



*Legislators' Guide to the Issues*

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## THE ISSUE

In Texas, criminal law is not just for criminals anymore—at least not criminals as we have traditionally defined them. There are 779 Texas statutes that contain the word misdemeanor, but only 64 of these instances are in the Penal Code or Code of Criminal Procedure. Likewise, the word “felony” appears 418 times in Texas statutes, but only 64 of these occurrences are in the Penal Code or Code of Criminal Procedure. Many of the remaining 1,069 references to felony or misdemeanor are to the existence of criminal offenses for ordinary business activities in fields such as agriculture, health care, natural resources, and insurance.

There are significant differences between criminal and civil law, which make criminal law an overly blunt instrument for regulating non-fraudulent business activities. The centrality of punishment remains a distinguishing feature of criminal law. While incarceration is traditionally associated with violent crime, half of all Texans behind bars are there for nonviolent offenses.

Another distinction between the two systems of law is that criminal law, because it is enforced entirely by state prosecution, tends to minimize the importance of the harm to the victim. Traditionally, civil and criminal law have also been distinguished by the requirement that a criminal must have a guilty state of mind, expressed by the Latin term *mens rea*.

In the 79th Legislative Session, many bills would have criminalized conduct traditionally addressed through the free market or civil law. Proposed legislation would have criminalized everything from failure to recycle any piece of electronics equipment to placing a business sign on a rural road, and even leaving a dog tethered to a tree for a total of 8 hours in a 24-hour period. Other bills would have increased the criminal penalties for existing offenses. For example, legislation would have inexplicably made unscrupulous business practices relating to construction or repair of home a state jail felony, while such practices would remain a misdemeanor in all other industries. Fortunately, all of these measures were defeated. However, House Bill 1361 authorized the Texas Animal Health Commission to implement the National Animal Identification System (NAIS) being forced upon states by the U.S. Department of Agriculture and created a Class C misdemeanor for failure to comply.

The 79th Legislature commendably acted to rein in overcriminalization by prohibiting local criminal ordinances that dispense with strict criminal liability while authorizing a fine of more than \$500, reforming the public school zero tolerance law to allow a child’s intent to be considered in deciding whether expulsion is appropriate, and limiting the use of city nuisance laws to criminalize law-abiding businesses that are victimized by crime.

## THE FACTS

- ★ The General Accounting Office tallied over 4,000 federal criminal laws before it stopped counting. No similar total is available for Texas.



- ★ After a torrent of criticism from small farmers and ranchers, the Texas Animal Health Commission decided in April 2006 to postpone consideration of the mandatory animal identification program until the winter or spring of 2007.
- ★ Prior to the passage of House Bill 1690 in the 79th Legislature, which reined in local nuisance laws, cities like Dallas were able to use businesses' reporting of crime against them to charge them with maintaining a nuisance.

## RECOMMENDATIONS

- ★ Avoid creating new criminal offenses, especially for non-fraudulent business activities. If new regulations are necessary, civil fines and revocation of state permits and licenses can be used as enforcement mechanisms.
- ★ Ensure culpable mental state is required for conviction under most criminal statutes. With narrow exceptions such as speeding, due process requires a culpable mental state of at least criminal negligence for conviction.
- ★ Monitor state agencies to ensure they are not engaging in overly broad interpretations of criminal law contrary to legislative intent. The Texas Alcoholic Beverage Commission's recently suspended policy of arresting bar patrons for public intoxication may contradict the Legislature's intent that the 0.08 threshold be used for determining one's competency to operate a motor vehicle.
- ★ Revise mandatory animal identification program. This program should be voluntary. Short of that, the Legislature could also replace the current criminal penalty with a civil fine.

