

# TEXAS TOUGH Three Years Later

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## Acknowledgments

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# Texas Tough? Three Years Later<sup>1</sup>

## Introduction

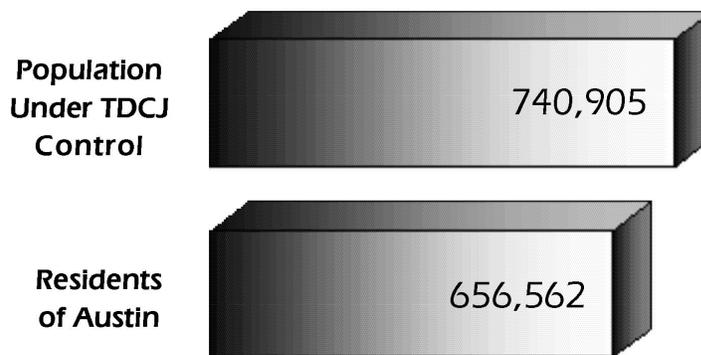
In August, 2000, the Justice Policy Institute reported the significant role Texas had played in the nation's prison expansion<sup>2</sup>. At that time, JPI reported that 1 in 5 new prisoners added to the nation's prison system during the 1990s was added in Texas, and that in 1999, the Justice Department reported that the state had the largest prison system in the US. The report showed that the expanding use of incarceration in Texas had a disproportionate impact on communities of color, and that states that had added far fewer prisoners than Texas had much bigger drops in crime during the 1990s.

Since then, JPI has reported that the drop in Texas' prisoner population since 2000 (mainly due to changes to the parole system) was of national significance, and that the change was something other states should emulate to reduce corrections costs during budget strained times.<sup>3</sup> Today, Texas' prison population is once again on the rise, and state legislators and policymakers are at a crossroads: either policy changes will be enacted to reduce the state's incarcerated population, or the state will once again expand the number of prison beds. As Texas contemplates how to reconcile public safety, fiscal health and community justice through its corrections system, the Justice Policy Institute updates some of the startling statistics that define the Lone Star State's prisoner dilemma.

**1) Texas’ incarcerated population looms large over the country, and the world, and is projected to rise unless reforms are enacted.**

- Between 1983 and 2001, the number of prison and jail inmates in Texas quadrupled from 50,500 to 203,800.<sup>4</sup> In 2001, 1 in 10 people in prison or jail in the United States was incarcerated in Texas. Texas had the largest number of offenders under criminal justice jurisdiction in the nation in 2001.
- There are more people under criminal justice control in Texas (740,905<sup>5</sup>) than live in the City of Austin (656,562<sup>6</sup>). (See Figure 1)
- One out of 21 adults in Texas was under criminal justice jurisdiction in 2001.<sup>7</sup>
- With 711 people incarcerated per 100,000 citizens in 2001, Texas has the 3rd highest incarceration rate per 100,000 residents in the country (only behind Louisiana, 800, and Mississippi, with 715).<sup>8</sup>
- Texas has an incarceration rate that is 4 times greater than two-thirds of the countries in the world; the state’s incarceration rate is several times higher than every country in Western Europe, and is higher than the reported incarceration rates of Russia, China, Iran and Yemen.<sup>9</sup>

**FIGURE 1: THERE ARE MORE PEOPLE UNDER CRIMINAL JUSTICE CONTROL IN TEXAS THAN LIVE IN AUSTIN**



Source: Criminal Justice Policy Council (2003); U.S. Census Bureau, Department of Commerce (2003).

## 2) Policy Changes Have Successfully Reduced Texas' Prison Population, but the Prison Population is Rising.

- After two full decades of rising incarceration rates, Texas' incarceration rate decreased by 4.2% in 2000, and 2.6% in 2001.<sup>10</sup> Some of the decreases were due to parole reforms.<sup>11</sup> The parole board's approval rate began to rise, the rate of parole revocations fell, and the prison population dropped by 7,698 offenders from September 2000 to the end of December 2001. The Texas Department of Criminal Justice was able to reduce its designated prison capacity by more than 1,000 beds in 2001, and hold thousands of empty prison beds on reserve.<sup>12</sup>
- The Texas Department of Criminal Justice reported that the prison population of the state will exceed the state's prison capacity over the next five years. This will mean that either the state will have to change policies or laws to reduce the intake or length of stay of prisoners, or build or contract for more prison cells. In February, 2003, it was reported that the state's prisoner population had reached 147,610 prisoners, inching closer to filling the 151,470 beds.<sup>13</sup>

## 3) Having the largest incarcerated population in the U.S. did not mean that Texas experienced larger drops in crime than states that made less use of prison.

