

A Deficit of Wellbeing: The End of the War on Drugs and Investing in a Brighter Future

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“There is now an emergent national consensus that the overuse of incarceration is unsustainable and that low-risk offenders no longer should be sanctioned with a prison sentence.”¹ The term “revolving-door” has become almost synonymous with jail due to the somber fact that among low-level drug and property crimes, crimes such as possession or trespassing, the recidivism rate is extremely high. The same people are in and out of jail for the same offenses all the time, often not being able to receive the help they need to end the cycle.

When these low-level crimes are considered felonies, prison populations skyrocket and states end up paying millions of dollars to keep someone who might be a first time, nonviolent drug offender behind bars instead of providing them with the care they need to rejoin society. This project is looking into forms of legislation aimed at improving this revolving-door situation. Specifically, Proposition 47, which was an act passed in California in 2014 that changed many nonviolent offenses from felonies to misdemeanors in order to lower the incarcerated population as well as allocate the money saved to beneficial community and rehabilitative services. The research conducted in this project aims to answer this question, could a major criminal justice reform bill such as Proposition 47 in California gain public support and pass in Texas?

This question is answered throughout the project by comparing Proposition 47 to the Sandra Bland Act, a criminal justice reform bill passed in Texas in 2017. By looking at studies done by the Public Policy Institute of California, American Public Health Association, UT Department of Psychiatry, Department of State Health Services, and a variety of others done into where improvement is needed the most and the positive and negative impacts of this type of legislation. The largest hurdle for legislation like this to pass in Texas is money. Texas is known

¹Thielo, A.J., Cullen, F.T., Cohen, D.M., & Chouhy, C. (2015). Rehabilitation in a Red State.

for not liking big government and allowing the government to decide where this money is to be allocated is likely to raise concerns and skepticism from Texas lawmakers. This doesn't mean a bill like Proposition 47 can't pass in Texas, it means the approach will have to be different and the public will have to be open to it. The jails and prisons in this country are filled to the brim with people who suffer from substance abuse disorders and mental illnesses. The entire goal of incarceration supposedly has always been rehabilitation. If the pattern of keeping people behind bars instead of helping them continues, our state and our country are going to have a lot more to worry about than money allocation.

Substance Abuse Disorders

For individuals struggling with substance abuse disorders the in and out pattern of jail can be deadly. While incarcerated they are cut off from their drug supply. Upon release, their reduced tolerance level can lead to an accidental overdose if they attempt to return to their previous dosage. If their reduced tolerance does not take them back to drugs many times the environment in which they return to is filled with drugs as well. Those with untreated substance abuse disorders experience high rates of relapse, recidivism, and overdose.

The National Center on Addiction and Substance Abuse at Columbia University estimates that only 11% of incarcerated individuals in need of substance abuse treatment receive it in jail or prison.² This number is low and it may be in part because of the public's negative perception of those struggling with substance abuse disorders. People struggling with an

²The Center for Prisoner Health and Human Rights. (2015, February). Incarceration, Substance Abuse, and Addiction.

addiction are often seen as being solely responsible for their dependence on a substance and people seem to be less sympathetic and not as eager to help. The issue with this mindset, shifting people in and out of jail only exacerbates the problem and costs the state copious amounts of money that could be put towards community outreach services to help people instead of imprisoning them.

In a study published by the Addiction Society Clinical Practice, that looked into why relapse and recidivism rates are so high among nonviolent drug offenders, one participant stated, “Most people relapse in the first six months because it’s so stressful because they have no help. There’s no financial help to even get housing or to... buy clothes for work or a bus pass to even try to look for a job.”³ The stress of feeling like there is nowhere to go, the overwhelming feeling of just how narrow the options are, this makes it all that much easier for people to turn back to alcohol or drugs, to try and cope with the stress.

