

# **Crime and Punishment in Texas: Update**

by

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## Executive Summary

Texas, which suffered from a 29 percent increase in the rate of serious crime during the 1980s, is experiencing a dramatic improvement in the 1990s:

- The overall rate of serious crime has been cut by 35 percent and now is the lowest since 1973.
- Compared to 1991, the lower crime rate means that 1,140 fewer Texans will be murdered in 1996 and 450,000 fewer crimes against person and property will be reported to the police.

Why the sharp declines? Punishment works. Incarceration works. Overall:

- A four-year building boom has raised prison capacity from 49,000 to 150,000.
- The state's prison population per 100,000 residents has increased from close to the national average to 64 percent above the national average, the highest in the nation.
- The average (mean) time served for all serious crimes, 1.9 years in 1990, climbed to 3 years by 1994.
- Whereas prisoners released in 1990 served 20 percent of their sentences on the average, those released in 1994 served 28 percent on the average.

One reason why prisoners are spending more time in prison is that far fewer prisoners considered for parole are actually paroled.

- Of 71,074 prisoners considered for parole in 1990, 56,442, or 79.4 percent, received approval.
- Of 51,439 considered in 1994, only 11,469, or 22.3 percent, received approval.

Primarily because of the longer sentences actually served per crime, expected punishment has risen in recent years. Expected punishment is a way of measuring the effectiveness of the justice system. It is expressed as the amount of prison time criminals can expect when they commit crimes, given the probabilities of being apprehended, convicted and sent to prison and given the median sentence served per crime.

- The expected punishment for serious crimes rose from 8.2 days in 1988 to 10.5 days in 1991 and then to 33.2 days in 1994, a fourfold increase over six years.
- Expected punishment rose 360 percent for murder (24 months to 9.2 years) and 266 percent for rape (5.3 months to 19.4 months).
- Expected punishment rose 167 percent for larceny (0.9 days to 2.4 days), 360 percent for aggravated assault (8.2 days to 37.7 days) and 299 percent for burglary (6.7 days to 26.7 days).
- Expected punishment for robbery rose 220 percent (2 months to 6.4 months) and for motor vehicle theft 222 percent (2.7 days to 8.7 days).
- Overall, the expected punishment for a crime of violence is 168 days and for a property crime 8.7 days.

Still, more needs to be done. A serious crime problem remains. More than 250,000 Texans are victims of violent crimes each year and more than 2 million are victims of property crime. Based on 14 risk factors, Texas was rated the sixth most dangerous state in which to live in 1993. And despite the rise in expected punishment, there has been a dramatic decline in arrest rates over the past 34 years, even for the most serious crimes.

To continue reducing crime, the state must continue to raise expected punishment, which does not come cheap. Prison construction and operating costs can be minimized by privatization. Further, the state should remove the remaining legal and bureaucratic hurdles so that prisoners can work for productive, for-profit firms. Work in prison benefits nearly everyone — relieving tedium and enabling prisoners to acquire marketable skills. Income from work enables them to pay victim compensation and to contribute to their own and their families' support while they are in prison.

Reducing crime — or even holding it at its current level — requires continuing vigilance. The continued rise of violent juvenile crime is an especially troubling trend that poses a threat to public safety. The Texas Legislature has taken a positive step in adopting a new juvenile code that holds juveniles accountable for their behavior.

## Introduction: Despite Some Relief, A Problem Remains

Texas suffered an increase of 29 percent in the rate of serious crime in the 1980s, while the rate in the United States as a whole declined by 4 percent. But the outlook for law-abiding citizens in Texas has improved dramatically during the 1990s:<sup>1</sup>

- After peaking at 8.0 crimes for every 100 people in 1988 (41 percent above the national average), the Texas crime rate has plummeted by 30 percent, to 5.6 crimes for every 100 people (10 percent above the national average).
- The overall crime rate in Texas now is the lowest since 1973.
- The murder rate is the lowest since 1966.
- The burglary rate is the lowest since 1968.

The reductions in crime have been largest in the big cities. As Figure I shows, reported crime between 1991 and 1994 fell 35 percent in Dallas and 29 percent in Houston. For the country as a whole, by contrast, crime fell only 8 percent over the three-year period. Preliminary figures for the first half of 1995 show another reduction in violent crime<sup>2</sup> of 9 percent in Dallas and 7 percent in Houston.<sup>3</sup> Property crime<sup>4</sup> decreased 6 percent in Dallas during the first half of 1995, but rose 2.7 percent in Houston (with no adjustment for population change).<sup>5</sup>

These declines are not likely to be mere statistical illusions. They reflect very real improvements in public safety. The number of murders reported is generally conceded to be accurate. So is the number of motor vehicle thefts because cars and trucks are relatively expensive, insured items. Between 1991 and mid-1995, murder in the state fell 41 percent and motor vehicle theft 43 percent. Further, although many crimes are not reported to the police,<sup>6</sup> the National Crime Victimization Survey shows that the reporting rates have been gradually creeping upward (up 20 percent since 1973), and better performance by the criminal justice system has stimulated even more reporting. Thus the decline in total crime, considering both crimes reported to the police and those not reported, may actually be even greater than the statistics indicate.

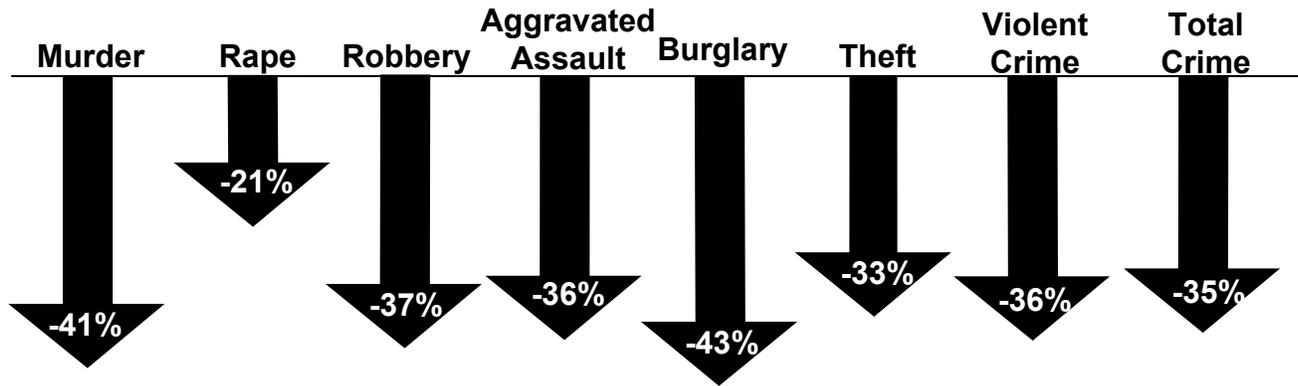
Texans should take some satisfaction in this achievement. Compared to 1991, *the lower crime rates mean that 1,140 fewer Texans will be murdered this year and 450,000 fewer crimes against person and property will be reported to the police.* However, a serious crime problem remains:<sup>7</sup>

*“Between 1991 and mid-1995, murder in Texas fell 41 percent; motor vehicle theft fell 43 percent.”*

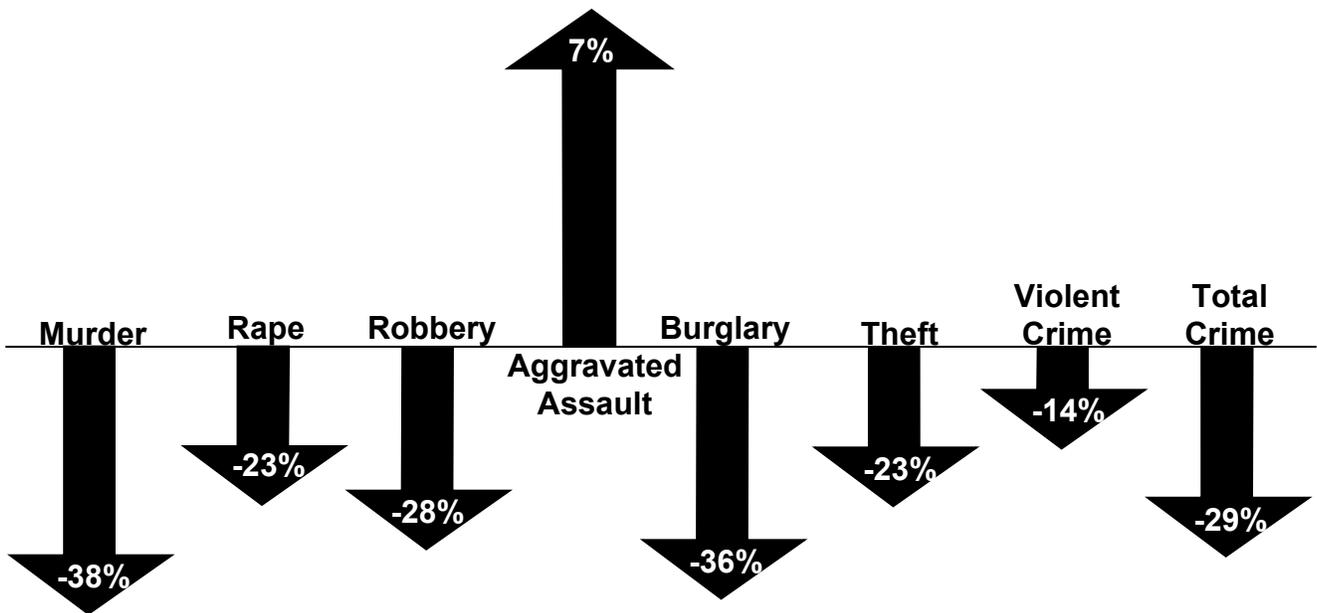
FIGURE I

**Crime in Dallas and Houston**  
(1994 compared to 1991)

**Dallas**



**Houston**



Source: Texas Department of Public Safety and FBI.

- Every year, more than 250,000 Texans are victims of violent crimes, of which only 130,000 are reported to the police.
- More than 2 million Texans each year are victims of property crimes: burglary, larceny/theft and arson.
- On an average day in Texas, 5 to 6 murders, 25 rapes, 103 robberies and 222 life-threatening assaults are reported to the police.
- A car is stolen every 4.7 minutes and a burglary is committed every 2.4 minutes.

The overall Texas crime rate — the number of serious crimes per 100 residents — remains high relative to that of other states:<sup>8</sup>

- Although the state's overall crime rate was below the national average in 1975, today it is 10 percent above the national average.
- The state's murder rate was the 10th highest in the nation in 1994.
- Based on 14 risk factors, Texas was rated the sixth most dangerous state in which to live in 1993 by Morgan Quitino Press of Lawrence, Kan., a company specializing in state and statistical rankings.<sup>9</sup>

## Lesson: Punishment Works

The Texas crime statistics tell an amazing story about the ability of punishment, even of the mildest variety, to reduce crime. It's almost a controlled experiment in the efficacy of incarceration and punishment.

**The Texas Prison Boom.** Why the big declines? Punishment works. Incarceration works. It's that simple. Elected on a "more cops on the street" pledge, Houston Mayor Bob Lanier attributes the continuing decline to "increased law enforcement and an increase in state action on prisons and paroles."<sup>10</sup> The mayor cautions, however, "We are down to a rate where progress will come slower."<sup>11</sup>

Among all the tools available to combat crime, the most dramatic change has occurred in the ability of government to imprison criminals. Texas' prison capacity has tripled in the last five years:<sup>12</sup>

- In September 1990, Texas prisons had a design capacity of 49,000.
- With the completion of a \$1.5 billion construction program in December 1995, the design capacity has increased to 150,000.

The prison-building binge has raised the Texas prison population per 100,000 citizens from average among the states to the highest in the nation<sup>13</sup> at 659 per 100,000 as of June 30, 1995, 64 percent above the national average of 403. The state has sharply reduced its 30,000-prisoner backlog in county

*"The most dramatic change has occurred in the ability of government to imprison criminals."*

jails, and the Texas Commission on Jail Standards says there are 14,000 empty beds in the state's county jails.<sup>14</sup> County jails now recruit paying tenants from out of state (dubbed by some the "rent-a-cell" program).

