



## **Jerry Madden**

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**House Judiciary Committee's Subcommittee on Crime, Terrorism,  
Homeland Security, and Investigations Hearing on Prison Reform**

# **Testimony of Jerry Madden before the House Judiciary Committee Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.**

**July 15, 2014**

Thank you Chairman Goodlatte and Committee members for the opportunity to address you. My name is Jerry Madden. I was elected to the Texas House of Representatives in 1993. My background is that of an engineer, an insurance salesman, and Republican Party leader in Collin County Texas. I am not a lawyer and had not done any work or legislation on Corrections and Criminal Justice until January of 2005 when our Conservative Republican Speaker Tom Craddick asked me to come to his office. He told me that he wanted me to be Chairman of the Corrections Committee. I of course told him how honored I was to have such an opportunity, all the time wondering what I did to deserve this. But I then asked him what turned out to be the second most important question of my life. I asked him "Mr. Speaker, what do you want me to do?" and he told me the 8 words that changed my life. He said, "Don't build new prisons, they cost too much."

After that day I chaired the committee for 6 years and served as vice-chairman for 2 years. I served on the Council of State Governments Justice Center Board. I chaired the Criminal Justice task force at the National Conference of State Legislatures. I chaired the Corrections and Elections Task Force and the Justice Performance Project at the American Legislative Exchange Council. Because of our corrections reforms, John Whitmire and I were chosen as Governing Magazine's National Public Officials of the Year in 2010, and I have become a Senior Fellow for Right on Crime at the Texas Public Policy Foundation. I have traveled the country talking to many legislative leaders in many of our states as they start their work on criminal justice reform, and I have appeared here before Congress. All of this because of those 8 words. "Don't build new prisons, they cost too much. "

Texas has always been recognized as tough on crime. It deserves that title, and we wear it proudly. But what happened to make Texas the national leader in smart criminal justice and corrections reform in the country? And how do those things we did apply to the Federal Criminal Justice system and the opportunity to reform here in Washington? Let us start with the obvious. Texas is big and its corrections system is big. It was hard to find systems of comparable size for us to look at. In fact, only two systems were larger when we started looking at size in 2005; California and the Federal system. And they were not and are not much larger as we speak today. So in terms of number of prisoners, number of facilities, number of employees, and diversity of programs, we are slightly smaller but very comparable.

When I first started out I did not know any of this. I went searching for people in the legislature who knew a lot about our corrections system. I found out there were very few who knew the system. But in looking, I asked some of my friends in the Texas Senate and they all said the one they trusted on the subject was Senator John Whitmire. John is Dean of the Texas Senate. I had never done bill or committee work with John, and though we knew each other we had not worked on any projects together. We are of different parties and of course we were in different houses of the legislature. I went to see John and in that next couple of hours we bonded on corrections ideas. We came to have a great working relationship and a consensus of ideas as a team. We put our staffs to working on ideas to avoid new prison construction.

We have had a long history of judicial oversight of our prisons due to overcrowding, and because of that under Governors Ann Richards and George W Bush we built a lot of prisons. My task was to determine how not to build more and I came to the conclusion that I had only two choices if our prison population met the projections we had from our Legislative Budget Board. My analysis quickly said I had to either let more people out quicker or figure out the way to slow them down coming in. In Texas opening the door was not going to succeed, so the alternative of slowing down the rate people were coming into prison was the only viable approach. In our first approach to legislation we looked at probation and the efforts that could be made in the community to reduce the number of people being sent to prison. We determined the probation organizations in Texas had some good ideas that could slow the growth. As can always be expected this came with the rejoinder that they could do it but it would require more funding. Working with Senator Whitmire we developed legislation to make changes to reduce some probation terms, develop additional specialty courts in Texas with methods to provide better funding, provide greater support for our probation staff by cutting case loads, and several other ideas for programs in our probation departments. The bill passed both houses of the legislature but was vetoed by the Governor. This actually turned out to be a very important and positive thing for us because it prompted us over the next year and a half to look not just at a part of the system, but at the entire system.