## RESOURCES

- *Not Just for Criminals: Overcriminalization in the Lone Star State* by Marc Levin, Texas Public Policy Foundation (Apr. 2005) <http://www.texaspolicy.com/pdf/2005-04-pp-overcrim.pdf>.
- *Big Government's New Pet Project* by Marc Levin, Texas Public Policy Foundation (Mar. 2006) [http://www.texaspolicy.com/commentaries\\_single.php?report\\_id=1057](http://www.texaspolicy.com/commentaries_single.php?report_id=1057).
- *It Shouldn't Be a Federal Offense to Offend* by Marc Levin, Texas Public Policy Foundation (Feb. 2006) [http://www.texaspolicy.com/commentaries\\_single.php?report\\_id=1025](http://www.texaspolicy.com/commentaries_single.php?report_id=1025).
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- *Criminalization Out of Control* by Gene Healy, Cato Institute (June 2005) [http://www.cato.org/pub\\_display.php?pub\\_id=3883](http://www.cato.org/pub_display.php?pub_id=3883).
- *Sometimes There Ought Not Be a Law* by Paul Rosenzweig and Steve Muscatello, Heritage Foundation (Apr. 2005) <http://www.heritage.org/Press/Commentary/ed040605a.cfm>.

## THE ISSUE

Drug courts are an alternative to incarceration for minor drug offenders willing to take responsibility for their actions, using prison only as leverage to ensure compliance. Drug courts involve comprehensive supervision, drug testing, treatment services, family and community interaction, and immediate sanctions and incentives. Successful completion of the drug court program results in dismissal of the charges (pretrial diversion) or satisfaction or reduction of the sentence (reentry or intensive probation).

The most well-known drug court in Texas is a pretrial diversion program overseen by Dallas Judge John Creuzot, which limits eligibility to first-time minor drug offenders. While participation is voluntary, Judge Creuzot informs prospective participants that they cannot opt out once they enroll.

The 77th Legislature authorized counties to create drug courts and required courts in counties with populations over 550,000. While Texas had only three drug courts in 2002, there are now 44 drug courts with another 20 in the planning stages, including adult, juvenile, family, DWI/DUI, and tribal drug courts. Nationally, there are over 1,600 drug courts, indicating that Texas has substantially fewer drug courts per capita than other states.

Although drug court judges are ideally situated to supervise a treatment regime, other judges can sentence a drug offender to inpatient or outpatient mandatory drug treatment as part of their probation agreement. Additional funding provided by the 79th Legislature has resulted in 500 new community corrections facility beds, some of which are at substance abuse centers, and outpatient drug rehabilitation services for 4,000 additional probationers. Yet, the state still has 1,400 fewer beds than in 1995 despite a larger population of probationers now totaling 450,000. As a result, Bexar County District Judge Mark Luitjen says waiting times are as long as six months to get a drug offender into a residential substance abuse treatment center and, because that time must be spent in the county jail, many judges and even some offenders choose prison instead.

## THE FACTS

- ★ Texas offenders completing drug court programs have a 28.5 percent re-arrest rate compared to 58.5 percent in the control group of those who did not go through a drug court.
- ★ A comprehensive drug court program typically costs between \$2,500 and \$4,000 annually for each offender, a fifth of the cost of prison. A study of a drug court in Portland, Oregon found \$5,071 in savings, including victimization costs, due to reduced rates of drug use and recidivism.
- ★ Increased utilization of alternatives to incarceration for nonviolent drug offenders could help avoid the need to spend nearly \$1 billion in



constructing nearly 10,000 new prison beds that the Legislative Budget Board says will be necessary by 2010 if current policies and trends continue.

