



TEXAS

Driver Prosecutions, Immigrants, and “Smuggling” in Texas: Fueling A Mass Incarceration Crisis



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The state of Texas is aggressively using the criminal legal system to go after immigrants. Since the start of [Operation Lone Star](#), Texas’s troubled border program, thousands of people have been arrested for “smuggling,” which in reality most often looks like driving with an undocumented person in their car. To make matters worse, the Texas state legislature recently passed a series of anti-immigrant laws that are poised to further fuel mass incarceration. This includes Texas Senate Bill 4 ([SB 4 88S3](#)), hereinafter referred to as the “Texas Driver Prosecutions Law” which was introduced in the third special session of the 88th Texas legislature in 2023 and went into effect on February 6, 2024. Unlike higher-profile legislative counterparts [SB 3](#) and [SB 4](#) (HB 4/SB 4 88S4 or “SB 4 Deportation”), with the latter being litigated in federal court, the Texas Driver Prosecutions Law has largely slipped under the radar both in Texas and around the country. This policy brief explores the Texas Driver Prosecutions Law in detail and places it in the broader context of the mass incarceration crisis in the United States.

BACKGROUND: OPERATION LONE STAR AND THE TEXAS DRIVER PROSECUTIONS LAW

[Operation Lone Star](#) (“OLS”) is a deadly Texas law enforcement scheme that pours vital state resources into the criminal legal system to target migrants for arrest, detention or imprisonment, and deportation. Created in March 2021 by Texas Governor Greg Abbott and backed by nearly [\\$10 billion](#) of Texas state funds, OLS criminalizes migrants, many of whom are seeking safety, to unite with family, or a better life in the United States, and rapidly funnels them into the immigration detention and deportation



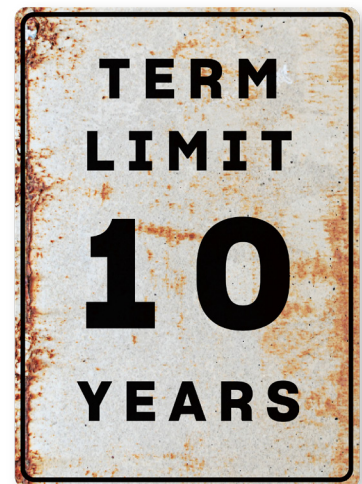
system. OLS [promotes](#) racial profiling, fuels the mass incarceration of people of color, and [encourages white supremacist rhetoric](#) that is harmful to all Texans. The Texas Driver Prosecutions Law is a dangerous and unnecessary [extension](#) of OLS, as it lengthens OLS's toxic reach deeper into Texan communities, sows fear and uncertainty among all Texans, and increases harmful interactions with the [criminal legal system](#).

WHAT DOES THE TEXAS DRIVER PROSECUTIONS LAW CHANGE?

The Texas Driver Prosecutions Law, also known as [SB 4 88S3](#), modified the existing Texas state smuggling law by increasing criminal penalties for offenses related to the “smuggling of persons,” creating harsh mandatory minimum sentences for them. Although “smuggling of persons” sounds like a serious offense, under Texas law, criminal intent to smuggle a person is not required, although the intent to conceal is a requirement. Nonetheless, there is no “intent to conceal” definition in the statute in the Texas Penal Code at Section 20.05. Public defenders representing clients charged with smuggling routinely observe that the “intent to conceal” is broadly interpreted by law enforcement, prosecutors, and judges. The statute does not require actual or even attempted concealment of another person. Indeed, public defenders note that an “intent to conceal” has been presumed whenever a driver has a passenger without legal status in the vehicle. Taken together, this means community members could be prosecuted for merely driving with a family member without legal status if law enforcement officers allege they had an “intent to conceal” the person.

In a nightmarish scenario, with the new mandatory minimum prison sentences in effect, a community member could face up to 15 years in prison for taking a loved one without legal status to a medical appointment or driving them to school. The Texas Driver Prosecutions Law modified certain existing sections of the Texas Penal Code in the following ways:

- **Increased penalties** for “smuggling of persons” convictions to a **mandatory minimum sentence of 10 years of imprisonment**. If a defendant has provided “**significant cooperation**” with law enforcement or “smuggles” **certain extended family members**, the mandatory minimum sentence is lowered to 5 years of imprisonment if convicted.
- **Increased penalties** for “smuggling of persons” crimes when committed in an area subject to the Governor’s disaster declaration, with a **mandatory minimum sentence of 15 years of imprisonment**