Mental Illnesses

The situation is not much brighter for those suffering from mental illnesses either. As found by the Center for Prisoner Health and Human Rights during a study on recidivism rates of individuals with mental health issues, “Within three years of being released, 37 percent of inmates who leave state prisons with mental illnesses are locked up again, compared with 30 percent of those who do not have mental health problems.”⁴ In addition, many individuals suffer

³ Binswanger, I.A., Nowels, C., Corsi, K.F., et al. (2012). Return to Drug Use and Overdose After Release from Prison: A Qualitative Study of Risk and Protective Factors. *Addiction Science & Clinical Practice*, 7(1), 3.

⁴ The Center for Prisoner Health and Human Rights. (2015, February). Incarceration, Substance Abuse, and Addiction.

from comorbidity, meaning they struggle with both a mental illness and a substance abuse disorder at the same time. Individuals with poor mental health are much more likely to have experienced or witnessed traumatic events during adolescence. Dara Dehart, assistant dean for research support at the College of Social Work at Desautels College stated, “They grow up in homes witnessing violence and sexual abuse, and caregivers going in and out of jail. Victimization leads to or exacerbates mental health problems like depression, anxiety, and PTSD.”⁵ As they grow up, their conditions worsen and many turn to drugs or alcohol to cope with the symptoms or numb the pain. In order to pay for their addictions, they often get involved in property crimes and prostitution, sometimes escalating to violent offenses.

Alex Briscoe, the health director for Alameda County in northern California had this to say about jails and those struggling with mental health conditions, “We’ve frankly, criminalized the mentally ill, and used jails as de facto mental health institutions.”⁶ A prime example of this is Harris County Jail here in Houston, otherwise known as the largest mental health care facility in Texas. The average daily population in their mental health unit is 8,899. On a daily basis, the HCSO jail houses more individuals on psychotropic medications than any single mental hospital in Texas. The ultimate goal is to move these “patients”, they don’t refer to them as inmates, to state hospitals, however, this proves difficult when the average wait time for acceptance to a state hospital is 116 days.⁷ This results in people sitting in jail for long periods of time, even though they have not been charged with anything.

⁵ Varney, Sarah. (2014, May 15). By the Numbers: Mental Illness Behind Bars, *Kaiser Health News*.

⁶ Ibid

⁷ Harris County Sheriff’s Office. (2018, December 13). 2018 Annual Report- Mental Health Diversion Center.

According to the Bureau of Justice Statistics, “There are now three times more people with a serious mental illness incarcerated in the United States than in hospitals and the types of behavioral and mental health problems are becoming more severe.”⁸ Looking at this by the numbers it appears more incarcerated women are suffering from serious mental health issues than men. The Bureau of Justice Statistics reports, in state prisons, 73% of women and 55% of men have at least one mental health condition. In federal prisons, 61% of women and 44% of men. In local jails, 75% of women and 63% of men.⁹ Keeping people incarcerated exposes them to stressful prison environments and oftentimes people with severe mental illnesses end up in isolation for long stretches of time, which inflames their conditions even further. The Department of Justice reported that inmates with a mental illness were also much more likely to be injured in jailhouse fights.

Stephen Strakowski, chair of UT’s Department of Psychiatry, said, “When you don’t take care of mental health it doesn’t go away, so people end up suffering. Society often thinks that if we don’t pay for it, it doesn’t cost anything, but it ends up drumming up costs in many other areas.”¹⁰ What Strakowski said is prominent in Texas politics. Before anything is passed or even considered the question on everyone's minds is, who is going to pay for this? As seen throughout Texas history any sort of proposal to raise taxes is usually immediately struck down. Investing in the mental health of Texas citizens is not something to take lightly. Millions of dollars are already being spent to keep people imprisoned. What if that money could be saved and

⁸ James, Doris J., Glaze, Lauren E. (2006, September 6). Mental Health Problems of Prison and Jail Inmates. *Bureau of Justice Statistics*.

⁹ Ibid

¹⁰ Balevic, Katie. (2019, February 10). SB 10 Would Improve Mental Health Care. *The Daily Texan*.

reallocated to areas that actually help people stabilize their lives? That's where California has set an example with the passage of Proposition 47.

