



Sarah D. Pahl, Policy Attorney
 Work: (512) 441-8123, ext. 106
 Cell: (817) 229-7868
 spahl@TexasCJC.org
 www.TexasCJC.org

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of HB 333, which will provide incentives for individuals charged with state jail felonies to complete probation and avoid the collateral consequences that come with a felony conviction by allowing the court to reduce convictions to Class A misdemeanors.

COMMUNITY SUPERVISION ALTERNATIVES WILL INCREASE PUBLIC SAFETY, PERSONAL RESPONSIBILITY, AND COST SAVINGS

The state jail system was originally designed to improve the state criminal justice and corrections systems by redirecting individuals with low-level offenses out of overcrowded prisons, providing them the opportunity to serve their sentence on community supervision while reserving space in prisons for those who pose a higher risk to public safety.¹

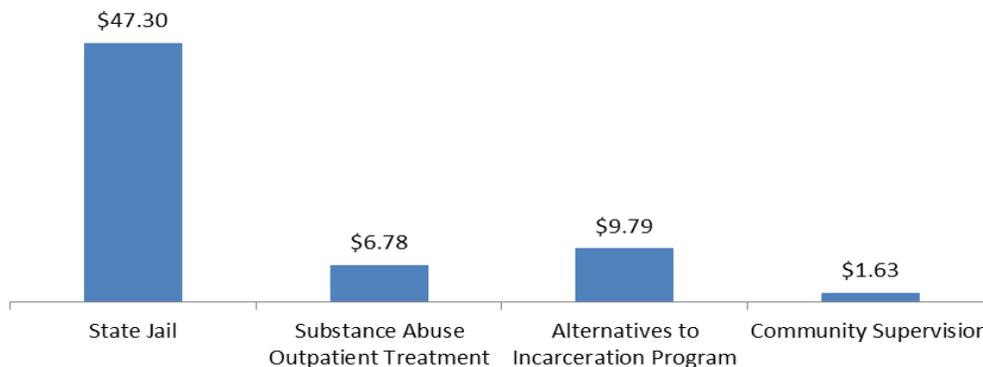
However, tens of thousands of Texans, primarily with low-level drug or property offenses, are sentenced directly to state jail with little access to treatment, and almost always without post-release community supervision or support. **In many cases, community supervision provides a better, less expensive opportunity to access meaningful services and resources that address substance abuse issues, mental health issues, employment problems, etc.; these, in turn, enable people to live productive, self-sufficient lives in our communities.**

House Bill (HB) 333 will incentivize community supervision by allowing certain individuals who meet specific criteria the opportunity to have a state jail conviction reduced by one offense level. Current law already permits a state jail offense to be punished and prosecuted as a Class A misdemeanor, but HB 333 will provide a more effective incentive for community supervision because it will apply only *after* successful completion of a term of probation, as opposed to before. By encouraging more community supervision placements, HB 333 will ensure that individuals have access to important community-based programs and services that will increase the chances of success in the community and decrease the likelihood of reoffending.

KEY FINDINGS

- **STATE JAIL TERMS ARE EXPENSIVE**: State jails are dramatically more costly (averaging approximately \$47 per day per person) than alternatives to incarceration such as community supervision (only \$1.63 per day per person) or community-based treatment (less than \$10 per day per person).²

Cost Per Person Per Day



- **INDIVIDUALS RELEASED FROM STATE JAILS HAVE HIGH RATES OF RE-OFFENDING:** The creation of state jail felony offenses was intended to carve out a population of individuals more amenable to rehabilitative services and treatment programs, yet persons convicted of state jail felony offenses have higher rates of re-arrest and re-incarceration than individuals exiting prisons and those on community supervision.

More specifically, **30.7%** of individuals released from a state jail in FY 2011 (measured through FY 2013) were re-incarcerated. To compare, **21.4%** of individuals released from prison in FY 2011 (measured through FY 2013) were re-incarcerated and an average of 15% of individuals on direct felony supervision were revoked from their probation from FY 2009 through FY 2014.³

This trend may be due to the lack of rehabilitative programming provided at state jail facilities, the relatively short terms of incarceration (on average, six months) that prohibit engagement in effective treatment programs, or the lack of post-release supervision.

