



TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION

Texas Criminal Defense Lawyers Association

2nd Annual Texas Indigent Defense Summit

March 1, 2011

Texas State Capital

Austin, Texas

Topic:

**How Alternatives to Incarceration and Re-
Classification of Misdemeanors Can Save Texas
Money**

Speaker:

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Professor from Practice Director, Defender Initiative

How Alternatives to Incarceration and Re-classification of Misdemeanors Can Save Texas Money

2nd Annual Texas Indigent Defense Summit
Improving Quality and Accountability During a Fiscal Crisis
March 1, 2011

Texas State Capitol, Austin
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Diverting and Reclassifying Misdemeanors Could Save \$1 Billion per Year:
Reducing the Need For and Cost of Appointed Counsel

■ **Removing cases from the criminal court system either by diversion or treating them as non-criminal violations can save Texas tens of millions of dollars.**

Misdemeanor Courts Are Overwhelmed

■ There are approximately ten million misdemeanor cases filed each year in state and municipal courts in the United States. **In some courts, the combination of driving with a suspended license, possession of marijuana, and minor in possession of alcohol cases can total between 40% and 50% of the caseload.** Many of those courts are overwhelmed with cases and the defenders in those courts, if they are present at all, are often overwhelmed and unprepared. The financial impact on both the defendants and the local governments is significant.

Minor Crimes, Massive Waste
 The Terrible Toll of America's Broken Misdemeanor Courts



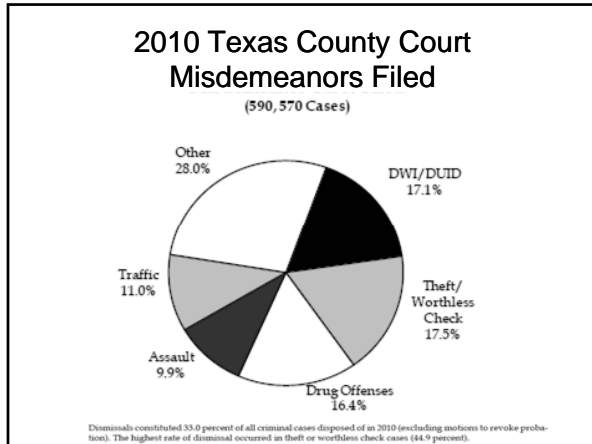
Saving \$1 Billion per Year

- By diverting or reclassifying these offenses as non-criminal violations, local and state governments could save hundreds of millions, perhaps more than \$1 billion per year. In the process, as outlined in the NACDL report, the reduced burdens on millions of defendants would allow them to work and to meet their obligations, and the unfairness related to racial disparity would be reduced.

Scope of Problem

- Tremendous volume and cost of misdemeanors
- **11,000 misdemeanants in Texas county jails at \$45 per day=\$495,000 per day, \$180,675,000 per year.** The ten counties with the largest jail capacities were spending an average of almost 14% of their budgets on jails.
- As of April 1, 2010, more than half (52%) of Texas' jail population was inmates awaiting trial.

Note: The estimated national average of jail cost per day is \$80 or \$29,200 per year for one person.



One Possibility

- Drunkenness—142,631 arrests per year
- Alternative—treat as public health problem

Sarasota

- A comprehensive effort that, for example, eliminated all drunkenness arrests, could save money and likely would be more effective than arrest and jail in addressing chronic alcoholism. Sarasota, Florida, recently celebrated five years of such a program. According to the *Sarasota Herald-Tribune*, the county established treatment programs instead of arrest for “frequent flier” alcohol and drug addicts arrested on minor crimes or because they were dangerous to themselves.

Sarasota

- "Police and judicial leaders are calling the Community Alternatives Residential Treatment initiative a success . . . "The jail population is down, arrests are down, and the program reports that 50% to 60% of participants remained sober a year after leaving the program, compared with the roughly 10% average success rate for other treatment programs.
- As a result of the Community Alternatives Residential Treatment initiative, drug arrests fell from a high of about 2,200 a year in 2007 to about 1,000 in 2009. Alcohol arrests fell from about 1,200 in 2007 to about 600 in 2009.19

Racial Disparity

- The racial disparity in many of these categories is striking: nationally, 36.7% of the disorderly conduct arrests and 44.7 % of the vagrancy arrests were of non-white persons.