Proposition 47

The former governor of California, Jerry Brown stated on the topic of criminal justice reform, "My view is that we should continue to work toward a more just system that respects victims, protects public safety, holds youth accountable, and also seeks a path of redemption and reformation whenever possible." Proposition 47 is a criminal justice reform initiative that was passed in California in 2014. This proposition reduced simple drug possession for personal use from a felony to a misdemeanor. It also increased the felony threshold for some property crime offenses from \$400 to \$950 to keep pace with inflation. This proposition was enacted in order to reduce the state's prison population. Once this proposition was put into action it saved the state an estimated \$150 million to \$250 million a year. The initiative requires the state government to put the money into a fund that will finance schools, mental health treatment, truancy and dropout programs, and victim compensation programs.¹¹ Legislation such as this can free up funds for programs that will work to prevent and reduce crime, such as treatment programs. Funds could potentially be allocated to residential treatment facilities as well for those who need to recover and receive treatment within a structured environment. Receiving inpatient treatment at a location that is built with recovery in mind and staffed with psychologists and people who have had more than a brief training on the effects of mental illnesses and drug dependence could be a safer and more favorable alternative to serving jail time for nonviolent offenders.

¹¹Ballotpedia. (2014). California Proposition 47, Reduced Penalties for some Crimes Initiative.

According to a report from Californians for Safety and Justice, “Nearly 4,700 people have been re-sentenced and released from state prisons, and the California Department of Corrections and Rehabilitation estimates 3,300 fewer individuals will now be incarcerated each year.”¹² The new law also lowered the state’s daily average jail population by about 8,000 people. On top of allocating the funds to community services the law also required some of the savings go to programs developing housing and employment opportunities for released individuals. An additional requirement and an important one to note was that the committee awarding the grants had a diverse membership, including people who had been formerly incarcerated. Vonya Quarles, who once was shuffled in and out of juvenile detention and now is the executive director of the Corona nonprofit Starting Over Inc. said, “We worked hard because Proposition 47 offered us something we didn’t have before, and that was the relief of carrying felony convictions on our backs. It was supposed to be with the promise to get mental health and substance abuse treatment for our folks- not to have to go to jail to get these services.”¹³ This committee produced much better results that actually worked for former incarcerated individuals rather than having a group of people who have never experienced anything close to the uphill battle of starting over after being released from jail or prison. If legislation like this was to be implemented in Texas, this would be a good model to follow.

Impact of Reform

In 2018, the Public Policy Institute of California looked into the impacts that Proposition 47 has had on crime and recidivism since its passage in 2014. It remains controversial to this day,

¹² Ulloa, Jazmine. (2017, March 29). Prop. 47 Got Thousands Out of Prison. Now, \$103 Million in Savings Will Go Towards Keeping Them Out. *Los Angeles Times*.

¹³ Ibid

opponents are concerned about burdening local jails and communities as well as potential increases in crime. To this effect, any increase in theft-related crimes, especially auto-burglaries, has been blamed on the Proposition 47 reforms. Opponents claim people commit more thefts because they know the consequences are not very harsh even if they get caught. As George Gascon, the district attorney of San Francisco pointed out, “A misdemeanor conviction still carries up to a year in jail, but in practice, the difference Proposition 47 has made is that California is no longer warehousing those addicted to drugs in our jails and prisons.”¹⁴ Gascon made it clear that there still is a potential for jail time among other consequences, depending on the defendant’s past convictions and if there is a history of violence.

In response to the blame of increased auto-burglaries on these reforms, Gascon had this to say, “The regions increase in crime has been driven by auto burglary, not theft. Proposition 47 did not alter the crime of auto burglary: people can still be charged with a felony.”¹⁵ Gascon highlights that 70 to 80 percent of auto burglaries are committed by organized groups. The property crimes affected by the proposition, on the other hand, have slowly been decreasing since 2014.

