



**Written Testimony of Marc Levin, Esq.  
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at the Texas Public Policy Foundation  
Hearing on Ohio Corrections Budget  
House Finance Subcommittee on Transportation  
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- **Introduction to TPPF and Right on Crime**

Since 1989, the Texas Public Policy Foundation has served as the state’s free-market think tank and in 2005 I launched our Center for Effective Justice. Our work in Texas which included research, data analysis, and legislative testimony helped shape Texas’ historic shift in criminal justice policy in 2007 away from building more prisons to instead strengthening alternatives for holding nonviolent offenders accountable in the community, such as drug courts. Since making this shift, Texas has achieved a drop in its incarceration rate by more than 14 percent and, most importantly, a drop in its crime rate by more than 29 percent, reaching its lowest level since 1968.<sup>1</sup> Taxpayers have avoided spending more than \$2 billion on new prisons.

Building on the Texas success, we launched Right on Crime in 2010. Our Statement of Principles signed by conservative leaders such as Rick Perry, Jeb Bush, Newt Gingrich, Bill Bennett, Grover Norquist, and J.C. Watts, as well as leading experts in the field such as John DiLulio and George Kelling, explains how conservative principles such as personal responsibility, limited government, and accountability should apply to criminal justice policy.

- **Supervising More Nonviolent Offenders in the Community Provides a Better Public Safety Return on Taxpayers’ Investment**

While prison is about 40 times more costly for taxpayers, it is a wise expenditure for those offenders who cannot be safely supervised in the community because of the danger they present. However, the current budget, which largely pays counties per probationer, does not provide sufficient incentive to prioritize the utilization of the prison system and provide effective supervision and treatment for nonviolent offenders in the community. Fortunately, the Governor’s proposed budget would remedy this and allow Ohio to simultaneously reduce its prison population, lower recidivism, and reintegrate more offenders in the workforce. It is also reassuring that you are not being asked to buy a pig

in a poke, since this has already been implemented as a pilot program over the last several months in eight counties.

The success of state/county fiscal partnership programs in reducing both recidivism and overall costs to taxpayers has been well documented with examples such as the Texas' juvenile system (the 2009 budget provision giving rise to the Commitment Reduction Program or "Grant C"), Arizona's adult probation incentive funding model, the Ohio RECLAIM juvenile system, and Illinois juvenile Redeploy program.<sup>2</sup> In Ohio and Illinois, the local jurisdictions participating in RECLAIM and Redeploy have achieved the desired goals of reducing recidivism and utilization of state youth lockups.<sup>3</sup> For example, the recidivism rate for moderate risk youth placed through RECLAIM was 22 percent, compared with a 54 percent rate for such offenders in state lockups.<sup>4</sup>

On the adult side, after adopting its incentive funding model in 2008 that promised to give local probation departments a share of the state's savings if they reduced both revocations and new offenses among probationers, Arizona had, by 2011, reduced its probation revocation to prison rate by more than 39 percent compared to its fiscal year 2008 rate. Most importantly, the number of new felony convictions among its felony probationers had also decreased by more than 41 percent, as probation departments implemented evidence-based practices such as motivational interviewing.<sup>5</sup>

A November 2012 Vera Institute report summarizes state experiences so far with such fiscal partnership and incentive funding frameworks and recommends strategies to promote successful implementation in Texas and other states.<sup>6</sup> There are several reasons why this approach makes sense.

First, thanks to advances in research and technology, we now have the tools to safely supervise more offenders in the community. Actuarial risk/needs assessments allow greater sophistication than ever before in ensuring offenders receive the right intervention in the proper dosage, such as whether a residential placement is necessary, how often to report to a probation officer, or whether they may be a good candidate for a specialty court. Furthermore, to ensure offenders comply with probation conditions, monitoring technologies now allow probation officers to verify that the offender is at home, work, or a treatment program when they are scheduled to be there.

Second, the proposal recognizes that some of the offenders being sent back to the counties do require a residential setting, such as workhouse or community corrections facility. These local facilities have significant advances over state prisons for offenders serving less than twelve months. One advantage is that there is necessarily significant delay by the time an inmate is transferred from the county jail to state prison and then goes through the classification process in the state system. This means that by the time they person actually arrives at the prison where they will serve the remainder of their sentence, there is often insufficient time to fully complete an appropriate treatment, vocational, and educational program. Additionally, given the greater proximity of local

residential facilities to the offender's family and local sources of employment and reentry assistance, successful reintegration into society is more likely to be achieved locally.

