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TESTIMONY 2013

S.B. 1291

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of **S.B. 1291 by Senator Ellis**, an effective policy that will save taxpayer money otherwise spent on costly 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.

## CONCLUSION

Thank you again for allowing me this opportunity to testify in favor of this bill. S.B. 1291 will decrease jail overcrowding, save taxpayers money, increase confidence in the criminal justice system, and facilitate more opportunities for rehabilitation, to reduce rates of re-offending. The Texas Criminal Justice Coalition strongly urges you to support this policy.

## **Citations**

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<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.