SPOTLIGHT ON CRIMINAL JUSTICE

By Shannon Edmonds
Texas District & County Attorneys Association (TDCAA)
ARE YOU READY??
Q: How can you predict what will be important to legislators?

A: Ask the people who put them there.
TX VOTERS’ PRIORITIES

TOP 10 POLL: JULY 2018

- Immigration + Border Security
- Economy + Jobs
- Crime + Drugs
- Moral Decline
- Guns
- Health Care
- Education
- Political Corruption
- "TOP 10 POLL: JULY 2018"
OUR “TOP 10” LIST

NEW:
1) Mass shootings & school safety
2) Opioids

OLD:
3) Asset forfeiture
4) Bail
5) Constitutional carry
6) DPS crime labs
7) Grand jury reform
8) Marijuana
9) Raise the Age
10) State jails
(1) MASS SHOOTINGS
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- Governor’s School & Firearm Safety Action Plan
  - Quicker reporting by clerks of adjudications that disqualify someone from gun purchases;
  - Changes to PC §46.13 (Making a Firearm Accessible to a Child);
  - Creating a new Class C misdemeanor for failure to report a lost or stolen firearm;
  - Creating a statewide case management system (CMS) under OCA for bond-setting purposes; and
  - Study the potential creation of a “red flag law”
(1) MASS SHOOTINGS

• Senate Select Committee on Violence in Schools and School Safety
  – “Harden targets” (metal detectors, alarms, cameras, architectural changes, etc.)
  – Minimum training standards for “guardian programs”
  – Increase funding for school marshals
  – Increase the availability of school counselors and school social workers
  – Clarify whether and when firearms can be returned to a person released from mental health detention
  – Rejected “red flag” law
(2) OPIOIDS

WHAT IS AN OPIOID?

Opioids are a class of drugs used for pain relief but may be abused for their euphoric properties.

Listed below are a few types of opioids:

--codeine
- fentanyl
- heroin
- hydrocodone (vicodin)
- methadone
- morphine (oxycontin and percocet)
- oxycodone

Sources: Centers for Disease Control and Prevention, U.S. Department of Health & Human Services/Community Impact Newspaper
(2) OPIOIDS

• House Select Committee on Opioids and Substance Abuse
  – Recommendations pending

• Q: What’s the biggest drug problem in your jurisdiction?
### (2) OPIOIDS

#### Drug use in East Texas

<table>
<thead>
<tr>
<th>Substance</th>
<th>Percent Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methamphetamine</td>
<td>34</td>
</tr>
<tr>
<td>Marijuana</td>
<td>27</td>
</tr>
<tr>
<td>Alcohol</td>
<td>17</td>
</tr>
<tr>
<td>Other opioids</td>
<td>6</td>
</tr>
<tr>
<td>Cocaine</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
<tr>
<td>Xanax</td>
<td>3</td>
</tr>
<tr>
<td>Heroin</td>
<td>2</td>
</tr>
<tr>
<td>Crack</td>
<td>2</td>
</tr>
<tr>
<td>Ecstasy/other</td>
<td>0</td>
</tr>
</tbody>
</table>

*Data: East Texas Council on Alcoholism and Drug Abuse*
(2) OPIOIDS

**Drugs and drilling**

Data collected and analyzed by the Houston Chronicle show a strong correlation between drilling activity in and around the Permian Basin and the number of times state troopers seized crystal meth during traffic stops or large-scale drug busts.

![Graph showing correlation between drilling activity and crystal meth seizures](#)

**NOTE:** Population was also taken into account. Year-to-year population growth in the region was slight—less than 2 percent growth annually. Population growth would’ve had a minimal effect on the meth analysis.

*Source: Analysis by the Chronicle’s John D. Harden of data from the Texas Dept. of Public Safety and Baker Hughes*
SAME-OLD, SAME-OLD
(3) CIVIL ASSET FORFEITURE

Satellite Radio.    $179.00
Radar Detector.    $340.00
Stereo System.     $3,150.00
22" rims/tires:    $4,800.00

forfeiting a drug dealer's vehicle (with all the above included):

...PRICELESS!
(3) CIVIL ASSET FORFEITURE

- “Policing for profit”
- “License to steal”
- “Guilty until proven innocent”
- “Taking contraband or taking our liberty?”
- “The forfeiture racket”
- “When police play bounty hunter”
(3) CIVIL ASSET FORFEITURE

