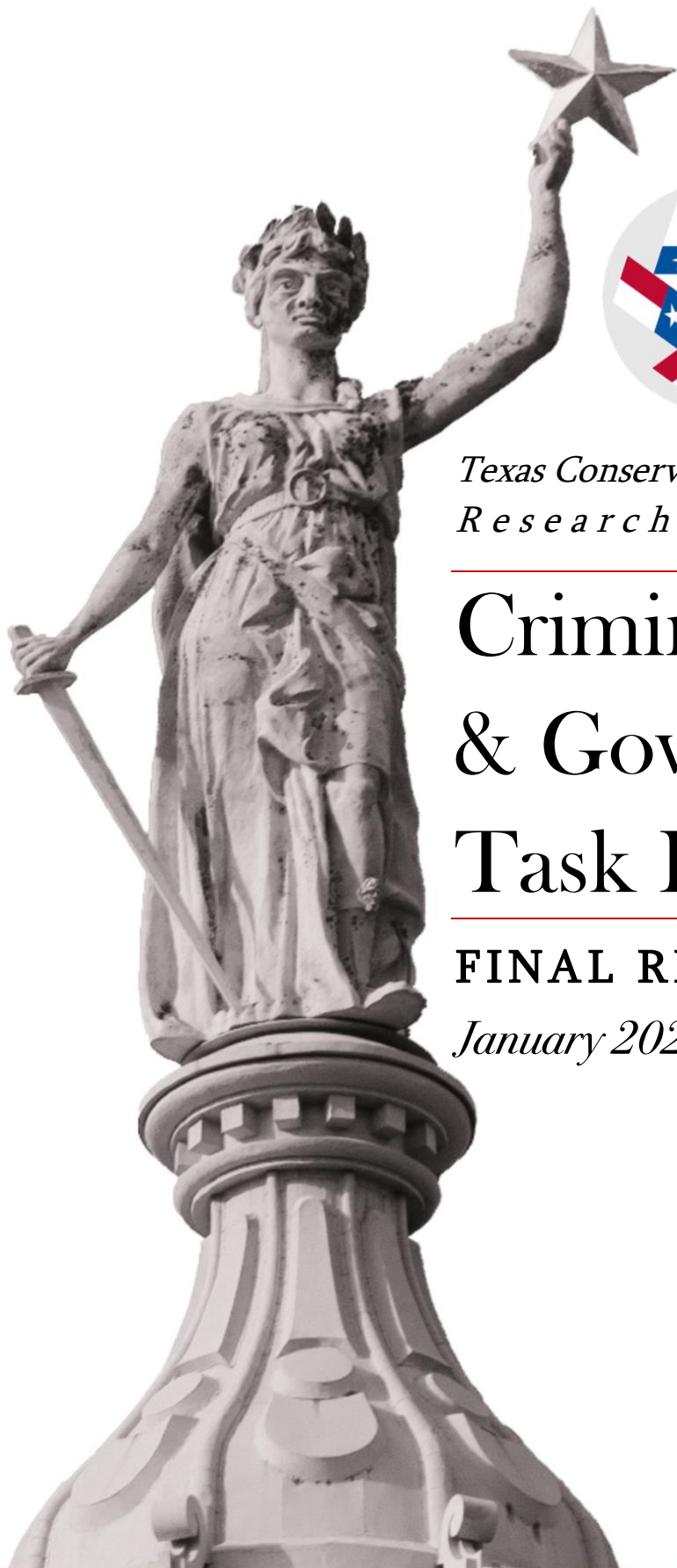


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*Texas Conservative Coalition  
Research Institute*

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# Criminal Justice & Government Reform Task Force

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**FINAL REPORT**

*January 2025*



*Texas Conservative Coalition  
Research Institute*

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**Criminal Justice  
& Government Reform  
Task Force**

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**FINAL REPORT**

*January 2025*



**TCCRI**

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# Table of Contents

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<b>INTRODUCTION</b> .....	<b>1</b>
<b>STATE POLICY ON CANNABIS AND THC</b> .....	<b>2</b>
DELTA-9 THC .....	2
DELTA-8 THC .....	2
OTHER FORMS OF THC (THCA, THCV, THCP).....	3
THC BEVERAGES.....	3
CANNABIS COMPOUNDS AND MINORS.....	4
POLICY RECOMMENDATIONS .....	4
<b>BORDER SECURITY</b> .....	<b>6</b>
OPERATION LONE STAR .....	7
<i>Multi-Agency Effort</i> .....	7
<i>Additional Support</i> .....	9
<i>Resources</i> .....	10
CONCLUSION .....	10
<b>BAIL REFORM</b> .....	<b>12</b>
BAIL BONDS.....	12
PERSONAL BONDS.....	12
CHARITABLE BAIL ORGANIZATIONS.....	12
SENATE BILL 6 (87R) .....	12
REASONABLE DEBATE OVER BAIL.....	13
UNREASONABLE OPPOSITION TO CASH BAIL.....	13
THE TRACK RECORD OF CHARITABLE BAIL ORGANIZATIONS.....	14
INCONGRUITIES IN THE ANNUAL OCA REPORT ON CHARITABLE BAIL ORGANIZATIONS.....	15
POLICY RECOMMENDATIONS .....	16
<b>PROPERTY RIGHTS &amp; “SQUATTERS”</b> .....	<b>18</b>
ADVERSE POSSESSION VS SQUATTING.....	18
CURRENT TEXAS LAW .....	19
POLICY RECOMMENDATIONS .....	19
<b>COPPER WIRE THEFT</b> .....	<b>21</b>
INCREASE IN COPPER WIRE THEFT .....	21
RELEVANT LEGISLATION.....	21
MORE WORK TO BE DONE.....	22



POLICY RECOMMENDATIONS ..... 23

**ELECTION INTEGRITY.....24**

FEDERAL LAW AND TEXAS LAW ..... 24

OCCURRENCES OF NONCITIZEN VOTING..... 26

CONCLUSION ..... 27

POLICY RECOMMENDATIONS ..... 27

**ENDNOTES .....28**



# Introduction

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One of the most important functions of government is the fair administration and enforcement of laws, both criminal and civil. The Texas Conservative Coalition Research Institute's Criminal Justice and Government Reform Task Force focuses on these issues.

One major policy area is the proliferation of marijuana-adjacent products taking advantage of changes made to Texas law, particularly regarding hemp. Texas remains a jurisdiction in which marijuana possession and consumption are illegal, and its laws should be consistent.

Border security remains an area in which state policy must remain strong, especially with the presumptive support of a new administration in Washington D.C.

Bail reform in Texas is long overdue. Too many violent criminals go on to commit additional violent acts after being released pending trial.

Property rights around the country are being violated by "squatters" who have no legal right to occupy a person's property, yet in jurisdictions around the country, including Texas, they have successfully asserted such a right.

Texas is also experiencing an increase in criminal activity in narrow areas. Like catalytic converter theft before, copper wire theft is on the rise.

Election Integrity also remains an important area of concern. Texas can do more to ensure that elections are fair, secure, and trustworthy.

Over the course of the 88th Legislative Session's Interim, TCCRI held meetings to discuss many of these topics. Those meetings informed the research and policy proposals contained in this report, as did TCCRI's research and work in other areas, including legislative testimony, white papers, and public policy summits. TCCRI hopes that you find the research and policy proposals helpful and informative.



# State Policy on Cannabis and THC

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## *Background*

In December 2018, the federal government passed the Agriculture Improvement Act of 2018 (sometimes called the 2018 Farm Bill), which, among other things, eased restrictions on the use and production of hemp.<sup>1</sup> In order to do this a legal distinction had to be made between hemp and marijuana. While scientifically hemp and marijuana are the same species of flowering plant in the Cannabaceae family, the 2018 Farm Bill sought out a means to differentiate between the two.

Under the enacted bill, a state that wishes to have primary regulatory authority over hemp must submit a plan to the U.S. Department of Agriculture for approval. The plan must meet certain requirements, such as establishing protocols for testing the Delta-9 tetrahydrocannabinol (THC) concentration of hemp and conducting annual inspections of hemp producers to verify that hemp is not produced in violation of federal law.

In 2019, Texas enacted House Bill 1325 (86R, King, T.), which directed the Texas Department of Agriculture (TDA), in consultation with the Governor and Attorney General, to submit a plan satisfying those federal requirements.<sup>2</sup> HB 1325 tracked significant portions of the federal law verbatim. Additionally, the bill defined hemp as any part of the cannabis sativa plant having a THC concentration of not more than 0.3 percent on a dry weight basis, removed hemp from the controlled substances list, and provided that hemp is not “marihuana” for purposes of the Health and Safety Code. These provisions exempt hemp from the Texas Controlled Substances Act under both laws pertaining to controlled substances and marijuana.

## *Delta-9 THC*

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The reason why the 2018 Farm Bill and HB 1325 focus on the content of Delta-9 THC is because Delta-9 is the primary psychoactive component of cannabis

sativa (hemp and marijuana). While there are a variety of other forms of THC found in marijuana, they have a significantly lower psychoactive effect. As a result, to legally distinguish between hemp and marijuana, HB 1325 restricts the total amount of Delta-9 THC that is permitted to be in a hemp product to 0.3% on a dry weight basis, with any higher percentage considered marijuana. The term “dry weight basis” is defined as:

The ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.<sup>3</sup>

## *Delta-8 THC*

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According to the Cannabis Regulatory Agency of Michigan:

Delta-8 - like delta-9 (regular THC) - binds to the body's endocannabinoid system, which causes a user to feel high. Chemically, delta-8 and delta-9 are similar in that they both have a double bond in their structures. Both cannabinoids have a chain of carbon atoms, but delta-8 has the double bond on the eighth carbon, whereas delta-9 has it on the ninth carbon. This double bond is thought to produce the intoxicating effects that make the user feel high. Delta-8 binds to the endocannabinoid system in a slightly different fashion because of the location of its double bond. This is what is thought to make delta-8 much less potent than regular THC. However, more research needs to be done on delta-8 and how it interacts with the body.<sup>4</sup>

So, while similarly psychoactive, Delta-8 THC is demonstrably less potent than Delta-9 THC. While the exact amount of lowered potency appears to be undetermined, estimates place Delta-8 THC at about





“one-quarter to one-third less potent than an equivalent amount of Delta-9 THC.” Unfortunately, HB 1325 specifically only limits the percentage of Delta-9 tetrahydrocannabinol in hemp products and does not reference Delta-8 at all, let alone its psychoactive properties.<sup>6</sup> This means that presently hemp products can be sold in Texas without any restriction on the amount of Delta-8 THC that they contain.<sup>7</sup> <sup>8</sup> This means that a high enough concentration of Delta-8 can be present in a product to exceed the potency which is the equivalent of 0.3% Delta-9 THC.