- Between 1991 and 2001, Texas' incarceration rate rose by 139.4%, and its crime rate dropped by 34.1%. Despite the fact that Texas' incarceration rate rose at a rate 5 times greater than Florida's,<sup>14</sup> (27%), Florida's crime rate dropped to a level that nearly approximated the decline in Texas' (34.8%). Texas' incarceration rate grew at 3 times the rate of California's (42.5%), but California experienced a crime rate drop that was 24% greater than that of Texas. (See Figure 2)
- Several national studies have cast doubt on the nature of the relationship between increasing prison populations and declining crime rates. Prof. William Spelman, from the LBJ School of Public Affairs, University of Texas at Austin, contends that 79 to 96 percent of the violent crime drop of the 1990's *cannot* be explained by prison expansion. The author contends that about one quarter of the total drop in crime is due to prison expansion, and further prison expansion will yield far less return in reducing crime.<sup>15</sup>

FIGURE 2: TEXAS LED THE NATION IN PRISON GROWTH IN THE 1990S,  
BUT THERE WERE BIGGER CRIME DROPS IN OTHER STATES—  
INCARCERATION VS. PERCENTAGE CHANGE IN THE CRIME RATE, 1991-2001



Source: Criminal Justice Policy Council (2003)

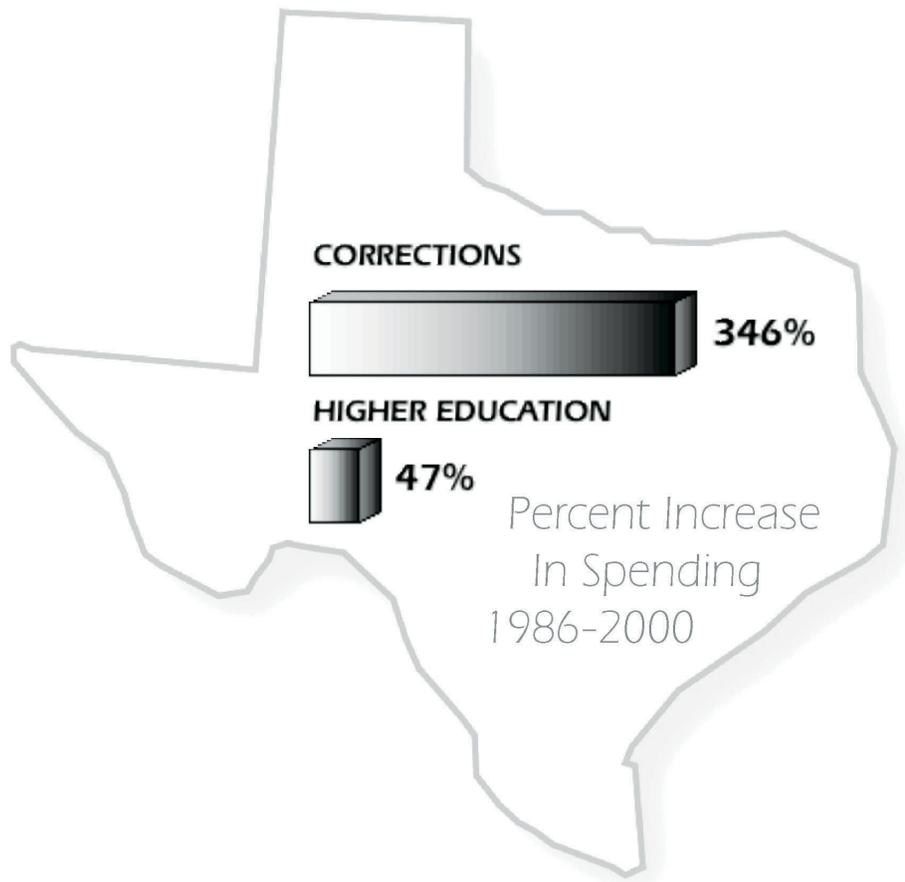
#### 4) As the Texas Prison Population has risen, the state has had to spend more on Corrections—a price that looms large during the state fiscal crisis.

