



Texas:  
*Tougher than Ever, But are we Safer?*

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The American Civil Liberties Union of Texas is a private, non-profit, nongovernmental organization that defends and preserves the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States.

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## **Executive Summary**

During the 80<sup>th</sup> Legislative Session, policymakers will have to choose between authorizing funding for new prison construction or providing adequately for our children's health and education. It's that simple.

In recent years, states with comparable sentencing practices like New York implemented sentencing policy changes. Those new policies contributed to a reduction in the state's prison population and enabled Albany to spend tax dollars more effectively to build a stronger economy and a stronger future.

During 2005 Texas had one of the largest populations under criminal justice supervision. Why? Because prisoners wait at taxpayer expense for needed drug and alcohol treatment before they can be released. Because thousands of prisoner "trustees" eligible for parole are used to fill jobs the system can't hire guards to fill (including unsupervised trips outside the prison). During 2006 the Parole Board approved for release fewer than 30% of eligible offenders—and far fewer of the safest, nonviolent offenders than indicated by their own guidelines.

The experience in New York—which once suffered legendary crime problems—proves that reductions in incarceration can be achieved while at the same time achieving improvement in public safety.

### **Texas at the Crossroad:**

- Texas' nonviolent prison population represents in the 6<sup>th</sup> largest prison system in the nation. Texas incarcerated 57,460 prisoners for drugs and property crimes in facilities managed by TDCJ during 2005.
- Texas' prison population crisis can be addressed effectively through safe and sensible changes to our parole policies. Due to such changes in 2001 and 2003, Texas saw reductions in the prison population of more than 7,700 inmates, and had more than 6,000 empty beds. We can solve the population problem today with renewed commitment to strong, sensible parole policies without building these new units.
- New York State successfully implemented incremental sentencing reforms that have contributed to a decline of 14% in the incarceration rate from 1995 to 2005, while experiencing a 44% decline in the crime rate. New York's reforms, taken as a whole, reward personal responsibility by inmates in clear and concrete ways. Texas rewards our most responsible and trustworthy inmates by refusing their parole so they can work at jobs that should be paid guard duties.
- Texas continues to invest in the same unproductive strategies from the past rather than building a better future. After adjusting for inflation, spending on public safety and corrections grew 223% in the last 15 years, while real higher education expenditures rose only 44% during the same period.<sup>1</sup> During this period funding appropriated to corrections increased at 5 times the rate of spending on higher education, while parents picked up the tab with a 39% increase in tuition and fees at state universities, just since 2003.

## Introduction

Texas' policymakers are at a crossroads. Public officials have the opportunity to implement policy changes that will safely reduce the state's incarcerated population rather than expanding the number of prison beds. Through the 80<sup>th</sup> Legislative Session policymakers must consider how to address public safety, fiscal health and personal responsibility through incarceration policy.

New York historically relied on prison construction to reduce crime, just like Texas. But as the costs rose and the benefits declined, New York implemented sentencing and correctional reforms that contributed to a declining prison population, safer streets and significant cost savings.

## Overview of Texas Prison Population

During 2005 Texas had one of the largest populations under criminal justice jurisdiction. Between 1983 and 2005, the number of people in prison and jail in Texas more than quadrupled from 50,500<sup>2</sup> to 223,195.<sup>3</sup> More people are under criminal justice supervision in Texas (755,423<sup>4</sup>) than live in the City of Austin (690,252<sup>5</sup>).

## Parole Policies Contribute to Texas' Rising Prison Population

The Legislative Budget Board predicts the state inmate population will exceed TDJC's capacity if no policy changes are implemented. This is primarily due to a decline in the release of people who are eligible for parole—even those judged safe to release like prison "trustees."