Texas

- **DISORDERLY CONDUCT:** 36.5% of arrests are Black persons; 36.4% are Hispanic persons [72.9%]
 - **VAGRANCY:** 44.4 % are Hispanic persons; 29.6% are Black persons [74%]
 - Texas Population is 50.3% Black and Hispanic
- | Total | Anglo | Black | Hispanic | Other |
|------------|------------|-----------|-----------|-----------|
| 25,373,947 | 11,441,595 | 2,925,751 | 9,847,852 | 1,158,749 |
| | 45% | 11.5% | 38.8% | 4.6% |

TEXAS ARREST DATA 2009 CRIME IN TEXAS

ARREST DATA BY RACE

CLASSIFICATION OF OFFENSE	White	Black	AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN OR PACIFIC ISLANDER	TOTAL
DRUNKENNESS	120,736	20,736	223	934	142,631
DISORDERLY CONDUCT	26,104	15,234	48	269	41,645
VAGRANCY	1,784	758	0	16	2,558
MARIJUANA	56,085	20,027	50	401	77,173

Texas Population

Total	Anglo	Black	Hispanic	Other
25,373,947	11,441,595	2,925,751	9,847,852	1,158,749
	45%	11.5%	38.8%	4.6%

2009 CRIME IN TEXAS TEXAS ARREST DATA

ARREST DATA BY ETHNICITY

CLASSIFICATION OF OFFENSE	Hispanic	Not Hispanic	TOTAL
DRUNKENNESS	59,078	83,553	142,631
DISORDERLY CONDUCT	15,159	26,486	41,645
VAGRANCY	1,137	1,421	2,558
ALL OTHER OFFENSES (EXCEPT TRAFFIC)	114,663	224,251	348,914
CURFEW AND LOITERING LAW VIOLATIONS	6,838	4,990	11,828
PLAY-ABAYS	6,674	5,805	12,479
MARIJUANA	29,416	47,757	77,173

Texas

Total	Anglo	Black	Hispanic	Other
25,373,947	11,441,595	2,925,751	9,847,852	1,158,749
	45%	11.5%	38.8%	4.6%

Alternatives

- Alternatives—Divert more of these cases and re-classify some misdemeanors to non-criminal violations

**One Major Possibility—
Reclassification to Non-Criminal
Violations**

- There were **77,250 arrests for possession of marijuana in Texas in 2009.**
- At an estimated cost of \$1000 per case, **Texas could save \$77 million per year by reclassifying possession of marijuana** as a non-criminal violation.

**Other States Are Doing It or
Considering It**

- Examples—Washington, Maine, Massachusetts

**The Washington Legislature should
legalize marijuana**

Seattle Times Editorial February 18, 2011

- **MARIJUANA should be legalized, regulated and taxed. The push to repeal federal prohibition should come from the states, and it should begin with the state of Washington.**
- In 1998, Washington was one of the earliest to vote for medical marijuana. It was a leap of faith, and the right decision. In 2003, Seattle was one of the first places in America to vote to make simple marijuana possession the lowest police priority. That, too, was a leap of faith, and the right decision. A year ago, City Attorney Pete Holmes stopped all prosecutions for simple possession: the right decision.

Maine—Not a Crime for Possession of Small Amounts of Marijuana

- Possession of small amounts of marijuana is a violation and no jail is possible for it:
 - A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than \$700 and not more than \$1,000 must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces of marijuana, none of which may be suspended.

Massachusetts

- A new law effective January 2, 2009, reclassified possession of one ounce or less of marijuana as a violation and not a crime.

Two Washington Legislators, One Republican, One Democrat, Argue for Decriminalizing Marijuana

We now have decades of proof that treating marijuana use as a crime is a failed strategy. It continues to damage the credibility of our public health officials and compromise our public safety. **At a fundamental level, it has eroded our respect for the law and what it means to be charged with a criminal offense: 40 percent of Americans have tried marijuana at some point in their lives. It cannot be that 40 percent of Americans truly are criminals.**

- Jeanne Kohl-Welles & Toby Nixon, *Time for Washington state to decriminalize marijuana*, SEATTLE TIMES, Aug. 20, 2009, http://seattletimes.nwsourc.com/html/opinion/2009701673_guests21nixon.html

Washington state should lead on marijuana legalization

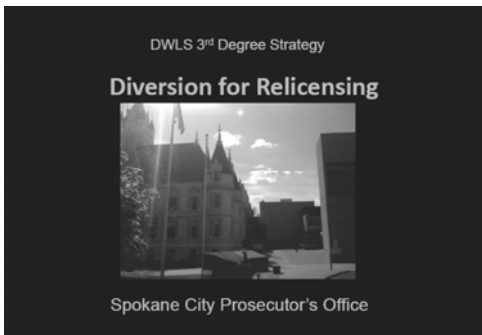
Seattle City Attorney Pete Holmes argues that its time to legalize, tax and regulate marijuana. Outright prohibition isn't working. February 16, 2011

- MARIJUANA prohibition is more than a practical failure; it has been a misuse of both taxpayer dollars and the government's authority over the people.
- As the steward of reduced prosecutorial dollars, I am the first Seattle city attorney to stop prosecuting marijuana-possession cases and to call for the legalization, taxation and regulation of marijuana for adult recreational use.
- My focus as city attorney is to ensure that we have ways to regulate the production and distribution of any potentially harmful substance so that we limit the potential risk and harm. Outright prohibition is an ineffective means of doing this.
- Instead, I support tightening laws against driving while stoned, preventing the sale of marijuana to minors, and ensuring that anything other than small-scale noncommercial marijuana production takes place in regulated agricultural facilities — and not residential basements.