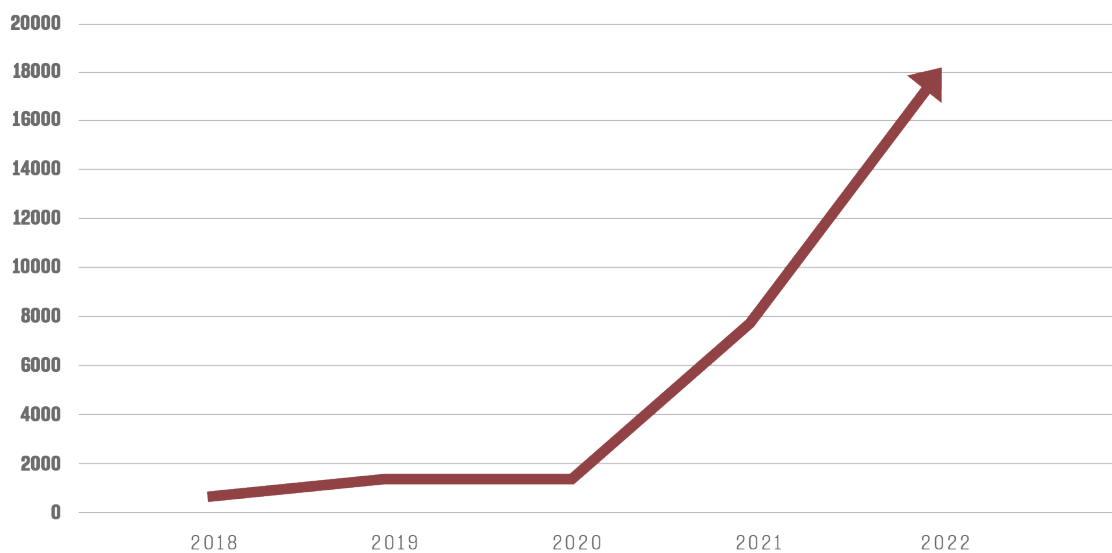


upon conviction.

- Since May 2021, Governor Abbott has issued disaster declarations in 62 counties “based on an increase” of immigration at the Texas-Mexico border. Declaring a “disaster” allows him to effectuate OLS by using state and local resources to respond to the named “disaster” and increases the penalty for convictions effectuated where disaster declarations are active.
- **Expanded the definition** of “smuggling of persons” to include assisting, guiding, or directing two or more individuals to enter or remain on agricultural land without the consent of the owner.

Data shows that arrests for smuggling-related offenses skyrocketed in 2021, after the implementation of Operation Lone Star. These numbers are expected to increase further under the new Texas Driver Prosecutions regime.

SMUGGLING-RELATED ARRESTS IN TEXAS



Source: Texas Department of Public Safety, Criminal History Arrest and Conviction Statistics: <https://www.dps.texas.gov/section/crime-records/crime-records-reports-and-statistical-information>

WHAT IS WRONG WITH THE TEXAS DRIVER PROSECUTIONS LAW?

- ***The Texas Driver Prosecutions Law is Targeting Daily Life for Texans Regardless of Status***

The Texas Driver Prosecutions Law is overbroad and sweeping in ways that will endanger Texans who are participating in the activities of everyday life in their communities. Texas has a [diverse population](#): one in six Texas residents are

immigrants and nearly 1.4 million U.S. citizens in Texas live with a family member who is without immigration status. Thousands of people in Texas could be prosecuted as “smugglers” under the modified law when they are transporting undocumented friends, neighbors, members of mixed-status families, rideshare customers, or school classmates to various locations for legitimate reasons. By targeting the day-to-day, deeply human activities of Texans of all immigration statuses, the Texas Driver Prosecutions Law will worsen the growing culture of [fear in targeted communities of color](#)—a culture fueled by anti-immigrant sentiment and enacted policy.



- ***The Texas Driver Prosecutions Law Will Exacerbate Dangerous OLS-Related Vehicle Chases***

The Texas Driver Prosecutions Law is an extension of OLS. According to a 2023 report from [Human Rights Watch](#), under OLS the Texas Department of Public Safety (“DPS”) and other law enforcement agencies have engaged in dangerous and deadly vehicle pursuits every week in the 62 Texas counties implementing OLS or experiencing DPS deployments under OLS. These vehicle pursuits, which according to Human Rights Watch are [explicitly incentivized](#) by OLS, are harming and killing Texans and migrants alike. Between the launch of OLS in March 2021 and July 2023, at least 74 people were killed and 189 people were injured during 49 vehicle pursuits by Texas troopers or local law enforcement (or both) in OLS counties. Some of the victims were bystanders not involved in the pursuit, and at least some of the victims were children under the age of 10. The OLS regime, now featuring mandatory minimum sentences and broad statutory provisions for smuggling, is incentivizing several negative, perverse trends: an expanded basis for law enforcement pursuits of vehicles, a spike in arrests, increases in law enforcement agency presence in border communities, and pressure to provide data to demonstrate the “[success](#)” of OLS. The expansion of the legal basis for smuggling arrests increases the risk that lethal OLS-related vehicle chases will continue or worsen.

