running up a huge bill, payable by Texas taxpayers.

PROGRAMS CREATED OR EXPANDED BY THE 83RD LEGISLATURE

Although much remains to be done to address mental health and substance abuse in Texas, we commend the Legislature for the steps it has already taken on these issues, and for its continued interest in examining the implementation of relevant legislation.

On the following pages, please find information on bills and budget riders passed by the 2013 Texas Legislature; we have included the objectives behind the legislation, needed improvements, and questions you may consider asking of stakeholders who are implementing these new reforms.

Bill (Author), Caption	Policy Objective	Improvement Needed	Implementation Data
Budget Rider 36, Texas Juvenile Justice Department, Mental Health Services	Budget Rider 36 provides funding for mental health services delivered by local juvenile probation departments to juveniles.	While the funding provided in this rider is necessary to deliver critical mental health services to juveniles, the rider did not include any performance measures by which the State may hold the Texas Juvenile Justice Department (TJJD) accountable.	<ul style="list-style-type: none"> ▪ How many juveniles were provided mental health services since September 1, 2013? ▪ What mental health services have been provided to juveniles since September 1, 2013? ▪ How has TJJD measured the success or failure of the mental health services provided to juveniles since September 1, 2013?
H.B. 144 (Raymond), Relating to a mental examination of a child subject to the juvenile justice system.	H.B. 144 permits courts, at their own discretion or at the request of a parent or guardian, to order a child to be examined by an expert to determine whether the child has a mental illness, is a person with mental retardation, or suffers from chemical dependency.	At this point, H.B. 144 does not require the court to order an examination for mental illness, mental retardation, or chemical dependency; the examination is permissive. Yet H.B. 144 does not address the behavioral health needs of children when an examination is not ordered by the court.	<ul style="list-style-type: none"> ▪ How many parents or guardians have requested an examination for mental illness, mental retardation, or chemical dependency since September 1, 2013? ▪ How many juvenile courts ordered an examination for mental illness, mental retardation, or chemical dependency since September 1, 2013? ▪ How many children were referred to services for mental illness, mental retardation, or chemical dependency since September 1, 2013?
H.B. 2392 (Menéndez), Relating to the mental health program for veterans.	H.B. 2392 replaced the provisions of S.B. 1325 (81 st Legislature) by spelling out what programs the peer-to-peer counselors would offer, including suicide prevention training and diversion services for incarcerated veterans; it also eliminated the distinction that veterans must have been honorably discharged in order to participate. According to the Department of State Health Services (DSHS), the program served 21,067 individual service members, veterans, and family members from September 1, 2013, to June 30, 2014 (reporting 53,637 service interactions). ⁵	H.B. 2392 expanded the programs funded by DSHS to provide services, primarily through volunteers. DSHS employs 35 paid volunteer coordinators and relies on volunteers to provide peer counseling, suicide prevention training, and service coordination. DSHS should receive allocated funding to hire 35-70 additional veterans to provide peer services, including services focused on providing assistance in securing housing and employment, in order to improve the quantity and quality of services provided.	<ul style="list-style-type: none"> ▪ How many volunteer peers have been trained, and how many peers have actively provided services, since September 1, 2013? ▪ Have the number of veterans admitted to emergency rooms or booked into county jails decreased since September 1, 2013?
H.B. 3793 (Coleman), Relating to powers, duties, and services of entities serving counties and county residents.	H.B. 3793 requires local mental health authorities to incorporate jail diversion strategies in order to reduce the involvement of the criminal justice system in managing adults with certain mental health disorders (Section 2, (b-1)), and it requires DSHS to allocate treatment services for those seeking voluntary treatment as well as those who are ordered by a court to receive services.	The mandate for counties to serve those with mental health needs is essential to reducing jail populations. However, it should be made clear whether the jail diversion strategies are truly diverting individuals from being incarcerated, or whether mental health services are merely being provided within a jail setting.	<ul style="list-style-type: none"> ▪ How many counties have signed contracts with local mental health authorities to provide treatment? ▪ What performance measures will be used to ensure the effective treatment and diversion of adults with mental health disorders? ▪ Have the number of bookings into county jails been reduced since September 1, 2013?