## RECOMMENDATIONS

- ★ Divert funding for new prisons to drug courts. The state only provides \$3.75 million in funding for drug courts, but creating more drug courts could help avoid billions of expenditures associated with building and operating new prisons.
- ★ Increase capacity of inpatient and outpatient drug treatment programs. These programs are more cost efficient than jails and prisons, but long waiting times make them unattractive to many judges as alternatives to incarceration.
- ★ Raise threshold for amount of drugs that triggers a long prison sentence. For example, Chapter 481 of the Health and Safety Code creates a third degree felony for possession of between one and four grams of drugs in Penalty Group 1, which includes morphine. Under Section 12.34 of the Penal Code, a third degree felony requires a prison sentence of between two and ten years. By raising the threshold for the amount of drugs that turns a state jail felony into a third degree felony, dealers would continue to face significant prison terms while mere users can be redirected into mandatory treatment in inpatient or outpatient rehabilitation programs.
- ★ Reduce state jail felonies for possessing a small amount of drugs to Class A misdemeanors. This could redirect more minor drug offenders from state jails to probation with mandatory drug treatment. It would also spare many minor drug offenders the difficulty that convicted felons face when trying to find employment and housing, obstacles that often side-track recovery and community reintegration.

## RESOURCES

- *Drug Courts: The Right Prescription for Texas* by Marc Levin, Texas Public Policy Foundation (Feb. 2006) <http://www.texaspolicy.com/pdf/2006-02-PP-drugcourts-ml.pdf>.
- *Drug Court Clearinghouse Project at American University: Summary of Drug Court Activity by State and County* (Sep. 29, 2005) [http://spa.american.edu/justice/publications/us\\_drug-courts.pdf#page=892004](http://spa.american.edu/justice/publications/us_drug-courts.pdf#page=892004).
- *Initial Process and Outcome Evaluation of Drug Courts in Texas* Criminal Justice Policy Council, Jan. 2003.
- National Association of Drug Court Professionals, <http://www.nadcp.org>.

## THE ISSUE

In 1989, Texas adopted a constitutional amendment now in Article I, Section 30 of the Texas Constitution establishing the various rights of crime victims. This included the rights to reasonable protection from the accused throughout the trial process, notification of court proceedings, to be present at all public proceedings, to confer with a prosecutor's representative, and to receive restitution.

Current state law allows a victim to submit a written impact statement that the court shall consider prior to sentencing but after conviction of the defendant and an oral statement after the sentence is pronounced. In 2005, House Bill 1751 became law, strengthening Texas' restitution statutes by requiring that trial courts that decline to order restitution provide a written explanation.

The Texas Crime Victims' Compensation Fund offers victims reimbursement of up to \$50,000 in medical and other costs resulting from violent crime.

Texas has 14 restitution centers with a total capacity of 737 beds. Judges may sentence offenders, who might otherwise go to prison, to probation and confinement in a restitution center. Residents work full time, perform community service, and participate in educational and rehabilitative programs.

Texas does not have a statewide victim-offender mediation program (VOMP), although several Texas counties offer VOMPs for juvenile crime victims. Victims must choose a VOMP over the traditional court system and offender participation is also voluntary, since the offender is required to take responsibility for his conduct and waive his right to trial and appeal.

A written agreement is reached that typically requires restitution, community service, and counseling. The agreement is then ratified by the prosecutor or judge. Failure to comply subjects the offender to traditional prosecution and, if necessary, incarceration. There are now more than 300 VOMPs in North America, almost of all which are limited to nonviolent crimes, such as property offenses.

## THE FACTS

- ★ In 2003, Texas collected roughly \$48 million in restitution payments.
- ★ Some 95 percent of cases resolved through victim-offender mediation result in a written agreement and 90 percent of these restitution agreements are completed within one year, a rate of restitution payments that far exceeds the national collection rate of 20 to 30 percent for court-ordered restitution.
- ★ One study found that 79 percent of victims who participated in VOMPs were satisfied, compared with 57 percent of victims who went through the traditional court system. Also, the 1,298 juveniles who participated in a pretrial VOMP were 32 percent less likely to recidivate.



- ★ The evidence indicates that restitution centers are efficient and effective. It costs the state an average of \$7,957 to place an offender in a community corrections facility, less than half the cost of prison. Moreover, restitution center residents paid more than \$4.5 million toward victim restitution, fines and fees and contributed another \$600,000 in community service restitution.

