

Criminal Justice Policy Brief
Texas LULAC State Executive Office



**Proven Pro-family Criminal Justice Policies
that Save Families, Save Tax Payers' Money
and Improve the Safety of our Community**

August 2004

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Advancing the economic condition, educational attainment, political influence,
health and civil rights of the Hispanic population of Texas.

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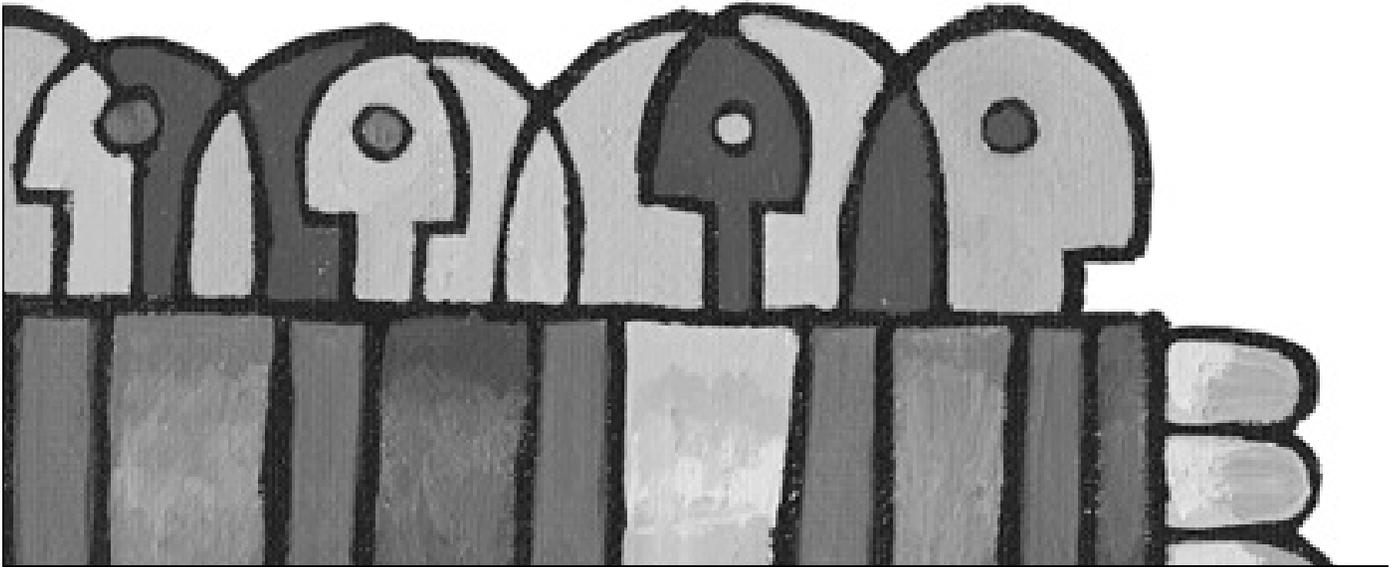


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Proven Pro-family Criminal Justice Policies

Pro-family criminal justice policies nurture family relationships, reserve expensive prison space for violent offenders, and support nonviolent offenders in the community so they can provide for their families materially and emotionally.

Pro-family criminal justice policies strengthen the family – either by keeping the nonviolent offender connected to the family but still under supervision, or by encouraging communication with family while the offender is in prison. When our families are stronger, our communities are stronger.

These policies help keep lawbreakers from committing another crime. Evidence-based programs have shown that they help nonviolent lawbreakers find work, comply with supervision requirements, succeed in drug treatment, and avoid committing new crimes. Fewer crimes mean fewer victims.

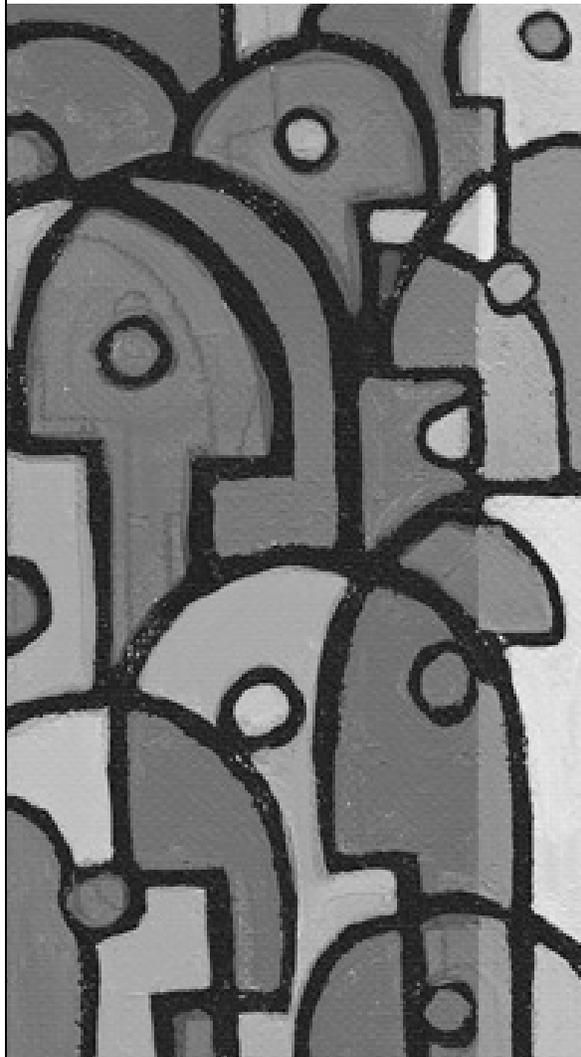
Because incarceration so deeply damages the entire extended family financially and spiritually, reviewing our incarceration policies is vital to the next generation of Texans.

More than half of the people in Texas prison are parents. Studies indicate that children who have a parent in prison get lower grades in school, drop out of school and become delinquent more often, and are 6-8 times more likely to end up in prison themselves.

Children with parents in prison often end up living with grandparents or in the state foster care system.

The financial impact on children is staggering – parents who are currently in Texas prisons owe \$2.5 billion in unpaid child support to children who live in Texas.¹

We must break this cycle!



Texas LULAC supports proven, evidence-based tools to fight crime such as drug courts and community based treatment programs for nonviolent offenders. Texas' over-reliance on incarceration harms Texas communities, and fails to change criminal behavior.

“Corrections policy in the coming decades cannot sustain the long-term financial costs associated with over-reliance on prisons as a means of controlling crime. What’s needed is a seamless system of progressive sanctions to limit and punish illegal behavior, and a system of re-entry options that better prepare offenders to successfully reintegrate into the community as clean, sober, working, taxpaying citizens. This is particularly true now that a growing body of evidence is proving the effectiveness of lower-cost public safety sanctions...doctors don’t perform surgery or hospitalize patients if less invasive, less costly therapies will restore their patients to health, and likewise, prison beds, because of their high cost to build, maintain and operate, ought to be treated as an option of last resort within a more expansive range of options.”