• Some proposals (+ 2017 bills, 85th R.S.)
  – Increase State’s burden of proof (HB 344)
  – Apply “loser pays” rule to State (HB 323)
  – Increase reporting requirements (HB 835)
  – Send all funds to state comptroller (SB 663)
  – Restrict equitable sharing w/ Feds (several)

• Repeal (SB 380, HB 1364)
  – Require criminal conviction
(4) BAIL REFORM

THE DEFENSE REQUESTS A REDUCED BAIL AS MY CLIENT IS NOT A FLIGHT RISK
(4) BAIL REFORM

- Texas Judicial Council’s SB 1338
  - Pre-trial risk assessments for everyone
  - Personal bond is default
  - “Preventative detention” hearings for some
  - Supervised by CSCD/pre-trial offices

- Governor’s “Damon Allen Act”
  - Statewide CMS (criminal history info)
  - District courts set bail for felonies/violent crimes
(5) CONSTITUTIONAL CARRY
(6) DPS CRIME LABS

Texas DPS Crime Laboratory System

- Headquarters and 12 Field Laboratories
  - Headquarters - full service forensic lab
  - Field - from drugs only to near full service
The number of forensic evidence requests from law enforcement entities submitted to DPS increased 21 percent over the last two biennia:

- FY 2014 – 88,623 from 1,427 entities
- FY 2015 – 93,364 from 1,437 entities
- FY 2016 – 103,401 from 1,434 entities
- FY 2017 – 107,143 from 1,475 entities
(6) DPS CRIME LABS

DPS Crime Laboratory Backlogged Cases, Fiscal Years 2012 to 2017:

- Drugs
- Alcohol
- Biology
- Toxicology

I8, 2018

LEGISLATIVE BUDGET BOARD ID: 5207
(6) DPS CRIME LABS

• 2017 proposal
  – FEES!
• 2019 proposals (pending)
  – Fees?
  – Stop-work notifications?
  – Other?
(7) GRAND JURY REFORM
(7) GRAND JURY REFORM

- TPPF’s SB 1424 / HB 2640
  - Allow defense counsel in the grand jury
  - Require DA to present exculpatory info
  - Prohibit re-presentation of cases absent new, material information
  - Create a pre-trial “motion to dismiss”
  - Require proceedings to be transcribed and provided to defendant upon indictment
As written, grand jury bill would weaken justice

A ction on legislation that would allow defense attorneys to accompany their clients into Texas' grand jury rooms has been postponed, but apparently its sponsor isn't going to drop the measure, which would have been the best course.

The controversy involving a Travis County grand jury's continuing investigation into alleged influence buying at the Capitol has created an atmosphere in which it seems impossible to conduct a reasoned debate on what would be a serious change in Texas law.

If the measure filed by Rep. Senfronia Thompson, D-Houston, does come back up for debate on April 3 as now scheduled, it should be defeated unless it can somehow be radically changed to protect the continued ability of grand juries to successfully conduct investigations, particularly wide-ranging ones into such matters as political corruption or organized crime. Such investigations are important, and it would be a travesty to allow them to be hindered.

Lawmakers, who may be picking up the bad publicity generated by the Washington grand jury, may want to be aware that some of their colleagues should be careful about setting up legislation that may be setting a stage for defense attorneys and witnesses to attack the grand jury's integrity.

If the measure is passed as a way to get back at the Travis County District Attorney's office, it may also have repercussions in the state who wants to maintain the integrity of the criminal justice system.

The Texas District and County Attorneys Association says: "In many instances, especially in organized crime and narcotics trafficking cases, a single lawyer may represent a number of clients involved in the matter being investigated. It is not unusual for the 'kingpin' to supply legal counsel to his underworld to protect the latter, but to direct (the king-pin) with the ability to control what the underlings say to the prosecution..." Will the Texas legislature be able to outwit the king-pins and other witnesses?

The prosecuters' association has just finished a study of the applicable laws of all 50 states. The results show that 31 states, including Texas, do not allow the attorneys to be present under some circumstances to advise "target" witnesses, that is, witnesses who are the object of a probe. Ten states allow attorneys to be present in the grand jury room in some circumstances to advise target and other witnesses.