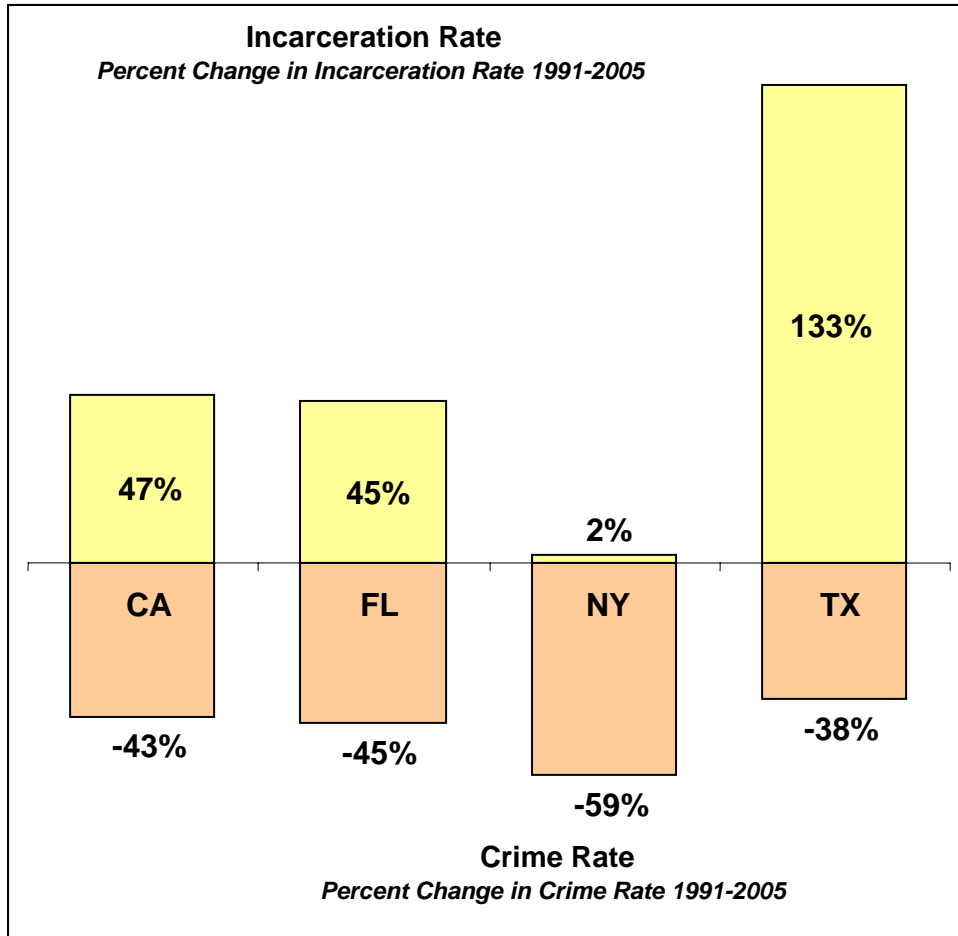
Incarceration rates are very sensitive to parole activity—small, public safety oriented reforms have a big positive impact. Parole reforms implemented seven years ago decreased the state prison population by 4.2% in 2000 and 2.6% in 2001.<sup>6</sup> The reforms, which including increases in Parole Board approval rates and a decline in parole revocation, contributed to a reduction in the prison population by 7,698 prisoners between 2000 and 2001.<sup>7</sup> In December 2001 the Texas Department of Criminal Justice (TDCJ) had **a surplus of 6,910 empty prison beds.**<sup>8</sup> **The current proposal to build three new prisons—at a cost to taxpayers of \$233 million to construct and \$106 million to operate—will only create 4,000 new beds.**

But these parole reforms were short lived. In 2003 TDCJ managers projected that the prison population would grow to exceed operational capacity over the next five years.<sup>9</sup> Starting in March of 2003, the State added 3,559 beds in internal prison capacity – for a total of 13,083 new beds added since 1997.<sup>10</sup>

The Parole Board has adopted risks and severity guidelines that include recommended approval rates to guide discretion. According to its guidelines, the Parole Board should release eligible offenders at minimum approval rate of 31%. However, during 2006 the Board only approved 26.5% of eligible offenders for release. Approving eligible inmates for parole at the *minimum* rate suggested by its own guidelines would have resulted in 2,480 additional releases during 2006.<sup>11</sup>

## Incarceration of Large Numbers of People for Nonviolent Offenses

Texas' incarceration rate increased by 133% between 1991 and 2005; and its crime rate declined by 38% during that same period. While Texas' incarceration rate rose at a rate nearly 67 times greater than New York's, New York enjoyed a significantly larger decline in its crime rate than Texas during the same period.



