

# Parole Reform in Texas:

## Recommendations to Achieve Forward- Looking Justice



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The authors acknowledge and thank the many advocates, community members, and colleagues who contributed valuable insight and expertise.

A special thank you to those who shared their personal stories so willingly and openly, in the hope that the challenges they faced in finding their way home may ease for the those who come after.

This report reflects the research and views of the individual authors only. It does not represent the views of the William Wayne Justice Center for Public Interest Law, the Civil Rights Law Clinic, The University of Texas School of Law, or The University of Texas at Austin.

## **Parole Reform in Texas: Recommendations to Achieve Forward-Looking Justice**

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# Summary and Recommendations

The rate of incarceration in Texas is significantly higher than the rate in the United States, which itself is significantly higher than rates in other countries. Parole is a powerful tool of change that, along with other interventions in the criminal legal system, can reduce Texas' over-reliance on incarceration. Parole can increase opportunities to safely release more people who are ready and poised for successful reentry to serve the remainder of their sentence at home.<sup>1</sup> Rightly conceived, the determination to grant or deny parole should be solely forward-looking and based solely on the risk that an individual may commit a future serious offense.<sup>2</sup> Parole decisions should not be an opportunity to re-litigate the underlying conviction or sentence.<sup>3</sup>

This report identifies key opportunities for parole reform available in Texas. Studies consistently have shown that increased rates of incarceration and longer prison sentences do not produce better crime prevention outcomes, additional rehabilitation, or deterrence. Meanwhile, increased incarceration imposes inordinate, life-long harms on individuals, families, and communities, at substantial financial cost to state and local jurisdictions. While the changes proposed in this report aim to address key problems with Texas' parole system, the changes—no matter how vast—cannot undo the harm the criminal legal system imposes on our communities.

The Texas Legislature has taken halting steps over the last two decades to slow the rate of incarceration, including closing prisons and expanding community supervision.<sup>4</sup> The persistent and unnecessarily high incarceration rate in Texas demands more. Evidence-based parole methods can do much to combat these rates. Most notably, Texas can reduce barriers to parole for individuals deemed to be “lower risk.” As used here, “lower risk” means the individual (1) has a low risk of recidivism, or of committing a new offense on parole, and (2) has a low risk of being unsuccessful in meeting the conditions of parole. In other words, “lower risk” speaks to an individual's likelihood of succeeding on parole; it is explicitly forward-looking and not determined by an individual's past.<sup>5</sup>

Other changes include utilizing Texas' Medical Release statute to allow for compassionate release for all aging individuals and uniquely vulnerable populations regardless of medical need, applying accrued good conduct time to all parole eligibility calculations, prioritizing forward-looking factors in the parole decision-making process, and creating a more transparent and predictable process for individuals under review. These are just some of the best and most readily implemented methods for safely increasing release to parole.

The devastating human and fiscal impacts of leaving so many individuals incarcerated who could safely be released demand action. For 2024 alone, the Texas Department of Criminal Justice (TDCJ) has budgeted 3.74 billion dollars to cover its anticipated incarceration expenses.<sup>6</sup> Lengthy incarceration imposes severe, long lasting adverse consequences, including negative physical and mental health outcomes, on individuals, their families, and the community. Creating a transparent, streamlined, and predictable parole process for people ready to return home has positive returns for individuals, communities, and the state.

# Recommendations

## 1 | Provide for Administrative Release:

Administrative release ensures that incarcerated individuals are released as soon as eligible unless the parole board articulates with specificity the objective reasons to deny release. This system ensures that individuals who are most likely to succeed on supervision are released at the earliest date possible, without additional administrative barriers. Upon meeting certain pre-conditions, these individuals are automatically released at their first eligible date, without further parole board involvement.

- > The Texas Legislature should create a statutory administrative release process, applied retroactively, prescribing amount of time served before eligibility, disciplinary requirements, and case plan requirements.
- > The Texas Board of Pardons and Paroles (the Board) should:
  - Work collaboratively with TDCJ to create a streamlined process to identify individuals most likely to succeed on parole (categories 5, 6, and 7 on the Board’s current matrix).
  - Create an automatic approval process, removing administrative barriers and expediting prompt release for this pre-identified population to the greatest extent possible.

## 2 | Expand MRIS Eligibility:

Criminogenic risk declines with age and, as such, elderly individuals (age 55+) are much less likely to pose a public safety risk upon release. So too, the elderly population and individuals with disabilities have more unmet needs and pose significantly higher health care costs. Medically Recommended Intensive Supervision (MRIS) is Texas’ system of release comparable to other states’ compassionate release programs. Expanding MRIS eligibility to individuals who are of advanced age or who are uniquely vulnerable to experiencing harm inside TDCJ reduces needless incarceration for individuals who pose little recidivism risk.

- > The Texas Legislature should:
  - Make geriatric release automatic upon reaching age 55 and after serving a quarter of an individual’s sentence or fifteen years, whichever is less.
  - Expand MRIS to other uniquely vulnerable populations based solely on individual factors, without additional medical grounds.
  - Expand MRIS to individuals who have been convicted of aggravated offenses or offenses that include a deadly weapon.
- > The Board and the Texas Correctional Office for Offenders with Medical or Mental Impairments (TCOOMMI) should:
  - Correctly interpret the MRIS statute to allow for release based solely on elderly status or other unique vulnerability without additional medical grounds.
  - Improve coordination and communication between the Board and TDCJ to ensure people are aware of their possible MRIS eligibility and assign correctional staff to assist these individuals in navigating the MRIS process.

- Create an alternate screening form and eligibility guidelines for individuals referred to MRIS, which focuses on special factors regarding aging and other disabilities.
- > TDCJ should ensure that parole conditions imposed on individuals granted MRIS release take fully into account each individual's unique needs and limitations. Only parole conditions necessary for the surrounding community's immediate safety should be considered.

### 3 | Expand Good Conduct Time<sup>7</sup> Utilization:

Good conduct time is awarded for good prison conduct, which means compliance with prison rules and regulations and avoidance of disciplinary infractions, and sometimes for participation in required or available activities. All incarcerated persons accrue good conduct time regardless of offense, but only certain individuals may utilize their accrued credit. Allowing everyone who is incarcerated to use their accrued good conduct credit and increasing the amount of good conduct time granted means that all incarcerated people will be positively incentivized by the possibility of more quickly reaching their parole eligibility date.

- > The Texas Legislature should:
  - Allow individuals convicted of aggravated offenses to benefit from accrued good conduct time when calculating their parole eligibility date.
  - Vest accrued work time days upon completion of approved TDCJ programming.
  - Vest accrued good time days every 12 months.
- > TDCJ should adopt a policy limiting forfeiture of good conduct time only up to 50% of accrued time. Work time days should not be eligible for forfeiture.

### 4 | Prioritize Forward-Looking Factors in Parole Decision-Making:

Research shows that parole determinations produce more reliable outcomes when they are based on an individual's readiness for release. Post-offense facts such as current age, prison disciplinary history, and educational, vocational or treatment programs completed in prison should weigh more heavily than offense-related facts.

- > The Texas Legislature should:
  - Limit input from trial officials to forward-looking, post-sentencing information.
  - Limit input from victims and victims' family members to forward-looking, post-sentencing information.
  - Remove offense severity as a required consideration in parole decision-making.
- > The Board should:
  - Weigh dynamic factors more heavily than static factors in the parole determination process.
  - Limit input from trial officials to forward-looking, post-sentencing information.
  - Limit input from victims and victims' family members to forward-looking, post-sentencing information.
  - Remove offense severity from the Board's risk assessment matrix calculation.

## 5 | Enhance Transparency and Predictability in Parole Decision-Making:

In its current form, the parole process fails to inform individuals what they need to do to address board concerns or to achieve a different result, if previously denied. At best, the current system is perceived to be arbitrary and subjective; at worst, individuals and their families are left in limbo, for years or even decades, wondering what more is needed before they will be permitted to serve the remainder of their sentence on community supervision. Parole would be a more effective rehabilitative tool and better achieve its policy goals if individuals under review could learn from the parole board's deliberative process.

- > The Legislature should:
  - Render the Institutional Parole Officer (IPO) summary and Board file subject to Texas Public Information Act requests.
  - For all but the most serious offenses, limit setoffs to not more than 2 years absent objective and specifically identified safety concerns.
- > The Board should:
  - Provide the person under review with a copy of the Institutional Parole Officer (IPO) summary and the opportunity to correct any omissions or inaccuracies in advance of the Board's review.
  - Record IPO interviews so that individuals can factually challenge the accuracy and completeness of the information contained in the summary.
  - Provide people who are denied parole a copy of the Board file and a description of what concerns the applicant needs to address to ensure a different result the next time.
  - For all but the most serious offenses, limit setoffs to not more than 2 years absent objective and specifically identified safety concerns.

## 6 | Create a Parole Process that Promotes Long-Term Success:

Advocating for oneself in the parole process requires self-reflection and the ability to articulate one's future goals and to identify the resources necessary to achieve those goals. For individuals who have been stripped of their agency and individual dignity during years of incarceration, having access to information about parole and reentry planning resources can be a meaningful first step toward successful reintegration. At its best, the parole process can promote individual healing and long-term success.

- > TDCJ should:
  - Include detailed information about parole and the parole decision-making process in all TDCJ and unit orientation materials and handbooks.
  - Include information about the parole decision-making process and how to advocate most effectively on one's own behalf in every law library and make it freely available on individual tablets.
  - Collaborate with outside organizations to ensure that peer-led classes on reentry include information about the parole-decision making process and provide individual peer support to individuals seeking to submit documentation or other supporting information.

# Introduction: Incarceration, Excessive Sentences, and Parole

Parole<sup>8</sup> is an area of criminal legal policy ripe for change to reduce unnecessary incarceration, increase an individual's prompt and safe return to their home community, and preserve critical resources. As the most important "early release"<sup>9</sup> mechanism from prison, parole impacts a substantial portion of people who are incarcerated or on community supervision.<sup>10</sup> Parole policy and practice substantially impacts incarceration rates, with parole determinations leading to higher or lower numbers of individuals released.<sup>11</sup> Opportunities to change parole include changes to procedure in parole eligibility and decision-making, parole supervision and revocation, and the composition and practices of parole boards.<sup>12</sup>

In Texas, the footprint of incarceration has grown exponentially in the last four decades, and efforts to counter that growth in the last decade have produced only modest gains. Moreover, increasing the number of people incarcerated has not been shown to promote community safety.<sup>13</sup> The movement to abolish prisons, and the research it has spawned, has shown persuasively that the prison system is based on, reproduces, and further exacerbates historic and systemic inequalities. Parole can increase opportunities to safely release more individuals who are ready and poised for successful reentry into their communities and can mitigate the harms caused by lengthy incarceration.<sup>14</sup>

## The Growth in Incarceration

Beginning in the 1970s, the Texas Legislature enacted more and tougher criminal penalties, which prosecutors pursued aggressively to produce significant increases of the state prison population.<sup>15</sup> In the fifty years between 1970 and 2020, the Texas prison incarceration rate increased by 768%.<sup>16</sup> Most of that threefold increase occurred in the 1990s, over the course of just one decade.<sup>17</sup> These increases were the result of policy changes, not increases in crime rates.<sup>18</sup> Despite modest reductions in recent years and before the pandemic, Texas' prison population routinely exceeds 130,000,<sup>19</sup> and the state has a rate of incarceration well above the national rate, which itself far exceeds the rates of most highly industrialized nations.<sup>20</sup>