Quote from Representative Ray Allen, Chairman of the Corrections Committee in the Texas House of Representatives, Effective Corrections Requires More Than Tough Prisons, American Legislative Exchange Council Issue Analysis, April 2004.

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Little-Known Facts About the Texas Criminal Justice System

Myth #1: “Tough on crime” policies are the most effective way to reduce crime.

Fact: Decades of research identify the punishments that produce long term change in most criminal offenders’ behavior. “Tough on crime” punishments simply do not work on most offenders.

As violent crime escalated over past decades, “tough on crime” policies like high “mandatory minimum” prison sentences, “three strikes, you’re out” and “truth in sentencing” became popular. Many people still support long prison sentences, including life in prison, even for non-violent offenders.

Today, we have more proven solutions. Scientific studies that use control groups and follow the behavior of different types of criminal offenders subject to different types of punishments demonstrate that certain programs reduce the chance that an offender will commit another crime and increase the chance that an offender will experience long term positive change in behavior. This body of research is often referred to as “what works” or “evidence-based programming.”²

Research shows that some people in society are so responsible and honest that they will immediately change their behavior if they are somehow caught up in the criminal justice system. Even without much punishment, these people will self-correct their behavior. On the other end of the spectrum, there are those who have a history of violence that does not suggest that treatment is a viable option.

But most people who are caught up in the criminal justice system are in between these two extremes, and can learn to change with proven evidence-based programs. Most people in the criminal justice system do not really make us afraid for our safety, but instead make us angry because they seem too impulsive to learn how to change. These people cannot be lectured or punished into being a better person – they will not learn their lesson the first time they are arrested or just because we threaten to put them into prison for longer and longer periods of time.

Instead, long-term change for this kind of person comes from learning and internalizing life’s lessons and changing thinking patterns – things that are virtually impossible inside prison walls. In fact, this kind of person will frequently choose to go to prison instead of living on probation, because it is easy to do prison time compared to the challenge of staying in the community and achieving real internal change through substance abuse treatment, life skills training and keeping a job.

Evidence-based programs reduce crime. The Texas Criminal Justice Policy Council found that offenders who received appropriate treatment were 4 times less likely to go back to prison than those who did not.

Increasing penalties for crime does not reduce crime for most criminal offenders. According to the United States Department of Justice, National Corrections Institute, severe punishments can have the opposite effect:

- **Punishment produced a -0.07% change in criminal activity (it increased criminal behavior)**
- **Treatment produced a 15% positive change in criminal activity (it decreased criminal behavior)**
- **Cognitive skills programs produced a 29% improvement in the criminal activity (it decreased criminal behavior the most)**³

Our criminal justice system should give criminals sentences that fit the offender’s personal behavior profile. For the typical person in the system, a simple probation plan, rather

than an impossible plan, will ensure that they are not set up to fail. Too many fines frequently doom an offender to financial failure. Job training for career-oriented employment is one of the keys to success. Community service works if it changes the person's expectations and options in life. Based on the individual's needs, proven substance abuse treatment programs and cognitive behavioral programs get people off drugs. Strengthening internal constraints instead of simply using external controls will be more likely to modify anti-social thinking and promote responsibility.

Key components of "what works" are:

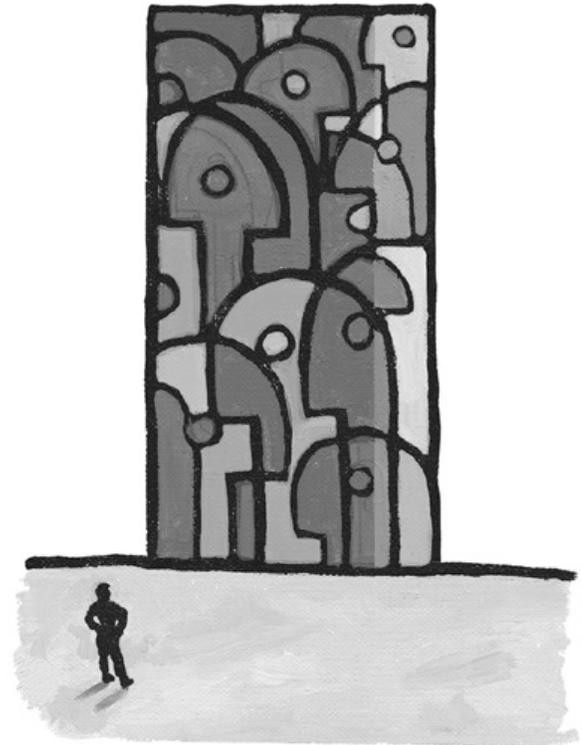
- Assess the individual's risk level and needs,
- Provide seamless programming tailored to the risk level and needs,
- Use incentives and other motivational tools to reward success,
- Use swift and clear sanctions to punish for lapses,
- Strengthen the individual's peers and family,
- Provide follow up services after release from "the system."

Only real, long-term change in criminal behavior will actually reduce crime and create stronger families and communities in our state.

Myth #2: If we put more people in prison, the crime rate will get lower

Fact: The crime rate does not continue to drop as our prisons expand. It is even possible that an unintended consequence of over-incarceration is an increased crime problem.

It would seem logical that if we keep putting more criminals in prison, then the crime rate will keep getting lower at the same time. In fact, Texas is a good example of how that has not worked. Since the early 1990's, Texas has tripled the size of its prisons. Texas expanded its prison space, and the num-



Texas' incarceration rate has been 51% higher than the national average, but in spite of that the crime rate has been 24% higher than the national average.

