

STATE CRIMINAL JUSTICE ADVOCACY IN A CONSERVATIVE ENVIRONMENT

Today's climate for criminal justice reform offers new opportunities for state-based criminal justice and civil rights organizations to identify and implement policy solutions to scale back the rate of incarceration and develop reform strategies that broaden approaches to public safety. In recent years, a national dialogue has surfaced on fundamental questions regarding the size of the nation's prison population, the collateral consequences of a conviction, and resulting impacts on public resources for education, health care, and other vital services.

The criminal justice policy challenges facing state and local governments will not subside anytime soon. While the pace of criminal justice reform has accelerated at both the federal and state levels in the past decade, current initiatives have had only a modest effect on the size of the prison population and narrowly address the civil sanctions that marginalize persons with a prior conviction. The scale of incarceration provides a key moment for the advocacy community to call for a change in criminal justice policy and practice.

APPROACHES TO STATE ADVOCACY

This overview highlights successful advocacy strategies employed in conservative political environments in the states of Indiana, Missouri, and Texas. While the ability to impact state reform varies by state, the strategies described here can aid activists developing future campaigns. Given the challenge of mobilizing political will to move towards substantially reducing state prison populations, many advocacy organizations are seeking policy changes that have a meaningful impact. Understanding how state-based advocacy strategies have resulted in achieving reforms in conservative states is key to future successes.

Campaign tactics that gained conservative support included: research, media outreach, direct and grassroots lobbying, direct actions, leveraging grass-tops contacts, and coalition building. Advocates also leveraged inside and outside strategies to move reforms. Inside strategies have prioritized working within government systems to influence decision makers and have included legislative and administrative lobbying, providing testimony, and participating in policy development, while outside strategies have involved hosting educational events, earning media attention, and organizing protests and rallies. Learning from successful efforts can hopefully raise awareness of effective approaches to changes in policy and practice.

INDIANA: DRUG-FREE SCHOOL ZONE REFORM CAMPAIGN

Advocates mobilized to reduce the state's drug-free zone law. Today, all 50 states and the District of Columbia have adopted some form of drug-free school zone law which imposes enhanced penalties on drug crimes committed within a designated zone. Indiana advocates prioritized a legislative remedy to limit the zones – scaling them back from 1,000 feet to 500 feet – and eliminating all zones except those around schools

and parks in order to reduce the excessive scope of the law. The tactics prioritized using research and leveraging bipartisan support. A salient research strategy involved developing a grid of maps with different zone sizes and configurations for legislators to consider. The campaign developed a website that housed materials and relevant documents. Republican leadership supported drug-free zone measures through the legislative process. The receptivity of conservative lawmakers served as a lesson for advocates to not assume legislative support or opposition based on party affiliation.

MISSOURI: FOOD STAMP BAN CAMPAIGN

In Missouri, a coalition anchored by the Missouri Association of Social Welfare (MASW) advanced legislation to modify the state's federal lifetime ban on food stamp benefits for persons with felony drug convictions. Coalition leaders identified Republican legislative champions that prioritized the measure on their agenda. MASW worked to mobilize around a values-based strategy open to support from advocacy organizations and legislative champions regardless of political affiliation or ideology. The energy behind the effort was driven by former activist lawmakers who were able to successfully negotiate the measure through the process. They consulted with a Republican lobbyist in an 'under the [Capitol] Dome team' to identify champions and tactics to move the bill. Missouri faith organizations provided grassroots support which is key in a state where conservative lawmakers are not always receptive to labor and civil rights constituencies.

TEXAS: PRISON CLOSURE CAMPAIGN

Organizers with Grassroots Leadership mobilized a coalition strategy that included labor and the families of incarcerated persons to defund two for-profit prisons. State advocates worked to close the Dawson State Jail and the Mineral Wells Pre-Parole Transfer Facility. Texas's austerity politics created the space for prison closures. Similarly, the championship of senior Democratic lawmakers, despite the state's Republican majority, helped set the tone by publicly calling for the closure of state prisons and worked with advocates to identify budget mechanisms to defund the state's contracts with for-profit prison vendors. Investigative reporting helped raise awareness about conditions

and contraband scandals at the two for-profit prisons targeted for closure.