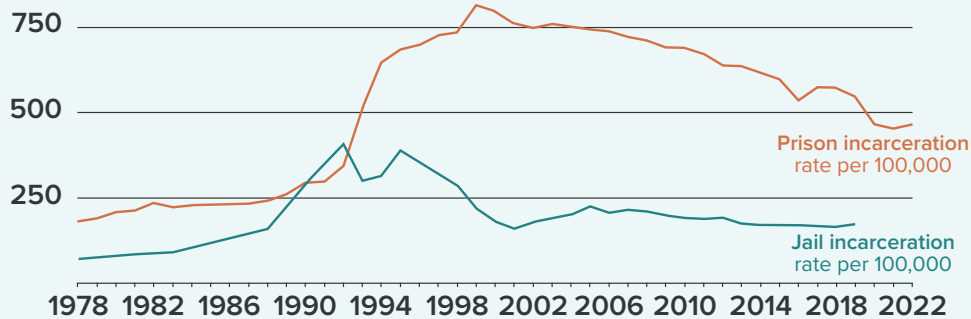
The expansion of incarceration has disproportionately affected African Americans, who make up 33% of the Texas prison population despite comprising only 12% of the state population.<sup>21</sup> Racial disproportionality occurs at all stages of the criminal legal system, including sentencing.<sup>22</sup> Causes of racial disproportionality include disparities in levels of police contact, pretrial detention based on money bail, as well as prosecutorial decisions.<sup>23</sup>

Even when prison admissions decline, the incarceration rate remains high because of excessively long sentences.<sup>24</sup> More than 33% of the on-hand prison population in 2023, for example, was serving a sentence longer than 20 years.<sup>25</sup> "Habitual-offender" statutes, the ever-expanding list of aggravated offenses, and other sentencing enhancement laws further exacerbate the problem.<sup>26</sup>



## Texas' prison and jail incarceration rates

Number of people incarcerated in state prisons and local jails per 100,000 state residents, 1978-2022



Jail populations were adjusted to remove people being held for federal and state authorities.  
For full sourcing see: [https://www.prisonpolicy.org/blog/2024/04/15/jails\\_update](https://www.prisonpolicy.org/blog/2024/04/15/jails_update)

## A Return to Justice Reinvention

Studies repeatedly have shown that increased rates of incarceration and longer prison sentences do not produce better crime prevention outcomes or deter crime long-term.<sup>27</sup> The over-reliance on imprisonment has resulted in little improvement by way of additional rehabilitation or deterrence.<sup>28</sup> Meanwhile, increased incarceration has imposed inordinate, life-long harms on individuals, families, and communities, as well as ever-increasing financial costs to state and local jurisdictions.<sup>29</sup> In recognition of these facts, the 80th Texas Legislature passed a series of "justice reinvention" reforms to slow the rate of incarceration, including closing prisons, expanding community supervision, and expanding vocational and educational training programs.<sup>30</sup> Today's unnecessarily high incarceration rates and ever-lengthening sentences, demand a fresh look at what will continue to move the reinvention needle.

Parole is a critical, and often overlooked, area of potential change to reduce over-incarceration. Specifically, making more people eligible for parole sooner, lowering the barriers to achieving parole for individuals most likely to succeed on parole, providing for compassionate release, and prioritizing forward-looking parole decisions are just a few of the best and most readily implemented methods for increasing release on parole, thereby reducing terms of incarceration in favor of promoting successful reentry into the community.<sup>31</sup>

## Benefits of Expanded Parole

The parole board should grant an individual parole when it determines that an individual's period of incarceration has met the sentencing goals of retribution, deterrence, and rehabilitation, and the individual is ready to re-enter society, with critical supports in housing, employment, and family, and community ties that will enable success. Parole does not shorten an individual's sentence or the burdens that attach but merely determines the setting in which that sentence can be safely and meaningfully completed.

The public health emergency of COVID-19 offers notable examples of jurisdictions successfully expediting the parole process to reduce the spread of infection in crowded prisons.<sup>32</sup> New Jersey, for example, passed legislation (S-2519) in 2020 that rewarded “public health emergency credits” to incarcerated people who were within one year of their maximum parole date.<sup>33</sup> These credits allowed eligible individuals to be released as much as eight months sooner.<sup>34</sup> The program cut the state’s prison population by 40% within 11 months and freed thousands, with a “negligible” effect on public safety and recidivism rates.<sup>35</sup> As of 2022, of those released, only about 9% were reincarcerated within one year, in comparison to the pre-pandemic one-year recidivism rate of 16%.<sup>36</sup>

High staff turnover and chronic understaffing present yet another public health emergency for Texas’ incarcerated population and for the individuals who work in its prisons. Not only does the lack of staff mean that persons who are incarcerated are less able to access the programming and rehabilitative supports, including medical care, which are needed for long-term success, but it also increases the risk of physical harm and mental strain for everyone who lives and works inside Texas prisons. Despite salary increases and the closing of three prisons in 2020, TDCJ staffing shortages continue together with the danger such shortages present.<sup>37</sup> TDCJ recognizes the risks that come with understaffing and identifies hiring and retention as its number one priority moving forward.<sup>38</sup>

Texas continues to have exceedingly long sentences, at great human cost to incarcerated individuals, their families, TDCJ employees, and the wider community, and at great financial cost to the state. The time is now for the Texas Legislature, TDCJ, and the Board to enact laws and policies that reflect recent advances in parole research and best practices.

“Getting denied parole was like pouring out the death of my dreams. With each denial, my hopes and dreams dimmed until there was nothing left.”

– **MONICA**

“Parole denial for the same reasons, year after year, is like telling people to line up for a race, but on the other side of the track, the finish line keeps getting erased and redrawn.”

– **RICHARD**

“I was denied parole multiple times because of things that would never change. Every time I came into parole review, my family and my children believed that I was coming home. After about the 5th denial, I became hopeless, and my mental health declined. I had no control over my future and lost all motivation to better myself.”

– **NATALIE**

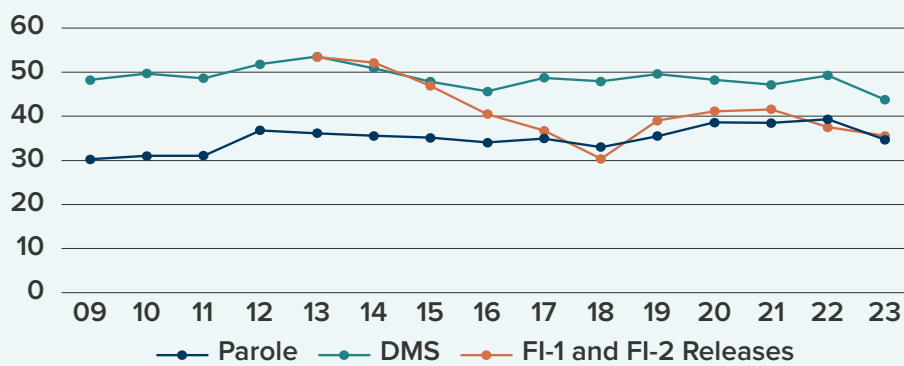
# Overview of Texas Parole<sup>39</sup>

The Texas Legislature created the first state Board of Pardon Advisors in 1893, precursor to today’s Board of Pardons and Paroles, to assist the governor in exercising pardon and release authority. Today, the agency exercises its duties pursuant to Article IV, Section 11, of the Texas Constitution, with the stated goal, regarding parole determinations, of “maximizing the restoration of human potential while restraining the growth of prison and jail population.”<sup>40</sup>

Over the years, the Board’s oversight of the parole process has shifted in structure and implementation, but the State’s basic premise that parole in Texas is a privilege and not a right remains true to this day.<sup>41</sup> In 1995, for example, the 74th Legislature abandoned mandatory supervision (i.e., automatic release to supervision when good time and time served equals the sentence) in favor of requiring the Board’s approval for all “early releases.”<sup>42</sup> A second major change was the legislatively mandated adoption of Parole Guidelines (Guidelines). Over the years, the Guidelines have undergone multiple revisions. The current Guidelines, which were finalized in 2022, include a Risk Assessment Instrument that lists both static and dynamic factors and an Offense Severity Classification with an assigned ranking for every statutory felony.<sup>43</sup>

These reforms were intended to create a more consistent and predictable parole process with the goal of maintaining public safety and limiting, to the greatest extent possible, the risk of paroling individuals who were deemed unsafe or not yet ready to succeed on community supervision.<sup>44</sup> The practical impact, however, meant precipitously declining rates of release to community supervision and a soaring prison population.<sup>45</sup> Reaching an all-time high of 79% in 1990, the parole approval rate declined to just 18% by 1999.<sup>46</sup> And while the rate did rise over the next decade, parole approvals have stagnated in the 30-35% range since 2008.<sup>47</sup> Likewise, discretionary mandatory supervision (DMS) releases have also remained surprisingly steady, typically in the 45 to 50% range versus 100% under the pre-1995 mandatory release procedures.<sup>48</sup> It is worth noting that these percentages have remained steady notwithstanding the increased vocational and educational opportunities inside TDCJ and the expanded access to proven reentry support available on the outside.

### Texas Parole & DMS Approval Rates 2009-2023



The enormous negative human and fiscal impact of leaving so many individuals incarcerated who could safely be released cannot be overstated.<sup>49</sup> The Board’s unduly cautious decision-making increases the state’s prison population while doing little to enhance public safety. Incarceration imposes severe, long lasting adverse consequences, including negative physical and mental health outcomes,<sup>50</sup> on individuals and their families and community.<sup>51</sup> And the longer the period of incarceration, the more severe and long lasting the consequences.

## The Parole Process

The Board consists of a presiding officer, who reports directly to the Governor, and six board members, each of whom is appointed by the governor with senate approval, as well as fifteen commissioners who are hired by the presiding officer. These twenty-two decision-makers are spread among seven Board offices. In addition to general release decisions, the Board is charged with deciding parole revocations and imposing special parole conditions, if any.

An individual is “in the Parole Review Process” for 4-6 months leading up to their parole eligibility date. During this time, they are interviewed by an Institutional Parole Officer (IPO), who is an employee of the Board. The interview is short and perfunctory – sometimes just a few minutes standing in a hallway - to collect the person’s proposed release address and to confirm completed programs. The IPO calculates the individual’s Risk Assessment Score and provides the Board with a brief summary. The calculated score and summary are not subject to the state’s open record laws and neither the individual under review nor their representative has an opportunity to review, fact check or respond to the IPO’s findings and recommendation.

In most cases, the Board decision is based solely on what is contained in the IPO case summary and in TDCJ’s institutional file.<sup>52</sup> There is no “hearing” per se, though an individual may seek permission for a representative to present their case directly to the lead voter in an interview typically lasting not more than 30 minutes, even for the most complex cases.<sup>53</sup> For individuals who are unrepresented (the overwhelming majority), Board review of the IPO summary and any additional information has been estimated to run closer to a “few minutes.”<sup>54</sup> The assembly line speed with which the Board must perform these reviews is not surprising in light of Texas’s large prison population and the Board’s statutory obligation to review and render a decision in each and every release determination. In 2023, Board members reviewed 77,484 IPO summaries relating to parole, DMS, and clemency; held 8,560 interviews; and conducted 19,519 parole violation hearings.<sup>55</sup>

The decision to release someone to parole is supposed to be guided by the Guidelines with each case assessed on its own merits and the Board releasing individuals when it is in “the best interest of society” and when they are “able and willing to fulfill the obligations of a law-abiding citizen.”<sup>56</sup> To help ensure these goals are met, the Board creates annual target approval rates and tracks outcomes by office and voter. These target approval rates can shift year-to-year at the Board’s discretion.