TDCJ Community Justice Assistance Division, Community Supervision in Texas: Summary Statistics January 2003, Prepared by Research and Evaluation.

ber of people in prison, faster than any other state. But the crime rate did not decline in Texas more than all other states. The crime rate went down in California and in New York state much more than in Texas, yet those states increased the number of people in prison much less than Texas.⁴

Does over-incarceration increase crime? Maryland's prison population declined by .6% for the first time in several decades, while Texas increased its prison population by 4.2%. Yet Maryland's violent crime rate fell 28% more than the violent crime rate in Texas, and Maryland's index crime rate fell 570% more than Texas' index crime rate.⁵

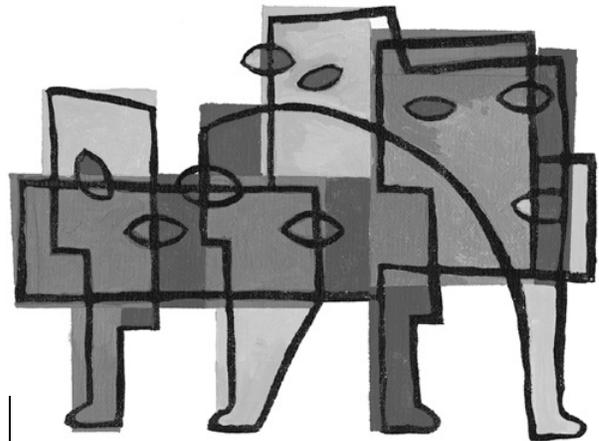
Over-incarceration might actually increase crime. Researchers are now studying whether there is a “tipping point” in communities that have high incarceration rates. We might start to increase the crime when we remove so many working-age and parenting-age males from the community. Studies show that children who have parents in prison are 6 - 8 times more likely to go to prison themselves. When a nonviolent parent is removed from the home and sent to prison, the family suffers most. The whole community suffers after this “tipping point” where a certain percentage of all the working fathers in one community are in prison. Instead of sending more people to prison, we should focus on stopping the annual, inter-generational migrations in and out of our most impacted communities.

Myth #3: Texas already spends a lot of money on programs that work, like drug treatment and diversion programs.

Fact: Texas spends almost all criminal justice dollars on prison beds and law enforcement.

Texas’ criminal justice dollars generally flow through the Texas Department of Criminal Justice (TDCJ) or the Governor’s Criminal Justice Division (CJD). State tax dollars are spent on TDCJ, and the Governor’s CJD generally handles federal grant money.

The Texas Department of Criminal Justice (TDCJ) spends billions of our state tax dollars each year, but spends less and less of its funds on proven treatment and diversion programs. TDCJ gets about \$5 billion from the Texas Legislature every two years. TDCJ spends 90% of those funds on prison beds or “hard incarceration” and only 10% on community based programming like substance abuse treatment and other probation programs. Over the past ten years, TDCJ funding of programs outside of the prison walls has actually decreased.⁶



According to President Bush’s 2003 National Drug Control Strategy, only 18% of the people who need substance abuse treatment are receiving it.

The Governor's Criminal Justice Division (CJD) distributes federal criminal justice dollars that come to Texas including the federal Byrne grant program. Each year, over \$30 million comes to Texas from the federal government in Byrne grant funds. The CJD can choose to spend the Byrne funds on substance abuse treatment, drug courts, prison diversion programs, and/or other programs that work to reduce crime. Instead, the CJD gives almost all of the money to Regional Narcotics Task Forces – failed law enforcement programs whose goals are simply to put more and more people in prison for petty drug offenses each year. Even after the well-reported corruption and scandals that surround this flawed law enforcement program, the CJD has failed to divert the \$30 million per year in federal dollars to “what works” treatment programs that would break the cycle of crime in Texas.⁷

There is a serious need in Texas for special programs that are not being funded. According to the US Department of Health and Human Services, over 1.3 million Texans need but do not receive treatment for alcohol abuse, and over 400,000 Texans need but do not receive treatment for illicit drug use.

Meanwhile, Texas pays the price for not having these needed programs in place. More people placed on probation are failing and being sent to prison. From 1994 to 2000, technical revocations (people who were sent to prison for failing probation with no new offense alleged, just failure to follow rules) increased 58%, and revocations for committing a new offense increased 9.6%.

People sent to prison for technical revocations in 2000 will cost state taxpayers \$220 million to incarcerate.⁸ If these probationers could successfully complete their probation and not go to prison, these hundreds of millions of tax dollars could be invested in programs that work instead of prison beds.

The cost of failing to provide Texans with the help they need extend far beyond the criminal justice system. The direct economic cost to American society of drug abuse in 2000, including health care costs attributable to drug abuse and



In Texas, the total economic cost associated with alcohol and drug abuse in 2000 alone was estimated at \$25.9 billion.

Texas Commission on Alcohol and Drug Abuse, Annual Report, 2003.

other costs which include the cost of goods and services lost to crime and social welfare costs, was over \$50 billion. The indirect economic cost to American society in 2000, including productivity losses due to incarceration, institutionalization, hospitalization, premature death, drug abuse related illness, productivity loss of victims of crime, and crime careers, was over \$110 billion. That's in addition to direct costs of arrest, prosecution, probation, incarceration and parole.⁹

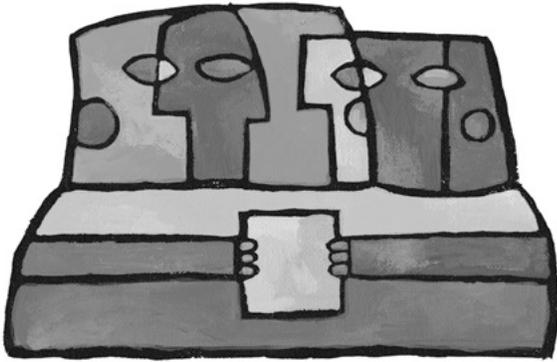
The cost of our failing criminal justice strategies falls on families, communities, and taxpayers.

Myth #4: Probation in Texas is short, and easy to complete.

Fact: Texas' probation terms are 67% longer than the national average for all states.¹⁰ Probation in Texas is difficult to complete successfully because of the conditions imposed, and because of the inconsistent way those rules are enforced. Probation officers can not respond adequately or consistently to problems when they occur because caseloads are too high.

Texas has the largest probation population in the United States due mainly to our long probation terms for nonviolent offenders.

Texas Criminal Justice Policy Council, Biennial Report to the 78th Texas Legislature, January 2003.



“\$470 million to imprison the probationers who were revoked from probation in 2001 alone?”

That money could have gone towards education instead, not towards housing people who have had successful probation for years.”

Mary Ramos
Texas LULAC
Houston

TDCJ asked a team of Texas judges to study the issue of probation conditions and consistency in enforcement, in response to the 58% increase in probation revocations from 1994 to 2000 for probationers who were sent to prison because they did not follow all of their probation rules. The team found that probation officers enforce probation conditions very differently around the state and made recommendations that might seem like common sense:

■ **Expand use of alternatives to prison through increased state funding for an array of treatment programs.**

■ **Utilize swift, certain, and graduated systems of sanctions, appropriate to the severity and frequency of the violation, for each and every probation violation.**

■ **Provide judges with information on available sanctions and treatments.**

■ **Institute written probation procedures with recommended responses to probation violations.**

■ **Direct judges to evaluate procedures for dealing with probation violations.**

■ **Conduct additional research on reasons for the increase in technical revocations.**

■ **Distribute information to all judges and probation officers about “what works.”¹¹**

Although it has been several years since the team of judges completed their study, TDCJ has not fully implemented the team’s recommendations and the Texas Legislature has not provided the requested funding for programs that work.