CASE STUDY: INDIANA DRUG-FREE SCHOOL ZONE REFORM CAMPAIGN

Drug-free zone laws are among the most longstanding sentencing policies in America's War on Drugs. In 1970 – 12 years before President Ronald Reagan officially used the term "War on Drugs" – Congress passed an early version of a law increasing penalties for certain drug offenses committed near schools. In the 1980s, many state governments began to do the same. Today, all 50 states and the District of Columbia have adopted some form of a drug-free zone law.¹

Indiana's original drug-free zone law, passed in 1987, raised the felony class of the underlying drug offense from Class B to Class A if the offense occurred within 1,000 feet of school property, a public park, a public housing complex, or a youth program center. Under state law, the penalties imposed for committing a Class A felony are substantially harsher than those for a Class B felony: a Class A felony exposes a defendant to a sentence of 20 to 50 years in prison with an advisory sentence of 30 years, while a Class B felony exposes a defendant to a sentence of 6 to 20 years in prison with an advisory sentence of 10 years.²

A CAMPAIGN EMERGES

Kelsey Kauffman, a professor at Indiana's DePauw University, remembers first learning about the impact of drug-free school zones when reading *Disparity by Design: How drug-free zone laws impact racial disparity – and fail to protect youth* in 2006. The comprehensive report concluded that drug-free zone laws, as they are typically configured, are not effective in reducing the sale or use of drugs, or in protecting school children. The report also found these laws increased unwarranted racial disparity.³

In January 2007, Kauffman taught a course on Prisons and Public Policy. In that same year, two bills were introduced – one in each chamber of the Indiana legislature – that would have expanded the state's current drug-free zones to include marked bus stops and churches. Kauffman assigned her students the task

of identifying legislation that would impact the state's prisons. Four students – all freshmen -- began studying the impact and effectiveness of the state law and found that drug-free zones blanketed large portions of inner city areas in Indianapolis and more than 75% of defendants who had their felony class raised under the drug-free zone statute were black.⁴

Kauffman and her students presented their findings before the Indiana Senate Committee on Corrections, Criminal, and Civil Matters in 2007 and 2008 and again before the specially-convened Indiana Sentencing Policy Study Committee in October 2008.

Kauffman's work with her students resulted in a seven year student-led campaign that evolved using increasingly sophisticated materials and analysis. The first two years of the campaign were defensive in preventing

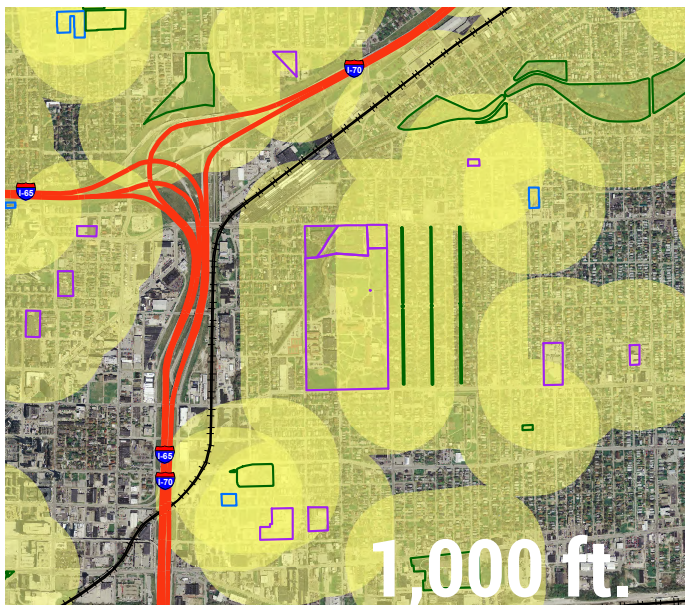
the expansion of the drug-free zones. The effort to elevate consciousness around this issue led legislators to question the legitimacy and the effectiveness of the zones themselves.

