



JUSTICE ★ **CENTER**
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

Mid Legislative Session Report: Funding Correctional Treatment and Diversion Initiatives in Texas

Dr. Tony Fabelo

May 2007

Mid Legislative Session Report: Funding Correctional Treatment and Diversion Initiatives in Texas

Dr. Tony Fabelo

May 2007

Council of State Governments Justice Center
100 Wall Street, 20th Floor
New York, New York 10005

JUSTICE★CENTER
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

The Council of State Governments Justice Center is a national non-profit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities.

JFA INSTITUTE

The JFA Institute, a Washington D.C.-based consulting firm, was retained by the Council of State Governments Justice Center to provide technical assistance to Texas during the 80th Texas Legislative Session.



Research and analysis described in this report has been funded by The Pew Charitable Trusts. Through its Public Safety Performance Project, which assists select states that want better results from their sentencing and corrections systems, Pew's project provides nonpartisan research, analysis and expertise to help states identify data-driven, fiscally responsible options for protecting public safety, holding offenders accountable, and controlling corrections costs.

Additional support for this report has been provided by the Bureau of Justice Assistance, a division of the U.S. Department of Justice.

Suggested citation for this document:
Council of State Governments Justice Center, "Mid Legislative Session Report: Funding Diversion and Correctional Treatment Initiatives in Texas," New York, New York: 2007.

Points of view or opinions in this document are those of the authors and do not represent the official position or policies of U.S. Department of Justice, The Pew Charitable Trusts, the Council of State Governments Justice Center or CSG members.

Table of Contents

Summary	i
I. Introduction	1
II. Overview of Texas Legislative Budget Process	3
III. Senate and House Diversion/Treatment Plans	5
IV. Comparison of Overall Budget Proposals	8
V. Related Legislative Proposals	11
VI. Conclusion	15
Notes	16

Table of Figures

Figure 1. Justice Center Publications Analyzing Texas Correctional Population Challenges and Presenting Policy Options for Consideration, January 2007	1
Figure 2: Original Diversion and Treatment Plan Presented January 30, 2007 with Subsequent Modifications (Whitmire/Madden Plan), Estimated New Costs for FY 2008–2009	2
Figure 3: Original TDCJ Request for Appropriations for FY 2008–2009	3
Figure 4: CSSB1 and CSHB 1 All Funds Recommended Appropriations for TDCJ, FY 2008–2009	4
Figure 5: Senate Diversion/Treatment Plan, CSSB1, FY 2008–2009	5
Figure 6: House Diversion/Treatment Plan, CSHB1, FY 2008–2009	6
Figure 7: Comparison of Recommended New Funding (Exceptional Items) in TDCJ Original Request for Appropriations and the Senate and House Recommendations in CSSB 1 and CSHB 1	8
Figure 8: Comparison of Senate and House Bill New (Exceptional) Item Appropriations (New Costs above Operational Baseline) with TDCJ Original Request for Appropriations and Impact of Each Scenario on the Projected Prison Bed Shortfall by FY 2012	10
Figure 9. Senate and House Plan Elements Directed at Providing More Resources to the Parole Board and Potential Impact on Projected Bed Shortfall of Increase in Discretionary Release Rates	11
Figure 10. Other Major Bills under Consideration Reforming Justice System Related to Diversion and Treatment Plan	12
Figure 11: SB 838 and Its Relation to Budget Plans	13
Figure 12: Review of Population and Fiscal Impact by FY 2012 of Three Proposed Policies	14

Summary

THE 80TH TEXAS LEGISLATURE IS MEETING IN ITS biennial regular session from January 2007 to May 2007. Under the bipartisan leadership of Senator John Whitmire, D, Chairman of the Senate Criminal Justice Committee and Representative Jerry Madden, R, Chair of the House Corrections Committee, legislators in Texas have been crafting policies to reduce the demand for prison space by enhancing diversion and treatment programs.

The Council of State Governments Justice Center, working with the JFA Institute, and under the guidance of Senator Whitmire and Representative Madden, developed an enhanced diversion and treatment plan, which incorporated policy recommendations provided by the Texas Department of Criminal Justice (TDCJ) and the Sunset Advisory Commission, which reviewed the continuation of TDCJ.¹ Officials in Texas now commonly refer to the plan as the Whitmire/Madden Correctional Treatment and Diversion Plan, or simply the “Whitmire/Madden Plan.”

Dr. Tony Fabelo, working under the guidance of Senator Whitmire and Representative Madden, has been providing technical assistance to Texas on behalf of the Justice Center under the Justice Reinvestment initiative funded by The Pew Charitable Trusts and the Bureau of Justice Assistance, a division of the U.S. Department of Justice. On January 30, 2007 Dr. Fabelo presented at a historic joint hearing of the Senate Criminal Justice and House Corrections Committee a review of trends impacting correctional policies in Texas and the initial outline of a Justice Reinvestment plan. The plan presented a set of treatment and diversion policy options that could reduce prison costs, allow the state to meet its projected demand for prison space and maintain public safety. A similar presentation to the House Appropriations Committee followed on January 31, 2007. Prior to that Dr. Fabelo briefed other key state officials.

This report reviews the status of the Whitmire/Madden Correctional Treatment and Diversion Plan as of April 2007. The Texas Senate Finance Committee and House Appropriations Committee have completed the development of the TDCJ budget and the state budget. The House and Senate have each passed appropriations bills (CSHB 1 in the House and CSSB 1 in the Senate), House and Senate leaders have appointed members to a conference committee to reconcile both versions of the bill and to finalize the state budget. The conference committee will meet until May and develop an agreement on the final state budget for consideration of both houses. The legislative session ends at the end of May and will not meet again for regular session until January 2009.

Texas works on a biennial budget. Requests for appropriations by state agencies are made for a “baseline budget.” Items that have to be funded “above the operational budget baseline” are in essence “new costs” above the agreed upon operational baseline. The “baseline” operating budget for FY 2008-2009 is adopted by the Legislative Budget Board (LBB) at the beginning of the legislative session to reflect operating costs under “present services.” The LBB is the legislative committee overseeing the development of the budget and supported by an expert staff. All new proposals by agencies, like the plan presented here or the new requests originally presented by TDCJ, are considered “above the baseline exceptional items.” These “exceptional items” include the cost of new prisons, new programs, additional personnel costs or cost for renovations and vehicle replacements.

The Whitmire/Madden Plan reflects budget modifications to the TDCJ original request for appropriations. The Whitmire/Madden Plan includes new funding to expand substance abuse treatment for people who are in prison or on probation, to increase the capacity of Intermediate

Sanction Facilities (ISF) that are used to sanction probationers and parolees in lieu of prison revocations, to open a new prison unit dedicated to support intensive substance abuse treatment of DWI offenders, to make available halfway houses for parolees to re-enter the community and to increase the accessibility of community-based substance abuse and mental health treatment for people under supervision of the criminal justice system. Senator Whitmire and Representative Madden, and others, have introduced supporting legislation related to the budget proposals.

The Senate and House budgets both incorporate major elements of the original Whitmire/Madden Plan. The Senate budget adopted a higher level of expenditures for diversion and treatment alternatives than did the House budget. The Senate budget includes an appropriation of \$228.7 million for elements of the Whitmire/Madden Plan; the House appropriation for elements of the Whitmire/Madden Plan is approximately \$128.9 million.