Probation in Texas can last up to ten years. Extremely long probation terms increase the chance that probationers will eventually fail to meet their rules of supervision and face a technical revocation, even if they have made serious long-term improvement in their lives. A person who has successfully completed every probation condition for several years can still be sent to prison if he or she is late to one monthly meeting or late paying a fee.

The average amount of time spent in Texas prison after probation is revoked is 4.3 years. Texas taxpayers shell out \$470 million just to imprison all of the probationers who were revoked from probation in 2001.¹²

Early dismissal for successful probationers exists as an option in the law, but is rarely utilized. The early dismissal option allows a probationer to show the judge that he or she has successfully completed a certain number of years of probation and request to be released from probation early. Almost half of those sent to Texas prison with revoked probation have already successfully completed several years of their probation.

If a person has successfully completed all of the conditions of probation for the period of time set out in the law for early dismissal, the person should be encouraged to take advantage of the early dismissal option. This is one component of “what works” – use of incentives and other motivational tools to reward success. The individual will have earned his or her freedom, Texas will be investing in “what works”, taxpayers can save the cost of incarcerating a person who may violate a technical condition of probation after already having been successful for years. Plus, the probation officer can close the case and focus on probationers who require more attention.

Probation officers in Texas carry an average of 150 cases each – twice as many as professionals recommend. Due to these unreasonably large caseloads, probation officers frequently fail to respond when a probationer has a problem and

are not able to adequately supervise those who need it the most. If Texas would shorten its maximum probation terms to be more in line with the rest of the country, we could release people from probation after they have successfully made serious long-term change in their lives. Then our probation officers could carry fewer cases at a time. Our system would become stronger and more responsive to those probationers who require more personal attention in order to succeed.

Texas’ long probation terms and failure to grant early dismissal to those who have earned it make our probation system weak. We should make our probation system more effective by assuring that we have the right people under supervision.

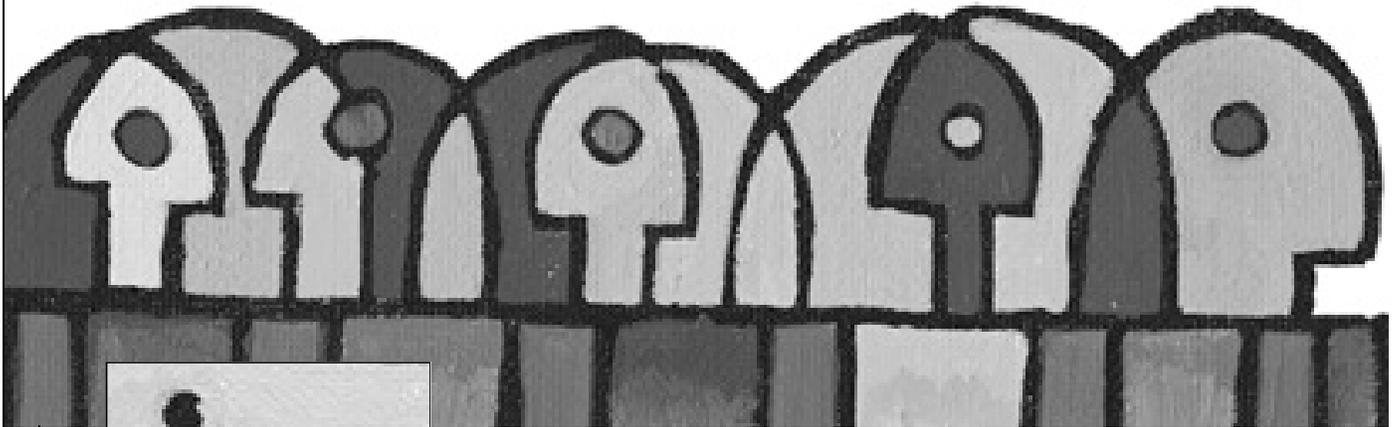
Myth #5: A felon’s punishment ends the day he walks out of prison.

Fact: Once an adult is convicted of a felony, that person is always and forever a “felon” for the rest of his or her life. In Texas, there is no way to reduce or recover from the impact of the permanent label, “felon”. It is on the person’s criminal record forever, and most felony conviction records are available to the public on the internet.

Indirect or collateral consequences of felony punishment in Texas extend deep into the life of the individual and the community, and have wide ranging ramifications. For most felons, time in prison begins a life-long series of punishments. While it might seem reasonable for certain violent felons to be punished in all of these ways for the rest of their lives, the punishments are so permanent and harmful that as a society we must closely examine who we are subjecting to these policies.

Legal barriers and roadblocks that face felons in Texas severely limit access to all of life’s most fundamental necessities – food, clothing, shelter, employment and education.





“The penalties must fit the crime, bottom line”.

Roger Rocha, Texas LULAC Laredo

There are too many separate legal restrictions on felons in Texas to mention them all in this report, but some are discussed below.

1. Civil Rights

“Equal rights” does not apply to convicted felons in Texas.¹³ In a legal scheme reminiscent of the way racial minorities and women have been treated in the past in this country, felons are not equal under Texas law. The law ensures a felon is treated as a second class citizen and can never exercise many of the rights that other people have to participate in our democratic government or access any degree of political power.

A felon in Texas can never hold a public elective office.¹⁴ A felon can not serve on a jury or a grand jury in Texas.¹⁵ If a felon is ever a witness in a Texas courtroom, the fact that they are a felon is automatically admissible as evidence in court.¹⁶ And a felon can never legally protect a family member’s estate by acting as an executor or administrator of an estate in probate court.¹⁷

2. Housing

In determining eligibility for public housing, federal law gives local public housing agencies the ability to deny housing to virtually anyone with a criminal background. Each local public housing agency sets its own policy about whether it will ban felons from public housing. Local housing authorities can consider the individual circumstances and history of applicants if that is their policy. They can decide whether to consider arrests that have not resulted in a conviction in eviction proceedings. They can determine how long to deny housing assistance to people with criminal records. They can decide what, if anything, qualifies as rehabilitation for the purpose of lifting the bar to public housing.¹⁸

“We have to do something that gives hope because a drug conviction on someone’s record is kind of a permanent ‘scarlet letter’ that prevents him or her from getting a job, getting housing or getting student loans - it makes it impossible for these guys to support a family or to make a living.”

Adrian Rodriguez
Texas LULAC
Plano

Private landlords can, and usually do, refuse to rent to felons. Even felons raising children are usually limited to the worst part of town to find an apartment because no other landlord will rent to them. No matter how long or how hard a felon works to improve his or her life, and no matter how many children depend on the felon for support, many felons must raise their family in substandard housing because of the label “felon”.

