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FACT SHEET 2017

HB 575

It's Time for Texas to More Effectively Address Minor Drug Offenses

CHASING TRACES: AN INEFFECTIVE AND COSTLY RESPONSE LOWEST-LEVEL DRUG POSSESSION

Possession of less than a gram of a controlled substance—the equivalent of a sugar packet—is a state jail felony in Texas. Individuals found in possession of even residue or trace amounts of a controlled substance (less than .02 grams) can be convicted and sent to state jail at a cost of \$17,264 per person per year.¹ Drug sentences should better match the severity of the crimes and maximize taxpayers' bang for their buck. HB 575 is an effective approach that would establish .02 grams of a controlled substance in Penalty Group 1 as the minimum weight necessary to constitute a state jail felony.

Controlled substances of less than .02 grams cannot be tested twice by a crime lab and therefore cannot be prosecuted if both the State and defense request testing. **Establishing .02 grams of a controlled substance as the minimum state jail felony weight will protect due process by allowing such crime lab testing.**

Furthermore, this approach may reduce unnecessary, costly confinement. Texas incarcerates high numbers of individuals for low-level drug possession. During the one-year period from July 2015 through June 2016, 17,585 individuals were adjudicated for possessing controlled substances in amounts consistent with personal use, mostly less than one gram.² Of those, **more than 7,000 (or 42%) served time in a state jail,³ costing the state nearly \$70 million.⁴**

KEY FINDINGS

- .02 grams is the minimum weight necessary for both the prosecution and defense to test a controlled substance in a crime lab, thus protecting individuals' due process rights.
- Under the administration of former Harris County District Attorney Pat Lykos, trace amounts of controlled substances were prosecuted as Class C misdemeanors instead of state jail felonies.⁵ This policy safely decreased incarceration, saved money, and freed up time in the Houston Police Department Crime Lab and local courts.⁶ **Notably, the crime rate steadily dropped during Lykos's tenure.⁷**
- **Other jurisdictions in Texas utilize prosecutorial discretion and do not prosecute trace amounts of drugs.** In Collin, El Paso, Tarrant, and Travis counties, most cases involving .02 grams or less are either not pursued or the defendant is charged with the lesser offense of possession of drug paraphernalia.⁸

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 575 BY REPRESENTATIVE SENFRONIA THOMPSON

HB 575 will establish .02 grams as the minimum weight necessary to constitute a state jail felony. This is a proactive, common sense approach to minor drug crimes that will safely reduce incarceration, protect due process, and prevent individuals from being burdened with the lifelong consequences of a felony conviction. It will also **relieve crowded felony court dockets and save Texas millions in state prison spending, a percentage of which could be reinvested in county programs to address substance abuse.**

Citations on reverse.

Citations

¹ Legislative Budget Board (LBB), *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, Submitted to the 84th Legislature, February 2015, 4; cost reflects a costs per day in a state jail in 2014 (\$47.30 per day).

² Texas Department of Criminal Justice; data received via open records request submitted by TCJC in 2016.

³ Ibid.

⁴ Cost analysis of impacted population performed by TCJC, using LBB's *Criminal and Juvenile Justice Uniform Cost Report*.

⁵ Emily DePrang, "Houston's New DA Brings Back 'Trace' Felonies, the Eighties," *Texas Observer*, February 15, 2013.

⁶ Ibid.

⁷ Rebecca Bernhardt, J.D., *Harris County Communities: A Call For True Collaboration*, January 2013, 9.

⁸ Sarah R. Guidry, *et al.*, *Blueprint for Criminal Justice Policy Solutions in Harris County*, March 2015.