

Changing Direction: A Bipartisan Team Paves a New Path for Sentencing and Corrections in Texas

Expert Q&A

No. 4 | January 2008

Whitmire File



- Occupation: Attorney
- House Member, 1973-1982; Senate Member 1983-present
- Chair, Senate Criminal Justice Committee
- Dean of the Senate
- 15th Senatorial District (North Houston and North Harris County)

Madden File



- Occupation: Insurance
- House Member, 1992-present
- Chair, House Committee on Corrections
- Lead House Member, Legislative Oversight Committee for Criminal Justice
- 67th House District (Plano)



Despite having built more than 100,000 prison beds in the 1980s and '90s, Texas was looking at a 17,000-bed shortfall by 2012 at an additional cost of \$900 million for fiscal years 2008 and 2009. The huge price tag, combined with its uncertain payoff in public safety, encouraged policymakers to reconsider their reliance on incarceration.

Two leaders in particular, Senator John Whitmire (D-Houston) and Representative Jerry Madden (R-Plano), found that the drivers of prison growth were not the state's increasing resident population or rising crime rates, but rather the state's criminal justice policies and practices. Data analysis revealed the specific culprits: high revocation rates of probationers, a lack of in-prison or community-based treatment and diversion options, and a low parole grant rate.

Tackling these problems, Sen. Whitmire and Rep. Madden helped enact a legislative package that represents a striking redirection of corrections policy in a state known for being tough on crime. The centerpiece is a \$241 million network of short-term residential diversion and treatment facilities for low-level substance abusing offenders and additional outpatient drug and mental health treatment resources. The package will save Texas \$210 million over the next two years, and an additional \$233 million if the programs cut recidivism as expected. With successful implementation, new projections from the Legislative Budget Board show Texas' prison population holding flat over the next five years.

The two lawmakers spoke recently with Pew's Public Safety Performance Project about their accomplishment and what lies ahead.

It probably would have been a lot easier to stay the course and continue to build more prisons. Why did you choose a different path?

MADDEN: My challenge was real simple. As the speaker said when I first became Chairman of the Corrections Committee, "don't build new prisons; they cost too much." You've got to recognize how much the prisons actually cost us. We had projections that by the year 2011, we were going to be somewhere between 14- and 17,000 beds short. That meant that I was going to have to build probably seven new prisons just to keep up with the next three years' demand. That's a



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ABOUT THE PROJECT

Launched in 2006 as a project of Pew's Center on the States, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

For more on this topic, visit our website at www.pewpublicsafety.org

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—Representative Jerry Madden (R-Plano)

billion and three-quarters dollars, and that doesn't take into account the fact that we also spend about \$40 million to operate each one of those prisons. So we're talking somewhere around \$280 to \$300 million a year in additional costs.

WHITMIRE: I started working on this in '93 because the prisons were overcrowded, we were putting every type of inmate in one type of facility, we were letting out murderers and rapists to put in a car thief, and it made no sense. The trick is to leave the hard beds for the more violent offenders and not break the bank. It's an ongoing battle. But I agree with Jerry: we've got to show that this new direction is not only tough and smart, it's also about money. Money! Money! Money! We need to let people know that we can save the state money because our tax system—from now 'till we change it—will be short of money for whatever services we're talking about, whether it's public education, highways, or social services.

This was a significant shift in how Texas approaches criminal justice. How were you able to overcome partisan differences and concerns that this could be seen as soft on crime?

MADDEN: I learned pretty quickly that the think tanks that were working on this process—both very conservative think tanks and very liberal think tanks—agreed on a lot of things. So I said, “OK guys, go sit in a room and tell me what you agree we should do.” And it quickly came out that there were a lot of things that could be done that made good sense. And many of those had to do with treatment: treatment of drug addicts, of alcoholics and treatment for people on parole or probation who were having problems.

WHITMIRE: The justice think tanks, including a right-wing bunch of folks, got behind it because everything we do is very conservative. What's more conservative than preventing the next crime?

MADDEN: So at that stage we started turning the debate from one that says, “be tough on crime” to one that says, “be smart on crime.” And I will say that my conservative Republicans are all on board with that. They think we should be intelligent in how we use our money and how we produce results. “Tough”—you know, we have a lot of people that *choose* to go into our state jails instead of going through rehabilitation. But it's far better for our society if we can get rid of the drug habit than if they just serve a short period of incarceration and go back to drugs after they come out.

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***—Representative Jerry Madden
(R-Plano)***

WHITMIRE: I agree. The treatment I support ain’t a feel-good program. It’s to treat these people so they don’t go out on the street and commit another crime. For instance, DWI: we got 5,500 drunks locked up today, 5,500 people with three or more DWIs, which will get you prison in Texas. They go in and out and don’t get any treatment. They come out and they drink and drive again. What’s liberal about making a guy quit drinking—so he doesn’t kill you? So, there’s a law and order spin to being smart on crime. And since my early chairing of the Criminal Justice Committee in ’93, my whole belief has been that you cannot just be tough on crime. If you’re just tough, you’ll lose the battle.