The Board must provide the individual under review with written notice of its decision and indicate a setoff date, meaning a date for reconsideration, if parole is denied. These setoff



periods increase depending on the initial offense and can be up to ten years into the future or not at all, meaning there will be no further parole review.

In addition to the above parole process, individuals who meet certain criteria may seek release under Texas' Medically Recommended Intensive Supervision (MRIS) statute.<sup>57</sup> This is a complicated process and rarely approved, as discussed below.

## Parole Eligibility

An individual's parole eligibility date depends on their sentence and the date of the offense. Current parole eligibility guidelines provide for any of the following:<sup>58</sup>

- (a) When calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less (non-aggravated offenses only).
- (b) For aggravated or "3g" offenses, after serving at least 50% of the sentence or 30 years, whichever is less, and a minimum of 2 years. Individuals in this category cannot use their accrued good time credit toward shortening the time they must wait to be considered for community supervision; they must serve 50% of their calendar time before they are eligible for an initial parole review.
- (c) After serving a minimum of 35 years if convicted of: (i) aggravated kidnapping with intent to commit sexual abuse, (ii) burglary of a habitation with intent to commit a felony, (iii) indecency with a child by contact, or (iv) aggravated sexual assault, or a minimum of 40 years if convicted of capital murder.<sup>59</sup>

Individuals who are allowed to benefit from accrued good credit time move from being parole eligible to being eligible for DMS (or mandatory supervision, depending on the date of the offense) when their calendar time served plus accrued good conduct time equals their sentence. For DMS candidates, the Board has two additional factors it must consider before approving release: whether the individual's "good conduct time is not an accurate reflection of [that person's] potential for rehabilitation" if it believes that "release would endanger public safety."<sup>60</sup> It also is within the Board's discretion to impose additional conditions with its decision (i.e., pre-release programming, sex offense registration, or GPS monitoring).

## Medically Recommended Release to Intensive Supervision

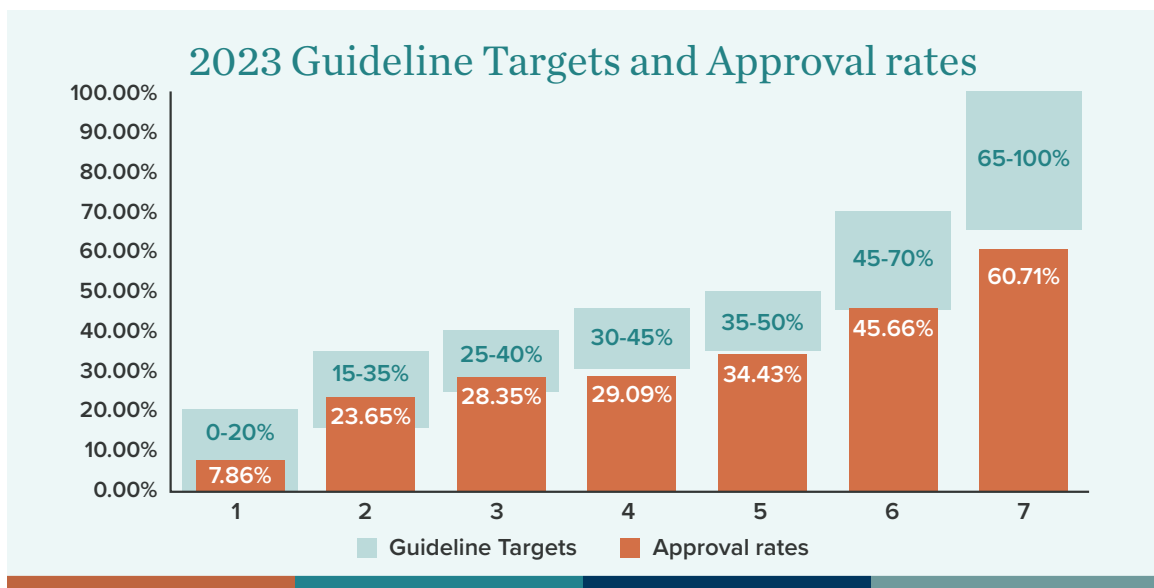
Originally enacted in 1997 and subsequently revised, the Texas Legislature created MRIS to permit the release of eligible individuals who were deemed to no longer be a threat to public safety due to age, illness, or mental health condition.<sup>61</sup> MRIS is Texas' answer to what other states call compassionate release, Texas' MRIS statute allows for expedited parole review of certain categories of incarcerated persons, including those with mental impairments and Intellectual or Development Disabilities (IDD), the elderly, terminally ill, or physically handicapped.<sup>62</sup> Notably, MRIS does not extend to individuals serving sentences of death or life without parole, as well as individuals serving aggravated offenses or who used a weapon as part of their offense, provided under Article 42A.054 of the Code of Criminal Procedure.<sup>63</sup>

MRIS eligibility and release determinations are based on a collaboration between TDCJ’s parole division, the Board, the Texas Correctional Office for Offenders with Medical or Mental Impairments, and Correctional Managed Health Care providers. To be a candidate for MRIS, one must either be referred directly by their facility’s Unit medical or mental health staff, make a written request themselves, or receive an “external” referral from family members, social service agencies, elected officials, or others.<sup>64</sup> TCOOMMI’s MRIS Program Supervisor then screens the candidate’s eligibility based on the general condition and offense criteria.<sup>65</sup> Next, a request is sent to the applicant’s Unit medical or mental health staff for a medical summary if they were not the original source of the reference.<sup>66</sup> The MRIS medical screening documents focus solely on medical diagnoses.<sup>67</sup> The emphasis on serious medical diagnoses in screening precludes MRIS candidates from asserting their statutory rights on the basis of age or other covered statuses.

If an individual is deemed eligible after screening, the Correctional Office will create a “parole case summary,” notify victims services, and complete any additional screening before sending all information collected to the Board’s MRIS Panel.<sup>68</sup> The Board makes the ultimate determination of MRIS parole, except for people with state jail felonies, who are reviewed by the sentencing judge. An MRIS decision includes a recommendation regarding the threat to public safety; an approval or denial of MRIS; and any additional special conditions that will be imposed on the individual, outside of the general condition that MRIS parolees remain under suitable medical supervision.<sup>69</sup>

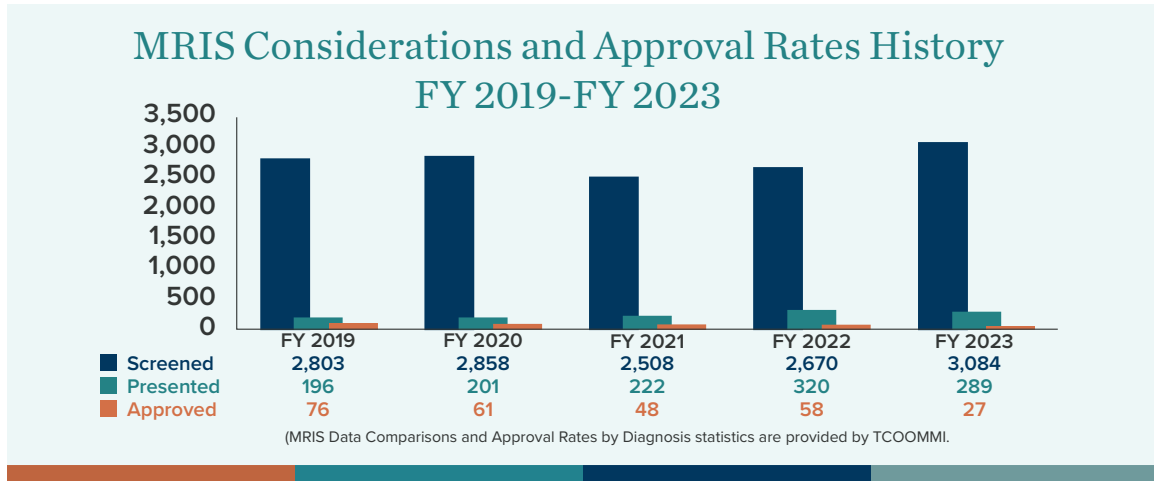
## Parole Trends

Releasing individuals to community supervision can have an enormous impact on the size of Texas’ incarcerated population. Restricted parole eligibility and overly cautious decision-making, however, limit this impact and leave Texans bearing the tremendous cost of incarcerating tens of thousands of individuals who could be living productive, dignified lives in their communities. Texas’ prison population remains the largest in the United States<sup>70</sup> with an incarceration rate roughly 28 percent higher than the national average.<sup>71</sup>



Reviewing legislative limits on when a person becomes parole eligible, there is a clear and consistent trend over the years of requiring longer sentences as well as requiring a longer portion of one’s sentence to be served before becoming eligible for parole.<sup>72</sup> So too, despite the creation of Guidelines and target release rates, the Board continues to exercise virtually unbridled discretion and its decisions are frequently perceived as capricious and unpredictable.<sup>73</sup> The result is that individuals eligible for parole in Texas now serve, on average, 62% of their sentence before releasing to community supervision.<sup>74</sup>

Parole approval rates have remained relatively unchanged for 15 years, notwithstanding TDCJ’s aging prison population and an increase in the percentage of individuals serving sentences for non-violent, low-level offenses.<sup>75</sup> A review of the Board’s release statistics illustrates just how few of these individuals will be approved for parole in any given year.



For example, in 2023, the Board approved only 61.7% of individuals who scored a 7 on the Board’s risk assessment scale (those deemed most likely to succeed on community supervision), below the targeted approval range of 65% to 100%.<sup>76</sup> Individuals scoring a 4 or 5 on the risk assessment, who make up more than half of all reviews annually, had their parole approved at an average rate of 29.09% and 34.43% respectively, also below the targeted approval rates (30-45% and 35-50% respectively).<sup>77</sup>

Compounding the chronically low release rate is the fact that even when a person is granted parole, more than likely they will be required to complete a course or remain in TDCJ for some period of months or even years prior to discharge. Of all parole approvals in 2023, only 15.68% received an FI-1 determination (discharge as soon after one’s eligibility date as possible), meaning that nearly 85% of the individuals granted parole that year remained incarcerated many months past the date of their approval.<sup>78</sup> On any given date there may be 15,000 or more individuals approved for parole but not yet released due to TDCJ delays in providing the programming that the Board deems necessary and that could easily be completed after an individual is released and on parole.

## MRIS Trends

The Board’s hesitancy to release individuals to community supervision who meet the Board’s own release criteria is even more apparent in its gross under-utilization of Texas’ MRIS statute, intended to expedite the release of vulnerable individuals who are most costly to incarcerate and who pose the least risk of committing new offenses.

Out of 3,084 individuals screened for MRIS consideration in 2023, only 27 (< 1%) were approved for release.<sup>79</sup> Of these 27 individuals, 20 were approved based on a terminal illness, 6 were released to long term care, and one person was released due to elderly status.<sup>80</sup> Not a single person was released to MRIS based on intellectual disability, physical handicap, or mental health status, despite the large number of individuals incarcerated in TDCJ who meet these criteria. These small numbers illustrate the chronic underutilization of MRIS as a mechanism to allow the prison system’s most vulnerable, least risky, and most costly residents to return home to family or specialized care where they can safely and humanely serve the remainder of their sentence.<sup>81</sup>

“People change and grow, yet keeping someone imprisoned beyond their need for rehabilitation only prolongs their suffering and hinders their reintegration. True justice lies in recognizing this change and supporting their return to families and communities, not in extending punishment that serves no one’s interest.”