## RECOMMENDATIONS

- ★ Allow victims to present an oral impact statement prior to sentencing. The 79th Legislature failed to hold a hearing on House Bills 338 and 442, which would have permitted this.
- ★ Allow victims to choose pretrial victim-offender mediation. Victims of property crimes should be empowered to select mediation with a binding restitution contract enforced by the state as an alternative to traditional prosecution and sentencing.
- ★ Give victims a seat at the table in plea bargaining. Follow Arizona in giving victims the right to participate in any plea negotiations.
- ★ Improve restitution monitoring. There is incomplete data on the success of the 121 local probation districts in collecting restitution. The state should evaluate these districts in part based on their success in collecting restitution.
- ★ Improve restitution collections. Explore the use of garnishment from wages, which the state uses for collecting child support, as a means of increasing the rate of restitution collections. Also, a procedure should be created whereby all victims can easily obtain a restitution lien against the offender's property. Finally, the law should be changed so restitution orders automatically follow a probationer revoked to prison when that offender is later released on parole.
- ★ Expand capacity of restitution centers. Victims can be better compensated and the state can save money by sentencing more nonviolent property offenders to work restitution centers as an alternative to prison.

## RESOURCES

- *Restorative Justice in Texas: Past, Present & Future* by Marc Levin, Texas Public Policy Foundation (Sep. 2005) <http://www.texaspolicy.com/pdf/2005-09-restorativejustice.pdf>.
- *Victim-Offender Mediation and Plea Bargaining Reform in Texas* by Marc Levin, Texas Public Policy Foundation (Apr. 2006) <http://www.texaspolicy.com/pdf/2006-04-PP-VOM-ml.pdf>.
- TDCJ Victim Division Services, <http://www.tdcj.state.tx.us/victim/victim-home.htm>.
- *2004 Crime Victims' Compensation Fund Annual Report*, [http://www.oag.state.tx.us/AG\\_Publications/pdfs/2004cvc\\_annual.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/2004cvc_annual.pdf).
- *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment* by Mark S. Umbreit, *Western Criminology Review* 1:1 (1998) <http://wcr.sonoma.edu/v1n1/umbreit.html>.

## THE ISSUE

Texas is again facing a prison crowding crisis, with prisons now at capacity with over 150,500 inmates. If policies are not changed to reduce prison inflows, the Legislative Budget Board projects that 9,600 new beds will be needed by 2010. This could mean prison construction costs of \$1 billion plus additional operation costs of \$224 million.

The 79th Legislature allocated \$19.9 million to lease beds in 2006 and \$43.8 million for 2007. Gov. Rick Perry vetoed all but \$10 million for leased beds in the current fiscal year. Most of these beds are leased from county jails. Yet county jails themselves are bursting with some 70,000 inmates. Some 44 county jails are out of compliance with Jail Standards Commission criteria.

The imperative to house more and more offenders devours much of the criminal justice budget, leaving little money for programming in prison, such as drug and mental illness treatment, as well as reentry services, which reduce recidivism.

State inmates who are diverted to leased beds in county jails receive even less programming. County jails are designed for temporary placement of offenders awaiting trial and serving short sentences for misdemeanors. County jails are not served by the Windham School District, which offers courses to state prisoners.

Crowding has long frustrated the intended design of the correctional system. In 1993, 17 state jails were created near urban areas to house minor drug and property offenders, segregating them from more serious offenders and bringing them closer to their point of reentry. Yet, due to crowding, transferees from prisons now fill more than half of state jail beds and reentry services are in short supply.

Approximately 15,000 Texas prison beds are in privately operated facilities. While outsourcing has produced significant savings, stringent state regulations imposed by the Texas Department of Criminal Justice (TDCJ) interfere with the ability of private prison operators to save money and improve programming. For example, TDCJ requires that private prisons use the state's key systems.

