

Effective Justice: 81st Legislative Session in Review

by Marc Levin, Director, Center for Effective Justice

Overview

The Center for Effective Justice focuses on policies that promote efficiency in the criminal justice system, empower victims of crime, reform offenders, and ensure that criminal law does not reach ordinary activities that pose no threat to public safety. We continued to make strides toward these goals in this legislative session.

Overcriminalization

- Unfortunately, lawmakers are often eager to enact further laws regulating conduct that is more appropriately left to local communities or the free market. However, the creation of new criminal offenses applying to ordinary business activities was thwarted, including new regulation on the sale of aerosol paint and criminal penalties on homebuilders. Lawmakers also rejected a proposal to create a criminal offense for selling or serving foods with trans fats.
- We worked to educate policymakers on how unnecessary and burdensome licensing of new occupations—along with their associated criminal penalties—is harmful to the state's economic prosperity. For example, HB 1854 which would have subjected roofers to licensing and created barriers to entry, such as a \$250,000 insurance mandate, was defeated. National studies suggest that licensing a new occupation such as roofing results in fewer practitioners and higher costs to consumers.
- The Legislature wisely rejected a series of bills that would have given counties the power to enact criminal offenses. In particular, HB 1119 would have allowed urban counties to impose criminal penalties on developers. With more than 2,000 state criminal laws and countless city criminal ordinances, giving counties the power to enact criminal laws would make it even more

difficult for businesses and ordinary Texans to determine what is legal.

Controlling Costs

- Of course, controlling costs is always important. The Legislative Budget Board projects that, under current policies, Texas would need more than 1,000 additional prison beds by 2013. While this is far fewer new beds than would have been needed without the landmark reforms in 2007, Texas still has the nation's second highest incarceration rate—with more than 157,000 inmates behind bars and half of all inmates incarcerated for nonviolent offenses. Moreover, the cost of each inmate has risen from \$51.85 per day in 2007 to \$56.10 per day in 2008. This demonstrates the need for policymakers to continue to closely scrutinize the criminal justice budget to ensure that money intended to make Texas safer is spent wisely.
- The 81st Legislature's budget contains no funding for new prisons and expands intermediate sanctions facilities, which have proven to be successful short-term alternatives to prison. Savings and efficiencies at the Texas Department of Criminal Justice (TDCJ) were realized, avoiding the agency's proposed \$1.08 billion budget increase. SB 1206, expediting the release of inmates approved for parole who have completed a rehabilitation program, was passed and was projected to save more than \$21 million. The legislation was vetoed by Governor Perry because he objected to shifting the power to release paroled inmates from the Parole Board to TDCJ. However, Perry ordered the Board and TDCJ to “work together to ensure that offenders are not held for extended periods after successfully completing a rehabilitation program required by the Board as a condition for parole.”

Juvenile Justice

- The Texas Youth Commission's (TYC) funding was cut from \$314.9 million in 2008 to \$210 million per year for 2010-11, while community-based alternatives received \$60 million. The final result is a \$44.9 million net savings to Texas taxpayers. Research published by the Foundation indicates that community-based programs will result in a lower recidivism rate than TYC. Additionally, the prohibition on youthful misdemeanants being sent to TYC was maintained. This centerpiece of the 2007 reforms has contributed to the historic downsizing of TYC.
- The sunset bill for TYC and the Texas Juvenile Probation Commission included reforms that reflect the research published by the Foundation. For example, under this legislation, a risk assessment instrument will be administered to juveniles entering the system, which will provide greater clarity as to whether a costly out-of-home placement is necessary. Additionally, the bill requires TJPC to use performance-based contracting which will ensure taxpayers get the best return on their money.
- HB 171 enacted a reform that the Foundation has been recommended in its research since 2005. This legislation requires that school districts consider the following factors before expelling or suspending a student: 1) self-defense; 2) intent or lack of intent at the time the student engaged in the conduct; 3) a student's disciplinary history; or 4) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. Keeping more kids in school rather than on the streets enhances public safety, as statistics show suspended youth in Texas are 35 times more likely to commit a criminal offense than those in school.

Restoring Crime Victims

- Since crimes are first and foremost violations of individual victims, those victims should have a greater role in the criminal justice process. The creation of a victim-offender

mediation program paid for through participant fees would offer the opportunity for restoration of the victim while teaching the offender the impact of his crime. HB 2139 provided counties the option of setting up a victim-offender mediation program for first-time, non-violent offenses such as graffiti and shoplifting, and would have been paid for by fees on the offenders. Unfortunately, the conference report on this bill was not adopted in time and it will have to wait until next session.

- Garnishment for restitution to crime victims is a long overdue reform, given that more than 90 percent of Texas parolees still owe their victims restitution. HB 2373 would have provided garnishment for restitution to crime victims, but was left pending in committee. The Legislature did enact HB 2236, requiring that the court consider the victim's perspective when ruling upon a defendant's motion for a continuance.

Reforming Offenders

- Our research has demonstrated that ex-offenders who are employed are three times less likely to re-offend. Accordingly, in 2007 we worked with Chairman John Whitmire to draft legislation to allow otherwise qualified nonviolent ex-offenders to obtain a provisional license to enter most occupations. In 2009, the Legislature passed this bill as HB 963 and it was signed by Governor Perry.

Our work was critical in making Texas safer, saving taxpayers' money, creating a more efficient system of criminal justice, empowering crime victims, and protecting businesses from the criminalization of legitimate business activities. ★