## ***Other Forms of THC (THCa, THCv, THCP)***

The most prevalent of these three lesser-known forms of THC is THCa (tetrahydrocannabinolic acid). THCa in its natural form is not psychoactive and as a result, products that contain the substance are not restricted under Texas law, other than the limitation on Delta-9 THC.<sup>9</sup> However, when THCa is heated it is converted into Delta-9 THC.<sup>10</sup> Since HB 1325 addresses the percentage of Delta-9 THC during production, sale, and possession, THCa provides a legal loophole to get Delta-9 THC to consumers within the confines of current law.

THCv (delta 9 tetrahydrocannabivarin) is another derivative of hemp and marijuana which is legal and unregulated in Texas. However, it is found to have little psychoactive effect except in significantly high concentrations. In fact, the psychoactive effect is so minimal that a recent study refers to the compound as lacking psychoactive effects.<sup>11</sup> In contrast, THCP (Delta-9-tetrahydrocannabiphorol) is unregulated and legal in Texas while having a psychoactive effect that is “33 times that of Delta-9 THC.”<sup>12</sup> This chemical was only discovered in 2019 and is significantly more effective at bonding to the CB1 receptor, resulting in the higher psychoactive properties.<sup>13</sup> This chemical—regardless of its highly psychoactive nature—is readily available in products across the state as a result of being legally defined as hemp.<sup>14</sup>

## ***THC Beverages***

While a majority of these legal THC products are sold in the form of flower, gummies, or resin,<sup>15</sup> there has been a growing market for THC-infused beverages. This is evidenced by these products being sold in Texas at major beer and wine retailers.<sup>16</sup> <sup>17</sup>

These beverages contain Delta-9 THC and are often marketed as an alternative to alcohol that lacks the side effects (i.e. hangovers). Despite this marketing, these drinks remain intoxicating, frequently containing five milligrams of THC. While this has been described as “a ‘low’ dose, capable of producing a high in new users,” these beverages are not marketed or designed to consume just one.<sup>18</sup> In fact, producers intend to make the beverage “similar to a beer, where experienced consumers could drink a couple if they wanted to.”<sup>19</sup>

Since these drinks are frequently sold in packs of four, the average quantity of THC per purchase is roughly twenty milligrams.<sup>20</sup> However, these beverages are not restricted to five milligrams per can, with some containing up to thirty milligrams.<sup>21</sup> Even this high quantity and potency is minuscule in comparison to what is permitted under current law.

As previously mentioned, the 2018 Farm Bill and HB 1325 restrict hemp products to less than 0.3 percent Delta-9 THC on a dry weight basis. This extends to any derivative of the plant to include liquid products like THC-infused beverages. Essentially, the total concentration of THC permitted in these drinks is 0.3 percent of the product’s content, excluding water. In other words, for every gram of solid material in a beverage, 3 milligrams of Delta-9 THC can be added.

To put this in context, a 12-ounce can of Coca-Cola contains 39 grams of sugar, meaning that if someone wanted to create a THC-infused version of a Coca-Cola they could add roughly 117 milligrams of Delta-9 THC.<sup>22</sup> This is more than double the fifty-milligram benchmark that Weedmaps—a marijuana locator service—considers a “very strong [dose]... typically reserved for medical patients and daily consumers with established THC tolerance.”<sup>23</sup>

While this is not the industry norm, it is important to note that the restrictions under HB 1325, while not



intended to do so, allow the creation of highly intoxicating products. The limitations are even less effective when considering that they only apply to Delta-9 THC, meaning that THC beverages using Delta-8, THCa, THCV, and THCP have *no* restrictions under current law.

## ***Cannabis Compounds and Minors***

According to the Texas Department of State Health Services (DSHS), “there currently is no minimum age set by Texas statute to purchase consumable hemp products in Texas... [including] hemp products that are intended for smoking.”<sup>24</sup> As Delta-8, Delta-9 (below 0.3% concentration on a dry weight basis), and other forms of THC are hemp products, this oversight in state law permits retailers to sell these products to minors.

THC has a litany of adverse effects on the developing mind, which, according to the American Addiction Centers, are as follows:

1. Cognitive problems, such as problems with attention, concentration, problem-solving, learning, and memory.
2. Reduced coordination and reaction time.
3. Performance issues at school or work. A greater likelihood of dropping out of school.
4. Poor decision-making and judgement.
5. Relationship problems.
6. Overall lower life satisfaction.
7. Increased risk of depression, anxiety, and suicidal thoughts.<sup>25</sup>

While the effects listed specifically refer to Delta-9 THC, it is reasonable to assume that similarly psychoactive compounds at equivalent potencies may have the same effect on minors. Texas should protect the mental health and capabilities of its future by prohibiting youth consumption of these compounds.

## ***Policy Recommendations***

### ***Policy Recommendation 1***

*Prohibit minors from purchasing, possessing, and consuming THC compounds and consumable hemp products*

The first action that Texas must take is to prohibit minors from purchasing, possessing, and consuming these compounds. This should be done by applying the same restrictions that are provided to the sale of alcohol, including both penalties for minors in possession and those who choose to sell to minors.

### ***Policy Recommendation 2***

*Prohibit the sale of psychoactive compounds*

Beyond addressing purchase, possession, and consumption of these products by minors, it is clear that HB 1325 has been abused and that producers and sellers of hemp have intentionally bent the rules to sell psychoactive compounds within the state of Texas. The intent of HB 1325 was to allow for the production of hemp, not to authorize a host of exemptions and loopholes for the manufacture and sale of intoxicating substances.<sup>26</sup> The Legislature should correct path and prohibit the sale of these psychoactive compounds.

### ***Policy Recommendation 3***

*Close the loophole the currently allows the sale of highly potent cannabinoid compounds*

If this is not achieved, the state must address the loopholes for the production and sale of highly potent cannabinoid-derived compounds that violate the spirit of the law. These restrictions should be based on the 0.3% Delta-9 THC concentration restriction which is present in current law.

In keeping in line with HB 1325, the state has two ways to address this issue.



1. The first option is to regulate hemp products such that all cannabinoid-derived THC compounds have the same concentration restriction of 0.3% (i.e. Delta-8 THC, THCa, THCv, THCP).
2. Alternatively, the state can provide a concentration restriction which is based on the potency equivalent to 0.3% of Delta-9 THC. This addresses future advancements in the industry, such as THCP, which has a higher potency than Delta-9 THC. The state should also limit Delta-9 THC or its equivalent to a specific quantity in milligrams per purchase, to prohibit sales that include a high dose of psychoactive compounds as seen with THC-infused beverages. In any case, the state can define products with cannabinoid-derived THC compounds above the decided threshold as marijuana and provide the same penalties in law.

Texas should also address the issue of compounds like THCa by redefining hemp as having a Delta-9 THC concentration of not more than 0.3% on either a dry weight basis or when heated.



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# Border Security

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## *Background*

On March 6, 2021, Texas Governor Greg Abbott launched Operation Lone Star in response to what was rapidly developing as a major humanitarian crisis and national security threat at the southern border between the United States and Mexico. The operation aimed to “integrat[e] DPS with the Texas National Guard and deplo[y] air, ground, marine, and tactical border security assets to high threat areas to deny Mexican Cartels and other smugglers the ability to move drugs and people into Texas.”<sup>27</sup>

The United States and Texas have a long history of defending the southern border against illegal immigration and human and drug trafficking.<sup>28</sup>

Former Texas Governor Rick Perry took actions and supported numerous efforts to counter illegal human and drug trafficking, including sending Texas Rangers and Texas National Guard troops to the border.<sup>29</sup>

While faced with the same issues as previous border security operations, namely illegal immigration and trafficking of humans and drugs, Governor Abbott’s Operation Lone Star has had to face an unprecedented effort from the federal government to support policies that ended up exacerbating, not working to solve, these issues.

The Biden administration entered office as the southern border had seen illegal entries decrease tremendously. The Trump administration had put in place several policies that limited illegal entries by disincentivizing the abuse of the U.S. asylum system. These policies included but were not limited to the Title 42, Migrant Protection Protocols, better known as “Remain in Mexico,” and safe third country agreements.



Figure 1

**Southwest Border Illegal Alien Apprehensions, FY 2015–2024<sup>1</sup>**

Fiscal Year (Oct. 1– Sept. 30)	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 (YTD)
<b>Apprehensions</b>	331,333	408,870	303,916	396,579	851,508	400,651	1,734,686	2,378,944	2,475,669	2,033,260

Source: U.S. Border Patrol Fiscal Year Southwest Border Sector Apprehensions (FY 1960 - FY 2020) and Southwest Land Border Encounters, FY 2021 – FY 2024.<sup>30</sup>

On Inauguration Day, President Biden undid—or tried to undo—by executive orders most of these policies.<sup>31</sup> Coming after campaign messaging that appeared to invite a “surge to the border,”<sup>32</sup> inadvertently or not, the messaging that was sent to the world, and that would continue to be sent in the three years to follow, was “come and you may stay”—a messaging reinforced by the Biden administration’s policy to release an unprecedented number of illegal aliens inside the United States.