THE INDIANA STRATEGY

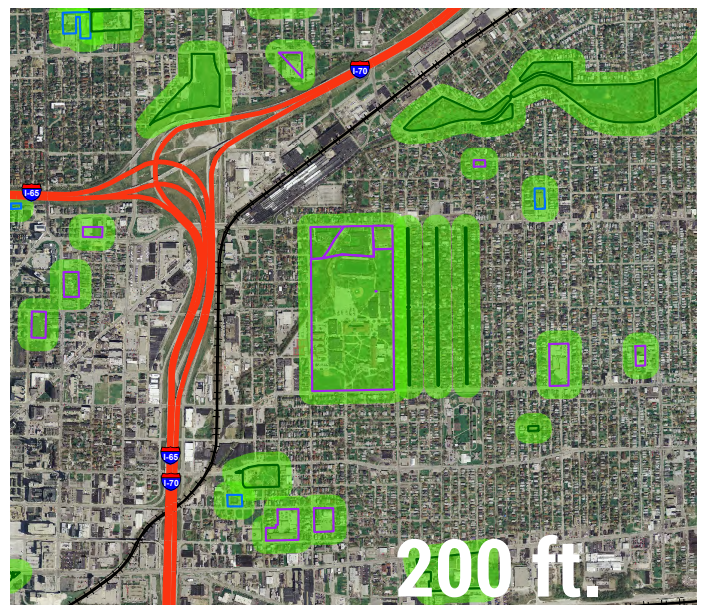
During the eight-year campaign, Kauffman observed increased awareness around criminal justice issues but viewed the strongest motivating factor towards reform as a desire to avoid spending millions of dollars on new prison construction. The organizing principles for Indiana's drug-free zone reform effort focused on using research, and leveraging bipartisan support.

The research undertaken by Kauffman's students resulted in an organizing narrative that provided detailed analysis, including background information on sentencing policy.

Existing drug-free school zones near Arsenal High School, Indianapolis: 1,000 ft.



Proposed drug-free school zones near Arsenal High School, Indianapolis: 200 ft.



Originally generated with assistance from the DePauw GIS Center, Spring 2007. Created as part of a student project for WS370B. Updated January 2010 as part of a student project for UNIV299. DePauw University is not responsible for inadvertant inaccuracies in the data.

Data Sources:
Indiana Geological Survey igs.indiana.edu
Indiana Spatial Data Portal www.indiana.edu/~gisdata/

Horizontal Datum:
1983 North American Datum

Projection:
Universal Transverse Mercator Zone 16N

Maps provided by Kelsey Kauffman.

A salient research strategy involved developing a grid of maps with different zone sizes and configurations for legislators to consider. The campaign developed a website that housed materials and relevant documents.

HELPFUL LEADERSHIP, NEUTRALIZING OPPOSITION

Legislators who championed the drug-free zone reform included three Republicans who were former prosecutors – Sen. Richard Bray, his successor and son Sen. Rod Bray, and Rep. Ralph Foley. All three represented the conservative district of Martinsville. The senior Sen. Bray and Rep. Foley held key chairmanships that positioned them to influence efforts to restrict the zones and prevent the expansion of the zones. All three legislators were former prosecutors viewed by advocates as ethical and reasonable who were open to the law change. The receptivity of conservative lawmakers served as lesson for advocates to not assume legislative support based on party affiliation.

Despite the support of the three key former prosecutors, the Indiana Prosecuting Attorneys Council opposed the reform proposal. The prosecutors provided resistance to drug-free zone reform and in one hearing criticized both Republican and Democratic lawmakers for questioning the effectiveness of drug-free zones. To overcome this opposition, activists focused on presenting research to substantiate claims that the drug-free zones were unfair and in need of reform.

During 2013, Indiana lawmakers voted to limit the zones – scaling them back from 1,000 feet to 500 feet – and eliminating all zones except those around schools and parks. The law change imposed a new standard that children had to be present in order to trigger a penalty enhancement for certain drug offenses. In 2014, prosecutors led an effort to reduce the zones to 250 feet, using what appeared to be the same spirit of reform that animated prior advocacy support. But the prosecutors' proposal would have also imposed new restrictions around hundreds of small entities like childcare centers. Lawmakers rejected the approach, believing the new restrictions would result in unintended consequences that did not meet the goal of deterring drug crime. The measure did not advance in the legislature.