One consequence of the expansion of prison capacity is that Texas now has more criminals under state supervision — in prison, on probation or on parole — than any other state.<sup>15</sup>

- Currently, one of every 111 adult Texans is in a state prison — not in jail, not on probation or parole, but in prison.<sup>16</sup>
- Texas also has the largest number of adults on probation and parole with more than 503,000 under such supervision, followed by California with 370,000.
- At the end of 1994, one of every 26 adult Texans was on probation or parole.

**Effects on Average Time Served.** The expansion of prison capacity had an effect. Probably the most important change was that people convicted began serving longer prison sentences for every crime. As Figure II shows:<sup>17</sup>

- The estimated average (median) sentences served by inmates convicted of murder, rape or robbery more than tripled between 1988 and 1994.
- The average sentences served by inmates convicted of aggravated assault, burglary or theft went up more than fourfold.

One reason why prisoners are spending more time in prison is that far fewer prisoners considered for parole were actually paroled. Figure III compares parole approval in 1994 with 1990.

- Of 71,074 prisoners considered for parole in 1990, 56,442, or 79.4 percent, received approval.
- Of 51,439 considered in 1994, only 11,469, or 22.3 percent, received approval.

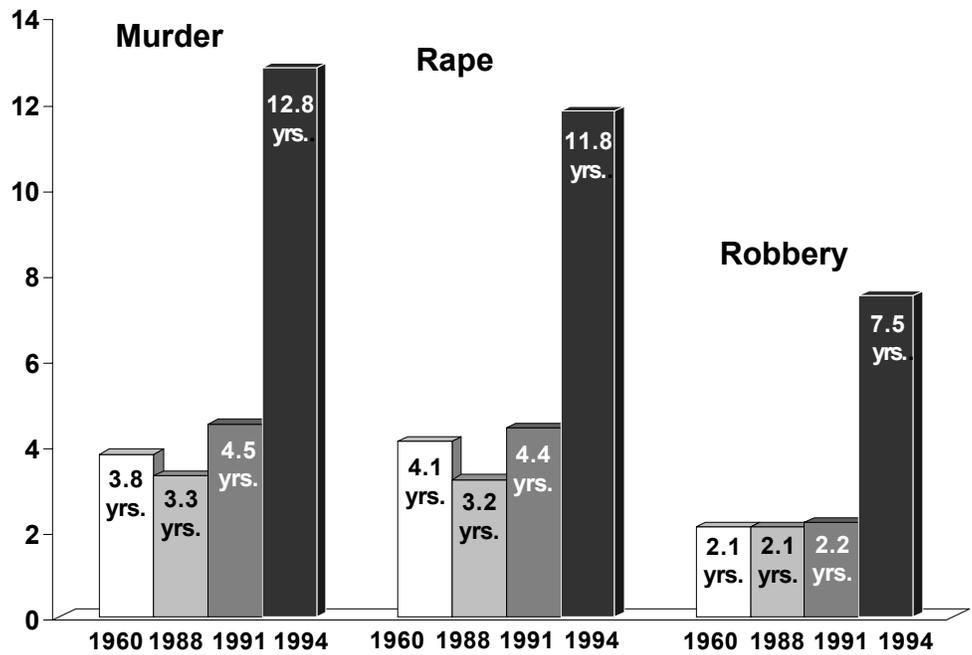
Historically, the Board of Pardons and Paroles granted paroles to about 25 percent of eligible cases that came before it. But under pressure of federal lawsuits over prison crowding, the board increased its approval rate to 79 percent in 1990, releasing more prisoners than it kept behind bars. With the new prison capacity, approval rates have fallen to the historic level.

**Debate Over the Results.** The governor's Criminal Justice Policy Council has questioned the cause-and-effect relationship between greater imprisonment and the reduction in crime. In an October 1995 report, the council labeled Texas "the most punitive state in the country" suggesting that "the case for more incarceration...made on the basis of crime reduction" is weak.<sup>18</sup> "Texas continues to have one of the highest crime rates in the nation,"

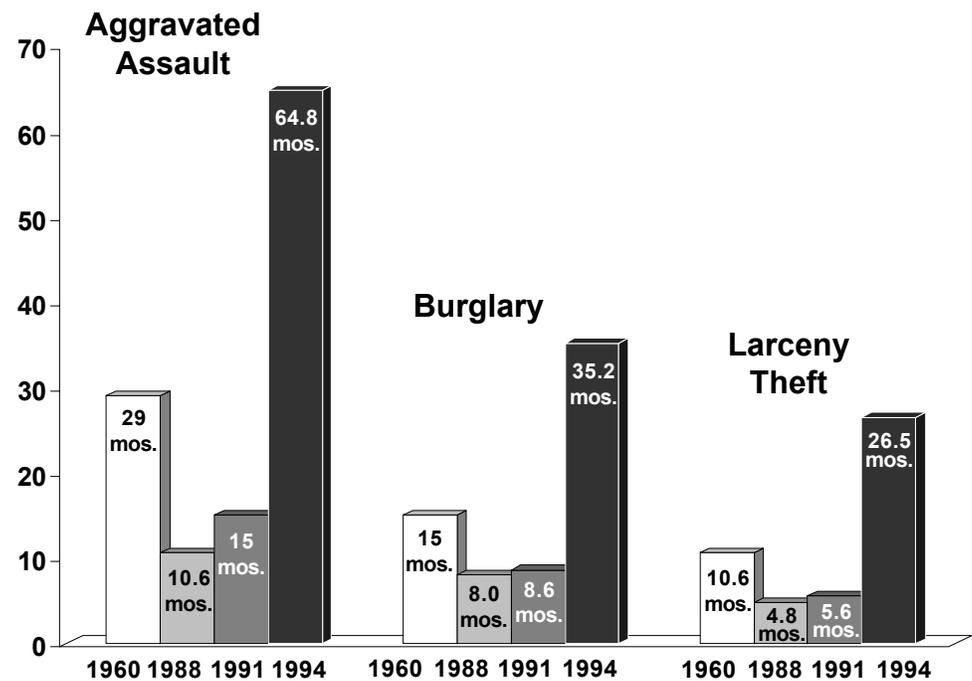
*"At the end of 1994, one of every 26 adult Texans was on probation or parole."*

*“The average (median) sentences served for murder, rape or robbery more than tripled between 1988 and 1994.”*

**FIGURE II**  
**Estimated Median Sentence Served in Texas for Selected Crimes\***



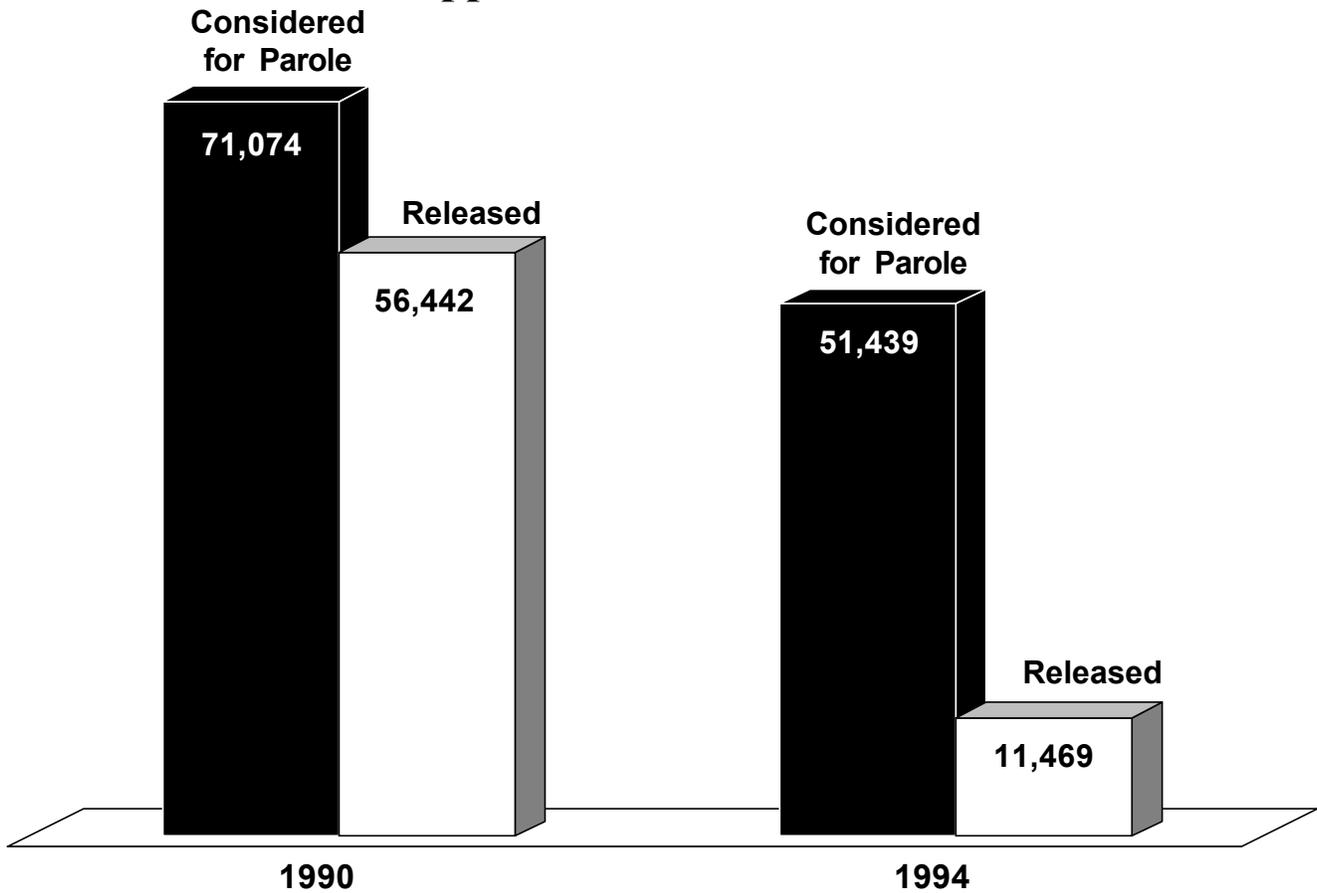
*“The average sentences for aggravated assault, burglary or theft went up more than fourfold.”*



\* Estimated by dividing the number of prisoners on hand at year-end by the number released in the previous 12 months to get the mean sentence, then multiplying by .75 to get the median.

FIGURE III

### Number of Prisoners Considered and Approved for Parole in Texas



Sources: Criminal Justice Policy Council, State of Texas.

*“By 1994, far fewer prisoners considered for parole were actually paroled.”*

Dr. Tony Fabelo, the executive director, wrote, “in spite of a dramatic increase in the incarceration rate.” Dr. Fabelo argued that “most offenders are incarcerated after their criminal career has peaked, limiting the impact of more incarceration on the crime rate.” He speculated that “perhaps funding meaningfully early interventions in the juvenile justice system...will achieve better returns on lowering crime for each new dollar spent.”<sup>19</sup>

This conclusion seems to contradict the council’s more ebullient opinion, expressed only 10 months earlier in a publication that praised expanded prison capacity. At that time Dr. Fabelo wrote, “Policies adopted by the legislature since 1987 are having a positive outcome in reducing crime, increasing time served in prison for violent offenders and providing adequate correctional capacity to meet demands for tougher penalties.”<sup>20</sup>

Of course, reduction in the crime rate is not the only reason for punishing those who commit crimes. There is a powerful feeling in society that predators and other crooks should be punished on principle. Law is an entirely

appropriate instrument of organized retribution. There is strong evidence that tougher policies on crime have produced much larger gains in public safety than Dr. Fabelo recognizes. By contrast, while the rehabilitation and prevention strategies he proposes may appeal to our best instincts, their record for repairing and reconstructing souls has been abysmal.<sup>21</sup>

How does the expansion of prison capacity affect the decision calculus of people who are considering committing a crime? And how do we know that the increased risk of imprisonment has not been offset by some other change? To answer these questions, we need a full accounting of all of the factors that affect the “expected punishment” for committing a crime.