In March 2021, the consequences of the Biden administration’s reversal of immigration policies just two months before and its accompanying messaging<sup>2</sup> were already visible:

When you create a system that incentivizes people to come across, and they are released, that immediately sends a message to Central America that if you come across you can stay,” said Democratic Rep. Vicente Gonzalez, whose South Texas district sits near the

border with Mexico. “It incentivizes droves of people to come, and the only way to slow it down is by changing policy at our doorstep. If they don’t change the policy, the flow of continued migration traffic isn’t going to stop or slow down.”<sup>33</sup>

Those federal policies, while eventually impacting the entire nation, would cost the state of Texas at least \$11 billion appropriated to support Operation Lone Star—although the total cost to the state and its residents is likely to be much higher as many unknowns remain.

## Operation Lone Star

### Multi-Agency Effort

Operation Lone Star (OLS) is a multi-agency operation that started with the **Texas Department of Public Safety (DPS)** and the **Texas Military Department (TMD)**, especially the Texas National Guard (TXNG), and rapidly involved additional

<sup>1</sup> Starting in March 2020, USBP encounters statistics include both Title 8 apprehensions and Title 42 expulsions. “Apprehension” is defined as “The arrest of a potentially removable noncitizen by the Department of Homeland Security” and “Encounters” as “The sum of U.S. Border Patrol (USBP) Title 8 apprehensions, Office of Field Operations (OFO) Title 8 inadmissibles, and noncitizens processed for expulsions under Title 42 authority by USBP or OFO.” See Office of Homeland Security Statistics. “Glossary.” U.S. Department of Homeland Security, <https://ohss.dhs.gov/glossary>. Accessed 24 Sep. 2024. Title 42 expulsions began March 21, 2020, and ended on May 11, 2023. See “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions.” *U.S. Customs and Border Protection*, 17 Jun. 2024, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>. Accessed 24 Sep. 2024.

<sup>2</sup> In March 2021, the *Washington Post* reported that “Administration officials have been plagued by muddled messaging, sometimes making appeals that seem directed more at liberal activists than the migrants they need to dissuade from coming to the country” and that “the administration ... took several steps ... that increased the flow of migrants and encouraged more to try their luck.” See Parker et al.



agencies, including but not limited to the **Texas Parks and Wildlife Department**, the **Office of Court Administration**, the **Texas Department of Emergency Management**, the **Texas Alcoholic Beverage Commission**, and the **Texas Department of Criminal Justice**.

The original mission of these agencies is not to secure the border, but under Governor Abbott's Operation Lone Star, the multi-agency endeavor has been a success from a law enforcement perspective.

Since March 2021 and as of July 19, 2024, OLS has led to more than:

- 516,300 illegal immigrants apprehended.
- 45,300 criminal arrests.
- 39,400 felony charges reported.
- 505 million lethal doses of fentanyl seized.<sup>34</sup>

On January 30, 2023, Governor Abbott announced that he was creating the position of **Texas Border Czar** and named Mike Banks to fulfill this role, as Special Advisor on Border Matters to the Governor.<sup>35</sup> In his role, Border Czar Banks “ensure[s] border security strategies are fully executed” and facilitates communications between the different agencies involved in OLS, as well as local law enforcement, local officials, and border communities.<sup>36</sup>

OLS has followed “a multi-layered, multi-jurisdictional strategy”<sup>37</sup> that has led to the decrease of the number of illegal entries in the state of Texas from more than 130,000 illegal entries a month or an average of 4,200 daily, in December 2022 to 35,900 in January 2024, or about 1,100 daily.<sup>38</sup> In the meantime, the number of illegal entries in the states west of Texas—New Mexico, Arizona, and California—have increased, seemingly indicating that the Texan multi-layered barrage against illegal immigration and trafficking of humans and drugs by cartels serves as a deterrent to avoid crossing in Texas.<sup>39</sup>

In a June 11, 2024, Texas Senate Border Security hearing, **DPS** director, Colonel Steve McCraw explained that April 2022 marked the first time that the Rio Grande Valley region was no longer leading the nation for smuggling activity. The bulk of smuggling activity progressively moved west according to

McCraw, first to Del Rio, then El Paso, then Tucson in 2023, and now seems to be targeting San Diego.<sup>40</sup>

The “prevent, detect, and interdict” multi-layered strategy uses tactical infrastructure, such as concertina wire, anti-climb barriers, buoys, etc., and technology such as drones that together serve as “a force multiplier” for boots on the ground present at the border to enforce Texas laws and serve as a deterrent to illegal crossers.<sup>41</sup>

According to Major General Thomas Suelzer, Adjutant General for the state of Texas and head of the **Texas Military Department**, the Texas Military (which includes the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard) has installed miles of border barriers in the form of commercial-grade fences (72 miles), C-wire barricade (133 miles), and anti-climb fencing (30 miles).<sup>42</sup>

DPS and TXNG have created deterrence at the border by their very presence but also by their willingness to ensure that Texas law is respected and by adopting a mentality that Texas Border Czar Mike Banks called “Stop at the line, don’t let them in,”<sup>43</sup> leading to the decrease in the number of illegal entries.

It is important to note that the use of tactical infrastructure and technology frees up troops to focus on gotaways rather than migrants seeking asylum in the United States. Gotaways are illegal entrants whom we know (thanks to cameras, for example) have entered the country but were not stopped. According to data obtained by Fox News, 1.6 million gotaways have entered the country between 2021 and 2023—more than the entire decade before that.<sup>44</sup>

It is a well-known tactic of cartels that they overwhelm one area with hundreds or thousands of migrants at once so that Border Patrol needs to process them rather than actually patrol the border.<sup>45</sup> This is where the security risk for the state and the nation is greatest as criminal organizations and individuals use these times to sneak in areas that do not easily accommodate barriers and are left unpatrolled.

Texas also pursued the construction of its own border wall.<sup>46</sup> In June 2021, Governor Abbott directed the **Texas Facilities Commission** (TMC) to oversee its construction. As of August 9, 2024, the TMC reported that, while the construction was still underway, “38



miles of the border wall program had been completed.”<sup>47</sup>

In order to relieve border community and the state from the overwhelming number of migrants arriving in the midst of the crisis, in April 2022, Governor Abbott directed the **Texas Division of Emergency Management (TDEM)** to “coordinat[e] the voluntary transportation, to Washington, D.C. and other locations outside the State of Texas, of migrants released from federal custody.”<sup>48</sup> As of September 20, 2024, TDEM had coordinated the transportation by bus of nearly 120,000 migrants to the cities of Washington, DC, New York, Chicago, Philadelphia, Denver, and Los Angeles.<sup>49</sup>

Several other agencies come in support of OLS. The **Texas Parks and Wildlife Department (TPWD)** temporarily deploys between 25 and 65 game wardens and 3 to 5 state park police officers to the operation.<sup>50</sup> TPWD Director Colonel Chad Jones testified before the Texas Senate on June 11, 2024, that TPWD game wardens and police officers had apprehended more than 21,000 illegal immigrants, seized 1,600 lbs. of marijuana and 150 lbs. of cocaine, and made 250 criminal arrests, including 122 trespass arrests.<sup>51</sup>

Part of the **Texas Alcoholic Beverage Commission’s (TABC)** mission is to investigate organized crime in the alcoholic beverage industry. TABC Chief of Enforcement Ronald Swenson testified during the same hearing that cartels can use alcoholic beverage businesses as front businesses. TABC’s special investigations unit, which focuses on narcotics, human trafficking, and money laundering, shut down 130 licensed locations since 2013, half of them at the border.<sup>52</sup>

The **Office of Court Administration** provides court support for all levels of courts dealing with OLS cases.

The **Texas Department of Criminal Justice** operates three OLS facilities: the Dolph Briscoe unit in Dilley, Texas, and the Segovia and Lopez units in Edinburg, Texas.<sup>53</sup>

### | Additional Support |

The **Office of the Attorney General of Texas** has played an important role in securing the Texas-Mexico border by either suing the federal government

or defending the state of Texas in its authority to secure its own border and protect its citizens.<sup>54</sup>

In addition, the 88th Legislature passed several bills aimed at helping state and local law enforcement better tackle the consequences of the border crisis. These include:

- SB 423 (88-R) allowed TMD to use drones to monitor the Texas-Mexico border.
- SB 1133 (88-R) created a program to compensate landowners for property damage related to border crimes.
- SB 1403 (88-R) authorizes the governor to create an interstate compact for border security.
- SB 1900 (88-R) designates drug cartels as foreign terrorist organizations.
- HB 4635 (88-R), the Texas Racketeering Act, creates new civil remedies and enforcement actions to allow law enforcement and local prosecutors to target those engaged in organized crime more aggressively.
- SB 4 (88-3) creates a 10-year mandatory minimum for the offenses of smuggling of persons and continuous smuggling of persons, and a 5-year mandatory minimum for the offense of operating a stash house.
- SB 3 (88-4) appropriates \$1.54 billion for border security operations and the construction, operation, and maintenance of border barrier infrastructure.
- SB 4 (88-4) creates a state criminal offense for entering the state from a foreign nation illegally and gives local judges and magistrates the authority to order an offender of the new state offense to return to the foreign nation from which they came from.<sup>55</sup>

Finally, the state of Texas has received the support of several other states: in the past two years, a total of 18 states have deployed about 2,400 National Guard troops to support Operation Lone Star.<sup>56</sup>



## Resources

As mentioned earlier, the agencies involved in Operation Lone Star or that support the border security effort are participating in a mission that is not originally theirs. This means that, when OLS started, the agencies had to adapt and deploy staff and resources strategically but also unusually.

