



Policy *Perspective*

Ten Tall Tales About Texas Criminal Justice Reforms

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Justice

Texas is still tough on crime, but it is also getting smarter, largely as a result of changes made by the 80th Legislature. The following are 10 key misconceptions about the current state of criminal justice reform in the Lone Star State:

1) Thousands of felons are being released into the community due to probation reform.

HB 1678, the probation reform bill enacted in 2007, provided for the performance-based reduction of probation terms from 10 to 5 years for nonviolent offenders who had met all conditions of probation, such as paying restitution and staying drug-free. Governor Rick Perry held a signing ceremony for this legislation. It will not release a single offender from prison, as the 450,000 Texans on probation are by definition already on the street. The Texas Probation Association, whose members consist of probation department directors and officers, testified in support of the bill that they could better supervise high-risk probationers such as sex-offenders—who are unaffected by this legislation—if compliant, nonviolent offenders can be removed from their caseloads after proving themselves over five years. Prior to this legislation, Texas had the longest probation terms in the nation. Studies have shown that an offender whose last offense was seven or more years ago is no more likely to commit another crime than the average citizen, and there is an insignificant difference after five years.¹ Moreover, HB 1678 gives judges the discretion to extend probation terms a year at a time after five years. The Legislative Budget Board estimates that HB 1678 will save Texas taxpayers \$39 million.²

2) The Texas Legislature has not provided prosecutors with sufficient alternatives to prison.

For years, prosecutors have with some justification complained about the lack of more effective and less costly alternatives to incarceration for nonviolent offenders, such as the 8,500 offenders now in prison who have never committed an offense other than drug possession.³ In 2007, the Legislature made historic changes to address the projected need for 17,000 new prison beds by 2012, which would have cost over \$1 billion to build and operate. The changes included increasing the capacity of prison alternatives, such as Substance Abuse Felony Punishment Facilities (SAFPFs) and Intermediate Sanctions Facilities (ISFs), which are secured facilities just like prisons but that offer programming that is proven to reduce the recidivism of nonviolent drug possession offenders and avoid co-mingling these offenders with violent offenders. These facilities save taxpayer money because a typical stay is shorter, though far more constructive, than it would be in prison. All told, the 2008-09 budget adds 4,000 new probation and parole treatment secure beds, 500 in-prison treatment beds, 1,200 halfway house beds, and 1,500 mental health pre-trial diversion beds.⁴ The state has now given prosecutors the tools they need to punish and reform low-level drug and mentally ill offenders, thereby protecting public safety and conserving prison space for violent offenders. In February 2008, the Legislative Budget Board released new projections showing that no new prison beds will be needed through 2012, due in large part to these new diversion initiatives.⁵

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3) Texas has not built enough new prisons.

Texas has the second highest incarceration rate in the nation and the most number of prisoners, even though California's population is 50 percent higher.⁶ The state's prison system grew 278 percent from 1978 to 2004 while population only increased 35 percent during that time. From 1985 to 2006, Texas' incarceration rate ballooned 205 percent.⁷ Texas' nonviolent prison population not only exceeds the total prison population of all other U.S. states except California, but also that of the United Kingdom. In addition, Texas' per capita incarceration rate is about 10 times that of China.⁸ Texas has added 13,083 prison beds since 1997 and 3,559 beds since March 2003. Another 1,200 beds will be added in the spring of 2008 as two TYC facilities are converted to adult prisons. By comparison, Florida and New York have increased their incarceration rates at less than half that of Texas in the last 25 years, but have achieved significantly greater crime reductions.⁹

4) There is no provision to build more prisons if the new focus on alternatives to incarceration does not fully relieve the projected need.

Lawmakers included in a general infrastructure bond measure—approved by voters in November 2007—a \$233 million proposal to construct 3,990 new prison beds. A provision in the 2008-09 budget states that the Texas Department of Criminal Justice must bring the construction proposal to the Legislative Budget Board, which will then determine whether the prisons are actually needed, primarily based on factors such as the success of diversion initiatives, parole rate, and crime rate.

5) Texas lawmakers have decriminalized drugs.