CASE STUDY: MISSOURI FOOD STAMP BAN CAMPAIGN

The 1996 federal welfare reform legislation, the *Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA), ended “welfare as we know it” and imposed several provisions that denied federal benefits to people convicted in state or federal courts of felony drug offenses.⁵ The provisions subject individuals who are otherwise eligible for receipt of welfare benefits or food stamps to a lifetime disqualification unless states act to opt out of the ban. Since adoption, over thirty-five states have opted out of the provisions either in full or in part.⁶

About a dozen states still enforce the welfare and/or food stamp ban in full. During 2014, Missouri advocates led a successful campaign to achieve a modification of the Supplemental Nutrition Assistance Program (SNAP) ban on receipt of food stamp benefits. First introduced in 2006, the legislative reform gained increasing momentum in recent years. In 2014, the conditions that led to reform were helped by progressive lawmakers motivated to support a broadly supported policy goal in spite of the state's conservative atmosphere. Developing a strategic legislative approach combined with effective coalition mobilization allowed advocates to win.

BACKGROUND AND APPROACH

The Missouri Association of Social Welfare (MASW)⁷ is a multi-issue, grassroots organization founded in 1901. The group's mission envisions the state becoming a more just, equitable and democratic society that assures every person's health, safety, security, independence, human rights, dignity and the opportunity to reach full potential. MASW has several advocacy priorities including criminal justice, education, and hunger.

MASW's membership base is structured into a committee model of task forces, organized to address advocacy priorities. The food stamp ban issue allowed for work at the intersection of various priorities for MASW's small staff. Beginning in 2006, as advocates worked to introduce a legislative mechanism to modify the federal ban their strategy was to primarily raise consciousness. These activities included annual workshops and student advocacy days where MASW

members undertook lawmaker education to increase awareness. The first few years resulted in the publication of state materials distributed to lawmakers and targeted stakeholders. MASW repurposed its research materials for a mass audience by placing op-eds, submitting letters to the editor, and amplifying the stories of individuals personally impacted by the policy.

In the first few legislative cycles, the bill was championed by former Democratic Senator Yvonne Wilson. She helped to elevate dialogue by hosting committee hearings to introduce the issue to other policymakers. In later years, Democratic Senator Shalonn “Kiki” Curls, worked with the coalition to champion the policy goal.

LEGISLATIVE STRATEGY: MOVING FROM EDUCATION TO ACTION

The legislative strategy gained momentum in 2009. Jeanette Mott Oxford, started as executive director with MASW in 2012. Oxford, a former state representative elected in 2004, had activist roots as the former executive director of the Reform Organization of Welfare (ROWEL) and as a grassroots coordinator for the American Lung Association. Oxford’s experience enhanced the legislative strategy to move the bill through process.

The energy behind the 2014 strategy was helped by another state advocate with political roots. Former state senator Patrick Dougherty currently works as the Senior Director of Advocacy for Catholic Charities in Missouri after serving 28 years in the legislature. Oxford and Dougherty developed their legislative strategy by using a values-based approach open to support from advocacy organizations and legislative champions regardless of political affiliation or ideology.

WINNING SUPPORT

Coalition leaders consulted with a Republican lobbyist in an ‘under the [Capitol] Dome team’ to identify champions and tactics to move the bill. The team worked to identify Republican champion Rep. Paul Wieland, who was elected in 2010 and is Catholic, organized a religious affinity caucus that prioritized the measure. Due to term limits, Wieland was also seeking election to the state senate in a swing district; expanding food

stamp eligibility was described as a way to build support among likely voters. However, there were concerns about being perceived as “soft on crime” in supporting the reform. Sen. Curls and Rep. Wieland provided strong leadership by having strategic conversations with targeted lawmakers and leveraging policy mechanisms to move the legislation through the process.

Also key in the coalition’s conservative strategy was strategic constituent engagement in the form of supportive calls, office visits, and emails. Religious leaders, particularly from the state’s two largest jurisdictions of St. Louis and Kansas City, aided the strategy by leveraging grassroots support to target lawmakers. The support of pro-life advocacy organization – Missouri Right to Life – helped to include unlikely allies in support of the policy reform.

VALUES-BASED COALITION-BUILDING OVER PARTISAN POLITICS

Demonstrating broad support through an advocacy coalition was key in Missouri. In addition to MASW and Catholic Charities the coalition included the Missouri Grocers Association, Missouri Parole and Probation Association, the Kansas City Metropolitan Crime Commission, and Missouri Right to Life. National criminal justice reform organizations like Justice Fellowship and The Sentencing Project also supported the state coalition, as well as Bread for the World, a national faith organization dedicated to ending hunger.

