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# TEXAS CRIMINAL JUSTICE SUMMIT

## TEXAS ADULT PROBATION COMMISSION MONOGRAPHS

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ACQUISITIONS

## MONOGRAPH 1: STRUCTURE AND MISSION OF TAPC

### TAPC Statutory Mission Statement

The mission of the Texas Adult Probation Commission is stated under "Purposes", Section 1.01 Article 42.121, Texas Code of Criminal Procedure.

The purposes of this article are to make probation services available throughout the state, to improve the effectiveness of probation services, to provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services, community-based correctional programs, including restitution centers, and facilities other than jails or prisons, to establish uniform probation administration standards, and to assist judicial districts that choose to participate in programs for the supervision of persons entering a pretrial diversion program in the implementation and maintenance of those programs.

Because of the ever increasing population pressure on the felony criminal justice system, the Legislature is placing increased emphasis on that portion of the TAPC mission "to provide alternatives to incarceration". The Legislature created the "intensive probation program" which consists of: intensive supervision caseloads; specialized caseloads; surveillance probation; and home confinement and electronic monitoring. In doing so, the Legislature stated its intent in Section 6f(d), Article 42.12, Code of Criminal Procedure.

It is the intent of the legislature to provide courts with a continuum of programs and sanctions to employ in the supervision and rehabilitation of probationers.

### Policy Making Structure

To accomplish this mission, the Legislature established the Commission as the policy making authority. The Commission consists of six district judges, three county court at law judges, and three citizen members. All are appointed by either the Chief Justice of the Supreme Court or the Presiding Judge of the Court of Criminal Appeals.

Policy is implemented by the Executive Director and the staff of the Commission. The staff is managed in four divisions. Executive Administration provides public information, legal and general administration services. The Program Services Division performs management audits of the judicial district adult probation departments, develops programs, performs program evaluation,

provides training, and implements the probation officer certification program. The Data Services Division provides statistical analysis services, manages the Interstate Compact, and performs other computer services needed by the agency and the departments. The Fiscal Services Division performs fiscal audits of the departments, provides personnel services within the agency, fiscally manages grants awarded to the agency, and performs various administrative services for the agency.

### Analysis of Funding

Funding for the Texas Adult Probation Commission's State aid to judicial district adult probation departments has increased by 2.7% from \$99.7 million in the FY86-87 biennium to \$102.4 million in the FY88-89 biennium. Funding for basic probation services, excluding funding for diversion programs, decreased by approximately 7% from \$68.8 million in FY86-87 to \$63.9 million in FY88-89. Funding for diversion programs increased by 24% from \$30.8 million to \$38.3 million. These increases do not, however, meet the need or request for additional diversion capacity or reduction in average caseload size to meet the 100 cases per officer standard. It should also be noted that even though total amounts of State aid increased during this period, the daily subsidy for Intensive Supervision Probation decreased from \$5.00 to \$4.50. Basic per capita aid which subsidized regular probation dropped from \$0.75 per day to \$0.65 for felony cases. Misdemeanor State aid changed from \$0.40 per day in FY86 to \$0.65 in FY88, but funding for each case is available for only six months starting in FY88 whereas in FY86 it was available for up to two years. The overall impact of the increase in the total amount of State aid is not as significant as it may seem because of need and changes in the funding formulas.

Occurring concurrently with the increases in funding was the increase in the number of people being supervised by probation officers. FY86 commenced with 260,142 probationers under regular supervision (109,519 felons), and 4,428 probationers under the supervision of diversion programs. As of December, 1987, there were 283,129 probationers under regular supervision (127,188 felons) and 6,685 probationers under the supervision of diversion programs. This is an increase of 8.8% in regular probation and 51% in diversion programs. Continued growth in the number of felony cases is expected during the remainder of the FY88-89 biennium. The number of misdemeanor cases is expected to remain stable or decline.

