

**Testimony of Ann del Llano, ACLU of Texas
To the American Bar Association – Justice Kennedy Commission
February 6, 2004**

The only morally justifiable goal of corrections is to enhance public safety – to reduce the number of criminals and the number of crimes committed. Therefore, corrections policy makers should seek out evidence-based programs which reduce crime and recidivism. Policy should be based on reasoned solutions rather than sound bites and political grand standing.

These principles may seem elementary, but they are not followed in Texas. Texas prosecutor John Bradley has correctly concluded that much of our criminal sentencing policies have been set by political posturing rather than by adhering to principles of public policy. **(Attachment A)** Elected officials who have no background in criminal law routinely bring bills that create new crimes and enhanced criminal penalties in order to "go home a hero". For example, in the 2003 Texas legislative session a Senator passed a bill to increase the criminal penalty for assault if the victim is a sports official. Obviously, the lawmaker had a constituent who was upset about an incident involving a sports official and his natural reaction was to enact a new law creating a harsher criminal penalty for the conduct. This legislator had no evidence that the specific crime was widespread, nor that increased confinement for that crime would decrease recidivism. It was, of course, already a crime to assault a sports official, the only question was whether to increase the penalty. Hundreds of similar bills were filed last session and many of them passed.

Maybe Texas is a microcosm of the entire criminal justice system. The Heritage Foundation reached the same conclusion about Congress: "The real problem is overcriminalization. Members of Congress continue to pass criminal laws to impress their constituents." (Paul Rosenzweig testimony, March 2003.)

But if public safety is the goal, then our legislators must focus state resources on correctional programs that follow proven principles of reducing recidivism.

Liberal use of incarceration does not result in a proportional reduction in crime. Texas operates the largest criminal justice system in the nation. **(Attachment B)** One out of every 21 adults in the state of Texas is *currently* under the supervision of the criminal justice system – incarcerated, jailed, on probation or on parole. We have furiously increased the capacity of our prisons:

Texas Department of Criminal Justice (TDCJ) Prison Bed Capacity	
1990	51,249
1995	131,194
2000	155,522

Texas has grown its incarceration system so quickly that it can not afford to maintain the pace. In 2003, our legislature had to cut the TDCJ budget by some \$250 million, yet experts predict that our prisons will overflow. The most recent report claims that by 2008 we will have over 11,000 more inmates than we have prison beds. **(Attachment C, page 10)**

Unfortunately, our crime rate has not dropped in proportion to our prison bed expansion **(Attachment D, pages 5-6)**:

Texas 1989-2001	United States 1989-2001
Crime rate: -35%	Crime rate: -27.5%
Incarceration rate: 176.7%	Incarceration rate: 73.4%

Serving out a prison term in Texas does not generally improve the inmate's ability to be a law-abiding citizen upon release. Few Texas inmates have access to self-improvement programs. Budget cuts and prioritizing incarceration spending meant that programs inside the prison walls were cut to almost nothing. Medical and mental health care are not being provided adequately inside our prisons. The Hepatitis C virus is not being treated according to accepted medical standards, and Hepatitis C will have a significant impact outside the prison walls if the epidemic explodes in the coming years according to projections. TDCJ is currently facing a lawsuit regarding a pattern of inmate-on-inmate rape. All in all, Texas prison inhibits an offender's ability to be a productive citizen following release rather than providing support to the offender who wants to remain trouble-free following imprisonment. There is even evidence that increased incarceration causes crime to increase rather than decrease.

On the other hand, there are treatment and diversion programs that reduce crime. A 5-year study released by the National Center on Addiction and Substance Abuse found that people who completed a drug treatment program were 33% less likely to be arrested, 45% less likely to be convicted again, and 88% less likely to return to prison than a comparable group sent to prison instead of treatment. A 2002 Texas Criminal Justice Policy Council study shows that offenders who went through the Texas drug court diversion program were almost 8 times less likely to recidivate in three years than those who did not go through the program. The United States Department of Justice, National Institute of Corrections, promotes the use of offender program interventions that are consistent with research findings on effectiveness. There are many resources available today to lawmakers as they search for solutions that maximize public safety.

Texas underutilizes treatment and diversion programs. In Texas, for every dollar invested in the Treatment Alternative to Incarceration Programs, for example, the state gets a return of \$2.86 in reduced recidivism costs. But the state continues to spend 4/5 of its \$5 billion prison budget on pure incarceration, the most expensive corrections solution. Incarceration in Texas costs about \$20,000 per year per offender. To improve the public safety, Texas should shift a significant portion of those incarceration dollars to fund evidence-based treatment and diversion programs.

70% of the admissions to Texas prison are for nonviolent offenses. These lower-risk offenders should have access to treatment and diversion programs, and an attempt should be made to keep them in the community. We agree with the Heritage Foundation that "given the pressures on the criminal-justice system, it makes sense to explore creative alternatives for non-violent offenders, including restitution and community service." Robert Moffitt, PhD, and David Muhlhausen, May 3, 2000.