Proposition 47 increased funding for behavioral health programs, redirecting 65% of state correctional savings toward mental health and substance use treatment programs.¹⁶ The Board of State and Community Corrections oversees the allocation of behavioral health funding. The

¹⁴ Gascon, G. (2018, November 23). Prop. 47 is Necessary to put War on Drugs Behind Us. *San Francisco Chronicle*.

¹⁵ Ibid

¹⁶ Bird, M., Lofstrom, M., Martin, B., et al. (2018, June 21). The Impact of Proposition 47 on

Crime and Recidivism. *Public Policy Institute of California*.

proposition reduced both overall jail bookings and the number of individuals entering the jail system. Offenders have lower 2-year rearrest and reconviction rates when compared with their pre-reform counterparts.¹⁷

Another major impact, Proposition 47 has reduced the sentencing disparity in San Francisco between Caucasians and African Americans by half. As found by the American Public Health Association, in the month following passage, absolute black-white disparity in monthly felony drug arrests decreased from 81 to 44 per 100,000 and continued to decrease over time.¹⁸ This study concluded that “Reducing criminal penalties for drug possession can reduce racial/ethnic disparities in criminal justice exposure and has implications for improving health inequalities linked to social determinants of health.”¹⁹ The United States has taken an increasingly punitive approach to substance use in recent decades, which has disproportionately affected people of color. Not only can such legislation provide funding for community-based treatment and prevention programs but can also aid in closing the gap in sentencing disparities in different racial and ethnic groups.

Cost is the most commonly reported barrier to using mental health services. A 2016 national survey on drug use and health found that 1 in 5 Americans report they or a family member did not receive needed mental health services. As district attorney Gascon pointed out, California is saving around \$800,000 a day thanks to Proposition 47, all of which is being

¹⁷ Bird, M., Lofstrom, M., Martin, B., et al. (2018, June 21). The Impact of Proposition 47 on Crime and Recidivism. *Public Policy Institute of California*.

¹⁸ Mooney, A.C., Giannella, E., Glymour, M.M., et al. (2018). Racial/Ethnic Disparities in Arrests For Drug Possession After California Proposition 47, 2011-2016. *American Journal of Public Health*, 108(8), 987-993.

¹⁹ Ibid

reallocated into community programs helping people get the treatment they need. In Texas, a state comparable in size to California, the savings could be similar and have immense positive impacts. The major concern would be the difference in the number of people who need public assistance for these programs as the poverty rate in Texas is much higher than in California. This is an issue that could be addressed during the legislative process by possibly allocating a larger portion of the savings in areas that need it most or areas that currently have a shortage of mental health and other treatment services.

Sandra Bland Act

For a long time, there has been tension and concern when it comes to how the criminal justice system treats those struggling with mental disorders. For example, the case of Sandra Bland, which became well-known in Texas in 2015. Sandra Bland was pulled over for failing to signal a lane change and the officer claims their interaction quickly got heated and that he feared for his safety. He ended up arresting her on suspicion of assaulting a public servant. She was found hanging in her jail cell three days later.²⁰ In response to this Governor Greg Abbott signed the Sandra Bland Act in 2017, it went into effect in September of that year. The goals of the act were stated as, “The Sandra Bland Act mandates county jails divert people with mental health and substance abuse issues toward treatment, making it easier for defendants to receive a personal bond if they have a mental illness or intellectual disability, and requires that independent law enforcement agencies investigate jail deaths.”²¹ This comprehensive piece of

²⁰ Collister, B. (2017, September 16). Trooper Fired for Sandra Bland Stop: “My Safety was in Jeopardy.” *The Texas Tribune*.