Another advantage of local management of these offenders is that the short stays in jail, particularly weekend jail, can be effectively used to promote compliance with probation terms. One example of this is the Hawaii HOPE Court which uses swift, sure, and commensurate sanctions to promote compliance. Of course, it requires counties to spend more money on both executing arrest warrants and the county jail, even as they would save the state several times the cost they incur. In the HOPE Court, the judge apprises the drug-related offenders entering his court that each day they must call in to find out if they must report for a random drug test and, if they test positive or don't show up, an immediate arrest warrant will result in brief jail time, often on the weekend so they can keep their job. The Court has achieved more a more than 50 percent reduction in probation revocations and reoffending, an 80 percent reduction in missed probation appointments, and an 86 percent reduction in positive drug tests.<sup>7</sup>

Finally, it is apparent that prison terms of a year or less accomplish little in the way of incapacitation. Indeed, both because lower-level, lower-risk offenders are mixed with more hardened inmates and because of the difficulty in finding employment and housing upon reentering society, whatever public safety benefit is achieved by segregating the person from society for a year or less is likely offset or even overwhelmed to the extent the individual reenters as a greater risk than when they arrived. Notably, the proposal does not cover those with a current or prior violent or sex offense, meaning they could still be sent to state prison.

- **Earned Time for Inmates Completing High School Degree or GED Will Promote Positive Behavior and Enhance Reentry Outcomes**

The proposal allows inmates who obtain a high school degree or GED while incarcerated to earn 90 days off of their term. This would be in addition to the maximum of 8 percent that eligible offenders can currently earn. This is a sensible approach that offers a modest earned credit while still maintaining the integrity of the sentencing process, since the vast majority of the term will still be served.

Research has shown that positive incentives are a powerful tool to enhance individual motivation and promote pro-social behavior change.<sup>8</sup> Research on human behavior indicates that offenders attempting to change behavior are even more motivated by positive reinforcement than negative.<sup>9</sup> Specifically, earned time has been found to motivate offenders to participate in programs.<sup>10</sup> The benefits of a greater share of discharged inmates having at least high school proficiency are clear, as with the growing role of automation in the economy fewer and fewer jobs are available for those who fall short of this educational benchmark.

- **Expanding Reintegration Unit to Serve High Security Inmates Will Reduce Recidivism**

Ohio has been a national pioneer with its reintegration unit for lower security inmates and this budget proposal builds on that progress by expanding this concept to high security inmates who are scheduled to be discharged, having fulfilled their prison term. Such reintegration units will ensure these inmates are productively occupied for 8 to 10 hours a day rather than languishing in a cell. There is a considerable evidence that conditions immediately prior to release affect subsequent recidivism. A study in Washington state found that inmates released directly from the Supermax prison committed new felonies at a rate 35 percent greater than other inmates of the same risk profile.<sup>11</sup> Additionally, a greater percentage of the new crimes committed by those released from the Supermax facility were among the most serious violent felonies.<sup>12</sup>

- **Probation Reform to Reduce Technical Revocations Will Save Taxpayer Dollars and Keep More People in the Workforce**

Some 23% of prison admissions in Ohio are due to technical probation revocations, which means the person involved is not alleged to have committed a new crime. Such violations include missing meetings, testing positive for drugs, and leaving the county without permission. While technical violations of supervision must not be ignored, the traditional probation model of waiting for violations to pile up and then coming down like a ton of bricks does not work. It is not the duration of the sanction so much as the swiftness and sureness that changes behavior. Moreover, sufficient treatment resources are vital to address the fact that many technical violations stem from addiction or mental illness.

The evidence shows that implementing best practices and expanding the availability of treatment for those on community supervision can decrease revocation rates substantially.<sup>13</sup> In 2005, the Texas Legislature allocated \$55 million in incentive-based probation funding to departments promising to reduce revocations by 10 percent as well as provide graduated sanctions for technical violations. Departments that participated reduced their technical revocations by 13.4 percent from 2005 to 2012, while departments that did not participate increased their technical revocations by 5.9 percent over the same period.<sup>14</sup> Assuming all departments increased their technical revocations by 5.9%, the total amount of technical revocations would have increased by 797. Instead, Texas experienced a decline of 1,470 technical revocations, saving \$104.4 million in revocation costs (assuming an average time served of 2.5 years) over previous expectations.