## How Prison Capacity Affects Expected Punishment

Most crimes are not irrational acts. Instead, they are committed by people who at least implicitly compare the expected benefits with the expected costs, including the costs of being caught and punished. The reason we have so much crime is that, for many people, the benefits outweigh the costs — making crime more attractive than other career options.

It is virtually impossible to prevent people from committing crimes. What the criminal justice system does is construct a list of “prices” (expected punishments) for various criminal acts. People commit crimes so long as they are willing to pay the price society charges, just as many of us might risk a parking or speeding ticket by disobeying traffic laws.

Because criminals and potential criminals rarely have accurate information about the probabilities of arrest, conviction and imprisonment, their personal assessments of the expected punishments vary widely. Some overestimate their probability of success, while others underestimate it. More skillful and intelligent criminals face better odds of getting away with their crimes. Despite the element of subjectivity, if the (objectively measured) expected cost of crime to criminals declines, crime increases and vice versa.<sup>22</sup> This theory is consistent with public opinion<sup>23</sup> and with the perceptions of potential criminals.<sup>24</sup> And it is supported by considerable statistical evidence.<sup>25</sup>

**How Expected Punishment Is Calculated.** Four adverse events must occur before a criminal ends up in prison. The criminal must be arrested, prosecuted, convicted and sentenced to prison. As a result, the expected punishment for crime depends on a number of conditional probabilities: the probability of being arrested for a crime after it is committed; the probability of being prosecuted after an arrest; the probability of being convicted if prosecuted; and the probability of going to prison if convicted.

*“The criminal justice system constructs a list of ‘prices’ (expected punishment) for various criminal acts.”*

As Table I shows, the *expected punishment* is the result of multiplying all four of these probabilities and then multiplying that result by the average or median time served. Even if each of the separate probabilities is reasonably high, their product can be quite low. Suppose, for example, that each was one-half.<sup>26</sup> The overall probability that a criminal would spend time in prison would be only 6.25 percent.

Expected punishment is *not* the length of time criminals actually remain in prison; those released in 1994 served an average of three years.<sup>27</sup> To reiterate, expected punishment has to do with *probabilities* and takes into account that 98 percent of all crimes in Texas do not result in any prison time.

**The Probability of Arrest.**<sup>28</sup> Table II shows the percentage of crimes “cleared by arrest” in mid-1995 in Texas. Note the dramatic decline in arrest rates over the past 34 years, even for the most serious crimes.<sup>29</sup>

- Since 1960, the probability of being arrested for committing a murder has fallen by 21 percent.
- The probability of arrest for rape has dropped 22 percent, for robbery 23 percent and for burglary 51 percent.

Overall, during the 1980s, only one in five reported serious crimes in Texas was cleared by arrest.<sup>30</sup> In the first half of 1995, the statewide clearance rate rose to 24 percent. In Japan, by contrast, 50 percent of serious crimes are cleared by arrest. And Japan, with a population of 122 million, has fewer murders each year than Texas, with a population of only 18.3 million.<sup>31</sup>

**The Probability of Going to Prison.** In contrast to the probability of arrest, the probability of imprisonment if one is arrested has increased substantially for most crimes. [See Table III.] Still, police in Texas arrested nearly 215,000 people for violent and property crimes in 1994, but only 27,000 — or

“Four adverse events have to occur before a criminal actually winds up in prison.”

<b>TABLE I</b>				
<b>Calculating Expected Punishment</b>				
<b>EXPECTED TIME IN PRISON =</b>				
<b>(1)</b>		<b>(2)</b>		<b>(3)</b>
<b>Probability</b>		<b>Probability</b>		<b>Probability</b>
<b>of</b>	<b>x</b>	<b>of</b>	<b>x</b>	<b>of</b>
<b>arrest</b>		<b>prosecution</b>		<b>conviction</b>
		<b>(4)</b>		<b>(5)</b>
		<b>Probability</b>		<b>Median</b>
	<b>x</b>	<b>of</b>	<b>x</b>	<b>Sentence</b>
		<b>imprisonment</b>		

*“The arrest rates have declined, even for the most serious crimes.”*

TABLE II

### Percent of Serious Crimes Cleared by Arrest in Texas<sup>1</sup>

<u>Crime</u>	<u>1960</u>	<u>June 1995</u>	<u>Change: 1960 to 1995</u>
<b>Murder</b>	<b>96.5%</b>	<b>76%</b>	<b>- 21%</b>
<b>Rape</b>	<b>74.3%</b>	<b>58%</b>	<b>- 22%</b>
<b>Robbery</b>	<b>41.3%</b>	<b>32%</b>	<b>- 23%</b>
<b>Aggravated Assault</b>	<b>79.2%</b>	<b>57%</b>	<b>- 28%</b>
<b>Burglary</b>	<b>30.6%</b>	<b>15%</b>	<b>- 51%</b>
<b>Larceny/theft</b>	<b>23.7%</b>	<b>22%</b>	<b>- 7%</b>

<sup>1</sup>1960 figures include Oklahoma, Arkansas and Louisiana. 1993 figures are rounded to nearest full percentage point.

13 percent of those arrested — went to prison. That means that 87 out of every 100 people arrested for crimes of violence or against property in Texas served *no* time in state prison.<sup>32</sup> Despite that fact, more people who are arrested are now going to prison and staying there longer.

**Expected Punishment in Texas.** A comparison of Figures II and IV shows the difference between the average time spent in prison by people who are imprisoned and the expected punishment at the time a crime is committed:<sup>33</sup>

- Murderers in prison will average spending 12.8 years there, but the expected punishment for someone who commits a murder is 9.2 years.
- Although the actual time served in prison by rapists averages 11.8 years, the expected punishment for committing rape is only 19.4 months.
- The actual time served in prison for robbery averages 7.5 years, vs. expected punishment of only 6.4 months.

For other crimes, Figure IV shows these results:

- Expected punishment is 37.7 days for aggravated assault, 26.7 days for burglary, 8.7 days for motor vehicle theft and 2.4 days for larceny.
- Expected punishment for all crimes of violence is 168 days and for property crimes 8.7 days.
- Overall, the average expected punishment for all serious crimes is 33.2 days.

If many of these numbers seem low, they are. For this reason, crime still pays for many criminals. Nonetheless, the expected cost of crime to criminals is much higher than it used to be.

**The Change in Expected Punishment Over Time.** Increasing the prison time served severalfold has had a dramatic effect on expected punishment for every type of crime in Texas.

- During the six-year period 1988 to 1994, expected punishment rose 360 percent for murder and 266 percent for rape.
- It rose 167 percent for larceny, 360 percent for aggravated assault and 299 percent for burglary.
- It rose 220 percent for robbery and 222 percent for motor vehicle theft.

On the average, the crimes with the longest expected prison terms (murder, rape, robbery and assault) are the crimes least frequently committed, comprising only about 12 percent of all serious crimes in Texas. The remaining 88 percent of serious crimes carry an expected prison term of only a few days.<sup>34</sup>

**Expected Punishment and the Crime Rate.** Figure V shows the relationship between the overall expectation of punishment and the crime rate over the past 34 years. As the figure indicates:<sup>35</sup>

- Expected punishment fell sharply from 1965 to 1975, coinciding with a steep rise in the crime rate.
- Although the crime rate continued to climb, the rate of increase moderated from 1975 to 1980 — a period when expected punishment rose.

TABLE III

**Probability of Going to Prison<sup>1</sup>**  
(if arrested)

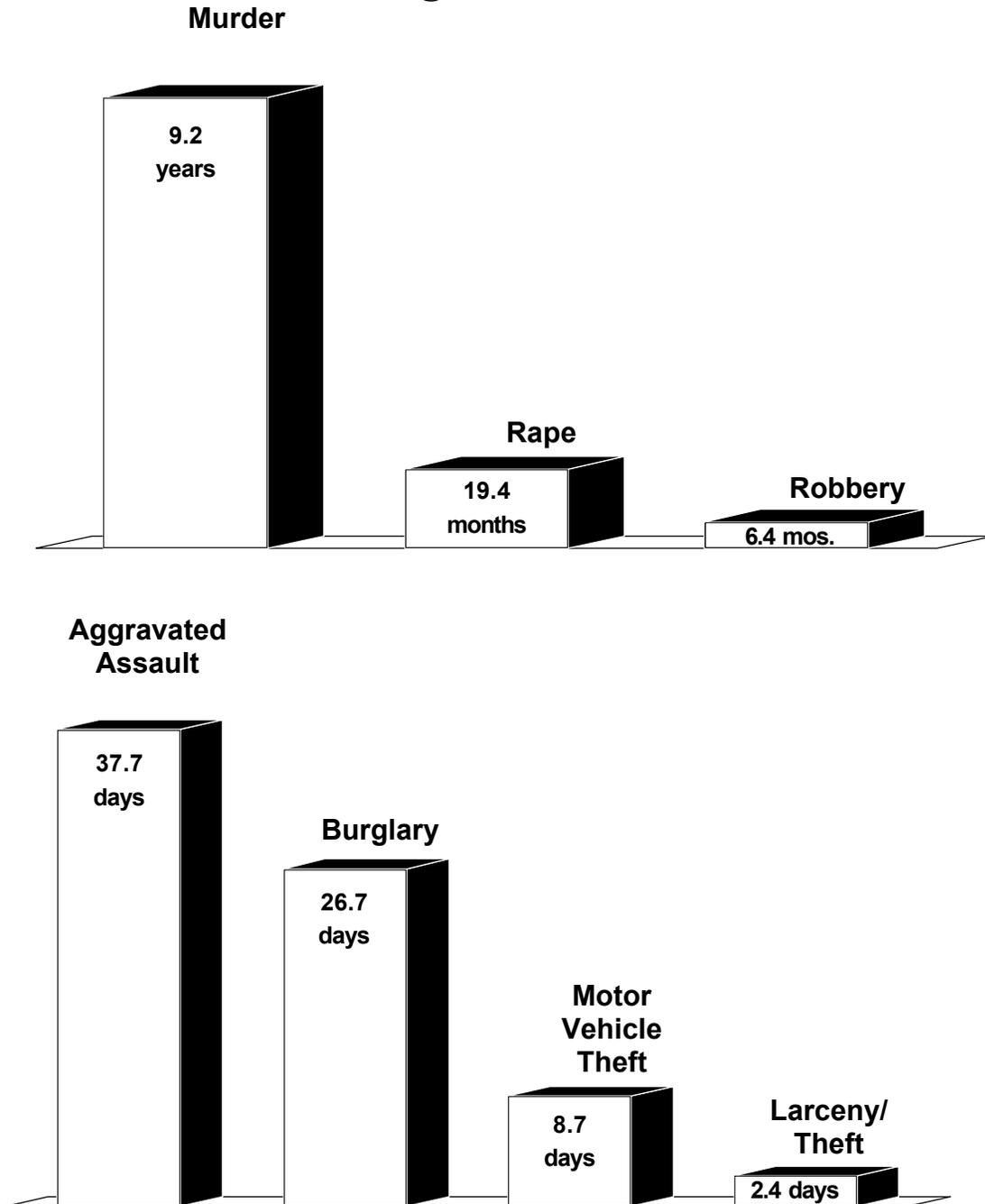
Crime	1960	1994	Change: 1960 to 1994
<b>Murder</b>	26.3%	71.9%	+ 173.0%
<b>Rape</b>	6.8%	13.5%	+ 98.0%
<b>Robbery</b>	12.4%	7.0%	- 44.0%
<b>Aggravated Assault</b>	1.7%	1.9%	+ 12.0%
<b>Burglary</b>	2.5%	2.5%	0.0%
<b>Larceny/theft</b>	4.5%	0.3%	- 93.0%

*“The probability of going to prison has increased for most crimes, but 87 of every 100 people arrested for crimes of violence or crimes against property serve no time.”*

<sup>1</sup>The percent of serious crimes resulting in a prison sentence.