We were very conscientious not to take any step we felt would make Texans less safe. Rather, we strove very hard to make them safer while reducing the costs of incarceration and the corrections system. We also were fortunate in Texas to have think tanks and other active groups interested in our efforts that included inmate families, reentry program personnel, crime victims, law enforcement, and others. We started looking at the entire system to devise steps that would keep people from coming to prison or keep them from coming back to prison. As such, our efforts equally addressed both recidivism and initial incarceration. We wanted to keep people from committing crimes that brought them to prison, and we wanted to address the causes that drove people to commit crimes to bring them back to prison. We recognized that there is a chain from school misbehavior to prison and we wanted to break that chain. We discovered there are several places to break the cycle of recidivism and of recruitment of people into crime. Coming from the back to the early stages of the cycle this

includes parole, actions taken while prisoners are incarcerated, probation, initial involvement with the criminal justice system and law enforcement, schools and the juvenile system, and even early family involvement.

At this stage we began to put together a legislative plan. We had found that there were think tanks and organizations really interested in probation so we put them together to look at recommendations to deal with the veto we had received on the first bill and to make recommendations to overcome the Governor's objections. In addition, they were to look at other ideas in the bill and how we could improve on them, and to look at other possible actions in probation that would encourage communities to keep more of the low risk nonviolent felons in the community under community supervision and reduce the numbers of these felons that got to prison. We had members of the Governor's staff, ACLU, Texas Public Policy Foundation and Texas Criminal Justice Coalition and others including our staff going through all of these recommendations.

I had found that there were good ideas (and some bad ideas) on all sides of the political spectrum. We wanted creative ideas to help with this effort so we put together a second group to look at the programs we had and any others that might help in the state. Texas had a good number of programs that had started in the 1990's but had either lost steam, lost funding, or were floundering in the system. We asked what programs were working, and we asked for actual data that showed their successes. It is important to point out here that Texas, unlike other states, had a lot of good program data that showed what results the programs achieved. We asked whether the expansion of certain programs could reduce recidivism or keep people from prison. We also asked whether they were getting the public safety results anticipated. In particular we wanted to cancel programs that were not working and reinforce those that were. For example, we had almost 1800 inmates of the state held in county jails. We found that they were not getting the programs they needed for drug addiction nor the education to change their cognitive thinking skills. We heard from prosecutors and defense lawyers that people were sent on to prison for holding because it took six months to get to a drug treatment plan. This second group made recommendations on programs to get us to the adequate number of appropriate beds in the corrections system.

The final group was our statisticians and budget team. We asked them to determine what the results would be in recidivism and movement to prison if we implemented the recommendations? And how much would these expended programs cost? We did not reinvent the wheel. We only put in two programs we did not already have in the state; an alcohol treatment program in prison and a mother and infant program in a small facility in Houston.

In late 2006 our Legislative Budget Board (LBB) came out with a new prediction that said we would need to house 17,770 new prisoners by 2012 if we took no action. At about the same time, we had our predictions well documented that said that for about \$241 million we could expand our programs and we would have little or no growth in our prison population for the next five years. We had data that

showed we would have a safer state for less money if we followed our plan. The LBB also included over \$530 million in the budget recommendation to build three prisons to hold about a fourth of the 17,700 new prisoners. The other prisons needed would have brought the total bill to around \$2 billion. This would be the first wave in new prison spending. We showed our plan to many groups including the Governor, and got the OK to move forward with our ideas in the legislative session. We moved many of them through the Appropriations process in the Appropriations Bill, although we did other things in special pieces of legislation. At the same time we dealt with a huge crisis in our juvenile system, totally revising it in a way that would cut our juvenile facilities in half and remove over 3000 of our 4500 juveniles from the state system. The actions we took have saved our state over 2 billion dollars in the adult system and over 200 million in the juvenile system.