- ***The Texas Driver Prosecutions Law Harms Both Migrants and U.S. Citizens Alike***

Like other failed [deterrence](#) immigration policies implemented since the mid-

1990s, the Texas Driver Prosecutions Law will not slow or eliminate migration. Instead, deterrence policies drive the human smuggling market and contribute to dramatic increases in border-crossing and related deaths.

Although migration occurs whether or not smugglers are involved, the smuggling of migrants is partially a result of policies that restrict access to asylum procedures at ports of entry. Implementing severe criminal provisions for broadly defined “smuggling” will neither deter nor prevent people seeking safety, to unite with family, or a better life, from potentially suffering at the hands of actual smugglers. [Deterrence](#) policies and laws like the Texas Driver Prosecutions Law [increase the profits](#) of smugglers and bad actors who can become the only recourse for migrants and asylum seekers.

It may also surprise many people to know that most people prosecuted for smuggling in Texas are young U.S. citizens. Arrest trends from [Lone Star Defenders](#) show that the typical profile of a “smuggler” under OLS (before the Texas Driver Prosecutions Law went into effect) is a U.S. citizen in their early 20s who responded to a social media posting asking for transportation in exchange for money. According to Lone Star Defenders, out of about 3,500 people arrested under the prior smuggling law, about 3,000 individuals were U.S. citizens. Thirteen percent of those arrested for smuggling were between the ages of 17 and 19, and 51 percent were between the ages of 20 and 30.

Other data supports what Lone Star Defenders has found through their legal representation services. Per [Human Rights Watch](#), nearly 80 percent of people arrested and booked into OLS processing centers in two Texas counties between June 2021 and July 2023 were U.S. citizens with a median age of 26. Nearly 13 percent of those charged with smuggling were aged 18 or 19. As the data demonstrate, OLS’s previous smuggling regime has overwhelmingly harmed U.S. citizens, while still harming migrants. As such, the Texas Driver Prosecutions Law will most likely punish young U.S. citizens convicted of “smuggling” with purely criminal consequences and not immigration consequences. In a review of media reports, [Human Rights Watch](#) identified at least 12 youth between the ages of 14 and 17 charged with smuggling under Texas law between August 2021 and March 2023 as a result of OLS.

- ***Mandatory Minimums for Prosecuted Drivers Are Excessive and Will Harm Black and Brown Communities***

Generally, mandatory minimums worsen racial disparities in the larger [criminal legal context](#), disproportionately harming and incarcerating Black and Brown people across the United States. The existence of gratuitous mandatory minimum sentences under the new Texas Driver Prosecutions Law makes it reasonable to anticipate that this pattern of racialized harm will hold for Texans prosecuted for “smuggling.”

Furthermore, the mandatory minimum sentences for smuggling under the Texas Driver Prosecutions Law far [exceed the gravity](#) of the offense. According to the [U.S. Sentencing Commission](#), in Fiscal Year 2022, the average sentence for a federal conviction for “alien smuggling” was 15 months of imprisonment. The Texas Driver Prosecutions Law’s mandatory minimum sentences of 10 to 15 years far exceed this average, demonstrating their excessive severity at the state level. Longer mandatory minimums under the Texas Driver Prosecutions Law will replicate and deepen the harms caused by the criminal legal system within Black and Brown communities in Texas. Data has proven time and again that inflexible, harsh mandatory minimum sentences with no room for discretion exacerbate both crime and racial disparities within the criminal legal system. Excessive mandatory minimums in Texas run counter to [recent trends](#) in criminal legal system reform to reduce, or eliminate, the use of mandatory minimums, including reform efforts that have received [bipartisan support](#).