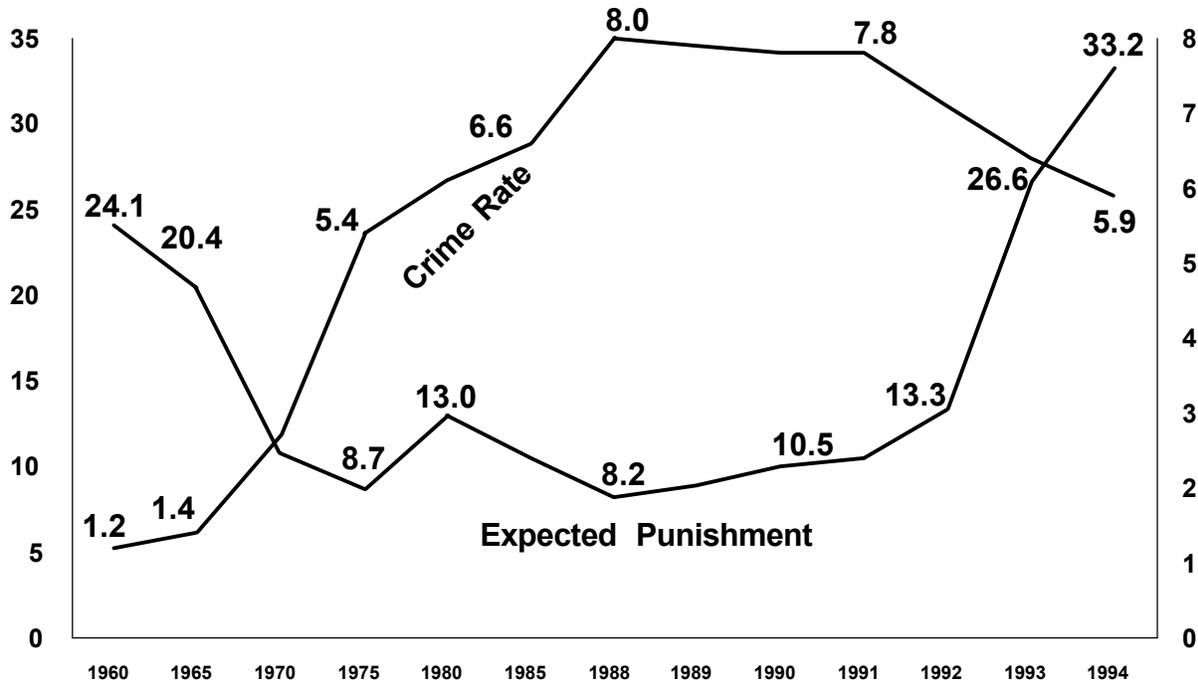
FIGURE IV

## Expected Time in Texas Prisons For Committing Selected Crimes in 1994<sup>1</sup>



<sup>1</sup>Based on the probabilities of arrest, prosecution, conviction and imprisonment. For those in prison, the average time served by all prisoners released in 1994 was 3.0 years. The FBI defines *robbery* as taking or attempting to take anything of value from the care, custody or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear. *Aggravated assault* is an unlawful attack by one person on another for the purpose of inflicting severe or aggravated bodily injury, usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. *Burglary* is the unlawful entry of a structure to commit a felony or theft. *Larceny/theft* is the unlawful taking, carrying, leading or riding away of property from the possession or constructive possession of another.

FIGURE V  
**Crime and Punishment in Texas**



\* Median prison sentence for all serious crimes, weighted by probabilities of arrest, prosecution, conviction and imprisonment.

Sources: National Center for Policy Analysis calculations from FBI *Uniform Crime Reports*, annual, and Texas Department of Criminal Justice *Statistical Report*, annual.

*“Since 1991 a drastic increase in expected punishment has coincided with a major decline in crime.”*

- Expected punishment began falling again in the early 1980s, and by 1985 the crime rate had resumed a steep rise.
- Expected punishment began rising again in 1988, and this time the crime rate fell moderately.
- Since 1991 a drastic increase in expected punishment has coincided with a major decline in crime.

Table IV, comparing 1991 and 1994, shows that this relationship also holds across the range of specific types of crime except for aggravated assault, which rose 1 percent during the period. The reason for the one exception is not clear, although it could be related in part to an increase in violent crime by juveniles.

## Comparing Texas With the Rest of the Nation

The Texas experience during most of the 1980s differed sharply from the national picture. Expected punishment rose nationally, keeping U.S. crime rates below the peak recorded in 1980.<sup>36</sup>

- Between 1980 and 1988, the expected number of days in prison rose 36 percent nationally but dropped 37 percent in Texas.
- During that same period, crime in Texas increased from 3 percent to 42 percent above the national average.<sup>37</sup>

During the 1990s this pattern has been reversed: crime in Texas has declined much more steeply than in the nation as a whole, while the Texas prison population has grown more rapidly than the nation's.

The two most populous states, California and Texas, together account for more than one of every five inmates in the country, with 131,342 and 127,092 prisoners, respectively, as of June 30, 1995. These two states have followed opposite paths during the 1980s and 1990s, with very different impacts on the amount of serious crime.

**Texas vs. California: the 1980s.** In 1980, the California state prison population (98 per 100,000 population) was 30 percent below the national average and the state's rate of violent crime and burglary was 40 percent above the national average. In Texas, by contrast, the prison population (210 per 100,000 population) was 50 percent above the national average and its serious crime rate only 5 percent above the national average [see Figures VI and VII]. By the end of the 1980s, California's state prison population was 9

TABLE IV

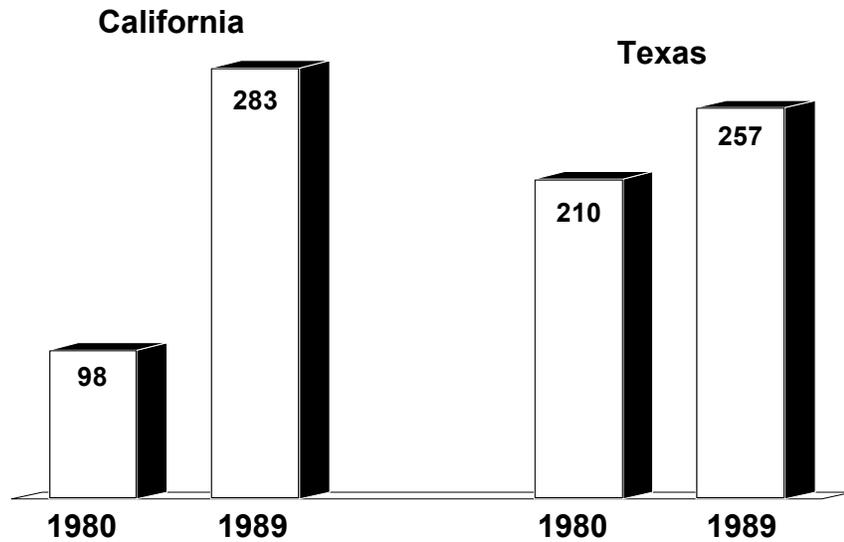
### Crime Rates and Expected Prison Days 1991-1994

<u>Crime</u>	<u>Increase in Expected Prison Time</u>	<u>Change in Crime Rate</u>
<b>Murder</b>	+ 274%	- 22%
<b>Rape</b>	+ 152%	- 7%
<b>Robbery</b>	+ 220%	- 28%
<b>Agg. Assault</b>	+ 246%	+ 1%
<b>Burglary</b>	+ 214%	- 37%

*“Every type of crime has decreased except aggravated assault.”*

FIGURE VI

### State Prisoners per 100,000 Population

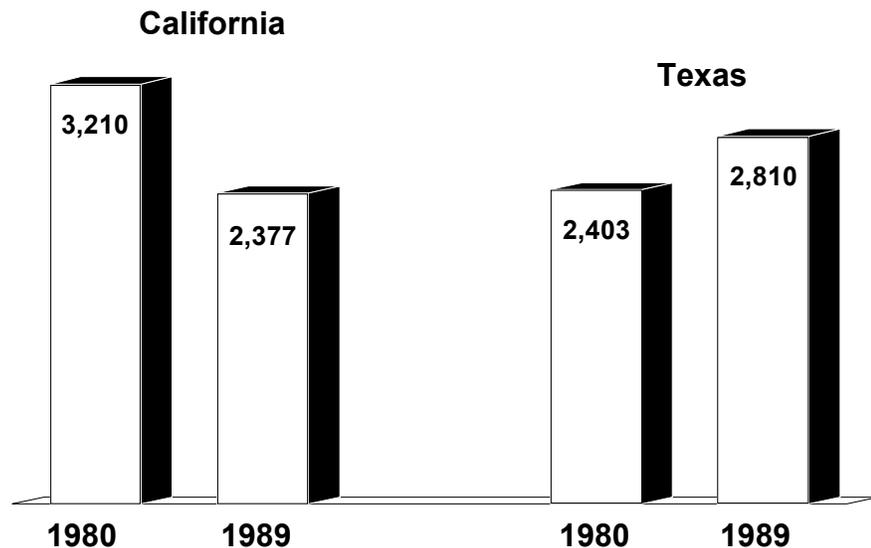


*“During the 1980s, California’s prison population increased and its serious crime rate fell.”*

Source: Bureau of Justice Statistics.

FIGURE VII

### Violent Crimes and Burglaries per 100,000 Population

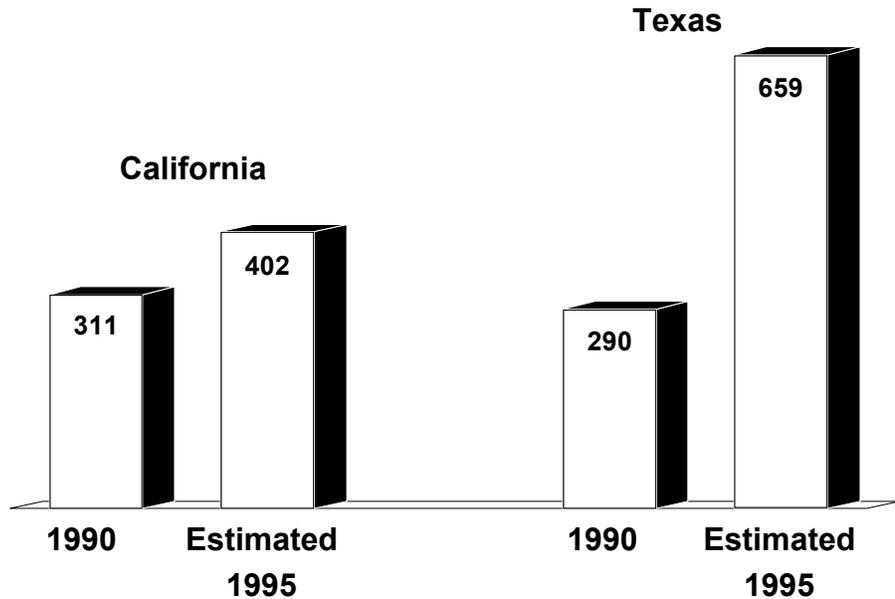


*“As the Texas prison population fell below the national average in the 1980s, its serious crime rate went from 5 percent to 45 percent above the national average.”*

Source: FBI.