MASW leveraged in-state visits by national organizations like The Sentencing Project to elevate dialogue with visits to target legislators, and cementing support among Legislative Black Caucus Members. The Black Caucus is viewed as a key base of votes in the legislature and wields bipartisan influence.

Coalition tactics included regular conference calls to share legislative updates, identify next steps and helping partners around the state to feel “in the know” about the day-to-day happenings at the capitol. Advocates worked to strike a balance of sharing information to maintain momentum that did not undermine efforts to negotiate the bill through the legislative process. The measure was adopted with bipartisan support and signed by the governor.

CASE STUDY: TEXAS PRISON CLOSURE CAMPAIGN

In recent years, the Texas prison population stabilized as a result of initiatives by the Texas Board of Pardons and Parole to grant a higher rate of parole, combined with a decrease in admissions to prison. The impact has slowed growth although there has been an increase in the population in recent years. Texas' prison population increased from 166,911 at the end of 2003 to 168,280 at the end of 2013, and is projected to increase further.

However, the state's criminal justice policy has evolved due to a changing climate. During 2007, the legislature enacted a package of criminal justice legislation that considered by some to be an expansive redirection in state correctional policy. The policies focused on an expansion of treatment and diversion programs and enhancement of parole and probation policies. The success of the "Texas model" in achieving progress on criminal justice reform is viewed as an accomplishment because the state is viewed as one of the 'toughest on crime' jurisdictions in the country.

THE CONTEXT FOR CLOSURE

In 2013, the Texas legislature cut more than \$97 million from the budget of the Texas Department of Criminal Justice and "made it clear that their intent was to reduce [the capacity of prisons]."⁸ Lawmakers had already demonstrated that prisons could be closed during the 2011 legislative cycle when officials closed adult and juvenile prisons. The Texas Youth Commission (TYC) closed three facilities in 2011 – over 590 beds. The closures were made possible following several years of declines; today there are less than half as many youth in TYC institutions as in 2006.⁹

The Texas Department of Criminal Justice announced in 2011 that the Central Unit prison would close and not be replaced. The adult men's prison in Sugar Land was built in 1909 and had a capacity of 954 beds. Factors contributing to the prison's closure included expansion of suburban development, the stabilization of the state's adult prison population, and pressure to reduce the budget.¹⁰

CAMPAIGN FOR NEW CLOSURES EMERGES

Suggestions to close the Jesse R. Dawson State Jail¹¹ (DSJ) and the Mineral Wells Pre-Parole Transfer Facility started as far back as 2009. Both prisons were privately operated by the Corrections Corporation of America (CCA), the nation's largest for-profit prison company. DSJ was situated on prime real estate in Dallas, and Mineral Wells was located about 80 miles west of Dallas on what was once a United States Army base.

Established in 1997, the Dawson State Jail – on the outskirts of downtown Dallas – had the capacity to incarcerate 2,200 inmates. City officials advocated for the closure of the prison to repurpose the land into a new development called the Trinity River Corridor Project.

During late 2012, prior to the start of the 83rd Legislature, Senator John Whitmire publicly named DSJ as a prison to close. The prison was one of twenty minimum security prisons in the state jail system created during Whitmire's tenure. Lawmakers established a low level felony classification – the state jail felony – in 1993, and constructed a system of minimum security prisons to incarcerate persons convicted of these offenses.¹²

Whitmire's leadership in calling for the closure of DSJ and Mineral Wells provided a well-developed framework that advocates leveraged to organize a campaign for closure. Whitmire is the longest running state senator in Texas, whose seniority earns him the title, Dean of the Senate. As chair of the Senate Criminal Justice Committee, Whitmire was positioned to shape the process for closing prisons.

THE STRATEGY

Grassroots Leadership, a national organization with an office in Austin, organized a coalition in support of closing the private jails. Founded in 1980, the organization has led a campaign to end for-profit incarceration through direct action, organizing, research, and public education. Anchoring an effort to close two private prisons in Texas advanced that strategy. The prison closure structure identified a policy goal to organize around, elevated the dialogue with strategic messaging, and broadened support with a coalition of interests.



March 7, 2013: A coalition of groups representing criminal justice, civil liberties, policy, and faith organizations gathered across the street from Dawson State Jail in downtown Dallas, TX for a candlelight vigil on the eve of International Women's Day. The vigil was held to honor the women who have died while incarcerated at the jail, a privately run for-profit prison operated by Corrections Corporation of America. Photos provided by Grassroots Leadership.