SOURCES: Bureau of Justice Statistics and Sourcebook of Criminal Justice Statistics

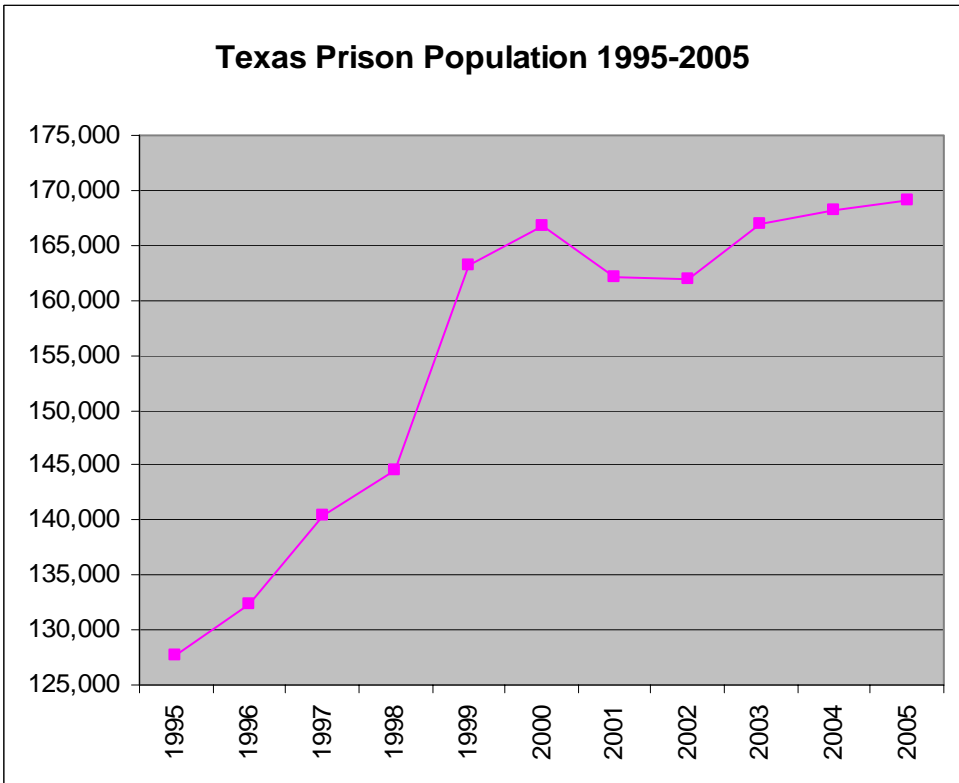
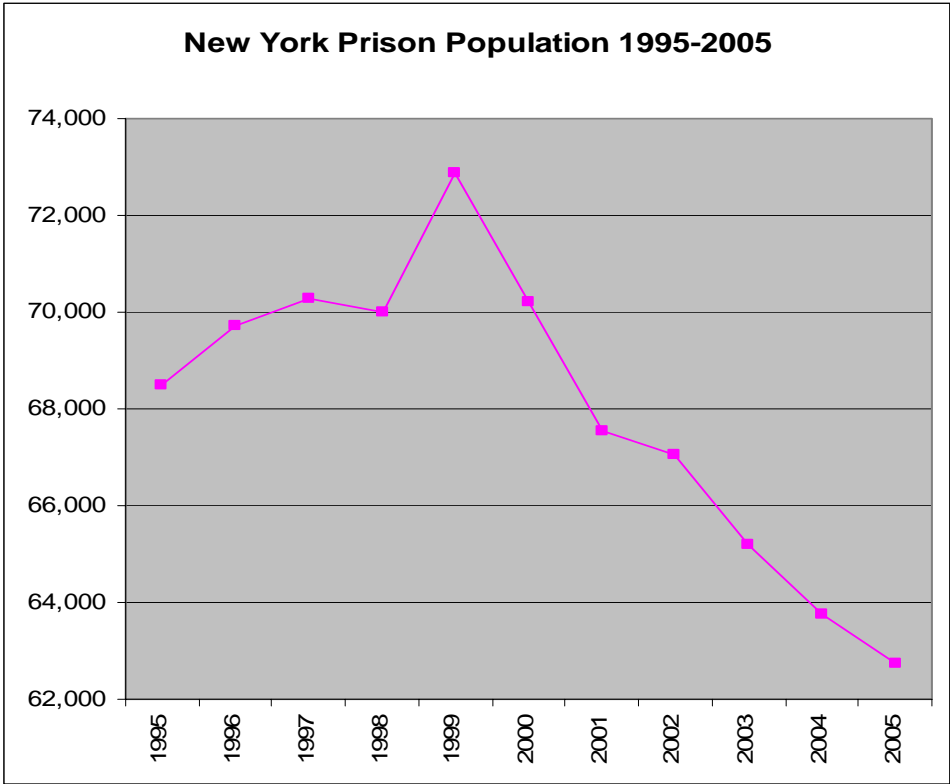
## **New York Sentencing Reforms Contribute to Declining Prison Population**