- **STATE JAILS ARE VIEWED AS LESS RIGOROUS THAN PROBATION:** Many defendants actually elect to serve their sentence in a state jail rather than take advantage of the support and resources offered by community supervision. This is primarily due to the fact that community supervision terms are generally longer than state jail terms and require a higher level of personal accountability and self-responsibility.

For instance, 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. It is incumbent upon each probationer to ensure all conditions are met, making this a highly rigorous and regulated period under supervision.

- **A STATE JAIL SENTENCE CREATES LIFELONG CONSEQUENCES:** Unfortunately, a state jail conviction creates collateral barriers associated with a felony conviction, including difficulties accessing housing, employment, and other assistance once released. This increases the likelihood of re-offending and returning to confinement.
- **STATE JAILS ARE NOT SERVING THEIR LEGISLATIVELY INTENDED PURPOSE:** The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.⁴ However, the High Value Data Set available on TDCJ's website indicates otherwise, showing that in May 2014, **23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years**⁵ (the maximum sentence for state jail felonies is two years). Further, state jail facilities intermingle those serving time for state jail felonies with the general prison population. While it is common knowledge that TDCJ regularly utilizes state jail facilities to hold individuals convicted of higher-level crimes for periods of time less than two years, this practice is entirely improper and contrary to the purpose for which state jails were created.

TDCJ may save money by housing individuals with longer sentences in state jails (given that some prison facilities cost as much as \$53.87 per person per day, compared to the \$47.30 price tag of state jails).⁶ However, depriving individuals with longer sentences of the services and programs they should receive in prison facilities is a blatant misuse of the resources designated for this population.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 333 BY REPRESENTATIVE LONGORIA

- **HB 333 will encourage individuals with certain state jail felony convictions to serve their sentence on community supervision by allowing a court to reduce the conviction one offense level *after* all conditions of probation are satisfied.** Before a defendant requests a modification for an offense reduction under HB 333, he or she must first successfully fulfill all conditions of community supervision and pay any required fees, restitution, or fines.
- **HB 333 will not modify a state jail level offense for all offenses, and various restrictions will limit its applicability.** HB 333 only applies to limited state jail offenses and it excludes any offenses under Title 5 of the Penal Code (such as homicide, kidnapping, and assault). Moreover, before a judge can grant a modification, he or she must provide notice to the attorney representing the state, who in turn may request a hearing before any modification is issued. The modification can only be issued if no party requests a hearing or, if a hearing is requested, the judge makes a finding that a modification of the record of conviction is in the best interest of justice.
- **HB 333 will save taxpayer dollars, enhance public safety through lower recidivism, increase self-responsibility, and strengthen communities.** Community supervision requires more diligence, self-responsibility, and accountability than state jail facilities. Moreover, with access to resources and services, community supervision has a significant impact on reducing recidivism. While increasing public safety is paramount, diverting a person from state jail to community supervision also saves taxpayers a significant amount of money that would be spent on state jail incarceration.
- **HB 333 will help individuals charged with a state jail felony offense avoid a felony conviction and, accordingly, avoid the collateral consequences that accompany a felony record.** It is undisputed that individuals with a felony record face significant challenges in finding housing and employment. Allowing individuals to request a modification for an offense reduction under HB 333 gives individuals charged with state jail felonies a greater opportunity to obtain employment, contribute to Texas' economy, and provide for themselves and their families.

Citations

¹ House Research Organization, Bill Analysis, Tex. S.B. 1067, 73rd Leg., R.S. (1993); House Research Organization, Tex. S.B. 532, 73rd Leg., R.S. (1993).

² Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4, 6; http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities. Substance abuse outpatient treatment costs the state \$6.78 per day, while the Treatment Alternatives to Incarceration Program costs the state \$9.79 per day.

³ Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, February 2015, pp. 3, 7, 8, 16; http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf.

⁴ Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2; http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf. The report indicates that 10,524 individuals were on hand in state jails, while 22,272 individuals were received into state jail facilities. The total number of individuals in TDCJ was 150,361.

⁵ Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls.

⁶ LBB, "Criminal Justice Uniform Cost Report," 4.