Grassroots Leadership organizers met with Whitmire's staff to identify a political strategy that could cement the closure of the prisons in 2013 and determined a timeline and approaches to move forward because the contracts with CCA were up for renewal. Organizers also worked with the staff of Democratic State Rep. Sylvester Turner – who chaired the House Appropriations Subcommittee on Criminal Justice -- to identify a mechanism that could defund the two private prisons. The tactics evolved to target the state's budget process, specifically advocating for a rider to remove funding for two prisons.

Advocates elevated the dialogue for closure by leveraging a human rights frame to highlight prison conditions at DSJ and helped move the conversation. Mineral Wells was a troubled privately run prison, with a track record of scandals; the prison had a long history of issues with contraband and other security concerns.¹³ DSJ had a track record of scandals too; the local CBS news affiliate conducted regular investigative reports on the problems plaguing the prison including reports that a young woman gave birth prematurely after the guards refused medical treatment; the infant died.¹⁴ The investigative reporting created the context for a human

rights framing despite Texas' conservative climate.¹⁵ Campaign leaders held a vigil outside of the prison in honor of International Women's Day to call attention to the conditions experienced by incarcerated women. Organizers were committed to focusing not only on the state's culture of fiscal austerity and the politics of cutting the budget.

To ensure a broad base for reform, organizers relied on a coalition strategy to demonstrate support. The coalition included the state affiliate of the American Civil Liberties Union, labor support through the local chapter of the American Federation of State, County & Municipal Employees Union, and support by the Texas Inmate Families Association. Coalition participants helped with grassroots tactics including letters to legislative targets and lobby visits.

EFFECTIVE LEADERSHIP IN CLOSING PRISONS

In Texas, the ability to close prisons in a tough-on-crime state was due to the leadership of senior Democratic officials motivated to take advantage of the opportunity

to use the state's budget process to defund private prisons. Legislators were able to move towards closure despite opposition.

Resistance surfaced in Mineral Wells from local newspaper coverage that activated a vocal base in opposition and from officials representing the district where the prison was located. However, the vocal constituency in the district surrounding the prison was not enough to undermine the interests in support of its closure. Campaign messaging encouraged those opposing prison closure to not rely on prisons as an economic development strategy.

During the budget negotiation process, state Rep. Phil King, R-Weatherford, and Jim Keffer, R-Eastland, offered an amendment that specified that TDCJ's governing board close privately run prisons based on their cost to operate. The move was meant to force a debate between the legislature's two chambers on which prisons to close. At the time, the Senate budget bill

specified that Mineral Wells and the Dawson State Jail in Dallas were to be closed, while the House version of the budget left the decision on closures to prison officials.¹⁶ The final version of the budget left the decision on closure to prison officials, who moved forward by not renewing the contract for Mineral Wells and DSJ.¹⁷

LESSONS LEARNED

Advocates are challenged to develop strategies that respond to various factors including political climate and competing priorities. Realizing successful advocacy campaign goals is often dependent on assessing which approach is likely to succeed at a particular time. Over time, advocates have adopted pragmatic approaches to sentencing reform to achieve long-term goals. In many cases, advocacy organizations with their allies have worked to shift the political climate and garnered muscular support to advance public safety that is less focused on incarceration, while investing more heavily in treatment and prevention.

ENDNOTES

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- 11 State jails incarcerate persons convicted of state jail felonies and individuals awaiting transfer to prison. Courts can require persons convicted of state jail felonies to serve up to two years in these prisons as a direct sentence or as a revocation from community supervision. Persons can also serve “up front time” of up to 180 days (1 year for manufacture/delivery of a controlled substance) in jail before serving a community supervision sentence. Community supervision can last up to five years and can be extended for an additional five years by court action. Individuals convicted of non-violent, non-sex offenses can also serve up to two years of their prison sentences in state jails awaiting transfer to prison.
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- 14 Nicholson, Eric “Woman Whose Infant Died after Birth in Prison Toilet is Suing Operator of Dawson State Jail,” Dallas Observer Blogs. (March 2013) Available at: http://blogs.dallasobserver.com/unfairpark/2013/03/inmate_who_delivered_baby_in_p.php
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