*“During the early 1990s, Texas went on a building spree and doubled its prison population.”*

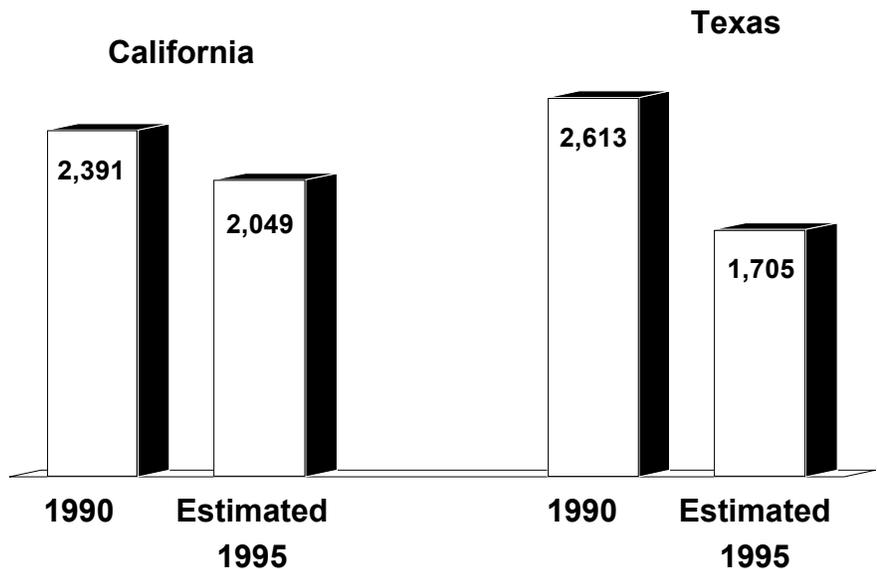
**FIGURE VIII**  
**State Prisoners per 100,000 Population**



Source: Bureau of Justice Statistics.

**FIGURE IX**  
**Violent Crimes and Burglaries per 100,000 Population**

*“California was able to reduce its rate of violent crimes and burglaries by only 14 percent, while in Texas the rate declined 35 percent.”*



Source: FBI.

percent above the national average and its serious crime rate had declined to 22 percent above the national average. In Texas, meanwhile, the state prison population had fallen 5 percent below the national average and its rate of serious crime had jumped to 45 percent above the national average.

**Texas vs. California: the 1990s.** The ratio of prisoners to Texas residents remained below the national average in the late 1980s, primarily due to federal court orders and prison capacity constraints. As noted above, however, during the early 1990s Texas doubled its prison population. During the same period, California's prison population increased by about one-third.<sup>38</sup> At 659 prisoners per 100,000 population, Texas became the state with the highest number of inmates per resident at midyear 1995. [See Figure VIII.] The result? Texas was more effective in combating crime. As Figure IX shows, California was able to reduce its rate of violent crimes and burglaries by only 14 percent, while in Texas the rate declined 35 percent.

## Other Factors Affecting the Crime Rate

Crime and punishment obviously do not operate in a vacuum. They are affected by a host of political, judicial, social and other influences. This section examines some of these.

**“Root Causes” of Crime.** Sociological factors affecting crime have not changed in Texas, although the economy recently has strengthened and unemployment has dropped. Despite much rhetoric to the contrary, there is little evidence that such economic factors as poverty, a poor economy, low wages or low income growth and high unemployment cause crime. If anything, the reverse is true: crime causes poverty and economic stagnation. None of the unpleasant social or demographic facts about Texas have changed: births to unmarried women continue to grow, high school dropout rates remain at about 20 percent and the number of Texans living in poverty has increased about 20 percent in the 1990s, to more than 3.1 million. Texas' per capita income remains 91 percent of the national per capita income, no higher than 45 years ago, and down from 102 percent during the oil boom of the early 1980s.<sup>39</sup>

*“Sociological factors affecting crime have not changed in Texas.”*

**Law Enforcement Personnel.** As Table V shows, Texas had fewer police per capita than the national average during the 1970s. However, the number of full-time police employees in Texas has increased 53 percent since 1987, pushing Texas to 13 percent above the national average. Total employment in the courts and correctional system has grown apace. More police do deter crime.<sup>40</sup>

**Federal Court Decisions.** One key factor that had an impact throughout the 1970s and 1980s was the change in the criminal justice system caused by the U.S. Supreme Court. After the Supreme Court's first landmark deci-

“Texas has more police per capita than the nation as a whole.”

TABLE V  
**Full-Time Police Employees in  
Texas and the United States**

<u>Year</u>	<u>Police Employees In Texas</u>	<u>Police Employees per 10,000 Population<sup>1</sup></u>	
		<u>Texas</u>	<u>U.S.</u>
<b>1968</b>	<b>17,375</b>	<b>16</b>	<b>20</b>
<b>1979</b>	<b>31,705</b>	<b>23</b>	<b>26</b>
<b>1987</b>	<b>40,952</b>	<b>24</b>	<b>27</b>
<b>1991</b>	<b>57,128</b>	<b>32</b>	<b>28</b>
<b>1993</b>	<b>62,829</b>	<b>35</b>	<b>31</b>

<sup>1</sup> Full-time equivalent.

Source: FBI, *Crime in the United States*, annual.

sion in 1961 (*Mapp v. Ohio*) expanding the rights of criminal defendants and making it more costly for police and prosecutors to obtain criminal convictions, a growing reluctance to prosecute and punish criminals emerged.

A series of related decisions followed: *Gideon v. Wainwright* (1963) required taxpayer-funded counsel for defendants who could not afford an attorney; *Escobedo v. Illinois* (1964) and *Malloy v. Hogan* (1964) expanded privileges against self-incrimination, impeding interrogation of suspects by police; and *Miranda v. Arizona* (1966) made confessions — even voluntary ones — inadmissible as evidence unless the suspect had first been advised of certain rights.

The enforcement system was transformed by these decisions. As Justice Benjamin Cardozo wrote in a 1926 case, “The criminal is to go free because the constable has blundered.”<sup>41</sup> Justice Byron White, dissenting in the *Miranda* case, warned that the decision would have “a corrosive effect on the criminal law as an effective device to prevent crime.”<sup>42</sup> It appears that what Judge Macklin Fleming called “the pursuit of perfect justice” has increased the time and effort required to apprehend, convict and punish the guilty.<sup>43</sup>

**Texas Court Decisions.** In Texas in 1980, Federal District Judge William Wayne Justice compounded the problem by declaring the Texas prison system unconstitutionally “cruel and unusual punishment.” The resulting court orders, federal monitoring and consent decrees in *Ruiz v. McCotter* prohibited the state from housing more than two prisoners in one cell, forbade assigning inmates to supervise the activities of other inmates, ordered staffing increased to one guard per six inmates (now one per four) and ordered the

state to reduce its prisoner population to 95 percent of prison capacity. The state's failure to expand prison space under these costly constraints was a major factor in the decline in length of prison sentences served in Texas during the 1980s.

Under terms of a settlement reached in December 1992, state officials recovered "control" of the state prisons. Yet Judge Justice still has the final word on such matters as size of the inmate population, staffing, medical care and the use of tents to house inmates. This situation could have been avoided if the state had sought termination of the *Ruiz* suit. The U.S. Justice Department had joined state officials in calling for an end to the suit, and recent decisions by the U.S. Court of Appeals and U.S. Supreme Court suggested that the state's chances of winning complete prison control were excellent.

*"Recent court decisions suggested that the state's chances of winning complete control of its prisons were excellent."*

The issue still is not settled. In the 1995 Texas legislative session, the House voted to challenge the *Ruiz* settlement but the measure did not pass the Senate, where the vote was straight down party lines, Democrats opposing the challenge. The battle continues, with State Representative John Culberson (R-Houston) vigorously pursuing the challenge, supported by U.S. Senator Kay Bailey Hutchison and U.S. Representative Bill Archer of Houston.<sup>44</sup>

Through its Court of Criminal Appeals, Texas has given criminal defendants even more legal privileges than has the federal judiciary:

- In the federal courts, oral confessions can be admitted into evidence; in Texas, they cannot unless they are recorded.
- If police obtain evidence operating on good faith under a search warrant and the search warrant is later thrown out, the federal courts will admit the evidence under a "good faith" exception; the Texas Court of Criminal Appeals will not.<sup>45</sup>

**Other Social and Demographic Factors.** The late 1960s and early 1970s were socially turbulent years — the Vietnam War, the rise of a counter-culture, urban riots. Also during the 1960s, males between the ages of 15 and 24 — the most crime-prone group — increased from 6.6 percent to 8.5 percent of the U.S. population. The increase continued during the 1970s, with the young male population peaking at 8.9 percent in 1980. This demographic factor undoubtedly helped boost the crime rate nationwide.

Texas has a higher Hispanic population than the nation as a whole (25.5 percent versus 9 percent), but in most racial, ethnic and social dimensions the state resembles the national averages. There are some factors that arguably imply a somewhat higher-than-average crime rate for Texas because of a larger supply of crime-prone people: Texas has a younger population than the national average, and as a growth state with a warm-weather climate and border location, it has a relatively larger mobile and transient population.

## The Cost of Prisons

With completion of its \$1.5 billion prison-building boom, Texas' system has grown from 40 units to 114 units, including 18 state jails with 25,000 beds to confine those convicted of a new class of fourth-degree felonies — basically 55 nonviolent crimes carrying sentences of two years or less, written into the new penal code in 1993. The Texas Department of Criminal Justice (TDCJ) now has more than 34,000 employees and its annual budget surpasses \$2 billion, about 5 percent of the state budget. The departing TDCJ Executive Director, James (“Andy”) Collins, claims that the expansion has been achieved at less than half the national average cost of prison construction.<sup>46</sup>

In terms of operating costs, the Texas Department of Criminal Justice spends almost \$20,000 a year to keep a criminal in prison, or more than \$50 per day. This cost is up dramatically from \$2,900 a year in the early 1980s. The primary factor driving up costs so sharply was the *Ruiz* decision. Even \$20,000 per year may underestimate the costs because it ignores, for example, the forgone rental value of state land, TDCJ employee pension costs and services provided by other agencies free of charge.

## The Cost of Not Building Prisons

Although the cost of building and maintaining prisons is high, the cost of not doing so appears to be higher. A recent study by Brookings Institution researchers found that keeping most prisoners behind bars lowers their cost to society.<sup>47</sup>

- The latest Bureau of Justice Statistics figures show that it costs, on average, less than \$16,000 per year to keep a prisoner in state or federal prison; hidden and indirect expenses to taxpayers may inflate this figure to \$20,000 or \$25,000 per year.
- In the late 1970s, the Rand Corporation found in prisoner surveys in Texas, Michigan and California that the median number of nondrug crimes committed by prisoners the year before they were incarcerated was 15; similar surveys in Wisconsin in 1990 found 12 nondrug crimes, as did a 1993 New Jersey survey.
- One calculation based on an analysis of jury awards estimated that incarcerating a newly admitted criminal in New Jersey prevents a median annual social damage of \$70,098.<sup>48</sup>

Thus, even at \$25,000 a year, keeping the “average” criminal in prison is worthwhile, since on the streets he would commit an average of 12 or more nondrug crimes each year. For serious crimes, therefore, imprisonment pays

*“Keeping most prisoners behind bars lowers their cost to society.”*

for itself.<sup>49</sup> However, this research underestimates the benefits to society because it considers only monetary benefits and ignores the benefits of exacting retribution, of possible rehabilitation and of the deterrent effects on others.

The failure to keep offenders in prison once they are there is another hazard created by a lack of prison space, and early release often leads to more crime.