HB 2391 did not decriminalize or lower the penalties for marijuana. Instead, it simply gave police officers the discretion as to whether to make an arrest for the less than four ounces of marijuana, which is a misdemeanor, or issue a citation and notice to appear. The penalty, which includes possible jail time, remains the same for marijuana and other nonviolent misdemeanors included in the bill, such as driving without a license. The bill passed the House 131-1 and the Senate 29-1, and was then signed by Governor Perry. Local prosecutors, sheriffs, and police departments can choose whether or not to exercise this option on a case-by-case basis. If they choose, they can continue to arrest and bring to jail every misdemeanor. In Travis County, the Sheriff's office reports that 90 percent

of those cited under this legislation have reported for their court dates.¹⁰ HB 2391 was supported by the Sheriffs' Association of Texas and Combined Law Enforcement Association of Texas (CLEAT), who noted that it will save local taxpayers \$60 per night on jailing these offenders before they post bond while keeping more officers on the street who would otherwise spend four hours booking the suspect into county jail. In short, this bill recognized that since local taxpayers bear the mounting cost of county jails, local governments should have the tools to prioritize their limited county jail capacity to focus on those offenders who pose the *greatest* danger.

6) Reform of the Texas Youth Commission (TYC) has imposed an unfunded mandate on Texas counties.

SB 103 made dramatic reforms to end abuses at TYC, including improving the staff-to-youth ratio, creating an inspector general to investigate wrongdoing, increasing training for juvenile correctional officers, and creating a parental bill of rights so parents can better monitor the conditions under which their child is being kept. SB 103 also ended the commitment of misdemeanants to TYC, meaning that youth who have violated a curfew, possessed alcohol, or scribbled graffiti will no longer be jailed next to murderers and rapists at a cost to Texas taxpayers of \$62,000 per youth per year. Little was gained by committing misdemeanants, as TYC's recidivism rate had been 52 percent. Also, adult misdemeanants are already the responsibility of counties and, if incarcerated, are in county jails while felons are in state penitentiaries. To avoid creating an unfunded mandate for counties that are now dealing with these misdemeanants closer to their families, churches, and other sources of support, the Legislature appropriated an additional \$13.8 million to counties specifically for these misdemeanants. The Legislature also committed \$35.4 million for the local placement of many youths that would have previously been eligible for commitment to TYC, including \$8.8 million to reimburse counties for placing violent offenders and sex offenders in less costly, but equally secure, locally operated youth lockups.

7) Crime in Texas is on the rise and corrections policies are to blame.

While any crime is too much, crime is decreasing. In Dallas, violent crime was down 12 percent in 2007 and all crime declined 4 percent.¹¹ Similarly, homicides in Houston declined from 376 in 2006 to 351 in 2007.¹²

In 2006, there were 1,080,138 crimes committed in Texas, a decline from 1,111,384 crimes in 2005 despite a population increase of over half a million.¹³ Moreover, even if crime were increasing, it may not be attributable to probation and parole policies. In 2006, there were some 998,493 arrests of Texas adults and 16,190 adults were revoked from probation after being arrested.¹⁴ In 2005 (the most recent year available), 16,711 new offenses or allegations of new offenses were presented to the Board of Pardons and Paroles for a revocation decision.¹⁵ Based on these figures, probationers and parolees would account for only 3.29 percent of adult arrests in Texas. Even factoring in the 45.5 percent of state penitentiary releases who are not on parole, either because they are state jail inmates or served all of their sentences, it is clear that most new arrests are attributable to offenders not in the state criminal justice system. This indicates the need for other anti-crime strategies in addition to incarceration, such as more effective law enforcement. A study by Florida State University Professor Jonathan Klick and George Mason University Professor Alexander Tabarrok examined periods when Washington D.C. Police had announced more deployments in various neighborhoods. The study concluded that a strong and visible police presence reduces street crime by 15 percent.¹⁶ Such findings raise the question of whether the next public safety dollar should be spent on more prisons or more police. In Texas, law enforcement is primarily a local issue and major Texas police departments such as Houston and Dallas are taking steps to significantly increase their manpower and, just as importantly, their measurable effectiveness. For example, Dallas is now using a computer system to rapidly deploy officers to neighborhoods that experience sudden increases in crime and is evaluating the performance of each sector commander based in part on the crime rate in that area.

