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*.


6 Ibid.