Nearly four years into OLS though, several of the agencies have now found ways to deploy troops and resources ingeniously while also focusing on personnel morale.

According to Major General Suelzer, Operation Lone Star is now almost an all-volunteer operation as far as the Texas National Guard is concerned, with 97 percent of the troops volunteering to start or remain on this operation.<sup>57</sup> During his testimonies in both the June 2024 and September 2024 Senate Border Security Committee hearings, he explained that TMD had been able to improve guardsmen's quality of life: "they're being taken care of."<sup>58</sup>

In February 2024, Governor Abbott announced that the state was building a new Forward Operating Base in Eagle Pass that will be able to house Texas National Guardsmen who respond to the border crisis.<sup>59</sup> The base opened to receive the first 300 guardsmen in May.<sup>60</sup>

The base is built to receive 1,800 troops but can accommodate an additional 500 if necessary. Guardsmen will each have their individual room, and the base provides numerous amenities such as internet connection, a fitness center, a recreation facility, and shared prepared meals.<sup>61</sup>

DPS Director Colonel McCraw testified that troopers were doing great and that DPS was trying to use volunteers as much as possible.<sup>62</sup> However, DPS also currently has more than 500 vacancies, which will be filled in part by recently graduating classes. This, he explained, would help with each trooper having to complete fewer rotations.<sup>63</sup>

In his testimony, Executive Director of the Department of Public Safety Officers Association Clay Taylor mentioned a decline in morale and an increase in stressful conditions, due in part to regular

deployments and troopers being away from their families.<sup>64</sup>

Part of the September 19, 2024, Senate Border Security Committee hearing focused on personnel well-being. Agencies had the opportunity to discuss resources needed to be able to continue to support OLS.

Regarding the National Guard, one issue mentioned was that OLS-deployed guardsmen were temporary state employees and, as a result, did not get access to vacation or credit toward state retirement.<sup>65</sup> State tuition assistance was also mentioned as a possible way to better support guardsmen.

As far as DPS is concerned, with 542 vacancies, many of which will be filled by current graduating classes, Director McCraw still expressed the need for more troopers.<sup>66</sup> He and Clay Taylor also expressed the need to find strategies to retain officers, including pay increases.<sup>67</sup>

Several supporting agencies expressed the need for additional FTEs, including the TPWD and TABC.<sup>68</sup>

## Conclusion

The state of Texas has invested a tremendous amount of money to help secure the border—a task normally incumbent upon the federal government.

The deployment of Operation Lone Star has allowed the state of Texas to deter illegal entries into the state (the number of illegal entries in Texas would likely have been even higher without the deterrence effect of OLS). Although the situation is likely to change with the new administration's policies on immigration and border security, like it was mentioned during the Senate Border Security Committee hearings, there are two reasons why Texas should be prepared to continue to have a role, regardless of who is in the White House: 1) the deterrence gained would be hard to regain if at some point abandoned, 2) Texas could face the responsibility to secure its border again in the future, and it would be costly to start from scratch.

The Texas Legislature should continue to support the efforts of state agencies to secure the Texas-Mexico





border. There are also ways it can help them and the state be more efficient.

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#### ***Policy Recommendation 4***

##### ***Ensure Operation Lone Star Remains Fully Staffed***

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Operation Lone Star is ongoing and could be needed for years to come. Even with an administration that decides to take the federal responsibility of securing the border seriously, as mentioned by DPS Director McCraw in Senate committee hearings, current policies have allowed criminals and gang members to enter the country and start wreaking havoc throughout the nation, the damage of which Texas will have to face and fight for years to come.

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#### ***Policy Recommendation 5***

##### ***Consider creating a new law enforcement unit dedicated to the border***

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Because of the size of its border with Mexico, the state of Texas is likely to continue to have to secure its border to some degree, regardless of whether the federal government decides to take its responsibility seriously or not.

For this reason, the Texas Legislature should consider creating a border force that would be dedicated and specifically trained to enforce the law at the border—and free up other state agencies currently fulfilling the OLS mission to return fully to their original mission.

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#### ***Policy Recommendation 6***

##### ***Ensure local authorities are also equipped and funded appropriately in response to new legislation***

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Several pieces of legislation passed by the 88th Legislature have given additional tools to law enforcement to deter illegal immigration and fight human and drug trafficking. The Legislature should also make sure that local authorities have the resources necessary to be able to fully take advantage of these tools. For example, if SB 4 is declared constitutional, it is likely to impose important costs on local law enforcement (personnel, facilities) and local courts.

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#### ***Policy Recommendation 7***

##### ***Seek efficiency as Texas continues to shoulder the cost of securing the border***

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The Texas Legislature has rightly funded the operations necessary for the state of Texas to secure our southern border and the state is likely to have to continue to do so for the time being. However, to ensure that it can continue to best support these operations, the Legislature should commission an independent efficiency audit of border security operations, with the goal of helping find the best and most efficient ways to allocate resources.

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#### ***Policy Recommendation 8***

##### ***Consider studying the full cost of the border crisis***

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In August, Governor Abbott signed an executive order requiring Texas public hospitals to collect and report healthcare costs for illegal immigrants.<sup>69</sup> This is a good start but there are many other ways the border crisis is imposing direct or indirect costs on the state (public education, drug treatment and fatalities, property destruction, etc.).

The Texas Legislature should consider commissioning a study of the full cost (direct and indirect) and work with willing members of Congress to find a way for Texas to be reimbursed by the federal government.



# Bail Reform

## *Background*

The Eighth Amendment to the United States Constitution states that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>70</sup> Federal courts, however, have acknowledged that bail may be denied to defendants in limited cases when they pose a threat to public safety.<sup>71</sup> Courts have also held that a defendant’s bail cannot be set at a figure that exceeds the amount that is reasonably likely to ensure his or her presence appearance at trial.<sup>72</sup>

The Texas constitution provides additional safeguards against defendants being confined prior to trial. Article 1, Section 11 of that document generally prohibits the imposition of bail except in limited circumstances, including capital cases and certain cases in which the defendant is accused and/or has been convicted of two felonies.<sup>73</sup>

## *Bail Bonds*

Many defendants make use of a bail bond company when posting bail. In exchange for the defendant (or a related party, such as a close family member) paying a non-refundable fee that amounts to a small percentage of the bail amount, the bail bond company will post the bail amount for the defendant. The defendant is then released, but if he or she fails to appear in court, bail bondsmen have broad authority to track the defendant down and place him or her under arrest. If the defendant ultimately fails to appear, the bail bond company can lose the bail it posted. Thus, the company is highly motivated to ensure that the defendant appears in court.

## *Personal Bonds*

A personal bond, unlike traditional bail, is essentially a promise by the defendant, in lieu of posting bail, to appear in court as scheduled. When a court allows release on personal bond, Texas law permits the

imposition of a small fee on the defendant (the greater of \$20 or 3 percent of the set bail amount).<sup>74</sup>

## *Charitable Bail Organizations*

Charitable bail organizations (CBOs), sometimes referred to as bail funds, are 501(c)(3) organizations that pay bail for defendants. The CBO obtains a certificate from the county clerk by proving its 501(c)(3) status and provides proof that it is current with all of its IRS-required filings. Each month, the CBO must file a report with the county’s sheriff that details certain information, including the defendants for whom the CBO has paid bail and any dates those defendants failed to appear in court as required. A CBO may not accept compensation for posting bail, and failure to abide by the above statutory requirements may result in the CBO being suspended. A CBO that is suspended or otherwise not compliant with the statutory requirements may not post bail for a defendant. Each year, OCA must publish a report that aggregates the data in the reports that CBOs submit to county sheriffs.

## *Senate Bill 6 (87R)*

Senate Bill 6 (87S2, Huffman) implemented at least three important bail reforms. First, it required the Office of Court Administration (OCA) to develop a public safety report system (PSRS) that is used to generate reports for magistrates and judges when determining bail for a given defendant that provides specific information on that defendant (e.g., his criminal history).

Second, the bill eliminated the ability of courts to release defendants on personal bond if they are accused of any one of a number of violent or sex-related offenses.

Third, SB 6 created a number of requirements for CBOs. Notably, the provisions of SB 6 do not apply to CBOs that post bail for fewer than four defendants in a 180-day period.

SB 6 was the enabling legislation for Senate Joint Resolution 3 (87S2), which would have presented a constitutional amendment to voters to expand the number of cases in which bail could be denied to



defendants accused of certain violent or sex-related crimes, provided there was clear and convincing evidence that the defendant is a flight risk or a threat to public safety. SJR 3 passed the Senate, but did not pass the Texas House of Representatives.<sup>75</sup>

Subsequently, in the 88<sup>th</sup> Legislative Session, Senator Huffman filed Senate Joint Resolution 44, which would have similarly amended the Texas Constitution to allow greater flexibility to the legislature in setting laws relating to bail. Indeed, SJR 44 would have authorized denial of bail to individuals accused of violent offenses and trafficking of persons. The judge making such an order would have been required to issue a written order that includes findings related to the reason for the denial. SJR 44 passed the Senate, but did not pass the Texas House of Representatives.

## ***Reasonable Debate Over Bail***

There is a reasonable debate to be had regarding the requirement of bail in some cases, such as non-violent misdemeanors. If a defendant is arrested for such an offense but lacks the means to pay the bail, he or she must remain in jail until the applicable trial (or other disposition of the case). This can lead to poor defendants losing their jobs, falling into debt, failing to receive appropriate health care, and experiencing strained relationships with family and friends, any of which might increase a defendant's recidivism risk. Moreover, defendants who are confined to jail prior to trial may be entirely innocent of the charges brought against them. Even defendants who are innocent of the charges may feel pressure to acknowledge guilt if doing so will get them released from jail earlier than they would otherwise be released.