– MONICA

“I have seen men serving life sentences who are working as field ministers. It is an admirable role to have; they are like social workers for the prison population. Instead of symbolic rewards, the real victory would be earning the trust of society anew.”

– RICHARD

“You can be a model inmate and still be denied parole. It’s why so many people give up. It feels useless. Utterly hopeless.”

– LINDA



# Expanding Access to Community Supervision: Five Opportunities for Reform

## Opportunity #1: Administrative Release

One considerable roadblock to being released to community supervision is the lengthy parole review process, with additional wait times for completing certain pre-release programs or requirements. Following the legislature’s abolishment of mandatory supervision, every individual regardless of offense must now go through a formal process with the Board, draining scarce resources and needlessly delaying release for parole eligible people.<sup>82</sup>

A second roadblock lies in the heavy burden placed on incarcerated individuals and their families to provide the Board with the additional information needed for the Board to approach its decision-making with a full and holistic understanding of the individual under consideration. Collecting support letters; creating detailed and comprehensive release plans, including employment and housing opportunities; and providing the personal context and background needed for the Board to better understand the motivations and challenges facing the person under consideration requires familiarity with the Board’s decision-making process and a high degree of literacy and English language proficiency. It also requires access to programs and people on the outside, which is often a huge, barrier for people who are incarcerated. We should not have a criminal legal system where people ready for successful release are kept incarcerated only because they are not equipped to navigate complicated and technical bureaucratic processes. This is patently unjust.

### 1 | Revisiting Historical Precedent.

Prior to the 1995 legislative reforms, release to mandatory supervision was automatic, with no Board decision required. Anyone serving time for an offense committed prior to August 31, 1996, and classified as eligible for mandatory supervision was released on their “minimum expiration date” when calendar time served and accrued good conduct time added up to equal their entire sentence.

Underlying the decision to abolish automatic release in favor of requiring Board determinations for parole, was the legislature’s concern that individuals were being released who were not ready to reenter their community safely. The adopted statutory language mandates that an individual may not be released on mandatory supervision if the assigned Board panel determines that: “(1) the offender’s accrued good conduct time is not an accurate reflection of the offender’s potential for rehabilitation, **and** (2) the offender’s release would endanger the public.”<sup>83</sup>

However, the legislation misunderstands the realities of what constitutes “low-risk” for purposes of parole. In fact, the majority of individuals who commit violent crimes do not do so again upon release, and have a lower recidivism risk than those who commit non-violent crimes such as drug offenses.<sup>84</sup> Many individuals who commit violent crimes are more likely to succeed on parole and

PROFILE  
**LINDA**

Linda was 42-years old, college-educated, and employed at the time of her first arrest. She was charged with a non-aggravated burglary of an abandoned cabin and theft/forgery of an elder. The elder's family did not want the charges brought and the elder testified to that at trial. Linda was nevertheless convicted on three counts, including one 9-year sentence.

Linda did everything right inside TDCJ. She never had a single disciplinary write-up, she worked as a peer educator, and she completed every single available program. She had no prior arrest history, no history of violence, and no history of substance use. She had strong outside support and a comprehensive reentry plan waiting for her on release to community supervision. Linda was as safe a bet for success on parole as anyone could be. Nevertheless, despite all of this, Linda was denied parole three times based solely on 2D (nature of the offense).

Linda did not have the resources to hire an attorney to help with her parole review. She did what she could on her own, submitting a personal letter, recommendations, and copies of her certificates, but the circumstances of her case were complicated and not easy to explain solely on paper. The repeated denials were especially surprising given that Linda should have scored exceptionally well on the Board's risk assessment matrix. If an administrative parole process had been in place at the time, Linda might well have been approved at her first parole review.

can safely reenter their communities much earlier than current legislation allows.<sup>85</sup> The legislation imposes burdens that needlessly drain agency resources and harm individuals, their families, and communities. It is time to revisit this change in the law to minimize the burdens imposed on the Board and free up agency resources to ensure in-depth reviews of the more complex cases. Instituting administrative release for individuals most likely to succeed on parole will increase certainty in terms of release timing and promote earlier and more robust pre-release preparation, and will save TDCJ resources currently spent incarcerating individuals ready to safely rejoin their community. Administrative release provides a level of certainty that in turn gives hope and affirms the humanity of the incarcerated individual.

## **2 | Targeted administrative release will significantly reduce TDCJ's prison population while maintaining community safety.**

In response to growing prison populations, many states have implemented administrative parole systems.<sup>86</sup> Administrative parole, sometimes called presumptive or objective parole, ensures incarcerated individuals are released as soon as eligible unless the parole board finds explicit reasons to not release.<sup>87</sup> This system ensures that individuals who are likely to succeed on supervision are released at the earliest date possible. Upon meeting certain pre-conditions, these individuals will be automatically released at their first eligible date, rather than having to go through the full parole review process.<sup>88</sup> In so doing, agency resources are used most efficiently and individuals who are most likely to succeed are released expeditiously. Automatic release at the first eligible date also mitigates some of the significant and lasting harm that incarceration imposes on incarcerated people, their families, and the wider community.

Oklahoma has created just such a path to parole.<sup>89</sup> Its administrative parole process eliminates two requirements of standard parole: the pre-review investigation and the appearance before the parole board. Instead, as soon as an individual meets eligibility requirements, their case is sent directly to Oklahoma’s Pardon and Parole Board for approval. To be eligible, the individual must have served 1/4th of their sentence, substantially complied with supervision eligibility requirements, and not received certain infractions within the time leading up to their eligibility date.<sup>90</sup> If eligible, the person is released on their parole eligibility date.<sup>91</sup>

An increasing number of states are moving or have moved in this direction, including Michigan, Maryland, Mississippi, South Dakota, New Jersey, Louisiana, Arkansas, and North Carolina.<sup>92</sup> While each system varies, the over-arching system of targeted presumptive release upon meeting certain pre-conditions remains the same. Individuals become eligible for administrative release after serving a portion of their sentence, dependent on the offense committed. Other conditions to be met before release include compliance with an initial case plan, agreement to supervision requirements, and lack of recent disciplinary actions. Upon notification that all requirements are met, the individuals are approved for release. By implementing these processes, states can swiftly release individuals deemed ready for reentry into society, saving agency resources while ensuring public safety.

### **3 | Targeted administrative release will save significant state resources and improve long-term reentry outcomes.**

Given the size of Texas’ prison population, the potential cost savings from expediting release for certain targeted individuals would be significant. For 2024, TDCJ budgeted more than \$3.4 billion for costs associated with incarceration – an increase of almost \$75 million from 2023. In contrast, the agency budgeted \$197.4 million for its anticipated community supervision costs – an increase of just \$12.3 million from 2023.<sup>93</sup> The significant cost differential between incarceration and parole grows even wider if one also accounts for the benefit to individuals and their families, as well as the wider community, from earlier reentry and increased employment, and the many other intangible benefits that come with reunified families and community reengagement.

Indeed, looking at 2023 data and considering just that population of individuals who fall at the lower end of the Board’s risk assessment components (i.e., scoring 5, 6 or 7), the number of individuals approved for parole (not DMS) could have increased by up to an additional 17,551 individuals.<sup>94</sup> The net savings to TDCJ from releasing that many additional individuals to parole could exceed \$496 million.<sup>95</sup>

In addition to the financial savings from targeted administrative release, such a system also benefits those who currently face having to navigate a complicated and lengthy Board process. Targeted administrative release eliminates the need for providing supplemental information to the Board. In so doing, it helps create a fairer and more predictable process that does not penalize the many people in TDCJ who face barriers to advocating for themselves through the Board process (e.g., behavioral health challenges, intellectual and developmental disabilities, low educational attainment, and language and financial barriers). Having a date certain for release enables this population and their families to focus on comprehensive reentry planning, identifying opportunities

and building the skills needed for successful reentry, rather than worrying about when or if they will be released and diverting limited resources—emotional, financial, and otherwise—into navigating the lengthy parole process.

### **Recommendations:**

- > The Texas Legislature should create a statutory administrative release process, prescribing amount of time served before eligibility, disciplinary requirements, and case plan requirements.
- > The Board should:
  - Work collaboratively with TDCJ to create a streamlined process to identify individuals likely to succeed on parole (categories 5, 6, and 7 on the Board’s current matrix).
  - Create an automatic approval process, removing administrative barriers and expediting prompt release for this pre-identified population to the greatest extent possible.

## **Opportunity #2: MRIS Eligibility**

### **1 | Fully Utilize MRIS for the Elderly**

The elderly population in U.S. prisons is rapidly rising. The number of people 55 or older in prison increased 500% between 1991 and 2021.<sup>96</sup> In 1991, incarcerated persons age 55+ made up 3% of total prison population; by 2021, they had grown to comprise 15%.<sup>97</sup> In Texas, at the end of 2017, people who were incarcerated age 55+ made up 13% of the state prison population, and the number of people who are incarcerated in that age group had doubled in the previous five years.<sup>98</sup> As of June 2023, TDCJ incarcerates over 20,000 people over the age of 55.<sup>99</sup>

MRIS unquestionably applies to allow release based on “elderly” status alone, defined in the policy as 65 years or older.<sup>100</sup> Despite the high cost and low criminogenic risk associated with elderly people, Texas has made little effort to utilize MRIS to expedite parole for the incarcerated elderly. The Board’s 2023 Annual Statistics Report shows that in the last five years, the Board has released just 8 people via MRIS based on the “elderly” category.<sup>101</sup> Moreover, while the 2023 Annual Statistical Report does not break down cases reviewed by eligibility category, it does indicate that the final approval rate for the approximately 2,500 to 3,000 individuals screened for MRIS has been less than 3% every year since 2019.<sup>102</sup> This data shows a vast underutilization of the “elderly” category for MRIS. TDCJ, TCOOMMI, the Correctional Managed Health Care providers, and the Board should update their policies to redefine the term “elderly” to include anyone 55-years or older and to utilize the “elderly” category—as the statute intended—to evaluate individuals for MRIS release based on advanced age, apart from medical condition or illness.