Many states have limited technical revocations, particularly when it comes to nonviolent offenders. For example, Louisiana has limited the duration of such revocations to 90 days and it was working so well they went down to 60 days just a few years ago. In Washington state, those on probation who commit technical violations cannot be sent to prison, but instead can be briefly incarcerated in county jails when other sanctions such as curfews and extending probation terms are insufficient. There is no evidence that probation compliance or public safety has been negatively affected by these approaches. By reducing technical revocations of nonviolent offenders, Ohio can save millions on prison costs while also keeping more probationers in their communities where they can participate in the workforce and meet their family obligations.

- **Conclusion**

Ohio policymakers have an opportunity to build on recent reductions in the state's crime and incarceration rates by shaping the budget to move from a corrections system that grows when it fails to one that rewards results. We must ensure that low-level offenders are not sent to prison even when judges and prosecutors believe a less costly alternative would be do as much or more to protect public safety, simply because such alternatives would cost the local jurisdiction more, but the state much less. Forging a more flexible and results-oriented budgetary partnership between the state and local jurisdictions can bring the corrections system as a whole into greater fiscal balance.

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<sup>1</sup> Marc Levin, "The Texas Model: Adult Corrections Reform, Lower Crime, Lower Costs," Texas Public Policy Foundation, Sept. 2011, <http://www.texaspolicy.com/sites/default/files/documents/2011-09-PB44-TexasModel-AdultCorrections-CEJ-MarcLevin.pdf>.

<sup>2</sup> Marc Levin, "[Rewarding Results; Measuring and Incentivizing Performance in Corrections.](#)" Texas Public Policy Foundation, Aug. 2010.

<sup>3</sup> *Id.*

<sup>4</sup> Chris Lowenkamp and Ed Latessa, "Evaluation of Ohio's RECLAIM Funded Programs, Community Correctional Facilities, and DYS Facilities, August 2006," November 2, 2008, at [http://www.uc.edu/ccjr/Reports/ProjectReports/Final\\_DYS\\_Cost\\_Benefit.pdf](http://www.uc.edu/ccjr/Reports/ProjectReports/Final_DYS_Cost_Benefit.pdf).

<sup>5</sup> Arizona Supreme Court, Adult Probation Services Division, [Arizona Adult Probation: Probation Works in Arizona Fiscal Year 2011](#) (Phoenix: Administrative Office of the Courts, 2012).

<sup>6</sup> "[Performance Incentive Funding, Aligning Fiscal and Operational Responsibility to Produce More Public Safety at Less Cost.](#)" Vera Institute, Nov. 2012.

<sup>7</sup> "[Program Evaluation Results.](#)" Hawai'i State Judiciary's HOPE Probation Program

<sup>8</sup> National Research Council, Committee on Community Supervision and Desistance from Crime, Parole, Desistance from Crime, and Community Integration (Washington, D.C.: The National Academies Press, 2007); Andrews, Don, "Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy," *Criminology and Public Policy*, No. 5, pp. 595-602 (2006); Burke, Peggy, *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Offender Transition*, (Washington, D.C.: National Institute of Corrections, 2004); Petersilia, Joan, "What Works in Prisoner Reentry?: Reviewing and Questioning the Evidence," *Federal*

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<sup>9</sup> Bandura, Albert, and Richard H. Walters, *Social Learning and Personality Development*, (New York: Holt, Rinehart and Winston, 1963); Latessa, Edward, Francis Cullen and Paul Gendreau, "Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment," *Federal Probation*, 66 (2), pp. 43-49 (2002); Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston: 2004).

<sup>10</sup> *Id.*

<sup>11</sup> David Lowell, et. al., "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency*, Oct.2007, vol. 53 no. 4 633-656, <http://cad.sagepub.com/content/53/4/633.abstract>.

<sup>12</sup> *Ibid.*

<sup>13</sup> <http://www.texaspolicy.com/content/detail/policy-perspective-texas-adult-corrections-a-model-for-the-rest-of-the-nation>

<sup>14</sup> <http://www.texaspolicy.com/content/detail/policy-perspective-texas-adult-corrections-a-model-for-the-rest-of-the-nation>.