

Effective Justice: 80th Session In Review

by **Marc Levin**

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ALTERNATIVES TO INCARCERATION

- Texas has the nation's second highest incarceration rate with over 220,000 adult inmates incarcerated in state prisons and county jails. Half of Texas prisoners are nonviolent offenders.
- At the beginning of the 80th Session, the Legislative Budget Board (LBB) estimated that the state would need another 17,300 prison beds by 2012, which would cost \$1.6 billion to build and billions more to operate over the next decade.
- The 2008-09 budget represents a historic shift away from simply building more prisons, as it creates capacity in community-based treatment and intermediate sanctions facilities to divert tens of thousands of nonviolent offenders from prison. The diversion initiatives in the budget that closely follow the Foundation's recommendations, when combined with the conversion of Texas Youth Commission (TYC) lockups back to the adult system, may avert the need for new prisons.
- The Foundation assisted Senator Rodney Ellis in drafting Senate Bill 1909 which would have mandated that nonviolent, low-level drug offenders be redirected from prison into probation and treatment. Senate Bill 1909 cleared the Senate but was not considered in time by the House. However, many judges, prosecutors, and probation and parole officials have indicated that since the community beds and day treatment slots are now going online, they will finally have the tools to reduce prison utilization. The budget creates bonding authority for three new prisons with 4,000 beds, but construction cannot begin unless approved by the LBB—a decision that will likely be shaped by the success of the diversion initiatives.
- In keeping with Foundation recommendations, the Legislature enacted probation reforms in House Bill 3200 by Representative Jerry Madden that will institute a performance-based funding formula so departments are rewarded for fewer revocations to prison and more early termination. Departments will no longer have a financial incentive to keep probationers on their rolls simply to collect their fees, even though they have met all of their terms and pose no danger to the public.
- House Bill 530 by Representative Madden followed the Foundation's recommendation to expand the number of drug courts, which have proven to dramatically reduce recidivism and costs by diverting minor drug offenders from prison into a rigorous regimen of treatment, drug testing, and employment.
- The Foundation also recommended legislation (House Bill 2391 by Representative Madden) to give peace officers the discretion to issue a citation and notice to appear for certain misdemeanors that do not pose an immediate danger to public safety. The freed-up space in county jails could be leased by the state in lieu of building more prisons. Bexar County has projected this legislation will save their taxpayers \$10,000 a day.
- In January 2007, the Foundation held a primer on juvenile justice and the crisis at TYC; weeks later it became a major scandal. Through landmark legislation in Senate Bill 103 by Senator Chuy Hinojosa, the Legislature passed many of our recommendations into law, such as ending state incarceration of misdemeanants. While juvenile misdemeanants can be placed at local post-adjudication facilities, this shift will end the incentive for communities to dump nonviolent youth onto the state by overutilizing TYC. It will also reduce recidivism, as community-based programs can work more closely with families, churches, non-profits, and employers. The legislation also tracks our recommendations by instituting independent review panels to ensure the prompt release of rehabilitated

youths, allow more parental visitation, and create an ombudsman and office of independent counsel to prevent abuse. Even before this legislation takes effect, the conservator in charge of TYC identified over 1,000 rehabilitated youths for release—some of whom were at TYC for graffiti or curfew violations. Within a few months, these reforms have already reduced TYC’s population by over 1,000, which translates into \$21 million in savings.

EMPOWERING CRIME VICTIMS

- The Foundation assisted with House Bill 2291 by Representative Joe Farias to give victims of property crimes the right to request mediation with the offender, which would result in a binding restitution agreement. While the goal of creating such a mediation option on a statewide basis was not achieved, legislation was approved requiring the Texas Juvenile Probation Commission to conduct a study on juvenile victim-offender mediation and make policy recommendations to the Legislature in July 2008.
- The Legislature passed House Bill 2151 by Representative Dwayne Bohac requiring graffiti offenders to clean up the mess they create.
- A constitutional amendment drafted by the Foundation would have allowed offenders’ wages to be garnished to pay restitution to the victim, but the bill failed to come up for debate in the full House.

COMPETITION IN CORRECTIONS

- Studies have shown that private prisons save money both directly and indirectly, as states with competition have lower per-inmate costs. The Foundation supported House Bill 198 by Representative Madden to raise the arbitrary caps on the number of inmates that can be kept at existing, privately operated prisons.
- Texas Department of Criminal Justice (TDCJ) modified its initial plans so that if new prisons are built, at least one will be privately operated. New intermediate sanctions and drug treatment facilities will be privately operated.

REENTRY AND EMPLOYMENT OF EX-OFFENDERS

- Ex-offenders who are employed are three times less likely to re-offend. The Foundation drafted legislation approved by the Senate that would have allowed ex-offenders, other than murderers, rapists, and violent sex offenders, to obtain provisional licenses for most occupations that would then become permanent licenses if they complied with all probation and parole conditions and all occupational rules. Senate Bill 1750 died in the House in the closing days of the session.
- The Foundation drafted legislation to provide civil liability relief from negligent hiring lawsuits to employers who hire nonviolent ex-offenders.

SCHOOL-TO-PRISON PIPELINE

- Research has indicated that students who are suspended, expelled, and/or have early contact with the criminal justice system are much more likely to end up in prison.
- The Foundation recommended legislation that was ultimately passed in House Bill 278 by Representative Madden, repealing the authority of school districts to issue criminal citations to students for routine misbehavior, such as chewing gum and tardiness, which is not a criminal offense under state or local law.
- 130,000 Texas students are sent to Disciplinary Alternative Education Programs (DAEPs), some of which are half-day programs (although the district receives full state funding). There has been no statewide accountability or standards for DAEPs, which are not required to offer the courses needed for graduation. House Bill 426 by Representative Madden directs the Texas Education Agency to create standards for evaluating DAEPs. Moreover, the Legislature enacted a specific proposal made by the Foundation—to administer an intake and outtake exam such as the Iowa Test of Basic Skills to students placed at a DAEP for 90 days or more, providing a barometer of learning.

OVERCRIMINALIZATION

- The Foundation has documented 1,700 criminal offenses in state law and urged the Legislature to rein in the inappropriate use of criminal law, particularly as it impacts ordinary business activities. It is a Class A misdemeanor (up to a year in jail) to violate any occupational rule. Moreover, the “deadweight loss” to society from occupational licensing is over \$35 billion.
- The Foundation opposed a proposed licensing scheme for interior designers that would have criminalized thousands of interior decorators. The bill did not pass.
- The Foundation testified against failed legislation that would have required every auto mechanic and repair shop to obtain a government license, and another failed bill that would have required journeymen and sheetmetal workers to be licensed.
- The House passed legislation—backed by the Foundation—to repeal the criminal offense associated with the animal identification program, but it was not considered by the full Senate.
- The Foundation testified against a bill—rejected in committee—that would have required all counties to adopt residential building codes that include a criminal penalty. 