



# Enhancing Public Safety & Arresting the Growth of Arizona's Criminal Justice System



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# Introduction to the Texas Public Policy Foundation

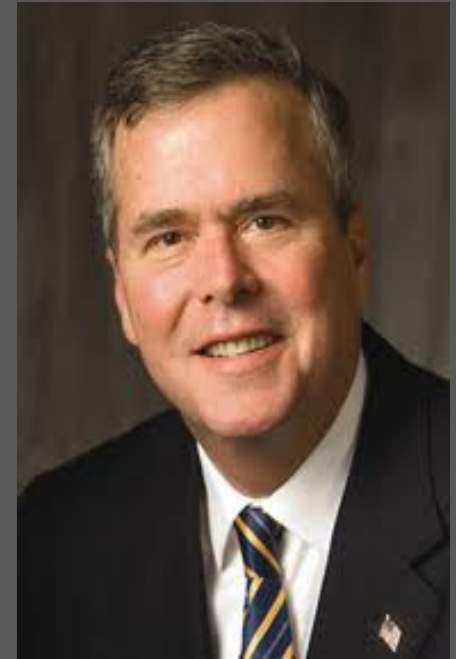
- TPPF Mission: Individual Responsibility, Free Enterprise, Limited Government, Private Property Rights
- We apply these foundational principles to criminal justice, bringing together stakeholders and working with policymakers and allies across the spectrum.

# The TPPF Portfolio

- Fiscal and tax restraint
- Civil justice reform (worked to enact loser pays in 2011)
- Center for Tenth Amendment Studies
- Deregulation of (over)regulated industries like insurance and utilities.
- Center for Effective Justice launched in March 2005, Right on Crime in Dec. 2010

# Right on Crime Enters the Field

- Former Governor Jeb Bush, Speaker Newt Gingrich, Former Drug Czar Bill Bennett, Grover Norquist, and Other Conservative Leaders Endorse Right on Crime Statement of Principles
- Statement Supports Reining in Growth of Non-Traditional Criminal Laws, Cost-Effective Alternatives for Nonviolent Offenders, Emphasis on Restitution and Treatment, and Performance Measures.





**Conservatives  
Latch on to Prison  
Reform**

January 28, 2011



**Right on Crime Noted  
in “Budget Crunch  
Forces New Approach  
to Prisons”**

February 15, 2011



***National Review*  
Praises Right on  
Crime**

February 21, 2011

# Overcriminalization Challenges at the State Level



# Regulatory Offenses on the Rise

- ▣ No inventory of all state criminal laws is available, which itself adds uncertainty to the business climate.
- ▣ Arizona has some 4,000 statutory offenses, exceeding the 1,700 statutory offenses in Texas.
- ▣ Texas has 11 felonies relating to harvesting oysters and in the gulf states of Texas, Louisiana, Mississippi, Alabama, and Florida, there are some 715 environmental criminal offenses alone.

# The Withering Intent Requirement

- ▣ Many of these laws dispense with the traditional requirement of a culpable mental state. For example, of the 83 environmental criminal offenses in Florida, 52 are strict criminal liability offenses.





# Arizona Falls Short on *Mens Rea*

- ▣ Arizona Criminal Code Chapter 13, Title 2 states in part: “If a statute defining an offense does not expressly prescribe a culpable mental state that is sufficient for commission of the offense, no culpable mental state is required for the commission of such offense, and the offense is one of strict liability unless the proscribed conduct necessarily involves a culpable mental state.”



# Penalties Are Often Excessive

- ▣ In Alabama, “disposing of scrap tires in a way not approved by the Environmental Management Act” is a felony punishable by up to ten years in prison, even if no harm.
- ▣ In Arizona, a person who slaughters any livestock, sheep, goats, swine, horses, mules or other equines, for compensation without a license is guilty of a Class 2 misdemeanor punishable by up to 4 months in jail. Also, a Class 2 misdemeanor to purchase five or more bulk plastic merchandise containers without keeping a log and meeting other requirements.

# The Dangers of Delegation

- ▣ State offenses often confer virtually unlimited authority on agencies to effectively create new criminal offenses through their rulemaking.
- ▣ For example, in Louisiana, RS 30:2421A creates an offense with a one year prison term for “disposing of white goods (appliances) except in a collection or recycling facility in accordance with the rules and regulations of the department.”

# Vicarious Liability Offenses Make Doing Business Precarious

- Alaska's corporate criminal liability statute exposes organizations to criminal liability for the actions of their agents, as long as agents intended the organization to benefit from their actions.
- It also specifies that organizations cannot disclaim liability through codes of conduct or corporate policies; their liability extends beyond any merger, consolidation, or dissolution; and that convicted organizations can be subjected to larger fines than the convicted individual.