3. Employment

Prison inmates who learn marketable job skills in prison return there less than half as often as inmates who do not. Most people agree that career-oriented employment is key to long-term positive change.

Texas does not prohibit discrimination by employers based on a criminal record. Employers in Texas usually ask job applicants about arrests and convictions, and almost always refuse to employ felons regardless of individual circumstance or business necessity.

A felon who has been convicted of a drug crime can be an attorney, but not a notary public. And a felon can get permission to be a licensed physician, but not a physician’s assistant. Clearly, the legal bans on employing a felon in Texas are irrational.

As an additional barrier to employment, Texas has over 100 state laws that forbid a felon working certain types of jobs. Just a few employment opportunities legally banned for felons in Texas are:

- Labor union officer or labor organizer,¹⁹
- Pesticide applicator (ineligible for 5 years),²⁰
- Person who issues parking tickets for disabled parking spaces,²¹
- Court interpreter,²²
- Meat and poultry inspection service,²³
- Auctioneer,²⁴
- Athletic trainer (at the discretion of the licensing agency),²⁵
- Insurance agent, counselor, or adjustor (discretion of agency),²⁶
- Interior designer (discretion of agency),²⁷
- Acupuncturist (discretion of agency),²⁸
- Midwife (discretion of agency),²⁹
- Mortgage broker,³⁰
- Distributor or manufacturer of medical devices (discretion of agency),³¹
- Speech – Language pathologist (discretion of agency),³²
- Hearing aid fitter or distributor (discretion of agency),³³
- Physical therapist (discretion of agency),³⁴
- Dental hygienist (discretion of agency),³⁵
- Marriage or family counselor,³⁶
- Monitor or aid on a school bus,³⁷
- Registered nurse (discretion of agency),³⁸
- Chiropractor (discretion of agency),³⁹
- Physician assistant,⁴⁰
- Psychologist,⁴¹
- Private security detection device salesperson,⁴²
- Bingo worker, supply manufacturer or distributor, or service provider (ineligible for 10 years),⁴³
- Coin-operated machine business license,⁴⁴
- Business license holder,⁴⁵
- Vehicle storage facility operator (ineligible for 3 years).⁴⁶

If only 1% of the people in the Texas criminal justice system could get out of the system and get a \$40,000 a year job and pay taxes, the impact will be more than \$320 million in just one year.

Austin American Statesman,
March 1, 2004,
page A9.

Laws banning felons from doing certain jobs in Texas do not appear to be consistent or logical. Some are prohibited only for a certain number of years while others can be decided at the discretion of a board or commission based on personal circumstances. Whether or not the legal bans on felon employment in Texas make sense, they are very real barriers to success.

Texas should revisit the list of banned jobs so that felons are only excluded for reasons of business necessity. In addition, Texas should offer a certificate of rehabilitation which would lift the bar to employment for a felon who obtains one. At this time, six other states (Arizona, California, Illinois, Nevada, New Jersey and New York) offer such an opportunity to felons.⁴⁷

4. Education

Federal and state law discourages felons from obtaining higher education.

“How is it possible that a sexual predator can go back to school by getting a student loan, but a non-violent offender convicted of possession of marijuana can’t?”

Renato de los Santos
TX LULAC
Dallas

Federal law states that students convicted of a drug-related offense are ineligible for grants, loans and work assistance.⁴⁸ This federal barrier cannot be altered by the states. No other class of offense, including violent offenses, sex offenses, repeat offenses, or alcohol-related offenses, results in the automatic denial of education financial aid eligibility.

Felons in Texas can not receive most state-based higher education financial aid including prepaid higher education tuition scholarships. Felons are not eligible for a Toward Excellence, Access & Success (TEXAS), grant or a TEXAS grant II for public, private or two-year institutions of higher education.⁴⁹

5. Food and necessities.

The 1996 federal welfare law prohibits anyone convicted of a drug-related felony from receiving federally funded food stamps and cash assistance (also known as TANF - Temporary Assistance for Needy Families). This is a lifetime ban— even if someone has completed his or her sentence, overcome an addiction, been employed but got laid off, or earned a certificate of rehabilitation.

States can maintain the federal lifetime ban on cash assistance and food stamps, but they also have the option of passing legislation to limit the ban or eliminate it altogether. Texas has adopted the federal drug felon ban on public assistance.⁵⁰ No person in Texas who receives a felony drug conviction after 1996 is eligible to receive Temporary Assistance for Needy Families or food stamps.

“Effective preparation of prison inmates to succeed in the outside world must become one of the highest priorities of both legislative policy makers and corrections professionals alike. We must fully fund and integrate current re-entry programs into a seamless re-entry initiative which begins with cognitive behavior training, offers correctional industries job training and certification in recognized work skills, provides in-prison drug and alcohol treatment, technical work and life skills training.”

Quote from Representative Ray Allen, Chairman of the Corrections Committee in the Texas House of Representatives, Effective Corrections Requires More Than Tough Prisons, American Legislative Exchange Council Issue Analysis, April 2004.



Myth #6: The system is fair – there is no racial profiling of Latinos in Texas.

Fact: All people should be treated fairly in the criminal justice system without regard to skin color. But nationwide, Latinos are serving time in prison at 2.5 times the rate of whites.⁵¹ Worse, if we continue to put people into prison at the same rate, 1 out of every 6 Latino men who were born in 2001 will serve time in prison at some point in their life. On the other hand, a white man born in 2001 is almost three times less likely to see the inside of a prison.⁵²

In Texas, studies have shown that law enforcement agencies treat Latinos differently. Approximately 6 of every 7 law enforcement agencies reported searching blacks and Latinos at higher rates than whites following a traffic stop, even though most searches are fruitless. In some departments, more than 95 percent of Latinos searched did not do anything wrong yet they suffered the humiliation and demoralization of a search that simply wasted everyone's time.⁵³ Similarly, 7 out of every 9 regional narcotics task forces in Texas search Latinos for drugs more often than whites.⁵⁴

State and local criminal justice agencies in Texas have unclear data about how many Latinos are in the criminal justice system. Many criminal justice agencies in Texas label Latinos as "W" for "white." Even though Texas' racial profiling law requires law enforcement to list Latinos as "H" for "Hispanic," practices around the state vary greatly. Many local law enforcement agencies and the statewide law enforcement agency, the Department of Public Safety, continue to label Latinos as white. As a result, Texas cannot accurately determine how many Latinos are involved in any part of its criminal justice system.