The House budget includes no funding for new prisons, whereas the Senate budget funds three small prisons (so-called Hobby Units, each with 1,330 beds, or 3,990 beds, total) at a General Obligation bond cost of \$233.4 million and a bond debt service General Revenue cost for the biennium of \$34.5 million. The TDCJ original request for appropriations included the construction of a larger maximum security unit (so-called Michaels Unit of 2,750 beds) and one medium security unit (so-called Hobby Unit) of 1,330 beds for a total of 4,080 beds at a General Obligation Bond cost of \$377.7 million and bond debt service General Revenue cost for the biennium of \$55.8 million. The overall cost of TDCJ's original request for new appropriations that included new prison construction plus other exceptional items was \$900.7 million (after some LBB technical adjustments to the original request submitted in August 2006).

Most inmates in Texas are released after a parole review process and the discretionary release rates have a large impact in determining the projected size of the Texas prison population. The TDCJ plan assumed no changes in parole policy. Given this assumption, the construction proposed by TDCJ was projected to reduce the projected prison bed shortfall from over 17,000 to 8,399 beds by 2012.

The overall cost of the Senate diversion and treatment plan, plus new expenses (exceptional items), which include prison construction costs, is \$695.3 million—\$205.4 million less than the TDCJ original request for new appropriations. This Senate plan assumes that increases to the treatment and diversion capacity should enable the Board of Parole to increase slightly its grant rate. Given this assumption, and assuming that the new prisons authorized in the Senate bill are not constructed, the projected impact of the plan is to eliminate the prison bed shortfall projected by 2012.

The overall cost of the House plan and other new costs (exceptional items) is \$331.2 million or \$569.4 million lower than the TDCJ budget request for exceptional items. The House budget is lower primarily because it does not include any funding for new prisons. The House plan will reduce the projected 2012 prison bed shortfall from over 17,000 to 4,442 beds assuming the maintenance of the FY 2006 average parole rate of 26%. If the parole rates increases to 28%, the prison bed shortfall under the House plan could also be eliminated by 2012.

Details on each package and its related cost are presented below. References related to legislation can be found at: <http://www.capitol.state.tx.us/>. References related to the Legislative Budget Board can be found at: <http://www.lbb.state.tx.us/> although this reports relies on some working documents that have not been posted by the LBB on its web site.

I. Introduction

THE 80TH TEXAS LEGISLATURE IS MEETING IN ITS biennial regular session from January 2007 to May 2007. Under the bipartisan leadership of Senator John Whitmire, D, Chairman of the Senate Criminal Justice Committee and Representative Jerry Madden, R, Chair of the House Corrections Committee, legislators in Texas have been crafting policies to reduce the demand for prison space by enhancing diversion and treatment programs.

The Justice Center, working with the JFA Institute, and under the guidance of Senator Whitmire and Representative Madden, developed an enhanced diversion and treatment plan incorporating policy initiatives previously reviewed by both leaders.² The plan is now known as the Whitmire/Madden Correctional Treatment and Diversion Plan. The plan also incorporates recommendations by the Sunset Advisory Commission that reviewed the continuation of the Texas Department of Criminal Justice (TDCJ). TDCJ is the state agency administering the prison, state jails, parole and probation systems in Texas. The Sunset Advisory Commission is a legislative committee supported by professional staff that

is in-charge of reviewing by a legislative set date the operations of state agencies and recommending their abolition or reauthorization. The chairman of the committee is Senator Kim Brimer, R.

Dr. Tony Fabelo, working under the guidance of Senator Whitmire and Representative Madden, has been providing technical assistance to Texas on behalf of the Council of State Governments Justice Center, through its Justice Reinvestment Initiative, which receives funding support from The Pew Charitable Trusts and the Bureau of Justice Assistance, a division of the U.S. Department of Justice.

On January 30, 2007 Dr. Fabelo presented to an historic joint committee hearing convened by the Senate Criminal Justice and House Corrections Committee. The purpose of the hearing was to review the impact of correctional policies in Texas and the possible application of a Justice Reinvestment strategy in Texas. The analysis presented included a set of treatment and diversion policy options that could reduce prison costs, allow the state to meet its projected demand for prison space and maintain public safety. Dr. Fabelo provided a



FIGURE 1. Justice Center Publications Analyzing Texas Correctional Population Challenges and Presenting Policy Options for Consideration, January 2007

similar presentation to the House Appropriations Committee on January 31, 2007, as well as at meetings with other key state officials.

Figure 1 shows the three Justice Center publications presented at the hearings and meetings described below.³ These publications reviewed the factors driving the growth in the Texas prison population, which the Legislative Budget Board projected would be short more than 17,000 prison beds by 2012. The publications also included two Justice Reinvestment scenarios, which demonstrated the impact of policies that could address this shortfall. These scenarios also discussed the policies' potential impact on recidivism.

Figure 2 below reflects some modifications to the scenarios presented by the Justice Center at the joint committee hearing, which were made at the request of Chairmen Whitmire and Madden and because of comments provided by other committee members.

The original Whitmire/Madden Plan included the following: 5,800 beds in probation substance abuse and mental health treatment facilities, half-way houses, and Intermediate Sanction Facilities (ISF) for parolees and probationers (sanctioning option in lieu of a prison revocation) at an estimated cost for the FY 2008-2009 biennium of \$160.4 million; increases to in-prison treatment capacity at a cost of \$40.2 million (intensive therapeutic community program and DWI in-prison intensive treatment program); additional mental health pre-trial jail diversion programs, outpatient treatment and additional probation supervision funding at a cost of \$65.0 million; and the transfer of two Texas Youth Commission (TYC) facilities to TDCJ which adds 1,200 prison beds at a cost of \$3.0 million in renovation costs. TYC is the state youth incarceration agency.

FIGURE 2. Original Diversion and Treatment Plan Presented January 30, 2007 with Subsequent Modifications (Whitmire/Madden Plan), Estimated New Costs for FY 2008-2009

Substance Abuse Felony Punishment Treatment Facilities	1,800 Beds	In-Prison Therapeutic Community Treatment	1,500 Beds/ Slots
Intermediate Sanction Facilities (ISF) State Operated Available for Probation and Parole	2,400 Beds	DWI Treatment Facility	500 Beds
Probation Residential Treatment Facilities	800 Beds	Total	\$40,224,423 for 2,000 Beds
Halfway Houses	600 Beds	MH Pretrial Services, Outpatient Treatment and Probation Supervision	
Total	\$160,497,342 for 5,800 Beds	Total	\$65,000,000
		Transfer of Juvenile Facilities to TDCJ	1,200 Beds
		Total	\$3,000,000
		Grand Total	\$265,721,794