# Solutions to Rein in Overcriminalization at the State Level



# Reduce and Revise Criminal Laws

- ▣ Stop creating new criminal offenses as a method of regulating business activities. Regulation is better handled through non-criminal administrative mechanisms and market forces, not the heavy stigma of criminal sanctions
- ▣ Revise criminal laws to remove ambiguities and consolidate redundant laws to help prevent prosecutorial abuse.

# Narrow What's Criminal and Jailable

- ▣ Convert many regulatory misdemeanors into civil violations or, at the least, remove jail time as an option for such offenses, provided that the non-jail penalty is satisfied.
- ▣ Economic conduct should be criminal only when it results in actual harm or danger, except if there is intentional fraud such as Madoff.

# Create Interim Review of Statutes, Particularly Those Outside Penal Code

- Create interim committees and commissions to develop and submit comprehensive, consensus reform packages to lawmakers at the beginning of sessions.
- These bodies would identify criminal laws that are unnecessary, duplicative, overbroad, excessively vague, lacking an appropriate culpable mental state, create vicarious liability, or are otherwise deficient, and incorporate their work into one omnibus bill.



# Enact ALEC Model Intent Rule

- Applies default rule that the following culpable mental state applies to all elements of the offense if one is not provided in the statute:
  - (a) with the conscious object to engage in conduct of the nature constituting the element;
  - (b) with the conscious object to cause such a result required by the element;
  - (c) with an awareness of the existence of any attendant circumstances required by the element or with the belief or hope that such circumstances exist; and
  - (d) with either specific intent to violate the law or with knowledge that the person's conduct is unlawful.

# Enact ALEC Rule of Lenity Model Bill

- This due process protection provides that state laws are construed against the government when there is doubt as to whether the Legislature intended to criminalize the conduct at issue, ensuring there is fair notice concerning the line between legal and criminal behavior.
- Parallels conservative emphasis on strict interpretation of Constitution.

# Enact ALEC Transparency & Accountability in Criminal Law Measure

- This requires:
  - A detailed state and local fiscal note on all bills creating or enhancing an offense.
  - Reference to new offense or enhancement in caption of bill.
  - Elimination of provisions that delegate power to agencies to create offenses through rulemaking.

# Institute Procedural Safeguards to Slow Growth in New Criminal Laws

- Require approval of new offenses and sentencing enhancements by the legislative committees overseeing criminal justice system, which is best positioned to evaluate the impact on the capacity and resources of the criminal justice system.



# Create Safe Harbor Statutes

- These statutes, such as Section 7.03 of the Texas Water Code, can prevent local prosecutors and the Attorney General from bringing a prosecution when the same conduct is the subject of pending or resolved administrative proceeding before a state agency.

# Suppressing Unnecessary Arresting

- ▣ Prohibit arrest for regulatory misdemeanors unless the charged individual fails to respond to a summons or emergency danger to humans.
- ▣ Being arrested can create a permanent record, compromise an individual's ability to defend themselves, and be used in cases to gather personal information and effects when a court might not have found sufficient basis for a search warrant.

# Prioritizing Victims



- Nationally, restitution ordered in only 26% of property cases – a third collected.

# Making Victims Whole

- ▣ Arizona has model law involving victims in plea bargaining.
- ▣ Probationers pay \$391 million in restitution (at least 34 times more per offender than inmates) and do 135 million service hours.
- ▣ Victim mediation: 14 states with statutes. Must be chosen by victim & offender. Proven to increase victim satisfaction as a result of apology and completion of restitution in 89% of cases. Most studies find less re-offending as well.



# The Victims' Perspective

## *Survey of Iowa Burglary Victims*

<b>Sanction</b>	<b>Percent Requesting</b>
<b>Restitution</b>	<b>81.4%</b>
<b>Community Service</b>	<b>75.7%</b>
<b>Pay Fine</b>	<b>74.3%</b>
<b>Regular Probation</b>	<b>68.6%</b>
<b>Treatment/Rehabilitation</b>	<b>53.5%</b>
<b>Intensive Probation</b>	<b>43.7%</b>
<b>Short Jail Term</b>	<b>41.4%</b>
<b>Boot Camp</b>	<b>40.0%</b>
<b>Work Release Facility</b>	<b>34.3%</b>
<b>Prison Sentence <math>\geq</math> Year</b>	<b>7.1%</b>

# Strengthening Alternatives to Incarceration



- Arizona has 40,000 inmates as of Nov. 12 according to the state's Department of Corrections and the nation's 6<sup>th</sup> highest incarceration rate.

