



# Texas Adult Corrections: A Model for the Rest of the Nation

by Greg Glod

## Key Points

- In 2004, Texas had the second highest incarceration rate in the country.
- With billions of dollars in new prison construction looming, Texas lawmakers invested in criminal justice reform policies designed to reduce incarceration, while keeping our streets safer and saving millions in correction costs.
- Since 2005, Texas has significantly reduced its incarceration, crime, and recidivism rates, becoming a model for reform across the country.

## Introduction

In 2004, Texas had the second highest incarceration rate in the United States, only behind Louisiana (Bureau of Justice Statistics), along with one of the worst crime rates in the country (Federal Bureau of Investigation 2015a). In recent years however, both incarceration and crimes rates have shown dramatic decreases. This is in part due to Texas' success in becoming a model for criminal justice reform across the country by making our streets safer while decreasing the costs of corrections by billions of dollars.

Since 2005, incarceration rates in Texas have dropped significantly, from 741 individuals imprisoned per 100,000 people, down to 588 in 2014, a 20.65 percent decrease (Bureau of Justice Statistics). Additionally, violent and property crime rates have hit decade lows. Violent crime is down 23.77 percent from 2005 to 2014, its lowest rate since the 70s. Property crime is at its lowest rate since 1968 and has decreased 30.3 percent from 2005 to 2014 (Federal Bureau of Investigation 2015a; Federal Bureau of Investigation 2015b). All the while, Texas has closed three prisons (Koh; Goodwin).

This paper highlights major adult criminal justice reforms in Texas from 2005 through the most recent legislation session in 2015.

## 2005 Legislative Session

The 79th Texas Legislature took a major step in improving Texas' probation system. The Legislature allocated \$55 million in incentive-based funding to probation departments on the condition that the departments accomplish certain goals, such as reducing revocations and implementing graduated

sanctions for technical violators. Specifically, the money was appropriated to probation departments to reduce caseloads for probation officers (from an average of 150 to 110 probationers per supervising officer), enable closer supervision of probationers, and allow for more specified supervision for probationers with mental illness (Levin 2011, 1).

From 2005 to 2010, probation departments that participated in the funding reduced their technical revocations by 16 percent, while non-participating departments increased their technical revocations by 8 percent. Assuming all departments would have increased technical revocations by 8 percent without the funding, the incentive program saved \$119 million on the decrease of technical violations alone (Levin 2010, 1).

## 2007 Legislative Reforms: The Beginning of the Texas Criminal Justice Vision

In 2007, the Texas Legislature faced a critical dilemma. The Legislative Budget Board estimated that in the next five years, 17,000 additional prison beds would be required at a cost of more than \$2 billion (Texas Department of Criminal Justice). Instead of signing off on this massive bill to the taxpayers, Texas lawmakers decided to look into alternatives to halt the state's bloated corrections system.

A group of legislative leaders requested the Council of State Government's Justice Center to determine the root of Texas' criminal justice problem and recommend cost-effective solutions that would decrease the prison population while increasing public safety (Council of State Governments Justice Center 2007, 3).



The Justice Center concluded that three main factors led to a meteoric rise in Texas' incarceration rate. First, probation revocations increased 18 percent from 1997 to 2006. Second, decreased funding for substance abuse and mental health services during the 78th Legislature in 2003 led to a reduction in capacity to deliver these services. This left more than 2,000 individuals in 2006 awaiting placement in these critical recidivism-reducing programs. Third, parole boards were adhering to even stricter practices than stipulated in their implemented guidelines; leaving 2,252 individuals incarcerated that should have been placed in community supervision (Council of State Governments Justice Center 2009, 3). With this analysis in mind, a bipartisan group of legislators proposed, and Texas adopted, a \$241 million investment program to increase capacity of treatment programs within prison and expand diversion options. Specifically, 4,500 new diversion beds and 5,200 new program slots were funded (Council of State Governments Justice Center 2009, 5).

A study was conducted in April 2009 by the Justice Center to assess the impact the investment had on Texas' corrections system. Overall, the study concluded that the 2007 reforms helped stabilize the Texas prison population growth, while crime rates decreased. Incarceration rates fell by 3.31 percent from 2006-2008, while the national incarceration rate increased by 1 percent over the same time (Federal Bureau of Investigation).

The study also showed that more individuals were able to go on probation and parole and stay on due to increases in capacity and more intensive and specialized supervision. Parole revocations decreased by 25 percent from 2006 to 2008.

This decrease in probation revocations was a major factor in the stabilization of the prison population (Council of State Governments Justice Center 2009, 6-8).