II. Overview of Texas Legislative Budget Process

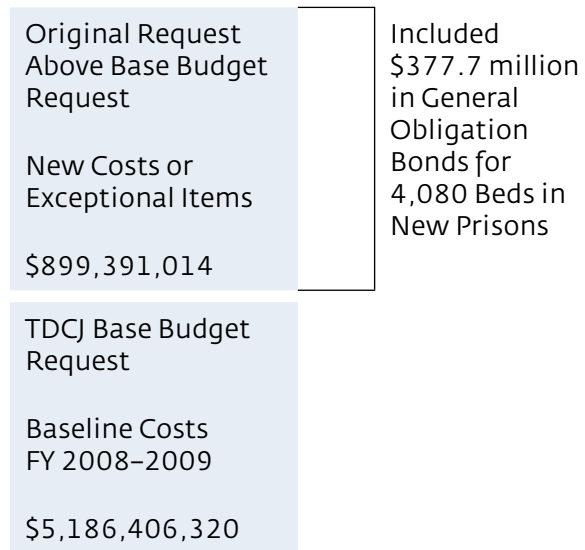
TEXAS WORKS ON A BIENNIAL BUDGET. REQUESTS for appropriations by state agencies are made for a “baseline budget.” Items that have to be funded “above the operational budget baseline” are in essence “new costs” above the agreed upon operational baseline. The “baseline” operating budget for FY 2008–2009 is adopted by the Legislative Budget Board (LBB) at the beginning of the legislative session to reflect operating costs under “present services.” The LBB is the legislative committee overseeing the development of the budget and supported by an expert staff. All new proposals by agencies, like the plan presented here or the new requests originally presented by TDCJ, are considered “above the baseline exceptional items.” These “exceptional items” include the cost of new prisons, new programs, additional personnel costs or cost for renovations and vehicle replacements. Legislative budget negotiations usually concentrate in negotiating the size and composition of the new costs (exceptional items) although legislative members can also address issues and make modifications to the baseline budget.

Figure 3 presents the original request for new appropriations made by TDCJ in August 2006 (the date that requests for appropriations for the FY 2008-2009 biennium are submitted by state agencies). The TDCJ Base Budget for FY 2008-2009 was initially calculated at \$5.1 billion and the new costs (exceptional items) at \$899.3. The new costs (exceptional items) included a request for \$377.7 million for constructing 4,080 beds in new prisons. The prisons proposed were a 2,750 bed maximum security unit (known as a Michaels type unit) and a 1,330 bed medium security unit (known as a Hobby type unit). The agency requested

General Obligation Bond funding (GO Bonds) for the new prisons. The rest of the request was mainly for General Revenue funds (direct funding from the state).

The budget development process during a legislative session is dynamic. Negotiations among different factions in the legislature prompt changes on a nearly daily basis. During this legislative session, the House initiated the appropriations process and adopted their budget recommendations in what is known as Committee Substitute for House Bill 1 (CSHB 1). The Senate then adopted its recommendations in what is known as Committee Substitute for Senate Bill 1 (CSSB 1).

FIGURE 3. Original TDCJ Request for Appropriations for FY 2008–2009



TDCJ, Request for Appropriations for FY 2008–2009, August 2006

Figure 4 below shows the Senate and House recommended TDCJ budget for all funds for FY 2008–2009. The Senate bill appropriates \$5,638,122,498 for the biennium and the House bill appropriates \$5,499,155,373 with the Senate being \$138,967,125 higher.

FIGURE 4. CSSB1 and CSHB 1 All Funds Recommended Appropriations for TDCJ, FY 2008–2009

	Senate Bill FY 2008–2009	House Bill FY 2008–2009
Total TDCJ Appropriation	\$5,638,122,498	\$5,499,155,373
	+ \$138,967,125	

III. Senate and House Diversion/Treatment Plans

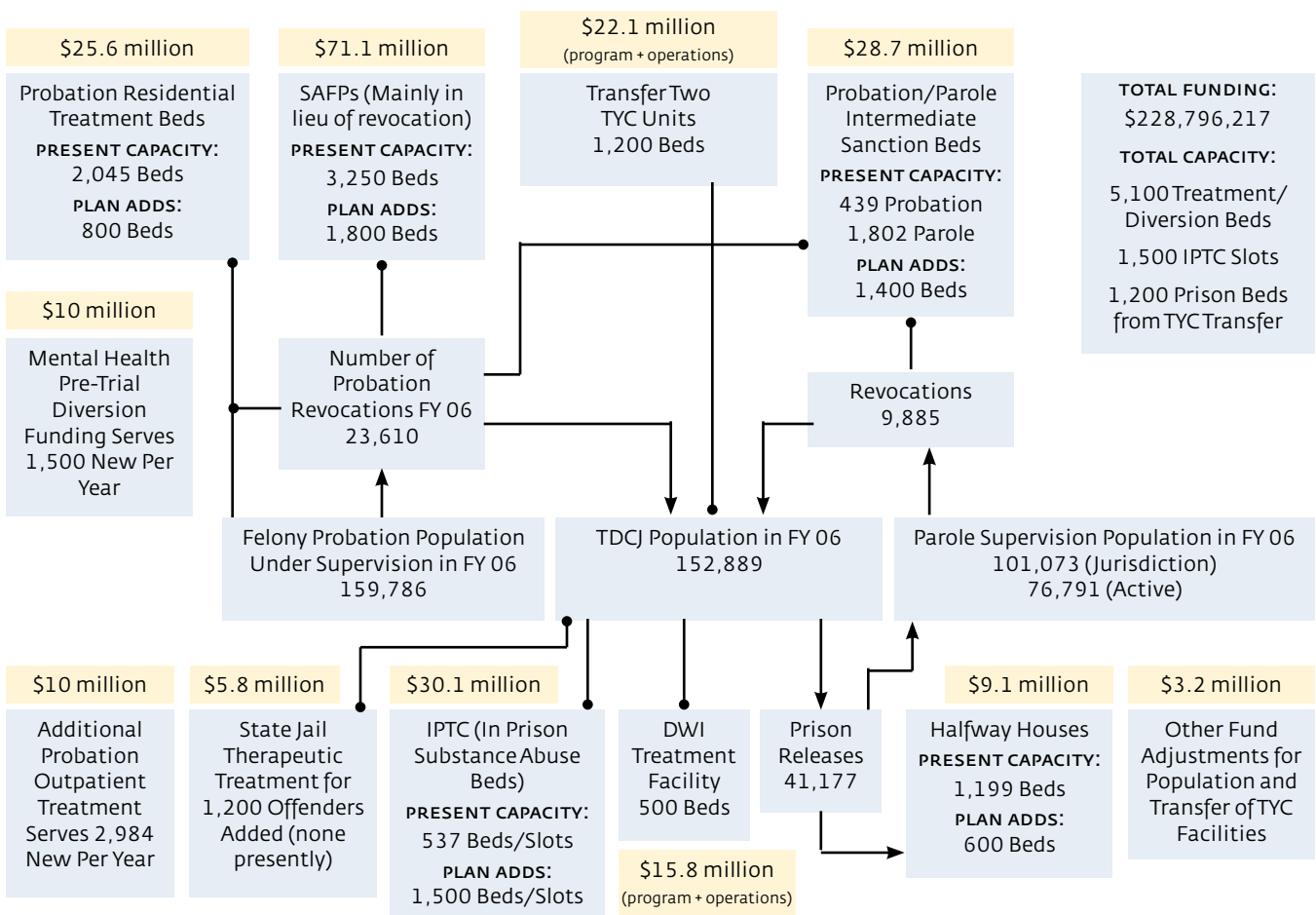
DURING THE COURSE OF SENATE FINANCE AND House Appropriations Committee meetings, legislators used elements of the Whitmire/Madden Plan to modify TDCJ’s original request for new appropriations.⁴ The Senate ultimately approved an appropriations bill with more spending on TDCJ than the appropriations bill approved by the House. The Senate budget specifically provided for more spending on diversion/treatment than the budget approved by the House.