Bill (Author), Caption	Policy Objective	Improvement Needed	Implementation Data
S.B. 213 (Whitmire), Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Windham School District and to the functions of the Board of Pardons and Paroles and the Correctional Managed Health Care Committee.	S.B. 213 provides for numerous improvements in Texas' criminal justice system, including the creation of a standardized assessment instrument, to be used throughout confinement, probation, and reentry processes, as well as enhanced requirements in developing treatment plans and planning for confined individuals' reentry to society.	The Texas Department of Criminal Justice (TDCJ) should continue to enhance its capacity to rehabilitate those convicted of crimes in a way that aids public safety and decreases public spending. These additional enhancements may include providing each person confined in a TDCJ facility with access to a case manager upon initial intake, and creating landlord outreach specialist positions in the Reentry and Integration Division.	<ul style="list-style-type: none"> ▪ Has the assessment instrument been validated and implemented throughout the system? If not, in which departments/divisions/ jurisdictions has it not yet been implemented? ▪ What mechanisms have TDCJ put in place to ensure that the assessment instrument is properly implemented, according to best practices (e.g., regular audits) during all stages of system involvement (probation, confinement, and parole)? ▪ How are these assessment instruments being utilized to develop appropriate case management and treatment plans?
S.B. 462 (Huffman), Relating to specialty court programs in this state.	S.B. 462 requires specialty courts to register with the Criminal Justice Division of the Governor's Office, track and report their performance, and comply with best practices adopted by the Criminal Justice Division.	Creating structure to hold specialty court programs accountable is essential to providing effective services to those who live with behavioral health issues. However, specialty court programs in Texas serve only a fraction of those who qualify. Additional measures should be taken to expand the capacity of specialty court programs, where necessary, and designated state and/or county funding should be appropriated for this effort.	<ul style="list-style-type: none"> ▪ How many individuals have met the eligibility criteria for acceptance into specialty court programs since September 1, 2013? ▪ How many individuals have been accepted into specialty court programs since September 1, 2013? ▪ How many of the state's specialty court programs are complying with best practices? ▪ What are the success rates of specialty court programs in Texas?
S.B. 1185 (Huffman), Relating to the creation of a mental health jail diversion pilot program.	S.B. 1185 was enacted in order to reduce the recidivism and frequency of arrests and incarceration of persons with mental illness in the Harris County Jail. The program's stated goals include (1) reducing the frequency of arrests and incarcerations; (2) reducing the number of days spent in jail; (3) increasing access to housing, behavioral health, and social services; (4) reducing criminogenic risk; and (5) improving quality of life.	Harris County hired a director for the Jail Diversion Program. The program is still in its infancy and it is difficult at this time to assess the success of this diversion pilot program.	<ul style="list-style-type: none"> ▪ How many individuals have been served through the program since June 1, 2013? ▪ Have the number of individuals booked into the Harris County Jail and identified as having mental illness decreased since June 1, 2013? ▪ What have been the lessons learned so far while trying to implement this pilot program?
S.B. 1475 (Duncan), Relating to a jail-based restoration of competency pilot program.	S.B. 1475 creates a 4-year, permissive competency restoration pilot program in up to two county jails to treat defendants who are incompetent to stand trial. The Department of State Health Services must authorize a public or private provider to operate and manage the program, and a stakeholder workgroup will help develop rules for the program.	Senator Duncan worked collaboratively with criminal justice advocates to make this bill as effective as possible. Recommendations will be made when progress of the program is reported.	<ul style="list-style-type: none"> ▪ How many individuals have received competency restoration services since September 1, 2013? ▪ How many individuals have achieved competency as a result of the program? ▪ What were the outcomes for those who did not achieve competency?

KEY FINDINGS

- The Department of State Health Services provided substance abuse treatment services to approximately 58,000 people in fiscal year 2013, or 3% of Texans who have substance abuse problems.⁶
- **About 90% of all drug arrests in Texas are for possession, not manufacture, of a controlled substance.**⁷ Many of those arrested struggle with addiction and, increasingly, research indicates that addiction is a brain disease that can be treated with proper resources and services.⁸
- In 2013, approximately 34% of youth referred to the Texas Juvenile Justice Department had a suspected or confirmed substance abuse issue and about 34% had mental health needs. The most frequent mental health diagnoses for youth are ADHD, bipolar disorder, conduct disorder, and other mood disorders.⁹
- Whereas state incarceration costs over \$50 per person per day,¹⁰ community supervision costs the state \$1.38 per person per day,¹¹ and it is better equipped to address the underlying causes of drug crime through local programs and services. An emphasis on drug and mental health treatment, alongside effective supervision in the community, will continue to help vulnerable individuals become productive and healthy members of society while preventing the gross inefficiencies and significant costs of incarceration.
- The results of a recent study suggest that specific assessments regarding the severity of the co-occurring disorder, as well as related issues (*e.g.*, primary drug of choice, gender, and recent behavior), may help inform treatment decisions that will increase the probability of a person's success while reducing the likelihood that he or she will re-offend, at least within one year of the initial conviction.¹²
- The Rules of Court in Harris County, the state's largest county, indicate that each detainee should be screened by a psychiatrist or other mental health professional as part of the booking process at the Harris County Jail. Screening includes a search of available state and county agencies providing in- and out-patient treatment to the public.¹³
- A 2013 report submitted by the Texas Department of Criminal Justice to the Governor showed that, since 2005, **providing treatment resources to individuals as a diversion from prison has decreased technical revocations, decreased the average caseload size, and increased early terminations** (as an incentive for compliance with community supervision conditions).¹⁴
- Although the number of individuals on parole in Texas has steadily increased since 2007, the revocation rate has decreased each year. In FY 2012, Texas Department of Criminal Justice reported a 7.4% revocation rate. **Of the 6,169 individuals whose parole was revoked, admitting them to prison, 35.6% were revoked for drug-related offenses—these individuals comprise the largest share of revoked parolees.**¹⁵

