



**Douglas Smith**, Senior Policy Analyst

Work: (512) 441-8123, ext. 102

Cell: (512) 757-1941

dsmith@TexasCJC.org

www.TexasCJC.org

**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.<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> which does not meet best practices given that it offers no aftercare or post-release services.<sup>4</sup>

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.<sup>5</sup> The most recent state jail re-arrest rate as reported by the Legislative Budget Board is nearly 63%, compared to 46% for prison releases.<sup>6</sup>

### **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 use<sup>7</sup> 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

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

<sup>2</sup> Texas Department of Criminal Justice, *FY 2018 Statistical Report*, 2, [https://www.tdcj.texas.gov/documents/Statistical\\_Report\\_FY2018.pdf](https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf).

<sup>3</sup> Texas Department of Criminal Justice, *Unit Directory*, [http://tdcj.state.tx.us/unit\\_directory/](http://tdcj.state.tx.us/unit_directory/).

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

<sup>5</sup> 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](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.

<sup>6</sup> 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](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Statewide_Crim_Just_Recid_Revoc.pdf).

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