Figure 5 below depicts the funding plan approved by the Senate in CSSB 1 for TDCJ to implement the Senate version of the Whitmire/Madden plan.⁵ (The

cost of all new or “exceptional items” approved by the Senate above the TDCJ operational budget baseline is shown in the next section of the report.)

The figure below shows the current capacity of different components of the Texas corrections system directly affected by the Whitmire/Madden Plan. It shows the population on felony probation under supervision in FY 2006 (159,786), the TDCJ population (152,889), the parole population under supervision (101,073), the number of probation revocations to TDCJ (23,610), the number of parole revocations to prison (9,885) and the number of prison releases (41,177).

FIGURE 5. Senate Diversion/Treatment Plan, CSSB1, FY 2008–2009



**Population figures from TDCJ Annual Statistical Report, FY 06. Plan capacity per CSSB 1.

The total cost of the Senate plan for FY 2008–2009 is approximately \$228.7 million. As can be seen on the previous page the plan includes:

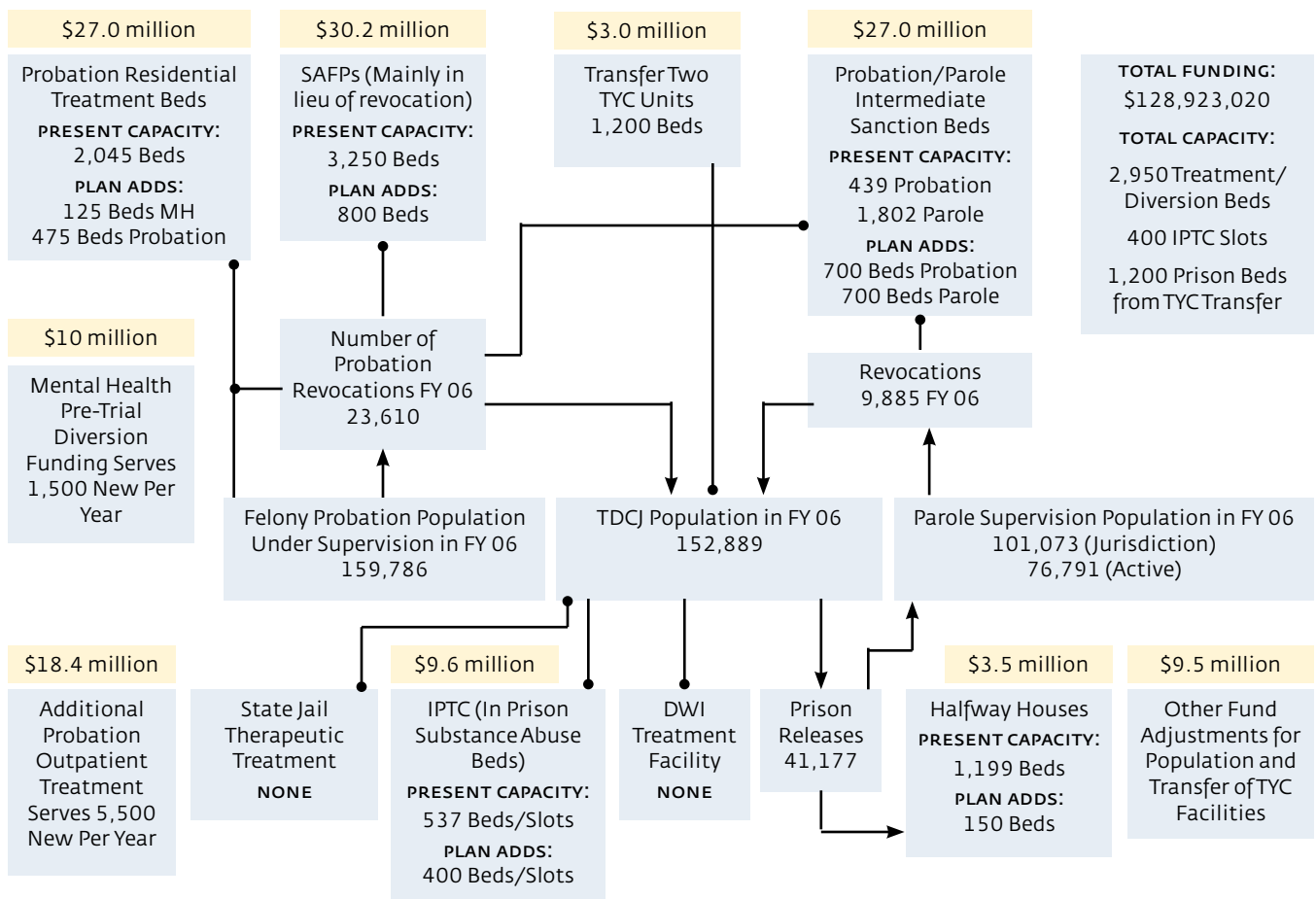
- \$25.6 million for 800 additional Probation Residential Treatment beds;
- \$10 million for Mental Health Pre-Trial Diversion services;
- \$10 million for Probation Outpatient Treatment programs and \$10 million for funding the probation funding formula;
- \$71.1 million for 1,800 beds in Substance Abuse Felony Punishment (SAFP) treatment facilities;
- \$5.8 million for therapeutic treatment in State Jails facilities serving 1,200 offenders;
- \$30.1 million for 1,500 beds/slots for the In-Prison Therapeutic Treatment (IPTC) program;

- \$10 million for a new DWI treatment center with 500 beds and \$12.1 million for operational costs;
- \$28.7 million for 1,400 beds for probation and parole Intermediate Sanction Facilities (ISFs);
- \$9.1 million for 600 beds in parole halfway houses; and,
- \$3.0 million for the transfer of two Texas Youth Commission (TYC) facilities adding 1,200 beds to TDCJ and \$12.0 million for operational costs.

Figure 6 below depicts the funding plan approved by the CSHB 1 for TDCJ in the House. (The cost of all new or “exceptional items” approved by the House above the TDCJ operational budget baseline is shown in the next section of the report.)

The total cost of the House plan for FY 2008–2009 is approximately \$128.9 million. As can be seen below the plan includes:

FIGURE 6. House Diversion/Treatment Plan, CSHB1, FY 2008–2009



*Population figures from TDCJ Annual Statistical Report, FY 06. Plan capacity per CSHB 1.

