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2019 FACT SHEET

HB 4169

A Failure in the Fourth Degree: Texas' State Jail System Should Be Abolished

THE STATE JAIL SYSTEM EXPERIENCES HIGH RECIDIVISM RATES AND COMES AT MASSIVE TAXPAYER COST

In 1993, Texas created a new fourth-degree category of felony called the state jail felony.¹ The system was envisioned as a rehabilitative alternative to prison, with incarceration intended as a last resort. This vision was never realized. Instead, nearly 17,000 people each year are sent to a state jail facility, often for offenses as minor as possession of less than a gram of a controlled substance.² In state jail, people receive little to no treatment. Of the 15 state jail units in the state, only six offer the State Jail Substance Abuse Treatment Program,³ which does not meet best practices given that it offers no aftercare or post-release services.⁴

As a result, people released from state jails have the highest rate of re-offending of any population released from a state correctional institution in Texas – yet incarcerating this population costs Texas taxpayers more than \$170 million each year.⁵ The most recent state jail re-arrest rate as reported by the Legislative Budget Board is nearly 63%, compared to 46% for prison releases.⁶

THE STATE JAIL SYSTEM IS CONTRIBUTING TO THE SUBSTANCE USE CRISIS IN TEXAS

With such high re-arrest rates among individuals with state jail offenses – a large percentage of whom were initially incarcerated on a drug-related charge – the cycle of substance use, arrest, and incarceration simply continues, at a massive cost to taxpayers and communities. This underscores the need to address public health issues *outside* the criminal justice system. Despite Texas' heavy reliance on incarceration to address drug offenses, there is no empirical evidence that it will prevent future substance use⁷ or the associated justice system involvement.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 4169 BY REPRESENTATIVE MOODY

HB 4169 will save taxpayer dollars that can be used to better serve people in the community:

1. This bill eliminates the state jail felony offense level, replacing it with a fourth-degree felony.
2. The bill also modifies several offense categories:
 - a. The penalty for possession of a controlled substance (Penalty Group (PG) 1, less than a gram; PG 1A, less than 20 units; and PG 2, less than 1 gram) is reduced from a state jail felony to a Class A misdemeanor.
 - b. The penalty for possession of a controlled substance in PG 2A (synthetic cannabinoids, such as K2) is reclassified as follows: Less than 4 ounces is a Class B misdemeanor; 4 ounces to 5 pounds is a Class A misdemeanor; and amounts greater than 5 pounds begin at the third-degree felony level.

Continued on reverse.

- c. Similarly, the penalty for marijuana possession is reclassified as follows: Less than 4 ounces is a Class B misdemeanor; 4 ounces to 5 pounds is a Class A misdemeanor; and amounts greater than 5 pounds begin at the third-degree felony level.
 - d. The penalties for prescription fraud, harassment of a public servant, and obscenity are all reduced from a state jail felony to a Class A misdemeanor.
 - e. The penalty level for repeat theft offenses is modified: Currently, theft under \$2,500 is enhanced to a state jail felony when there are two or more prior convictions of any grade of theft; this bill reduces the penalty to a Class A misdemeanor for theft under \$750 when there are two or more prior convictions of any grade of theft, and there is no felony enhancement for repeat misdemeanor-level theft.
 - f. The penalty levels for retail theft and false statement to obtain property are also modified, eliminating the state jail felony level, which currently applies to a property loss of between \$2,500 and \$30,000; under this bill, an offense would be a Class A misdemeanor if the property loss was \$750 to \$30,000.
 - g. The penalty for prostitution is modified, eliminating the state jail felony enhancement on the fourth offense.
3. The bill retains the provisions within Penal Code 12.44, which allow for Class A misdemeanor punishment for the newly named fourth-degree felony.

Citations

¹ SB 1067 (73R), Whitmire/Place, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=73R&Bill=SB1067>.

² Texas Department of Criminal Justice, *FY 2018 Statistical Report*, 2, https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf.

³ Texas Department of Criminal Justice, *Unit Directory*, http://tdcj.state.tx.us/unit_directory/.

⁴ Hiller, M., et al., "Prison Based Substance Use Treatment, Residential Aftercare and Recidivism." *Addiction* (1999), 94(6), 833 – 842, 834.

⁵ Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report, Fiscal Years 2017 and 2018*, 4, https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/4911_Criminal_Juvenile_Uniform_Cost_Jan_2019.pdf. Calculated by taking the total receives (16,999) and multiplying by the cost per day (\$52.46) at an average number of days served of 194; per the Statistical Report, people serve on average 10.8 months in state jail minus time in county jail.

⁶ Legislative Budget Board Staff, *Statewide Criminal and Juvenile Justice Recidivism and Revocations Rates*, January 2017, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Statewide_Crim_Just_Recid_Revoc.pdf.

⁷ Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, 2015, Columbia University Press, New York, ebook location 5014.