

[2017 Session] Modify the Penalty for Certain Drug Possession Offenses & Reinvest Savings in Treatment

Policy Background:

Texas' state jail system, created in 1993, was originally intended to divert certain individuals from crowded prisons and provide them rehabilitative assistance. However, people sentenced to state jail facilities have extremely limited access to treatment and programming options, and typically have no post-release supervision. As a result, state jail releasees have the highest rates of re-arrest and re-incarceration among returning populations.

Alarming, 99% of people in state jail have committed a nonviolent offense – typically drug- or property-related – and yet they continue to cycle through the system and drain taxpayer resources by failing to get the help they need to become productive, stable members of the community.

Possession of less than a gram of a controlled substance – the equivalent of less than a sugar packet – qualifies as a state jail felony in Texas; it is punishable by up to two years in confinement, and the felony record saddles convicted men and women with lifelong barriers to housing, employment, and other assistance. Drug sentences must better match the severity of the crimes and maximize taxpayers' bang for their buck.

Texas policy-makers should reduce the penalty for up to 1 gram of a controlled substance from a state jail felony to a Class A misdemeanor. This common sense approach to low-level drug use will increase the likelihood that people are placed on probation, enabling more people to access community-based services while being held accountable for meeting strict requirements. Rigorous supervision will help to lower recidivism rates, and the penalty recalibration can eliminate the barriers to employment and housing that generally accompany a felony conviction.

This change will also relieve crowded felony court dockets and save Texas millions in trial, defense, and corrections spending.

Key Facts:

- As of August 2015, there were 9,400 people on hand in a state jail facility, 99% of whom were incarcerated for a nonviolent offense.¹
- From July 2015 to June 2016, nearly 17,600 people were adjudicated in Texas for possessing controlled substances in amounts consistent with personal use, mostly less than one gram.

Of those, more than 7,000 people (or 42%) served time in a state jail.² The cost to incarcerate this population reached \$70 million.³ This does not include costs associated with arrest, prosecution, and public defense.

These same individuals, lacking strong access to treatment or post-release supervision, contributed to a 62% re-arrest rate.⁴

- Probation is far less expensive than incarceration, costing the state only \$1.63 per person per day.⁵ And it is often more effective at addressing addiction than incarceration: people on probation frequently have more access to drug treatment than those incarcerated, and treatment programming results in lower levels of re-offending than strict incarceration.⁶
- Probation conditions, which vary by judge and offense, typically require regular reporting to a probation officer, fee payments throughout the course of the probation term, full payment of court costs and fees, community service, meeting all mandated class or program obligations (e.g., class or program attendance, drug testing, etc.), school or employment attendance, abiding by restrictive conditions (e.g., curfews, drug and alcohol abstinence, avoidance of negatively influential peers or locations), and remaining law-abiding during the course of the probation term; depending on the offense, probation conditions may also require victim restitution.

Relevant Bills:

- **Bill Number:** [HB 2398](#) [Phil King, Senfronia Thompson, Parker, Burkett, Longoria]
Bill Caption: Relating to the punishment for certain possession offenses under the Texas Controlled Substances Act; changing eligibility for community supervision.

- **Bill Number:** [SB 1461](#) [Hinojosa]
Bill Caption: Relating to the punishment for certain possession offenses under the Texas Controlled Substances Act; changing eligibility for community supervision.

Other Bills Related to State Jail Felonies:

- **Bill Number:** [HB 130](#) [Dutton]
Bill Caption: Relating to the penalty for certain offenders for possession of a small amount of certain controlled substances.
House Hearing Notice: [Criminal Jurisprudence, March 13, 2017](#)
- **Bill Number:** [HB 722](#) [Longoria, Rose]
Bill Caption: Relating to certain procedures for defendants who successfully complete a period of state jail felony community supervision.
House Hearing Notice: [Criminal Jurisprudence, April 24, 2017](#)
TCJE House Action: [Card in support](#)
- **Bill Number:** [HB 3841](#) [Collier]
Bill Caption: Relating to the punishment for possession of a small amount of a substance in Penalty Group 1 under the Texas Controlled Substances Act.

Other Materials:

- TCJE Fact Sheet: [Opioid Abuse in Texas](#) [August 2016]
- [TCJE Interim Testimony](#) before House Corrections Committee [February 2016]

Charge: Study incarceration rates for non-violent drug offenses and the cost to the state associated with those offenses. Identify alternatives to incarceration, including community supervision, that could be used to reduce incarceration rates of non-violent drug offenders.

¹ Texas Department of Criminal Justice, *Statistical Report: Fiscal Year 2015*, p. 1.

² Texas Department of Criminal Justice (TDCJ); data received via open records request submitted by TCJE in 2016. The total number of people adjudicated for possessing controlled substances in amounts consistent with personal use was 17,585.

³ Cost analysis of impacted population performed by TCJE, using Legislative Budget Board (LBB)'s *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, Submitted to the 84th Legislature, February 2015, p. 4.

⁴ TDCJ; data received via open records request submitted by TCJE in 2016.

⁵ LBB, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, p. 6.

⁶ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment, *The National Treatment Improvement Evaluation Study: NTIES Highlights*, 1997. Also see: Dustin Johnson, Ph.D., “Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice-Community Justice Assistance Division: Research and Evaluation,” May 2011, pp. 13, 23 (people completing residential programs have significantly lower two-year arrest rates and incarceration rates than those who do not complete their program).