- \$27 million for 600 additional Probation Residential Treatment beds;
 - \$10 million for Mental Health Pre-Trial Diversion services;
 - \$18.4 million for Probation Outpatient Treatment programs but no additional funds for funding the probation funding formula;
 - \$30.2 million for 800 beds in Substance Abuse Felony Punishment (SAFP) treatment facilities;
 - no funds for therapeutic treatment in State Jails facilities;
 - \$9.6 million for 400 beds/slots for the In-Prison Therapeutic Treatment (IPTC) program;
 - no funds for a new DWI treatment center;
- \$27 million for 1,400 probation and parole Intermediate Sanction Facilities (ISFs);
 - \$3.5 million for 150 beds in parole halfway houses; and,
 - \$3.0 million for the transfer of two Texas Youth Commission (TYC) facilities adding 1,200 beds to TDCJ.

IV. Comparison of Overall Budget Proposals

FIGURE 7 COMPARES THE NEW COSTS IN THE budget that TDCJ requested and the budgets that the House and Senate each approved. Each of these new costs include expenses associated with elements of the Whitmire / Madden Plan. These new costs, plus costs associated with new prisons (GO Bond expenditures), increased utilities, staff overtime, and facility renovations, intensify competition for “new dollars.” Figure 7 also shows for TDCJ to contract with counties across the state to make up temporarily for shortfalls in its capacity.

Adopting the Whitmire/Madden would reduce the need for temporary capacity. Accordingly, to make complete comparisons, this cost and the cost of proposed prisons are included in the comparative

analysis below. The figures below also include some technical adjustments made by the LBB as part of the budget process and these are included to fully match the figures in LBB working documents.

Figure 7 also reflects recommendations in both the Senate and House budgets that are for significantly more funding in treatment and probation diversion capacity than the provided in the original TDCJ request:

- \$134.7 million for the Senate and \$87.8 million for the House for diversion and probation capacity in comparison with \$28.1 for the TDCJ plan;
- the Senate includes more funding for in-prison treatment at \$52.3 million compared to \$20.1

FIGURE 7. Comparison of TDCJ Request for Appropriations with Senate and House Appropriation Bills

	TDCJ Request for Appropriations	Senate Bill	House Bill
Diversion/Probation Capacity (Residential, SAFPs, Halfway Houses, ISFs)	\$28,135,448 650 Beds	\$134,708,977 4,600 Beds	\$87,830,510 2,950 Beds
In-Prison Treatment (IPTC, DWI)	\$20,154,609 700 Beds	\$52,395,543 500 New Beds/ 1,500 IPTC Slots	\$9,656,510 400 IPTC Slots
Other Program Capacity (MH, Probation, State Jails)	\$48,436,000	\$25,800,000	\$28,436,000
Other Technical Adjustments and Transfer of TYC Units	(\$1,369,392)	\$15,891,698 1,200 Beds	\$3,000,000 1,200 Beds
Plan Related Above Sub-Total	\$95,356,665	\$228,796,218	\$128,923,020
Temporary Contracted Capacity for Backlog	\$184,485,360	\$66,089,360	\$99,386,640
Debt Service for New Prisons	\$55,840,099 for 4,080 Beds	\$34,506,432 for 3,990 Beds	\$0
Other Operational Cost Above Baseline	\$187,359,311	\$132,543,144	\$102,953,986
Total	\$523,041,435	\$461,935,154	\$331,263,646
Bonds for New Prisons	\$377,700,000	\$233,400,000	\$0

million for the TDCJ plan and \$9.6 million for the House plan;

- both the Senate and the House have lower cost for contracted temporary capacity due to the impact of the diversion/treatment elements of the plan with \$66 million in the Senate and \$99.3 in the House compared to \$184.4 for the TDCJ plan;
- for other program capacity the Senate version includes \$25.8 million and the House version includes \$28.4 million in funding for mental health pre-trial services, additional outpatient treatment and a therapeutic treatment programs in the State Jails (the House does not fund the State Jail program) and the TDCJ plan included more funds for probation formula financing.

The overall new cost for items related to the Whitmire/Madden Correctional Treatment and Diversion Plan are \$228,796,218 in the Senate and \$128,923,020 in the House. Equivalent items in the TDCJ original request for new appropriations total \$93,356,665. The Senate figure, therefore, is closer to the original plan presented in January (see Figure 2, \$265,721,794).

The House budget does not fund new prisons. The Senate version funds three smaller prisons (so-called Hobby Units of 1,330 beds for 3,990 beds) at a bond cost of \$233.4 million and a bond debt General Revenue cost for the biennium of \$34.5 million. The TDCJ original request for appropriations included the construction of a larger maximum security unit (so-called Michaels Unit of 2,750 beds) and one Hobby Unit of 1,330 beds for a total of 4,080 beds at a bond cost of \$377.7 million and bond debt General Revenue service cost for the biennium of \$55.8 million.

It is important to note that the Senate appropriations bill includes a rider directing TDCJ not to start the construction of new prisons without the approval of the LBB. TDCJ is also required to present a plan “which specifically identifies, by name, the units with capacity equal to the number of new beds being constructed which would be decommissioned if population trends do not support the need for additional capacity.”⁶ The purpose of this rider is to ensure a review of population trends after the adjournment of the legislative session. If changes to the parole rate and the enhancements to diversionary and treatment

programs are not having the intended impact, the Senate plan provides a contingency measure, which would allow state leaders to authorize the construction of up to three prison units. If the population trends support decommissioning older units, the Senate rider will also allow for the construction of the new units and the decommissioning of the older ones identified by TDCJ.

Figure 8 on the following page compares the total Senate and House exceptional items (new costs) appropriation recommendations in relation to the TDCJ original request for appropriations for new funds and shows the impact of each plan on the projected prison bed shortfall as has been calculated by the LBB.⁷

The LBB has been analyzing various impact scenarios at the request of Chairmen Whitmire and Madden. Status quo projections by the LBB in January 2007 showed Texas projected to be short of over 17,000 prison beds by 2012. This projection was based on the assumption that the parole rate for FY 2006 would stay the same during the projection period at 26%.⁸ Most inmates in Texas are released after a parole review process and discretionary release rates have a large impact in determining the projected size of the Texas prison population.

As can be seen in Figure 8, the total cost of TDCJ’s original request for new appropriations that included new prison construction plus other new (exceptional) items was \$900.7 million.⁹ The TDCJ scenario in their request for appropriations assumed no changes in parole policy. Given this assumption, the impact of TDCJ’s plan was to reduce the projected prison bed shortfall from over 17,000 to 8,399 beds by 2012.¹⁰

The total new cost of the Senate plan that includes other new (exceptional) items and the cost of new prison construction is \$695.3 million or \$205.4 million less than the TDCJ plan. This plan assumes that the treatment and diversion capacity should impact a slight increase in the parole rate. Given this assumption, and assuming that the new prisons authorized in the Senate bill *are not constructed*, the projected impact of the plan is to eliminate the prison bed shortfall projected by 2012.¹¹

Finally, the total new cost of the House plan and other new (exceptional) items is \$331.2, or \$569.4 million less than the TDCJ plan. The difference

between the two budgets exists primarily because the House budget does not include funding for any new prisons. The House plan will reduce the projected 2012 prison bed shortfall from over 17,000 to 4,442 beds, assuming the FY 2006 average parole rate of 26% remains steady.¹² If the parole rates increases to 28%, the prison bed shortfall under the House plan would be eliminated by 2012.¹³

All projections assumed a “conservative” diversion impact for the treatment and diversion programs. The assumption is that 50% of the offenders utilizing the programs would be offenders who would not otherwise have gone to prison (“expansion of the net” effect). The projection also uses actual recidivism rates for each program to adjust the diversionary or treatment impact based on prior research by the Criminal Justice Policy Council and supported by recent research from the State Auditor’s Office.¹⁴

It is important to note that none of the figures below have yet been adjusted for the cost of the recent settlement in the *Frew v. Hawkins* case in which the state has agreed to provide \$706.7 million for enhanced rates and services related to the provision of Medicaid services provided to children in Texas.¹⁵ To generate funds for the Frew settlement, CSSB 1 includes a rider directing all state agencies to make an across-the-board reduction of their budget by .59%.¹⁶ The intent is for the cuts to apply to all line items in an agency and not be concentrated on specific programs. The adjustments will be made during the course of conference committee negotiations. As a result, TDCJ’s budget could see an across-the-board reduction of \$32 million for the biennium, which would obviously have an impact on any of the plans described above.