The actual items we implemented included a significant number of Substance Abuse Treatment beds in prison, for use by parole and probation departments. We also added an Alcoholic Treatment program in the Prison. We added Intermediate Sanction Facilities for Probation and Parole that would give them a short term alternative of 2-3 months for recalcitrant probationers and parolees instead of return or direct movement to prison for a longer term. We added money for Mental Health Treatment in the prisons and for those leaving prison since we know that the prisons have turned into a mental health dumping ground. We expanded and supported with funding our specialty courts which work for veterans, mental health prisoners, and drug users, as well as help with newer ideas like Prostitution Courts. We encouraged sending fewer low-level nonviolent offenders to prison.

And the results are as follows:

- The crime rate is now down to 1968 levels;
- Arrest rates are down significantly;
- We have closed 3 prisons and 6 juvenile facilities without any new facility construction;
- We have a lower number of people on Felony Probation;
- We have a significantly lower number of people on Juvenile Probation;
- Our Parole rate when we started was about 24%, this last year it was 36%;
- About 22,000 people a year were approved for Parole (the number was 28,000 last year);
- We brought all 1800 prisoners back from county jails and there are none there now;
- Parole revocations in 2005 were about 11,000 a year (last year it was about 5,900);

Just this month the LBB projected that there will be minimal growth in the prison population for the next six years, lower juvenile populations and static or lower numbers on probation or parole in Texas. And that is assuming the legislature does nothing significant to lower populations further. Not only did we not build new prisons from 2007 to 2013, but we will not need to build any more from now until at least 2019 or beyond.

As an addition, in late 2010 the Texas Public Policy Foundation created the organization Right on Crime as the national conservative voice for criminal justice reform in the United States. This organization is now recognized as one of the great additions to the efforts to bring results and policies forward throughout the country. Led by Marc Levin, Right on Crime has become instrumental in bringing changes to states around the country and rallying conservatives to support this effort. Our signatories include some of the most influential conservatives in the country. We will of course give you a list of all of them. It can truly be said that this program came from the efforts Marc, myself, and many others who worked to implement these ideas in Texas. It would not have happened without our successes.

Some critics have said all we did was go after low hanging fruit. I would say to them that most states and the federal corrections system have not even gone after that. I would challenge all to see and pick the low hanging fruit. The work we are doing has created an atmosphere where many other things can be discussed. I have been called a leprechaun, an aw-shucks type, and laid back. What I am mostly is very proud of our Texas work and how other states are now following our lead.

## **How does Texas reform apply to the Federal efforts?**

The Federal Government has many of the same symptoms that Texas had in 2005 when we started. Those certainly include but are not limited to: a rapidly growing cost for their criminal justice system, a rapidly expanding number of people in the system with projections of additional growth, the building of more prisons, and interest from leaders of the executive branch who see that budgets are growing at an unsustainable level. The Attorney General has pointed out the problem of growth in this section of his budget, and the President has recognized that there may be some people in the system that could be released with little or no danger to the public. The budget request for 2013 is \$6.9 billion which is about twice our Texas yearly budget for Corrections. The budget growth was about 4% a year. Remember the words of Speaker Craddick in Texas. "Do not build new prisons, they cost too much." Texas is operating at about 96% of capacity. The Federal System is at about 139% of capacity with those facilities holding the most dangerous offenders at even higher percentages of capacity. These situations lead to dangerous safety concerns in the prisons.

The following are my personal suggestions for the chairman and committee members on what can be learned from our Texas experience.

1. This was a bipartisan effort. Bipartisanship did not come about because of any great revelation; it came about because I got a mission from my legislative leader. To fulfill that mission I looked for the best and most knowledgeable person I could find in the legislature. That happened to be a member of the other party. We forged a partnership in this effort. We both convinced our leaders and other legislators that we had taken a lot of good ideas and had recommendations to implement them that would keep us from having to build (and spend more) on prisons, and would keep us safer and provide opportunities for some people to break the cycle of recidivism.