### **Broader use of MRIS for the elderly is appropriate, safe, and cost-effective.**

It is costly to incarcerate elderly people because their increased medical needs cost two to three times more than medical care for younger people who are incarcerated.<sup>103</sup> For example, elderly incarcerated people are more likely to “experience dementia, impaired mobility, and loss of hearing and vision.”<sup>104</sup> In addition, elderly incarcerated people are nearly three times as likely as younger persons to report having had a chronic condition or infectious disease.<sup>105</sup> High blood



pressure, diabetes, arthritis and heart problems are among the most common medical problems for this population, and they can require costly diagnosis, medication, and regular monitoring.<sup>106</sup> Moreover, elderly incarcerated people may need wheelchairs, walkers or canes, and they are more likely to suffer falls resulting in costly hip fractures.<sup>107</sup> States have had to retrofit and modify facilities to ensure the physical safety of this aging population.<sup>108</sup>

With greater medical needs, incarcerating the elderly poses higher health care costs to the state. According to TDCJ, in 2016, people age 55+ accounted for 43% of all of the prison system's hospital and specialty medical care costs, and geriatric incarcerated people access health care at five times the rate of the younger population.<sup>109</sup> In Texas, a substantial portion of this elderly population is serving long sentences, and TDCJ must use its funds to adapt physical facilities to their needs as they age.<sup>110</sup> The COVID-19 pandemic further revealed the critical importance of compassionate release because so many incarcerated people have ailments that make them at high risk for death or lasting long-term adverse health conditions because of coronavirus infection.<sup>111</sup>

Between 2012 and 2019, TDCJ's population over the age of 54 increased by 65%, notwithstanding TDCJ's overall 3% population decline in this same period.<sup>112</sup> And TDCJ's health care costs matched this growth, increasing 53% in this same time frame.<sup>113</sup> Today, individuals aged 55 and older constitute one-eighth of TDCJ's overall population and account for almost a half of TDCJ's hospitalization costs, which exceeded \$750 million in 2019.<sup>114</sup> As TDCJ's elderly population continues to increase, so too will medical costs associated with age and increased illness, more than wiping out any potential cost-saving measures, such as increased use of telemedicine and the use of discounted medications implemented by TDCJ's health-care providers.

At the same time, the elderly population has been found to be dramatically less likely to pose a public safety risk. The United States Sentencing Commission's 2017 report on aging and recidivism found that only "13.4 percent of offenders age 65 or older at the time of release were rearrested compared to 67.6 percent of offenders younger than age 21 at the time of release."<sup>115</sup> Categorically, across offense, time served, and education level, those over 65 were significantly less likely to re-offend.<sup>116</sup> Notably, the Vera Institute, relying on Justice Reinvestment Initiative recidivism data, found the trend to be even more pronounced, with "arrest rates drop[ping] to just more than 2 percent in people ages 50 to 65 years old and to almost zero percent for those older than 65."<sup>117</sup>

### **Define "elderly" for purposes of MRIS eligibility to include 55 years and older.**

As noted, Texas's MRIS provisions currently define "elderly" as an individual who is 65 years or older. While this may be a common threshold age requirement for many governmental purposes in the free world, 65 years old is overly restrictive for purposes of "elderly" MRIS consideration given both the compromised health status of TDCJ's geriatric population as well as the greatly reduced recidivism risks even for individuals significantly younger than 65 years old.<sup>118</sup> The Texas Legislature should amend MRIS criteria for "elderly" to expand eligibility to include incarcerated individuals who are 55 years and older. Doing so recognizes the unique challenges facing this population and is consistent with most corrections practices.<sup>119</sup>

PROFILE  
**THOMAS**

Thomas has been institutionalized in one prison setting or another since he was a teenager. He has now served almost 20 years on a 30-year sentence for aggravated robbery. Thomas suffers significant brain trauma from long-term substance use and debilitating behavioral health diagnoses. He has trouble comprehending and complying with prison rules and correctional officer expectations. And he is not able to advocate meaningfully on his own behalf, requiring assistance for something as simple as writing a letter or submitting an I-60 request.

When Thomas comes up for parole, he is inevitably denied due to his inability to participate in work, therapeutic programming, or to comply with TDCJ's rules. He requires the support of trained caregivers to succeed, but instead lives with the constant threat of violence and administrative segregation due to his inability to function in the general population. He has been the victim of sexual assault in prison and had his jaw broken during one altercation with a peer.

Despite his documented diagnoses and disabilities, Thomas has been denied MRIS review. According to one doctor, his conditions do not meet the required criteria, and his repeated infractions indicate a continuing danger to society. Such findings deny Thomas his right to live safely with the daily support and services that he needs to be able to successfully build a life for himself. Instead, Thomas will continue to languish in TDCJ at significant taxpayer expense, left to his own demons, risking further serious injury, and unable to engage in any of the programming that might help him to live safely in the free world.

## 2 | Expand MRIS Release for Individuals with Disabilities, Regardless of Medical Need

Incarcerated people with disabilities make up a large number of the prison population. Nationally, about 40% of people in state prisons have a disability.<sup>120</sup> Naturally, this population has some overlap with the population of elderly individuals who are incarcerated, but not all incarcerated people with disabilities are over 55. As such, Texas should ensure that MRIS release includes people with disabilities under age 55 as well. Disabilities include cognitive disabilities, ambulatory disabilities, and vision and hearing disabilities, with cognitive disabilities being the most represented type of disability in prison.<sup>121</sup> Given this large population, Texas has an opportunity to reduce the number of people incarcerated in the state by granting compassionate release to incarcerated individuals with disabilities.

### People with Disabilities Do Not Receive Adequate Services in Prison.

As discussed above, it is costly to care for the elderly population in prison. Similarly, it is costly to care for the needs of incarcerated people with disabilities. They may require ambulatory devices, auxiliary aids, and specialized programming. Many people with disabilities are refused equal access to prison programming due to a lack of accommodations. Refusal to provide equal access can impact their parole eligibility since eligibility is often contingent on completing certain programming. Without affirmative equal access, people with disabilities will linger in prisons despite being ready to succeed on parole by all other metrics.

HB 3116 established a task force to study persons being housed in Texas Jails with IDD.<sup>122</sup> The Bill Analysis for HB 3116 notes, people with IDD are more likely than their similarly situated peers to serve longer sentences without equal opportunity for probation or parole.<sup>123</sup> The taskforce established under HB 3116 found that

there appeared to be inadequate resources for individuals with IDD and advised that appropriate strategies and resources, tailored to address IDD needs, would improve the effectiveness of jails providing support.<sup>124</sup> But this has not happened.

Moreover, people with cognitive, ambulatory, and hearing and vision disabilities face unique challenges in prison. Not only may they be excluded from prison programming due to inaccessible formats, but they also face bullying, trauma, and lack of inclusive support systems. Given these circumstances, Texas should act to utilize the existing MRIS statute to release individuals with disabilities onto parole.

### **Texas' MRIS Statute Already Allows for Parole Due to Disability.**

MRIS, discussed above, allows for quicker parole review of certain categories of incarcerated persons, including those with mental impairments and IDD, the elderly, terminally ill, or physically handicapped.<sup>125</sup> Ensuring the MRIS statute is consistently and properly applied to individuals with disabilities will allow for the quicker release of those who have been identified as eligible under MRIS.

Studies on recidivism rates in people with IDD and mental health disabilities found that the recidivism rate was less than or equal to the rate of individuals without disabilities.<sup>126</sup> Rates could be even lower if proper supports and services are set up in the community prior to reentry. In 2020, individuals released onto parole into TCOOMMI case management had only a 10.4 percent recidivism rate, lower than those not under case management.<sup>127</sup> TCOOMMI provides prerelease screening and referral to services for people with disabilities being released from incarceration. The lower recidivism rate for individuals under TCOOMMI case management underscores the ability of persons with disabilities to succeed on parole under TCOOMMI. It also supports the expansion of TCOOMMI case management to cover all individuals eligible under the MRIS statute.

### **3 | Expand MRIS eligibility to include individuals serving sentences for aggravated offenses or those involving a deadly weapon.**

In Texas, an individual's eligibility for parole depends in part on the offense committed.<sup>128</sup> State law currently provides that most people who are convicted of so-called "non-aggravated" offenses become parole-eligible when they have served actual calendar time plus good conduct time equaling 25 percent of their sentence or 15 years (the lesser of the two).<sup>129</sup> In contrast, individuals who are convicted of "aggravated offenses" must serve a minimum of 50 percent actual calendar time of their sentence before becoming parole-eligible.<sup>130</sup> "Aggravated offenses" are certain offenses set out in Texas law that carry higher penalties upon conviction.<sup>131</sup> Additionally, a person convicted of an aggravated offense or an offense including a deadly weapon is only eligible for MRIS consideration if they have been diagnosed with a medical condition of terminal illness or long-term care.<sup>132</sup>

The Legislature can and should expand MRIS eligibility for individuals convicted of aggravated offenses or offenses involving a deadly weapon. This would result in broader use of MRIS. Since elderly people who are incarcerated pose low criminogenic risks,<sup>133</sup> expanding MRIS eligibility to elderly individuals and other uniquely vulnerable populations convicted of aggravated offenses would reduce medical costs without endangering public safety.<sup>134</sup>

#### 4 | Compassionate release programs are being implemented nationwide with great success.

A number of states have amended their compassionate release procedures in recent years to expedite the release of aging prison populations.<sup>135</sup> The Oklahoma legislature upon determining the degree to which the state's aging prison population was both costly and growing,<sup>136</sup> created the Aging Prisoner's Parole program.<sup>137</sup> This program expands parole eligibility to any person 60 years of age or older, who has served in actual custody 10 years or 1/3 of the total term of imprisonment (whichever is shorter), is deemed to pose a minimal public safety risk, and is not incarcerated for a violent crime.<sup>138</sup> By expanding eligibility based on factors such as age and time served, Oklahoma strengthened its commitment to releasing elderly individuals likely to succeed on parole.

Illinois passed HB 3665, also known as the Joe Coleman Medical Release Act, in 2021. The bill allows people who are incarcerated to petition for supervised release to the Prisoner Review Board if the person is facing a terminal illness or disability that is considered incapacitating.<sup>139</sup> The new law applies retroactively. Prior to 2022, compassionate release was feasible to individuals with serious medical conditions only through Executive Clemency, a process that showed to leave most, including Joe Coleman, without any true recourse.<sup>140</sup> Illinois successfully expanded its compassionate release program and the result has been that one-third of those requesting compassionate release are approved.<sup>141</sup> Though Illinois has much room to increase the number of people released under the Act, it has taken affirmative steps to allow for the expansion of compassionate release.

In addition, the federal system expanded compassionate release after Congress passed the First Step Act in 2018 and as a response to the COVID-19 pandemic in 2020. The federal system's standard is that a court can reduce an incarcerated person's sentence for "extraordinary and compelling reasons" under 18 U.S.C. § 3582(c)(1)(A), which included risks associated with COVID-19 under the Policy Statement at §1B1.13.<sup>142</sup> The First Step Act allows an incarcerated person to file a motion for compassionate release directly with a district court after exhausting administrative requirements. As a result of these changes, 3,608 were granted release from January 2020 to June 2021,<sup>143</sup> as compared to 145 in 2018.<sup>144</sup>

Reducing the population of elderly people through individualized parole is both safe and cost effective.<sup>145</sup> Researchers with the Vera Institute found that most states could strengthen compassionate release for elderly people by loosening stringent eligibility requirements and simplifying overly burdensome processes. Researchers suggest i) expanding eligibility to those with sentences currently barred, ii) expanding processes to be based on age alone rather than on subjective medical criteria, iii) making geriatric consideration automatic, and iv) speeding up the parole process by improving coordination between the Departments of Correction and parole board and assigning correctional staff to assist with applications, among other things.

Compassionate release is a significant way of recognizing the limitations of the current criminal legal system. By allowing people who are uniquely harmed by incarceration to transition safely back to community-based care, compassionate release begins the restoration of dignity for elderly and disabled people.

## 5 | MRIS screening rubrics should specifically address factors unique to aging and vulnerable populations.

To ensure that the largest number of elderly individuals are released safely, a geriatric-specific MRIS screening rubric should be created to incorporate the kinds of special concerns and factors that relate to an aging population, such as dementia, mobility impairments, vision and hearing loss, degenerative conditions (i.e., Arthritis, Parkinson's or Osteoporosis), and other natural aging process that makes complying with many institutional rules and requirements increasingly difficult. Likewise, MRIS screening rubrics should specifically address and account for the unique needs and barriers faced by the other incarcerated populations covered by the statute, namely, persons living with chronic and severe mental health needs, physical handicaps, and intellectual disabilities.