FIGURE 8. Comparison of Policy Cost and Projected Impact on Prison Beds by 2012 Based on LBB Projections

	TDCJ Request for Appropriations FY 2008–2009	Senate Bill FY 2008–2009	House Bill FY 2008–2009
Total	\$523,041,435	\$446,006,402	\$326,323,310
Bonds for New Prisons	\$377,700,000	\$233,400,000	\$0
Total Including New Prisons	\$900,741,435	\$695,335,154	\$331,263,646
Savings/Cost Avoidance in Comparison with TDCJ Request for Appropriations		\$205,406,281	\$569,477,789
	↓	↓	↓
Projected Prison Bed Shortfall by 2012	8,399 Beds	0	4,442 Beds
Projection and Assumptions	LBB Scenario 5*	LBB Scenario 1A**	LBB Scenario 6B
Projections by the LBB	Adjusted for the additional prison capacity assumed to become operational in 2012	Assumes that parole rate will increase from 26% in FY 2006 to 28% in 2012	Parole rate at average for FY 2006 of 26%
Assumptions vary by scenarios	Parole rate at average for FY 2006 of 26%	Assumes that prison units authorized will not be constructed.	

* Scenario 5 did not consider new proposed capacity but the scenario was adjusted to account for this after conversations with LBB projection staff
 ** Scenario 1A assumes 1,000 new SAFP beds but the final package included 1,800 and this impact is not considered in this scenario
 Parole rate in the first six months of FY 2007 is an average of 31% compared to 26% in FY 2006

V. Related Legislative Proposals

KEY ELEMENTS OF THE SENATE AND HOUSE PLANS provide additional resources to the Texas Board of Pardons and Parole to increase the number of parolees and the use of Discretionary Mandatory Releases (DMS, another form of discretionary release) for low risk offenders. One of the issues addressed by the Sunset review of the TDCJ was that the parole board was not following its own parole guidelines for low risk and low severity offenders. The Sunset review found that the parole board should meet its recommended guidelines release rates for low-risk, low-severity offenders.¹⁷

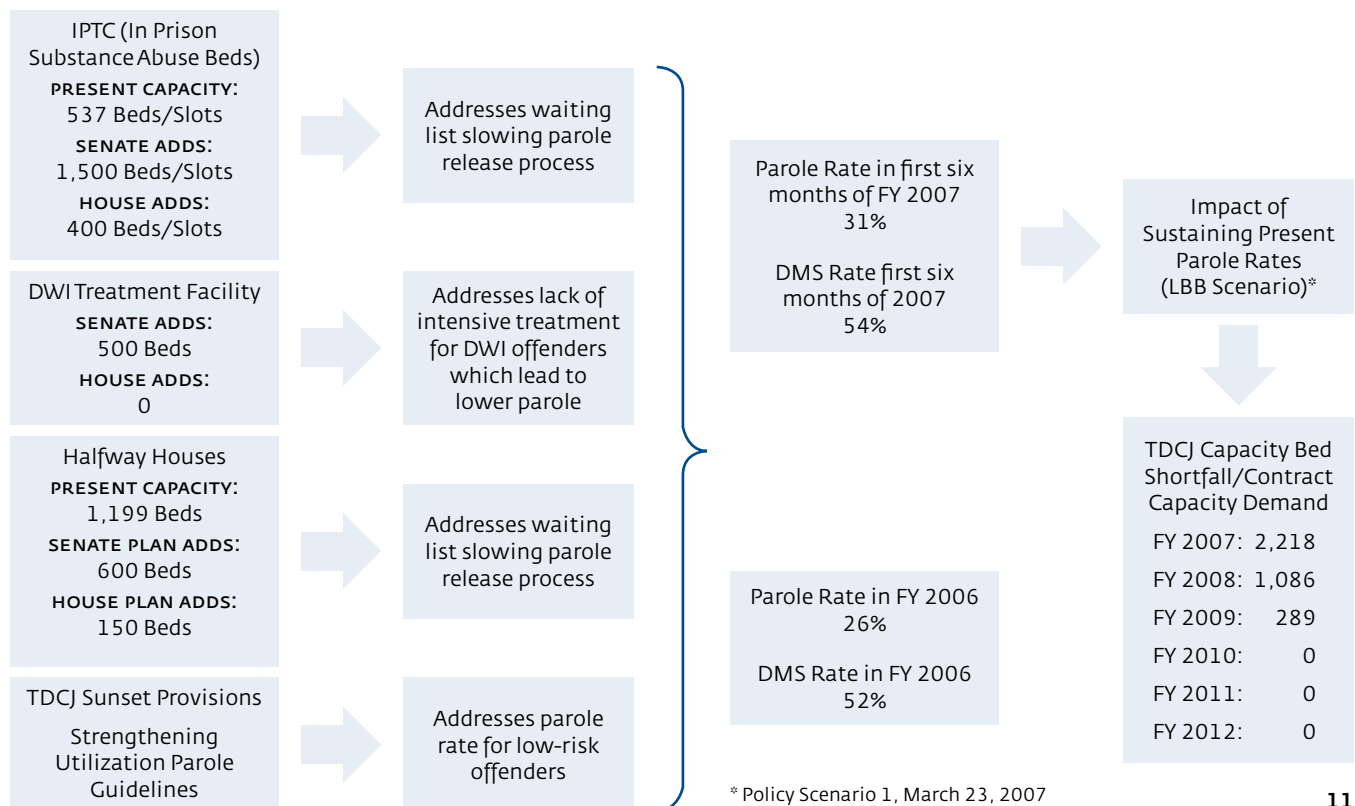
Senate Criminal Justice Committee and House Corrections Committee hearings early during this legislative session also revealed that the parole board feels frustrated by the lack of program capacity in

prison, long waiting lists for people under community supervision to participate in programs and lack of intensive treatment programs for DWI offenders.

Both the Senate and House plans try to address these concerns, and, in the process, assist the parole board in moderately increasing the number of discretionary releases. There is growing consensus that a moderate increase in parole rates with adequate program support can occur without jeopardizing public safety. There is also a well-established consensus that the parole rate increase should be applied to low-risk, low-severity offenders, *not* to violent or sex offenders.