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Expand and strengthen programs to divert individuals from incarceration before they are arrested.** Diverting individuals from jail to effective treatment programming and other supportive services **saves immediate costs** associated with typically high incarceration expenses, as well as trial and defense expenses. Additionally, valuable law enforcement and corrections resources can instead be **concentrated on higher-risk offenses** and legitimate threats to public safety.

- » **With regard to individuals suffering from substance abuse and mental health issues, specifically encourage pretrial diversion programs to reduce the burden on the criminal justice system.** Programs such as the Law Enforcement Assisted Diversion (LEAD) program help local criminal justice leadership reduce the intake of individuals with addiction into confinement. The LEAD program is a pre-booking strategy that stresses both immediate access to services and participant accountability, with the target being low-level drug users for whom probable cause exists for an arrest. Specially trained law enforcement officers immediately divert the individuals into community-based treatment with access to support services (housing, vocational and educational assistance, etc.).
- » **Expand the number of specially trained law enforcement officers on mental health and substance abuse issues, including through the implementation of Crisis Intervention Response Teams.** The existing mental health diversion efforts in Harris County being implemented by both the Houston Police Department and the Harris County Sheriff's Office have resulted in numerous positive results, including increased jail diversion efforts, increased safety for both officers and the mentally ill, improved willingness of families to call law enforcement about someone suffering from mental illness, improved confidence of officers to respond to such calls, and reduced liability/litigation through fewer injuries and shootings.¹⁶ Furthermore, the cost savings created by CIRTs can be significant. The Harris County Sheriff's Department's CIRT has diverted 518 persons from jail;¹⁷ given that the average jail bed costs for inmates with medical or mental health issues is approximately \$80 per day, that represents a one-day savings of over \$40,000.

Community partners also benefit from investments in specially trained officers. For instance, according to the Public Policy Research Institute, "many of the problems faced by emergency rooms could be improved if skilled law enforcement officers were more aware of protocols to divert cases to other locations for a mental health screenings."¹⁸

- » **Invest in sobering programs as a cost-saving alternative to incarceration that leaves individuals free of a lifelong criminal record.** Houston's new Sobering Center, which provides safe, short-term treatment and management of persons under the influence of alcohol and drugs, in lieu of incarcerating them, has diverted 5,659 individuals from incarceration. Even at lower-average bed costs of \$40 per day, that represents a collective one-day savings of more than \$225,000.
- **Expand judges' ability to sentence individuals to tailored supervision and treatment, if necessary, in particular circumstances.** Judges should sentence certain individuals – those who do not pose public safety concerns and who are charged with drug possession – to probation and, based on the findings of an assessment, in tailored treatment or other programming. Chemical dependency and mental illness cannot be "cured" through incarceration. Upon the successful completion of probation, treatment, and all other terms, an individual should be permitted to petition for a dismissal of the charges and an order of nondisclosure or expunction.
- **Fully implement a criminal justice assessment instrument to inform case management and treatment plans, including the appropriate level of supervision required pretrial.** A consistent and properly-utilized tool used on system-impacted individuals, with modifications at each stage in the system to account for relevant factors that determine an individual's risk to public safety, will provide agency and department practitioners with easier access to shared information that can inform next steps, including further treatment and programming decisions. **It is critical that practitioners are adequately trained, monitored, and audited to ensure that individuals are accurately assessed and resources are properly utilized.** The correct use of an assessment instrument during the reentry process is especially crucial in helping to determine the level of wrap-around services needed for people returning to the community following incarceration, to keep them on a safe, healthy, law-abiding path.