A recurrent problem is the interruption of the growth of the Intensive Supervision Probation diversion program due to variations in levels of funding. Prior to 1986 the ISP program was experiencing steady growth. In 1986 and then again after Senate Bill 215, funding for ISP was cut, resulting in the closure of several ISP programs and the reduction in the number of available slots in the others for diversion. These shifts in the number of available slots sent mixed messages to the judiciary concerning diversion. Stability in funding levels would ensure the continued commitment of the judiciary to the full use of diversion programs.

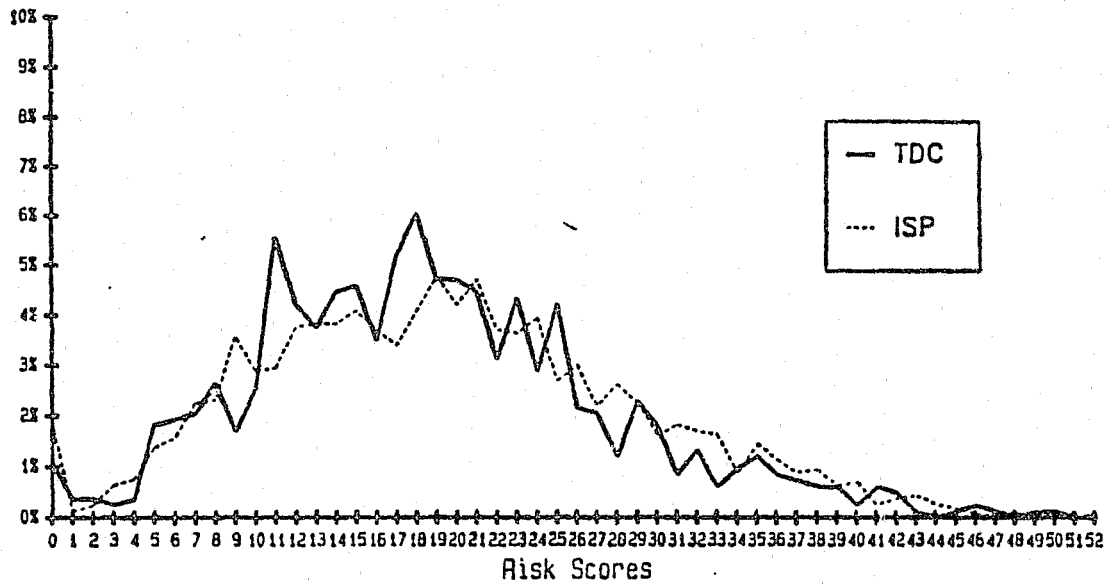
## Analysis of Mission

The mission of the agency is consistent with the present realities of the Texas Criminal Justice System. Providing alternatives to incarceration and having these alternatives within probation ensures that the judiciary, which makes the diversion decision, will have confidence in the alternatives as they will ultimately be responsible for administering the supervision of those defendants who are diverted from incarceration.

There still remains a significant number of offenders who are committed to TDC whose risk of reoffending and needs for services as determined by probation's classification system are parallel to offenders being successfully supervised in diversion programs. (See graphs on next page) In attempting to find solutions to jail and prison overcrowding, this group of offenders could be supervised in diversion programs if the capacity limits of these programs were raised. They can be raised through additional resources being available to expand capacity.

As the judicial district adult probation departments implement diversion programs such as ISP and restitution centers, the punitive nature of these programs is becoming very apparent to offenders. The incidence of the unusual situation of defendants choosing short term incarceration in TDC followed by parole supervision rather than supervision on probation administered diversion programs is increasing. The criminal justice system's approach to solutions to prison overcrowding ought to include reducing the defendants' opportunity to choose how to be punished. Also the criminal justice system should recognize that probation is punishment, and tougher than incarceration in many instances.