But many states don't rely on grand jury indictments as the only method of bringing charges. Many rely on direct filing followed by a probable cause hearing before a judge. Significantly, the 10 states that do allow an attorney to accompany his or her client target or other witness into the grand jury room only rarely use grand juries. So unless House members are prepared to destroy Texas' grand jury investigative capacity, they ought to either defeat the Thompson measure or work closely with the state's prosecutors to see if they can find a way to amend the bill.

That amendment would have to be written in such a way as to ensure that the grand jury can continue to be used as the valuable crime-fighting tool it has traditionally been in Texas.
(8) MARIJUANA
United States of Marijuana

The state of the union is strong for marijuana, a $9 billion industry. Recreational weed is legal in nine states and Washington, D.C. Medical marijuana is legal in 30 states, but it’s still prohibited by the federal government.

*Recreational states are also included in the 30 medical states figure, $9 billion industry based on BDS Analytics data.
(8) MARIJUANA

REDUCE PUNISHMENT FOR POSSESSION OF MARIJUANA?

- Strongly support: 44%
- Somewhat support: 24%
- Somewhat oppose: 11%
- Strongly oppose: 15%
- Don't know: 7%

68% FOR

SOURCE: University of Texas/Texas Tribune Poll, June 2015
MOE = +/- 2.83 percentage points
MARIJUANA

Proposals:
- POM < 1 oz. = “civil offense” (HB 81)
- POM < 1 oz. = Class C (HB 82)
- Medical marijuana (HB 2107)
- Industrial hemp legalization (HB 3587)
- Low-THC/High-CBD cannabis expanded beyond epilepsy patients
(9) RAISE THE AGE

Age of adult criminal jurisdiction across states

Source of data: National Conference of State Legislatures
(9) RAISE THE AGE

• HB 122 (2017) fiscal note:
  – $110M cost to State over first five years
  – $5M-$20M annual cost for urban counties,
    $500K-$5M annual cost for suburban counties

• Advocates’ challenge: How to make that disappear?
  – Kick the can down the road
  – Bifurcate
  – Fees
(10) STATE JAILS
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<table>
<thead>
<tr>
<th>Adult Populations</th>
<th>Rearrest %</th>
<th>Reconviction %</th>
<th>Incarceration/Reincarceration %</th>
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</thead>
<tbody>
<tr>
<td>Felony Community Supervision</td>
<td>35.9</td>
<td>23.6</td>
<td>25.8</td>
</tr>
<tr>
<td>Prison</td>
<td>46.4</td>
<td>36.1</td>
<td>21.0</td>
</tr>
<tr>
<td>State Jail</td>
<td>62.7</td>
<td>54.3</td>
<td>32.2</td>
</tr>
<tr>
<td>Substance Abuse Felony Punishment Facility</td>
<td>44.4</td>
<td>35.4</td>
<td>45.4</td>
</tr>
<tr>
<td>In-Prison Therapeutic Community</td>
<td>46.7</td>
<td>34.0</td>
<td>21.3</td>
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<tr>
<td>Intermediate Sanction Facility</td>
<td>59.2</td>
<td>47.4</td>
<td>39.4</td>
</tr>
<tr>
<td>Parole Supervision</td>
<td>44.2</td>
<td>33.9</td>
<td>19.8</td>
</tr>
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</table>

Fiscal Year 2016 Felony Revocation Rates

<table>
<thead>
<tr>
<th>Adult Populations</th>
<th>Fiscal Year 2016 Felony Revocation Rate</th>
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</thead>
<tbody>
<tr>
<td>Felony Community Supervision</td>
<td>15.3%</td>
</tr>
<tr>
<td>Parole Supervision</td>
<td>7.2%</td>
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</table>

NOTES: The reconviction rate includes individuals that have been convicted or reconvicted.

SOURCES: Legislative Budget Board; Texas Department of Criminal Justice; Texas Department of Public Safety.
(10) STATE JAILS

• Proposals:
  – Mandatory diversion, followed by mandatory probation, followed by *more* mandatory probation
  – Lower SJFs to misdemeanors, let the counties deal with them

• Past attempts:
  2011: SB 1076 by Ellis (died in committee)
  2009: SB 1118 by Ellis (died on Senate Intent)
  2007: SB 1909 by Ellis (died in House Calendars)
It's QUESTION TIME!!
If you’re not at the table, you’re on the menu.
Come Join Us in Austin!