Financially, the positive results are apparent. Initially, the Texas Department of Criminal Justice (TDCJ) proposed a budget request for 2008-2009 of \$707 million for additional prison space construction and rental costs from county jails (Texas Department of Criminal Justice). Because of the re-investment program, Texas did not have to build additional prisons or rent additional space. Therefore, the program saved approximately \$444 million in 2008-2009 alone. Texas has not had to open an additional prison since 2007 and in fact has closed three: 1) Central Unit in Sugarland; 2) Dawson State Jail in Dallas; and 3) Mineral Wells Pre-Parole Transfer Facility (Goodwin; Koh).

The 2007 reforms were some of the most comprehensive changes the Texas criminal justice system has ever seen. They established the mindset of policymakers that it is possible to make Texas safer by treating low-level offenders with appropriate sanctions—versus those intended for violent criminals—while giving them opportunities to take personal responsibility for their actions and become better citizens than when they went into the corrections system.

## 2009 Legislative Reforms

The legislation of 2009 brought positive reform in several areas of corrections; specifically on incentivizing good behavior for current incarcerates and assisting in ex-offenders' successful reentry.

HB 93 authorized TDCJ to restore offenders' good conduct time that was previously forfeited because the inmate committed an offense or broke a rule. Previously, all time was forfeited if an offense or rules violation was committed. However, this law further incentivizes inmates to abide by the rules (House Research Organization 2009a).

HB 1711 required TDCJ to adopt and implement several plans that emphasize better results during confinement and post-release, including:

- ★ A comprehensive plan to reduce recidivism and ensure successful reentry and reintegration.
- ★ Adopting policies that encourage family unity and participation during incarceration and after to transition into the community.

- ★ Conducting research to determine whether the reentry and reintegration plan and the policies to encourage family and participation in fact reduce recidivism (House Research Organization 2009b).

HB 3226 allowed for TDCJ to pay for temporary post-release housing for individuals eligible for parole or mandatory supervision. Under the bill, TDCJ could release funds only up to an amount that would be equal to the cost that incurred if the individual was incarcerated. This bill allows inmates a much greater chance at successful reentry with no fiscal impact (House Research Organization 2009c).

The 81st Legislative Session also saw reform for a program that has cost more than 1.3 million Texans their licenses (Texas Criminal Justice Coalition). The Driver Responsibility Program requires Texas drivers to pay surcharges for three years if the driver commits certain traffic violations. If the fees are not paid, the driver will lose his or her license, forcing indigent drivers to jeopardize their insurance and in many cases, break the law to continue working or taking children to school. An amendment to the Department of Public Safety's (DPS) Sunset Bill required DPS to set up an indigency program for impoverished drivers who are required to pay these often exorbitant fees (190).

## 2011 Legislative Reforms

In many ways, the 82nd Legislature benefited from the reinvestment programs that the 80th Legislature implemented. Because prison populations continued to decline, Texas lawmakers were able to close Sugar Land Central Unit, saving taxpayers approximately \$20 million (Lawrence). The Sugar Land shutdown was the first prison closure of its time in Lone Star State and continued to strengthen the Texas model demonstrating that safety can still increase while incarcerating fewer individuals.

Additionally, several other bills were passed and signed that furthered the "Texas Miracle" of criminal justice reform. First, SB 1055 allowed counties to enroll in performance incentive funding if they met certain requirements such as reducing prison populations, reducing recidivism, increasing the amount of probationers making victim restitution, and increasing probationers' employment rates. (Senate Research Center 2011).

Second, HB 1205 allows judges to give "good time" credits for probationers if they perform certain tasks, such as earning a degree, paying the full amount of restitution, and completing treatment programs (House Research Organization 2011a).

Third, similar to HB 1205, HB 2649 incentivizes individuals within the corrections system to get the training and help they need to become successful citizens on the outside. The bill allows judges to award state jail offenders diligent participation credits if they complete educational, treatment, or vocational programs while incarcerated. Because of the short sentences of state jail felons, probation was typically not an option for these low-level offenders (House Research Organization 2011b). HB 2649 was expected to save \$49 million in tax dollars (Legislative Budget Board 2011).



## 2013 Legislative Reforms

The 2013 session saw a litany of corrections reforms signed by then-Governor Perry. SB 1173 creates split sentencing options for state jail felons. Split sentencing helps reduce recidivism by transitioning offenders from incarceration into community supervision, rather than straight release from state jail (House Research Organization 2013b).

HB 1188 provides indemnity for employers for negligent hiring when they employ ex-offenders. Exceptions were implemented for 3g offenses, sexually violent offenses, and offenses that were committed while performing duties substantially similar to those reasonably expected to be performed in the current employment (2).