- **Provide adequate training and support to staff throughout the criminal justice system.** Probation and parole practitioners, as well as corrections staff, should have access to training on substance abuse and mental health issues to better meet the needs of those they supervise. With proper training and support, staff in the criminal justice system can recommend appropriate community-based or in-house programming that will best address the root causes of criminal behavior and ultimately reduce an individual’s likelihood of recidivism.
- **Equip the community to respond to the needs of those with co-occurring disorders.**
 - » **Promote prevention and early intervention** by training teachers and others to identify early warning signs of mental health issues among children, providing diversion programs for children entangled in the juvenile justice system, and increasing funding for community-based mental health services for children.
 - » **Allow counties to provide competitive contracts with local mental health services providers** by appropriating adequate funds to keep up with the cost of providing mental health services.
 - » **Integrate the continuum of care** by providing mental health services, substance abuse treatment, and other medical services in the same setting through co-location of services and through the appropriate and protected sharing of medical information amongst these providers.
 - » **Increase and support the workforce that serves individuals with co-occurring disorders** by adding psychiatric residency positions, funding loan forgiveness programs for behavioral health professionals, and promoting behavioral health fields from adolescence through university.
 - » **Improve the reentry process for individuals with co-occurring disorders** by establishing “step-down” care that provides transitional rehabilitative housing for those most at risk for recidivism.

Citations on following page.

Citations

- ¹ Dale E. McNeil, Ph.D., Renée L. Binder, M.D., and Jo C. Robinson, M.A., "Incarceration Associated with Homelessness, Mental Disorder, and Co-occurring Substance Abuse," *Psychiatric Services* 56 (2005): 840-846, accessed April 16, 2014, doi: 10.1176/appi.ps.56.7.840.
- ² Adi Jaffe et al., "Drug-Abusing Offenders with Comorbid Mental Disorders: Problem Severity, Treatment Participation, and Recidivism," *Journal of Substance Abuse Treatment* 43(2012): 244.
- ³ National Institute of Health (NIDA), "Drugs, Brains, and Behavior: The Science of Addiction," (April 2007): 8, accessed April 16, 2014, available at <http://www.drugabuse.gov/sites/default/files/sciofaddiction.pdf>.
- ⁴ Adi, "Drug-Abusing Offenders," 244.
- ⁵ Ted Hughes, Texas Department of State Health Services, Email sent August 14, 2014 to author.
- ⁶ Department of State Health Services, "Sunset Advisory Commission: Staff Report with Decision Material," (August 2014): 27, accessed August 14, 2014, available at https://www.sunset.texas.gov/public/uploads/files/reports/DSHS%20Decision%20Material_0.pdf. The report estimates that two million Texans have substance abuse problems and that DSHS-funded programs provided treatment to about 58,000 people, serving 2.9% of the population with substance abuse treatment needs.
- ⁷ Texas Department of Public Safety, "Crime in Texas: 2012," (2013): 75, accessed April 16, 2014, available at <http://www.dps.texas.gov/crimereports/12/citCh9.pdf>. Total number of drug abuse arrests of adults in 2012 was 130,549 and the total number of possession arrests of adults in 2012 was 116,634, making the percentage of adults arrested for possession 89.34% of all drug-related arrests.
- ⁸ NIDA, "Drugs, Brains, and Behavior," 25-28.
- ⁹ Open Records Request made to the Texas Juvenile Justice Department, 2014. Data available upon request.
- ¹⁰ Legislative Budget Board (LBB), "Criminal Justice Uniform Cost Report: Fiscal Years 2010 to 2012," Submitted to the 83rd Legislature (Jan. 2013): 8, accessed April 17, 2014, available at http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf. FY 2012 system-wide cost per day for state-operated facilities was \$50.04.
- ¹¹ *Ibid.* at 14. The average cost per day was calculated using the average number of those with felony and misdemeanor convictions under direct supervision and does not include those under electronic monitoring, within specialized caseloads, or under intensive supervision probation.
- ¹² Adi, "Drug-Abusing Offenders," 250.
- ¹³ Rules of Court, Harris County Criminal Courts of Law (Sept. 6, 2012), accessed April 17, 2014, available at <http://www.ccl.co.harris.tx.us/criminal/Rules%20of%20Court.pdf>.
- ¹⁴ Texas Department of Criminal Justice, "Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds," (December 1, 2013): 21, accessed April 17, 2014, available at http://www.tdcj.state.tx.us/documents/cjad/CJAD_Monitoring_of_DP_Reports_2013_Report_To_Governor.pdf.
- ¹⁵ Legislative Budget Board (LBB), "Statewide Criminal Justice Recidivism and Revocation Rates," Submitted to the 83rd Legislature (Jan. 2013): 63-64, accessed April 18, 2014, available at http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf.
- ¹⁶ Houston Police Department, About the CIT Program; <http://www.houstoncit.org/about.html>.
- ¹⁷ April 21, 2014 CIRT Stats provided by Alan Bertstein at Harris County Sheriff's Office.
- ¹⁸ Dottie Carmichael, Ph.D., et al., Evaluation Findings for the Crisis Services Redesign Initiative, pg. 110.