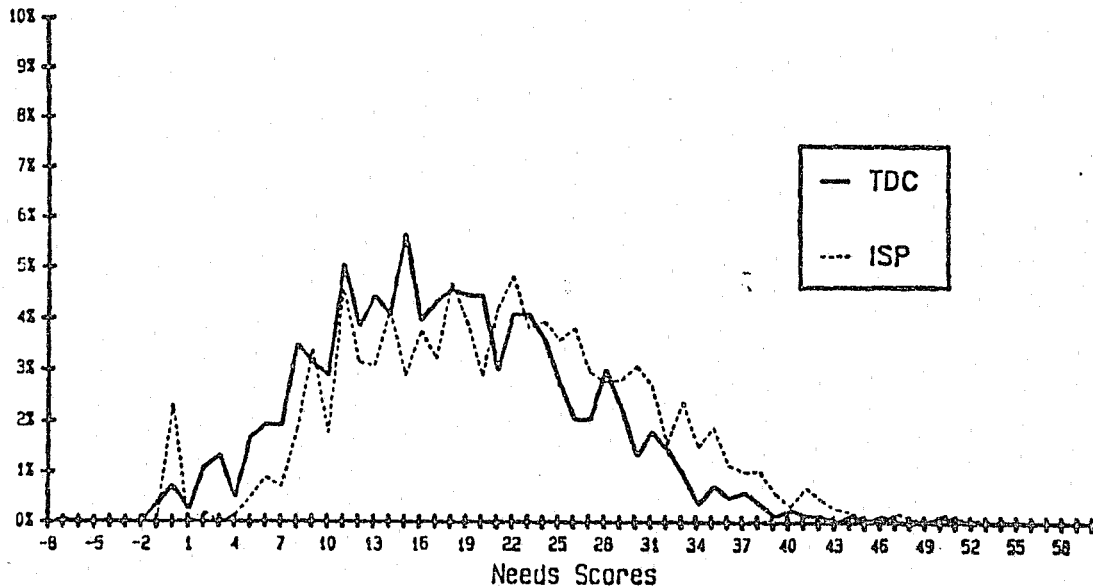
### Distribution of Intensive Supervision and TDC Probable on Risk Scale



TDC Mean RISK Score = 18.9255

ISP Mean RISK Score = 19.5798

### Distribution of Intensive Supervision and TDC Probable on Needs Scale



TDC Mean NEEDS Score = 17.3690

ISP Mean NEEDS Score = 21.0964

## Major Issues

The Criminal Justice System is stretched to its limits, and perhaps at times even beyond its limits. This has resulted in Federal intervention and hopes for quick solutions. Some seeking solutions have suggested limiting the discretion of the judiciary to revoke probationers who are in violation of the conditions of probation. This could increase the likelihood of their criminal activity. Rather than limiting discretion (or the court's obligation to enforce its orders), a better solution is to provide the judiciary with a continuum of sanctions. Some of these can be used as intermediate steps prior to revocation. All jurisdictions do not have in place a continuum of sanctions. A primary reason for this is the cap placed on diversion programs through appropriated funds and also the authorization of programs (such as electronic monitoring) but no funding for them. Additional funding would allow for the expansion of alternatives to incarceration, a much more economical solution.

A second problem is the misunderstanding by some of what diversion is. The essential criterion for diversion is presented in the Code of Criminal Procedure. Section 6f (a), Article 42.12 states:

If a judge determines that a defendant whom the judge would otherwise sentence to the Texas Department of Corrections would benefit from intensive probation and the district is served by an intensive probation program... the judge shall suspend imposition of the sentence and place the defendant on intensive probation.

This statement of Legislative intent unquestionably places the diversion decision with the judiciary and the determination made by the judiciary that an individual offender is or is not a diversion.

The distinction between misdemeanor and felony probationers is negligible when considering the goal of public safety. Yet messages from the Legislature imply misdemeanor offenders are less of a threat to public safety and need less supervision. Supervision provided by professionally trained and certified probation officers should be based upon level of risk of reoffending and needs for services as determined by a proven classification procedure. The appropriate level of service delivery should not be limited by funding, demands for documentation of diversion, or the misdemeanor/felony distinction. Authority to make available to high risk/needs probationers all of the programs in the continuum of sanctions would result in the reduction of the number of revocations to TDC. This enhancement of public safety through delivery of appropriate levels of supervision would become part of the prison overcrowding solution.