When investigative reporters in San Antonio conducted a study of racial data maintained by the San Antonio police department, they found the racial tracking information "too inaccurate for anyone to tell anything."⁵⁵ In thousands of cases the San Antonio police department interacted with

people with Latino names, but listed them as white, even listing people who live in Mexico, like Mr. Garcia Garza, as white. They discovered that in 26% of the cases the driver's race listed on the ticket was different from the same person's race listed in their court file. One department supervisor responded that the "officer might be listing everybody that's not black as white."⁵⁶ Even though the San Antonio law enforcement agency is the only one to be scrutinized in this way so far, the study raised questions that should be answered for every criminal justice agency in the state.

The Texas Department of Public Safety maintains a statewide database called CLERIS (Combined Law Enforcement Reporting and Information System) that does not have a category for Latinos. It records every person in the entire database as "B" for black or "W" for white.



"These numbers seem to be junk."

Julian Castro
City Councilman
San Antonio

Enough evidence of unfair treatment in Texas exists to require better record keeping and additional study. Until Texas criminal justice agencies make a serious attempt to disclose the way they treat Latinos as a group, we cannot intelligently address the issue of fairness.

Myth #7: We must build more prisons in Texas because there is nothing we can do to stop people from being sent to prison.

Fact: Our Texas Legislature has direct control over who goes to Texas prison and for how long – they enact our state sentencing laws. Our Governor must agree anytime the Legislature changes state sentencing laws.

The Texas Legislature defines which behaviors are crimes, and how harsh the criminal penalty will be for each crime. They determine which crimes are felonies and which crimes are misdemeanors.

"What does it really mean to win the 'war on drugs'?"

Politicians are always talking about winning this war, but they don't ever define what constitutes a victory!

Do we have to arrest more people? Do we have to get more police? Do we build even more prisons? Do we confiscate more homes and break up more families and end more careers?

At least rehabilitation gives you concrete solutions and proven results!"

Angie Garcia
Texas LULAC
San Antonio

A felony conviction can result in a sentence to prison, and cause the person to have life long status as a “felon” with all of the consequences of that label. A misdemeanor conviction, on the other hand, is punishable by fines or time in the county jail, and fewer collateral consequences result from the conviction. Prison is reserved for felons only.

Texas Department of Criminal Justice director Gary Johnson testified to the Senate Criminal Justice Committee the agency must spend 90% of its budget on prison beds due to “front end pressure.” That means that there are so many felons entering the prison, and the prison has a legal duty to hold them inside due to long sentences, that TDCJ has no choice – it must spend 90% of its budget on prison beds, leaving almost no money available for alternatives to incarceration and “what works”.

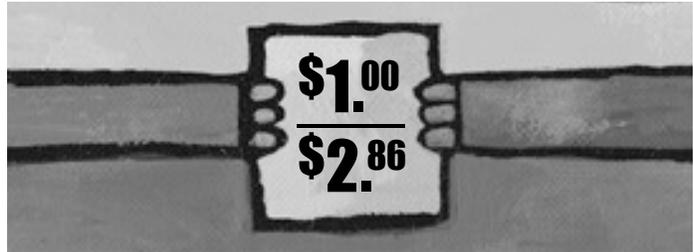
It is time to ask if Texas is creating too many felons for our own good.

There are almost 2,000 felonies in Texas. The Texas Board of Pardons and Paroles maintains a list of 1941 individual felonies that exist in Texas law. That means there are almost 2,000 different behaviors or actions that will subject a Texan to prison and make the person a felon for the rest of his or her life.

1 in every 11 adults who live in Texas is already a felon.⁷

Our felony sentences are long, even for nonviolent felonies. Texas prison sentences are double the national average. The national average was just over 5 years in 1996, while the average Texas prison sentence was 9.5 years. 70% of admissions to Texas prison each year are for nonviolent crimes. Texas continues to punish small-time, nonviolent offenders with significant prison time, even though alternatives to incarceration are more effective!

Nearly half of Texas’ 15,000 state jail felony prisoners are serving time for drug convictions involving less than one gram. These offenders cost Texas taxpayers \$73 million a



For every \$1 that Texas spent on treatment, the state saved \$2.86 in costs of incarceration.

Texas Criminal Justice Policy Council, Treatment Alternatives to Incarceration Program – An Analysis of Retention in Treatment and Outcome Evaluation, March 1995.

year to incarcerate – money better invested in education, families, and alternatives that work.

In 2003, three members of the Texas House of Representatives, Chairman Harold Dutton, Chairman Ron Wilson, and Representative Jack Stick filed House Bill 2316, a serious attempt to decrease some of our low-level nonviolent felony penalties. That bill, if it had passed into law, was predicted to save Texas more than \$58 million during the 2004/2005 biennium and more than \$461 million during the 2006/2007 biennium in prison costs. We must revisit this type of reform for the sake of protecting our families – Texas needs those precious tax dollars for programs that improve our communities.

Myth #8: Change will never happen in Texas because politicians will always want to look “tough on crime.”

Fact: Change is constant – the only question is the direction of the change. If Texas does not change its current policies, then the change will be the construction of thousands and thousands of new prison beds.

Politicians who want to be tough on crime must realize that being tough means doing “what works” to change criminal behavior.

Prison spending in Texas increased 268% in Texas from 1988-1998, faster than health care or education.

Texas has added 4,000 new prison beds since the 2003 legislative session, and they are full. If policies do not change, Texas is expected to need 2,000 additional prison beds every year. That means Texas can either start building thousands of new prison beds each year, which will cost millions of dollars, or we can change our criminal sentencing policies to better protect the public safety.

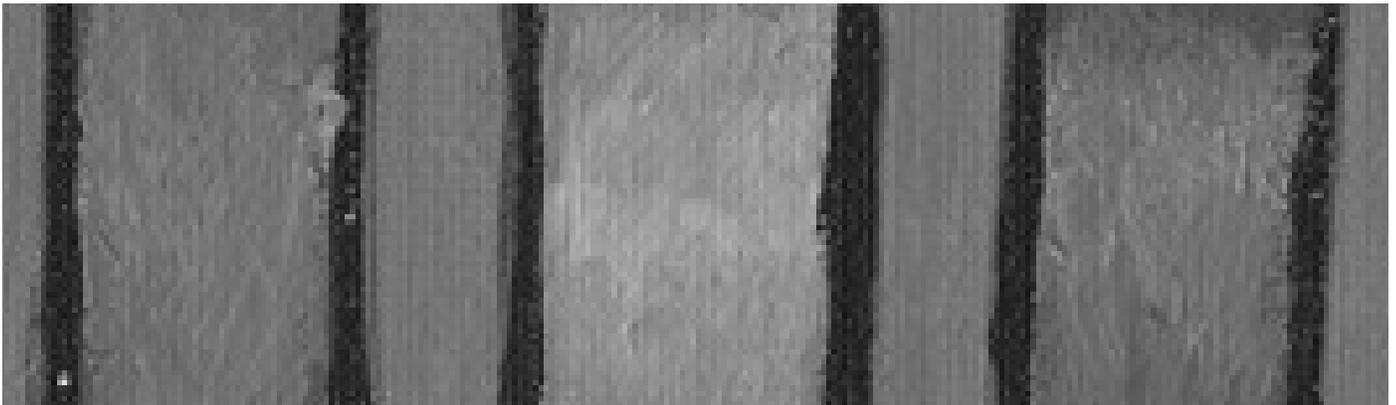
Sadly, change for the worse is the norm. Each time the Texas Legislature meets it passes numerous new criminal penalty enhancements, increasing specific criminal penalties. It has been said that a new felony is the easiest law to pass in Texas. Few people will oppose a new criminal penalty enhancement, because they are afraid it will look like they approve of the conduct. For instance, Texas passed a new law in 2003 that increased the criminal penalty for assault if the person assaults a sports official. Even though assault is already a crime, people were afraid that if they opposed the new law it might seem like they were in favor of assaulting sports officials. We have to work smarter than that. Texas should refuse to pass any new criminal penalty enhancements until the prison crisis is solved.