In recent years, New York State successfully implemented incremental sentencing reforms that have contributed to a decline of 14% in the incarceration rate from 1995 to 2005, while experiencing a 44% decline in the crime rate. The decrease in New York's incarceration followed decades of prison expansion and prison construction. Between 1995 and 1999, the prison population grew by more than 4,000. During 2000, the state corrections department opened three new prisons and expanded nine existing units with additions.<sup>12</sup>

Corrections spending in the face an emerging budget crisis inspired New York policymakers to implement sentencing reforms that would maintain public safety while reducing expenditures on incarceration. New York sentencing reforms include:

- Providing that those serving a mandatory sentence under the Rockefeller Drug Laws could receive a “merit time” reduction of their sentence in the amount of one-third of the minimum imposed by the court for good behavior and participation in work or treatment programs. This policy accelerated release eligibility for about 75 prisoners who had served 10 years behind bars on a 15-to-life sentence.
- Another policy reform expanded the “earned eligibility” program for certain prisoners that complete work and/or treatment programs may earn a certificate that makes parole release presumptive at the first hearing unless the parole board decides otherwise.
- The State expanded eligibility to earn presumptive parole from prisoners serving a minimum sentence of up to six years to include those serving terms of up to eight years. Nonviolent prisoners with a clean prison records and no prior violent felony record can apply to the commissioner of the corrections for a “presumptive release” after serving five-sixths of their minimum term.
- During 2004, Legislators implemented significant reforms to the Rockefeller Drug Laws by doubling the drug amounts that trigger mandatory prison sentences – from four to eight ounces for class “A1,” and from two to four ounces for class “A2.” Indeterminate sentences of 15-to-life for “A1” were replaced by determinate sentences to be set within a range of eight to twenty years.
- Legislators implemented a “merit time” allowance during 2005 for persons convicted under class “A2” of the Rockefeller Drug Laws, affording prisoners the ability to petition judges for re-sentencing. Judges were given broader ranges of discretion in their considerations of re-sentencing applications.<sup>13</sup>