Incentives like early release programs should be used to encourage compliance and rehabilitation. Texas "tough on crime" policies have prevented use of the incentive – the offender's incentive to successfully complete probation or his prison sentence. Our low risk offenders should have a reasonable early release date that they can work toward, and know with certainty that if they successfully complete all aspects of the program they can be released on the early date. True "truth in sentencing" policies leave the offender with no reason to successfully complete programs, since they know that they will have to serve the entire sentence either way. Incentives do not compromise public safety if they are used with the lowest risk offenders.

Many of our nonviolent offenses should not be felonies. We have almost 2000 distinct felony offenses in Texas. **(Attachment E)** As stated earlier, one of every 21 adults in Texas is *currently* under the supervision of the criminal justice system -- that number would be much higher if we were to look at how many Texans have been permanently branded as a felon at this point. It is hard to describe, and probably impossible for most of us to imagine, what life is like as a felon. Jobs are near impossible to find. In Texas, there are over 125 statutory prohibitions on felons holding certain types of jobs. See *Statutory Restrictions on Convicted Felons In Texas*, Texas State Law Library, March 2002. But even where not legally prohibited from hiring a felon, most employers are not interested and most felons have a very difficult time earning a living. Felons are routinely turned down for housing, and they have a very difficult time locating a safe place to raise their families. Our legislators should recognize the stigma and handicap that comes with being a felon and make sure that all 2000 of the felonies in Texas really merit that kind of lifetime punishment.

Where it is effective in reducing crime, parole decisions should be made so that prisoners who are released have some time on supervision, rather than serving the entire sentence in prison and then being released with no supervision. For example, research shows that people with severe alcohol addictions tend to respond well to intensive treatment programs. Prison without intensive treatment does not change the substance abuse behaviors; and prison for the full term means that there is no supervised treatment to change behaviors when the inmate is released and gets to go home. These offenders should be treated while confined, and then released on supervision so that they can continue their treatment for a few months while on supervision.

Incarceration of a significant percentage of the population makes the community unstable and perpetuates a cycle that becomes self destructive as it repeats itself. The impact of incarceration on the family and children are profound.

Even if it were true that a criminal who is off the street is not able to commit a crime, the prisoner will get out one day and when he does the public does not want him to have the need, the skills and the desire to commit worse crimes.

The racial disparities in the Texas criminal justice system exist at every step of the process, and have been relatively well-publicized. The new Texas racial profiling report released this week is the most comprehensive racial profiling data set in the nation. It shows a clear pattern of racial profiling in policing statewide -- the offender's first interface with the criminal justice system. The stop rates are unequal, the search rates are more unequal. The racial disparity in Texas' criminal justice system can not be ignored.

In Texas, we have taken a small step toward reform for both social and economic reasons. **(Attachment F)** A bill passed into law in 2003 that diverts low level drug offenders from prison into treatment. This commission should recommend that states like Texas fully implement best practices in order to reduce recidivism and protect public safety.

For successful state sentencing reform, the only political conditions that are necessary are a willingness on the part of leadership to earnestly seek out the best practices in reducing crime and protecting public safety; and a willingness to reject knee-jerk political responses that make good sound bites. Many legislators are interested in these solutions. **(Attachment G)**

The public is less tolerant of the outdated "tough on crime" rhetoric from legislators. In Texas, every large city Editorial Board endorsed the 2003 treatment diversion bill, as did top Judges and statewide organizations including many religious denominations. Policy makers should respond with sound policy decisions that support proven methods of reducing crime and strengthening communities.

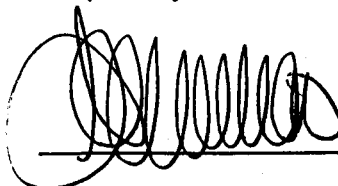
Recommendations:

1. **Lawmakers should enact criminal justice policy based on the goals of reducing recidivism and strengthening communities. Criminal penalties should be designed to reduce recidivism, and criminal justice funding decisions should be designed to reduce recidivism.**
 2. **Criminal penalties for nonviolent offenses should be reduced. Fewer nonviolent crimes should be felonies. Incarceration should be the alternative to probation, not the other way around.**
 3. **Probation and incarceration sentences should provide an dependable early release incentive for successful completion of the program. An offender should know that he will earn release on a date certain if he successfully completes all aspects of his supervision or incarceration.**
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Attachments:

- A. "Penal Code tinkering could lead to prison crowding, some fear", Austin American Statesman, December 1, 2003.
 - B. The Big Picture in Adult and Juvenile Justice Issues, Texas Criminal Justice Policy Council, January 2003.
 - C. Update in TDCJ Population Projection, Review of Trends and Issues Regarding Capacity, Texas Criminal Justice Policy Council, May 2003.
 - D. Texas Tough: Three Years Later, Justice Policy Institute, April 2003
 - E. List of felony offenses in Texas, published by the Texas Board of Pardons and Paroles
 - F. Treatment works; incarceration costs: Support HB2668, fact sheet, Spring 2003.
 - G. "Give small-time drug users help, not jail, bill says", Austin American Statesman, April 2, 2003.
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