



Scott Henson, Policy Consultant

Cell: (512) 417-0120

shenson@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2015

HB 254

Reduce Penalties for User-Level Drug Possession

A small modification will save nearly \$100 million by incarcerating fewer nonviolent individuals

A simple way to save nearly \$100 million in the state budget over the next biennium¹ is to reduce penalties for possession of less than a gram of a controlled substance from a state jail felony to a Class A misdemeanor.

A state jail felony in Texas is punishable by up to two years in confinement and a fine of \$10,000. Probation and treatment work better than incarceration to reduce addiction and drug crime, which is why the Legislature in 2003 mandated probation on the first offense for individuals convicted of possessing less than a gram of a controlled substance. Even so, many individuals who suffer from substance abuse are ultimately incarcerated. In the 2011-2012 biennium, 16,262 individuals were sentenced to state jail for a drug conviction;² of these individuals, 88% were convicted of possessing less than a gram of a controlled substance without the intent to deal or distribute.³

Personal-use level possession of drugs should be dealt with at the local, misdemeanor level, utilizing strong probation methods instead of continuously cycling individuals through brief state jail terms without post-release supervision. To that end, HB 254 would reduce the penalty category for possession of less than a gram of a controlled substance from a state jail felony to a Class A misdemeanor. Savings from reduced incarceration costs should be used to subsidize more probation officers and programming for counties to supervise the additional misdemeanor caseload.

KEY FINDINGS

- **One gram equals one packet of Sweet’N Low.**
- Texas pays millions to incarcerate drug addicts for possession of these miniscule amounts instead of treating them, tagging thousands with a felony record that will follow them into the workplace and beyond throughout life.

In fact, **incarcerating a person in state jail totals nearly \$16,000 per year.**⁴ This excludes costs associated with arrest, prosecution, and public defense.

- Low-level addicts benefit more from strong community supervision than brief incarceration stints in dysfunctional Texas state jails.

And local probation departments are in the best position of anyone in the criminal justice system to confront addiction, but they require greater resources which could be freed up by this measure.

- Michael McSpadden, a Republican and longtime district court judge in Harris County, believes these penalties should be reduced. Judge McSpadden and 11 fellow Harris County judges wrote in 2013, “the public has realized that draconian punishment of minor drug offenses as state jail felonies is not working, and **as judges, we hear countless complaints from trial juries and grand juries who do not believe these cases should be tried as felonies.**”⁵

Continued on reverse.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 254 BY REPRESENTATIVE THOMPSON

- **HB 254 reduces the penalty for up to 1 gram of a controlled substance from a state jail felony to a Class A misdemeanor.** Drug sentences should better match the severity of the crimes and maximize taxpayers' bang for their buck.
- **HB 254 will reduce incarceration and save money.** Texas leads the nation in the number of people incarcerated, spending around \$3 billion per year to confine people. This bill helps reverse that trend and would save \$100 million in the coming biennium.
- **HB 254 will facilitate the treatment of addiction and will enhance liberty.** Community supervision, overseen closely by a local judge with access to resources for programming, is a better choice than prison to treat addiction.
- **HB 254 will continue to hold people accountable.** Class A misdemeanors are still punishable by up to one year in jail and a \$4,000 fine if individuals cannot comply with probation conditions or a judge or jury believes a particular case merits jail time.

Citations

¹ Fiscal note for HB 1417 by Thompson, 83rd Texas Legislature, March 26, 2013, last accessed online 1/22/15 at: <http://www.capitol.state.tx.us/tlodocs/83R/fiscalnotes/html/HB014171.htm>, estimating "a positive impact of \$97,873,833 through the biennium ending August 31, 2015." Five year savings would run roughly to \$285 million.

² Texas Department of Criminal Justice, Fiscal Year 2011 Statistical Report (2012) and Fiscal Year 2012 Statistical Report (2013).

³ Open Records Request, Texas Department of Criminal Justice; *data available upon request*.

⁴ Legislative Budget Board, *Criminal Justice Uniform Cost Report, Fiscal Years 2010 to 2012*, Submitted to the 83rd Texas Legislature, January 2013, p. 8;

www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf. Texas spends \$42.90 per person per day to incarcerate one individual in a state jail, for an annual total of \$15,658.50.

⁵ Letter from Judge Michael McSpadden of the 209th District Court to State Senator John Whitmire, January 3, 2013; <http://www.scribd.com/doc/139764249/Letter-from-Judge-Michael-McSpadden-of-the-209th-District-Court-to-State-Senator-John-Whitmire>.