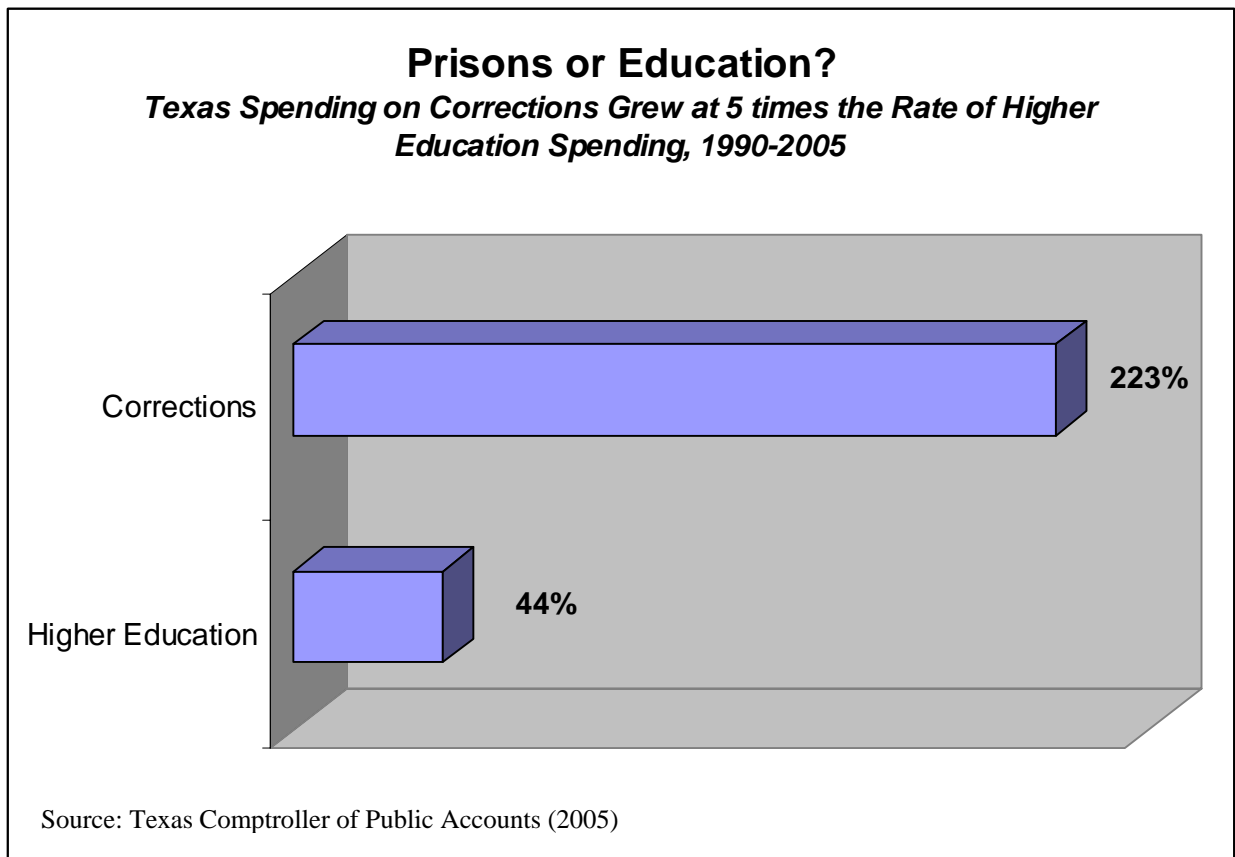
By the fall of 2006, 189 prisoners incarcerated for “A1” Rockefeller Drug Law convictions were re-sentenced and released. These prisoners were released from custody 47 months on average before their previously calculated earliest release dates, resulting in an estimated \$21.3 million in cost savings for New York State taxpayers.<sup>14</sup>



Source: Bureau of Justice Statistics<sup>15</sup>

## Spending on Texas Incarceration

The Texas corrections budget increased from \$600 million in 1985 to \$2.4 billion in 2005.<sup>16</sup> Currently, Legislators are considering cuts to education and other basic services while providing funding for corrections. After adjusting for inflation, spending on public safety and corrections grew 223% in the last 15 years, while real higher education expenditures rose only 44% during the same period.<sup>17</sup> During this period funding appropriated to corrections increased at 5 times the rate of spending on higher education. Meanwhile, parents picked up the tab for the cost of higher education with a 39% increase in tuition and fees just since 2003—and far higher increases for our state’s flagship institutions.<sup>18</sup>



## Texas Incarcerates a Significant Number of Nonviolent Offenders

Historically, correctional administrators have used complicated terminology to mask the proportion of individuals incarcerated for nonviolent crimes. Texas incarcerated 57,460 prisoners for drugs and property crimes in facilities managed by TDCJ during 2005.<sup>19</sup> Texas’ nonviolent prison population represents in the 6<sup>th</sup> largest prison system in the nation.