As part of a legal settlement, Harris County implemented a system in 2017 in which bail is generally not required for release for people charged with misdemeanors, although it can be required in some circumstances (e.g., family violence, repeat DWI offenders, or prior violations of release on personal bond).<sup>76</sup> The monitor of this system, the Wilson Center for Science and Justice at Duke University, has released periodic reports on the implementation of the system. In the most recent report, from March 2024, the monitor praised the program, stating "The bail reforms . . . have saved Harris County and residents many millions of dollars, improved the lives of tens of

thousands of persons arrested for misdemeanors, and these large-scale changes have produced no increase in new offenses by persons arrested for misdemeanors."<sup>77</sup>

While there have been some positive results from the program, it should also be noted that the Harris County program did see a rise in the bond failure rate among arrestees for misdemeanors who were released. That rate quickly rose from 16 percent for cases filed in 2015 and 2016 (before the program was implemented) to 30 percent in 2018, before declining to 26 percent in 2022.<sup>78</sup> As the monitor's report notes, however, bond failure is not necessarily a good proxy for a defendant's failure to appear. A bail bond can fail for other reasons, such as the defendant failing to pay the applicable fee to the bail bond company or violating bail conditions (e.g., avoiding certain places).<sup>79</sup>

The report notes that certain factors- a felony charge that accompanies the misdemeanor charge, homelessness, mental illness, and a criminal history-increase the likelihood of nonappearance by a defendant who has been bailed out.<sup>80</sup> Most strikingly, a defendant with a previous failure to appear is almost five times as likely not to appear as a bailed-out defendant without such a history.<sup>81</sup> The lesson that can be drawn from the data is that a blanket position on setting bail for defendants may not be appropriate; rather, a number of circumstances should be considered.

## ***Unreasonable Opposition to Cash Bail***

CBOs and some criminal justice reform advocates tend to be rigid in their opposition to cash bail. As one official with the Bail Project (a longstanding CBO) has stated: "The use of cash bail is unconscionable, is thoroughly un-American, and considers people guilty until proven wealthy. It has corrupted our criminal legal system, and its consequences impact us all."<sup>82</sup> This view leaves little room for the idea that bail may be necessary in some cases to ensure that the defendant appears in court.

Notably, Texas law (consistent with federal courts' interpretation of the Eighth Amendment) already provides that, when bail is set, the magistrate should impose "the least restrictive conditions, if any, and the



personal bond or cash or surety bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense."<sup>83</sup> This takes into account to at least some extent the defendant's financial condition, because a bail amount of (for example) \$5,000 may be enough to ensure a poor defendant's appearance in court, whereas a much higher figure may be necessary for a wealthy defendant. In addition, Texas law allows a defendant who lacks the financial means to pay a bail amount that is set by a bail schedule (i.e., a court's guideline of bail amounts for various offenses) to file an affidavit and provide supporting documentation to request that the bail figure be lowered.

## ***The Track Record of Charitable Bail Organizations***

CBOs have existed for decades. They rose to prominence, however, after George Floyd died while being arrested by a Minneapolis police officer in 2020. There are now more than 100 CBOs in the country;<sup>84</sup> the National Bail Fund Network (NBFN) alone includes more than 90 nonprofits in 38 states,<sup>85</sup> including the Texas Organizing Project in Texas.<sup>86</sup> NBFN estimates that \$100 million or more was raised in the second half of 2020, largely from individuals.<sup>87</sup> Incredibly, the Minnesota Freedom Fund went from \$231,000 in donations in 2019 to more than \$41 million in 2020.<sup>88</sup>

While many CBOs receive donations through a sort of "crowdsourcing," there have unquestionably been large donations by organizations. Open Philanthropy (founded by Facebook co-founder Dustin Moskovitz), the National Football League, and the Audacious Project (a sub-unit of TED, of "TED Talk" fame) are just a few examples of organizations that have donated to CBOs.<sup>89</sup> The Audacious Project's donation to the Bail Project in 2018 was \$30 million.<sup>90</sup> In at least one case, the Bail Project received \$150,000 in Indiana taxpayer funds over two years.<sup>91</sup> This fact led to scrutiny when the CBO bailed out a defendant who went on to commit murder.<sup>92</sup>

There are numerous examples of defendants bailed out by CBOs who have gone on to commit serious crimes once released. A particularly tragic story in

Texas involved Shane James, who was charged in January of 2022 with aggravated assault against his own family members. He was bailed out by the Texas Organizing Project, promptly removed his ankle monitor,<sup>93</sup> and would eventually go on to murder six people, including his own parents.<sup>94</sup> The Texas Organizing Project received more than \$700,000 and \$500,000 from George Soros's Open Society Policy Center in 2019 and 2021, respectively.<sup>95</sup>

Another notable case in which the Texas Organizing Project paid bail involved defendant Hassain Muhammad Jr., who was bailed out by that CBO in November 2022 when facing a charge of criminal trespass. A February 2024 news article states that, "Since then, Muhammad has been criminally charged in seven new cases, including three charges of criminal trespassing, criminal mischief, possession of drugs in a drug-free zone, theft and burglary of a building with the intent to commit theft . . ."<sup>96</sup> After being released on bail and allegedly committing more crimes, Muhammad was again bailed out by the same CBO in November 2023.<sup>97</sup> This raises serious concerns that CBOs are bailing out habitual offenders irrespective of the threat they may pose to the public.

Stories similar to those of Shane James and Hassain Muhammad have led to widespread reaction against CBOs in various states across the country, with legislation being introduced in (at least) Georgia, Kentucky, Minnesota, Pennsylvania, Tennessee, Virginia, and Indiana. Just a few weeks ago, Georgia enacted a law that increases the number of offenses which require monetary bail, and prohibits CBOs (among other persons) from paying bail for more than three people in a year.<sup>98</sup> In 2023, the Seventh Circuit Court of Appeals upheld a recently-enacted Indiana statute that requires CBOs to pay a \$300 biennial fee to the state and prohibits them from bailing out defendants who are accused of violent crimes or have certain violent crime histories.<sup>99</sup> Last month, Kentucky enacted a measure that prohibits CBOs from posting bail of \$5,000 or more for a defendant.<sup>100</sup>

CBOs and their proponents argue that the people they bail out appear in court at very high rates, which they say proves that CBOs are not undermining the purpose of bail. For example, the Bail Project claims that 91 percent of defendants it bails out later appear in court as required.<sup>101</sup> A Los Angeles County study found that defendants bailed out by the Bail Project



did indeed appear at higher rates than other bailed-out defendants, although much of that might be attributable to the support services provided by that organization to the defendants it bails out. On the other hand, an investigation by *CNN* found that defendants bailed out by CBOs failed to appear in court at roughly double the rate as other bailed out defendants; 52 percent versus 24 percent in Seattle, and 42 percent versus 22.5 percent in Minnesota.<sup>102</sup>

The intuitive concern with CBOs is that the defendant has zero “skin in the game” when a third-party organization bails him out of jail. In contrast, if a defendant or a family member pays the bail, he has a powerful incentive to appear in court as promised. Similarly, if the bail is paid by a commercial bail bond company, that company will have an incentive to ensure that the defendant appears in court; or, if the defendant fails to appear, the company will have a strong incentive to track him down and bring him to court. As a 2016 law review article warning of the dangers of the “crowdsourcing” of bail payments aptly stated, “If there is little or no relationship between the defendant and those supplying the money, the bail money provides no incentive to prevent the defendant from simply fleeing the jurisdiction. This is especially true if the money does not have to be paid back or, even if it does, if lenders are unlikely to collect.”<sup>103</sup>

Admittedly, a CBO does have some incentive to see the defendant appear in court, because the CBO will then receive the back the money it used to pay the bail, after which it can use that same money to bail out another defendant, and so on and so forth. Thus, it may be in the CBO’s interest to exclude from its consideration defendants who pose a flight risk. But even assuming CBOs are capable of correctly evaluating defendants for flight risks, they are unlikely to have the authority and capability to track them down. More importantly, the defendant himself has no reason to care about whether the CBO gets its money back.

## ***Incongruities in the Annual OCA Report on Charitable Bail Organizations***

SB 6 required OCA to publish a report each year on CBOs. A report, which is due by December 1<sup>st</sup> each year, has been released for each of FY 2022 and FY 2023. The reports appear to be incomplete in some respects, and action by the Legislature may be necessary to correct it.

The data in both reports indicate that only four counties in the state provided CBO reports: Bexar, Harris, Hays, and Travis counties. The table below lists the number of defendants bailed out by CBOs who failed to appear in court as scheduled, disaggregated by fiscal year and county.

*Figure 2*

### **Defendants Released on Bail Paid by CBOs Who Subsequently Failed to Appear in Court, by County, FYs 2022-23**

	FY 2022 <sup>104</sup>	FY 2023 <sup>105</sup>
<b>Bexar</b>	240	321
<b>Harris</b>	81	188
<b>Hays</b>	50	121
<b>Travis</b>	3	8
<b>TOTAL</b>	374	638

Notably, all bails paid by CBOs in Bexar County in each year involved the Texas Organizing Project. All bails paid by CBOs in the other three counties involved the Bail Project. Curiously, the report for FY 2023 states without elaboration that the Bail Project stopped paying bail after July 2023.<sup>106</sup>

As the table indicates, bail outs by CBOs increased significantly from FY 2022 to FY 2023, although the figures for future years could drop if the Bail Project has indeed stopped paying bail for defendants in Texas.

The reports by OCA appear to be flawed in at least two respects. First, the FY 2022 report indicates that only three defendants out of 374 failed to appear in court,<sup>107</sup> which if true would be an extraordinarily low



number. Moreover, those three failures to appear occurred in April and June, with entire months showing no failures to appear. Second, the FY 2023 report does not list failures to appear at all.