The Texas Driver Prosecutions Law also risks further fueling the practice of racial profiling, which has already increased under OLS. An American Civil Liberties Union (“ACLU”) [report](#) analyzing arrest-level data from DPS spanning the time period of March 2021 through January 2024 shows that under OLS, Black and Latinx people had disproportionately high arrest rates compared to their population within the state. A [university analysis](#) of DPS traffic stops in 2021 found a disproportionate number of stops and searches of Latinx drivers. In 2021, under OLS, DPS conducted a significantly greater portion of consent searches on Latinx drivers relative to white drivers. A consent search is discretionary and involves an officer asking for permission to search a vehicle. Because they are discretionary and subjective, racial disparities in consent searches are indicators of racial profiling. According to the analysis, DPS asked for and was granted consent to search by 19.5 percent of white drivers compared to 32.1 percent of Latinx drivers. University researchers, in analyzing this data, concluded there is “a reasonable probability that racial profiling is a significant contributor to” those

disparities. They characterized their findings as “concerning.”

Under OLS, more than 1,000 DPS officers have been deployed to border communities in Texas. Since 2006, past “surges” of DPS officers led to spikes in racial profiling during traffic stops. During two DPS “surge” time frames from 2009 to 2011 and 2012 to 2014, a Border Network for Human Rights [review](#) of DPS traffic stop data found that citations of Latinx drivers in border counties rose while those of white drivers in the same counties dropped. In Starr County, citations of Latinx drivers increased 127 percent, while citations of white drivers dropped 40 percent; in Webb County, citations of Latinx drivers increased 87 percent versus a 30 percent drop for white drivers; in Cameron County, there was a 9 percent increase for Latinx drivers versus a 28 percent decrease for white drivers. This data undergirded an OLS-focused 2022 [complaint](#) authored by the ACLU of Texas and Texas Civil Rights Project to the U.S. Department of Justice (“DOJ”).

WHAT DO TEXAS DRIVER PROSECUTIONS MEAN IN THIS MOMENT?

The Texas Driver Prosecutions Law is part and parcel of OLS, which encourages over-policing, criminalization, and mass detention and incarceration under the guise of “border security,” but motivated by [flagrant anti-immigrant animus](#). Similar to the failed War on Drugs, the Texas Driver Prosecutions Law will likely target the most racially and economically marginalized members of Texas communities: those impacted by the criminal legal system who are often locked out of traditional employment opportunities. When one needs to make money doing odd jobs, it is easy to be tempted by anonymous offers to transport people for cash. Under the new regime, quick decisions made to survive can easily turn into criminal convictions with 10- or 15-year mandatory minimum sentences.

Disproportionately punitive and discriminatory criminal legal system policies violate human rights, especially since non-carceral and public health-based responses to a range of social issues are available. The Texas Driver Prosecutions Law and OLS are one example of such harsh criminal legal system policies. Others include [disproportionate law enforcement responses to protests](#) over “Cop City” in Atlanta, a \$90 million police training facility; the recent [mobilization](#) of 750 National Guard soldiers to patrol New York’s subway system despite a lack of [statistically significant evidence](#) that such a response is warranted; a pilot program in California establishing a surveillance infrastructure



that will generate fines on a massive scale and [disproportionately impact](#) Black, Indigenous, and people of Color (BIPOC) communities; and the implementation of [drug-free zones](#) in Washington, DC, wherein police officers can more easily arrest two or more people suspected of illegal drug activity.

Additionally, the likelihood of Texas Driver Prosecutions Law copycat bills cropping up in other states is high. Governors in several other states tend to [replicate](#) the anti-immigrant efforts of states like Florida and Texas. Substantially similar bills targeting the “smuggling” of undocumented migrants have already been introduced or passed in state legislatures in [Kansas](#), [Florida](#), [Idaho](#), and [Iowa](#), and more are on the way.

“SMUGGLING” STORIES: HOW TEXAS DRIVER PROSECUTIONS HARM COMMUNITIES

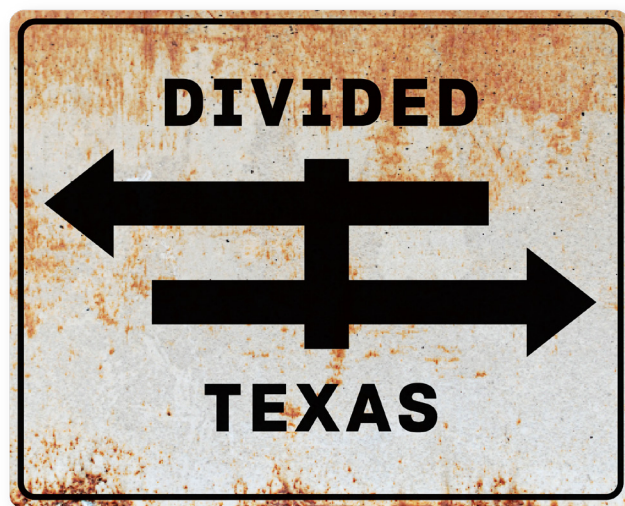
Through the legislative changes and OLS at large, Governor Greg Abbott and state elected officials have harmed all Texans for the sake of their anti-immigrant political agenda and at the expense of meeting the real needs of Texas communities. Below are excerpted stories from Texans who have been directly affected by the Texas Driver Prosecutions Law or its precursor smuggling provisions under OLS.