Similarly, TDCJ prevents private operators from implementing drug treatment programs that differ from those offered by the state. Instead, the private prison operators must use instructors with the same certifications and implement a program of the same duration as the state's treatment program. Some 63 percent of prison inmates are substance abusers, but less than 15 percent of inmates are actually enrolled in any of the state's drug treatment programs due to limited funds and the high per inmate cost of the state's programs.

## THE FACTS

- ★ From 1988 to 2004, the state's prison population grew by 278 percent while the state's overall population rose by only 35 percent.



- ★ Only one-third of county jails offer any drug treatment.
- ★ Privately operated prisons save the state 10 to 14 percent while providing similar or better programming.

## RECOMMENDATIONS

- ★ Minimize pretrial confinement in county jails. Defendants in drug cases, in particular, wait long periods due to delays in the Department of Public Safety's testing for controlled substances. All the while, taxpayers are paying about \$40 a day to put each county jail inmate behind bars.
- ★ Make state jail felons eligible for parole. State jail felons, who are primarily nonviolent drug and property offenders, are currently ineligible for parole. Space at state jails can thereby be freed up for violent offender transferees from state prison.
- ★ Expand faith-based programming. Faith-based prison programs such as the ecumenical Bridges to Life and the Christian Inner Change Freedom Initiative have been proven to reduce recidivism.
- ★ Lease beds from private operators in lieu of building new prisons or leasing beds from county jails. Private prison operators have offered to temporarily house overflow inmates at a lower cost than county jails and with a full array of education, job training, treatment, and reentry programs not found in most county jails.
- ★ Allow alternative treatment programs in privately operated jails. Private prison operators should be encouraged to innovate by implementing less costly drug treatment programs that have proven effective at their facilities in other states and can reach more inmates with the same amount of funds.

## RESOURCES

- *How to Avert Another Texas Prison Crowding Crisis* by Marc Levin, Texas Public Policy Foundation (May 2006) <http://www.texaspolicy.com/pdf/2006-05-PP-prisoncrowding-ml.pdf>.
- *Aligning Incentives and Goals in the Texas Criminal Justice System* by Marc Levin, Texas Public Policy Foundation (Nov. 2005) <http://www.texaspolicy.com/pdf/2005-11-perversoincentives-pp.pdf>.
- *Adult and Juvenile Correctional Population Projections Fiscal Years 2005-2010*, Legislative Budget Board, (Jan. 2005) [http://www.lbb.state.tx.us/PubSafety\\_CrimJustice/Projections\\_Reports\\_2005.pdf](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Projections_Reports_2005.pdf).
- *A Portrait of Prisoner Reentry in Texas* by J. Watson, A. L. Solomon, N.G. La Vigne & J. Travis, Washington, DC: Urban Institute (Mar. 2004) [http://www.urban.org/UploadedPDF/410972\\_TX\\_reentry.pdf](http://www.urban.org/UploadedPDF/410972_TX_reentry.pdf).
- *Privatization and Competition in Corrections* by Geoffrey Segal, Reason Public Policy Research Institute (Aug. 2003) <http://www.rppi.org/competitionin corrections.html>.

## THE ISSUE

Some 455,000 Texans, or one out of every 20 Texans, are on probation. The 37 percent of prison intakes and 41 percent of state jail intakes that are revoked probationers account for \$547 million in direct incarceration costs. Texas has the longest probation terms in the country at up to 10 years.

The 79th Legislature offered the 121 local probation departments additional funds to hire new probation officers in return for implementing progressive sanctions, which reduce revocations by responding to each probation infraction with measured punishments, such as increased reporting requirements, a curfew, electronic monitoring, or a shock night in jail. In the first quarter of 2006, there has been a 12 percent decrease in felony probation revocations attributable to the departments that accepted the new money and implemented progressive sanctions.