In advance of release, TDCJ should assist in identifying the supports necessary to ensure the individual can return to their community safely. Moreover, as noted above with respect to burdensome parole procedures, current MRIS procedures impose significant hurdles in terms of applying for relief as well as the requirements that must be met before MRIS is granted. TDCJ should create mechanisms for quick identification of eligible individuals and the screening process should be streamlined to ensure the greatest number of these individuals are released as quickly and seamlessly as possible.

### Recommendations:

- > The Texas Legislature should:
  - Make MRIS eligibility automatic upon reaching age 55 or after serving a quarter of an individual's sentence.
  - Expand MRIS eligibility to elderly persons and persons with other MRIS-eligible disabilities who have been convicted of aggravated offenses or offenses that include a deadly weapon.
- > The Board and TCOOMMI should:
  - Correctly interpret the MRIS statute to allow for release based solely on elderly status, IDD, and disability without additional medical grounds.
  - Improve coordination and communication between the Board and TDCJ to ensure all elderly people and people with disabilities incarcerated are aware of their MRIS eligibility and assign correctional staff to assist this population in navigating the MRIS process.
  - Create alternate screening forms and eligibility guidelines for individuals eligible for MRIS review and that focuses on special factors regarding the elderly and disabled.

## Opportunity #3: Good Conduct Time

Texas prisons remain packed and costs related to incarceration continue to drain the state's budget.<sup>146</sup> One way to safely reduce both the financial burden as well as the constant safety risk to both staff and incarcerated populations posed by TDCJ's severe staffing shortages, is to expand the use of good conduct time, both by allowing more individuals to benefit from accrued good time credit as well as by safeguarding good conduct time already earned. Doing so will enable individuals to reach parole eligibility dates quicker, reduce prison overcrowding, cut expenditures for the Texas Legislature, and create meaningful incentives for all incarcerated individuals.

### 1 | Expand the use of good conduct time to further incentivize rehabilitation and positive behavior, and to reduce operational costs.

Good conduct time allows individuals to incrementally earn time off their statutorily mandated term of incarceration.<sup>147</sup> It is awarded for good prison conduct, which means compliance with prison rules and regulations as well as avoidance of disciplinary infractions, and sometimes for participation in required or available activities.<sup>148</sup> Although good conduct time accrues automatically regardless of offense of conviction, not all incarcerated individuals benefit from the accrued time.<sup>149</sup>

The amount of good conduct time available to individuals varies considerably by state jurisdiction and offense type.<sup>150</sup> In 2011, the National Conference of State Legislatures reported that 44 states had either good conduct time or earned time credit systems for their correctional populations.<sup>151</sup> States' definitions of good time vary, their methods of calculations differ, and some states may exclude certain offenses or have tiered systems of good time credits dependent on the offense.<sup>152</sup>

Once awarded, good conduct time may be forfeited for misconduct.<sup>153</sup> In most states, any criminal offense committed in prison or a serious violation of prison rules will suffice.<sup>154</sup> In Texas, TDCJ may forfeit any or all of an individual's accrued good conduct time if "the inmate commits an offense or violates a rule of the department."<sup>155</sup> In addition to forfeiture for any prison rule violation, forfeiture is required for individuals who contact minor victims or their family members.<sup>156</sup> Good time may also be forfeited in Texas for filing a "frivolous lawsuit."<sup>157</sup> Although corrections officials may suspend good conduct time in lieu of forfeiture in some instances, once forfeiture is ordered, corrections officials may not later restore good conduct time.<sup>158</sup>

### 2 | States are reforming good conduct statutes to reduce prison populations and related operational costs.

Faced with perennially high prison populations, states are looking to good conduct time law reform as one means for reducing ever-increasing operating costs. For example, in 2017, Maryland reformed its good conduct time statute in several ways. Individuals sentenced to prison in Maryland are entitled to earn diminution of confinement credits (Maryland's version of good conduct time) that reduce the length of incarceration.<sup>159</sup> In 2017, the state expanded eligibility for diminution credits. Now, the only individuals who may not receive diminution credits are those who are serving a sentence for first or second degree rape or sexual offense against a victim under age 16, those who are serving a repeat sentence for a third-degree sexual offense against a victim under age 16, and those imprisoned for a lifetime sexual offender supervision violation.<sup>160</sup> All other individuals are eligible for varying degrees of good conduct time—regardless of offense—as long as they are not serving a life sentence.<sup>161</sup>



PROFILE  
**MARIA**

Maria was 21 years old and mother to 2 toddlers when she was sentenced to 8 years in TDCJ for intoxicated manslaughter. She would have to serve 50% of her sentence before being parole eligible.

Maria spent two years on pre-trial bond and another 10 months on an appeal bond without incident. Her first three years inside TDCJ also went well. She attended college, worked, participated in programming, and received just 1 minor write-up (out of place). Things quickly changed, however, after Maria was falsely accused of attempted assault on an officer, written up, and sent to administrative segregation months before her first parole review. It was at this point the “whole trajectory of [her] time changed.”

Following her time in administrative segregation, Maria was sent to the G5 unit because there was no space for her in the G4 unit. Life in a G5 unit is rough and Maria had to learn how to survive and adapt to her new surroundings. As a result of her housing and what that meant for her safety and survival, Maria went from having 1 write-up in her first 3 years to receiving 19 cases in 6 months.

Maria’s first parole review was at the end of year 4, in the midst of this downward spiral. Not surprisingly, she was denied. Had Maria benefitted from all the good time and work time credit accrued during her first three years of incarceration, she likely could have avoided the troubles that flowed from life in the G5 unit. Maria was released to parole after serving over 80% of her sentence, years longer than needed to ensure she could serve her sentence safely back home with her young children.

In addition, Maryland also allows certain diminution credits to vest, meaning that once such credits have been received, they can no longer be revoked. Under Maryland law, diminution credits awarded for work tasks and education cannot be taken away once granted.<sup>162</sup> In other words, whenever a person receives diminution credits for “manifest[ing] satisfactory performance of assigned work tasks”<sup>163</sup> or “manifesting satisfactory progress in or completion of” a range of educational programs,<sup>164</sup> revocation of such credits cannot be used as a form of disciplinary action. These reforms enable more individuals to complete their prison sentences more quickly, saving taxpayer dollars.

Texas should follow Maryland’s example and expand its good conduct time policies. Under current law, individuals may earn a certain number of days of good time per 30 days calendar time served.<sup>165</sup> The specific number of days one can earn depends on that person’s prison classification and ranges from zero to 30 days per month.<sup>166</sup> Individuals who are convicted of aggravated offenses accrue good time on paper but are precluded by statute from ever benefitting from the accrued time for purposes of calculating their release date.<sup>167</sup>

Incarcerated individuals may accrue additional good conduct time when TDCJ determines the individual is “actively engaged in an agricultural, vocational, or educational endeavor, in an industrial program or other work program, or in a treatment program, unless the department finds that the inmate is not capable of participating in such a program or endeavor.”<sup>168</sup>

As noted above, some individuals in TDCJ are statutorily barred from ever benefitting from their accrued time due to the nature of their offense and many other individuals lose accrued good conduct time through TDCJ’s antiquated and highly subjective disciplinary process. Texas can and should expand the ability to benefit from

accrued good conduct time to further long-term rehabilitative goals. Better policies involving the use of accrued good conduct time will reduce prison costs and get more individuals out on parole faster—without increased risk to public safety.

### **3 | Texas should allow individuals convicted of aggravated offenses to benefit from their accrued good conduct time.**

Allowing individuals convicted of aggravated offenses to benefit from their accrued good conduct time—as is done in Maryland—would enable them to reach parole eligibility dates faster and reduce the amount of time spent languishing in prison. The Texas Legislature had the opportunity to pass such a reform in 2023, under H.B. 1064, which died in a House committee.<sup>169</sup> This change should come up for a vote again.

Regardless of the offense, individuals should be given the opportunity to be rewarded for good conduct while in prison. Awarding good conduct is affirming to the individual who is incarcerated and promotes rehabilitation. With 61% of TDCJ’s prison population serving sentences for aggravated offenses, this expansion will have an immediate and significant impact on spending and enable quicker release for those most ready to safely return home.<sup>170</sup>

### **4 | Good conduct time should permanently vest upon program completion or one year after accrual, depending on the type of good conduct time at issue.**

Like Maryland, good conduct time in Texas should vest—or be secure from forfeiture—for individuals upon the completion of beneficial prison programming. If accrued work time days were ineligible for revocation, it would provide incarcerated individuals with much-needed protection and a faster route to successful reentry into society. Similarly, vesting accrued good time days after 12 months, and never allowing forfeiture of more than 50% of accrued good time, would incentivize the TDCJ population on a forward-looking basis while also acknowledging the Board’s particular focus on disciplinary incidents from the preceding year.

Revoking accrued good time creates a chilling effect and reverses the incentive to engage in good conduct. Good conduct time, without the looming threat of reversal, incentivizes rehabilitative efforts, progress, and positive conduct. Good conduct time gives hope to the person who is incarcerated. It gives meaning to their lives and efforts in prison. Reforming good conduct time laws will allow individuals to obtain parole more quickly and reduce prison populations, while also promoting community living skills.

## **Recommendations**

- > The Texas Legislature should:
  - Allow individuals convicted of aggravated offenses to benefit from accrued good conduct time when calculating their parole eligibility date.
  - Vest accrued work time days upon completion of approved TDCJ programming.
  - Vest accrued good time days every 12 months.
- > TDCJ should adopt a policy limiting forfeiture of good conduct time that has not yet vested only up to 50% of accrued time. Work time days should not be eligible for forfeiture.

## Opportunity #4: Forward-Looking Factors

### 1 | Parole determinations should be based on forward-facing factors and de-emphasize prior offense history.

Research shows that parole determinations produce more reliable outcomes when they are based on an individual's likelihood of committing a serious offense after release and their readiness for release.<sup>171</sup> The use of actuarial risk assessments can help parole authorities to better assess future risk based on objective and individualized facts, and not just general personal judgment.<sup>172</sup> When properly calibrated, these assessments better enable parole determinations based on an individual's current level of risk, rather than prior offense history.<sup>173</sup> Recognizing this, more states are using risk assessments.<sup>174</sup> In addition, states have learned that they must monitor outcomes to ensure their risk assessments are not incorrectly relying on hidden biases on race, ethnicity and gender.<sup>175</sup>

Risk assessment tools analyze both static and dynamic factors relating to risk. Static risk factors relate to the individual's prior history, such as age at first incarceration, prior incarceration, employment history, and the underlying offense.<sup>176</sup> By contrast, dynamic risk factors concern post-offense facts, such as current age, prison disciplinary history, and educational, vocational or treatment programs completed in prison.<sup>177</sup> Focusing on dynamic, post-offense factors helps better predict an individual's *current* level of risk and readiness for release.<sup>178</sup>

### 2 | Texas over-relies on static factors in parole determinations.

The Board utilizes written parole guidelines that provide the basis for parole determinations.<sup>179</sup> These guidelines consist of two major components that interact to provide a single "parole guidelines score" that is supposed to be a key determinant of when parole should be granted to an individual.<sup>180</sup> The first component is a Risk Assessment Instrument that weighs both static and dynamic factors associated with the offender's record.<sup>181</sup> Some static factors that the Board weighs include age at first admission to a correctional facility, prior incarcerations, and employment history.<sup>182</sup> Such static considerations rely heavily on facts that are rooted in racial disparities and class inequality. The Board also considers dynamic factors including current age, prison disciplinary conduct, and training programs completed during incarceration.<sup>183</sup> The second component utilized in making parole determinations is an offender's Offense Severity Class.<sup>184</sup> The Board has assigned an Offense Severity Ranking, yet another static factor, to every felony offense under Texas law.<sup>185</sup> Offense Severity Classes range from Low, for non-violent crimes such as credit card abuse, to Highest, for capital murder.<sup>186</sup> The two components of the guidelines – Risk Assessment and Offense Severity – are then merged into a matrix that creates the offender's Parole Guidelines Score that weighs both components equally.<sup>187</sup> The guidelines are meant to "aid" the Board's parole determinations but do not create "a right or expectation" to parole in any particular case.<sup>188</sup>

The Board's process over-relies on the static factors in three ways. First, the numerical score tilts toward the static factors because an individual "receives 0-10 points on Static Factors and 0-9 points on Dynamic Factors." Second, the Board automatically notifies trial officials, judges, district attorneys, sheriffs, and police chiefs of the opportunity to provide input as to whether parole should be granted to an individual.<sup>189</sup> In almost all such instances, the information provided will be entirely

PROFILE  
**MONICA**

Monica was 18 when she was arrested for the first and only time in an incident where someone lost their life. She was a community college student who was sentenced to 20 years for murder/manslaughter.

