



Texas Public Policy Foundation

# Center for Effective Justice

## 84th Texas Legislature in Review

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The 84th Legislature saw a great deal of improved criminal justice legislation forwarded to the governor's desk. The following major pieces of legislation offer Texans increased public safety and more efficient use of tax dollars in the criminal justice system.

### Overcriminalization

A great deal of progress was made in dealing with overcriminalization in Texas. Of note, the Legislature passed HB 1396, codifying the common-law judicial rule of lenity in statutory interpretation. Going forward, when judges face a statute subject to two equally reasonable interpretations, they are guided to adopt the interpretation that most favors the defendant. This prevents overly broad or ambiguous laws from being subjectively applied.

HB 1396 also contained provisions that will convene a commission on overcriminalization, studying criminal laws outside of the penal and the health and safety codes for consolidation, reorganization, or elimination. This commission will provide members of the 85th Legislature recommendations to streamline criminal law and reduce its overall burden on law-abiding citizens.

The Senate amended SB 393/HB 1530 to HB 1396, raising property theft thresholds to parity with the original legislative intent when the law was established in 1993. When felony theft thresholds are statutorily enshrined, as the real value



of a dollar decreases, the real value of the threshold decreases as well. To that end, Texas's felony theft threshold, established in 1993 as \$1,500, was equivalent to \$2,419 in 2014 dollars, or nearly 61 percent greater in value. The persistent devaluation of the dollar allows low-level offenders to

easily cross the felony threshold, even if the real value of the property remains static. Adjusting the threshold allows low-risk offenders to remain eligible for community supervision, be better able to retain employment, and make restitution.

Finally, the enrolled version of HB 1396 contained provisions that codify the U.S. Supreme Court's recent unanimous ruling in *Riley v. California* (2014). Pursuant to this case, Texas law enforcement must now procure an evidentiary

search warrant before perusing an arrestee's cellular phone. These provisions will better protect the privacy of law-abiding Texans, while offering ample exceptions to law enforcement when it needs to conduct a search under exigent circumstances.

### Orders of Nondisclosure

In a first for Texas, the Legislature moved to expand the eligibility of first-time, nonsexual, non-family violence, non-DWI misdemeanor offenders for orders of nondisclosure.

While previously available to certain offenders granted deferred adjudication, this move will allow low-risk offenders who are given probation or a carceral sanction to petition to have their record functionally sealed after a period has elapsed, as long as they have not committed any other infraction (aside from a minor traffic offense) in the interim. SB 1902 will better facilitate redemption and reintegration into the community and incentivize compliance with the law and terms of supervision. Judicial and prosecutorial discretion is preserved for this expansion.



This is furthered by HB 3579, a bill allowing individuals to petition to receive an order of nondisclosure for first-time, fine-only, Class C misdemeanors. The bill also codifies the commonly practiced interpretation of expunction laws by clarifying that an individual can receive an expunction for individual charges when the person is charged with multiple crimes arising out of the same occurrence, even if some of the charges are ineligible for expunction. Finally, HB 3579 incentivizes individuals to successfully complete community supervision rather than choose a short state-jail sentence by giving them an opportunity to petition to lower their state felony to a Class A misdemeanor after they have completed at least two-thirds of their community supervision.

Texas also lifted several regulatory burdens on those seeking to ply an honest trade. Barbers and cosmetologists, once confined to practicing only in approved facilities, are now able to work remotely for special events including weddings under HB 104. HB 2255 increases the number of hours the Texas State Board of Plumbing Examiners is allowed to authorize to a prospective journeyman plumber from 500 to 1,000 hours

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if a 48-hour classroom portion of an approved training program is completed, making it easier for prospective master plumbers to achieve credentials. HB 2717 removes from the definition of barbering the clause concerning braiding—the “act of braiding a person’s hair, trimming hair extensions only as applicable to the braiding process and attaching hair only by braiding and without the use of chemicals or adhesives”—thereby allowing entrepreneurs who practice traditional African hair braiding to do so without needing to procure a full barber’s license. Finally, HB 2372 retains the requisite 300-hour training requirement needed for correctional officers employed under the Texas Juvenile Justice Department (TJJD), but allows them to work independently after 240 hours. This allows the final 60 hours to be satisfied through specialized in-service training.

### Juvenile Justice

The Legislature also made great strides in juvenile justice. HB 2398 decriminalizes truancy, while leaving it as a status offense, which does not create a lifetime criminal record. The bill also places priority on prevention of truancy and resort to more school-based remedial measures, rather than criminal confinement. HB 2398 also allows for a judicial donation trust fund for needy children and families who appear before the court, and provides services that eliminate barriers to school attendance or seek to prevent criminal behavior. HB 2398 will tremendously help juveniles overcome the lifetime obstacle a criminal record places on their future opportunities, while providing assistance children and families need to prevent future truancy.

SB 1630 would require the TJJD to develop a plan for juvenile probation departments across the state to keep low- to medium-risk youth closer to home, rather than committing them to TJJD facilities that are likely far away. SB 1630 allows state-run facilities to still be an option for the most serious cases. Studies have roundly shown that keeping youth closer to home decreases the potential for recidivism. Moreover, state-run facilities are substantially more expensive to operate than local programs, thus saving taxpayers money.

SB 790 authorizes the magistrate of a county holding a person released on parole or mandatory supervision who is suspected of an administrative violation to be released on bond, as long as the Board of Pardons and Paroles permits and the magistrate determines that the person is not a threat to public safety. SB 790 also modifies current blue-warrant procedure to allow the Board of Pardons and Paroles to issue the warrant after, instead of before, it makes a final determination regarding the violation. SB 790 will reduce county jail overcrowding and operating costs while allowing individuals with administrative violations to continue to work and maintain their job while waiting for their revocation hearing.

Finally, the 84th Legislature established a process wherein sentencing judges may determine the applicability of diligent-participation credits at adjudication. This will streamline the process and allow judges to avoid making the ruling as the sentence draws to a close. Diligent-participation credits are awarded for satisfactory completion of educational and vocational programs and incentivize inmates to take ownership of their own rehabilitation. ★