The data in the reports on failures to appear does not accord with other data; for example, a news report from February 2024 indicated that, dating back to October 2022, in 58 of 196 cases (approximately 30 percent) in which the Texas Organizing Project had bailed out defendants, the bailed-out defendants were re-arrested, “usually for failing to show up for court appearances.”<sup>108</sup> Yet there is no indication of these failures to appear in the OCA reports.

Under current law, CBOs are required to report data (including the dates all applicable defendants failed to appear in court) to the county sheriff’s office, which is then required to report it to OCA, which is then required to aggregate and publish the data. One or more of CBOs, sheriffs, or OCA are failing to adhere to the law. This is critically important for more reasons that the need to have good data; CBOs that do not fulfill their reporting obligations under the law are not permitted to continue paying bail for defendants and can be suspended from doing so for an entire year by the sheriff after receiving a warning.

## ***Policy Recommendations***

### ***Policy Recommendation 9***

*Amend the Texas Constitution to authorize the denial of bail to individuals accused of violent crimes*

The Texas Legislature should be mindful that denial of bail or imposition of bail set at a high level can deprive a person of his or her liberty before the person is convicted of a crime. However, the ability to deny bail or set appropriate bail in certain circumstances is a matter of public safety. Therefore, the legislature should once again attempt to amend the Texas Constitution along the lines of that proposed in SJR 3 (87S2, Huffman) and SJR 44 (88R, Huffman) to ensure that Texas Constitution authorizes denial of bail to individuals accused of violent offenses and trafficking of persons.

### ***Policy Recommendation 10***

*Pass further reforms affecting CBOs in order to protect public safety*

Although imposing additional restrictions on CBOs in Texas may be subject to legal challenge, the decision by the Seventh Circuit mentioned above suggests that the Legislature has ample discretion in regulating CBOs. While being mindful that some criticisms of cash bail are not without merit, the Legislature could enact the following reforms to promote public safety and increase the likelihood that defendants will appear in court as scheduled:

1. Prohibit CBOs from posting bail in cases in which a defendant faces charges for a violent or sex-related crime. A logical choice for the list of such crimes would be those set forth in SB 6 (crimes for which release on personal bond is no longer permitted).
2. Prohibit CBOs from posting bail in cases in which a defendant’s criminal history indicates that he is a threat to public safety and/or a habitual offender.
3. Prohibit CBOs from posting bail for a defendant who has a previous failure to appear after release on bail or has otherwise violated conditions of release on bail.
4. Cap the amount of bail a CBO may pay in a given case.
5. Provide that CBOs are not eligible to receive grants or other funding from the State or any of its political subdivisions. While there is no evidence that this is currently happening, eliminating the possibility that taxpayer funds would be used in this way should not be controversial.
6. When registering with the county, a CBO should be required to state whether it will refrain from paying bail for any category of defendant (e.g., a convicted felon).
7. Ascertain from witnesses why the FY 2022 and FY 2023 OCA reports apparently failed to



report large numbers of defendants who failed to appear in court after they were bailed out by CBOs.

8. Impose a fine on CBOs that fail to fulfill their required reporting duties.



# Property Rights & “Squatters”

## *Background*

In recent years, stories of property owners having their property taken over by “squatters” have appeared in the news with greater frequency. Perhaps the most egregious example of this trend occurred in New York City earlier this year, where Adele Andaloro was arrested after changing the locks to her \$1 million home that she had recently inherited and was in the process of selling.<sup>109</sup> She had the locks changed because multiple squatters had replaced her door after illegally gaining entry. Incredibly, Andaloro was arrested for unlawful eviction; fortunately, this charge was eventually dropped.<sup>110</sup>

The growing number of stories across the country about squatters are notable for the utterly brazen actions of squatters. As in the Andaloro case, squatters often break into apartments or homes and rekey the doors. On many occasions, they even put the property’s utilities in their names and generate fraudulent lease agreements that purport to show that they have the right to occupy the premises.<sup>111 112</sup> Once in possession of the property, they exclude the rightful owner(s). Based on media reports, vacant homes (e.g., uninhabited rental properties or properties being sold) are particularly ripe targets for squatters.

The issue of squatting is not confined to New York. A sharp increase has been observed in the past several years in cities across the country. Atlanta is similarly plagued by this problem, with an estimated 1,200 squatters in the city.<sup>113</sup> Jacksonville<sup>114</sup> and Cleveland,<sup>115</sup> to name just two others, have also experienced problems with squatters. Georgia and Florida recently passed legislation to address the problem, increasing penalties for squatters and providing expedient remedies to homeowners.<sup>116</sup> Notably, Florida’s House Bill 621 (2024, Steele)<sup>117</sup> creates the following criminal penalties for squatters:

- A first-degree misdemeanor for making a false statement in writing to obtain real property or

for knowingly and willfully presenting a falsified document conveying property rights.

- A second-degree felony for any person who unlawfully occupies or trespasses in a residential dwelling and who intentionally causes \$1,000 or more in damages.
- A first-degree felony for knowingly advertising the sale or rent of a residential property without legal authority or ownership.<sup>118</sup>

In this regard, Texas should follow Florida’s lead to deter squatters that are appearing across the state. A 2021 *D Magazine* article discussed the author’s unfortunate months-long experience with two squatters who took over her cottage that had been purchased for the benefit of her elderly relative.<sup>119</sup> Multiple reports of squatting have emerged from Harris County.<sup>120 121 122</sup> Remarkably, one squatter in Harris County actually called law enforcement to complain about being “harassed” by a person who was the true owner of the property, similar to how the squatters in the Andaloro case in New York acted.<sup>123</sup>

The issue of squatting even ties into the border crisis as individuals like Leonel Moreno—a Venezuelan national—take to social media to inform criminal aliens how to avoid being homeless “by invading “empty homes and liv[ing] there.”<sup>124</sup>

## *Adverse Possession vs Squatting*

Often, squatting is conflated with the legal doctrine of adverse possession, but they differ in important ways. While squatting refers to people who live on property to which they have no title, right, or (legitimate) lease agreement, adverse possession refers to how an individual may gain ownership of property if he or she takes certain actions regarding the property over a long period of time. Fortunately, Texas already has relatively stringent policies related to adverse possession. In Texas, a trespasser may claim ownership of a property through adverse possession of property only if the trespasser’s actions are:

1. Hostile (against the right of the true owner and without permission);





2. Actual (exercising control over the property);
3. Exclusive (in the possession of the trespasser alone);
4. Open and notorious (using the property as a real owner would, without concealing the occupancy); and,
5. Continuous for the statutory period.<sup>125</sup>

This statutory period ranges from three to ten years, depending on the circumstances. Because of the long statutory period and the requirement that adverse possession be a visible appropriation, cases in which trespassers successfully invoke adverse possession are rare. In contrast, squatters can illegally take over a property in one day. As a result, amending the law on adverse possession would not truly address the issue of squatting.

## ***Current Texas Law***

Texas law addresses both civil trespass (although not with the actual term “civil trespass”) and criminal trespass.<sup>126</sup> Criminal trespass consists of a person entering onto another’s property without consent and either having notice that entry was forbidden, or receiving notice after entering and refused to leave. Criminal trespass is generally a Class B misdemeanor, which is punishable by a fine of up to \$2,000 and/or 180 days in jail.

Civil trespass can be either a “forcible detainer,” in which a person who was formerly a tenant remains on the property after his or her right to occupy it has expired, or a “forcible entry and detainer,” which encompasses situations in which a non-tenant enters the property without consent. It should be emphasized that squatters do not meet the definition of “tenant” under the Property Code, which defines a tenant in relevant part as a person authorized to occupy premises under a lease.<sup>127</sup> Thus, under current law, squatters commit both criminal trespass and forcible entry and detainer.

But crucially, a common complaint of property owners who have been victimized by squatters is that law enforcement tells them their complaints are civil

matters, which forces an owner to go through the eviction process. The lack of a vigorous response from law enforcement is especially likely to rise when the squatter has a fake lease, as law enforcement understandably believes that it cannot definitively determine who the true owner of the property is in such cases or whether the squatter is a tenant and therefore entitled to statutory protections against immediate discharge from the property.

Although an eviction from start to finish can theoretically be completed in 30-35 days,<sup>128</sup> there are many reports about the process taking much longer when a determined squatter is involved. One media outlet in Harris County that has reported on squatters has stated that “it can take six months to a year for the eviction process to work through the court system.” A Houston attorney informed that outlet that “If you’ve got a professional squatter who knows the system, they can string that [eviction] process along.”<sup>129</sup> Aside from being deprived of the use of their property, property owners evicting a squatter must pay court filing fees and attorney fees, and upon regaining possession of their property, often learn that the property has been damaged by the squatter.

## ***Policy Recommendations***

The Legislature could amend the law in at least three ways to address the threat squatters pose to law-abiding property owners.

### ***Policy Recommendation 11***

#### ***Amend the current statute on criminal trespass***

First, the statute on criminal trespass could be amended to provide for an expedited determination by law enforcement that a squatter is trespassing on a property. This determination could be based in part on an affidavit by the property owner (as that owner is listed in the applicable county property records) that the other party is squatting. To minimize weaponization of this tactic by owners against legitimate tenants, the affidavit could be subject to penalties for perjury. Unfortunately, changes to the civil trespassing statute are unlikely to deter squatters



since many of them presumably lack the assets to pay a judgement (i.e., they are “judgement proof”).

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### ***Policy Recommendation 12***

#### ***Increase the offense of squatting***

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Second, squatting should be classified as a higher criminal offense than the Class B misdemeanor designation given to criminal trespass. Given the seriousness of squatting- effectively, the theft of someone’s home for weeks or even months- the offense should be upgraded to a felony. By comparison, burglary- entering a building with the intent to commit theft, assault, or a felony- is a second-degree felony if the building in question is a residence. Burglary is perhaps the best analogy to draw to squatting because it involves illegally entering a property with an intent to “steal” the use of the residence from the property owner. For additional context, theft of property worth \$2,500 is a state jail felony, and becomes a third-degree felony if the value of the property is \$30,000 or more. Moreover, the seriousness of squatting is amplified due to the great potential for violence that exists when frustrated owners confront the belligerent criminals who have taken over their property.