Figure 9 below shows the elements of the Senate and House plans that provide more resources for the parole board to accomplish this goal. In the first

FIGURE 9. Senate and House Plan Elements Directed at Providing More Resources to the Parole Board and Potential Impact on Projected Bed Shortfall of Increase in Discretionary Release Rates



six month of FY 2007 (September 2006 to February 2007) the parole rate increased to 31% from an average of 26% in FY 2006. The DMS release rate increased to 54% from an average of 52%. This increase is due to additional efforts by the parole board to meet its guidelines.

A projection by the LBB shows that if this moderate increase in the release rates is sustained during the years of the projection, Texas will eliminate its status quo projected prison bed shortfall of over 17,000 beds by 2012 *even assuming that no new prisons are constructed or even assuming the major expansion of diversion programs proposed under both the Senate and House plans*.¹⁸ The Whitmire/Madden Plan, however, provides the needed long-term program support to sustain this recent increase in the discretionary release rates.

Figure 10 shows other legislation under consideration that can supplement the proposed Whitmire/Madden Plan. SB 909 by Senator Whitmire is the Sunset bill that reauthorizes the operation of TDCJ. One element of this bill requires more accountability from the parole board in meeting its

own guidelines. The bill also creates a permanent Legislative Criminal Justice Oversight Committee to oversee the reforms and strengthen accountability to the Legislature. The Sunset bill will be sponsored in the House by Representative Madden.

HB 1678 by Representative Madden provides for a comprehensive reform of probation policies. Among other provisions, the bill reduces probation terms for property and drug offenders and encourages early discharges from probation for those doing well under supervision. Madden is also carrying a bill to redesign probation funding formulas by increasing funding for those being supervised in the early years of probation and establishing penalties for technical revocations (HB 3200) and a bill that requires the expansion of drug courts to 12 additional counties for a total of 21, sets a court fee to fund the courts and expands the definition of drug courts to include other problem solving courts (HB 530).

Another reform bill, SB 1909 introduced by Senator Ellis, requires probation and treatment for drug possession offenses under certain circumstances. SB 1750 sponsored by Senator Whitmire, strengthens

FIGURE 10. Other Major Bills under Consideration Reforming Justice System Related to Diversion and Treatment Plan

TDCJ Sunset SB 909 Whitmire	Reauthorizes TDCJ, and among other provisions, strengthens parole guidelines utilization and probation alternatives and creates Legislative Criminal Justice Oversight Committee to oversee reforms and accountability to Legislature.
Probation Reform HB 1678 Madden	Among other things, reduces probation terms for property and drug offenders, encourages early discharges from probation and strengthens other probation policies
Probation Reform HB 3200 Madden	Redesign probation funding formulas to increase funding for those being supervised in the early years and establishes penalties for technical revocations
Probation Reform HB 530 Madden	Expand required drug courts to 12 additional counties for a total of 21, sets court fee to fund the courts and expand definition to include other problem-solving courts
Probation Reform SB 1909 Ellis	Requires probation and treatment for drug possession offenses under certain conditions and also establishes revocation conditions
Re-entry Reform SB 1750 Whitmire	Reduces barriers for ex-convicts to acquire occupational licenses under certain circumstances
Parole Revocation SB 838 Whitmire	Prohibits parole revocations to prison for an administrative violation but sets provisions for modification of supervision to include a term of 180 days to one year in an Intermediate Sanction Facility (ISF) for an administrative violation of parole

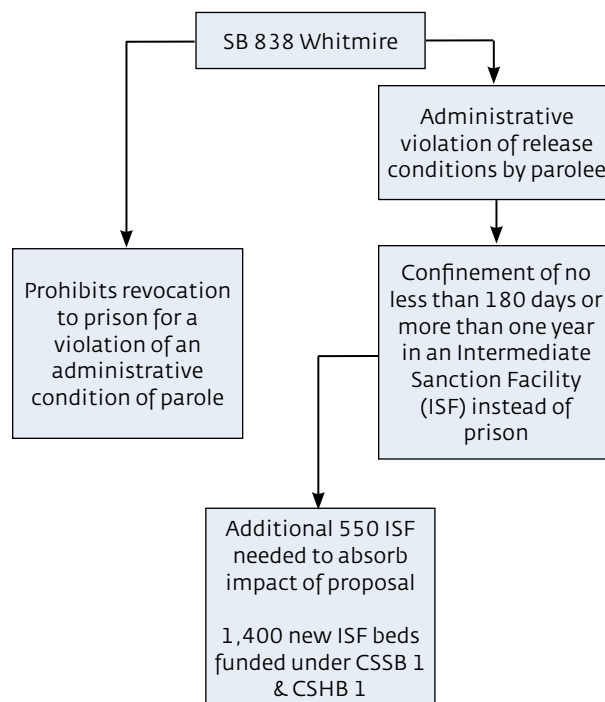
prison re-entry policies, reducing barriers for ex-convicts to acquire occupational licenses under certain circumstances. SB 838, also sponsored by Senator Whitmire, prohibits parole revocations to prison for an administrative violation, and sets provisions for modification of supervision to include a term of 180 days to one year in an Intermediate Sanction Facility (ISF) for an administrative violation of parole. All the above bills are supported by the Texas Public Policy Foundation and the Texas Criminal Justice Coalition. Both groups are supporting reforms in the justice system directed at reducing costs and increasing effectiveness.

Figure 11 depicts how part of the budget relates to bills introduced this session. SB 838 by Whitmire prohibits parole revocations to prison for an administrative violation but sets provisions for modification of supervision to include a term of 180 days to one year in an Intermediate Sanction Facility (ISF) for an administrative violation of parole. Last year

there were over 2,000 parolees revoked to serve an average of two years to prison for an administrative violation (so-called technical violation). Under this proposed policy, those offenders could still be sanctioned, but they would serve time in an ISF facility for a period of 180 days to one year. Implementing this policy would require an additional 550 ISF beds. CSSB1 and CSHB1 include funding for 1,500 new beds in parole and probation ISFs, which would support this policy.¹⁹

Figure 12 summarizes three major policy initiatives that could have a substantial impact in reducing the demand for prison space by FY 2012 and produce significant savings. HB 1678, sponsored by Representative Madden, is projected to reduce the demand for prison beds by 1,500 beds by FY 2012 and produce savings of \$45.3 million between FY 2008–FY 2012. SB 1909 by Ellis is projected to reduce the demand for prison beds by 10,515 and produce savings of \$493.4 million. SB 838 by

FIGURE 11. SB 838 and Its Relation to Budget Plans



Whitmire is projected to reduce the prison bed demand by 7,773 beds and produce savings of \$258.6 million during the same above period. The combined total beds impact of the above policies is projected to be a reduction in the demand for prison beds of 19,783 by 2012 with a combined savings of \$797.5 million for the FY 2008–FY 2012 period.²⁰

Finally, a set of riders to the appropriations bill directs TDCJ to develop a comprehensive

implementation plan for the diversion and treatment initiatives, requires TDCJ to identify older prison units to close if prison population trends make such an option feasible, and provides flexibility for reinvesting unexpended funds for contracted capacity and probation formula funding back into improving the probation system.²¹

FIGURE 12. Review of Population and Fiscal Impact by FY 2012 of Three Proposed Policies

	Prison Bed Impact by FY 2012	Fiscal Impact FY 2008 – FY 2012
HB 1678 by Madden	-1,500	\$45,389,830 savings
SB 1909 by Ellis	-10,510	\$493,498,768 savings
SB 838 by Whitmire	-7,773	\$258,624,792 savings
Total	-19,783	\$797,513,390 savings

VI. Conclusion

THIS REPORT REVIEWED THE STATUS OF THE WHITMIRE/Madden Correctional Treatment and Diversion Plan at the point in the Texas Legislature in which the Texas Senate Finance Committee and House Appropriations Committee have completed the development of the TDCJ budget and the state budget. The House appropriations bill is known as CSHB 1 and the Senate version is known as CSSB 1. Both bills have been voted out of each chamber and a conference committee has been appointed to reconcile both versions of the bill and finalize the state budget. The conference committee will meet until May and develop an agreement on the final state budget for consideration of both houses. The legislative session ends at the end of May and will not meet again in regular session until January 2009, so intensive work is still ahead to craft the final budget.