The responsibility of funding probation is shared by probationers, the county and the State. Each funding partner would like to reduce its contribution to this responsibility. The ability of the probation office to manage its mission when funding expands and retracts is problematic. Also if one component of the partnership increases its funding for services (the State) and the county cannot or will not increase its share (office space, utilities, and equipment) problems arise. The level of contribution by probationers varies, especially during this period of economic downturn in the Texas economy. A department administrator may not be able to collect in fees what he budgeted to collect due to bad economic times or due to various other local administrative problem areas such as policies of judges, prosecutors, or county commissioners. It should be noted that probation fees have risen from \$29.7 million in FY85 to \$45.7 million in FY87 due primarily to the Legislature raising the maximum fee to \$40 per month.

The general perception that prison is punishment and probation is not results in costly misunderstandings. It results in the public thinking they will be safe if there are more prisons. The Legislature responds by appropriating more money to build more prisons at a high cost. Recent Rand Corporation research indicated that arrest rates and re-incarceration rates are higher for offenders who have been incarcerated than for those who have been placed on probation. This research matched groups of inmates with probationers on the basis of criminal history and demographics. This implies that the public is not safer with more prisons.

In reality incapacitating and punishing offenders can and does take place within probation. Court records in some cases indicate that the offenders would rather go to prison than go through the rigors, responsibilities, and restitution of probation. For example, probationers must assume greater responsibility by improving their education and seeking employment to pay probation fees, fines, court costs, restitution to the victim, and counseling costs. While working full time, the probationer is required to perform community service restitution, attend counseling sessions, and meet with his probation officer on a regular basis. Probation could even be more punitive through more intensive supervision for additional selected offenders.



## MONOGRAPH 2: PROGRAMS AND POLICIES

### Successful Program and Policies of Agency Contributing to the Effectiveness of the Criminal Justice System

In 1981 twenty judicial district adult probation departments implemented Intensive Supervision Probation (ISP) programs to assist in alleviating prison overcrowding. Today diversion programs are operational in fifty-seven adult probation departments providing public safety services to 83.2% of the State's general population. In addition to the fifty-seven ISP programs, additional diversion efforts include: sixteen restitution centers, three court residential treatment centers, thirty specialized caseloads, and six surveillance probation caseloads. A major part of the reason for this successful expansion of diversion programs is the administration of correctional programs in the community by the district judges and the local probation department. Local involvement and ownership is critical to the acceptance of correctional programs and their success.

The TAPC has managed a State subsidy program for the past ten years. It has resulted in probation services being available throughout the state. A reduction in the average statewide caseload size during this time has not occurred because the number of persons on adult probation has increased from 116,000 in 1978 to 283,000 in 1988. The State aid has been sufficient only to enable probation departments to hire enough officers to maintain approximately the same average statewide caseload size. The standard set by the TAPC for average caseloads of no more than 100 cases per officer has not yet been achieved by all departments. It is a goal still being pursued by adult probation and worthy of being achieved.

The TAPC has improved the effectiveness of probation services through: establishing standards; providing management audits; establishing a case classification system; and providing training and technical assistance.

### Programs or Policies Which Merit Re-evaluation

The diversion programs funded by the TAPC have capacity limits. These diversion program caps are imposed by the funding levels authorized by the Legislature. Departments are not allowed to overcrowd restitution centers or increase ISP caseloads beyond the level of effectiveness. The result is early release from some diversion programs to accommodate new arrivals from the courts or from the revocation process. Also, waiting lists exist for many of the diversion programs as the judiciary alters its sentencing practices and uses alternatives to incarceration with a higher frequency.