- A Rand Corporation survey of former inmates in Texas found that 60 percent were rearrested within three years of their release and 40 percent of those were reconvicted.<sup>50</sup>
- Large numbers of Texas prisoners were released in 1991 to relieve overcrowding, and the Texas Criminal Justice Policy Council reported that 48 percent were reincarcerated within three years.<sup>51</sup>
- A survey of 11 states showed that 62 percent of all released prisoners were rearrested within three years, 47 percent were reconvicted and 41 percent were reincarcerated.<sup>52</sup>
- A study of 22 states for the Bureau of Justice Statistics found that 69 percent of young adults (ages 17-22) released from prison in 1978 were rearrested within six years, after committing an average of 13 new crimes.<sup>53</sup>

As Bureau of Justice statistician Patrick Langan pointed out in *Science*, whatever the causes, in 1989 there were an estimated 66,000 fewer rapes, 323,000 fewer robberies, 380,000 fewer assaults and 3.3 million fewer burglaries than there would have been if the crime rate had been at the 1973 level. If only one-half or even one-fourth of the reductions resulted from increased incarceration, imprisonment has reduced crime significantly.<sup>54</sup>

*“Large numbers of Texas prisoners were released in 1991 to relieve overcrowding, and 48 percent were reincarcerated within three years.”*

## **Employment of Prisoners: Factories Behind Fences**

Some writers assert that prisoners are 90 percent unemployed since fewer than one in 10 prisoners work in a prison industry that produces goods like license plates, mattresses or circuit boards. The *Sourcebook of Criminal Justice Statistics 1993* reports that in 1990 only about 7 percent of prisoners worked in prison manufacturing industries and 4 percent in farming, down from a combined 16 percent in 1984, suggesting that prison jobs have lagged behind the enormous increase in prison population. Meanwhile, the proportion of prisoners doing housework like laundry or food service increased from 32 to 41 percent over the same period. Work-release jobs remained below 1 percent of prisoners and a steady 8.7 percent remained enrolled in vocational training programs. All told, about half of prisoners worked nationally, counting household chores (facility support).

Texas has long been a leader in state-operated prison industries, yet in 1994 employed only 7,500 inmates (fewer than one in 10) in 42 factories inside prison walls and produced a reported \$94.3 million in state-use sales, less than \$13,000 in sales per prison worker. The agriculture division employed 6,500 prisoners and generated an estimated \$32.7 million, or \$5,000 per worker. Since probably half of sales are spent on inputs other than labor in manufacturing and agriculture, prisoner labor productivity obviously is poor.

Work in prison benefits nearly everyone. It relieves tedium within prisons and enables prisoners to earn wages and acquire marketable skills while learning individual responsibility and the value of productive labor. It also ensures that they are able to contribute to victim compensation and to their own and their families' support while they are in prison. For businesses, it can provide access to a new pool of labor (both pre- and post-release), a new market for their goods and services and a new source of goods and services to buy.

What is holding back the productive use of prison labor? What can be done to make it a central rather than marginal activity of Texas prisons?

**Historical Experience.** Prisons originally were intended to be self-supporting, and during the 19th century many state prisons ran surpluses, returning excess funds to their state governments. Today, prison inmates are a huge drain on taxpayer wallets despite the millions of available hours of healthy, prime-age labor they represent. If prisoners worked 40 hours a week at the current federal minimum wage of \$4.25, each would produce \$8,840 of market value per year.

During a relaxation of federal prohibitions on the use of inmate labor during World War II, U.S. prison industries produced sorely needed war materiel, and prison morale reportedly rose. As in the 19th century, many prisons became self-supporting, and some ran surpluses. Yet the federal government reimposed its restrictions at the war's end, paying little heed to the success of the prisons in becoming self-supporting and less to the rehabilitative value of the work itself.

**Removing National Barriers to Prison Work.** Increasing productive work for prisoners requires the repeal of the Walsh-Healy Act of 1936, which prohibited convict labor on government contracts exceeding \$10,000, and the Sumners-Ashurst Act of 1940, which made it a federal offense to transport prison-made goods within a state for private use.

Throughout the nation, a score of exceptions to these federal restrictions on prison labor have been authorized under the 1979 Percy Amendment, *provided* the inmates were paid a prevailing wage, labor union officials were

*“Increasing productive work for prisoners requires the repeal of two federal laws.”*

consulted, free labor was not adversely affected and the goods were in an industry without local unemployment.<sup>55</sup> Since 1979 the Prison Industry Enhancement (PIE) certification program has certified 34 jurisdictions and generated gross earnings for convicts of \$44 million and offsetting incarceration costs of \$8 million. Yet by the end of 1994, only 1,700 prisoners were employed in 116 programs with annual earnings of \$10-11 million, with about half of the earnings going toward family support, victim restitution, taxes and incarceration costs.<sup>56</sup>

**Removing State Barriers.** Until 1989, prisoners in Texas were forbidden to work for pay. After a Sunset Law review of the Texas Department of Corrections in 1987, legislation passed in 1989 included authorization for the department to contract with other state agencies and local governments and to pursue agreements with private business and industry to use inmate labor.

Today the primary obstacle to private production and gainful employment for Texas prisoners appears to be resistance to new ideas by the Texas Department of Criminal Justice. Texas' success in state-run prison industries probably has hindered the move toward private sector opportunities for prison employment and production. "Nope, not invented here," seems to be the attitude. Bill Robinson, a three-time-convicted felon who is now a Southern Baptist minister and chairman of Corrections Concepts, Inc., has fought the TDCJ for 11 years in an effort to build and operate a 600-bed, Christian-based vocational training and private production facility for prisoners. With the industry jobs already recruited, Robinson says, "The TDCJ doesn't want to do anything that will succeed. Prisons are the only industry whose very success depends on its own failure."<sup>57</sup>

*"The primary state obstacle to prison work appears to be resistance to new ideas."*

What can increase work opportunities for Texas prisoners? Here are some possibilities:

- Wardens and prison officials could be paid bonuses for progress toward financial self-sufficiency.
- A TDCJ Office of Enterprise Prison Recruiting could be created to recruit private industry work programs.
- Private prison operators must be allowed to "profit" from the use of convict labor, thus paving the way for new "enterprise prisons."
- The state should set up procedures and actively solicit bids for approved and supervised private uses for prison labor by responsible private contractors.
- To diminish prisoner litigation against work, Texas should institute the "English rule" under which prisoners can lose as well as win lawsuits; for example, eliminate good-time credits during the suit unless the court orders otherwise upon settlement.

Ultimately, only the private sector can provide productive work for thousands and thousands of prisoners. A new survey of prison industries managers shows that they believe they “must operate like and work with private companies.” Washington state corrections administrator Charles Riveland says that if political and union objections could be overcome, the prisoners working for private companies in the prison system could jump from the current 3 percent to 50 percent.<sup>58</sup> The state can lease out labor both inside and outside prison walls and yet retain its control, inspection and auditing responsibilities. This will transfer the problems faced by prison industries to more capable hands — private enterprise, which is already accustomed to adjusting to high turnover, poor skills, high costs of production and quality control problems.

## Conclusion

Texas has shown in recent years that punishment deters crime and that when crime does not pay criminals commit fewer crimes.

What can be done to continue reducing crime in Texas? At a minimum, this report suggests the following improvements:

First, the public sector must continue to raise the level of expected punishment to suppress criminal activity. Crime must be made *not* to pay on a continuing basis.

Second, the national laws hampering private employment of prisoners must be relaxed. The Texas Department of Criminal Justice already has the authority to pursue private employment agreements; now it needs to cooperate with those seeking such agreements and reduce its resistance to new ways of doing business. Prisoners should work to pay a greater portion of what it now costs taxpayers to keep them in prison.

Reducing crime in Texas — or even holding it at its current level — requires continuing vigilance. One of the threats to public safety in the years just ahead is the growth of the juvenile population and an increase in juvenile crime. There are indications that juvenile crime — particularly violent crime — has continued to rise even as crime overall has decreased. The Texas Legislature has taken a positive step in adopting a new juvenile code that holds juveniles accountable for their behavior.

By both word and deed, it is up to criminal justice officials and the general public to persuade juveniles and other would-be offenders that crime does not pay.

NOTE: Nothing written here should be construed as necessarily reflecting the views of the National Center for Policy Analysis or as an attempt to aid or hinder the passage of any bill before Congress or any state legislature.

*“One of the threats to public safety in the years just ahead is the growth of the juvenile population and an increase in juvenile crime.”*

## Notes

- <sup>1</sup> Calculated from Federal Bureau of Investigation, *Uniform Crime Reports*, annual; and Texas Department of Public Safety, *Crime in Texas: 1994*. [See Tables A-1 and A-2 in the appendix to this report.] Note that no drug offenses are included in these crime figures.
- <sup>2</sup> Murder, rape, robbery and aggravated assault.
- <sup>3</sup> Murders increased by 11 percent in Dallas during the first six months, but it appears that the total for the entire year will be down from 1994. Jason Sickles, "Dallas Slayings Increase: Six-month Figures Buck U.S. Trend," *Dallas Morning News*, December 18, 1995, p. 17A.
- <sup>4</sup> Burglary and theft.
- <sup>5</sup> Dallas Police Department, Support Services Division, June 1995; and T. J. Milling and S. K. Bardwell, "A Sharp Fall in Murders," *Houston Chronicle*, August 24, 1995, p. 29A.
- <sup>6</sup> Nonreporting of crime is due to a number of factors, among them: the victim does not "want to get involved," distrusts or has low confidence in the police, is afraid of retaliation by the offender if the crime is reported or believes the loss was too small to bother with. Different people have different propensities to report crime — even the same crime. See Morgan O. Reynolds, *Crime by Choice: An Economic Analysis* (Dallas, TX: Fisher Institute, 1985), p. 25.
- <sup>7</sup> See Note 1. Also calculated from U.S. Bureau of Justice Statistics, *National Crime Victimization Survey*, annual.
- <sup>8</sup> *Ibid.*
- <sup>9</sup> "Louisiana Deemed Most Dangerous State," Associated Press dispatch, *Fort Worth Star Telegram*, March 10, 1995.
- <sup>10</sup> "8.3% Violent Crime Drop," *Houston Chronicle*, January 26, 1995, p. 23A.
- <sup>11</sup> Milling and Bardwell, "A Sharp Fall in Murders."
- <sup>12</sup> Texas Department of Criminal Justice, Institutional Division.
- <sup>13</sup> Louisiana stood second at 573 and Oklahoma was third at 536; lowest was North Dakota at 90.
- <sup>14</sup> Steve Olafson, "County Jails Boomed, Now Face a Bust," *Houston Chronicle*, November 12, 1995, p. 37A.
- <sup>15</sup> 621,000 vs. 496,000 in California at the end of 1994. See Bureau of Justice Statistics, Press Release, "The Nation's Correctional Population Tops 5 Million," August 27, 1995.
- <sup>16</sup> This assumes a prison population of 118,000 and a state population of 18.3 million.
- <sup>17</sup> As might be expected, the average (mean) time served for all serious crimes and the percentage of each prison sentence actually served have also increased in recent years. The mean time served for all serious crimes, 1.9 years in 1990, climbed to 3 years by 1994. Whereas prisoners released in 1990 served 20 percent of their sentences on the average, those released in 1994 served 28 percent on the average.
- <sup>18</sup> Criminal Justice Policy Council, *Testing the Case for More Incarceration in Texas: The Record So Far*, October 5, 1995, State of Texas, first page (no numbers provided).
- <sup>19</sup> Criminal Justice Policy Council, *Testing the Case for More Incarceration in Texas*, second unnumbered page.
- <sup>20</sup> Criminal Justice Policy Council, *The Big Picture Issues in Criminal Justice*, Biennial Report to the Governor and the 74th Texas Legislature, January 1995, p. 1.
- <sup>21</sup> See, for example, Robert James Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility* (Irvington-on-Hudson, NY: Foundation for Economic Education, 1994); Morgan O. Reynolds, "Crime-Stoppers' Textbooks," *Reason*, August/September 1995, pp. 58-62; James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature* (New York: Simon & Schuster, 1985), pp. 377-78; Douglas Lipton, Robert Martinson and Judith Wilks, *The Effectiveness of Correctional Treatment* (New York: Praeger, 1975); and Steven P. Lab and John T. Whitehead, "From Nothing Works to the Appropriate Works: The Latest Stop on the Search for the Secular Grail," *Criminology* 28, August 1990, p. 405.
- <sup>22</sup> This is true for "crimes of passion" as well as economic crimes. The less costly crime becomes, the more often people fail to control their passions. Incentives matter in all human behavior.
- <sup>23</sup> James Q. Wilson, *Thinking About Crime*, revised edition (New York: Basic Books, 1983), p. 117.