“Texas needs to break the cycle by being smart about the way we deal with nonviolent offenders. We deserve proven pro-family criminal justice policies that save families and improve the safety of our community.”

Margaret Moran
Texas LULAC
San Antonio

Senator Whitmire, Chairman of the Criminal Justice Committee in the Texas Senate, made just such a pledge this year. At the TDCJ Community Justice Assistance Division Sentencing Conference in the spring of 2004, Senator Whitmire pledged that he will not allow any new penalty enhancements to pass into law in 2005. Support for intelligent elected officials like Chairman Whitmire is essential.

Research clearly shows that the old “tough on crime” policies do not stop crime. Elected officials who try to act “tough on crime” with the old rhetoric and old ideas should be politely educated about “what works”. If an elected official is serious about stopping crime, he or she has no choice but to support solutions that work to reduce crime.



2

Texas LULAC Recommendations That Save Families While Saving Tax Dollars

1. Texas Needs More Alternatives to Incarceration for Nonviolent Offenders

- The Texas Legislature should increase funding for evidence-based alternatives to incarceration.
- The Texas Department of Criminal Justice should increase funding for evidence-based alternatives to incarceration within its own budget.
- The Governor’s Criminal Justice Division should award grant funds, like the Byrne grant funds, to support evidence-based alternatives to incarceration.

2. The Texas Probation System Should Follow “What Works” Principles

- The Texas Legislature should make community supervision, along with the early dismissal opportunity, available consistently for all low-level nonviolent offenders.
- The Texas Legislature should ensure that the early dismissal option is available to successful probationers who qualify for it.
- The Texas Legislature should reduce the maximum term of probation for a misdemeanor to 3 years and for a felony to 5 years.

3. Criminal Penalty Levels Should be Restructured

- The Texas Legislature should sentence small-quantity nonviolent drug users to misdemeanor punishment rather than felony punishment.

- The Texas Legislature should reject new criminal penalty enhancements while it reevaluates the current criminal penalty structure.

- The Texas Legislature should revise some of the lowest level nonviolent non sex-related offense levels downward, for example:
 - Possession of less than one gram of a controlled substance, often trace amounts, should be a misdemeanor rather than a felony.
 - 4 grams but less than one ounce of a controlled substance should carry a maximum of 10 years in prison for possession rather than 20 years; and a maximum of 20 years in prison for manufacturing or distributing, rather than the current maximum of life in prison.
 - Offenders with 4 grams of a drug should be distinguished from more serious offenders with 200 grams by creating a new category for 4 to 56 gram (two ounce) offenders, rather than the current penalty range that applies to all offenders from 4 grams to 200 grams.
 - The third petty theft should be a misdemeanor, rather than a felony. At a minimum, there should be a minimum value attached to the theft convictions, like \$500, to be sure that the smallest \$1 theft does not turn into a felony.
 - Graffiti should always be a misdemeanor, instead of having graffiti on certain types of buildings designated as a felony.
 - Bail jumping, if it is a felony, should be the lowest level felony, instead of the more serious third degree felony which carries 2-10 years in prison.
 - Prostitution offenses should be misdemeanors, instead of having a mandatory felony enhancement for repeat offenders.
 - Possession of the smallest amounts of marijuana, less than two ounces, should be a fine-only Class C misdemeanor, instead of carrying jail time as a Class B misdemeanor.
 - Judges and juries should have discretion to apply penalty enhancements, instead of having mandatory penalty enhancements based on the offender's criminal record.

4. Texas Should Adopt Comprehensive, Integrated Policies That Support Offender Reentry and Success Outside the Prison Walls

- The Texas Department of Criminal Justice should offer career-oriented job training and other treatment programs inside prison to prepare the individual for successful reentry into the home and community.
- The Texas Legislature should fund career-oriented job training and other treatment programs inside prison to prepare the individual for successful reentry into the home and community, and programs outside prison to support the reentry process.
- The Texas Legislature should remove legal barriers that prevent felons from being successful in the community. Offenders, especially nonviolent offenders, should have the ability to rehabilitate and live productive and successful lives as equals under the law.

5. Texas Should Make Certain That Latinos are Treated Fairly in the Criminal Justice System

- The Texas Legislature should strengthen Texas' racial profiling law so that the state can confirm full and accurate compliance by all law enforcement agencies, and so that the law achieves the goal of fair treatment for all.
- The Texas Legislature should require criminal justice agencies in the state to accurately identify Latino individuals within the system, instead of tracking Latinos as white.
- All criminal justice agencies in Texas should identify Latinos separately within the system, instead of tracking Latinos as white.