To accommodate this demand for increasing the capacity of diversion programs, the TAPC at its August, 1987, meeting authorized (however, funding was not available): creation of two additional court residential treatment centers; the expansion of one court residential treatment center; the creation of a "boot camp" for probationers; the expansion of the contract residential services program; and the creation of twenty-five additional specialized caseloads, nine of which would document diversion while the others would provide supervision to high risk and high need probationers.

Additional funding of \$325,000 for FY88 would enable the TAPC to support the departments in the development of the residential centers and to commence the operation of twenty-five specialized caseloads, which were authorized but for which there was no funding. An additional \$3.215 million for FY89 would enable the TAPC to support the operation of all of these programs for the year. These programs would enable the TAPC to expand its diversion capacity in FY89 by approximately 1,750.

TAPC received funding to maintain a capacity of 4,400 slots in the ISP program during FY88-89. There currently are approximately 5,000 slots filled in the program. During FY88 these additional 600 slots can be supported through budget transfer authority only because of the delayed start-up of two restitution centers. In FY89 no funds will be available in the TAPC budget to transfer. Additional funding of \$972,000 is needed to continue funding the additional 600 slots during FY89. Without additional funding the capacity of the ISP program will likely drop to its funded level of 4,400 in FY89.

Current requests by the probation departments indicate a need for 1,200 slots over the current utilization level of 5,000 to meet the diversionary demand of the judiciary. This would raise the capacity of the ISP program to 6,200. Additional funding of \$1,944,000 is needed to reach this capacity.

Diversion documentation currently is consistent with Section 6f(a), Article 42.12 (see Monograph 1). If the Governor's Office and the Legislative Budget Board were willing to accept high risk and need scores of the case classification system as documentation of diversion and appropriate supervision, then the number of offenders diverted from TDC could be expanded. Diversion programs could then provide services to additional persons who are now being committed to TDC and who have similar risk and needs profiles. Also the quality supervision being provided by diversion programs could be provided to offenders who are at high risk of violating their conditions of probation and being revoked if supervised on regular probation. This strategy would aim at reducing the number of persons revoked from regular probation without having to have judicial documentation of diversion or violations of the conditions of probation occurring.

This theme of having high risk probationers eligible for diversion programs in order to prevent these probationers from re-offending and subsequently being revoked carries through to the supervision of interstate transfers. Given that probationers who are transferred into Texas are not probationers diverted from the TDC, they are currently not eligible for placement into diversion programs. Some of these are high risk probationers and cannot be adequately supervised on regular probation. If the diversion concept were expanded to include the prevention of criminal activity by documented high risk probationers, public safety would be enhanced.

Restitution center legislation restricts eligibility for placement into this diversion program. Offenders convicted of Title 5 crimes are not eligible for the twenty-four hour supervision provided by restitution center programs. These same offenders, however, are eligible for ISP or for placement into court residential treatment centers. The TAPC recognizes that the number of diversions could increase if local communities established their own eligibility requirements for restitution centers, which in some cases may be less restrictive than State requirements. Legislative changes allowing for the determination by local advisory boards of the eligibility criteria for admission to restitution centers would be beneficial.

## **Actions to Preserve and Enhance Successful Programs and Policies**

The last session of the Legislature mandated the TAPC to establish a probation officer **certification** program. The program is to include coursework leading to an examination prepared by the Commission. The examination must test candidates on knowledge required in the proper performance of duties by probation officers. This certification program is intended to increase the professionalism and competency of adult probation officers statewide. Such an enhancement should lead to improved supervision resulting in a higher rate of compliance by probationers with their conditions of probation. This will have the consequence of reducing the dependence on TDC as a correctional option for probationers and increasing public safety.

The FY87 level of TAPC training had to be reduced in FY88 to develop the certification program because no additional staff support was provided by the Legislature. Through funding for TAPC administrative staff and for contracting with colleges and universities for the remainder of this biennium, the certification program training could be delivered and the examinations conducted on a more timely schedule and in a manner least disruptive to the delivery of other necessary training by TAPC staff.

