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FACT SHEET 2013

S.B. 1291

## Implement More Effective Approaches to Address Minor Drug Offenses

*Common Sense Strategies will Save Taxpayers Money, Safely Reduce Incarceration, and Protect Due Process*

### CHASING TRACES: AN INEFFECTIVE AND COSTLY RESPONSE TO FIRST-TIME LOW-LEVEL DRUG POSSESSION

Individuals found in possession of even residue or trace amounts of a controlled substance (less than .02 grams) can be convicted of a state jail felony and sent to state jail or prison, at costs of \$15,700 - \$18,300 per person per year.<sup>1</sup> S.B. 1291 would establish .02 grams of a controlled substance in Penalty Group 1 as the minimum weight necessary to constitute a state jail felony. **This amount will protect due process by allowing both the State and defense to test the controlled substance in a crime lab.** Furthermore, S.B. 1291 makes possession of less than .02 grams of a controlled substance a Class C misdemeanor, and possession of more than .02 grams but less than one gram a state jail felony.

Texas incarcerates high numbers of individuals for low-level drug possession. In 2011 and 2012 alone, 16,262 individuals were sentenced to state jail for a drug conviction.<sup>2</sup> Of these individuals, 88% were convicted of possessing less than a gram of a controlled substance without the intent to deal or distribute (a gram equals one packet of Sweet’N Low).<sup>3</sup> As of August 2012, nearly one-third (31%) of the total Texas state jail population was incarcerated for possession of less than a gram.<sup>4</sup>

In 2011 and 2012, the Texas Department of Criminal Justice (TDCJ), comprised of state jails, prison units, and Substance Abuse Felony Punishment facilities, received 43,793 individuals convicted of drug crimes.<sup>5</sup> Approximately 42% of these individuals were incarcerated for possession of less than a gram.<sup>6</sup>

Many individuals convicted of low-level drug offenses struggle with mental illness and chemical dependency. For that reason, **incarcerating individuals for possession of less than one gram of a controlled substance often costs the state more on average than incarcerating those convicted of other types of offenses.**

Indeed, individuals convicted of possession of less than a gram fill beds in TDCJ medical, psychiatric, and intellectually disabled units at high expense:

- **Medical Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 465<sup>7</sup> had been placed in a medical unit (\$661.86/day)<sup>8</sup> during the span of their incarceration. These individuals alone filled beds in the medical unit for a total of 5,812 days,<sup>9</sup> costing the state \$3,846,730.
- **Psychiatric Unit:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 113<sup>10</sup> had been placed in a psychiatric unit (\$63.10/day)<sup>11</sup> during the span of their incarceration. These 113 individuals alone filled beds in the psychiatric unit for 13,969 days,<sup>12</sup> costing the state \$881,443.
- **Intellectually Disabled Program:** Of the individuals on hand in TDCJ on August 31, 2012, who were sentenced for possession of under a gram, 18<sup>13</sup> individuals had been placed in an intellectually disabled program (\$66.35/day)<sup>14</sup> during the span of their incarceration. These 18 individuals alone filled beds in intellectually disabled units for 6,550 days,<sup>15</sup> costing the state \$434,592.

*Continued on reverse.*

## 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.<sup>16</sup>
- In 2011 and 2012, TDCJ received 18,535 individuals for possession of less than a gram of a controlled substance.<sup>17</sup>
- In 2011 and 2012, 16,262 individuals were sentenced to state jail for a drug conviction.<sup>18</sup> 88%, or 14,309 of these individuals, were sentenced for possession of less than a gram.<sup>19</sup>
- 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.<sup>20</sup> This policy safely decreased incarceration, saved money, and freed up time in the Houston Police Department Crime Lab and local courts.<sup>21</sup> **Notably, the crime rate steadily dropped during Lykos's tenure.**

## COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT S.B. 1291 BY SENATOR ELLIS

**S.B. 1291 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 save taxpayers money, safely reduce incarceration, protect due process, and prevent individuals from being burdened with the lifelong consequences of a felony conviction.

## Citations

<sup>1</sup> Legislative Budget Board (LBB), *Criminal Justice Uniform Cost Report, Fiscal Years 2010-2012* (2013), p. 8; costs reflect an annual term of incarceration in a state jail (\$42.90 per person per day) and an annual term of incarceration in a prison (\$50.04 per person per day).

<sup>2</sup> Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

<sup>3</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>4</sup> Ibid.

<sup>5</sup> Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

<sup>6</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>7</sup> Ibid.

<sup>8</sup> LBB, *Criminal Justice Uniform Cost Report*, p. 8.

<sup>9</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>10</sup> Ibid.

<sup>11</sup> LBB, *Criminal Justice Uniform Cost Report*, p. 8.

<sup>12</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>13</sup> Ibid.

<sup>14</sup> LBB, *Criminal Justice Uniform Cost Report*, p. 8.

<sup>15</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>16</sup> Emily DePrang, "Houston's New DA Brings Back 'Trace' Felonies, the Eighties," *Texas Observer*, February 15, 2013.

<sup>17</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>18</sup> Texas Department of Criminal Justice, *Fiscal Year 2011 Statistical Report* (2012) and *Fiscal Year 2012 Statistical Report* (2013).

<sup>19</sup> Open Records Request, Texas Department of Criminal Justice.

<sup>20</sup> Houston's New DA Brings Back 'Trace' Felonies, the Eighties.

<sup>21</sup> Ibid.