According to Audrey Mulholland, Director of Padilla-Immigration at the Texas RioGrande Public Defender, smuggling arrests have increased tremendously since OLS and these arrests have impacted the immigration outcomes of many long-term Texas residents without permanent status. Since 2021, the Texas RioGrande Public Defender has represented hundreds of individuals arrested under Texas’ smuggling of persons offense. She says, “The broad language of the statute has resulted in expansive and increasing arrests of many individuals unaware of their involvement in a criminal offense, including young U.S. citizens accepting one-time jobs to transport people for extra cash—akin to an Uber driver, and long-term undocumented and lawful U.S. residents traveling together who face loss of status, deportation, and prolonged detention in both criminal and ICE custody. [...] We have already seen the impact of these enhanced charges on our clients, including a young, single mother who is facing a decade or more in Texas custody and prolonged separation from and possible loss of custody of her young children for her first criminal arrest.”

In other cases, advocates working in Texas note that undocumented people are being accused of smuggling when attempting to cross into the United States at a port of entry (“POE”) or while driving or walking near a POE. In these cases, prosecutors have not followed up with criminal charges, meaning that people face immigration consequences but

not criminal ones. Nonetheless, these laws are often used as a pretense to enter people into the immigration system, into ICE custody, and to kickstart the full deportation process. In one example, a client with lawful permanent resident status was accused of smuggling while trying to cross at a POE. Thankfully, her attorneys prevented her deportation due to the relief available for her particular circumstances. However, under the new legal regime, people convicted of smuggling will not move into immigration custody after their prison sentences for many years due to mandatory minimums. This extended incarceration very likely makes it harder to prove their eligibility for certain legal pathways to remain in the United States.

In another example, a [law enforcement affidavit](#) demonstrates the extreme lengths to which DPS officers have gone to arrest “smugglers,” and the flimsy assumptions on which they have grounded arrests. A DPS Trooper claimed to have stopped a vehicle merely for driving in the left lane without passing vehicles in the right lane. While speaking to the driver, the trooper noticed a male passenger with “grass on his clothes, as if he had managed to travel through the brush of the area[.]” Grass stains were enough to lead the officer to believe the passenger was undocumented which then led to the arrest of the driver for “smuggling.”



One Lone Star Defenders client was arrested for smuggling in Maverick County while driving an SUV, picking up four individuals without legal status in the parking lot of a business complex. Law enforcement immediately pulled him over and saw three individuals sitting in the backseat and one sitting in the rear cargo area of the SUV. None of the individuals were hidden under blankets or concealed in any other manner. At trial, the state claimed that having an individual sitting in the rear cargo area of the SUV was evidence that the client had the intent to conceal. The client was convicted and sentenced to five and half years in prison by a jury, after the state recommended six years of imprisonment.

One young, Black Texan’s story is emblematic of the Texas Driver Prosecutions Law’s potential harms. In 2021, [Nathan Perrow](#), a recent high school graduate, received a Snapchat message from a group willing to fill up his gas tank and pay him \$1,200 for transportation. When Nathan arrived at the pickup location, the group was nowhere to be found. Nearby [law enforcement officers](#) accused Perrow of human smuggling, and he was

arrested and charged with six counts of smuggling of persons under OLS. Nathan spent three months in Texas state prison before being released. In 2023, Nathan testified before the Texas House State Affairs Committee, “If it (SB 4) was in place when I was accused, I wouldn’t have had the opportunity to better my life [...]. When I was in (jail), there were other guys my age in there for the same thing, just trying to make some money, and I’m just grateful I got to get out and better my life because some of them didn’t.” During Nathan’s three months in prison, he lost what he believed was an opportunity to join the National Guard. Nathan described his experience for the committee, stating, “The interactions with the officers were terrifying[.]”

To learn more and get involved in ongoing advocacy efforts, please visit
<https://www.endlonestar.com/>