



Texas Public Policy Foundation

Center for Effective Justice

Texas Legislature's *83rd Session* in Review

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The 83rd Texas Legislative Session was, in general, good for sensible criminal justice reform. The budget produced by the Legislature, for all its flaws, was reasonable on criminal justice. It saves \$97 million by closing at least two unneeded prisons (there are currently around 8,000 empty prison beds in Texas), and it continues to provide appropriate levels of funding for probation, drug courts, and other proven interventions for nonviolent offenders. Moreover, the Texas Department of Criminal Justice came up for sunset review, and Rep. Four Price's bill to extend the agency, HB 2289, included important provisions for performance-based funding, the integration of offender risk and needs assessments, and re-entry planning for ex-offenders.

Ex-Offender Re-Entry

Re-entry bills spearheaded by the Foundation's Center for Effective Justice (CEJ) were, in fact, a highlight of the session. HB 1790 allows an ex-offender who has proven successful on probation for a non-violent state jail felony to petition the sentencing court to reduce the offense to a Class A misdemeanor. Ex-offenders are only eligible if they have paid all restitution, and the prosecutor has consented. The bill is based on similar legislation in Utah.

SB 1173 creates a split sentencing option for state jail felons, which is expected to reduce recidivism, as some state jail inmates who are now released without supervision would instead transition to probation.

Additionally, an amendment to SB 107 provides a streamlined online process for applying for an order of nondisclosure as an alternative to filing a civil lawsuit. This is expected to lead more eligible ex-offenders who have successfully completed deferred adjudication probation and waited the requisite number of years to take advantage of this opportunity and make themselves more employable.

SB 369 prohibits the name of a former sex offender's current employer from being listed in the public sex offender registry. This will reduce the harassment of innocent employers, who will no longer be tagged with a "scarlet letter" for having committed no crime.

HB 1188 immunizes employers from being sued for negligent hiring in most circumstances when they hire ex-offenders.

Yet another bill, HB 1659, prohibits occupational licenses from being suspended, revoked, or denied to ex-offenders who have (1) completed deferred adjudication, and (2) gone an additional five years with a clean record. As an important safeguard, licenses could still be denied to sex offenders and those uniquely "unfit for the license." For instance, certain banking-related licenses could be denied to those who completed deferred adjudication for fraud.

Occupational Licensing & Overcriminalization

HB 1659 was not only a re-entry bill, it was also one of many bills this session that chipped away at the state's onerous occupational licensing burdens. Most prominently, HB 86 gives the Sunset Advisory Commission the "sunrise" function of making recommendations on proposed occupational licenses before they are established. Texas currently licenses over 500 occupations, and advance scrutiny of proposed licensing schemes increases the likelihood that unnecessary ones can be averted.

Several unneeded licensing bills were defeated during the session. Among the most notable were proposed licenses for foundation repair contractors (HB 613) and roofers (HB 2693 and SB 311). After hearing CEJ's testimony against licensing roofers in a Senate Business & Commerce Committee hearing, the committee dropped the licensing idea.

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Criminal penalties were repealed in a bill for violations of many occupational licensing rules, including those for cosmetology, staff leasing, and property tax consulting. Also, HB 2294 carved out an important licensing exception for thermostat installers, so that they need not obtain an HVAC repair license to fix a modern “smart home” thermostat system.

Finally, among the “overcriminalization” bills creating new offenses that were defeated was HB 852, which would have criminalized the sale and purchase of shark fins. CEJ provided key research on this legislation to senators who ultimately rejected it.



Juvenile Justice

Juvenile justice was another area that saw incremental, but important, steps forward. SB 393 implements a tiered discipline model in schools. Warning letters, community service, or counseling for youths who commit

fine-only misdemeanors in school must now be utilized before a student is given a Class C misdemeanor citation and sent to court. This legislation will help keep schools safe, save taxpayer dollars, and may even lead to higher graduation rates. Additionally, SB 1114 repeals criminal offenses in the education code that have resulted in hundreds of thousands of tickets being issued to students for minor misbehavior such as making too much noise.

New legislation also allows children to have fine-only, non-traffic Class C misdemeanors sealed if they are found not guilty, the case is dismissed, or they are granted a deferred disposition.

Proven Diversion

The Legislature passed several bills this session that are intended to divert low-level, non-violent offenders from costly incarceration, and instead place these offenders in more cost-effective treatment programs. Among the most important was SB 1185, which authorizes a pilot jail diversion program for low-level, mentally ill defendants/offenders in Harris County.

Just as importantly, few new offenses or sentencing enhancements were enacted, though dozens of such bills were filed.

Victims’ Empowerment

SB 1237 expressly authorizes victim-offender conferencing for certain criminal cases. Conferencing provides greater victim satisfaction because it results in a higher rate of restitution collection, an apology, a sense of closure, and more expedited justice. Notably, it has also been proven to reduce recidivism because many offenders better understand the harm to an actual person that resulted from their conduct.

Indigent Defense Reform

Perhaps the most prominent criminal justice legislative achievement this session was SB 1611 (known as the “Michael Morton Act”), which establishes open-file discovery systems in all Texas counties. The government will now be required to provide defense counsel with all discovery materials in their possession (except for those materials that may implicate the safety of witnesses). The legislation will have a particularly salutary impact in cases involving indigent defendants, as their publicly-funded counsel can work more efficiently instead of chasing evidence and witness statements already in a prosecutor’s files.

Conclusion

While the session was largely successful, it was not perfect. Significant drug sentencing reform stalled, for example, as did the most expansive state jail reform bills. A bill to create a commission to review all criminal offenses outside the state penal code did not pass, nor did a bill to institute the rule of lenity. Many of these bills had support, but died for technical reasons (such as being attached to more controversial legislation). The Center for Effective Justice is optimistic, however, about the positive impact of policies enacted this session and the opportunities for further reforms next session. ★