Expanded training is needed in order to inform the probation department personnel, the judiciary and prosecutors on the role adult probation has in alleviating the prison overcrowding problem. This training would include information on the continuum of correctional options and sanctions before revocation would be necessary to ensure public safety. Such training could lead to revisions in revocation policies, which, in turn, could reduce the number of persons being revoked and committed to TDC.

Given probation officer turnover and the need to reinforce training with subsequent refresher courses, the enhancement through additional funding of the TAPC training staff and Sam Houston State University's Criminal Justice Center's Probation Officer Academy is needed. Such support would result in an increase in the number of training sessions delivered on topics specific to the offender population being diverted from TDC. Through the training, improved supervision and intervention strategies would occur and thereby reduce the probability of revocation.

## Actions to Modify Programs or Policies in Need of Re-evaluation

Through additional funding adult probation could make a significant contribution to alleviating prison and jail overcrowding. The needs which could be met through emergency funding include:

1. Expansion of the court residential treatment center and specialized caseloads programs to divert approximately 1,600 offenders.  
Funding necessary: FY88-- \$318,000; FY89-- \$2,915,000.
2. Expansion of the Intensive Supervision Probation program by 1,800 diversion slots over the FY88 appropriations level, for a total of 6,200 slots in FY89.  
Funding necessary: FY89-- \$2,520,000.
3. Increase the TAPC training staff and funding available for contract training services to implement certification and expand training curriculum to include revocation guidelines and other training intended to reduce the dependency on TDC as a correctional option.  
Funding necessary: FY88-- \$50,000; FY89-- \$200,000
4. Implement four electronic monitoring programs to divert approximately 400 offenders from TDC.  
Funding necessary: FY88-- \$50,000; FY89-- \$200,000.
5. Establish a "boot camp" program to divert 160 offenders from TDC. The limits imposed by Rider 16 of the TAPC appropriation would need to be removed.  
Funding necessary: FY88-- \$100,000; FY89-- \$400,000.
6. Increase TAPC administrative staff to manage expansion of diversion programs.  
Funding necessary: FY88-- \$25,000; FY89-- \$100,000

Additional funding of \$543,000 in FY88 and \$6,335,000 in FY89 would enable the TAPC to assist in alleviating the prison overcrowding problem by expanding adult probation's diversionary capacity by approximately 4,000 slots, taking into consideration turnover rates in various programs.

### MONOGRAPH 3: CRIMINAL JUSTICE SYSTEM EFFICIENCY

#### Measuring the System's Efficiency

The Criminal Justice Summit's attention to cost effectiveness and public safety would result in outcomes appealing to the public. Texans are faced with the prospect of having their income taxed in order to continue basic State services such as education, health and justice. Examination of the need to continue prison construction beyond the current planned expansion is reasonable. Less costly methods in correcting people exist and should take precedence over the most costly method of correcting offenders-- prison. Through choosing less costly methods, funding could be available to meet the other needs of Texans.

Efficiency is explained as an effective operation as measured by comparison of production with cost. Applied to corrections, efficiency would dictate the use of the least costly correctional strategy to reduce the criminal behavior of the offender. Any instance in which a more costly correctional strategy than what is needed is chosen, the system is working inefficiently. Research currently demonstrates that large numbers of offenders are committed to TDC whose risk and needs scores are similar to probationers who are supervised successfully on Intensive Supervision. This demonstrates a system inefficiency-- use of the costly and scarce prison resource rather than a less costly correctional option. Of course, as pointed out in an earlier monograph, the ISP resource has a cap and is not available to the extent it is needed.

The Rand Corporation in its "Prison versus Probation" study demonstrated that incarceration does not result in the elimination of future criminal activity. In fact, the study demonstrated that incarceration results in more criminal activity after release than putting a like offender on regular probation initially. If the study had included in the comparison probationers placed into diversion programs, it is highly probable that the results concerning community corrections would have been even more favorable. In fact, their conclusions recommended the use of diversion programs such as Intensive Supervision Probation. Efficiency in so far as considering outcomes would dictate the expanded use of probation and the reduction in the dependency on prison as a correctional option.