²¹ *Criminology & Public Policy*, 1.5(1), 137-170. Silver, J. (2017, June 15). Texas Gov. Abbott Signs “Sandra Bland Act” into Law. *The Texas Tribune*.

legislation had a difficult time making it through in one piece, as many law enforcement agencies in Texas were concerned about the changes and did not like the burden of an unfunded mandate. Local law enforcement agencies would have to pay for the now mandatory de-escalation training and also pay for the investigations into jail deaths. The Senate altered the language of the bill, “The Senate version of the bill, by state Sen. John Whitmire of Houston, removed much of the language related to encounters with law enforcement (de-escalation training remained) and became a mostly mental health bill, which ultimately passed both chambers without opposition.”

²² Bland’s family was disappointed by the Senate version of the bill and felt that it did not address the issues that led to Sandra being pulled over and ultimately arrested, a lot of which had to do with racial profiling which is not included or really mentioned at all within the officer's new mandatory de-escalation training.

By re-focusing the bill mainly on mental health reform it left out key components of the overall issue. It also did not do much in the area of reducing sentences or aiding those with substance abuse disorders. The main concern of this bill is to make encounters between potentially mentally ill citizens and officers safer. The intention of the bill was stated as, “To make both officers and the public safer, S.B. 1849 increases officer training in general de-escalation and mental health de-escalation tactics.” The Senate bill analysis continues, “The use of de-escalation tactics helps ensure that both law enforcement and the public are able to go home safe.”²³ The bill did discuss the diversion of mentally ill individuals into treatment centers

²² *Criminology & Public Policy*, 1.5(1), 137-170. Silver, J. (2017, June 15). Texas Gov. Abbott Signs “Sandra Bland Act” into Law. *The Texas Tribune*.

²³ Anderson, J. (2017, December 3). Senate Bill 1849 Breaking Down the Sandra Bland Act-85th Legislature. *Texas County Progress*.

rather than jail, however, this is largely dependent on the availability of said treatment centers and bed space and currently, in Texas, there is not much availability and the average wait time for acceptance to a state hospital is 116.7 days.²⁴ Most of Texas' state hospitals were built in the 19th and early 20th centuries, when mental health care was poorly understood and many people with mental illnesses were expected to spend their lives in insane asylums. David Lakey, the associate vice chancellor for population health at the University of Texas system said, "State mental health hospitals are in really bad condition. Every session, I would go and ask for like \$100 million to repair basic things, like roofs and HVAC systems. In most years I'd get zero, and in some years I'd get \$30 million."²⁵ The Department of State Health Services determined that five state hospitals- Rusk, Austin, San Antonio, Terrell and North Texas at Wichita Falls- were beyond repair and should be completely replaced. Six other hospitals are under the list of needing major repairs. Due to this, the already diminished capacity is diminished further since some hospitals are no longer in use because there is not enough funding to replace or repair them. This lack of funding has also led to staff shortages and hospitals hiring people not as qualified as they should be for the positions they hold.²⁶ The Department of State Health Services estimates, "The total price tag for replacing the five hospitals, repairing the remaining hospitals, and adding capacity is closer to \$2 billion."²⁷ Even with the savings Texas would accumulate

²⁴ Harris County Sheriff's Office. (2018, December 13). 2018 Annual Report- Mental Health Diversion Center.

²⁵ Walters, Edgar. (2016, May 1). State Spending More on Mental Health Care, but Wait List Grows. *The Texas Tribune*.

²⁶ Harris County Sheriff's Office. (2018, December 13). 2018 Annual Report- Mental Health Diversion Center.

²⁷ Walters, Edgar. (2016, May 1). State Spending More on Mental Health Care, but Wait List Grows. *The Texas Tribune*.

with the passage of a bill such as Proposition 47 it would take a really long time to reach that number. David Lakey offered up some alternative solutions and pointed to the University of Texas Health Science Center at Tyler for an example, they converted an empty ward in a university building into a mental health hospital. Lakey said similar public-private partnerships could be a cheaper and effective solution that the fiscally conservative legislature might find palatable.