- 24 W. Kip Viscusi, "The Risks and Rewards of Criminal Activity: A Comprehensive Test of Criminal Deterrence," *Journal of Labor Economics*, Vol. 4, No. 3, 1986, pp. 317-40; Julie Horney and Ineke H. Marshall, "Risk Perceptions Among Serious Offenders: The Role of Crime and Punishment," *Criminology*, Vol. 30, No. 4, November 1992, pp. 575-91; and *Houston Chronicle*, Dec. 2, 1990, pp. 1A, 25A and 1D.
- 25 Ibid. Also see earlier surveys of the literature in Gordon Tullock, "Does Punishment Deter Crime?" *The Public Interest*, 36, Summer 1974, pp. 103-11; Reynolds, *Crime by Choice*, ch. 12; and Stephen G. Craig, "The Deterrent Impact of Police: An Examination of a Locally Provided Public Service," *Journal of Urban Economics*, Vol. 21, 1987, pp. 298-311.
- 26 In other words, one-half of all crimes resulted in an arrest, one-half of all arrests led to prosecution, one-half of all prosecutions produced a conviction, and one-half of all convictions meant a prison sentence.
- 27 See Table A-6 in the appendix to this report for estimated median sentences for each category of crime.
- 28 Statistics on two probabilities — that of being prosecuted after an arrest and of being convicted if prosecuted — are not available in detail. Fortunately, we do not need such detail to calculate expected punishment. We require only three numbers for each type of crime: (1) the number of new convicts the courts sent to prison for those crimes, (2) the number of those crimes reported to police and (3) the median prison time served by those released from prison. Mathematically, the percentage of crimes cleared by arrest multiplied by the ratio of prosecutions to arrests multiplied by the ratio of convictions to prosecutions multiplied by the ratio of those sent to prison to total convictions equals the ratio of new prisoners to number of crimes, that is, the probability of prison.
- 29 Ibid., and Texas Department of Public Safety, *Crime in Texas 1991*, p. 10. The 1960 figures are for the FBI's West South Central Region, which also includes Oklahoma, Arkansas and Louisiana, but Texas makes up 60 percent of the four-state area.
- 30 Ibid.
- 31 In 1985, the most recent year for which comparative figures are available, the FBI *Uniform Crime Reports* show 2,132 homicides in Texas, and the Interpol International Crime Statistics show 1,780 homicides in Japan. In 1994, Texas had 2,023 homicides.
- 32 Calculated from FBI *Uniform Crime Reports*, annual, and Texas Department of Criminal Justice, *Statistical Reports*. [Admissions to prison and probability of imprisonment are shown in Tables A-3 and A-4 in the appendix to this report.]
- 33 Calculated from FBI *Uniform Crime Reports*, annual, and Texas Department of Criminal Justice, *Statistical Reports*, annual.
- 34 Crimes compiled in the FBI Index of Crime are sometimes referred to as "Index crimes." These crimes are defined as murder/nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny/theft and motor vehicle theft.
- 35 Ibid.
- 36 Morgan O. Reynolds, "Crime Pays, But So Does Imprisonment," NCPA Policy Report No. 149, March 1990.
- 37 FBI *Uniform Crime Reports*, annual.
- 38 California partly offsets its lower imprisonment rate by keeping more people on probation or parole. Specifically, California keeps 25 percent of its supervised offenders in prison vs. 19 percent in Texas. Indeed, among criminals under supervision, Texas has a smaller percentage in prison than the nation. One reason why Texas is at a disadvantage is a court-ordered requirement to operate prisons at a maximum of 95 percent of design capacity, while California operates its prisons at 184 percent of design capacity. See Bureau of Justice Statistics Bulletin, *Prisoners in 1994*, NCJ-151654, August 1995, p. 7.
- 39 Caleb Solomon, "If Growth Is So Strong, Why Aren't Incomes?" *Wall Street Journal*, September 20, 1995, p. T1.
- 40 See Steven D. Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime," National Bureau of Economic Research, Inc., Working Paper No. 4991, January 1995.
- 41 *People v. Defore*, 242 NY 21 (1926).
- 42 384 US 543.
- 43 Macklin Fleming, *The Price of Perfect Justice* (New York: Basic Books, 1974); Reynolds, *Crime by Choice*, ch. 8; and Bidinotto, *Criminal Justice? The Legal System Versus Individual Responsibility*.
- 44 Kay Bailey Hutchison and Bill Archer, "Cut the Federal Handcuffs Off Texas' Prisons," *Houston Chronicle*, September 26, 1995, p. 19A.
- 45 The Texas Court of Criminal Appeals operates independent of the Texas Supreme Court, while the federal court system does not separate criminal appeals from civil appeals.

<sup>46</sup> TDCJ 1994 Annual Report, p. 6.

<sup>47</sup> Anne Morrison Pichl and John J. DiIulio Jr., "Does Prison Pay? Revisited," *The Brookings Review*, Winter 1995, pp. 21-25.

<sup>48</sup> Ibid.

<sup>49</sup> Prisons, however, do not pay for themselves with many drug offenders, who have grown to 30 percent of new state prisoners, up from 7 percent in 1980. There is no social benefit for incarcerating drug dealers, according to Pichl and DiIulio, because they are readily replaced in the drug market. Hence, the researchers calculate that prisons cannot pass a cost-benefit test for about one in four prisoners.

<sup>50</sup> Stephen Klein and Michael Caggiano, *Policy Implications and Recidivism* (Santa Monica, CA: Rand Corporation, 1986); and Joan Petersilia et al., *Prison Versus Probation* (Santa Monica, CA: Rand Corporation, 1986).

<sup>51</sup> Clay Robison, "State's Repeat Offender Rate Rises," *Houston Chronicle*, January 8, 1996, p. 10A.

<sup>52</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 1988*, p. 658.

<sup>53</sup> Allen Beck, *Recidivism of Young Parolees* (Washington, DC: Bureau of Justice Statistics, 1987). Also see "The Case for More Incarceration," Office of Policy Development, U.S. Department of Justice, in Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility*.

<sup>54</sup> Quoted in Bidinotto, *Criminal Justice? The Legal System Versus Individual Responsibility*, p. 214. Also see George Allen, "The Courage of Our Convictions: The Abolition of Parole Will Save Lives and Money," *Policy Review*, Spring 1995, pp. 4-7.

<sup>55</sup> Bruce Fein and Edwin Meese III, "Have to Fight Crime Within Our Limited Means," *Houston Chronicle*, May 3, 1989, p. 29A.

<sup>56</sup> Prison Industry Enhancement certification program, quarterly report, American Correctional Association, Laurel, MD, March 1, 1995.

<sup>57</sup> Telephone interview with the author, January 3, 1996.

<sup>58</sup> Knut A. Rostad Associates, "Prison Officials Want Inmate Work Programs Increased 166 Percent; Private Sector Is Key," Press Release, November 3, 1995, Washington, DC.

## Appendix

TABLE A-1

### Total Crime in Texas By Offense 1960-1994

Year	Total Crimes	Murder	Rape	Robbery	Agg. Assault	Burglary	Larceny/ Theft	Motor Vehicle Theft
1960	110,225	821	901	2,979	10,593	57,166	22,227	15,538
1961	110,194	785	941	2,990	10,591	56,397	23,562	14,928
1962	115,693	727	946	3,138	10,569	57,591	26,200	16,522
1963	127,412	757	1,018	3,637	11,944	62,405	30,392	17,259
1964	141,701	782	1,188	4,403	13,219	67,669	33,989	20,451
1965	148,124	790	1,143	4,432	14,475	71,110	36,531	19,643
1966	172,820	979	1,249	5,885	16,042	82,044	42,466	24,155
1967	193,993	1,069	1,442	7,429	16,553	88,730	50,803	27,967
1968	226,496	1,159	1,605	8,936	17,656	102,338	61,566	33,236
1969	282,089	1,264	2,175	12,822	20,073	121,255	82,432	42,068
1970	302,961	1,294	2,352	15,019	21,808	128,912	89,423	44,153
1971	309,126	1,378	2,728	13,977	24,581	134,651	89,522	42,289
1972	447,225	1,435	2,767	13,774	22,903	140,573	227,410	38,363
1973	477,211	1,501	3,006	16,765	23,723	149,358	241,904	40,954
1974	576,832	1,652	3,486	19,757	22,113	185,928	297,850	46,046
1975	661,675	1,639	3,430	20,076	22,658	203,821	362,665	47,386
1976	682,340	1,519	3,666	17,352	21,885	193,280	400,767	43,871
1977	692,450	1,705	4,332	19,558	26,714	205,672	383,451	51,018
1978	723,164	1,853	4,927	21,395	28,475	209,770	398,923	57,821
1979	793,097	2,235	6,043	25,667	34,043	239,758	412,515	72,836
1980	870,458	2,392	6,700	29,547	39,339	262,600	450,792	79,088
1981	892,723	2,446	6,821	28,528	40,765	275,978	454,879	83,306
1982	962,977	2,466	6,816	33,618	45,278	285,967	501,727	87,105
1983	928,858	2,239	6,333	29,769	42,205	262,198	503,582	82,532
1984	964,128	2,093	7,343	28,540	42,761	266,074	529,518	87,799
1985	1,075,295	2,132	8,364	31,680	47,854	289,825	595,912	99,528
1986	1,235,822	2,258	8,607	40,021	59,039	341,747	665,029	119,121
1987	1,296,519	1,959	8,068	38,053	57,881	355,597	711,594	123,367
1988	1,345,369	2,022	8,119	39,301	60,057	361,972	739,642	134,256
1989	1,346,866	2,029	7,951	37,913	63,996	342,346	741,660	150,971
1990	1,356,527	2,389	8,750	44,297	73,907	314,512	731,261	154,145
1991	1,356,527	2,652	9,266	49,700	84,125	312,693	734,261	163,830
1992	1,245,897	2,239	9,425	44,583	86,106	268,907	689,589	145,048
1993	1,160,932	2,149	9,923	40,464	84,892	233,944	664,738	124,822
1994	1,079,360	2,023	9,101	37,639	81,079	214,698	624,048	110,772

Source: Federal Bureau of Investigation, *Uniform Crime Reports*, annual.