Marijuana-legalization bill deserves a hearing

Seattle Times Editorial February 24, 2011

- REP. Mary Lou Dickerson's bill to legalize marijuana, tax it and sell it to adults through the state liquor stores — House Bill 1550 — deserves a hearing in the House Ways and Means Committee. This is the money committee, and **Dickerson's bill could create a revenue stream for the state of at least \$300 million a year.**
- The money is not the main reason we favor the bill. As we explained on this page last Sunday, our main reason is that we believe the costs of prohibition in police, courts, jails, gang warfare, civil liberties and blighted lives are too high, especially for a product that lends itself so well to be handled like alcohol.
- That is an argument valid anytime. Right now there is a crisis in state spending and revenue, which makes a \$300 million river of cash of immediate interest.



■ From Mary Muramatsu, Spokane City Prosecutor

Community Relicensing Program:
A Continued Success

- Continues to operate at steady pace after 2 years
- Success due to county-wide reach and participation of multiple jurisdictions
- Appeals to the self-motivation of drivers to drive legally
- Demand continues to justify the program

Has Fulfilled Policy Objectives

- Legislative objective of RCW 46.20.341 to “assist suspended drivers to regain their license and insurance and pay outstanding fines”
- Responsibility of being licensed and insured back to drivers
- Recovery by multiple jurisdictions of “uncollectable” fines

Volume of Relicensing Clients

- Number of Applicants Since Outset of Program: 6,975
- Current Participants: 2,911
- Total Terminated: 1,235
- Total Relicensed: 2,775

Administrative Fees Collected

- Combined City and County Applicants:
- 2008 Admin Fees: \$83,086.48
- 2009 Admin Fees: \$149,337.84
- 2010 Year to Date: \$118,150.00
- 2010 Admin Fees: \$162,150.00*

* Projects 4th quarter revenues

"Uncollectable" Money Now Paid

- January 2010 through present:
\$605,732.34
- Commencement of CRP through Present:
\$1,136,718.37

Courts Continue to be Congested

- 33% to 38% of criminal dockets consist of DWLS 3rd Degree Cases
- Public Defender Caseloads are challenged
- Negotiations slow down process
- Multiple continuances for a driver's license compound docket sizes
- Violations frustrate the flow of cases

Taking a New Direction on Suspended License Cases

- City and County Budgets facing tough challenges due to declining revenues
- Prosecutor's Offices have taken cuts to personnel and programming
- Police Arrests have not declined and workload remains steady
- Public Defender Caseloads must be reduced to meet anticipated standards

DWLS 3rd Charges Have Fed the Community Relicensing Program

Approach has generally been a post-charging diversion program which permits dismissal after entry into the CRP

Has encouraged participation in CRP from DWLS 3rd cases on criminal dockets

Has relied upon Prosecutor Discretion to incentivize the defendant's entry into the CRP

The City of Spokane's
"3rd Degree Strategy"

- Addresses all cases for which DWLS 3rd Degree is the sole criminal charge
- A new Notice of Infraction is written to replace each criminal citation charging DWLS 3rd degree
- One of two infractions:
 - Possession of an Invalid License
 - Operating a Motor Vehicle Without a License

A "Diversion Strategy"

- For those eligible, finds them committed on infractions and sets time payment 180 days out.
- Gives 30 days to pay \$100 admin fee and enter the CRP
- Provides ample time for tier two and tier three to complete – 180 days from court date
- Obligation to pay all fines referencing this ticket evaporates upon completion of the Relicensing Program

Designed to Incentivize

- Allows driver to avoid stigma of a criminal charge
- Reaches out to those whose driving behavior can be corrected
- No further amendment of ticket: the deal is you avoid the fines by getting licensed and insured
- Insurance benefit
- Dismissal of case upon completion of CRP

Preserves Right to Challenge

- Those ineligible or not interested may have a contested hearing, pay the ticket or mitigate.
- The Information may be useful to these individuals the next time around.
- Eligibility factors made clear

**Other Side of Diversion:
"The Stick"**

- Those who fail to follow through with the Relicensing Program begin paying on their committed infractions after 180 day deadline.
- Those who continue to stack up DWLS 3rd degree charges may be ineligible for the diversion program and may have criminal charges filed.

Questions?

Spokane City Prosecutor's Office
Community Relicensing Program
909 W. Mallon
Spokane, Washington 99201
(509) 835-5936

King County, Washington Diversion and Re-Licensing Program

Defenders, prosecutors, judges, and county officials were able to establish a diversion and re-licensing program for suspended driver's license cases by building a coalition of political and judicial leaders that began with an alliance between the defenders and the prosecutors.

An evaluation of the first year of the program found that it returned \$2 for every dollar spent, cut the jail population, and helped people get their licenses back.

Dramatic Impacts

■ Imagine the impact on a local or state court system if 30% of the misdemeanors were diverted out of court, with no need for judges, court clerks, prosecutors, defenders, or jailers to handle those cases.