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### ***Policy Recommendation 13***

#### ***Impose additional sanctions on squatters***

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Third, in addition to making squatting a felony, the Legislature could consider special sanctions for squatting such as prohibiting charges from being plead down to misdemeanors, requiring minimum jail time, and/or imposing mandatory fines or community service. These sanctions could be increased in cases in which squatters have damaged the property and/or provided a fake or otherwise invalid lease agreement purporting to show that they have the right to occupy the property. While detailed data on squatters is not available, it takes only common sense to realize that someone who engages in an offense as outrageous as squatting is unlikely to refrain from such offenses if he or she is given the metaphorical “slap on the wrist.” As the quote above from the attorney in Harris County points out, some (perhaps most) squatters are experienced offenders- they simply look for a new property to take over once they are finally evicted from

an original property. Such a calculated and radical attack on the property rights of law-abiding citizens calls for severe punishment.



# Copper Wire Theft

## *Background*

Copper wire is an electrical conductor that is essential to daily life in the modern era. It is used in most electronics, but most importantly, it facilitates power distribution and telecommunications. The theft of copper wire causes power and network outages that not only impact the general public but also disrupt public services and “key sectors like healthcare, transportation, and finance.”<sup>130</sup> According to HPD Sgt. Robert Carson:

One cut affects so many different things... Hospitals, medical facilities, pharmacies, part of the 911 system, [and] school districts.<sup>131</sup>

As a result, the recent increase in copper wire theft across Texas should be of great concern to the Legislature. According to a report in the Dallas Morning News, from 2022 to 2024, there has been a 60% increase in “metal swipes” from AT&T lines. This is an average of twenty incidents in Texas per week for AT&T lines alone.<sup>132</sup>

## *Increase in Copper Wire Theft*

In Fort Worth, “there has been a 545% increase in copper thefts over the past two years.” Similarly, in the last year the Houston area “has seen a 17% jump in the number of cable lines being cut by thieves looking for copper.” The issue is so extensive in Austin and the Dallas-Fort Worth metroplex<sup>133</sup> that AT&T is offering:

A reward of up to \$10,000 for specific and detailed information that leads to arrest and conviction for copper cable thefts or the attempted sale or purchase of stolen AT&T copper cable.<sup>134</sup>

These offenders are cutting power and communication for roughly three to five dollars per pound of scrap copper.<sup>135</sup> The damages, however, far exceed this amount. Though largely incalculable, the damages include:

1. Loss of power, which is life-threatening for vulnerable demographics;
2. Access to medication from pharmacies;
3. Disruptions to emergency response and hospitals;
4. The cost to repair power and telecommunication lines; and,
5. Economic impacts on businesses and employees that work from.

## *Relevant Legislation*

While the issue has become more prevalent in recent years, it is not new. In 2015, the 84<sup>th</sup> Legislature passed House Bill 2187 (84R, Smith),<sup>136</sup> which regulates the sale of copper and other regulated materials to metal recycling entities (MRE). The bill prohibits MREs from making cash or debit card payments to sellers for regulated material unless the seller possesses a cash transaction card (CTC). To obtain a CTC an individual must apply with an MRE. This application must include:

- 1) the name, address, sex, and birth date of the applicant;
- 2) the identification number from the applicant’s personal identification document;
- 3) a digital photograph that accurately depicts the applicant’s entire face taken at the time the applicant completes the application;
- 4) a clear and legible thumbprint of the applicant; and,
- 5) the signature of the applicant.<sup>137</sup>



Additionally, MREs are required to maintain a record of these sales that must include a copy of the seller’s CTC. Upon request, this record must be made available to law enforcement for inspection. The intent was to reduce copper wire theft by creating a paper trail that could connect an offender to the sale.

However, the sale of stolen goods to MREs persisted following these regulatory changes, as evidenced by the recent increase in copper wire theft and the passage of House Bill 4110 (87R, Leach) in 2021.<sup>138</sup>

HB 4110 specifically addressed the sale of catalytic converters—another frequently stolen item—by including them as a regulated material as it relates to their sale to MREs. This applied the same regulations created by HB 2187 to the sale of catalytic converters.

### *More Work to be Done*

Unfortunately, this reform did not adequately deter catalytic converter theft. In fact, the year following the enactment of this legislation, Houston County Sherriff’s Office Deputy Darren Almendarez was murdered while attempting to prevent the theft of his personal vehicle’s catalytic converter.<sup>139</sup> In response to this incident, the 88<sup>th</sup> Legislature passed Senate Bill 224 (88R, Alvarado)—known as the Deputy Darren Almendarez Act.<sup>140</sup> SB 224 addressed the theft and resale of catalytic converters by increasing criminal penalties for related criminal activities, as follows:

1. Designated the following as State Jail Felonies:
  - a. Damage, destruction, or tampering of a motor vehicle causing a pecuniary loss of less than \$30,000 during the removal or attempted removal of a catalytic converter;
    - Penalty enhancer for pecuniary losses above \$30,000; and
    - Penalty enhancer for possession of a firearm.

- b. Intentional or knowing unauthorized possession of a catalytic converter unlawfully removed from a vehicle;
  - Penalty enhancer for repeat offense;
  - Penalty enhancer for related conduct constituting conspiracy; and
  - Penalty enhancer for possession of a firearm.

The bill also created a presumption that the possession of one or more converters removed from one or more vehicles is stolen unless the possession is by the vehicle owner or person acting in the ordinary course of business.<sup>3</sup> Lastly, SB 224 required metal recycling entities to identify if they deal with catalytic converters and established record-keeping and transaction requirements. If an MRE intentionally or knowingly failed to maintain these records, they would be subject to a Class A Misdemeanor.

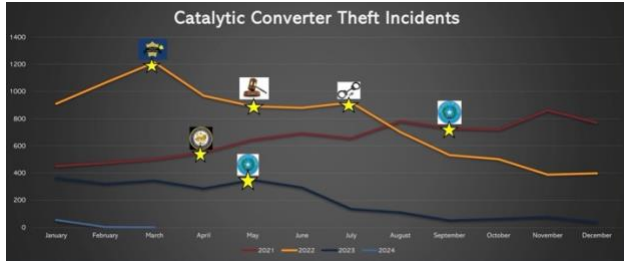
The positive impact of SB 224 on catalytic converter theft was almost immediate. According to a presentation from Houston Police Commander Dana Hitzman, incidents of catalytic converter theft in Houston fell drastically following the implementation of SB 224 to near zero in February 2024:<sup>141</sup>

<sup>3</sup> Exception for entities that regularly handle catalytic converters through the course of their business.



Figure 3

**Houston Police Department Catalytic Converter Incident Timeline**



Source: Houston Police Department<sup>142</sup>

Data provided by State Farm shows that this decrease in catalytic converter theft is statewide. In the first half of 2024, they only received 140 insurance claims related to catalytic converter theft, as compared to 1,450 in 2023.<sup>143</sup> Assuming this trend persisted throughout 2024, that is a roughly eighty percent decrease from 2023 to 2024. While other factors, like a decrease in market value for catalytic converters,<sup>144</sup> certainly contributed to the reduction in theft it is evident that SB 224 is positively impacting rates of catalytic converter theft.

***Policy Recommendations***

***Policy Recommendation 14***

***Apply the Principles of SB 224 to Copper Wire Theft***

It is evident that the policies implemented by SB 224 have helped drastically decrease catalytic convertor theft in Texas. The legislature should continue to combat theft and the sale of regulated materials to MREs by similarly increasing the criminal penalties for copper wire theft and establishing a presumption that the possession of copper or brass material is stolen unless the possession is by the materials owner or person acting in the ordinary course of business. This would increase the risk for offenders and empower law enforcement to effectively combat copper wire theft.



# Election Integrity

## *Background*

In 2021, the 87th Texas Legislature passed Senate Bill 1<sup>145</sup> (87-2), which, among other provisions meant to strengthen election integrity, provided for additional mechanisms to remove ineligible people from the state voter rolls, including noncitizens.

In August 2024, Governor Greg Abbott announced that, since SB 1 had become effective, Texas had removed more than 1 million people from the state's voter rolls, including more than 6,500 noncitizens.<sup>146</sup> Among those 6,500, 1,930 had a voting history.

While some dismiss noncitizen voting as rare and likely having little impact on elections,<sup>147</sup> there are several reasons why it is important to take it very seriously.

First, any illegitimate vote dilutes legitimate ones. Illegitimate voting erodes election integrity and the rule of law, and, as a result, Americans' trust in the electoral system. It should not be tolerated, and that should not be a controversial position.

Second, just a few votes can make a difference in tight races. The future of our country, state, and local communities should be decided by people who are committed to our country, that is native or naturalized American citizens. Immigrants who came to United States the right way and made the decision to become citizens swear an Oath of Allegiance to support the Constitution and the laws of the United States. Allowing non-citizens to vote undermines this act of loyalty.

Finally, considering the border crisis that the state of Texas has faced the past four years, with more than 10 million border encounters nationwide, including more than 8 million at the Southwest border alone, and not counting now nearly 2 million gotaways nationwide,<sup>148</sup> it is imperative to ensure that people who already entered the country illegally do not attempt to be or are not placed by unscrupulous actors on Texas voter rolls.

## *Federal Law and Texas Law*

It is illegal for a noncitizen to vote in federal and state elections—across the country.