- According to the Criminal Justice Policy Council, spending on corrections in Texas rose from \$600 million in 1985 to \$2.9 billion in 2002.
- As the state currently debates cuts to education, health care and other government services, the increase in spending on corrections during the last several years (\$2.3 billion) now represents about a quarter of the \$10 billion budget shortfall the state is now facing. While spending on any program is only one factor in the state's budget woes, the increase in corrections spending represents new annual costs which forces legislators to choose between cellblocks and classrooms.<sup>16</sup>
- As Texas' prison system has expanded, employment in the state's corrections system has grown faster than that of other state functions. Between 1980 and 2000, corrections employment in Texas experienced an astonishing 12-fold increase (1103%). This was nearly twice the rate of increase for all state employment (597%), 5 times the rate of higher education (217%), and 12 times the rate of public welfare (91%).<sup>17</sup>
- During the 1980s and 1990s, the Justice Policy Institute has shown that Texas increased general fund spending on higher education by 47%, but corrections spending grew by 346%. Put another way, Texas' spending on corrections grew at 7 times the rate of spending on higher education during the period.<sup>18</sup> (See Figure 3)

#### 5) The expansion of Texas' prison system and the shift to a "tougher" justice system has had a significant impact on women and their families.

- While men comprise more than 9 out of 10 people incarcerated in Texas, women's imprisonment has increased in Texas at twice the rate of men throughout the 1990s. The Bureau of Justice Statistics reported that, in 2001, 12,400 women were imprisoned in Texas.<sup>19</sup>
- Recent studies done on the fiscal impact of women's imprisonment underscore the reality that, *while the economic impact of her crime is typically small, the economic impact of the prison term typically meted out to a woman is huge.*<sup>20</sup> While more than half of all prisoners have minor children whose lives may be affected by the incarceration of a parent, women are far more likely than men to have been living with dependent children when they were arrested (64 %, compared with 44 %). Most of women prisoners' children are displaced—living with extended family members or friends—while they are incarcerated. At least 10% of the children of prisoners are placed in non-kin foster care.<sup>21</sup> Almost all (90 %) fathers in prison report that their children reside with their other parent while they are imprisoned—but just 28 percent of mothers report this to be the case.
- In Texas, as well as other states, women convicted of a state or federal felony offense for using or selling drugs are subject to a lifetime ban on receiving cash assistance and food stamps (no other offenses result in losing benefits). The Sentencing Project found that during the late 1990s, 4,700 women in Texas were affected by this ban—61% of whom were African American or Latina.<sup>22</sup> Several key impacts of the drug felony welfare ban which highlight the multiplier effect of women's imprisonment include the impact on the ability of women to become self-sufficient to provide for their children; to be active participants in their communities; higher incidences of family dissolution and further increase in child welfare caseloads.

**FIGURE 3: CELLBLOCKS OR CLASSROOMS?  
TEXAS SPENDING ON CORRECTIONS GREW AT 7 TIMES  
THE RATE OF HIGHER EDUCATION SPENDING, 1986-2000**



Source: Cellblocks or Classrooms, The Justice Policy Institute (2002).  
Note, graph represents General Fund spending on Corrections and Higher Education.  
Fiscal data from the National Association of State Budget Officers.

## 6) Prison expansion in Texas has had a disproportionate impact on racial and ethnic minorities.

- While Texas' general population is mainly White, Texas' prison population is mostly African American and Latino. According to the Criminal Justice Policy Council, African Americans make up 11% of the population, and 41% of the prison population, and Latinos make up 30% of the state population, and 28% of the prison population.<sup>23</sup> As such, while about 4 out of every 10 Texans are either African American or Latino, about 7 out of every 10 Texas prisoners are African American or Latino.
- According to Human Rights Watch, African Americans and Latinos are incarcerated in various forms of locked facilities (including local jails, federal detention centers, military disciplinary barracks and jails, police lockups) at rates much higher than Whites. Using 2000 Census data on rates of incarceration for Texas residents, Human Rights Watch found that African Americans were incarcerated at 5 times the rate of Whites (3,734 African Americans are incarcerated per 100,000 residents, compared to 694 for Whites), and Latinos were incarcerated at 1.7 times the rate of Whites (1,152 Latinos are incarcerated per 100,000 residents, compared to 694 for Whites).<sup>24</sup>

## 7) Texas Imprisons and Incarcerates Large Numbers of People for Nonviolent Offenses.

- While 53.1% of the people in prison in Texas in 2002 were there for a violent crime, and the proportion of non-violent offenders has declined in recent years, Texas still imprisons large numbers of people for nonviolent crimes. In 2002, the 59,100 prisoners were held for non-violent crimes.<sup>25</sup>
- The size of Texas' criminal justice system and its complicated terminology masks the proportion of people incarcerated for nonviolent crimes. If the above figures are recalculated to include people in prison, and people in state jails held for drug and property crimes, then there were approximately 72,600 people incarcerated for nonviolent offenses in institutions run by the Texas Department of Criminal Justice in 2002.<sup>26</sup> Texas' 72,600 nonviolent incarcerated population would represent the 5th largest prison system in the country (behind the federal system, California, Texas and Florida), and is about the same size of the entire prison system in France and England—countries with nearly 3 times the population of Texas.