HB 1659 prohibits the suspension, revocation, or denial of occupational licenses to ex-offenders who have completed deferred adjudication and have not committed an offense in five years. Exceptions existed for sex offenders and offenses that would make an individual "unfit for license" due to the similar nature of the offense to the occupational license vocation (House Research Organization 2013c).

Diversion programs received much needed reform in the 83rd Legislature. SB 1185 allowed for a jail diversion program for low-level, mentally-ill defendants in Harris County (House Research Organization 2013d).

SB 1237 strengthened victim's rights by allowing offenders and victims to confer for certain offenses. Statistics show that 79 percent of victims are satisfied as a result of the conferring process. In addition, research showed that 72 percent of jurisdictions previously using victim-offender conferring were able to reduce recidivism by 7 percent (Senate Research Center 2013).

One of the most significant criminal justice reforms that became law in the 83rd was SB 1611, known as the "Michael Morton Act." The bill requires prosecutors to provide all discovery materials to a defendant's counsel, with an exception of evidence that could compromise witness safety. This will allow defense counsel, particularly public defenders with massive caseloads, to devote more time to case details, rather than wasting time obtaining evidence already in the possession of the state (House Research Organization 2013e).

## 2015 Legislative Session

The 84th Legislature was a banner session for criminal justice reform in Texas. Legislation that passed and was signed during the 84th will have a positive impact on Texas' corrections system in almost every aspect.

With regard to offender reentry, SB 1902 will allow millions of Texans the opportunity to move past their low-level criminal past and become productive members of society. SB 1902 expands orders of nondisclosure to first-time, low/non-violent, non-sexual, non-family violent convicted misdemeanants. Prior to passage of SB 1902, orders of nondisclosure were only available to offenders who received deferred adjudication, a type of sentencing that allows the underlying conviction to be dismissed if the offender successfully completes the conditions dictated by the court.

An order of nondisclosure seals a person's criminal record from the general public and most employers, except for employers in sensitive fields such as health, finance, education, etc. The record is also available to law enforcement agencies for criminal justice purposes. SB 1902 will now allow this class of minor offenders to truthfully say they have not been convicted of the underlying crime to employers, housing managers, and certain licensing agencies, greatly increasing their chances of getting a good job and housing. Studies have consistently shown that proper housing and vocation

are critical to successful reentry. SB 1902 is expected to decrease recidivism rates, while saving millions in public expenditures. Although SB 1902 had an indeterminate fiscal note, it is expected to be positive as more individuals will be petitioning for orders of nondisclosure, which carries certain fees (House Research Organization 2015a).

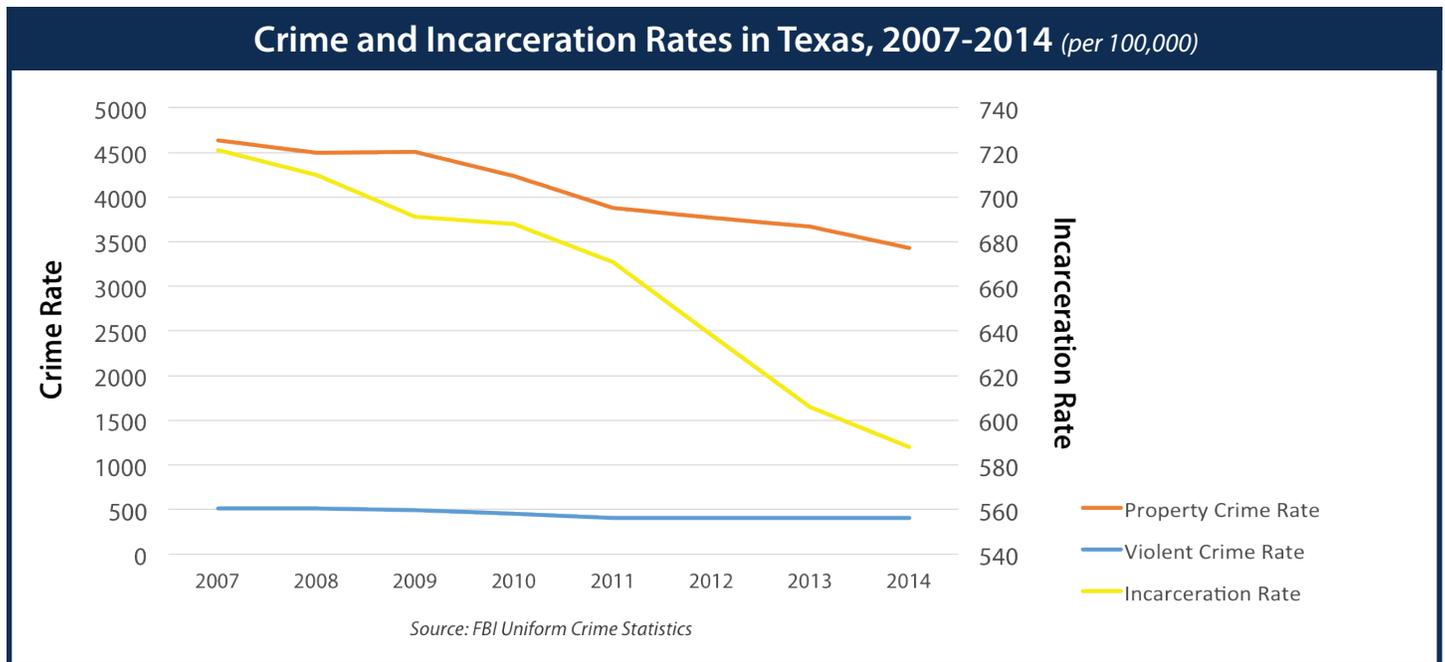
The issue of overcriminalization also saw significant reform in 2015. HB 1396 increased thresholds across the board for property crimes to catch up with modern-day inflation and the statute's original intent when the legislation was initially enacted. This will prevent property offenders from being overcharged due to outdated offense thresholds.