Monica spent the next 19 years incarcerated despite her lack of prior criminal history, tremendous family support, and educational achievements, earning her college degree while inside. She never received a single disciplinary case. She was also lucky in that she had the resources to hire one of Texas' most experienced parole attorneys to represent her in her parole reviews.

Notwithstanding Monica's extraordinary successes and strong evidence of her ability to return home safely, she was denied parole 5 times. Every single time, denial was based solely on one static factor: 2D (nature of the offense). Her first two denials each resulted in 3-year set offs; her last three denials each resulted in 1-year set offs. Seemingly, there was nothing she could do to produce a different result. Monica was eventually discharged to community supervision with just 7 months left on parole. Even then, she could have come home earlier but was required to do a pre-release six-month program.

backward-looking, focusing on such factors as the underlying offense, charging decisions and related negotiations, and prior criminal history. What this backwards approach fails to consider is that the underlying offense has already been addressed through the sentence. Parole decisions should not be an opportunity to double punish.

Third, the Board considers submissions by victims or their loved ones that may be backward-looking. Pursuant to state law, the Board must also notify the victim, the victim's guardian, or a close relative of the deceased victim that parole is being considered.<sup>190</sup> The Board must allow one person to appear before a Board Member or Parole Commissioner to present a statement of the person's views about the offense, the offender, and the effect of the offense on the victim.<sup>191</sup> The victim may also choose to provide a written statement to the panel.<sup>192</sup> Currently, the Board does not limit the victim impact statements or submissions to post-offense information.

### **3 | The Board should shift its focus from static to dynamic factors.**

By weighing dynamic risk factors more heavily than static factors, the Board can make parole determinations that more accurately predict a person's likelihood of succeeding on parole and safely increase the number of individuals who receive parole.

First, the Board should focus more heavily on the dynamic, post-offense factors. It should do so by modifying the current allocation of points between Static (0-9 points) and Dynamic (0-10 points) Factors such that Static Factors are weighted less, and Dynamic Factors are weighted more in calculating the final Risk Assessment score. Researchers agree that dynamic factors, such as the completion of treatment and educational or vocational programs while incarcerated, have a

strong correlation with reducing recidivism.<sup>193</sup> Second, the Board should adopt a uniform set of questions for prosecutors, judges, and law enforcement who want to offer input, and the Board should explicitly seek post-conviction information that is more relevant than information related to the underlying offense or prior criminal history.<sup>194</sup> Third, and similarly, the Board should narrow the focus of victim statements in parole determinations to post-conviction information.

Finally, the Texas Legislature should decrease the influence of static factors by calling for the removal of offender Offense Severity Classes in the formula utilized to make parole determinations. Offense Severity Classes do not adequately assess the future risk of an incarcerated individual because the offense is an immutable part of the past. This, coupled with the fact that Offense Severity Class makes up half of an individual's parole guidelines score, creates inequitable results. As currently applied, considering an individual's Offense Severity Class serves to double count this static factor as far as the Risk Assessment Instrument already assigns points based on the individual's commitment offense, the charging and sentencing of which also takes into account the severity of the underlying conduct.

## Recommendations

- > The Texas Legislature should:
  - Require the Board to more heavily weigh dynamic factors over static factors.
  - Limit input from trial officials to forward-looking, post-sentencing information.
  - Limit input from victims and victims' family members to forward-looking, post-sentencing information.
  - Remove offense severity as a required consideration in parole decision-making.
- > The Board should:
  - Weigh dynamic factors more heavily than static factors in the parole determination process.
  - Limit input from trial officials to forward-looking, post-sentencing information.
  - Limit input from victims and victims' family members to forward-looking, post-sentencing information.
  - Remove offense severity from the Board's risk assessment matrix calculation.

PROFILE  
**HEATHER**

Heather was arrested for aggravated assault when she was 26-years old. It was her first arrest and she served two years successfully on pre-trial bond. She agreed to an open plea deal based on her attorney's assurance that, at worst, she was looking at a 2 to 10-year sentence. Instead, she was sentenced to a 20-year aggravated sentence, meaning she would have to serve 50% of her sentence before coming into parole review and could not benefit from accrued good or work time credit.

Heather had a four-year degree and had worked professionally. While in TDCJ, Heather did everything she could to continue to grow and learn. She describes her time inside TDCJ as a time of self-reflection and a chance to work on herself. She earned a second degree, had excellent on-the-job training credentials, and received just one major disciplinary write-up (possessing perfume) in year four of her sentence.

Heather did not have an attorney represent her in her parole review, but she had a stellar record inside TDCJ, had met every expectation, and so much more. Even so, Heather was denied parole at her first review and set off for five years based on the nature of her offense and a pattern of offending - a pattern based entirely on the one offense for which she was sentenced. She was subsequently denied parole four more times, based solely on the nature of her offense.

Heather released to parole with just 9 months left on her 20-year sentence and has had no contact with the legal system since. Had the Board focused on her record of success inside TDCJ, she could have returned home and put her work ethic and professional skills to productive use 10 years earlier.

## Opportunity #5: Transparency and Predictability

Texas's current parole process is opaque. Individuals in the parole review process are given little to no information about what they can do to effectively prepare for parole review, to address any past parole board concerns, and to improve their chances of parole in the future. Transparency should be a cornerstone of the parole process because it ensures outcomes that are accurate, fair, and consistent with public safety. When people are deprived of the resources they need to effectively advocate for themselves, the Board lacks the information needed to determine more accurately and fairly who is a strong candidate for release. And the lack of transparency means that the prospect of being granted parole loses its value at incentivizing good behavior and the productive use of one's time while incarcerated.

A parole attorney can partly compensate for this opacity because they understand how the process operates and typically are granted an interview with the lead voter.<sup>195</sup> But parole attorneys can cost thousands of dollars, a price tag that is prohibitive for most incarcerated people, who largely come from marginalized and under resourced communities. Absent legal representation, family members and their incarcerated loved ones are left to figure out on their own how parole decision-making works and what they can do to influence the process. Moreover, unlike attorneys, family members are rarely afforded the opportunity to speak with the lead voter. The result is a process that systematically burdens people who are poor and fails to incentivize people to grow and improve.

The current decision-making process unfairly disadvantages individuals who cannot afford legal representation and fails to provide any guardrails



PROFILE  
**RICHARD**

Richard spent decades cycling in and out of prison due to substance use. All of his offenses were non-violent and non-aggravated, but the sentences were enhanced due to his multiple convictions. The last time he went to prison, he was sentenced to 30 years for a non-aggravated evading arrest charge. By then almost 50-years old, Richard was determined to “do things differently.” He had experienced success in his community and knew that he had much to contribute working on behalf of others who had been similarly impacted by the criminal legal system.

Richard immediately went to work to “figure out” what he needed to do to be approved for parole so that he could return to his community work. He spoke with the older men in his unit to learn from their experience, he read everything he could about parole, learning about static and dynamic factors. He read case law and paid for a subscription to the Parole News Magazine. He organized peer study groups to discuss parole and to encourage himself and those around him to keep moving forward.

Remarkably, Richard was approved for parole at his first review. He was lucky to have incredible outside support, but he also was lucky to be a smart, educated, and driven individual who could teach himself about the parole process and advocate meaningfully on his own behalf. Most people do not arrive at TDCJ with these same advantages. Even so, with proper instruction, encouragement, and access to the resources needed to engage in meaningful self-advocacy, thousands of other incarcerated individuals can experience similar success and return safely to their families and communities much earlier.

to ensure that the information received by the Board and on which it will base its decision is both complete and accurate. The overwhelming majority of criminal convictions come because of plea bargaining, meaning no trial record exists from which the Board might learn critical mitigating details of the convicted individual’s personal history or the individual circumstances surrounding a particular offense or string of offenses. It is left to the Institutional Parole Officer to gather all of the relevant information that goes into a parole determination, including personal history and individual circumstances but, by necessity due to overwhelming caseloads, IPO interviews are short – often just a few minutes and conducted in non-confidential settings - and focused on the most basic information, such as the individual’s planned release address and confirming completed programming.<sup>196</sup> There is little, if any, opportunity for the individual under review to provide the IPO with the kind of mitigating details that an attorney can bring to light during an interview with the lead voter and no opportunity whatsoever to review the IPO’s summary to confirm the accuracy or completeness of the information gathered. The Board is responsible for making an informed and individualized decision for each case under review, an impossible task if it is reviewing partial information and information gathered exclusively from law enforcement, district attorneys, and other system actors.

Today, when a person is denied parole they are notified of the ground(s) for denial, but without any individualized explanation of the Board’s concerns or what they can do to address those concerns going forward. Many denials are based solely on static factors: offense history, nature of the offense, drug or alcohol involvement, adjustment during periods of supervision (i.e., prior revocation from probation or parole), time served.<sup>197</sup> This fact makes it all the more important for the Board to identify what the individual under review can do to overcome the Board’s

assumptions about how past conduct may inform current behavior and to highlight more effectively the personal growth and development they have experienced while incarcerated. Receiving the same denial vote year after year, based on factors that can never change is discouraging at best and can lead to self-destructive and dangerous behaviors.

Failure to be transparent about the reasons for denial undermines parole’s rehabilitative or incentivizing benefits. The Board should provide the person who is incarcerated with a copy of its complete file, including, most importantly, the IPO summary and any case notes taken during the voting panel’s review. In addition, the Board should provide specific guidance explaining what the person can do differently before their next parole review. Finally, the Board should be limited to not longer than two-year offsets absent extraordinary grounds. These changes will allow a person who is denied parole to learn from the Board’s decision and to address concerns in advance of their next review cycle.

### Recommendations:

- > The Board should:
  - Provide people who are incarcerated with a copy of the IPO summary and the opportunity to correct any omissions or inaccuracies in advance of the Board’s review.
  - Record IPO interviews so that individuals can factually challenge the accuracy and completeness of the information contained in the summary.
  - Provide people who are denied parole a copy of the Board file and list of factors that the applicant needs to address to ensure a different result the next time.
  - For all but the most serious offenses, limit setoffs to not more than 2 years absent objective and specifically identified safety concerns.