# The Incentive Funding Model: Aligning Goals & Funding

- ▣ Gives counties the option to receive some state funds now spent incarcerating non-violent offenders in exchange for setting a prison commitment target and reducing recidivism.
- ▣ Funds could be used for treatment, stronger probation, electronic monitoring, prevention, problem-solving policing, and victim mediation and services.

# Strengthen Probation: Demand Results

- 2008-09: CA, IL & AZ pass performance-based probation funding measures providing departments with incentive funding for fewer commitments, fewer new crimes, and more restitution. AZ measure led to 31% decline in new crimes and 28% drop in revocations, but was never funded and repealed.
- IL. bill requires system-wide use of assessment instruments that match risk and needs to supervision strategies, tracking an offender from entry to reentry.

# Problem-Solving Courts

- Drug courts: 34% lower recidivism: should focus on high-risk offenders who would have gone to prison.
- Hawaii HOPE Court with regular testing, treatment as needed, and weekend jail in few cases of non-compliance: 2/3 less re-offending, costs a third of drug court.
- Mental health courts: *Amer. Journal of Psychiatry*: less total & violent re-offending.

# Strengthening Supervision & Electronic Monitoring

- ▣ Use graduated sanctions and incentives
- ▣ Enhance use of risk/needs assessments to match offenders with programs
- FL Study: GPS monitored probationers were 89% less likely to be revoked

# Day Reporting Centers

- Often targeted at probationers who need more structure as alternative to initial incarceration or used as parole condition.
- Union County, PA center has 10.2% recidivism rate, Orange County, FL has 82% success rate.
- Elements may include work, treatment as needed, literacy and other instruction, job placement, meeting restitution obligations, contribution to daily cost as able, drug testing.
- NC: Day reporting centers cost \$15 a day.



Day Reporting Center, Dover, DE

# Athens, GA Day Reporting Center



*Rick Thomas installs hardwood floors in an Athens apartment complex as part of his construction job. Thomas graduated from the Day Reporting Center opened in 2008 by the Department of Corrections. Newly released offenders with a history of a substance abuse and cognitive challenges receive counseling and supervision. To graduate, participants must hold and maintain a job for 90 days. Georgia has 11 day reporting centers.*



# Promote Successful Reentry

- ▣ Half of homeless are ex-offenders
- ▣ Transitional living where reentering inmates without resources or family home gradually pay more of their board through employment
- ▣ OH: Halfway house study found reduced re-offending for parolees safe enough for release but posing a substantial risk without housing. OH residents generate \$6.7 million in earnings. Cost is less than half of prison.



Norwich, CT.  
Halfway House

# Stop the Revolving Door

- Employed offenders on supervision are twice as likely to succeed
- In-prison vocational training = 9% less re-offending
- Grant occupational licenses when offense is unrelated to the job. In some states, drug possession disqualifies a prospective barber. 2009 TX. law allows many ex-offenders to obtain a provisional license for most trades, which becomes permanent if they comply with law and rules.

# Remove Barriers to Reentry

- ▣ Ensure discharged inmates have photo ID
- ▣ Provide protection to employers hiring ex-offenders from negligent hiring lawsuits – model Minnesota language says if no additional risk from job than simply being in society, no liability.
- ▣ Enable nonviolent, non-chronic ex-offenders after time of compliance to obtain non-disclosure of record.



# Taking the Next Steps to Turn Ideas into Action



# Asking the Right Questions: Demand Facts & Measure Results

- Which criminal laws are overlapping, obsolete, overbroad or vague, or lacking a *mens rea* provision?
- What percent of offenders in community corrections and prison are paying the restitution they owe?
- Which treatment, education, and work programs most reduce re-offending for each type of offender?

# Asking the Right Questions: Demand Facts & Measure Results

- How many low-risk offenders are going to prison?
- How many probationers and parolees are revoked for rule violations who could be safely supervised and treated given sufficient resources?

# Key Resources

- ▣ Texas Public Policy Foundation  
[www.texaspolicy.com](http://www.texaspolicy.com)
- ▣ Heritage Foundation  
[www.overcriminalized.com](http://www.overcriminalized.com)
- ▣ Right on Crime  
[www.rightoncrime.com](http://www.rightoncrime.com)
- ▣ Pew Center on the States  
[www.pewcenteronthestates.org](http://www.pewcenteronthestates.org)
- ▣ Council of State Governments Justice Center  
[www.justicecenter.csg.org](http://www.justicecenter.csg.org)
- ▣ Justice Fellowship  
[www.justicefellowship.org](http://www.justicefellowship.org)