## Conclusion

Over the past several years, faced with massive budget shortfalls and public opinion that increasingly supports alternatives to incarceration, states around the country have actively taken steps to reduce their prison populations.

Since the state budget crises erupted, governors in many states—**Florida, Illinois, Michigan, Ohio, Utah, and Virginia**—have decided to close entire prisons, while other states such as **New York and Nevada** have “downsized” unneeded prison space by closing prison housing units. Wrestling with a \$34.8 billion budget deficit, **California’s** Governor Gray Davis has temporarily closed the Northern California Women’s Facility, a move that will save \$11.7 million over 18 months. The budget crisis has derailed prison construction plans in **Oregon**, while **Pennsylvania’s** corrections managers have postponed the opening of two newly-constructed prisons in their effort to shave \$15 million from the budget. Nonviolent offenders in **Arkansas, Oklahoma, and Kentucky** have been released early, saving those states millions in corrections costs. Other states are taking more strategic routes to reducing correctional spending. More examples crop up each week of states looking at corrections, one of the fastest growing line items during the 1990s, as a budget item whose time for scrutiny and reevaluation has come:

- In 2003, **Kansas** legislators considered a bill to reduce the demands for prison beds by diverting people convicted of drug possession who are currently in prison to community-based drug treatment. In 2000, **Kansas** legislators mandated that probation and parole violators be sanctioned within the state’s community corrections system rather than be sent back to prison, saving almost 800 prison beds for occupancy by more serious offenders.
- In **South Carolina**, the Corrections Department have suggested several money saving options that could free up to 4,000 inmates this year, including restarting a furlough program and the accelerated release of nonviolent offenders.
- In **Montana**, legislators considered a bill this year to eliminate incarceration as a penalty for drug possession within the state.
- Before leaving office at the end of 2002, **Michigan’s** Governor John Engler approved legislation that repealed most of the state’s mandatory minimum drug statutes.
- **Ohio’s** sentencing guidelines and parole reforms have combined to reduce the state’s prison population by more than 3,400 since 1998.
- In **Mississippi**, nonviolent first offenders regained eligibility for parole after they serve one-quarter of their prison sentence. By the end of 2001, more than 2,000 of the state’s prisoners became parole-eligible.
- **Louisiana’s** legislators repealed mandatory minimum sentences for simple drug possession and many other nonviolent offenses, and cut minimum sentences for drug trafficking in half.

- In November of 2000, **California** voters passed Proposition 36, a groundbreaking treatment instead of incarceration initiative that has become a model for other states. Proposition 36, also known as the Substance Abuse and Crime Prevention Act of 2000, diverts low-level, nonviolent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration. The Legislative Analyst's Office estimated that the measure would divert over 30,000 drug offenders a year to treatment, save California taxpayers approximately \$1.5 billion (net) over the next five years, and prevent the need for a new prison slated for construction. Within the first six months, Proposition 36 diverted over 12,000 individuals into treatment instead of prison. The decline in incarceration of female nonviolent drug offenders has been so significant that many lawmakers are considering closing one or two of the four women's prisons to help shrink California's budget deficit.

This growing trend cuts across regional, ideological, and party lines. States from all regions of the country and with state houses and governors' mansions in the hands of both dominant political parties have turned to safely cutting corrections budgets as one effective method to close widening state budget gaps. With 72,000 nonviolent offenders incarcerated in its prisons and state jails, Texas may wish to look to the experience of other states (and to its own experience with parole reforms) in an effort to reduce in a thoughtful and deliberate manner the number of nonviolent offenders the state incarcerates.

## Endnotes

<sup>1</sup> This policy brief was authored by Vincent Schiraldi and Jason Ziedenberg of the Justice Policy Institute, and reviewed by Michael Supancic, Ph.D., Southwest Texas State University, Department of Criminal Justice, and Michele Deitch, Director, Center for Criminal Justice Initiatives, and former counsel, Texas Senate Committee on Criminal Justice.

<sup>2</sup> Schiraldi, Vincent and Jason Ziedenberg. *Texas Tough: An Analysis of Incarceration and Crime Trends in the Lone Star State*, Justice Policy Institute, 2000.

<sup>3</sup> Greene, Judith and Vincent Schiraldi. *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis*, Justice Policy Institute, 2002.