And it worked because we developed complete trust and confidence in each other. This is now an area - and maybe the only area- where I believe under current conditions that Conservatives and Liberals, Republicans and Democrats, can work together for positive results. We are doing it over and over again in the states. Georgia has passed criminal justice reform with unanimous votes on most of their bills; North Carolina started reform under a Democratic Governor and Legislature and carried it to completion under a Republican Legislature. Mississippi has just passed major reforms with massive bipartisan majorities. Alaska, it was reported, actually had legislators arguing on the floor about who got to be the sponsor in the House of their bipartisan bill. Oregon, Hawaii, Ohio, Pennsylvania, Oklahoma, South Dakota, Idaho, Kentucky and many others have completed bills with substantial bipartisan support. And these actions are supported by great majorities of our citizens on all sides of the political aisle. I have included a chart entitled "Sentencing and Corrections Reforms in Justice Reinvestment States" produced by the Public Safety Performance Project of the Pew Charitable Trusts. It gives a comprehensive summary of the many reforms done in the states.

2. There are now a great number of people working at the federal and state levels with ideas to make our system better. We pulled all of them in Texas together to take all of the ideas; and in free and open discussion, we built a huge trust between these groups. We set ground rules which basically said we were looking for consensus and wanted to move on to those items where most if not all of the groups would be able to say they supported the efforts. None of them got everything they wanted, but all of them got a great hearing on their ideas and were in many cases successful in building very positive relationships. Much to their surprise many of them found that other groups agreed with them. We had to have consensus to put ideas in the bills. Although you have more groups here in Washington, you should bring them together, using the same techniques we used in the states to successfully gather legislative support in the federal system.
3. I would highly advise a good review of programs in the system, like we did, to ask the questions we asked like, "Are they working?" and "Do we get all the people we need to through the programs they need?" I would be prepared to expand some of the programs if you can show that by doing so you could reduce recidivism, as well as be prepared to find out which ones are wasting your money, and eliminate them.
4. Make sure the federal system is primarily aimed at incarceration of the people we are afraid of, not the people we are mad at.

My colleagues Marc Levin and Vikrant Reddy at Right on Crime produced a policy perspective in July 2013 entitled "The Verdict on Federal Prison Reform: State Successes Offer Keys to Reducing Crime and Costs." This was based on our work in Texas. They list 6 Guiding Principles for Genuine Reform of the

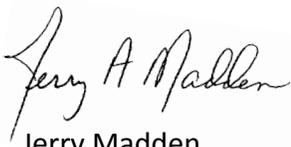
Federal System. I will paraphrase them here. The first principle is transparency and the inclusion of performance measures. The second is to ensure that crime victims, the public, and taxpayers are recognized as key consumers of the system. The third is a set of items that should be stressed to ensure that behavioral changes are being addressed in our Correction Department. The fourth idea is to ensure the criminal justice system works to reform as many offenders as possible by harnessing families, charities, faith-based groups, and communities. The fifth is to align incentives in the system with policies to move the system from one that grows because it fails to one that rewards results. And finally, reserve criminal conduct for those that are blameworthy or frighten us but do not use it to grow government and undermine economic and personal freedom.

In addition they list four broad policy recommendations. These four are:

1. Put a greater focus in the federal system on community corrections.
2. Expand good time credits
3. Facilitate reentry and limiting collateral consequences
4. Reverse over-criminalization.

I would add two other recommendations. Congress should take no actions which withdraw funds from projects that are working in Criminal Justice just to encourage or arm twist states to comply with some new federal requirement. I refer to Byrne Grants which work and the withholding of funds to implement other federal programs. Secondly I would try to ensure no criminal penalties could be implemented in rules by agencies. Criminal law should come from the criminal justice codes of the federal government and the states.

I do hope these suggestions have been helpful to the committee and I look forward to working with you.



Jerry Madden

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