## **Conclusion**

Sentencing reforms in other states significantly reduced the rate of incarceration while maintaining public safety. Budget crises and changing public attitudes towards incarceration encouraged policymakers across the nation to institute reforms resulting in cost savings. Texas should consider looking to other states that have successfully downsized their prison populations. Texas must implement alternatives to incarceration rather than incarcerating 57,460 nonviolent offenders in TDCJ facilities.

Texas policymakers should consider New York as they decide on proposals to expand prison capacity or invest in alternatives to reduce crime and improve public safety. Texas officials may fear that choosing not to expand prison capacity will lead to resurgence in violent crime. However, it remains clear when analyzing the reforms that contributed to New York's declining incarceration rate, that increased crime was not the result.

Some lawmakers have tried to minimize the tradeoffs by claiming that the state needs only fund the interest expense on new bonds to construct these prisons—but unless they intend to support only empty buildings, they will need more than \$100 million each year for this initiative. The state sacrifices other priorities like roads and higher education while Texans are increasingly asked to pay for these things themselves through toll fees and higher tuition payments. With reasonable and safe parole and sentencing reforms, Texas can save hundreds of millions they would have to spend for financing, construction and operation of new prisons over the next three years, and redirect that spending to build the state's economy and invest productively in our children.

## Endnotes

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- <sup>2</sup> Schiraldi, Vincent & Jason Ziedenberg. “Texas Tough: Three Years Later,” Justice Policy Institute (April 2003).
- <sup>3</sup> Harrison, Paige M. and Allen J. Beck. “Prison and Jail Inmates at Midyear 2005. Washington, DC: Bureau of Justice Statistics. (May 2006)
- <sup>4</sup> Glaze, Lauren E. and Thomas B. Bonczar. “Probation and Parole in the United States in 2005.” Washington, DC: Bureau of Justice Statistics, November 2006; and “Prison and Jail Inmates at Midyear 2005”
- <sup>5</sup> U.S. Census Bureau, “Population Finder,” (2005).
- <sup>6</sup> Fabelo, Tony “The Big Picture in Adult and Juvenile Justice Issues,” Criminal Justice Policy Council (Austin, 2003).
- <sup>7</sup> Greene, Judith and Vincent Schiraldi. “Cutting Correctly: New Prison Policies for Times of Fiscal Crisis.” Washington, DC: Justice Policy Institute. (2002)
- <sup>8</sup> Fabelo, Tony “Justice Reinvestment: A Framework to Improve Effectiveness of Justice Policies in Texas,” (2007).
- <sup>9</sup> Schiraldi, (2003).
- <sup>10</sup> Fabelo (2007).
- <sup>11</sup> Ibid.
- <sup>12</sup> Greene, Judith, “New York City: Ahead of The Reentry Curve,” New York: Justice Strategies. (November 2006)
- <sup>13</sup> Ibid.
- <sup>14</sup> Ibid. Department of Correctional Services managers based their savings estimate on an annual operational cost of \$29,000 per prisoner
- <sup>15</sup> BJS figures differ from the Texas Department of Criminal Justice due to the different definitions used by these two agencies.
- <sup>16</sup> Schiraldi, (2003); TDCJ Legislative Appropriations request for FY 06-07, online at <http://www.tdcj.state.tx.us/publications/finance/lar-fy2006-7-short.pdf>
- <sup>17</sup> Combs, Susan “The Impact of the State Higher Education System on the Texas Economy,” Texas Comptroller of Public Accounts (2005).
- <sup>18</sup> Robison, Clay, “Since deregulation, college tuition costs 39% more than 3 years” *Houston Chronicle*, (September 25, 2006).
- <sup>19</sup> Staff, “FY 2005 Statistical Report,” Texas Department of Criminal Justice (2006).