MADDEN: We put together a bipartisan coalition on this. It was Republicans and Democrats, it was liberals and conservatives, all basically saying what it is we agree on, and those were the things that we were able to put into the budget bill.

WHITMIRE: We teamed up and it made a good package. I’m a Houston Democrat, pretty progressive guy, knew the ins and outs of the

criminal justice committee. And here Jerry was a new face: a Plano Republican. We helped each other because we’d get up and talk, and we said the same thing.

MADDEN: We also had in our pocket the work that we’ve done over the last several years in Texas on statistics and data gathering. So we had the numbers that could show what the probable success rates were going to be. The statistics are such that we could clearly show that we could operate these new programs for less money and we wouldn’t have to build new prisons. We showed, in fact, that the prison population probably will drop.

WHITMIRE: One last thing. I think the legislature is finally catching up with the public. I think the public’s been ahead of us for a number of years. In fact, I know they have because back in ’93 I would crisscross Houston and the state talking about a better way to do it, with a heavy emphasis on drug and alcohol treatment. And people in the audience just nodded their heads—they nodded their heads! But we couldn’t pull it off then because the legislature was afraid that someone was going to accuse them of being soft on crime. So, we’ve evolved.

There are hundreds of thousands of offenders under supervision in Texas and any one of them may commit one horrible act that creates a public backlash against this legislation. How do you deal personally and politically with a situation like that?

WHITMIRE: I was robbed, and begged for my life, at gunpoint in ’92. I mean the guy held my wife up and put a gun in my face. I gave him my wallet and just begged him to leave, and so he gets back in the car and leaves. I never pull in my driveway at night now without thinking about that. They captured the guy. And what’s amazing is that right in the middle of our debate last Spring, the parole board called

me and said the guy was up for parole having served half of his 25 year sentence and asked if I had an opinion: should he get out or not? And I said, “Well, that’s your call. Hopefully he’s a better person than the guy you first got. But I haven’t been around him for 13 years—that’s your call.” And they went ahead and paroled him. The parole board and others are going to be wrong occasionally, but that don’t mean you don’t make rational decisions.

MADDEN: Well, personally, if I’m totally convinced that we’re positively impacting a lot of lives, then I can handle that because I go in as an engineer: knowing that it’s statistical. And the statistics will clearly show that there will be failures. You know, we have to be prepared for that. I am prepared because I believe we can still get up and say that we have changed for the positive far more lives than we’ve changed for the negative.

WHITMIRE: I admit that what I say is not perfect, but it’s a hell of a lot better than what we’ve done for the last 50 years. Look, I have no sympathy for people that are violent, brutal offenders and where every indication is that they’ll do it again. I’d lock them up and throw away the key. But that is a small number compared to the 80 percent that are locked up that have a substance abuse problem.

MADDEN: Now, we should also point out that a lot of these programmatic beds are, in fact, in secured locations. While they’re going through these programs, these people are not going to be out on the street and many of them are in secured facilities.


Where do you hope to take this issue in the next session?

WHITMIRE: First of all, we’re staying on top of it. We got the plan authorized—that’s where we are now. But we’ve got to monitor the authorization and the request for proposals. We’ve got to make sure that the programs are in the right places and we’ve got to get some results. For instance,

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—Senator John Whitmire (D-Houston)

probation officers can revoke any probationer. I can do it any day of the week. I mean, all you’ve got to do is follow a probationer close enough and they’re going to either be drinking when they shouldn’t be drinking, or associating where they shouldn’t be. But what we’ve got to do is make the goal to make probation work.

MADDEN: Exactly. We’ve got to make sure that we get the results desired. We have got to be able to measure how well each program has really done. We’ve got to show that the programs are, in fact, effective. If we find some that aren’t, we’ve got to change them. But for those that are effective, we’ve got to be able to reinforce them. I honestly believe that we will find that the programs work, that there will be a greater demand for those programs, and that we’ll probably need to build more of these beds to carry the true need that we have in the State of Texas. If we can get up and show those results two years from now, show that we’ve taken the return-to-prison rate and cut it in half, what a huge thing that would be as far as cost and the number of lives that we’ve positively changed. There are a lot of people in the Texas Department of Criminal Justice that will respond positively if you give them a second chance. 

For an analysis of Texas’ prison population drivers and the anticipated fiscal impacts of recently adopted legislation, see “Justice Reinvestment State Brief: Texas,” a publication by the Council of State Governments Justice Center, a Public Safety Performance Project partner.