However, just because it is the law and that a registration application presents you with the requirement to acknowledge that you “understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law [...] Conviction of this crime may result in imprisonment up to one year in jail, a fine up to \$4,000, or both,”<sup>149</sup> does not mean that every single person will follow the law. If there is no mechanism to ensure that people follow the law, some might be encouraged—or at least think it is less of a risk—to violate it. An obvious and related example is that it is also illegal to enter the country between ports of entry,<sup>150</sup> yet millions have done so or attempted to do so in the past 4 years, despite clearly visible signs prohibiting entry.<sup>151</sup> Moreover, they have done so with the tacit encouragement and approval of the Biden administration, making clear that the situation is far more dire than the current system is designed to address.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) made it unlawful in statute for a noncitizen to vote in federal elections, punishable by a fine and up to one year in prison.<sup>152</sup> Aliens who have violated federal, state, or local election laws or regulations are also inadmissible<sup>153</sup> and deportable<sup>154</sup> under federal law.

In addition, falsely claiming knowingly to be a citizen in order to register to vote or to vote “in any Federal, State, or local election (including an initiative, recall, or referendum)” is punishable by a fine and up to five years in prison.<sup>155</sup>

However, and this is crucially important, federal law does not require providing evidence that you are a citizen of the United States to be able to register to vote.

The National Voter Registration Act of 1993 (also known as NVRA or the “motor voter law”) made it mandatory for states' motor vehicle agencies to offer people seeking to obtain or renew their driver's license the opportunity to register to vote. It also requires



states to extend this opportunity to register to vote by mail and in certain state and local public assistance agencies.<sup>156</sup>

The Civil Rights Division of the U.S. Department of Justice does not state any requirement to prove citizenship while applying and instead explains that “the voter registration application *must state* each voter eligibility requirement (including citizenship), *contain an attestation that the applicant meets each requirement, state the penalties* provided by law for submission of a false voter registration application *and require the signature of the applicant under penalty of perjury.*”<sup>157</sup>

Regarding the mail-in application, the U.S. Election Assistance Commission provides a “National Mail Voter Registration Form” in several languages.<sup>158</sup> Again, no proof of citizenship is required. The form states that first time voters who register to vote will have to show a proof of identification the first time they vote, with the ID required only being “A current and valid photo identification or a current utility bill, bank statement, government check, paycheck or government document that shows your name and address,” or that voter may submit a copy of these with their application to register.<sup>159</sup> While the form makes it clear you must be a U.S. citizen to register to vote and to vote, no proof is required. For example, the form states:

If you wish to submit a COPY, please keep the following in mind: Your state may have additional identification requirements which may mandate you show identification at the polling place *even if you meet the Federal proof of identification.*”<sup>160</sup>

In 2021, the U.S. District Court for the District of Columbia ruled that states could not require proof of citizenship to vote in federal elections.<sup>161</sup> The League of Women Voters had filed a lawsuit after the U.S. Election Assistance Commission authorized three states to modify their national mail voter registration form to require a proof of citizenship.<sup>162</sup>

In his ruling, Judge Richard J. Leon explained that “regardless of how a state approaches voter registration for its own elections, it cannot decline to register for federal elections an applicant who timely completes

and submits a Federal Form.”<sup>163</sup> The judge ruled that then-Executive Director of the Election Assistance Commission Brian Newby failed to “analyz[e] whether the proposed instructions were ‘necessary to enable the [State] to assess the eligibility of the applicant.’”<sup>164</sup>

More recently, a U.S. Supreme Court decision allowed Arizona to require proof of citizenship only for Arizona elections, not federal ones.<sup>165</sup>

To remedy the possibility that this situation might lead to noncitizens successfully registering to vote and voting, on July 10, 2024, the U.S. House of Representatives passed the Safeguard American Voter Eligibility (SAVE) Act, which requires an individual to provide proof of U.S. citizenship to be able to register to vote, as well as gives states access to federal databases to better maintain their voter registration rolls.<sup>166</sup> The bill did not move further and the White House made it clear that it opposed the bill as unnecessary and considered it instead an avenue to make it more difficult for Americans to vote.<sup>167</sup>

Under the Texas Constitution, Article VI, Section 2, only U.S. citizens are “qualified voters.” However, Article VI, Section 1, of the Texas Constitution, which lists “classes of persons not allowed to vote” fails to mention noncitizens. During the 88th Texas Legislature, Senate Joint Resolution 35 proposed a constitutional amendment to add “persons who are not citizens of the United States” to the list of persons not allowed to vote in Texas. SJR 35 passed the Senate and was voted out of the House State Affairs Committee but did not reach the House floor.<sup>168</sup>

Under Texas Election Code §§ 13.001 and 20.31, a person must be a U.S. citizen to be eligible to register as a Texas voter and voter registration applications should only be provided to U.S. citizens, respectively.<sup>169</sup>

The website of the Texas Secretary of State also explains how voter rolls are regularly cleaned, which provides an additional safeguard.<sup>170</sup>

The Secretary of State regularly receives information from the Texas Department of Public Safety and court clerks on people who demonstrated evidence of being or claimed to be noncitizens for the purposes of obtaining or renewing driver’s license or jury summons notifications, respectively. The Secretary of State then compares these data to voter rolls and if noncitizens



are found to be registered, their information is transmitted to county voter registrars for them to verify their eligibility. These registered voters are then notified and have 30 days to respond and provide proof of citizenship. If they don't, their registration is cancelled.<sup>171</sup> Voter registrars who have reason to believe a voter is ineligible can also require proof of citizenship.

Once you are duly registered to vote, you need to supply one of seven forms of identification at the voting poll:

- Texas Driver License issued by the Texas Department of Public Safety (DPS)
- Texas Election Identification Certificate issued by DPS
- Texas Personal Identification Card issued by DPS
- Texas Handgun License issued by DPS
- United States Military Identification Card containing the person's photograph
- United States Citizenship Certificate containing the person's photograph
- United States Passport (book or card)<sup>172</sup>

However, not possessing any of these ID does not necessarily prevent a voter from casting a regular ballot:

If ... the voter cannot reasonably obtain such ID, the voter may still cast a regular ballot by presenting a supporting form of ID and executing a Reasonable Impediment Declaration, noting the voter's reasonable impediment to obtaining an acceptable form of photo identification, stating that the information contained in the declaration is true, that the voter is the same individual personally appearing at the polling place to sign the declaration, and that the voter faces a reasonable impediment to procuring an acceptable form of photo identification.<sup>173</sup>

On October 11, 2024, Secretary of State Jane Nelson issued new guidance related to Texas driver's licenses that are marked as being temporary or "limited-term."

These are generally issued for noncitizens. While these had been so far accepted at polling stations, granting voters who presented such an ID a regular ballot, election workers must now require a naturalization certificate for the voter to receive a regular ballot.<sup>174</sup>

## *Occurrences of Noncitizen Voting*

Occurrences of noncitizens registering or attempting to register to vote have been found in several states.<sup>175</sup> Even if the instances found remain small, that does not mean that nothing should be done for these to address the issue.

A few municipalities across the country (though not in Texas) allow noncitizens to vote in certain local elections,<sup>176</sup> which can create confusion. Whether a noncitizen is able to register by mistake, or whether he or she is doing it knowing it is illegal, these instances should not be ignored.

A recent study, based on data used in a 2014 academic journal article, estimated that between 10 percent and 27 percent of noncitizens could be registered to vote.<sup>177</sup> It is important to note though that this study has been contested.<sup>178</sup> The author of the study acknowledges that "As is often the case with studies of illegal actions where enforcement is limited, both Just Facts' study and the one from Electoral Studies have sizeable margins of uncertainty. This is due to relatively small sample sizes and other possible sources of error—some that could produce overcounts and others undercounts."<sup>179</sup>

It remains that noncitizens have been found to have been able to register to vote and states should do what is possible to prevent this from happening without curtailing Americans' right to vote.

The Heritage Foundation has created an Election Integrity Scorecard<sup>180</sup> that looks at election integrity in general, including noncitizen voting, in which Texas ranks #13.<sup>181</sup> Notably, the Heritage Foundation points to possible ameliorations in voter ID implementation, accuracy of voter registration lists, absentee ballot management, voter harvesting, election litigation procedures, restriction of private funding of election





officials or government agencies, and verification of citizenship.

Regarding the verification of citizenship, the Heritage Foundation points out that Texas does not seem to require in statute the use of the Systematic Alien Verification for Entitlements (SAVE) Program to help identify non-citizens who register to vote.<sup>182</sup> SAVE is an online immigration status verification database operated by the U.S. Citizenship and Immigration Services.<sup>183</sup> It is available to all levels of government.

The Texas Department of Public Safety uses SAVE to verify the legal status of an applicant to a driver's license.<sup>184</sup> As noted before, TxDPS sends information to the Secretary of State about driver's license applicants who are noncitizens to help the Secretary of State make sure that voter rolls are accurate.

## ***Conclusion***

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Although verifying the citizenship of people who register to vote in federal elections sounds like a simple and reasonable way to ensure that only Americans can vote, there is little that the state of Texas can do besides pressing Congress to fully pass the SAVE Act, and for the president to sign it.

## ***Policy Recommendations***

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### ***Policy Recommendation 15***

*Continue to use existing tools to prevent noncitizens from becoming Texas voters*

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Texas should be commended for its efforts to regularly clean voter rolls to make sure that voter fraud in general, including noncitizen voting, is as limited as can be. Texas should continue these efforts, and the Texas Legislature should ensure that all tools available to Texas agencies are being used, such as the SAVE program currently used by TxDPS to verify legal status of applicants for a Texas driver's license.

### ***Policy Recommendation 16***

*Present to Texas voters the opportunity to clarify that noncitizens are constitutionally prohibited from voting in all Texas elections.*

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In order to fully ensure that no noncitizen can vote in Texas, including at the local level, the 89th Texas Legislature should consider finally passing SJR 35 (88-R) in 2025 to present the constitutional amendment to Texas voters. In the 89<sup>th</sup> Legislature, SJR 28 by Senator King would also achieve this goal.



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