Endnotes:

- ¹The US Department of Justice, Bureau of Justice Statistics reports that Texas has 164,222 people in prison; the Texas Department of Criminal Justice reports that 55% of the adults in Texas prison are parents, and the Texas Attorney General reports that the average adjudicated child support arrears for Texas prisoners is \$28,000 each.
- ²See the United States Department of Justice, National Institute of Corrections (NIC) website: <http://www.nicic.org/> and search the library for "What works". See also the following reports: <http://www.state.me.us/spo/sp/commission/docs/whatworks.pdf> and <http://www.ncjrs.org/works/download.htm> and <http://www.wsipp.wa.gov/> and www.uc.edu/criminaljustice/Articles.html and www.urgan.org/urlprint.cfm?ID=7727.
- ³Department of Justice, National Institute of Corrections; reported by Minnesota Judge and scholar Dennis Challeen.
- ⁴Michele Deitch, Texas Sentencing Policy in Context: From Crisis Construction to Rational Reflection: Global and National Comparison Charts, TDCJ/JAC 2004 Sentencing Conference; citing to Criminal Justice Policy Council's Biennial Report of the 78th Legislature, January, 2003, and Uniform Crime Reports of the FBI and the US Bureau of Justice Statistics Reports.
- ⁵Justice Policy Institute, New Prison Statistics Show Prison Growth Unrelated to Crime Rates, May 2004; original source of figures is from the Bureau of Justice Statistics' Prisoners in 2003, May 2004.
- ⁶TDCJ Community Justice Assistance Division, Report to House Corrections / Appropriations Committees, March 17, 2004.
- ⁷ACLU of Texas reports, Flawed Enforcement, May 2004, and Too Far Off Task, December 2002; available on the ACLU of Texas website: <http://www.aclutx.org/>.
- ⁸TDCJ Community Justice Assistance Division, Strengthening Community Supervision Sanctions & Services: A Local-State Partnership, Technical Violations Committee Recommendations, March 2001.
- ⁹President Bush's 2003 National Drug Control Strategy.
- ¹⁰Texas Criminal Justice Policy Council, Biennial Report to the 78th Texas Legislature, January 2003; based on Bureau of Justice Statistics, August 2002.
- ¹¹TDCJ Community Justice Assistance Division, Judicial Advisory Council, Technical Violations Committee Recommendations, March 2001.
- ¹²Texas Criminal Justice Policy Council, Biennial Report to the 78th Texas Legislature, January 2003.
- ¹³Texas Constitution, Art. 1, Section 3.
- ¹⁴Texas Election Code, Section 141.001(4).
- ¹⁵Texas Constitution, Art. 16, Section 2; Texas Code of Criminal Procedure, Art. 19.08; Texas Government Code, Section 62.102.
- ¹⁶Texas Rules of Evidence, Rule 609.
- ¹⁷Vernon's Annotated Texas Civil Statutes, Article 6358, 78.
- ¹⁸Legal Action Center, After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People With Criminal Records, May 2004, available on the Legal Action Center website: <http://www.lac.org/lac/index.php>.
- ¹⁹Texas Labor Code, Section 101.109; see Friends of the Texas State Law Library, Statutory Restrictions on Convicted Felons in Texas, March 2002.
- ²⁰Texas Agriculture Code, Section 76.108.
- ²¹Texas Transportation Code, Section 681.0101.
- ²²Texas Government Code, Section 52.0295.
- ²³Texas Health and Safety Code, Section 433.028.
- ²⁴Texas Occupations Code, Section 1802.251.
- ²⁵Texas Occupations Code, Section 451.251.
- ²⁶Vernon's Annotated Texas Civil Statutes, Article 4641, 21.01-2, 3A; 4641, 21.14-1; 4641, 21.49-3b, 3B.
- ²⁷Texas Occupations Code, Section 1053.252.
- ²⁸Texas Occupations Code, Section 205.351.
- ²⁹Texas Occupations Code, Section 203.404.
- ³⁰Texas Finance Code, Section 156.208.
- ³¹Texas Health and Safety Code, Section 431.279.
- ³²Texas Occupations Code, Section 401.453.
- ³³Texas Occupations Code, Section 402.203.
- ³⁴Texas Occupations Code, Section 453.351.
- ³⁵Texas Occupations Code, Section 263.001.
- ³⁶Texas Occupations Code, Section 502.252.
- ³⁷Texas Education Code, Section 22.084.
- ³⁸Texas Occupations Code, Section 301.452.
- ³⁹Texas Occupations Code, Section 201.502.
- ⁴⁰Texas Occupations Code, Section 204.303.
- ⁴¹Texas Occupations Code, Section 501.255.
- ⁴²Texas Occupations Code, Section 1702.263.
- ⁴³Texas Occupations Code, Section 2001.105.
- ⁴⁴Texas Occupations Code, Section 2153.302.
- ⁴⁵Texas Occupations Code, Section 53.021.
- ⁴⁶Vernon's Annotated Texas Civil Statutes, Article 6687-9a.
- ⁴⁷Legal Action Center, After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People With Criminal Records, May 2004, available on the Legal Action Center website: <http://www.lac.org/lac/index.php>.
- ⁴⁸Federal Higher Education Act of 1998.
- ⁴⁹Texas Education Code, Sections 56.304, 56.305, 56.354 and 56.355.
- ⁵⁰Texas Administrative Code, Title 40, Sections 3.103 and 3.501(b)(3)(x).
- ⁵¹Beck, Allen and Paige Harrison. Prisoners in 2001. (2003) Washington, DC: Office of Justice Program, Bureau of Justice Statistics; compiled by Vincent Schiraldi and Jason Ziedenberg, Justice Policy Institute Race, Ethnicity and Incarceration in Texas: Recent Findings on the Impact of Imprisonment on Latinos and African Americans, July 2004.
- ⁵²Bonczar, Thomas. Prevalence of Imprisonment in the U.S. Population, 1974-2001. (2003) Washington, DC: Office of Justice Programs, Bureau of Justice Statistics. compiled by Vincent Schiraldi and Jason Ziedenberg, Justice Policy Institute Race, Ethnicity and Incarceration in Texas: Recent Findings on the Impact of Imprisonment on Latinos and African Americans, July 2004.
- ⁵³Dwight Steward of the Steward Research Group for the Texas Criminal Justice Reform Coalition, the ACLU of Texas, NAACP of Texas, and Texas LULAC. Racial Profiling: Texas Traffic Stops and Searches, February 2004, available on the Texas Criminal Justice Reform Coalition website: http://www.protex.org/criminaljustice/police_accountability/RPreportFinal.pdf.
- ⁵⁴ACLU of Texas, Flawed Enforcement, May 2004, available on the ACLU of Texas website: <http://www.aclutx.org/>.
- ⁵⁵WOAI TV in San Antonio, Texas, SAPD Racial Profiling Information Full of Flaws, May 8, 2004.
- ⁵⁶WOAI TV in San Antonio, Texas series: SAPD Racial Profiling Investigation, May 6, 2004; SAPD Racial Profiling Information Full of Flaws, May 8, 2004; SAPD Explains Flawed Racial Profiling Data, May 8, 2004; City Leader Wants Answers from SAPD, May 11, 2004.
- ⁵⁷Although no state agency maintains the data, it is simple math. In 2000, Texas had over 835,000 residents who had felony convictions but had completed their criminal sentence. TDCJ reports that Texas has over 500,000 adults who are currently serving their criminal sentence. The US Census Bureau reports that Texas has approximately 15 million adult residents. This means about 1 of every 11 adults in Texas will live the rest of their life as a felon.



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