“The biggest problem with parole is that the Board does not interview you in person. Their decisions are based on what they have read, and humans are more complex than that. All their questions aren’t going to be answered by that report they are reading.”

– **HEATHER**

“As currently implemented, parole is not about the future; it is about endlessly revisiting the mistakes of the past, mistakes that time cannot alter, and that change cannot undo.”

– **MONICA**

“The Texas parole system is like navigating a maze with trap doors. You have to feel your way through, without any certainty of which one it is.”

– **RICHARD**

# Expanding Opportunities for Community Supervision Will Promote Long-Term Success

At its best, a fair and predictable parole process can offer individuals hope and incentivize them to engage fully and intentionally with the educational and work opportunities, and self-reflection needed to create a new path forward for themselves. Consistent with this goal, the Board’s own vision statement directs that it “shall render just determination in regard to parole release and revocations, thereby maximizing the restoration of human potential while restraining the growth of prison and jail populations.” It is incumbent on the legislature, TDCJ, and the Board to do more to ensure that this bold and humane vision becomes a reality.

A frequent complaint by those who have personally experienced parole review is that the process is not well understood – by themselves, their families, and even by their defense attorneys. The parole eligibility guidelines are complicated and change frequently, and parole decisions vary widely and unpredictably by Board office and lead voter. All too often, individuals arrive at TDCJ with unrealistic expectations of how soon they will come up for parole or how likely they are to be paroled when they are reviewed, and no idea of what they can be doing while waiting for their eligibility date to better ensure a positive outcome.

To address this chronic information gap, TDCJ should ensure that everyone who is incarcerated has free access to updated and easily understood information regarding the parole decision-making process and the means to advocate on their own behalf, including through peer education and support, and ensuring that written materials are available in law libraries and on individual tablets. Easily understood instructions in English and Spanish, templates and sample documents, and videos that walk an individual through what it takes to tell their own story – all of this is easily accessible through tablets and can be further reinforced with peer education and support.

TDCJ and the Board should empower individuals to advocate on their own behalf when in parole review. This should include classes on making parole packets and assistance in preparing a comprehensive reentry plan in anticipation of going into parole review. These classes will help individuals share important, relevant information about their lives and the changes they have experienced since their incarceration with the parole board—information that would bear on the Board’s decision-making in many cases. Providing this kind of support levels the playing field in terms of who has access to the kind of support that comes with hiring legal representation and ensures that thousands more individuals can safely return home sooner than currently is happening.

Empowering individuals to self-advocate in the parole process brings long-term benefits. Rather than feeling powerless and subject to the perceived whims of the voters, individuals can proactively work to understand their personal story – past, present, and future – and in so doing continue to heal from past trauma, better understand certain past decisions, and begin to chart a brighter path forward. Not everyone who is incarcerated will be ready to engage in this work

or want to take on this role, but for those who are ready, the benefits will accrue and continue long after their release to community supervision.

### Recommendations:

- > TDCJ should:
  - Include information about parole in all TDCJ and unit orientation materials and handbooks.
  - Include information about the parole decision-making process and how to advocate most effectively on one’s own behalf in every law library and make it freely available on individual tablets.
  - Collaborate with outside organizations to ensure that peer-led classes on reentry include information about the parole-decision making process and provide individual peer support to individuals seeking to submit documentation or other supporting information.

## Conclusion

Parole, or “early release,” is a critical but long overlooked area of opportunity for reducing Texas’ historic reliance on incarceration. By instituting changes to the current parole policies and practices, state officials can expand eligibility for thousands of individuals who are ready for release and who pose little or no risk of recidivism for serious offenses. Given the drastic increase in incarceration rates and sentences over the last four decades, parole is a valuable tool for policymakers to ensure that incarceration is not needlessly long, and that people can successfully reenter and reintegrate into their families and communities.

“Parole is premised on the belief that one can change – that transformation from one’s past to a new, more acceptable way of being in the world can happen. In Texas, we do not make this standard of change clear enough. We need better guidelines to help those who are in custody to meet the mark.”

– RICHARD

“Each parole denial without a clear path forward feels like more than just lost time with family—it’s a loss of hope for redemption. The system must recognize that presumptive parole and expanded MRIS are not only more efficient policies, but vital lifelines that restore hope for a fair chance to rebuild our lives.”

– JENNIFER

# Endnotes

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- 3 *Id.* at 15 (“...a state should revise the release criteria to deemphasize consideration of the underlying offense at the time of the parole hearing.”).
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- 7 Texas Gov’t Code Ann. Sec. 498.003 governs the accrual and use of good conduct time in TDCJ and references only “good conduct time.” Tex. Gov’t Code Ann. Sec. 498.003 (2021). In practice, however, TDCJ separates good conduct time accrual into two separate categories: “good time” for time earned under subsection (b) and “work time” for time earned under subsection (d) of Sec. 498.003. This report uses the term “good conduct time” to include both “good time” and “work time” unless otherwise noted. (TDCJ also uses the term “bonus time” for time accrued by individuals serving offenses that occurred pre-1977, however, that category is so rarely used today that it has not been considered for purposes of this Report.)
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- 9 “Early release” is a commonly used but misleading phrase to describe parole. Parole does not shorten the total time served. Rather, it marks the division between physical custody and community supervision. The entire sentence term is still served. Likewise, parole is not “early” as far as a person cannot exit physical custody until eligible. One can release to parole only after having reached an eligibility date that is calculated based on the offense of conviction. This report avoids using the term “early release” to eliminate any confusion, and instead uses the more accurate term of “release.”
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- 21 *Texas profile*, Comparing Texas's resident and incarcerated populations (graph).
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- 41 37 Tex. Admin. Code Sec. 145.3(1).
- 42 Tex. H.B. 1433 74th Leg., R.S. (1995). Discretionary mandatory supervision (DMS), as it is called, applies only to offenses committed on or after September 1, 1996. Individuals incarcerated for offenses committed before September 1, 1996, remain eligible for mandatory supervision (MS), which does not require the approval of the Board. Individuals sentenced for 3g and certain other serious offenses are not eligible for either DMS or MS and can only be released early via a discretionary grant of parole.
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- 45 Paul M. Lucko, *Board of Pardons and Paroles*, HANDBOOK OF TEXAS ONLINE, Apr. 16, 2019, <https://www.tshaonline.org/handbook/entries/board-of-pardons-and-paroles>.
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- 47 Texas Board of Pardons and Paroles, *Annual Statistical Report FY 2023*, at 5 (2023), [https://www.tdcj.texas.gov/bpp/publications/FY\\_2023\\_Annual\\_Statistical\\_Report.pdf](https://www.tdcj.texas.gov/bpp/publications/FY_2023_Annual_Statistical_Report.pdf) [hereinafter *Board Annual Statistical Report FY 2023*]. While the rates did increase during the COVID pandemic (2020-2022), the numbers immediately dropped back to 34.68% in 2023. *Id.* at 6 (2023).
- 48 *Id.* at 9 (2023). In 2023, for example, approximately 56% those who would have released automatically to mandatory supervision - including more than 10,000 individuals with non-violent and non-aggravated offenses - remain incarcerated for an indeterminate number of additional years and at a cost to taxpayers of more than \$282 million per year. See [Criminal and Juvenile Justice Uniform Cost Report Fiscal Years 2021 and 2022 \(texas.gov\)](https://www.texas.gov) (\$77.49 per day to incarcerate an individual in Texas).
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- 54 *How the Texas Parole Board Makes Decisions*, THE LAW OFFICE OF GREG TSIOROS (2018), <https://txparolelaw.com/texas-parole-board-makes-decision/>.
- 55 *Board Annual Statistical Report FY 2023*, *supra* note 47, at 13, 15, 17. Large as these numbers are they do not include the Board's numerous other responsibilities, including, special reviews, MRIS considerations, and transmittal votes.
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- 57 Tex. Gov't Code Ann. Sec. 508.146.
- 58 Individuals serving the following sentences are never eligible for parole: a) death, b) life in prison without the possibility of parole, and c) the commission of continuous sexual abuse of a minor or illegal reentry by certain undocumented immigrants. Tex. Gov't Code Ann. Sec. 508.145.
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75 *To Decrease Prison Population, Texas Must Increase Parole Rate*, 31 PRISON LEGAL NEWS 44, <https://www.prisonlegalnews.org/news/2020/feb/4/decrease-prison-population-texas-must-increase-parole-rate/>.

76 *Parole Guidelines Annual Report FY 2023*, *supra* note 40, at 9.

77 *Id.*

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79 *Board Annual Statistical Report FY2023*, *supra* note 47, at 11.

80 *Id.*

81 For the preceding four years, the approval rates range from 1.91 (2021) to 2.7% (2019). *Id.*

82 *Parole in Texas: Answers to Common Questions*, *supra* note 39, at 11-12.

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89 Jeff Raymond, *Pardon and Parole Board Approves First Inmates for Streamlined Parole*, OKLAHOMA WATCH, Oct. 28, 2019, <https://oklahomawatch.org/2019/03/08/first-inmates-to-come-before-pardon-and-parole-board-under-new-law/>.

90 57 OK Stat. § 332.7 (2023).

91 *Id.* To be eligible, a victim or district attorney must not object to release. Persons serving a sentence of life imprisonment without parole or who are convicted of an offense designated as a violent offense are not eligible.

92 M.C.L. § 791.233e (2022) (which mandates Michigan’s parole board to create “parole guidelines” that must be adhered to so as to make “objective, evidence-based release decisions”; the guidelines cannot be departed from unless there is “substantial and compelling objective reasons,” such as the prisoner exhibiting patterns of “major misconducts or additional criminal convictions,” refusing to participate in programming to evaluate their risk, etc.); Md. Code, Correctional Services, § 7-301; Miss. Code Ann. § 47-7-18; S.D. Codified Laws § 24-15A-38; NJ Rev Stat § 30:4-123.55 (2019); LA Rev Stat § 15:574.2 (2017); AR Code § 16-93-715 (2017); NC Gen. Stat. § 15A1340.18.

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101 *Annual Statistical Report FY 2023* at 11. Notably, the Board did not release a single individual under the “Mental Illness,” “Intellectually Disabled” or “Physically Handicapped” categories.

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107 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (2012), <https://www.hrw.org/report/2012/01/27/old-behind-bars/aging-prison-population-united-states>.

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195 Anecdotally, parole attorneys in Texas appear to enjoy an approval success rate nearly twice that of the Board's published rate. The University of Texas School of Law's Pro Bono Parole Project, for example, has a six-year success rate of close to 75% for its work representing women who are incarcerated in Central Texas. Other attorneys representing individuals in Texas parole review proceedings report similarly high approval rates.

- 196 Statement based on The University of Texas School of Law’s Pro Bono Parole Project’s client experiences as well as from numerous conversations with Texas parole attorneys and individuals who have experienced parole review in Texas. There is no formal tracking of IPO interviews in terms of length, location, or topics covered.
- 197 See Texas Board of Pardons and Paroles website at [Texas Board of Pardons and Paroles Approval/Denial Reasons Page](#). The remaining grounds for denial are based on documented conduct while incarcerated: disciplinary infractions, receiving felony charges inside TDCJ, gang affiliation and a refusal to participate in programming. *Id.*