The Senate and House budgets both incorporate key elements of the original Whitmire/Madden plan with the Senate adopting a higher level of expenditures for diversion and treatment alternatives. The total cost of the Senate plan for FY 2008-2009 is approximately \$228.7 million. The House adopted a lower level of expenditures for diversion and treatment alternatives. The total cost of the House plan for FY 2008-2009 is approximately \$128.9 million.

In terms of prison construction, the House version does not fund new prisons. The Senate version funds three smaller prisons (so-called Hobby Units of 1,330 beds for 3,990 beds) at a bond cost of \$233.4 million and bond debt service for the biennium of \$34.5 million. The TDCJ original request for appropriations included the construction of a larger maximum security unit (so-called Michaels Unit of 2,750 beds) and one medium security unit (so-called Hobby Unit) of 1,330 beds for a total of 4,080 beds at a General Obligation Bond cost of \$377.7 million

and General Revenue bond debt service cost for the biennium of \$55.8 million.

The overall cost of TDCJ original request for new appropriations that included new prison construction plus other exceptional items was \$900.7 million (after some LBB technical adjustments to the original request submitted in August 2006). The TDCJ policy assumed no changes in parole policy. Given this assumption, the impact of the plan was to reduce the projected prison bed shortfall from over 17,000 to 8,399 beds by 2012. Most inmates in Texas are released after a parole review process and the discretionary release rates have a large impact in determining the projected size of the Texas prison population.

The overall cost of the Senate diversion and treatment plan, other new costs (exceptional items) including prison construction costs is \$695.3 million or \$205.4 million less than the TDCJ original request for new appropriations. This Senate plan assumes that the treatment and diversion capacity should impact a slight increase in the parole rate. Given this assumption, and assuming that the new prisons authorized in the Senate bill are not constructed, the projected impact of the plan is to eliminate the prison bed shortfall projected by 2012.

Finally, the overall cost of the House plan and other new costs (exceptional items) is \$331.2 or \$569.4 million lower than the TDCJ plan. The lower cost is mainly due to the House not funding any new prisons. The House plan will reduce the projected 2012 prison bed shortfall from over 17,000 to 4,442 beds assuming the maintenance of the FY 2006 average parole rate of 26%. If the parole rates increases to 28%, the prison bed shortfall under the House plan will also be eliminated by 2012.

Notes

- 1 TDCJ is the state agency administering the prison, state jails, parole and probation systems in Texas. The Sunset Advisory Commission is a legislative committee supported by professional staff that is in charge of reviewing the operations of state agencies and recommending their abolition or reauthorization. The chairman of the committee is Senator Kim Brimer, R.
- 2 Representative Madden and Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, are members of the Board of Directors for the Council of State Governments Justice Center.
- 3 The publications can be found at http://www.justicecenter.csg.org/resources/justice_reinvestment/.
- 4 Senator Whitmire is a member of the Senate Finance Committee and has been in-charge of leading the working group of senators in the committee designated to develop a budget for TDCJ. Senator Steve Ogden, R, is Chairman of the Senate Finance Committee. Representative Sylvester Turner, D, chaired the House Appropriations Criminal Justice Sub-Committee and was in-charge on the House side of integrating the plan's proposals into the budget. Representative Warren Chisum, R, is Chairman of the House Appropriations Committee. Dr. Fabelo assisted Senate and House staff and worked with the staff of the Legislative Budget Board (LBB) on issues related to the plan. The LBB is the legislative agency in-charge of staffing the budget process and developing official projections and impact analysis of proposed policies.
- 5 CSHB 1 and CSSB 1 can be found at: <http://www.capitol.state.tx.us/>. Other calculations presented here are from working documents during the legislative process detailing different components of the budget. These working documents are not posted or catalogued in any methodical way as they are constantly changing during the legislative process due to the rapid pace of legislative negotiations in Texas.
- 6 Rider 83 related to decommissioning of facilities and Rider 88 related to approval for new construction in CSSB 1.
- 7 References related to the Legislative Budget Board can be found at: <http://www.lbb.state.tx.us/> although this reports relies on some working documents that have not been posted by LBB it its web site, like the projection scenarios discussed here.
- 8 The LBB report with the official projections for this legislative session can be found at: http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2007.pdf
- 9 This sum also reflects some technical adjustments LBB made to the original request that TDCJ submitted in August 2006.
- 10 LBB Projection Scenario 5 adjusted for proposed TDCJ new prisons. Scenario not published in the web site of the agency.
- 11 LBB Projection Scenario 1A includes most of the Senate proposals but did not include the three new prisons proposed later in the negotiations and an additional 800 beds approved for SAFP (1,000 in the projection compared to 1,800 in the final proposal). Scenario not published in the web site of the agency.
- 12 LBB Projection Scenario 6B. Scenario not published in the web site of the agency.
- 13 LBB did not develop a projection with the higher parole rate for the House plan but based on the impact of the parole rate as seen in the other scenarios, this statement can be supported by the related projection work.
- 14 The work of the Criminal Justice Policy Council related to prior research on the effectiveness of plan related programs can be found at the LBB web site and was reviewed in the CSG Bulletin, January 2006, entitled "Policy Options to Increase Public Safety and Manage the Growth of the Prison Population." The State Auditor report of March 2007 entitled "Selected Rehabilitation Programs at the Department of Criminal Justice" can be found at <http://www.sao.state.tx.us/>
- 15 "Terms of Medicaid deal are revealed" in Austin American-Statesman, April 10, 2007
- 16 Amend CSHB1, page IX-73, with new Sec. 18.6 entitled Frew v Hawkins Settlement
- 17 Texas Sunset Advisory Commission, October 2006. "Texas Department of Criminal Justice, Board of Pardons and Paroles, Correctional Managed Health Care Committee" Staff Report at <http://www.sunset.state.tx.us/>
- 18 LBB Projection Policy Scenario 1, March 23, 2006. Scenario not published in the web site of the agency.
- 19 LBB Fiscal Note, SB838 (revised version of April 17, 2007).
- 20 LBB Fiscal Notes for HB 1678, SB 1909 and SB 838 (revised April 17, 2007).
- 21 See Riders 60, 73, 83, 87 and 88 in CSSB 1 among others.