Approximately 76,000 Texans are on parole or mandatory supervision. While mandatory supervision is determined based on the number of days served plus good time, the Texas Board of Pardons and Paroles (TBPP) makes discretionary decisions regarding applications for parole. Unlike the probation system which largely functions independently in the 121 districts, TDCJ's Parole Division supervises parolees, utilizing 66 local offices. Programming includes substance abuse counseling and Project RIO (Reintegration of Offenders), which provides job training and placement. In 2004, the statewide parole revocation rate was only 11 percent.

Each year, over 50,000 prisoners reenter Texas neighborhoods. Although 63 percent of prisoners have a substance abuse problem, only five percent received treatment while in prison, although as many as half receive such treatment as part of aftercare programs following release. Only 28 percent of mentally ill prisoners and parolees receive treatment.

## THE FACTS

- ★ The Wisconsin Policy Research Institute found: "Even 10 percent less recidivism by those on probation, parole and pretrial release would mean nearly 20,000 fewer crimes a year, saving citizens \$122 million annually and offsetting about 88 percent of the cost of community corrections."
- ★ A TDCJ survey indicated that over 70 percent of judges would use probation more often as a sentencing option or as an alternative to revocation if more community corrections facility beds were available.
- ★ According to the Criminal Justice Policy Council, Texas saves 49.5 percent in reduced incarceration costs for each offender placed in a residential work restitution center or mental illness treatment facility.

## RECOMMENDATIONS

- ★ Implement progressive sanctions statewide and release probationers who have met all of their obligations. Progressive sanctions have been proven



to reduce revocations and the 80th Legislature should insist that they be used throughout the state. By imposing gradual measures, probationers who miss a meeting, fail a drug test, or commit another technical violation can be reformed without resorting to revocation to prison, which results in an average sentence of more than four years.

- ★ Release offenders from probation who have met all their obligations, including paying restitution or participating in a garnishment system to assure remaining restitution payments. This will allow probation resources to be focused on the offenders who need intensive supervision. The Travis County Probation Department developed a matrix for classifying probationers based on their original offense and socialization level to target each probationer with the most appropriate type and degree of supervision.
- ★ End revocations of probationers for drug relapses. Probationers who test positive for drugs or are arrested for drug possession are often revoked to prison for four or more years, even for a small quantity of marijuana (usually a fine or at most a brief stay in county jail for a non-probationer). Given that successful graduates of drug treatment programs often have several relapses, probationers in treatment or willing to undergo treatment should not be revoked to prison for possession of small quantities of drugs.
- ★ Expand availability of reentry programs. Reentry programs, including job training, treatment for substance abuse and mental illness, and faith-based programs, are correlated with reduced recidivism.
- ★ Eliminate past drug or alcohol use as a reason for denying parole. Among the factors that the TBPP uses in deciding whether to grant parole is “excessive drug or alcohol involvement in the instant offense or criminal history.” A substance abuse problem many years ago may not correlate with an offender’s risk of recidivism today, particularly if appropriate treatment programs are available in prison or on parole.

## RESOURCES

- *How to Avert Another Texas Prison Crowding Crisis* by Marc Levin, Texas Public Policy Foundation (May 2006) <http://www.texaspolicy.com/pdf/2006-05-PP-prisoncrowding-ml.pdf>.
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- *Keep the Keys: Texas Probation System Needs Correction* by Marc Levin, Texas Public Policy Foundation (Apr. 2005) [http://www.texaspolicy.com/commentaries\\_single.php?report\\_id=790](http://www.texaspolicy.com/commentaries_single.php?report_id=790).
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- *A Portrait of Prisoner Reentry in Texas* by J. Watson, A. L. Solomon, N.G. La Vigne & J. Travis, Washington, DC: Urban Institute (Mar. 2004) [http://www.urban.org/UploadedPDF/410972\\_TX\\_reentry.pdf](http://www.urban.org/UploadedPDF/410972_TX_reentry.pdf).