HB 1396 also enacted a commission to study criminal penalties outside the penal code. For example, Texas has 12 different criminal penalties, including felonies, for oyster harvesting not in accordance with the law. The commission will examine if certain laws criminalizing activities outside the penal code is "unnecessary, unclear, duplicative, overly broad, or insufficient to serve the intended purpose of the law."

HB 1396 codified the rule of lenity, an element of judicial canon that states that if there are two reasonable interpretations of a criminal law or penalty, the judge must rule in favor of the defendant. Recently, the Supreme Court of the United States in *Yates v. United States* applied the rule of lenity and overturned a conviction where a fisherman was prosecuted under the Sarbanes-Oxley Act (a lengthy and confusing piece of federal legislation enacted for securities fraud) for allegedly throwing three fish overboard after officers declared they were undersized. The codification of the rule of lenity will ensure that citizens will only be prosecuted the actual intent of a law or its penalties (2).

Additionally, HB 1396 codified the Supreme Court decision *Riley v. California*, which states that law enforcement must now procure an evidentiary search warrant before browsing an arrestee's cellular telephone (28).

HB 1546 brought a more streamlined mechanism for the use of diligent participation credits to defendants confined in a state jail facility. Diligent participation credits allow for inmates to be released at an earlier time if they participate in educational vocational, treatment, or work program. Prior to the passage of the bill, TDCJ would report the number of days the inmate diligently participated in programs 30 days before the person served 80 percent of their sentence. Then, judges were allowed to use the credit against the original sentence up to one-fifth of the original time required to be served. However, due to backlogging, judges would routinely not get to these



reports by the time the inmate has served his or her sentence. HB 1586 would allow the judge to presumptively entitle the inmate with these credits so that TDCJ would be required to credit them against the original sentence automatically, without having to refer them to a judge. The judge can, however, can make a finding that the inmate is not presumptively entitled, and the process prior to the passage of the bill would stay in effect (House Research Organization 2015b).

The parole system saw reform that will keep the lowest level offenders out of prison for technical violations of their parole conditions, such as missing a meeting with their parole officer. SB 790 authorizes the county magistrate holding individuals due to an administrative violation of their parole or mandatory supervision to be released on bond, with consent from the Pardons and Paroles Division and with a finding from the magistrate that they are not a threat to public safety. The bill also allows the Pardons and Paroles Division to issue the warrant after they make a final determination regarding the violation instead of before it. This will reduce county jail overcrowding, as well as allow individuals who pose no threat to society to continue working while they await their revocation hearing (House Research Organization 2015c).

Lastly, HB 710 expanded the use of summons in lieu of a warrant for low-level parole violators in two circumstances. First, the Pardons and Paroles Division may issue a summons for parolees that are charged with committing a new Class-C misdemeanor if the person has maintained steady

employment and residence for one year and has not been charged with another offense while on parole or mandatory supervision. Second, the Pardons and Paroles Division must issue a summons instead of a warrant if the individual is only accused of an administrative violation and the alleged violation occurred after the first year the individual was placed on parole or to mandatory supervision (instead of after the third). Similar to SB 790, this bill will also allow individuals who pose no risk to society to maintain stable employment while awaiting their revocation hearing (House Research Organization 2015d).

### Conclusion

The push for criminal justice reform based on conservative principles—improved public safety, consideration for victims, redemption, fiscal restraint, and liberty—continues to grow as more and more states realize the positive benefits these changes can have on public safety, the costs of corrections, and family preservation. Texas spearheaded many of these reforms and has continued to strive each session to remain a guiding light for the rest of the nation. ★

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