8) Texas prisoners are serving less time.

Exactly the opposite is true. Texas prisoners are receiving longer sentences and serving a greater percentage of them behind bars before being released. In 1988, Texas prisoners' average time served was 1.8 years.¹⁷ That increased to 3.3 years in 2002. It has continued to rise to 4.5 years in 2006, the most recent year for which data is available.¹⁸ This is a result of longer sentences imposed by judges and juries, lower parole rates, and increases in penalties and enhancements passed by the Legislature. Particularly in recent years, parole has been abolished or greatly restricted

for murderers and 3(g) offenders, which includes the most serious offenders, such as rapists and aggravated kidnappers. Consequently, violent 3(g) offenders served 84.9 percent of their sentences in 2006.¹⁹

9) Legislation approved by the Senate would have kept drug dealers out of prison.

In fact, SB 1909, passed by the Senate in the 80th Legislature but not considered by the full House, would have only applied to individuals convicted of low-level drug possession. Drug delivery is a separate group of offenses not covered by this legislation. Moreover, drug possession offenders who had a previous conviction for a violent, sex, or property crime were excluded. For those drug possession offenders covered, the bill would have required that their sentence be probated and that they receive treatment, which they would have had to pay for. The judge would determine whether such treatment was at a residential facility or on an outpatient basis. However, upon a documented judicial finding that the offender is a danger to the community, the offenders covered by SB 1909 could still initially have been sent to prison. Furthermore, if the nonviolent drug user did not comply with the treatment program or otherwise violated their conditions of probation, they could be revoked to prison. The Legislative Budget Board estimated that SB 1909 would have saved taxpayers \$500 million by 2012, not including the hundreds of millions in avoided construction costs for additional prisons that might otherwise need to be built.

10) Texas can staff additional prisons.

Texas is 3,749 prison guards short and is hard pressed to safely staff its existing prisons.²⁰ A 300-bed wing of the Dalhart unit was recently closed—even as 99 percent of state prison beds are full—because there were not enough guards available.²¹ A proposal to increase pay for prison guards would increase the state budget by half a billion dollars, yet would not solve the problem, because most prisons are in rural areas with small workforces and jobs with better working conditions are increasingly available in growing industries such as oil and gas and trucking. ★

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ENDNOTES

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- ² Fiscal Note for HB 1678, <http://www.legis.state.tx.us/tlodocs/80R/fiscalnotes/html/HB01678E.htm>.
- ³ Mike Ward, "Prison alternatives back in fashion," *Austin American-Statesman* (16 Feb. 2005) Williamson County District Attorney John Bradley notes that he helped create many of these alternatives such as SAFP's in 1993 but that "These programs were created but never nurtured." He continued, "It's been limited in its success because they didn't follow through with the funding."
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- ¹⁵ Texas Board of Pardons and Paroles Annual Report FY 2006, <http://www.tdcj.state.tx.us/bpp/publications/AR%202006.pdf>.
- ¹⁶ Jonathan Klick and Alexander Tabarrok, "Using Terror Alert Levels to Estimate the Effect of Police on Crime," *Journal of Law and Economics* 68 (2005) 267-279, <http://mason.gmu.edu/~atabarro/TerrorAlertProofs.pdf>.
- ¹⁷ "A Portrait of Prison Reentry in Texas," Urban Institute (2004) http://www.urban.org/UploadedPDF/410972_TX_Reentry.pdf.
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- ¹⁹ Texas Department of Criminal Justice Fiscal Year 2006 Report, http://www.tdcj.state.tx.us/publications/executive/FY_2006_Statistical_Report.pdf.
- ²⁰ Mike Ward, "Guard shortage forces closure of prison wing in West Texas," *Austin American-Statesman* (10 Jan. 2008) <http://www.statesman.com/news/content/region/legislature/stories/01/10/0110guards.html>.
- ²¹ "Guard shortage prompts changes at two prisons," *Dallas Morning News* (10 Jan. 2008) <http://www.dallasnews.com/sharedcontent/APStories/stories/D8U2U3TGO.html>.