TABLE A-2

## Texas Crimes Per 100,000 Population 1960-1994

Year	Total Crimes	Murder	Rape	Robbery	Agg. Assault	Burglary	Larceny/ Theft	Motor Vehicle Theft
1960	1,177.5	8.7	9.8	32.8	111.8	613.8	233.1	168.1
1961	1,125.8	8.0	9.6	30.5	108.2	576.2	240.7	152.5
1962	1,143.7	7.8	9.4	31.0	104.5	569.8	259.0	163.3
1963	1,234.3	7.3	9.9	35.2	115.7	604.5	294.4	167.2
1964	1,363.0	7.5	11.4	42.4	127.1	650.9	326.9	196.7
1965	1,403.9	7.5	10.8	42.0	137.2	674.0	346.2	186.2
1966	1,607.3	9.1	11.6	54.7	149.2	763.1	395.0	224.7
1967	1,724.8	9.8	13.8	68.4	152.3	816.4	467.4	257.3
1968	2,064.3	10.6	14.6	81.4	160.9	932.7	561.1	302.9
1969	2,521.6	11.3	19.4	114.8	179.4	1,083.8	736.9	376.0
1970	2,705.8	11.6	21.0	134.1	194.8	1,151.3	798.7	394.3
1971	2,697.4	12.0	23.8	122.0	214.5	1,175.0	781.8	369.0
1972	3,839.2	12.3	23.8	118.2	196.6	1,206.7	1,952.2	329.3
1973	4,046.2	12.7	25.5	142.1	201.1	1,266.4	2,051.1	347.2
1974	4,787.0	13.7	28.9	164.0	183.5	1,543.0	2,471.8	382.1
1975	5,407.8	13.4	28.0	164.1	185.2	1,665.6	2,963.7	387.2
1976	5,464.4	12.1	29.4	139.0	175.3	1,547.8	3,209.5	351.3
1977	5,397.1	13.3	33.8	152.4	208.2	1,603.1	2,988.7	397.6
1978	5,556.8	14.2	37.9	164.4	218.8	1,611.9	3,065.3	444.3
1979	5,925.3	16.7	45.1	191.8	254.3	1,791.2	3,081.9	544.8
1980	6,143.0	16.9	47.3	208.5	277.6	1,853.8	3,181.4	558.1
1981	6,050.3	16.6	46.2	193.2	276.3	1,870.4	3,082.9	564.6
1982	6,302.2	16.1	44.6	220.0	296.3	1,871.5	3,283.6	570.1
1983	5,907.3	14.2	40.3	189.3	268.4	1,667.5	3,202.6	524.9
1984	6,029.9	13.1	45.9	178.5	267.4	1,664.1	3,311.8	549.1
1985	6,568.7	13.0	51.1	193.5	292.3	1,770.5	3,640.3	608.0
1986	7,408.1	13.5	51.6	239.9	353.9	2,048.6	3,986.5	714.1
1987	7,722.4	11.7	48.1	226.7	344.2	2,118.0	4,238.5	734.8
1988	8,017.7	12.1	48.4	234.2	357.9	2,157.2	4,407.9	800.1
1989	7,926.9	11.9	46.8	223.1	376.6	2,014.9	4,365.0	888.5
1990	7,826.8	14.1	51.5	260.8	435.1	1,851.5	4,304.7	909.0
1991	7,819.1	15.3	53.4	286.5	435.1	1,851.5	4,232.3	944.3
1992	7,056.5	12.7	53.4	252.5	487.7	1,523.0	3,905.7	821.5
1993	6,438.5	11.9	55.0	224.4	470.8	1,297.5	3,686.6	692.3
1994	5,873.1	11.0	49.5	204.8	441.2	1,168.2	3,395.6	602.7

Source: Federal Bureau of Investigation, *Uniform Crime Reports*, annual.

TABLE A-3

## Texas Admissions to Prison by Crime Type 1960-1994

Year	Total Crimes	1960-1994						Motor
		Murder	Rape	Robbery	Agg. Assault	Burglary	Larceny/ Theft	Vehicle Theft
1960	5,035	216	61	368	179	1,450	992	19
1961	5,690	NA	NA	NA	NA	NA	NA	NA
1962	5,608	168	41	410	NA	1,870	NA	6
1963	5,659	219	44	349	194	1,848	1,115	8
1964	5,703	288	261	541	104	1,981	882	57
1965	5,614	264	47	251	264	1,598	1,124	29
1966	NA	NA	NA	NA	NA	NA	NA	NA
1967	5,020	224	61	411	194	1,500	1,014	12
1968	4,244	291	80	443	201	1,488	NA	5
1969	NA	NA	NA	NA	NA	NA	NA	NA
1970	NA	NA	NA	NA	NA	NA	NA	NA
1971	NA	NA	NA	NA	NA	NA	NA	NA
1972	7,725	361	148	814	38	2,059	1,527	50
1973	7,780	822	301	1,227	232	2,024	1,982	105
1974	8,217	593	197	1,223	94	2,050	991	99
1975	9,858	576	216	1,665	204	2,747	1,079	206
1976	10,554	665	243	1,388	259	3,000	1,143	294
1977	11,077	677	286	1,540	312	3,303	1,235	264
1978	12,894	772	314	1,566	400	3,277	1,340	361
1979	13,041	891	368	1,687	432	3,392	1,463	419
1980	14,176	892	433	1,699	463	3,864	1,735	514
1981	15,702	912	477	1,787	511	4,090	1,808	545
1982	18,837	1,014	500	2,083	623	4,615	2,276	604
1983	22,870	1,114	527	2,210	723	5,192	2,566	663
1984	23,058	1,055	407	1,697	718	4,576	2,081	665
1985	25,365	1,240	214	2,627	1,024	7,563	2,075	751
1986	30,471	1,333	258	3,028	1,261	8,884	3,502	1,482
1987	35,077	1,463	1,163	3,264	1,493	10,159	3,602	2,012
1988	33,816	1,888	1,128	3,100	1,431	9,624	3,386	2,064
1989	33,003	NA	NA	NA	NA	NA	NA	NA
1990	46,357	1,564	1,467	4,099	2,036	12,142	3,947	2,648
1991	39,646	1,447	1,343	3,646	2,004	10,063	3,217	2,148
1992	35,088	1,412	1,271	3,477	1,682	8,169	2,609	1,656
1993	32,364	1,453	1,351	3,202	1,730	7,191	2,238	1,519
1994	26,983	1,454	1,224	2,629	1,561	5,375	1,957	1,084

NA: Not available. Source: Texas Department of Corrections, *Statistical Report*, annual.

TABLE A-4  
**Probability of Imprisonment in Texas  
 1960-1994**

Year	All Serious Crimes	Murder	Rape	Robbery	Agg. Assault	Burglary	Larceny/ Theft	Motor Vehicle Theft
1960	2.98	26.31	6.77	12.35	1.69	2.54	4.46	0.12
1961	NA	NA	NA	NA	NA	NA	NA	NA
1962	NA	23.11	4.33	13.07	NA	3.25	NA	0.04
1963	2.96	28.93	4.32	9.60	1.62	2.96	3.67	0.05
1964	2.90	30.43	21.97	12.29	0.79	2.93	2.59	0.28
1965	2.41	33.42	4.11	5.66	1.82	2.25	3.08	0.15
1966	NA	NA	NA	NA	NA	NA	NA	NA
1967	1.76	20.95	4.23	5.68	1.11	1.69	1.99	0.05
1968	NA	25.11	4.98	4.96	1.14	1.41	NA	0.02
1969	NA	NA	NA	NA	NA	NA	NA	NA
1970	NA	NA	NA	NA	NA	NA	NA	NA
1971	NA	NA	NA	NA	NA	NA	NA	NA
1972	1.12	25.16	5.35	5.91	0.17	1.46	0.67	0.13
1973	1.40	35.16	10.01	10.90	0.98	1.87	0.82	0.26
1974	0.91	35.90	5.65	6.19	0.43	1.10	0.33	0.22
1975	1.01	35.14	6.30	8.29	0.90	1.35	0.30	0.43
1976	1.02	43.78	6.83	8.00	1.18	1.55	0.28	0.67
1977	1.10	39.71	6.59	7.87	1.17	1.61	0.32	0.52
1978	1.11	41.66	6.37	7.32	1.40	1.56	0.34	0.62
1979	1.09	29.87	9.10	6.57	1.27	1.41	0.35	0.58
1980	1.10	37.29	6.46	5.75	1.18	1.47	0.38	0.65
1981	1.13	37.28	7.00	6.26	1.25	1.49	0.40	0.65
1982	1.22	41.12	7.39	6.20	1.38	1.61	0.45	0.69
1983	1.40	49.75	8.32	7.42	1.71	1.98	0.51	0.80
1984	1.16	50.41	5.54	5.95	1.68	1.72	0.39	0.76
1985	1.44	58.16	2.56	8.30	2.19	2.61	0.35	0.75
1986	1.60	59.03	3.00	7.57	2.14	2.63	0.53	1.24
1987	1.79	74.68	14.41	8.58	2.58	2.86	0.51	1.63
1988	1.68	61.18	13.90	7.89	2.38	2.68	0.46	1.54
1989	1.57	58.40	12.87	8.16	2.31	2.77	0.40	1.28
1990	2.09	65.47	16.77	9.25	2.75	3.86	0.54	1.71
1991	1.76	54.60	14.50	7.34	2.38	3.22	0.44	1.31
1992	2.8	63.1	13.5	7.8	2.0	3.0	0.4	1.1
1993	2.8	67.6	13.6	7.9	2.0	3.1	0.3	1.2
1994	2.5	71.9	13.5	7.0	1.9	2.5	0.3	1.0

NA: Not available. Source: Calculated by dividing entries in Table A-3 by respective entries in Table A-1.

TABLE A-5

## Estimated Sentences Served, All Texas Crimes 1957-1994

Year	All Prisoners On Hand	Prisoners Released	(years) Implied Average Sentence Served	(years) Implied Median Sentence Served
1957	10,091	4,141	2.44	1.83
1960	11,308	5,889	1.92	1.44
1965	12,854	6,559	1.96	1.47
1970	14,331	6,898	2.08	1.56
1975	18,151	7,995	2.27	1.70
1980	28,543	9,610	2.97	2.23
1985	37,320	23,333	1.60	1.20
1988	39,664	33,428	1.19	.89
1989	41,626	30,903	1.35	1.01
1990	49,157	37,921	1.30	.97
1991	49,608	37,735	1.31	.99
1992	51,592	29,664	1.74	1.30
1993	64,313	18,577	3.46	2.60
1994	79,430	16,379	4.85	3.64

Source: Columns 1 & 2 — Texas Department of Corrections, *Statistical Report*, annual.  
 Column 3 — Implied Average Sentence Served = col. 1 ÷ col. 2  
 Column 4 — Implied Median Sentence Served = .75 (col. 3)

TABLE A-6

**Estimated Median Sentences  
Served, Texas, Selected Years, 1960-1994**

<b>Year</b>	<b>Murder</b>	<b>Rape</b>	<b>Robbery</b>	<b>Agg. Assault</b>	<b>Burglary</b>	<b>Larceny/ Theft</b>	<b>Motor Vehicle Theft</b>
1960	3.77 <sup>a</sup>	4.06	2.13	2.44	1.26	.88	1.00
1965	4.00	5.24	3.39	2.23	1.09	.81	2.25
1970	2.78	4.52	2.90	2.21	1.42	1.29	.95
1972	3.39	3.48	3.04 <sup>b</sup>	1.83 <sup>b</sup>	1.37 <sup>b</sup>	1.22 <sup>b</sup>	.72 <sup>b</sup>
1976	4.26	4.02	3.03	1.74	1.43	.90	1.44
1980	3.56	3.41	2.35	1.25	1.39	.97	1.39
1981	6.79	6.03	2.34	1.75	1.33	1.03	1.02
1983	3.65	2.82	2.39	.96	1.20	.83	.90
1985	3.78	2.50	2.24	.96	1.03	.62	.77
1987	3.28	4.51	2.08	.81	.73	.39	.53
1988	3.33	3.20	2.21	.88	.66	.40	.48
1991	4.50	4.41	2.21	1.25	.72	.47	.57
1992	6.87	5.90	2.87	1.83	.93	.58	.65
1993	9.97	8.38	4.93	3.49	1.93	1.45	1.49
1994	12.80	11.85	7.46	5.44	2.93	2.21	2.39

a: Figure is for 1957.

b: Figures are for 1971.

## About the Author

**Morgan O. Reynolds**, an NCPA Senior Fellow and a professor of economics at Texas A&M University, received his Ph.D. from the University of Wisconsin in 1971. He has published many articles in academic journals, edited *W. W. Hutt: An Economist for the Long Run* (1986), and authored *Power and Privilege: Labor Unions in America* (1984), *Crime by Choice: An Economic Analysis* (1985), *Making America Poorer: The Cost of Labor Law* (1987) and *Public Expenditures, Taxes, and the U.S. Distribution of Income* (1977). He has been a consultant for the National League of Cities, the U.S. Department of Labor and many private organizations. He also serves on the board of the *Journal of Labor Research* and the *Review of Austrian Economics* and is a member of the Mont Pelerin Society and an adjunct scholar of the Cato Institute.

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- Special taxes on the elderly have destroyed the value of tax-deferred savings (IRAs, employee pensions, etc.) for a large portion of young workers; and
- Man-made food additives, pesticides and airborne pollutants are much less of a health risk than carcinogens that exist naturally in our environment.

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