An important distinction to make is that in order to improve access to mental health care in Texas the state will need to do much more than just expand the number of hospital beds available for patients in crisis. Services need to be in place and available within the community so people can get treatment provided to them before the situation is dire enough to need inpatient treatment. Andy Keller, president and chief executive of the Meadows Mental Health Policy Institute, said, “The solution isn’t just to build more hospitals. The state should provide options for people before they reach a mental health crisis.” Legislation such as Proposition 47 in Texas could have major impacts on the lack of funding and increase the capacity and quality of mental health and substance abuse treatment and prevention for the citizens of Texas, while also lowering the number of people incarcerated for nonviolent crimes.

Texas Public Support

The Journal of *Criminology and Public Policy* published a survey conducted in 2013 of 1,001 likely voters in Texas of all different backgrounds on public support for correctional reform in a red state. Respondents displayed strong support for rehabilitation, at least for nonviolent and drug offenders. All sample members showed a clear preference for the use of alternatives to incarceration as opposed to imprisonment. When asked about a specific policy

reform that used treatment rather than prison for nonviolent drug offenders, more than 8 in 10 Texans approved of the measure.²⁸ The idea of criminal justice reform and helping people recover within the community is popular in Texas, most people agree measures should be taken to improve the current criminal justice system. The disagreements arise when people try to narrow down how exactly to accomplish that goal. Many Texans do not like the idea of big government, therefore, the government being in control of large amounts of money and allocating it to where they wish is less appealing and more alarming to many Texas voters and lawmakers. If a measure like Proposition 47 were going to pass in Texas it would have to be shown to the public in the right way, that might mean focusing less on funding and instead emphasizing the positive impact measures such as this can have and the benefits these measures have brought to other communities outside of Texas.

The concern about an unfunded mandate is not just a Texas thing, California avoided an unfunded mandate at all costs with the passage of Proposition 47. Justice advocates and defense lawyers were critical of this and said, “Proposition 47 was written in a way to avoid an unfunded mandate and three years passed before savings could be calculated and allotted to community and social services, causing many former inmates to end up on the streets with no safety net or support system.”²⁹ This is obviously seemingly opposite of why they passed it in the first place. If Texas drafts up a similar bill the goal would need to be to have enough funding in the reserves to pay for the programs until the savings piled up enough to be utilized. Even though major

²⁸ Thielo, A.J., Cullen, F.T., Cohen, D.M., & Chouhy, C. (2015). Rehabilitation in a Red State. *Criminology & Public Policy*, 1.5(1), 137-170.

²⁹ Ulloa, Jazmine. (2017, March 29). Prop. 47 Got Thousands Out of Prison. Now, \$103 Million in Savings Will Go Towards Keeping Them Out. *Los Angeles Times*.

criminal justice reform is somewhat a slow-moving process in Texas considering the overall consensus that the criminal justice system needs improvement, especially in order to more efficiently redirect people to rehabilitative programs, the environment seems optimistic and open to change, something like Proposition 47 could have a pathway to becoming law in Texas in the near future.

Conclusion

Ultimately, the discussion comes down to putting money back into the community instead of keeping it behind bars where it only goes towards keeping the same people locked up and unable to begin anew. The collateral consequences of felony convictions are severe. A conviction like that can affect immigration status, access to jobs, health benefits, voting rights, housing, and financial support for higher education. Texas took a step in the right direction with the passage of the Sandra Bland Act in 2017, however, taking out parts of the bill that would have aided in closing the racial disparity in arrests and convictions plus passing a version of de-escalation training that is not very comprehensive has left gaps in reform and left much to be desired in the wake of this bill. Moving forward, considering passing a measure such as Proposition 47 and lowering many low-level, nonviolent offenses from felonies to misdemeanors could not only change lives for the better but also save money and provide support systems for those struggling with substance abuse disorders, mental illness, and those who have just been released from jail or prison. Knowing they have somewhere to turn could alter their outlook on life and lower suicide and accidental overdose rates. Considering legislation such as this is critical to the future of criminal justice reform here in Texas.

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