<sup>4</sup> Year 2001 figures from Glaze, Lauren E. *Probation and Parole in the United States* (2001). Office of Justice Programs, Bureau of Justice Statistics, and Total Number of Persons Under Local, State or Federal Correctional Supervision, 1983 (2000), Bureau of Justice Statistics, spreadsheet. These Justice Department figures differ slightly from what the Criminal Justice Policy Council reports to be the number of people locked up under state or county jurisdiction (195,813 in 2001), due to the different definitions used by those two agencies. These figures represent adults incarcerated, but may include a small number of youth under age 18 who have been tried as adults, and may be incarcerated in adult facilities, or held in local jails.

<sup>5</sup> Fabelo, Tony. *The Big Picture in Adult and Juvenile Justice Issues* (2003). Austin, Texas: Criminal Justice Policy Council.

<sup>6</sup> Cities with 100,000 or More Population in 2000 ranked by Population, 2000 in Rank Order, [www.census.gov](http://www.census.gov)

<sup>7</sup> Fabelo, 2003.

<sup>8</sup> Fabelo, 2003.

<sup>9</sup> Walmsley, Roy. *World Prisoner Population List, 2001*. (2002) London, UK: Home Office, Research, Development and Statistical Directorate.

<sup>10</sup> Fabelo, 2003.

<sup>11</sup> Fabelo, 2003.

<sup>12</sup> Personal interview with Fabelo, cited in Greene, Judith and Schiraldi, Vincent. *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis* (2002). Washington, DC: The Justice Policy Institute.

<sup>13</sup> Drosjack, Melissa. "Faced with space and budget crunch, legislators study options," *The Houston Chronicle*, February 19th, 2003.

<sup>14</sup> It is noteworthy that in 2001, Florida had an overall crime rate that was 8% higher than Texas' crime rate, while California's crime rate was 24.2% lower than Texas in 2001, even though Texas' incarceration rate was 36% higher or more than Florida and California. This may underscore the tangential relationship between crime and incarceration. California and Florida, like Texas, saw their populations increase during the 1990s.

<sup>15</sup> Spelman, William. "The Limited Importance of Prison Expansion." *The Crime Drop in America*, ed. Blumstein, Alfred and Wallman, Joel. Boston: Cambridge University Press, 2000.

<sup>16</sup> Mangos to Mangos: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas. (2003) Austin, Texas: Criminal Justice Policy Council. Figures for 1985 were converted to 2002 dollar values for comparison.

<sup>17</sup> Change in Full-Time equivalent employment from Western, Bruce and Guetzkow, Josh. (August, 2002) Punitive Policy and Neoliberalism in the U.S. Labor Market. Presented at the annual meeting of the American Sociological Association.

<sup>18</sup> Schiraldi, Vincent and Jason Ziedenberg. *Cellblocks or Classrooms: The Funding of Higher Education vs. Corrections and Its Impact on African American Me* (2002). Washington, DC: The Justice Policy Institute.

<sup>19</sup> Between 1990 and 2001, the rate of increase of women prisoners in Texas was 463%, versus 213% for men. 2001 figures are from Table 3 and Table 8, Beck, Allen, Harrison, Paige. *Prisoners in 2001* (2002) Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<sup>20</sup> Roche, Timothy and Greene, Judith. *Cutting Correctly in Maryland*. (2003). Washington, DC: Justice Policy Institute.

<sup>21</sup> Mumola, Christopher. *Incarcerated Children and their Parents*. Washington, DC: Bureau of Justice Statistics. 2000.

<sup>22</sup> Allard, Patricia. *Life Sentences: Denying Welfare Benefits To Women Convicted Of Drug Offenses* (2002). Washington, DC: The Sentencing Project. Extent of the Ban is updated through October, 2002.

<sup>23</sup> Fabelo, *The Big Picture*, 2003.

<sup>24</sup> Human Rights Watch (2002), Table 1, "Rates of Incarceration Per 100,000 Residents," available at [www.hrw.org/background/usa/ra](http://www.hrw.org/background/usa/ra)

<sup>25</sup> Fabelo, 2003.

<sup>26</sup> World prison populations are from Walmsley, Roy. *World Prisoner Population List, 2001*. (2002) London, UK: Home Office, Research, Development and Statistical Directorate; State jail population from "Offense Types for Incarcerated State Jail Offenders," Criminal Justice Policy Council, 2003. The Criminal Justice Policy Council and Bureau of Justice Statistics routinely report different counts of the state's prison population because the agencies define state jails and substance abuse felony punishment facilities differently. As this figure does not include approximately 5,000 nonviolent offenders in substance abuse felony punishment facilities, 72,600 is a conservative estimate of the true number of nonviolent offenders incarcerated in Texas.