The most recent national public opinion survey "Crime and Punishment: The Public's View" prepared for the Edna McConnell Clark Foundation indicates:

- \* Americans have low regard for the nation's prison system.
- \* Americans feel that a primary goal of the prison system should be to rehabilitate offenders, especially young or first offenders. But they feel that the prison system is falling far short of meeting that goal.
- \* The most important source of public support for alternatives is the belief that prisons fail to accomplish their primary objectives.
- \* Americans strongly favor the use of alternatives to incarceration in particular cases.
- \* Americans are even more inclined to support alternatives to incarceration when they understand the cost of building and maintaining new prisons.

These opinions lead to measures of efficiency. If prisons are falling short of meeting the rehabilitation goal, do the alternatives to incarceration perform better? This can be best answered by examining probation and its use of rehabilitative resources. Probation is committed to addressing the chronic problems of alcoholism, drug abuse, illiteracy, employability, and mental retardation if they exist in offenders and are related to the criminal behavior. Probation is committed to making the offenders accept responsibility for their acts and to the socialization of offenders so that they can function effectively and without criminal activity within the community. Through contract services with local service providers, court residential treatment centers, specialized caseloads, and other programs, these chronic problems are addressed. These problems are resolved or at least stabilized for many of the situational offenders and the inept offenders. Even critics of probation admit that probation is no less effective than prison in meeting these goals and is far less expensive. The predatory offenders who continue to be dangerous and unresponsive to intervention are best incapacitated through lengthy incarceration.

#### Changes Being Considered by the TAPC

Expanding the availability of diversion programs will result in reducing the judiciary's reliance on TDC as the correctional option of first choice either at sentencing or at revocation. To expand the availability the TAPC is working to raise the capacity limits imposed through appropriations on the diversion programs. If the caps on diversion programs were removed and these programs were allowed to grow to their natural limit, then the criminal justice system would better be able to determine how many more prison beds it would need.

The TAPC recognizes the benefits to increasing the training opportunities for judges and prosecutors. The purpose of this training would be to involve them in public policy making regarding the diversion programs. Their involvement would increase the opportunities to alleviate the prison overcrowding problem because their support of alternatives to incarceration would increase.

## **Areas in the Criminal Justice System for Re-evaluation**

The availability of uniform corrections intake information to all components of the corrections system would be efficient. Data could be gathered one time at the beginning of the offenders' involvement with corrections by probation officers and reflect the risk and needs of offenders as well as basic demographic data.

A statewide criminal justice information system with data needed to process offenders through the corrections system and to conduct research for long range planning purposes would benefit all components of the system.

Contemporary management theory employs decentralization as a problem solving technique. Complex management problems are divided into component parts which are more easily managed. Centralization of decision making and operating functions frequently overlooks local conditions and the expertise of those who are best able to solve problems that are close to them. The Texas Criminal Justice System has traditionally relied on a highly centralized correction system for felony offenders. The effectiveness of this philosophy needs to be reevaluated.

The problem that we face is how to most effectively punish and correct offenders, given the reality of limited resources. For the safety of the public, the most violent and predatory felony offenders must be incapacitated. This is a proper use of a centralized prison system. However, many offenders can be better corrected and supervised in a decentralized community corrections system. The decision to incarcerate an offender or correct him in the community is best made by the court or jury in the local community. But in order for community corrections to operate at its best, a wide range of options must be available to the decision makers.

Adult felony probation is a successful and cost effective way to deal with many felony offenders. It is the decentralization of decision making and operating functions that makes probation an effective community corrections tool. If a sufficient number of options are made available to local courts and probation departments, probation can be expanded to an even larger population of offenders, without adverse consequences to the public safety.