## THE ISSUE

Hundreds of thousands of Texas students are removed from regular schools and placed in Disciplinary Alternative Education Programs (DAEPs), Juvenile Justice Alternative Education Programs (JJAEPs), and Texas Youth Commission (TYC) residential facilities.

DAEPs are alternative settings to the regular classroom for students who commit virtually any disciplinary violation. All school districts must operate a DAEP. Many DAEPs are self-contained campuses while others are on the premises of a regular school. A student can be placed in a DAEP for any violation of the student code of conduct. School districts operate DAEPs with only minimal oversight by the Texas Education Agency. For example, state law requires that DAEPs provide only two hours of instruction everyday.

JJAEPs are juvenile justice day programs operated by county juvenile boards and overseen by the Texas Juvenile Probation Commission (TJPC). JJAEPs currently serve 6,907 students, the vast majority of whom have been expelled from school. JJAEPs also receive students who engage in serious or persistent misconduct while at a DAEP. Unlike DAEPs, JJAEPs are subject to extensive state oversight and accountability.

TYC residential facilities house approximately 2,500 juveniles who commit the most serious offenses.

In addition to the students who are sequestered, many other students receive misdemeanor citations in school for routine disciplinary violations. Rep. Harold Dutton (D-Houston) successfully defended an 8 year-old student in municipal court who had received a Class C ticket from a school police officer for chewing gum in class.

## THE FACTS

- ★ DAEP placements have increased from 70,728 individual students placed in 1999-2000 to 103,696 in 2003-04. About 80 percent of DAEP placements are discretionary.
- ★ Students who remain at a JJAEP for at least 90 days are given the national Kaufman Test of Educational Achievement Analysis (KTEA) upon their entrance into and departure from the program. In 2003, the students tested gained slightly more than a half of a grade increase in achievement level.
- ★ Misdemeanor citations issued in school are on the rise. From September 2004 through August 2005, there were 10,149 Education Code cases referred to Texas municipal courts. During the same period from 1998 to 1999, there were 6,888 such cases.



## RECOMMENDATIONS

- ★ Increase DAEP accountability. The state should no longer permit students at DAEPs to receive as little as two hours of instruction compared to the seven hours required for all other students. The state should also require that larger DAEPs offer the courses needed for high school graduation. The KTEA should be administered to determine whether students are learning at DAEPs and students' academic achievement, attendance, and behavior should be monitored after leaving a DAEP to gauge effectiveness.
- ★ Separate violent students from non-violent students. While most students at DAEPs have simply been disruptive in class, there are some who have committed violent crimes, but are not at JJAEPs because the crimes were off-campus and thus do not trigger expulsion. Fort Worth ISD has successfully created two tiers of DAEPs for these very different student populations. State law could also be changed to allow students guilty of violent off-campus crimes to be placed directly in a JJAEP.
- ★ Expand access to JJAEPs. In the 221 counties without JJAEPs, students are simply expelled to the street. The state could assist the most populous of these 221 counties by creating a JJAEP which could utilize distance education to reduce costs.
- ★ Reform zero tolerance. The 79th Legislature enacted House Bill 603, which allows schools to consider whether a student had a culpable mental state and a prior disciplinary history in issuing a mandatory expulsion or removal to a DAEP. However, reports that some districts continue to apply zero tolerance without common sense suggest that this legislation might need to be strengthened.
- ★ End issuance of criminal citations in school for routine disciplinary infractions that do not violate any state or local law. House Bill 443 in the 79th Legislature would have amended Section 37.102 of the Education Code to accomplish this.

## RESOURCES

- *Schooling a New Class of Criminals* by Marc Levin, Texas Public Policy Foundation (Mar. 2006) <http://www.texaspolicy.com/pdf/2006-03-PP-DAEP-ml.pdf>.
- *Disciplinary Alternative Education Programs: What Is and What Should Be* by Marc Levin, Texas Public Policy Foundation (Dec. 2005) <http://www.texaspolicy.com/pdf/2005-12-DAEPs-pb.pdf>.
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